

NGT Proposal for Treatment of Live pre-UNC Network Code Modification Proposals

Summary

A number of categories exists for Network Code Modification Proposals which have been raised, but not implemented, rejected or withdrawn, prior to the anticipated introduction of the Uniform Network Code (UNC) – Modification Proposals in-flight. This note sets out eight categories and NGT's proposed approach to each. The underlying principle is that the move from Transco's Network Code to the UNC should, as far as possible, have no impact on Modification Proposals and their progress through the modification process.

When completing Modification Reports prior to the introduction of the UNC, NGT will provide a note indicating, and would welcome views on, whether implementation of the Proposal would be expected to further the relevant objectives expected to apply when the UNC is introduced. In addition, when legal text is provided, NGT will indicate where it believes the text applicable to the prospective UNC would differ from that provided in respect of the existing Network Code. By this means, due consideration can be given to the impact of any Proposal in a pre- as well as post-UNC environment.

NGT proposes that any Modification Proposals which have been issued for consultation should effectively proceed through the existing modification process, while those that have not been issued for consultation should be superseded by a UNC Modification Proposal. For the former category, should Ofgem conclude that implementation would better facilitate the relevant objectives associated with the UNC, the Proposal could be implemented via the established "consent to modify" process in order to avoid duplicating the consultation process.

Categories of Modification Proposal

- 1) Modification Proposals which are being discussed/developed in a Review Group or Development Work Group.

There are 3 Modification Proposals in this category at the time of writing.

NGT proposes that any live Proposals in this category at the time the UNC is introduced should become UNC Modification Proposals. This would be achieved by the proposer or, by default, Transco raising a UNC Modification Proposal which is identical to the initial Proposal – or varied to the extent that the initial proposer believes that to be appropriate given discussions in the group concerned or the impact of moving to a UNC. The initial UNC Modification Panel would be requested to agree to the formation of a UNC Review Group or Development Work Group with the same terms of reference and membership as for the original Proposal, except that the Joint Office would provide a Chair and Secretary. This would ensure that any such Proposals would be formally constituted as UNC Modification or Review Proposals, with no interruption to the development work being undertaken and no change to the timetable.

Transco is willing to undertake that, in cases where, for whatever reason, the original Proposer does not wish to raise a new Proposal, Transco will raise a Proposal with the same wording as the original Proposal. Transco is also willing to undertake that at the initial UNC Modification Panel, its Voting Members would vote for the re-establishment of all such groups. In addition, NGT proposes that a meeting of the UNC Modification Panel should be arranged for the first business day following the introduction of the UNC, such that there should be no interruption to the continued discussion of Proposals.

The original Proposals would, by default, be Proposals to modify Transco's short form Network Code. NGT believes it would be appropriate for these Proposals to be withdrawn, which only the Proposer is able to do. If the Proposer declines to do this, the process could be completed as

normal, allowing full and proper consideration of any reasons why the Proposer felt that continuing the process was appropriate.

2) Modification Proposals which are being discussed/developed by a workstream

There are 4 Modification Proposals in this category at the time of writing.

NGT proposes the same approach for this category of Modification Proposals as for Category 1 above, and offers the same undertakings in respect of raising replacement Proposals and voting at the initial UNC Modification Panel. The initial UNC Modification Panel will be invited to agree that Workstreams should be established with the same terms of reference as the existing Workstreams, but with the UNC Workstreams to be administered by the Joint Office. UNC Modification Proposals would therefore be raised with the same terms as the original Proposals and the Modification Panel will be invited to agree that these Proposals should be considered by an appropriate Workstream, with no interruption to the development process. In anticipation that the UNC Modification Panel will vote in favour of establishing the same structure of Workstreams as exists prior to the introduction of the UNC, NGT will book meeting dates and times which will enable modification related business to continue without interruption when the Joint Office becomes responsible for administration of the UNC modification process.

3) Proposals which are due to be consulted on, but for which a draft Modification Report has not yet been issued

There are unlikely to be many, if any, Proposals in this category. For example, following determinations made by the February 2005 Modification Panel, there are presently three Proposals which would potentially fall in this category were the UNC to be introduced on 1 March 2005,

NGT will endeavour to ensure that any Proposals which potentially fall within this category are avoided, by issuing draft Modification Reports before introduction of the UNC. However, assuming that the UNC is introduced with effect from 1 May, any Proposals which the 21 April Modification Panel direct should proceed to consultation could be in this category since the modification rules provide that a draft Modification Report should be published within 15 business days. In addition, if urgent procedures are sought and agreed, it is possible that a Proposal raised before introduction of the UNC could be due to be issued for consultation shortly after the introduction of the UNC.

NGT proposes that any such Proposals should proceed to consultation within the established timescales. However, any legal text produced in association with the Proposal would assume that implementation would be via modification to the UNC rather than to Transco's Network Code prior to introduction of the UNC. In the draft Modification Report, NGT would consider, and would welcome views on, whether implementation of the Proposal would be expected to better facilitate the relevant objectives associated with the UNC. Representations in response to the draft Modification Report could be sent to either NGT or the Joint Office, and NGT would pass any representations received to the Joint Office.

