| Stage 04: Final Modification Report | At what stage is this document in the process? |
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# 0550:

## Project Nexus – Incentivising Central Project Delivery

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| 01 Modification |
| 02 Workgroup Report |
| 03 Draft Modification Report |
| 04 Final Modification Report |

This Modification proposes to introduce incentive payments from Gas Transporters should the implementation of Project Nexus be further delayed beyond 1st October 2016 because of transporters' failure to deliver.

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| | Panel consideration is due on 17 March 2016 *(at short notice by prior agreement)* |
| | High Impact: Shippers and Transporters. |
| | Medium Impact: None |
| | Low Impact: None |


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## Contents


1 Summary 3
2 Why Change? 4
3 Solution 5
4 Relevant Objectives 6
5 Implementation 8
6 Impacts 8
7 Legal Text 9
8 Consultation Responses 11
9 Panel Discussions 23
10 Recommendation 23


## About this document:

This Final Modification Report will be presented to the Panel on 17 March 2016.

The Authority will consider the Panel's recommendation and decide whether or not this change should be made.

**Modification timetable:**

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|---|---|
| Initial consideration by Workgroup | 08 September 2015 |
| Amended Modification considered by Workgroup | 13 January 2016 |
| Workgroup Report presented to Panel | 18 February 2016 |
| Draft Modification Report issued for consultation | 18 February 2016 |
| Consultation Close-out for representations | 10 March 2016 |
| Final Modification Report published for Panel | 11 March 2016 (short notice) |
| UNC Modification Panel recommendation | 17 March 2016 |


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# 1 Summary

## Is this a Self-Governance Modification?

The Modification Panel determined that this is not a self-governance modification because it is likely to have a material impact on the commercial activities connected with the shipping and transportation of gas since it introduces the potential for financial payments by the transporters and is expected to require financial transactions between industry parties.

## Is this a Fast Track Self-Governance Modification?

Fast Track does not apply because this is not a housekeeping matter.

## Why Change?

Modifications 0432 and 0440 were approved by Ofgem in February 2014 and January 2015 respectively. Prior to the approval of these modifications the industry was already working towards an implementation date of 1st October 2015. This 1st October 2015 date was established as a result of a stated desire by Ofgem in 2012 that the revised settlement functionality should be delivered by the 4th quarter 2015. On reviewing this requirement there was broad industry consensus to reset the implementation date for the relevant modifications as 1st October 2016.

Gas Shippers consider that they will be ready for 1st October 2016, but are concerned that the Transporter Agency will not meet this date, resulting in a delay to the modifications and delivery of the systems solution.

This modification seeks to address the lack of commercial incentive on the Gas Transporters associated with the delivery of Modifications 0432 and 0440.

## Solution

This proposal seeks to introduce an incentive payment scheme that will be triggered upon Authority Direction of the implementation of a UNC Modification that delays the Project Nexus Implementation. If one or more of the Transporters are determined to be responsible for a specific failure, leading to a deferral of the implementation date, payments will be made to Shippers and to a charity nominated by transporters. For clarity the Project Nexus Implementation date (applicable for this modification) is 1st October 2016.

## Relevant Objectives

This proposal has a positive impact on relevant objective f): promotion of efficiency in the implementation and administration of the Code. It is believed that an appropriate financial incentive will encourage Transporters to take all necessary action to ensure that Project Nexus is delivered by 1st October 2016, ensuring that the new UNC obligations under Modifications 0432 and 0440 can be met.

## Implementation

This modification should be implemented at the earliest possible date following the Authority's Decision.

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

This modification relates to the industry programme for the replacement of UK Link systems, since it defines a backstop implementation date. It does not however propose any changes to the functionality or the proposed solution and therefore should have no impact on the existing approved Project Nexus modifications.


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# 2 Why Change?

Modifications 0432 and 0440 were approved by Ofgem in February 2014 and January 2015 respectively. Prior to the approval of these modifications the industry was already working towards an implementation date of 1st October 2015. This 1st October 2015 date was established as a result of a stated desire by Ofgem in 2012 that the revised settlement functionality should be delivered by the 4th quarter 2015. On reviewing this requirement there was broad industry consensus to reset the implementation date for the relevant modifications as 1st October 2016.

Once an implementation date is set the industry plans for that date and expects delivery to be met. There are currently no commercial arrangements within the UNC to incentivise delivery. It is simply expected to happen.

The industry planned and commenced work to meet the implementation date. Following concerns raised by the industry regarding the overall approach to industry planning and assurance, Ofgem appointed PwC to assess industry readiness. PwC commenced work in April 2015.

