

CODE MODIFICATION PROPOSAL No 0213V
Introduction of User Pays Governance Arrangements into the UNC
Version 1.0

Date: 18/12/2008

Proposed Implementation Date: 01/02/2009

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/11700_Urgency_Criteria.pdf)

This proposal and associated business rules has been discussed and developed at the Governance Workstream. It is therefore proposed that this proposal should proceed direct to consultation for 15 business days.

Whilst outside the scope of this proposal it is also proposed that the UNC Panel should invite views on the updated Modification Proforma appended to this modification as part of the consultation and should consider the introduction of the updated Modification Proforma at the same UNC Panel as the FMR for this proposal for implementation to coincide with the implementation of this proposal should Ofgem direct its implementation.

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

As part of the recently completed Gas Distribution Price Control Review (GDPCR), a user pays approach has been introduced for the funding of some industry changes. Central to this new arrangement is the concept that xoserve's costs associated with the implementation of certain UNC Modification Proposals will be funded on a user pays basis. As noted by Ofgem in the GDPCR Final Conclusions document:

“For this revised funding arrangement to be effective in promoting the introduction of services between price control reviews, the parties need to be able to agree how much the service should cost, and who should bear the cost associated with the service. In particular, there need to be contractual arrangements to support these services.”

The purpose of this Modification Proposal is to introduce changes to the UNC Modification Rules to ensure that they reflect this revised approach and provide an appropriate governance framework under which Modification Proposals with a User Pays Service and/or User Pays Charges should be progressed. Business Rules have been provided as part of this Proposal to indicate how the revised rules are to be applied.

The main proposed changes to the Modification Rules are that:

1. A Modification Proposal shall state whether or not the Proposer believes the Proposal should result in a User Pays Service with supporting arguments;
2. A Modification Proposal would be required to state how the provision of any User Pays Service shall be funded with supporting arguments;
3. The Modification Panel shall be able to send Modification Proposals with a User Pays

Service to an appropriate Workstream, Development Work Group or Review Group to attempt to resolve any issues with the funding and charging arrangements;

4. The Transporters shall be required to produce supporting cost estimates and supporting User Pays Charges for all Modification Proposals where incremental agency analysis, development and/or operational costs are funded on a User Pays basis.
5. The Gas Transporters will produce a Guidance document to provide guidance to the industry on the construction of a cost estimate and User Pays Modification Proposals. This Guidance document will be referenced in the Modification Rules and will be amended from time to time subject to approval by Modification Panel majority.
6. The Transporters would be required to ensure cost estimates are appropriately recorded in Modification Reports; and
7. A facility is introduced to seek an Authority View on the proposed funding arrangements.

It is proposed that these revised rules should apply to all Modification Proposals which are raised subsequent to the implementation of this Modification Proposal. Modification Proposals which have already been raised would not face any requirements over and above those of the existing Modification Rules.

Business Rules

1. If implemented, the changes to the Modification Rules proposed herein would apply to all Modification Proposals raised after the date of implementation, as identified in the implementation notice. Until the Modification Rules are modified, Transporters will provide a view of funding and cost breakdown analysis, development and transaction charges, as and when requested by the Modification Panel or the Authority.
2. The Gas Transporters will produce a Guidance document to provide guidance to the industry on the construction of a cost estimate and User Pays Modification Proposals. This Guidance document will be referenced in the Modification Rules and will be amended from time to time subject to approval by Modification Panel majority.
3. All Modification Proposals would indicate whether or not incremental agency analysis, development and/or operational costs should be funded through User Pays Charges, along with supporting arguments detailed in an updated Modification Proposal Proforma.
4. Modification Proposals where it is proposed that Users pay a proportion of the implementation costs would require the Proposer to provide:
 - a. an apportionment of analysis, development and/or operational costs between Users and Gas Transporters along with the proposed apportionment split and supporting arguments i.e. all Transporters and Users pay a portion, Transporters only pay, Users only pay. Whilst this Modification Proposal does not stipulate the use of predefined cost apportionment splits, it is intended that the User Pays Guidance document which will be developed to support the introduction of this Modification Proposal will identify suggested cost apportionments to aid simplicity; and
 - b. an apportionment between Users of analysis, development and/or operational costs along with supporting arguments – e.g. charge per transaction, charge per supply

point, charge per AQ share, charge per meter read submitted, charge per LDZ offtake, charge in proportion to transportation charges; and

