



PHOENIX NATURAL GAS LTD.

**DISTRIBUTION NETWORK CODE
MODIFICATION RULES**

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Contents

	Page
1. Introduction	3
2. Proposed Modification.....	3
3. Consultation Period and Meetings.....	4
4. Preliminary Determination	5
5. Development Process.....	5
6. Modification Report.....	6
7. Determination and Implementation of Modification..	7
8. Alternative Procedure for Substantial Review of part of the Distribution Network Code.....	7
9. Modifications to the Modification Rules.....	8
10. Notices.....	9
11. Revision of Timescales.....	10
Appendix One – Definitions and Interpretation.....	11

1. Introduction

- 1.1 The Operator is required by Condition 2.5.4 of its Licence to establish and implement procedures for the modification of the Distribution Network Code by the Operator so as better to facilitate the achievement of the Relevant Objective.
- 1.2 The Operator is required pursuant to Condition 2.5.5 of its Licence to prepare a document, referred to in the Operator's Licence as "modification rules", setting out the procedures for the modification of the Distribution Network Code in accordance with Condition 2.5.4 of the Operator's Licence. These "**Rules**" constitute that document.
- 1.3 Any modification to the Distribution Network Code shall be made in accordance with these Rules or Condition 2.5.6 of the Licence.
- 1.4 These Rules are not part of the Distribution Network Code.
- 1.5 Unless the context otherwise requires, the definitions and rules of interpretation in the Appendix to these Rules shall apply.

2. Proposed Modification

- 2.1 The Authority, Operator and any User who has acceded to the Distribution Network Code may propose a modification to this Code ("**Proposed Modification**").
- 2.2 A Proposed Modification shall either be prepared and submitted by the Authority, a User or the Operator and include the following:
 - (a) a description of the nature and purpose of the modification;
 - (b) an indication of how the modification would better facilitate the Relevant Objective as compared with the existing provisions of the Distribution Network Code;
 - (c) a list of all the sections and parts of the Distribution Network Code that would require amending or a comparison of any text proposed for the Distribution Network Code with the relevant text of the existing Distribution Network Code; and
 - (d) the date proposed for the implementation of the modification and any end date.
- 2.3 If the Operator prepares a Proposed Modification, the Operator shall have regard to other Proposed Modifications currently outstanding relating to other Distribution Systems within Northern Ireland.
- 2.4 The Operator shall give each Proposed Modification a unique reference number.

- 2.5 The Operator may, from time to time, determine, in its reasonable judgement, the form that a Proposed Modification should take.
- 2.6 The Operator will forward a Proposed Modification to each User on the Phoenix Distribution System, the Authority (if the Authority is not the proposer) and to any other person who requests it (Collectively the “**Consultees**”) and will make it otherwise available in an appropriate manner where it is necessary for establishing whether the proposal would better facilitate the achievement of the Relevant Objective.
- 2.7 The Operator shall, within 5 business days of the submission of a Proposed Modification to it, or in the case of a Proposed Modification proposed by the Operator as soon as possible after preparing the same, forward the Proposed Modification to the Consultees.
- 2.8 Any person who has submitted a Proposed Modification may at any time, up to the submission of a Modification Report to the Authority, request the Operator to withdraw its Proposed Modification from the modification process described in these Rules. The Operator shall withdraw the Proposed Modification unless, in the opinion of the Operator, making the modification proposed would better facilitate the achievement of the Relevant Objective in which case the Operator shall become the proposer of such modification.

3. Consultation Period and Meetings

- 3.1 Each Consultee shall have 20 Business Days from receipt of the Proposed Modification within which it may respond to a Proposed Modification (the “**Consultation Period**”).
- 3.2 The Operator will properly consider all representations received within the Consultation Period (and not withdrawn) from the Consultees.
- 3.3 The Operator may elect to facilitate a meeting of interested Consultees to discuss a Proposed Modification where it considers such meeting appropriate.
- 3.4 Any Consultee may request the Operator to facilitate a meeting of interested Consultees to discuss a Proposed Modification where it considers it appropriate (“**Consultation Meeting**”). If the Operator does not consider one appropriate such Consultee may request a Preliminary Determination in relation to whether a meeting shall be held in accordance with section 4.1(d).
- 3.5 Representations must be made in writing but additional supporting argument may be made orally if a Consultation Meeting is convened.

