

Representation Draft Modification Report

Modification UNC 0674: Performance Assurance Techniques and Controls

1. **Consultation close out date:** 24th May 2021
2. **Respond to:** enquiries@gasgovernance.co.uk
3. **Organisation:** Gazprom Energy
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4. **Representative:** Steve Mulinganie
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5. **Date of Representation:** 24th May 2021
6. **Do you support or oppose Implementation:**
We **do not support** implementation of the Modification and we provide detailed comments below under section 7 & 14 below.
7. **Please summarise (in 1 paragraph) the key reason(s) for your position:**
Whilst we support in principle the introduction of appropriate and proportionate performance assurance techniques and controls. We believe this Modification is neither appropriate nor proportionate as it seeks to place the Performance Assurance Committee (PAC) above reasonable reproach and oversight. As we have recently seen from the AUGÉ process it is critical to ensure appropriate and transparent oversight of UNC Committees.

Importantly the proposals, as set out, are not subject to either a reasonableness and/or a cost benefit test despite being able to generate substantial industry costs which may flow through to consumers.

We would also question the value of this modification, at this time, considering that as part of the Switching Programme the Retail Energy Code (REC) is implementing its own Performance Assurance Board (PAB).

Whilst we appreciate that when the modification was originally raised the REC was at an early stage of its development. However due to the time it has taken to get the modification in a fit state for consultation consideration should be given as to its ongoing value considering the status and timing of this other major industry initiative.

8. Are there any new or additional Issues for the Modification Report?

Yes – these are also discussed further in section 14 below.

Interaction with non-Code Parties - We believe the scope of the powers being proposed go beyond the viries of the Uniform Network Code (UNC) and propose to impose sanctions in such circumstances. It is unclear on what basis and viries the Performance Assurance Committee (not a Board as per REC) would be able to undertake such interventions with non-code parties.

Interaction with the UNC Modification Panel – It is unclear how the introducing a new Objective (The Performance Assurance Objective which is also unclear) interacts with the current Relevant Objectives in terms of primacy and the operation of the UNC.

9. Self-Governance Statement Do you agree with the status?

NA

10. Relevant Objectives:

How would implementation of this modification impact the relevant objectives?

We **disagree** that this modification is positive in respect of Relevant Objective (d) as a reduction of innovation will also have a detrimental impact on competition and (f) as the Relevant Objectives of the UNC must remain the primary drivers for code change and not be undermined solely for the purpose of performance assurance.

11. Impacts & Costs:

What analysis, development and on-going costs would you face if this modification was implemented?

We believe the proposal has the potential to create additional significant ongoing costs as it is not subject to a cost/benefit test.

12. Implementation:

What lead times would you wish to see prior to this modification being implemented, and why?

In its current state we do not believe the modification is implementable within the proposed 3 months' notice period.

13. Legal Text:

Are you satisfied that the legal text will deliver the intent of the modification?

We have **not reviewed** the Legal Text provided.

14. Is there anything further you wish to be taken into account:

Please provide any additional comments, supporting analysis, or other information that you believe should be taken into account or you wish to emphasise.

Yes

Interaction with non-Code Parties

In summary the solution is to oblige UNC Parties (transporters, shippers) and CDSP (via DSC 3.5) to comply with an objective of equitable settlement and to cooperate with other Parties to further this objective.

It will also give PAC some additional authority to identify those areas of performance (whether in Code or not) which impact the objective, to require UNC Parties to improve in those areas and to impose sanctions where performance is below the required level, and to engage in discussion with relevant non-Parties where it is reasonably considered that they are impacting the objective. It will also require Proposer of a modification which adds or changes UNC performance standards or might impact a Party's performance against such standards to specify an appropriate monitoring report. The CDSP will be required to provide a ROM (rough order of magnitude) for workgroup consideration.

We believe the scope of the powers being proposed go beyond the viries of the Uniform Network Code (UNC) and even propose to impose sanctions on those parties in some circumstances. It is unclear on what basis and authority the Performance Assurance Committee (PAC) would be able to undertake such interventions with non-code parties.

Reporting

reasonably considered that they are impacting the objective. It will also require Proposer of a modification which adds or changes UNC performance standards or might impact a Party's performance against such standards to specify an appropriate monitoring report. The CDSP will be required to provide a ROM (rough order of magnitude) for workgroup consideration.

Whilst we understand the intent of the proposal for Parties raising Modifications to give appropriate consideration to Performance Reporting. The Business Rule obligation seems vague as it refers to "*might impact*". A Proposer, who is not a PAC Member, will not have the level of insight and focus that PAC itself has and yet must "*specify an appropriate monitoring report*". We do not believe that this is fair and reasonable obligation to place on a Modification Proposer.

Interaction with the UNC Modification Panel

- 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.

It is unclear how the introducing a new Objective, the Performance Assurance Objective (PAO), interacts with the current Relevant Objectives. As we read it, the Business Rules seek to introduce the PAO as a new overarching principle in the UNC and further requires the Panel: -

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.

Accordingly, we believe as well as fundamentally changing the scope of the Panel from its focus on the Relevant Objectives it also seems to place an unreasonable obligation on the Panel in relation to matters outside the UNC's viries and thus exposes the existing governance process if the test of *"when such acts or omissions are not explicitly proscribed under the UNC"* is implemented.

The Performance Assurance Objective (PAO)

In summary the solution is to oblige UNC Parties (transporters, shippers) and CDSP (via DSC 3.5) to comply with an objective of equitable settlement and to cooperate with other Parties to further this objective.

