

## Stage 04: Final Modification Report

# 0448:

## Aligning UNC with Licence conditions relating to European legislative change and Alternative Modification Proposals

At what stage is this document in the process?



This Modification would amend the Modification rules to recognise that the Authority:

- May raise Modification Proposals related to European regulatory change;
- May direct the timetable to be applied to a Modification Proposal related to European regulatory change;
- May direct that a Modification Proposal raised by a Transporter may not be withdrawn; and
- May direct that an alternative Modification Proposal may not be raised.



The Panel recommends implementation.



Low Impact: Shippers, Distribution Network Operators, National Grid NTS, Third Party Participants and Materially Affected Parties.

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## About this document:

This document is a Final Modification Report presented to the Panel on 19 December 2013.

The Authority will consider the Panel's recommendation and decide whether or not this change should be made.



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# 1 Summary

## Is this a Self-Governance Modification?

The Modification Panel determined that this is not a self-governance modification.

## Why Change?

The Modification Rules do not allow for the provisions in the Transporter Licence that the Rules should provide that the Authority:

- May raise European Modification Proposals;
- May direct the timetable to be applied to a European Modification Proposal;
- May direct that a European Modification may not be withdrawn; and
- May direct that an alternative Modification Proposal may not be raised.

## Solution

### Alignment of the UNC with European-driven licence changes

It is proposed that the Authority be enabled to raise Modification Proposals and alternative Modification Proposals to the Code which the Authority considers are necessary to comply with or implement any relevant legally binding decisions of the European Commission and / or the Agency for the Cooperation of Energy Regulators relating to Regulation 2009/715/EC of the European Parliament and of the Council of 13 July 2009 concerning conditions for access to the national gas transmission networks. Furthermore, it is proposed that, for European regulatory change related Modification Proposals, the Authority be enabled to direct the timetable within which such Modification Proposals are developed. This Modification Proposal also restricts Transporters' ability to withdraw Modification Proposals related to European regulatory change.

This Modification Proposal also seeks to align the UNC Modification Procedures with Transporter licence Standard Special Condition A11 (9(c)) which enables the Authority to direct that an alternative Modification Proposal may not be raised.

This Modification Proposal will require changes to the Modification Procedures.

## Relevant Objectives

Implementation would align the Modification Rules with the provisions of Standard Special Condition A11, and so facilitate efficient discharge of the licensee's obligations.

## Implementation

No implementation timescales are proposed. No implementation costs are expected and no lead-time is required prior to implementation.

## 2 Why Change?

### Maintaining currency with European legislative changes

In order to ensure that the UNC is aligned with relevant European legislation and binding decisions of the Commission and/or ACER, it is essential that Modifications to the UNC can be introduced in the required timescales. Currently, Modification Proposals may be raised by Transporters, Users and, in certain circumstances, Third Party Participants and Materially Affected Parties. None of these parties may direct the timetable for the implementation of the Modification Proposal, and so the implementation timetable required for European Modification Proposals cannot be guaranteed.

In order to avoid non-compliance with the requirements of European legislation, it is necessary for the Modification Rules to have a mechanism which ensures that the modification procedures respond to any modification timetable and/or procedural requirements directed by the Authority as necessary to comply with relevant EU requirements.

### UNC Modification Rules alignment with Transporters' licence conditions

The Transporters' licences currently include a condition empowering the Authority to control the introduction of Alternative Modification Proposals. This Modification will deliver this capability into the UNC Modification Procedures.

## 3 Solution

### Proposed Solution

#### Alignment of the UNC with European-driven licence changes

This Modification Proposal will enable licence holders to comply with their obligations relating to European regulatory change. It will:

- Enable the Authority to raise Modification Proposals and alternative Modification Proposals related to European regulatory change;
- Enable the Authority to determine the timetable to be applied to Modification Proposals related to European regulatory change; and
- Restrict the ability of Transporters to withdraw Modification Proposals raised as a consequence of European regulatory change.

#### Alignment of the UNC with Licence Special Standard Condition A11 (9(c))

It is proposed to change the Modification Procedures within the UNC as follows:

- To enable the Authority to direct that Alternative Modifications be prohibited in relation to specific Modification Proposals.

