

Draft Modification Report
Code Governance Review: Self Governance
Modification Reference Number 0323
Version 2.0

This Draft Modification Report is made pursuant to Rule 9.1 of the Modification Rules and follows the format required under Rule 9.4.

1 The Modification Proposal

Nature and Purpose of this Proposal

Where capitalised words and phrases are used within this Modification Proposal, those words and phrases shall usually have the meaning given within the Uniform Network Code (unless they are otherwise defined in this Modification Proposal). Key UNC defined terms used in this Modification Proposal are highlighted by an asterisk (*) when first used.

This Modification Proposal*, as with all Modification Proposals, should be read in conjunction with the prevailing Uniform Network Code* (UNC).

Background

In November 2007, Ofgem announced the Review of Industry Code Governance, which concluded at the end of March 2010 when Ofgem published their Final Proposals for the Code Governance Review (CGR). The Final Proposals covered the following work strands:

- Significant Code Review and Self Governance proposals;
- Proposals on the governance of network charging methodologies;
- Proposed approach to environmental assessment within the code objectives ;
- Proposals on the role of code administrators and small participant and consumer initiatives; and
- The Code Administration Code of Practice (subset of the above code administrators proposals).

The licence modifications necessary to implement the Final Proposals for the Code Governance Review and the Code Administration Code of Practice were published on 3 June 2010 and become effective on the 31 December 2010.

This Modification Proposal* aims to implement the Code Governance Review Final Proposals with regards to Self Governance within the UNC.

The purpose of including Self Governance within the CGR with a view to introducing Self Governance within industry codes was to ensure that industry resources will be focused on more material matters and that the implementation of non-material proposals will be facilitated faster. In addition Self Governance can reduce administrative time and effort reducing both the time and cost expended on non-material proposals.

Currently all Modification Proposals, irrespective of complexity and materiality, must proceed via the Modification Procedures* and be considered

by the Authority for determination on whether the Modification Proposal should be implemented.

Whilst the Gas Transporters Licence* provides, subject to Ofgem approval, for 'housekeeping' changes e.g. correcting typographical errors, amending incorrect numbering sequences etc to be made to the UNC via the consent to modify process, there is no facility for a non-material Modification Proposal to be raised and pursued without following the full Modification Procedures described above.

A brief overview of the key CGR recommendations regarding Self Governance can be found below. It is important to note that the following bullets represent excerpts from the CGR Final Proposals and do not necessarily represent the view of the proposer.

- 'Self Governance Criteria' will be established to allow the relevant code panel to assess whether a proposal can proceed through the Self Governance Route.
- The Self Governance Criteria will assess a proposal to ensure that, if implemented, it is unlikely to discriminate between different classes of UNC parties and unlikely to have a material effect on;
 - existing or future gas customers;
 - competition
 - operation of the pipeline system(s)
 - matters relating to sustainable development, safety or security of supply, or the management of the market or network emergencies;
 - the UNC governance procedures or Modification Procedures.
- When raising a proposal the proposer must state whether it believes the proposal can proceed via the Self Governance route, and provide evidence within the proposal in support of the Self Governance Criteria.
- If the relevant code panel determines that the proposal is suitable for Self Governance, the Code Administrator will submit a 'Self Governance Statement' to the Authority including confirmation of and an explanation of the determination taken in consideration of the Self Governance Criteria.
- The Authority shall either accept the Self Governance Statement by non-veto of the statement or written acceptance. Alternatively the Authority shall reject by directing that the proposal proceed as per the current code development procedures, with such a decision permitted at any time up until the date the code panel intends to determine whether or not to implement the Self Governance proposal.
- If the Authority accepts a Self Governance Statement and determines that a proposal can proceed via the Self Governance route, the code

panel will be permitted to determine in due course whether or not to implement the proposal rather than submit a recommendation to the Authority.

