

Draft Modification Report
Use of Principles of Governance in Applying Section Y of Network Code
Modification Reference Number 0714

Version 1.0

This Draft Modification Report is made pursuant to Rule 7.3 of the Modification Rules and follows the format required under Rule 8.9.3.

1. The Modification Proposal

To introduce the Principles of Good Governance within the Modification Rules as currently included within Network Code.

It is proposed that the "Network Code Principles of Good Governance" is an ancillary document maintained by Transco under the management of the Modification Panel. A draft of this document is included below for consideration.

**“Network Code
Principles of Governance**

1. Application and Status of Principles

• **Application**

This document sets out the principles which;

- a. should be borne in mind by Network Code parties when making Modification Proposals in respect of Section Y of Network Code, and,
- b. will be referenced by the Modification Panel when considering the suitability of any such proposal.

• **Status**

These Principles are based upon those published by Ofgem in its “Gas Retail Governance – Further Consultation” published in June 2003. They do not form part of the Network Code and may be amended by time to time by Panel Majority

2. Purpose of Principles

By better facilitating these Principles any modifications to Section Y should result in a better balanced and fairer governance regime for all participants in Network Code.

3. Principles

a. Effectiveness

To be effective the Modification Rules should enable proposals to be raised and progressed through development and consultation at an appropriate pace, balancing the potentially conflicting wishes of different stakeholders and producing a fair, balanced report to Ofgem setting out the views and recommendations of the parties.

b. Efficiency

The Modification Rules should balance the need for timely resolution and thorough consideration of issues yet produce a cost effective process for the industry.

c. Transparency

The operation of the Modification Rules and decisions made under them should be transparent to all interested parties. Equally any processes and procedures established under the Rules should be documented and made available.

d. Participation

All interested parties should be able to actively and effectively participate in the governance regime. There should be no exclusion or relevant information or viewpoints.

e. Accountability

The party or parties responsible for the management and administration of the governance process must be accountable to Network Code parties for the impartial and efficient operation of the governance process.

f. Consistency

The Modification Rules do not operate in complete isolation and should recognise and accommodate their relationship with other governance tools such as the Supply Point Administration Agreement (SPAA). Equally, the party or parties responsible for the management and administration of the governance process must ensure consistent, impartial application of the Rules to all proposals.”

Proposed legal text is as follows:

Section Y,

Paragraph 2.1, Defined Terms, add new definition:

“**Network Code Principles of Governance**”: a set of standing principles maintained by Transco (as amended from time to time by Panel Majority), by reference to which the Modification Panel will judge the desirability of any proposal to modify Section Y of the Code;”

Paragraph 6.2 Form of Modification Proposals, amend sub-paragraph 6.2.1 (c) as follows :

“...facilitate the achievement of the Relevant Objectives, and in the case of a Modification Proposal to Section Y, the basis on which the Proposer considers it would better facilitate the ‘Network Code Principles of Governance’;”

Paragraph 7.2.2, add new sub-paragraph:

“(f) (ii) that the Modification Proposal should be referred back to the Proposer together with suggested areas for amendment so that the proposal may better facilitate the ‘Network Code Principles of Governance’”

and renumber the existing sub-paragraph accordingly.

Add new paragraph:

“7.2.5. Where the Modification Panel discusses a Modification Proposal which it has previously discussed and referred back to the Proposer in accordance with paragraph 7.2.2 (f) (ii) the Modification Panel may;

- (a) make a determination in accordance with paragraph 7.2.2 (d), or 7.2.2 (f), or;
- (b) where the Modification Panel shall make no such determination the Modification Proposal shall be dealt with in accordance with paragraph 7.3.”

Amend paragraph 7.3 as follows:

“7.3 Circulation of Draft Modification Reports

If the Modification Panel shall determine, pursuant to paragraphs 7.2.2(e) , 7.2.3(c)(i), or 7.2.4(b)(i) that a Modification Proposal or Third Party Modification Proposal shall be dealt with in accordance with this paragraph 7.3, or a Modification Proposal that is dealt with pursuant to paragraph 7.2.5 (b) Transco will within the fifteen (15) Business Days immediately following the date of the meeting at which the determination was made, prepare a Modification

Report (in draft) in accordance with paragraphs 8.9.3 or 8.10 (including the text of each Modification in respect of which implementation is being recommended) and circulate such draft report, inviting each User, each Third Party Participant and each Non Code Party (if any) to make representations (in such format as Transco shall require) within the fifteen (15) Business Days immediately following the date of that invitation in respect of the report.”

