



Agenda Item	Action
9 – RG002	For Information

Significant Code Review (SCR) Mod proposals – potential changes required under CGR3 May 2016

Review Group (RG) 002 Paper for discussion for Tuesday, 7th June 2016

Current Modification rules

“Significant Code Review”: means complex changes to the Industry Codes led by the Authority and as set out in Standard Licence Condition 9 12A to C (inclusive) of the Gas Transporter’s Licence;

“Significant Code Review Modification Proposal”: a Modification Proposal made pursuant to a direction of the Authority which is made further to a Significant Code Review;

“Significant Code Review Suspended Modification Proposal”: unless Clause 13.3 applies a Modification Proposal in respect of which the application of the Modification Procedures is suspended pursuant to Clause 13.2 until the end of the Significant Code Review Phase;

“Significant Code Review Phase”: has the meaning given in Standard Licence Condition 9 (paragraphs 12A and 23) of the Gas Transporter’s Licence;

10 Modification Proposals

10.1.5 The Authority may direct an iGT UNC Operator to make a Significant Code Review Modification Proposal in respect of the iGT UNC and/or the Individual Network Code and without prejudice to Clause 15 or Clause 16, the iGT UNC Operator shall make a proposal in accordance with that direction and such a proposal shall proceed in accordance with the Modification Procedures.

10.1.6 An iGT UNC Operator, a Relevant Pipeline User or a Third Party Participant may not make a Modification Proposal in respect of the iGT UNC or Individual Network Code during the relevant Significant Code Review Phase if the subject matter of such proposal relates to a matter which is the subject of a Significant Code Review, unless:

- a) the Authority directs that it may do so, having taken into account, among other things, the urgency of the subject matter of such proposal; or
- b) the Modification is made by the iGT UNC Operator in accordance with Standard Licence Condition 9 (paragraphs 12A, 12B or 12C) of the Gas Transporter’s Licence.

13 Modification Proposals made during a Significant Code Review Phase

13.1 Where the Authority has received a written assessment of the iGT UNC Modification Panel under Clause 18.6 in respect of a Modification Proposal, the Code Administrator shall inform the Proposer and each iGT UNC Operator, Pipeline User, Third Party Participant and Non-Code Party (if any) of the direction or re-direction it has received from the Authority.

13.2 Where the direction or re-direction received by the Code Administrator from the Authority is not to proceed with the Modification Proposal that Modification Proposal shall become a Significant Code Review Suspended Modification Proposal and shall continue to be so until either the end of the Significant Code Review Phase or unless the Authority directs otherwise (having taken into account, among other things not limited to, the urgency of the subject matter of such a proposal).



13.3 Where the Authority:

- a) has not made a direction within twenty-eight (28) days after it has published its Significant Code Review conclusions, or has made no re-direction to proceed with the Modification Proposal; or
- b) directs that Standard Licence Condition 9 (paragraphs 12A, 12B or 12C) of the Gas Transporter's Licence applies to such proposal;
- c) such proposal shall not be or shall cease to be a Significant Code Review Suspended Modification Proposal and that Modification Proposal shall proceed in accordance with the Modification Procedures.

16 Withdrawal or Variation of Modification Proposals

16.7 The Authority, upon request by a Proposer of a Significant Code Review Modification Proposal may direct:

- a) that the Proposer may vary, withdraw or make a variation request in respect of the relevant Significant Code Review Modification Proposal in accordance with Clause 16; or
- b) that the Proposer may not vary, withdraw or make a variation request in respect of the relevant Significant Code Review Modification Proposal and that such proposal shall proceed in accordance with the Modification Procedures.

18 Discussion of Modification Proposals

18.6 The iGT UNC Modification Panel shall assess whether the subject matter of a Modification Proposal made during a Significant Code Review Phase relates to a matter that is the subject of an ongoing Significant Code Review and instruct the Code Administrator to submit to the Authority as soon as is reasonably practicable a written assessment including;

(a) representations received as to whether such proposal relates to the matter which is the subject of a Significant Code Review;

(b) its determination as to whether such proposal relates to the matter which is the subject of a Significant Code Review;

(c) its reasons for making such determination;

(d) a copy of the relevant Modification Proposal; and

(e) its assessment of whether the exceptions under Standard Licence Condition 9 (paragraph 12A) of the Gas Transporter's Licence may be applicable.

