

Draft Modification Report
Extending Modification Panel Voting Rights to Consumer Representatives
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Modification Reference Number 0286 0286A
Version 2

This Draft Modification Report is made pursuant to Rule 9.1 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;"

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User Pays

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

This Proposal has no systems implications and does 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 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)).

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.

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.

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 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.

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)

Written Representations are now sought in respect of this Draft Report.

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)

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

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

Representations are now sought in respect of this Draft Report and prior to the Transporters finalising the Report.

For and on behalf of the Relevant Gas Transporters:

Tim Davis
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