On 1st May 2015, PwC published the findings of its industry assurance assessment after reviewing iGT, GT and Shipper delivery plans for 1st October 2015. PwC found that organisations had built their delivery plans "right to left" focussing on the prescribed end date of 1st October 2015 and many plans were incomplete. Approximately 60% of organisations would not have completed build activities in time to take part in L1 Connectivity Testing and L2 File Format testing, therefore resulting in an incomplete and ineffective Market Trials period. In addition, Xoserve widely reported its delivery plan was built "right to left" and contained high levels of parallelism in order to achieve the implementation date and was not the approach it would ordinarily endorse. PwC recommended an exercise be undertaken to determine the most appropriate implementation date. At the time of the recommendation from PwC to replan the implementation date, a number of file format changes, found through Xoserve testing activities, were required to be addressed.

The industry re-planned (on a "left to right" basis) the programme of works and established a revised implementation date of 1st October 2016 for the modifications. Urgent Modification 0548 reset the implementation date to 1st October 2016.

Shippers consider that they will be ready for 1st October 2016, but are concerned that the Transporters will not meet this date, resulting in a delay to the modifications and delivery of the systems solution.

A key part of the RIIO process is ensuring the incorporation of incentives within the price control structure that deliver value for customers. It is the view of the Proposer RWE that any further delay to the Nexus programme will inflict unnecessary further costs on consumers, particularly as significant changes are expected across the industry over the next five years, and therefore there should be some incentive introduced in this area.

This modification seeks to address the lack of commercial incentive on the GTs associated with the delivery of Modifications 0432 and 0440.


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# 3 Solution

**Outline of the Payment Incentive Scheme**

To incentivise Gas Transporters to deliver the system solution on time, it is proposed to introduce a payment incentive scheme that will be triggered in favour of Shipper Users and a charity nominated by transporters if non-delivery is due to a specific failure by one or more of the Gas Transporters and the delivery date is not achieved. The incentive payments are to be assessed at a monthly rate of £5m or part of this sum dependent on the period of time that delivery remains outstanding. The Proposer has anticipated that a rescheduled mid monthly go live is a low probability, however the Solution accommodates such an event. The incentive payments will be capped to a period of two months.

Half of the payment incentive scheme will be distributed to Gas Shipper Users based on market share supply point count on the 1st October 2016. Payments will be expected to be made in the month following the relevant month of delay. This will be performed using the current transportation invoicing process. The remaining half will be redistributed to the charity nominated by transporters.

For the avoidance of doubt, the scheme applies only to the large transporter organisations. Any specific failure by any other party does not trigger the scheme.

**Supporting Information**

To provide industry with assurance that the scheme is set at a relevant level, the amount of these payments was intended to be defined by the UNC Governance Workgroup. There is little information available and Xoserve have been unable to provide either their cost liabilities (due to commercial reasons) or an accurate assessment of the cost of Project Nexus. Due to this the proposer has chosen a value of £5m per month to place on the incentive scheme.

The proposer acknowledges that this value is not considered accurate by some parties. The intention of this modification is to provide a suitable value for an incentive payment. Due to the nature of an incentive payment it is not required to be an accurate or genuine pre-estimate of Gas Shipper loss. It is provided to incentivise delivery and is not required to compensate Gas Shippers for loss however in this case the proposer feels that this value is relevant and reasonable and is believed to be roughly 10% of the costs of the initial delivery programme previously estimated at £70m whilst no other industry information has been forthcoming.

For the avoidance of doubt the Modification proposes that the Gas Transporters meet the costs of any incentives from shareholders and not through transportation allowances.

**Business Rules**

*Phrases in italics are to aid understanding and not for inclusion in Code*

1. *How does the scheme become live?* The trigger for the scheme to become active is if the Project Nexus Implementation Date for functionality associated with Modifications 0432 and 0440 of 01 October 2016 is not achieved.

2. *How are transporters determined to be liable?* A modification is successfully implemented through Authority direction that defers the Project Nexus Implementation Date as a consequence of one or more of the large Gas Transporters' specific failure.

   The demonstration of this will be via Authority determination only, in writing, describing the specific transporter failure that led to the deferral of the Project Nexus Implementation Date.
   If the Authority does not identify a specific transporter failure the scheme closes at this point.


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3. *How much are Transporters liable for and how is it distributed?* The Transporter Incentive Payment of £5m per calendar month (or part of) will be paid on a (calendar) daily pro-rata basis. Incentive Payments will be distributed as follows:
    a. 50% of the Transporter Incentive Payment will be paid to Shipper Users based on Shipper Users proportion of Supply Point counts as at 01 October 2016. Payments/invoicing will be made in line with TPD Section S.
        i. Where a Shipper User's individual aggregate payment under this scheme is <£100, a default payment of £100 will be made. For the avoidance of doubt, such sums are to be taken from the overall scheme amount.
    b. 50% of the Transporter Incentive Payment will be paid to a charity nominated by transporters and ratified by the Authority. The timeline for such payments will be agreed with the Authority.

