

# 0582S:

## Amendments to reflect separation in legal ownership of NTS and National Grid owned LDZs to facilitate the sale of National Grid's Gas Distribution Business

- 01 Modification
- 02 Workgroup Report
- 03 Draft Modification Report
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National Grid Gas plc intends to sell a majority stake in its Gas Distribution Business. The new business would no longer be known as National Grid Gas Distribution. It is necessary to modify the UNC to reflect the separation in ownership of the NTS and the 5 LDZs currently comprising National Grid Gas Distribution prior to completion of the sale process.



The Panel determined that this self-governance modification be implemented.







High Impact:  
None



Medium Impact:  
None



Low Impact:  
Shippers and Gas Transporters

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<b>About this document:</b>		
This Final Modification Report was considered by the Panel on 18 August 2016. The Panel unanimously determined that this modification should be implemented.		
<b>Modification timetable:</b>		
Initial consideration by Workgroup	26 May 2016	
Workgroup Report presented to Panel	16 June 2016	
Draft Modification Report issued for consultation	21 July 2016	
Consultation Close-out for representations	11 August 2016	
Final Modification Report published for Panel	12 August 2016	
UNC Modification Panel decision	18 August 2016	

# 1 Summary

## Is this a Self-Governance Modification?

The Modification Panel determined that this is a self-governance modification as the identified changes have no material effect on gas consumers or on competition since the only changes required are to effect the required separation in ownership.

### Workgroup View

Some Workgroup participants agreed with the Modification Panel that this modification is suitable for self-governance as it wouldn't have a material impact on the contractual relationships between UNC parties or the commercial activities associated with shipping gas. However, others were concerned that this modification is making material changes to contractual relationships and should have Ofgem oversight. In addition, this modification is closely linked to Modification 0585 "Separation of NTS and National Grid owned networks – Calculation of Credit Limit and Value at Risk" (which is not proposed to be self-governance) and therefore self-governance for this proposal should be reconsidered.

## Is this a Fast Track Self-Governance Modification?

Fast Track procedures are not requested.

### Why Change?

National Grid Gas plc (National Grid) currently owns and operates the NTS and 5 LDZs comprised in the North West, West Midlands, East Midlands and London networks (and together comprising National Grid Gas Distribution (NGGD). Though the UNC currently recognises National Grid as owner and operator of the NTS and as a Distribution Network Operator (DNO), it treats National Grid as a single party with a single network code. National Grid is now proposing to transfer the business and assets of NGGD to a new company (National Grid Gas Distribution Limited (NGGDL)).

This modification is required to change the UNC to correctly reflect the position following the legal separation of ownership of the NTS and the 5 LDZs comprising NGGD.

### Solution

Changes are required to a number of definitions within the Transportation Principal Document (TPD), which currently reflect National Grid's role as both NTS owner and operator and DNO in respect of the 4 LDZs comprising NGGD. Further, transitional rules are required to ensure an ordered separation of the NTS and NGGD on the hive across date.

### Relevant Objectives

This modification facilitates GT Licence relevant objective; f) Promotion of efficiency in the implementation and administration of the Code as it is necessary to ensure from the hive across that there is a coherent opening position in terms of NGGDL implementing its network code, e.g. inheriting values, parameters and similar where established before the hive across but relevant to the operation of the system after that date.

### Implementation

Given that self-governance procedures are proposed, implementation could be sixteen Business Days following a Modification Panel decision to implement, subject to no Appeal being raised.

In the event that the self-governance statement is withdrawn, no implementation date is proposed and National Grid will advise in due course.

## Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

Neither the Switching SCR nor implementation of Project Nexus is impacted.

However, there is a requirement for NGGDL to accede to the Transporters Framework Agreement and for NGGDL and Shippers wishing to continue using the 5 LDZs to sign a new Shippers Framework Agreement to make NGGDL's network code binding between them.

## 2 Why Change?

In November 2015, National Grid announced plans to sell a majority stake in the NGGD business.

To prepare for the sale, the 5 LDZs comprising NGGD will be transferred to NGGDL (hive-across). With effect from the hive-across date NGGDL will become a DNO for UNC purposes; it is expected NGGDL will be renamed at the time the sale process is completed.