It will also give PAC some additional authority to identify those areas of performance (whether in Code or not) which impact the objective, to require UNC Parties to improve in those areas and to impose sanctions where

The PAO is set initially as *"Equitable Settlement"* and parties are obliged to cooperate with other Parties to further this objective. We note no test of reasonableness or cost benefit is applied to the objective and this could lead to the inefficient implementation of interventions or changes.

However later in the document the PAO is defined differently as

- 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.

And further on in the document the Purpose is described as

- 130 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.

The Business Rules are therefore unclear and in conflict, and the proposer needs to clarify exactly which definition they prefer although we note none are currently subject to a reasonableness and/or cost benefit test. Therefore, as drafted one could therefore argue that nothing less than 100% performance is necessary to achieve (a) even though the cost of meeting this aspiration will far outweigh the benefit!

It would also help to understand how the PAO alters the existing obligations in the UNC i.e. to what extent does the UNC not already seek to ensure equitable settlement is achieved?

Exception Circumstances

If we seek to put such onerous arrangements in place, we will need to ensure that exceptional events such as the consequences of extreme events e.g. the ongoing pandemic are able to be managed appropriately and proportionately. We would note that the current PAC continued to chase Shippers on reading performance despite in many cases non domestic customers sites being closed and meter readers being unable to safely visit sites that were open.

Reporting as prima facia evidence of performance

- 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.

Whilst we understand and have some sympathy with the proposer's approach re reporting i.e. that the reports provided by the PAFA or PAC should be considered "robust". It is an acknowledged concern in the industry that the quality of information being provided to PAC has not been proven sufficiently accurate to rely upon even under the current regime.

This existing quality issue would be a concern if the PAC was to rely on this information for the purposes of imposing sanctions. We would therefore need to see a robust review process associated for such information and reports to ensure it is fit for purpose and of sufficient quality to be used for those purposes.

It should also be noted that *reports* are in lower case in the text and thus it is unclear what constitutes a relevant report. We note that reports are referred to often, there should be a clear definition, it is only defined in the PAFD when referred to as: -

‘Performance Report(s)’ - means a report or reports discussed in section 17 of this document and defined in the Performance Report Register

- d. Parties will use these reports to self-monitor performance.

The text also refers to Parties having access to these *reports* to self-monitor performance, so this implies the reports as set out are scheduled reports issued to Parties. This infers *reports* are more formal than implied by the prior text?

Any Report used to monitor performance should be readily available to all parties for at least 3-6 months, so it is possible that you can self-monitor across a reasonable period e.g. If underperformance is highlighted for Class 3 read performance, but it is identified that you have no AMRSP assigned, the party should also have access to this data too.

Provision of information

- 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.

The requirement for Parties to provide information is not limited and does not reflect instances where parties cannot be legally compelled to provide information. Surely this obligation should be limited accordingly.

Parties should only really provide information that is relevant, there seems to be no ability to challenge or deny an unreasonable request for information, which could be an issue due to commercial sensitivity etc.

The Role of the Committee

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.
- 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.

The Performance Assurance Committee is not a Performance Assurance Board as per the Retail Energy Code (REC) and it seems to be seeking powers commensurate with a Board whilst not having in place all the checks and balances (governance) of a Board. It is also seeking primacy over the UNC Committee with no ability to overrule its decisions nor to limit its functions and powers.

65 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.

The PAC is seeking to remove itself from any oversight and to be considered autonomous however it does not say how it will introduce suitable governance commensurate with being given such powers.

Appeals and the role of Ofgem

140 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.

Earlier the UNCC has no power to determine and now it does and although reference to "*potentially*" is made in the text 175(C) it should also read "*and subsequently*" as the right is always exercisable

I would also note the basis of such an appeal is presumably were (b) applies

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.

So why (e)

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.

In relation to the appeal does the party set out what form of rectification they are seeking?

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.

Surely it is a “*must*” be invited as the party has the right to be present and observe the determination. They, of course, may choose to attend or not attend.

- 175 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.
- 180 d) The UNCC will advise PAC of its observations and/or recommendations for PAC consideration.
- 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.
- 185 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.

This process creates a concept of oversight but is compromised as in reality as it cannot compel any change. Whilst the PAC in publishing its decision must “*justify any departure from the UNCC’s view*” this does not seem robust enough as surely it must set out its position in relation to the UNCC’s observations and/or recommendations as set out in (d)

What are the grounds for the appeal that have to be met?

Do these arrangements carve out the rights of a party to enact ADR in accordance with the UNC?

Role of the PAC

- 8) Give PAC authority in the UNC, with relevant protections noted below, to include:
- 220 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.
- 225 b) PAC will be added to “UNC – Modification Rules 6.1.1” as a Proposer to raise performance-related modifications. 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;
- 230 i. subject to agreement by a majority of PAC members, 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).
- 235 iii. Subject to the same process as for any other modification through UNC Mod Panel.
- 240 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.

Again, we would note the PAC is not a Code Manager and they should not be able to make unilateral changes to UNC as set out in (b) and in any event any decisions of this importance it should require the unanimous not a majority (b i) approval of the Committee.

255	f)	Parties acknowledge that:
260	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.
265	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.

The publication of any information in the public domain could be damaging to parties and in the absence of a counter narrative may not provide a fair and balanced view of the issue. It is not clear to us why we should be compelled to provide information that may be commercially sensitive and confidential under other agreements

285	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;
290	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:
295	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.

The scope of (l) and (m) above is different

300	o)	PAC may submit DSC Change Proposals which may include internal and/or external costs. Such requests are:
305	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.

Note our previous comments on Modifications - we don't agree. But even if this was implemented it should be on basis of a unanimous decision

- 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.

Presumably Ofgem would be entitled to the relevant information as necessary

355	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.
360		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.

Why is it in the interests of the GB gas industry surely, it's in compliance to the PAO?