

Modification proposal:	Uniform Network Code (UNC) 0320V: Appointment and Voting Rights for a Consumer Representative and Independent Panel Chair (UNC0320V)		
Decision:	The Authority ¹ directs that UNC0320V 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.

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

The modification proposal

This proposal seeks to change two things in the UNC modification rules.

First, it gives opportunity for a second voting consumer representative. The UNC currently has a single voting consumer representative (appointed by the National Consumer Council)⁸. This proposal allows the Authority to appoint a second voting consumer representative. This may be appropriate where a modification proposal has different and potentially conflicting impacts on various categories of consumer. It also extends the voting rights of all consumer representatives to include any 'self-governance' matters⁹.

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 UNC0286A gave a vote to this consumer representative

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=332&refer=Licensing/GasCodes/UNC/Mods>

⁹ The proposal on self-governance is UNC0323 (<http://www.gasgovernance.co.uk/0323>)

Secondly, it changes the rules governing the Panel chairman. This proposal would require an independent Panel chairman. Whilst the appointment would be selected by the transporters, it would be subject to Authority approval. The proposal will also allow the Panel chairman to have a casting vote.

The proposer considers UNC0320V will better facilitate relevant objectives (c) and (f)¹⁰ and paragraph 9 of Standard Special Condition A11¹¹. They believe the proposals will efficiently meet the new Licence obligation to allow for up to two voting consumer representatives and an independent Panel chairman with a casting vote¹². They also believe it will reduce 'unnecessary barriers and red tape', thus simplifying the change management process.

UNC Panel¹³ recommendation

The majority of consultation respondents felt that UNC0320V is better than baseline.

The UNC Panel (the Panel) met on 21 October 2010 and voted by majority to recommend implementation of UNC0320V.

The Panel considers UNC0320V furthers paragraph 9(a) of Standard Special Condition A11¹⁴ and relevant objective (f)¹⁵.

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 FMR¹⁶. The Authority has concluded that:

1. implementation of UNC0320V would better facilitate the achievement of the relevant objectives of the UNC¹⁷; and
2. directing that UNC0320V be made is consistent with the Authority's principal objective and statutory duties¹⁸.

Reasons for the Authority's decision

¹⁰ 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

¹¹ Of the Gas Transporters Licence

¹² Standard Special Condition A11(6)(d) of the Gas Transporters Licence

¹³ The UNC Panel is established and constituted from time to time pursuant to and in accordance with the UNC Modification Rules

¹⁴ Of the Gas Transporter Licence.

¹⁵ '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'

¹⁶ UNC modification proposals, modification reports and representations can be viewed on the Joint Office of Gas Transporters website at www.gasgovernance.co.uk

¹⁷ 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

¹⁸ 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.

We consider this proposal will further objectives (c) 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.

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

NGG must ensure that the UNC modification rules provide for: (1) up to 2 voting consumer representatives, one appointed by the Authority; and, (2) an independent Panel chairman with a casting vote¹⁹.

Whilst noting that there are outstanding issues in relation to the legal text accompanying this proposal (see below), we consider that this proposal improves alignment of the UNC modification procedures with the licence requirements set out above as compared to the baseline and therefore does better facilitate efficient discharge of NGG's licence obligations as compared to the 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 and paragraph 9 of Standard Special Condition A11

Consumer representatives

Paragraph 9 of Standard Special Condition A11 sets the minimum requirements for the UNC change management process. This proposal furthers these requirements as it improves the robustness of procedures. We consider that a second consumer representative may broaden the range of consumer voice. Allowing the consumer representatives to vote should give more weight to the opinions of those who ultimately pay the costs associated with the operation of the gas trading arrangements. This will support the UNC requirement to take into account representations on proposals.

We agree with a view expressed at the Panel meeting on 21 October 2010 that this proposal may help to ensure the capture of stakeholders' views and assist the Panel in making a robust decision. It was also suggested that this puts the UNC in line with the Code Administration Code of Practice, as it furthers best practice. We agree and note that this better facilitates achievement of paragraph 9(h) of Standard Special Condition A11.

