

Modification Report
Specific Amendments to the Modification Rules
Modification Reference Number 0008(0731)

Version 2.0

This Modification Report is made pursuant to Rule 7.3 of the Modification Rules and follows the format required under Rule 9.6.

1. The Modification Proposal

In the Justification section, the Proposer referred to the work of the Governance Workstream on the issues raised by Modification Proposal 0716. the Proposer suggested that Workstream members had reached the following conclusions on where changes should be made to Network Code Governance.

"1 Modification Panel

Giving the Panel, rather than Transco alone, more decision making in the operation of the governance regime.

Proposals include:

- The introduction of a User Vice Chairman;
- Clearer arrangements for overseeing and directing the work carried out by Workstreams; and
- Changing voting so that all determinations are by Panel Majority with the provision of clear default positions where a determination is not made.

2. Modification Proposals & Reports

Giving greater equality to Users and sharing more information earlier in the process.

Proposals include:

- Defined points at which the Proposer may change a Modification Proposal
- The removal of the confusing Alternative Proposals provision; and
- The need for additional information about systems impacts and implementation timescales during consultation.

3. Development

Making the process more transparent and participative.

Proposals include:

- Giving wider ability for appeals to be made to the Panel;
- Tighter terms of reference and clearer defaults;
- Making it easier for a Proposal to be sent to consultation."

In the Nature of Proposal section, the Proposer suggested the following:

"To effect the changes as detailed in 1 - 3 above ie

- Affording greater control of the decision making process to the Panel itself
- Introduction of a Vice-Chairman to ensure that the business of Panel and Workstreams is able to progress.
- Greater oversight of the work of workstreams and review groups
- Amendment of voting to make a panel majority the required level of agreement for all decisions with a clear default where a majority is not achieved.
- Facilitating the sharing of information at the earliest possible stage in the process.
- Defining the process and points in a proposals lifecycle at which User's may propose variation of their proposals.
- Facilitating consideration of systems impacts within the assessment of each proposal where appropriate.
- Introducing greater participation and transparency into the process.
- Clarifying terms of reference and default positions, therefore simplifying the assessment of readiness for consultation

An indicative copy of the Rules with marked-up revised text which has been developed in keeping with the 'themes' is attached, (the changes themselves are too detailed to list exhaustively here). This version was considered by the workstream to be 'near final' on the assumption that other Modification Proposals would have been successfully implemented. It is recognised that the responsibility and obligation for provision of legal text rightly resides with Transco as the owner of the Network Code at present. Therefore, this drafting is not definitive and will be subject to the approval of other Modification Proposals and some minor amendment raised in discussions at the workstream."

2. Extent to which implementation of the proposed modification would better facilitate the relevant objectives

Transco does not recommend implementation for the following reasons:

- **The new position of Vice Chairman appointed by Users' representatives.** This differs from the current provision where, in the absence of the Panel Chairman, one of the other Transco representatives in their role of deputy chairman will preside at Panel Meetings. Transco believes that the current arrangements have provided continuity and dealt satisfactorily with situations where the Panel Chairman has been unavoidably absent. Appropriate and effective chairmanship of the Modification Panel is entirely consistent with Transco's licence obligations in respect of the Network Code and this should provide Users with the assurance that the business of the Modification Panel will continue to be conducted in a satisfactory manner. Transco does not believe that the appointment of a Vice Chairman, as suggested in this Proposal, would lead to any greater assurance in respect of the conduct of business.

- **Workstream Guidelines.** This seeks to introduce a process by which the Panel may determine the terms of reference for Workstreams and approve the appointment of a chairman nominated by Transco. It also requires the Workstream Chairmen to attend Panel Meetings (or provide a User Representative to attend on that Workstream's behalf) and provides a mechanism by which Chairmen follow the guidance, clarification and instructions of the Panel with a "no confidence" provision by which a Chairman might be removed from office. Finally, more detailed guidance is provided on how Workstreams may report in respect of Modification Proposals.

