

UNC Request	At what stage is this document in the process?
<h1>UNC 0706R:</h1> <h2>Instances where Shippers can exit commercial agreements with an independent supplier</h2>	<div style="display: flex; flex-direction: column; align-items: flex-start;"> <div style="border: 1px solid #800040; border-radius: 5px; padding: 5px; margin-bottom: 5px; width: 100%;">01 Request</div> <div style="border: 1px solid #0070C0; border-radius: 5px; padding: 5px; margin-bottom: 5px; width: 100%;">02 Workgroup Report</div> <div style="border: 1px solid #FFA500; border-radius: 5px; padding: 5px; width: 100%;">03 Final Modification Report</div> </div>
<p>Purpose of Request:</p> <p>A review of the processes and obligations within the UNC and Supply Licence conditions to identify and enable a clear route for the gas Shipper to exit a commercial relationship with a supplier.</p>	
	<p>The Proposer recommends that this request should be assessed by a Workgroup This request will be presented by the Proposer to the Panel on 21 November 2019.</p>
	<p>High Impact:</p> <ul style="list-style-type: none"> Shippers Suppliers CDSP Gas Transporters
	<p>Medium Impact:</p> <ul style="list-style-type: none"> None
	<p>Low Impact:</p> <ul style="list-style-type: none"> None

Contents		 Any questions?
1 Request	3	Contact: Joint Office of Gas Transporters
2 Impacts and Costs	5	 enquiries@gasgovernance.co.uk
3 Terms of Reference	9	 0121 288 2107
4 Recommendation	10	Proposer: Chris Hooper Contract Natural Gas
About this document:		 chooper@cngltd.co.uk
This document is a Request, which will be presented by the Proposer to the panel on 21 November 2019 .		 07841 446 444
The Panel will consider the Proposer's recommendation and agree whether this Request should be referred to a Workgroup for review.		Systems Provider: Xoserve
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1 Request

Why is the Request being made?

At present there may be instances where a Shipper provides wholesale gas shipping services on behalf of an independent supplier via a contractual and commercial agreement. This places the obligations within the UNC on the Shipper party as presently suppliers are not required to accede to the UNC.

Generally, a contract is legally enforceable because it meets the requirements and approval of the law. In the event of breach of contract, the law awards the injured party access to legal remedies such as damages and termination.

There are also other instances whereby a party would be in a position to exit a commercial relationship, such as the point of contract renewal or end date.

However, within the Shipper / supplier relationship outlined above, the UNC and Supply Licence Conditions add extra layers of complexity beyond Contract Law. Presently there is no process for a Shipper to exit a commercial agreement should the supplier party be found in breach of the commercial contract between the Shipper and supplier. This is largely due to the requirement to continue to supply gas to the Supply Points.

This Request is for the establishment of a Workgroup to:

- Identify and define a clear process for a Shipper to exit a contractual agreement with a supplier without impacting the supply of gas to consumers; and
- Agree instances when the process can be initiated.

Scope

Limited to the impacts of the UNC on the bilateral contractual relationship between a Shipper and an 'Independent Supplier'.

Impacts & Costs

To be identified by the Workgroup

Recommendations

It is recommended that this Request Proposal be sent to the appropriate Workgroup for consideration.

Additional Information

Included below are some case studies and examples of impacts of this issue on industry parties:

1. Example of contractual negotiations

There are a several points throughout the commercial contract where it may be deemed necessary to revisit or renegotiate the commercial contract:

a) End of Contract Term

Generally, a commercial contract will be in place for a set period of time. Once the term of the contract has expired, both parties have the option to either extend or end the contract. The supplier is free to contract with another Shipper or apply for its own gas Shipper licence. However, if the Supplier does not contract with another party, the Shipper is presently unable to end the contract due to the obligations within the UNC to continue to supply gas to the Supply Points.

b) Breach of Contract

Commercial contracts will usually have certain terms and rules in place for each party to follow. These may be related to; financial payments, standards of performance, data & reporting etc. Termination would usually be an option in the result of a material breach of contract. At this point suppliers are again free to contract with another Shipper or apply for its own gas Shipper licence. However, Shippers are unable to exit the contract due to the obligations within the UNC to continue to supply gas to the Supply Points.

c) Other Trigger Points

There may be other clauses within the contractual agreement that may trigger the need for a contract to be renegotiated or terminated, for example, the supplier increasing in volume beyond the Shipper's risk appetite. As per the points outlined above, when this happens at present, without the agreement of both parties, it is impossible for the Shipper to exit the contract unless the supplier voluntarily contracts with a different Shipper.