- If the code panel does not agree with the proposer that the proposal can proceed via Self Governance, or the Authority disagrees with a Self Governance Statement, the proposal will proceed via the current code modification procedures.
- The relevant code panel will seek representations as to whether the proposal is suitable to proceed via Self Governance.
- All code parties (including Third Party Participants and Materially Affected Parties) will have rights of appeal against the Modification Panel's decision in respect of whether to implement or reject a self governance proposal. The Authority will oversee the appeal process and will consider the appeal and make a determination based on whether;
 - The appealing party would be unfairly prejudiced by the outcome of the Self Governance determination, or
 - The implementation or rejection of the proposal does not better facilitate the applicable code objectives.
- The individual industry codes can recommend whether an interim forum could be a useful device to limit the number of appeals to Ofgem.
- The Authority will be able to decline to hear an appeal if it considers the case to be frivolous, vexatious or to have no reasonable prospect of success.
- Finally, the voting rights for the code panel to use when determining Self Governance proposals should be proposed and developed by the individual codes.

Nature

In order to implement the above recommendations, the UNC Modification Rules require a number of amendments. As such, to reflect the CGR Final Proposals the following changes are proposed;

Clarification that a Modification Proposal shall follow the Self Governance route

In order to ensure that a Modification Proposal can appropriately follow the self governance route it is proposed the following changes are made to the UNC Modification Rules:

Section 7.2 'Discussion of Modification' within the UNC Modification Rules describes the initial determination that the Modification Panel will make as to whether the proposal is sufficiently developed or requires further work to

proceed through the Modification Procedures. It is proposed that this section be amended to include a Modification Panel determination as to whether a proposal satisfies the Self Governance Criteria and can proceed via the Self Governance route. It is also proposed that this section be amended to state that where the Modification Panel believes a proposal can proceed via Self Governance the Transporters shall submit a 'Self Governance Statement' to the Authority to include the above determination, justification for such a determination made in relation to the Self Governance Criteria, and may include the date the Panel expects to determine whether or not to implement the proposal.

Further, it is proposed that this section (7.2) be amended to state that the Authority can either accept a Self Governance Statement either in writing or by not rejecting the statement, or reject by directing that the proposal follow the current UNC Modification Procedures. Additionally, in the absence of a Self Governance Statement, it is proposed that the Authority can determine that a proposal can be pursued as a Self Governance Modification Proposal and inform the Panel of its determination prior to the Proposal being sent to Consultation.

To reflect that a proposal may be amended and no longer satisfy the Self Governance Criteria, it is proposed that a Self Governance Modification Proposal be able to change to a 'standard' Modification Proposal with implementation determined by the Authority during the Modification Procedures. To achieve this, it is firstly proposed that the Authority is able to reject a Self Governance Statement up until the Modification Panel determination as to whether or not to implement the proposal. Secondly, it is proposed that the Modification Panel is able to withdraw a Self Governance statement should they believe that the proposal no longer satisfies the Self Governance Criteria. For the avoidance of doubt, it is proposed that the Authority can determine that a Modification Proposal follow the Self Governance Route even if the Modification Panel has withdrawn a Self Governance Statement.

It is also proposed that section 9.3.3 be amended to state that the final Modification Report shall include reference to whether a proposal is being pursued as a Self Governance Modification Proposal.

Self Governance Determination

To enable the Modification Panel to make a determination with regards to a proposal, and to assist the Authority in its decision whether or not to approve a Self Governance Statement it is proposed that the UNC Modification Rules are amended to state that when a proposal is sent for consultation that respondents are asked whether they agree that Self Governance should apply.