4. Preliminary Determination

- 4.1 The Operator or any Consultee may, before the expiry of the Consultation Period, seek the preliminary view of the Authority in relation to any matter arising in respect

of any Proposed Modification, in accordance with this section 4, (a “**Preliminary Determination**”) including as to whether:

- (a) the Proposed Modification should be considered in an Alternative Procedure in accordance with section 8;
- (b) any Alternative Procedure issued by the Operator in accordance with section 8 should be adopted;
- (c) the Proposed Modification should be rejected without further consultation;
- (d) a meeting of interested Consultees shall be held in accordance with paragraph 3.4;

4.2 The Operator shall notify the Consultees and any Consultee shall notify the Operator that it has sought a Preliminary Determination setting out the matter on which the Authority’s view is being sought and its reasons for doing so.

4.3 The Operator and each Consultee shall, notwithstanding any other provision of these Rules, be bound by the Authority’s Preliminary Determination in relation to any Proposed Modification.

5. Development Process

5.1 Where, following the Consultation Period, amendments should, in the opinion of the Operator, be made to the Proposed Modification which will not change the aim stated in the Proposed Modification, such changes may be incorporated into the proposed wording contained in the Modification Report by the Operator. The Operator or any Consultee may propose any such amendments.

5.2 Where, following the Consultation Period, amendments should, in the opinion of the Operator, be made to the Proposed Modification which will change the aim stated in the Proposed Modification, an alternative Proposed Modification will be issued by the Operator for consultation containing such amendments (an “**Alternative Proposed Modification**”). Such alternative will be issued to the Consultees within 10 business days after the end of the Consultation Period for the first Proposed Modification. The Consultees will have 10 business days to respond to such alternative.

6. Modification Report

6.1 Subject to section 5.2 the Operator will compile and submit a modification report (a “**Modification Report**”) to the Authority within 20 business days after the end of the Consultation Period.

6.2 If an Alternative Proposed Modification is prepared the Operator will compile and submit a Modification Report to the Authority in respect of the original Proposed

Modification and the Alternative Proposed Modification, within 15 business days after the end of the Consultation Period for the Alternative Proposed Modification.

- 6.3 The Modification Report or (in the case of an Alternative Proposed Modification) both Modification Reports will contain:
- (a) any proposed text amending the Distribution Network Code;
 - (b) an indication of how the modification would better facilitate the Relevant Objective as compared with the existing provisions of the Distribution Network Code;
 - (c) the particulars of any representations or objections made (and not withdrawn) by any Consultee and an explanation of how such representations or objections have been addressed;
 - (d) the Operator's recommendation of whether or not the Proposed Modification (or, in the case of an Alternative Proposed Modification, the Alternative Proposed Modification) should be made;
 - (e) the factors which, in the Operator's opinion, justify making or not making a Proposed Modification (or, in the case of an Alternative Proposed Modification, the Alternative Proposed Modification);
 - (f) details of any amendment made in accordance with section 5.1 together with an explanation of why, in the opinion of the Operator, the amendment should be made; and
 - (g) the date proposed for the implementation of the Proposed Modification and any end date having regard to any system or procedural changes that may be necessary as a result of the modification. If such proposed date is different to that estimated by the Operator pursuant to section 2.2(d), the Operator will ensure that before completing the Modification Report Consultees will have been given a further opportunity to comment on the Operator's latest proposed implementation date and will include in the Modification Report any views on implementation dates expressed by Consultees that differ to that proposed by the Operator.
- 6.4 In preparing a Modification Report, the Operator shall have regard to the impact that such modification might have on any Proposed Modifications for other Distribution Systems in Northern Ireland.

7. Determination and Implementation of Modification

- 7.1 The Authority shall, after having received any Modification Report in relation to:
- (a) a Proposed Modification, determine whether the modification will, in the opinion of the Authority, as compared to the existing provisions of the Distribution Network Code better facilitate the achievement of the Relevant Objective;
 - (b) a Proposed Modification and an Alternative Proposed Modification, determine which proposals (if any) will, in the opinion of the Authority, as compared to the existing provisions of the Distribution Network Code better facilitate the achievement of the Relevant Objective;

and inform the Operator of its determination.