2. Example of reporting / data related issues:

- a) Based on its obligations within the UNC, there are certain reports that a Shipper is required to submit to the CDSP under the Performance Assurance Framework Document for the (Gas) Energy Settlement Performance Assurance Scheme. Whilst a number of these reports rely on data being provided to a Shipper by a supplier, the obligations and incentives on these reports sit with the Shipper.

These reports are linked to a number of areas including but not limited to:

- 1. Meter Read Performance
- 2. Theft of Gas
- 3. Accuracy & Cleansing of address data
- 4. Meter Point Status & Meter Status

- b) The supplier is contractually obliged to provide the relevant data sets to the Shipper in line with the reporting frequency, which enables the Shipper to remain compliant with its UNC obligations
- c) If a supplier does not provide this information as agreed, the supplier would technically be in breach of the commercial contract and the Shipper can look to take steps to improve this situation through regular contact with the supplier.
- d) However, in instances of repeat failure, there are few steps the Shipper can take other than flag with the Authority that the supplier is not fulfilling its contractual requirements
- e) As a result, the Shipper remains non-compliant with regard to its reporting obligations and is unable to exit the contractual agreement with the supplier due to the obligations placed on Shippers by the UNC.

3. Example of financial issues:

- a) Supplier X fails to fulfil its contractual payments to the Shipper. The Shipper advises Ofgem of what appears to be serious issues within the supplier's organisation however no action is taken
- b) The Shipper attempts to support Supplier X for a period of time but it becomes clear that that Supplier X is unable to trade out of its distressed position.

- c) Despite being unable to pay its invoices Supplier X does not accept that there is an issue and ultimately Ofgem advises it is unable to take any action. This is despite Supplier X technically being in breach of its Supply Licence as per *Schedule 2 'Revocation' Section 1. (f) (i)* which relates to being unable to pay debts in line with the Insolvency Act 1986.
- d) As a result, the Shipper continues to be responsible for all costs and is unable to exit the contractual agreement due to the obligations placed on Shippers by the UNC.
- e) The Shipper applies for a statutory demand which is again not met by the supplier and Ofgem ultimately deems that there is insufficient evidence to take action, which may be due to Supplier X being unwilling to cooperate with their requests.
- f) The Shipper then commences proceedings for winding up of Supplier X. The winding up was not an attempt to recover losses but to prevent further exposure and the process to try and wind up the supplier takes approximately 6 months.
- g) Supplier X is progressed through the Supplier of Last Resort (SoLR) process approximately 9 months after issues were initially raised with Ofgem. The Shipper is unable to recover any debt from Supplier X that has been incurred in that time.

4. Examples of new obligations being imposed on suppliers via the Supply Licence Conditions:

There are precedents whereby the Authority has imposed specific obligations on suppliers, for example Smart Metering. This suggests a precedent to insert specific obligations or rules which can be imposed on suppliers rather than placing the requirements on the Shipper who has no direct control over the implementation. This ensures a supplier must comply directly with these obligations rather than placing the obligations on Shippers, offering an additional layer of protection to the Shipper.

A process whereby a Shipper can give notice to exit a contractual agreement would thereby require the supplier to take on a number of industry obligations to ensure no impact to consumers and other industry parties.

