

MODIFICATION PROPOSAL 379 – Provision for an AQ Review Audit

LEGAL TEXT – v. 2.0

Proposed Amendments to the Uniform Network Code

UNC Transportation Principal Document – Section G

Insert a new paragraph 1.15 as follows:

“1.15 AQ Review Audits

1.15.1 For the purposes of the Code:

- (a) an **“AQ Review Year”** is a Gas Year in relation to which the outcome of SSP Users’ performance of AQ Review Obligations and, where relevant, the conduct by Auditable SSP Users’ of their AQ Review Obligations is being assessed or audited pursuant to this paragraph 1.15;
- (b) in relation to any AQ Review Year an **“SSP User”** is a User which is the Registered User of 50,000 or more Smaller Supply Points on the first day of the next following Gas Year which were Smaller Supply Points for the duration of that AQ Review Year;
- (c) an **“AQ Review Auditor”** is a person whose name is for the time being on the list of auditors maintained under paragraph 1.15.7;
- (d) **“AQ Review Audit Functions”** are the conduct (as a consequence of the operation of this paragraph 1.15), in relation to an SSP Auditable User and Gas Review Year, of the following functions by an AQ Review Auditor:
 - (i) a review of whether, in the opinion of an AQ Review Auditor, in the relevant AQ Review Year the relevant SSP Auditable User substantially complied with those User obligations set out in paragraphs 1.6.4 (including the warranty given at paragraph 1.6.4 (c)), 1.6.5, 1.6.6 and 1.6.13 9 (the **“AQ Review Obligations”**);
 - (ii) an assessment of the extent, in the opinion of the AQ Review Process Auditor, to which inappropriate reductions in the Annual Quantities of that SSP Auditable User’s Smaller Supply Points resulted from a failure or failures by such User to so comply;
 - (iii) where reasonably practicable, a determination of the financial benefit that, in the opinion of the AQ Review Auditor, has accrued and will accrue in the Gas Year next following the relevant AQ Review Year to the relevant SSP Auditable User to the detriment of other Users as a result of such failure or failures;
 - (iv) a review of the SSP Auditable User’s methodology for conducting its AQ Review Obligations, including as to the determination, prioritisation and management of AQ Amendments; and

- (v) as soon as reasonably practicable and in any event no later than five months after the appointment of the AQ Review Auditor pursuant to paragraph [], the preparation and provision of:
 1. an audit report on all such matters to the relevant Auditable SSP User, including recommendations for the improvement of the Auditable SSP User's performance of its AQ Review Obligations (an “**AQ Review Audit Report**”) and, where a copy is requested by the Authority, the provision of a copy of such AQ Review Audit Report to the Authority;
 2. the provision of an executive summary of such AQ Review Audit Report to the Secretary, for disclosure to the Uniform Network Code Committee or relevant Sub-committee.

1.15.2 For the purposes of the Code, in relation to any AQ Review Year an “**SSP Auditable User**” is any SSP User in relation to which, in respect of that AQ Review Year:

- (a) the value of X determined in accordance with paragraph 1.15.3 is greater than 80%; and/or
- (b) the value of X determined in accordance with paragraph 1.15.3 is greater than 0%, and:
 - (i) that SSP User's Aggregate SSP AQ Reduction Quantity is positive; and
 - (ii) the value of Y determined in accordance with paragraph 1.15.4 in relation to that SSP User is greater than 10%.

11.5.3 For the purposes of paragraph 11.5.2, the value of X (expressed as a percentage) in relation to any SSP User and any AQ Review Year shall be determined as follows:

$$X = (A - B)/B$$

Where:

A is the SSP User's SSP AQ Reduction Percentage for that AQ Review Year

B is the median of all SSP User's SSP AQ Reduction Percentages for that AQ Review Year

and where each SSP User's SSP AQ Reduction Percentage for the relevant AQ Review Year shall be determined as follows:

$$Z = (C - D)/D$$

Where:

Z is the SSP User's SSP AQ Reduction Percentage

C is the aggregate of the Annual Quantities of all of that SSP User's Smaller Supply Points on the first day of the next following AQ Review Year

D is the aggregate of the Annual Quantities of all such Smaller Supply Points on the first day of the AQ Review Year.

1.15.4 For the purposes of paragraph 11.5.2 the value of Y (expressed as a percentage) in relation to any SSP User and any AQ Review Year shall be determined as follows:

$$Y = (E - F)/F$$

Where:

E is the SSP User's AQ Reduction Percentage for that AQ Review Year

F is the median of all SSP User's SSP AQ Reduction Percentages for that AQ Review Year

and where each SSP User's SSP AQ Reduction Percentage for the relevant AQ Review Year shall be determined as follows:

$$W = G/H$$

Where:

W is the SSP User's SSP AQ Reduction Percentage

G is the number of successful applications made by the SSP User pursuant to paragraph 1.6.4 in the AQ Review Year for a decrease in the Provisional Annual Quantity

H is the number of successful applications made by the SSP User pursuant to paragraph 1.6.4 in the AQ Review Year for a decrease or increase in the Provisional Annual Quantity.

1.15.5 The Transporters shall, as soon as reasonably practicable following publication of the final reports pursuant to paragraphs 1.6.18 and 1.6.20 in respect of an AQ Review Period prepare and publish a report in relation to the relevant AQ Review Year specifying:

- (a) the SSP Auditable Users (if any) in relation to that AQ Review Year;
- (b) the performance of such SSP Auditable Users as against the criteria set out in paragraph 1.5.2,

and shall provide a copy of such report to the Secretary for provision to the Uniform Network Code Committee or relevant Sub-Committee.

