

Modification Report
Extending established Uniform Network Code governance arrangements to include the CSEP Ancillary Agreement document referenced in Section J 5.9
Modification Reference Number 0064

Version 4.0

This Modification Report is made pursuant to Rule 8.9 of the Modification Rules and follows the format required under Rule 9.6.

1. The Modification Proposal

The Proposal, as amended by the Proposer, is as follows:

A number of procedural documents which set out how Transporters and Users implement Uniform Network Code (UNC) obligations are not currently subject to full joint industry governance arrangements. This is despite the fact that many of the matters outlined in these documents can and do have a significant impact on Users' commercial positions and the quality of service Shippers-Suppliers are able to provide to their customers.

Although many of these documents are referred to in the UNC they are typically managed by the Transporters outside the UNC governance processes with only the Transporters being allowed to propose changes to the documents. Greater visibility of these documents is also desirable. Although updated documents are circulated and consulted on from time-to-time, these are not readily available to users; indeed new users or potential entrants would not necessarily be aware the documents exist to ask for them in the first place.

This Modification Proposal builds on the principles established by Modification 730 to the Network Code and proposes replacing the existing UNC governance arrangements concerning the CSEP Ancillary Agreement.

With respect to the CSEP Ancillary Agreement, it is proposed that the UNC be modified:

- to require publication of the CSEP Ancillary Agreement on a publicly accessible industry website, such as the Joint Office of Gas Transporters' website
- to require creation of a new version of the CSEP Ancillary Agreement document following any revision, with each version numbered sequentially, and with earlier versions continuing to be made available by the Transporters on request
- to enable Transporters or Users to propose revisions to the CSEP Ancillary Agreement by written notice to the Uniform Network Code Committee
- to prevent any revisions being made to the CSEP Ancillary Agreement without approval by majority vote of the UNC Committee
- without fettering the discretion of the committee, to permit the UNC Committee if it considers it appropriate (again subject to a majority

vote) to refer any proposed change to a relevant sub-committee, which would in turn be required to consider the matter and make recommendations to the UNC Committee

- in the event of the failure by the UNC Committee to come to a decision then the change should be subject to the UNC modification procedures unless the UNC Committee decides otherwise

Implementation of this Modification Proposal would allow Users as well as Transporters to instigate revisions to the CSEP Ancillary Agreement. However the implementation of proposed revisions would only be allowed by first formally satisfying industry stakeholders. Such arrangements would be consistent with approval processes established in industry codes elsewhere. It is also consistent with Ofgem's principles of good governance set out in their June 2003 consultation document "Gas Retail Governance – Further Consultation" and in their decision letters regarding Modification 730 to the Network Code.

2. Extent to which implementation of the proposed modification would better facilitate the relevant objectives

The Proposer suggested that implementation of this Proposal would be expected to better facilitate the relevant objectives by improving transparency and accountability. It would be a means of ensuring efficient consultation, which would increase the certainty and confidence of all UNC parties, thereby facilitating competition between shippers and suppliers. Further, increasing the efficiency and transparency of consultation would contribute to the promotion of efficiency in the implementation and administration of the UNC.

Implementation might also be expected to facilitate more efficient change management of processes associated with the UNC and therefore potentially facilitate the reduction of operating costs for the industry, consequently facilitating competition between shippers and between suppliers. Implementation might also reduce risk associated with insufficient visibility and governance of the CSEP Ancillary Agreement, and any such reduction in risk would be expected to further facilitate the securing of effective competition.

BGT stated that it believed that, "*the implementation of (this) Modification Proposal would further relevant objectives defined within SSC A11 of the gas Transporters licence sections:-*

(d) the securing of effective competition between Shippers and Suppliers and

(f) the promotion of efficiency in the implementation and administration of the Uniform Network Code by improving the visibility and transparency of these processes and by affording access by users to the process by which beneficial changes may be introduced."

E.ON considered that, "*the above proposals will better facilitate the relevant objectives (f) the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code and relevant objective (d) the securing of effective competition between relevant shippers, suppliers and/or between DN Operators and relevant shippers*

through improving transparency and accountability and creating a more level playing field, enabling both Users and Transporters to propose changes to the relevant documents.”