Without this proposal, the UNC would continue to treat National Grid as a DNO, which would not be the case after the hive-across date. The hive-across also requires some new transitional rules, to ensure the separation in legal ownership is ordered and to allow NGGDL to inherit UNC 'history' where this is required for UNC purposes (e.g. so that nominations given to National Grid before the hive-across date for later date are treated as binding on NGGDL).

## 3 Solution

Modification of the UNC is proposed as follows:

- changes to the Transportation Principal Document (TPD) (principally in Section V) to reflect that fact that post the hive-across of NG Gas Distribution business and assets to NGGDL National Grid will no longer be the holder a GT licence authorising the conveyance of gas through the relevant LDZs s;
- new transitional rules will be added to the Transition Document (TD) to cover the following TPD related issues:
  - to make clear National Grid's Network Code will continue in force post the hive-across date in respect of the NTS only;
  - National Grid and Users will release each other from rights and obligations relating to the relevant LDZs which shall become rights and obligations between NGGDL and Users;
  - transportation charges relating to the relevant LDZs which have not been invoiced prior to hive-across date will be invoiced by, and be payable to or by, NGGDL (even where the relevant charges relate to the period prior to the hive-across date);
  - acts of National Grid, and circumstances existing under National Grid's Network Code, in relation to the relevant LDZs will be deemed to be binding on NGGDL and exist under NGGDL network code with effect from the hive-across date;
  - all values, e.g. Capacity holdings, Supply Point Registrations relating to the LDZs and established under National Grid's Network Code will continue to apply with effect from the hive-across date pursuant to NGGDL's Network Code; and
  - ancillary agreements relating to the LDZs will be deemed form the hive-across date to be binding between NGGDL (in place of National Grid) and the relevant User;

- new transitional rules will be added to the TD to cover the following Offtake Arrangements Document (OAD) related issues:
  - rights and obligations under OAD in relation to NTS/LDZ offtakes for the relevant LDZs will become, from the hive-across date, rights and obligations enforceable between National Grid and NGGDL;
  - National Grid and DNOs will release each other from rights and obligations relating to LDZ/LDZ Offtakes which shall become (from the hive-across date) rights and obligations between NGGDL (in place of National Grid) and the relevant DNO;
  - acts of National Grid under OAD in relation to the relevant LDZs will be deemed to be binding on NGGDL with effect from the hive-across date; and

all values, e.g. maintenance programmes, Offtake Profile notices (OPNs) established under OAD and relating to the relevant LDZs will continue to apply with effect from the hive-across date.

While not part of the Modification, the following activities will also be necessary:

- the requirement that NGGDL prepare a Shipper's Framework Agreement, to be signed by NGGDL and shippers, such that NGGDL's Network Code is made binding between them with effect from the hive-across date;
- the requirement that NGGDL sign the Transporter's Framework Agreement, such that those parts of the UNC creating relevant Transporter to Transporter rights and obligations are binding between them with effect from the hive-across date.

User Pays	
Classification of the modification as User Pays, or not, and the justification for such classification.	No User Pays service would be created or amended by implementation of this modification and it is not, therefore, classified as a User Pays Modification.
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.	Not applicable
Proposed charge(s) for application of User Pays charges to Shippers.	Not applicable
Proposed charge for inclusion in the Agency Charging Statement (ACS) – to be completed upon receipt of a cost estimate from Xoserve.	Not applicable

## 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.	None
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.	None

This modification furthers objective f) because it ensures that, effective from the hive across, that there is a coherent position in terms of NGGDL implementing its network code and that there is a clear definition of National Grid NTS' and NGGDL's rights and obligations.

## 5 Implementation

As self-governance procedures are proposed, implementation could be sixteen business days after a Modification Panel decision to implement, subject to no Appeal being raised.

In the event that the self-governance statement is withdrawn, implementation is required in time for the hive-across (currently expected to be around 01 October 2016). At this stage, should an Authority direction be required instead of self-governance, no implementation date is proposed and National Grid will advise in due course.