In addition, Section 9.3 'Consultation – final Modification Report' of the UNC Modification Rules describes, among other activities, the determination the Modification Panel shall take regarding whether or not to recommend the implementation of the Modification Proposal or Third Party Proposal*. It is proposed that section 9.3 be amended to state that where a Self Governance

Statement has been issued and not vetoed by the Authority (as explained above) the Modification Panel shall;

- Submit any representations made or received by the Secretary as part of the proposals Consultation Phase to the Authority at least 7 (seven) calendar days before the date on which the Panel intends to make a determination on whether or not to implement the proposal (as stated either within the Self Governance Statement or notified to the Authority at the same time as the submission of any representations), and
- So long as the above is satisfied and the Authority has not vetoed the Self Governance Statement, determine at the Modification Panel meeting whether or not to implement the proposal and instruct the Secretary to notify all interested parties of this decision.

In addition to the above, it is proposed that section 9.3 be amended to state that where the Panel has determined that a Self Governance Modification Proposal shall be implemented, the proposal shall be implemented no less than 15 (fifteen) Business days after the date of such a determination to allow for any 'Self Governance Appeals' to be raised. Further it is proposed that if a 'Self Governance Appeal' is raised within the 15 Business day period, and satisfies the applicable criteria set out below, then the implementation of the proposal will be suspended until the outcome of the 'Self Governance Appeal' has been determined.

Voting on Self Governance Modification Proposals

For clarity where the Panel is to determine whether or not a proposal should be implemented (following acceptance of the Self Governance Statement) it is proposed that each Voting Member* of the Modification Panel can vote on such a Modification Proposal. For the avoidance of doubt following the implementation of Modification 0286A during the development of this proposal it is proposed that all Consumer Representatives be permitted to vote on Self Governance Modification Proposals.

Self Governance Appeals Process

To facilitate a Self Governance Appeal (SGA) process for UNC parties to challenge a Modification Panel determination on whether or not a Self Governance Modification Proposal should be implemented, it is proposed that a new section be created within the UNC Modification Rules. It is proposed that this section states that any UNC Party or Third Party Participant can appeal against such a determination so long as the appeal is made in line with the following criteria;

- The SGA has been made within 15 (fifteen) Business Days following the date on which the determination of the Modification Panel (as explained above) has been published by the Secretary*
- The appealing party provides supporting evidence to show that they will be unfairly prejudiced by the outcome of the Self Governance

determination, or

- The implementation or rejection of the proposal does not better facilitate the applicable code objectives, or

It is proposed that a UNC party or Third Party Participant wishing to submit an SGA will in the first instance, submit the appeal to the Secretary* for the Modification Panel to reconsider the determination on whether or not the proposal should be implemented. Upon submission of an appeal to the Secretary, it is proposed that the Modification Rules state that at the next meeting the Modification Panel shall, so long as the SGA satisfies the above criteria, reconsider whether or not the proposal should be implemented in light of the appeal and any further available information.

If, after considering an Appeal, the Panel does not wish to amend its determination and the appealing party is still not satisfied with the determination of the Modification Panel then the Appealing Party may then submit the appeal to the Authority for consideration. Such Appeal shall be required to be submitted to the Authority within 15 (fifteen) Business Days after the determination of the Modification Panel following consideration of the SGA by the Modification Panel.

Upon submission of an appeal to the Authority, the Authority shall;

- Undertake its own determination based on the proposal, the appeal, and any further information that is available and if applicable affirm or quash the Modification Panel decision, or
- If it believes that the Modification Panel has not considered the proposal fully, direct the Modification Panel to further reconsider its determination of whether or not the proposal should be implemented and provide a further written determination (either in support of the original decision or not) upon which the Authority will undertake its own determination to affirm or quash the Modification Panel decision

To reflect the second bullet above, it is proposed that the Modification Rules include an obligation on the Modification Panel to reconsider a determination on whether or not to implement a Self Governance Modification Proposal if directed to by the Authority, and submit to the Authority the result of such reconsideration.

Upon an Authority decision to affirm a Modification Panel decision, following submission of an appeal to the Authority by the Appealing Party, the appeal will be deemed to be unsuccessful.

