

Modification Report
Improving the Accountability and Management of Network Code Meetings
Modification Reference Number 0709

Version 4.0

This Modification Report is made pursuant to Rule 7.3 of the Modification Rules and follows the format required under Rule 8.9.3.

1. The Modification Proposal

To change Section Y such that the conduct of the Panel and Network Code Committee meetings are brought formally under the Chairman's Guidelines.

2. Transco's Opinion

Transco is of the opinion that the current arrangements, that have involved the operation of chairman's guidelines in an informal manner, have worked well since the introduction of the Network Code. Transco notes from the responses that this perception is shared by Users and no examples were given of occasions where the presence of more formal guidelines would have prevented issues occurring or would have assisted with the resolution of such issues. Transco sees no reason why this situation would change, particularly as it reflects the positive contribution that participants make within the current arrangements and the desire of such participants to maintain this positive stance.

It does, however, recognise the intention of this Proposal is to institute more formal guidelines for the conduct on meetings held within Network Code governance arrangements. Transco continues to suggest that whilst institution of more formal meeting guidelines might provide additional accountability, this should be balanced against losing the benefits of flexibility in the present arrangements which can assist in progressing Modification Proposals. Transco has provided one example that illustrated where this flexibility had been used to the benefit of industry participants in its response to the representations.

Hence, whilst Transco does not inherently object to the proposals set out in 709, Transco remains neutral as to whether this modification should be adopted. This is because we believe that any benefits that might accrue from the proposal need to be balanced against any detrimental effects that could potentially result from further formalisation of the process.

Following the November meeting of the Modification Panel, Transco agreed to reissue this report with legal text prepared at the request of Ofgem. Representations are therefore sought on this Proposal which should take into account the included legal text.

3. Extent to which the proposed modification would better facilitate the relevant objectives

The proposer stated that implementation of this Proposal would better facilitate the relevant objective (a) (the efficient and economic operation by the licences of its pipe-line system). The proposer also stated that by "making the minutes of

meetings subject to formal approval by the meeting rather than Transco alone, it will ensure greater openness and accountability within the process, which will ultimately lead to development of proposals that better facilitate the relevant code objective (c) (the securing of effective competition between relevant shippers and relevant suppliers)." This view was generally supported within the responses.

Transco would also question whether formalisation of the process, generally recognised in the responses as working well, would necessarily lead to the improvements in openness and accountability that the proposer is seeking.

In addition, Transco continues to suggest that considerations of flexibility and accountability, and any balance to be struck between them, should determine whether implementation of this Proposal would better facilitate the relevant objectives.

4. The implications for Transco of implementing the Modification Proposal , including

a) implications for the operation of the System:

No direct implications are anticipated.

b) development and capital cost and operating cost implications:

No such implications have been identified.

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

Not applicable.

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

Implementation of this Proposal would not be expected to impact price regulation.

5. The consequence of implementing the Modification Proposal on the level of contractual risk to Transco under the Network Code as modified by the Modification Proposal

It is not anticipated that there will be a change to the level of contractual risk to Transco as a consequence of this Proposal.

6. The development implications and other implications for computer systems of Transco and related computer systems of Users

No development implications on the computer systems of Transco or on the related computer systems of Users are anticipated.

7. The implications of implementing the Modification Proposal for Users

No direct implications are anticipated.

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

Transco is unaware of any such implications other than the general issue that a well run Modification process, which this proposal seeks to improve further, should be to the benefit of all industry participants.

9. Consequences on the legislative and regulatory obligations and contractual relationships of Transco and each User and Non-Network Code Party of implementing the Modification Proposal

No major consequences on the legislative and regulatory obligations and contractual relationships of Transco and each User and Non-Network Code Party are anticipated as a result of the implementation of this Proposal.

10. Analysis of any advantages or disadvantages of implementation of the Modification Proposal

Advantage

Formalisation and adoption of good meeting practice across the Network Code governance regime.

Disadvantage

There would be potential for the guidelines to become too prescriptive and bureaucratic.

11. Summary of the Representations (to the extent that the import of those representations are not reflected elsewhere in the Modification Report)

Further representations are now sought on this Proposal specifically in respect of the included legal text, which has been prepared by Transco.

Representations were received from the following:

Respondent	For/Against
Association of Electricity Producers (AEP)	For
British Gas Trading (BGT)	For
BP Gas Ltd (BP)	For
EDF Energy (EDF)	For
E.ON UK (EON)	For
Gemserv	For

Scottish and Southern Energy plc (SSE)	For
Shell Gas Direct (SGD)	For
Statoil (UK) Ltd (Statoil)	For
Total Gas & Power Limited (TGP)	For

These representations are summarised below:

Current Arrangements

BGT agreed with the “assertion” that the existing process “has generally worked well”. However, BGT suggested that “there have been lessons learned from the experience since 1996” without specifying what those lessons were.

