

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: **Wales & West Utilities Ltd**

Representative: Simon Trivella

Date of Representation: 19 May 2011

Do you support or oppose implementation?

Not in Support

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

We do not support the implementation of this modification proposal for the following reasons:

The modification proposal is based on the supposition that the Gas Transporters may not act in a reasonable manner when directed to raise a modification proposal as a result of a Significant Code Review (SCR). We disagree entirely with this. If there is a requirement to prevent the Authority from being in the position of controlling the end to end process then this is the issue that should be tackled, not the presumed conduct of the Transporters.

The legal opinion provided for the BSC and CUSC is not 100% conclusive and, whilst this is the case, implementation of this modification proposal will always be subject to challenge and uncertainty over its effectiveness / validity.

The statutory instrument is clear in its intent and to manipulate this by way of a change to the UNC modification rules is not appropriate. As the Statutory Instrument can be amended we believe that this would be the most appropriate route to tackle this issue. We share the concerns of the proposer based on the statement made by the Competition Commission:

"It is less clear that the system of checks and balances established in the code modification procedures works if GEMA is, to use GEMA's words, the 'effective progenitor' of a proposal (or at least if it is perceived as such). The existing system envisages that GEMA will express a firm view as to what (if any) reform ought to take place at the conclusion of the process, rather than at the start of the process. If GEMA is the effective progenitor of a proposal, there may be a perception that it cannot fulfil its intended role under the UNC modification procedures without having prejudged, or at least appeared to prejudice, the matter."¹

Our preferred resolution to this would be that the Statutory Instrument be amended to allow any affected party to appeal an Authority decision that has been made in relation to a modification proposal raised by a transporter as a result of a direction under their licence. This could not be raised as an alternative to this modification proposal as it would not be a change to the UNC.

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

We have no new or additional issues to be recorded in the Modification Report.

Relevant Objectives:

How would implementation of this modification impact the relevant objectives?

¹ Para 6.192, 'Decision and Order of the Competition Commission', 10 July 2007

We do not believe that implementation would assist in further achievement of any of the relevant objectives.

The concern raised by some Code parties that the proposed SCR process may result in insufficient separation of powers (i.e. Ofgem effectively acting as “judge, jury and executioner”) for the purposes of industry Code governance may well be valid. However, to tackle this through changing the modification rules and effectively redefining the term ‘majority’ is not an appropriate solution. The 11 voting members of the modification panel should, in our opinion, be making their recommendations based on the merits of the proposal and the impact that implementation will have on the relevant objectives and therefore the panel recommendation (if any) should in no way assist Ofgem in being “judge, jury and executioner”.

If the appeals mechanism is indeed under threat by the new SCR process then the most appropriate solution would be for the appeals process to be accessible for all decisions on SCR modifications regardless of the recommendation made by the modification panel.

Impacts and Costs:

What analysis, development and ongoing costs would you face if this modification were implemented?

There would be no additional ongoing costs to WWU if this modification were to be implemented.

Implementation:

What lead-time would you wish to see prior to this modification being implemented, and why?

Implementation could be achieved fairly promptly following a direction from to do so from the Authority.

Legal Text:

Are you satisfied that the legal text will deliver the intent of the modification?

We have no comments to make on the appropriateness of the legal text.

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

Please provide any additional comments, supporting analysis, or other information that that you believe should be taken into account or you wish to emphasise.

We have nothing further that we wish to be taken into account.

{By email}

Simon Trivella
Regulation & Commercial Manager
Wales & West Utilities Ltd
Tel: 07813 833174
E-Mail: simon.trivella@wwutilities.co.uk

0312
Representation

19 May 2011

Version 1.0

Page 3 of 3

© 2011 all rights reserved