

CODE MODIFICATION PROPOSAL No 0320
Code Governance Review: Appointment and Voting Rights for a Consumer
Representative and Independent Panel Chair

Version 54.0

Date: 07/10/2010
Proposed Implementation Date: 31 December 2010
Urgency: Non Urgent

1 The Modification Proposal

a) 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.

The Gas Transporters licence modifications necessary to implement the Final Proposals for the Code Governance Review and the Code Administration Code of Practice 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 an element of the code administrators work strand – the appointment of, and voting rights for, an Authority* appointed Consumer Representative* and an independent chair to the UNC Modification Panel.

The relatively narrow scope of change associated with this proposal is in recognition of the industry's interest in the topic of voting rights as shown

by Modification Proposals 0286 and 0286A recently raised in this area.

Code Governance Review Final Proposals and Proposed Licence Amendments

With regards to the appointment and voting rights of Consumer Representative(s) and an independent chair, the CGR Final Proposals can be summarised by the following points. It should be noted that these points are taken directly from the CGR Final Proposals document and do not necessarily reflect the view of the proposer.

- 2 (two) Consumer Representatives will be able to be appointed to the panel, one nominated by the National Consumer Council, and the second nominated by the Authority
- The Authority nominated Consumer Representative shall be appropriate where proposals would have different and potentially conflicting impacts upon various categories of consumers
- Both Consumer Representatives will be full voting members on the panel
- Consumer Representatives will also vote on self governance proposals, as although such proposals will have little or no consumer impacts, Consumer Representatives will have an important role in identifying self governance proposals, and will, as any other party, be at liberty to review its position once such self-governance proposals are considered by panel members
- Each of the main codes is to have an independent chair, but Ofgem will not seek to prescribe how that chair should be selected
- the Authority should have a right of veto over any candidate put forward by the licensee to act as an independent chair
- to provide the independent chair with the Authority to carry out their role effectively, the independent chair shall have a casting vote where there would otherwise be deadlock and the panel is required to make a determination
- the independent chair's casting vote is not necessary in the case of a recommendation, which can legitimately reflect a split vote without hindering the ongoing progress of a proposal; it will simply be recorded as such in the modification report to the Authority.
- code parties should agree on how the voting rights of the chair is incorporated into the relevant code rules

To reflect the above views as incorporated into the CGR Final Proposals, Ofgem has amended Paragraph 6d of Standard Special Condition A11 of the Gas Transporters Licence to state:

“d. the arrangements establishing a panel body.....whose composition shall include:

- i) an independent chairperson approved by the Authority; and*
- ii) a consumer representative (appointed by the National Consumer Council, or any successor body) and any other consumer representative as may be appointed by the Authority.*

each of whom shall have a vote as specified in the uniform network code”

Modification Panel Voting

Currently, the Modification Panel* comprises of 5 voting Transporters' Representatives* and 5 voting User's Representatives. The Panel Chairman* is a non voting Panel Member, as are the (up to two) Consumer Representative(s) as nominated by the National Consumer Council. A Terminal Operators' Representative*, an Independent Transporters' Representative* and an Independent Suppliers' representative* are also non-voting members. Currently the National Consumer Council has nominated Consumer Focus as one Consumer Representative.

As specified in section 5.1 of the Modification Rules, panel determinations shall be made by Panel Majority* i.e. more than half of the applicable votes must be made in support of a decision e.g. that a proposal should proceed to the Consultation Phase. As such, where a Modification Panel vote is tied, it is deemed that the Modification Panel has failed to agree to a decision. Where the panel determines whether or not to recommend the implementation of a Modification and Panel Majority is not achieved, the Modification Panel will be deemed to have not recommended implementation.

Modification Proposals 0286 and 0286A

Modification Proposals 0286 and 0286A: “Extending Modification Panel Voting Rights to Consumer Representative(s)” were raised in March 2010 by EDF Energy and British Gas Trading respectively. UNC Modification Proposal 0286 sought to amend the UNC modification rules such that the two non-voting seats on the panel currently allocated to consumer representatives are provided voting rights; it did not seek to amend any other aspect of the panel constitution or the rules more generally. Alternative Proposal 0286A sought to limit Consumer Focus to one Voting seat on the panel and clarify that its vote did not extend to self governance proposals or non-modification business carried out under the auspices of the UNC Committee, which has the same membership as the Modification Panel.

