

Representation - Draft Modification Report UNC 0674

Performance Assurance Techniques and Controls

Responses invited by: 5pm on 24 May 2021

To: enquiries@gasgovernance.co.uk

Please note submission of your representation confirms your consent for publication/circulation.

Representative:	Richard Pomroy
Organisation:	Wales & West Utilities
Date of Representation:	24 th May 2021
Support or oppose implementation?	Comments
Relevant Objective:	<p>d) Positive</p> <p>f) Negative</p>

Reason for support/opposition: Please summarise (in one paragraph) the key reason(s)

We support the aims of this modification to improve settlement accuracy; however, we have significant concerns regarding this modification due to the lack of proper governance over the Performance Assurance Committee.

The modification removes PAC from any governance under the UNC Committee while giving it scope to amend the Performance Assurance Framework Document that defines the scope of its activities and the actions and sanctions it may take.

The model used for this modification is that of the committees under the Data Services Contract. Although we acknowledge that the Data Service Contract Change and Contract Committees are also independent of the UNC Committee, there is a crucial difference in that the scope of their powers is carefully constrained by UNC General Terms D and they are not able to unilaterally amend them. This is the key difference compared to what is being proposed for PAC. There are also proposals to allow the chair and secretary of PAC to be PAFA employees. This means that PAC would be entirely separate from normal UNC and Joint Office governance except for the elections.

In our view the lack of governance over PAC proposed in this modification is a critical failing and therefore the modification should not proceed in its current form. Our view is that the best way forward would be to return this modification to workgroup for about 3 months to rectify the governance deficiencies so as not to waste the work put into this modification by the proposers and members of the workgroup. As it stands the modification sets up the Performance Assurance Committee as outside any form of effective governance, able to decide its own scope and rules and able to involve itself in any aspect of activity covered by the UNC that it determines as within its scope.

Our view is that the following changes are required:

1) Either

- a. PAC is a UNCC committee and that UNCC controls its existence and terms of reference and PAC controls the document that determines its scope and operating regime; or
- b. PAC is autonomous along the lines of the DSC Change and Contract committees but PAFD document has to be approved by UNCC and amendments to PAFD can be proposed by PAC or any UNC Party.

(b) is our preference and we think would need the least change to the proposed business rules and legal text. We think that the necessary changes are amending TPD V 16.7.2 (Performance Assurance Framework Document) and 16.7.3 (Performance Assurance Techniques) and 12.1 to make the PAFD and PAT subject to UNCC approval.

2) Business Rule 2a is amended to remove what we read as a very high-level obligation affecting the UNCC and UNC modification panel and imposing absolute obligations on Parties that ignores other obligations. This would require amendment to TPD V 16.1.2.

We believe that the issues raised under this point are new issues raised in consultations.

3) The Chair and Secretary of the PAC must be Joint Office employees.

Should this modification be implemented as it stands there is clearly scope for a party to raise a further modification to improve PAC governance along the lines described above.

Implementation: *What lead-time do you wish to see prior to implementation and why?*

We agree that 3 months between Authority Direction and implementation is appropriate as long as there is an adequate communication plan. We would expect the PAFA to table this at the first PAC meeting following the Authority Direction to implement, if this is not possible then a further month should be added to the implementation period.

Impacts and Costs: *What analysis, development and ongoing costs would you face?*

None identified at present but risk that some business costs could rise due to TPD V 16.1.2 (d) as this obligation would probably need to be put into contracts.

Legal Text: *Are you satisfied that the legal text will deliver the intent of the Solution?*

No, we do not. We do not believe that the text delivers the intent of Business Rule 2a because it does not address the implications for the Modification Rules or other UNCC sub-committees (as described in our answer to Panel question 2 below); notwithstanding this we do not believe that Business Rule 2a is implementable as written as, in our view, it effectively seeks to introduce a new relevant objective for UNC modifications.

We note that the legal text as written does not address the implications for the modification rules or UNCC and the proposer seems content with this; however, we do have concerns over the drafting of TPD V 16.1.2 c and d as described below.