If, following submission of an appeal to the Authority by the Appealing Party, the Authority determines to uphold an appeal, the Authority shall direct the transporters on how to progress the Proposal (i.e. direct the Panel to implement or reject the proposal or send the proposal back to the Development Phase or re-consult on the proposal).

For the avoidance of doubt, once a Self Governance Modification Proposal is implemented (i.e. after the 15 Business Days 'appeal window' has passed) an appeal can no longer be accepted by either the Modification Panel or the Authority.

It is also proposed that each UNC Party may only raise one SGA per UNC Self Governance Proposal.

It is proposed that if implemented the following transitional arrangements are used;

All modification proposals that have been allocated a number by the JO at the time of implementation will continue on the arrangements prior to implementation of this proposal, however from the date of implementation any new modifications will progress using the new arrangements.

Suggested Text

See separately published document.

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User Pays

a) Classification of the Proposal as User Pays or not and justification for classification

This Modification Proposal does not affect xoserve systems or procedures and therefore it is not affected by User Pays governance arrangements.

b) Identification of Users, proposed split of the recovery between Gas Transporters and Users for User Pays costs and justification

Not applicable.

c) Proposed charge(s) for application of Users Pays charges to Shippers

Not applicable.

d) Proposed charge for inclusion in ACS – to be completed upon receipt of cost estimate from xoserve

Not applicable.

3

Extent to which implementation of the proposed modification would better facilitate the relevant objectives

Standard Special Condition A11.1 (a): the efficient and economic operation of the pipe-line system to which this licence relates;

Implementation would not be expected to better facilitate this relevant objective.

Standard Special Condition A11.1 (b): so far as is consistent with subparagraph (a), the coordinated, efficient and economic operation of

(i) the combined pipe-line system, and/ or

(ii) the pipe-line system of one or more other relevant gas transporters;

Implementation would not be expected to better facilitate this relevant objective.

Standard Special Condition A11.1 (c): so far as is consistent with subparagraphs (a) and (b), the efficient discharge of the licensee's obligations under this licence;

This proposal is raised in accordance with paragraphs 1c, 1f and 9 of Standard Special Condition A11 Network Code and Uniform Network Code.

Paragraph 1f of the Licence states that “*so far as is consistent with subparagraphs (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code;*”.

Paragraph 2 of the Licence states that “*In relation to a proposed modification of the network code modification procedures, a reference to the relevant objectives is a reference to the requirements in paragraphs 9 and 12 of this condition (to the extent that those requirements do not conflict with the objectives set out in paragraph 1).*” Paragraph 9 of the Licence describes the procedures which must be included within the Modification Rules to allow amendments to the UNC to occur including but not limited to; the raising of proposals and alternates, providing publicity to a proposal and the consideration of any representations.

The Proposer considers that this Modification Proposal (which is seeking to implement an element of the Code Governance Review Final Proposals) will better facilitate paragraph 1f and 9 by providing a number of administrative and implementation efficiencies:

- Reducing unnecessary barriers and red tape within the UNC;
 - Reducing or eliminating inefficiencies and delays associated with the existing processes which can potentially hamper the implementation of important Modification Proposals and can have direct negative impacts on competition, new entrants and ultimately customers.
 - Making existing governance processes more transparent and accessible, particularly important for small participants and consumer groups.
 - Simplifying the UNC change processes and increase consistency between industry codes.
- Supporting large scale and complex Modification Proposals
 - Providing a much greater role for the industry to govern itself with regards to code modifications that have minimal customer impact leading to reduced costs and facilitate faster implementation of Modification Proposals

In addition, this proposal is raised in accordance with paragraph 1c of Standard Special Condition A11 Network Code and Uniform Network Code. The Proposer feels that the proposal better facilitates the efficient discharge by the licensee of the obligations imposed upon it following the Ofgem Code Governance Review, under paragraph 15 of Standard Special Condition A11. Network Code and Uniform Network Code, of the Gas Transporters’ Licence

as provided below:

Self-governance

15D. The network code modification procedures shall provide that modification proposals shall only be implemented without the Authority's approval pursuant to this paragraph 15D where:

- a. (i) in the view of the panel the modification proposal meets, all of the self governance criteria, and the panel has submitted to the Authority in respect of the modification proposal and not withdrawn a self-governance statement; or*
- (ii) if a self-governance statement has not been made, or has been withdrawn, the Authority has determined that the self-governance criteria are satisfied and the modification proposal is suitable for the self-governance route; and*
- b. unless otherwise exempted by the Authority, the panel has sent copies of all consultation responses to the Authority at least seven (7) days before the panel intends to make its determination under paragraph 15D(d); and*
- c. the Authority has not directed that the Authority's decision is required prior to the panel's determination under paragraph 15D(d); and*
- d. the panel has, no earlier than seven (7) days after sending the consultation responses referred to at paragraph 15D(b), determined, in accordance with paragraphs 9(d) to (f) and 15(a) of this condition as applicable, that the modification proposal or any alternative should be implemented on the basis that it would, as compared with the then existing provisions of the uniform network code and any other modifications proposed in accordance with paragraph 10(b), better facilitate the achievement of the applicable objective(s); and*
- e. (i) no appeal has been raised up to and including 15 days after the panel's determination under paragraph 15D(d) in respect of such modification proposal and any alternative in accordance with paragraph 15E; or*
- (ii) an appeal has been raised in respect of such a modification proposal and any alternative in accordance with paragraph 15E and the Authority has not quashed the panel's determination referred to at paragraph 15D(d) of this condition and either remitted the relevant modification proposal and any alternative back to the panel for reconsideration or taken the decision on the relevant modification proposal and any alternative itself following the appeal.*

15E. The network code modification procedures shall provide that those persons set out at paragraph 10 may appeal to the Authority the approval or rejection by the panel of a modification proposal and any alternative falling under the self governance route, provided the appeal has been made up to and including 15 days after the approval or rejection and in accordance with the procedures specified in the uniform network code and, in the opinion of the Authority:

- a. (i) the appealing party is, or is likely to be, unfairly prejudiced by the implementation or non-implementation of that modification or alternative proposal; or*
 - (ii) the appeal is on the grounds that:*
 - (1) in the case of implementation, the modification or alternative proposal may not better facilitate the achievement of at least one of the applicable BSC objectives; or*
 - (2) in the case of non-implementation, the modification or alternative proposal may better facilitate the achievement of at least one of the applicable BSC objectives; and*
- b. it is not brought for reasons that are trivial, vexatious or have no reasonable prospect of success.*

15F. The network code modification procedures shall provide that:

- a. where an appeal has been raised in respect of a modification proposal and any alternative in accordance with paragraph 15E that modification proposal and any alternative shall be treated in accordance with any decision and/or direction of the Authority following that appeal;*
- b. if the Authority quashes the panel's determination referred to at paragraph 15D(d) of this condition and takes the decision on the relevant modification proposal and any alternative itself following an appeal in accordance with paragraph 15E, the panel's determination of that modification proposal and any alternative referred to in paragraph 15D(d) of this condition shall be treated as a notice given to the Authority in accordance with the procedures specified in paragraph 15(a) of this condition and paragraph 15(b)(i) of this condition and the panel's determination shall be treated as its recommendation.*

Standard Special Condition A11.1 (d): so far as is consistent with subparagraphs (a) to (c) the securing of effective competition:

- (i) between relevant shippers;***
- (ii) between relevant suppliers; and/or***
- (iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers;***

Implementation would not be expected to better facilitate this relevant objective.

Standard Special Condition A11.1 (e): so far as is consistent with subparagraphs (a) to (d), the provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards... are satisfied as respects the availability of gas to their domestic customers;

Implementation would not be expected to better facilitate this relevant objective.