1.15.6 Each AQ Review Year each User and each Transporter may nominate up to three auditors for inclusion in the list of auditors established and maintained pursuant to paragraph 1.15.7.

1.15.7 The Secretary shall maintain a list of auditors comprising persons available to act as AQ Review Auditors. The listed auditors shall be such persons:

- (a) nominated by Users and the Transporters as the Uniform Network Code Committee or relevant Sub-committee determine have the requisite technical expertise to conduct the AQ Review Audit Functions; and
- (b) as have provided written confirmation to the Secretary of their willingness to act as an AQ Review Auditor and have not subsequently notified the Secretary to the contrary.

For such purposes the Secretary shall seek written confirmation from each AQ Review Auditor of its willingness or otherwise to continue in such capacity.

1.15.8 Each Gas Year, the Uniform Network Code Committee or relevant Sub-committee shall in respect of each SSP Auditable User in relation to the preceding AQ Review Year select an AQ Review Auditor to conduct an AQ Review Audit in relation to that SSP Auditable User and a substitute and the Secretary shall notify the SSP Auditable User of the identity of the AQ Review Auditors so selected.

1.15.9 Each SSP Auditable User in respect of an AQ Review Year shall seek confirmation from the AQ Review Auditor selected in relation to it pursuant to paragraph 1.15.8 that such AQ Review Auditor is willing to discharge the AQ Review Functions in relation to that SSP Auditable User and relevant Gas Year.

1.15.10 Where an AQ Review Auditor confirms its willingness to discharge the AQ Review Functions in relation to that SSP Auditable User and relevant Gas Year, the SSP Auditable User shall:

- (a) endeavour to agree with the AQ Review Auditor terms, subject to the approval of the Uniform Network Code Committee or relevant Sub-committee, for the conduct of such AQ Review Functions and their completion no later than March 31st in the Gas Year next following the relevant AQ Review Year; and
- (b) provide, and procure the provision by the AQ Review Auditor of, such information to the Uniform Network Code Committee or relevant Sub-committee as it shall reasonably require, including with respect to the independence of the AQ Review Auditor, for the purposes of determining its suitability to conduct the AQ Review Functions in relation to such SSP Auditable User,

and the Uniform Network Code Committee or relevant Sub-committee shall determine whether or not to approve the appointment.

1.15.11 Where an SSP Auditable User fails to obtain confirmation from, and reach agreement with an AQ Review Auditor in accordance with paragraphs 1.15.9 and 1.15.10 [within 30 days of being notified of such selection] the SSP Auditable User shall notify the Secretary accordingly providing a reasonably detailed explanation of the reasons for such failure and, where the Uniform Network Code Committee or relevant Sub-committee so determines, shall seek to agree terms with the substitute AQ Review Auditor selected pursuant to paragraph 1.15.8 and the provisions of paragraphs 1.15.9 and 1.15.10 shall apply with respect to the SSP Auditable User and such substitute accordingly.

- 1.15.12 Where the Secretary notifies an SSP Auditable User that pursuant to paragraph 1.15.11 the Uniform Network Code Committee or relevant Sub-committee has approved its appointment of an AQ Review Auditor, the SSP Auditable User shall at its own cost proceed forthwith with such appointment in a manner consistent with the information provided to the Uniform Network Code Committee or relevant Sub-committee in connection with the proposed appointment.
- 1.15.13 Where an AQ Auditable User appoints an AQ Review Auditor pursuant to paragraph 1.15.12, it shall provide, and procure that its suppliers provide, the AQ Review Auditor with such information, access to records and cooperation as the AQ Review Auditor shall reasonably require.
- 1.15.14 Where an AQ Review Audit with respect to an Auditable SSP User and AQ Review Year concludes that the Auditable SSP User substantially complied with the AQ Review Obligations in such AQ Review Year, the Transporters shall reimburse the Auditable SSP User in respect of the relevant AQ Review Auditor's charges for the conduct of the AQ Review Functions with respect to that Auditable SSP User.
- 1.15.15 Where the Transporters are required to reimburse an SSP Auditable User pursuant to paragraph 1.5.14, each SSP User with respect to the relevant AQ Review Year shall pay to the Transporters in respect of such reimbursement an amount determined as follows:

$$P = R(U/A)$$

Where:

R is the amount payable to the Transporters by the SSP User pursuant to this paragraph 1.15.15

U is the aggregate of the Annual Quantities all of that SSP User's Smaller Supply Points on the first day of the relevant AQ Review Year.

A is the aggregate of the Annual Quantities all SSP Users' Smaller Supply Points on the first day of the relevant AQ Review Year

- 1.15.16 An AQ Review Auditor Report shall be final and binding on the Parties except in the event of fraud or where it is so clearly erroneous on its face that it would be unconscionable for it to stand.”

UNC General Terms – Section B

Delete paragraph 4.4.2 and insert the following new paragraph 4.4.2:

- “4.4.2 Without prejudice to [Section G1.15 and](#) any requirement under the Code for a Transporter to consult with the Uniform Network Code Committee or any Sub-committee in respect of any matter, no Party may be required to provide to the Uniform Network Code Committee or any Sub-committee any information which such person is not willing so to provide.”

UNC Transition Document - Part II C

Insert new paragraph 1.7.9 as follows:

“1.7.9 The provisions of section 1.15 shall apply to the AQ Review Year commencing on 1st October 2012 (so that where applicable, AQ Review Auditors will be appointed to conduct the AQ Review Functions in respect of Auditable SSP Users’ performance of the User AQ Review Obligations in such AQ Review Year) and each subsequent AQ Review Year.”

[**NB** If the implementation date is later than the AQ Review Date for 2013 30th September 2012 then the reference to 1st October 2012 should be changed to 1st October 2013 or 2014 etc. as appropriate.]