

UNC Workgroup 0484 Minutes
Guidance for the production of legal text
Tuesday 18 March 2014
at 31 Homer Road, Solihull, B91 3LT

Attendees

Les Jenkins (Chair)	(LJ)	Joint Office
Bob Fletcher (Secretary)	(BF)	Joint Office
Alex Ross-Shaw	(ARS)	Northern Gas Networks
Amanda Rooney*	(AR)	Ofgem
Chris Warner	(CWa)	National Grid Distribution
Colette Baldwin	(CB)	E.ON UK
David Addison	(DA)	Xoserve
Erika Melen	(EM)	Scotia Gas Networks
Indre Deksnyte	(ID)	Northern Gas Networks
Lorna Lewin	(LL)	DONG Energy
Martin Connor	(MC)	National Grid NTS
Sean McGoldrick	(SMc)	National Grid NTS
Steve Edwards*	(SE)	Wales & West Utilities
Steve Mulinganie	(SM)	Gazprom
Tim Davis	(TD)	Gazprom
Tracey Lake	(TL)	National Grid Distribution

* *by teleconference*

Copies of all papers are available at: www.gasgovernance.co.uk/0484/200314

The Workgroup Report is due to be presented at the UNC Modification Panel by 15 May 2014.

1.0 Outline of Modification

TD introduced the modification and explained that the guidelines have been discussed at earlier meetings and they have been published alongside the modification for comments. The aim is to promote transparency, confidence and quality in the provision of legal text.

TL asked if there was any analysis as to why modifications had been rejected by Ofgem, was this due to the provision of poor text or is this mainly an issue around the quality of business rules in the modification, which prevents the production of quality text.

SM explained that their view is that there is inconsistency in the provision of text, the lack of effective feedback to close issues and that on occasions the text does not reflect the context of the modification. He also wanted to understand the development of text and these guidelines should support this process. This is why they wanted clear guidelines to support support this process and to manage expectations.

CB felt that recent experience had shown significant inconsistency in the process where text is either very late or does not fully deliver the business rules within the modification.

CW was concerned at the amount of text that is produced and then subsequently discarded due to further changes in the modification and he would like to see text produced when business rules were firm.

ARo explained Ofgems recent experiences and concerns with text provision, that on a number of occasions the text does not fully interpret the modification and with the number of consents raised to correct text that has been implemented.

2.0 Discussion

2.1. Consideration of the Guidelines

LJ presented the guidelines on the screen, which included the amendments proposed by Transporters.

TL was concerned that the guidelines extract the Modification Rules or paraphrase the rules so it may be easier to refer directly to the Modification Rules.

TD explained that the text highlighted was extracted from the CACoP and not the Modification Rules. LJ asked if the text could be referenced with no direct extractions, as this would reduce the risk of documents being out of alignment. TD felt that the rules being referenced were not dynamic and change was infrequent and the risk of misalignment was low, the extractions help with understanding which rules were being referenced.

EM could not see the value in including named legal representatives. TL was concerned that this is a data protection issue and may raise issue around liability for the legal representative. TL asked what advantage there is in the proposer and lawyer discussing the modification directly – it may cause a professional conduct issue as to who is the client.

LJ asked if it is likely that the legal representative and proposer would meet in private - it is likely that the Transporter commercial representative would attend the meeting. TD questioned why the proposer and legal representative wouldn't meet without a transporter representative – this would not be the case where the proposer is a transporter, shippers wouldn't be invited to the meeting.

SE asked parties to note that these are guidelines and should be seen in that light. The guidance document does not change the responsibilities of transporters to provide text; a lawyer would not be needed in the room for every modification.

SM agreed that the requirement isn't for a lawyer in the room; it would be of benefit to have the lawyers contact details to help clarify issues or concerns. He wanted to progress concerns about the production of legal text and these guidelines would help to address those problems.

DA suggested that if the proposer asks for a meeting with the transporter including the legal representative, the lawyer's identity would be provided at the meeting so disclosure would be provided at this stage without the need to publish the name in the modification.

LJ suggested that a mid-ground would be that the identity of the lawyer would be provided to the proposer only and not included in the modification report.

The proposer and Workgroup participants were content that the guidelines should be amended to say that the legal representative is notified to the proposer and not published in the modification.

There were concerns that a number of the proposed amendments were in legal speak and should not be accepted as the aim is to keep the guidelines in plain English, this was generally accepted as a good principle to adopt.

CB wanted alternate modification proposers to be invited/included in any discussions for legal text and that they should then decide if it is appropriate for them to attend the meeting.

Participants wanted the Transporter UNC representative to be a defined term so that they would be easily identified.

Participants reviewed a number of proposed changes guidelines and these were either accepted or rejected based on discussions in the room.

New Action 0484/0301 – Gazprom to review and amend the guidelines.

2.2. Consideration of the legal text

LJ asked if there were any views on the text provided. TD asked why transporters had not used the suggested text provided. EM advised that the text is close to the suggested text but their lawyers had a different view on how the text should be set out.

TD asked why the text refers to an annual review; this is not in the modification. EM agreed to review the text and remove any inconsistencies where necessary.

TL questioned the role of the Modification Panel for reviewing or updating the guidelines, is this outside their scope as defined in the Modification Rules. TD noted that this is a lift from User Pays guidelines and so currently within scope. SM asked if an explanatory note should be included as with the User Pays Guidelines. It was noted that the User Pays Guidelines were reviewed and approved by the Modification Panel rather than the UNCC as they were directly impacted by the guidelines.

CW suggested that the UNCC should be used as the process control. EM agreed that this could be reviewed as part of development of the legal text.

SM asked if governance is an issue that should be used as an excuse to delay progress of the modification, as there is currently an example in use. TL felt that it was essential to understand what process is to be followed and used – particularly the aspects of the guidelines that appear to be extractions of the Modification Rules.

TD explained that they would review the modification to allow Panel to approve all ancillary documents – this would clean up the process for all guideline documents.

CW wanted to understand what documents should be approved by Panel and those by UNCC, there may be a need to list which were approved where.

DA would like to see an approach that is consistent and that Panel would have a view of documents to be approved and that these would form part of consultation. He would like to see that each document specifies its governance approach i.e. Panel or UNCC?

LJ asked if consultation should be required or be considered to amend guidelines.

CB explained the approach used for iGTs, there the guidelines were sent to a workgroup, should issues be raised then Panel could consider consultation. TD felt this was already in scope as Panel could issue a document to consultation under its existing varies.

The proposer and workgroup participants agreed that Panel should govern the guidelines. SM agreed to amend the modification to clarify that other ancillary documents would follow the same approach.

New Action 0484/0302 – Gazprom to consider amending the modification.

New Action 0484/0303 – Scotia Gas Networks to review the legal text based on the modification and any amendments

2.3. Consideration of the Workgroup Report

LJ went through the draft Workgroup report on screen and no major issues were raised on its content.

3.0 Diary Planning

Further details of planned meetings are available at: www.gasgovernance.co.uk/Diary

The next meeting will take place on Friday 04 April 2014 at 12.00 by teleconference.

Action Table

Action Ref	Meeting Date	Minute Ref	Action	Owner	Status Update
0301	18/03/14	2.1	Gazprom to review and amend the guidelines.	Gazprom (TD)	Pending
0302	18/03/14	2.2	Gazprom to consider amending the modification.	Gazprom (SM)	Pending
0303	18/03/14	2.3	Scotia Gas Networks to review the legal text based on the modification and any amendments	Scotia Gas Networks (EM)	Pending