

Modification proposal:	Independent Gas Transporter Uniform Network Code (iGT UNC): Revision to the Modification Rules in Response to CGR2 (iGT052)		
Decision:	The Authority ¹ directs that this proposal be made ²		
Target audience:	Gemserv, Parties to the iGT UNC and other interested parties		
Date of publication:	25 November 2013	Implementation Date:	20 December 2013

Background to the modification proposal

Ofgem's Code Governance Review³ (CGR) sought to update and improve the industry code governance arrangements to ensure that they could effectively meet the challenges facing the industry, and to reduce complexity to ensure transparency and accessibility for all industry participants.

The CGR concluded in March 2010 with final proposals focusing primarily on the Balancing and Settlement Code (BSC), the Connection and Use of System Code (CUSC) and the Uniform Network Code (UNC). In April 2012, we initiated a second phase CGR (CGR Phase 2) with the aim of extending governance arrangements introduced through the CGR to other industry codes, including the Independent Gas Transporter Uniform Network Code (iGT UNC).

Following a consultation on initial proposals in September 2012,⁴ we published final proposals for CGR Phase 2 in March 2013.⁵ Licence modifications giving effect to these final proposals came into force on 5 August 2013.

The CGR Phase 2 final proposals require a number of changes to the governance arrangements of the iGT UNC (the CGR2 governance changes), to introduce:

- a Significant Code Review (SCR) process which provides a role for Ofgem to lead complex changes to the industry codes in a holistic manner⁶
- a self-governance process whereby a modification proposal that would be unlikely to have material impacts on, for example, consumers, competition or sustainable development, could be determined by the iGT UNC Panel without reference to the Authority for decision
- a 'fast track' self-governance process. This process is aimed at ensuring further efficiencies in order that very minor 'housekeeping' changes can be made by the iGT UNC Panel without the requirement to follow the full code modification process
- the 'send back' process allowing the Authority to send a final report on a modification proposal back to the iGT UNC Panel where the Authority indicates

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 CGR Phase 1 final proposals: <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-final-proposals-4310>

⁴ CGR Phase 2 initial proposals: <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-phase-2-consultation>

⁵ CGR Phase 2 final proposals: <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-phase-2-final-proposals>

⁶ Ofgem guidance on SCRs: <https://www.ofgem.gov.uk/ofgem-publications/61740/guidanceinitiating-and-conducting-scrsfinal-draft110810.pdf>

that it cannot make a decision based on the original report submitted to it. A send back direction by the Authority would allow deficiencies (for example, relating to proposed legal text or incomplete analysis) in the original report to be addressed

- the concept of an administrative body (the 'Code Administrator') and the Code Administration Code of Practice (CACoP).⁷ The CACoP establishes certain principles that are considered to capture the key elements of best practice in the administration of code modification procedures. It also provides a template for the ongoing convergence and simplification of existing code rules.

The modification proposal

E.ON Energy (the proposer) raised modification iGT052 on 5 June 2013. The proposal seeks to incorporate the CGR2 governance changes into the iGT UNC in line with the CGR Phase 2 licence changes by:

- recognising Ofgem's role in initiating, leading and managing the SCR process to develop proposals for complex and potentially cross-code changes. The proposal acknowledges that Ofgem's SCR conclusions may result in Authority directions to an iGT UNC Operator to raise iGT UNC modifications, and sets out the process to be followed where iGT UNC modifications are raised during an active SCR process
- requiring, where relevant, a proposer of an iGT UNC modification to justify self-governance status using the self-governance criteria. It will require the iGT UNC Panel to consider and agree whether the self-governance criteria are met so that the modification may proceed along the self-governance route ending in a Panel decision. The Authority will have the ability to 're-route' the modification to the standard modification route (whereby the Authority would make the decision) at any point prior to the self-governance modification proposal determination date and the iGT UNC Panel may also withdraw any self-governance statement before making a decision. The proposal also reflects the right of appeal of a self-governance modification decision to the Authority
- allowing the iGT UNC Panel, where it unanimously agrees that a modification proposal meets the 'fast track' self-governance criteria, to make a decision on that proposal subject to any objections by parties⁸ or by the Authority. The objections window for a 'fast track' self-governance modification would be open for at least 15 business days before the meeting of the iGT UNC Panel where it will be discussed. Where an objection was made, the modification could be re-routed to the self-governance or standard modification process
- recognising that the Authority may direct that additional steps are undertaken to address deficiencies in a report to the Authority where the Authority cannot properly form an opinion on a modification proposal

⁷ The CACoP is for energy code administrators and users of those codes. It was developed by industry as part of the CGR: <https://www.ofgem.gov.uk/licences-codes-and-standards/codes/industry-codes-work/code-administration-code-practice-cacop>

⁸ Identified in the iGT UNC legal text as "a Pipeline User, a Pipeline Operator, a Materially Affected Party (if any) or a Third Party Participant".