Transco does not believe that attendance by all Workstream Chairmen is necessary for all Panel Meetings. For example, there may be occasions where a Workstream has not met between Panel Meetings. Whilst the responses might indicate that this aspect was not intended by the Proposer, the Proposal itself is clear and therefore is not under current Network Code provisions capable of variation. Transco does not believe that a requirement to send all Panel Chairman to meetings of the Modification Panel is consistent with efficient and economic operation by Transco of its pipe-line system and therefore, does not support this aspect of this Modification Proposal.

However, Transco is willing to take up the suggestion of aligning its representation with the chairmanship of the main Workstreams, where practicable. It would point out that this is already current practice and does not require implementation of this Proposal.

Transco would support those elements of the Modification Proposal not specifically identified above and would point out that some of these could be implemented outside the Network Code Modification Process. Transco suggests progressing these in the Modification Panel as changes to the Chairman's Guidelines

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

The Proposer considered that "implementation of the amendments to the Modification Rules as contained within this Modification Proposal would better facilitate relevant objective (b) by permitting Transco to better discharge its licence condition 4D "Conduct of Transportation Business" by making the Rules more neutral and removing present examples of discrimination which favour Transco and Transco proposals above those of Users."

Transco would wish to point out that the provision quoted in licence condition 4d relates to Transco gaining unfair commercial advantage "in connection with a business **other** than its transportation business." It therefore does not believe that the Proposer is justified in citing this licence condition in support of this Proposal.

Transco acknowledges the general point that good governance of the contractual terms between Transco and Users is consistent with the terms of its licence. However, Transco does not believe that all the additional administration detailed in this Proposal is necessary in practice and, if anything, would adversely affect

efficiency. Transco also believes that appointment of Users to key chairmanships, even on a stand-in basis, is inconsistent with facilitating the relevant objectives as shippers do not have the same obligations within their licences.

4. The implications for Transporters and each Transporter of implementing the Modification Proposal, including

a) implications for operation of the System:

Transco is unaware of any direct implications that implementation would have for the operation of the System.

b) development and capital cost and operating cost implications:

Transco believes that such costs would be minor.

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

Transco does not intend to recover these costs.

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

Transco is unaware of any such consequence.

5. 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

Transco believes that any such consequences would be minor and restricted to its management of the Modification Process.

6. 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

Transco believes that the implications would be minor and restricted to document management systems.

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

Users represented on the Modification Panel would have a reduced ability to require the debate of Proposals in Workstreams. Potentially, Users may have more information on which to make consultation responses and would be able to appoint people to chair meetings in the absence of the person nominated by Transco.

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

Those attending the Modification Panel and Workstreams would be affected by the changes in governance identified in this Proposal, particularly by the requirement to obtain a Panel Majority for decisions.

9. 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

Transco believes that any such consequences would be minor.

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

Transco has identified the following potential advantages of implementation of this Modification Proposal:

- The removal of the need to obtain unanimity or a Qualified Majority for certain Panel decisions would lead to faster progress in Panel with Modification Proposals.
- The requirement for more detailed reporting would lead to greater transparency in the Workstream process.
- Greater flexibility in development of User Proposals

Transco has identified the following potential disadvantages of implementation of this Modification Proposal:

- Less ability for Users taking the minority view in Panel to ensure debate of Proposals in Workstreams.
- More onerous processes to be followed by Workstream Chairman potentially reflecting on efficiency.
- Greater potential for disputes on Transco appointments.

