

Stage 02: Workgroup Report

0448:

Aligning UNC with Licence conditions relating to European legislative change and Alternative Modification Proposals

At what stage is this document in the process?



This Modification would amend the Modification rules to recognise that the Authority:

- May raise European Modification Proposals;
- May direct that a Modification Proposal is a European Modification Proposal;
- May direct the timetable to be applied to a European Modification Proposal;
- May direct that a European Modification may not be withdrawn; and
- May direct that an alternative Modification Proposal may not be raised.



The Workgroup recommends that this modification should now proceed to consultation.



Low Impact: Shippers, Distribution Network Operators, National Grid NTS, Third Party Participants and Materially Affected Parties.

0448

Workgroup Report

31 October 2013

Version 0.2

Page 1 of 11

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Contents

1	Summary	3
2	Why Change?	4
3	Solution	4
4	Relevant Objectives	6
5	Implementation	7
6	Legal Text	7
7	Recommendation	11

About this document:

This report will be considered by the panel on 21 November 2013. The panel will consider whether the modification should proceed to consultation or be returned to the workgroup for further assessment.



Any questions?

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0448

Workgroup Report

31 October 2013

Version 0.2

Page 2 of 11

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1 Summary

Is this a Self-Governance Modification?

The Modification Panel determined that this is not a self-governance modification.

Why Change?

The Modification Rules do not allow for the provisions in the Transporter Licence that the Rules should provide that the Authority:

- May raise European Modification Proposals;
- May direct that a Modification Proposal is a European Modification Proposal;
- May direct the timetable to be applied to a European Modification Proposal;
- May direct that a European Modification may not be withdrawn; and
- May direct that an alternative Modification Proposal may not be raised.

Solution

Alignment of the UNC with European-driven licence changes

It is proposed that the Authority be enabled to raise Modification Proposals to the Code which the Authority considers are necessary to comply with or implement any relevant legally binding decisions of the European Commission and / or the Agency for the Cooperation of Energy Regulators relating to Regulation 2009/715/EC of the European Parliament and of the Council of 13 July 2009 concerning conditions for access to the national gas transmission networks. Furthermore, it is proposed that, for European-driven Modification Proposals, the Authority be enabled to direct the timetable within which such Modification Proposals are developed. The Authority will also be enabled to direct that a European Modification Proposal may not be withdrawn and that it should be implemented.

This Modification Proposal also seeks to align the UNC Modification Procedures with Transporter licence Standard Special Condition A11 (9(c)) which enables the Authority to direct that an alternative Modification Proposal may not be raised.

This Modification Proposal will require changes to the Modification Procedures.

Relevant Objectives

Implementation would align the Modification Rules with the provisions of Standard Special Condition A11, and so facilitate efficient discharge of the licensee's obligations.

Implementation

No implementation timescales are proposed. No implementation costs are expected and no lead-time is required prior to implementation.

2 Why Change?

Maintaining currency with European legislative changes

In order to ensure that the UNC is aligned with relevant European legislation and binding decisions of the Commission and/or ACER, it is essential that Modifications to the UNC can be introduced in the required timescales. Currently, Modification Proposals may be raised by Transporters, Users and, in certain circumstances, Third Party Participants and Materially Affected Parties. None of these parties may direct the timetable for the implementation of the Modification Proposal, and so the implementation timetable required for European Modification Proposals cannot be guaranteed.

In order to avoid non-compliance with the requirements of European legislation, it is necessary for the Modification Rules to have a mechanism which ensures that the modification procedures respond to any modification timetable and/or procedural requirements directed by the Authority as necessary to comply with relevant EU requirements.

UNC Modification Rules alignment with Transporters' licence conditions

The Transporters' licences currently include a condition empowering the Authority to control the introduction of Alternative Modification Proposals. This Modification will deliver this capability into the UNC Modification Procedures.

