

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; gap: 5px;"> <div style="border: 1px solid green; background-color: #00a651; color: white; padding: 5px; display: flex; align-items: center; justify-content: center;"> 01 Modification </div> <div style="border: 1px solid #00a651; padding: 5px; display: flex; align-items: center; justify-content: center;"> 02 Workgroup Report </div> <div style="border: 1px solid #00a651; padding: 5px; display: flex; align-items: center; justify-content: center;"> 03 Draft Modification Report </div> <div style="border: 1px solid #00a651; padding: 5px; display: flex; align-items: center; justify-content: center;"> 04 Final Modification Report </div> </div>
<p>Purpose of Modification:</p> <p>To alter the Modification Rules, to amend the voting for Self-Governance Modifications which have alternatives, and to simplify the governance of modifications with alternates, where individually they are due to follow different governance processes.</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:</p> <p>None</p>	
	<p>Medium Impact:</p> <p>UNC Modification Panel Members</p>	
	<p>Low Impact:</p> <p>All Code Parties</p>	

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Timetable			 commercial.enquiries@xoserve.com
The Proposer recommends the following timetable:			
Initial consideration by Workgroup	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		
<i>If workgroups meet in the second half of the month the timetable will slip one month.</i>			

1 Summary

What

Clear governance arrangements are required for Self-Governance (SG) where there are Alternate modifications on a common matter. This proposal sets out rules that are consistent with how Authority Direction Alternative modifications are processed and seek 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

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

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 this 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 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.

4 Code Specific Matters

Reference Documents

UNC Modification Rules: [https://www.gasgovernance.co.uk/sites/default/files/ggf/Modification Rules_30.pdf](https://www.gasgovernance.co.uk/sites/default/files/ggf/Modification_Rules_30.pdf) published at <https://www.gasgovernance.co.uk/general>

Knowledge/Skills

No special knowledge or skills are required.

5 Solution

Options *(this section is for information only)*

Panel voting

A key issue is the voting arrangements at Panel. 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 neither 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.

Of the above only options 1, 3, 6 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 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 is the proposed option as this means Panel Representatives and the wider UNC Parties take responsibility for making the decision which meets the aims of Self-Governance.

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 would 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 only way forward if change is required.

Proposed solution

Panel voting

The proposed solution puts the responsibility for a decision in the hands of the Panel Representatives and the Parties to the UNC. This is consistent with the concept of Self-Governance.

Panel is required to make a determination as to whether or not the Self-Governance Modification Proposal should be implemented (having regard to whether or not the Self-Governance Modification Proposal better facilitates the achievement of the Relevant Objectives) (MR 9.3.10.a).

Following Panel votes that result in Self-Governance Alternative Deadlock (SAD) no Final Workgroup Report will be issued and the proposed process to resolve the deadlock and to obtain the view of the Panel is:

1. Defer to the next Panel meeting to allow for wider informal consideration by the proposers and Shipper and GT/IGT parties. At this next Panel meeting either vote again (see step 2) send the proposals back to workgroup if the Panel has a reasonable expectation that this further period will result in a revised proposal that has more support. If the proposals are sent back to workgroup then they are treated in accordance with the Variation procedures in the Modification Rules.
2. Panel holds vote(s), as described below, but only in relation to which of the proposals better facilitates the relevant objectives. If this does not result in a panel determination to implement one of the proposals then none are implemented and the process stops. The modifications cannot be resurrected and a new Modification Proposal is required to progress the issue. The SAD process below reflects the process in Modification Rules 9.4.2 which describes how Panel comes to a "view" regarding the relative merits of Alternatives to Modification Proposals that require an Authority decision, therefore the proposed voting process is:

- a. Panel votes to determine which proposal better reflects the relevant objectives, if there is a panel majority then that proposal is implemented.
- b. If there is not a panel majority then if there is a tie for the alternatives with the highest number of votes then, where there are alternatives with fewer votes, the alternative(s) with the fewest votes are removed and a re-vote held (this process may occur more than once) until there is no tie or there are no other alternatives to eliminate. In the case of a panel majority the panel determines that that modification is implemented.³
- c. In the case where this process does not produce a panel majority for one modification proposal then the process ends and none are implemented as Panel has failed to make a determination.

It should be noted that this re-voting process can still result in there being no Panel Majority. Appendix 1 gives examples of how this would work in practice.

Note in the case of (c) a Party could appeal (see MR section 13) to the Authority on the grounds of it would be unfairly prejudiced by non-implementation but not on the grounds that a non-implemented proposal better facilitated a relevant objective because this ground for an appeal relies on Panel having made a determination which, by definition, it has not done. This modification does not propose to amend the Appeal Criteria to allow an appeal in this case.

