

**CODE MODIFICATION PROPOSAL No 0318A**  
**Code Governance Review: The approach to be taken when raising alternative**  
**Modification Proposals**  
**Version 1**

**Date:** 14/09/2010

**Proposed Implementation Date:** 31/12/2010

**Urgency:** Non Urgent

**1 The Modification Proposal**

**a) Nature and Purpose of this Proposal**

**Background**

In November 2007, Ofgem announced the Industry Codes Governance Review, which concluded at the end of March 2010 when Ofgem published their Final Proposals for the Code Governance Review (CGR). The Final Proposals covered the following work strands:

- Significant Code Review and Self Governance proposals;
- Proposals on the governance of network charging methodologies;
- Proposed approach to environmental assessment within the code objectives;
- Proposals on the role of code administrators and small participant and consumer initiatives; and
- The Code Administration Code of Practice (subset of the above code administrators proposals).

Modifications to the gas transporter's licence necessary to implement the Final Proposals for the Code Governance Review and the Code Administration Code of Practice were published on 3 June 2010 and become effective on the 31 December 2010.

This Modification Proposal aims to implement the Code Governance Review Final Proposals with regards to an aspect of the Code Administration Code of Practice (CoP) – “the approach to be taken when raising alternatives to Amendment Proposals.”

Principle 7 of the CoP states that:

*Any process for considering a suggested Modification to a code will allow for alternative solutions to be developed and fully assessed during the Modification lifecycle. To ensure this happens;*

- *other than the proposer of the Modification, any user who has a right to raise a Modification will be allowed to propose an alternative solutions;*
- *Alternative proposals shall be raised prior to or during the workgroup stage;*

- *Subject to timing and ownership there shall be no restriction on the number of alternative proposals that can be raised. Each alternative solution will be assessed with the same rigour as the proposed solution.*

This proposal is raised to amend the UNC to address Principle 7 of the CoP. It is intended that upon implementation of the proposal the Joint Office will facilitate the development of alternative solutions to the same degree as an original solution. In addition, implementation will ensure alternative proposals can be raised prior to, or during the workgroup stage and be subject to adequate assessment by industry participants.

The current UNC process for raising an alternative Proposal is not fully consistent with the aforementioned CoP principle. Currently the process for raising an alternative Proposal is described in paragraph 6.4 of the Modification Rules; broadly this requires an alternative Proposal to be raised within five business days of a Proposal proceeding to either the Development or Consultation Phase. The alternative Proposal proceeds to the same timescales as the initial proposal.

### **Nature of the Proposal**

Principle 7 of the CoP states that “Code Administrators will facilitate alternative solutions to issues being developed to the same degree as an original solution”. The following amendment will bring the UNC into line with this principle.

It is proposed that the existing provision in the Modification Rules 6.4.1(c) is removed and a new section added to state that:

- Alternative Proposals shall be allowed to be raised up until the time a Workstream or Development Workgroup Report is submitted to the Panel. Where the Panel subsequently send the Report back to the relevant group, then at that point alternatives may once more be raised up until the time a revised report is submitted to the Panel.
- Once a modification proposal(s) proceeds to the Consultation Phase, with or without an alternative, no further alternative can be raised.

The Code Administrators Working Group agreed that it was best practice for alternatives to be developed during the ‘assessment’ stage of any Modification Proposal. It was felt that all alternatives should be put forward in good time to allow for full industry consideration and for views for and against to be recorded in the Draft Modification Report. This then allows consultees (some of whom may not have been involved in the Workstream or Workgroup) to provide informed responses. For the purposes of the UNC, it was understood that this would mean in practice all but the simplest Modification Proposals being sent to a Workstream or Workgroup for assessment, rather than allowing fully formed proposals to be sent straight out to consultation which may not allow sufficient opportunity for industry

debate and views to be recorded; and which might otherwise have informed the responses of consultees.

Therefore:

- to help ensure alternative proposals are developed to the same degree as an original solution;
- to ensure there is reasonable opportunity for viable alternatives to be put forward; and
- to ensure arguments for and against a proposal and viable alternatives are fully recorded in the Draft Modification Report;

It is proposed that, in considering whether any Modification Proposal should be issued directly to consultation, the Modification Panel shall have regard to the following guidance:

- (a) whether the Proposal is sufficiently clear that all interested parties may be expected to readily understand its content and appreciate the implications
- (b) the complexity and likely impact of the proposal on code signatories and other materially affected parties; and
- (c) whether there is a reasonable prospect that viable alternatives will be brought forward.

In addition, there is a risk that alternatives may be raised unduly late in the development process and so delay the progress of Modification Proposals. To guard against filibustering while allowing legitimate Alternative Proposals that emerge at a late stage to be adequately assessed, it is proposed that the Panel should not grant further time for Workstream or Workgroup assessment of an Alternative Proposal where it believes that Alternative could have reasonably been brought forward earlier. This guidance is designed to give a clear steer to the Panel, whilst still allowing discretion over the appropriate timetable for assessment in the particular circumstances.

Should a Modification Proposal proceed to the Development Phase, the relevant Workstream or Workgroup can develop the Proposal(s) as necessary and create a new Alternative Proposal if the group believe this is required. If the Proposer of the original does not wish to amend its proposal to the alternative approach, a different party may raise and become the Proposer of the Alternative Proposal. Also, any other party may raise any Alternative Proposal (provided that they are entitled to raise a Proposal in this area). Such Alternatives shall be considered at the next and subsequent meetings of the Workstream or Workgroup provided that such Alternative Proposal is raised at least 5 working days before the first meeting at which it is discussed and is not withdrawn. It is anticipated that this will facilitate Alternative Proposals and original Proposals being developed to the same degree and timescales.

Although not part of this Proposal, as these points are already described within the UNC Modification rules, it is worth noting that the original Modification Proposal and any alternative Proposal(s) will be developed in accordance with Principle 6 of the CoP “A proposer of a Modification will retain ownership of the detail of their solution”. Key elements of this principle are as follows:

- Only a Proposer can amend their Modification Proposal.
- Workgroups will assist the Proposer in designing and assessing their solution advising on any issues but not changing the solution unless the Proposer agrees.
- Any User, who has the right to raise a Modification Proposal, has the right to adopt such a Modification Proposal that has been withdrawn by the original Proposer as detailed in paragraph 6.5 of the Rules.

**b) Justification for Urgency and recommendation on the procedure and timetable to be followed (if applicable)**

Not applicable.

**c) Recommendation on whether this Proposal should proceed to the review procedures, the Development Phase, the Consultation Phase or be referred to a Workstream for discussion.**

The proposer believes that this Modification Proposal would benefit from assessment by a Workstream. However, as an Alternative Proposal it is recommended that it follows the same process as Proposal 0318.

**2 User Pays**

**a) Classification of the Proposal as User Pays or not and justification for classification**

This Modification Proposal does not affect xoserve systems or procedures and therefore it is not affected by User Pays governance arrangements.

**b) Identification of Users, proposed split of the recovery between Gas Transporters and Users for User Pays costs and justification**

Not applicable.

**c) Proposed charge(s) for application of Users Pays charges to Shippers**

Not applicable.

**d) Proposed charge for inclusion in ACS – to be completed upon receipt of cost estimate from xoserve**

Not applicable.

### **3 Extent to which implementation of this Modification Proposal would better facilitate the achievement (for the purposes of each Transporter’s Licence) of the Relevant Objectives**

This proposal is raised in accordance with paragraphs 1c, 1f and 9 of Standard Special Condition A11 Network Code and Uniform Network Code.

Paragraph 1f of the Licence states that *“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;”*

Paragraph 2 of the Licence states that *“In relation to a proposed modification of the network code modification procedures, a reference to the relevant objectives is a reference to the requirements in paragraphs 9 and 12 of this condition (to the extent that those requirements do not conflict with the objectives set out in paragraph 1).”* Paragraph 9 of the Licence describes the procedures which must be included within the Modification Rules to allow amendments to the UNC to occur including but not limited to; the raising of proposals and alternates, providing publicity to a proposal and the consideration of any representations.

The proposer believes that this Modification Proposal (which is seeking to implement an element of the Code Governance Review Final Proposals) will better facilitate paragraphs 1f and 9 by providing a number of administrative and implementation efficiencies:

- Reducing unnecessary barriers and red tape within the UNC;
  - Making existing governance processes more transparent and accessible, particularly important for small participants and consumer groups.
  - Simplifying the UNC change processes and increase consistency between industry codes.
  - Provide greater clarification as to how alternative proposals shall be raised and treated (in particular during the workgroup stage) ensuring each alternative solution will be assessed with the same rigour as the proposed solution.
  - Issuing guidance to the Modification Panel to facilitate alternative Proposals being developed to the same degree as an original solution and to ensure there is reasonable opportunity for viable alternatives to be put forward, resulting in fewer under-developed Proposals being issued for consultation and ultimately reaching Ofgem for final decision.