EDF also noted that the current arrangements had “worked well since the introduction of the Network Code” but believed that more formal meeting guidelines would “provide additional accountability, and still be able to provide the appropriate flexibility.”

EON agreed to an extent that “the current arrangements, which have involved the operation of the Chairman’s Guidelines, have worked well” However, EON pointed out that this did not “preclude modifications being made where the rules can be enhanced to bring about more transparency and accountability within the process”

SSE expressed agreement that meetings within the Network Code regime “have worked reasonably well and that the Guidelines have broadly been followed for all meetings.” It pointed out, however, the guidelines only apply to “Workstreams that report to the Panel.” SSE believed that it was appropriate that “they be extended to cover all meetings.” SSE specifically suggested that the proposed Chairman’s Guidelines should apply to the Modification Panel, Network Code Committee and Sub-Committees.

SGD noted that the “current arrangements involving the operation of chairman’s guidelines in an informal manner, have mainly worked well since the introduction of the Network Code.”

Transco Response

Transco notes the general agreement that current arrangements work well. Within the responses no examples were put forward where problems had occurred and it is therefore difficult for Transco to comment on whether in such cases more formality in respect of the chairman’s guidelines would have resolved the issues. Transco suggests that if the behaviour of participants in the Network Code process does not change, the current arrangements would continue to be satisfactory. The need for a Proposal would, therefore, be linked to a perception that a change in participant behaviour is likely and Transco does not share that perception.

Accountability and Transparency Improvements

AEP considered that “improved definition of guidelines” would enable “participants to be better prepared for discussion at meetings” and for those who were unable to attend to have “greater confidence in the reports of the discussions at meetings and hence be better informed.”

BGT expressed the belief that the “proposed format of the ‘Guidelines for Chairpersons’ will provide a clear, consistent and transparent set of rules by which all Network Code fora should adhere.” BGT believed that this would improve the effectiveness of such for a by ensuring that “the conduct of the meeting, the authority of the body and achievement of the objective of the group” would be clear to participants and observers.

EDF expressed agreement with the proposer that making “the minutes of meetings subject to formal approval by the meeting rather than by Transco alone, will ensure greater openness and accountability within the process.”

EON whilst recognising positively current arrangements pointed out that this “did not preclude modifications being made where the rules can be enhanced to bring about more transparency and accountability within the process”

Gemserv anticipated that “formal adoption of best meeting practice would give Users additional confidence in the operation of the governance regime and would further signal Transco’s willingness to act impartially in its management and operation of the Modification Rules”.

SSE concluded that implementation of this Proposal would introduce “best practice” governance into the existing regime “thus enhancing transparency and accountability” . In respect of preventing undue discrimination, SSE believed that implementation would “remove any suggestion that Transco could manipulate meeting arrangements to its own benefit”.

SGD suggested that further transparency “about these processes” that affect the development of contracts with Transco and future gas network owners “would be welcomed”.

Statoil supported the Proposal in the belief that the adoption of more formal guidelines and good meeting practice “would ensure greater openness and accountability within the process”.

TGP believed that implementation would promote confidence that “minutes of previous meetings accurately reflect prior discussions”. This it suggested in turn would lead to “better preparation for subsequent meetings” and ultimately “to a more informed and efficient process”.

Transco Response

Transco believes that the existing less formal processes provide a high degree of transparency and accountability. Within each Network Code Workstream, minutes are routinely issued and agreement sought and obtained at the subsequent meeting. In addition to the accountability that each Workstream Chairman has to the members of that Workstream, there is additional accountability to the Modification Panel. Therefore, Transco does not believe that in practice greater formality within the process would lead to improvement in either transparency or accountability.

Flexibility Considerations

AEP expressed understanding of the desire to “balance flexibility and accountability in the way in which Network Code meetings are managed.” Nevertheless, it supported that implementation of this Proposal for reasons outlined elsewhere in this summary.

BGT recognised the comment that there was “a potential for losing some of the benefits of flexibility of a more informal process.” However, it also believed that this Proposal represented “a reasonable balance drawing on the many good points of the existing process, but improving areas where there is or is perceived to be a weakness.”

Whilst supporting implementation, BP expressed a general concern that if the rules were “applied too rigidly, some level of flexibility may be lost.” It therefore suggested that the formal rules should “concentrate on the output from and the supporting processes of the meeting, whilst retaining the flexibility in the meeting for widespread discussion.”

