

Modification proposal:	Uniform Network Code (UNC) 323V: (UNC323V) 'Code Governance Review: Self Governance'		
Decision:	The Authority ¹ directs that this proposal be made ²		
Target audience:	The Joint Office, Parties to the UNC and other interested parties		
Date of publication:	17 December 2010	Implementation Date:	31 December 2010

Background to the modification proposal

In November 2007 the Authority launched a review of the arrangements for governing the main gas and electricity industry codes, including the Uniform Network Code³ (the Code Governance Review ('CGR')). The aim of the review was to ensure that those industry codes remain fit for purpose given the wide range of changes that have occurred since the introduction of the codes and given the scale of challenge the industry faces over the coming decade.

The CGR Final Proposals⁴ published in March 2010 pulled together various initiatives that had previously been consulted upon through various CGR work strands. Those initiatives seek to make the industry code governance processes more transparent and accessible, particularly to small participants and consumer groups. The CGR also redefined a role for Ofgem with respect to significant changes to the industry codes, while also allowing us to step back from those parts of the governance arrangements that have minimal impact upon consumers or our wider statutory duties.

The Authority subsequently modified the Standard Conditions of the Gas Transporters ('GT') licence, amongst others, in order to give effect to the CGR Final Proposals. These modifications were made on 5 July 2010, but come into effect on 31 December 2010, allowing licensees opportunity to bring the codes for which they are responsible into line with the modified licence requirements by that time.

The modification proposal

The proposer, National Grid Gas ('NGG'), raised UNC323 in order to give effect to the self-governance element of the above licence changes. UNC323 reflects the fact that the GT licence now allows for modifications to be made to the UNC without having to come to the Authority for a decision. This will be limited to those proposals which satisfy the self-governance criteria set out in the licence.

The effect of this modification will be that the UNC Panel (the 'Panel') is able to make a determination on whether or not a proposal should follow a self-governance route. The Authority will be able to veto this decision if it feels that the self-governance criteria have not been satisfied. New evidence may also come to light during the development or consultation process of a proposal which suggests the impacts of the proposal are not immaterial. If the Authority does not veto the proposal following the self-governance

¹ The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

² This document is notice of the reasons for this decision as required by section 38A of the Gas Act 1986.

³ The open letter initiating the Code Governance Review (Doc Ref. 284/07) appears on the Ofgem website: <http://www.ofgem.gov.uk/Licensing/IndCodes/CGR/Documents1/Open%20letter%20announcing%20governance%20review.pdf>

⁴ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=297&refer=LICENSING/INDCODES/CGR>

route, the outcome of the Panel vote (made in consideration of whether the proposal better facilitates the relevant objectives than the prevailing baseline or any alternative) would now be a decision, rather than simply a recommendation to the Authority.

The proposal also provides for a right of appeal to the Authority if a code Party considers that implementation or non-implementation of the proposal does not better facilitate at least one of the relevant objectives, or that the implementation or non-implementation of the proposal would have an unfair prejudicial effect upon them providing the appeal is not brought for reasons that are trivial, vexatious or has no reasonable prospect of success.

Following the receipt of comments at the UNC Governance Work-stream meeting of 4 October 2010, the proposer requested that their UNC323 be varied in order to provide additional points of clarity⁵. Thereafter, UNC323 was deemed withdrawn, to be replaced by UNC323V, which was itself consulted upon.

UNC Panel⁶ recommendation

At the Modification Panel meeting held on 18 November 2010, the Panel determined unanimously that the proposal be implemented on the basis that it would better facilitate objectives (c) and (f).

The Authority's decision

The Authority has considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 6 December 2010. The Authority has considered and taken into account the responses to the Joint Office's consultation on the modification proposal which are attached to the FMR⁷. The Authority has concluded that:

1. implementation of the modification proposal will better facilitate the achievement of the relevant objectives of the UNC; and
2. directing that the modification be made consistent with the Authority's principal objective and statutory duties⁸.

Reasons for the Authority's decision

We note that this proposal attracted unanimous support from those who commented on it in either its original or varied form. Like the Panel, those who provided comments against specific relevant objectives considered that UNC323V would better facilitate objectives (c) and (f) only. We agree with that assessment and also consider that the proposal better facilitates paragraph 9 of standard special condition A11 of the gas transporters licence.

Relevant Objective (c): so far as is consistent with subparagraphs (a) and (b) the efficient discharge of the licensee's obligations under its licence.

⁵ <http://gasgovernance.co.uk/sites/default/files/Variation%20Request%200323%20v2.pdf>

⁵ UNC modification proposals, modification reports and representations can be viewed on the Joint Office of Gas Transporters website at www.gasgovernance.com

⁶ The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Gas Act 1986.

Several of those who responded to the Joint Office consultation agreed that the implementation of UNC232V would allow the GTs to discharge the obligations that had been placed upon them by the licence modifications made as a result of the CGR.