TGP also commented that it *“would support the suggestion made by the Governance Workstream that, when drawing up the legal text, consideration be given to the creation of a new section within the UNC which would list all the documents that are administered via similar arrangements to those put forward within the proposal.”* In TGP’s view, *“This would add clarity to the UNC and would promote efficiency in the administration of the Code”* and agreed that, *“As such the proposal clearly facilitates the Relevant Objectives specified within the Gas Transporters Licence by improving transparency and accountability.”*

STUK was of the opinion that, *“this would better facilitate the relevant objectives specified in the Gas Transporters Licence by improving transparency and accountability and facilitate better change management and competition between shippers and suppliers.”* It also believed that, *“as this proposal would reduce the risks associated with insufficient visibility of the CSEP Ancillary Agreement document, it would further facilitate the securing of effective competition.”*

SGN disagreed, and stated that it *“did not believe this would better facilitate the relevant objectives.”*

NG NTS did not agree with the Proposer's view that the Proposal would improve transparency and accountability and questioned how the Proposal would achieve the stated result of ‘ensuring efficient consultation’ any better than prevailing arrangements. NG NTS noted that, *“under prevailing UNC arrangements Users can already propose changes to the CSEP A(ncillary) A(greement) through the UNC Modification Process,”* and therefore did not believe that this Proposal would demonstrate any improvement to the relevant objectives in relation to this particular aspect.

The SME would observe that J6.6.1 reads *“The Transporter may require, as a condition of a User's giving notice pursuant to paragraph 6.3.1, that the User enter into or accede to an Ancillary Agreement (“CSEP Ancillary Agreement”) in a form designated by the Transporter with Condition A11(18) Approval of the Authority....”*. As the form of the Agreement is designated by the Transporter, this suggests that only Transporters, and not other Users, can propose changes to the generic form of CSEP Ancillary Agreement. However, J6.6.2 reads *“A CSEP Ancillary Agreement shall be deemed to be a part of the Code for the purposes of enabling such Agreement to be modified pursuant to the Modification Rules.”* This suggests that an individual CSEP Ancillary Agreement between a User and Transporter can be subject to modification as if it were part of the Code, but not the generic form of the CSEP Ancillary Agreement.

NG UKD was also in disagreement. It believed that, *“the Proposal does not better facilitate the ‘relevant objectives’ specified within the Gas Transporters*

Licence, specifically it does not facilitate the promotion of efficiency in the implementation and administration of the network code and or the uniform network code.” NG UKD was concerned that the proposal "seeks to place what is currently a UNC change process for an Agreement ... out of the Modification Rules and place it into the remit of the UNC Committee with no established clear governance by Ofgem determination".

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

The implementation of this proposal should not have any effect on security of supply or the operation of the Total System.

NG NTS agreed that, *“in some instances ensuring that documents are consistent across Transporters may mitigate perceived adverse affects of market fragmentation.”*

4. The implications for Transporters and each Transporter of implementing the Modification Proposal, including

a) implications for operation of the System:

Implementation of this Proposal would not affect the operation of the System.

TGP were in agreement that, *“there are no operational or systems impacts as a result of the implementation of the modification.”*

b) development and capital cost and operating cost implications:

No material development or capital cost implications have been identified.

TGP believes that *“there should be no cost implications other than to provide the relevant facility to publish and version control the manual on a publicly accessible industry website. This is a concept that the Joint Office have already informally taken forward”.*

c) extent to which it is appropriate to recover the costs, and proposal for the most appropriate way to recover the costs:

No additional cost recovery mechanism is proposed.

d) analysis of the consequences (if any) this proposal would have on price regulation:

No such consequences on price regulation have been identified.

5. The consequence of implementing the Modification Proposal on the level of contractual risk of each Transporter under the Code as modified by the Modification Proposal

Implementation may help reduce the level of contractual risk for each Transporter by improving transparency and governance.

