

Modification Report
Extending Modification Panel Voting Rights to Consumer Representatives
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Modification Reference Number 0286 0286A
Version 5.0

This Modification Report is made pursuant to Rule 9.3.1 of the Modification Rules and follows the format required under Rule 9.4.

1 The Modification Proposal

Modification Proposal 0286

Background:

As part of the Industry Codes Governance Review, Ofgem highlighted that Consumer Representative voting rights differ between modification panels. Ofgem's view from the Governance review is that this inconsistent treatment across codes is not warranted and that the UNC should be reformed so that the Consumer Representative are voting members. Implementation of this Proposal would make the UNC compliant with best practice, and with Ofgem's proposal that Consumer Representatives serving on all the major modification panels should be voting members. Further Ofgem's initial view is that the Gas Transporters' Licences should be amended to facilitate this requirement. This modification proposal, if implemented would remove the requirement for these Licence changes and represent a more effective means of enacting these changes.

Note that the Consumer Representative has voting rights on both the Balancing and Settlement Code and Connection and Use of System Code panels.

Full participation on the UNC will give the Consumer Representative greater scope to advocate for consumers who can either benefit from or suffer the consequences of changes to industry rules. Whilst it is recognized that currently the Consumer Representative is a non-voting member of the UNC, the value of this can be questioned. This can be seen by the lack of consumer representation at the panel until recently. This is in contrast to the BSC and CUSC where a consumer representative has voting rights and has been a regular attendee. Implementation of this proposal would help to ensure that consistent consumer representation at the UNC panel. Voting also sends a clear signal to industry about the Consumer Representative's position on particular issues.

The UNC defines the rights and responsibilities for users of gas transportation systems, and provides for all system users to have equal access to transportation services. The major concepts underlying the Uniform Network Code are that:

- Gas transportation services should meet market requirements.
- System security and safety should be assured.
- Pricing should reflect the real costs of the services concerned.
- Robust computer systems should be developed and maintained.

- Daily energy balancing should be operated.
- Gas Shippers (Shippers) should be incentivised to balance their own supply and demand.

While the UNC allows for efficient commercial relationships between transporters and shippers, it cannot be denied that the consequences of many changes to the gas governance arrangements do impact on end users, such as domestic, industrial and commercial customers. It is therefore crucial that the consumer's voice is represented in such an important forum.

There is also a possibility that by ensuring consumer representation at the panel Ofgem will pay greater respect to the UNC Modification panel recommendation. This should help to ensure that Proposals with the full support of the industry and consumers are implemented, whilst those that are unanimously opposed are rejected.

The Modification Proposal

This Proposal seeks to change the status of Consumer Representative(s) on the UNC Modification Panel from non-voting to voting member(s).

Modification Proposal 0286A

Background

As part of the Industry Codes Governance Review, Ofgem highlighted that Consumer Representative voting rights differ between modification panels.

Although final proposals are still awaited, Ofgem's early view from the Governance review is that this inconsistent treatment across codes is not warranted and that the UNC should be reformed so that the Consumer Representative has voting rights.

The proposer of this Alternative Proposal welcomes a greater role for Panel consumer representation, including the extension of Consumer Representative voting rights. However, the proposer believes that ideally, reform of Consumer Representative voting rights within the UNC should be the subject of much fuller debate between all interested parties, since a simple extension of voting rights could have far reaching implications. Issues include:

- Impacting the prevailing balance in respect of permitting a Competition Commission appeal;
- Whereas the National Consumer Council (NCC) may be judged to be impartial, current arrangements would permit the NCC to appoint consumer representatives other than NCC, who may be strongly aligned to a particular market sector;
- The questionable need for appointed Consumer Representatives to have voting rights on matters of UNCC business; and
- The questionable need for Consumer Representatives to have voting rights in respect of anticipated Self-Governance proposals.

Review Group 0267 has been established in order to consider the output of the

Ofgem Code Governance Review and its impact upon the UNC. The Review Group is therefore well positioned to define UNC change requirements once Ofgem's final proposals are known.

However, it has been necessary to raise this alternative proposal at this time, and in the absence of the desired level of scrutiny and development, in order to comply with UNC timescales for Alternative Proposals, and so as not to unduly delay the progress of the original proposal 0286.

This Proposal

This Proposal is to:

- Change the status of one Consumer Representative from a non-voting to a voting member, but;
 - Not extend to the voting Consumer Representative voting rights in respect of Uniform Network Code Committee (UNCC) business; and
 - Not extend to the voting Consumer Representative voting rights in respect of UNC Modification Proposals which may in future fall under any Self-Governance regime; and
 - Prevent the NCC from appointing as the voting Consumer Representative any party other than the NCC (this could either be a permanent NCC employee or a consultant or contractor substantively employed to carry out NCC business). This shall not restrict the ability of the NCC representative to appoint an Alternative to act on their behalf.

