

Modification proposal:	Uniform Network Code (UNC) 0318/0318A: The approach to be taken when raising alternative Modification Proposals (UNC0318/0318A)		
Decision:	The Authority ¹ directs that UNC0318 is made ²		
Target audience:	The Joint Office, Parties to the UNC and other interested parties		
Date of publication:	17 December 2010	Implementation Date:	31 December 2010

Background to the modification proposal

Many of the rules for participating in the gas and electricity markets in Great Britain ('GB') are set out in the industry codes. These codes also contain rules on their change management. Over the last two years, we have reviewed these rules on change management (the 'Code Governance Review' ('CGR'))³. Our aim is ensuring the change management rules stay fit for purpose; especially given the challenges facing the industry in the next ten years.

We published our final proposals on the CGR in March 2010⁴. These set out amendments to improve the change management of codes, such as the Uniform Network Code ('UNC'). To give effect to our final proposals, we made changes to National Grid Gas plc's ('NGG') Licence⁵ which come into force on 31 December 2010. Along with the Final Proposals, a 'Code Administration Code of Practice' ('the Code of Practice') was created⁶. The Code of Practice helps: (i) consistency and simplicity in change management of the codes; and, (ii) protect small players and consumers through things, such as increased use of plain English. To start with the Code of Practice will apply to the UNC, Balancing and Settlement Code and Connection and Use of System Code.

In response to the licence changes and Code of Practice, NGG has raised eight UNC code modification proposals⁷.

The modification proposal

UNC318 seeks to bring the UNC change procedures into line with the Code of Practice principle on managing alternatives⁸. The principle provides that any alternatives to a proposal should be 'developed and fully assessed'. In other words, the original and alternative are treated in the same way. The principle gives guidance on how to fulfil it. Any person entitled to raise a UNC modification proposal may raise an alternative, other than the proposer of the original proposal. Alternatives must be raised prior to or during the 'workgroup' stage (i.e. when the development/assessment of the original is taking place). There is no restriction on the number of alternatives allowed.

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 Documents on the CGR can be viewed on our website at <http://www.ofgem.gov.uk/Licensing/IndCodes/CGR/Pages/GCR.aspx>

⁴ Final Proposals 43/10 -

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=297&refer=Licensing/IndCodes/CGR>

⁵ Gas Transportation Licence.

⁶ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=328&refer=Licensing/IndCodes/CGR>

⁷ <http://www.gasgovernance.co.uk/CGR>

⁸ Principle 7.

E.on raised an alternative, 318A, which has two extra elements in addition to the proposal, as set out below.

Firstly, UNC318A seeks to set out within the code “guidance” for the panel when deciding what to do with a proposal and whether to send it to consultation. This makes the panel decide:

- whether the proposal is clear enough that anyone interested could readily understand it and its consequences;
- how complex the proposal is and what its likely impacts are;
- the likelihood of practical alternatives being raised.

The rationale for the “guidance” is that if a proposal is sent straight to consultation the right to raise an alternative is lost.

Secondly, UNC318A proposes that the panel won’t allow more time for workstream or workgroup assessment of an alternative proposal where it believes that alternative could have reasonably been brought forward earlier. This is to avoid the risk that alternatives may be raised unduly late in the development process and so delay the progress of modification proposals.

The proposers consider UNC0318 and UNC0318A will better facilitate relevant objectives (c) and (f)⁹ and paragraph 9 of Standard Special Condition A11¹⁰. They believe the proposals will efficiently meet the new obligation to treat alternatives in line with the Code of Practice and will reduce ‘unnecessary barriers and red tape’, thus simplifying the change management process.

UNC Panel¹¹ recommendation

The majority of consultation respondents felt that both UNC0318 and UNC0318A were better than baseline. The majority of respondents also preferred UNC0318A.

The UNC Panel (the “Panel”) met on 21 October 2010 and voted on UNC0318 and UNC0318A as follows:

- nine of the Panel voted to implement UNC0318;
- all of the Panel voted to implement UNC0318A;
- ten of the Panel consider UNC0318A facilitates the relevant UNC objectives better than UNC0318. One Panellist considers that when comparing UNC318 and UNC318A, the former is better, as preferably guidance should be kept separate to the UNC, so as not to fetter Panel discretion.

The Panel recommends implementation of both UNC0318 and UNC0318A but prefers UNC0318A. The Panel thinks guidance to help provide the opportunity for raising alternatives aids efficiency of the change management process. This is by encouraging alternatives rather than separate proposals on the same topics.

⁹ As set out in Standard Special Condition A11(1) of the Gas Transporters Licence, see: http://epr.ofgem.gov.uk/document_fetch.php?documentid=6547

¹⁰ Of the Gas Transporters Licence

¹¹ The UNC Panel is established and constituted from time to time pursuant to and in accordance with the UNC Modification Rules

The Panel considers UNC0318 and UNC0318A further paragraph 9 of Standard Special Condition A11 of the GT licence and relevant objective (f)¹². A Panellist believes the proposals offer a wider ability to raise alternatives and have them fully developed. Another considered the proposals would simplify the process and aid consistency with the Code of Practice.