If the proposer is content with the scope of 16.1.2 then Business Rule 2a needs to be amended so that the text as drafted is aligned with Business Rule 2a.

16.1.2 Each Party:

(a) acknowledges the manner in which it conducts its business (pursuant to the Code and in respect of any business ancillary to Code ("relevant business")) can have a material impact, positively or negatively, on the achievement of the Performance Assurance Objective;

(b) acknowledges the standard of performance of a Relevant Third Party in undertaking a relevant activity can have a material impact, positively or negatively, on the achievement of the Performance Assurance Objective;

(c) agrees to conduct its relevant business at all times in a manner which facilitates the achievement of the Performance Assurance Objective;

This absolute obligation should be tempered by "subject to other UNC, licence or statutory obligations" or if there is a carve out in GTB for higher obligations then "subject to other UNC obligations"

(d) agrees to take all reasonable steps available to it to ensure a Relevant Third Party undertakes the relevant activity so as to facilitate achievement of the Performance Assurance Objective and complies with any Performance Assurance Technique applied to it;

We acknowledge that, unlike (c) this is not an absolute obligation; however, the "all reasonable steps" obligation is very strong, and some interpret "all reasonable steps" as equivalent to "best endeavours". Parties that have contracts with third parties are likely to find that prices go up significantly where general and wide ranging obligations such as "facilitate the achievement of the Performance Assurance Objective" are made stronger than a "reasonable endeavours obligation". We therefore think that this should be amended to "take reasonable steps..." or "use reasonable endeavours to ensure..."

(e) acknowledges the acts and omissions of each other Party to the Code in relation to the Performance Assurance Objective are not relevant for the purposes of such Party complying with the requirements of this paragraph 16.1.2;

(f) acknowledges it is for the Performance Assurance Committee to determine whether or not a Party's conduct or performance under the Code is (or is likely to) prejudice the achievement of the Performance Assurance Objective;

(g) acknowledges it may be required to comply with such Performance Assurance Techniques as the Performance Assurance Committee may determine in accordance with the Performance Assurance Framework Document; and

(h) agrees to make available to the Performance Assurance Committee such records, data and other information as the Performance Assurance Committee may reasonably require for the performance of PAC Functions and further acknowledges that such records, data and information (and the processes for making such available) shall not be limited to the records, data and information (and processes) specified in the Performance Assurance Framework Document

Modification Panel Members have requested that the following questions / considerations are addressed:

Q1: Provide a view on whether respondents think it is appropriate to impact non-UNC parties with this proposal?

A contract, the UNC legally being a contract, cannot impose obligations on third persons that are not a party to the contract. The most it can do is impose an obligation on a party to the contract that that party backs off as it sees fit in its contract with the relevant third person. This means that PAC cannot compel a meter reading service provider to attend PAC meetings although they may choose to attend if invited.

Q2: Consider impact of proposal for the overarching principle to apply to Modification Panel, UNCC, Sub Committees and Parties as set out in business rule 2a.

Business Rule 2a states “The Modification Panel, UNCC, sub-committees and Parties must always ensure that acts (or omissions) contribute to, and do not prejudice, the achievement of the Performance Assurance Objective even when such acts or omissions are not explicitly proscribed under UNC.”

Our view is that in terms of the Modification Panel this Business Rule effectively tries to impose a new relevant objective that puts the Performance Assurance Objective above other considerations. The Relevant Objectives are set out in Transporter Standard Special Condition A11 and can only be changed by a licence modification. We therefore do not see how this Business Rule can be implemented, although, if amended with more moderate language, it could be a consideration in assessing whether a modification furthers Relevant Objective f (Promotion of efficiency in the implementation and administration of the Code.). Had this rule been in place in 2020 there might have been an interesting discussion regarding Modification 0722 as, although its aim was to facilitate timely reconciliation, the use of estimated meter readings that were recorded as being recorded as actual meter readings might have been seen as impacting accurate settlement. We note though that the legal text provided for this Modification does not take this approach and presumably the proposer is content that the text reflects the intent of the Business Rule; however we believe that the text does not notwithstanding our objection to Business Rule 2a itself.

For UNCC and other UNC sub-committees our view is that it effectively changes the Terms of Reference of them and therefore analysis is required as to the impact on each of the Terms of Reference. We do not believe that this analysis has been done either by the 0674 workgroup or the committees and sub-committees themselves. Until this has been done it would be wise to assume that there may be an impact. We suggest that the 0674 workgroup needs to address this deficiency. This seems to be a new issue raised during consultation. We note though that the legal text does not take this approach and presumably the proposer is content that the text reflects the intent of the Business Rule; however we believe that the text does not notwithstanding our objection to Business Rule 2a itself.

In summary our view is that:

- Business Rule 2a seeks to put the Performance Assurance Objective above other UNC obligations, this cannot be the allowed particularly where other UNC obligations fulfil or help fulfil higher licence or statutory obligations;

- while we acknowledge that the legal text for TPD V16.1.2 c and d probably delivers the implication of Business Rule 2a we think that these are unreasonable obligations. See above legal text section; and
- the legal text does not deliver our understanding of the plain reading of Business Rule 2a

Are there any errors or omissions in this Modification Report that you think should be taken into account? *Include details of any impacts/costs to your organisation that are directly related to this.*

As mentioned above there is no analysis of the impact of Business Rule 2a on the Terms of Reference of UNCC and any other UNC sub-committees including the DSC Committees. We think that there could be a conflict between this new obligation and their existing obligations in some cases.

Please provide below any additional analysis or information to support your representation

We have taken the solution section and put comments in **red** where appropriate. These should assist the workgroup should the modification be returned to workgroup by Panel.

(Associated changes will be made to the Performance Assurance Framework documents).

- 1) Introduce a new objective to the UNC, the Performance Assurance Objective (PAO)

The Performance Assurance Objective is:

- a. To ensure in relation to a Day accurate and timely Settlement for the Day. **This taken literally requires accurate settlement for each Day individually rather than overall. This may pose a challenge in allocating theft volumes. A question arises between the balance of accuracy and timeliness and indeed if one can be offset against the other or whether an improvement in one cannot result in a degradation of the other even is only slightly. For example, UNC modification 0722 probably address timeliness more than accuracy and could be argued to adversely impact accuracy by the use of estimates treated as actuals. If this rule was in place would 0722 have been implemented?**

- 2) Introduce a new overarching principle to the UNC.

- a. The Modification Panel, UNCC, sub-committees and Parties must always ensure that acts (or omissions) contribute to, and do not prejudice, the achievement of the Performance Assurance Objective even when such acts or omissions are not explicitly proscribed under UNC. **We think that there are significant problems with this and comment on this under the specific question 2 above.**

- b. The acts or omissions of any other Party (such as another shipper, supplier or their agent) do not absolve any other Party of their obligations under the UNC.
 - c. Parties acknowledge that reports provided by PAFA or PAC shall constitute evidence of a Party's performance with regard to UNC compliance, and shall be accepted as such unless evidenced to the contrary.
 - d. Parties will use these reports to self-monitor performance.
 - e. Parties will also respond to PAFA/PAC enquiries with the requested information, timeously and in accordance with such process as may be specified in PAF Document from time to time.
- 3) Introduce a new overarching principle to the UNC of collective co-operation towards the specified objective.
- a. All UNC Parties acknowledge that each is dependent on the others for the achievement of the PAO and will cooperate wherever is necessary (whether explicitly required in UNC or not) to achieve the PAO.
- 4) Responsibility for updating the PAF Document to PAC (and upon notice to Parties and publication of the revised document). **The problem is that PAC is now able to define its own terms of reference and processes and there is no oversight over it so it could, if it wanted to, extend its remit as wide as it wanted and UNCC could do nothing about it. The DSC committees are also independent of UNCC but their scope of activity is laid out in GTD whereas this does not seem to be the case with PAC. A solution would either to have PAC under UNCC governance or for PAFD and PAT to be subject to UNCC approval.**
- 5) Define the PAC in V16, as an autonomous UNC sub-Committee following the principle used in General Terms D4 for DSC sub-Committees. PAC and PAFD will no longer be governed under Section V12 of UNC. **See comment on 4 above.**

To facilitate comparison the following terms to be incorporated into V16 are shown under each main heading of General Terms Section D 4.1 – 4.5 (mutual mutandis).