Suggested Text

Amend the definition of Voting Member in Modification Rules 2.1, Defined Terms, to read

"Voting Member": any Consumers' Representative, Transporters' Representative (other than the Panel Chairman and deputy chairman) and any Users' Representative; and

Delete "non-" from paragraph 3.2.1 (f) of the Modification Rules, in order to read:

"(f) if appointed, up to two (2) Consumers' Representative(s), being voting Members;"

2 User Pays

a) Classification of the Proposal as User Pays or not and justification for classification

These Proposals have no systems implications and do not fall within the User Pays framework.

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

No User Pays charges applicable.

c) Proposed charge(s) for application of Users Pays charges to Shippers

No User Pays charges applicable to Shippers.

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

No charges applicable for inclusion in ACS.

3 Extent to which implementation of the proposed modification would better facilitate the relevant objectives

Standard Special Condition A11.1 (a): the efficient and economic operation of the pipe-line system to which this licence relates;

Implementation would not be expected to better facilitate this relevant objective.

Standard Special Condition A11.1 (b): so far as is consistent with subparagraph (a), the coordinated, efficient and economic operation of

(i) the combined pipe-line system, and/ or

(ii) the pipe-line system of one or more other relevant gas transporters;

Implementation would not be expected to better facilitate this relevant objective.

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

The Proposer considers that applicable objective C – the efficient discharge of the licensees (transporters) obligations will be better facilitated. This is because condition A11.2 of the Gas Transporter Licence states:

"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)."

Paragraphs 9 includes:

"9. The network code modification procedures shall provide for:

.....

(f) the consideration of any representations relating to such a proposal made (and not withdrawn) by the licensee, any other relevant gas transporter, any relevant shipper, or any gas shipper or other person likely to be materially affected were the proposal to be implemented".

The Modification Rules provide that Membership of the Modification Panel includes up to two Consumers' Representatives, being non- voting Members. By changing this to voting Members, implementation of this Proposal would

mean that consumer representative votes would be clearly recorded and visible to the Authority in Modification Reports and Modification Panel minutes. This would be expected to facilitate consideration of representations “by persons likely to be materially affected were the proposal to be implemented” and, consequently, implementation would be expected to facilitate achievement of paragraph 9.

No conflict with other relevant objectives has been identified.

The proposer of Proposal 0286A believes that allowing a greater share of voice to consumers in respect of certain Panel business, by extending Consumer Representative voting rights, will better facilitate the efficient discharge of the Licencee’s obligations (A11.1(c)).

EDF Energy notes that the outcome of the Industry Codes Governance Review is that Licence Conditions will be placed on the Transporters to implement the outcomes of this Review. It is clear that a Licence Condition will be placed on the Transporters to provide voting rights to the Consumer Representatives. Therefore implementation of both Proposals could be seen to facilitate these Licence Conditions (when implemented) and so facilitate this relevant objective at a future date.

EDF Energy believes that Proposal 0286 facilitates this objective to a greater degree than Proposal 0286A as it extends Consumer Representative voting rights to the UNCC. Therefore Proposal 0286 is more consistent with Ofgem’s Governance proposals and so will better facilitate the Transporter Licence requirements when implemented.

Wales & West Utilities disagree that implementation of either Modification Proposal will better facilitate the achievement of relevant objective A11(c). All representations made against a Modification Proposal are on a consistent and equal basis, included within the Final Modification Report, and are provided in full to the Authority. By making Consumer Representatives voting members the fulfillment of this requirement will be unaffected.

Standard Special Condition A11.1 (d): so far as is consistent with subparagraphs (a) to (c) the securing of effective competition:

(i) between relevant shippers;

(ii) between relevant suppliers; and/or

(iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers;

Implementation would not be expected to better facilitate this relevant objective.

Standard Special Condition A11.1 (e): so far as is consistent with subparagraphs (a) to (d), the provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards... are satisfied as respects the availability of gas to their domestic customers;

Implementation would not be expected to better facilitate this relevant objective.

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

The Proposer of 0286A considers the promotion of efficiency in the implementation and administration of the network code and or the uniform network code (A11.1 (f)) will be better facilitated by this proposal.

Wales & West Utilities do not agree that implementation would better facilitate the achievement of relevant objective A11(f). As neither of the Modification Proposals are consistent with the Ofgem Code Governance Review Final Proposals it is likely that further Modification Proposals will be required in relation to the status of Consumer Representatives.

