

Modification proposal:	Uniform Network Code (UNC) 764 (Urgent): UNC TPD Section Y (Part A-I) amendments to K_t to align to RII02 Licence		
Decision:	The Authority ¹ directs this modification be made ²		
Target audience:	UNC Panel, Parties to the UNC and other interested parties		
Date of publication:	19 May 2021	Implementation date:	To be confirmed by the code administrator

Background

Within UNC Transportation Principal Document ("TPD") Section Y there are references to the National Grid Gas ("NGG") Licence. UNC764 states that these need to be updated to reflect the new NGG Licence (RIIO2) which is applicable from 1 April 2021.

UNC764 proposes to amend the references in UNC TPD Section Y (Part A-I) for the calculation of K_t , such that they correctly align with RII02. K_t refers to the under/over recovery for National Transmission System ("NTS") Transportation owner revenue in line with the Licence.

The modification proposal

On 6 April 2021, the Joint Office of Gas Transporters ("Joint Office") received a request from NGG (the proposer) that UNC modification UNC764 'UNC TPD Section Y (Part A-I) amendments to K_t to align to RII02 Licence' should be treated as 'urgent' and proceed under a timetable approved by Ofgem. On 14 April 2021, we decided to grant urgent status.³ UNC764 states that it seeks to:

¹ 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.

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

³ UNC764: UNC TPD Section Y (Part A-I) amendments to K_t to align to RII02 Licence (14th April 2021) <https://www.ofgem.gov.uk/publications-and-updates/unc764-unc-tpd-section-y-part-i-amendments-kt-align-riio2-licence>

- “Amend the wording within UNC TPD Section Y to link to the applicable conditions for K_t of the RII02 NGG Licence.
- Ensure the correct revenue is used as an input into the Transmission Services Entry and Exit charge setting calculations.
- Update Entry Adjustment Proportion and Exit Adjustment Proportion of the Entry Revenue Adjustment and Exit Revenue Adjustment (in UNC TPD Section Y 1.5.3 (f)) to relate to the applicable years”.⁴

UNC Panel⁵ recommendation

At the UNC Panel meeting on 13 May 2021, UNC Panel members unanimously considered that UNC764 would better facilitate the UNC objectives and the Panel therefore recommended its approval. Panel Members considered that UNC764 would have a positive impact on UNC Relevant Code Objectives (c), (d), and (f). Panel Members also considered that UNC Charging Methodology Relevant Objectives (“CMROs”) (a) and (aa) are also furthered by UNC764.

Our decision

We have considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 13 May 2021. We have also considered and taken into account the response that was submitted to the industry consultation on the modification proposal which is attached to the FMR⁶. We have concluded that:

- implementation of the modification proposal will better facilitate the achievement of the relevant UNC objectives;⁷ and
- directing that the modification be made is consistent with our principal objective and statutory duties.⁸

⁴ UNC764 Final Modification Report (“FMR”) 13 May 2021, page 4.

⁵ The UNC Panel is established and constituted from time to time pursuant to and in accordance with the UNC Modification Rules.

⁶ UNC modification proposals, modification reports and representations can be viewed on the Joint Office of Gas Transporters website at www.gasgovernance.co.uk

⁷ As set out in Standard Special Condition A11(1) of the Gas Transporters Licence, available at:

<https://epr.ofgem.gov.uk/Content/Documents/Standard%20Special%20Condition%20-%20PART%20A%20Consolidated%20-%20Current%20Version.pdf>

⁸ The Authority’s statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Gas Act 1986 as amended.

Reasons for our decision

We consider this modification proposal will better facilitate UNC Relevant Code Objectives (c), (d), (f), (g) and CMROs (a), (aa), (c) and (e). We consider that the UNC Relevant Code Objectives (a), (b), (e) and CMROs (b) and (d) are not relevant to the modification proposal under assessment.

Given the similarities between the UNC Relevant Code Objectives and the CMROs, we assess them in tandem.

Objective (c) so far as is consistent with sub-paragraphs (a) and (b), the efficient discharge of the licensee's obligations under this licence and CMRO Objective (a) save in so far as paragraphs (aa) or (d) apply, that compliance with the charging methodology results in charges which reflect the costs incurred by the licensee in its transportation business

The proposer states: "This Modification positively impacts Relevant Objective c) by ensuring UNC is aligned with the prevailing RII02 licence requirements". Panel Members agreed with this assessment and noted that "this Relevant Objective was the most important to be furthered by this Modification when considering implementation". We agree with Panel's view. In the context of this decision, the relevant licensee is NGG. The changes to the licence are now in effect and the relevant licensee, NGG, must comply with its licence provisions. The changes proposed by UNC764 will ensure the licensee complies with the licence provisions regarding the calculation of K_t . UNC764, by ensuring that UNC TPD Section Y is consistent with the licence, will better facilitate UNC Relevant Code Objective (c).

