

CODE MODIFICATION PROPOSAL No 0281

Prevention of "Timing Out" of Authority decisions on Modification Proposals

Version 1.0

Date: 13/01/2010

Proposed Implementation Date: 1 July 2010

Urgency: Non Urgent

1 The Modification Proposal

a) Nature and Purpose of this Proposal

Where capitalised words and phrases are used within this Modification Proposal, those words and phrases shall usually have the meaning given within the Uniform Network Code (unless they are otherwise defined in this Modification Proposal). Key UNC defined terms used in this Modification Proposal are highlighted by an asterisk () when first used.*

This Modification Proposal, as with all Modification Proposals, should be read in conjunction with the prevailing Uniform Network Code* (UNC).*

Executive Summary

This Modification Proposal* seeks to clarify the way in which implementation dates of UNC Modification Proposals are determined, whilst avoiding the possibility that Modification Proposals may "Time Out".

Background

There exists a risk that a Modification Proposal*, especially those classified as an Urgent Modification Proposal, may "Time Out". "Timing Out" will occur where an Authority* decision on a final Modification Report* has not been provided in time to allow the Modification to be implemented by the proposers suggested last possible implementation date.

If a Modification Proposal is left to "Time Out" this may mean that the proposed benefits to the industry are lost or delayed. This may be particularly relevant in the case of Modification Proposals that have a specific suggested implementation window.

Whilst the current 'work-around' solution to a "Timed Out" Modification may be to raise a new Modification Proposal, this route may at best result in the duplication of industry effort spent as the new Modification follows the same Modification Procedures from start to finish. At worst a "Timed Out" Modification Proposal may result in the potential time bound benefits of a Modification becoming unrecoverable.

This proposal considers that "Timing Out" may be particularly relevant to Modification Proposals classified as User Pays whereby a particular suggested implementation may be perceived as being more cost efficient

than other potential dates.

Whilst "Timing Out" has not occurred for a UNC Modification Proposal to date, it has occurred within the electricity industry, most notably in 2007 when the Authority was unable to provide a decision on a small number of Balancing and Settlement Code (BSC) modification Proposals¹ before the final date allotted for such a decision in the final modification report. A subsequent judicial review ruled that when the Authority did not make its decision by the latest date included in the final modification reports, it lost the ability to make any decision on those proposals.

Following the judgement the Authority issued a number of industry consultations the most recent of which, in May 2009, included indicative modifications to National Grid's Transmission/Transporter licences to try and prevent "timing out" reoccurring. National Grid NTS recognises the issues raised during the industry consultations and considers that raising a Modification Proposal is the most efficient way to address these.

To ensure consistency across all industry codes this Modification Proposal has been raised in conjunction with similar modification proposals to the BSC 2 and Connection and Use of System Code (CUSC). Where possible any industry best practice has been adopted in the development of the UNC proposal.

The BSC modification proposal P250 has two objectives. The first is to remove the risk that future modification proposals can "Time Out", whilst the second is to mitigate the risk that the quality of an Authority decision is reduced due to a material change to the underlying analysis and perceived benefits of a modification proposal. An erosion of the underlying analysis and perceived benefits of a modification proposal within any industry code may occur if there is an extended period time between the submission of the final modification report and the Authority decision being published.

National Grid NTS believe that section 9.5 of the UNC Modification Rules allow for the UNC Panel to alert the Authority should either of the following instances occur;

- a) no Authority decision after a set length of time following the submission of the final Modification Report, and
- b) a situation where the Authority or Voting Member of the UNC Panel* believes that the circumstances relating to the Modification have materially changed.

¹ Balancing and Settlement Code Modification Proposals P198, P200, P203 and P204

² Balancing and Settlement Code Modification Proposal P250 submitted by National Grid on 4 January 2010, available on Elexon's website at:

www.elexon.co.uk/ChangeImplementation/modificationprocess/modificationdocumentation/default.aspx

In the case where there may be a material change to the circumstances of a Modification Proposal, the UNC panel is, following an additional consultation phase, able to provide supplemental information to aid the Authority decision.

As such this UNC Modification Proposal does not seek to implement the second objective within the BSC modification and focuses solely on ensuring that UNC Modification Proposals cannot "Time Out".

Implementation dates put forward within Modification Reports are usually provided by Transporters at the time the Authority decision is made. As such the proposed implementation date will be contained within the Notice to implement a Modification Proposal in accordance with Standard Special Condition A11: Network Code and Uniform Network Code.