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

No implications on security of supply, operation of the Total System or industry fragmentation have been identified.

5 The implications for Transporters and each Transporter of implementing the Modification Proposal, including:

a) Implications for operation of the System:

There are no implications for operation of the System.

b) Development and capital cost and operating cost implications:

There are no cost implications.

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

Not applicable.

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

The Consumer Representative vote could alter the outcome of a Panel vote. This increases Transporters' risk that the Panel will vote in favour of an issue despite having no Transporter support. Also the change in voting rights may mean that Transporters are unable to lodge a Competition Commission appeal against an Ofgem direction (not) to implement a Modification Proposal since Appeals are only permitted when an Ofgem direction does not accord with a Panel recommendation.

EDF Energy disagrees that Proposals 0286 or 0286A will have any impact on price regulation.

6 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

The Consumer Representative vote could alter the outcome of a Panel vote. This may increase the Transporter's risk that the Panel will vote in favour of an issue despite having no Transporter support. Also the change in voting rights may mean that Transporters are unable to lodge a Competition Commission appeal against an Ofgem direction (not) to implement a Modification Proposal since Appeals are only permitted when an Ofgem direction does not accord with a Panel recommendation.

7 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

No implications have been identified.

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

Administrative and operational implications (including impact upon manual processes and procedures)

No implications have been identified.

Development and capital cost and operating cost implications

No implications have been identified.

Consequence for the level of contractual risk of Users

Both Proposers consider the Consumer Representative vote could alter the outcome of a Panel vote. This may increase User's risk that the Panel will vote in favour of an issue despite having no User support. Also the change in voting rights may mean that Users are unable to lodge a Competition Commission appeal against an Ofgem direction (not) to implement a Modification Proposal since Appeals are only permitted when an Ofgem direction does not accord with a Panel recommendation.

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

Both Proposers consider implementation would increase visibility of consumer views with respect to Modification Proposals and ensure these can be formally recorded in Modification Reports and Modification Panel minutes.

10 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

None.

11 Analysis of any advantages or disadvantages of implementation of the Modification Proposal

Advantages

In respect of both Proposals 0286 and 0286A:

- Increases visibility of consumer interests in modification process
- Gives consumers a greater say in Modification Panel business
- Brings UNC into line with best practice in other industry codes
- Consistent with Ofgem’s Industry Codes Governance Review

Disadvantages

In respect of Proposal 0286A:

- Increases Transporter and User risk in respect of potentially limiting appeal rights.

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

Representations were received from the following parties:

Organisation	Position		Preference
	0286	0286A	
AEP	Supports	Supports	-
BOC	Supports	Not in Support	0286
British Gas	Not in Support	Qualified Support	0286A
BP Gas Marketing	Not in Support	Not in Support	-
Consumer Focus	Supports	Not in Support	0286
EDF Energy	Supports	Supports	0286
E.ON UK	Not in Support	Not in Support	-
Gazprom Marketing & Trading	Qualified Support	Not in Support	0286
LAGUR and UIA	Supports	Not in Support	0286

National Grid Distribution	Qualified Support	Qualified Support	-
Northern Gas Networks	Qualified Support	Qualified Support	-
National Grid Transmission	Qualified Support	Qualified Support	-
RWE npower	Not in Support	Not in Support	-
Scotia Gas Networks	Not in Support	Not in Support	-
Scottish and Southern Energy	Not in Support	Supports	0286A
Scottish Power	Not in Support	Qualified Support	0286A
Statoil	Not in Support	Not in Support	-
Wales & West Utilities	Not in Support	Not in Support	-

In summary, of the 18 representations received for Proposal 0286, 5 supported implementation, 4 offered qualified support and 9 do not support implementation.

In summary of the 18 representations received for Proposal 0286A, 3 supported implementation, 5 offered qualified support and 10 do not support implementation.

For those expressing a preference: 5 prefer Proposal 0286 and 3 prefer 0286A.

The Association of Electricity Producers does not have a strong view on whether there should be one or more Consumer Representatives on the Modification Panel. The important issue is that the interests of all types of consumers are taken into account, which may be difficult where there is only one representative and a particular proposal affects domestic and industrial customers differently.

BGT, Scotia Gas Networks and Wales & West Utilities consider the appointment of up to two voting consumer representative positions, as set out in Proposal 0286, has the potential to give rise to a greater number of occasions where the consumer representative vote sways a Panel outcome, and therefore possible rights of appeal. Appeals may only be made by materially affected parties (or their representatives) when a decision has been made by the Authority that does not accord with the majority view of the Modification Panel.