PAC COMMITTEE

a) Establishment and functions of the Performance Assurance Committee

In connection with the requirement to operate the UNC Performance Assurance Regime the following Network Code Sub-committee is established:

The Performance Assurance Committee (PAC)

The Performance Assurance Committee shall perform the functions and have the powers and duties provided in this section UNC V16, and the Performance Assurance Framework Document

The Performance Assurance Committee shall have control of the following documents:

- Document 1: Performance Assurance Reports Register (PARR)
- Document 2: The Risk Register
- Document 3: PAC letters of confirmation and company agreement
- Document 4: PAFA scope
- Document 5: PAF Document

A PAC Committee may establish a sub-committee for such purposes (within the scope of its functions, powers and duties) and comprising such members and on such terms as it decides; and references to a PAC Committee include any such sub-committee.

The PAC Committee is autonomous, and the UNC Committee has no power to overrule a decision of the PAC or its sub-committees or reduce or qualify the scope of its functions, powers.

No decision of the PAC shall be made or (if made) shall be effective if the decision would cause a party to be or act in breach of the UNC.

b. Constitution of the PAC

The PAC shall comprise representatives ("Committee Representatives") of each Customer Class as follows:

- (a) 9 individuals appointed as representatives of Shipper Users ("Shipper User Representatives"); and
- (b) 3 individuals appointed as representatives of Transporters and IGTs, of which:
 - (i) 2 shall be appointed by DN Operators ("DNO Representatives"); and
 - (ii) 1 shall be appointed by IGTs ("IGT Representatives").

For the avoidance of doubt NTS shall not have membership rights **Mod refers to transporters so implies that NTS could be in scope of PAC but will not have membership rights on PAC. Probably an oversight.**

For PAC to fulfil its role under the PAF, its Shipper members shall be appointed using the guidelines as defined in the UNC governed document:

[Uniform Network Code Panel, Uniform Network code committee \(UNCC\), Sub-Committees and Data Services Contract \(DSC\) Committees - Guidelines for the User Representative Appointment Process](#)

For PAC to fulfil its role under the PAF, its membership must behave in a manner that is consistent with the principles of the PAF and the duties of the PAC.

PAC Members are representatives in their own right and do not represent the company by which they are employed.

All PAC Members and their alternates will be required to sign the following documents to assure that the Member will be attending and voting at the PAC in the interests of the GB gas industry and not representing any commercial interest or commercial body or interest group:

- Letter of Confirmation, which includes:
 - Member impartiality,
 - Non-Disclosure Agreement,
 - Declaration of interest.
- Letter of agreement from Company Employing a committee member.
- And if applicable, Letter of Agreement from company nominating a committee member.

The documents listed above are controlled by the PAC and can be found in the PAC Framework Document.

c. Committee members and alternates

A list of all PAC Members and standing alternates is published on the Joint Office website.

Alternates need not necessarily come from the same company as the PAC Member. It will be for the PAC Member to consider the suitability of their alternate, in respect of experience and understanding of the issues that the PAC will deal with. For the avoidance of doubt a PAC Member can act as Alternate for another PAC Member

A single alternate may not represent more than one (1) other PAC Member.

d. Voting Arrangements

This Modification does not seek to make any changes to the extant voting arrangements for PAC as agreed by UNCC. The latest position on which is that UNC0732 has been approved and effective from 14 September 2020. TPD V16.2.1 has been footnoted as follows:

- Implementation of Modification 0732FT¹ effective 05:00hrs on 14/09/2020 will amend paragraph 16.2.1.