2 Impacts and Costs

Consideration of Wider Industry Impacts

Impacts

Impact on Central Systems and Process	
Central System/Process	Potential impact
UK Link	<ul style="list-style-type: none"> The CDSP would be required to provide an overview of any impact on UK Link systems
Operational Processes	<ul style="list-style-type: none"> Dependent on outcome of the review

Impact on Users	
Area of Users' business	Potential impact
Administrative and operational	<ul style="list-style-type: none"> Dependent on outcome of the review

Impact on Users	
Development, capital, and operating costs	<ul style="list-style-type: none"> • Dependent on outcome of the review
Contractual risks	<ul style="list-style-type: none"> • Dependent on outcome of the review
Legislative, regulatory, and contractual obligations and relationships	<ul style="list-style-type: none"> • Highly likely - Dependent on outcome of the review

Impact on Transporters	
Area of Transporters' business	Potential impact
System operation	<ul style="list-style-type: none"> • No impact identified
Development, capital, and operating costs	<ul style="list-style-type: none"> • No impact identified
Recovery of costs	<ul style="list-style-type: none"> • Dependent on outcome of the review
Price regulation	<ul style="list-style-type: none"> • No impact identified
Contractual risks	<ul style="list-style-type: none"> • Dependent on outcome of the review
Legislative, regulatory, and contractual obligations and relationships	<ul style="list-style-type: none"> • Highly likely - Dependent on outcome of the review
Standards of service	<ul style="list-style-type: none"> • No impact identified
Cross Code impact	<ul style="list-style-type: none"> • Potential impact on IGT UNC

Impact on Code Administration	
Area of Code Administration	Potential impact
Modification Rules	<ul style="list-style-type: none"> • No impact identified
UNC Committees	<ul style="list-style-type: none"> • No impact identified
General administration	<ul style="list-style-type: none"> • No impact identified
DSC Committees	<ul style="list-style-type: none"> • No impact identified

Impact on Code	
Code section	Potential impact
Section S - Invoicing and Payment	<ul style="list-style-type: none"> • Dependent on outcome of the review
Section V – General	<ul style="list-style-type: none"> • Dependent on outcome of the review
Shipper Licence Conditions	<ul style="list-style-type: none"> • Dependent on outcome of the review
Supplier Licence Conditions	<ul style="list-style-type: none"> • Dependent on outcome of the review

Impact on UNC Related Documents and Other Referenced Documents

Impact on UNC Related Documents and Other Referenced Documents	
Related Document	Potential impact
Network Entry Agreement (TPD I1.3)	<ul style="list-style-type: none"> • Dependent on outcome of the review
General	Potential Impact
Legal Text Guidance Document	<ul style="list-style-type: none"> • No impact identified
UNC Modification Proposals – Guidance for Proposers	<ul style="list-style-type: none"> • No impact identified
Self-Governance Guidance	<ul style="list-style-type: none"> • No impact identified
TPD	Potential Impact
Network Code Operations Reporting Manual (TPD V12)	<ul style="list-style-type: none"> • No impact identified
UNC Data Dictionary	<ul style="list-style-type: none"> • No impact identified
AQ Validation Rules (TPD V12)	<ul style="list-style-type: none"> • No impact identified
AUGE Framework Document	<ul style="list-style-type: none"> • No impact identified
Customer Settlement Error Claims Process	<ul style="list-style-type: none"> • No impact identified
Demand Estimation Methodology	<ul style="list-style-type: none"> • No impact identified
Energy Balancing Credit Rules (TPD X2.1)	<ul style="list-style-type: none"> • Dependent on outcome of the review
Energy Settlement Performance Assurance Regime	<ul style="list-style-type: none"> • No impact identified
Guidelines to optimise the use of AQ amendment system capacity	<ul style="list-style-type: none"> • No impact identified
Guidelines for Sub-Deduct Arrangements (Prime and Sub-deduct Meter Points)	<ul style="list-style-type: none"> • No impact identified
LDZ Shrinkage Adjustment Methodology	<ul style="list-style-type: none"> • No impact identified
Performance Assurance Report Register	<ul style="list-style-type: none"> • No impact identified
Shares Supply Meter Points Guide and Procedures	<ul style="list-style-type: none"> • No impact identified
Shipper Communications in Incidents of CO Poisoning, Gas Fire/Explosions and Local Gas Supply Emergency	<ul style="list-style-type: none"> • No impact identified
Standards of Service Query Management Operational Guidelines	<ul style="list-style-type: none"> • No impact identified
Network Code Validation Rules	<ul style="list-style-type: none"> • No impact identified

