

Modification proposal:	Uniform Network Code (UNC) 0319V: Role of Code Administrators and Code Administration Code of Practice (UNC0319V)		
Decision:	The Authority ¹ directs that UNC0319 is 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

Many of the rules for participating in the gas and electricity markets in Great Britain ('GB') are set out in the industry codes. These codes also contain rules on their change management. Over the last two years, we have reviewed these rules on change management (the 'Code Governance Review' ('CGR'))³. Our aim is ensuring the change management rules stay fit for purpose; especially given the challenges facing the industry in the next ten years.

We published our final proposals on the CGR in March 2010⁴. These set out amendments to improve the change management of codes, such as the Uniform Network Code ('UNC'). To give effect to our final proposals, we made changes to National Grid Gas plc's ('NGG') Licence⁵ which come into force on 31 December 2010. Along with the Final Proposals, a 'Code Administration Code of Practice' ('the Code of Practice') was created⁶. The Code of Practice helps: (i) consistency and simplicity in change management of the codes; and, (ii) protect small players and consumers through things, such as increased use of plain English. To start with the Code of Practice will apply to the UNC, Balancing and Settlement Code and Connection and Use of System Code.

In response to the licence changes and Code of Practice, NGG has raised eight UNC code modification proposals⁷.

The modification proposal

This proposal makes the following changes to the UNC modification rules to align the proposal and the Code of Practice:

1. Role of Code Administrators

1.1 *Creating a Code Administrator*: This proposal reflects NGG's new licence obligation to establish a Code Administrator to carry out the functions prescribed by the Gas Transporter Licence/UNC. The Code Administrator will be the Joint Office. The Code Administrator will be required to have regard to and, to the

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 Documents on the CGR can be viewed on our website at <http://www.ofgem.gov.uk/Licensing/IndCodes/CGR/Pages/GCR.aspx>

⁴ Final Proposals 43/10 - <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=297&refer=Licensing/IndCodes/CGR>

⁵ Gas Transportation Licence.

⁶ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=328&refer=Licensing/IndCodes/CGR>

⁷ <http://www.gasgovernance.co.uk/CGR>

extent they are relevant, act in accordance with the principles in the Code of Practice.

- 1.2 *Embedding a 'critical friend' role for the Code Administrator:* Under this proposal the Code Administrator will be required to assist parties (in particular small participants and consumer representatives). This will be subject to reasonable request.
 - 1.3 *Aligning the UNC modification procedures with the Code of Practice:* This proposal seeks to align the terminology used in the modification process with that in the Code of Practice/other codes.
 - 1.4 *Send-back:* This proposal introduces an ability for the Authority to send a final modification report back to the UNC panel (the 'Panel') if it is deficient and the Authority believes it is therefore unable to make a decision (eg because of insufficient analysis or errors in legal text). The Panel then chooses how to address the defect(s) and as soon as practicable re-submits a revised final modification report.
 - 1.5 *Panel rationale:* This proposal will include in the UNC modification rules a requirement for the Panel to give its rationale as to why a modification proposal does or doesn't better facilitate the UNC relevant objectives.
 - 1.6 *Maximum period of workgroup stage:* This proposal sets a maximum workgroup stage of 6 months. Any extension which would take the total workgroup stage beyond this 6 month cap will be subject to non-objection by the Authority.
2. Code of Practice
 - 2.1 *Urgency:* This proposal introduces into the UNC modification rules an ability for the Authority to seek the Panel's opinion on whether a modification proposal should be considered urgent.
 - 2.2 *Legal Text:* This proposal changes the UNC modification rules on the preparation of legal text. It will require that ordinarily legal text will be available prior to the consultation phase. There will however be an ability for the Panel (by exception) to allow a modification proposal to proceed to consultation without legal text (eg where the proposer has provided suggested text).
 - 2.3 *Implementation costs:* This proposal seeks to make the requirement for cost assessments to apply to all types of modification proposals.
 3. Other
 - 3.1 *Housekeeping changes:* This proposal also seeks to make minor housekeeping and grammar changes to the UNC modification rules. Some examples of these changes relate to updating definitions (eg the definition of relevant objectives, to include those relating to charging methodologies) and permitting observers to participate in meetings unless the Panel Chairman decides otherwise.

