

Modification Report
Code Governance Review: Role of Code Administrators and Code Administration Code of Practice
Modification Reference Number 0319V
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

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).

The licence modifications necessary to implement the Final Proposals for the Code Governance Review and the Code Administration Code of Practice (CoP) 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 the main elements of the code administrators work strand and the Code Administration Code of Practice.

Joint Office

Following National Grid's sale of four regional gas networks in 2005 the UNC was introduced to mitigate the need to have each network operating under the terms of its own network code. Previously National Grid acted as the code administrator but the governance process for the UNC was changed to introduce a new code administrator, the Joint Office of Gas Transporters (Joint Office). The Joint Office is independent of all participants in the gas market and is constituted in accordance with the gas transporters' licence conditions.

The heart of the role of the Joint Office (JO) is the efficient administration and governance of the processes for modifying the commercial regime which underpins the GB gas industry. It does this by publishing industry information, primarily through its web site, and by hosting industry meetings. Whilst this service is provided on behalf of the major Gas Transporters, it seeks to provide a professional and even handed service to all parties with an interest in the gas industry. The JO continually seeks to improve the service it provides and values any feedback received.

Code Governance Review

As part of the CGR Ofgem indicated that they had become concerned that the industry code arrangements have become complex and difficult for new entrants, small participants and consumers to engage in. These problems are often compounded by the fact that these industry participants are often less well resourced than large incumbent energy market participants and find it difficult to engage in the codes arrangements, including the code modification process.

In addition, Ofgem highlighted that the code arrangements are highly fragmented. Therefore, these small industry participants need to devote significant resources to understand each of the many industry code processes (across the gas and electricity regimes), to engage in and influence policy outcomes.

A key objective of the CGR was to deliver a set of code arrangements that are more accessible, efficient, and transparent, particularly from the perspective of new entrants, small participant and consumer representatives.

The CGR Final Proposals require that code administrators:

- Act as a ‘critical friend’, in particular to small participants; and
- Act consistently in line with the Code Administrator Code of Practice.

This Proposal aims to implement the changes to the UNC to enable the Joint Office to be able to comply with the above requirements. It is anticipated that the implementation of this Proposal will further the accountability of the Joint Office in terms of their quality of service, and better enable all market participants to engage in the UNC Modification process. The aforementioned elements of the CGR addressed by this Proposal are summarised below.

Role of Code Administrators

The key aspects of the Ofgem Final Proposals with regards to the role of code administrators are as follows:

- ‘Send back’ powers – will allow the Authority to formally return reports to the code panel where it considers the analysis, legal text, or any other aspect of the report is deficient, or inhibiting its ability to take a robust decision.
- Critical Friend obligation – code administrators will upon request be required to assist interested parties, particularly small participants (which may include new entrants) and consumer groups. This assistance may involve advice on the fundamentals of the modifications process, help understanding the implications of a proposal or even help in the drafting of a proposal.

- Code of Practice (CoP) – establishment of common principles, procedures and templates to reduce complexity of operating across several codes and to ensure best practice is adopted by all code administrators. The CoP will set out in a greater level of detail and prescription the services that Ofgem expect of the code administrators acting in a “critical friend” role. See below for more detail on the CoP.
- The code administrators and more generally the code processes must adhere to the principles of the CoP. The code administrators need to review the CoP from time to time and any modifications are subject to the agreement of the Authority.
- Adoption of and reporting on, Key Performance Indicators (KPIs) by code administrators as defined within the CoP. *Please note that Transporters are to implement the KPIs for the Joint Office through changes to the Joint Governance Arrangements Agreement.*
- Panels to provide reasons for their recommendations and decisions - a specific requirement that recommendations are made in a transparent and robust manner, with reference to the relevant objectives of the code.

The Code Administration Code of Practice

The CoP formed an integral part of the Code Governance Review Final Proposals. It sets out the principles that Ofgem consider should underpin the administration of the industry code modification processes.

The Code Administrators’ Working Group¹ (CAWG) looked at improvements which could be made to the code modification processes without structural change, for instance through modification to the existing rules or simply changing custom and practice. The CAWG provided Ofgem with its interim report in early 2009, which included amongst other things, a recommendation that Code Administrators be subject to a Code of Practice.