BGT, Scotia Gas Networks, Scottish and Southern Energy do not consider that it is appropriate for consumer representatives to have a voting role in respect of Modification Proposals that are subject to self governance arrangements, nor for matters that are reserved for the Uniform Network Code Committee. Believing such matters are, and should remain, the preserve only of Transporters and

Shippers.

BOC prefers Proposal 0286 as it allows voting rights for two consumer representatives; these would sensibly be split Residential and Business, covering the interests of the smaller and the larger consumers respectively. In respect of Proposal 0286A, BOC considers that the proposed limitation to the scope for contribution from consumer representatives to be a misplaced concern.

BP Gas Marketing raised concerns that the Proposals were raised before Ofgem had issued the final proposals document in relation to the Code Governance Review. As such they have not taken into account Ofgem's recommendations in how they see the consumer representative's role on the UNC Panel.

Consumer Focus has considered the concerns of some parties that voting consumer representatives could skew Panel recommendations with the result that some Authority decisions may no longer be eligible for the right of appeal. In the opinion of Consumer Focus, there is little material risk that their votes would prevent others from appealing and if there is; the risk may not unwind the other benefits of the proposal.

Consumer Focus notes that the right to appeal designated Authority decisions to the Competition Commission was introduced by the Energy Act 2004. In the six years that this right has existed, they estimate that the Authority will have made approximately 900 modification decisions and of these only three have been appealed to the Competition Commission. In none of these three circumstances could two consumer representative votes have swayed the overall Panel recommendation and by extension the eligibility of the decision for appeal.

Consumer Focus confirmed they are represented at two major industry code panels where consumer representatives have the right to vote - the Balancing and Settlement Code (BSC) and Connection and Use of System Code (CUSC). The consumer voice is actively sought and appears to be genuinely appreciated by industry parties. Their experience to date has been that industry parties see their presence and vote as an important part of industry debate and decisions.

On both the BSC and CUSC the consumer representative(s) has the right to vote on all business considered by the panel without exclusion. This has never proven to be an issue on either code; and it is not clear that there is any good reason why Consumer Focus should not be able to vote on all matters under the UNC.

EDF Energy notes that the ability to raise an appeal to the Competition Commission is not limited to UNC signatories, or UNC Panel members; with any impacted party or their representative being able to raise an appeal. This means that consumer representatives, including Consumer Focus, MEUC and EIUG are all able to raise an appeal if they so desired. Of these EDF Energy believes that Consumer Focus is most likely to raise an appeal due to their remit and the high cost associated with an appeal.

EDF Energy considers that it is important that the Consumer representatives are

able to vote on UNCC matters, as these also can have a direct impact on consumers. In particular they note that the UNCC votes on amendments to UNC Related Documents.

E.ON does not support implementation of either Proposal. However, they consider there are meritorious aspects of both Proposals which could be consolidated into a single Modification Proposal, should either of these be not implemented. E.ON considers Consumer Representative(s) should not have a vote on self-governance issues, including UNCC business.

Gazprom considers Proposal 0286 can best facilitate representation of both Domestic and Commercial Consumers through the allocation of one voting position to a Domestic Consumer representative and one voting position to a Commercial Consumer representative. However, they believe the scope of Consumer Representative voting should be subject to more detailed discussion since simple extension of Voting rights may have far reaching implications in particular by affecting the ability undertake a Competition Commission appeal and also question the benefit arising from an appointed Consumer Representative having voting rights on UNCC matters.

BP Marketing, National Grid Distribution, Northern Gas Networks, National Grid Transmission, RWE Npower, Scotia Gas Networks, Scottish Power and Statoil UK are supportive of consumer representation on the UNC Panel. However, all consider the Proposals have been raised prior to the conclusion of the Industry Codes Governance Review and would be better facilitated by concluding Review Group 0267 followed by the implementation of its recommendations.

Wales & West Utilities disagree that by bringing the UNC in to line with other industry codes is a demonstration of alignment with best practice. Because arrangements differ in more than one other industry code, this does not automatically qualify as best practice.

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

Implementation is not required to enable each Transporter to facilitate compliance with safety or other legislation.

14 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

Implementation is not 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.

15 Programme for works required as a consequence of implementing the Modification Proposal

No programme of works would be required as a consequence of implementing the Modification Proposal.

16 Proposed implementation timetable (including timetable for any necessary information systems changes and detailing any potentially retrospective impacts)

Either Proposal could be implemented with immediate effect following direction from Ofgem.

17 Implications of implementing this Modification Proposal upon existing Code Standards of Service

No implications of implementing this Modification Proposal upon existing Code Standards of Service have been identified.