- making changes to the iGT UNC to incorporate a role and requiring the Code Administrator to, amongst other things, have regard to and be consistent with the CACoP. The proposed modification to the iGT UNC governance arrangements recognises that the iGT UNC Code Administrator (currently Gemserv) should comply with the CACoP principles.⁹

The proposer considers that iGT052 will better facilitate iGT UNC Relevant Objective (c) by enabling parties to adhere to the CGR Phase 2 licence changes, and iGT UNC Relevant Objective (f) by improving the iGT UNC governance arrangements and providing a more consistent approach with other industry codes. In the proposer's view iGT052 will deliver benefits to all industry parties in better planning and implementation of industry change, especially where it spans multiple industry codes.

iGT UNC Panel¹⁰ recommendation

iGT052 was considered by the iGT UNC Panel on 16 October 2013. Following the Panel meeting on 16 October, the panel undertook an "ex-committee" formal vote where the Panel members unanimously decided to recommend that iGT052 should be implemented.

The Authority's decision

We have considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 18 October 2013. We have considered and taken into account the responses to Gemserv's consultation on the modification proposal which are attached to the FMR.¹¹ We have concluded that:

1. implementation of the modification proposal will better facilitate the achievement of the relevant objectives of the iGT UNC;¹² and
2. directing that the modification be made is consistent with the Authority's principal objective and statutory duties.¹³

Reasons for the Authority's decision

We agree with the proposer and respondents that iGT052 better facilitates Relevant Objectives (c) and (f).

(c) so far as is consistent with sub-paragraphs (a) and (b), the efficient discharge of the licensees obligations under this licence

The recent licence modifications made to introduce the CGR2 governance changes in to the iGT UNC governance arrangements are now in force. The relevant licensees therefore must ensure that these licence provisions can be efficiently discharged. The changes proposed to the iGT UNC by iGT052 will ensure that these licensees can discharge their obligations relating to the CGR2 governance changes through the iGT UNC

⁹ See footnote 7

¹⁰ The iGT UNC Panel is established and constituted from time to time pursuant to and in accordance with the iGT UNC Modification Rules

¹¹ iGT UNC modification proposals, modification reports and representations can be viewed on the iGT UNC website at <http://www.igt-unc.co.uk/>

¹² As set out in Standard Condition 9 Gas Transporters Licence, see: <http://epr.ofgem.gov.uk/index.php?pk=folder414978>

¹³ 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

governance procedures both efficiently and effectively. We therefore consider that this modification better facilitates this objective.

(f) so far as 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 referred to in paragraphs 2 an 5 respectively of this condition

We consider that iGT052 will promote efficiency in the implementation and administration of the iGT UNC by improving the existing governance processes. The inclusion of the SCR process will help ensure that complex code changes can occur in a timely and holistic manner. Enabling modification decisions to be made by the iGT UNC Panel in line with the self-governance criteria, will ensure efficient progression of code modifications which have low materiality. Further, by allowing the iGT UNC Panel to make decisions on fast track self-governance modifications ensures that, where appropriate, minor housekeeping changes can be implemented with minimal administrative burden and industry resource. The self-governance modification decision appeal provisions and fast track self-governance objection process will ensure appropriate safeguards are in place.

The introduction of iGT052 also enables a process for the Authority sending back a FMR where it cannot make a decision on the proposed modification due to some identified deficiency, eg defective legal text. This approach is more efficient when compared to the alternative of the Authority either rejecting an otherwise beneficial modification or accepting a flawed modification which requires later correction.

We also consider that adherence to the CACoP principles will lead to improved efficiency in iGT UNC administration and the promotion of good industry practice.

Legal drafting

We note that in the text the term 'Materially Affected Party' is used and this is not defined in the iGT UNC. For example this appears at clauses 12.7, 10.1.6 and 30.1 of the text. We understand that this is an error in the legal drafting and should therefore be corrected as soon as possible by way of a housekeeping modification.

We note some further typographical issues with the legal text. For example, the definition of 'self-governance modification proposal determination date' includes fast track self-governance determinations, however, does not cross reference to the relevant clause. Also not all instances of the 'Representative' have been replaced by 'Code Administrator' and there appears to be an incorrect cross-reference at clause 6.4 of the drafting.

We note that this modification introduces substantial changes to Part L of the iGT UNC. It is our expectation that in producing legal drafting for proposed code modifications, appropriate scrutiny is given to that drafting – procuring legal advice where required – to ensure that it is free of errors and correctly fulfils the intent of the modification proposed, prior to it being submitted to the Authority for approval (or, in the case of self-governance modifications, before the iGT UNC Panel issue a decision). This should avoid errors such as those we have identified with this modification being identified at a late stage and the need for further modifications to be raised to correct them.

Decision notice

In accordance with Standard Condition 9 of the Gas Transporters Licence, the Authority hereby directs that modification proposal iGT052: 'Revision to the Modification Rules in Response to CGR2' be made.

Lesley Nugent

Head of Industry Codes and Licensing

Signed on behalf of the Authority and authorised for that purpose