

Mr. Julian Majdanski  
Joint Office of Gas Transporters  
Ground Floor Red  
51 Homer Road  
Solihull  
B91 3QJ.

Declan McLaughlin  
Commercial Manager – Customer  
Services

declan.mclaughlin@uk.ngrid.com  
Direct tel +44 (0)1926 656914  
Direct fax +44 (0)1926 656602  
Mobile +44 (0)7767 297944

[www.nationalgrid.com](http://www.nationalgrid.com)

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Our Reference  
Your Reference

## **Re: Modification Proposals 0053, 0056, 0059, 0063 and 0064**

Dear Julian,

Thank you for your invitation seeking representations with respect to the above Modification Proposals. Please find below the National Grid Gas (Distribution) response to each Proposal:

Distribution is supportive of a number of common elements detailed within the proposals, specifically concerning publication of the five documents on a publicly accessible industry website, and the appropriate version control applied to each. However, the presence of other aspects of the Proposals (described below) means that Distribution opposes implementation of all of the Proposals. We believe that in each case, the Proposal does not better facilitate the 'relevant objectives' specified within the Gas Transporters Licence, specifically it does not *'facilitate the promotion of efficiency in the implementation and administration of the network code and or the uniform network code'*. We believe that 'abbreviated' governance is not necessarily more efficient in the long term if, for example, such decisions of the UNC Committee were subsequently challenged by Modification.

From industry discussion the proposed change route for the five documents which are the subject of the Proposals is as follows:

1. Change proposed
2. UNC Committee votes whether to approve change
  - a. If approved, change implemented
  - b. If not approved change lapses
  - c. If no decision (i.e. 'split' 50/50 vote) change is subjected to Modification process unless UNC Committee determines otherwise.

From discussion within the Governance Workstream the above procedure does not seek to preclude any party from raising a UNC Modification Proposal at any point if it so wished. However, in each case the Nature of the Proposal (and hence the basis for the proposed textual changes to the UNC) allows for a UNC Modification Proposal to be raised *"unless UNC Committee decides otherwise"* which indicates that the UNC Committee has a power of veto over future related Proposals.

For the sake of clarification, Distribution believes that the UNC Committee should not (and cannot) have the authority to prohibit any Transporter or Shipper from raising a UNC Modification Proposal as this conflicts with each Transporter's Licence obligation under Standard Special Condition A11(7). In addition, as the UNC Committee is not able (in the event that this Proposal were implemented) to prohibit a proposal being raised by a Third Party Participant, it would appear to be discriminatory in its application.

UNC Modification Proposal 0053 'Extending established Uniform Network Code governance arrangements to include the Network Code Operations Reporting Manual referenced in Section V9.4.'

Currently, where National Grid NTS provides an appropriate notice of a change to the Network Code Operations Reporting Manual, a User may object to the change. Where National Grid NTS is so notified, it will not implement the revision unless Ofgem approves the change (TPD Section V9.4.5). This gives the User an appropriate degree of protection that a change may not be unilaterally implemented without recourse to challenge.

We do not believe it is appropriate to remove Ofgem from being the arbiter in the change process for this document. Our view is that this proposal would reduce the independence of the decision where this is alternatively undertaken by the UNC Committee.

Section 5 of the Draft Modification Report suggests that the Transporters' level of contractual risk may reduce if the Proposal were implemented. We would question the validity of this statement given that the Proposal allows non-Transporter parties to instigate change to the Network Code Operations Reporting Manual whereas currently only National Grid NTS has this ability.

It is not good governance to have two change processes, one of which allows change to the main body of UNC (the Modification Rules) which emanates from a Licence Condition and is subject to determination by Ofgem against clear principles and one of which is subject to the vote of the UNC Committee which may veto change or instigate against the wishes of Transporters, but which bypasses the regulatory process for determination.

UNC Modification Proposal 0056 'Extending established Unified Network Code governance arrangements to include the Code Credit Rules referenced in section V3.1.2'

The purpose of the Code Credit Rules is to act as a guidance information document in respect of how a Transporter operates its credit security policy. We believe that it is inappropriate that (in the event of implementation) a potential debtor can instigate changes to the way a Transporter operates this policy. A potential debtor is likely to seek relaxation of a Transporter's credit security policy whereas this is in place to minimise the level of unsecured debt in the event of Shipper default. This facilitates competition between relevant Shippers by mitigating against potential exposure to additional costs.

We believe the ability for a debtor to instigate changes to a creditor's credit security policy would not be contemplated in any other large commercial contract. Furthermore we would not expect any User to permit their customers to change their credit security policy.

