

Richard Court,
Commercial Frameworks Manager,
NT&T.

Dear Richard,

22nd October 2004

Representation on Modification Proposals:

a) 0712 “Additional Information in Modification Proposals and Modification Reports”

b) 0713 “Ability for Users to Vary their Modification Proposals”

c) 0714 “Use of Principles of Governance in Applying Section Y of Network Code” and,

d) 0715 “Modification Panel Approval of the treatment of Representations in Final Modification Reports”

As a leading provider of governance services to the energy industry Gemserv is extremely interested in the outcome of these Modification Proposals and offers the following comments.

For simplicity and to avoid repetition the following points apply to all four Modification Reports;

General

- It is encouraging to note that Transco is supportive of the intent of and principles underlying these proposals yet disappointing that it is unable to recommend implementation even in principle. If there are flaws or shortcomings in the proposals from Transco’s perspective then it would be most constructive for the Modification Report to set out Transco’s preferred solution and seek views on the relative merits of the two approaches.
- Gemserv supports Transco and each of the proposer’s views that the proposals would better facilitate Transco’s discharge of its licence Condition 4D. Since relevant objective b) in licence Condition 9. 1 is “... the efficient discharge of its obligations under this licence” each of the proposals must therefore further facilitate the relevant objectives.

Specific Points

a) 0712 “Additional Information in Modification Proposals and Modification Reports”

- Transco seeks views on when legal drafting should be “standardised”, Gemserv believes this should be at Final Modification Report stage to take account of points made in Representations and possible variation of the proposal in hand (see also 0713). Transco should also consider publishing guidelines for this “standardisation” in order that any proposer providing text would be able to provide it in an acceptable format thus saving time.
- Transco raises problems regarding timescales, cost and level of detail of providing potential system impacts in Draft Modification Reports.
 - Timescales – It seems very unlikely that the Panel would send a poorly defined proposal directly to consultation; it would be much more likely to developed in a Workstream first during which process Transco would inevitably be coming to a view on systems impacts. In any exceptional case where Transco believed it needed extra time before the DMR was issued this can be approved by the Panel under it’s existing powers.
 - Costs – Presently Transco forms a view at (or before) DMR stage as to whether it supports a Proposal or not, as this will be significantly influenced by systems impacts it must currently have a reasonable idea before publishing the DMR, therefore this is work that Transco does anyway and consequently no additional costs should be incurred.
 - Level of detail – The body of the Proposal says “...Transco would be required to outline its initial understanding of how the UK Link systems would be impacted (NB this is not intended to be a full systems impact assessment...)” If the proposed legal text then implies a more prescriptive position beyond “an indicative high level” perhaps Transco should have provided alternative words with which it would be happy.

- A liability disclaimer might be sensible.
- **Implications for Transco of implementing, b) costs, and, c) cost recovery**
 - b) Gemserv doesn't believe that the proposal intends any significant additional costs to be created. In fact it seems highly likely that Transco will already be conducting high level impact assessments for its own purposes in the early stages of coming to a view on each Proposal, this being so then gathering the information represents no additional cost.

As referenced in para 6 of the DMR there may be some cost associated in amending the format of the DMR and FMR (echoed in other associated Modification Proposals 0715 & 0716) and consequently in amending the Registered Users website but this cost should not be excessive and hence covered under existing transportation revenues.

c) Gemserv does not believe there is a need for any special or additional cost recovery.

- **Programme of Works & Implementation timetable**

Presumably the program (sic) of works that needs to be developed is that implied by changing the report layout and the supporting internet systems. Clearly the former can change earlier than the latter but might be best to pick a date for both. As other Section Y related proposals may also require changes in NEMISYS it would be sensible to look at them together.

Gemserv is of the view that it would be appropriate to refer matters of implementation to the Network Code Committee in order to determine an appropriate date. It would be appropriate to include such a reference as part of the Recommendation within the FMR.

- **Legal Text**

Gemserv believes that the text supplied generally seems to carry through the intent of the Proposal. However, the reference to "7.2.5(b)" appears to relate to the text put forward within Modification Proposal 0714.

Apart from the area noted above concerning systems impacts (where Transco might usefully have proposed what changes it believes are necessary) it would be very helpful to the consultation process if Transco could be more open and forthcoming about the nature of any reservations it may have with the text supplied.

b) 0713 "Ability for Users to Vary their Modification Proposals"

Response to Transco Summary of Issues

- Views are sought on the legal text submitted with proposal.

Gemserv is of the opinion that this Text merely establishes parity between Transco and Users, it changes nothing other than permitting Users to vary their proposals in the same way and at the same time as Transco has enjoyed from the outset.
- When may changes be submitted?