UNC0674 will be updated to reflect the legal text arising from UNC0732 for PAC voting majority.

e. Proceedings of PAC Committee meetings

The meeting will be quorate where there are at least four Shipper User PAC Members and two Transporters (DNO and/or IGT) PAC Members present with a minimum of six PAC Members in attendance. For the avoidance of doubt Alternates do not count towards quoracy (as per Mod Panel)

- The Code Administration Code of Practice shall apply to the conduct of the meetings.
- Information to be used within meetings will be provided to PAC Members, the Joint Office and the Ofgem representative via a secure web portal. Such information shall not be downloaded.
- PAC members, the Joint Office and Ofgem shall treat all information as confidential unless it is clearly marked otherwise.
- The default is PAC meetings are 'closed' to non-Members. PAC Members can agree to hold 'open' meetings.
- With agreement of the Chairperson, and for example for the purposes of but not limited to developing the PAC arrangements or carrying out investigations into performance, PAC Members can invite 3rd parties and non-members to the meeting.
- The CDSP may be required to attend (by one or more representatives) meetings of the PAC.
- OFGEM shall have the right for up to 3 representatives to attend as observers.

6 Appeal

a. To enable it to deliver upon its purpose of identifying and mitigating gas Settlement inaccuracy, the UNC gives PAC the power to apply Performance Assurance Techniques (PATs) specified in the PAFD to various industry roles.

b. The parties to whom the PATs are applied (the subject of a PAT) can be materially affected, financially, operationally or reputationally, by their application.

c. The party subject to a PAT may believe that the accuracy of the information underpinning PAC's use of a PAT is materially and demonstrably incorrect. It may also believe that the procedure surrounding use of the PAT, as set out in the PAT technical document, has demonstrably not been followed, resulting in a material impact on them.

¹ [Modification 0732FT - Performance Assurance Committee voting arrangements](#)

d. Where PAC determines that a party is to be referred to OFGEM the subject of the PAT is entitled to appeal the PAC's decision, initially to the PAC and potentially to UNCC. The decision of the PAC, having considered any new information that might arise from any subsequent UNCC appeal, is final.

e. The criteria for a valid appeal, is as follows:

- i. The inaccuracy of fact or irregularity of procedure can be demonstrated.
- ii. A material inaccuracy of fact or irregularity of procedure has occurred, such that the outcome would be different if the correct information or procedure were used instead.
- iii. The appeal must be raised with the PAC within 1 month of the relevant PAC decision.

f. Procedure;

- a) The gas PAFA will assess any appeal in respect of whether the criteria for the appeal has been met, before presenting the appeal to PAC at the next practicable opportunity.
- b) The PAFA's initial views on the validity of the appeal and the appropriate rectification will be presented to the PAC alongside the appellant's representations.
- c) PAC's original reasons for applying the PAT will form part of the material PAFA reviews and provides to PAC to aid its decision on the appeal.
- d) During the period between an appeal being raised and the PAC hearing the appeal, any obligations on the appellant, PAC and PAFA pursuant to a PAT which is wholly or partly the subject of the appeal will be suspended. The PAC's decision on the appeal will include guidance for resumption or termination of timescales for action under any of the PATs at issue.
- e) The PAC will treat the matter as confidential. All meetings to hear the appeal will be closed and the meeting and the material presented for consideration during an appeal will not be published.
- f) The appellant may be invited to present their case and their supporting evidence. Notice of the meeting will be not less than 14 Business Days.
- g) The PAC will determine the extent to which it accepts the appeal. This could be wholly, partially or not accepted. The PAC may recommend or provide guidance on how or whether the application of the original PAC decision resumes or continues.

g. Appeal Decision

- a) Any communications from PAC, PAFA or JO in regard to the Appeal shall be directed to the Performance Assurance Party's, (PAP), Company Secretary (and cc'd to the PA Representative)