Section 5 of the Draft Modification Report suggests that a Transporter's level of contractual risk may reduce if the Proposal were implemented. We would question the

validity of this statement given that the Proposal allows non-Transporter parties to instigate change to the Code Credit Rules whereas currently only Transporters have this ability. Such changes could result in significant financial detriment to Transporters. Also, whereas the Code Credit Rule provisions which govern contractual operation, may be changed only by the Modification process by Ofgem's determination, this proposal would allow the commercial guidance rules which do not form part of UNC to be changed (or change vetoed) without recourse to regulatory determination. This could lead to perverse conflicts between the operation of the contract and the guidance to that contract.

UNC Modification Proposal 0059 'Extending established Unified Network Code governance arrangements to include the Network Code Validation Rules document referenced in Section M1.5.3'

Currently, where Transporters provide an appropriate notice of a change to the UNC Validation Rules, a User may request that Ofgem disapproves the change and hence the change does not take place (TPD Section M1.5.3). Thus this gives the User an appropriate degree of protection that a change may not be unilaterally implemented without recourse to challenge.

The Proposal effectively removes this ability. We do not believe it is appropriate to remove Ofgem from being the arbiter in the change process for this document. We are of the view that this Proposal would reduce the independence of the decision where this is alternatively undertaken by the UNC Committee.

Section 5 of the Draft Modification Report suggests that a Transporter's level of contractual risk may reduce if the Proposal were implemented. We would question the validity of this statement given that the Proposal allows non-Transporter parties to instigate change to the Network Code Validation Rules whereas currently only Transporters have this ability.

It is not good governance to have two change processes, one of which allows change to the main body of UNC (the Modification Rules) which emanates from a Licence Condition and is subject to determination by Ofgem against clear principles and one of which is subject to the vote of the UNC Committee which may veto change or instigate against the wishes of Transporters, but which bypasses any regulatory process for determination.

UNC Modification Proposal 0063 'Extending established Uniform Network Code governance arrangements to include the GRE Invoice Query Incentive Scheme Methodology document referenced in Section S4.6'

Currently, National Grid NTS prepares the above document and agrees this with Ofgem (TPD Section S4.6.1(a)).

We do not believe it is appropriate to remove Ofgem from being the arbiter in the change process for this document. Distribution is of the view that this proposal would reduce the 'independence' of the decision where this is alternatively undertaken by the UNC Committee. We believe that Ofgem agreement in respect of this document is essential as it dictates the calculation of financial liabilities. It is appropriate that as the economic regulator Ofgem validates any changes made to this methodology.

Section 5 of the Draft Modification Report suggests that Transporters level of contractual risk may reduce if the Proposal were implemented. We would question the validity of this

statement given that the Proposal allows non-Transporter parties to instigate change to the GRE Invoice Query Incentive Scheme whereas currently only National Grid NTS has this ability.

UNC Modification Proposal 0064 'Extending established Uniform Network Code governance arrangements to include the CSEP Ancillary Agreement document referenced in Section J5.9'

Distribution notes that the CSEP Ancillary Document is referred to in TPD Section J6.6 and pursuant to Section J6.6.2 is deemed to be part of the UNC and thus is only able to be amended by Modification. This Proposal seeks to place what is currently a UNC change process for an Agreement integral to the UNC, out of the Modification Rules and place it into the remit of the UNC Committee with no established clear governance by Ofgem determination.

If changes to a CSEP Ancillary Agreement were dealt with in this manner, a precedent would be set to permit any other part of UNC to be subject to change outside of the Modification Rules. It is also arguable that in seeking to effectively circumvent the Modification process there would be a conflict with the Transporters Licence (Standard Special Condition A11) which provides for UNC changes to be through the Modification process.

It also could result in parts of the UNC being subject to changes under separate governance processes (only one of which is subject to regulatory determination) thus resulting in conflicts in the operation of the UNC. For instance: in the event that a Modification to the UNC merited changes to a CSEP Ancillary Agreement but the UNC Committee voted against such a change.

Alternatively, if a change to a CSEP Ancillary Agreement were successfully proposed or opposed by the UNC Committee but it conflicted with a UNC Modification Proposal on a related UNC principle, this would create a tension. There is no control mechanism to prevent such a situation arising. Also, if a UNC Modification relied on a change to the CSEP Ancillary Agreement but this was vetoed by a UNC Committee vote, then the UNC governance process could be frustrated without apparent redress.

Please contact Chris Warner on 01926 653541 ([chris.warner@ngtuk.com](mailto:chris.warner@ngtuk.com)) should you require any further information with respect to the above representations.

Yours sincerely,

Declan McLaughlin  
Commercial Manager – Customer Service  
National Grid