In addition, this proposal is raised in accordance with paragraph 1c of Standard Special Condition A11 Network Code and Uniform Network Code. The Proposer feels that the Proposal better facilitates the efficient discharge by the licensee of the obligations imposed upon it following the Ofgem Code Governance Review, under paragraph 10 of Standard Special Condition A11. Network Code and Uniform Network Code, of the Gas Transporters’ Licence as provided below:

*10b “where a modification proposal has been made under paragraphs 10(a), 10(aa) or 10(ab) of this condition (an “original proposal”) alternative modification proposals may be made, in respect of any such original*

*proposal, by any of the parties listed in paragraph 10(a) 10(aa) or 10(ab) of this condition with the exception of the person who made the original proposal provided that:*

*(i) the alternative proposal is made as described in the Code of Practice and as further specified in the uniform network code; and*

*(ii) unless an extension of time has been approved by the panel and not objected to by the Authority after receiving notice, any workgroup stage shall last for a maximum period (as specified in the uniform network code) from the date on which the original modification was proposed.*

**4 The implications of implementing this Modification Proposal on security of supply, operation of the Total System and industry fragmentation**

In terms of industry fragmentation, this proposal better aligns the UNC alternative Modification Proposal process to that utilised in the CUSC and BSC than the *status quo*.

**5 The implications for Transporters and each Transporter of implementing this Modification Proposal, including:**

**a) The implications for operation of the System:**

Not applicable.

**b) The development and capital cost and operating cost implications:**

Not applicable.

**c) Whether it is appropriate to recover all or any of the costs and, if so, a proposal for the most appropriate way for these costs to be recovered:**

Not applicable.

**d) The consequence (if any) on the level of contractual risk of each Transporter under the Uniform Network Code of the Individual Network Codes proposed to be modified by this Modification Proposal**

Greater level of certainty that an alternative has been subject to appropriate scrutiny / development prior to being issued to consultation.

**6 The extent to which the implementation is required to enable each Transporter to facilitate compliance with a safety notice from the Health and Safety Executive pursuant to Standard Condition A11 (14) (Transporters Only)**

Not applicable.

**7 The development implications and other implications for the UK Link System of the Transporter, related computer systems of each Transporter and related computer systems of Users**

Not applicable.

**8 The implications for Users of implementing the Modification Proposal, including:**

**a) The administrative and operational implications (including impact upon manual processes and procedures)**

UNC parties would need to note the new timescales and procedures for raising alternative proposals and amend their administration processes accordingly.

**b) The development and capital cost and operating cost implications**

Not applicable.

**c) The consequence (if any) on the level of contractual risk of Users under the Uniform Network Code of the Individual Network Codes proposed to be modified by this Modification Proposal**

Not applicable.

**9 The implications of the implementation for other relevant persons (including, but without limitation, Users, Connected System Operators, Consumers, Terminal Operators, Storage Operators, Suppliers and producers and, to the extent not so otherwise addressed, any Non-Code Party)**

All UNC parties would need to note the new procedures for raising alternative proposals and amend their administration process accordingly.

**10 Consequences on the legislative and regulatory obligations and contractual relationships of the Transporters**

Implementation of the proposal should enable National Grid NTS to meet its licence obligation effective on 31 December 2010 to be met.

**11 Analysis of any advantages or disadvantages of implementation of the Modification Proposal not otherwise identified in paragraphs 2 to 10 above**

**Advantages**

It allows both alternatives and original proposals to have the same development and analysis if that is the route chosen by the Panel.

**Disadvantages**

The Modification process may become extended to allow for better development of

alternatives.

- 12 Summary of representations received as a result of consultation by the Proposer (to the extent that the import of those representations are not reflected elsewhere in this Proposal)**
- 13 Detail of all other representations received and considered by the Proposer**
- 14 Any other matter the Proposer considers needs to be addressed**
- 15 Recommendations on the time scale for the implementation of the whole or any part of this Modification Proposal**

It is recommended that this Modification Proposal be implemented by 31<sup>st</sup> December 2010.
- 16 Comments on Suggested Text**
- 17 Suggested Text**

**Code Concerned, sections and paragraphs**

Uniform Network Code

Modification Rules

**Section(s)** 6

**Proposer's Representative**

*Richard Fairholme (E.ON UK)*

**Proposer**

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