EDF did not agree that there was a balance to be struck between accountability and flexibility but believed that the Proposal sought “to implement best practice” and under the proposed regime both accountability and flexibility could be achieved.

EON expressed itself to be “at a loss to see how” implementation of this Proposal would “in any way reduce flexibility within the arrangements.” It believed that much of the elements of this Proposal reflected current practice and that implementation would ensure “best practice through ensuring the arrangements are detailed in an open and transparent manner, through the Network Code.”

Gemserv saw no benefit in the “claimed” flexibility in current arrangements and argued that this Proposal “be implemented to introduce a framework of best practice that will make the arrangements fair.” Gemserv also asserted that considerations of balance between accountability and flexibility had “no meaning in this context and no relevance to whether the Proposal better facilitates good governance”.

SSE expressed a lack of understanding on the linkage between considerations of accountability and flexibility and facilitation of the relevant objectives. Additionally it pointed out that it did not see what flexibility “afforded by the current arrangements would be lost by implementing this proposal as the Panel would continue to have the vires to modify the Guidelines.”

SGD were unable to agree that there “needs to be a trade off between flexibility and accountability. While it will be open to any shipper to raise modifications to make further change, we consider that it is unlikely that there will be much appetite to focus industry attention on these issues. There may be further change, if experience suggests that the rules are too prescriptive but we see little reason to expect either over-prescription or over-flexibility to be the source of problems in governance of the Code.”

Statoil was unsure that implementation could lose the benefits of flexibility “as we believe that much of what is proposed is actually undertaken in practice anyway and that formalising these arrangements within the Network Code will lead towards a more transparent process.”

TGP considered concerns on loss of flexibility to “be largely unfounded for all parties except perhaps for Transco.” In its view implementation of this Proposal would not “detract from any flexibility that benefits all parties, since the guidelines will be agreed and modifiable by the Panel”

Transco View

The proposer and several respondents linked improvements to the Modification Process to the facilitation of the relevant objectives. Transco suggests from this that if implementation did not turn out to provide improvements due, for instance, to a loss of flexibility then the relevant objectives would not be facilitated and potentially might be impaired. Transco therefore considers it to be entirely consistent with the proposer's position to suggest that the balance between flexibility and accountability be considered.

Transco believes that allowing flexibility in the past has been helpful to making progress on particular Modification Proposals and this has been to beneficial to all parties not just Transco. For example, Network Code Workstreams can dedicate a series of meetings in close succession to consider the legal drafting of a particular Proposal. The key output from these sessions tends to be the updated legal draft and in the past Transco was able to concentrate on producing these updates prior to the following session. Having to produce in parallel a set of minutes would have detracted from the prime objective – to agree a legal draft - potentially to a tight time constraint.

This is only one example of how appropriate use of flexibility has led to outcomes consistent with facilitation of the relevant objectives. Whilst the guidelines could reflect exceptions of this nature, addressing each potential reason for exception might lead to a cumbersome set of guidelines.

The Unified Network Code

BGT pointed out that this Proposal was addressed at Network Code as it exists and does not anticipate “changes which may be necessary following the sale of Distribution Networks.” BGT also expressed the expectation that “existing arrangements may form the basis of such revisions” but maintained that “the application of good practice is not in any way in conflict with this objective”

EDF also believed that Modification Proposals could only be “assessed against the current baseline which is the Network Code and not the Unified Network Code.” However, EDF saw no reason why “709 cannot be included in the UNC as this proposal seeks to introduce best practise.”

EON did not believe it to be appropriate for Transco to make reference to governance under the Unified Network Code “as this proposal addresses how meetings for considering changes to the existing NWC can be improved and not UNC arrangements, which have yet to be established under the new gas transportation licences.” EON did, however, suggest that “best practice amendments proposed here would also benefit procedures surrounding any UNC development work.”

Gemserv expressed the view that consideration and implementation of this Proposal “need have no interaction with the Unified Network Code (UNC) work.” Gemserv also suggested that the “UNC work may well build on 0709 as it unfolds”

SSE expressed the view that this Proposal was “a simple change to the benefit of all parties” and consequently saw no reason to “link it with the development of the Uniform Network Code”.

SGD did not consider the potential sale of some of Transco's Networks should be considered an opportunity "for the industry to be required to implement significantly different arrangements". Instead SGD advocated only incremental improvements and suggested that the "good practice which the proposal advocates will make a useful template for the development of the Uniform Network Code (UNC) governance."

