

**Modification Report**  
**Code Governance Review: The approach to be taken when raising alternative**  
**Modification Proposals.**  
**Modification Reference Number 0318/0318A**  
**Version 3.0**

This Modification Report is made pursuant to Rule 9.3.1 of the Modification Rules and follows the format required under Rule 9.4.

## **1 The Modification Proposal 0318**

### **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 Industry Codes Governance Review, 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).

Modifications to the gas transporter's licence 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 an aspect of the Code Administration Code of Practice (CoP) – “the approach to be taken when raising alternatives to Amendment Proposals.”

Principle 7 of the Code Administrator CoP states that:

*Any process for considering a suggested Modification to a code will allow for alternative solutions to be developed and fully assessed during the Modification lifecycle. To ensure this happens;*

- *other than the proposer of the Modification, any user who has a right to raise a Modification will be allowed to propose an alternative solutions;*
- *Alternative proposals shall be raised prior to or during the workgroup stage;*

- *Subject to timing and ownership there shall be no restriction on the number of alternative proposals that can be raised. Each alternative solution will be assessed with the same rigour as the proposed solution.*

This proposal is raised to amend the UNC to comply with Principle 7 of CoP. It is intended that upon implementation of the proposal the Joint Office will facilitate the development of alternative solutions to the same degree as an original solution. In addition, implementation will ensure alternative proposals can be raised prior to, or during the workgroup stage.

The current UNC process for raising an alternative Proposal is not consistent with the aforementioned CoP principle. Currently the process for raising an alternative Proposal, is described in paragraph 6.4 of the Modification Rules; broadly this requires an alternative Proposal to be raised within five business days of a Proposal proceeding to either Development Phase\* or Consultation Phase\*. The alternative Proposal proceeds to the same timescales as the initial proposal.

### **Nature of the Proposal**

Principle 7 of the recently published Ofgem document The Code Administration Code of Practice states that “Code Administrators will facilitate alternative solutions to issues being developed to the same degree as an original solution”. The following amendment will bring the UNC into line with this principle.

It is proposed that the existing provision in Code Modification Rules 6.4.1(c) is removed and a new section added to state that:

- alternative proposals shall be allowed to be raised up until the time a workstream report is submitted to the Panel. Where the Panel subsequently reject the report and send it back to the workstream then at that point alternatives may once more be raised up until the time a workstream submits the revised report to the Panel.
- Once a modification proposal(s) proceeds to the Consultation Phase with or without an alternative, no further alternative can be raised.

Should a Modification Proposal proceed to the Development Phase, the relevant Workgroup can develop the Proposal(s) as necessary and create a new alternative Proposal if the work group believe this is required. If the Proposer of the original does not wish to amend their proposal to the alternative approach a different party may become the proposer of the alternative proposal. Also, any other party may raise an alternative provided that they are able to raise a proposal in this area. Such alternatives shall be considered by the workgroup provided that such alternate is raised at least 5 working days before a meeting of the workgroup. It is anticipated that this will enable alternative(s) and original Proposals to be developed to the same degree and timescales.

Although not part of this Proposal, as these points are already described within the UNC Modification rules, it is worth noting that the original Modification Proposal and any alternative Proposal(s) will be developed in accordance with Principle 6 of the CoP “A proposer of a Modification will retain ownership of the detail of their solution”. Key elements of this principle are as follows:

- Only a Proposer can amend their Modification Proposal
- Workgroups will assist the Proposer in designing and assessing their solution

advising on any issues but not changing the solution unless the Proposer agrees.

- Any User, who has the right to raise a Modification Proposal, has the right to adopt such a Modification Proposal that has been withdrawn by the original Proposer as detailed in paragraph 6.5 of the Rules

With the above in mind we anticipate that the Proposers of the original and any alternative proposal(s) will attend the workgroup, or send a representative. Upon the implementation of Modification Proposal 0319: Role of the Code Administrator and Code Administration Code of Practise the Joint Office may, as a Code Administrator, offer to represent small participants.