- b) The PAC will respond in writing to the appellant within 10 Business Days of making their decision with the reasons for its decision.
- c) Where, following the decision of the Performance Assurance Committee in respect of an appeal, the Appellant Party considers that the grounds of appeal in paragraph continue to be met the Appellant Party may, within five (5) Business Days after the publication of the Performance Assurance Committee's appeal decision, appeal to the UNC Committee, by notice given to the PAC Secretary setting out the basis on which it considers the grounds of appeal are met.
- d) The UNCC will advise PAC of its observations and/or recommendations for PAC consideration. **The UNCC may decline to give a view as under the current arrangements it has no influence and cannot do anything regarding how PAC operates.**
- e) PAC will then either amend or uphold its original decision, justifying any departure from UNCC's view and notifying the PAP within 15 Business Days. UNCC cannot however overturn or amend PAC's decision.

Although UNCC cannot override a PAC decision, this process creates 'administrative tension' which incentivises PAC to ensure that its determinations are robust, proportionate, and fair, in order to avoid UNCC casting an alternative view of the appeal.

7) Section V16 will include amongst other things the following:

- i. The UNC Performance Assurance Objective and other terms pertaining to PAC
- ii. the composition of the Performance Assurance Committee membership, (as per the present Terms of Reference v2.2);
- iii. the basis on which Performance Assurance Committee members are to be appointed and from time to time removed and/or replaced. This to include that each User and its Affiliates holding more than one Gas Transporters Licence may submit up to one nomination for the purposes of the appointment process.
- iv. the basis on which a person (not being a committee member) will be appointed to chair each meeting of the Performance Assurance Committee; to include a PAC-appointed PAFA employee if necessary. **Disagree, this should be JO person it is a UNC committee**
- v. the basis on which a person (not being a committee member) will be appointed as secretary to the Performance Assurance Committee; to include a PAC-appointed PAFA employee if necessary. **Disagree, this should be JO person it is a UNC committee**
- vi. the basis on which decisions of the Performance Assurance Committee may be appealed to the Authority, (see section 6 above).

- vii. Definition of the Performance Assurance Framework Document and its purpose and governance, (removing it from V12 and moving it to a PAC-governed document).
 - viii. UNCC will have no power to overrule a decision of the PAC or its sub-committees, or to reduce or to qualify the scope of PAC's functions, powers and duties (per GT D4 treatment for DSC). **PAC can rewrite PAF Document and no one can intervene unless they raise a mod which is not quick**
 - ix. No decision of PAC shall be made if the decision would cause a party to breach UNC. **What about other Codes?**
 - x. Specify PAC controlled documents as being Performance Assurance Reports Register (PARR), The Risk Register, PAC letters of confirmation and company agreement, PAFA scope, PAFD.
 - xi. Definition of the Performance Assurance Party being a party who will be subject to Performance Assurance Objective (either a Party to UNC, CDSP or any other party whose performance or non-performance of activities governed directly or indirectly under UNC) and whose acts or omissions could impact another PAP's contribution to the Performance Assurance Objective.
- 8) Give PAC authority in the UNC, with relevant protections noted below, to include:
- a) To determine the performance and applicable assurance monitoring and incentive tools to be applied to a Party, consistent with those defined in the PAFD, as amended by PAC from time to time.
 - b) PAC will be added to "UNC – Modification Rules 6.1.1" as a Proposer to raise performance-related modifications. **The problem is that PAC changes and the lead person may no longer be on PAC.** This has the benefit that the proposal is non-partisan, and in the interests of the industry not in the interests of a single UNC Party proposing a modification. In particular if PAC considered that a modification was in the interests of industry performance assurance it might be difficult to get an individual shipper to act as proposer. Controls over this power will be that the proposal is;
 - i. subject to agreement by a majority of PAC members, **what does majority mean, simple majority or constituency voting** and
 - ii. restricted to changes reasonably considered to impact on the achievement of the Performance Assurance Objective (for example where rules on process or performance are proven to be unnecessary / ineffective). **This could be stretched and it is not clear that UNC panel could reject a mod that it did not believe was within PAC's remit.**
 - iii. Subject to the same process as for any other modification through UNC Mod Panel.