4. *What is the limit to the scheme?* The Transporter Incentive Payment will be capped at £10million.

| 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* |

# 4 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<br>(i) the combined pipe-line system, and/ or<br>(ii) the pipe-line system of one or more other relevant gas transporters. | None |
| c) Efficient discharge of the licensee's obligations. | None |


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| | |
|---|---|
| d) Securing of effective competition:<br>(i) between relevant shippers;<br>(ii) between relevant suppliers; and/or<br>(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. | **Impacted** |
| 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 |

This proposal mitigates the risk of Project Nexus not being delivered because it incentivises Transporters to take actions designed to deliver on time. This furthers relevant objective f): efficiency in the implementation and administration of the code, because the UK Link system is central to the new gas settlement regime implemented under Modifications 0432 and 0440.

Transporter representatives disagreed, believing that there was a negative, or no, impact on relevant objective f) since they already have a best endeavours obligation introduced under Modification 0548. They also believe that there are no further activities available to them to increase the likelihood of delivery on time, beyond those in place at the current time. Further concerns (including that the principle is untested, it is without wider scrutiny of the industry) were expressed about the precedent set by this proposal, without due consideration. Transporter representatives believed that the scheme was not in fact an incentive (which should be balanced) but a penalty scheme, which was believed to be unlawful.

In response, Shipper representatives explained that this situation is more akin to a traditional service provider contract, where incentives to deliver on time are commonplace. They added that it was understood that Transporters had such arrangements with their own Nexus suppliers and that it would not be unreasonable to extend this to Shippers. Addressing the introduction of precedent without due consideration, Shipper representatives pointed out that the assessment of this proposal under the auspices of the Governance Workgroup was in itself due industry consideration. Further, the concept of incentives is not new to the UNC nor to Licencees, under RIIO. Finally, Shipper representatives disagreed with Transporters, believing the scheme to be lawful.

Shipper representatives added that, throughout the assessment process, they had asked for financial information (total contract value and/or liabilities) to help them to assess the level of payments. Transporters pointed out that this information was commercially sensitive and would not be shared. It was suggested that this lack of clarity added to the uncertainty in developing the modification, and that the materiality of the proposed incentive scheme could not be validated beyond the level of materiality shown in the Solution.

Some Shipper representatives disagreed about the capacity of Transporters to act differently, citing earlier discussions about potential mid-month implementation as an example of something that could be done differently.


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Transporter representatives expressed some concerns about the proposal for Ofgem to have sole determining authority for cause of any delay. In particular, that there may be a lack of transparency of Ofgem's consideration in their assessment of accountability for failure to deliver. They requested that Ofgem should set out the process and, preferably, the criteria they will use to assess accountability at the time of direction on this modification.

# 5 Implementation

No implementation date has been specified, however an early decision by the Authority would provide certainty to the industry as to the expected delivery of Project Nexus on 1st October 2016.

# 6 Impacts

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

This modification is relevant to implementation of the UK Link Replacement programme, however it has no impact other than to incentivise delivery.

## Precedents

In recognising the unusual circumstances of this proposal, Panel requested that the Workgroup consider any precedents in other energy sector Codes.

On behalf of the Workgroup, the Joint Office made enquiries with the relevant Code Administrators and discovered that there were no direct comparative incentive schemes in other Codes. Workgroup participants confirmed that they also had no knowledge of similar schemes elsewhere in such Codes.

The Workgroup considered the arrangements in Supply Point Administration Arrangements SPAA Schedule 34 of the Theft Risk Assessment Arrangements (TRAS) – which are paralleled in the electricity DCUSA (Distribution Connection and Use of System Arrangements) – to address the late submission of data by Suppliers, which is on the implementation project's critical path. Failure to submit the data may compromise the implementation of the project and relieve the TRAS Service Provider of obligations to subsequent milestone dates. The TRAS arrangements have therefore been drafted such that failure by a Party to submit data in accordance with the Code will constitute a breach of the Code, but may result in additional costs that the SPAA Executive Committee and DCUSA Panel have the ability to recover directly from the Party in breach.

Participants believed that these arrangements were in fact different to those proposed in Modification 0550, as they directly compensated costs incurred, but that this should be recorded for completeness in the Workgroup's Report.

In addition, brief consideration was given to the TRAS Incentive Scheme, which creates a performance incentive pot intended to encourage Suppliers to detect theft of gas (the pot is c.£8m for year one of the scheme). Some participants observed that Ofgem's recent decision to support the scheme under CP15/292 was worthy of reference as a direction set in recent times. Other participants felt this was entirely dissimilar, as it was not about a single delivery project.

