

0577:

Aligning UNC to the indirect clearing model operated by ICE Endex.

01	Modification
02	Workgroup Report
03	Draft Modification Report
04	Final Modification Report

This modification seeks to align the provisions of section D of the TPD to the indirect clearing model operated by ICE Endex as operator of the OCM and ICE Clear Europe as its clearing house.



The Proposer recommends that this modification should be subject to self-governance and proceed directly to consultation.



High Impact:
None



Medium Impact:
None



Low Impact:
Shipper Users, Trader Users, National Grid NTS, Trading System Clearer

Contents		 Any questions?
1 Summary	3	Contact: Code Administrator
2 Why Change?	4	 enquiries@gasgovernance.co.uk
3 Solution	5	 0121 288 2107
4 Relevant Objectives	6	Proposer: Jennifer Randall
5 Implementation	7	 Jennifer.randall@nationalgrid.com
6 Impacts	7	 07768 251404
7 Legal Text	7	Transporter: National Grid NTS
8 Recommendation	8	 Jennifer.randall@nationalgrid.com
About this document:		
This modification will be presented by the proposer to the Panel on 17 th March 2016.		
The Panel will consider the proposer's recommendation and agree whether this modification should proceed directly to consultation.		
The Proposer recommends the following timetable:		
Draft Modification Report issued for consultation	17 March 2016	
Consultation Close-out for representations	11 April 2016	
Final Modification Report published for Panel	12 April 2016	
UNC Modification Panel decision	21 April 2016	

1 Summary

Is this a Self-Governance Modification?

The proposer considers that this modification meets the Self Governance criteria since it describes only minor structural changes to the arrangements for the Trading System Clearer which are not expected to have a material impact on competition between Shipper Users, nor on operation of the pipeline system.

Is this a Fast Track Self-Governance Modification?

Fast track procedures are not proposed as it is not a house keeping modification.

Why Change?

On 24 February 2016, the clearing model for the independent market for balancing (On-the-day Commodity Market or OCM) changed.

The changes include:

- the role of Trading System Operator and Trading System Clearer are assumed by the same legal entity;
- certain functions of the Trading System Clearer are discharged by a recognised clearing central counterparty;
- the central counterparty operates an indirect clearing model and all Users obtain access to clearing services indirectly through clearing banks.

These structural changes and the resulting increased need for limitation of National Grid NTS' liability for actions of the Trading System Clearer need to be adequately covered by the UNC TPD.

Solution

The following changes are proposed:

- express recognition of the discharge of certain obligations of the Trading System Clearer by an approved clearing central counterparty;
- extension of the existing limitation of liability of National Grid NTS' to acts of the Trading System Clearer and the approved central counterparty;
- express recognition of the indirect clearing structure and the performance of obligations between the approved central counterparty and National Grid NTS through a clearing bank.

Relevant Objectives

This modification furthers Relevant Objective f) promotion of efficiency in the implementation and administration of the Code, because it ensures that the UNC accurately reflects structural arrangements that exist in the industry.

Implementation

National Grid NTS requests that this Code Modification is implemented as soon as possible. However, as self-governance procedures are proposed, implementation could be sixteen business days after a Modification Panel decision to implement, subject to no Appeal being raised.

Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

There are no expected impacts on an SCR or other significant industry change projects.

Please also note that there is no dependency on the implementation or otherwise of UNC Modification 0568 "Security Requirements and Invoice Payment Settlement Cycle for the Trading System Clearer".

2 Why Change?

ICE Endex Spot Limited (ICE Endex) is designated by OFGEM and appointed by National Grid Gas (NGG) as the Trading System Operator of the On-the-day Commodity Market (OCM).

ICE Endex previously designated APX Commodities Limited (APX UK) as Trading System Clearer to provide clearing services in relation to transactions resulting from trading on the OCM.

On 24 February 2016, ICE Endex took over the role of Trading System Clearer from APX UK.

Under UNC TPD Section D, ICE Endex, as the Trading System Operator, must act as the TSC or appoint another person as the TSC. ICE Endex will discharge its obligations by relying on ICE Clear to provide all central counterparty clearing and settlement services in respect of transactions resulting from trading on the OCM. For this purpose ICE Endex and ICE Clear have entered into a service level agreement.