Nature of the Proposal

To ensure that Modification Proposals can no longer "Time Out" it is proposed that the suggested implementation dates contained within both a Modification Proposal and final Modification Report are constructed in such away that "Timing Out" cannot occur. To achieve this it is proposed that the forms of both the Modification Proposal and final Modification Report described within the UNC Modification Rules be amended to state that if a User is suggesting an implementation date both documents must include both suggested 'fixed' and 'flexible' implementation dates. For the avoidance of doubt any suggested implementation date will be included on the understanding that such a date is not binding on any party. Alternatively if the implementation date is left blank, then this will be determined at a later date.

Both types of suggested implementation date are explained in further detail below;

Suggested Fixed Implementation Date

As used within the modification reports within the BSC, it is proposed that a suggested fixed implementation date will contain a minimum of two sets of suggested implementation dates in the following format:

- Implementation date of AA, based on an Authority decision published on or before BB; or
- Implementation date of CC, based on an Authority decision published after BB, but on or before DD

If an Authority decision is not published by the first decision date (BB), then the Authority is provided with a further period of time to make its decision.

In suggesting the decision dates (BB & DD) Users should take into consideration both the Authority's key performance indicators (to reach a determination on at least 70% of Modification Proposals in 25 Business Days)

and the notice period provisions of UNC Section 9.5 Further Consultation.

Suggested Flexible Implementation Date

As described above if a User has chosen to include a suggested 'fixed' implementation date they must also include a suggested flexible implementation date. This suggested 'flexible' implementation date will indicate that the Modification Proposal may also be implemented by a specified period after the Authority decision has been published. Suggested flexible implementation dates should be presented in the following format:

- X Business Days after an Authority decision; or
- X Calendar Months after an Authority decision

It is envisaged that to facilitate this proposal both the Modification Proposal and Modification Report templates will be amended to help capture the suggested fixed and flexible implementation dates in the formats specified.

Although mentioned above, it is important to reiterate that this proposal does not bind any party to perform any action, including an Authority decision, in preparation or response to a suggested implementation date or associated timescales. Furthermore, in keeping with current practice Transporters will continue to confirm the implementation date at the time the Authority decision is made.

If a User opts to include suggested implementation timescale options in line with the above the proposer of the Modification Proposal must also include justification for any date(s) provided. It is envisaged that this justification will include reference to the cost efficiency of a suggested implementation date for a Modification Proposal classified as User Pays.

For the avoidance of doubt, this Modification Proposal applies to both 'non-urgent' Modification Proposals, and Urgent Modification Proposals. In addition, Users wishing to submit an alternative or variation to a Modification Proposal must also ensure that any suggested implementation timescales and associated justification are consistent with the aforementioned formats and do not allow a Modification Proposal to "Time out".

Example

To illustrate the above proposal using an example; a User submits a Modification Proposal and, after consultation with the Transporters, obtains a Detailed Cost Analysis (DCA). As part of this DCA it is suggested that implementation of the Modification may be most efficiently implemented during one of the three UK Link* release dates, with a 1 month lead time, or alternatively if implementation during a UK Link release is not possible approximately 6 calendar months after Authority decision is published. As a result, the suggested implementation timescales within the final Modification Report may look similar to the following;

1. Decide by Date of 26/01/2010 for suggested implementation of 26/02/2010
2. Decide by Date of 25/05/2010 for suggested implementation of 25/06/2010
3. Decide by Date of 5/10/2010 for suggested implementation of 5/11/2010

And, if the Authority decision is published after the above dates then the following 'Flexible Date' would apply;

4. The suggested flexible implementation date is six (6) calendar months after an Authority Decision being published

In addition the proposer will also be expected to provide justification for the suggested dates.

Blank Suggested Implementation Date

In keeping with the current practice, Users who raise a Modification Proposal will continue to have the ability to not specify a suggested implementation date if there are circumstances where it is not critical or practical to do so.

For clarity where a suggested implementation date is left blank within a Modification Proposal, this proposal considers that the UNC Panel and Authority will continue to assume that the implementation of a Modification Proposal can be determined in line with Standard Special Condition A11. i.e. that the Gas Transporters will determine the most efficient implementation date upon Authority decision.

- 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 proposal is sufficiently clear to proceed directly to consultation

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 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**
n/a
- c) Proposed charge(s) for application of Users Pays charges to Shippers**
n/a
- d) Proposed charge for inclusion in ACS – to be completed upon receipt of cost estimate from xoserve**
n/a

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 section of the Modification Proposal is made pursuant to Standard Special Condition A11.2 of National Grid NTS’ Licence;

"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)."