25 Content of Modification Reports

25.1 Each Draft Modification Report or Final Modification Report shall set out the information, and be in the form, specified on the iGT UNC Website and:

(a) shall in relation to a recommendation of the iGT UNC Modification Panel under Clause 23.3.3(b), include details of the iGT UNC Modification Panel's reasoning for determining whether or not the Modification Proposal better facilitates achievement of the Relevant Objectives; and

(b) state whether or not a determination has been made by the iGT UNC Modification Panel under Clause 23.3.3(a) and the number of Voting Members in favour of, and the number of Voting Members present and not voting in favour of, the implementation of the Modification Proposal;



(c) where it relates to a Self-Governance Modification Proposal, state that fact and whether the iGT UNC Modification Panel or the Authority determined that such proposal satisfied the Self-Governance Criteria; and

(d) state whether the Modification Proposal is made pursuant to a direction of the Authority in respect of a Significant Code Review.

Main Licence change proposals relating to SCR changes – put forward by Ofgem

Condition 9: Network Code and Uniform Network Code (iGTs)

7. The network code modification procedures shall provide for:

j) modification proposals made by the Authority or the licensee in accordance with paragraphs 8(a) and 9(a) ~~which the Authority reasonably considers are necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators:~~

- i. to be accepted into the network code modification procedures by the panel;
- ii. where they are raised by the licensee, not to be withdrawn without the
- iii. Authority's prior consent;
- iv. to proceed in accordance with any timetable(s) directed by the Authority in
- v. accordance with paragraph 7(k);

k. compliance by the licensee and (where applicable) the panel with any direction(s) issued by the Authority under this paragraph setting and/or amending a timetable (in relation to a modification **within the scope of paragraph 12CE** ~~which the Authority reasonably considers is necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Cooperation of Energy Regulators~~) for the:

- i. licensee to raise a modification proposal; and/or
- ii. completion of each of the procedural steps outlined in this paragraph 7 **or paragraph 12CC**, to the extent that they are relevant; and/or
- iii. (iii) implementation of a modification;

8. In respect of the uniform network code:

a) a modification proposal may be made by the following:

- i. the licensee;
- ii. any other relevant gas transporter;
- iii. any relevant shipper identified in the network code modification procedures as being entitled to propose a modification;
- iv. any other relevant person (a **"third party participant"**) identified (individually or as a member of a class of persons) in the network code modification procedures as being entitled to propose a modification; and/or
- v. the Authority (in relation only to modifications ~~which it reasonably considers are necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the~~



European Commission and/or the Agency for the Co-operation of Energy Regulators within the scope of paragraph 12CE); and

9. In respect of each network code (excluding the terms of the uniform network code incorporated within it):

- a) a modification proposal may be made by one of the following:
 - i. the licensee, to the extent that the modification proposed relates to the pipe-line system to which this licence relates;
 - ii. any relevant shipper identified in the network code modification procedures as being entitled to propose a modification;
 - iii. a third party participant; or
 - iv. the Authority (in relation only to modifications which it reasonably considers are necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators within the scope of paragraph 12CE); and

Modification of Network Code and the Uniform Network Code

10. The licensee shall not make or permit any modification to the network code or to the uniform network code except:

- a) to comply with paragraph 12(b), 12CC(b)(i) or 13; or
- b) with the written consent of the Authority;
- c) in accordance with paragraph 12D (the “self-governance route”); or
- d) in accordance with paragraph 12G (the “fast track self-governance route”), and shall furnish the Authority with a copy of any such modification made.

