

Modification proposal:	Uniform Network Code (UNC) 286/286A: Extending Modification Panel Voting Rights to Consumer Representatives (UNC286/286A)		
Decision:	The Authority ¹ directs that proposal 286A be made ²		
Target audience:	The Joint Office, Parties to the UNC and other interested parties		
Date of publication:	30 July 2010	Implementation Date:	To be confirmed by the Joint Office

Background to the modification proposal

In November 2007 Ofgem launched a review into the industry codes and the governance surrounding them (the Code Governance Review). As part of the Code Governance Review (CGR) the structure of code panels was considered. Ofgem found that the voting rights of consumer representatives varied across the codes. We considered this to be unnecessary and inconsistent. We indicated that we felt the codes should be more consistent and consumer representatives should have voting rights at all the major code panels. As part of our Code Governance Review final proposals published in March 2010³ we proposed to require changes to the UNC to provide the National Consumer Council representative with a voting right. Currently the UNC can have up to two consumer representatives, appointed by the National Consumer Council, on the panel but these are non-voting members.

The modification proposal

UNC286 was raised to change the status of the consumer representative(s) on the UNC Panel from non-voting to voting member(s). The proposer felt that the modification would better facilitate applicable objective (c)⁴, the efficient discharge of the licensee's obligations under this licence. Paragraph 9 in Standard Special Condition A11 requires the consideration of any representation, relating to a modification proposal, made "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 proposer argues that consumers could be considered to be persons 'likely to be materially affected' by modification proposals. Allowing consumer representatives to have voting rights would enable their views to be clearly recorded and visible to the Authority in Modification Reports and Modification Panel minutes. This would facilitate the consideration of representations by persons likely to be materially affected were the proposal to be implemented.

Representations received during the consultations carried out by the Joint Office of Gas Transporters on UNC286 raised a number of issues. Concerns were raised that, under UNC 286, consumer representative(s) would be able to vote on areas of the UNC that were considered to have no influence on consumers, for example Uniform Network Code

¹ The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

² This document is notice of the reasons for this decision as required by section 38A of the Gas Act 1986.

³ Code Governance Review – Final Proposals 43/10 -

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=297&refer=Licensing/IndCodes/CGR>

⁴ As set out in Standard Special Condition A11(1) of the Gas Transporters Licence, see:

http://epr.ofgem.gov.uk/document_fetch.php?documentid=6547.

Committee⁵ (UNCC) business. The UNCC make decisions on changes to the following documents:

- Network Code Operations Reporting Manual as referenced in Section V9.4;
- Network Code Validation Rules referenced in Section M1.5.3.;
- ECQ Methodology as referenced in Section Q6.1.1(c);
- Measurement Error Notification Guidelines for NTS to LDZ and LDZ to LDZ Measurement Installations as referenced in OAD Section D3.1.5.; and
- The Allocation of Unidentified Gas Document referenced in Section E9.1.1.

Under UNC286 the consumer representative would also be able to vote on modification proposals that might come under the 'self-governance' procedures proposed by Ofgem.

Some representatives did not feel that this was necessary and could lead to parties lobbying the consumer representative for their vote on issues unrelated to consumers. There was also a concern that there was no restriction on what type of consumers the consumer representatives could represent. This would mean that representatives who were strongly aligned to a particular type of consumer might vote in line with that consumer's view rather than the general views of consumers as a whole. Those who raised the concern felt that the consumer representative should only be individuals who were employed by the National Consumer Council (NCC), which is more commonly known as Consumer Focus, as they felt that the NCC may be judged to be more impartial.

As a result of these concerns an alternative to UNC286 was raised. UNC286A varies from UNC286 in that it would:

- change the status of only one of the two current consumer representatives to a voting member;
- restrict the consumer representative's vote so they would not be able to vote on UNCC business;
- restrict the consumer representative's vote so they would not be able to vote on modification proposals that would not be decided on by Ofgem (i.e. self governance proposals);
- require that the voting consumer representative be an employee of the NCC.

The proposer of UNC286A believes that applicable objectives (c) and (f) would be facilitated should their proposed alternative modification be implemented.

UNC Panel⁶ recommendation

At the UNC panel meeting held on the 20 May 2010, both UNC286 and UNC286A received five of the available ten votes in favour of the modification. This meant that the UNC panel did not recommend the implementation of either UNC286 or its alternative. The panel then voted for which proposal they felt would better facilitate the relevant objectives when compared to each other. Two votes were in favour of UNC286 and five were in favour of UNC286A.

⁵ The UNC Committee is distinct to the UNC Panel although all UNC Panel members are automatically considered members of the UNC Committee. The UNCC is established under the UNC to review matters concerned with the implementation of the UNC.

⁶ The UNC Panel is established and constituted from time to time pursuant to and in accordance with the UNC Modification Rules

Several panel members felt that the relevant objectives did not apply in relation to these modification proposals as the changes proposed were changes to the modification rules. It was pointed out that the modification proposals might be considered to facilitate the requirements under paragraph 9 of Standard Special Condition A11. Under paragraph 2 of A11 the relevant objectives for modification proposals to the modification procedures can also include facilitation of the requirements under paragraphs 9 and 12 of A11. However, it was noted by some panel members that as the consumer representative's views are clearly recorded and visible in Modification Reports and Modification Panel minutes without the need for a vote, the facilitation of paragraph 9 had not been demonstrated.

The Authority's decision

The Authority has considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 02/07/2010. The Authority has considered and taken into account the responses to the Joint Office's consultation on the modification proposal which are attached to the FMR⁷. The Authority has concluded that:

1. implementation of either UNC286 or UNC286A would better facilitate the achievement of the relevant objectives of the UNC⁸;
2. as it is not practicable to implement both UNC286 and UNC286A we consider that of the two, implementation of UNC286A would best meet the relevant objectives; and
3. directing that UNC286A be made is consistent with the Authority's principal objective and statutory duties⁹.