**Typical Commercial Incentives**

Workgroup participants noted that it is normal commercial practice for service providers to be incentivised to deliver to target with financial adjustments. Shipper representatives drew reference to the arrangements that had been acknowledged between the Transporter's Agent and their systems


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developers by way of example. Transporters countered that it was more conventional to set such incentives at the onset of a delivery contract and not during delivery, as could be observed to be the case here. Transporters also observed that, in such commercial arrangements, it was usual to price a risk premium into those service provider's contracts, which was not possible in the UNC. Shippers felt that it was not clear how any payments received by the Transporter's Agent (from their providers) would feed back in to the overall project accounting.

# 7 Legal Text

## Text Commentary

A Legal Text Explanatory table has been provided and is published alongside this report.

## Text

The following text has been provided by National Grid Gas Distribution. The workgroup has considered the text and no issues were raised.

**TRANSITION DOCUMENT – PART IIC**

*Insert new paragraph 22 to read as follows*:

22 **Delay in implementation of Modifications 0432 and 0440**

22.1 This paragraph 22 shall apply in the event:

(a) a Modification (**"Delay Modification"**) is made pursuant to which Modifications 0432 and 0440 are to be implemented on a date later than 1 October 2016; and

(b) the reason for the Delay Modification is due to a delay in the implementation of the Transporter Agency's UK Link replacement programme caused by a specific action or actions on the part of one or more of the Transporters; and

(c) the Authority makes a determination that the requirement for the Delay Modification is for the reason described in paragraph (b).

22.2 The "**delay period**" is the period from 1 October 2016 until the earlier of:

(a) the day preceding the new implementation date for Modifications 0432 and 0440; and

(b) 30 November 2016.

22.3 Subject to paragraph 22.4, in respect of each day in the delay period the Transporters shall pay each Shipper User an amount (the "**daily delay charge**") calculated as follows:


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(£2,500,000 / D) * (SSP / ASP)

where:

D is the number of days in the Month in which the day falls;

ASP is the number of Supply Points identified in the Supply Point Register at the start of 1 October 2016;

SSP is the number of such Supply Points in respect of which the Shipper User is the Registered User.

22.4 Where following calculation of the daily delay charge for the last day in the delay period (**"last delay day"**) the aggregate daily delay charges payable to a Shipper (**"relevant Shipper"**) by Transporters in accordance with paragraph 22.3 is less than £100:

(a) the daily delay charge for the last delay day shall be increased by an amount (**"uplift amount"**) such that the aggregate daily delay charges payable by Transporters to each relevant Shipper equals £100; and

(b) the daily delay charge for the last day for each other Shipper shall be decreased by an amount equal to:

AUA * (SSP / ASP)

where:

AUA is the aggregate of uplift amounts payable to relevant Shippers;

SSP and ASP have the meaning in accordance with paragraph 22.3.

22.5 Where the Transporters are liable to pay daily delay charges the Transporters shall make a payment to such charitable organisation as the Transporters and the Authority shall agree of an amount equal to the aggregate daily delay charges payable by the Transporters in accordance with this paragraph 22.

22.6 Daily delay charges shall be invoiced and payable in accordance with TPD Section S.

22.7 This paragraph 22 is not a Compensation Rule.


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# 8 Consultation Responses

Of the 15 representations received 8 supported implementation, 1 offered qualified support and 6 were not in support.

Representations were received from the following parties:

| Organisation | Response | Relevant Objectives | Key Points |
|---|---|---|---|
| British Gas | Support | f - positive | • Supports the intent of the modification especially in seeking to continue to deliver the core Nexus aspects by 01 October 2016.<br>• Believes that all reasonable steps to de-risk delivery and improve chances of a timely implementation should be taken.<br>• Points out that the previous implementation delay from 01 October 2015 to 01 October 2016 added significant costs to Shipper delivery programmes, which are ultimately borne by end consumers – any further delay only adds to these additional costs.<br>• Notes that the proposed incentive payment mechanism does not cover the additional costs Shippers and end consumers have faced.<br>• Supportive of the proposed approach to implementation and does not anticipate incurring any negative impacts or costs. |
| E.ON | Support | f - positive | • Believes it is imperative that the central system is ready, fit for purpose and available for the market to go-live.<br>• Is disappointed that elements of the Nexus modifications have already been de-scoped to facilitate delivery on 01 October 2016, particularly given the financial and resource investments made already.<br>• Observes that incentives typically create greater management focus on control and delivery of programmes; they encourage greater co-operation between those delivering and those receiving the services and stimulates greater ownership and commitment to delivery.<br>• Feels that delays and overruns of certain elements of this programme have repeatedly been caused by the limited subject matter experts who have been available to support the multiple delivery strands of the project.<br>• Notes that, co-incident with progression of the proposal to introduce incentives, PwC reported that the Transporter |