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

Representations were received from the following:

E.ON UK plc (EON)	For
Gemserv	For
RWE npower plc (RWE)	For
Shell Gas Direct Limited (SGD)	For
Statoil (U.K.) Limited	For
Total Gas & Power Limited (TGP)	For

The new position of Vice Chairman appointed by User's representatives

Gemserv referred to Transco's comments on the current position and its benefits in respect of continuity and consistency with Transco's licence obligations. Gemserv expressed the belief that the existence of a Vice Chairman role would be unlikely to hinder the business of the Modification Panel. Gemserv also pointed out in this respect that the "role of Panel Chairman (and Vice Chairman) exists to facilitate the fair discharge of the business of the meeting rather than to secure a particular outcome." Gemserv also referred to the development of the Chairman's Guidelines as further protection of continuity. Turning to Transco's licence obligation in respect to the Modification Process, Gemserv referred to the secretariat services and operation of all change processes and concluded from this that "having a User Vice Chairman who would chair meetings by exception cannot be construed as preventing Transco from discharging its obligation."

SGD referred to Transco's concerns but stated that it was not convinced that the objections were robust. It referred to occasions where another Transco representative had stepped in when the Chairman was available but to other occasions where shippers had to wait until Transco staff arrived. SGD considered it to be more efficient for that time to be taken up with basic housekeeping such as corrections to minutes etc. SGD suggested the criteria for choice of chairmanship should be knowledge of the subject rather than a person's employer. In turning to Transco's licence obligations SGD did not see that "these obligations relate to whether or not Transco chairs meetings at which the Code and proposed modifications are discussed." SGD referred to the Chairman's Guidelines and suggested that these would be followed equally by a shipper or Transco chairman and in support of this referred to Shippers' obligations as Code signatories. Finally, SGD referred to an implication given by Transco that Ofgem had "some remit over how it chairs meetings" and responded that it "had not understood this to be the case."

TGP considered that it to be important that "the governance process is not subject to, or perceived to be subject to, undue influence and control by any one party." It, therefore, believed that the appointment of a User representative as Vice Chairman would provide "confidence to all Users that a safeguard is in place to ensure that the Panel meeting may continue should the Panel Chairman be absent, for whatever reason."

Transco View

Transco would wish to point out that no Panel decision can take place at the Modification Panel unless at least one Transco representative is present at that meeting and would suggest that the benefit of commencing the meeting in order to discuss previous minutes etc is limited. There is currently nothing to prevent discussions taking place informally between Panel members prior to the commencement of the meeting if those members wished to use that time profitably. As there will always be at least one Transco representative present, when the Panel is able to conduct business, the issue rests on the benefits of having a Transco member taking the chair compared with a member representing one of the other groups. Transco acknowledges that the Chairman's Guidelines should provide the necessary assurances that the Panel Meeting should be chaired impartially and objectively. Transco would, therefore, suggest that providing the Transco nominated deputy chairman has the necessary skills and competence no

change to current practice is required. Transco still remains of the view that there is a benefit in a Transco employee bound by the licence conditions of his/her employer and who would be expected to be conversant with the licence requirements relating to the Network Code, taking the chair at Modification Panel meetings and Transco is committed to providing this type of person even on a stand-in basis when the Chairman is unable to be present.

The removal of the concept of Qualified Majority and Unanimity in the context of Panel decisions

EON commented that implementation would "prevent a single User skewing the process, for example, preventing a proposal going to consultation through insisting it goes to a Workstream, where the majority of the industry has voted for the proposal to go to consultation."

Gemserv suggested that making all decisions by Panel majority whilst potentially disadvantaging a minority of Users "is a less valid concern than the reverse argument that under present requirements a minority (of one) User representative can block progress." Gemserv also contested Transco's interpretation of the current rules in respect of the number of Users required to ensure that a Proposal goes to consultation following its progress in a Workstream and stated that in all "determinations of the Panel agreement by the majority of Users is required at the very least."

TGP expressed its full support in removing this concept. It considered that Transco's concerns would be "addressed through the clear backstop provisions that have been placed into the legal text to ensure that modification proposals, following effective review by the relevant Workstream are ultimately circulated for industry consultation." Furthermore, TGP expressed the belief that "removal of these provisions will in future prevent further delay by a minority of User Representatives from insisting that a proposal be sent to a Workstream, where a majority of Users favoured progress to consultation."

