
















Modification	At what stage is this document in the process?
<h1>0603:</h1> <h2>Removal of liability for members of Performance Assurance Committee</h2>	<div>01 Modification</div> <div>02 Workgroup Report</div> <div>03 Draft Modification Report</div> <div>04 Final Modification Report</div>
<p>Purpose of Modification:</p> <p>To provide legal protection for members (and alternate members) of the Performance Assurance Committee (PAC) identical to those provided to members of the Energy Balancing Credit Committee</p>	
	<p>The Proposer recommends that this modification should be:</p> <ul style="list-style-type: none"> • subject to self-governance • proceed to Consultation <p>This modification will be presented by the Proposer to the Panel on 17 November 2016. The Panel will consider the Proposer's recommendation and determine the appropriate route.</p>
	<p>High Impact: None</p>
	<p>Medium Impact: None</p>
	<p>Low Impact: All Code Parties, Members and alternate members of the Performance Assurance Committee</p>

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Timetable		 Any questions? Contact: Joint Office of Gas Transporters  enquiries@gasgovernance.co.uk  0121 288 2107 Proposer: Richard Pomroy  richard.pomroy@wwutilities.co.uk  029 2027 8552 or 07812 973337 Transporter: WWU  richard.pomroy@wwutilities.co.uk  029 2027 8552 or 07812 973337 Systems Provider: Xoserve  commercial.enquiries@xoserve.com Other: Insert name  email address  telephone
The Proposer recommends the following timetable:		
Modification Panel consideration	17 November 2016 (short notice)	
Consultation Close-out for representations	08 December 2016	
Final Modification Report available for Panel	09 December 2016 (short notice)	
Modification Panel decision	15 December 2016	

1 Summary

What

Discussions at Performance Assurance Committee (PAC) on confidentiality have shown that members of PAC need protection from legal action for their decisions taking when acting in good faith in accordance with their duties as members or alternate members of PAC. It seems sensible to reflect the provisions in section X relating to members of Energy Balancing Credit Committee (EBCC).

Why

The change is needed to give members protection from legal action by Parties that are affected by their actions or decisions. Other UNC sub-committees, with the exception of EBCC, do make decisions but these do not directly affect Parties and therefore it is desirable to give protection to PAC members to ensure that they do not feel constrained in performing their duties. This protection is limited to decisions made in good faith pursuant to members' duties. Not having this protection may mean that members do not make difficult decisions and thereby limit the effectiveness of PAC in delivering performance assurance.

How

New text will be inserted that mirrors the provisions in TPD X 1.2.7 and 1.2.8 relating to EBCC.

2 Governance

Justification for Self-Governance

This modification is proposed as self-governance as it does not have a material effect on any of the relevant criteria.

Fast track procedures are not proposed, as this is not a house keeping change; although this change could have been made by modification 0506V this was not a requirement of the business rules and it is therefore not an error in the legal text of 0506V.

Requested Next Steps

This modification should be:

- subject to self-governance
- proceed to Consultation

We propose that this modification goes straight to consultation as the legal text is exactly the same as the existing text in TPD X 1.2.7 and 1.2.8 with necessary changes being made to make it apply to PAC.

This issue was briefly discussed at PAC on 10th October where the proposer stated that a modification maybe required. The draft modification was discussed at the PAC on 8th November.

3 Why Change?

Members of PAC hold confidential information and may be required to make decisions that directly impact UNC Parties. It is important that they should be protected from liability claims made against them when they are carrying out their duties in good faith.

General Terms B 2.4.1 states “Nothing in the Code or a Framework Agreement or any Ancillary Agreement creates contractual rights or liabilities: [between any two Parties]”

However General Terms B 4.3.6 states “Members of a Sub-committee appointed to represent Users shall be appointed having regard to the contribution which they may as individuals make to the business of the Sub-committee and not to the Users by whom they are employed or engaged.”

This makes it clear that members of PAC are appointed having the regard to the contribution they make as individuals.

In this respect PAC members are in a similar position to members of the EBCC. Members of the EBCC are protected from legal action by clauses in TPD X 1.2.7 and 1.2.8 which were presumably introduced to provide clarity and assurance for EBCC members and this modification proposes to give PAC members the same protection.

This should give confidence that members of PAC are protected from legal action by UNC Parties for decisions that PAC members and alternate members make when acting in good faith in carrying out their duties.

The legal text replicates that in TPD X 1.2.7 and 1.2.8 to be consistent with EBCC arrangements and to facilitate the speedy resolution of this issue to enable PAC to start fulfilling its functions as soon as possible.

4 Code Specific Matters

Reference Documents

PAC terms of reference

<http://www.gasgovernance.co.uk/sites/default/files/PAC%20Terms%20of%20Reference%20approved%20v2.0.pdf>

Performance Assurance Framework Document (this is currently being reviewed by PAC)

<http://www.gasgovernance.co.uk/sites/default/files/PAF%20Guidelines%20v1.0.pdf>

Knowledge/Skills

No specific requirements

5 Solution

The legal text will be inserted in TPD V 16.2 and will replicate the text from TPD X 1.2.7 and 1.2.8 with the necessary changes being made, for example the name of the committee will be changed from EBCC to PAC and the appropriate UNC Parties will be referenced.