At the initial UNC Modification Panel, NGT would suggest a named Subject Matter Expert who would be available to assist in the completion of the draft Modification Report within the initial, usually 15 business day, timescale. The Panel would be able to select a different Subject Matter Expert should it wish to do so. The Joint Office would be responsible for completing the process for administering the Modification Proposal, ensuring that the selected Subject Matter Expert was appointed and asked to provide the final Modification Report in accordance with Section Y of the UNC.

- 4) Proposals in respect of which a draft Modification Report has been issued and remains open for representations when the UNC is introduced

At the time of writing, there are four Proposals which would fall in this category, with the latest closing date for representations being 3 March 2005. Assuming the UNC is implemented with effect from 1 May 2005, any draft Modification Reports produced in light of decisions by the April Modification Panel and prior to 1 May would fall in this category.

To the extent that any Proposals fall into this category, NGT will have indicated when the draft Modification Report was issued where the legal text could differ depending on whether the Proposal was implemented as an amendment to Transco's existing Network Code or to the prospective UNC, and whether achievement of the relevant objectives of each would be facilitated by implementation. Views would be welcomed on the merits of implementation both as a Network Code and UNC modification.

At the initial UNC Modification Panel, NGT would suggest a named Subject Matter Expert who would be available to assist in the completion of the final Modification Report. The Panel would be able to select a different Subject Matter Expert should it wish to do so. The Joint Office would be responsible for completing the process for administering the Modification Proposal, ensuring that the selected Subject Matter Expert was appointed and asked to provide the final Modification Report in accordance with Section Y of the UNC. Representations could be submitted to the Joint Office, and NGT would pass any representation it received to the Joint Office. On completion of the process, the Joint Office would submit the final Modification Report to Ofgem for their consideration.

- 5) Proposals in respect of which representations have been received but no final Modification Report has been issued when the UNC is introduced

Based on existing live Modification Proposals and assuming a UNC were to be introduced on 1 March 2005, no Proposals would fall in this category.

NGT will endeavour to manage the process and issue final Modification Reports in timescales which avoid this situation. However, to the extent that any such Proposals exist when the UNC is introduced, the process applicable to the previous category would apply, except that NGT would undertake that were the Subject Matter Expert it identified asked to act in this capacity, the final Modification Report would be issued to the Joint Office within 15 days of the close of the consultation period. This would ensure there would be no delay to the production of the final Modification Report as a result of the introduction of the UNC.

- 6) Proposals in respect of which a final Modification Report has been submitted to Ofgem but no direction issued

At the time of writing, nine Proposals would fall within this category.

For Proposals which have completed the modification process apart from Ofgem's decision as to whether or not to direct implementation, NGT believes it would be appropriate for Ofgem to consider whether implementation would be expected to facilitate the Relevant Objectives associated with the UNC. If Ofgem conclude this is the case, notice could be given to the Joint Office that the Proposal should be implemented.

In order to implement the Proposal, the legal text identified as suitable for the UNC would be used. However, since the Modification Proposal formally applies to Transco's Network Code rather than the UNC, it would not be appropriate to direct implementation of the Modification Proposal itself. Instead the Joint Office, on behalf of the Transporters, would seek, from Ofgem, consent to modify the UNC. This mechanism would allow for the Modification Proposal to be implemented within the UNC without the need for a further consultation process – the use of the

established consent to modify process reflects the fact that a full consultation process would have been followed, allowing all interested parties to participate in the development and consideration of the Proposal.

While it is difficult to be definitive in advance, there may be circumstances where Ofgem or the Modification Panel believed that further consultation would be justified before consent to modify the UNC was granted. This is consistent with existing practices - if a Proposal has been with Ofgem for decision for an extended period, the modification rules provide for the possibility of further consultation at the Modification Panel's discretion. NGT believes it would be appropriate for such applications by the Joint Office for a consent to modify the UNC to be issued for consultation, inviting responses within five business days. The Joint Office would summarise any responses received and could invite the Modification Panel and Ofgem to consider them before Ofgem agrees or declines to grant the consent. By this route, NGT believes sufficient checks and opportunities for comment would be incorporated within the process without unduly adding to timescales.

- 7) Proposals which have already been implemented, but which are not reflected in the UNC drafting

The Network Code has been subject to continual development through the raising and implementation of Modification Proposals. If a UNC is created to reflect the Network Code at a given point in time, it will not automatically take into account any subsequent modifications to the Network Code which are implemented prior to the introduction of the UNC.

To take account of these modifications, NGT proposes the same approach as for the previous category of modifications, with implementation via the consent to modify route in light of the fact that consultation has been completed and the decision taken in favour of implementation, but with the option of consultation where this is deemed necessary. Applications for consent to modify the UNC would be submitted by NGT prior to the UNC going live, such that any direction to implement could be issued with a view to ensuring the modifications were included in the UNC at inception.

- 8) Modification Proposals which Ofgem have directed should be implemented, but which have implementation dates after the introduction of the UNC

When a direction is given to implement a Modification Proposal, the implementation date is generally shortly afterwards. On occasion, however, a delayed implementation date is specified. It is possible, therefore, that some Modification Proposals will have been directed to be implemented subsequent to the introduction of the UNC.

For this category of modifications, NGT proposes to prepare applications for consent to modify the UNC as for the previous category. However, since implementation is not required to coincide with inception of the UNC, there would be an opportunity for the initial Modification Panel to consider the proposed consent and the merits of further consultation should this be considered desirable.