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

All modification proposals that have been allocated a number by the Joint Office 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.

## The Modification Proposal 0318A

### Nature and Purpose of this Proposal

#### Background

In November 2007, Ofgem announced the Industry Codes Governance Review, 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).

Modifications to the gas transporter's licence 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 an aspect of the Code Administration Code of Practice (CoP) – “the approach to be taken when raising alternatives to Amendment Proposals.”

Principle 7 of the CoP states that:

*Any process for considering a suggested Modification to a code will allow for alternative solutions to be developed and fully assessed during the Modification lifecycle. To ensure this happens;*

- *other than the proposer of the Modification, any user who has a right to raise a Modification will be allowed to propose an alternative solutions;*
- *Alternative proposals shall be raised prior to or during the workgroup stage;*
- *Subject to timing and ownership there shall be no restriction on the number of alternative proposals that can be raised. Each alternative solution will be assessed with the same rigour as the proposed solution.*

This proposal is raised to amend the UNC to address Principle 7 of the CoP. It is intended that upon implementation of the proposal the Joint Office will facilitate the development of alternative solutions to the same degree as an original solution. In addition, implementation will ensure alternative proposals can be raised prior to, or during the workgroup stage and be subject to adequate assessment by industry participants.

The current UNC process for raising an alternative Proposal is not fully consistent with the aforementioned CoP principle. Currently the process for raising an alternative Proposal is described in paragraph 6.4 of the Modification Rules; broadly this requires an alternative Proposal to be raised within five business days of a Proposal proceeding to either the Development or Consultation Phase. The alternative Proposal proceeds to the same timescales as the initial proposal.

## Nature of the Proposal

Principle 7 of the CoP states that “Code Administrators will facilitate alternative solutions to issues being developed to the same degree as an original solution”. The following amendment will bring the UNC into line with this principle.

It is proposed that the existing provision in the Modification Rules 6.4.1(c) is removed and a new section added to state that:

- Alternative Proposals shall be allowed to be raised up until the time a Workstream or Development Workgroup Report is submitted to the Panel. Where the Panel subsequently send the Report back to the relevant group, then at that point alternatives may once more be raised up until the time a revised report is submitted to the Panel.
- Once a modification proposal(s) proceeds to the Consultation Phase, with or without an alternative, no further alternative can be raised.

The Code Administrators Working Group agreed that it was best practice for alternatives to be developed during the ‘assessment’ stage of any Modification Proposal. It was felt that all alternatives should be put forward in good time to allow for full industry consideration and for views for and against to be recorded in the Draft Modification Report. This then allows consultees (some of whom may not have been involved in the Workstream or Workgroup) to provide informed responses. For the purposes of the UNC, it was understood that this would mean in practice all but the simplest Modification Proposals being sent to a Workstream or Workgroup for assessment, rather than allowing fully formed proposals to be sent straight out to consultation which may not allow sufficient opportunity for industry debate and views to be recorded; and which might otherwise have informed the responses of consultees.

Therefore:

- to help ensure alternative proposals are developed to the same degree as an original solution;
- to ensure there is reasonable opportunity for viable alternatives to be put forward; and
- to ensure arguments for and against a proposal and viable alternatives are fully recorded in the Draft Modification Report;

It is proposed that, in considering whether any Modification Proposal should be issued directly to consultation, the Modification Panel shall have regard to the following guidance:

- (a) whether the Proposal is sufficiently clear that all interested parties may be expected to readily understand its content and appreciate the implications
- (b) the complexity and likely impact of the proposal on code signatories and other materially affected parties; and
- (c) whether there is a reasonable prospect that viable alternatives will be brought forward.

In addition, there is a risk that alternatives may be raised unduly late in the development process and so delay the progress of Modification Proposals. To guard against filibustering while allowing legitimate Alternative Proposals that emerge at a late stage

to be adequately assessed, it is proposed that the Panel should not grant further time for Workstream or Workgroup assessment of an Alternative Proposal where it believes that Alternative could have reasonably been brought forward earlier. This guidance is designed to give a clear steer to the Panel, whilst still allowing discretion over the appropriate timetable for assessment in the particular circumstances.

