

Stage 01: Modification

0448: Aligning UNC with Licence conditions relating to European legislative change and Alternative Modification Proposals

At what stage is this document in the process?

- 01 Modification
- 02 Workgroup Report
- 03 Draft Modification Report
- 04 Final Modification Report

This Modification Proposal will enable licence holders to comply with their obligations relating to European regulatory change. It will:

- Empower the Authority to raise / direct licensees to raise European Modification Proposals;
- Empower the Authority to determine the timetable to be applied to European Modification Proposals;
- Empower the Authority to direct, in writing, that a European Modification may not be withdrawn; and

This Modification Proposal also seeks to align the UNC with Transporter licence Standard Special Condition A11 (9(c)) which empowers the Authority to direct that an alternative Modification Proposal may not be raised.



The Proposer recommends that this modification should be (delete as appropriate):

- assessed by a workgroup



High Impact:
Insert name(s) of impact



Medium Impact:
Insert name(s) of impact

0448

Modification

9 October 2013

Version 6

Page 1 of 13

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Low Impact:

Shippers, Distribution Network Operators, National Grid NTS, Third Party Participants and Materially Affected Parties.

0448

Modification

9 October 2013

Version 6

Page 2 of 13

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Contents

1	Summary	4
2	Why Change?	5
3	Solution	5
4	Relevant Objectives	6
5	Implementation	7
6	Legal Text	8
7	Recommendation	13

About this document:

This modification was presented by the proposer to the panel on 21 March 2013.

The panel considered the proposer's recommendation, and agreed that it should be referred to a workgroup (Workgroup 0448) for assessment.

This modification proposal previously included an intention to incorporate the Fast Track Self-Governance element of the Authority's Code Governance Review (Phase 2) (CGR2) licence change. Due to the desired timescales for implementing the European change rules into the Modification Procedures, it has been agreed with the Authority that the CGR2 licence conditions will be introduced into the UNC via a separate Modification Proposal. The CGR2 element, therefore, has been removed from this Modification Proposal and has separately been raised as Modification Proposal 0462.

Guidance On The Use Of This Template:

This is a modification template that the Proposer is asked to complete. All parts other than the Solution (which is "owned" by the Proposer) will be refined by the workgroup process. A separate checklist is also available to help identify impacts that, if material, should be recorded in this template.

As Ofgem is currently conducting a Significant Code Review (SCR), a modification may not be proposed if the subject matter relates to the SCR, unless Ofgem directs otherwise. Please do not, therefore, raise modifications that relate to the SCR.

If the impact of the modification on greenhouse gas emissions is likely to be material, please assess the quantifiable impact in accordance with the Carbon Costs Guidance (published by Ofgem).

The Joint Office is available to help and support the drafting of any modifications, including guidance on completion of this template and the wider modification process. Contact: enquiries@gasgovernance.co.uk or 0121 623 2115.

Please contact Xoserve when drafting any modification that impacts central systems. They will be available to help and support the drafting of any modifications that impact central systems, including guidance on potential systems impacts and the drafting of business rules, which reflect system capabilities. Contact: commercial.enquiries@xoserve.com.



Any questions?

Contact:
Code Administrator

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0448

Modification

9 October 2013

Version 6

Page 3 of 13

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1 Summary

Is this a self-governance Modification?

Following discussion at Panel on March 21st, it has been agreed that this Modification Proposal will not be progressed as self-governance.

Why Change?

This change is required to align the UNC with elements of Gas Transporters' licences, delivering the alignment of the UNC with current Transporter licence requirements (Standard Special Condition A11 (SSC A11)) relating to European legislative change.

It also seeks to align the UNC with SSC A11 (9(c)) which empowers the Authority to direct that alternative Modification Proposals may not be raised.

Solution

Alignment of the UNC with European-driven licence changes

It is proposed that the Authority be enabled and empowered to raise / direct licensees to raise Modification Proposals to the Code which the Authority considers are necessary to comply with or implement any relevant legally binding decisions of the European Commission and / or the Agency for the Cooperation of Energy Regulators relating to Regulation 2009/715/EC of the European Parliament and of the Council of 13 July 2009 concerning conditions for access to the national gas transmission networks. Furthermore, it is proposed that, for such European-driven Modification Proposals, the Authority be empowered to direct the timetable within which such Modification Proposals are developed. The Authority will also be empowered to direct that a European Modification Proposal may not be withdrawn.