Standard Special Condition A11.1 (f): so far as is consistent with subparagraphs (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code;

Implementation would not be expected to better facilitate this relevant objective.

4 The implications of implementing the Modification Proposal on security of supply, operation of the Total System and industry fragmentation

Not applicable.

5 The implications for Transporters and each Transporter of implementing the Modification Proposal, including:

a) Implications for operation of the System:

Not applicable.

b) Development and capital cost and operating cost implications:

Not applicable.

c) Extent to which it is appropriate to recover the costs, and proposal for the most appropriate way to recover the costs:

Not applicable.

d) Analysis of the consequences (if any) this proposal would have on price regulation:

Any implications on the level of contractual risk will be negligible in light of the matters likely to be determined via the Self Governance route.

6 The consequence of implementing the Modification Proposal on the level of contractual risk of each Transporter under the Code as modified by the Modification Proposal

Not applicable.

7 The high level indication of the areas of the UK Link System likely to be affected, together with the development implications and other implications for the UK Link Systems and related computer systems of

each Transporter and Users

Not applicable.

8 The implications of implementing the Modification Proposal for Users, including administrative and operational costs and level of contractual risk

Administrative and operational implications (including impact upon manual processes and procedures)

No such implications identified.

Development and capital cost and operating cost implications

No such implications identified.

Consequence for the level of contractual risk of Users

No such consequences identified.

9 The implications of implementing the Modification Proposal for Terminal Operators, Consumers, Connected System Operators, Suppliers, producers and, any Non Code Party

Third Party Participants and Materially Affected Parties would be able to pursue minor changes via the self governance route as opposed to the current processes which may be viewed as a more efficient process.

10 Consequences on the legislative and regulatory obligations and contractual relationships of each Transporter and each User and Non Code Party of implementing the Modification Proposal

Implementation of the proposal would allow the new licence obligation effective on 31 December 2010 to be met.

11 Analysis of any advantages or disadvantages of implementation of the Modification Proposal

Advantages

- The proposal would allow the new licence obligation effective on 31 December 2010 to be met.

Disadvantages

- None.

12 Summary of representations received (to the extent that the import of those representations are not reflected elsewhere in the Modification Report)

Written Representations are now sought in respect of this Draft Report.
Consultation End Date: **11 October 2010**.

13 The extent to which the implementation is required to enable each Transporter to facilitate compliance with safety or other legislation

Implementation is not required to enable each Transporter to facilitate compliance with safety or other legislation.

14 The extent to which the implementation is required having regard to any proposed change in the methodology established under paragraph 5 of Condition A4 or the statement furnished by each Transporter under paragraph 1 of Condition 4 of the Transporter's Licence

Implementation is not required having regard to any proposed change in the methodology established under paragraph 5 of Condition A4 or the statement furnished by each Transporter under paragraph 1 of Condition 4 of the Transporter's Licence.

15 Programme for works required as a consequence of implementing the Modification Proposal

No programme of works would be required as a consequence of implementing the Modification Proposal.

16 Proposed implementation timetable (including timetable for any necessary information systems changes and detailing any potentially retrospective impacts)

It is recommended that this Modification Proposal be implemented on 31st December 2010, if this date has already past at the time of the Authority decision then it is recommended that it is implemented on the next working day after the decision.

17 Implications of implementing this Modification Proposal upon existing Code Standards of Service

No implications of implementing this Modification Proposal upon existing Code Standards of Service have been identified.

18 Recommendation regarding implementation of this Modification Proposal and the number of votes of the Modification Panel

19 Transporter's Proposal

This Modification Report contains the Transporter's proposal not to modify the Code and the Transporter now seeks direction from the Gas and Electricity Markets Authority in accordance with this report.

20 **Text**

Representations are now sought in respect of this Draft Report and prior to the Transporters finalising the Report.

For and on behalf of the Relevant Gas Transporters:

Tim Davis
Chief Executive, Joint Office of Gas Transporters