Should a Modification Proposal proceed to the Development Phase, the relevant Workstream or Workgroup can develop the Proposal(s) as necessary and create a new Alternative Proposal if the group believe this is required. If the Proposer of the original does not wish to amend its proposal to the alternative approach, a different party may raise and become the Proposer of the Alternative Proposal. Also, any other party may raise any Alternative Proposal (provided that they are entitled to raise a Proposal in this area). Such Alternatives shall be considered at the next and subsequent meetings of the Workstream or Workgroup provided that such Alternative Proposal is raised at least 5 working days before the first meeting at which it is discussed and is not withdrawn. It is anticipated that this will facilitate Alternative Proposals and original Proposals being developed to the same degree and timescales.

Although not part of this Proposal, as these points are already described within the UNC Modification rules, it is worth noting that the original Modification Proposal and any alternative Proposal(s) will be developed in accordance with Principle 6 of the CoP “A proposer of a Modification will retain ownership of the detail of their solution”. Key elements of this principle are as follows:

- Only a Proposer can amend their Modification Proposal.
- Workgroups will assist the Proposer in designing and assessing their solution advising on any issues but not changing the solution unless the Proposer agrees.
- Any User, who has the right to raise a Modification Proposal, has the right to adopt such a Modification Proposal that has been withdrawn by the original Proposer as detailed in paragraph 6.5 of the Rules.

## **Suggested Text**

### **Code Concerned, sections and paragraphs**

#### **MODIFICATION RULES**

Delete all text at paragraph 6.4 and replace with text to read as follows:

#### **6.4 Alternative Proposals**

**6.4.1** In respect of a Modification Proposal which the Modification Panel pursuant to paragraph 7.2.3 has determined should proceed to the Development Phase:

- (a) where the Modification Proposal is made in respect of the Uniform Network Code, any Transporter or User;
- (b) where the Modification Proposal is made in respect of an Individual Network Code, any Relevant Transporter or Relevant Shipper;
- (c) where the Modification Proposal is a Third Party Modification Proposal, any Third Party Participant;

being a person other than the Proposer, may make an alternative Modification

Proposal in accordance with paragraph 6.2.

6.4.2 The Development Work Group shall consider an alternative Modification Proposal made under paragraph 6.4.1:

- (a) at the next meeting of the Development Work Group if such proposal is made no later than five (5) Business Days before the next meeting of the Development Work Group; or
- (b) at the meeting of the Development Work Group immediately following the meeting referred to in paragraph (a) if such proposal is made after the date which is five (5) Business Days before the meeting referred to in sub-paragraph (a).

6.4.3 An alternative Modification Proposal shall not be:

- (a) made in respect of a Modification Proposal; or
- (b) considered by the Development Work Group under paragraph 6.4.2;

where:

- (1) the Development Work Group Report (relating to the relevant Modification Proposal) has been sent to all Members in accordance with paragraph 8.7; or
- (2) the Modification Panel has made a determination to refer the Workgroup Report (relating to the relevant Modification Proposal) back to the Workgroup for revision or further work under paragraph 8.8.1(b)(ii) and such Development Work Group Report has been sent to all Members in accordance with paragraph 8.7 after such revision or further work.

6.4.4 An alternative Modification Proposal may not be made in respect of a Modification Proposal after the Modification Panel pursuant to paragraph 7.2.3 has determined such Modification Proposal should proceed to the Consultation Phase.

## **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**

No User Pays charges applicable.

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

No User Pays charges applicable to Shippers.

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

No charges applicable for inclusion in ACS.