- 7.2 If the Authority's determination is that it, or one of such proposals (as appropriate) will so facilitate such objective the Authority shall direct the Operator to implement the Proposed Modification or Alternative Proposed Modification (as appropriate) on the date proposed for its implementation in the Modification Report or such other date as the Authority requires.
- 7.3 The Operator shall comply with any direction given by the Authority to make a modification to the Distribution Network Code in accordance with a Modification Report.
- 7.4 The Operator shall promptly:
- (a) notify the Consultees of any determination of the Authority in relation to the implementation of a Proposed Modification or Alternative Proposed Modification (as appropriate); and
 - (b) provide a copy of any modification to the Distribution Network Code to the Authority and the Consultees.

8. Alternative Procedure for substantial review of part of the Distribution Network Code

- 8.1 The Operator, if it considers that any Proposed Modification would make such a significant change to the Distribution Network Code that the procedure given to it in sections 2 and 3 is not adequate to allow the Proposed Modification to be properly considered, request a Preliminary Determination as to whether an alternative procedure should be adopted in relation to it (an "**Alternative Procedure**").
- 8.2 If the Authority's Preliminary Determination is that an Alternative Procedure should be adopted the Operator shall prepare a document setting out:
- (a) the Operator's reason for adopting an Alternative Procedure;

- (b) an outline of the proposed Alternative Procedure including a proposed timetable which timetable shall provide each Consultee with a time period of not less than the Consultation Period in which to comment;
 - (c) any proposed amendment or addition to the Proposed Modification;
 - (d) details of any analysis it proposes is prepared to enable the Proposed Modification to be properly considered;
 - (e) details of any proposed working group or review group to consider the Proposed Modification.
- 8.3 Any such Alternative Procedure shall be forwarded to the Consultees along with the Proposed Modification.
- 8.4 A Consultee may, within 15 business days after the date that the Alternative Procedure was issued, submit to the Operator any comments it may have on the Alternative Procedure including its availability to attend any meeting proposed in the procedure.
- 8.5 The Operator shall within 25 business days from the date that a document was issued, in accordance with Section 8.2, finalise and issue to the Consultees, the Alternative Procedure which shall, subject to section 8.6, be adopted and followed.
- 8.6 A Consultee may, within 10 business days from the date that the Alternative Procedure was issued, request a Preliminary Determination as to whether the Alternative Procedure proposed should be adopted in accordance with section 4.1.
- 8.7 The Operator may, at any time, amend the Alternative Procedure with the consent of the Authority or the unanimous agreement of all Users

9. Modifications to the Modification Rules

- 9.1 Any modification to these Rules shall be made in accordance with the change rules set out in this section 9.
- 9.2 The Operator, or the User may propose an amendment to these Rules by preparing an “**Application for Change**” which will include;
- (a) the proposed change including the proposed text to be inserted into these Rules;
 - (b) a description of the objective of the proposed change; and
 - (c) its proposed date of implementation

and in the case of the User, by sending the Application for Change to the Operator.

- 9.3 The Operator shall forward any Application for Change to Users inviting their comments on it. Any such comments must be made within 15 business days of the date the Application for Change was forwarded or any such shorter period as the Operator

may have requested the *Authority* to approve and the *Authority* shall have so approved.

9.4 The Operator shall prepare a report including:

- (a) the Application for Change;
- (b) any such comments on it as the *Users* shall have made;
- (c) The Operator's views on such comments and where it was submitted by a User on the Application for Change;
- (d) any proposed text amending these Rules to incorporate the change.

9.5 If the *Authority* approves the change to these Rules proposed in such report the Operator shall provide the Users with 5 Business Days notice of the implementation of such change.

10. Notices

10.1 Any notice or other communication given or made by any person under these Rules shall be:

- (a) in writing and may be (i) delivered by hand to the addressee; (ii) sent by first class prepaid letter, to the address of the addressee; (iii) sent by fax to the addressee's fax transmission number specified in writing by the addressee or such other address or number as may be notified by a person from time to time in writing for this purpose; or (iv) sent by email to an email address specified in writing by the addressee or such other address or number as may be notified by a person from time to time in writing for this purpose; and
- (b) deemed to have been given or made and delivered (i) if by hand, when left at the relevant address; (ii) if by letter, on the second day after posting; (iii) if by fax transmission between the hours of 09:00 and 17:00 on Monday to Thursday and between the hours of 09:00 and 16:00 on Friday, at the time of receipt by the sender of confirmation of transmission and otherwise at 09:00 on the next business day after transmission; and (iv) if by email between the hours of 09:00 and 17:00 on Monday to Thursday and between the hours of 09:00 and 16:00 on Friday, at the time of receipt by the sender of confirmation of receipt and otherwise at 09:00 on the next business day after transmission;
- (c) marked clearly and conspicuously for the attention of the relevant addressee.

