

UNC Modification Rules

A paper by NGT for DISG 14, 20th July 2004

1 How it works now

- Transco has a licence requirement to have a process in place to modify Network Code.
- This obligation is discharged by way of the production of and adherence to the Modification Rules.
- With effect from 10th June 2004, the modification rules became part of the Network Code. The principle effect of this move was that the rules ceased to be subject to the change process described in the Gas Transporters' Licence, and became themselves subject to the governance arrangements currently used to modify the Network Code.
- Only Transco or a user may make proposals to change the Network Code:
 - Exception: energywatch may submit a proposal of specific nature to a specific part of Network Code. (Section V: Annex V1)
- Transco undertakes secretariat and administers and operates the modification rules:
 - Chairs and runs meetings, compiles agendas and writes minutes,
 - Authors the Draft Modification Report ("DMR"), (where one is required),
 - Drafts legal text,
 - Collates representations, writes the Final Modification Report ("FMR") and submits it to Ofgem;
 - As part of the report Transco includes in the report, a summary of the representations, its opinion and its recommendation as to whether the proposed modification should be made. Transco includes these sections in the report as a means of discharging its obligations detailed in ASC9.9(a)(iii) to (v).
- Shippers participate in industry forums and make representations at the DMR stage.
- Ofgem accepts or rejects proposals using the "furthering of the relevant objectives", (the relevant objectives being those listed in ASC9.1), as a yardstick for either directing implement or rejecting the proposed change.

2 Assumptions;

Each transporter would have a Network Code.

Each of the individual transporter network code would be a "Short-form" Network Code ("SFC"), that is say, it would not contain any substantive commercial terms but would simply serve to refer readers to a further document, the Uniform Network Code, ("UNC").

The UNC would be very similar in nature and content to Transco's present Network Code and would be the substantive document containing the arrangements for gas conveyance through the system.

3 Proposal

3.1 Structure

It is proposed that the governance arrangements are constructed so as to ensure that change to the business rules would, in vast majority of cases, be directed at the UNC. It is proposed that even if the proposed business rule change, or appended service, would be restricted to fewer than all Distribution Network Operators (“DNOs”), such changes would be included in the UNC, as opposed the DNOs SFC, to ensure that there would be a single point of reference for gas conveyance business rules.

3.2 Operation of the Modification Panel

The constitution of the Panel would be modified to accommodate the new transporter parties.

The Transco member would be replaced by a number of transporter members.

Each of the transporter members would be voting members and represent the following constituencies:

- Transco: Transmission Operator,
- Transco: operator of the retained Distribution Networks and
- representatives of independent DNOs

As a general principle, it is proposed that the current Network Code modification rules would apply at UNC level, and amended where necessary to accommodate multiple transporters and deliver incremental improvements where change is thought appropriate.

These could include:

3.2.1 Composition of the Panel – voting members

[50]% of the voting members would be User (shipper) representatives, elected as now by the Gas Shipper Forum. The other [50]% would be GT votes, with the NTS owner being allocated [10]% and DN owners [40]%. The total number of members would need to be set such that a balance is struck between adequate DN owner representation and unwieldiness. A member’s vote could be exercised by proxy by a member of the same constituency or by the Panel Secretary.

This split of voting rights would lend itself neatly to a 5 transporter / 5 Shipper voting members and provide a good footing for simple majority voting. However, but other voting membership could be explored providing parity between the parties remained.

3.2.2 Composition of the Panel – non-voting members

The current arrangements, whereby non-voting seats are included as panel members, would continue. NGT would expect the interests of producers, terminal operators, suppliers and consumers to be represented in this way and, given the Panel’s ability to make recommendations (see below), we would expect to see an increase in current attendance levels. ‘Independent’ members (drawn for example from other industry panels) could also serve as non-voting members, if their presence were judged to be of significant value.

3.2.3 Composition of the Panel – Chair

A senior member of the UNC Joint Office (“UNCJO”) staff would, in an administrative capacity, chair the Modification Panel

3.2.4 Voting format

The simple majority rule would apply. In the event of a tie the Chairman would exercise a casting vote.