**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 sub-paragraph (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 sub-paragraphs (a) and (b), the efficient discharge of the licensee's obligations under this licence;*

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 10 of Standard Special Condition A11. Network Code and Uniform Network Code, of the Gas Transporters' Licence as provided below:

*10b "where a modification proposal has been made under paragraphs 10(a), 10(aa) or 10(ab) of this condition (an "original proposal") alternative modification proposals may be made, in respect of any such original proposal, by any of the parties listed in paragraph 10(a) 10(aa) or 10(ab) of this condition with the exception of the person who made the original proposal provided that:*

*(i) the alternative proposal is made as described in the Code of Practice and as further specified in the uniform network code; and*

*(ii) unless an extension of time has been approved by the panel and not objected to by the Authority after receiving notice, any workgroup stage shall last for a maximum period (as specified in the uniform network code) from the date on which the original modification was proposed.*

The 0318A proposal is raised in accordance with paragraph 1c of Standard Special Condition A11 Network Code and Uniform Network Code. The Proposer of 0318A 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 10 of Standard Special Condition A11. Network Code and Uniform Network Code, of the Gas Transporters' Licence as provided below:



*10b “where a modification proposal has been made under paragraphs 10(a), 10(aa) or 10(ab) of this condition (an “original proposal”) alternative modification proposals may be made, in respect of any such original proposal, by any of the parties listed in paragraph 10(a) 10(aa) or 10(ab) of this condition with the exception of the person who made the original proposal provided that:*

*(i) the alternative proposal is made as described in the Code of Practice and as further specified in the uniform network code; and*

*(ii) unless an extension of time has been approved by the panel and not objected to by the Authority after receiving notice, any workgroup stage shall last for a maximum period (as specified in the uniform network code) from the date on which the original modification was proposed.*

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

Paragraph 1f of the Licence states that “so far as is consistent with sub-paragraphs (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 believes that this Modification Proposal (which is seeking to implement an element of the Code Governance Review Final Proposals) will better facilitate

paragraphs 1f and 9 by providing a number of administrative and implementation efficiencies:

- Reducing unnecessary barriers and red tape within the UNC;
  - 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.

Provide greater clarification as to how alternative proposals shall be raised and treated (in particular during the workgroup stage) ensuring each alternative solution will be assessed with the same rigour as the proposed solution.

The 0318A 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 sub-paragraphs (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 believes that this Modification Proposal (which is seeking to implement an element of the Code Governance Review Final Proposals) will better facilitate paragraphs 1f and 9 by providing a number of administrative and implementation efficiencies:

- Reducing unnecessary barriers and red tape within the UNC;
  - 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.
  - Provide greater clarification as to how alternative proposals shall be raised and treated (in particular during the workgroup stage) ensuring each alternative solution will be assessed with the same rigour as the proposed solution.
  - Issuing guidance to the Modification Panel to facilitate alternative Proposals being developed to the same degree as an original solution and to ensure there is reasonable opportunity for viable alternatives to be put forward, resulting in fewer under-developed Proposals being issued for consultation and ultimately reaching Ofgem for final decision.

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

In terms of industry fragmentation, this proposal better aligns the UNC alternative Modification Proposal process to that utilised in the CUSC and BSC *than the status quo.*

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

**Implications for operation of the System:**

a)

Not applicable.

**Development and capital cost and operating cost implications:**

b)

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:**

Not applicable.

**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**

Greater level of certainty that an alternative has been subject to appropriate scrutiny / development prior to being issued to consultation.

**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)*

UNC parties would need to note the new timescales and procedures for raising alternative proposals and amend their administration processes accordingly.

*Development and capital cost and operating cost implications*

Not applicable.

*Consequence for the level of contractual risk of Users*

Not applicable.

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

All UNC parties would need to note the new procedures for raising alternative proposals and amend their administration process accordingly. By raising an alternative the UNC party is committing to sending a representative to the Working Group.

**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.

It allows both alternatives and original proposals to have the same development and analysis if that is the route chosen by the Panel.

**Disadvantages**

The Modification process may become extended to allow for better development of alternatives.