10.2 If a communication by fax is received in an incomplete or illegible form:

- (a) if the addressee so requests (by telephone or otherwise), the sender shall promptly retransmit the communication to the addressee; and

(b) provided that the request for re-transmission was made within 24 hours after time of receipt (in accordance with section 10.1) of the first fax, the communication shall not be deemed to have been received until the time (whether or not between 09:00 and 17:00 hours) of receipt by the sender of confirmation of such retransmission.

10.3 No accidental omission or neglect in sending any notice or other communication to, or non-receipt of any or notice or other communication by, any person shall be capable of invalidating any act or thing done pursuant to these Rules.

11. Revision of Timescales

11.1 The Operator or any Consultee may, at any time, request the Authority to approve the increase or reduction of any of the time scales outlined in these Rules.

11.2 The Operator and each Consultee shall, notwithstanding any other provision of these Rules, be bound by the Authority's determination of whether such an increase or reduction of time scales shall be made. The Operator shall inform the Consultees of such determination by the Authority.

1. Definitions

In these Rules the following expressions have the following meanings:

“Alternative Proposed Modification”: shall have the meaning set out in paragraph 5.2

“Alternative Procedure”: shall have the meaning set out in paragraph 8.1

“Application for Change”: shall have the meaning set out in paragraph 9.2

“Authority” shall mean the Northern Ireland Authority for Energy Regulation

“Consultees”: shall have the meaning set out in paragraph 2.6

“Consultation Period”: shall have the meaning set out in paragraph 3.1

“Consultation Meeting”: shall have the meaning set out in paragraph 3.4

“Distribution Network Code”: means the Distribution Network Code governing the relationship between the Operator and each User in relation to the transportation of gas on the Phoenix Distribution System pursuant to Condition 2.5.2 a (ii) of its Licence;

“Framework Agreement”: means an agreement in such form as may be required by the Operator pursuant to which the Code is made binding upon the Operator and each User.

“Licence”: means the licence to convey gas comprised in the Conditions set out in Parts 1 and 2 and the relevant Schedules of the combined Licences to be treated as granted to Phoenix Natural Gas Ltd, as from time to time in force.

“Proposed Modification ”: a proposal for the modification of the Network Code pursuant to these Rules;

“Preliminary Determination”: shall have the meaning set out in paragraph 4.1

“Operator”: Phoenix Natural Gas Ltd. in its capacity as the Operator of the Distribution System;

“Order”: the Gas (Northern Ireland) Order 1996 as amended, modified or replaced from time to time;

“other Distribution Systems”: means a distribution pipeline system other than that owned by Phoenix Natural Gas Ltd. for the conveyance of gas as authorised by a Licence granted by the Authority

“Phoenix Distribution System”: means the distribution pipeline system owned by the Operator for the conveyance of gas as authorised by the Operator Licence

“Rules”: shall have the meaning set out in paragraph 1.2

“Relevant Objective”: the objective defined in Condition 2.5.1 of the Combined Licence;

“User”: a person other than the Operator acting in its capacity as licensee under the Conveyer's Licence, who is for the time being bound by the Code pursuant to the Framework Agreement

2. Interpretation

2.1 Unless otherwise defined in these Rules, all terms in these Rules, which are defined in the Code, will have the meaning defined in the Code.

2.2 References in these Rules to paragraphs are to paragraphs contained in these Rules, and references to Conditions are to Conditions of the Operator's Licence.

2.3 **"including"** shall mean including but not limited to;

2.4 **"Business Day"** shall be construed as a reference to a day, other than a Saturday, Sunday or a bank holiday, in Northern Ireland;

2.5 A person shall be construed as a reference to any person, firm, company, corporation, government or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing;

2.6 Time shall be construed by reference to the official time in the United Kingdom and;

2.7 The singular shall include the plural and vice versa