This Proposal simply establishes parity, it does not change timing. Specifically, paragraph 11.4 is unaltered in this respect and hence a User may propose changes at the same time as Transco.
- How should the consultation process and timescales be managed?

In exactly the same way as they have been managed by Transco in respect of changes it has made to its proposals since the inception of the Code.
- Are changes needed to shipper licences?

Shippers do not have an existing licence obligation to ensure that their proposals

better facilitate the relevant objectives and so it is unclear why Transco feels it may be necessary to have such an obligation for changes to existing proposals in order to ensure that it (Transco) can continue to discharge its own licence obligations.

- Should timescales be extended to re-draft legal text and gather system impacts?
If text is provided by a User and the User wishes to vary its proposal then it would seem logical that the User should vary its text to reflect that change. If Transco still feels it needs extra time this can be addressed by the Panel on a case by case basis.
- How should further impact assessments and re-drafting be funded?
If a variation implied a major change to an impact assessment then perhaps this would constitute a new proposal. In any event Gemserv believes that publication of the assessment would imply making public work Transco already undertakes for its own purposes. If Transco publishes guidelines and/or leaves “standardisation” of text to FMR stage (as suggested under 0712) then it is unlikely that significant cost would be involved.
- **Implications for Transco Systems**
Gemserv is unclear what costs would be incurred in modifying Transco’s systems for a change to a User proposal over and above any functionality already provided to enable Transco to vary its own proposals.
- **Analysis of Disadvantages**
The legal text provided merely gives Users the same abilities and constraints that have applied to Transco from the outset. Gemserv is then at a loss to understand how the (unaltered) provisions of paragraph 11.4 can be a “disadvantage” when applied to User proposals yet not when applied to Transco proposals?
- **Programme of Works**
All this proposal does is extend existing rights and restrictions to Users, so it is hard to understand why any “works” might be required.
- **Implementation timetable**
Given the simple nature of the proposal there seems little impediment to immediate implementation. If any “works” are required then Gemserv believes the Network Code Committee should be to determine an appropriate date and this should be included as part of Transco’s Recommendation in the FMR.
- **Legal Text**
Gemserv believes the text supplied carries through the intent of the proposal with no defects being apparent.

c) 0714 “Use of Principles of Governance in Applying Section Y of Network Code”

- **Transco’s Opinion**
It seems improbable that proposer intends the Principles to be a Network Code “Ancillary Agreement”, indeed the proposal refers to them as an “Ancillary document” and it seems much more likely that the intention was that they have similar status to Chairman’s Guidelines and Workstream Chairman’s Guidelines before them.
- **Analysis of Disadvantages**
Gemserv does not regard the risk of making the process overly complex as significant.
- **Programme of Works**
As the proposal contains an initial set of Principles there should be very little if any

development required prior to implementation. The Panel can adopt the existing set of Principles and amend them as found appropriate over time.

- **Implementation timetable**
Given the simple nature of the proposal there seems little impediment to immediate implementation. If any “works” are required then Gemserv believes the Network Code Committee should be to determine an appropriate date and this should be included as part of Transco’s Recommendation in the FMR.
- **Legal Text**
Gemserv believes the text supplied carries through the intent of the proposal with no defects being apparent.

d) 0715 “Modification Panel Approval of the treatment of Representations in Final Modification Reports”

Response to Transco Summary of Issues

- Views requested on legal text submitted with proposal?
Gemserv believes that the text carries through the intent of the Proposal with no defects being apparent.
- What aspects of FMR may Members express opinion on?
The proposal is clear that it is only the treatment of the Representations.
- How will “changes” be included in FMR?
There is no suggestion in the proposal that any “changes” to the content of a FMR will be suggested. A change to the final format is required to incorporate a new section for any opinions that are expressed on representations. This could be included as an appendix or in any other appropriate cost effective way.
- Impact on Authority determination of adequacy (licence condition 9(12))?
The proposal doesn’t impinge on this condition. The Authority will still determine if representations have been “properly considered” but will now have the added benefit of an opinion expressed by the respondent.
- **Programme of Works**
There should be very little if any “works” involved in creating the ability to attach comments to the FMR in the form of an appendix. Gemserv believes this has already been done on occasions in the past.
- **Implementation timetable**
Given the simple nature of the proposal there seems little impediment to immediate implementation. If any “works” are required then Gemserv believes the Network Code Committee should be to determine an appropriate date and this should be included as part of Transco’s Recommendation in the FMR.
- **Legal Text**
Gemserv believes the text supplied carries through the intent of the proposal with no defects being apparent.

If you have any queries or wish to discuss this response further please do not hesitate to contact me or Richard Gray (richard.gray@gemserv.co.uk).
Yours sincerely,

Nigel Bromley,
Chief Executive, Gemserv