SSE stated that, *“The proposed changes to the governance arrangements to extend the established Network Code arrangements to include the CSEP Ancillary Agreement is not appropriate as the document is a contractual agreement.”* SSE further stated that, *“It seems to be neither suitable or necessary that (as indicated in the bullet point at the top of pg 2 of the Draft Modification Report) Transporters or Users could propose revisions to the CSEP Ancillary Agreement in the way envisaged by 0064.”* (The bullet point referred to in this statement can also be found on page 1 of this Final Modification Report.)

In SGN’s opinion, *“The UNC Modification procedures currently apply to this document. Change currently requires industry wide consultation through the UNC Modification process, including approval by the Authority. It seems that this proposal would actually reduce the transparency and robustness of the governance process by limiting consultation and only requiring approval of the UNC Committee.”* In their view, *“the CSEP Ancillary Agreement is not, as suggested by the Proposer, simply a procedural document. It is not appropriate that a bilateral agreement of this nature should be incorporated under the UNC. It is not clear what elements would be made public. It is not clear how confidential elements would be protected.”*

As noted in Section 2 above, the SME would observe that the provisions of J6.6.1 and J6.6.2 imply that individual CSEP Ancillary Agreements can be subject to modification as if they were part of the Code, but not the generic form of the CSEP Ancillary Agreement.

6. The high level indication of the areas of the UK Link System likely to be affected, together with the development implications and other implications for the UK Link Systems and related computer systems of each Transporter and Users

No systems implications have been identified.

7. The implications of implementing the Modification Proposal for Users, including administrative and operational costs and level of contractual risk

Implementation could reduce administrative costs for users by ensuring that the CSEP Ancillary Agreement is relevant to User needs. This proposal would also significantly reduce the level of contractual risk for users by implementing more robust governance, which will additionally facilitate competition between shippers and suppliers through greater transparency and accountability.

TGP supported the above statement and agreed that, *“implementation could help reduce administrative costs and contractual risk for users by providing a clear and transparent mechanism to help ensure that the ... CSEP Ancillary Agreement is relevant to the needs of both Transporters and Users.”*

8. The implications of implementing the Modification Proposal for Terminal Operators, Consumers, Connected System Operators, Suppliers, producers and, any Non Code Party

Implementation would provide an opportunity for Users to sponsor changes proposed by non UNC parties, ensuring wider industry involvement or participation.

RWE felt that the current situation, where “*only Transporters are able to propose changes to these documents*” was inappropriate, “*as these documents could have a significant impact on the quality of service (RWE) was able to provide to (its) customers*” and believed that it was “*appropriate that this document should be subject to the same governance (which includes a formalised consultation process) as set out in the Uniform Network Code.*”

9. Consequences on the legislative and regulatory obligations and contractual relationships of each Transporter and each User and Non Code Party of implementing the Modification Proposal

No implications have been identified

10. Analysis of any advantages or disadvantages of implementation of the Modification Proposal

Advantages

- allows Users as well as Transporters to propose changes to the CSEP Ancillary Agreement and hence make the CSEP Ancillary Agreement more relevant to User requirements.
- prevents changes being made to the CSEP Ancillary Agreement without either approval of the UNC Committee or the Modification Procedures being followed
- facilitates efficient consultation which will increase the certainty and confidence of UNC parties leading to the securing of effective competition between shippers and suppliers
- contributes to the promotion of efficiency in the implementation and administration of the UNC
- improved transparency and confidence in arrangements as the current version would be published on the industry website and subject for formal version control

TGP believed that, “*the Draft Modification Report clearly sets out the advantages that implementing this proposal will bring*” and concurred with E.ON’s view that, “*the proposed arrangements would also ensure consistency with Ofgem’s principles of good governance set out in their June 2003 consultation document, ‘Gas Retail Governance – Further Consultation’.*”

RWE stated that, “*With the inception of a multi transporter environment we feel that it is more essential that these documents be placed into a formal governance structure. This will ensure that all change proposals are subject to*

formal change control, allowing Users the opportunity to be involved in the review of the changes via the consultation process.” They also considered that, “the incorporation of these documents under the UNC will assist transparency and accountability, which will help to increase Users confidence as the consultation process will be inclusive and efficient.”