The proposer considers UNC0319V will better facilitate relevant objectives (c) and (f)⁸ and paragraph 9 of Standard Special Condition A11⁹. The proposer believes the proposal will efficiently meet the new licence obligations, align the UNC with the Code of Practice and reduce 'unnecessary barriers and red tape'.

UNC Panel¹⁰ recommendation

The majority of consultation respondents felt that UNC0319V are better than baseline.

⁸ As set out in Standard Special Condition A11(1) of the Gas Transporters Licence, see: http://epr.ofgem.gov.uk/document_fetch.php?documentid=6547

⁹ Of the Gas Transporters Licence

¹⁰ The UNC Panel is established and constituted from time to time pursuant to and in accordance with the UNC Modification Rules

The Panel met on 18 November 2010 and unanimously voted to recommend implementation of UNC0319V. The Panel considers UNC0319V furthers paragraph 9 of Standard Special Condition A11¹¹ and relevant objective (f)¹².

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 FMR¹³. The Authority has concluded that:

1. implementation of UNC0319V would better facilitate the achievement of the relevant objectives of the UNC¹⁴; and
2. directing that UNC0319V be made is consistent with the Authority's principal objective and statutory duties¹⁵.

Reasons for the Authority's decision

We consider this proposal will further objectives (c), (d) and (f) and paragraph 9 of Standard Special Condition A11 of the Gas Transporter Licence. The proposal is neutral regarding the remaining objectives.

Standard Special Condition A11.1(c): so far as is consistent with sub-paragraphs (a) and (b), the efficient discharge of the licensee's obligations under this licence

NGG must ensure that the: (i) Code Administrator shall have regard to and (where relevant) be consistent with the Code of Practice principles¹⁶; and (ii) functions, powers and duties of the Code Administrator include facilitating the UNC modification procedures and must be (where relevant) consistent with the Code of Practice principles¹⁷. We consider that this proposal improves consistency of the UNC modification procedures with these licence requirements as compared to the baseline therefore we consider better meeting objective (c) than the current baseline.

NGG must ensure that under the UNC modification procedures, where the Authority sends a final modification report back to the UNC panel (the 'Panel') if it is deficient and the Authority believes it is therefore unable to make a decision (eg because of insufficient analysis or errors in legal text), the Panel then addresses the defect(s) and as soon as practicable re-submits a revised final modification report¹⁸. We consider that this proposal improves consistency of the UNC modification procedures with these licence requirements

¹¹ Of the Gas Transporter Licence.

¹² 'so far as is consistent with sub-paragraphs (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code'

¹³ UNC modification proposals, modification reports and representations can be viewed on the Joint Office of Gas Transporters website at www.gasgovernance.co.uk

¹⁴ As set out in Standard Special Condition A11(1) of the Gas Transporters Licence, see: http://epr.ofgem.gov.uk/document_fetch.php?documentid=6547

¹⁵ 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.

¹⁶ As set out in Standard Special Condition A11(6)(c)(iii) of the Gas Transporters Licence.

¹⁷ As set out in Standard Special Condition A11(9)(h) of the Gas Transporters Licence.

¹⁸ As set out in Standard Special Condition A11(15)(b)(ii) of the Gas Transporters Licence.

as compared to the baseline therefore we consider better meeting objective (c) than the current baseline.

NGG must ensure that the UNC modification procedures require the Panel to give its rationale as to why a modification proposal does or doesn't better facilitate the UNC relevant objectives within its recommendation to approve or reject a modification proposal¹⁹. Again, this proposal improves consistency of the UNC modification procedures with these licence requirements as compared to the baseline therefore we consider better meeting objective (c) than the current baseline.

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.

Standard Special Condition A11.1(d): so far as is consistent with sub-paragraphs (a) to (c) the 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

Changes such as, creating a Code Administrator who is obliged to provide reasonable assistance (in other words, be a 'critical friend'), the earlier provision of draft legal text and information on implementation costs should assist all parties, especially small participants and consumer representatives. This could help further competition and the efficient administration of the UNC, for example, by aiding understanding and encouraging fuller discussion of costs/legal text during the assessment and consultation phases.