This Modification Proposal also seeks to align the UNC Modification Procedures with Transporter licence Standard Special Condition A11 (9(c)) which empowers the Authority to direct that an alternative Modification Proposal may not be raised.

Relevant Objectives

Efficient discharge of the licensee's obligations

The UNC Modification Procedures do not currently fully reflect European change requirements of SSC A11. The UNC Modification Procedures also do not reflect the Authority's ability to control the introduction of Alternative Modification Proposals as defined in the Transporters' licences.

This Modification Proposal proposes rectify this.

Compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators

This Modification Proposal will facilitate compliance with European legislative requirements by allowing the direction of changes to European legislation to be implemented into the Uniform Network Code within the timescale(s) and procedural steps directed by the Authority.

Promotion of efficiency in the implementation and administration of the Code.

This Modification will ensure that alignment between the Uniform Network Code (UNC) and European Legislation can meet the required legal timetable.

0448
Modification

9 October 2013

Version 6

Page 4 of 13

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Implementation

This Modification Proposal is considered to be restricted to Code Governance, and so no implementation costs are directly attributable to it.

2 Why Change?

Maintaining currency with European legislative changes.

In order to ensure that the UNC is aligned with relevant European legislation and binding decisions of the Commission and / or ACER, it is essential that Modifications to the UNC can be introduced in the required timescales. Currently, Modification Proposals may be raised by Transporters, Users and, in certain circumstances, Third Party Participants and Materially Affected Parties. None of these parties may direct the timetable for the implementation of the Modification Proposal, and so the implementation timetable required for European Modification Proposals cannot be guaranteed.

With the introduction of a single internal market for Energy in Europe, there is a significant level of legislative change which will need to be reflected in changes to the UNC. European Union member states are required to align their individual Network Codes with European legislative change relating to the Gas Industry.

In order to avoid non-compliance with the requirements of European legislation, it is necessary for the Modification Rules to have a mechanism which ensures that the Modification Procedures respond to any modification timetable deemed by the Authority as necessary to comply with relevant EU requirements.

UNC Modification Rules alignment with Transporters' licence conditions.

The Transporters' licences currently include a condition (SSC A11 9(c) empowering the Authority to control the introduction of Alternative Modification Proposals. This Modification will deliver this capability into the UNC Modification Procedures.

3 Solution

Proposed Solution

Alignment of the UNC with European-driven licence changes

This Modification Proposal will enable licence holders to comply with their obligations relating to European regulatory change. It will:

- Empower the Authority to raise / direct licensees to raise European Modification Proposals;
- Empower the Authority to determine whether or not a Modification is European / Non-European;
- Empower the Authority to determine the timetable to be applied to European Modification Proposals; and
- Empower the Authority to direct, in writing, that a European Modification may not be withdrawn.

0448
Modification

9 October 2013

Version 6

Page 5 of 13

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Alignment of the UNC with Licence Special Standard Condition A11 (9(c))

It is proposed to change the Modification Procedures within the UNC as follows:

- To empower the Authority to direct that Alternative Modifications be prohibited in relation to specific Modification Proposals.

User Pays
Classification of the modification as User Pays, or not, and the justification for such classification.
<i>It is not anticipated that there will be any system change costs associated with this Modification Proposal, and so this Modification Proposal is not classified as User Pays.</i>
Identification of Users of the service, the proposed split of the recovery between Gas Transporters and Users for User Pays costs and the justification for such view.
N/A
Proposed charge(s) for application of User Pays charges to Shippers.
N/A
Proposed charge for inclusion in the Agency Charging Statement (ACS) – to be completed upon receipt of a cost estimate from Xoserve.
N/A

4 Relevant Objectives

Impact of the modification on the Relevant Objectives:

Relevant Objective	Identified impact
a) Efficient and economic operation of the pipe-line system.	None
b) 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.	None
c) Efficient discharge of the licensee's obligations.	Positive.
d) 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.	None

0448

Modification

9 October 2013

Version 6

Page 6 of 13

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e) 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.	None
f) Promotion of efficiency in the implementation and administration of the Code.	Positive.
g) Compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.	Positive.