Amend sub paragraph 8.9.3 (c):

..... achievement of the Relevant Objectives and, if appropriate, the Network Code Principles of Governance;

Amend paragraph 11.9.3 (c)

~~“Modification Proposal or Third Party Modification to change the Workstream Chairman’s Guidelines, or,”~~

add new sub-paragraph 11.9.3 (d)

“to change the Network Code Principles of Governance”

2. Transco’s Opinion

Transco is supportive of the principles being suggested in this Modification Proposal and welcomes the additional clarity that might be afforded to the governance process through the adoption of these principles. However, clearly these principles could only be interpreted in a way that was consistent with the Licence.

The proposer suggests "that the "Network Code Principles of Good Governance" is an ancillary document". Transco would welcome clarification as to whether the proposer intends the principles to be a Network Code Ancillary Agreement.

3. Extent to which the proposed modification would better facilitate the relevant objectives

The proposer makes no specific reference as to how this Proposal would better facilitate the relevant objectives.

The proposer considers that the Proposal will better facilitate Transco's ability to comply with its licence condition 4D Conduct of Transportation Business as adherence to the Principles of Governance will make the operation of the modification process more transparent and hence remove any suggestion of discriminatory or preferential treatment by Transco.

In its decision letter to Modification Proposal 0679: Formally Include the Network Code Modification Rules within the Network Code, Ofgem "notes that the Balancing & Settlement Code refers specifically to promoting efficiency in the implementation and administration of the balancing and settlement arrangements. However, in judging whether a change to the modification rules themselves would or would not be worthwhile it does not seem that an objective of this type adds any particular clarity. Ofgem holds the view that the current objectives as defined in Standard Condition 9 of the Gas Transporters Licence , in particular objective b), are adequate for judging the benefits of a modification proposal on rule changes, though Ofgem will continue to monitor the situation and give further consideration to the possibility of reviewing the Network Code objectives at a future date, if appropriate".

On the basis of Ofgem's views, Transco believes that the Proposal better facilitates the relevant objectives as defined under Amended Standard Condition 9 of Transco's GT licence.

Transco invites views from respondents as to how they believe this Proposal better facilitates the relevant objectives.

**4. The implications for Transco of implementing the Modification Proposal , including
a) implications for the operation of the System:**

Transco does not anticipate any such implications.

b) development and capital cost and operating cost implications:

Transco does not envisage additional capital or operational costs as a result of this Proposal.

c) extent to which it is appropriate for Transco to recover the costs, and proposal for the most appropriate way for Transco to recover the costs:

No significant additional costs are anticipated.

d) analysis of the consequences (if any) this proposal would have on price regulation:

Implementation of this Proposal would not be expected to impact price regulation.

5. The consequence of implementing the Modification Proposal on the level of contractual risk to Transco under the Network Code as modified by the Modification Proposal

It is not anticipated that there will be a change to the level of contractual risk to Transco as a consequence of this Proposal.

6. The development implications and other implications for computer systems of Transco and related computer systems of Users

No such implications are anticipated.

7. The implications of implementing the Modification Proposal for Users

No such implications are anticipated.

8. The implications of implementing the Modification Proposal for Terminal Operators, Consumers, Connected System Operators, Suppliers, producers and, any Non-Network Code Party

Transco would welcome views from the above parties on any anticipated implications.

9. Consequences on the legislative and regulatory obligations and contractual relationships of Transco and each User and Non-Network Code Party of implementing the Modification Proposal

Transco is not aware of any such consequences.

10. Analysis of any advantages or disadvantages of implementation of the Modification Proposal

Advantages

Implementation of this Proposal will establish a clear set of principles, in addition to the relevant objectives, against which the Modification Panel will be able to judge the desirability of any proposal to modify Section Y of the Network Code.

Disadvantages

There is a risk that implementation of this Proposal may make the governance process overly complex.

11. Summary of the Representations (to the extent that the import of those representations are not reflected elsewhere in the Modification Report)

Transco now seeks responses to this Draft Modification Report.

12. The extent to which the implementation is required to enable Transco to facilitate compliance with safety or other legislation

Transco is unaware of any such requirements.

13. The extent to which the implementation is required having regard to any proposed change in the methodology established under Standard Condition 4(5) or the statement furnished by Transco under Standard Condition 4(1) of the Licence

Transco is unaware of any such requirements.

14. Programme of works required as a consequence of implementing the Modification Proposal

If this Proposal were to be implemented in its current format, Panel members would need to develop and agree, by Panel Majority, a set of "Network Code Principles of Governance". The process and governance to be utilised to develop and agree these new principles requires further clarification.

15. Proposed implementation timetable (including timetable for any necessary information systems changes)

An implementation timetable would need to be developed.

16. Recommendation concerning the implementation of the Modification Proposal

Transco supports the intent of the Proposal, however Transco's recommendation cannot be determined until it has fully considered the views of respondents to the Proposal.

17. Text

Representations are now sought in respect of this Draft Report and prior to Transco finalising the Report

Signed for and on behalf of Transco.

Signature:

Richard Court
Commercial Frameworks Manager
NT & T

Date: