

UNC Final Modification Report		At what stage is this document in the process?
<h1>UNC 0696:</h1> <h2>Addressing inequities between Capacity booking under the UNC and arrangements set out in relevant NExAs</h2>		<div style="display: flex; flex-direction: column; gap: 5px;"> <div style="border: 1px solid #ccc; border-radius: 5px; padding: 5px; display: flex; align-items: center;"> 01 Modification </div> <div style="border: 1px solid #ccc; border-radius: 5px; padding: 5px; display: flex; align-items: center;"> 02 Workgroup Report </div> <div style="border: 1px solid #ccc; border-radius: 5px; padding: 5px; display: flex; align-items: center;"> 03 Draft Modification Report </div> <div style="border: 1px solid #ccc; border-radius: 5px; padding: 5px; display: flex; align-items: center;"> 04 Final Modification Report </div> </div>
<p>Purpose of Modification: To the extent to which a Consumer has entered into a bi-lateral Network Exit Agreement (NExA) with the relevant Transporter then any new or additional capacity charging should only apply from the relevant date set out in the NExA.</p>		
	The Panel recommends implementation	
	Medium Impact: None	
	Low Impact: None	

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Timetable			
Modification timetable:			
Initial consideration by Workgroup	27 June 2019		
Workgroup Report presented to Panel	15 August 2019		
Draft Modification Report issued for consultation	15 August 2019		
Consultation Close-out for representations	12 September 2019		
Final Modification Report available for Panel	17 September 2019		
Modification Panel decision	19 September 2019		

1 Summary

What

An inequity has been identified between the arrangements for capacity as set out in the NExA which can be a bilateral agreement between the Transporter and the Consumer or a Tripartite agreement including the Shipper and the UNC which is an agreement between the Shippers and Transporters.

Context

An example of the issues identified in this Modification is set out in Section 3 and provides the context for the proposed changes to the UNC. A consumer has been disadvantaged by the inconsistencies in the Capacity Referral process not taking into account the limitations set out by the relevant Transporter in the NExA.

Why

If the change is not made, then relevant Consumers will continue to be at risk of incurring charges under the UNC whilst being prohibited from benefiting from the new or additional capacity under the terms of the NExA.

How

It is proposed that any new or additional capacity requested for DM Supply Points under the UNC should only take effect from the date set out in the NExA. This process would not apply to NTS Supply Points.

2 Governance

Justification for Authority Direction

The Modification Panel determined that as the proposal has a material impact on the Transportation arrangements for Shippers and relevant consumers and proposes a limited element of retrospection, it should be subject to **Authority Direction**.

Requested Next Steps

- This Modification should proceed to consultation; and
- follow Authority Direction procedures for the reasons set out above.

3 Why Change?

Issue

An inequity has been identified between the arrangements for Capacity as set out in the Network Exit Agreement (NExA) which can be a bilateral agreement between the relevant Transporter and the relevant Consumer or a tripartite arrangement including the Shipper, and the Uniform Network Code (UNC) which is an agreement between Shippers and Transporters. Following discussions with the relevant Transporter who may be the only party to both sets of arrangements, an inequity in the current arrangements has been identified which needs to be addressed to enable an equitable outcome for the Consumer and to avoid similar occurrences of Consumer detriment in the future.

Background

Customer A entered into arrangements to increase Capacity at one of their sites with Transporter B.

As the site is a major industrial site (Class 1) this involved considerable effort both in the form of resources, surveys, undertakings, and negotiation between Customer A and Transporter B. Due to this complexity the date that additional gas was required to be available was dynamic in nature.

Customer A was already subject to a NExA with Transporter B.

Transporter B and Customer A finally agreed bilaterally that the additional gas should be available for offtake from 1st December 2018 and a variation to the existing NExA was issued to the customer to this effect.