## 6 Impacts

### Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

It is expected there would be no material impact on any parties to the UNC. Minor changes would be needed to TPD to reflect the fact National Grid will cease to be a DNO. In addition rules will be needed in the TD to accommodate the separation of ownership of NTS and NGGD from the hive-across date; and to ensure an ordered separation of the businesses with effect from the hive-across date.

While not part of the modification, the following activities will also be necessary:

- the requirement that NGGD prepare a shippers framework agreement, to be signed by NGGD and shippers, such that NGGD's network code is made binding between them with effect from the hive-across date;
- the requirement that NGGD sign the transporters framework agreement, such that those parts of the UNC creating relevant Transporter to Transporter rights and obligations are binding between them with effect from the hive-across date.

#### Workgroup View

Some workgroup participants were concerned this modification is now likely to be one of at least two modifications related to the separation of National Grid NTS and Distribution networks, therefore they would have dependencies and should be issued to consultation together.

#### Panel Comment

Parties are advised to note that Modification 0592S Separation of National Grid Transmission and Distribution owned networks – Transitional invoicing arrangements has now been raised. Parties are encouraged to consider all three proposals (0582S, 0585 and 0592S) in making their response to the Consultations.

## 7 Legal Text

### Text Commentary

Text Commentary was not available for Workgroup assessment but is published as a separate document alongside the Workgroup Report.

### Text

The following Text has been prepared by National Grid Distribution at the request of the Modification Panel.

#### TRANSPORTATION PRINCIPAL DOCUMENT

#### SECTION V – GENERAL

*Amend paragraph 2.1.2(c) to read as follows:*

"where the Applicant User wishes to become a Shipper User in relation to an LDZ the Applicant User is, or will be, a Shipper User under National Grid's Network Code at the User Accession Date;"

*Amend paragraph 3.1.2 to read as follows:*

"In this paragraph 3 references to Users include DNO Users."

Amend paragraph 4.1.6 to read as follows:

"In this paragraph 4 references to Users include Trader Users, except in relation to paragraph 4.3.1(f), and DNO Users."

## TRANSITION DOCUMENT

### PART I – GENERAL

Delete text at paragraph 2.1 and replace with text as follows:

"In this Transition Document the following words and expressions shall have the following meanings:

- (a) **"First Day"** is the DN Hive Down Implementation Date; and where the context admits a reference to the First Day is to 05:00 hours at the start of such Day;
- (b) **"Last Day"** is the Day preceding the DN Hive Down Implementation Date; and where the context admits a reference to the Last Day is to 05:00 hours at the end of such Day;
- (c) **"Relevant System"** is a System owned and operated by National Grid (up until, but not after, the Last Day) as licensee under a Transporter's Licence authorising the conveyance of gas through the LDZ comprised in such System;
- (d) **"New Transporter"** is the Transporter which (from, but not before, the First Day) owns and operates the Relevant System;
- (e) **"National Grid Framework Agreement"** is the Framework Agreement between National Grid and Users dated 26 February 1996.

### PART II – TRANSPORTATION PRINCIPAL DOCUMENT

#### Part II A – General

Delete text in paragraphs 2 to 4 (inclusive) and replace with text as follows:

#### **"2 National Grid**

2.1 For the avoidance of doubt, National Grid's Network Code (as modified with effect from the First Day by the Code Modification referred to in the definition of DN Hive Down Implementation Date) shall continue in force in accordance with its terms in relation to the NTS only, and Part IIB shall not apply in respect of National Grid's Network Code.

2.2 With effect from the First Day, National Grid and Users hereby release each other from all rights and obligations and liabilities under National Grid's Network Code, the National Grid Framework Agreement and any Ancillary Agreement which:

- (a) relate to a Relevant System;
- (b) by virtue of the operation of Part IIB become rights, obligations and liabilities between, and enforceable by, the New Transporter and Users.

#### **3 Collective actions**

3.1 Anything done by the Transporters collectively pursuant to National Grid's Network Code on or before the Last Day which (if it were done on or after the First Day) would be required to be done by the Transporters (including the New Transporter) collectively, shall be deemed to have been done collectively by the Transporters and the New Transporter pursuant to the Code for the purposes of its application on and with effect from the First Day.

