

Modification proposal:	<b>Uniform Network Code (UNC) 813: Revision of Virtual Last Resort User and Contingent Procurement of Supplier Demand Event Triggers (UNC813)</b>		
Decision:	The Authority <sup>1</sup> has decided to reject this modification <sup>2</sup>		
Target audience:	UNC Panel, Parties to the UNC and other interested parties		
Date of publication:	20 July 2023	Implementation date:	n/a

## Background

When a shipper is terminated from the Uniform Network Code ("UNC"), most likely due to User Default,<sup>3</sup> the Virtual Last Resort User ("VLRU") and Contingent Procurement of Supplier Demand ("CPSD") mechanisms can be activated<sup>4</sup> for the procurement of the delivery of gas to affected Supply Meter Points which remain available until the transfer of registration to a new shipper.<sup>5</sup> The VLRU mechanism<sup>6</sup> enables the relevant supplier of affected Supply Meter Points to utilise other existing shipper relationships to source additional supplies of gas and make trade nominations to the terminated shipper account to balance that portfolio. The CPSD<sup>7</sup> requires that, separate to its role as residual balancer, National Gas Transmission ("NGT") procures gas at the National Balancing Point ("NBP") either via the On the Day Commodity Market ("OCM"), Over-the-Counter trading or other gas exchanges to meet the forecast

<sup>1</sup> References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

<sup>2</sup> This document is notice of the reasons for this decision as required by section 38A of the Gas Act 1986.

<sup>3</sup> Causes for User Default include shipper unpaid dues, a shipper's Value at Risk exceeding 100% of their Code Credit Limit, or a shipper being in material breach of the UNC. In such circumstances, the Transporter may (subject to conditions) issue a Termination Notice to the shipper. User Default is set out in Consolidated Transportation Principal Document Section V 4.3 <https://www.gasgovernance.co.uk/sites/default/files/ggf/page/2023-06/Transportation%20Principal%20Document%20%28Consolidated%2C%20printable%20version%29.pdf>

<sup>4</sup> If required triggers are met.

<sup>5</sup> When a shipper is terminated from the UNC, suppliers are required by Gas Supply Standard Licence Condition ("SLC") 18.4 to take all reasonable steps to ensure that they have arrangements with an alternative gas shipper in place to deliver gas to affected Supply Meter Points within 25 working days. Consolidated Standard Licence Conditions are available on <https://www.ofgem.gov.uk/industry-licensing/licences-and-licence-conditions>

<sup>6</sup> Introduced by 0788 (Urgent) - Minimising the market impacts of 'Supplier Undertaking' operation <https://www.gasgovernance.co.uk/0788>

<sup>7</sup> Introduced by 0791 (Urgent) - Contingency Gas Procurement Arrangements when a Supplier acts under a Deed of Undertaking <https://www.gasgovernance.co.uk/0791>

demand of affected meter points. Ofgem approved the VLRU and CPSD mechanisms as we considered that they would reduce costs faced by consumers as a result of a shipper being terminated.<sup>8</sup> Previously, any imbalance was resolved by NGT, in its residual balancing role, undertaking gas procurement activity via the OCM where necessary.

If a gas shipper were to be subject to sanctions by the United Kingdom ("UK") Government, their ability to deliver gas to registered Supply Meter Points in the Great Britain ("GB") market would be inhibited. The application of sanctions would not, however, constitute a User Default under the UNC. The shipper would not be terminated from the UNC and so their registration to Supply Meter Points would not be terminated. The VLRU and CPSD mechanisms could not be activated, so consumers would not be protected through these mechanisms. For as long as a sanctioned shipper remained an active User under the UNC but is not able to flow gas to registered Supply Meter Points, NGT would procure gas via the OCM to balance the market as necessary, in its residual balancer role.<sup>9</sup> Only if and when affected Supply Meter Points are transferred to another operational shipper in the industry systems, would the new shipper take on the associated rights and obligations (including the ability to trade). The modification proposes to introduce a process to allow these existing VLRU and CPSD mechanisms to be triggered when shippers are sanctioned.