The Proposer believes the proposals pre-empted Ofgem's Final Proposals for the CGR and Ofgem has since indicated in the CGR Final Proposals that although “neither conflicts with the proposed licence modification.....if either of the proposals are implemented a further code modification may still

be required in order to reflect the potential for a further consumer representative on the panel to be appointed by the Authority”.

Ofgem has approved Modification Proposal 0286A and changed the status of one Consumer Representative (Consumer Focus) from a non-voting to a voting member.

We are aware that the implementation of these revised voting arrangements is a change in the structure of the UNC Modification Panel and other industry participants may wish to consider further changes to the composition and voting arrangements of the Modification Panel. As the proposed changes in the following section are to simply implement the CGR Final Proposals, it is our view that these considerations should be addressed outside of this proposal.

Nature of the Proposal

Consumer Representative(s)

To implement the above CGR Final Proposals with regards to Consumer Representative(s) it is proposed that a number of sections within the Modification Rules be amended.

Firstly, it is proposed that the defined term for Consumer Representative(s) be amended to state that one representative may be for the time being appointed (or, as the case may be, re-appointed) each by the National Consumer Council and by the Authority.

Secondly, to reflect the amended membership of the Panel it is proposed that Section 3.2 of the Modification Rules be amended to ensure both Consumer Representatives are Voting Members. In addition, it is proposed that Consumer Representatives should be removed from the second sentence of Section 3.2.2 which states that non-voting representatives should inform the Panel of the views of the persons which they represent.

It is also proposed that Section 4 of the Modification Rules be amended to provide the Authority with an option to appoint 1 (one) Consumer Representative as a voting Modification Panel member.

For the avoidance of doubt, following the implementation of Modification Proposal 0286A, this proposal intends that the ~~Customer~~Consumer Representative(s) as described above become full voting members including votes on matters of Self Governance (as being introduced via Modification Proposal 0323) and those matters governed by the UNC Committee. The proposer acknowledges that whilst this proposal is in contrast to Modification 286A it more accurately reflects the recommendations of the Code Governance Review Final Proposals and the Modification Proposal 0286A decision letter.

Appointment of an Independent Chair

For clarity this Proposal also proposes that the role of Panel Chairman undertakes the role of independent chair as described within the CGR Final Proposals and Code Administration Code of Practise.

Section 3.6 of the Rules states that the Transporters shall appoint a Panel Chairman by notice to the Secretary and as detailed in the Joint Governance Agency Agreement (JGAA). The Transporters will be reviewing the JGAA in light of these changes.

It is also proposed that the definition of Panel Chairman be amended to clarify that the chair as appointed above will have the approval of the Authority.

Independent chair's casting vote

A number of amendments are also required to the Modification Rules to enable the CGR Final Proposals regarding the independent chair's casting vote to be adopted within the UNC.

It is proposed that Section 3 of the Modification Rules be amended to state that the Panel Chairman shall have a 'Casting Vote' in all cases other than when a Panel recommendation is made pursuant to section 9.3.3(a) of the UNC Modification Rules, for which the existing Rules will continue to apply.

In addition, it is proposed that "Casting Vote" become a defined term within the Modification Rules to add further clarity to this process. For clarity where the Panel Chairman's Casting Vote is made in favour, the Modification Panel will have determined in favour of the matter under consideration. Vice versa where the Panel Chairman's Casting Vote is not in favour, the Modification Panel will have determined against the matter under consideration.

This proposal is consistent with the intent of a chair's vote on relevant motions in the Connection and Use of System Code (CUSC) which specifically excludes the chair's vote from being cast in relation to a Panel recommendation on a Modification Proposal.

It is also proposed that the defined term for Panel Majority be amended to reflect that determinations can be made as follows:

- a majority (in number) of the votes in favour of such matter over the votes not in favour of such matter from the total number of votes exercisable by the Voting Members present at that meeting; or
- where there is an equal number of votes in favour and not in favour of such a matter from the total number of votes exercisable by the Voting Members present at that meeting, the Panel Chairman's Casting Vote shall apply.

For the avoidance of doubt the Panel Chairman's Casting Vote shall not be applicable in the case of a Panel recommendation pursuant to section 9.3.3(a) of the UNC Modification Rules. It is the proposer's view that this reflects the CGR Final Proposals that such a determination can legitimately reflect a split vote without hindering the ongoing progress of a proposal.

This proposal changes the default position, where if no Panel Majority is obtained it is deemed that the motion under consideration is not supported. We feel that although these circumstances are rare it is appropriate for the independent Panel Chairman to have a casting vote rather than the progression of a Modification Proposal being determined by a default position.