- c. a cost recovery period for any analysis and development costs associated with the implementation of the Modification Proposal.
5. The Modification Panel shall be able to send Modification Proposals with a User Pays Service to an appropriate Workstream, Development Work Group or Review Group to attempt to resolve any issues with the funding and charging arrangements.
6. In accordance with the current provisions, prior to the release of the Draft Modification Report the Modification Panel will be able to request the Transporters to request from the Authority a View on whether the proposed cost apportionment and charges are appropriate. The Proposer may decide to amend the Proposal to reflect the Authority's view, or others may raise alternative Proposals to take account of it.
7. At any stage of development prior to the Proposal entering the Consultation phase, the Modification Panel may instruct Transporters to provide a Rough Order of Magnitude (ROM) assessment, which would include cost estimates, indicative User Pays Charge(s) and a commentary on the sensitivities of these for each relevant Proposal in accordance with the time-scale determined by the Modification Panel.
8. The instruction to provide the above cost and charging estimates would be automatically cancelled if the Modification Proposal is Withdrawn or the Modification Panel rescind their instruction or the Proposal is amended.
9. When the Modification Panel determines that a Proposal which contains a User Pays Service should be issued for consultation, unless the Panel determined otherwise, Transporters would provide the most recent estimate in line with the Modification Panel's instructions and associated indicative User Pays charge for the Panel's information and subsequent inclusion in the Draft Modification Report (DMR) within the time identified by the Panel.
10. When a cost estimate is submitted to the Panel as part of the modification proposal immediately prior to consultation, the Panel may determine that a more accurate cost estimate is needed. Transporters are then obliged to procure an estimate in accordance with the timescale determined by the Modification Panel.
11. At any stage during the process of developing a User Pays Charge(s), the indicative charges may vary to ensure that the value of the recovered revenue is not eroded by time (the elapsed time between incurring costs and the final recovery of the costs in full). The basis of the calculation of this adjustment to the allowed revenue recovery would be set out in the charging methodology contained within the Agency Charging Statement, (ACS).
12. If at any stage of the process a cost estimate cannot be provided within the time identified by the Panel, then the Transporters would provide to the Panel:
 - a. A written explanation as to why the Transporters are unable to meet the timetable at the earliest opportunity and no later than 2 Business Days after the deadline identified by the Modification Panel; and

- b. A list of the questions to be answered before the estimate could be provided, or which would need to be answered to narrow the range.
 - c. A date by which the cost estimate will be provided, giving due regard to the explanation provided by the Transporters
13. Ofgem may request that a cost estimate be produced when the Panel has not done so.
 14. The Final Modification Report and the Draft Modification Report would contain the most recent cost estimate provided during the Modification process.
 15. The ACS would provide for costs as specified in the Final Modification Report of implemented Proposals to be reflected in User Pays Charges.
 16. For any implemented proposal where analysis and development costs are not recovered within the period identified within the proposal any remaining costs shall be recovered in line with the methodology and associated User Pays Charge set out in the ACS.
 17. For any proposal containing a User Pays Service sent to Ofgem for decision, the Transporters shall provide indicative User Pays Charge(s) and a charge validity period. The indicative charges may be qualified with a list of factors that could result in a charge variation between the indicative charge(s) and the inclusion of User Pays Charges into the Agency Charging Statement and would be valid only for the specified validity period.
 18. Any proposal not implemented, where it was established that a portion of the analysis costs should be borne by users, such costs would be recovered in line with the User Pays Charge set out in the ACS.
 19. After a proposal has been sent to Ofgem for a decision which includes a User Pays Charge then Ofgem may request that the Transporters submit a supporting ACS amendment. Any request from Ofgem to the Transporters to submit legal text for a proposal which also includes a User Pays Charge would also constitute a request to submit an ACS amendment at the same time as the legal text.
 20. An Ofgem direction to implement a User Pays Service will also be viewed as a decision to support the indicative User Pays Charges for inclusion in the ACS and not to veto the supporting ACS amendment, unless stipulated in the decision letter.

