

CODE MODIFICATION PROPOSAL No 0294
Changes to UNC Modification Panel Constitution
Version 1.0

Date: 23/04/2010

Proposed Implementation Date: To be directed to implementation by 1 August 2010 with a view to the revised Panel arrangements being in place from 1 October 2010.

Urgency: This proposal is not considered urgent at this stage.

1 The Modification Proposal

a) Nature and Purpose of this Proposal

Background

Current UNC Modification Rules provide for a UNC Modification Panel to be made up of a maximum of ten voting members. These voting members consist of no more than 5 Transporter Representatives, and no more than 5 Shipper User Representatives. Each large Transporter is able to nominate one Representative to sit on the Panel, with each nominated Transporter Representative effectively being guaranteed a seat.

The UNC Modification Rules also permit the Designated Person (currently the Secretary of The Gas Forum) to appoint the 5 Shipper User Representatives. The Gas Forum has therefore drawn up a process which, with the cooperation of the UNC code administrator, supports Shippers selecting their UNC Panel User Representatives. Shipper User Representatives are selected through a process of nominations and, where more than 5 nominations are put forward, an election. Such an election utilises a “first past the post” voting mechanism, with one vote per company or group of companies (as opposed to one vote per Shipper Licence held). If Shipper Users were, by some definition, considered to belong to one of a number of constituencies, the constituency able to cast the greatest number of eligible votes will have a greater influence over the outcome of a Panel election than a smaller constituency. Traditionally, more than 5 Shipper nominations have been put forward, resulting in an annual election for Shipper User Representatives.

Neither the UNC nor the Gas Forum appointment process currently provides for the appointment of User Representatives with reference to defined constituencies.

Although there is often unity within the wider Shipper community, there are differing commercial drivers depending upon the portfolio of customers served by each Shipper. The proposer believes that natural constituencies present themselves very clearly in respect of Shippers who serve wholly or mainly large supply points (LSP), and Shippers who serve wholly or mainly small supply points (SSP), where very different business drivers can exist.

The absence of any Shipper constituency sub-division and the use of a simple “first past the post” voting regime, means that neither an LSP nor a SSP constituency is guaranteed representation on the Modification Panel. Indeed, it is possible that one constituency could unduly dominate the Shipper element of the Modification Panel, to the exclusion and potential detriment of all others.

For example, one possible outcome of the current arrangements is that 5 Shipper User Representatives could be returned from companies who between them do not serve a single domestic customer, or indeed do not even hold a domestic supply licence. Such a result would, by definition, exclude any of the “big 6” energy Shipper/Suppliers who supply gas to the vast majority of domestic consumers.

Similarly, Shippers other than the “big 6” may supply niche, or unique, end consumers and, it could be argued, better understand the businesses of those end consumers and the impacts that individual Modification Proposals may have on them. It could therefore be argued that it would be equally inappropriate to have Panel User representation consisting only of Shippers whose main business interest is in the SSP sector.

Either of these situations would be inappropriate and would give rise to questions about the degree to which the modification process meets the requirements of the Gas Transporters’ Licences. The proposer therefore believes that arrangements which are able to return such outcomes are inappropriate, and that steps have to be taken to ensure a balanced Panel constitution.

The proposer also believes that there is a risk in the Gas Forum acting as the Designated Person in that, over time, the Gas Forum may become more representative of one constituency over another depending upon membership of the Gas Forum and appointment to the Gas Forum Executive. This could have implications around the way the Gas Forum appointment process operates – in particular the way changes to the Shipper User Representative appointment process can be proposed and decided upon.

The proposer therefore believes that a more open, inclusive, equitable and transparent Shipper User Representative appointment process can be achieved by moving governance of that process from the Gas Forum, and instead placing it as a responsibility on the UNC code administrator. The proposer believes that such a move will increase confidence amongst Shippers that they are able to propose changes to the Shipper User Representative appointment process, and that any such proposals will be assessed impartially.

Above all else, therefore, this proposal seeks equitable appointment to, and representation on, the UNC Modification Panel between Shipper Users whose main business interest lies in the LSP market, and Shipper Users whose main business interest lies in the SSP market. This, in turn, will

ensure that Panel business provides balanced representative of the whole range of end consumers.