## **The modification proposal**

UNC813 was raised by NGT ("the Proposer") on 8 July 2022 and seeks to amend the UNC Transportation Principal Document ("TPD"), principally Sections D (Operational Balancing and Trading Arrangements), E (Daily Quantities, Imbalance and Reconciliation), and G (Supply Point Registration). The modification proposes to establish the basis and process for NGT to issue a User Premises Termination Notice ("UPTN") to a shipper that is sanctioned by the UK

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<sup>8</sup> Authority decision on UNC788 'Minimising the market impacts of 'Supplier Undertaking' operation' <https://www.ofgem.gov.uk/publications/authority-decision-unc788-minimising-market-impacts-supplier-undertaking-operation>; Authority decision on UNC791 'Contingency Gas Procurement Arrangements when a Supplier acts under a Deed of Undertaking' <https://www.ofgem.gov.uk/publications/authority-decision-unc791-contingency-gas-procurement-arrangements-when-supplier-acts-under-deed-undertaking>

<sup>9</sup> The OCM is GB's balancing market, where day-ahead and within-day trades occur. It is used to formulate the System Average Price and the System Marginal Prices. It is a short-term market and using it to procure large volumes of gas may inflate the System Marginal Price Buy ("SMPbuy price"), which in turn is more generally likely to increase costs for consumers. We therefore consider it not to be the most economical solution for procuring gas.

Government (as set out in TPD Section G4.8.9).<sup>10</sup> This would have the effect of discontinuing the shipper's registration at any Supply Meter Points while it remains a 'live' (i.e. not terminated) User. This, in turn, would be a trigger for 'activating' the Supplier Undertaking and the application of the VLRU and CPSD mechanisms (as set out in TPD Section E10.1.1(a) and TPD Section D6.1.2(a)),<sup>11</sup> currently triggered by a User Termination. The Proposer considers the proposed arrangements would provide greater flexibility to procure gas to meet the demand of affected Supply Meter Points on a more economic basis compared to the status quo.

The proposal would introduce an arrangement into the UNC whereby NGT issues a provisional UPTN to the Authority if it understands that a User is or will become sanctioned by the UK Government under the Sanctions and Anti-Money Laundering Act 2018<sup>12</sup> ("the Sanctions Act"). The Authority would then be required by the proposed revised terms of the UNC to interpret and come to a view on whether the shipper in question is or will become sanctioned under the Sanctions Act and on the basis of this interpretation would decide whether to disapprove NGT's issuing of a UPTN.

### **UNC Panel<sup>13</sup> recommendation**

At the UNC Panel meeting on 16 February 2023, the UNC Panel unanimously considered that UNC813 would better facilitate the UNC objectives and recommended its approval.

### **Our decision**

We have considered the issues raised by the modification proposal and the Final Modification Report ("FMR") dated 16 February 2023 and concluded that the proposed modification should not be made as the Authority does not have the *vires* and/or expertise to conduct what the modification proposes. In view of this, we have not proceeded to assess the modification against the UNC objectives. We acknowledge and appreciate the response to the industry

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<sup>10</sup> Legal text available from <https://www.gasgovernance.co.uk/sites/default/files/ggf/book/2023-02/0813%20Revised%20Legal%20Text%20and%20Commentary%20%28National%20Gas%20Transmission%20Amendment%2016%20February%202023%29.pdf>

<sup>11</sup> Consolidated Transportation Principal Document <https://www.gasgovernance.co.uk/TPD>

<sup>12</sup> <https://www.legislation.gov.uk/ukpga/2018/13/contents/enacted>

<sup>13</sup> The UNC Panel is established and constituted from time to time pursuant to and in accordance with the UNC Modification Rules.

consultation and UNC Panel recommendation attached to the FMR<sup>14</sup> but have not addressed these comments within this decision document as they refer to whether or not the proposal better facilitates the UNC objectives.

When a shipper is sanctioned and is unable to convey gas to Supply Meter Points, our concern and role as the energy regulator is to ensure that consumers are protected, including with respect to security of supply. Ofgem does not have a role or specific expertise in deciding whether an individual or company is subject to sanctions under the Sanctions Act. We acknowledge a mechanism similar to that proposed, but without an Ofgem Disapproval role, may protect consumers when a shipper is sanctioned and is unable to convey gas to registered Supply Meter Points. We would welcome the proposer continuing to work with industry to develop and propose a new mechanism and process without an Ofgem Disapproval role, which we would consider against the relevant objectives on receipt of an FMR.

### **Reasons for our decision**

We consider that our designated regulatory functions do not cover the arrangement in the proposal for the Authority to interpret and come to a view on whether a shipper is or will become sanctioned under the Sanctions Act and, on the basis of this interpretation, decide whether to disapprove NGT's issuing of a UPTN. Because of this, we consider that this role, as described in the proposal, is outside the *vires* of the Authority.