NGG must ensure that the UNC modification procedures provide for a self-governance route for certain modification proposals that fulfil the self-governance criteria with an appeal route to the Authority if particular grounds for appeal exist⁹. We consider that the proposal improves consistency of the modification rules with these requirements in the licence.

We have some concerns over the drafting of the legal text for UNC323V, which we have raised with NGG during the course of its development and subsequently. However, we do not consider that on balance these concerns are sufficient to reject UNC323V, which overall remains better than the prevailing baseline even as we consider further amendments to the relevant legal text are required to fully discharge the licence obligations.

We also consider that some of the benefits of UNC323V will be contingent upon the Panel being willing and able to take appropriate and timely decisions. Although the safeguards that have been built into the process were primarily to allow the Authority to intervene if, for instance, a proposal is no longer considered to satisfy the self-governance criteria, we consider that this can also work in reverse, with proposals reverting to the self-governance route if, for instance, they are found to be immaterial during the course of development.

Whilst noting that there are outstanding issues in relation to the legal text accompanying this proposal (see below), we consider that this proposal improves alignment of the UNC modification procedures with the licence requirements set out above as compared to the baseline and therefore does better facilitate efficient discharge of NGG's licence obligations as compared to the baseline.

Relevant Objective (f): the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code.

The majority of those who commented suggested that the self-governance route would provide for a more efficient change process for the majority of non-material modification proposals. There were no counter arguments to this.

For the reasons set out in our Final Proposals we consider that the introduction of a self-governance mechanism, alongside the opportunity to pursue a Significant Code Review¹⁰, allows the modification procedures to provide a proportionate and effective means of managing the range of changes that the gas industry may face over the coming years. A number of modification decisions could be addressed by self-governance with the potential to reduce costs and facilitate faster implementation of change proposals. We consider that introducing self-governance arrangements into the UNC will ensure that our resources are focussed on those issues that are more material to consumers or our other statutory duties with consequential better regulation benefits. Although the various elements of the CGR have been pursued through discrete modification proposals, we

⁹ Paragraphs 9(b)(i), (9)(da), (13)(c), (15D), (15E) and (15F) of standard special condition A11 of the gas transporters licence.

¹⁰ The Authority issued its decision on UNC modification proposal 0324V 'Code Governance Review: Significant Code Reviews' today, which can be found on our website

consider that both individually and collectively¹¹ they will increase the efficiency and efficacy of the administration of the UNC. Therefore, we consider this proposal also furthers the UNC's efficient administration under objective (f).

One respondent suggested that whilst self-governance seems the most appropriate route for minor modifications, some changes may be so inconsequential that it is questionable whether it should be a UNC modification in the first place. They suggest instead that such trivial changes could be pursued as a 'consent to modify' under the existing governance arrangements. We agree that there may be instances where the consent to modify route, pursuant to standard special condition A11(13)(b), may remain an option. However we would expect these instances to be limited to changes which either reflect a matter of fact, or are of a trivial housekeeping nature such as the correction of typographical or numbering errors, which do not warrant a consultation.

Paragraph 9 of standard special condition A11

Paragraph 9 of standard special condition A11 sets the minimum requirements for the UNC change management process. Particularly paragraphs 9(b)(i) and (9)(da) require the UNC modification rules to provide for the making of proposals via a self governance route and proper evaluation of the suitability of the self-governance route for modification proposals by assessment against the self-governance criteria. We consider that this proposal improves consistency between these requirements and the UNC modification procedures. Therefore, we consider this proposal better facilitates achievement of the applicable requirements of paragraph 9 of standard special condition A11.

Consolidated suggested legal text

We note that NGG has produced consolidated legal text covering all of the CGR related proposals. This is to help others understand how the code rules will look if we were to direct implementation of all of the proposals (and not their alternatives where applicable). We consider this has been helpful. We also note that if NGG consider the consolidated text accurately reflects all of the CGR related proposals and we direct implementation of all of the CGR related proposals and not their alternatives where applicable (as the consolidated text does not reflect those alternatives), NGG/the Joint Office may choose to implement using the consolidated text.

We have raised a number of issues with NGG regarding compliance of certain aspects of the legal text for this proposal with requirements of standard special condition A11 in NGG's licence. We note NGG's letter of 15 December 2010¹² which sets out a process for dealing with the outstanding legal text issues through a further modification proposal. We note that NGG will meet with Ofgem to review the outstanding comments and gain a common understanding of the further change required. We consider that this is an appropriate way forward.

Decision notice

In accordance with Standard Condition A11 of the Gas Transporters Licence, the Authority, hereby directs that modification proposal UNC323V: Code Governance Review: 'Self-Governance' be made.

¹¹ We today issued decisions on the other CGR related proposals which can be found on our website

¹² <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=372&refer=LICENSING/INDCODES/CGR>

Mark Cox

Associate Partner, industry Codes and Licensing

Signed on behalf of the Authority and authorised for that purpose.