

CODE MODIFICATION PROPOSAL No. 0002(0714)
"Use of Principles of Governance in Applying Section Y of Network Code"
Version 2.0

Date: 09/09/2004

Proposed Implementation Date: 01/12/2004

Urgency: Non-Urgent

Proposer's preferred route through modification procedures and if applicable, justification for Urgency

(see the criteria at http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/2752_Urgency_Criteria.pdf)

In June 2003 Ofgem published its paper "Gas Retail Governance - Further Consultation" in Section 5 of which were outlined six "principles of good governance that should be adhered to by any governing body, code or agreement".

These six principles are:

1. Effectiveness - arrangements must be capable of achieving what they set out to do,
2. Efficiency - arrangements must produce timely results and be cost efficient,
3. Transparency - operation and decisions must be transparent to all and appropriate information be made available to all interested parties,
4. Participation - there must be no exclusion of relevant information or viewpoints and all appropriate contributions must be allowed,
5. Accountability - governing bodies must be accountable to stakeholders for their decisions, and,
6. Consistency - arrangements must recognise and operate within existing frameworks.

As the formerly freestanding Modification Rules were replaced with Section Y of the Code the Rules are now capable of amendment by virtue of an approved Modification Proposal. As with any other part of the Code changes to this Section should better facilitate the Code relevant objectives set out in National Grid Transco's licence condition 9.

This is considered an appropriate and robust test for such changes but it would now be helpful to make explicit use of the Principles of Governance as a guide and first stage test for Modification Proposals to Section Y. In other words the Principles should be used to help improve the governance regime for Network Code.

Nature and Purpose of Proposal (including consequence of non implementation)

To ensure that changes to the Network Code governance regime are aligned with best practice by adopting a set of Network Code Principles of Governance initially based upon those published by Ofgem. These Principles would serve to guide Network Code parties who wished to propose changes to Section Y and ensure that the Modification Panel makes reference to best practice when considering such Modification Proposals.

This 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.

Basis upon which the Proposer considers that it will better facilitate the achievement of the Relevant Objectives, specified in Standard Special Condition A11.1 & 2 of the Gas Transporters Licence

Changes to Section Y could be proposed which better facilitated the relevant objectives yet didn't observe the Principles of Governance and may therefore not improve the regime, or at worst, have the effect of reducing the degree of transparency and participation

Any further information (Optional), likely impact on systems, processes or procedures, Proposer's view on implementation timescales and suggested text

Code Concerned, sections and paragraphs

Section Y

Modification Proposal – “Use of Principles of Governance in Applying Section Y of Network Code”

Proposed Legal Text:-

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”

In addition it is necessary to create the Network Code Principles of Governance as an ancillary document maintained by Transco and under the management of the Modification Panel. A draft of this document is included below for consideration during consultation upon this Proposal and for amendment/adoption by the Modification Panel at the appropriate time.

“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.”

Proposer's Representative

Mike Young (British Gas Trading Ltd)

Proposer

Mike Young (British Gas Trading Ltd)

Signature

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