Transco View

Transco confirms that there were two typographic errors in its draft report and it should be understood that the concept of a Panel Majority does embody the requirement for a majority of Users as well as Transco to vote in favour. After considering the representations, Transco continues to have no objections to this element of the Proposal.

Removal of Alternative Proposal Provision and Allowance for Variation

EON expressed the view that removing the "alternative proposal provision and allowing the proposer to vary their modification proposal would enable both Transco and users to be able to modify their proposal, as they consider appropriate." EON suggested that "this would introduce more flexibility and equality within the Code." EON also expressed lack of agreement with Transco's interpretation of Condition 9.9 (a) (ii) of its licence and suggested that Transco would not "be open to breach of its licence, through the implementation of this modification proposal 0731 as, if they haven't put forward an alternative proposal in the first instance, then they cannot breach their licence through not notifying the Authority of such a proposal."

Gemserv pointed out that this Proposal did "not seek to prevent Transco or any User from raising new Proposals on any topic." It also pointed out that it "is always possible for Transco to draw alternative means of furthering the relevant objectives to the attention of Users through the Draft Modification Report." Gemserv viewed the current "asymmetry" to be "an unnecessary and confusing complication". In respect of variation of proposals Gemserv supported the provisions of this Proposal, implementation of which, in its view, would clarify the existing arrangements and introduce "better, transparent governance by putting decision making under the Modification Panel."

RWE commented that the "ability for a Shipper to be able to modify a proposal during its life cycle will be an important improvement." RWE referred to instances "where a mod proposal with a sound concept has struggled because of an inappropriate sentence" and suggested that the ability to amend a Proposal would be "an efficient use of all participants time."

TGP also addressed the variation aspect of this Proposal and stated that it merely asked "for the same rights for a User Proposal as for a Transco Proposal." It pointed out that if the "User insists on a change that is clearly not in line with the relevant objectives for assessing changes to the Network Code then Ofgem will presumably not approve the Proposal." TGP did not share the belief that implementation would lead to extended timescales "on a universal basis." although it did recognise the possibility in individual cases. For example, if a User had made a late change after the DMR had been issued, Transco "may have to reconsider the legal text (assuming they are supporting the Proposal)." TGP concluded that under those circumstances "the Modification Panel should be able to agree a variation to the standard process times." Finally, whilst acknowledging the risk of allowing unconstrained changes to Proposals, TGP stated that this would not be introduced as a result of implementation and suggested that approval of such an amended Proposal would be unlikely if the amendments were "clearly different to that which had been discussed by the industry."

Transco View

Transco acknowledges the principle that variation of a Proposal during development may be more efficient than the current process of withdrawal followed by resubmission of a Proposal that reflects the development discussions. The prospect of development giving rise to a variation that attracts widespread support would potentially justify workstream discussions where currently a Proposal is sufficiently defined for progress to consultation to be the appropriate decision. Transco also supports the approach that such variations should have a governance process that involves the Modification Panel and that such variations should only be introduced prior to the issue of the Draft Modification Report. Transco believes that these aspects are clearly stated in the draft legal text accompanying this Proposal. Transco continues to believe that it has licence obligations in respect of bringing alternatives to Ofgem's attention but as the possibility currently exists of Transco raising a new Proposal, it does not object to the removal of the current alternative provisions.

Workstream Guidelines

EON did not consider that a requirement for Workstream Chairmen to attend Panel Meetings would impede Transco's ability to economically and efficiently operate its pipeline system and suggested that if the Workstream Chairman were unable to attend a Modification Panel meeting then that Workstream Chairman could arrange for a member of the group to attend the meeting. EON recognised, however, "that it would be inefficient for a member of a group to attend the Modification Panel if that group has not met between Panel meetings." EON suggested resolution of this issue "through an insertion in the legal text, holding the Chairman or relevant member, unaccountable in terms of attending the Modification Panel Meeting, where no workgroup, review group or workstream meeting has been held." EON concluded that having a representative of the Workstream would "provide the Modification Panel with more clarity and transparency with regards to group reports, where a representative will always be present to explain and clarify potential areas of misunderstanding."