<b>User Pays</b>
Classification of the modification as User Pays, or not, and the justification for such classification.
There will be no system change costs associated with this Modification, and so this is not classified as User Pays.
Identification of Users of the service, the proposed split of the recovery between Gas Transporters and Users for User Pays costs and the justification for such view.
N/A
Proposed charge(s) for application of User Pays charges to Shippers.
N/A
Proposed charge for inclusion in the Agency Charging Statement (ACS) – to be completed upon receipt of a cost estimate from Xoserve.
N/A

## 4 Relevant Objectives

### Impact of the modification on the **Relevant Objectives**:

Relevant Objective	Identified impact
a) Efficient and economic operation of the pipe-line system.	None
b) 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.	None
c) Efficient discharge of the licensee's obligations.	Positive
d) 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.	None
e) 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.	None
f) Promotion of efficiency in the implementation and administration of the Code.	Positive

g) Compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.	Positive
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**Relevant Objective (c): Efficient discharge of the licensee's obligations**

Implementation would deliver improved alignment between the Uniform Network Code and Special Standard Condition A11 of the GT Licence. This is because changes have been made to the Licence specifying that the network code modification procedures should provide specific rules for European Modifications and should allow for the Authority to determine that no alternative modifications may be raised. These requirements are not currently provided for in the modification procedures. Implementation would therefore facilitate efficient discharge of the licensee's obligations with respect to SSC A11 (9).

**Relevant Objective f) Promotion of efficiency in the implementation and administration of the Code**

By introducing clarity regarding the modification process to be followed if Ofgem exercise the relevant powers under the Transporter's Licence, implementation would create transparency and certainty and ensure that all parties understand the process to be followed, which is consistent with promoting efficiency in the implementation and administration of the Code.

**Relevant Objective (g): Compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators**

Implementation of this modification is not a requirement of the Regulation or any legally binding decisions of the EC and/or ACER. However, implementation potentially facilitates future compliance in a timely manner since fixed timetables may be set which all UNC parties would be expected to work towards and which could not be varied without approval by the Authority.

## 5 Implementation

This Modification Proposal requires a change to the Modification Procedures. It does not require any system change and has no implementation costs associated with it.

This modification delivers alignment of the UNC Modification Rules with those sections of SSC A11 relating to European regulatory change. It also introduces the provisions of Transporter Licence A11 (9(c)) which enables the Authority to direct in writing that a Modification Proposal may not be raised. The omission of this condition in the Modification Procedures is such that Transporters are currently non-compliant. The relevant condition should be incorporated into the UNC Modification Procedures as soon as possible.

## 6 Legal Text

### Text

The following Text has been prepared by National Grid NTS, and has been reviewed by the Workgroup.

#### **Uniform Network Code – Modification Rules**

*Amend paragraph 1.1(b) as follows:*

- (b) the making of proposals for the modification of the Uniform Network Code either by a Transporter, a User ~~or~~, a Third Party Participant [or the Authority](#);

*Amend paragraph 1.1(c) as follows:*

- (c) the making of proposals for the modification of each Individual Network Code by a Relevant Transporter, a Relevant Shipper ~~or~~, a Third Party Participant [or the Authority](#);

*Amend paragraph 1.1(d) as follows:*

- (d) [subject to paragraph 6.4.5\(b\)](#) where a proposal is made for the modification of the Uniform Network Code the making of an alternative proposal for the modification of the Uniform Network Code by any Transporter, User, ~~or~~ a Third Party Participant [or the Authority \(but in the case of the Authority only insofar as such alternative proposal is one which the Authority reasonably considers is necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Cooperation of Energy Regulators\)](#), other than the person who raised the original modification proposal;
- (e) [subject to paragraph 6.4.5\(b\)](#) where a proposal is made for the modification of an Individual Network Code the making of an alternative proposal for the modification of that Individual Network Code by a Relevant Transporter, a Relevant Shipper ~~or~~, a Third Party Participant [or the Authority \(but in the case of the Authority only insofar as such alternative proposal is one which the Authority reasonably considers is necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Cooperation of Energy Regulators\)](#), other than the person who raised the original modification proposal;

*Add new defined terms in alphabetic order under paragraph 2.1 as follows:*

**"Regulation"** means [Regulation 2009/715/EC of the European Parliament and of the Council of 13 July 2009 \(as amended from time to time\) concerning conditions for access to the national gas transmission networks](#);

*Amend paragraph 6.1.1 as follows:*

- 6.1.1 Without prejudice to paragraph 6.4 or paragraph 12.4 and subject to paragraph 6.1.4, a Modification Proposal in respect of the Uniform Network Code may be made from time to time by:

- (a) a Transporter;

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- (b) a User;
- (c) [a Third Party Participant](#), only insofar as such Modification Proposal relates to a proposal to modify Annex V-1 (“Table of Operational and Market Data”) in the Uniform Network Code, ~~a Third Party Participant~~;
- (d) a Materially Affected Party (but only in respect of a Modification Proposal which proposes a modification to a NTS Charging Methodology or a DN Charging Methodology);~~;~~
- (e) [the Authority \(but only insofar as such Modification Proposal is one which the Authority reasonably considers is necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Cooperation of Energy Regulators\).](#)

*Amend paragraph 6.1.2(b) as follows:*

- (b) any Relevant Shipper; ~~and/or~~

*Amend paragraph 6.1.2(c) as follows:*

- (c) a Materially Affected Party (but only in respect of a Modification Proposal which proposes a modification to a NTS Charging Methodology or a DN Charging Methodology); ~~;~~ [and/or](#)

*Add a new paragraph 6.1.2(d):*

- (d) [the Authority \(but only insofar as such Modification Proposal is one which the Authority reasonably considers is necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Cooperation of Energy Regulators\).](#)

*Amend paragraph 6.2.1(e) as follows:*

- (e) in the case of a Modification which proposes a timescale for the implementation of the Modification (for the purposes of enabling the Authority and any persons, including but not limited to Users, Transporters, Third Party Participants and Non Code Parties to be aware of the potential benefits or constraints associated with such timing), [except in the case where the Authority has directed a timetable in accordance with paragraph 12.5.2 and/or 12.5.3, where only one Fixed Implementation Date may be included](#), shall include:
  - (i) two or more Fixed Implementation Dates;
  - (ii) a Proposed Authority Decision Date in respect of each Fixed Implementation Date, for the purposes of enabling the Modification to be implemented by the Fixed Implementation Date;
  - (iii) a Backstop Lead Time;
  - (iv) the reasons why it is proposing each date under paragraph (i), (ii) and (iii).

*Amend paragraph 6.4.5 as follows:*

- 6.4.5 An alternative Modification Proposal may not be made:



(a) in respect of a Modification Proposal after the Modification Panel pursuant to paragraph 7.2.3(a) has determined such Modification Proposal should proceed to Consultation; ~~or~~

(b) where the Authority directs a Transporter in writing that an alternative Modification Proposal shall not be made in respect of a Modification Proposal.

In case of paragraph (b), the Transporter shall notify the Secretary about the direction as soon as reasonably practicable after it has been received by the Transporter, and the Modification Panel shall ensure that a Modification Proposal will not be considered as an alternative Modification Proposal to the relevant Modification Proposal.

*Amend paragraph 6.5.7 as follows:*

6.5.7 For the purposes of this paragraph 6.5:

(a) ~~The~~the Authority, upon request by a Proposer of a Significant Code Review Modification Proposal, may direct:

(a) that the Proposer may vary, withdraw or make a variation request in respect of the relevant Significant Code Review Modification Proposal in accordance with paragraph 6.5; or

(b) that the Proposer may not vary, withdraw or make a variation request in respect of the relevant Significant Code Review Modification Proposal and that such proposal shall proceed in accordance with the Modification Procedures; ~~and~~

(b) where the Proposer of a Modification Proposal is a Transporter, and the Authority has issued a direction to the Transporter setting and/or amending a timetable (in relation to the Modification Proposal, which Modification Proposal the Authority reasonably considers is necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Cooperation of Energy Regulators) for the raising of such Modification Proposal by the Transporter, the completing of each of the procedural steps in these Rules (to the extent that they are relevant) and/or implementation of the Modification Proposal, then the Proposer may not withdraw the relevant Modification Proposal without the Authority's prior consent.

*Amend paragraph 12.5 as follows:*

12.5 Time periods

12.5.1 Notwithstanding any time periods specified in these Rules, in respect of any Modification Proposal or Request the Modification Panel may subject to paragraph 12.5.2, from time to time, determine to shorten or lengthen the time period within which any (or all) of the Modification Procedures, Request Procedures or any other procedures is (or are) to be undertaken. If the Modification Panel shall so determine, the Code Administrator shall, so far as consistent with these Rules and the Transporter's Licence, do all acts and things which these Rules specify as acts and things to be done by the Code Administrator within such shorter or longer period of time so as to give effect to such determination.

