

Modification 0473A Legal Text Comment Letter

Dear Joint Office,

We have worked with the proposer to produce completed legal text for 0473A but despite our best endeavours have found this to have taken far longer than it should have done had the Modification been properly developed. There are a number of reasons for this.

Both proposals are highly complex and contentious. 0473A was raised late in the development of 0473, and while the proposer had every right to do this, the complexity of the Modification meant that it should have had substantial development.

Due to the time constraints the workgroup were placed under, development of the alternate was rushed and although legal text was never technically requested, when we started development work on the text there were still a number of issues with the Modification solution that required resolution and/or clarification. This is evidenced by the fact that we have ended up having to produce multiple versions of the draft text as a lack of development of the proposal in certain areas was brought out by the text.

We have concerns that the production of the legal text was used as a tool to continue the development of the Modification's solution following completion of the Workgroup Report where talks between the proposer and Xoserve took place. While we appreciate discussions did take place between parties during the Workgroup phase of development it is clear that it was insufficient to properly clarify the proposer's solution in a manner that would allow legal text to be produced.

This further development should not have been done as part of the legal text production process and in other circumstances with a less time-constrained and contentious proposal we would have recommended further development in the workgroup rather than use legal resource to finalise Modification development.

We acknowledge that there were some brief periods where our external resource was unavailable during legal text development, which we relayed to the proposer as and when we became aware of them. Given that new issues were being raised by both the proposer and Xoserve throughout this process, up to and including the day before the Consultation period ended, we do not believe this prolonged legal text development significantly.

The fact remains that due to the complexity of Project Nexus-related proposals there are very limited options available to Transporters when producing legal text. Legal text production is a specialised legal skill and for Project Nexus-related text this is certainly the case. Very few lawyers possess sufficient knowledge of the Project Nexus world to be able to produce legal text for Modifications relating to it. Furthermore, this proposal is not the only workload our external resource had to deal with and as a consequence it should be expected that there will be periods when their availability is more limited.

Nonetheless, we believe the text as published works and reflects the intent of the solution and will only be subject to minor amendments before being finalised for inclusion in the Final Modification Report.

The Joint Governance Arrangement Committee (JGAC) have been in discussions on how to best manage production of legal text going forward and will continue to do so.

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