

Mark Cox
Licensing and Industry Codes
Ofgem
9 Millbank
London
SW1P 3GE

Mark Ripley
Regulatory Frameworks Manager

Mark.g.ripley@uk.ngrid.com
Direct tel +44 (0)01926 654928

15 December 2010

www.nationalgrid.com

Dear Mark,

Code Governance Review: Legal text

On 21st July 2010, National Grid raised eight Modification Proposals (0318 - 0325) to the UNC in line with Ofgem's Code Governance Review Final Proposals and the associated licence modifications.

The formal legal text has been amended to reflect a significant number of the comments provided by Ofgem and National Grid believes that the text matches the proposals and satisfies the corresponding licence conditions. We also clarified the reasons for not including some of the more substantive suggestions provided.

We have now received a further set of comments from Ofgem on 13th December 2010 (attached as annex 1 to this letter). Whilst we accept that some of the comments provided have merit, not all the changes suggested to the legal text are possible as they would require a new Modification Proposal to allow such changes to be legitimately made to the text.

As such, our proposed way forward is for National Grid to meet with Ofgem following implementation of the proposals to review the outstanding comments and gain a common understanding of the further change required. National Grid will subsequently raise a Modification Proposal to address these comments. We propose to do this in January 2011, as one Modification Proposal, once the decision has been made by the Authority for all the eight UNC Modification Proposals.

If you wish to discuss further please do not hesitate to contact me.

Yours sincerely

Mark Ripley
Regulatory Frameworks Manager

ANNEX 1: Ofgem Comments on 13th December 2010

LICENCE COMPLIANCE CONCERNS **UNC FINAL LEGAL TEXTS FOR THE CGR SUITE OF MODS**

Modification 0319V: Code Administrators & Small Participants

Paragraph	Comment
1.5.1	The words "but not limited to" are omitted – required for compliance with standard special condition A11(9)(aa). Assistance does not appear to extend to Consumer Representatives as reference is to "Users" – required for compliance with standard special condition A11(9)(aa).
1.5.1(d)	Reference to "Modifications" omitted - required for compliance with standard special condition A11(9)(aa)(iv).
Definition "small participant"	In (a) reference to "legitimate need of assistance" should be "particular need of assistance" – required for compliance with definition of 'small participant' in A11(24). The words legitimate and particular have different meanings. Arguably 'legitimate' is narrower than 'particular'.
2.4 electronic publication	How does this interrelate with the particular obligations to draw attention to proposals to small participants (SSLC A11(9)(d)) and provide assistance to small participants / materially affected parties / other parties (SSLC A11(9)(aa) and (9)(ac)(iii), noting the latter is subject of another proposal) if electronic publication on the website discharges any obligation to send, provide or make available any information to another person? Presumably where assistance is required and you are required to provide information, you will at least send the link to the information to the relevant party?
6.2	We consider that where the detail which has been struck through is consistent with the CoP, it should be reinstated to assist parties' understanding of the modification procedures. In fact, we suggest generally it may be best/prudent to keep in the all the requirements and specifically state that these apply unless inconsistent with the COP, for example, section 6.2. (Content of Modification Proposals) could be reinstated and include a provision that paragraph 6.2 applies unless inconsistent with the COP or otherwise provided for in the COP?
8.3.2	The 12 month timescale set out in this paragraph is not consistent with either the COP and should be amended to comply.
9.3.3(b)	The test set out in SSLC A11 is "better facilitate achievement of" the relevant objectives and not "better achieve" the relevant objectives. We consider this paragraph should be therefore amended.
9.3.8	We note that you have amended this in light of our comment. However we think the words "with the aim of sending" should be "and shall send" so that the obligation is clear and the reference to the "Authority directs" should be a reference to "Authority may direct" and for consistency and include "pursuant to standard special condition A11" for clarity.
9.4.1	The test set out in SSLC A11 is "better facilitate achievement of" the relevant objectives and not "better achieve" the relevant objectives. We consider this paragraph should be therefore amended.

Modification 0320: Voting rights & Independent Chair

Paragraph	Comment
Definition of "Panel Chairman"	Should refer to "independent" in line with SSLC A11(6)(d)(i).
4.1.3 and 4.4.2(e)	In line with previous comment, which was accepted, the reference to "individual" should be reference to "representative".

Modification 0321: Environmental Assessments

Paragraph	Comment
9.4.1(b)	We consider that to comply with SSLC A11(15)(a)(iv)(bb), this paragraph should only refer to "in the opinion of the Modification Panel" or refer to both the Panel's opinion and the proposer's opinion.