TGP believed that "improvements to the current governance arrangements should not be frustrated by discussions relating to the UNC." It maintained, however, that improvements to the existing governance processes should be borne in mind when considering future arrangements.

Transco Response

Transco recognises that the discussions on this Modification Proposal will also be useful in informing discussions on UNC Governance development. Transco considers that consistency of governance arrangements would assist orderly transition and believes that the responses affirm that principle.

The Modification Panel

TGP considered that "better recording the contribution of the Panel by requiring a report to be prepared of determinations by the Panel, including how individual panel members voted, will lead to an improvement in the accountability of panel members and the transparency of Panel activities. The current rules allow for only a sparse aggregate voting record that provides little opportunity for interested parties not present to understand the underlying rationale of Panel members' determinations or monitor how their concerns are being represented." TGP did however recognise that a record of panel voting is now part of the Panel minutes.

Transco Response

Whilst Transco believes that the nature of the Modification Panel would indicate different recording arrangements to a Workstream, Transco would have no objection to this meeting being covered by agreed guidelines and as the respondent indicated, there have been changes to the structure of the minutes in response to the requests of Panel Members.

Applicability of Guidelines and Implementation Timetable

In referring to the proposer's suggested guidelines BGT expressed the belief that they would "provide a clear, consistent and transparent set of rules by which all Network Code fora should adhere" BGT also expressed the view that these guidelines were "very close to a format that could be adopted and therefore very little development would be required".

EON expressed the view that "the Chairman's Guidelines have already been amended in draft form, which simply need to be agreed by a majority vote of the Modification Panel." In consequence EON did not foresee "any impediment to prompt implementation following an Ofgem decision."

Gemserv also questioned the extent to which the Modification Panel would need to develop a new set of Chairman's Guidelines. It suggested that "as the Guidelines already exist in draft form, no complex or lengthy timetable would be required."

SSE suggested that it was unnecessary to “start from scratch” to develop chairman’s guidelines and that “some simple amendments to the existing Guidelines could be put forward by the Modification Panel.”

SGD suggested that this Proposal “should be implemented immediately” and wondered why an implementation timetable would need to be developed.

Statoil was unclear why Transco “would need to develop an implementation timetable for this proposal” and in consequence requested further information.

Transco View

Transco would concur that if the existing guidelines were acceptable to Panel Members as a starting point the implementation timetable would be simple and require the input of only one Panel meeting. In reviewing the proposer’s draft amendments, however, Transco believed that it raised issues that merited discussion potentially at more than one Panel meeting. Therefore, in Transco’s view, any implementation timetable should recognise the possibility that more than one Panel meeting would be required to agree the guidelines.

12. The extent to which the implementation is required to enable Transco to facilitate compliance with safety or other legislation

This Modification Proposal is not required to facilitate any such change.

13. The extent to which the implementation is required having regard to any proposed change in the methodology established under Standard Condition 4(5) or the statement furnished by Transco under Standard Condition 4(1) of the Licence

This Modification Proposal is not required to facilitate any such change.

14. Programme of works required as a consequence of implementing the Modification Proposal

If this proposal were implemented, the Network Code Modification Panel would need to develop and agree, by Panel Majority, a new set of Chairman's Guidelines.

15. Proposed implementation timetable (including timetable for any necessary information systems changes)

An implementation timetable would need to be developed based upon meetings of the Modification Panel. If the Panel were able to agree a simple carry-over of the existing guidelines a single Panel Meeting would be sufficient.

16. Recommendation concerning the implementation of the Modification Proposal

Transco does not make any recommendation concerning the implementation of this Modification Proposal.

17. Restrictive Trade Practices Act

If implemented this proposal will constitute an amendment to the Network Code. Accordingly the proposal is subject to the Suspense Clause set out in the attached Annex.

18. Transco's Proposal

This revised Modification Report contains Transco's proposal not to modify the Network Code but has been prepared following direction from the Gas & Electricity Markets Authority.