Consequences of non-implementation

If this Modification Proposal were not implemented, and the existing Modification Rules were conducted to continue to apply, there would be no clarity about the way in which the user pays regime would be applied to proposed changes in service levels or to the introduction of new services. Ofgem has not provided funding for some industry changes which would lead to xoserve, as the Transporter Agency, incurring higher costs. Failure to implement this Modification Proposal may therefore be expected to act as a barrier to change.

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

The GT Licence specifies that “In relation to a proposed modification of the network code modification procedures, a reference to the relevant objectives is a reference to the requirements in paragraphs 9 and 12 of this condition (to the extent that those requirements do not conflict with the objectives set out in paragraph 1).”

Paragraph 9 specifies that the modification procedures should provide for, inter alia, (c) “the seeking of the views of the Authority on any matter connected with any such proposal” and, by specifying circumstances where a view may be sought from the authority regarding the user pays element of a Proposal, implementation of this Proposal would further the achievement of this.

Implementation would not conflict but rather facilitate achievement of the code relevant objectives, in particular:

Standard Special Condition A11.1 (c): so far as is consistent with sub-paragraphs (a) and (b), the efficient discharge of the licensee's obligations under this licence.

Implementation of this Modification Proposal would provide an efficient governance process to support the application of the users pays approach to the provision of new services, or changes to existing services. The move to a user pays approach has been introduced as an outcome from the 2008-13 Gas Distribution Price Control Review (GDPCR) and is a requirement of Standard Special Condition A15 the text for which is available on Ofgem's website at: http://epr.ofgem.gov.uk/document_fetch.php?documentid=13936. Hence implementation of the Modification Proposal would be consistent with facilitating the achievement of this Relevant Objective.

Standard Special Condition A11.1 (f): so far as is consistent with sub-paragraphs (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code

If this Modification Proposal were implemented, it would provide a clear governance route to be followed by proposed changes which fall within the user pays framework. By creating a clear governance route and ensuring necessary issues are addressed in the development and consideration of proposed changes, implementation of this Modification Proposal would be expected to facilitate the achievement of this Relevant Objective.

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

It is suggested that this Proposal should be developed within the Governance Workstream and be implemented as soon as possible. Implementation could follow immediately on direction from the Authority.

Suggested Text

MODIFICATION RULES

Include the following definitions in paragraph 2.1 to read as follows:

“**Implementation Costs**”: the costs of analysis, development and/or operation of the User Pays Service as proposed by the User Pays Modification Proposal;”

“**User Pays Guidance Document**”: the guidance document produced and published by the Transporters which contains guidance in respect of the provision of cost estimates pursuant to these Rules and the content of cost analysis documents and cost allocation decisions in respect of a User Pays Modification Proposal;”

“**User Pays Modification Proposal**”: a Modification Proposal which contains a proposal for a User Pays Service;”

Add new paragraph 5.13 to read as follows:

“5.13 User Pays Guidance Document

The production of a User Pays Modification Proposal (including the provision of cost estimates and other information in respect of a User Pays Modification Proposal) pursuant to these Rules shall have regard to the User Pays Guidance Document which may be amended only by a determination of the Modification Panel in accordance with paragraph 5.1.2(a).”

Amend paragraph 6.2 to read as follows:

“6.2 Form of Modification Proposals

6.2.1 Each Modification Proposal made pursuant to paragraph 6.1.1 or 6.1.2:

- (a) shall be in writing and shall specify whether it relates to the Uniform Network Code or an Individual Network Code;
- (b) shall set out in reasonable but not excessive detail the nature and purpose of the Modification Proposal;
- (c) shall set out the basis upon which the Proposer considers that it would better facilitate the achievement of the Relevant Objectives;
- (d) shall detail the sections and paragraphs of the Uniform Network Code or the Individual Network Code which are to be amended or otherwise affected by the Modification Proposal;
- (e) shall, if the Proposer considers that the Modification Proposal should be treated as an Urgent Modification Proposal, identify the Modification Proposal as such and indicate the Proposer's justification for such belief;
- (f) shall, where it is made by a Transporter pursuant to Standard Special Condition A11(14), state that it is so made;
- (g) shall state the name of the Proposer and the Proposer's representative;