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| | | | Agency had procured additional resources to support the delivery. It could be argued that the suggestion of incentives has already seen a beneficial impact on the delivery of the programme.<br>• Prefers implementation as soon as possible.<br>• Not expecting any increased costs associated with this modification, expect it to help avoid future costs. |
| EDF Energy | Support | f - positive | • Supportive of the modification and believes that should delivery be even later, it makes sense for Gas Transporters to be exposed to incentives to deliver on time. As Shippers bear significant costs for later delivery, they should be compensated, as this is out of their control.<br>• Has continued to support despite deferral to 01 October 2016.<br>• Welcomes immediate implementation following a decision by the Authority.<br>• Sees implementation of 0550 as helping to mitigate the costs of an Xoserve delay, although probably not enough to compensate for any extended delay – extremely difficult to attribute actual figure as it very much depends on the scenario against which any delay is applied. |
| First Utility | Support | f - positive | • Notes their investment of substantial resource to develop internal systems and business processes for Nexus with the intention of implementation on 01 October 2015.<br>• Have continued this support despite deferral to 01 October 2016.<br>• Expects to see immediate implementation following a decision by the Authority.<br>• Considers that the Legal Text is inadequate, in that it states that a penalty would become due if a transporter actively did something that caused a delay; believes it would be difficult to prove direct cause.<br>• Believes that any delay in the delivery of the agency system should trigger incentive payments. |
| Flow Energy | Oppose | a - negative<br>f - negative | • Highlights that opposition to the proposal should not be construed as a wish or complacency in seeing Nexus delayed beyond 1st October 2016<br>• Notes that they will in all likelihood face additional costs, but in the context of UNC contractual changes this does not lead them to support.<br>• Argues that relevant objective (f) is *not* further satisfied by this Modification because, for this incentive (if it is an |


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| | | | incentive) to have the impact it proposes, it must fill or better replace an existing void. Believes this is not the case.<br>• Observes that Transporters have an existing licence requirement regarding Nexus delivery that supersedes any UNC requirement in terms of the potential seriousness any such breach may bring.<br>• Believes that the resulting payment that could be made to Shippers does not satisfy relevant objective (a) given the very significant disparity in payments that would accrue to larger shippers compared to other shippers. States that any shipper with a minimum of 10% market share would receive a minimum of £500,000 in compensation whereas any shipper with (say) 0.5% market share would receive a maximum of £ 25,000 for the same period:<br>• Given that all shippers (irrespective of size) have to make system changes, undergo market trials and prepare training in their organisations, (the cost of which is not directly proportionate to customer numbers) such a marked difference in payment values is inappropriate and does not facilitate competition between shippers and suppliers.<br>• Considers that, given potential behavioural and precedents in this and other industry contracts and commercial arrangements that may arise, there are issues that make this proposal inappropriate:<br>• Potential difficulties in identifying a failure 100% or predominately attributable to a GT.<br>• Difficulty at this stage in the Nexus programme (March 2016) of taking additional actions to mitigate risk of dates being amended<br>• This could be effectively viewed as a retrospective proposal, as the programme was contracted for and plans prepared on the commercial arrangements that prevailed at the time<br>• Potential precedent for future programmes – if parties enter into arrangements with uncertainty over the stability of the commercial arrangements, the plans and commercial arrangements may be more cautious from the outset and impose higher costs on the industry and consequently consumers, as they attempt to mitigate the risk of potential liabilities being introduced later in the programme |
| Gazprom Energy | Support | f - positive | • Observes that Transporters have already failed to deliver Nexus for 1st October 2015 and already a delay of 12 |


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| | | | months to 1st October 2016 has been incurred. This 12 months delay should have provided the Transporters with sufficient time to successfully deliver the Nexus program.<br>• Notes that Transporters have recently had to request a further 12 months delay, until October 2017, in delivering elements of retrospective functionality from core delivery with Shippers having to pick up the bill for supporting a manual workaround. Believes that, in this context, it seems fair and proportionate, having already been given an addition 12 months to deliver Nexus, that Transporters are further incentivised to deliver Nexus for the 1st October 2016.<br>• No significant costs have been identified. |
| National Grid Distribution | Oppose | - | • Believes that the proposed 'incentive' contained within the Modification constitutes a financial penalty/sanction.<br>• Considers that this would also create a highly undesirable precedent in UNC that could encourage inappropriate behaviours from Code parties concerning future systems and process implementation programmes.<br>• Argues that implementation would have the effect of placing a very substantial and unfunded financial penalty (up to £10m) on Gas Transporters, over and above the costs Transporters would inevitably incur as a consequence of any future delay in implementation of Project Nexus.<br>• Indicates that no analysis has been undertaken to assess whether the incentive is relevant and reasonable.<br>• Notes their disappointment that there has been a series of delays to implementation and express determination to take whatever measures they can to ensure the 01 October 2016 implementation date is met.<br>• Does not believe it constitutes an incentive, which should be balanced. Note that this is an underpinning tenet of the RIIO framework.<br>• Observes that all parties have a best endeavours obligation already<br>• Confirms that senior level involvement within National Grid and Xoserve already taking place.<br>• Advises that additional labour resources and significant re-prioritisation has already taken place.<br>• Believes this proposal creates a significant and highly undesirable precedent.<br>• Expresses concern that it might hamper future such |


