

Representation For. 0048
"Preparation of Legal Text for Users Modification Proposals"
Version 1.0

Date of Communication: 26/10/2005
External Contact: Simon Howe (R W E Npower Plc)
Slant: For
Strictly Confidential: No

Abstract

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Mod 048

Dear Julian,

On behalf of RWE npower I would like to thank you for the opportunity to respond to this Mod Proposal.

I believe that this proposal has identified a weakness in the Mod rules as they presently exist and I welcome the opportunity to support this proposal. I agree with the proposer's view that it is the legal text that is more important than the business rules as outlined in the initial proposal. The contractual arrangement between Transporters and Shippers is defined by the wording in the UNC and not in a mod proposal. It is important that every party to the UNC should have the opportunity to consider and comment upon any changes to the contractual arrangements. In certain circumstances only to be able to comment upon the business rules rather than the legal text of the contract seems to go against natural justice.

The way the current rules work in that the legal text is may not be available for comment during the consultation phase could lead to unfortunate wording in the drafting of the legal text. Indeed there is a recent example of this type of problem, but fortunately as the text was included in the Draft Mod Report, these mistakes were able to be rectified before the Final Mod Report was written. If the legal text had been prepared after the consultation stage had closed it is unclear what the solution would

have been short of raising another mod. This would clearly be an inefficient use of time.

There is a certain aspect of this proposal that is not clear, in that there are no guidelines as to when the Panel should recommend that legal text is not included in the Draft Mod Report. There is always the danger that a vote not to include the legal text could be construed as a vote on the merit of the proposal. However, I do not believe that this seriously undermines the value of the proposal.

There could be an alternative to Transporters having to incur costs in drafting the legal text. When a Shipper raised mod is submitted to the Mod Panel it could include the legal text. There is no obligation on Shippers to do so but I do not believe that there is anything to prevent them doing this. Additionally the provision of Legal text in the Proposal is unlikely to be undertaken lightly and would only reinforce the well intentioned action of the Proposer.

I would be happy to discuss any of the issues raised with you.

Yours sincerely,

Simon Howe.

Gas Network Codes Manager