Compared to the previous clearing model used by ICE Endex and APX, the OCM now uses an indirect clearing model. Under the indirect clearing model, Users and National Grid access clearing services for the OCM through a clearing bank. In accordance with the clearing rules and the contractual terms of clearing banks, the clearing bank intermediates the contractual relationship between the TSC and National Grid NTS or a User by acting as principal vis-à-vis the TSC for balancing transactions accepted for clearing between the clearing bank and National Grid NTS or a User.

Whilst these structural changes can be subsumed under the current wording of the UNC TPD Section D.2, it would aid the clarity of this section if the indirect and intermediated relationships created by the new structure would be expressly reflected in UNC TPD Section D.2.

The current wording of UNC TPD Section D.2 appears to have been drafted on the basis of a direct contractual relationship between the Trading System Clearer and NTS and Users and that the principal actions of the Trading System are performed by the TSO.

UNC TPD Section D.2.2.8 provides that payments are made between National Grid NTS and the TSC. In the indirect structure, the start and end point of process are still the same. However, from a contractual perspective, the transactions are entered into between the clearing central counterparty and the clearing member, and between the clearing member and National Grid NTS or a User. Moreover, the wording of section D.2.2.8 is correct only insofar the use of the term "Trading System Clearer" also encompasses the entity which is the clearing central counterparty.

UNC TPD Section D.2.1.3 sets out the definitions for the terms "Trading System Clearer" and "Trading System Arrangements". Whilst the definition of "Trading System Clearer" expressly foresees that the TSC may be a different entity from the TSO, it is silent on whether another legal person may be designated by the TSO where the TSO also acts as TSC. Similarly, the term "Trading System Arrangements" appears to have been drafted on the assumption that the terms for both the trading system itself and the clearing system are set by the TSO. It does not expressly consider that in relation to its clearing functions, some parts of the system may be provided by a legal person that is different from the TSO.

UNC TPD Section D.2.1.5 sets out the principle that National Grid NTS shall not be liable for action, omission or failure by the TSO in relation to the Trading System. The provision assumes that the main actions and functions would be performed by the TSO. In the indirect clearing model, some of the functions in relation to the operation clearing services forming part of the Trading System are, however, now performed by the Approved Trading System Subcontractor. As the Approved Trading System Subcontractor is carrying out activities on behalf of the TSC, National Grid NTS limitation of liability provided by this section should therefore extend also to the TSC.

Relationship with Modification 0568

There is no dependency on the implementation or otherwise of UNC Modification 0568 "Security Requirements and Invoice Payment Settlement Cycle for the Trading System Clearer". This modification is raised as a result of the OCM clearing migration which took place on 24 February 2016. It simply codifies the relationships established as a result of the clearing migration and appropriately defines the parties involved. Furthermore, this modification makes changes to different sections of the UNC than Modification 0568 and so there is no amendment to the text introduced by UNC Modification 0568. These changes were not included as part of UNC Modification 0568 as the clarity needed to do so was not available until towards the end of the process. To incorporate these clarifications within UNC Modification 0568 may have led to that modification being delayed which neither the Proposer nor NGG wished to see.

Recommendation for Consultation

The proposer considers that this modification is sufficiently developed to allow it to progress to consultation without the need for prior Workgroup assessment. As this modification is not making any significant changes and simply follows on from the clearing migration it is anticipated that it will not be contentious and therefore can proceed straight to consultation.

3 Solution

To implement the rationale for change set out above, the following changes to UNC TPD Section D2 are proposed:

3.1 Proposed changes to UNC TPD Section D 2.1.3

A new definition should be inserted that defines and describes a separate legal person which provides clearing services under a service level agreement with TSC (or the TSO and the TSC, where they are the same legal person).

The existing definition of "Trading System Clearer" should be expanded to cover this new definition.

The existing definition of "Trading System Arrangements" should be expanded to cover clearing services.

3.2 Proposed changes to UNC TPD Section D 2.1.5

Section 2.1.5 should be amended to refer to both the TSO and the TSC.

The amendment should achieve that National Grid NTS shall not be liable for any User for any act, omission or failure of the TSO and the TSC.

The amendment should also achieve that National Grid NTS is not required to incur any liability or to take any steps against the TSO or the TSC.