Following Ofgem’s Initial Proposals, the Code Administrators of the Balancing and Settlement Code (BSC), Connection and Use of System Code (CUSC) and UNC produced a draft Code of Practice. This document built upon the principles agreed by the CAWG and set out a standard process that the BSC, CUSC and UNC modification rules should follow, generally simplifying the processes.

On 31 March 2010 Ofgem issued an open letter consultation on the Code of Practice and associated Key Performance Indicators (KPIs) alongside the Final Proposals for the Code Governance Review. The CoP is mandatory and a copy of the CoP can be found via the following link:

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?file=FinalCoPLetter.pdf&refer=Licensing/IndCodes/CGR>

Nature of the Proposal

¹ The CAWG comprised of members from the code administrators (Elexon, Joint Office, and National Grid) in addition to participants from all sectors of the gas and electricity industries, including EDF Energy, Good Energy, RWE, Centrica, E.ON, MEUC, Association of Electricity Producers and Cornwall Energy. Representatives from Consumer Focus and the Better Regulation Executive also attended.

The Code of Practice expressly states that the industry Codes take precedence and therefore there should be no conflict between the two. However, to ensure there are no such issues and to aid understanding as to how the UNC interacts with the Code of Practice it is proposed that as far as practical both elements (role of code administrator and the CoP) are implemented within the UNC. Where this is not practical it is proposed that sufficient cross reference is made within the UNC to the CoP.

It is proposed that the Uniform Network Code Modification Rules be amended to include the following:

a). Role of Code Administrators

Implement SSC A11 paragraph 6 (c) to establish the Code Administrator and clarify their role in relation to the CoP.

- Provide further clarity to the UNC Governance Process by establishing a body (the "Code Administrator") who shall exercise the powers, duties and functions ascribed to the Code Administrator in the Modification Rules. This will be introduced through a definition of Code Administrator, which shall be included as a means of setting out the role and responsibilities and the appointment process (i.e. Transporters shall appoint the Code Administrator in accordance with SSC A12; Joint Office Governance Arrangements). This amendment will also require multiple references to Transporters to be replaced with Code Administrator.
- A definition of the CoP (as defined in SSC A11);
 - “Code of Practice” means the Code Administration Code of Practice approved by the Authority and:
 - Developed and maintained by the code administrators in existence from time to time; and
 - Amended subject to the Authority’s approval from time to time; and
 - Re-published from time to time.
- Provide a general statement that clarifies that the Code Administrator is obliged to follow the requirements defined in the CoP to the extent this does not contradict the Modification Rule.

Implement SSC A11 paragraph 9 (aa) to embed the “critical friend” role

- Better facilitate competition by embedding the “critical friend” role and placing an obligation on the Code Administrator to comply with the CoP. This obligation will include a specific requirement to assist all parties and in particular small participants and consumer groups. This provision of help will include assistance where requested (subject to a reasonableness test) with:
 - drafting a Modification Proposal,
 - understanding the operation of the Uniform Network Code,
 - the involvement in, and representation during, the Modification Procedures* (including but not limited to Panel, and/or Workgroup meetings), and

- accessing information relating to Modification Proposals and/or Modifications.
- A definition of small participant:
 - “small participant” means
 - a shipper, a supplier, or new entrant to the gas market in Great Britain that can demonstrate to the code administrator that it is resource-constrained and therefore, is in particular need of assistance;
 - any other participant or class of participant that the code administrator considers to be in particular need of assistance; and
 - a participant or class of participant that the Authority has notified the code administrator as being in particular need of assistance.

Implement SSC A11 paragraph 9 (h) so that the modification procedures are consistent with the principles contained in the CoP.

- To aid consistency and understanding between all the major Codes, it is proposed that the Modification Rules be amended to change several definitions and/or the use of such terminology as specified within the CoP. A key aspect of this change is the adoption of a common Modification Process as presented in the CoP:

Current Definition/terminology	New Definition/terminology or change required
Development Phase	Workgroup Assessment
Development Work	Assessment Work. Definition needs to refer to Workgroups and to cross reference to the Terms of Reference section within the Modification Rules. The Terms of Reference definition itself also needs to be updated to refer to workgroups.
Section 7.6 Development Process	Update to reflect that is now an Assessment process. Update timescales as follows: within ten (10) Business Days of such determination finalise the Terms of Reference and place the Modification on the agenda of an existing Workgroup or constitute a new Workgroup in accordance with paragraph 8.
Section 8 Modification	Update to reflect that is now a Workgroup