12.5.2 Notwithstanding any time periods specified in these Rules, in respect of any

Modification Proposal which the Authority reasonably considers is necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Cooperation of Energy Regulators, the Authority may, by direction in writing to a Transporter, specify and/or amend the timetable to apply to each stage of such Modification Proposal and/or the implementation date of such Modification Proposal.

12.5.3 Where the Authority makes a direction referred to in paragraph 12.5.2 and such direction specifies:

- (a) a timetable in respect of all of the steps specified in these Rules as applying to such Modification Proposal, the Modification Proposal shall progress in accordance with the timetable specified in such direction (and not the timetable set out in these Rules );
- (b) a timetable in respect of some (but not all) of the steps specified in these Rules as applying to such Modification Proposal (and does not direct that the steps in respect of which no timetable is directed are not to apply to such Modification Proposal), then such Modification Proposal shall proceed on the basis of the timetable specified in the direction (in respect of the steps specified in the direction) and the timetable set out in these Rules (in respect of all other steps specified in these Rules as applying to such Modification Proposal);
- (c) an implementation date in respect of such Modification Proposal but specifies no timetable to apply to such Modification Proposal in relation to these Rules, then the Transporter to whom the direction is made by the Authority shall notify the Secretary of the timetable that the Transporter reasonably believes ought to apply to such Modification Proposal in order to achieve the directed implementation date, and such notified timetable shall apply for the purposes of these Rules in relation to such Modification Proposal.

12.5.4 Until such time as the Authority makes a direction referred to in paragraph 12.5.2, the Modification Proposal shall proceed in accordance with the Modification Procedures.

## 7 Consultation Responses

Representations were received from the following parties:

Company/Organisation Name	Support Implementation or not?
British Gas	Qualified Support
Gazprom	Qualified Support
Northern Gas Networks	Support
Scotia Gas Networks	Support

Of the four representations received, two supported implementation and two offered qualified support.

### Summary Comments

British Gas noted that paragraph 6.4.5 of the legal text seeks to place an obligation on the Modification Panel. The Modification Panel is not a party to the UNC and therefore it cannot be formally obligated by the Code.

British Gas was hesitant about supporting a modification which further strengthens Ofgem's control over the governance of, and the terms set out within, the UNC.

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However, they recognised that the changes required by this modification have their roots in EU law to which the UK has already acceded.

Gazprom recognised the requirements for the modification. However, they did not see benefit in additional governance control of Ofgem over the UNC.

## 8 Panel Discussions

The Panel Chair summarised that Modification 0448 focuses on changing the Modification rules to enable the Authority to raise Modifications and alternative Modifications to the UNC where the Authority considers a modification is necessary to comply with or implement any European regulatory change and allow the Authority to direct the Modification development timetable. This Modification also restricts Transporters' ability to withdraw Modifications related to European regulatory change and to align Modification procedures with Transporter licence Standard Special Condition A11 (9(c)) which enables the Authority to direct that an alternative Modification may not be raised.

Members considered the representations raised and in particular the comments on the perceived additional governance by the Authority strengthening Ofgem's control over the governance of modifications. Particular concern was expressed with regards to preventing alternative Modifications being raised however it was recognised such change was required to align the process with EU law.

Members considered the relevant objectives (c), (f) and (g). Members agreed that implementation would deliver improved alignment between the Uniform Network Code and Special Standard Condition A11 of the GT Licence; would introduce clarity regarding the modification process to be followed if Ofgem exercise the relevant powers under the Transporter's Licence, implementation would create transparency and certainty and ensure that all parties understand the process to be followed, which is consistent with promoting efficiency in the implementation and administration of the Code; and implementation potentially facilitates future compliance in a timely manner with fixed timetables associated with EU legislation. Conversely, members briefly discussed British Gas' observation that the Panel was not a Code Party and obligations placed on it were unenforceable. As such this may add confusion to the rules rather than clarity. It was noted that there were already many such references existing in the Modification Rules and Members agreed that this was an appropriate way to proceed.

Members agreed that implementation would expect to further these relevant objectives. Members voted unanimously to recommend implementation of Modification 0448.

## 9 Recommendation

### Panel Recommendation

Having considered the Modification Report, the Panel recommends:

- that proposed Modification 0448 should be made.