- (h) shall, without prejudice to the Modification Panel's right of determination pursuant to paragraph 7.2, state the Proposer's preference as to whether the Modification Proposal should:
 - (i) be subject to the review procedures;
 - (ii) proceed to the Development Phase;
 - (iii) proceed to the Consultation Phase; or
 - (iv) be referred to a Workstream in accordance with paragraph 7.4 for discussion;
- (i) may state the Proposer's opinion of the likely impact of the implementation of the Modification Proposal upon Users' computer systems and/or manual processes and procedures;
- (j) may state the Proposer's view of possible implementation timescales for the Modification Proposal; and
- (k) may include the Proposer's Suggested Text, including that prepared for consideration by the Transporters when preparing the text of the Modification pursuant to paragraph 9.6;
- (l) shall state whether or not it is a User Pays Modification Proposal ;”

Add new paragraph 6.2.7 to read as follows:

“6.2.7 A User Pays Modification Proposal shall:

- (a) state the reasons why it should be a User Pays Modification Proposal;
- (b) contain:
 - (i) an estimate of the Implementation Costs; and
 - (ii) an indicative User Pays Charge;
- (c) where it proposes that Users pay a proportion of the Implementation Costs, contain:
 - (i) an apportionment of the Implementation Costs between Users and Transporters; and
 - (ii) an apportionment of the Implementation Costs between Users;
in each case, together with the reasons for such apportionment; and
 - (iii) the period in which the Implementation Costs are to be recovered.”

Amend paragraph 7.2.3 to read as follows:

“7.2.3 Subject to paragraph 7.2.2, the Modification Panel may, without prejudice to paragraph 7.2.4, determine that:

(a) a Modification Proposal:

- (i) should be subject to the review procedures under paragraph 11;
- (ii) should proceed to the Development Phase (in which case the Modification Panel shall discuss, and shall (in accordance with paragraph 7.6) request the Transporters to finalise, the Terms of Reference to be applicable); or
- (iii) should proceed to the Consultation Phase in accordance with paragraph 7.3; or

(b) a Modification Proposal or Third Party Modification Proposal:

- (i) should be referred to a Workstream in accordance with paragraph 7.4 for discussion (and the Modification Panel may determine the Terms of Reference for such work (including terms as to the identity of any third parties to be consulted) and the date upon which it requires the Workstream to submit its report); or
- (ii) should be deferred to a subsequent meeting of the Modification Panel for further discussion-; and

“(c) where Modification Proposal is a User Pays Modification Proposal, at any time before it proceeds to the Consultation Phase in accordance with paragraph 7.3 the Transporters shall:

- (i) in accordance with a period determined by the Modification Panel, provide a rough order of magnitude assessment, which will include a cost estimate(s) for the User Pays Service , an indicative User Pays Charge(s) and, having regard to the User Pays Guidance Document a commentary in respect of these; and
- (ii) request from the Authority a View on whether the proposed cost apportionment and User Pays Charges are appropriate and following receipt of such View circulate it to the next meeting of the Modification Panel.”

Add new paragraphs 7.2.6, 7.2.7 and 7.2.8 to read as follows:

“7.2.6 Where the Modification Panel considers that a more detailed analysis and cost estimate is required in respect of a User Pays Modification Proposal it may:

- (a) determine that the Transporters prepare and submit to the Modification Panel (within a period determined by it) such an analysis and estimate; and
- (b) where its assessment concludes that such analysis and estimate is satisfactory, make a determination in accordance with paragraph 7.2.3(a)(iii).

