

Representation - Draft Modification Report 0565 0565A 0565B

Central Data Service Provider: General framework and obligations

Responses invited by: 5pm 08 December 2016

To: enquiries@gasgovernance.co.uk

Representative:	Angela Love
Organisation:	ScottishPower Energy Management Limited
Date of Representation:	8 th November 2016
Support or oppose implementation?	0565 - Qualified 0565A - Support 0565B - Qualified
Alternate preference:	<i>If either 0565, 0565A or 0565B were to be implemented, which would be your preference?</i> 0565A
Relevant Objective:	c) Positive d) Positive f) Positive

Please note that due to the number of documents required the 'Supporting Business Documentation' page has been linked to the main modification page, which includes the legal drafting as follows:

CDSP/DSC Draft for Consultation: <http://www.gasgovernance.co.uk/0565/DSC> (CDSP and DSC documents)

UNC Draft for Consultation: <http://www.gasgovernance.co.uk/0565/UNCdrafting> (UNC Legal Text)

Reason for support/opposition: Please summarise (in one paragraph) the key reason(s) for each modification

The difference between the modification proposals is the split of the representation of the Transporters on the Data Service Contract (DSC) Committees. ScottishPower has a preference for MOD565A for a number of reasons. Firstly MOD565A replicates the arrangements for Shippers, with two representatives per Class. Secondly ScottishPower believes that it would be appropriate for the Independent Gas Transporters (iGTs) to have equal representation on the Committees, as the other Transporters, as although the costs that the iGTs will meet is lower than the other Parties, any changes to Xoserve's costs are more significant for the iGTs, than the other Transporters due to their scale.

It would appear through discussions on the development of Funding, Governance and Ownership (FGO) arrangements and Shipper participation in the Agency Services Agreement Contract Managers Meeting that there has been little or limited challenge over Xoserve costs or a drive for efficiencies by the Transporters. It is unclear why this has been the case. It therefore seems to be a more prudent approach to have greater involvement in the Committees by the new Parties, Shippers and iGTs, who have already demonstrated, through continued participation in the development of the new arrangements, that they have a keen interest in managing the Xoserve and driving efficiencies. This was apparent through the recent budget discussions, where Xoserve were challenged to provide more detailed information, than they would appear to have provided in the past.

Self-Governance Statement: *Please provide your views on the self-governance statement.*

ScottishPower agrees with the view of the workgroup that MOD565 and the associated alternative proposals are not suitable for self-governance.

Implementation: *What lead-time do you wish to see prior to implementation and why?*

Although the Modifications do not propose implementation timescale, ScottishPower would support an early decision on implementation to provide for certainty of the arrangements post-April 2017 and allow Xoserve to undertake key activities in preparation for the new DSC.

Impacts and Costs: *What analysis, development and ongoing costs would you face?*

The new arrangements under the DSC will separate the costs of Xoserve for the first time. In principle there should be little change in the costs incurred by Shippers. However under the new arrangements ScottishPower is hopeful that there is more opportunity to scrutinise Xoserve costs, seek efficiencies and ensure that the work of Xoserve is focused and prioritised, by taking account of all of their customers' needs.

Therefore if anything ScottishPower would expect the costs of Xoserve to reduce. There will be an additional cost for Shippers due to the new invoices and credit arrangements being put in place, but ScottishPower does not expect these costs to be significant.

Legal Text: *Are you satisfied that the legal text will deliver the intent of the Solution?*

It has been difficult to fully determine the legal text due to ongoing changes resulting from the industry meetings on the proposals and due to the amount of legal text that is involved in both the UNC and in the new DSC. As a frequent attendee of the MOD565 legal text meetings, ScottishPower does however believe that the intent of the proposals and concerns raised during those meetings have nearly all been addressed (see additional information below).

