

UNC Modification		At what stage is this document in the process?
<h1>UNC 0623:</h1> <h2>Governance Arrangements for Alternatives to Self-Governance Modification Proposals</h2>		<div style="display: flex; flex-direction: column; align-items: flex-start;"> <div style="border: 1px solid #00a651; border-radius: 5px; padding: 5px; margin-bottom: 5px; width: 100%;">01 Modification</div> <div style="border: 1px solid #00a651; border-radius: 5px; padding: 5px; margin-bottom: 5px; width: 100%;">02 Workgroup Report</div> <div style="border: 1px solid #00a651; border-radius: 5px; padding: 5px; margin-bottom: 5px; width: 100%;">03 Draft Modification Report</div> <div style="border: 1px solid #00a651; border-radius: 5px; padding: 5px; width: 100%;">04 Final Modification Report</div> </div>
<p>Purpose of Modification:</p> <p>This is a Governance proposal that seeks to amend the Self-Governance Modification Rules. Should a proposal have alternatives, this modification sets out how they should be treated and clarifies Panel voting arrangements.</p>		
	<p>The Proposer recommends that this modification should be:</p> <ul style="list-style-type: none"> considered a material change and not subject to self-governance assessed by a Workgroup <p>This modification will be presented by the Proposer to the Panel on 20 July 2017. The Panel will consider the Proposer’s recommendation and determine the appropriate route.</p>	
	<p>High Impact: None</p>	
	<p>Medium Impact: UNC Modification Panel Members</p>	
	<p>Low Impact: All Code Parties</p>	

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Timetable		
The Proposer recommends the following timetable:		
Initial consideration by Workgroup	21 August 2017	
Workgroup Report presented to Panel	16 November 2017	
Draft Modification Report issued for consultation	23 November 2017	
Consultation Close-out for representations	14 December 2017	
Final Modification Report available for Panel	16 December 2017	
Modification Panel recommendation	21 December 2017 short notice or 18 January 2018	
If workgroups meet in the second half of the month the timetable will slip one month.		
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1 Summary

What

Clear governance arrangements are required for Self-Governance (SG) where there are Alternative modifications on a common matter. This proposal sets out rules that are consistent with how Authority Direction Alternative modifications are processed and seeks to enable the UNC Modification Panel to provide effective and timely governance of SG Alternatives. It also addresses the issues raised by modifications and alternatives that are not all Self-Governance or Authority Decision.

Why

With the implementation of UNC Modification 0596 (Implementing CGR3 decisions on Significant Code Reviews and self-governance) the higher materiality threshold for Authority Direction, leading to more SG modifications, means that it is more likely now that SG Alternatives will arise. Clear governance rules are required for SG Alternatives in particular what to do if there is not a Panel majority in favour of implementing the original SG modification or one of its Alternatives. This situation does not arise with Authority Direction modifications and Alternatives as the Modification Rules set out how to process Alternatives. It should be noted that the GT licence does not require an Alternate or the original Modification Proposal to be implemented although in the case of modifications that require an Authority Determination this has been the case in the vast majority of modifications.

Having modifications and alternatives that are not all Self-Governance or Authority Decision is not handled well by the current Modification Rules and it is sensible to look at this while making changes to the Modification Rules.

How

New arrangements are proposed to the Modification Rules that are consistent with how Authority Direction modifications proceed to an implementation decision.

The Modification Rules already contain provisions relating to alternatives, which apply equally to SG Alternatives. Changes are required to ensure that this is clear and to introduce new rules when required to deal with specific circumstances peculiar to SG Alternatives. For example rules are provided that enable Panel to consider individually the SG Alternatives' suitability for implementation and then to determine which one best furthers the relevant objectives and therefore should be implemented. It also provides for the situation where Panel considers that none of the Alternatives should be implemented, and the implications for Appeals.

2 Governance

Justification for Authority Direction

The changes described in this proposal constitute a material change to the UNC Modification Rules since they introduce additional rules to accommodate Alternatives to Self-Governance Modification Proposals and for Panel to determine their implementation. Consequently, this represents a material impact on self-governance criterion (e) 'the uniform network code governance procedures or the network code modification procedures' and Authority Direction is appropriate.

Requested Next Steps

This modification should:

- be considered a material change and subject to Authority Direction
- be assessed by a Workgroup

3 Why Change?

Background

The GT licence Standard Special Condition A11 (7) requires Gas Transporters to establish and operate modification procedures so as to better facilitate the achievement of the Uniform Network Code or Network Code relevant objectives. A11 (9) (ac) (c) requires that the modification rules provide for the making of alternative modification proposals and A11 (9) (ac) (da) requires proper evaluation of whether Self-Governance is appropriate. The licence does not require an Alternate or the original Modification Proposal to be implemented although in the case of modifications that require an Authority Determination this has been the case in the vast majority of modifications. Since the implementation of the UNC in June 2005 there have been 12 cases where the authority has rejected both a Modification Proposal and its Alternatives.¹

The recent changes to the Self-Governance arrangements as a result of UNC Modification 0596 (Implementing CGR3 decisions on Significant Code Reviews and self-governance), mean that more modification proposals are likely to follow the Self-Governance route, with a corresponding increase in likelihood that Alternate proposals will arise. This means that providing clear governance for Alternatives to Self-Governance Modification Proposals is increasingly important.