The proposer also states: "This Modification furthers Relevant Charging Methodology Objectives (a) [...] by ensuring that the revenue used in charge setting for Transmission Services Entry and Exit when setting the prices for Gas Year 2021/22 and onwards, are aligned to the appropriate Allowed Revenue calculated in accordance with the prevailing Licence". Panel agreed with this assessment. UNC764 seeks to ensure that the correct polarity is used for determining how K_t is applied. In turn, this ensures that NGG can recover its allowed revenue. If the wrong polarity were applied, this would distort the level of the

calculated Transmission Services Entry and Exit Charges. For these reasons, we consider that UNC764 better facilitates CMRO Objective (a).

Objective (d) so far as is consistent with sub-paragraphs (a) to (c) the 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 and CMRO Objective (c) that, so far as is consistent with sub-paragraphs (a) and (b), compliance with the charging methodology facilitates effective competition between gas shippers and between gas suppliers, and CMRO Objective (aa) that, in so far as prices in respect of transportation arrangements are established by auction, either: (i) no reserve price is applied, or (ii) that reserve price is set at a level: (I) best calculated to promote efficiency and avoid undue preference in the supply of transportation services; and (II) best calculated to promote competition between gas suppliers and between gas shippers

The proposer states that UNC764 has a positive impact on UNC Relevant Code objective (d) “by setting charges in line with the intentions of the Charging Methodology and the Licence. This would remove potential competitive distortions that might otherwise occur by not having such carry-over of revenues and having impacts of one year felt in another thereby improving competition”. Panel members agreed with the proposer but noted that this objective “is not the most relevant to support implementation”. The proposer and Panel also considered that UNC764 will further CMRO (aa).

UNC764 will ensure that the relevant provisions of the UNC are consistent with the licence. This will remove a source of uncertainty regarding the applicable rules and provide additional clarity to the market. As a general rule, clarity surrounding the regulatory framework has a positive impact on effective competition. In addition, if the relevant UNC provisions were not updated to correctly reflect the licence, the incorrect polarity applied to K_t in the price setting process would lead to increased price volatility which would be damaging to competition between shippers and between gas suppliers. For these reasons we conclude that UNC764 will better facilitate UNC Relevant Code Objective (d) and CMROs (c) and (aa).

Objective (f) so far as is consistent with sub-paragraphs (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code

The proposer states that UNC Relevant Code Objective (f) is “overall furthered as this proposal is promoting efficiency in the code and providing clarity in the necessary areas, here specifically the references within UNC TPD Section Y (Part A-I) to the RIIO2 NGG Licence”. Panel agreed with this assessment while noting that this objective “is not the most relevant to support implementation”.

Given that the licence takes precedence over the UNC, NGG could not credibly apply the relevant provisions of UNC TPD Section Y to the extent that these would be at odds with the licence. UNC764, by aligning the UNC with the licence, improves the efficiency in the implementation and administration of the code and therefore better facilitates UNC Relevant Code Objective (f).

Objective (g) and CMRO objective (e) Compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Cooperation of Energy Regulators

The proposer view is that UNC764 will have no impact on these objectives. A core principle of Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas (“TAR NC”) is the requirement that transmission tariffs must be transparent and predictable.⁹ TAR NC has now been incorporated in UK law by the European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020, as amended by Schedule 5 of the Gas (Security of Supply and Network Codes) (Amendment) (EU Exit) Regulations SI 2019/531.

UNC764 better facilitates these principles, as it addresses a tension between the UNC and the RIIO2 licence and removes a source of uncertainty about the applicable regulatory framework. In addition, the application of the current UNC provisions regarding K_t would lead to further significant under-recovery of revenue which would get progressively larger each year and significant price volatility. Such an outcome would be at odds with Article 17 TAR NC which

⁹ See Preamble to TAR NC.

states that: (a) the under- or over-recovery of the transmission services revenue must be minimised; (b) transmission services revenue must be recovered by the transmission system operator in a timely manner; (c) significant differences between the levels of transmission tariffs applicable for two consecutive tariff periods must be avoided to the extent possible. For these reasons, we consider that UNC764 better facilitates UNC Relevant Code Objective (g) and CMRO (e).

Decision notice

In accordance with Standard Special Condition A11 of the Gas Transporters licence, the Authority hereby directs that modification proposal UNC764 (Urgent): *'UNC TPD Section Y (Part A-I) amendments to K_t to align to RII02 Licence'* be made.

David O'Neill

Head of Gas Markets and Systems

Signed on behalf of the Authority and authorised for that purpose