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

Organisation	0318	0318A	Preference
British Gas	Not in support	Supports	0318A
EDF Energy	Comments	Comments	0318A
E.ON UK	Not in support	Supports	0318A
First Utility	Supports	Supports	0318A
National Grid Distribution	Supports	Supports	None
National Grid NTS	Supports	Supports	0318A
Northern Gas Networks	Supports	Supports	None

RWE Npower	Supports	Comments	0318
Scotia Gas Networks	Supports	Supports	0318A
ScottishPower	Supports	Supports	None
SSE	Supports	Supports	0318A
Wales & West Utilities	Supports	Supports	0318

In summary, of the twelve representations received for Proposal 0318, nine supported and two opposed implementation and one offered comments. Of the twelve representations received for Proposal 0318A, ten supported implementation and two offered comments.

For those expressing a preference, two prefer Proposal 0318 and seven prefer Proposal 0318A.

British Gas is concerned that the prevailing arrangements allow for an alternative proposal to be raised in respect of each and every original proposal made, but proposal 0318 seeks to restrict this ability. Specifically, proposal 0318 would only permit the raising of alternative proposals in instances where an original proposal was directed for further development by the UNC Modification Panel. In instances where a proposal was directed by the Panel to proceed directly to the consultation phase, and in the case of Urgent modification proposals, no scope for the raising of alternative proposals would exist. To this end British Gas considers that 0318 severely weakens compliance with the Gas Transporter Licence in that in certain circumstances the raising of alternatives will be prohibited.

British Gas considers the implementation of 0318 would necessitate the adoption of two possible “workarounds”. The first would be a change to the UNC Panel’s approach to modifications. Whereas a current test applied by the Panel in respect of a proposal proceeding directly to consultation would be an assessment about whether or not the changes sought to the UNC are set out sufficiently clearly, British Gas believe that in future such a decision is likely to involve the exercising of greater discretion by the Panel in respect of the likelihood of an alternative proposal(s) being raised. Where the Panel concluded that this was likely, the Panel may feel compelled to direct an otherwise fully developed proposal to development in order to create the scope for the raising of an alternative(s). This is likely to lead to instances where fully developed proposals are sent for development and no alternatives materialise.

The second change would see a greater number of uniquely numbered proposals being raised which are, in all but name, alternatives to the original proposal which have proceeded directly to consultation without a development phase, and hence allowed no opportunity for the raising of alternative proposals.

EDF Energy considers that 0318A would implement principle 7 of the COP (Code Administration Code of Practice) more robustly than 0318. Implementation of proposal 0318A will ensure there is a reasonable opportunity for viable alternatives to be put forward and developed by ensuring that all but the simplest Modification Proposals are

sent to a Workgroup instead of being sent direct to consultation. This additional element of 318A would better facilitate relevant objective A11.1 (f) compared to the baseline and 0318 as it will introduce a number of benefits in the efficiency in the administration of the codes.

E.ON does not consider Proposal 0318 contains adequate safeguards to ensure alternative proposals are developed to the same degree as an original solution; which was a key finding of the Code Administrator's workgroup. Consequently, E.ON do not consider this Proposal better facilitates the relevant objectives.

First Utility consider it appropriate

to require the UNC Modification Panel to consider whether or not a Modification is suitably developed, along with its likely impact on Users and the market, before directing that a Modification be issued directly to consultation. First Utility conclude that

they agree with the proposal contained in 0318A that the Panel should generally not grant further time for Workstream assessment of an Alternate Modification where it believes that the Alternate Modification could have reasonably been raised earlier.

National Grid Distribution disagrees with the Disadvantage identified in section 11 of the Draft Modification Report. Whilst the development process may be extended to facilitate development of alternative Proposals they consider this is preferable to under developed Proposals being issued for consultation. In the event that a change proposal decision is time-bound and 'normal' procedures cannot deliver a decision by this deadline or other deadline determined by the proposer, National Grid Distribution would anticipate that the proposer would petition the Authority to grant 'Urgent' status in respect of the Proposal.