Impact on UNC Related Documents and Other Referenced Documents	
OAD	Potential Impact
Measurement Error Notification Guidelines (TPD V12)	<ul style="list-style-type: none"> No impact identified
EID	Potential Impact
Moffat Designated Arrangements	<ul style="list-style-type: none"> No impact identified
IGTAD	Potential Impact
	<ul style="list-style-type: none"> No impact identified
DSC / CDSP	Potential Impact
Change Management Procedures	<ul style="list-style-type: none"> No impact identified
Contract Management Procedures	<ul style="list-style-type: none"> No impact identified
Credit Policy	<ul style="list-style-type: none"> No impact identified
Credit Rules	<ul style="list-style-type: none"> No impact identified
UK Link Manual	<ul style="list-style-type: none"> No impact identified

Impact on Core Industry Documents and other documents	
Document	Potential impact
Safety Case or other document under Gas Safety (Management) Regulations	<ul style="list-style-type: none"> No impact identified
Gas Transporter Licence	<ul style="list-style-type: none"> No impact identified

Other Impacts	
Item impacted	Potential impact
Security of Supply	<ul style="list-style-type: none"> Dependent on outcome of the review
Operation of the Total System	<ul style="list-style-type: none"> Dependent on outcome of the review
Industry fragmentation	<ul style="list-style-type: none"> Dependent on outcome of the review
Terminal operators, consumers, connected system operators, suppliers, producers and other non code parties	<ul style="list-style-type: none"> Potential impact on suppliers Potential impact on SPAA Potential impact on consumers

3 Terms of Reference

Background

It is apparent that when the Uniform Network Code (UNC) and Supply Licence Conditions (SLCs) were initially drafted, there was an assumption that shipping and supply services would be undertaken by the same party. However, some Shippers now provide wholesale services to new entrants / independent suppliers via a commercial and contractual relationship.

In a situation whereby a Shipper is supporting independent suppliers, the way the UNC and SLCs place the obligations in a number of areas (i.e. financial, provision of date, guaranteed supply etc.) on the shipping party. The Shipper then takes on the lion's share of the responsibility of industry process, regardless of whether the supplier is fulfilling its contractual and industrial obligations.

Recently a number of independent suppliers have been proven unable to manage their business and customers appropriately and generally they have exited the market via the SoLR process. The steps to initiate a SoLR outcome can be lengthy (in some instances this can take 6 to 12 months) and a Shipper for an independent supplier has no opportunity during this time at any point to terminate their commercial contract due to the rules within the UNC relating to guaranteeing supply of gas to Supply Points.

When such instances arise, the Shipper may bring concerns to the attention of the Authority (Ofgem). However, the Shipper remains unable to exercise their contractual rights to terminate any agreement and generally are left to carry the financial burden / regulatory risk indefinitely.

To the contrary, should the Shipper be found in breach of contract, the supplier is in a position to exercise their contractual rights to exit the contract and transfer shipping services to another party, or commence the application process for their own Shipper licence.

Topics for Discussion

Workgroup 1 – information gathering

- Review of common practices and nuances of wholesale Shipper / supplier relationships including existing UNC and Supply Licence obligations
- Identification of the first cut of fundamental industry requirements for Shipper contract exit process
- Impact assessment of the Shipper of an independent Supplier exiting the agreement, leaving the independent Supplier to find another Shipper (or potentially leaving the Supplier without a Shipper)

Workgroup 2 – agreeing the basic requirements and options analysis

- Agreement on overall industry requirements
- Identification and development of preferred options / solutions
- Initial assessment of potential impacts of the identified solutions

Workgroup 3 – finalising options and solutions

- Agreement of preferred options / solutions
- Finalise assessment of implementation costs of any solutions

Workgroup 4 – reporting

- Completion of the Workgroup report

Outputs

Produce a Workgroup Report for submission to the Modification Panel, containing the assessment and recommendations of the Workgroup including a draft modification where appropriate.

Composition of Workgroup

The Workgroup is open to any party that wishes to attend or participate.

A Workgroup meeting will be quorate provided at least two Transporter and two User representatives are present.

Meeting Arrangements

Meetings will be administered by the Joint Office and conducted in accordance with the Code Administration Code of Practice.

4 Recommendations

Proposer's Recommendation to Panel

The Proposer invites the Panel to:

- DETERMINE that Request 0706R progress to Workgroup for review.