Summary of this proposal

It is proposed that:

1. The UNC Modification Panel constitution is changed from the current maximum of five voting Shipper User Representatives, instead to comprise a maximum of six voting Shipper User Representatives.
2. Two Shipper User Representative Constituencies are created, one being the Large Supply Point (LSP) constituency and the other will be the Small Supply Point (SSP) constituency.
3. The maximum of six voting Shipper User Representatives will comprise no more than three Shipper User Representatives who will represent the LSP constituency, and no more than three Shipper User Representatives who will represent the SSP constituency.
4. Processes be introduced by which:
 - Prospective Shipper User Panel Representatives declare as part of the Panel nomination/appointment process which constituency they will represent; and
 - The Designated Person can, after seeking advice from the serving Modification Panel, reject a nomination if it is considered to fall into the wrong constituency; and
 - a serving Shipper User Representative can be removed as a Panel member should their circumstances change such that in the view of the Designated Person, if necessary after seeking advice from the serving Modification Panel, that Shipper User Representative no longer fully meets the criteria for representing their chosen constituency.
5. On each occasion where a voting panel member other than a Transporter is eligible to cast a vote, each single vote cast shall carry a weighting of five “voting units”. Voting panel representatives shall not be able to split their five “voting units” per vote, therefore a single vote cast in favour shall only ever carry a weighting of five “voting units”, with a non-vote only ever carrying a weighting of zero “voting units”.
6. In order to maintain the current voting balance between Shipper Users and Transporters, it is necessary to weight the votes of Transporter Representatives. Therefore, on each occasion where a Transporter Representative is eligible to cast a vote, each single vote cast shall carry a weighting of six “voting units”. Transporter Representatives shall not be able to split their six “voting units” per vote, therefore a single vote cast in favour shall only ever carry a weighting of six “voting units”, with a non-vote only ever carrying a weighting of zero “voting units”.

7. The outcome of any Panel Vote shall be determined as provided for in the UNC Modification Rules at the time this Proposal is implemented save that account shall be taken of voting units rather than simply the number of votes cast. For example, assuming that six Shipper User, five Transporter and one Consumer Voting Member were present for a vote:
 - Three Transporter, two Shipper User and one Consumer Representative voting in favour of a proposition would result in thirty three out of a possible sixty five voting units (i.e. a majority);
 - One Transporter, one Shipper User and one Consumer Representative in favour would be recorded as sixteen voting units out of sixty five (i.e. no majority);
 - Five Transporter and six Shipper User Representatives in favour would be recorded as sixty voting units out of a possible sixty five (i.e. a majority).
8. The process for appointing Shipper User Representatives is henceforth to be conducted by the UNC code administrator (currently the Joint Office of Gas Transporters (or its successor, as appropriate)). That appointment process shall be governed by rules set out in a UNC Related Document entitled "*Rules Governing the UNC Shipper User Appointment Process*". The initial contents of this document will be the version attached to, and forming part of, this Proposal. Upon implementation of this Proposal the UNC Related Document will be subject to modification as specified in TPD Section V 12 - General, being included in the list of documents in V 12.1. The document would therefore be capable of being changed subject to approval by the UNC Committee or by following the Modification Procedures.
9. Appointment of any Independent Suppliers' Representative shall henceforth be by notice given directly to the Panel Secretary by the Independent Suppliers, rather than by means of an appointment process conducted by the Gas Forum.
10. Appointment of members of the various UNC Sub-Committees shall henceforth be conducted by the UNC code administrator. It is therefore proposed that UNC document General Terms (GT) Section B 4 be modified to include a new paragraph 4.3.2 stating that the UNC code administrator shall be responsible for conducting an appropriate process to invite and appoint members to the various Network Code Sub-committees.

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

Urgent procedures are not requested at this stage. However, it is intended that this process should apply for the 2010-11 gas year. Assuming that a Shipper election is needed to appoint Shipper User Panel Representatives

for that gas year, an Ofgem decision will be required by the end of July. Therefore, if it appears that this proposal is likely to fail to meet these deadlines, it may be necessary to seek status as an urgent proposal.

- 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.**

There have been various general discussions around Panel constitution in recent months, particularly under the guise of Review Group 0267 and the Governance Workstream. These have helped inform the proposer's views on necessary Panel reform. This proposal is being brought forward for progression to the consultation phase at the May 2010 Modification Panel. Raising it at this stage will ensure it can be fully discussed at the Governance Workstream on 7 May. It will also automatically be added to the agenda of the Transmission Workstream as a live Modification Proposal.

2 User Pays

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

Implementation of this proposal will not involve any changes to xoserve systems or processes. It will not incur any user pays costs. It is therefore not a User Pays Proposal.

- 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

The test of better facilitation of the standard Relevant Objectives doesn't apply in the case of a Modification Proposal which seeks to change the Modification Rules, as is the case with this proposal. Rather, reference is made specifically to paragraph 9 of Standard Special Licence Condition (SSLC) A11.2 of the Gas Transporter Licence.

SSLC A11.2 9(a) (i) and (ii) require a mechanism by which the UNC and each transporter's network code may be modified. Such a mechanism currently exists. However, it is the proposer's view that the current arrangements could give rise a

recommendation to implement an inappropriate Modification Proposal should there be bias, or potential for bias, between the voting rights of Shipper User constituencies. This proposal seeks to address this point by creating balance and equality between LSP and SSP Shipper User constituencies.