Such mods could be drafted by (but not limited to) CDSP (include this as a Direct Function) or PAFA (include as per PAFD Scope of PAFA). (This will make industry change more agile, for example UNC Modifications 721 & 722 could have been raised by PAC and drafted by Xoserve or PAFA immediately following the 24 March 2020 PAC meeting when the prospect of overstated allocation was first raised) This also codifies a practice that has developed over the last couple of years in which certain modifications have been developed with contributions from, or raised on behalf of, PAC such as UNC 0664 and UNC 0674.

- c) PAC will define those areas of a Party's or of Parties' performance which impact the PA Objective. PAC will set the tolerance threshold and determine those levels at which Performance Assurance Techniques will apply. PAC will require UNC Parties to improve in those areas and will have powers to impose sanctions where performance is below the required level, provided the thresholds, areas and sanctions/techniques are consistent with what is defined from time to time in the PAFD. **There is no oversight or control over PAC**
- d) Require parties to respond to and meet PAC requests reasonably made in the context of performance matters and in pursuit of the Performance Assurance Objective. This requires a carve-out under GT B4.4.2.
- e) Deploy Performance Assurance Techniques (PATs) described in the PAFD as they deem appropriate, including applying derogations where reasonable and appropriate (for example where performance is impacted by pandemic, events of force majeure or industry developments).
- f) Parties acknowledge that:
 - i. such techniques could include publishing on the Joint Office website the company names and performance (only) of Parties to allow peer comparison. Such information will be limited to the performance measures outlined in PAFD from time to time. In so doing, PAC will not divulge any information on the Parties' specific commercial or operational arrangements, the reasons for the level of performance or any details of the improvement plans.
 - ii. PAC and/or PAFA and/or CDSP will engage with the PAP in a manner reasonably intended to support and encourage improved performance, This could require the PAP to describe, under confidentiality terms, its operational processes and commercial arrangements, with the sole objective of identifying where changes might be proposed that could improve achievement of the PAO.
- g) The Proposer of a modification will be required to seek a ROM from Xoserve for workgroup consideration of the impact of their modification proposal where such proposal:
 - i. adds or changes UNC performance standards or
 - ii. impacts a Party's performance against such standards to specify an appropriate monitoring report.

- h) Definition of the Performance Assurance Framework Document and its purpose and governance, (including PAC authority to make changes to the document));
- i) Remove the UNC requirements for UNC approval of changes to PARR (remove PARR from UNC Related Documents and UNCC governance, delete V12.1(h) and V16.5.2). PARR becomes an Annex to PAFD subject to PAC Governance. The principle here is to remove unnecessary barriers to data access for PAC which reduce the effectiveness of performance assurance; **PAFD should be subject to UNCC governance to provide oversight.**
- j) Request reports or data that it deems required to understand performance issues, causes and materiality of impact on the Performance Assurance Objective. **Subject to spend being within PAC budget or otherwise by raising a DSC change proposal**

PAC will advise UNCC of any changes to data access rights.

- k) Remove references to PARR Schedule 1 which is now obsolete.
- l) Clarify that both PAC and PAFA may see all data requested un-anonymised, so including shipper names; this is not limited to PARR 'B' schedules as Xoserve interprets V16.5.3. PAC members have signed confidentiality provisions and acknowledged that they are acting on behalf of GB Gas industry. PAFA are bound by confidentiality terms in their agreement with CDSP. There should be no reason to bar PAC from access to information that it reasonably requires for performance assurance;
- m) Such un-anonymised data or information to include anything that PAC reasonably requests in pursuit of their duties under UNC and at least but not limited to:
 - i. all data identified in DPM.
 - ii. all data available in DDP.
 - iii. all such other data items or information held by CDSP.
 - iv. anything else that CDSP can reasonably obtain subject to DSC approval.
- n) PAC may establish a sub-committee for such purposes (within the scope of its functions, powers and duties) and comprising such members and on such terms as it decides.
- o) PAC may submit DSC Change Proposals which may include internal and/or external costs. Such requests are:
 - i. limited to investigations and analysis of settlement, performance of PAPs and related matters reasonably

considered to impact on the achievement of the Performance Assurance Objective (for example where rules on process or performance are proven to be unnecessary / ineffective), and

