

Representation

Draft Modification Report

0312 - Introduction of Two-Thirds Majority Voting to the UNC Modification Panel

Consultation close out date: 19 May 2011

Respond to: enquiries@gasgovernance.co.uk

Organisation: **RWE Npower**

Representative: Robin Healey

Date of Representation: 18 May 2011

Do you support or oppose implementation?

Support

Please summarise (in one paragraph) the key reason(s) for your support/opposition.

Modification 0312 provides for additional checks and balances to be applied to the UNC Modification Panel arrangements pertaining to modifications which are raised as a result of the Authority compelling the Licensee to raise them. The application of two-thirds voting to this type of modification shifts the balance of votes required for the Panel to recommend a modification for implementation and thus increases the probability that the right to appeal to the Competition Commission will remain open to materially affected industry parties.

This is particularly important for modifications raised under the direction of the Authority (e.g. Significant Code Reviews) since this type of modification is likely to be contentious and have a material impact on industry participants. The contentious nature of these modifications also means that it is less likely that the Panel will reach an overwhelming consensus due to the multi-party composition of the Panel.

0312

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Version 1.0

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Are there any new or additional issues that you believe should be recorded in the Modification Report?

We would like to have seen more detailed analysis to address the question whether the underlying Statutory Instrument would allow modification 0312 to be effective, as was performed with the equivalent modifications to the CUSC (CAP190) and BSC (P264).

It is our view that because clause 10-2 of SI 2005 1646 is worded the same as 5-2 (which relates to the BSC) and not the same as 6-2 (which relates to the CUSC) that the advice provided by the QC for CAP190 & P264 would apply to 0312 insofar as because the recommendation of the UNC Panel is referred to as the view expressed by the Panel as a corporate entity (as oppose to being the views of the individual Panel members), that 0312 would function as intended under the SI.

We would have liked to see this thoroughly investigated and the results published in order that no question remains as to the validity of 0312.

Relevant Objectives:

0312 better facilitates objective SSCA11.1(d) of the UNC by ensuring that smaller parties with minority interests which may not have the resources available to participate in the SCR process are more likely to be able to appeal to the Competition Commission if the modification is approved for implementation.

0312 also promotes greater efficiency under SSC A11.1(f) by reducing the likelihood that the Regulator will be perceived to 'pre-judge' modifications which it has directed due to the increased possibility of appeal to the Competition Commission.

Impacts and Costs:

None

Implementation:

Immediate implementation would be preferred in order to allow the changes to be applied for any modifications raised under the SCR process.

Legal Text:

We are happy that the legal text accurately reflects the intention of the modification.

Is there anything further you wish to be taken into account?

No