Impacts to Relevant Objectives

- Relevant Objective: Efficient discharge of the licensee's obligations
 - This Modification Proposal will deliver improved alignment between the Uniform Network Code and Special Standard Condition (SSC) A11 of the licensee's obligations. SSC A11 currently includes provisions for the Authority to raise / direct the licensee to raise Modification Proposals.
 - This Modification Proposal also includes provisions for the Authority to direct in writing that Alternative Modifications may not be raised in line with SSC A11 9 (c).
- Relevant Objective: Promotion of efficiency in the implementation and administration of the Code
 - This Modification Proposal will ensure that alignment between the Uniform Network Code and European Legislation can meet the necessary legislative timetable.
- Relevant Objective: Compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.
 - This Modification Proposal will facilitate compliance with European legislative requirements by allowing the direction of changes to European legislation can be implemented into the Uniform Network Code within the required timescale(s). Currently there is no mechanism in the UNC to maintain the alignment of Code with changes to European legislative requirements.

5 Implementation

This Modification Proposal requires a change to the Modification Procedures. It does not require any system change and has no implementation costs associated with it.

It is anticipated that this Modification Proposal will go to development Workgroup to agree the procedural changes necessary to facilitate the proposed changes. This will be followed by a period of consultation on the refined Modification Proposal and its associated legal text.

This modification delivers alignment of the UNC Modification Rules with those sections of SSC A11 relating to European regulatory change. It is anticipated that this Modification Proposal will be presented to Panel for approval at the October 2013 UNC Panel meeting.

This Modification Proposal also introduces the provisions of Transporter Licence A11 (9(c)) which enables the Authority to direct in writing that a Modification Proposal may not be raised. The omission of this condition in the Modification Procedures is such that Transporters are currently non-compliant. The relevant condition should be incorporated into the UNC Modification Procedures as soon as possible.

0448
Modification

9 October 2013

Version 6

Page 7 of 13

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6 Legal Text

UNC Modification 0448

Aligning UNC with Licence conditions relating to European legislative change and Alternative Modification Proposals

Legal Text

Uniform Network Code – Modification Rules (1 January 2013 version amendments)

Amend paragraph 1.1 as follows:

1.1 Status

Each of the Transporters is required, together with the other Transporters, to establish and operate procedures for the Modification of the Uniform Network Code and each Individual Network Code, so as to better facilitate, consistently with the duties imposed on each Transporter under Section 9(1) and (2) of the Act, the achievement of the Relevant Objectives. The procedures are to provide for:

- (a) a mechanism by which the Uniform Network Code and each Individual Network Code may be modified and/or reviewed;
- (b) the making of proposals for the modification of the Uniform Network Code either by a Transporter, a User ~~or~~ a Third Party Participant [or the Authority](#);
- (c) the making of proposals for the modification of each Individual Network Code by a Relevant Transporter, a Relevant Shipper ~~or~~ a Third Party Participant [or the Authority](#);
- (d) [subject to paragraph 6.4.5\(b\)](#) where a proposal is made for the modification of the Uniform Network Code the making of an alternative proposal for the modification of the Uniform Network Code by any Transporter, User, or Third Party Participant, other than the person who raised the original modification proposal;
- (e) where a proposal is made for the modification of an Individual Network Code the making of an alternative proposal for the modification of that Individual Network Code by a Relevant Transporter a Relevant Shipper ~~or~~ a Third Party Participant [or the Authority](#), other than the person who raised the original modification proposal;
- (f) determination by the Modification Panel whether a proposal for modification of the Uniform Network Code or an Individual Network Code is a Self-Governance Modification Proposal;

0448
Modification

9 October 2013

Version 6

Page 8 of 13

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- (g) a right of appeal in respect of any determination by the Modification Panel to implement or not to implement a Self-Governance Modification Proposal;
- (h) the giving of adequate publicity to any such proposals including, in particular, drawing them to the attention of Transporters and Users and sending a copy of the proposal to any other person who asks for one;
- (i) the seeking of the View of the Authority on any matter connected with any such proposals other than Self-Governance Modification Proposals;
- (j) the consideration of any representations relating to such proposals made (and not withdrawn) by a Transporter, a User, the Users or any other person likely to be materially affected were the proposals to be implemented; ~~and~~
- (k) where the Authority accepts that the Uniform Network Code or an Individual Network Code may require modification as a matter of urgency, the exclusion, acceleration or other variation, subject to the Authority's approval, of any particular procedural steps which would otherwise be applicable~~;~~;
- (l) a mechanism by which the Uniform Network Code or an Individual Network Code can be modified in order to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Cooperation of Energy Regulators; and
- (m) where the Authority directs that a Modification Proposal modifying the Uniform Network Code or an Individual Network Code is a European Modification Proposal and the timetable, as directed by the Authority, which applies to such Modification Proposal.

and may include provisions which differ as between proposed modifications to the Uniform Network Code and proposed modifications to an Individual Network Code.