Procedures - Development Phase	Assessment.
Section 8.1 Composition of Development Work Groups	Section 8.1 Composition of Workgroups
Development Work Group	Not required.
Development Work Group Report	Not required.
Review Group	Not required.
Review Proposal	Not required.
Section 6.2 Form of Modification Proposals	Section updated to reflect that a Modification shall be proposed in accordance with the form stipulated in the CoP.
Section 7.4 Modification Proposal discussed by workstream Section 8.3 Liaison with the Modification Panel Section 8.4 Consideration of representations Section 8.5 Monthly reports	Not required as workgroup principles and activities are defined in the CoP and in the Modification Rules.
Section 8.2 Proceedings of Development Work Groups	Update workgroup proceedings to specify that workgroups are to be set out in accordance with the CoP. The notification to the Authority in 8.2.1 shall remain.
Section 8.6 Development Work Group Report Section 8.7 Circulation of Development Workgroup reports 8.8 Discussion of development Work Group Report	Create new section “Workgroup Report” and update to indicate that the Code Administrator will prepare the report in accordance with the CoP and reflect the timescales within the CoP. A final workgroup report will be submitted to the Modification Panel within 12 months from the date on which the original modification was proposed.
Section 9.4 Form of a Modification Report	Update to reflect that Modification Reports shall be in the format prescribed in the CoP.
Section 11 Review Procedures	Define as issues, pre-change process

Workstream	Workgroup
Modification Modification Proposal Transporter Proposal Third Party Modification Proposal	Only the term Modification is used as part the CoP Common Modification Process. Modification Proposal is to be used instead of Transporter Proposal and Third Party Modification Proposal throughout. Any specific references to a Transporter Proposal and Third Party Modification Proposal are no longer required.
Consultation Phase	Amend to Consultation
None	“Workgroup Report” Definition (new) required :the report of a workgroup prepared in relation to any Modification referred to it by the Modification Panel

Implement SSC A11 paragraph 15 (b) (ii) – Send Back Powers

- Specify that the Authority will have the power to ‘send back’ Proposals where analysis, legal text or any other aspect of the Final Modification Report (FMR) is in their opinion deficient. This will be provided for through a new provision to allow the Authority to send back a FMR prior to an Authority direction on whether or not to implement a Proposal.
- For clarity the Panel will consider in accordance with Section 7.2 of the Modification Rules, the Authority’s direction at its next meeting and at the same meeting shall make a decision on the course of action required which shall be either ;
 - send to development
 - send to consultation
 - defer consideration

Implement SSC A11 paragraph 15 (a) (aa) - Modification Panel to provide reasons for recommendations

- Oblige the Modification Panel to provide the reasons for recommendations on whether or not a Modification Proposal should be implemented and base these decisions on the Relevant Objectives*. The reasons for a recommendation will also be recorded in the Final Modification Report (FMR).

Implement SSC A11 paragraph 10 (b) (ii) – maximum period of workgroup stage

- Amend section 12.9.2 to clarify that the Panel shall set an initial timetable of up to six months and where the Panel determines that an extension to the workgroup timetable is required and the timetable exceeds 6 months in total, the Panel shall notify the Authority. If the Authority object to the extension

then the Panel shall, at the next Panel meeting, in accordance with 7.2 decide the next course of action.

b) Code of Practice

The following amendments will implement specific requirements with regards to the CoP that are required to remove any potential duplication or conflict with the governance process set out in CoP.

Implement CoP Principle 11 – Enable the Authority to consult the Modification Panel in respect of whether a Modification Proposal should follow Urgent procedures

- In order to facilitate the Authority requesting the Panel to provide an opinion on whether a proposal should be granted Urgent status or not in a reasonable time frame it is proposed to amend the Modification Rules to reflect the process currently in place for the CUSC Panel i.e. in line with CUSC 8.7.3.
- To enable the Authority to consult the Modification Panel in respect of an application for a Proposal to be subject to Urgent procedures. Such request will be placed on the Agenda for a Panel meeting which in turn will be convened within 5 business days of the Members of the Panel being informed of the requirement for such consultation.