However, during the project, prior to the variation to the NExA being finalised, a Capacity increase was proceeded by Shipper C (in this case the current Shipper) for a date prior to the 1st December 2018. This was due to both the dynamic nature of the project and pressure to ensure Capacity was available in a timely manner and to avoid the risk of ratchet charges being applied by Transporter B under the UNC i.e. if the site was to use the increased capacity prior to a capacity increase being approved the site would have been subject to penal Ratchet charges.

This capacity increase request was referred to Transporter B.

Despite Transporter B being party to the terms of the revised NExA negotiations and thus aware that this only allowed for offtake from 1st December the referral was accepted for a date prior to the 1st December and the increase registered prior to the 1st December 2018.

This has led to the Customer being charged hundreds of thousands of pounds for additional Capacity that they were prohibited, under the terms of the NExA, from taking prior to the 1st December.

For the avoidance of doubt detailed discussions have taken place to seek to address this matter. However, it has been noted that the current drafting in the UNC needs to be amended to enable an equitable resolution.

This proposal would ensure that Shippers and Customers are not subject to this unfair charging risk in future and would also seek to recover the costs unfairly levied against Shipper C and Customer A i.e. the proposal has a limited degree of retrospection. For the avoidance of doubt this solution will be enduring so preventing this issue from occurring in the future.

Retrospective Arrangements

Ofgem currently applies a number of tests regarding retrospection:

- a situation where the fault or error giving rise to additional [material] costs or losses was directly attributable to central arrangements;
- combinations of circumstances that could not have been reasonably foreseen; or
- where the possibility of a retrospective action had been clearly flagged to the participants in advance, allowing the detail and process of the change to be finalised with retrospective effect.

This issue meets all of these tests, in that restriction in LDZ Capacity becoming available has resulted owing to mismatches in central system processes and processes operated by the Gas Transporters (NExAs). It could not be reasonable foreseen at the time when these discussions were being undertaken to increase capacity that such a mismatch would be allowed to occur by the Gas Transporters.

The impact of retrospection will simply to refund the capacity payments made by the Gas Shipper for the affected meter points. These additional costs come out of allowed revenue, so there will be a minimal impact to the rest of the market as the refund will be spread across the whole DN.

4 Code Specific Matters

Reference Documents

Network Exit Agreement (NExA)

Knowledge/Skills

5 Solution

Solution

It is proposed that any new or additional capacity for DM Supply Meter Points (excluding NTS Supply Points), that is Class 1 or Class 2 Supply Meter Points, requested under the UNC should only take effect from the date set out in the NExA.

Business Rule 1

Any requests for new or additional capacity for DM Supply Points (excluding NTS Supply Points) shall, where a relevant NExA exists, only take effect from the relevant date set out in the NExA.

Business Rule 2

This change would be effective from 1st September 2018, with the CDSP correcting any capacity charges for sites identified by a Shipper as having been affected by the mismatch in NExA and UNC capacity booking processes.

6 Impacts & Other Considerations

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

None

Consumer Impacts

Impacts consumers who are party to NExA arrangements.

Consumer Impact Assessment

Criteria	Extent of Impact
Which Consumer groups are affected?	<ul style="list-style-type: none">Any consumer with a NExA and is either a Class 1 or Class 2 Supply Meter Point

What costs or benefits will pass through to them?	<ul style="list-style-type: none"> • If implemented this Modification would benefit consumers as it would remove a risk of potential charging for capacity, they are prevented from using under the terms of the NExA. • If implemented retrospectively, this should benefit consumers who have previously paid for capacity they were unable to use.
When will these costs/benefits impact upon consumers?	<ul style="list-style-type: none"> • Immediately following implementation.
Are there any other Consumer Impacts?	None identified.

Cross Code Impacts

There should be no known impacts on other Codes

EU Code Impacts

None

Central Systems Impacts

There should be no Central System impacts as this proposal can be addressed as part of the existing Transporter referral process.

Workgroup Impact Assessment

There were some concerns raised regarding the obligation for the Shipper to pass on the payment to the affected customer, but it was stated that the proposal would not be modified to clarify this point. It was noted that one participant had advised that they were considering raising an Alternatives Modification. However, others felt that this Modification was sufficiently developed to be issued to consultation and should be progressed without delay or being subject to a wider review.

Some participants were concerned that the justification for retrospective implementation had not been provided.

Rough Order of Magnitude (ROM) Assessment

A ROM has not been requested as there are no impacts identified on Central Systems.

7 Relevant Objectives

Impact of the modification on the Relevant Objectives:	
Relevant Objective	
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	None

(ii) the pipe-line system of one or more other relevant gas transporters.	
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-operation of Energy Regulators.	None
Demonstration of how the Relevant Objectives are furthered inserted here	
Relevant Objective f): Implementation of this Modification would further this Relevant Objective as it would ensure the alignment of provisions in both the NExA and UNC to ensure capacity is not booked that can't be used by the consumer.	

8 Implementation

No implementation timescales are proposed and as there are no known Central System Impacts, implementation could be immediately following Authority Direction to implement the Modification.

9 Legal Text

Legal Text and Commentary was not available for consideration by the Workgroup.

10 Consultation

Panel invited representations from interested parties on 15 August 2019. The summaries in the following table are provided for reference on a reasonable endeavours' basis only. It is recommended that all representations are read in full when considering this Report. Representations are published alongside this Final Modification Report.

Of the 7 representations received 4 supported implementation and 3 were not in support.

Representations were received from the following parties:

Organisation	Response	Relevant Objectives	Key Points
Cadent	Oppose	d - negative f - negative	<ul style="list-style-type: none"> • Cadent’s view is that the specific situation which led to the raising of this Modification, including the inclusion of a retrospective element, was foreseeable and appears to have arisen due to a lack of communication between the Shipper and the customer regarding whether a NExA is in existence and the date any provisions came into effect. • As the Shipper had booked capacity on the system, this would not be available to other Shippers and therefore, if a refund is due back to the Shipper for the capacity booked (but not paid for as a consequence of the refund) this would appear to be a detriment to all other Shippers and therefore Relevant Objective d) would be Negative. • Whilst Cadent agree that there may be benefit in improving the current process to enable better alignment of NExAs and capacity bookings, Cadent’s view is that the solution within this Modification is limited so at best Relevant Objective f) would be no change. • Impacts and costs are difficult to assess currently but Cadent would expect there to be a number of system changes which will impact them. • Legal Text not reviewed as not available at the time of submission. • Implementation recommended as soon as possible after an Authority decision.
Corona Energy	Support	f - positive	<ul style="list-style-type: none"> • Corona Energy believe that this Modification will remove detrimental consumer impacts by removing the current contradiction under the UNC where a Consumer is charged for capacity under the UNC but is prohibited from accessing this capacity under a NEXA agreement. • Support implementation as soon as possible after Authority decision. • No costs identified. • Content with the Legal Text. • In addition, Corona Energy support increasing the scope of the retrospection of this Modification to ensure the Consumer detriment is reversed as much as possible.
Gazprom Energy	Support	c - positive f - positive	<ul style="list-style-type: none"> • Gazprom raised this Modification to retrospectively address a matter of material Consumer detriment (circa £400k) due