Add new defined terms in alphabetic order under paragraph 2.1 as follows:

"European Modification Proposal" means a Modification Proposal which the Authority reasonably considers is necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Cooperation of Energy Regulators;

"Regulation" means Regulation 2009/715/EC of the European Parliament and of the Council of 13 July 2009 concerning conditions for access to the national gas transmission networks.

Amend paragraph 6.1.1 as follows:

6.1.1 Without prejudice to paragraph 6.4 or paragraph 12.4 and subject to paragraph 6.1.4, a Modification Proposal in respect of the Uniform Network Code may be made from time to time by:

- (a) a Transporter;

0448

Modification

9 October 2013

Version 6

Page 9 of 13

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- (b) a User;
- (c) [a Third Party Participant](#), only insofar as such Modification Proposal relates to a proposal to modify Annex V-1 (“Table of Operational and Market Data”) in the Uniform Network Code, ~~a Third Party Participant~~;
- (d) a Materially Affected Party (but only in respect of a Modification Proposal which proposes a modification to a NTS Charging Methodology or a DN Charging Methodology);~~;~~
- (e) the Authority (but only insofar as such Modification Proposal is a European Modification Proposal).

Amend paragraph 6.1.2 as follows:

6.1.2 Without prejudice to paragraph 6.4 or paragraph 12.4, and subject to paragraph 6.1.5, a Modification Proposal in respect of an Individual Network Code may be made from time to time by:

- (a) a Relevant Transporter;
- (b) any Relevant Shipper; ~~and/or~~
- (c) a Materially Affected Party (but only in respect of a Modification Proposal which proposes a modification to a NTS Charging Methodology or a DN Charging Methodology); ~~;~~ and/or
- (d) the Authority (but only in respect of a European Modification Proposal).

Amend paragraph 6.2.1 (e) as follows:

(e) in the case of a Modification which proposes a timescale for the implementation of the Modification (for the purposes of enabling the Authority and any persons, including but not limited to Users, Transporters, Third Party Participants and Non Code Parties to be aware of the potential benefits or constraints associated with such timing), except in the case of a European Modification Proposal where only one Fixed Implementation Date may be included, shall include:

- (i) two or more Fixed Implementation Dates;
- (ii) a Proposed Authority Decision Date in respect of each Fixed Implementation Date, for the purposes of enabling the Modification to be implemented by the Fixed Implementation Date;
- (iii) a Backstop Lead Time;
- (iv) the reasons why it is proposing each date under paragraph (i), (ii) and (iii).

Amend paragraph 6.4.5 as follows:

- 6.4.5 An alternative Modification Proposal may not be made:
- (a) in respect of a Modification Proposal after the Modification Panel pursuant to paragraph 7.2.3(a) has determined such Modification Proposal should proceed to Consultation; or
 - (b) where the Authority directs a Transporter in writing and the Transporter notifies the Secretary that an alternative Modification Proposal shall not be made in relation to a Modification Proposal, the Modification Panel shall ensure that a Modification Proposal will not be considered as an alternative Modification Proposal to the relevant Modification Proposal.

Amend paragraph 6.5.1(a) as follows:

- 6.5.1 A Proposer may:
- (a) subject to paragraphs 6.5.7 and 6.8.6, withdraw a Modification Proposal, at any time before the final Modification Report is circulated to the Authority pursuant to paragraph 9.3.4 or in respect of a Self-Governance Modification Proposal at any time before the Modification Panel makes a determination under paragraph 9.3.10(a), by notice to the Secretary, and subject to paragraphs 6.4 and 12.4, any Modification Proposal so withdrawn shall lapse; or

Add new paragraph 6.8:

6.8 European Modification Proposals

6.8.1 If, at any time after a Modification Proposal is raised, the Authority directs a Transporter that it has determined that such Modification Proposal is a European Modification Proposal, the Modification Proposal will from that point forward be considered as a European Modification Proposal, until such time as the Authority withdraws such direction in accordance with paragraph 6.8.7.