STUK agreed that, *“the CSEP Ancillary Agreement document would benefit from full joint industry governance so that all Transporters and Users can propose revisions, with changes only being made by majority vote of the UNC committee.”*

In its review of the Proposal NG NTS recognised that, *“the changes propose the introduction of additional steps in the governance process, and notes that Users may, regardless of the conclusions of the UNC Committee, submit the change through the UNC Modification process. The introduction of such Proposals may reduce the requirement for, non-contentious, changes to procedural documents being required to enter into the full Modification Governance Process and therefore may demonstrate a more efficient administration of the UNC,”* but it was concerned that, *“changes relating to the documents proposed may have a significant material impact on Users and therefore any decision regarding revision should be made upon the direction of the Authority.”*

NG NTS also commented that, *“in principle, (it) supported the proposed publication of the stated documents and any subsequent versions onto a common website, as this may promote efficiency in the administration and transparency of the UNC.”*

Similarly NG UKD was supportive of the publication *“of the documents on a publicly accessible industry website, and the appropriate version control applied to each.”*

Disadvantages

- gives responsibility for decisions to the UNC Committee rather than a neutral party, such as Ofgem

It was not TGP’s belief that, *“the disadvantage highlighted in the report, such that responsibility for the administration of change being given to the Uniform Network Code (UNC) Committee rather than Ofgem, warrants concern with respect to the CSEP Ancillary Agreement.”* In TGP’s opinion, *“The arrangements proposed by the Modification, such that the UNC Committee has open to it the option to refer any proposed change to a relevant sub-committee, should provide a route to ensure full transparency and discussion by the industry should any proposed change be unclear or contentious.”*

Although acknowledging that Modification Proposal 0730 - 'Extending established Network Code governance arrangements to relevant Transco documents', introduced greater governance through the UNC Committee, NG NTS understood that this Proposal *“sought to extend UNC Committee*

governance further such that it proposes to permit revisions of the documents, through majority approval of the UNC Committee, by Users as well as Transporters.” NG NTS was therefore of the view that, “implementation of (this Proposal) would change the status of the UNC committee from a reviewing body to a governing body. The introduction of such a governing body potentially dilutes, and is conceived to be in certain instances a replacement for, the current decision-making role of the Authority.”

In principle NG NTS supported the publication of the CSEP Ancillary Agreement and any subsequent versions. However it was of the belief that, as a result of site specific circumstances at some CSEPs, there may be a requirement for a formal recognition that the published agreement may differ from that offered in respect of proposed new CSEPs. NG NTS made reference to UNC TPD, Section J6.6.4, which states that, 'The Transporter will make available to any User on request a copy of any CSEP Ancillary Agreement' and observed that this Proposal appeared to make individual Ancillary Agreements more readily available. In NG NTS's view the Proposal implied that, *“a generic AA is made available and suggests that there is only one CSEP AA.”* It was NG NTS's belief that there were three generic CSEP Ancillary Agreements (DM NTS, DM LDZ, and NDM LDZ). NG NTS sought clarity that the Proposal did not require signed agreements to be published.

The SME would observe that J6.6.1 refers to a single form of CSEP Ancillary Agreement, with individual agreements being entered into by Users and Transporters in this form. This CSEP Ancillary Agreement is distinct from the CSEP Network Exit Provisions envisaged in the UNC - such as might be contained in a DM NTS NExA, DM LDZ NExA, or NDM LDZ NExA - which are not the subject of this Modification Proposal.