3 Solution

Proposed Solution

Alignment of the UNC with European-driven licence changes

This Modification Proposal will enable licence holders to comply with their obligations relating to European regulatory change. It will:

- Enable the Authority to raise European Modification Proposals;
- Enable the Authority to determine whether or not a Modification is an European Modification;
- Enable the Authority to determine the timetable to be applied to European Modification Proposals; and
- Enable the Authority to direct, in writing, that a European Modification may not be withdrawn.

Alignment of the UNC with Licence Special Standard Condition A11 (9(c))

It is proposed to change the Modification Procedures within the UNC as follows:

- To enable the Authority to direct that Alternative Modifications be prohibited in relation to specific Modification Proposals.

0448

Workgroup Report

31 October 2013

Version 0.2

Page 4 of 11

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User Pays
Classification of the modification as User Pays, or not, and the justification for such classification.
There will be no system change costs associated with this Modification, and so this is not classified as User Pays.
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 (i) the combined pipe-line system, and/ or (ii) the pipe-line system of one or more other relevant gas transporters.	None
c) Efficient discharge of the licensee's obligations.	Positive
d) Securing of effective competition: (i) between relevant shippers; (ii) between relevant suppliers; and/or (iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers.	None
e) Provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards... are satisfied as respects the availability of gas to their domestic customers.	None
f) Promotion of efficiency in the implementation and administration of the Code.	Negative
g) Compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.	None

Relevant Objective (c): Efficient discharge of the licensee's obligations

Implementation would deliver improved alignment between the Uniform Network Code and Special Standard Condition A11 of the GT Licence. This is because changes have been made to the Licence specifying that the network code modification procedures should provide specific rules for European Modifications and should allow for the Authority to determine that no alternative modifications may be raised. These requirements are not currently provided for in the modification procedures. Implementation would therefore facilitate efficient discharge of the licensee's obligations with respect to SSC A11 (9)

Relevant Objective f) Promotion of efficiency in the implementation and administration of the Code

By introducing an additional modification classification, European Modification Proposal, and additional obligations that parties need to understand and comply with, the complexity of the Modification Rules will be increased. Increasing complexity does not promote efficiency in the implementation and administration of the Code, and hence this Relevant Objective could be regarded as being negatively impacted by implementation of this modification.

Relevant Objective (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

Implementation of this modification is not a requirement of the Regulation or any legally binding decisions of the EC and/or ACER. However, implementation potentially facilitates future compliance in a timely manner since fixed timetables may be set which all UNC parties would be expected to work towards and which could not be varied without approval by the Authority.

5 Implementation

This Modification Proposal requires a change to the Modification Procedures. It does not require any system change and has no implementation costs associated with it.

This modification delivers alignment of the UNC Modification Rules with those sections of SSC A11 relating to European regulatory change. It also introduces the provisions of Transporter Licence A11 (9(c)) which enables the Authority to direct in writing that a Modification Proposal may not be raised. The omission of this condition in the Modification Procedures is such that Transporters are currently non-compliant. The relevant condition should be incorporated into the UNC Modification Procedures as soon as possible.

6 Legal Text

Text

The following Text has been prepared by National Grid NTS, and no issues were raised by the Workgroup regarding its content.

UNC General – Modification Rules

Amend paragraph 1.1(b) as follows:

- (b) the making of proposals for the modification of the Uniform Network Code either by a Transporter, a User ~~or~~, a Third Party Participant [or the Authority](#);

Amend paragraph 1.1(c) as follows:

- (c) the making of proposals for the modification of each Individual Network Code by a Relevant Transporter, a Relevant Shipper ~~or~~, a Third Party Participant [or the Authority](#);

Amend paragraph 1.1(d) as follows:

- (d) [subject to paragraph 6.4.5\(b\)](#) where a proposal is made for the modification of the Uniform Network Code the making of an alternative proposal for the modification of the Uniform Network Code by any Transporter, User, or Third Party Participant, other than the person who raised the original modification proposal;

- (e) [subject to paragraph 6.4.5\(b\)](#) where a proposal is made for the modification of an Individual Network Code the making of an alternative proposal for the modification of that Individual Network Code by a Relevant Transporter, a Relevant Shipper or a Third Party Participant, other than the person who raised the original modification proposal;