7.2.7 Where the Transporters fail to comply with paragraph 7.2.6 , the Transporters shall provide to the Modification Panel:

- (a) a written explanation as to reasons for such failure at the earliest opportunity and in any event no later than two (2) Business Days after the final date for such submission; and
- (b) a date by which the detailed analysis and cost estimate will be provided, having regard to the explanation provided.

7.2.8 The obligation on the Transporters pursuant to paragraph 7.2.3(c) shall cease:

- (a) in accordance with a determination by the Modification Panel; or
- (b) where the User Pays Modification Proposal is withdrawn pursuant to paragraph 6.5.1(a) or varied pursuant to paragraph 6.5.1 (b).”

Amend paragraph 7.3.1 to read as follows:

“7.3.1 If the Modification Panel determines pursuant to paragraph 7.2.3(a)(iii) or 7.2.5(b) that a Modification Proposal or Third Party Modification Proposal should proceed to the Consultation Phase;

(a) the Modification Panel shall:

- ~~(a)~~(i) determine whether the preparation of text is required with the Draft Modification Report;
- ~~(b)~~(ii) inform the Transporters if it determines that the time periods set out in paragraph 9 for the Consultation Phase should, in its opinion, be deviated from in relation to the relevant Modification Proposal or the Third Party Modification Proposal- ;

(b) where the Modification Proposal is a User Pays Modification Proposal:

(i) unless the Modification Panel determines otherwise, the Transporters shall prepare and submit to the Modification Panel (within a period determined by the Modification Panel) and include within the Draft Modification Report:

- (1) the most accurate cost estimate for the User Pays Service which is available at such time ; and
- (2) the associated indicative User Pays Charge;

(ii) where the Transporters fail to comply with paragraph (b)(i)(1) and/or (b)(i)(2) by the final date for such submission, the Transporters shall provide to the Modification Panel:

- (1) a written explanation as to reasons for such failure at the earliest opportunity and in any event no later than two
- (2) Business Days after the final date for such

submission;

(2) a list of information required to enable the most recent cost estimate to be prepared;

(3) a date by which the cost estimate will be provided, having regard to the explanation provided.”

Add new paragraph 9.3.7 to read as follows:

“9.3.7 Where the Modification Proposal is a User Pays Modification Proposal, Ofgem may request the Transporters to prepare and submit a cost estimate for the User Pays Service where the Modification Panel has not done so.”

Amend paragraph 9.4.1 to read as follows:

“9.4.1 In addition to identifying which paragraph of these Rules the Modification Report is made pursuant to, each Modification Report shall, subject to paragraphs 9.4.5 and 10.2 and to the extent relevant and that the Transporters have been made aware:

(a) set out: ...

(b) ... etc.

(s) set out a high level summary of views expressed in the representations, which may be satisfied by stating the number of representatives in favour of, and the number of representatives against the implementation of the Modification Proposal (or Third Party Modification Proposal);

(t) where it is a User Pays Modification Proposal, contain the most accurate cost estimate for the User Pays Service which is available at such time and the associated indicative User Pays Charge;”

Add new paragraph 9.6.4 to read as follows:

“9.6.4 Where the Modification Proposal is a User Pays Modification Proposal, the request or direction pursuant to paragraph 9.6.1(a)(ii) or (b)(ii) will be deemed to be a request for text in respect of a proposed amendment to the Agency Charging Statement and such text will be prepared at the same time the text prepared pursuant to paragraph 9.6.1(a)(ii) or (b)(ii).”

Amend paragraph 12.8.1 to read as follows:

“12.8.1 The Transporters may decide to seek a View from the Authority:

(a) on any matter arising (under these Rules or otherwise) from a Modification Proposal at any stage prior to the date on which the Transporters finalise the Modification Report; ~~the Transporters may decide to seek a View from the Authority on any matter arising (under these Rules or otherwise) from a Modification Proposal. and~~

(b) in respect of the proposed funding arrangements for a User Pays Modification Proposal, at any stage prior to a determination under paragraph 7.2.3(a)(iii).”

Transportation Principal Document Section B paragraph 1.7

Add new paragraph B1.7.14 to read as follows:

“1.7.14 Where any User Pays Modification Proposal is not implemented but it is determined that a portion of the Implementation Costs should be paid by Users in accordance with the User Pays Charge set out in the Agency Charging Statement, such User Pays Charge shall be invoiced in accordance with Section S.”