#### **4 Transportation Charges in relation to a Relevant System**



- 4.1 In this Transition Document "**Invoiced Transportation Charges**" means amounts relating to a Relevant System which are payable by a User or National Grid pursuant to National Grid's Network Code by way of a Transportation Charge, or otherwise pursuant to any provision of National Grid's Network Code which provides for an amount to be payable (but for the avoidance of doubt not including Energy Balancing Charges) and in respect of which an Invoice for such amount has been issued by National Grid on or before the Last Day.
- 4.2 Invoiced Transportation Charges shall continue to be payable by or to National Grid under National Grid's Network Code (and shall not become payable by or to the New Transporter).
- 4.3 Any dispute whether existing as at the Last Day or arising on or after the Last Day, as to (or so far as relating to) any Invoiced Transportation Charges shall be a dispute under National Grid's Network Code between National Grid and the relevant User."

**Part IIB – Relevant Transporters**

*Rename "Part IIB – New Transporter".*

*Delete text in paragraphs 1 to 13 (inclusive) and replace with text as follows:*

**"1 Introduction**

- 1.1 Anything done by a User or National Grid pursuant to, and any circumstances existing under National Grid's Network Code on or before the Last Day, so far as relating to a Relevant System, shall be deemed to have been done (by the User or the New Transporter) pursuant to or exist under the New Transporter's Network Code for the purposes of its application on and with effect from the First Day, except as provided under paragraph 4 of Part IIA or expressly provided for in this Part IIB.

**2 New Transporter's Network Code**

- 2.1 In accordance with paragraph 1.1, for the purposes of giving effect to the New Transporter's Network Code on the First Day, all parameter values established and prevailing pursuant to the terms of National Grid's Network Code on the Last Day and relating to a Relevant System shall be deemed to have been established and prevailing on and with effect from the First Day in accordance with the equivalent terms of the New Transporter's Network Code.
- 2.2 In accordance with paragraph 1.1, any determination made, discretion exercised or step taken by National Grid pursuant to National Grid's Network Code on or before the Last Day and relating to a Relevant System shall be deemed with effect from the First Day to be a determination made, discretion exercised or step taken by the New Transporter in accordance with the equivalent terms of the New Transporter's Network Code.

**3 Values and parameters**

- 3.1 The parameter values referred to in paragraph 2.1 shall include, but not be limited to, the following:

TPD Section	Value and parameter
TPD Section B: System Use and Capacity	A User's Registered and Available System Capacity in respect of relevant System Points

	Overrun Amounts and Supply Point Ratchet amounts in respect of relevant System Points
TPD Section C: Nominations	Input Nominations, Output Nominations and Renominations
TPD Section G: Supply Points	Registered Users and Registered Supply Points
	Annual Quantities, Supply Point Offtake Rates, maximum offtake rates, Maximum Supply Point Offtake Rates and Aggregate Bottom-stop Capacity in respect of relevant System Points
	Designation of relevant Supply Points as Firm or Interruptible Supply Points and remaining available Interruption Allowances for the Gas Year in respect of relevant System Points
TPD Section H: Demand Models and Demand Forecasting	End User Categories, Demand Models, Composite Weather Variables, Weather Variable Coefficients and seasonal normal values
TPD Section L: Maintenance and Operational Planning	Programmed Maintenance in respect of relevant System Points
TPD Section N: Shrinkage	Shrinkage Factors in respect of Relevant Systems
TPD Section Q: Emergencies	Designation of Priority Consumers in respect of relevant System Points
TPD Section U: UK Link	Planned UK Link downtime

#### **4 Code Communications**

- 4.1 In accordance with paragraph 1.1, but subject to paragraphs 3 and 4 of Part IIA, a Code Communication made or received for the purposes of National Grid's Network Code on or before the Last Day shall to the extent relating to a Relevant System be deemed to have been made or received and be effective in accordance with the equivalent terms of the New Transporter's Network Code.

#### **5 Invoices**

- 5.1 For the avoidance of doubt, in accordance with paragraph 1.1, amounts relating to a Relevant System and payable by way of a Transportation Charge, other than Invoiced Transportation Charges, shall be payable by or to the New Transporter pursuant to the New Transporter's Network Code, including where such amounts accrue in respect of any period on or before the Last Day.