12. Where a proposal is made in accordance with the network code modification procedures to modify the network code or the uniform network code the licensee shall:

- a. except in the case of a modification falling within the scope of paragraph 12CB or 12G, as soon as is reasonably practicable, and no later than the time specified in the network code modification procedures, give notice to the Authority:

Significant code reviews

12A. Without prejudice to paragraph 12CB, the network code modification procedures shall provide that proposals for the modification of the network code and/or the uniform network code falling within the scope of a significant code review may not be made during the significant code review phase, except:

- a. where the Authority determines that the modification proposal may be made, having taken into account (among other things) the urgency of the subject matter of the proposal; or
- b. at the direction of, or made by, the Authority.



12C. The network code modification procedures shall provide that if within twenty-eight (28) days after the Authority has published its significant code review conclusions ~~the Authority issues to the~~ licensee:

a) ~~the Authority issues~~ directions to the licensee, the licensee shall comply with those directions and shall treat the significant code review phase as ended;

b) ~~the Authority issues to the licensee~~ a statement that no directions under sub-paragraph (a) will be issued in relation to the network code and/or the uniform network code, the licensee shall treat the significant code review phase as ended;

~~ba) the Authority raises a modification proposal in accordance with paragraph 8(a)(v) or 9(a)(iv), the licensee shall treat the significant code review phase as ended;~~

~~bb) the Authority issues a statement that it will continue work on the significant code review, the licensee shall treat the significant code review phase as continuing until it is brought to an end in accordance with paragraph 12CA;~~

c) neither directions under sub-paragraph (a), nor a statement under sub-paragraph (b) or (bb) has been issued, nor a modification proposal under sub-paragraph (ba) has been made, the significant code review phase will be deemed to have ended.

The Authority's published conclusions and directions to the licensee/relevant gas transporter(s), will not fetter any voting rights of the members of the panel or the procedures informing the recommendation described at paragraph 12(a)(iv).

12CA. The network code modification procedures shall provide that, if the Authority issues a statement under sub-paragraph 12C(bb) and/or a direction in accordance with paragraph 12CD, the significant code review phase will be deemed to have ended when either:

- a) the Authority issues a statement that the significant code review phase has ended;
- b) one of the circumstances in sub-paragraphs 12C(a) or (ba) occurs (irrespective of whether such circumstance occurs within twenty-eight (28) days after the Authority has published its significant code review conclusions); or
- c) the Authority makes a decision consenting, or otherwise, to the modification of the network code pursuant to paragraph 12CC(c)(i).

12CB. The network code modification procedures shall provide that, where the Authority has issued a statement in accordance with sub-paragraph 12C(bb) and/or a direction in accordance with paragraph

12CD, the Authority may submit a modification proposal for a modification falling within the scope of sub-paragraph 12CE(b) to the panel.

12CC. The network code modification procedures shall provide, where the Authority submits a significant code review modification proposal to the panel in accordance with paragraph 12CB:

- a) for the licensee to give notice to the Authority:
 - i. including a recommendation by the panel as to whether the proposed modification should or should not be made, and the factors which (in the opinion of such body) justify the making or not making of the proposed modification, which shall include:
 - ii. (aa) a detailed explanation of whether and, if so how, the proposed modification would better facilitate the achievement of the relevant objectives; and
 - iii. (bb) where the impact is likely to be material, an assessment of the quantifiable impact of the proposed modification on greenhouse gas emissions, to be conducted in accordance with any such guidance (on the treatment of carbon costs and evaluation of greenhouse gas emissions) as may be issued by the Authority from time to time;

- iv. giving such further information as may be required to be given to the Authority by the network code modification procedures;
- b) for the licensee to comply with any direction of the Authority:
 - i. to make a modification to the network code and/or the uniform network code in accordance with a proposal described in a notice given to the Authority under sub-paragraph 12CC(a) which, in the opinion of the Authority, will, as compared to the existing provisions of the network code and/or (as the case may be) the uniform network code or any alternative proposal, better facilitate, consistent with the licensee's duties under section 9 of the Act, the achievement of the relevant objectives; or
 - ii. to revise and re-submit a report provided in accordance with sub-paragraph 12CC(a) where the Authority determines that it cannot properly form an opinion on the approval of the modification proposal in accordance with paragraph 12CC(b)(i);
- c) for each of the procedural steps outlined in this paragraph 12CC, to the extent that they are relevant, to be in accordance with any timetable(s) directed by the Authority under paragraph 7(k).