National Grid NTS, Northern Gas Networks and Scotia Gas Networks consider both Modification Proposals provide a framework whereby alternative Modification Proposals are developed at an earlier stage in the process than under the current regime. This will ensure that alternatives are sufficiently developed prior to the consultation stage and should provide for more robust alternatives being offered when they are considered to be required

RWE Npower consider the addition of the ability of the Panel to refuse to award additional time to develop alternative modifications if they believe that the modification could reasonably have been raised earlier in the process under 0318A seems a reasonable measure to put in place in order to prevent abuse of the process, but the use of the Panel's discretion without any additional guidelines or draft text means that RWE Npower's view is that 0318A does not provide sufficient transparency to allow certainty in the process.

**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 be implemented on 31<sup>st</sup> 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**

At the Modification Panel meeting held on 21 October 2010, of the nine Voting Members present, capable of casting eleven votes, nine votes were cast in favour of implementing Modification Proposal 0318. Therefore the Panel recommended implementation of Modification Proposal 0318.

The Panel agreed that Proposal 0318 seeks to bring the process for raising Alternative Proposals in line with the Code Administration Code of Practice. Rather than being able to raise alternatives only within five business days of a Proposal being sent to consultation or development, alternatives would be able to be raised prior to a Workstream report for Proposals issued to a Workstream; or prior to five business days ahead of the final meeting of a Development Workgroup for Proposals sent to development. However, alternatives would not be permissible for Proposals issued directly to Consultation. This would, therefore, facilitate the relevant objective of efficient administration of the UNC by facilitating alternatives being developed alongside the main Proposal.

However, removing the ability to raise an alternative when Proposals are issued to consultation could lead to informal alternatives being raised and developed as freestanding Proposals. This would reduce flexibility compared to the existing position and could prolong the period before Modification decisions are issued by Ofgem, and so be detrimental to the relevant objective of efficient administration of the UNC.

Being a change to the Modification Rules, Panel Members also recognised that

implementation of the Proposal should be judged against Para 9 of Condition A12, and it was suggested that the same case could be made as for facilitating, or harming, the efficient administration of the UNC.

Proposal 0318 also includes transitional rules such that the new approach would only apply to Proposals raised subsequent to implementation of this Proposal. It was questioned how, if implementation facilitated the relevant objectives, it could be considered that not applying the approach to existing Proposals could be justified. It was argued that having a clean cut off would ensure that each Proposal would follow a holistic process throughout its life cycle, and this would be consistent with efficient administration of the UNC.

At the same Panel meeting, all eleven votes were cast in favour of implementing Alternative Proposal **0318A**. Therefore the Panel recommended implementation of Modification Proposal **0318A**.

The Panel agreed that Proposal 0318A sought to build on Proposal 0318 by providing guidance to the Panel when considering if a Proposal should be issued to Consultation. This should mean that Proposals would not be issued directly to Consultation if there was a likelihood of an Alternative being raised, or if, notwithstanding that a Proposal is clear, the issues were complex and merited assessment by a workgroup. This would be expected to facilitate the efficient administration of the UNC by ensuring all Proposals are adequately assessed and that an opportunity to put forward alternative solutions is available.

The Panel then proceeded to vote on which of the two Proposals would be expected to better facilitate achievement of the Relevant Objectives. Of the nine Voting Members present, capable of casting eleven votes, one vote was cast in favour of implementing Proposal 0318 in preference to Alternative Proposal **0318A**, and ten votes were cast in favour of implementing the Alternative Proposal **0318A** in preference to Proposal 0318.

Therefore, the Panel determined that, of the two Proposals, Proposal **0318A** would better facilitate the achievement of the Relevant Objectives.

## **19 Transporter's Proposal**

This Modification Report contains the Transporter's proposal to modify the Code and the Transporter now seeks direction from the Gas and Electricity Markets Authority in accordance with this report.

## **20 Text**

Legal text in support of Proposals 0318 and 0318A has been published, alongside and as part of this Report, in separate files.

For and on behalf of the Relevant Gas Transporters:

**Tim Davis**  
**Chief Executive, Joint Office of Gas Transporters**