			<p>to a contradiction arising between the UNC arrangements and those set out in a NEXA agreement. This led to the Consumer being charged for capacity in accordance with the UNC during a period when they were prohibited from accessing that Capacity under the NEXA.</p> <ul style="list-style-type: none"> • Gazprom consider this Modification to be positive in respect of Relevant Objective c) and & f) as this would introduce a process improvement to ensure that all relevant information is considered when reviewing a capacity request. • Implementation is requested as soon as possible. • Gazprom have indicated that Modification 0701 provides a similar solution but does not include the retrospection element. Gazprom consider this to be an acknowledgment and recognition that the current arrangements are not considered fit for purpose and can lead to material consumer detriment. • Prior to the Modification Gazprom were unable to address the issue directly with the Transporter due to constraints within the current drafting of the UNC. Hence a UNC Modification was required. • The retrospection element is therefore limited to enable the customer to be compensated. • Under the current arrangements, the relevant Transporter is the only party who is both a party to the NEXA and also the UNC, including being the relevant party who also approves UNC capacity referrals. Neither the Customer nor the Shipper are party to both the NEXA and UNC and therefore would not have been able to reasonably foresee the circumstances arising. • In requesting retrospection, Gazprom have sought to minimise the period of retrospection by developing a targeted solution which meant that only a limited development period was required before the UNC Modification Panel determined that the Modification proposal could be issued to consultation. • The period of retrospection is limited back to the 01 September 2018 to ensure that it addresses the material detriment caused to the Customer whilst also minimising any broader market impact. During the development period, Gazprom have not been made aware of any other party being identified as having suffered material detriment during the proposed period of retrospection. • In considering the cost/loss incurred as a result of the prevailing rules Gazprom noted that the affected Customer is
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			<p>a provider of services and products that are critical to the UK. As a major employer of multi skilled and diverse operational team the additional and unforeseen charges that the existing paradigm provides could give rise to negative decisions on the future investment into the operational developments at site. This Modification proposal will ensure that future growth planning will have some risk reduced. The additional material cost of capacity is circa £400,000 for the period during which the Customer was prevented from utilising the relevant capacity.</p> <ul style="list-style-type: none"> • Gazprom have not been made aware of any consequential impact arising from the erroneous sterilisation of capacity during the relevant period.
ICoSS	Support	c – positive f - positive	<ul style="list-style-type: none"> • Believe the current arrangements with regard to the interaction of the UNC and Network Exit Agreements (NExA) to be inadequate. ICoSS consider this is recognised by the fact that both the gas transporters and shippers, both through development of this change and through the attempted raising of alternate proposals to address the contradictions between the two documents. • The issue has been recognised as needing addressing and this Modification achieves that. Creating a clear order of precedent between UNC and NExA arrangements furthers both the administrative efficiency of the code and improving competition by preventing unnecessary costs being incurred by shippers. • ICoSS believe that retrospection in this case is justified in light of the previous failures of the process and the additional costs that customers have unjustly incurred. The date of September 2018 seems appropriate to strike a balance between protecting historic arrangements and addressing known problems. • Recommends implementation as soon as possible to provide certainty to the market during the 2019/20 winter. • Positive impact for ICoSS members from this change as it will reduce the risk of capacity being booked which cannot then be utilised. It will also reduce operational costs for the need to manage both the NExA agreements and UNC capacity bookings in parallel. • Legal Text has not been reviewed. • ICoSS surprised that relevant objective (c) was not seen as being impacted by the objectives set out in the Modification. Believe this Modification has a clear positive impact on competition by ensuring appropriate cost targeting.