In addition to the above changes to the voting process, further changes to the Modification Rules may be required to clarify, for the avoidance of doubt, that the existing rules on Alternatives apply equally to SG Alternatives and Authority Decision Alternatives and to work through the process to ensure that the Joint Office has clear rules regarding how to process Alternatives to Self-Governance Modification Proposals. The generic concept of an alternative modification proposals is introduced in Modification Rules 6.4 and is not a defined term. The purpose of that rule is to bind together proposals that deal with a common matter to ensure that there are not competing proposals dealing with a common matter following different timescales.

Mixed Modifications

For mixed modifications, the proposal is to enable the Panel to treat the Self-Governance Modification Proposals or Alternatives as following the Authority Decision path.

Amendments Required to Modification Rules

The table below shows the Proposer's view of the sections of the Modification Rules relevant to the solution and our initial view as to whether amendments are required.

Modification Rules paragraph	Purpose	Amendment required?
6.4	Introduces concept of alternative modification proposal	No. This applies equally to SG and Authority Direction modifications. See below for "mixed modifications"
6.6	Introduces concept of Self Governance Modification Proposal	No. See below for "mixed modifications"

³ This process is limited to the situation where there is a tie because if it was applied to all votes where there was not a panel majority it would lead to the progressive removal of all alternatives until only one remained. In practice the number of proposals with two or more alternatives is likely to be limited.

6.6.1	Process for Panel to issue Self-Governance statement	Yes. Modified to say that Panel cannot issue a Self-Governance statement for alternatives to Authority Decision Modification Proposal and that it should be treated as Authority Decision.
6.6.7	Process for Panel to issue materiality statement where Self-Governance criteria are not satisfied	Yes. Needs to be modified in case where Panel has issued a Self-Governance statement for a Modification Proposal but an alternative proposal is raised that Panel believes should be Authority Decision.
7.2.3	Process for determining whether Self-Governance statement should be issued	Yes. Required if “mixed modification” solution is to treat Self Governance proposals as Authority Decision.
8	Workgroups	Yes. The proposed voting solution envisages the possibility of referral back to a workgroup.
9.3.3	Panel determines whether recommend implementation to the Authority	No. This refers to Authority Decision modifications
9.3.9	Dis-applies some of the previous provisions in the case of Self-Governance modifications	No. Section 9 could be clearer but is the product of incremental changes and does work.
9.3.10	Voting arrangements for Self-Governance Modification Proposals	Yes. Will require amending to reflect the process agreed.
9.5	Further consultation	Yes. The proposed voting solution envisages the possibility of further consultation.
12.8	Panel requests a View from Authority	No. This approach is not the proposed way forward.
13	Appeals	No. No changes to the appeal process are proposed.

6 Impacts & Other Considerations

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

This modification does not impact a Significant Code Review (SCR) or other significant industry change projects.

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

To be produced when the legal text has been provided.

Text

Legal text has not been provided as the detail of the process may change following workgroup discussion.

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

Examples of proposed voting arrangements

Example 1

Consider a proposal with two alternatives, 1, 1A, 1B

Assume Panels votes as follows in determining which better facilitated the relevant objectives:

1: 5 votes, 1A: 5 votes, 1B: 2 votes

Under the current arrangements there is no Panel Majority and none are implemented.

Under the proposed arrangements panel would vote again (rather than those voting in favour of 1B just voting again) but with only 1 and 1A being available.

If this resulted in:

- a) 1: 7 votes, 1A: 5 votes

then there would be a Panel Majority in support of 1

- b) 1: 6 votes, 1A: 6 votes

then there is still a tie but there are no other alternatives to be removed and so the tie remains and there is no Panel Majority and none are implemented

- c) 1: 6 votes, 1A: 5 votes, 1 abstention

then there is no Panel Majority (for a determination the voting is on votes exercisable not votes exercised) and none are implemented

Example 2

Consider a proposal with two alternatives, 2, 2A, 2B

Assume Panel votes as follows in determining which better facilitated the relevant objectives

2: 5 votes, 2A: 4 votes, 2B: 3 votes

Under the current arrangements there is no Panel Majority and none are implemented

Under the proposed arrangement there is no Panel Majority. There is no tie between the proposals with the highest number of votes so the process ends, there is no Panel Majority and none are implemented.

Example 3

Consider a proposal with three alternatives, 3, 3A, 3B, 3C

Assume Panels votes as follows in determining which better facilitated the relevant objectives

3: 4 votes, 3A: 3 votes, 3B: 3 votes, 3C: 2 votes

Under the current arrangements there is no Panel Majority and none are implemented.

Under the proposed arrangement there is no Panel Majority. Although there is a tie, it is not between the proposals with the highest number of votes so the process ends. There is no Panel Majority and none are implemented.