In NG NTS's view CSEP Ancillary Agreements were not simple operational manuals. The agreements were integral to UNC and were fundamental as to how gas was allocated at CSEPs. NG NTS did not believe that it was appropriate for the governance of these agreements to be addressed outside of the UNC modification process. Furthermore NG NTS considered that it was arguable that, *“in seeking to circumvent the Modification rules process for change, the Proposal conflicts with the SSC A11 which provides for UNC changes to be by Modification process.”* NG NTS suggested that an alternative could be *“to introduce substantive parts of the CSEP AA into UNC so that the entire industry can propose or comment on changes. Introducing specific sections of the agreements in UNC principle document may overcome the difficulty of having to amend existing signed agreements when rules are revised.”*

In addressing the statement, 'In respect of the proposed prevention of any revisions being made to the CSEP AA without approval of the UNC Committee' NG NTS stated that currently CSEP AA modifications needed A11 (18) Authority approval (J6.6.1) and that the Transporter cannot impose changes. In their view, *“This Proposal seems to be a dilution of the current governance arrangements and consumer protection by introducing the UNC Committee as the decision-making body rather than the Authority.”*

The SME would observe that the provision regarding Authority approval in J6.6.1 only applies to the form of CSEP Ancillary Agreements, implying that Transporters are able to make changes provided the form is not altered.

NG NTS also expressed the view that, *“The Proposal also has the potential to create conflicts”* and that it was not clear what the Proposer intended to happen if a Modification to the UNC merited a change to a CSEP Ancillary Agreement but the UNC committee voted against such a change. NG NTS felt that the Proposal did not address this issue and had *“the potential to fetter the prompt implementation of UNC Modification changes.”*

NG UKD drew attention to a concern that, *“It also could result in parts of the UNC being subject to changes under separate governance processes (only one of which is subject to regulatory determination) thus resulting in conflicts in the operation of the UNC. For instance: in the event that a Modification to the UNC merited changes to a CSEP Ancillary Agreement but the UNC Committee voted against such a change.”*

Secondly it added *“Alternatively, if a change to a CSEP Ancillary Agreement were successfully proposed or opposed by the UNC Committee but it conflicted with a UNC Modification Proposal on a related UNC principle, this would create a tension.”* In NG UKD’s view, there was no control mechanism to prevent such a situation arising. Also, *“if a UNC Modification relied on a change to the CSEP Ancillary Agreement but this was vetoed by a UNC Committee vote, then the UNC governance process could be frustrated without apparent redress.”*

As observed earlier, the SME would wish to point out that the existing provisions in the UNC differ between the requirements for modifying individual CSEP Ancillary Agreements, which are subject to the Modification Rules, and modifying the generic form of the CSEP Ancillary Agreement, which is not. Hence to the extent that the highlighted tensions are possible, these already exist.

11. Summary of representations received (to the extent that the import of those representations are not reflected elsewhere in the Modification Report)

A total of 9 representations were received, 5 in favour and 4 opposing.

<u>Organisation</u>	<u>Abbreviation</u>	<u>Position</u>
British Gas Trading	BGT	For
E.ON UK	E.ON	For
National Grid Distribution	NG UKD	Against
National Grid Transmission	NG NTS	Against
RWE Npower Plc	RWE	For
Scotia Gas Networks	SGN	Against
Scottish and Southern Energy	SSE	Against
Statoil UK	STUK	For
Total Gas & Power Limited	TGP	For

Legal Text

The Proposer has not provided draft text.

When the legal text is drawn up, the Proposer suggested that consideration be given to the creation of common governance arrangements for this and other similar documents, some of which were referenced in Modification 730, with the CSEP Ancillary Agreement being suitably appended to the list. This would be consistent with the promotion of efficiency in the administration of the Uniform Network Code.

TGP supported this suggestion stating “ this would add clarity to the UNC and would promote efficiency in the administration of the Codes”.

EON “support the creation of a list of the relevant documents, along with the creation of a section detailing common governance arrangements” arguing this “would better facilitate the administration of the network code and improve transparency”. They added that they “would expect such changes to be developed within the Governance Workstream”.

Following clarification that the Proposal related only to the generic pro forma agreements and not to existing individual bi-lateral agreements already in place, the Modification Panel voted to reconsult on this Proposal. Only two representations were received (from National Grid Transmission and Total Gas & Power Limited) both of which confirmed the respondees original views.

12. The extent to which the implementation is required to enable each Transporter to facilitate compliance with safety or other legislation

Implementation is not required to enable each Transporter to facilitate compliance with safety or other legislation.