It is 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

b) Justification for Urgency and recommendation on the procedure and timetable to be followed (if applicable)

Not applicable.

c) Recommendation on whether this Proposal should proceed to the review procedures, the Development Phase, the Consultation Phase or be referred to a Workstream for discussion.

The proposer believes that this Modification Proposal is sufficiently clear to proceed directly to consultation

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

Not applicable.

c) Proposed charge(s) for application of Users Pays charges to Shippers

Not applicable.

d) Proposed charge for inclusion in ACS – to be completed upon receipt of cost estimate from xoserve

Not applicable.

3 Extent to which implementation of this Modification Proposal would better facilitate the achievement (for the purposes of each Transporter’s Licence) of the Relevant Objectives

This proposal is raised in accordance with paragraphs 1c, 1f and 9 of Standard Special Condition A11 Network Code and Uniform Network Code.

Paragraph 1f of the Licence states that *“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 paragraphs 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.

In addition, 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 of Standard Special Condition A11. Network Code and Uniform Network Code, of the Gas Transporters’ Licence as provided below:

6 d. the arrangements establishing a panel body, as specified in the uniform

network code, (the “panel”) whose functions shall include the matters required by this condition and whose composition shall include:

- (i) an independent chairperson approved by the Authority; and*
- (ii) a consumer representative (appointed by the National Consumer Council, or any successor body) and any other consumer representative as may be appointed by the Authority,*

each of whom shall have a vote as specified in the uniform network code;

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

Not applicable.

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

a) The implications for operation of the System:

Not applicable.

b) The development and capital cost and operating cost implications:

Not applicable.

c) Whether it is appropriate to recover all or any of the costs and, if so, a proposal for the most appropriate way for these costs to be recovered:

Not applicable.

d) The consequence (if any) on the level of contractual risk of each Transporter under the Uniform Network Code of the Individual Network Codes proposed to be modified by this Modification Proposal

6 The extent to which the implementation is required to enable each Transporter to facilitate compliance with a safety notice from the Health and Safety Executive pursuant to Standard Condition A11 (14) (Transporters Only)

Not applicable.

7 The development implications and other implications for the UK Link System of the Transporter, related computer systems of each Transporter and related computer systems of Users

Not applicable.

8 The implications for Users of implementing the Modification Proposal, including:

a) The administrative and operational implications (including impact upon manual processes and procedures)

The proposer is not specifically aware of any such implications

b) The development and capital cost and operating cost implications

The proposer is not specifically aware of any such implications

c) The consequence (if any) on the level of contractual risk of Users under the Uniform Network Code of the Individual Network Codes proposed to be modified by this Modification Proposal

The proposer is not specifically aware of any such implications

9 The implications of the implementation for other relevant persons (including, but without limitation, Users, Connected System Operators, Consumers, Terminal Operators, Storage Operators, Suppliers and producers and, to the extent not so otherwise addressed, any Non-Code Party)

Consumer Representatives on the Modification Panel will be able to offer views from the important perspective of the impact on consumers, who ultimately pay the costs associated with the operation of the gas regime.

10 Consequences on the legislative and regulatory obligations and contractual relationships of the Transporters

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 not otherwise identified in paragraphs 2 to 10 above

Advantages

The proposal would allow the new licence obligation effective on 31 December 2010 to be met.

Seeking to make existing governance processes more transparent and accessible is particularly important for small participants and consumer groups. Providing the Authority with the option of appointing a further consumer representative will allow a Consumer Representative that may have different views to Consumer Focus to represent an additional set of consumers.

Introducing voting rights for a further consumer-appointed UNC Panel member will provide such representatives with rights to vote on the UNC Panel which are

consistent with their rights under the BSC and CUSC.

Providing the independent Panel Chair with a casting vote on governance determinations (that may be subject to an equal number of votes for and against a motion) is an improvement on the default position, which may lead to the progression of Modification Proposals being unnecessarily impeded.

Disadvantages

12 Summary of representations received as a result of consultation by the Proposer (to the extent that the import of those representations are not reflected elsewhere in this Proposal)

13 Detail of all other representations received and considered by the Proposer

14 Any other matter the Proposer considers needs to be addressed

15 Recommendations on the time scale for the implementation of the whole or any part of this Modification Proposal

It is recommended that this modification be implemented on 31st December 2010, if this date has already past at the time of the Authority decision then it is recommended that it is implemented on the next working day after the decision.