- ii. subject to agreement by a majority of PAC members, and
 - iii. Subject to the same process as for any other proposals through DSC Change Management.
- p) Requesting the remedy of performance issues, even where there is no explicit prescriptive performance standard specified in the code, where that performance issue is limiting or preventing the achievement of the Performance Assurance Objective (PAO)

9) PAF Protections

- a) All shippers shall be required to nominate a person, (and appropriate delegate), in their organisation to act in capacity as First Point of Contact in relation to all PAC correspondence (the “PA Representative”), such person to have appropriate seniority with suitable knowledge and authority so as to understand and instruct action to be taken in regard to such communication, including attending PAC if required and providing suitably informed escalation contacts up to director level should PAC require it.
- b) PAC, PAFA, JO and CDSP personnel and any other party attending closed PAC meetings may not reveal the workings or the decision-making process in reaching any decisions, save when required by law or due to an appeal from any affected party.
- c) PAC, PAFA, JO and CDSP personnel and any other party attending closed PAC meeting are required to sign and adhere to undying non-disclosure agreements and any confidential material downloaded must be deleted when no longer required and when ceasing to attend the PAC (for whatever reason), whichever is sooner.
- d) Using an approach similar to Section X for EBCC (which **avoids the need for each and every Party to provide separate indemnities**), Members (being persons) of PAC, PAFA and CDSP connected with a performance assurance decision should be protected from any litigation connected with the operation of the performance assurance regime.
- e) Performance Assurance Techniques shall be limited to those specified in the PAFD and as amended from time to time in accordance with 9. g) below.
- f) PAC shall be prohibited from levying direct costs on PAPs (i.e. directly invoicing PAPs for charges of any kind) unless and until and only if such are specified in a modification approved for implementation by the Authority.

- g) For the avoidance of doubt this does not preclude PAC from using PATs which involve the PAP incurring costs or resourcing activity that might reasonably be required to comply with PATs and with the Party's obligations under UNC.
- h) PAC will conduct an **Annual PAF Review** by industry consultation, following which PAC will publish an **Annual PAF Delivery Plan and update the PAFD** by 1 month prior to the new Gas Year.
 - i. The process for this is outlined in the PAFD. It is intended to determine how effective the PAF has been, what changes are required (e.g. to the PAFD, to Code, to PAFA, etc) and what performance management actions will be taken during the upcoming year.
 - ii. The consultation will commence 3 months before the start of the Gas Year.
 - iii. Following the consultation PAC will determine The PAF Delivery Plan and revise the PAFD.
 - iv. Both will be published simultaneously 1 month before the start of the Gas Year.
- 10) PAC will be an elected and impartial committee with appropriate expertise to make assessments and judgements using the tools and evidence provided to inform actions in pursuit of the Performance Assurance Objective.

Individuals with an interest in any matter being discussed will declare it; PAFA will advise PAC if it becomes aware of potential conflict of interest. PAC members will apply their expertise without discrimination, as representatives in their own right and vote at the PAC in the interests of the GB gas industry and not representing any commercial interest or commercial body or interest group or the company by which they are employed.
- 11) Where PAC requests an interview with a party, the party is required to attend and send an individual(s) with the required expertise and authority.
- 12) PAC is a UNC sub-committee, established under TPD V16 and cannot be amended without Authority approval; and it cannot under GT B4.3.1 'cease to be established' by UNCC. **This is acceptable only if PAC's activities are subject to oversight such as amendments to PAFD having to be approved by UNCC.**