13. The extent to which the implementation is required having regard to any proposed change in the methodology established under paragraph 5 of Condition A4 or the statement furnished by each Transporter under paragraph 1 of Condition 4 of the Transporter's Licence

Implementation is not required having regard to any proposed change in the methodology established under paragraph 5 of Condition A4 or the statement furnished by each Transporter under paragraph 1 of Condition 4 of the Transporter's Licence.

14. Programme for works required as a consequence of implementing the Modification Proposal

No programme of works would be required as a consequence of implementing the Modification Proposal.

15. Proposed implementation timetable (including timetable for any necessary information systems changes)

It is proposed that implementation should be on the business day following receipt of direction from the Authority.

16. Implications of implementing this Modification Proposal upon existing Code Standards of Service

No implications of implementing this Modification Proposal upon existing Code Standards of Service have been identified.

17. Recommendation regarding implementation of this Modification Proposal and the number of votes of the Modification Panel

At the Modification Panel meeting held on 18 May 2006, of the 7 Voting Members present, capable of casting 10 votes, 5 votes were cast in favour of implementing this Modification Proposal. Therefore the Panel recommend non-implementation of this Proposal.

18. Transporter's Proposal

This revised Modification Report contains the Transporter's proposal not to modify the Code but has been prepared following direction from the Gas & Electricity Markets Authority.

19. Text

UNIFORM NETWORK CODE - TRANSPORTATION PRINCIPAL DOCUMENT

SECTION J - EXIT REQUIREMENTS

Amend Section J5.9 as follows:-

5.9 Metering and Measurement

5.9.1 Where (in accordance with paragraph 5.4.1(b)) the Network Exit Agreement contains provisions alternative to those contained in Section M, such provisions shall apply as between the Transporter and the Registered User (and any inconsistent provisions of Section M shall not apply).

5.9.2 The Network Exit Agreement shall be governed by the provisions of Section V12.

SECTION V - GENERAL

Insertion of a new Section V12 in the TPD

12 General Provisions Relating to UNC Related Documents

12.1 Purpose

The purpose of this Section is to establish generic governance arrangements in respect of the following UNC Related Documents (each a “**Document**” and collectively the “**Documents**”):-

- (a) Network Code Operations Reporting Manual as referenced in Section V9.4
- (b) Code Credit Rules referenced in Section V3.1.2
- (c) Network Code Validation Rules referenced in Section M1.5.3;
- (d) GRE Invoice Query Incentive Scheme Methodology Document referenced in Section S4.6; and
- (e) CSEP Ancillary Agreement document referenced in Section J5.9.

12.2 Publication Requirements

Each Document shall be kept up to date and published by the Transporters on the Joint Office of Gas Transporters website.

12.3 Modifications

Should a User or Transporter wish to propose modifications to any of the Documents, such proposed modifications shall be submitted to the Uniform Network Code Committee and considered by the Uniform Network ~~Committee~~ Committee or any relevant sub-committee where the Uniform Network Committee so decide by majority vote. in accordance with the [Uniform Network Code Modification Procedures].

12.4 Approved Modifications

12.4.1 If the event that the a proposed modification is approved ~~by~~ by a majority vote of the Uniform Network Code Committee, the modification ~~to the Document~~ shall be implemented ~~within the timescale set out in the proposed modification or as soon as is reasonably practicable and agreed by the Uniform Network Code Committee.~~ Where the Uniform Network Code Committee fails to achieve majority approval the proposed modification shall be considered in accordance with the provisions set out in Section 7 of the Uniform Network Code Modification Rules unless the Uniform Network Code Committee determines otherwise.

12.4.2 Each revised version of a Document shall be version controlled and retained by the Transporters. It shall be made available on the Joint Office of Gas Transporters website.

~~12.4.3~~

Subject Matter Expert sign off:

I confirm that I have prepared this modification report in accordance with the Modification Rules.

Signature:

Date :

Signed for and on behalf of Relevant Gas Transporters:

Tim Davis
Chief Executive, Joint Office of Gas Transporters

Signature:

Date :