Code Concerned, sections and paragraphs

Uniform Network Code

Transportation Principal Document

Section(s)

Proposer's Representative

Stefan Leedham (EDF Energy)

Proposer

EDF Energy

Appendix 1

CODE MODIFICATION PROPOSAL No xxxx

<Title>

Version x.x

Date: 19/12/2008

Proposed Implementation

Date:

Urgency: Non Urgent

1 The Modification Proposal

- a) **Nature and Purpose of this Proposal**

- b) **Justification for Urgency and recommendation on the procedure and timetable to be followed (if applicable)**

- c) **Recommendation on whether this Proposal should proceed to the review procedures, the Development Phase, the Consultation Phase or be referred to a Workstream for discussion.**

2 User Pays

- a) **Classification of the Proposal as Users Pays or not and justification for classification**

- b) **Identification of Users, proposed split of the recovery between Gas Transporters and Users for User Pays costs and justification**

- d) **Proposed charge(s) for application of User Pays charges to Shippers**

- e) **Proposed charge for inclusion in ACS – to be completed upon receipt of cost estimate from xoserve**

- 3 Extent to which implementation of this Modification Proposal would better facilitate the achievement (for the purposes of each Transporter's Licence) of the Relevant Objectives**
- 4 The implications of implementing this Modification Proposal on security of supply, operation of the Total System and industry fragmentation**
- 5 The implications for Transporters and each Transporter of implementing this Modification Proposal, including:**
 - a) The implications for operation of the System:**
 - b) The development and capital cost and operating cost implications:**
 - c) Whether it is appropriate to recover all or any of the costs and, if so, a proposal for the most appropriate way for these costs to be recovered:**
 - d) The consequence (if any) on the level of contractual risk of each Transporter under the Uniform Network Code of the Individual Network Codes proposed to be modified by this Modification Proposal**
- 6 The extent to which the implementation is required to enable each Transporter to facilitate compliance with a safety notice from the Health and Safety Executive pursuant to Standard Condition A11 (14) (Transporters Only)**
- 7 The development implications and other implications for the UK Link System of the Transporter, related computer systems of each Transporter and related computer systems of Users**
 - a) The development costs for the Systems of the Transporters' Agent for implementation of this proposal as identified in the cost estimate.**

- b) **The on going operational costs for the System of the Transporters' Agent for implementation of this proposal as identified in the cost estimate.**

 - c) **The development implications and other implications for the related computer systems of each Transporter and related computer systems of Users**
- 8 The implications for Users of implementing the Modification Proposal, including:**
- a) **The administrative and operational implications (including impact upon manual processes and procedures)**

 - b) **The development and capital cost and operating cost implications**

 - c) **The consequence (if any) on the level of contractual risk of Users under the Uniform Network Code of the Individual Network Codes proposed to be modified by this Modification Proposal**
- 9 The implications of the implementation for other relevant persons (including, but without limitation, Users, Connected System Operators, Consumers, Terminal Operators, Storage Operators, Suppliers and producers and, to the extent not so otherwise addressed, any Non-Code Party)**
- 10 Consequences on the legislative and regulatory obligations and contractual relationships of the Transporters**
- 11 Analysis of any advantages or disadvantages of implementation of the Modification Proposal not otherwise identified in paragraphs 2 to 9 above**

Advantages

Disadvantages

- 12 Summary of representations received as a result of consultation by the Proposer (to the extent that the import of those representations are not reflected elsewhere in this Proposal)**
- 13 Detail of all other representations received and considered by the Proposer**
- 14 Any other matter the Proposer considers needs to be addressed**
- 15 Recommendations on the time scale for the implementation of the whole or any part of this Modification Proposal**
- 16 Comments on Suggested Text**
- 17 Suggested Text**

Code Concerned, sections and paragraphs

Uniform Network Code

Transportation Principal Document

Section(s)

Proposer's Representative

Name (Organisation)

Proposer

Name (Organisation)