

Energy Networks Association

UNC Request 0676R UNC Legal Text preparation

30th July 2019

Transporters are (and always have been) responsible for producing legal text for UNC modifications.

Relevant GT licence obligations – Standard Special Condition A11: Network Code and Uniform Network Code

- 6. The licensee shall, together with the other relevant gas transporters, prepare a document (the “uniform network code”).....
- 7. The licensee shall, together with the other relevant gas transporters, establish and operate procedures (“network code modification procedures”).....

UNIFORM NETWORK CODE – MODIFICATION RULES

- 9.6 Legal Text for Modification 9.6.1 Subject to paragraphs 6.2.1(q)(i) and 9.6.6, in relation to each Modification Proposal, the Transporters shall prepare the legal text of the Modification....

Outline of present arrangements

- Each GT produces legal text for its own UNC Modification.
- Shipper UNC Modifications:
 - Transmission related Modifications, legal text undertaken by National Grid.
 - Rota arrangements – allocation based on size of Network e.g. Cadent allocated double that of SGN or SGN double that of W&WU or NGN.
 - No account taken of legal text extent or complexity during allocation.
- Each GT responsible for providing legal resource.
- Benefit of early engagement i.e. lawyers typically engaged early in Modification assessment process.
- GDN's policy is normally to undertake work via internal legal resource.
 - Dependent on complexity of Modification or availability of internal resource, lawyers may direct work to be outsourced to external resource.
 - In general preferred law firm is presently Dentons although not all GDNs have used them .

Drawbacks of present arrangements

- Some evidence of inconsistent drafting dependent on lawyer producing legal text.
- Approach to legal support and advice to proposer in interpreting business rules may vary dependent on allocated lawyer.
- Speed and timeliness of legal text production may vary dependent on legal resource availability and other factors such as knowledge and experience.
- Shippers may feel they are dealing with lawyers 'second hand' whereas Transporters have direct access (albeit GTs do arrange 'liaison calls' with Proposers as required).
- Overall cost of text production not transparent and therefore difficult to quantify.
- Difficult to determine efficiency/effectiveness of process.

Advantages and disadvantages of using Dentons

- Advantages
 - Highly experienced and knowledgeable lawyers, especially for UNC.
 - Offer insight and detailed advice on content of business rules as pre-requisite for text production.
 - Able to interpret complex arrangement into legal text with a minimum of input from proposer/s (albeit dependent on how well solution in Modification is defined).
 - Able to provide explanatory pre-drafting papers.
 - Consistent legal drafting.
- Disadvantages
 - Expensive. Very high hourly rate.
 - Reliant on 2 x specific individuals – long term level of support uncertain.

Centralised production of text - benefits

- Elimination of fragmented approach to legal text production.
- Consistency in drafting.
- Certainty of charging rates (although not overall cost).
- Overall cost of legal text production more easily ascertained and quantifiable.
- Dedicated 'single point of contact'.
- Code Manager / administrator or Shippers/ GTs could act as contact intermediary (between the relevant external legal organisation and the Modification proposer to ensure effective engagement).

Centralised production of text - issues

- GTs would need to set up a competitive tender for a UNC legal text service provider (cannot 'gift' to Dentons directly). Frequency of tendering requirement would need to be identified.
- High risk that appointed provider would initially be unlikely to have knowledge and experience of UNC text production although knowledge would build over time.
- Successful applicant would be reliant on Proposer to advise/provide expertise on UNC regime and arrangements; i.e. text production would be 'mechanical' being a strict legal interpretation of the Modification solution and business rules.
- Process much more disciplined which may lead to inflexibility and extended assessment timescales.
 - Much greater emphasis on precise accuracy of business rules – early engagement of lawyer unlikely to be cost effective.
 - lawyer likely to refer Modification back to proposer if solution is in any way deficient or unclear leading to process delay.
- Funding liability would need to be reviewed under such arrangements and may be necessary to modify GT Licence and Modification Rules.

Further considerations

- Outcome of BEIS/Ofgem Code Governance review uncertain e.g. role of Code Manager?
- May be worth considering other industry codes approach to legal text production (e.g. electricity codes)?
- UNC potentially unique in its complexity (when compared to some industry codes e.g. SPAA or REC)?
- Cost of ‘abortive’ legal text for rejected or withdrawn UNC Modifications – expectations regarding legal access, etc. by parties would need to be balanced and realistic. High risk of effective cost control being compromised?
- Comparative Cost/benefit exercise between present arrangements and centralised approach may be useful?
- Risk of pressure to produce legal text before business rules are finalised; would need ‘gate keeper’ role in Joint Office (JO) to manage this which leads to issues with JO capacity to facilitate this effectively?
- Necessity for GT to continue ‘oversight’ of Legal Text production and content may temper potential benefits of centralisation?