19. Text

Amended Legal Text

SECTION W: INTERPRETATION

Amend paragraph W1 to read as follows:

Delete “Modification Rules...Standard Condition” and replace with the following:

“**Modification Rules:** the modification rules as set out in Section Y and made pursuant to Standard Condition 9 of the Transco Licence

SECTION Y: Modification Rules

Amend paragraph Y2.1 to read as follows:

Delete “Workstream Guidelines...Panel Majority” and replace with:

“**Chairman’s Guidelines**” a set of standing guidelines issued by Transco governing the conduct of meetings of the Modification Panel, Workstreams, Development Work Groups and Review Groups, which may be amended from time to time by Panel Majority”

Add the following to paragraph Y 2.1:

“**Report of Determinations**” a report produced by the Secretary setting out each of the determinations which were made by Voting Members at each meeting of the Modification Panel;”

Delete “Workstream...and/or Transco)” and replace with:

“**Workstream**”: a group comprised of representatives of Users and Transco, chaired by Transco and operating within the Chairman’s Guidelines, which is convened for the general purposes of consideration and discussion of matters relating to the Code or a Modification Proposal in accordance with paragraph 7.4 in accordance with its Terms of Reference (which such group shall have no power or authority to bind any User and/or Transco);”

Amend paragraph 5.3.2 as follows:

“Every notice convening a meeting...to which they relate or, subject to paragraph 5.3.3, where in the opinion of the Secretary a shorter period...”

Add new paragraph 5.3.3 as follows:

“Notwithstanding where the Secretary has determined a shorter period to circulate the relevant materials in respect of a meeting of the Modification Panel pursuant to paragraph 5.3.2, no new items to the Agenda will be considered except by consent of a Panel Majority prior to such meeting.”

Renumber paragraph 5.6 to 5.6.1

Add new paragraph 5.6.2

“The Chairman shall conduct all meetings of the Modification Panel in accordance with the Chairman’s Guidelines”

Add new paragraph 5.6.3

“Members may propose amendments to the Chairman’s Guidelines from time to time by notice in writing to the Secretary who shall place such proposed amendments on the Agenda for the next following meeting of the Modification Panel. If such proposed amendment is accepted by Panel Majority, the Secretary shall amend the Chairman’s Guidelines as appropriate and circulate to Members and Users the Chairman’s Guidelines within ten (10) Business Days of such meeting.”

Amend paragraph 5.11.1

“The Secretary shall ensure that determinations...and that a Report of Determinations is issued to each Member and each User within three (3) Business Days of the meeting of the Modification Panel at which such determinations were made”

Signed for and on behalf of Transco.

Signature:

Richard Court
Commercial Frameworks Manager
NT & T

Date:

Gas and Electricity Markets Authority Response:

In accordance with Condition 9 of the Standard Conditions of the Gas Transporters' Licences dated 21st February 1996 I hereby direct Transco that the above proposal (as contained in Modification Report Reference **0709**, version **4.0** dated **23/11/2004**) be made as a modification to the Network Code.

Signed for and on Behalf of the Gas and Electricity Markets Authority.

Signature:

The Network Code is hereby modified with effect from, in accordance with the proposal as set out in this Modification Report, version **4.0**.

Signature:

Process Manager - Network Code
Transco

Date:

Annex

1. Any provision contained in this Agreement or in any arrangement of which this Agreement forms part by virtue of which The Restrictive Trade Practices Act 1976 ("the RTPA"), had it not been repealed, would apply to this Agreement or such arrangement shall not come into effect:
 - (i) if a copy of the Agreement is not provided to the Gas and Electricity Markets Authority ("the Authority") within 28 days of the date on which the Agreement is made; or
 - (ii) if, within 28 days of the provision of the copy, the Authority gives notice in writing, to the party providing it, that he does not approve the Agreement because it does not satisfy the criterion specified in paragraphs 1(6) or 2(3) of the Schedule to The Restrictive Trade Practices (Gas Conveyance and Storage) Order 1996 ("the Order") as appropriateprovided that if the Authority does not so approve the Agreement then Clause 3 shall apply.
2. If the Authority does so approve this Agreement in accordance with the terms of the Order (whether such approval is actual or deemed by effluxion of time) any provision contained in this Agreement or in any arrangement of which this Agreement forms part by virtue of which the RTPA, had it not been repealed, would apply this Agreement or such arrangement shall come into full force and effect on the date of such approval.
3. If the Authority does not approve this Agreement in accordance with the terms of the Order the parties agree to use their best endeavours to discuss with Ofgem any provision (or provisions) contained in this Agreement by virtue of which the RTPA, had it not been repealed, would apply to this Agreement or any arrangement of which this Agreement forms part with a view to modifying such provision (or provisions) as may be necessary to ensure that the Authority would not exercise his right to give notice pursuant to paragraph 1(5)(d)(ii) or 2(2)(b)(ii) of the Order in respect of the Agreement as amended. Such modification having been made, the parties shall provide a copy of the Agreement as modified to the Authority pursuant to Clause 1(i) above for approval in accordance with the terms of the Order.
4. For the purposes of this Clause, "Agreement" includes a variation of or an amendment to an agreement to which any provision of paragraphs 1(1) to (4) in the Schedule to the Order applies.