The Authority's published conclusions and significant code review modification proposal shall not fetter the voting rights of the members of the panel or the recommendation procedures informing the recommendation described at sub-paragraph 12CC(a)(i).

12CD. The network code modification procedures shall provide that, where a proposal has been raised in accordance with paragraph 12C(a) or 7(k), or by the Authority under paragraph 12C(ba) and it falls within the scope of paragraph 12CE(b), the Authority may issue a direction (a "backstop direction"), which requires such proposal(s) and any alternatives to be withdrawn and which causes the significant code review phase to re-commence.

12CE. Modification proposals fall within the scope of this paragraph where:

- a) the Authority reasonably considers the modifications are necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency; and/or
- b) the modification proposal is in respect of a significant code review.

22. Without prejudice to any rights of approval, veto or direction the Authority may have, the licensee shall use its best endeavours to ensure that procedures are in place that facilitate its compliance with the requirements of this condition including, but not limited to, modifying the uniform network code where necessary no later than 31 March 2017.

Definitions

"significant code review phase" means the period

- a) commencing either:
 - i. on the start date of a significant code review as stated by the Authority; or
 - ii. on the date the Authority makes a direction under paragraph 12CD (a "backstop direction"); and
- b) ending in one of the following ways:

Commented [S1]: Is my understanding that where the Authority submits a Modification under 12CB, the Panel will receive the proposal and ensure that the proposal goes through the normal modification procedures albeit this may be under a timetable directed by the Authority. However, this isn't very clear as the steps in 12CC are limited.,

Commented [S2]: When it says "fall within the scope of this paragraph" does it mean 12CE or 12?

- i. on the date on which the Authority issues a statement under sub-paragraph 12C(b) that no directions will be issued in relation to the network code and/or the uniform network code; or
- ii. if no statement is made under sub-paragraph 12C(b) or (bb), on the date on which the licensee has made a modification proposal in accordance with directions issued by the Authority under sub-paragraph 12C(a), or the Authority makes a modification proposal under sub-paragraph 12C(ba); or
- iii. immediately under sub-paragraph 12C(c) if neither a statement, a modification proposal nor directions are made issued by the Authority within (and including) twenty eight (28) days from the Authority's publication of its significant code review conclusions, or
- iv. if a statement has been made under paragraph 12C(bb) or a direction has been made under paragraph 12CD (a "backstop direction"), on the date specified in accordance with paragraph 12CA.

Possible changes to the Modification Rules

"European Modification Proposal": has the meaning set out in Clause 10.1.7;

"Significant Code Review": means complex changes to the Industry Codes led by the Authority and as set out in Standard Licence Condition 9 12A to C (inclusive) of the Gas Transporter's Licence;

"Significant Code Review Modification Proposal": a Modification Proposal made pursuant to a direction of the Authority in accordance with 10.1.3(b) or 10.1.5 which is made further to a Significant Code Review;

"Significant Code Review Suspended Modification Proposal": unless Clause 13.3 applies a Modification Proposal in respect of which the application of the Modification Procedures is suspended pursuant to Clause 13.2 until the end of the Significant Code Review Phase;

"Significant Code Review Phase": has the meaning given in Standard Licence Condition 9 (paragraphs 12A, 12CA, 12CD and 23) of the Gas Transporter's Licence;

10.1.3 A Modification Proposal in respect of the iGT UNC or an Individual Network Code may be initiated by the Authority in relation only where:
a. to the Authority reasonably considers the modifications which it reasonably considers are necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/ or the Agency for the Co-operation of Energy Regulators; and/or
b. the modification proposal is in respect of a Significant Code Review.