## **6 Accrued rights, obligations and liabilities**

6.1 In accordance with paragraph 1.1, but subject to paragraph 4 of Part IIA the rights, obligations and liabilities of National Grid and a User under National Grid's Network Code, the National Grid Framework Agreement and any Ancillary Agreement as outstanding on the Last Day and so far as relating to a Relevant System, shall be deemed with effect from the First Day to be rights, obligations and liabilities between, and enforceable by, the New Transporter and the User.

## **7 Ancillary Agreements and NEAs/NExA**

7.1 In accordance with paragraph 1.1, where (as at the Last Day) National Grid and a User or Users are party to an Ancillary Agreement relating to a Relevant System, the Ancillary Agreement shall be deemed with effect from the First Day to be an agreement between the New Transporter and the relevant User(s) and in respect of which National Grid is no longer a party.

7.2 In accordance with paragraph 1.1, where (as at the Last Day) there is a Network Exit Agreement or there are Network Entry Provisions in force relating to a Relevant System, parameter values contained or provided for in or determined under such Network Exit Agreement or Network Entry Provisions shall be deemed on and with effect from the First Day to apply for the purposes of the New Transporter's Network Code (unless and until the New Transporter enters into an equivalent Network Exit Agreement or Network Entry Provisions).

## **8 Publications and procedures etc**

8.1 In accordance with paragraph 1.1, subject to paragraph 3 of Part IIA, any document or publication made available by National Grid and relating to a Relevant System shall be deemed to have been made available or published by the New Transporter in accordance with the equivalent terms of the New Transporter's Network Code.

8.2 In accordance with paragraph 1.1, where pursuant to National Grid's Network Code any procedures, conditions, methodologies or standards relating to a Relevant System apply, the same procedures, conditions, methodologies or standards shall be deemed to be the procedures, conditions, methodologies or standards applying with effect from the First Day for the purposes of the New Transporter's Network Code.

## **9 Disputes**

9.1 Subject to paragraph 4.3 of Part IIA, any dispute existing and outstanding on the Last Day between National Grid and a User and relating to a Relevant System shall be deemed with effect from the First Day to be a dispute existing and outstanding under the New Transporter's Network Code between the New Transporter and the relevant User.

## **10 External UK Link Users**

10.1 Each person permitted to have access to and use of UK Link pursuant to National Grid's Network Code shall be deemed with effect from the First Day to have been permitted access to and use of UK Link pursuant to the New Transporter's Network Code.

## **11 User Agents**

11.1 Each person appointed by a User as a User Agent pursuant to National Grid's Network Code

shall be deemed with effect from the First Day to be have been appointed as a User Agent by the same User for the same period and in respect of the same category of UK Link Code Communications pursuant to the New Transporter's Network Code.

## 12 Credit arrangements

12.1 Nothing in this Part IIB affects (or operates to transfer to the New Transporter) any surety or security provided by any User to National Grid as at the Last Day pursuant to National Grid's Network Code.

## 13 UNCC sub-committees

13.1 Each person appointed to a sub-committee of the Uniform Network Code Committee on or before the Last Day by National Grid as a representative of National Grid in its capacity as a DN Operator shall be deemed with effect from the First Day to have been appointed to the sub-committee by the New Transporter."

## PART III – OFFTAKE ARRANGEMENTS DOCUMENT

*Delete text at paragraphs 1 to 10 (inclusive) and replace with text as follows:*

### "1 Introduction

1.1 In this Part III defined terms shall have the meanings given to them in or for the purposes of the Offtake Arrangements Document.

### 2 Rights and Obligations

2.1 With effect from the First Day, the rights and obligations set out in the Offtake Arrangements Document between Transporters in respect of;

- (a) each NTS/LDZ Offtake at which gas can flow from the NTS to an LDZ comprised in a Relevant System ("**Relevant NTS/LDZ Offtake**"); and
- (b) the planning, operation and maintenance of the NTS and Relevant Systems, and the implementation of certain provisions of the Transportation Principal Document

shall become rights and obligations between, and enforceable by, National Grid and the New Transporter.