6.8.2 Where the Authority has determined that a Modification Proposal is a European Modification Proposal and has so directed a Transporter pursuant to paragraph 6.8.1, the Transporter shall promptly notify the Secretary which in turn shall promptly notify the Proposer, each Transporter, each User, each Member and each Non-Code Party (if any) of the Authority's determination.

6.8.3 Any Modification Proposal made by the Authority shall be a European Modification Proposal and shall be accepted into the Modification Procedures by the Modification Panel and proceed in accordance with any timetable(s) specified in the Modification Proposal.

6.8.4 A European Modification Proposal shall follow the timetable included within the direction made by the Authority pursuant to paragraph 6.8.1

or, if provided, the timetable included within the Modification Proposal made by the Authority and otherwise shall follow any timetable which would otherwise be applicable pursuant to these Rules.

6.8.5 Until such time as the Authority directs the Transporter that a Modification Proposal is a European Modification Proposal and such direction provides a timetable to be followed, the Modification Proposal shall proceed in accordance with the Modification Procedures.

6.8.6 A European Modification Proposal shall not be withdrawn without the Authority's prior written consent.

6.8.7 Where the Authority directs the Transporter at any time prior to a European Modification Proposal being submitted to it for a final determination, that a European Modification Proposal should no longer be considered to be a European Modification Proposal, the Transporter shall promptly notify the Secretary which in turn shall promptly notify each Member, each Transporter and each User, each Third Participant and each Non-Code Party (if any) of the Authority's direction. From the date of receipt of the Authority's direction:

(a) the Modification Proposal shall no longer be a European Modification Proposal for the purposes of these Rules; and

(b) the Modification Proposal shall from that point on be subject to the timetable and procedures of these Rules that relate to Modification Proposals that are not European Modification Proposals, but (for the avoidance of doubt) the Modification Proposal shall not have to retrospectively comply with any such procedures in the period prior to receipt of the Authority's direction.

6.8.8 Where the Authority is the Proposer of a European Modification Proposal and the Authority directs the Transporter that the Modification Proposal should no longer be considered to be a European Modification Proposal, then the Modification Proposal shall be deemed to have been withdrawn from the date of receipt of the Authority's direction.

Amend paragraph 12.5 as follows:

12.5 Time periods

Notwithstanding any time periods specified in these Rules, in respect of any Modification Proposal or Request the Modification Panel may subject to paragraph 6.8.3, from time to time, determine to shorten or lengthen the time period within which any (or all) of the Modification Procedures, Request Procedures or any other procedures is (or are) to be undertaken. If the Modification Panel shall so determine, the Code Administrator shall, so far as consistent with these Rules and the Transporter's Licence, do all acts and things which these Rules specify as acts and things to be done by the Code Administrator within such shorter or longer period of time so as to give effect to such determination.

0448

Modification

9 October 2013

Version 6

Page 12 of 13

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Amend paragraph 12.7.1 as follows:

12.7.1 [Subject to paragraph 6.8.3](#), in respect of any Modification Proposal or Request if the Code Administrator considers it would be appropriate to disapply any of these Rules the Secretary shall notify each Member, each Transporter and each User, each Third Party Participant and each Non-Code Party (if any) and in that notice specify which paragraphs of these Rules the Code Administrator considers it would be appropriate to disapply and explaining why and invite each Transporter, Users, Third Party Participants and Non-Code Parties (if any) to make representations within ten (10) Business Days following the date of such invitation in respect of the proposed disapplication. The Code Administrator shall within the three (3) Business Days following the expiry of such ten (10) Business Days send to each Member and the Authority copies of all representations (if any) so received.

Amend paragraph 12.7.2 as follows:

12.7.2 The Modification Panel shall, subject to paragraphs [5.3.1](#) and [6.8.3](#), at the next following meeting of the Modification Panel consider the representations (if any) received (in accordance with this paragraph 12.7.1) from Transporters, Users, Third Party Participants and Non-Code Parties (if any), and the Modification Panel may determine that it is appropriate to disapply any of the paragraphs of these Rules specified in the relevant notice. If the Modification Panel shall so determine the paragraphs of these Rules specified in the relevant notice shall, if the Authority agrees, be disapplied.

7 Recommendation

The Proposer invites the Panel to:

- AGREE that this modification should be issued to consultation.

0448

Modification

9 October 2013

Version 6

Page 13 of 13

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