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| | | | developments, in that financial penalties could make parties wary of progressing developments, stifling change and innovation.<br>• Maintains some concerns that the mechanism and criteria by which the Authority makes a determination that Transporters are culpable for the specific action/s necessitating a date change are not explicit.<br>• Believes that the proposal could be implemented with immediate effect.<br>• More extensive views than can be reproduced here have been provided in the full Representation. |
| National Grid NTS | Oppose | f - none | • Considers that the proposal seeks to impose an inappropriate and arbitrary additional cost upon Transporters.<br>• Notes that it would be in addition to any implementation costs incurred by Transporters over and above the respective allowance in each Transporter's price control arrangements.<br>• Believes that this in itself creates an effective incentive for Transporters to deliver in a timely manner to avoid additional cost exposure that would not be recoverable from Shippers through use of system charges.<br>• Does not envisage any specific lead-time requirement.<br>• Maintains some concerns that the criteria and process by which the Authority makes a determination that Transporters are culpable for the specific action/s necessitating the Delay Modification are not explicit.<br>• Believes that the Report lacks clarity in the rationale for the proposed apportionment of incentive revenue between shippers. Also for the rationale for the reasonableness and relevance of the proposed incentive value.<br>• More extensive views than can be reproduced here have been provided in the full Representation. |
| Northern Gas Networks | Oppose | f - negative | • Disagrees that this proposal will in any way further incentivise Transporters.<br>• Argues that, as well as a best endeavours obligation to deliver Project Nexus under Modification 0548 and the risk of enforcement action under the GT licence, Transporters, as funders of the central programme and their own individual system developments, already face strong commercial incentives<br>• Considers it more important to be confident that the central systems and sufficient market participants are |


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| | | | ready for live market operation with no major issues. Pushing for any fixed date at the expense of a failed roll out is very clearly not in the customers' interest.<br>• Expresses concerns that he proposal diverts people towards looking to establish who is to blame and possibly push towards more risk in the go-live decision<br>• Reminds that, historically, Code has sought to contain liability to all parties rather than expand them in a one sided manner. If liability is to be expanded then the normal principles where liability applies in situations of breach should be capable of being applied to all parties; this Modification Proposal makes no attempt to do that.<br>• Adds that Code is not a unilateral arrangement – all parties are to some extent dependant on other parties to ensure performance. This modification makes no attempt to recognize this consequential effect and is wholly inequitable.<br>• Believes it is this sort of modification that lends itself to the expansion of litigious action to try and attribute and defend claims between the parties by continual claim and counter claim.<br>• Highlights that RIIO incentives are balanced to ensure that they drive the most appropriate behaviours within networks for delivering outputs.<br>• Notes that these typically include rewards and penalties; where there are penalty-only incentive mechanisms (as proposed here), they relate to the setting of a minimum acceptable standard of service (e.g. on complaint handling) by a Transporter of activities wholly within its control.<br>• Observes that distribution of the penalty sum would be according to Supply Point market share and would not reflect the system costs faced by individual Shippers in developing readiness<br>• Contends that Shipper arguments that this amounts to a traditional service provider contract fail to take into account the very advanced stage industry parties are currently at with regards development and delivery.<br>• Notes that a specific request from the Modification Panel found no party could provide a single example of a similar provision existing in other codes<br>• Argues that it is not the case that delays to Project Nexus are in any way 'risk free' for Transporters, who are already sufficiently incentivised to ensure they are doing all they can to ensure timely implementation. |


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| | | | • Observes that it is unusual to try to place obligations on the Authority as they are not a Party to the UNC. It is unclear how the Authority can be obligated to undertake the necessary assessment of a delayed date.<br>• Believes that a suitable lead-time is required to implement the associated charging mechanism.<br>• More extensive views than can be reproduced here have been provided in the full Representation. |
| RWE npower | Support | f - positive | • Observes that Nexus has already been delayed by a year and parties have had to extend their internal programmes; these inefficiencies are costly and feed through to the consumer.<br>• Believes there is clearly no incentive on the Transporters to deliver Nexus on 01 October 2016.<br>• Clarifies, as proposer, that this proposal seeks to give industry participants increased confidence in the delivery of Nexus.<br>• Believes it is clear that this modification is not compensatory in nature –half of the payment would be distributed to charity.<br>• Observes that such incentives are common place in many commercial contracts, including energy metering contracts.<br>• Feels that implementation should be as soon as possible to provide clarity and to assist in removing the undermined confidence in delivery.<br>• Notes that discussion at the Workgroup indicated that it was not necessary to include in the Legal Text about how transporters fund the incentive payment.<br>• Explains in more detail how, as proposer, the incentive level was determined, making reference to the lack of clarity about the transporter's Agency's suppliers liabilities and to the PwC assessment of failure to deliver. Also notes that damages for non-delivery at 10% are common practice.<br>• Notes that an incentive payment does not need to be reflective of costs incurred and suggests that the proposed value is far below Shippers' costs. |
| Scotia Gas Networks | Oppose | f - negative | • Considers that the UNC is not the appropriate legal and contractual framework to utilise for the purpose intended by the proposer. Its use in this respect should not be deemed acceptable by the authority.<br>• Strongly believes that relevant objective f is negatively |