Are there any errors or omissions in this Modification Report that you think should be taken into account? *Include details of any impacts/costs to your organisation that are directly related to this.*

No

Please provide below any additional analysis or information to support your representation

There are a number of areas where ScottishPower has concerns around the new arrangements. These are detailed below and we would seek assurances around these ahead of Parties being required to sign the DSC:

- **UKLINK User Agreement** – ScottishPower understands that, as yet, this document has not been created, and therefore has not been socialised with the Trader Users who will be required to sign it. ScottishPower believes that to ensure that the arrangements encompass the full suite of contractual agreements that this document needs to be provided as soon as possible
- **Memorandum of Understanding and Articles of Association** – again the work to update these corporate documents has not been concluded. Therefore all Parties are being asked to opine on MOD565 and its alternatives without being able to see the full detail of the arrangements for the governance of Xoserve going forward. ScottishPower would urge that work on this aspect is concluded by Xoserve as a matter of urgency
- **Transporter Director Appointments** – whilst the process for appointing Shipper nominated Directors to the Xoserve Board has been created and enacted, the proposal for appointing the Directors on behalf of the Large Transporters has not been shared and it is unclear if the process has been agreed. Again ScottishPower would urge that this is concluded as a priority

Over and above the concerns noted, ScottishPower is keen to assure that there are no unforeseen historic liabilities on the new Parties to the arrangements, namely the Shippers and iGTs. ScottishPower believes that the arrangements put in place under the DSC ensure that any costs for Project Nexus (related to hyper care and the core Modifications 432, 434 and 440) require the Large Gas Transporters to meet the costs. ScottishPower would like to ensure that this precedent set out by Ofgem at the FGO Programme Overview Board is a principle of the arrangements. Similarly new Parties to the arrangements have had assurances around possible pension liabilities, as outlined below, and ScottishPower would like to see a principle agreed that new Parties will not be liable for any historic deficits or mis-management.

“To date any Xoserve pension deficit liability is not separately identified within the NGG defined benefits pension scheme. Any deficit would be recoverable through the transmission price control. There is no proposal to change this treatment.

Since the start of RIIO any deficit costs relating to post-March 2013 service are not directly recoverable. Under RIIO pension provision is treated as an employment cost, and costs post-March 2013 are treated as part of the total expenditure calculation (totex). The totex incentive mechanism allows for some sharing between licensees and customers, so some element of the additional costs are recoverable.

The first calculation of any deficit for post RIIO service will be based on a March 2016 valuation, and a portion of any deficit will be notionally attributable to Xoserve employees. It is yet to be determined whether any such cost will be treated as totex or allocated to Xoserve. If the cost was allocated to Xoserve and recovered over a period of up to 15

years the annual cost is expected to be < £100,000 (though this is subject to the actual valuation).

In summary, most deficit risk relates to the pre-March 2013 period and is funded through the transmission price control. Post-March 2013 risk is limited as it relates only to post-March 2013 service and the defined benefit membership is in decline”¹.

ScottishPower is also concerned about data protection and the potential for Xoserve to breach the Data Protection Act (DPA) and be subject to a fine. Under the new arrangements there is limited opportunity for Shippers to influence Xoserve procedures and policies and therefore to have comfort that the risk of a DPA breach is being effectively managed. For that reason ScottishPower has proposed that it would be beneficial for a questionnaire to be developed, which Xoserve would complete to appraise new Parties of the arrangements Xoserve has in place to minimise this risk.

ScottishPower would welcome Ofgem’s endorsement of this approach. ScottishPower is creating a draft of the proposed questionnaire to discuss with other Parties and Xoserve to determine if this is an appropriate way to manage the risk.

Finally ScottishPower has some concerns around the proposed credit assessment. The Credit Rules provided by Xoserve appear to be less prescriptive and potentially more onerous than those that are in the UNC. There is no detail provided over how or when Xoserve will carry out a credit risk assessment on Parties or what discretion they will use. In addition there is no route of appeal set out in the arrangements. Given the sums of money involved under the DSC, when compared to the UNC, ScottishPower would like to see proportionate arrangements put in place and a timetable of when the assessment will be undertaken to allow this to happen (and allow for appeals) before the new DSC arrangements come into effect.

¹ <http://www.gasgovernance.co.uk/sites/default/files/DSC%20-%20Outline%20for%20%20Financial%20Transition.pdf>
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