SSLC A11.2 9(d) requires *the giving of adequate publicity to any such (modification) proposals*. The proposer believes that part of the role of any Shipper User Representative is to be aware of Modification Proposals, have an understanding of the implications of them, be prepared to discuss Proposals with other interested parties, and reflect the views of interested parties in Panel voting. The proposer believes that the degree to which each Shipper User Representative is able to fulfil this role is, to a certain extent, driven by the constituency into which they may naturally fall. For example the extent to which a Shipper User, whose main business interest is in the LSP market sector, can (and is prepared to) understand and reflect the implications on, and views of, domestic consumers may be less than an SSP focused Shipper User Representative. The opposite may also be the case. The proposer therefore believes that publicity surrounding each proposal – specifically in the ability of interested or affected parties to know about and understand implications and have views reflected – is better facilitated by having a Panel equally balanced between the two constituencies outlined.

Further, the addition of a sixth voting Shipper User Representative is likely to result in greater publicity overall for each proposal than would be the case with five voting Shipper User Representatives, thereby better facilitating this relevant Licence condition.

SSLC A11.2 9(f) requires *the consideration of any representation relating to such a proposal*. Whilst any party has the right to respond in writing to any Modification Proposal consultation, verbal representation can also be made to a Shipper User Representative for reflection in Panel discussions. The proposer believes that, particularly where a proposal causes contention between LSP and SSP constituencies, better consideration may be given to representations where these are made by Shipper User Representatives who are active in the relevant market sector.

This proposal will also help to ensure that Transporters do not unwittingly unduly discriminate between users by implementing inappropriate UNC modifications based on biased Panel discussions and voting.

The proposer does not consider that any of these points conflicts with the standard Relevant Objectives.

With regards to the proposed amendment to change the appointment process for membership of UNC Sub-committees, the proposer believes that such a move will better facilitate A11.1(f) – this being the efficient administration of the UNC. Currently, no process is set out in the UNC for appointing Sub-committee members. The proposer believes that adding a paragraph to the UNC which sets out who will conduct the appointment process will aid understanding of that appointment process. The proposer also believes that requiring the UNC code administrator to act as the appointing body is likely to be viewed as leading to a more inclusive process than having an appointment process conducted by Gas

Forum as at present. To the extent that this is the case, the proposer believes that this will better facilitate A11.1(c) – the efficient discharge of the licensee’s obligations not to unduly discriminate by virtue of a more representative process, and one that can be amended by use of the established UNC modification process.

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

None identified.

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

a) The implications for operation of the System:

None identified.

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

None identified.

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

None identified.

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)

Nugatory.

b) The development and capital cost and operating cost implications

None identified.

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

Implementation of this Proposal is expected to reduce Users' contractual risk by ensuring that no single identified constituency or interest can dominate Shipper Panel representation. Rather, this proposal provides equal opportunity for SSP and LSP Shipper User representation.

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)

Will ensure that both SSP and LSP end consumers are fairly and equally represented at UNC Panel decisions.

Implementation is also expected to increase Users' confidence in their ability to propose changes to the Shipper User appointment process, and that any such proposals will be assessed impartially.

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

No such consequences have been identified.

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

Advantages

The proposed UNC Related Document includes a requirement on the UNC code administrator, in addition to publishing the names of the appointed representatives, to also publish the number of votes cast in favour of each Panel nominee in that appointment process. This provides greater transparency in respect of Panel appointments.

The proposer also believes that having balanced LSP and SSP Shipper User Representation on the Panel would be beneficial to the Panel Transporter Members in respect of hearing a wider range of views prior to deciding upon the voting preferences.

Disadvantages

Requires minor changes to the Panel appointment processes.

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)

None received

13 Detail of all other representations received and considered by the Proposer

None received

14 Any other matter the Proposer considers needs to be addressed

None

15 Recommendations on the time scale for the implementation of the whole or any part of this Modification Proposal

Ahead of the 2010/11 gas year. A new Panel is to be appointed with effect from 1 October 2010, with the expected start of that process being a call for Shipper User nominations in August.

16 Comments on Suggested Text

The majority of the changes required by this proposal can be carried out through amendment to the UNC Modification Rules. The proposer's suggestions for text changes have been provided as a marked up version of the Modification Rules.

It is expected that the Shipper User Panel Representative Election Rules will be further developed by the Secretary of the UNC Panel, in collaboration with Shippers as appropriate over time, and set out in the proposed UNC Related document, which will be included in the list of documents in TPD V12.1.

17 Suggested Text

Code Concerned, sections and paragraphs

Uniform Network Code

Transportation Principal Document

Section(s) TPD V12, Modification Rules

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