

Xoserve response/comments on Modification 0841

Background

In the first instance, Xoserve would like to note that it is supportive of the proposed intention behind the modification – to provide for more transparency in the budget process aimed at facilitating “the objective of economic, efficient and transparent charging for the provision of the CDSP Services” (Gas Transporter Standard Special Condition A15, 6(d)(ii)) and joint control and governance of the CDSP “on an economic and efficient basis” (Gas Transporter Standard Special Condition A15, 4(c)(i)).

However, Xoserve would like to express several high-level, but potentially significant, concerns with the proposal, as further detailed in the table below. Also, Xoserve would like to highlight its reservations around the timings and proposed scope of this proposed Modification (and its resulting effectiveness) in light of the ongoing efficiency review.

High-level summary of Xoserve concerns

Modification component/aspect	Potential resulting Risk(s)	Xoserve input/comment/proposal
<p>Governance change proposed via new BCM 4.7.4: <i>“Committee will...assess whether the draft CDSP Budget is compliant with the rules and specify the action(s) the CDSP will need to take to make the draft CDSP Budget fully compliant with the rules.”</i></p>	<p>It is unclear what ‘rules’ refers to in this section, but assuming it refers to compliance with the information requirements detailed in s11, then given the subjective nature of those requirements, making the CDSP ‘fully compliant’ with such rules is an unknown, open-ended requirement.</p> <p>This subjectivity component, together with the governance change that the Committee will assess such compliance, effectively creates a potential ‘loop’ that could result in the CDSP Budget not being agreed, which could put Transporters at risk of breaching the Gas Transporter Standard Special Condition requirement A15 6(c) as this licence condition requires them to ensure that the DSC includes <i>“obligations on CDSP to produce, in consultation with Relevant Users of CDSP Services, and publish an annual budget in respect of the delivery of CDSP Services”</i>. If the CDSP Budget is never agreed owing to this loop, it cannot be finally produced and published.</p> <p>Similarly, this level of governance could – even if agreement could ultimately be reached – lead to significant delays in the CDSP Budget process.</p> <p>Also, lack of, or delay in reaching, agreement on a CDSP Budget could impact Xoserve’s ability to perform its obligations effectively, which could impact not just the whole gas industry, including stakeholders.</p>	<p>Xoserve would strongly recommend that existing Business Plan governance processes are unchanged. However, we recognise that a more detailed process could be developed around the ‘in consultation with’ component anticipated by the GT SSLC A15. (and is further provided for in the existing process at BCM 4.7.3, where the Committees views will be taken into account as Xoserve considers appropriate).</p> <p>However, if some form of more formalised governance mechanism were required to be built in, then an appropriate process needs to be factored in to avoid such a ‘loop’ and to avoid any delays to the CDSP Budget process, such process should consider:</p> <ul style="list-style-type: none"> - Caveats on use of alternates to keep balance on ‘voting power’ - Agreed process (including timings and specific steps) for discussing the CDSP Budget and any items of dispute with view to working in good faith to resolve - what level of agreement constitutes approval - what happens if that level of approval isn’t obtained - Clarification that Xoserve Board has ultimate authority to approve the CDSP Budget whether or not approved by CoMC, to both close loop and ensure no dual governance issue. <p>Also, if a governance mechanism is built in upfront then the ‘checks and balances’ provided for as part of the existing process (e.g. the appeals process and the right for annual Contract Assurance Audit in the Contract Management</p>