10.1.5 The Authority may direct an iGT UNC Operator to make a Significant Code Review Modification Proposal in respect of the iGT UNC and/or the Individual Network Code and without prejudice to Clause 15 or Clause 16, the iGT UNC Operator shall make a proposal in accordance with that direction and such a proposal shall proceed in accordance with the Modification Procedures, subject to Clause 31.

10.1.7 In accordance with Standard Condition 9.7(j) of the Gas Transporter's Licence, where a Modification Proposal has been made by the Authority under Clause 10.1.3(a) or



where the Proposer of a Modification Proposal is an iGT UNC Operator or a Relevant iGT UNC Operator and the Authority reasonably considers the Modification Proposal is necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Cooperation of Energy Regulators, that Modification shall be classified as a European Modification Proposal and be subject to Clause 31.

10.1.9 In relation to a ~~European Modification Proposal~~ modification initiated under 10.1.3 :

- (a) any actions and/or decisions taken by either the Code Administrator, the iGT UNC Operators, a Relevant iGT UNC Operator or the Modification Panel; and
- (b) any requirements relating to the contents of a Modification Proposal, Workgroup Report, Draft Modification Report or Final Modification Report; and
- (c) any notice periods for the holding of meetings; and
- (d) any requirements relating to the setting of an implementation date or the implementation of a Modification Proposal,

shall be in full accordance with Clause 31 and will take precedence over any other relevant actions, decisions and/or requirements set out in these Modification Rules.

18.10 Where the Modification Proposal ~~has been initiated under 10.1.3 is a European Modification Proposal the European Modification~~ the -Proposal will proceed in accordance with the Modification Rules subject to any changes required by Clause 31.

23.3.3 Upon receipt of the Final Modification Report under Clause 23.3.1 or 23.3.2 the iGT UNC Modification Panel shall assess whether the Final Modification Report complies with Clause 25, and if it is compliant, shall:

(a) determine whether or not to recommend the implementation of the Modification Proposal to the Authority;

(b) submit to the Authority its determination under Clause 23.3.3(a) and the factors which (in its opinion), justify its determination and which shall include details of the iGT UNC Modification Panel's reasoning for determining whether or not the Modification Proposal better facilitates achievement of the Relevant Objectives or not;

c) where the impact is likely to be material, the evaluation of the proposed modification in respect of the relevant objectives shall include an assessment of the quantifiable impact of the proposed modification on greenhouse gas emissions, to be conducted in accordance with any such guidance (on the treatment of carbon costs and evaluation of greenhouse gas emissions) as may be issued by the Authority from time to time;

d) giving such further information as may be required to be given to the Authority by the network code modification procedures;

~~(ee)~~ subject to Clause 31, provide a date for the implementation of the Modification Proposal, either by endorsement of the Proposer's recommended implementation date, or pursuant to Clause 23.3.4; and

~~(fd)~~ instruct the Code Administrator to send the Final Modification Report, together with its recommendation to the Authority.

26.3 Pursuant to Clause 26.2 the iGT UNC Panel shall review the comments provided by the Authority and either:

(a) refer the matter to the appropriate Work Group for further development; or

(b) re-issue the Modification Proposal for further Consultation, highlighting the concerns raised by the Authority; and/or

(c) subject to Clause 31.5, subject to the agreement of iGT UNC Panel, amend the Final Modification Report to address the concerns raised by the Authority.

31 European Modification Proposal and Significant Code Review Modification Procedures

31.1 Notwithstanding any time periods specified in these Modification Rules, in respect of a European Modification Proposal or a Significant Code Review Modification Proposal:

(a) The Authority may, by direction to an iGT UNC Operator or a Relevant iGT UNC Operator, specify and/or amend the timetable to apply to all or any of the relevant Modification Rules (including, but without limitation, iGT UNC Modification Panel decisions, Code Administrator actions on behalf of the iGT UNC Operators, notice periods, preparation of legal text and seeking representations from each iGT UNC Operator, each Member, each Pipeline User, each Third Party Participant and each Affected Person (if any) and setting the implementation date of such European Modification Proposal or Significant Code Review Modification Proposal); and

(b) Where such direction has been issued, the iGT UNC Modification Panel, the iGT UNC Operators and the Relevant iGT UNC Operator will comply with the direction and ensure that any decisions and /or actions taken are in accordance with such timetable and/or implementation date.