<p>Northern Gas Networks</p>	<p>Oppose</p>	<p>d - negative f - negative</p>	<ul style="list-style-type: none"> • Agree that the visibility and linking of existing and new Network Exit Agreements (NExAs) with central systems needs to be improved. However, although NGN agree in principle that any new or additional capacity for DM Supply Points with NExAs should only take effect from the, yet to be defined, relevant NExA date, NGN do not believe the solution and system impacts of this proposal have been adequately assessed. This change is likely to require significant UK Link system changes to align the confirmation effective date of the new capacity with the relevant NExA date. • NGN do not believe that this Modification is positive on relevant objective f) <i>Promotion of efficiency in the implementation and administration of the Code</i>, as NGN do not agree that it is the fault of central arrangements as this issue could be foreseen and was in the gift of the Shipper to accept the offer at the confirmation effective date which aligns to the NExA change. • In addition, NGN believe that allowing a retrospective element for this Modification is negative for d) <i>securing of effective competition (i) between relevant shippers</i>, as the ability to take capacity from a specific date already is in the gift of the shippers, and therefore shippers who are already following this process are now gaining no benefit against those who are not. • NGN do not believe the justification provided for retrospective payments meets the quoted Ofgem's circumstances regarding retrospection. Consider the loss is not directly attributable to central arrangements due to the existing ability of a shipper to control the confirmation effective date. The combination of circumstances therefore could have reasonably been foreseen. • Implementation lead times cannot be accurately assessed as the new mechanism required to capture the information, calculate the relevant refund and how this is to be issued under invoicing arrangements has yet to be determined or assessed. • Legal Text has not been reviewed as it was not available at the time of submission. • Concern that if the Modification is implemented it may result in NGN receiving requests from one or more Shippers to recover costs due to the retrospective nature. However due to the existing process of the confirmation effective date being in the control of the Shipper, and the rarity of future dated NExAs, NGN do not foresee any occurrences.
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Total Gas & Power	Support	f - positive	<ul style="list-style-type: none"> • Total Gas & Power believe that the arrangements between Consumers and Transporters under a NEXA should be aligned with the UNC which is a code operating between Shippers and Transporters. Consumers would therefore not be charged where capacity is not available under the NEXA. This would be a simple cross check and therefore relatively easy to implement. Given the significant consumer detriment in this case we believe limited retrospection is justified as the case made meets the tests that Ofgem apply regarding the granting of retrospection. Total Gas & Power believe that Transporters acknowledge the issue, with NGN having raised Modification 0701. • Recommend implementation as soon as possible after Authority decision. • Believe the impact is beneficial as it would remove the risk of capacity being booked when it is not permitted to be utilised. • There would be no costs. • Review of Legal Text was not undertaken.
Wales & West Utilities	Oppose	c - negative f - negative	<ul style="list-style-type: none"> • WWU believe that this Modification has been raised to address a particular issue for one Shipper, hence its retrospective element. • In addition, due to a lack of justification for retrospection, the Modification does not provide a good solution for handling inconsistencies between Network Exit Agreements and system capacity as it fails to address the wider combination of circumstances that could result in a conflict between the two. It also does not put in place process changes to improve information provision. WWU therefore, disagree that this Modification has a positive effect on relevant objective f (efficient administration of Code) because it does not put in place appropriate measures to enable it to work smoothly. Noted that Modification 0701 will address this area. • WWU also believe the Modification is negative for Relevant Objective (d) competition. • Implementation could be immediately following Ofgem direction. • A number of system change are required to provide a robust long-term solution, at minimum some indication in UK Link that a NEXA exists. WWU would expect the proposer will be required to raise the necessary Xoserve change proposals, which may lead to some costs for WWU. • Consideration of the Legal Text would have been helpful.

Please note that late submitted representations will not be included or referred to in this Final Modification Report. However, all representations received in response to this consultation (including late submissions) are published in full alongside this Report and will be taken into account when the UNC Modification Panel makes its assessment and recommendation.

11 Panel Discussions

Discussion

Panel Members noted that the Consultation raised no new issues.

Panel Members noted that there was a split between Transporter respondents and Shipper respondents and the responses highlighted several points for consideration.

Panel Members noted that there was a disagreement between Transporter and Shipper respondents in relation to the retrospective element but noted that Modification 0701 has been raised by a Transporter to look at matters relating to the NExA, albeit with a slightly wider scope and without the element of retrospection.

Consideration of the Relevant Objectives

Panel Members noted that those in favour cited Relevant Objectives c) and f). Those not in favour cited Relevant Objectives c), d) and f).

Panel Members noted all of the points raised.

Determinations

Panel Members voted with 7 votes in favour (out of a possible 13), to implement Modification 0696.

12 Recommendations

Panel Recommendation

Members recommended:

- that Modification 0696 should be implemented.