Reasons for the Authority's decision

We consider that a consumer representative will be able to offer views at the UNC panel from the important perspective of the impact on consumers. We agree that this view should be capable of being expressed as part of the recommendation on whether to accept or reject a proposal. While consumer representative's views are normally captured during the modification process a vote will add greater weight to their views.

A number of issues were raised in the representations received relating to these modification proposals. One of the main arguments against the proposal and the alternative was that giving voting rights to consumer representatives could disrupt the ability of parties to appeal to the Competition Commission. Appeals can only be raised by parties who are materially affected by a modification decision and where the Authority's decision does not accord with the majority view of the panel. It was argued that the addition of a Consumer Representative vote would influence party's ability to raise an appeal.

Consumer Focus in their response¹⁰ to the Joint Office consultation on UNC286 and UNC286A, pointed out that since the power to raise appeals has been in place (brought in by the Energy Act 2004) approximately 900 modification decisions were made by the

⁷ UNC modification proposals, modification reports and representations can be viewed on the Joint Office of Gas Transporters website at www.gasgovernance.com

⁸ As set out in Standard Special Condition A11(1) of the Gas Transporters Licence, see: http://epr.ofgem.gov.uk/document_fetch.php?documentid=6547

⁹The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Gas Act 1986.

¹⁰ UNC286 and UNC286A proposals and responses - <http://www.gasgovernance.co.uk/0286>

Authority. Of these, three appeals were raised against the Authority's decision. In all three cases the consumer representative's votes would not have influenced the final outcome.

Although past events cannot predict what may occur in the future, and we acknowledge that UNC286 and alternative may have an impact on parties' ability to appeal, we consider that the overall risk is very low and the benefits of allowing a consumer vote outweigh the risks. We also note that there are voting consumer representatives on the Balancing and Settlement Code Panel and the Connection and Use of System Code Panel.

Consumer Focus is supportive of the original proposal. They do not support the alternative because of the restrictions it would put in place on the voting rights of the consumer representatives. They feel that the original reflects the fact that consumers are affected by almost all of the decisions taken under the UNC and point out that in some cases there are proposals that influence only shippers, or only transporters, but all voting parties are able to vote on these proposals.

Other representations made were concerned that the modification was raised before Ofgem's final decisions had been made on the CGR and as a result the modification does not fully implement the requirements of the CGR. They felt that all issues/modifications relating to the CGR should be considered in UNC Review Group 267 after the final CGR decisions were published. This would be a more efficient way of bringing the changes required.

In our Code Governance Review final proposals we noted that these modifications were out to consultation, we commented that in our view the proposals did not conflict with our proposed licence modifications. Although, we did note that further modifications may still be required as neither proposal addressed the intention for Ofgem to be able to appoint a further consumer representative. We believe that this is still the case and further modifications will still be required.

The concern that Consumer Focus might appoint a party external to them to represent consumers and that this party might only represent a small section of the consumer profile does not appear to be a strong possibility given Consumer Focus' role and responsibilities.

Applicable objective (c): so far as is consistent with sub-paragraphs (a) and (b), the efficient discharge of the licensee's obligations under this licence

Both UNC286 and UNC286A proposers argue that the proposals will facilitate relevant objective (c) by facilitating the consideration of representations by persons likely to be materially affected were the proposal to be implemented. Some panel members were not convinced by this argument as they felt that the consumer representative's views were captured in the FMR and their representations included in the copies of responses sent to Ofgem.

Although, we understand the point raised by some panel members we feel that recording the vote will make the consumer representatives view clearer and give them a stronger influence in debates in a way they do not currently have. Panel members will have to consider the views expressed and engage more fully with the consumer representatives. This may result in modification proposals being adapted to take into account the consumer representative's views leading to more effective code development. We therefore agree with the proposers that both UNC286 and UNC286A facilitate relevant

objective (c) insofar as it will allow the licensee to better discharge the obligations set out in paragraphs 9 and 12 of SSC A11.

Applicable objective (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

The proposer of UNC286A argues that the proposal will also facilitate applicable objective (f) by promoting the efficiency in the implementation and administration of the network code and UNC, although they have not stated how.

We agree with the proposer of UNC286A that the proposal would better facilitate applicable objective (f) by formalising the requirement for the consumer representative's opinion to be noted in the form of a vote and comments surrounding that vote.

We also note that UNC286 would result in there being two consumer representatives on the panel who would have the ability to vote. We consider that by providing a vote to Consumer Focus will rightly provide a stronger voice for consumers at the UNC panel and in changes to the UNC. However we do not consider that there are grounds at this time to extend this further.

We do not consider that UNC286A would restrict the very important role that the consumer representative would have in identifying self governance proposals. It would simply restrict the consumer representative's ability to vote on modification proposals that have been identified as self-governance and hence have no material impact on consumers. However, the scope of the restriction proposed by UNC286A also applies to the UNCC. While we recognise that work undertaken by this body may be considered to be largely technical in nature and generally non-modification business, it may still have some degree of consumer impact.

However although, both UNC286 and UNC286A will in our consideration better facilitate the applicable objectives, we believe on balance that UNC286A will better facilitate the objectives in comparison to UNC286.

Decision notice

In accordance with Standard Special Condition A11 of the Gas Transporters Licence, the Authority, hereby directs that modification proposal UNC 286A:
Extending Modification Panel Voting Rights to a Consumer Representatives be made.

Mark Cox
Associate Partner, Licensing and Industry Codes

Signed on behalf of the Authority and authorised for that purpose.