The principal objective of the Authority in carrying out our functions in relation to gas is to protect the interests of existing and future consumers. Consumers' interests include amongst other things security of supply and our carrying out of our designated regulatory functions.<sup>15</sup> We licence transporters and shippers, and a requirement of NGT's transporter licence is that it establish transportation arrangements to facilitate the relevant objectives through the UNC.<sup>16</sup> We serve the interests of consumers through our oversight and approval of UNC processes. NGT as transporter has direct contractual relationships with shippers, including via the UNC

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<sup>14</sup> UNC modification proposals, modification reports and representations can be viewed on the Joint Office of Gas Transporters website at [www.gasgovernance.co.uk](http://www.gasgovernance.co.uk)

<sup>15</sup> The Authority's principal objectives are set out in Section 4AA(1) of the Gas Act 1986 <https://www.legislation.gov.uk/ukpga/1986/44/contents>

<sup>16</sup> See the Gas Transporters Standard Licence Conditions, Standard Licence Condition 9 <https://www.ofgem.gov.uk/publications/licence-conditions>

and we do not generally have any involvement in determinations on these bilateral contractual relationships. NGT's issuing of a UPTN to a shipper would be a contractual matter between two parties to the UNC. In the comparable case of User Termination, the Energy Balancing Credit Committee ("EBCC")<sup>17</sup> makes the determination on any termination.<sup>18</sup> Ofgem has approved the process and is kept informed about process being followed, but we do not have an Approval/ Disapproval role in that determination. We note, under the Sanctions Act, NGT as a UK company must comply with the Act. Failure to comply could lead to significant consequences for NGT and its employees including criminal convictions, potentially unlimited fines and imprisonment. In view of these serious consequences, we do not believe it appropriate for us to interfere in any way or delay NGT's decision making as to how best to comply with the Act.

In the event that the Disapproval role was not deemed to be *ultra-vires*, Ofgem has no more expertise than NGT on determining whether or not entities are sanctioned and we are of the view that the proposed role for Ofgem in the process would not have a clear utility and could be inefficient. We note that the Proposer states in the FMR<sup>19</sup> that an interpretation from the Authority may be required where a shipper may not be explicitly identified as being subject to sanctions but may be 'controlled' by an entity or individual that is. However, the government provides a list of departments that may be contacted for sanctions inquiries.<sup>20</sup> Making this determination would take considerable time and may require Ofgem to commission external legal counsel and expert advice whereas NGT's issuing of a UPTN would often be time critical. The process as proposed would, given the above, slow down the issuing of UPTN, delaying the activation of the proposed mechanisms, therefore reducing the time that consumers could potentially benefit from their use. This process may also impede NGT's ability to comply with the Sanctions Act.

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<sup>17</sup> The EBCC is a UNC committee and is a body of industry representatives with certain rights and responsibilities relating to the management of the Community's energy balancing credit risk <https://www.gasgovernance.co.uk/EBCC>

<sup>18</sup> Uniform Network Code – Transportation Principal Document, Section X 2.9 sets out the process for User Termination [https://www.gasgovernance.co.uk/sites/default/files/qgf/page/2023-05/Transportation%20Principal%20Document%20%28Consolidated%2C%20printable%20version%29\\_0.pdf](https://www.gasgovernance.co.uk/sites/default/files/qgf/page/2023-05/Transportation%20Principal%20Document%20%28Consolidated%2C%20printable%20version%29_0.pdf)

<sup>19</sup> <https://www.gasgovernance.co.uk/sites/default/files/qgf/book/2023-02/Final%20Modification%20Report%200813%20v2.0%20%28Reps%20Appended%29.pdf>

<sup>20</sup> Guidance on the The UK Sanctions List <https://www.gov.uk/government/publications/the-uk-sanctions-list>; UK Financial Sanctions: General guidance for financial sanctions under the Sanctions and Anti-Money Laundering Act 2018 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1144893/General\\_Guidance\\_-\\_UK\\_Financial\\_Sanctions\\_Aug\\_2022\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1144893/General_Guidance_-_UK_Financial_Sanctions_Aug_2022_.pdf)

## **Decision notice**

In accordance with Standard Special Condition A11 of the Gas Transporters Licence, the Authority has decided that modification proposal UNC813: *'Revision of Virtual Last Resort User and Contingent Procurement of Supplier Demand Event Triggers'* should not be made.

**Dr Adrian Richardson**

**Head of Energy Security of Supply**

Signed on behalf of the Authority and authorised for that purpose