There is also the possibility of “mixed modifications” where the original is SG or Authority Decision but the Alternative is the other. Although rare this has occurred in the past.² The existing governance process does not fully handle this situation.

Why Change

Should a party wish to propose an Alternate to a SG proposal now the Joint Office, as Code Administrator, is of the opinion that it would not be able to accept that Alternative since the Modification Rules do not explicitly provide for it. This is unsatisfactory and inefficient.

Amendment to the Modification Rules is the preferred route to ensure that the intent of the Self-Governance procedures are maintained; that Panel determines implementation for matters that are not likely to have a material impact on the Self-Governance Criteria that are described in the GT Licence. The option to escalate such SG (competing) Alternatives to Ofgem for Direction is not considered to be a suitable solution simply because the presence of an Alternative does not, in itself, constitute a material impact on one or more of the SG Criteria.

Without the change then Self Governance Modifications with Alternatives might fail before even being considered at Panel and this is potentially contrary to the obligations set out in the GT Licence. It is

¹ 0054, 0115, 0150, 0151, 0156, 0194, 0228, 0246 (including two alternatives), 0282, 0335, 0369 and 0418 (information provided by Joint Office).

² 0479S was raised as an alternative to 0479, it was later, in December 2014, determined not to be an alternative and was re-numbered 0522

sensible to put in place Modification Panel processes that allow some reconsideration of these proposals with the aim maximising the implementation of a modification that satisfies the Relevant Objectives rather than none being implemented.

“Mixed modifications” will result in conflicting governance which is at best undesirable..

The section below discusses options for Panel voting and “mixed modifications”

Options

Panel voting

The key issue is the voting arrangements at Panel in relation to determining which should be implemented if Panel determines that two or more modifications satisfy the relevant objectives. Currently Modification Rules (MR) 9.4.2 provides a process for Panel to provide a view to the Authority in the case of Authority Decision modifications. This needs to be replicated for Self-Governance proposals except that in this case Panel needs to make a determination. A problem occurs where Panel voting does not result in a Panel Determination to implement one of the proposals but the proposals facilitated the relevant objectives and as a result no proposal is implemented because panel could not make a determination. There are two possible ways forward for SG Modifications Proposals with one or more Alternatives:

- 1) Resolve the issue at the panel meeting
- 2) Resolve elsewhere and / or at a future panel meeting

Resolve at the panel meeting

This is the fastest path to resolution and includes:

1. Do nothing – this is the current position, no majority exists and none can be implemented. A new modification proposal would need to be raised to address the issue.
2. Have a second Panel Vote on the tied mods only (in case there are two or more alternatives). This does not work in the case of one alternative and is therefore incomplete in itself.
3. The Chairperson to have a casting vote only in this specific circumstance. It should be noted that the Chairperson does not have the casting vote on implementation matters for Authority Direction Modifications Proposals

Refer elsewhere and / or resolve at a future panel meeting

4. The modifications become Material and require Authority – this would require a change to the Self-Governance criteria which would require a change to the GT licence, it also abrogates the Panel’s responsibilities in respect of Self-Governance
5. Refer to the Authority for a View (existing Modification Rules 12.8 would need extending) and return to a subsequent Panel for re-vote. Note that a View is generally binding on Panel – this abrogates the Panel’s responsibilities in respect of Self-Governance
6. Defer to a future Panel meeting to allow for wider informal consideration by the proposers, Shipper and IGT parties and re-vote. Also allow the one or more of the proposers to request, or for Panel to decide, that Panel refers the issue back to workgroup if the Panel has a reasonable expectation that this further period will result in a revised proposal that has more support.
7. Amend the call in rules to allow Ofgem to call in the proposals after a Panel vote.
8. Clarify the Appeal provisions to allow a Party to appeal to Ofgem in the case where the new rule on making a Panel Determination of which proposal it prefers does not lead to a determination to implement one of them. The current Appeal Criteria (see Appendix 1) is written to refer to the case of one SG Modification Proposal and this needs amending to clarify that this also applies to the case where the Panel does not determine a preference where there are Alternatives.

Of the above options 1, 3, 6, 7, 8 and possibly 5 are feasible. Option 1 is the current unsatisfactory position. Option 3 means a decision is made but not by panel members and is preferable to option 5 and 7 which passes the responsibility to the Authority. As noted above the Chairperson does not have a casting vote on implementation for Authority Decision Modification Proposals so to introduce it for Self-Governance Modification Proposals only would not be consistent. Option 6 means Panel Representatives and the wider UNC Parties take responsibility for making the decision but it would not necessarily result in decision to implement one proposal. Option 8 is the proposed option as this maintains the decision making with industry parties, which enables a party to appeal a non-implementation decision to Ofgem for resolution, but does not require it and allows industry parties to raise another proposal, should they wish, which they believe would have more support.