18 Recommendation regarding implementation of this Modification Proposal and the number of votes of the Modification Panel

At the Modification Panel meeting held on 20 May 2010, of the 9 Voting Members present, capable of casting 10 votes, 5 votes were cast in favour of implementing Modification Proposal 0286. Therefore the Panel did not recommend implementation of Modification Proposal 0286.

At the same meeting, 5 votes were cast in favour of implementing Alternative Proposal 0286A. Therefore the Panel did not recommend implementation of Alternative Proposal 0286A.

The Panel then proceeded to vote on which of the two Proposals would be expected to better facilitate achievement of the Relevant Objectives. Of the 9 Voting Members present, capable of casting 10 votes, 2 votes were cast in favour of implementing Proposal 0286 in preference to Alternative Proposal 0286A, and 5 votes were cast in favour of implementing Alternative Proposal 0286A in preference to Proposal 0286.

Panel members noted that the standard Code Relevant Objectives do not apply since the Proposals involve a change to the Modification Rules.

T Davis summarised that Implementation of either Proposal would mean that consumer representative votes would be clearly recorded and visible in Modification Reports and Modification Panel minutes. This might be expected to facilitate consideration of representations “by persons likely to be materially affected were the proposal to be implemented” and, consequently, implementation would be expected to facilitate achievement of paragraph 9. However, it may also be argued that representations are readily available and views can be recorded without a vote being introduced, such that it has not been demonstrated that implementation would facilitate better achievement of paragraph 9.

19 **Transporter's Proposal**

This Modification Report contains the Transporter's proposal to modify the Code and the Transporter now seeks direction from the Gas and Electricity Markets Authority in accordance with this report.

20 **Text**

**MODIFICATION 0286
EXTENDING MODIFICATION PANEL VOTING RIGHTS TO
CONSUMER REPRESENTATIVES**

MODIFICATION RULES

Amend paragraph 2.1 to read as follows:

"Voting Member": any Transporters' Representative (other than the Panel Chairman and deputy chairman), ~~and~~ any Users' Representative and any Consumers' Representative; and

Amend paragraph 3.2.1(f) to read as follows:

"if appointed up to two (2) Consumers' Representative(s), being ~~non-voting~~ Voting Members;"

Amend paragraph 3.2.2 as follows:

"... It is expected that the Terminal Operators' Representative, ~~Consumers' Representative(s)~~, Independent Suppliers' Representative and Independent Transporters' Representative shall, as appropriate, inform the Modification Panel of the views of those persons which they represent."

**MODIFICATION 0286A
ALTERNATIVE PROPOSAL
EXTENDING MODIFICATION PANEL VOTING RIGHTS TO
CONSUMER REPRESENTATIVES**

MODIFICATION RULES

Amend paragraph 2.1 to read as follows:

"Voting Member": any Transporters' Representative (other than the Panel Chairman and deputy chairman), ~~and~~ any Users' Representative and any Consumers' Representative appointed as a Voting Member; and"

Amend paragraph 3.2.1(f) to read as follows:

"if appointed up to two (2) Consumers' Representative(s), ~~being non-voting Members~~ one being a Voting Member and the other being a non-Voting Member, provided that if only one (1) Consumer Representative

is appointed such Consumer Representative shall be a Voting Member:"

Add a new paragraph 3.8 to read as follows:

"3.8 Consumers' Representatives

3.8.1 The Consumers' Representative appointed by the National Consumer Council to be a Voting Member shall:

- (a) be an individual who is an employee, representative, officer or contractor of the National Consumer Council and the Modification Panel may ask the Consumers' Representative to provide evidence that such is the case (and in the event such is not the case the Consumers' Representative shall not be a Voting Member); and
- (b) notwithstanding appointment as a Voting Member, not have the right to exercise a vote in respect of any decision by the Modification Panel in relation to a Modification Proposal which may be implemented in accordance with the Modification Procedures and if permitted under the Transporter's Licence, without the written consent of the Authority."

Amend paragraph 5.8 to read as follows:

".... On any vote each Voting Member present shall (subject to paragraphs 3.8, 4.5.2 and 4.5.4) be entitled to exercise one (1) vote."

GT SECTION B – GENERAL TERMS

Amend paragraph 4.1.2 to read as follows:

".... in respect of the Uniform Network Code Committee; provided a member of the Uniform Network Code Committee who is a Consumers' Representatives shall not be entitled to a vote for the purposes of determining any decision of the Uniform Network Code Committee."

For and on behalf of the Relevant Gas Transporters:

Tim Davis
Chief Executive, Joint Office of Gas Transporters