2.2 With effect from the First Day, and in respect of each LDZ/LDZ Offtake at which gas can flow between an LDZ comprised in a Relevant System and an LDZ not comprised in a Relevant System ("**Relevant LDZ/LDZ Offtake**"), the rights, obligations and liabilities of National Grid and the relevant DN Operator arising under the Offtake Arrangements Document (and the relevant Supplemental Agreement) as outstanding at the Last Day shall be deemed with effect from the First Day to be rights, obligations and liabilities between, and enforceable by, the New Transporter and the relevant DN Operator.

2.3 Anything done by National Grid in its capacity as a DN Operator (and downstream Party) pursuant to the Offtake Arrangements Document on or before the Last Day, so far as relating to a Relevant System, Relevant NTS/LDZ Offtake or Relevant LDZ/LDZ Offtake, shall be deemed to have been done by the New Transporter for the purposes of the application of the Offtake Arrangements Document on and with effect from the First Day.

2.4 For the purposes of paragraphs 2.1 and 2.2, all parameter values established and prevailing

pursuant to the terms of the Offtake Arrangements Document on the Last Day and relating to a Relevant System, Relevant NTS/LDZ Offtake or Relevant LDZ/LDZ Offtake shall be deemed to have been established and prevailing on and with effect from the First Day in accordance with the Offtake Arrangements Document.

2.5 For the purposes of paragraphs 2.1 and 2.2, any determination made, discretion exercised or step taken by National Grid pursuant to the Offtake Arrangements Document on or before the Last Day and relating to a Relevant System, Relevant NTS/LDZ Offtake or Relevant LDZ/LDZ Offtake shall be deemed with effect from the First Day to be a determination made, discretion exercised or step taken by the New Transporter in accordance with the Offtake Arrangements Document.

### 3 Values and parameters

3.1 The parameter values referred to in paragraph 2.4 shall include, but not be limited, to the following:

OAD Section	Value and parameter
Section F: Determination of Calorific Value	The daily CV in respect of Relevant Systems
Section G: Maintenance	Planned Maintenance in respect of Relevant Systems
Section H: NTS Long Term Demand Forecasting	Historic and forecast demand information exchanged in respect of Relevant Systems
Section I: Operational Flows	Offtake Profile Notices and pressure requests in respect of Relevant NTS/LDZ Offtakes
Section J: LDZ/LDZ Offtakes – Planning and Operational Flows	Offtake Parameter Values and Offtake Profile Notices for Relevant LDZ/LDZ Offtakes

### 4 Supplemental Agreements

4.1 Until such time as National Grid and the New Transporter enter into a Supplemental Agreement in respect of a Relevant NTS/LDZ Offtake there shall be deemed to be a Supplemental Agreement in force, on the terms of the arrangements existing (as between National Grid as both the upstream and downstream Party) on the Last Day in respect of the Relevant NTS/LDZ Offtake, which shall with effect from the First Day give rise to rights, obligations and liabilities between, and enforceable by, National Grid and the New Transporter."

## PART IV – MODIFICATION RULES

*Delete text at paragraphs 1 to 5 (inclusive) and replace with text as follows:*

### "1 Modification Panel

1.1 The person appointed to the committee established pursuant to the Joint Governance Arrangements Agreement dated 1 May 2005 between the relevant Transporters ("**JGAA committee**") by National Grid in its capacity as the owner of the Relevant Systems, and

therefore a Transporter Representative on the Modification Panel, shall be deemed with effect from the First Day to have been appointed to the JGAA committee by the New Transporter and such person shall continue to be appointed to the JGAA committee and be a Transporter Representative on the Modification Panel until such time as such person is replaced as the New Transporter's representative on the JGAA committee.

## **2 Modification Proposals**

2.1 Where as at the Last Day a Modification Proposal in respect of the Code has been made by National Grid in its capacity as a DN Operator and the Authority has not given a consent or direction in respect of such Modification Proposal the Modification Proposal shall be deemed with effect from the First Day to have been made by the New Transporter in accordance with the Modification Rules.