Standard Special Condition A11.1 (f): so far as is consistent with sub-paragraphs (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code

The Code of Practice sets out a common best practice and modification process for the Balancing and Settlement Code, Connection Use of System Code ('CUSC') and UNC. This aims to reduce fragmentation and complexity of the existing code governance processes through alignment across these codes and in turn to help reduce barriers to entry for new/small participants (eg by providing assistance and limiting the number of procedures they will need to become familiar with across different codes). Any changes to the Code of Practice must receive Authority approval to be made. Code parties as well as Code Administrators can propose/discuss changes to the Code of Practice. We therefore consider alignment between the UNC and Code of Practice helps facilitate the efficient administration of the UNC.

Introducing an express requirement for the Panel to provide rationale based on the relevant UNC objectives when making recommendations on the implementation (or not) of modification proposals will, in our view, help transparency of process. Further, by enabling the Authority to 'send-back' any final modification reports which it considers defective will provide efficiencies in process. This can help reduce the potential for duplication of process and delay. This is because the Authority would not have to reject the proposal based on, for example, lack of analysis, meaning that the proposer would

¹⁹ As set out in Standard Special Condition A11(15)(a)(iv)(aa) of the Gas Transporters Licence.

not have to re-start the whole modification process again to address the issue. Instead the Authority can send-back the final modification report and the Panel arranges for steps to rectify the deficiency to be taken and a revised report submitted.

We note the proposed housekeeping changes and agree that steps that aid clarity and understanding of process could assist the efficient administration of the UNC. We further note the proposed change to allow observers to participate in meetings (subject to a contrary decision of the Panel Chairman). We consider this could help ensure more industry/consumer views are heard and considered in the modification process, encouraging robustness of process.

Industry responses

Some concerns were raised by a few of the consultation respondents and we consider these below:

1. One consultation respondent considered that it was inappropriate to remove paragraphs from the modification rules and replace them with references to the Code of Practice which sets out replacement elements of the modification process. We consider that part of this belief appears to stem from a misunderstanding that only Code Administrators can 'influence' the Code of Practice. Further, we consider that all code users can 'influence' the Code of Practice and we strongly urge code parties to participate in any review of this document.
2. One consultation respondent felt more detail is needed in the UNC on the process to be followed if the Authority uses the new send-back power. We consider that it is open to the Panel to use any option currently at its disposal to address the defect in the final modification report (eg seek revised legal text/send to workgroup for further assessment) and that the proposal better facilitates the relevant code objectives than the baseline. However, should UNC parties feel in practice that further detailed rules, or Panel guidelines, would be useful, they could produce guidelines or raise a new code modification proposal at that stage.
3. One consultation respondent was concerned that the new legal text requirements may increase administrative burden and potentially costs. We consider that any increases are likely to be minimal and would be outweighed by benefits, such as more robust legal text. We consider it could reduce the risk of disagreements over the interpretation of legal text (for example, as after the implementation of UNC0229), as parties will have more opportunity to discuss the legal text prior to completion of the final modification report. This could in turn reduce the potential for subsequent modification proposals seeking to 'correct' impacts parties had not previously foreseen.

Paragraph 9 of Standard Special Condition A11

This proposal takes steps to align the best practice principles of the Code of Practice and the modification procedures of the UNC. Particularly, paragraph 9(h) of Standard Special Condition A11 requires the procedural steps of the UNC modification process, to the extent that they are relevant, to be consistent with the principles contained in the Code of Practice. Further, paragraph 9(aa) of Standard Special Condition A11 requires the provision of assistance (such as with drafting a modification proposal or understanding the operation of the UNC) by the Code Administrators to parties that reasonably request assistance, including small participants and consumer representatives.

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 these licence requirements set out above as compared to the baseline and therefore does better facilitate the requirements of paragraph 9 of Standard Special Condition A11.

In light of the above, we consider that the proposal would as compared to the current baseline and the alternative better facilitate the relevant UNC objectives.

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 2010²⁰ 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 Special Condition A11 of the Gas Transporters Licence, the Authority, hereby directs that modification proposal UNC0319V: Role of Code Administrators and Code Administration Code of Practice be made.

Mark Cox
Associate Partner, Licensing and Industry Codes

Signed on behalf of the Authority and authorised for that purpose

²⁰ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=372&refer=LICENSING/INDCODES/CGR>