

UNC Modification Panel and Voting Rules

Joint Office of Gas Transporters
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1. Background & Purpose

- ▶ The Modification Rules originated from the commencement of the Transco Network Code (the Code) 01 March 1996.
 - ▶ *Extract from the **Transco Network Code - Introduction** ‘A Network Code can change over time as experience is gained and business conditions vary. A GT Licence granted by Ofgas requires the transporter to define and operate a mechanism to control this process - the Modification Rules’.*
- ▶ To make a change to the Uniform Network Code a Panel **majority** is required
- ▶ Good governance recommends parties should listen and engage with discussions ahead of any voting.

The Modification Rules were established in order to provide a structured framework for the creation and maintenance of a level playing field for all signatories (or potential signatories) to the Code

2. Problem Statement

- ▶ For a Vote to pass (regardless of the type of vote) there must be a “Panel Majority”
 - ▶ Where the Vote requires a response of ‘In Favour’ or ‘Not In Favour’ the outcome is easily determined:
 - ▶ If votes ‘In Favour’ > ‘Not In Favour’ then there is a Panel Majority
 - ▶ If votes ‘In Favour’ < or = ‘Not in Favour’ then there is no Panel Majority.
- ▶ The issue arises when Panel are asked to for ‘Yes’ votes only.
 - ▶ To determine the outcome of these votes you must know the number of votes available before voting takes place e.g.
 - ▶ 10 votes available, 7 vote Yes = 7/10 (Panel Majority)
 - ▶ 10 votes available, 5 vote Yes = 5/10 (No Panel Majority)
 - ▶ 10 votes available, 4 vote Yes = 4/10 (No Panel Majority)
 - ▶ If the number of votes available is not known then you cannot determine whether there is a Panel Majority (see appendix A - example vote)

3. Areas of Ambiguity

- ▶ Is an absent Panel Member who has not handed their vote to their Alternate considered Not Present?
- ▶ What is the role of a Panel Member who is acting as Alternate? Particularly, if further debate takes place and votes change / are added.
- ▶ If a Panel Member is Not Present is that 1 less Exercisable vote?
- ▶ If all Panel Members or their Alternates attend does that mean that there is a full compliment of Exercisable votes?
- ▶ If a Panel Member chooses not to Exercise their vote but is in attendance does that mean the total number of Exercisable votes gets reduced?
- ▶ Can a Panel Member choose to abstain from voting and if so, is that classed as choosing not to exercise their vote?
- ▶ For 'Yes' votes only, at what point into the voting process can a Panel Member declare they are choosing not to exercise their vote / abstain?

4. Current Interpretation

1. Not Present is used to record where a Panel Member is not in attendance and has not confirmed they have handed their vote to an Alternate.
2. If an Alternate has been authorised they will be recorded as such against the Panel Member's name on the Record of Determinations.
3. Panel Members cannot 'abstain' from voting but can choose not to exercise their vote.
4. If a Panel Member chooses not to exercise their vote it is still counted as an Exercisable vote but one that has not been Exercised.
5. 'Yes' only votes are counted against the total number of Exercisable votes available regardless of whether a Panel Member(s) has chosen to exercise their vote or not.

There will always be 14 Exercisable votes and only where a Panel Member is not present and has NOT authorised an Alternate would the total number of Exercisable votes be reduced

5. Appendices and Extracts from UNC

Appendix A - Example Vote

Implementation Vote Example:

- ▶ 14 Panel Members, 3 not present and 2 have handed their votes to alternates.
- ▶ 'Yes' only vote takes place
 - ▶ 6 'Yes' votes
- ▶ Both of the alternates states that they were not given an instruction on how to vote so did not vote 'Yes'
- ▶ How many Exercisable votes were there - 13 or 11?
- ▶ Do you count the alternate's votes as Exercisable votes which weren't Exercised or exclude them from the total Exercisable votes?
- ▶ Depending on the answer above the outcome could be:
 - ▶ $6 / 13 =$ No Panel Majority
 - ▶ $6 / 11 =$ Panel Majority

Panel Majority

“Panel Majority”: in relation to

(a) a Modification Panel recommendation made pursuant to paragraph 9.2.1 (b) or 9.3.3(a) to be determined at a quorate and duly convened meeting of the Modification Panel means:

a majority (in number) of the votes exercisable by the Voting Members present at that meeting and voting in favour of such matter; and

(b) any other Modification Panel determination to be determined at a quorate and duly convened meeting of the Modification Panel means:

(i) a majority (in number) of the votes exercised by the Voting Members present at that meeting and voting in favour of such matter; or

(ii) if there is an equal number of votes by the Voting Members present at that meeting in favour of and against such matter, where the Panel Chairperson has exercised a Casting Vote in favour of such matter;

Modification Panel Voting

5.8 Voting

Subject to paragraph 5.9, the discharge of all of the functions within the competence of the Modification Panel and expressed to require a determination of the Modification Panel shall be determined by a vote conducted on a show of hands or, if the meeting takes place pursuant to paragraph 5.7.2, on a show of hands or such other demonstration of affirmation or consent as may be appropriate. On any vote each Voting Member present shall (subject to paragraphs 3.8, 4.5.2 and 4.5.4) be entitled to exercise one (1) vote.

Implementation Votes

9.3.3 Upon receipt of the final Modification Report under paragraph 9.3.1 or 9.3.2 the Modification Panel shall assess whether the final Modification Report complies with paragraph 9.4, and if it is compliant, shall:

(a) determine whether or not to recommend the implementation of the Modification Proposal to the Authority; and

(b) submit to the Authority its determination under paragraph 9.3.3(a) and the factors which (in its opinion), justify its determination and which shall include details of the Modification Panel's reasoning for determining whether or not the Modification Proposal better facilitates achievement of the Relevant Objectives or not;

Member Alternates

4.1.6 *Each Voting Member shall be appointed for a two (2) year period commencing on 1 October (in alternate Gas Years) and ending with effect from the second anniversary of such date (“Appointment Period”).*

4.5.3 *A Member who is, by reason of also being an alternate of a Voting Member, entitled to exercise more than one (1) vote shall not be required to exercise all the votes which that Member is entitled to exercise, or to exercise all of the votes which that Member is entitled to exercise in the same way.*

Use of Casting Votes

“Casting Vote”: a vote exercisable by the Panel Chairperson in favour of or against any matter to be determined by the Modification Panel except the making of a recommendation under paragraph 9.2.1(b) or 9.3.3(a);

“Voting Member”: any Transporters' Representative, any Users' Representative, the Independent Gas Transporters' Representative and any Consumers' Representative and shall not include the Panel Chairman except where the Panel Chairman exercises a Casting Vote under paragraph 5.8.2;