Gemserv expressed the understanding that the two Workstreams conducted the work delegated to them by the Panel and concluded from this that "it seems appropriate that they should be formally accountable to the Panel and reasonable that their Chairmen should attend Panel meetings." Gemserv suggested that Transco wishes might keep meeting attendance to appropriate levels by ensuring "that its Panel Members are also the Workstream Chairmen."

RWE also referred to the requirement of attendance even if there had been no meetings between Panel meetings, and suggested that "this might be acceptable exception to the Panel." RWE, however, stated that "the requirement for Workstream Chairmen to attend and give account of and answer questions about the activity at a Workstream would be an important step forward."

TGP considered it important "for effective operation of panel meetings to ensure that Workstream Chairmen or a representative on behalf of the Chairman attend the Panel." It noted that there were relatively few workstreams and this requirement would be subject to Clause 8.3.9. TGP suggested that in respect of Workstreams "that have met infrequently it may be appropriate to seek Panel approval of the non-attendance of a workstream chairman in reasonable time prior to the Panel Meeting."

Transco View

Transco acknowledges that there may be benefits in the attendance of Workstream Chairmen at Panel Meetings but has concerns in respect of the lack of flexibility within this Proposal which, if implemented, would clearly require the attendance of a Workstream Chairman or representative even where that Workstream had not met between meetings. Whilst acknowledging the suggestions for variation within the responses Transco believes that the current provisions of Section Y do not allow a variation of this kind to be made to this Proposal. A further aspect of the inflexibility of wording is the requirement for the Workstream Chairman to nominate a User Representative as an alternate where there may be a Transco attendee available who might even be attending the Panel Meeting for another reason such as the presentation of a new Proposal. Transco would wish to point out that the type of improvements suggested by the Proposer could be adopted into the Chairman's Guidelines and thus approved by the Modification Panel after due discussion, without requiring approval of a Modification Proposal. If a member of the Modification Panel were to initiate

discussion in Panel on this type of change to the Chairman's Guidelines, Transco would be supportive.

System Impacts and Implementation Timescales

Statoil referred to the "need during the consultation stage for additional information from Transco about the likely systems impacts and the implementation timescales." It believed that early indication of the likely system impacts "would be helpful in determining the associated costs which would assist shippers in making informed decisions on various proposals. " Statoil recognised the Transco might be impacted by lack of information or time constraints in some instances but still believed that indicative information should be produced for the Draft Modification Report.

Transco View

Transco's analysis of the Proposal is that this additional information would be discussed during the Workstream or Development Work Group meetings. Transco would support this development within the process and would welcome the active engagement of meeting participants in providing that part of the information not available to Transco. This is another element of this Proposal that could be implemented without approval of a Modification Proposal and would legitimately be the subject of a revision to the Chairman's Guidelines.

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

Transco is unaware of any such requirement.

13. 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

Transco is unaware of any such requirement.

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

Transco is unaware of any such requirement.

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

The Proposal could be implemented from the first Modification Panel Meeting following approval.

16. Implications of implementing this Modification Proposal upon existing Code Standards of Service

17. Recommendation regarding implementation of this Modification Proposal and the number of votes of the Modification Panel

Transco does not recommend implementation of this Proposal. Transco has, however, indicated its support for the elements within this Proposal in respect of Workstream reporting, that could be implemented without requiring approval of a Network Code Modification. Transco is prepared to discuss implementation of these elements at the Modification Panel in the context of changes to the Chairman's Guidelines.

18. Transporter's Proposal

This Modification Report contains the Transporter's proposal not to modify the Code and the Transporter now seeks agreement from the Gas & Electricity Markets Authority in accordance with this report.

19. Text

Subject Matter Expert sign off:

I confirm that I have prepared this modification report in accordance with the Modification Rules.

Signature:

Date :

Signed for and on behalf of Relevant Gas Transporters:

Richard Court
Commercial Frameworks Manager

Signature:

Date :