4 The role of the Modification Panel

4.1 Role of the Panel – process

As now, the Panel would be required to vote on matters of process.

4.2 Role of the Panel – informed input

The Panel would, inter alia, be empowered to:

- **Establish terms of reference** and the **associated timetables** when referring proposals for development
- **Express an initial view** either collectively or individually, at the meeting or shortly thereafter, for incorporation in the DMR.
- **Make a recommendation** in the FMR. If the Panel’s decision was not unanimous among all members whether voting or non-voting, an outline of the balance of opinions could be given. In the event that unanimity was hindered solely by virtue of dissenting non-voting members, the fact would be recorded as “**voting members unanimity**”. It is hoped this would be consistent with the operation of the proposed appeals procedure.

It would also be appropriate for GTs, (either individually or collectively), to have the opportunity to make draft recommendations in the DMR and/or recommendations in the FMR, to the extent that they consider that the proposed modification would have an impact on their ability to effectively discharge their licence obligations.

Additionally, as now, a GT would still be able to express its individual view by way of a separate written representation outside of the Panel report itself. The secretariat process could facilitate this by providing for any GT opinions to be appended to the FMR.

The status and roles of non-voting members, including their ability to express views and make recommendations, would remain as now.

4.3 Panel members’ ability to see the FMR in draft

One of the functions of the secretariat would be to compose a summary of representations received in respect of a modification. NGT envisages a mechanism that allows a period within which relevant parties may raise reasonable objections to the draft documents (whether representations, opinions or recommendations). This ought to assuage existing concerns relating to Transco’s discretion in this area,

consistent with the way in which Amended Standard Condition 9.9 (iii) to (v) of Transco's Licence could be applied in a multi-transporter environment.

5 Administration

To be carried out by a UNC Joint Office described in, **“Constitution of the UNC Joint Office: A paper by NGT for DISG 13”**

6 Process Changes

In principle the passage of a proposal through the process would remain unchanged. Urgent proposals would still be afforded urgent status in accordance with the criteria published by Ofgem and be processed in accordance with the rules laid down in the modification rules.

For proposals proceeding to consultation, the process would be similar but be modified to accommodate the inclusion of panel member views and its collective recommendation in the DMR and FMR respectively.

7 Justification of proposed change

7.1 Creation of a UNC Joint Office

See paper identified above

7.2 Changes to the Constitution of the Panel

With the introduction of new transporter parties in to the contractual arrangements, there is scope for the constitution of panel to change in response to the increased number of contracting parties. Additionally, the increased representation would present an opportunity to remove the concept of **qualified majority voting** (“qmv”), which has been seen in past as giving Transco a disproportionate amount of control over the progress of proposals at the modification panel, to the point where qmv is regarded by some industry participants as giving rise to a **“Transco veto”** in the process.

The proposed constitution of the panel would resolve the voting issue by balancing the votes between transporter parties and user parties, with the casting vote being exercised by the Chairman in the event of a tie. It should be noted, however, that under the new arrangements, just as now, voting would be principally on matters of procedure and the panel would not be able to reject a proposal.

7.3 Changes to the role of the panel and consequential changes to procedures

It is proposed that the panel is given additional responsibilities during the development life-cycle of proposals.

These would include; for proposal referred to a Workstream, a broad specification of development work to be undertaken and, in the case of proposal progressing to development, to opine the merits, or otherwise, of the proposal sufficiently to allow the UNCJO to compile a users' opinion to accompany Transco's opinion in the DMR and FMR.

It is also proposed that, as a routine part of the process that the FMR sent to Ofgem contains a “**panel recommendation**”. The purpose of this is to provide a statement that could feed into the “**Appeals Mechanism**”, as envisaged by the recently proposed amendment to the [Energy Act]. It is envisaged that the panel recommendation could be obtained through a voting mechanism but the requirement for the FMR to be resubmitted to the panel could result a delay in it being forwarded to Ofgem, although teleconference meetings of the panel could mitigate this delay where time was of the essence.