Implement CoP Principle 9 – Legal Text

- To aid understanding of a Proposal, amend the Modification Rules to ensure legal text is normally made available prior to the Consultation Phase. The Modification Panel may, prior to the Consultation Phase, by exception, agree that legal text is not required, including instances where the Proposer has produced “suggested text” as part of the Modification Proposal.
- For clarity, if changes to the legal text are proposed after the Consultation Phase but prior to the final recommendation by the Modification Panel, the Proposal may be varied in accordance with section Modification Rules 6.5.

Implement CoP Principle 8 – Estimates of implementation costs to Central Systems

- To capture Transporters’ Agent central systems cost information as part of any consultation by requiring that cost assessments (covering development, implementation and on-going operating costs) shall be applicable to all Proposals and not just User Pays Proposals.

c) Other

Implement a number of house keeping and minor grammar changes that aim to make the Modification Rules more relevant and easier to understand.

- Update Relevant Objectives definition:
 - "Relevant Objectives": means the Relevant Objectives set out in Standard Special Condition A11 of the Transporter Licence.
- Remove Chairman’s Guidelines Definition
- Update 5.3: Notice convening meetings:
Remove “prior to such meeting” from the end of 5.3.3.
- Update 5.4.2:
Without prejudice to paragraph 5.4.1, if a majority of Voting Members

shall agree in writing the Secretary shall convene a meeting of the Modification Panel on shorter notice than specified in paragraph 5.3.1.

- Remove 5.6.3 – amendments to Panel Chairman’s guidelines
- Update 5.10 Observers and invitees to reflect any individual may attend as an observer on behalf of a User, a Transporter, a Third Party Participant or a Non-Code Party. Observers are permitted to participate within the meeting unless the Panel Chairman decides otherwise.
- Introduce a statement to indicate that in relation to aspects of the Rules which oblige the Code Administrator to “issue” and/or “provide” information, this obligation may be met by the Code Administrator making the information available on their website.
- Update and simplify 5.11.2 to clarify that minutes will be made available within 5 (five) Business Days.
- Update 5.11.3 to reflect that the Secretary will record the individuals who attended that meeting.
- Update 6.3.1:

Subject to paragraph 10, each Proposer shall ensure the attendance of a representative of the Proposer at the meeting of the Modification Panel at which the Modification, is to be discussed initially; at such meeting the Proposer's representative may give a presentation in respect of the Modification and shall endeavour to answer any questions which the Modification Panel may have in respect of the Modification or the presentation.
- Update 6.5.3:

Following receipt of the notice given pursuant to paragraph 6.5.1 (c) the Secretary shall submit such variation request to the appropriate Modification Panel which the Proposer may attend for the purpose of explaining the variation request.
- Update 7.1.1 (c) to indicate that a Modification needs to be received at least 8 (eight) Business days prior to a Modification Panel meeting.
- Update 8.1:
 - to reflect that all workgroups are open to all parties to attend and contribute
 - to be quorate, any meeting should include not less than two (2) representatives of Users and not less than two (2) representatives of the Transporters unless the Terms of Reference specify otherwise

Further, comments received during the Transmission Workstream held on 5th August 2010 stated that UNC parties wished to retain elements of the current Review Proposal process and be able to hold formal discussions on issues relating to the UNC with a view to reaching a conclusion that may or may not lead to the raising of a Modification Proposal. As such the proposer has included within the draft text reference to a “Pre-Modification Assessment Proposal” to allow UNC Parties to raise topics / issues for discussion and development ahead of raising a formal Modification Proposal.

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

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

Further details of the above amendments can be found in the text that accompanies this proposal.

Suggested Text

See separate document.

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 6 and 9 of Standard Special Condition A11. Network Code and Uniform Network Code, of the Gas Transporters' Licence as provided below:

*6. The licensee shall, together with the other relevant gas transporters, by the date at which this condition becomes effective (unless the Authority consents otherwise in writing), have prepared a document (the "**uniform network code**") setting out:*