6 Impacts & Other Considerations

Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

There is no impact on an SCR.

Consumer Impacts

There is no direct impact on Consumers.

Cross Code Impacts

There are not cross code impacts.

EU Code Impacts

There are not EU Code impacts.

Central Systems Impacts

There are not Central Systems impacts.

User Pays

User Pays	
Classification of the modification as User Pays, or not, and the justification for such classification.	No User Pays service would be created or amended by implementation of this modification and it is not, therefore, classified as a User Pays Modification.
Identification of Users of the service, the proposed split of the recovery between Gas Transporters and Users for User Pays costs and the justification for such view.	n/a
Proposed charge(s) for application of User Pays charges to Shippers.	n/a
Proposed charge for inclusion in the Agency Charging Statement (ACS) – to be completed upon receipt of a cost estimate from Xoserve.	n/a

7 Relevant Objectives

Impact of the modification on the Relevant Objectives:	
Relevant Objective	Identified impact
a) Efficient and economic operation of the pipe-line system.	None
b) Coordinated, efficient and economic operation of (i) the combined pipe-line system, and/ or (ii) the pipe-line system of one or more other relevant gas transporters.	None
c) Efficient discharge of the licensee's obligations.	None
d) Securing of effective competition: (i) between relevant shippers; (ii) between relevant suppliers; and/or (iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers.	None
e) Provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards... are satisfied as respects the availability of gas to their domestic customers.	None
f) Promotion of efficiency in the implementation and administration of the Code.	Positive
g) Compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.	None

Relevant object (f) is facilitated as it promotes efficiency in the administration of Code by giving members of PAC confidence that they protection for legal action when they carry out their duties.

8 Implementation

As self-governance procedures are proposed, implementation could be sixteen business days after a Modification Panel decision to implement, subject to no Appeal being raised.

9 Legal Text

Text Commentary

The text shown below is the text from TPD X 1.2.7 and 1.2.8 shown with strike outs and additions (in red) to show that the text is the same as that for the EBCC with only the necessary changes made.

The current legal text relating to PAC in TPD V specifically refers to DNOs, Shipper Users and Trader Users and this text retains this for consistency. Note that Independent Gas Transporters will be included after Project Nexus Implementation Date.

~~X 1.2.7~~ **V 16.2.3** No member of the ~~Performance Assurance Committee~~**Energy Balancing Credit Committee** shall be liable (whether in contract or tort including negligence or otherwise) to **any DNO, National Grid-NTS or any Shipper User or any Trader User** of the Users for anything done when acting properly in or in connection with his office under the Code, or anything done in what such member in good faith believes to be the proper exercise and discharge of the powers, duties, functions and discretions of that office in accordance with the Code; and each **Transporter, [Independent Gas Transporter], Shipper User and Trader User**~~User and National Grid-NTS~~ waives any such liability that any such member may have and any claim in respect thereof.

~~X 1.2.8~~ **V 16.2.4** Nothing contained in paragraph 16.2.3 shall exercise or limit the liability of a member of the ~~Performance Assurance Committee~~**Energy Balancing Credit Committee**:

- (a) for death or personal injury resulting from the negligence of such member; or
- (b) in any case where such member has in the exercise and discharge of its powers, duties, functions and discretions acted in bad faith or fraudulently.

Legal Text

Insert new paragraphs 16.2.3 and 16.2.4 into TPD Section V

16.2.3 No member of the Performance Assurance Committee shall be liable (whether in contract or tort including negligence or otherwise) to any DNO or any Shipper User or any Trader User for anything done when acting properly in or in connection with his office under the Code, or anything done in what such member in good faith believes to be the proper exercise and discharge of the powers, duties, functions and discretions of that office in accordance with the Code; and each Transporter, Shipper User and Trader User waives any such liability that any such member may have and any claim in respect thereof.

16.2.4 Nothing contained in paragraph 16.2.3 shall exercise or limit the liability of a member of the Performance Assurance Committee:

- (a) for death or personal injury resulting from the negligence of such member; or
- (b) in any case where such member has in the exercise and discharge of its powers, duties, functions and discretions acted in bad faith or fraudulently.

Post Nexus Text

16.2.3 No member of the Performance Assurance Committee shall be liable (whether in contract or tort including negligence or otherwise) to any DNO or any Shipper User or any Trader User for anything done when acting properly in or in connection with his office under the Code, or anything done in what such member in good faith believes to be the proper exercise and discharge of the

powers, duties, functions and discretions of that office in accordance with the Code; and each Transporter, Independent Gas Transporter, Shipper User and Trader User waives any such liability that any such member may have and any claim in respect thereof.

16.2.4 Nothing contained in paragraph 16.2.3 shall exercise or limit the liability of a member of the Performance Assurance Committee:

- (a) for death or personal injury resulting from the negligence of such member; or
- (b) in any case where such member has in the exercise and discharge of its powers, duties, functions and discretions acted in bad faith or fraudulently.

10 Recommendations

Proposer's Recommendation to Panel

Panel is asked to:

- Issue this modification directly to Consultation.