2.2 For the purposes of paragraph 2.1, all steps, acts and other things done at the Last Day by National Grid as the Proposer of the Modification Proposal shall with effect from the First Day be deemed to have been done by the New Transporter in accordance with the Modification Rules."

## **GENERAL TERMS**

### **SECTION B – GENERAL**

*Delete paragraph 1.2.2.*

*Amend paragraph 2.1.1(a) to read as follows:*

""National Grid NTS" means National Grid as licensee under the Transporter's Licence authorising the conveyance of gas through the NTS;"

*Amend paragraph 2.1.1(b) to read as follows:*

""DN Operator" or "DNO" means a person which is the owner or operator of one or more LDZ(s) and licensee under a Transporter's Licence authorising the conveyance of gas through such LDZ(s);"

*Amend paragraph 2.1.2 to read as follows:*

"For the purposes of the Code:

- (a) a reference to "the Transporters" is to the Transporters collectively;
- (b) anything required to be done by the Transporters which is done by or on behalf of any one or more of them shall be treated as having been done by all of them."

### **SECTION C – INTERPRETATION**

*Add new definition in paragraph 1 as follows:*

""**DN Hive Down Implementation Date**" means the date with effect from which National Grid's Network Code is modified such that National Grid ceases to be a DN Operator;"

## 8 Consultation Responses

The summaries in the following table/s are provided for reference on a reasonable endeavours basis only. We recommend that all representations are read in full when considering this Report. Representations are published alongside this Report.

Of the 5 representations received implementation was unanimously supported.

Representations were received from the following parties:

Organisation	Response	Relevant Objectives	Key Points
British Gas Trading Ltd	Support	f) – positive	<ul style="list-style-type: none"> <li>• Recognises that the proposal amends Code to reflect the proposed transfer of the business and assets of National Grid Gas Distribution Business out of National Grid Gas plc and into the new company: National Grid Gas Distribution Limited (NGGDL).</li> <li>• In acknowledging that the split and subsequent sale is a commercial decision for National Grid, accepts that the new Transporter, NGGDL, and new arrangements need to be correctly referenced in Code.</li> <li>• Supports Self Governance status as the Code change should have no material impact to competition or our customers.</li> <li>• In understanding that the hive across and the sale are commercial matters for National Grid, considers that the legal text of the industry code should take account of, and set out in sufficient detail, the legal effect of the hive across of the distribution business to a new company. The drafting currently reads as though the Code is the document that brings the transfer of rights, obligations and liabilities into effect as opposed to underlying arrangements/agreements being transferred/novated. In particular, there are many “deeming” provisions in the draft where, presumably, the legal benefit and burden under the referenced arrangements/agreements need to move in law rather than being “deemed” to have moved.</li> <li>• Also considers that the legal drafting needs to be more extensive in places so as to be clear about its effect (i.e. in part IIA paragraph 2.2, this waiver could be more detailed so as to set out whether or not the parties are agreeing not to pursue one another and to hold one another harmless).</li> <li>• Believes the modification needs to be considered alongside the other DNO separation modifications and is satisfied the FMR captures this.</li> </ul>

National Grid Distribution	Support	f) – no view stated	<ul style="list-style-type: none"> <li>• Agrees that this modification should be subject to Self-Governance procedures, as the proposed changes do not have a material effect on gas customers, contractual arrangements between UNC parties or commercial activities associated with the shipping of gas.</li> <li>• Notes that there is no longer a link with withdrawn Modification 0585.</li> <li>• Believes that the measures identified are fundamental to enabling the efficient ‘hive-across’ of National Grid Gas’ Distribution business to National Grid Gas Distribution Limited (NGGDL) in anticipation of the sale of NGG’s Distribution networks likely to occur in early 2017.</li> <li>• The business rules and associated legal text is largely predicated on that implemented in support of the previous sale of four of the Gas Distribution networks in 2005. No significant issues were subsequently identified as a consequence of the approach taken then and there is confidence that similar transition terms can be used albeit that these have been revised appropriately to reflect the specific requirements of the present sale.</li> <li>• This modification is essentially ‘legalistic’ in nature and in consequence has little impact on industry stakeholders. UNC parties will be supported at all stages with respect to the associated administration requirements including accession to NGGDL’s Network Code in the period leading up to ‘hive-across’ and following the subsequent network sale by a dedicated team.</li> <li>• Additional analysis is not believed to be necessary.</li> </ul>
National Grid NTS	Support	f) - positive	<ul style="list-style-type: none"> <li>• Agrees with the conclusion of the Workgroup that implementation of this Proposal would better facilitate relevant objective f) <i>Promotion of efficiency in the implementation and administration of the Code</i>, on the basis that implementation would ensure the effective contractual transition to the establishment of an additional Transporter in the UNC to reflect the separation of National Grid Gas Distribution Ltd (NGGDL) from National Grid.</li> <li>• Agrees with the conclusion of the Modification Panel that this is a self-governance modification, on the grounds that when taken in isolation this Proposal merely seeks to extend the already established principle of multiple Transporters in the UNC, which is</li> </ul>