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| | | | impacted.<br>• Highlights the joint industry governance in place, meaning that the industry as a whole is responsible for key decisions impacting delivery.<br>• Considers that it is unreasonable to introduce a modification at such a late stage in the project lifecycle that will penalise one specific group of parties for delays to the delivery.<br>• Believes it important to look back across the whole project and consider the joint nature of decisions at certain milestones, in addition to assessing the performance of all parties.<br>• Argues that a financial penalty on one set of parties will not drive positive behaviours and will not encourage all parties to ensure delivery by October 2016.<br>• Does not consider the payment an incentive as it is one-sided and so acts purely as a penalty for non-delivery by Transporters.<br>• Observes that:<br>  • Project is not a traditional commercial agreement and so does not include usual risk premiums.<br>  • It is not normal to add incentives just months from delivery of a multi-year project.<br>  • An incentive is typically both a charge for non-delivery or a payment for early delivery, and the latter is not included.<br>  • Quotes legal precedence that a penalty payment should reflect the loss caused.<br>• Queries whether this supports the FGO initiatives.<br>• Maintains some concerns that the mechanism and criteria by which the Authority makes a determination that Transporters are culpable for the specific action/s necessitating a date change are not explicit.<br>• Observes that Transporters already have a best endeavours obligation to deliver Nexus in the timescales prescribed in Modification 0548.<br>• Believes this could set an unwanted precedent for penalty payments in the UNC, which would be detrimental to the Code.<br>• Observes that the ‘avoidance of doubt’ statement about shareholders (and not transportation allowances) funding the incentive is not in the Legal Text.<br>• More extensive views than can be reproduced here have |


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| | | | been provided in the full Representation. |
| Scottish Power | Support | f - positive | • Believes that, without this modification, there is little incentive on the Transporters to deliver Nexus by 01 October 2016.<br>• Notes that Nexus has already been delayed (Modification 0548) and elements de-scoped (Modification 0573).<br>• Adds that such delays result in additional costs to Shippers by prolonging their programmes and moreover result in lost benefits to customers, through no fault of their own.<br>• Comments that, for many months, Shippers have requested that additional resources applied to ensure the implementation date could be met. Notes that, despite being told continually that resources could not be found, multiple resources were secured since the instigation of this proposal.<br>• Notes other areas that could jeopardise the date, including RGMA, ERR/FRJ files and Unique Sites. Feels that these have been flagged at a late stage, with the only suggested remedies being for Shippers to constrain their own testing, de-scope or develop manual workarounds.<br>• Highlights that Modification 0531 was raised in February 2015 to act as a contingency to address issues or slippage and that, 12 months on, there are no clear plans to extend the testing environment.<br>• Believes this proposal will make Transporters consider alternative approaches or become more innovative in seeking resolutions.<br>• Expresses concerns that the core delivery could become a bare minimum, having no resemblance to the agreed UNC changes.<br>• Believes that Transporters could benefit from liability payments from their suppliers, whilst Shippers bear the costs.<br>• Notes that, as Shippers were unable to get information on any supplier liability payments, an incentive value could not be calculated. Believes that the incentive payment is a fraction of the assumed overall programme cost.<br>• Observes that the incentive is capped at two months and so any delay beyond this has no delivery incentive.<br>• Believes it should be implemented as soon as possible.<br>• More extensive views than can be reproduced here have been provided in the full Representation. |