16 Comments on Suggested Text

17 Suggested Text

MODIFICATION RULES

Amend paragraph 2.1 to read as follows:

"Casting Vote": a vote exercisable by the Panel Chairman in favour of or against any matter to be determined by the Modification Panel except the making of a recommendation under paragraph 9.3.3(a);

"Consumers' Representative(s)": the individual~~s~~ (if any) for the time being appointed by the National Consumer Council and the Authority to the Modification Panel in accordance with these Rules;

"Panel Chairman": the person appointed as chairman of the Modification Panel by the

Transporters with the approval of the Authority, and as the context may so require, a deputy ~~Panel chairman~~ Chairman;

"Panel Majority": in relation to any matter to be determined at a quorate and duly convened meeting of the Modification Panel;

- (a) a majority (in number) of the votes exercisable by the Voting Members present at that meeting and voting in favour of such matter; or
- (b) if there is an equal number of votes by the Voting Members present at that meeting in favour of and against such matter, where the Panel Chairman has exercised a Casting Vote in favour of such matter;

"Voting Member": any Transporters' Representative (~~other than the Panel Chairman and deputy chairman~~), and any Users' Representative and any Consumers' Representative, ~~appointed as a Voting Member; and shall not include the deputy chairman or the Panel Chairman except where the Panel Chairman exercises a Casting Vote under paragraph 5.8.2;~~ and

Amend paragraph 3.2.1(a) to read as follows:

"... the Panel Chairman, being (without prejudice to paragraph 5.8.2) a non-voting Member;"

Amend paragraph 3.2.1(f) to read as follows:

~~"... if appointed up to two (2) Consumers' Representative(s), one being a Voting Member and the other being a non-Voting Member, provided that if only one (1) Consumer Representative is appointed such Consumer Representative shall be a Voting Member;"~~

Amend paragraph 3.2.2 to read as follows:

~~"... It is expected that the Terminal Operators' Representative, Consumers' Representative(s), Independent Suppliers' Representative and Independent Transporters' Representative shall, as appropriate, inform the Modification Panel of the views of those persons which they represent."~~

Amend paragraph 3.6 to read as follows:

The Transporters shall appoint, by notice to the Secretary (and as the case may be, remove and reappoint); a

- (a) where such appointment or reappointment has been approved by the Authority, one (1) person, from time to time as the Panel Chairman; and
- (b) one (1) person, from time to time, as the deputy Panel Chairman.

Amend paragraph 3.8 as follows:

3.8 Consumers' Representatives

3.8.1 The Consumers' Representative appointed by the National Consumer Council to be a Voting Member shall:

(a) be an individual who is an employee, representative, officer or contractor of the National Consumer Council and the Modification Panel may ask the Consumers' Representative to provide evidence that such is the case (and in the event such is not the case the Consumers' Representative shall not be a Voting Member); and

(b) notwithstanding appointment as a Voting Member, not have the right to exercise a vote in respect of any decision by the Modification Panel in relation to a Modification Proposal which may be implemented in accordance with the Modification Procedures and if permitted under the Transporter's Licence, without the written consent of the Authority.

Amend paragraph 4.1.3 to read as follows:

"The National Consumer Council and the Authority may, from time to time, by notice to the Secretary each identify up to two (2) one (1) individuals to be appointed (and revoke any such these appointments) as a "Consumers' Representative(s)".

Amend paragraph 4.4.2(e) to read as follows:

"... a Consumers' Representative;

- (i) where appointed by the National Consumer Council, the National Consumer Council may, by notice to the Secretary, identify another individual to be appointed as the National Consumer Council's appointed Consumers' Representative;

- (ii) where appointed by the Authority, the Authority may, by notice to the Secretary, identify another individual to be appointed as the Authority's appointed Consumers' Representative;

Amend paragraph 5.6.2 to read as follows:

"The Panel Chairman"

Amend paragraph 5.8 to read as follows:

5.8 Voting

- 5.8.1 Subject to paragraph 5.9, the discharge of all of the functions within the competence of the Modification Panel and expressed to require a determination of the Modification Panel shall be determined by a vote conducted on a show of hands or, if the meeting takes place pursuant to paragraph 5.7.2, on a show of hands or such other demonstration of affirmation or consent as may be appropriate. On any vote each Voting Member present shall (subject to paragraphs 3.8, 4.5.2 and 4.5.4) be entitled to exercise one (1) vote.

Code Concerned, sections and paragraphs

Modification Rules

Uniform Network Code

Transportation Principal Document

Section(s)

Proposer's Representative

Chris Shanley, National Grid NTS

Proposer

National Grid NTS