			<p>not expected to have a material impact on gas consumers or competition.</p> <ul style="list-style-type: none"> <li>• Notes that in principle the changes (if directed for implementation) will take effect from the DN Hive Down Implementation Date that is defined as the date from which National Grid ceases to be a DN Operator.</li> <li>• No additional analysis, development or ongoing costs are envisaged.</li> </ul>
RWE Supply & Trading GmbH	Support	f) - positive	<ul style="list-style-type: none"> <li>• Recognises that the creation of separate legal and licenced entities as part of NGG's proposed sale of its distribution assets requires consequent changes to the UNC and other documents.</li> <li>• Believes that the solution set out in this modification proposal will deliver the required changes to ensure the UNC continues to operate after hive-across.</li> <li>• Supports Self-Governance status.</li> <li>• Believes that implementation timetable should be aligned with any linked proposals to ensure a coordinated and orderly process.</li> </ul>
SGN	Support	f) - positive	<ul style="list-style-type: none"> <li>• Supports this modification believing that it delivers the amendments to UNC required to support the creation of separate legal and licenced entities as part of NGG's proposed sale of its distribution assets.</li> <li>• Supports Self-Governance status.</li> <li>• Supports implementation at the earliest possible date following a Modification Panel decision in order to provide the industry with certainty and stability.</li> <li>• Also suggests that implementation of this modification is aligned with that of any related modifications, in order to provide a smooth and coordinated transition into the new arrangements.</li> </ul>

Please note that late submitted representations will not be included or referred to in this Final Modification Report. However, all representations received in response to this consultation (including late submissions) are published in full alongside this Report, and will be taken into account when the UNC Modification Panel makes its assessment and recommendation.

## 9 Panel Discussions

### Discussion

The Panel Chair summarised that Modification 0582S seeks to modify the UNC to recognise the separation in ownership of the NTS and the four networks currently comprising National Grid Gas Distribution prior to completion of the sales process.

Members noted that implementation was unanimously supported in the 5 representations received. Respondents recognised that the hive across and the sale are commercial matters for National Grid. However, some considered that the legal text of the industry code should take account of, and set out in sufficient detail, the legal effect of the hive across of the distribution business to a new company.

Members also noted that one respondent felt that the legal drafting currently reads as though the Code is the document that brings the transfer of rights, obligations and liabilities into effect rather than the underlying arrangements / agreements being transferred / novated. An additional legal view was provided by the Proposer and Members agreed that the matter had been addressed.

Finally, Members noted that respondents agreed that there are benefits to aligning all related (sale / hive-across) modifications, in order to provide a smooth and coordinated transition into the new arrangements. It was believed that the Final Modification Reports had achieved this alignment.

### **Consideration of the Relevant Objectives**

Members considered relevant objective f), agreeing that implementation would have a positive impact because it ensures that, from the hive across, there is a coherent position in terms of National Grid Gas Distribution (NGGD) implementing its network code and that there is a clear definition of National Grid NTS' and NGGD's separate rights and obligations.

### **Determinations**

Members voted unanimously to implement Modification 0582S.

## **10 Recommendation**

### **Panel Recommendation**

Having considered the Modification Report, the Panel determined that:

- proposed self-governance Modification 0582S should be made.