

Modification proposal:	GUC017: Amendment of the Network Code Modification Rules to provide clarity on the drafting and provision of Legal Text associated with Modification Proposals.		
Decision:	The Authority¹ directs that this proposal be made.²		
Target audience:	GUC, Parties to the GUC Network Code, and other interested parties		
Date of publication:	05 April 2007	Implementation Date:	To be confirmed by GUC.

Background to the modification proposal

The Network Code Modification Rules contain rules relating to the provision of legal text for Modification Proposals. It was felt that uncertainty existed over which party's responsibility it was to draft the legal text, and at which point in the modification process the text should be issued for consultation. It was felt this had caused progress on some Modification Proposals to be delayed.

In the interests of the timely progression of Modification Proposals, and to provide clarity over how legal text should be dealt with the proposer considered it appropriate to raise the Modification Proposal which is the subject of this decision letter.

The Modification Proposal

The proposal introduces provisions which make it clear that the Pipeline Operator is responsible for drafting the legal text for a Modification Proposal. The modification provides that the legal text should be included in the draft modification report in order to provide consultees with sufficient time to comment on the suitability of the text.

The Authority's decision

The Authority has considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 05 March 2007. The Authority has considered and taken into account the responses to GUC's consultation on the modification proposal which were included in the FMR.

The Authority has concluded that:

1. implementation of the modification proposal will better facilitate the achievement of the relevant objectives of GUC's Network Codes,³ and
2. directing that the modification be made is consistent with the Authority's principal objective and statutory duties.⁴

¹ The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

² This document is notice of the reasons for this decision as required by section 38A of the Gas Act 1986.

³ As set out in Standard Condition 9(1) of the Gas Transporters Licence, see: http://62.173.69.60/document_fetch.php?documentid=4311

⁴ The Authority's statutory duties are wider than the relevant objectives and are detailed mainly in the Gas Act 1986.

Reasons for the Authority's decision

Although the description of a modification in the Modification Report and the documents which precede it are important aspects in the development of a change, the industry's evaluation of a Modification and the subsequent decision made by Ofgem to approve or reject, are ultimately concerned with the legal text setting out the alteration to the contract. As such, Ofgem agrees that the provision of legal text for all modifications should be the norm. Provision of legal text as envisaged by these changes will facilitate the efficient and economic operation of the system and help the licensee to discharge the obligations placed upon it by its licence.

The modification report recognised the need to provide legal text for comment in good time for consultees to express a view and considered that the draft Modification Report stage would be an appropriate time for it to be introduced. We agree that consultation on legal text is an essential part of any modification and would be supportive of consultation at the earliest appropriate stage in any modification. By ensuring consultation occurs the proposed modification will better facilitate Relevant Objective(s) (a) and (b). We note that it may be possible to consult earlier than the draft Modification Report stage, but consider the draft Modification Report is an appropriate backstop date by which consultation on legal text must have been carried out.

The legal text to be inserted into the code modification rules provides that, in the case of a User or Third Party Modification Proposal, the proposer may include suggested text for consideration as part of the modification proposal and/or may indicate potential areas of the Network Code which may be affected by the modification proposal. We note that the changes to the non-urgent modification proposal template does not make any reference to the proposer indicating potential areas of the Network Code which may be affected by the proposed change. It may be appropriate to address this in the future so as to add clarity to the process relating to the proposal of a modification.

Decision notice

In accordance with Standard Condition 9 the Gas Transporters Licence, the Authority, hereby directs that modification proposal GUC017: Amendment of the Network Code Modification Rules to provide clarity on the drafting and provision of Legal Text associated with Modification Proposals be made.



Mark Feather
Associate Director, ICL

Signed on behalf of the Authority and authorised for that purpose.