Concerns expressed in response to the consultation were that:

- (i) having a second voting consumer representative may tip the balance of 'interests' of the Panel;
- (ii) it is unclear how the appointment process for a second, Authority appointed, consumer representative will work/whether it will result in an Authority 'influence' on the Panel.

We disagree with the first view. The Authority does not anticipate a blanket and ongoing appointment of a second consumer representative. An appointment may however be appropriate where a modification proposal(s) has different and potentially conflicting impacts on various categories of consumer. The aim is to ensure that those individual categories are represented in addition to consumers in general. We therefore consider

¹⁹ Standard special condition A11(6)(d) of the Gas Transporters Licence.

that the facility to appoint a second consumer representative helps ensure a reflective balance of 'interests' rather than prevent it. Further, consumer views could be useful in helping to decide whether or not a proposal may be suitable for 'self-governance'²⁰.

On the second view we note:

- (i) the appointment process is not prescriptive as who the appropriate consumer representative may be. This would likely depend upon the nature of the modification proposals being developed/consulted on. Further, we do anticipate that we would, where appropriate, issue open documents on why we think an appointment is necessary and who we propose to appoint.
- (ii) We do not agree that our appointment of a third party to help represent consumers will influence the third party's decision making. We value the independent recommendations of the Panel when making our own decisions and are not seeking to remove or curtail this.

We consider that the proposals on consumer representatives may, for the reasons set out above, improve the efficiency of the UNC modification rules. We therefore consider that this proposal better facilitates this applicable UNC objective and better facilitates achievement of paragraph 9(h) of Standard Special Condition A11 by putting the UNC in line with the Code of Practice.

Independent Panel chairman

For the reasons set out below, we consider that this proposal will better facilitate this applicable UNC objective than the current baseline.

Requiring an independent Panel chairman improves the robustness of the UNC modification rules, furthers the UNC's efficient administration and better facilitates achievement of paragraph 9(h) of Standard Special Condition A11 by putting the UNC in line with the spirit of the Code of Practice²¹.

An independent Panel chairman guards the objectivity of the Panel decision making process. By clarifying in the UNC modification procedures that the Panel chairman is independent this may increase parties' confidence in the objective administration of the UNC. We consider that making the appointment, which is carried out by the transporters, subject to Authority approval this may act as a balance to check Panel views have been taken into account. We therefore disagree with the concern raised in the consultation responses that Ofgem may seek to influence the Panel through this process. After all, the chairman must be independent and it will be for the transporters, having particular regard to the views of the relevant panel, to ensure that they have discharged this requirement.

We also disagree with the view that by 'creating' a situation where a casting vote is needed is inefficient. We consider that in order to effectively capture the Panel views, it is good practice to take votes for and against recommending implementation (although some Panel members may choose to abstain). This way the final modification report will more accurately reflect Panel views on a modification proposal. Failure to secure a majority view could result in deadlock and impede effective governance particularly in the

²⁰ A new pathway for modification proposals under the gas transporter licence.

²¹ The Code of Practice is based on principles, such as that the code modification process should be 'administered in an impartial, objective and balanced manner'.

case of modification proposals falling within self-governance. This situation then supports a casting vote, which should be used objectively by the independent chairman.

In light of the above, we consider that the proposal would as compared to the current baseline better facilitate the relevant UNC objectives and achievement of paragraph 9(h) of Standard Special Condition A11.

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.

We have raised a number of issues with NGG regarding compliance of certain aspects of the legal text for this proposal with requirements of standard special condition A11 in NGG's licence. We note NGG's letter of 15 December 2010²² which sets out a process for dealing with the outstanding legal text issues through a further modification proposal. We note that NGG will meet with Ofgem to review the outstanding comments and gain a common understanding of the further change required. We consider that this is an appropriate way forward.

Decision notice

In accordance with Standard Special Condition A11 of the Gas Transporters Licence, the Authority, hereby directs that modification proposal UNC0320V: Appointment and Voting Rights for a Consumer Representative and Independent Panel Chair be made.

Mark Cox
Associate Partner, Licensing and Industry Codes

Signed on behalf of the Authority and authorised for that purpose

²² <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=372&refer=LICENSING/INDCODES/CGR>