Add new defined terms in alphabetic order under paragraph 2.1 as follows:

"European Modification" means a Modification Proposal which the Authority reasonably considers, and has directed, is necessary to comply with or implement Regulation 2009/715/EC of the European Parliament and of the Council of 13 July 2009 concerning conditions for access to the national gas transmission networks and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Cooperation of Energy Regulators;

Amend paragraph 6.1.1 as follows:

6.1.1 Without prejudice to paragraph 6.4 or paragraph 12.4 and subject to paragraph 6.1.4, a Modification Proposal in respect of the Uniform Network Code may be made from time to time by:

- (a) a Transporter;
- (b) a User;
- (c) [a Third Party Participant](#), only insofar as such Modification Proposal relates to a proposal to modify Annex V-1 ("Table of Operational and Market Data") in the Uniform Network Code, ~~and a Third Party Participant~~;
- (d) a Materially Affected Party (but only in respect of a Modification Proposal which proposes a modification to a NTS Charging Methodology or a DN Charging Methodology);
- (e) [the Authority \(but only insofar as such Modification Proposal is a European Modification\)](#).

Amend paragraph 6.1.2(b) as follows:

- (b) any Relevant Shipper; ~~and/or~~

Amend paragraph 6.1.2(c) as follows:

- (c) a Materially Affected Party (but only in respect of a Modification Proposal which proposes a modification to a NTS Charging Methodology or a DN Charging Methodology); ~~and/or~~

Add a new paragraph 6.1.2(d):

- (d) [the Authority \(but only insofar as such Modification Proposal is a European Modification\)](#).

Amend paragraph 6.2.1(e) as follows:

- (e) in the case of a Modification which proposes a timescale for the implementation of the Modification (for the purposes of enabling the Authority and any persons, including but not limited to Users, Transporters, Third Party

Participants and Non Code Parties to be aware of the potential benefits or constraints associated with such timing), except in the case of a European Modification, where only one Fixed Implementation Date may be included, shall include:

- (i) two or more Fixed Implementation Dates;
- (ii) a Proposed Authority Decision Date in respect of each Fixed Implementation Date, for the purposes of enabling the Modification to be implemented by the Fixed Implementation Date;
- (iii) a Backstop Lead Time;
- (iv) the reasons why it is proposing each date under paragraph (i), (ii) and (iii).

Amend paragraph 6.4.5 as follows:

6.4.5 An alternative Modification Proposal may not be made:

(a) in respect of a Modification Proposal after the Modification Panel pursuant to paragraph 7.2.3(a) has determined such Modification Proposal should proceed to Consultation; or

(b) where the Authority directs a Transporter in writing and the Transporter notifies the Secretary that an alternative Modification Proposal shall not be made in relation to a Modification Proposal, the Modification Panel shall ensure that a Modification Proposal will not be considered as an alternative Modification Proposal to the relevant Modification Proposal.

Amend paragraph 6.5.1(a) as follows:

6.5.1 A Proposer may:

- (a) subject to paragraphs 6.5.7 and 6.8.6, withdraw a Modification Proposal, at any time before the final Modification Report is circulated to the Authority pursuant to paragraph 9.3.4 or in respect of a Self-Governance Modification Proposal at any time before the Modification Panel makes a determination under paragraph 9.3.10(a), by notice to the Secretary, and subject to paragraphs 6.4 and 12.4, any Modification Proposal so withdrawn shall lapse; or

Add new paragraph 6.8:

6.8 European Modifications

6.8.1 If, at any time after a Modification Proposal is raised, the Authority directs a Transporter that such Modification Proposal is a European Modification, the Modification Proposal will from that point forward be considered as a European Modification, until such time as the Authority withdraws such direction in accordance with paragraph 6.8.7.

6.8.2 Where the Authority has directed that a Modification Proposal is a European Modification, the Transporter shall promptly notify the Secretary which in turn shall promptly notify the Proposer, each Transporter, each User, each Member and each Non-Code Party (if any) of the Authority's direction.

