

CODE MODIFICATION PROPOSAL No xxxx
Code Governance Final Proposals Mod x: Self Governance
Version 0.5

Date: 09/07/2010

Proposed Implementation Date: 1 November 2010

Urgency: Non Urgent

1 The Modification Proposal

a) 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 it 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 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 non-veto, or reject by directing that the proposal follow the current UNC Modification Procedures. Further, it is proposed that the Authority be able to reject a Self Governance Statement up until the Modification Panel determination as to whether or not to implement the proposal.

It is also proposed that section 9.3.3 be amended to state that the Modification Panel shall state within the final Modification Report whether the 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 received by the Transporters 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, and

- So long as the above is satisfied and the Authority has not vetoed the Self Governance Statement, determine whether or not to implement the proposal and submit this decision to all interested parties.

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 appeals to be raised. Further it is proposed that if an appeal is raised within the 15 Business day period, and satisfies the applicable criteria, then the implementation of the proposal will be suspended until the outcome of the appeal has been determined.

Voting on Self Governance Modification Proposals

For clarity where a Panel determination is required with relation to Modification Proposal that has followed the self governance route it is proposed that each Voting Member* of the Modification Panel can vote on such a Modification Proposal.

Appeals Process

To facilitate an appeal process for UNC parties to challenge a Modification Panel determination on whether a Self Governance Modification 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, Third Party Participant or Materially Affected Party that wishes to appeal against such a determination so long as the appeal is made in line with the following criteria;

- The appeal has been made within 15 (fifteen) business days following the determination of the Modification Panel (as explained above)
- The appealing party perceives 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
- The appeal is not, in the view of the Authority, frivolous, vexatious or has no reasonable prospect of success

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

further available information.

If the Panel does not wish to amend its determination on whether or not the proposal should be implemented and the appealing party is still not satisfied with the determination of the Modification Panel then the appeal may then be submitted to the Authority.

Upon submission of an appeal to the Authority, it is proposed that the UNC Modification Rules state that, in so far that the appeal satisfies the above criteria, the Authority may;

- Undertake its own determination based on the original 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

Upon an Authority decision to affirm a Modification Panel decision, the appeal will be deemed to be unsuccessful.

For clarity, If the Modification Panel determines that an appeal is successful it shall undertake a further determination on whether or not the proposal shall be implemented and the proposal will still be deemed to have followed Self Governance.

If the Authority determines that an appeal is successful, the Authority shall direct the transporters on whether or not to implement the proposal.

b) Justification for Urgency and recommendation on the procedure and timetable to be followed (if applicable)

Not applicable.

c) Recommendation on whether this Proposal should proceed to the review procedures, the Development Phase, the Consultation Phase or be referred to a Workstream for discussion.

The proposer believes that this Modification Proposal is sufficiently clear to proceed directly to consultation

2 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 this Modification Proposal would better facilitate the achievement (for the purposes of each Transporter's Licence) of the Relevant Objectives

The proposal implements the changes to paragraph 15D, E, F 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.

4 The implications of implementing this 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 this Modification Proposal, including:

a) The implications for operation of the System:

Not applicable.

b) The development and capital cost and operating cost implications:

Not applicable.

c) Whether it is appropriate to recover all or any of the costs and, if so, a proposal for the most appropriate way for these costs to be recovered:

Not applicable.

d) The consequence (if any) on the level of contractual risk of each Transporter under the Uniform Network Code of the Individual Network Codes proposed to be modified by this Modification Proposal

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 extent to which the implementation is required to enable each Transporter to facilitate compliance with a safety notice from the Health and Safety Executive pursuant to Standard Condition A11 (14) (Transporters Only)

Not applicable.

7 The development implications and other implications for the UK Link System of the Transporter, related computer systems of each Transporter and related computer systems of Users

Not applicable?

8 The implications for Users of implementing the Modification Proposal, including:

a) The administrative and operational implications (including impact upon manual processes and procedures)

The proposer is not specifically aware of any such implications.

b) The development and capital cost and operating cost implications

The proposer is not specifically aware of any such implications.

c) The consequence (if any) on the level of contractual risk of Users under the Uniform Network Code of the Individual Network Codes proposed to be modified by this Modification Proposal

The proposer is not specifically aware of any such implications.

9 The implications of the implementation for other relevant persons (including, but without limitation, Users, Connected System Operators, Consumers, Terminal Operators, Storage Operators, Suppliers and producers and, to the extent not so otherwise addressed, 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 the Transporters

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 not otherwise identified in paragraphs 2 to 10 above

Advantages

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

Disadvantages

12 Summary of representations received as a result of consultation by the Proposer (to the extent that the import of those representations are not reflected elsewhere in this Proposal)

13 Detail of all other representations received and considered by the Proposer

14 Any other matter the Proposer considers needs to be addressed

15 Recommendations on the time scale for the implementation of the whole or any part of this Modification Proposal

16 Comments on Suggested Text

17 Suggested Text

Code Concerned, sections and paragraphs

UNC Modification Rules

Uniform Network Code

Transportation Principal Document

Section(s)

Proposer's Representative

Chris Shanley, National Grid NTS

Proposer

National Grid NTS