Modification 0322: NTS Charging Methodologies

Paragraph	Comment
Definition of "NTS Charging Methodology"	Reference to standard special condition 4B should be standard condition 4B.
Conflicts	This proposal amends certain paragraphs which are being completely deleted/or substantially amended by 0319V i.e. paragraph 6.2.1 and 9.41.

Modification 0323: Self Governance and Appeals

Paragraph	Comment
2.1 Definition of "Appeal Criteria"	This definition is not in compliance with SSLC A11(15E). There should be an "or" in between (i) and (ii) and an "and" is required after (ii)(2). As drafted all the criteria listed need to be fulfilled to raise an appeal however the licence does not require all the criteria to be fulfilled.
6.6.2	The reference to the Authority accepting a Self-Governance Statement is not in compliance with SSLC A11(15D)(c) which does not require this. SSLC A11(15D)(c) is a veto type provision, the Authority may reject the Self-Governance Statement by the determination date but if it is not rejected by that date, it will not expressly accept it either.
9.3.9(a)	We remain of the view that the paragraph should reflect the licence requirement (SSLC A11(15D)(d)) to consider the relevant objectives: whether or not the Self-Governance Modification Proposal should be implemented on the basis that it would (or would not), as compared to the then existing provisions of the Uniform Network Code and any alternative modification, better facilitate the achievement of the applicable objective(s). We note you state that standard proposals are evaluated against the relevant objectives and same should apply to self-governance proposals. However, reference to panel determination against relevant objectives is expressly made in paragraph 9.4.1 and 9.3.3 in relation to standard proposals except for self-governance proposals under modification proposal 0319V. Therefore, if 0319V is approved, for consistency we think reference should be made in 9.3.9(a).

13.6	If the Authority rules that the Panel's determination has no further effect i.e. quashes it, it will be remitted back to the Panel for decision or the Authority will decide it. Therefore, to comply with the process envisaged by SSLC A11(15D)(e)(ii), this paragraph requires amendment.
13.7	This paragraph is not a step required by the appeals process set out in SSLC A11(15D) to (15E).
13.9	The modification panel's determination is not treated as its recommendation in all cases. It is only so in the case of 13.9(b) – where the Authority quashes the panel determination and takes the decision itself. To comply with SSLC A11(15F)(b) this paragraph requires amendment so that the panel's determination is only treated as its recommendation in the case of 13.9(b).

Modification 0324V: SCRs

Paragraph	Comment
New paragraph	<p>We note your view that the obligation to raise an SCR modification proposal is in the licence (SSLC A11(10)(aa)). However, SSLC A11(15C) requires that the Network Code Modification Procedures themselves must provide for this too. We therefore consider that the requirement on the Transporter to raise an SCR proposal should be express in the UNC to comply with. In your consolidated draft text of 15 September 2010 this was contained in paragraph 6.1.3 and we consider that this should go back in with following amendments:</p> <p>(1) include a reference to "and/or the Individual Network Code in accordance with that direction" after the reference to "Uniform Network Code" and</p> <p>(2) include reference to "such a proposal shall proceed in accordance with the Modification Procedures" for avoidance of doubt.</p>
6.1.4 and 6.1.5	SSLC A11(15A)(b) provides that a mod falling within an SCR cannot be raised unless it is a mod raised by the licensee pursuant to an SCR i.e. for example another SCR. This is not reflected in 6.1.4 and 6.1.5 and is required to be for compliance with SSLC A11(15A)(b).
6.6.2	<p>SSLC A11(15B)(c) provides that upon giving the required notice to the Authority, the panel must not proceed with the mod if the Authority directs. Therefore 6.6.2(b) is not in compliance with this licence provision and should be deleted. The Authority is not required to positively direct that a proposal proceeds, it should proceed unless the Authority directs otherwise.</p> <p>Therefore, to comply with the licence provision we consider that 6.6.2 should be amended to the effect that: "Where a direction from the Authority under paragraph 6.6.1 not to proceed with the Modification Proposal or Third Party Modification Proposal is received by the Secretary, that Modification Proposal or Third Party Modification Proposal shall become a Significant Code Review Suspended Modification Proposal. Otherwise the Modification Proposal or Third Party Modification Proposal shall proceed in accordance with the Modification Procedures."</p> <p>Please note that the direction may be made at any time during the</p>

	<p>modification process. The revised paragraph will allow for this and also means that paragraph 6.6.4 is no longer necessary.</p> <p>Further paragraph 6.6.3(b) also applies where the Authority has not previously made a determination – so in the case of 6.6.2 (SSLC A11(15A)). Therefore to comply with the licence 6.6.2 will require amendment.</p>
--	---