- a. the terms of transportation arrangements established by the licensee and other relevant gas transporters, to the extent that such terms are common, or are not in conflict, between relevant gas transporters; and*
- b. the network code modification procedures established pursuant to paragraph 7 including procedures required by paragraphs 15A to 15C, which are, subject to paragraph 8, incorporated by reference into each network code prepared by or on behalf of each relevant gas transporter,; and*
- c. the arrangements establishing a secretarial or administrative person or body, as specified in the uniform network code and the joint governance arrangements established in accordance with Standard Special Condition A12 (Joint Office Governance Arrangements) (the "**code administrator**") and setting out the code administrator's powers, duties and functions, which shall:
 - (i) include a requirement that, in conjunction with other code administrators, the code administrator will maintain, publish, review and (where appropriate) amend from time to time the Code of Practice approved by the Authority and any amendments to the Code of Practice are to be approved by the Authority;*
 - (ii) include facilitating the procedures established in accordance with paragraph 7; and*
 - (iii) have regard to and, in particular to the extent that they are relevant, be consistent with the principles contained in, the Code of Practice; and**

9. The network code modification procedures shall provide for:

- a. without prejudice to paragraphs 15A and 15B a mechanism by which any of
 - (i) the uniform network code; and*
 - (ii) each of the network codes prepared by or on behalf of each relevant gas transporter, may be modified;**
- aa. the provision by the code administrator of assistance, insofar as is reasonably practicable and on reasonable request, to parties (including, in particular, small participants and consumer representatives) that request the code administrator's assistance in relation to the uniform network code including, but not limited to, assistance with:
 - (i) drafting a modification proposal;**

- (ii) understanding the operation of the uniform network code;*
- (iii) their involvement in, and representation during, the network code modification procedures (including but not limited to panel, and/or workgroup meetings) as required by this condition, specified in the uniform network code, or described in the Code of Practice; and*
- (iv) accessing information relating to modification proposals and/or modifications;*

.....

- d. the giving of adequate publicity to any such proposal including, in particular, drawing it to the attention of all relevant gas transporters, and, all relevant shippers, small participants and consumer representatives, and sending a copy of the proposal to any person who asks for one;*
- da. proper evaluation of the suitability of the significant code review or self governance route for a particular modification proposal;*
- e. except in respect of proposals falling within the scope of paragraph 15D, the seeking of the views of the Authority on any matter connected with any such proposal;*
- f. the consideration of any representations relating to such a proposal made (and not withdrawn) by the licensee, any other relevant gas transporter, any relevant shipper, or any gas shipper or other person likely to be materially affected were the proposal to be implemented including representations made by small participants and/or consumer representatives; and*
- g. where the Authority accepts that the uniform network code or a network code prepared by or on behalf of a relevant gas transporter 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; and*
- h. for each of the procedural steps outlined in this paragraph 9, to the extent that they are relevant, to be consistent with the principles contained in the Code of Practice.*

15. Where a proposal is made in accordance with the network code modification procedures to modify the network code prepared by or on behalf of the licensee, (excluding the terms of the uniform network code incorporated within it) or the uniform network code the licensee shall unless, in the case of a proposal falling within the scope of paragraph 15D, otherwise directed by the Authority:

- a. as soon as is reasonably practicable in accordance with the time periods specified in the uniform network code, which shall not be extended unless approved by the panel and not objected to by the Authority after receiving notice, give notice to the Authority:*
 - (i) giving particulars of the proposal;*
 - (ii) where an alternative proposal is made in respect of the same matter as the original proposal, giving particulars of that alternative proposal;*
 - (iii) giving particulars of any representations by:*
 - (aa) the licensee,*
 - (bb) any other relevant gas transporter,*
 - (cc) any relevant shipper identified in the network code modification procedures as being entitled to propose a modification,*

(dd) in respect of modifications to a network code (excluding the terms of the uniform network code incorporated within it) only, a DN operator with whom the licensee has entered into transportation arrangements in respect of the pipe-line system to which this licence relates, or

(ee) any other person with respect to those proposals;

(iv) including a recommendation (or, in the case of a proposal falling within the scope of paragraph 15D, a determination) (on the part of such person or body as may be provided for in the network code modification procedures) by the panel as to whether any proposed modification should or should not be made, and the factors which (in the opinion of the panel such person or body) justify the making or not making of a proposed modification, which shall include:

(aa) a detailed explanation of whether and, if so how, the proposed modification would better facilitate the achievement of the relevant objectives; and

.....