3.3 Proposed changes to UNC TPD Section D 2.2.8

Section 2.2.8 should be amended to reflect that the payments may be made through a clearing bank where such clearing bank acts as principal in the relationship with the TSC.

Classification of the modification as User Pays, or not, and the justification for such classification.	No User Pays service would be created or amended by implementation of this modification and it is not, therefore, classified as a User Pays Modification.
Identification of Users of the service, the proposed split of the recovery between Gas Transporters and Users for User Pays costs and the justification for such view.	N/A
Proposed charge(s) for application of User Pays charges to Shippers.	N/A
Proposed charge for inclusion in the Agency Charging Statement (ACS) – to be completed upon receipt of a cost estimate from Xoserve.	N/A

4 Relevant Objectives

Impact of the modification on the Relevant Objectives:	
Relevant Objective	Identified impact
a) Efficient and economic operation of the pipe-line system.	None
b) Coordinated, efficient and economic operation of (i) the combined pipe-line system, and/ or (ii) the pipe-line system of one or more other relevant gas transporters.	None
c) Efficient discharge of the licensee's obligations.	None
d) Securing of effective competition: (i) between relevant shippers; (ii) between relevant suppliers; and/or (iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers.	None
e) Provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards... are satisfied as respects the availability of gas to their domestic customers.	None
f) Promotion of efficiency in the implementation and administration of the Code.	Positive
g) Compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-	None

f) Promotion of efficiency in the implementation and administration of the Code

This objective is furthered by this modification as it is proposing to clarify the relationship among the TSO, the TSC, the central clearing service provider contracted by them, the clearing banks and the Users of the Trading System. Whilst these structural changes can be subsumed under the current wording of the UNC TPD Section D.2, it would aid the clarity of this section if the indirect and intermediated relationships created by the new structure would be expressly reflected in UNC TPD Section D.2.

5 Implementation

The proposer requests this Code Modification is implemented as soon as possible. No specific implementation date is proposed, however, as self-governance procedures are proposed, implementation could be sixteen business days after a Modification Panel decision to implement, subject to no Appeal being raised.

6 Impacts

Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

There are no expected impacts on an SCR or other significant industry change projects

Please also note that there is no dependency on the implementation or otherwise of UNC Modification 0568 "Security Requirements and Invoice Payment Settlement Cycle for the Trading System Clearer".

7 Legal Text

To implement the solution outlined above, it is proposed that UNC TPD Section D.2 is modified as below.

Text Commentary

Text Commentary has been published alongside this modification.

Text

"2.1.3 For the purposes of the Code:

(c) "Trading System Clearer" is, [subject to and in accordance with the Trading System Contract](#), (a) the Trading System Operator, or (b) a person designated by the Trading System Operator to provide clearing services for the purposes of the Trading System, [or \(c\) an Approved Trading System Subcontractor](#);

(d) "Trading System Arrangements" are the arrangements including the rules for use of the Trading System made by the Trading System Operator in respect of the provision and operation of the Trading System [and the rules for clearing services of the Trading System Clearer](#);"

[\(f\) "Approved Trading System Subcontractor" is a person contracted by Trading System Operator or by the Trading System Clearer to perform any duty or function or to provide any services in relation to the Trading System Arrangements and which is approved by National Grid NTS;](#)"

"2.1.5 National Grid NTS shall not be liable to any User for any act, omission or failure of the Trading System Operator [or the Trading System Clearer](#) under or relating to the terms of the Trading System Contract or the Trading System Arrangements and National Grid NTS shall not be required to incur any liability or be required to take any steps, including the commencement of proceedings in connection with the enforcement against the Trading System Operator [or the Trading System Clearer](#) of its rights pursuant to the Trading System Contract."

"2.2.8 Where National Grid NTS takes a Market Balancing Action:

(a) in the case of a Market Balancing Sell Action (or negatively priced Market Balancing Buy Action) the Trading System Clearer shall pay to National Grid NTS the Market Balancing Action Charge;

(b) in the case of a Market Balancing Buy Action (or negatively priced Market Balancing Sell Action) National Grid NTS shall pay the Trading System Clearer the Market Balancing Action Charge.

[Payments between the Trading System Clearer and National Grid NTS may be made through a clearing bank designated by National Grid NTS.](#)"

8 Recommendation

The Proposer invites the Panel to issue this modification directly to consultation.