

**Draft Modification Report**  
**Removal of 9.5.5 of the Modification Rules**  
**Modification Reference Number 0039**

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 9.6.

**1. The Modification Proposal**

This Proposal was submitted by Transco NTS following the completion of the work of the Governance Workstream on Review Proposal 0020 "Proposal to establish a review group to assess whether any changes are needed to UNC Governance in the light of the imminent introduction of the Appeals mechanism against Authority UNC modification decisions". The wording of this Proposal reflects one of the two draft Modification Proposals prepared by this Workstream and as such has the support of the Workstream.

The Proposal submitted was as follows:

Within the Modification Rules, 9.5.5 provides:

'If the vote of the Modification Panel under paragraph 9.5.2(b)(i) results in an equal number of votes in favour of, and not in favour of, implementation, the Modification Panel will be deemed to have determined to recommend non-implementation.'

The appeals process which has been introduced by DTI allows parties to appeal against Ofgem decisions. However, there is no right of appeal when an Ofgem decision accords with a majority recommendation by the UNC Modification Panel. Given the terms of 9.5.5, if half the available Voting Members on the Panel did not support implementation of a Modification Proposal, and Ofgem directed implementation, an appeal would be possible. This would remain the case if 9.5.5 were deleted, since there would be no Panel recommendation in favour of implementation.

If half the available Voting Members on the Modification Panel did not support implementation of a Proposal, and Ofgem did not direct implementation, no appeal would be possible. This is because 9.5.5 provides for a non-implementation recommendation, with which Ofgem would have agreed. Removal of 9.5.5 would reinstate this right of appeal in these particular circumstances. Hence any Ofgem decision would be appealable when the view of Voting Members on the Modification Panel is equally divided between those who do and do not support implementation of a Modification Proposal."

**2. Extent to which implementation of the proposed modification would better facilitate the relevant objectives**

The Proposer stated that:

"Implementation of this Modification Proposal would better facilitate the achievement of the Relevant Objective specified in Standard Special Condition A11.2 through development of the mechanism by which any of the uniform network code and each of the network codes prepared by each relevant gas transporter may be modified.

Implementation of this Modification Proposal would also better facilitate the achievement of the Relevant Objective specified in Standard Special Condition A11.1 (f), the promotion of efficiency in the administration of the network code and/or the uniform network code."

Views are sought regarding the extent to which implementation would better facilitate the relevant objectives.

**3. The implications of implementing the Modification Proposal on security of supply, operation of the Total System and industry fragmentation**

No adverse implications in respect of security of supply operation of the Total System and industry fragmentation, have been identified.

Views would be welcome if any party believes there would be any such implications.

**4. The implications for Transporters and each Transporter of implementing the Modification Proposal, including**

**a) implications for operation of the System:**

The Proposer stated that, "No operational or systems impacts are anticipated."

Views would be welcome, from parties, regarding any implications relating to the operation of their respective systems.

**b) development and capital cost and operating cost implications:**

No such cost implications have been identified.

A view from the parties would be welcome.

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

No such cost implications have been identified.

A view from the parties would be welcome.

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

No such consequences have been identified.

Views would be welcome if any party believes there would be any such consequences.

**5. The consequence of implementing the Modification Proposal on the level of contractual risk of each Transporter under the Code as modified by the Modification Proposal**

Allowing an appeal to be heard if the Modification Panel did not make a recommendation on a specific Proposal might be considered beneficial in terms of risk management.

Views on this aspect of risk are now sought.

**6. The high level indication of the areas of the UK Link System likely to be affected, together with the development implications and other implications for the UK Link Systems and related computer systems of each Transporter and Users**

The Proposer did not anticipate any systems impacts.

Views would be welcome if any party believes there would be any such impacts

**7. The implications of implementing the Modification Proposal for Users, including administrative and operational costs and level of contractual risk**

Allowing an appeal to be heard if the Modification Panel did not make a recommendation on a specific Proposal might be considered beneficial in terms of risk management.

Views on this aspect of risk are now sought.

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

It is believed that these parties are entitled to make an appeal and would therefore be affected by implementation of this Proposal, in the same way as Parties to the Code

Views, regarding such implications are invited.

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

No such consequences have been identified.

Views would be welcome if any party believes there would be any such consequences.

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

**Advantages**

In the review report presented to the UNC Modification Panel by the Governance Workstream, the Workstream considered that 9.5.5 of the Modification Rules potentially created ambiguity and may have the unintended consequence of preventing an appeal when the Panel was equally split. Implementation of this Proposal would remove this potential ambiguity.

**Disadvantages**

No disadvantages have been identified by the Proposer

Views would be welcome if any party believes there are further advantages or disadvantages

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

Representations are now sought.

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

No such requirements have been identified.

**13. The extent to which the implementation is required having regard to any proposed change in the methodology established under paragraph 5 of Condition A4 or the statement furnished by each Transporter under paragraph 1 of Condition 4 of the Transporter's Licence**

No such requirements have been identified.

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

No such programme has been identified.

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

There are no known barriers to immediate implementation.

**16. Implications of implementing this Modification Proposal upon existing Code Standards of Service**

Views would be welcome if any party believes there would be any such implications.

**17. Recommendation regarding implementation of this Modification Proposal and the number of votes of the Modification Panel**

**18. Text**

**MODIFICATION RULES**

*Amend 9.5.2 (b) (ii) to read as follows:*

- (ii) submit its recommendation to the Authority, setting out its determination under paragraph 9.5.2(b)(i) (~~subject to paragraph 9.5.5~~) and the factors which (in its opinion) justify its determination;

*Delete paragraph 9.5.5*

*Renumber 9.5.6 as 9.5.5*



Subject Matter Expert sign off:

*I confirm that I have prepared this modification report in accordance with the Modification Rules.*

Signature:

Date :

Signed for and on behalf of Relevant Gas Transporters:

**Tim Davis**  
**Chief Executive Joint Office of Gas Transporters**

Signature:

Date :