31.2 Where the Authority makes a direction referred to in Clause 31.1(a) and such direction specifies:

(a) A timetable in respect of all of the relevant procedures specified in these Modification Rules as applying to such European Modification Proposal or a Significant Code Review Modification Proposal ~~European Modification Proposal~~, the European Modification Proposal or a Significant Code Review Modification Proposal ~~European Modification Proposal~~ shall progress in accordance with the timetable specified in such direction (and not the timetable set out in these Modification Rules);

(b) A timetable in respect of some (but not all) of the relevant procedures specified in these Modification Rules as applying to such European Modification Proposal or a Significant Code Review Modification Proposal ~~European Modification Proposal~~ (and does not direct that the relevant procedures in respect of which no timetable is directed are not to apply to such European Modification Proposal or a Significant Code Review Modification Proposal ~~European Modification Proposal~~), then such European Modification Proposal or a Significant Code Review Modification Proposal ~~European Modification Proposal~~ shall proceed on the basis of the timetable specified in the direction (in respect of the relevant procedures specified in the direction) and the timetable set out in these Modification Rules (in respect of all other relevant procedures specified in these Modification Rules as applying to such European Modification Proposal or a Significant Code Review Modification Proposal ~~European Modification Proposal~~);

Commented [S3]: Change this paragraph to reference both European Mods and SCR mods made by the Authority under 10.1.3

(c) An implementation date in respect of such European Modification Proposal but specifies no timetable to apply to such European Modification Proposal or a Significant Code Review Modification Proposal ~~European Modification Proposal~~ in relation to these Modification Rules, then the iGT UNC Operator or the Relevant iGT UNC Operator to whom the direction is made by the Authority shall notify the Code Administrator of the timetable that the iGT UNC Operator or the Relevant iGT UNC Operator reasonably believes ought to apply to such European Modification Proposal or a Significant Code Review Modification Proposal ~~European Modification Proposal~~ in order to achieve the directed implementation date, and such notified timetable shall apply for the purposes of these Modification Rules in relation to such European Modification Proposal or a Significant Code Review Modification Proposal ~~European Modification Proposal~~.

31.3 Until such time as the Authority makes a direction referred to in Clause 31.1(a) the European Modification Proposal or a Significant Code Review Modification Proposal ~~European Modification Proposal~~ shall proceed in accordance with the Modification Procedures.

31.4 (a) Where the Proposer of a European Modification Proposal or a Significant Code Review Modification Proposal ~~European Modification Proposal~~ is an iGT UNC Operator or a Relevant iGT UNC Operator then the Proposer may not withdraw the Modification Proposal without the Authority's prior consent, and-

(b) in relation to a Significant Code Review Modification Proposal the Authority may issue a direction (a "backstop direction"), which requires such proposal(s) and any alternatives to be withdrawn and which causes the significant code review phase to re-commence.

31.5 The iGT UNC Modification Panel will revise and re-submit a report provided in accordance with Paragraph 23.3.3 where the Authority determines that it cannot properly form an opinion on the approval of the modification proposal.

31.5-6 Where a European Modification Proposal or a Significant Code Review Modification Proposal ~~European Modification Proposal~~ is implemented, then:

- (a) Where the Modification was subject to a timetable directed by the Authority, the Code Administrator shall at the next meeting of the iGT UNC Modification Panel report to the iGT UNC Modification Panel in respect of that Modification; and
- (b) The iGT UNC Modification Panel may determine at that meeting that the subject matter of the Modification so made shall be referred to a Work Group. If the iGT UNC Modification Panel shall so determine, the Code Administrator shall refer such proposal to the relevant Work Group together with the Terms of Reference to be applicable.

Figure 2.1 Diagram illustrating the proposed SCR process