6.8.3 Any Modification Proposal made by the Authority shall be a European Modification and shall be accepted into the Modification Procedures by the Modification Panel and proceed in accordance with any timetable(s) specified in the Modification Proposal.

6.8.4 A European Modification shall follow the timetable included within the direction made by the Authority pursuant to paragraph 6.8.1 or, if provided, the timetable included within the Modification Proposal made by the Authority and otherwise shall follow any timetable which would otherwise be applicable pursuant to these Rules.

6.8.5 Until such time as the Authority directs the Transporter that a Modification Proposal is a European Modification and such direction provides a timetable to be followed, the Modification Proposal shall proceed in accordance with the Modification Procedures.

6.8.6 A European Modification shall not be withdrawn without the Authority's prior written consent.

6.8.7 Where the Authority directs the Transporter at any time prior to a European Modification being submitted to it for a final determination, that a European Modification should no longer be considered to be a European Modification, the Transporter shall promptly notify the Secretary which in turn shall promptly notify each Member, each Transporter and each User, each Third Participant and each Non-Code Party (if any) of the Authority's direction. From the date of receipt of the Authority's direction:

(a) the Modification Proposal shall no longer be a European Modification for the purposes of these Rules; and

(b) the Modification Proposal shall from that point on be subject to the timetable and procedures of these Rules that relate to Modification Proposals that are not European Modifications, but (for the avoidance of doubt) the Modification Proposal shall not have to retrospectively comply with any such procedures in the period prior to receipt of the Authority's direction.

6.8.8 Where the Authority is the Proposer of a European Modification and the Authority directs the Transporter that the Modification Proposal should no longer be considered to be a European Modification, then the Modification Proposal shall be deemed to have been withdrawn from the date of receipt of the Authority's direction.

Amend paragraph 12.5 as follows:

12.5 Time periods

Notwithstanding any time periods specified in these Rules, in respect of any Modification Proposal or Request the Modification Panel may subject to paragraph 6.8.4, from time to time, determine to shorten or lengthen the time period within which any (or all) of the Modification Procedures, Request Procedures or any other procedures is (or are) to be undertaken. If the Modification Panel shall so determine, the Code Administrator shall, so far as consistent with these Rules and the Transporter's Licence, do all acts and things which these Rules specify as acts and things to be done by the Code Administrator within such shorter or longer period of time so as to give effect to such determination.

0448
Workgroup Report
31 October 2013

Version 0.2

Page 10 of 11

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Amend paragraph 12.7.1 as follows:

12.7.1 [Subject to paragraph 6.8](#), in respect of any Modification Proposal or Request if the Code Administrator considers it would be appropriate to disapply any of these Rules the Secretary shall notify each Member, each Transporter and each User, each Third Party Participant and each Non-Code Party (if any) and in that notice specify which paragraphs of these Rules the Code Administrator considers it would be appropriate to disapply and explaining why and invite each Transporter, Users, Third Party Participants and Non-Code Parties (if any) to make representations within ten (10) Business Days following the date of such invitation in respect of the proposed disapplication. The Code Administrator shall within the three (3) Business Days following the expiry of such ten (10) Business Days send to each Member and the Authority copies of all representations (if any) so received.

Amend paragraph 12.7.2 as follows:

12.7.2 The Modification Panel shall, subject to paragraphs 5.3.1 [and 6.8](#), at the next following meeting of the Modification Panel consider the representations (if any) received (in accordance with this paragraph 12.7.1) from Transporters, Users, Third Party Participants and Non-Code Parties (if any), and the Modification Panel may determine that it is appropriate to disapply any of the paragraphs of these Rules specified in the relevant notice. If the Modification Panel shall so determine the paragraphs of these Rules specified in the relevant notice shall, if the Authority agrees, be disappplied.

7 Recommendation

The Workgroup invites the Panel to:

- AGREE that this modification should be submitted for consultation.