The Authority's decision

The Authority has considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 6 December 2010. The Authority has considered and taken into account the responses to the Joint Office's consultation on the modification proposal which are attached to the FMR¹³. The Authority has concluded that:

1. implementation of either UNC0318 or UNC0318A would better facilitate the achievement of the relevant objectives of the UNC¹⁴;
2. we consider that of the two, implementation of UNC0318 would best meet the relevant objectives; and
3. directing that UNC0318 be made is consistent with the Authority's principal objective and statutory duties¹⁵.

Reasons for the Authority's decision

We consider this proposal will further objectives (c), (d) and (f) and paragraph 9 of Standard Special Condition A11 of the Gas Transporter Licence. We consider that the proposal is neutral regarding the remaining objectives.

Paragraph 9 of Standard Special Condition A11 sets out the minimum requirements for the UNC change management process. Particularly paragraph 9(c) refers to the making of alternative modification proposals in accordance with paragraphs 10(b) and 11(b) of standard special condition A11. Paragraph 10(b) requires alternative modifications to be made as described in the Code of Practice. Principle 7 of the Code of Practice provides that any alternatives to a proposal should be 'developed and fully assessed', effectively just as the original is treated. Therefore this proposal furthers these requirements as it provides that alternatives should receive the same treatment as original proposals.

Standard Special Condition A11.1(c): so far as is consistent with sub-paragraphs (a) and (b), the efficient discharge of the licensee's obligations under this licence

As set out above, NGG must ensure alternative proposals are made 'as described in the Code of Practice'. We consider that these proposals reflect this requirement in the UNC modification procedures. We consider that implementation of these proposals would therefore better meet objective (c) than the current baseline.

Standard Special Condition A11.1(d): so far as is consistent with sub-paragraphs (a) to (c) the securing of effective competition: (i) between relevant shippers; (ii) between

¹² 'so far as is consistent with sub-paragraphs (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code'

¹³ UNC modification proposals, modification reports and representations can be viewed on the Joint Office of Gas Transporters website at www.gasgovernance.co.uk

¹⁴ As set out in Standard Special Condition A11(1) of the Gas Transporters Licence, see: http://epr.ofgem.gov.uk/document_fetch.php?documentid=6547

¹⁵ The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Gas Act 1986.

relevant suppliers; and/or (iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers

We consider that giving effect to the Code of Practice may encourage competition. All proposals (whether raised as an original or alternative) will get the same scope of development/assessment. Therefore, ideas will be given parity in the change control process. This may in turn foster greater participation, give opportunity to properly develop alternative proposals which may propose more competitive solutions where appropriate and therefore encourage competition. We consider that implementation of these proposals may therefore better meet this objective than the current baseline.

Standard Special Condition A11.1 (f): so far as is consistent with sub-paragraphs (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code

A clear process for dealing with alternatives helps make the UNC more transparent and opportunity to fully develop and assess alternatives helps make the modification process more efficient. The proposals will also provide more opportunity for related options to be dealt with together. This could help streamline the modification process. It may also help to avoid unnecessary piecemeal change. Accordingly, implementation of these proposals may better meet this objective than the current baseline.

We agree that careful consideration should be given as to whether a proposal is sent straight to consultation, denying Users the opportunity to raise an alternative. Whilst guidance for the Panel is useful, we consider the following two aspects would not better facilitate the promotion of efficiency in the administration of the code. First, the Panel may not be in a position pre-consultation to fully assess likely impacts (eg on small participants) and whether potential alternatives are viable. In this regard, the Panel may consider any representations raised during the consultation and, if new issues are raised, could consider referring the proposal to a workgroup for further assessment/consideration of alternatives. Further, a proposal should not be unduly delayed. Secondly, a blanket ban on workgroup extensions for late alternatives may not be appropriate in all circumstances. On a case by case basis there may be good reasons for allowing a late alternative full development/assessment which outweigh the delay of an extension. Panel members should be afforded discretion to weigh up the circumstances of each case and decide accordingly. We therefore consider that guidance should be kept outwith the code.

In light of the above, we consider that the proposal would as compared to the current baseline and the alternative better facilitate the relevant UNC objectives.

Consolidated suggested legal text

We note that NGG has produced consolidated legal text covering all of the CGR related proposals. This is to help others understand how the code rules will look if we were to direct implementation of all of the proposals (and not their alternatives where applicable). We consider this has been helpful. We also note that if NGG consider the consolidated text accurately reflects all of the CGR related proposals and we direct implementation of all of the CGR related proposals and not their alternatives where applicable (as the consolidated text does not reflect those alternatives), NGG/the Joint Office may choose to implement using the consolidated text.

Decision notice

In accordance with Standard Special Condition A11 of the Gas Transporters Licence, the Authority, hereby directs that modification proposal UNC0318: Code Governance Review: The approach to be taken when raising alternative Modification Proposals be made.

Mark Cox
Associate Partner, Licensing and Industry Codes

Signed on behalf of the Authority and authorised for that purpose