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| SSE | Qualified Support | f - none | • Supports the intent of the modification and, in particular, any incentive that increases the probability of the Nexus go live date being met.<br>• Remains fully committed to the go live date.<br>• Expresses concerns that this proposal could result in an incorrect decision being made for go live as it could be clouded by the incentive.<br>• Recognises that any fallout from too-early an implementation would likely impact customers' ability to switch and result in misallocation of gas between Shippers.<br>• Feels that a short deferral is a potential consequence, to avoid the payments, and that this is itself presents a problem since re-planning is believed to be months rather than days.<br>• Believes that such an incentive should be in place at the start of a project and not near the end.<br>• Foresees issues as to the burden of proof required to trigger payments.<br>• Feels that modifications such as this could be divisive, impacting the necessary cooperation needed in the industry.<br>• Observes that it create perverse incentives that ultimately increase costs and affect customers.<br>• Believes that the incentive should be cost reflective, but note that the stated figure is arbitrary.<br>• Have concerns about any mid-month implementation, as it would increase settlement risk and invoicing/transition complexity.<br>• Believes it could be implemented as soon as an Authority decision is received. |
| Statoil UK Ltd | Support | f - positive | • Believes the modification provides the necessary incentives to ensure Project Nexus is delivered on 01 October 2016.<br>• Remains concerned at the prospect of another potential delay and the adverse impact on Shippers such a delay would bring and therefore believes the modification plays a key role in ensuring Transporters deliver the core functionality without further delay.<br>• Supportive of immediate implementation of the modification.<br>• Suggests that the impacts and costs associated with any further delay would be significant on the industry. |


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| Wales & West Utilities | Oppose | f - negative | • Raises three key areas of concern, namely issues of principle, precedence and impact on the customer bill; legal issues with proposal and process; and imposition of obligations on GTs which were not priced into Xoserve provider contracts or RIIO GD1 allowances.<br>• <u>Principle, precedence and impact on bills</u><br>  • Believes Ofgem already has sufficient remedies at its disposal to take action against Transporters and notes that Licence Condition A15 (3) requires that Xoserve services *"shall be established, operated and developed on an economic and efficient basis".* Enforcement action is a licence issue and should not be subject to dual governance under the UNC.<br>  • Is of the view that this modification does not better facilitate delivery of Project Nexus and points out that Modification 0548 imposed a "best endeavours" obligation **on both** Shippers and Transporters.<br>  • Points out that Nexus is receiving significant focus, including at the highest level, Chief Executives of the GTs.<br>  • Points out that none of the Shipper representations submitted previously against Modification 0548 (including from the proposer of 0550) made any reference to the need to impose any additional regime to ensure the 01 October 2016 delivery date is met.<br>  • Believes implementation of the modification would set an inappropriate precedent which could potentially over time turn the UNC from a contract where all parties are encouraged to work in the wider industry interests, to one where they focus on their own interests to the longer term detriment of the customer and a potential increase in the risk premium within the Network Weighted Average Cost of Capital.<br>  • Believes inclusion of additional liabilities linked to one off projects within the UNC potentially results in a increase in the risk and insurance premiums for DN's which could get passed to customers in future price controls.<br>  • Is concerned that should the modification be implemented, potential future lenders may change their views on risk, potentially impacting future DN funding.<br>• <u>Legal issues with the proposal</u><br>  • Believes that the payment as proposed is, in legal terms, an unlawful penalty and therefore argues that a court would find this unenforceable as a consequence. Cites |


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| | | | some legal precedence.<br>• Suggests that as there is NO option for early delivery of the project, the argument for a balanced incentive is not appropriate in this instance, neither is there a case for liquidated damages, especially when the Draft Modification Report made it perfectly clear that the value of the payment is NOT based on a pre-assessment of potential losses.<br>• In noting that contracts typically have liability clauses that state if 'x' happens, then one party (or other) is liable *(the value of such a related claim being assessed and established after the event)*. Makes reference to the approach adopted by the SPAA in non-provision of data for the Theft Risk Assessment Service and points out that the modification does not adopt such an approach.<br>• Cites two principal concerns in relation to the proposal that Ofgem is the arbiter on whether the Transporters are found to be at fault – the first being the level of resource and expertise at Ofgem's disposal to undertake any analysis which could potentially add costs that feed through to customers, and secondly the process utilised to conduct the analysis, which could be subject to a judicial review at some stage, thereby potentially incurring significant legal costs which again could feed through to the customer.<br>• <u>Imposition of penalities which were not priced into service provider contracts or RIIO GD1 allowances</u><br>• Believes that the Shippers argument that commercial service provider contracts generally contain liquidated damages or liability clauses for non-delivery, fails to take into account three key points; such arrangements are known in advance before sub contracts as let which enables such clauses to be 'backed off' down the contractual chain; the consequence of such arrangements is an increase in price for the service, as it reflects an increased risk to the service provider (due to the late nature of the modification, this pricing in risk option is not available); fundamental project delivery in the regulated gas industry has always been based on keeping costs low by minimising risks and it is therefore felt that it is unreasonable for Shippers to seek to both continue to benefit from this cost minimisation approach and to seek payment should the Project Nexus Implementation Date be put back.<br>• More extensive views than can be reproduced here have been provided in the full Representation. |


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Representations are published alongside the Final Modification Report.

# 9 Panel Discussions

# 10 Recommendation

## Panel Recommendation

Having considered the Modification Report, the Panel recommends:

- that proposed Modification 0550 [should/should not] be made.


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