- b. without prejudice to paragraph 15D comply with any direction of the Authority*
- (i) to make a modification to the network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it) and/or the uniform network code in accordance with a proposal described in a notice given to the Authority under paragraph 15(a) which, in the opinion of the Authority, will, as compared to the existing provisions of the network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it) and/or (as the case may be) the uniform network code or any alternative proposal, better facilitate, consistent with the licensee's duties under section 9 of the Act, the achievement of the relevant objectives; or*
 - (ii) to revise and re-submit a notice provided in accordance with paragraph 15(a) to reflect the additional steps (including drafting or amending existing drafting of the amendment to the uniform network code), revisions (including timetable revisions), analysis or additional information specified in the direction to enable the Authority to form such an opinion in accordance with paragraph 15(b)(i) as soon after the Authority's direction as is appropriate (taking into account the complexity, importance and urgency of the modification).*

23A. Without prejudice to any rights of approval, veto or direction the Authority may have, the licensee shall use its best endeavours to ensure that procedures are in place that facilitate its compliance with the requirements of this condition, and shall create or modify industry documents including, but not limited to, the uniform network code and industry codes where necessary no later than 31 December 2010.

24. a. In this condition:

.....

"Code of Practice" means the Code Administration Code of Practice approved by the Authority and:

- (a) developed and maintained by the code administrators in existence from time to time; and*

- (b) amended subject to the Authority's approval from time to time; and*
- (c) re-published from time to time.*

....

"small participant" means

- (i) a shipper, a supplier, or new entrant to the gas market in Great Britain that can demonstrate to the code administrator that it is resource-constrained and, therefore, is in particular need of assistance;*
- (ii) any other participant or class of participant that the code administrator considers to be in particular need of assistance; and*
- (iii) a participant or class of participant that the Authority has notified the code administrator as being in particular need of assistance.*

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

- Reducing unnecessary barriers and red tape within the UNC;
 - Reducing or eliminating inefficiencies and delays associated with the existing processes which can potentially hamper the implementation of

important Modification Proposals and can have direct negative impacts on competition, new entrants and ultimately customers.

- Making existing governance processes more transparent and accessible, particularly important for small participants and consumer groups.
- Simplifying the UNC change processes and increase consistency between industry codes. For instance there will be more common, user-friendly and accessible templates for raising Modification Proposals.
- Requiring Code Administrators to take a more active “critical friend” role, particularly in providing assistance to smaller parties and consumer representatives who may otherwise be restricted in their ability to fully participate in the process.

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

No implications on security of supply, operation of the Total System or industry fragmentation have been identified.

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

a) Implications for operation of the System:

Not applicable.

b) Development and capital cost and operating cost implications:

Operating costs associated with the requirement to produce an increased quantity of legal drafting are expected to increase. Any JO costs?

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

Not applicable.

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

Not applicable.

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

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

All parties will need to review their administrative processes in light of the substantial changes to the Modification Rules.

Development and capital cost and operating cost implications

The proposer is not specifically aware of any such implications.

Consequence for the level of contractual risk of Users

The proposer is not specifically aware of any such implications.

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

Not applicable.

- 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.

The Proposal will reduce complexity and fragmentation of the existing UNC governance making it more transparent and accessible. Such complexity is an obstacle for all market participants, but presents a particular barrier to new entrants and smaller parties seeking to engage in codes processes. Removing these barriers is likely to promote competition.

This proposal will also make the governance arrangements more consistent between industry codes.

Disadvantages

None identified.

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

The following representations were received in respect of UNC 0319 and UNC 0319V:

Organisation	0319 Position	0319V Position
British Gas	Comments	-

EDF Energy	Not in Support	-
E.ON UK	Supports	Supports
First:Utility	Supports	-
Northern Gas Networks	Supports	Supports
National Grid Distribution	Supports	Supports
National Grid Transmission	Supports	Supports
RWE npower	Supports	Supports
Scotia Gas Networks	Supports	Supports
Scottish Power	Supports	-
SSE	Supports	-
Wales & West Utilities	Supports	Supports

Summary of representations received for UNC 0319V

Seven respondents notified their continued support for the varied Modification Proposal.

E.ON UK continues to support this proposal as a package of governance measures, but has serious concerns about the “send back” arrangements as described in this varied Modification Proposal, which if raised as a standalone proposal, they would be unable to support. The variation in respect of “send back” powers is, in their view materially worse than its predecessor Proposal 0319 as it now omits any detail on what process the Panel should follow.