		Arrangements) should be varied appropriately to reflect this updated governance.
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Requirement imposed (BCM 4.7.3(b)) for the draft CDSP Budget to <i>"identify each instance in which the draft CDSP Budget is not compliant with the information requirements pursuant to s11, explain the reasons for non-compliance and describe the step(s) it will take to ensure each subsequent draft CDSP draft is fully compliant."</i>	Given the subjective nature of the requirements set out in section 11 (such as 'robust and high-quality' and 'well-evidenced and stretching'), this is an open-ended, unknown requirement that could prevent Xoserve from getting to the point that the CoMC assessed the draft CDSP Budget to be compliant (with the resulting risks as identified above).	Remove subjective measures and agree appropriate guidance instead based around objective measures (equivalent to the <i>"clear guidance from the Authority, in some detail, of the expectations for content of their annual Business Plans"</i> that is provided by the Authority to many other central service providers, such as Recco and Elexon as is referred to in Paragraph 5 (Solution) of the UNC Mod
<p>Multiple references to subjective measures in other documents:</p> <p><u>DSC Ts&Cs:</u></p> <ul style="list-style-type: none"> - s3.4 and s6.1 'efficiently, economically and effectively' - s3.9 'efficient and economic' <p><u>UNC GT-D</u></p> <ul style="list-style-type: none"> - s1.2.2(d), s1.4.5, s3.1.3(e), 'efficient and economic' 	Subjective criteria do not provide any party with comfort as to what is required to be provided/what they are providing, which simply builds in ambiguity and opportunities for disagreement/dispute, which is detrimental to all concerned.	<p>Objective criteria to be agreed in relation to any obligations.</p> <p>It may be that the outputs of the Efficiency Review could help to formulate what constitutes some of the objective criteria in this regard.</p> <p>It may also be that the outputs from the Efficiency Review will provide CoMC with further assurance that the CDSP services are being delivered in an efficient and economical way. Adopting this benchmarking as part of the annual Business Plan process (with associated costs included in future CDSP Business Plans) would negate the need for the process to be so substantially adjusted via the proposed code amendment.</p>
A new BCM s11.3.2 provides that <i>'The CDSP shall publish in a level of detail agreed with the Committee...the following information...</i>	This lack of specificity and reliance on reaching agreement of what are the agreed specifics at a later date raises a similar issue to the issues caused by subjectivity in terms of the 'loop' and building in potential disputes. The scope of any such detail agreed would also need to be considered in the context of the concerns around confidentiality set out below.	In relation to any such appropriate obligations, agree the detail of what is required upfront.

<p>A new BCM 11.3.1 provides “<i>The CDSP shall use its best endeavours to ensure transparency with result to the development and content of the CDSP Budget.</i>”</p>	<p>Such overarching provisions raise similar concerns to those around subjectivity and lack of specificity.</p>	<p>If more detailed provisions are agreed and set out as to what, for example, the transparency requirements are then compliance with those obligations should satisfy the related requirement to ensure transparency. We would propose that such overarching obligations be removed or, as a minimum, tied to the remainder of the related provision (e.g. by inserting ‘as further provided for in this section 11.3’ at the end of 11.3.1).</p>
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<p>A new BCM 11.3.3 provides that ‘<i>Information considered sensitive may be excluded from the draft or final CDSP Budget but only by exception</i>’ with a requirement to detail any reasons for exclusion.</p> <p>A new BCM 11.3.5 further provides that ‘<i>The CDSP must share the full and unredacted versions of the items in paragraph 11.3.2, excluding feedback received in confidence, with the Committee.</i>’</p>	<p>It is not appropriate for Xoserve to be required to share any information/material, the disclosure of which would put it in breach of any duty of confidentiality and/or contractual obligations of confidentiality. It is also not in the DSC parties’ interest for Xoserve to be placed in such a position given that any resulting liability incurred by Xoserve is borne by the DSC Parties.</p> <p>Similarly, there is lack of clarity as to whether certain sensitive information will be granted such exception.</p> <p>There is the potential to prejudice future procurement events by making commercially sensitive data available, albeit to a small select group.</p>	<p>Any requirement to share information/material with the Committee must be subject to appropriate carve outs/caveats in relation to material/information in respect of which Xoserve owes a duty of confidentiality and/or contractual confidentiality obligations to any third party.</p> <p>Further, the right to exclude sensitive information should be by default not exception but, as a minimum, a pre-agreed list of sensitive information that is exempt should be agreed to provide certainty and avoid confusion and potential for dispute.</p>
<p>Cost Allocation Methodology and Cost Allocation Model being re-classified as CDSP Service Documents via amendment to 3.1.4 in GT-D</p>	<p>Xoserve assumes that at the point that the BCM was created and identified as a CDSP Service Document due consideration was given to whether the Cost Allocation Methodology and Cost Allocation Model should also be so identified and that it was determined that specifically excluding them from constituting CDSP Service Documents best reflected the agreed FGO arrangements, which a change to the classification of these documents would not.</p>	<p>That said, provided that such re-categorisation is limited to a complete version of the Cost Allocation Methodology and an unpopulated version of the Cost Allocation Model then Xoserve has no objection.</p> <p>Would need to consider a limit to how these documents could be amended – perhaps commit to review every [x] number of years or as and when certain conditions are met.</p>