To assist in the understanding of this section, paragraph 9 of Standard Special Condition A11.2 of National Grid NTS’ Licence is provided below. Underneath this extract is an explanation of how this Modification Proposal benefits this paragraph.

Paragraph 9 of Standard Special Condition A11.2

“9. The network code modification procedures shall provide for:

- (a) a mechanism by which any of
 - (i) the uniform network code; and*
 - (ii) each of the network codes prepared by or on behalf of each relevant gas transporter, may be modified;**
- (b) (i) the making of proposals for the modification of the uniform network code in accordance with paragraph 10 (a) of this condition; and/or*
 - (ii) the making of proposals for the modification of a network code prepared by or on behalf of a relevant gas transporter in accordance with paragraph 11(a) of this condition;*
- (c) the making of alternative modification proposals in accordance with*

paragraphs 10(b) and 11(b) of this condition, except in a case where the Authority otherwise directs in writing;

- (d) the giving of adequate publicity to any such proposal including, in particular, drawing it to the attention of all relevant gas transporters and all relevant shippers and sending a copy of the proposal to any person who asks for one;*
- (e) the seeking of the views of the Authority on any matter connected with any such proposal;*
- (f) the consideration of any representations relating to such a proposal made (and not withdrawn) by the licensee, any other relevant gas transporter, any relevant shipper, or any gas shipper or other person likely to be materially affected were the proposal to be implemented; and*
- (g) where the Authority accepts that the uniform network code or a network code prepared by or on behalf of a relevant gas transporter may require modification as a matter of urgency, the exclusion, acceleration or other variation, subject to the Authority's approval, of any particular procedural steps which would otherwise be applicable."*

How this Modification Proposal would better facilitate paragraph 9 of A11.2

National Grid NTS believe that this proposal benefits the above paragraph in so far that;

- In respect of sub-paragraphs (a), (b), (c), (d) and (e) above, this proposal improves the mechanism by which Modification Proposals, and any alternative or variation, are raised by ensuring clarity with regards to any suggested implementation dates and accompanying justification. This improved mechanism will aid both the understanding of the proposed changes and the subsequent Authority decision;
- In respect of sub-paragraph (f) above, this proposal will provide greater clarification of a suggested implementation timescale to all interested parties. As such, interested parties will be able to include in their representations views on the affect on them of any suggested implementation date.

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

This Modification Proposal seeks to reduce industry fragmentation by ensuring consistency across the main industry codes (BSC, CUSC and UNC) with regard to the implementation arrangements for code modification proposals, in line with the objectives of the ongoing industry Code Governance Review.

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

- a) **The implications for operation of the System:**
n/a
 - b) **The development and capital cost and operating cost implications:**
n/a
 - 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:**
n/a
 - 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**
n/a
- 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)**
n/a
- 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**
n/a
- 8 **The implications for Users of implementing the Modification Proposal, including:**
- a) **The administrative and operational implications (including impact upon manual processes and procedures)**

If implemented this Modification Proposal will ensure that Users are not asked to duplicate any administrative effort in support of the Modification process for a Modification that would previously have "Timed Out".
 - b) **The development and capital cost and operating cost implications**
n/a
 - 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**
n/a

- 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)**
- 10 Consequences on the legislative and regulatory obligations and contractual relationships of the Transporters**
- 11 Analysis of any advantages or disadvantages of implementation of the Modification Proposal not otherwise identified in paragraphs 2 to 10 above**

Advantages

National Grid NTS believe that this Modification Proposal will, if implemented, ensure that a Modification can be delivered in a timely manner ensuring that the potential benefits to Users are realised at the earliest opportunity. By ensuring that an Authority decision can be made on the original Modification (as much as possible) will be more efficient as it will remove the need to re-raise a potentially time consuming duplicate Modification.

In addition National Grid NTS believe that this Modification Proposal, if implemented, will reduce the financial risk to Users of a delay in implementing a Modification Proposal and the additional administration costs borne from raising a new Modification if the original has timed out.

Disadvantages

- 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**

16 Comments on Suggested Text

17 Suggested Text

Uniform Network Code – Modification Rules

Code Concerned, sections and paragraphs

Uniform Network Code - Modification Rules

Transportation Principal Document

Section(s)

Proposer's Representative

Nick Reeves (National Grid NTS)

Proposer

National Grid NTS