E.ON UK considers a level of detail regarding Panel process is missing from this Proposal. This means that inadequate safeguards are in place to protect the legitimate rights of proposers, Shippers and Transporters. Moreover, it is also likely to undermine Competition Commission appeal rights if the merits of a Proposal are not properly considered by the Panel before the Proposal is sent to the Authority for its decision.

Summary of representations received for UNC 0319

British Gas believes there are aspects of this proposal that add uncertainty into the prevailing regime, where such uncertainty does not currently exist and exposes loopholes which could render good intentions ineffective. British Gas comment on the introduction of the ‘send back’ powers and the ability to provide further analysis: they raise concerns about the period the Authority may take to make an extension decision and that it is not clear what happens to a workgroup pending this decision; and they

highlight that the Panel is powerless to reject resubmitted proposals. British Gas also believes that the change of emphasis on the provision of legal text will increase the instances where text is provided and amended during the development and consultation phase, possibly aiding clarity but also adding to the administrative burden and cost of administering the UNC.

EDF Energy is concerned that the suggested legal text for this proposal is inappropriate as it reduces the transparency of the modification provisions. The suggested legal text seeks to delete a number of sections of the current provisions of the code and simply refer to the arrangements specified in the COP e.g. large deletions in section 6.2, 8.2 and 8.3 etc. EDF does not support this policy and believe the wording in the code should remain and simply reflect where appropriate explicit provisions set out in the COP. EDF believes as a principle appropriate code governance arrangements should ensure that provisions to modify any industry code should be explicitly set out within such code and not simply refer to a stand alone document that only the code administrators have any influence over. Consequently, they believe the proposal as drafted is detrimental to achieving the relevant objectives A11.1 (c) and (f).

E.ON UK supports implementation of this proposal, but believes that the benefits of implementation would be marginal. Moreover, EON express concern about the relevant objective justification and do not believe this is sufficient for the Modification Panel to be able to make a merits-based recommendation. EON also provide comments on the powers to ‘send back’ modifications in that this could be useful if used sparingly and in cases where there is a clear failure of the Modification process. However, as drafted, EON consider that this aspect of the proposal lacks appropriate checks and balances. It is stated that: “the Authority will have the power to ‘send back’ Proposals where analysis, legal text or any other aspect of the Final Modification Report is in their opinion deficient”. In EON’s view, this gives Ofgem excessive discretion in dictating the reasons why a Proposal might be ‘sent back’ and gives rise to concerns that Ofgem will be able to choreograph a particular outcome by ‘sending back’ a Proposal until it provides the desired solution. EON do not believe this would be efficient use of industry time.

Whilst RWE npower agrees with the rationale that the proposed change will reduce complexity and fragmentation in the UNC, RWE believes that it is questionable as to whether this will have a significant impact in terms of promoting competition by removing some of the barriers that this complexity introduces.

Scottish Power provide their support but believe there are a number details that need further clarification.

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)

Proposal could be implemented with immediate effect following direction from Ofgem.

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 18 November 2010, of the 10 Voting Members present, capable of casting 11 votes, 11 votes were cast in favour of implementing this Modification Proposal. Therefore the Panel did recommend implementation of this Proposal.

Members considered the report was in the correct form and discussed whether or not to recommend implementation of the Proposal. They did not determine that new issues had been raised that justified seeking further views from a Workstream or Development Work Group, with no votes cast in favour.

Members agreed that the Proposal seeks to introduce a suite of changes to bring the modification process in line with best practice, as specified in the Code Administration Code of Practice. This would, therefore, facilitate the relevant objective of efficient administration of the UNC. It was noted that the Proposal does not include detailed rules should a Proposal be sent back by the Authority – the Proposal appears to envisage an amended Report being agreed by Panel and sent back to Ofgem. However, a variation or new round of consultation may be required, though it could be argued this gave the Panel discretion.

Being a change to the Modification Rules, 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.

The Proposal also includes transitional rules such that the new approach would only apply to Proposals raised subsequent to implementation of this Proposal. It could be questioned how, if implementation facilitated the relevant objectives, it could be

considered that not applying the approach to existing Proposals could be justified. However 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.

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 Proposal 0319V has been published, alongside and as part of this Report, in a separate file.

For and on behalf of the Relevant Gas Transporters:

Tim Davis
Chief Executive, Joint Office of Gas Transporters