Mixed Modifications

For mixed modifications options include:

1. Redefining them all as Authority Direction modifications but it is difficult to justify changing from Self-Governance to Authority Direction solely because another proposal has been raised.
2. Treating (as opposed to defining them as Authority Decision) the Self-Governance Modification Proposals as Authority Direction and have them follow the Authority Direction route.
3. Giving Panel the power to request that the Authority reject the Self-Governance statement on the grounds that all proposals should follow the same governance process.

Option 1 will require a change to the Self-Governance criteria which would require a change to the GT licence and option 3 seems overly cumbersome. This leaves option 2 as the preferred way forward if change is required.

4 Code Specific Matters

Reference Documents

UNC Modification Rules:

http://www.gasgovernance.co.uk/sites/default/files/Modification%20Rules_30.pdf

Knowledge/Skills

No special knowledge or skills are required.

5 Solution

Proposed solution

Panel voting

The Modification Rules are amended

To put in place a new clause describing the process for Panel to determine its preferred modification status. This will be identical to 9.4.2 which describes how Panel forms a view on which proposal is preferred for Authority Decision proposals except were required to allow Panel to make a determination. 9.4.2 will be dis-applied for Self-Governance proposals.

The proposed solution puts the responsibility for progressing the issue in the hands of the Parties to the UNC. This is consistent with the concept of Self-Governance.

Mixed Modifications

For mixed governance modifications the Modification Rules will be amended to enable the Panel to treat the Self-Governance Modification Proposals or Alternatives as following the Authority Decision path. The Modification Rules need to cater for both the case where the first proposal was Self Governance and a subsequent proposal was Authority Decision and the case where the first proposal was Authority Decision and a subsequent proposal was Self Governance.

6 Impacts & Other Considerations

Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

No it does not.

Consumer Impacts

There is no direct impact on consumers, although since this proposal will improve the modification process there will be some indirect benefit for consumers as some modifications are likely to be implemented more quickly.

Cross Code Impacts

We are not aware of other codes addressing this issue.

EU Code Impacts

None

Central Systems Impacts

None, this only affects Panel processes there is no impact on central systems.

7 Relevant Objectives

Impact of the modification on the Relevant Objectives:	
Relevant Objective	Identified impact
a) Efficient and economic operation of the pipe-line system.	None
b) Coordinated, efficient and economic operation of (i) the combined pipe-line system, and/ or (ii) the pipe-line system of one or more other relevant gas transporters.	None
c) Efficient discharge of the licensee's obligations.	Positive
d) Securing of effective competition: (i) between relevant shippers; (ii) between relevant suppliers; and/or (iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers.	None
e) Provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards... are satisfied as respects the availability of gas to their domestic customers.	None
f) Promotion of efficiency in the implementation and administration of the Code.	Positive
g) Compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.	None

This proposal is positive for relevant objective (c) as it supports compliance with A11 (9) (ac) (c). It is positive for relevant objective (f) as it makes the process for making determinations for Self-Governance Modification Proposals which have Alternatives more likely to produce a decision to implement one of the proposals.

8 Implementation

This would be best implemented at a quiet time in the monthly cycle of Modification Panel meetings. For this reason we propose implementation on the Day after the first Modification Panel meeting following an Authority determination to implement. This arrangement worked well for Modification 0596 (Implementing CGR3 decisions on Significant Code Reviews and self-governance).

9 Legal Text

Text Commentary

Legal Text Commentary has been published alongside this modification.

Text

Legal Text has been published alongside this modification.

10 Recommendations

Proposer's Recommendation to Panel

Panel is asked to:

- Agree that Authority Direction should apply
- Refer this proposal to a Workgroup for assessment for four months

11 Appendix 1

“Appeal”: an appeal made by an Appealing Party to the Modification Panel of a determination by the Modification Panel under paragraph 9.3.10(a) in respect of a Self-Governance Modification Proposal;

“Appeal Criteria”: the following criteria in respect of an Authority Appeal:

- (a) the Authority Appeal has been made within the time specified in these Rules;
- (b) in the opinion of the Authority;
 - (i) the Appealing Party is, or is likely to be, unfairly prejudiced by the implementation or non-implementation of the Self-Governance Modification Proposal;
 - (ii) the Authority Appeal has been made on the grounds that the Appealing Party reasonably believes that:
 - (1) where the Modification Panel has made the determination to implement the proposal, the proposal does not better facilitate the achievement of at least one of the Relevant Objectives; or
 - (2) where the Modification Panel has made the determination not to implement the proposal, the proposal does better facilitate the achievement of at least one of the Relevant Objectives; and
 - (iii) the Authority Appeal has not been made for reasons that are trivial, frivolous or vexatious; and
 - (iv) the Authority Appeal has a reasonable prospect of success;