

UNC Modification Proposal 0453 – Draft Legal Text

Demand Estimation Sub-Committee discussion item

Summary of issue

The purpose of this paper is to explain the rationale for the approach taken in preparation of draft legal text in respect of UNC Modification Proposal 0453 which presently reflects that relevant NDM algorithms should be retained within UNC rather than incorporated in the Demand Estimation Methodology document.

Legal position

This section is concerned with the question of what should be enshrined at the level of the Uniform Network Code (Code), and what can be left to the decision of DESC (or the Transporters) and/or delegated to a subsidiary document (the proposed NDM Demand Estimation Methodology).

Specifically the following text addresses the proposal that the formula for determining NDM Supply Meter Point Demand (SPD) be relocated from the Code to the NDM Demand Estimation Methodology.

From a purely logical point of view, any part of the Code could be relocated to a subsidiary document, so long as the reference to the document (and the document itself) is sufficiently certain to be binding contractually. But regulatory and governance principles limit what can be delegated in this way.

There is no fixed rule about what should be included at the Code level, but some guiding principles are:

- (a) the overall need for transparency and certainty about the rules which Users are bound by (given that the Code is mandated under the Transporters' licences);
- (b) the need for an appropriate level of governance of changes to those rules, having regard to the significance of the matter in question.

The Code can delegate (to a subsidiary document, or the decision of Transporters or the UNC Committee or a sub-committee) things which are matters of detail, or administrative processes, but should not delegate substantive things or matters of principle. Such delegation may be appropriate where the matter in question is very detailed, very procedural (as with the UK Link Manual), or highly technical, and does not define important commercial or legal terms of the relationship among Users and Transporters.

Placing a rule in the Code provides the greatest level of transparency and certainty, and assurance that the full Code modification rules will apply; i.e. the process and

consultation defined in detail in the Code (and prescribed by the Transporters' licences), with a regulatory decision by the Authority made under rules set out in the licences, and with the possibility of an appeal to the Competition Commission. This modification framework exists on the assumption that changes to significant matters affecting Users (and so suppliers and consumers) and Transporters will be made subject to that framework.

The way in which (through the Code modification procedures) the Code adapts to changes (in the gas market, or the development or deployment of technology) should be progressive. It is not desirable to 'bullet-proof' the Code against the need for future modification as such changes occur. It is appropriate to go through the full modification process, at the time when the external changes occur, so that consultation can occur and the Authority's ultimate decision be made based on all the information at the time.

The allocation of NDM demand to Users for daily balancing is a commercially significant area of the Code. It directly affects the application of marginal imbalance charges (subsequent reconciliation is based on system average price, SAP).

It is appropriate that the actual formula for calculating NDMSPD should be in the Code. It is a simple formula which expresses a simple concept, of weather-adjustment of a seasonal normal demand profile, for a EUC. It is a basic aspect of the Code, and any change to this basic simple principle should be addressed at the level of a Code modification.

The formula makes sense of the individual terms which are used in the formula: ALP, DAF and (through WCF) CWV. Without the formula, the point of those terms isn't clear. It would be very odd if the Code were to define the parameters and then delegate the use of them (i.e. the definition of the formula in which they are used) to a subsidiary document. It would create a spurious level of detail and definition in the Code, made entirely uncertain by the delegation outside of the Code of how the terms are actually to be used. If the formula is to be removed, the component terms should also be removed (and the whole replaced with a much vaguer set of principles).

Conversely, it is acceptable, as is currently proposed, to include the formula and a high level explanation of the terms, and to leave the exact definition of the terms to the subsidiary document. The existence of the formula in the Code provides a clear framework to DESC within which it can develop or vary the definitions of those terms, because it makes clear the purpose of the terms.

The formula for deriving AQ is another version of the SDP formula, using the identical terms but working in reverse (i.e. providing the 'weather adjusted' fraction or multiple of a year which the AQ metered period represents). It would be perverse to include the AQ formula and not the SDP formula in the Code, since they are both at the same level of detail and definition. Each formula implies the existence of the other. If the SDP formula is to be removed and delegated to a subsidiary document, the AQ formula should also be.

Governance

The following governance routes would apply dependent on where the NDM algorithms are located:

Demand Estimation Methodology – This would be modified by a majority vote of the members of the Demand Estimation Sub Committee (DESC)

UNC Transportation Principal Document – Dependent on the UNC Modification Panel's view on the materiality of the change, this is modified either by direction from Ofgem or by self governance. The latter requires a majority vote of the UNC Modification Panel.

The relevant portions of text for NDM estimation and AQ are very succinct and self-contained, and would not require a major overhaul of UNC, if it is only the algorithm which requires a change.

Transporters believe that from a governance perspective there is no benefit in incorporation of the algorithms in the Methodology document. Furthermore we are concerned that non-DESC members may feel disenfranchised from having a say in determination of the algorithm.

Systems

The choice of governance route would make no difference with regards to the delivery timescales pertaining to any systems development requirement which might arise as a consequence of changes to the NDM algorithm. By identifying the potential for future change to the NDM algorithm, DESC has highlighted that this an area for flexibility within the future system design. However, unless the exact details of any future changes are known, it will not be possible to design and build different versions of the algorithm. Whilst a certain amount of flexibility can be incorporated in the design at this stage, future changes to the algorithm are likely to require changes to both Xoserve and Shipper systems, and the lead times associated with those changes will not be influenced by the outcome of the decision on incorporating the formula in UNC.

Conclusion

It is the opinion of Transporters that the approach taken in the draft legal text Section H as tabled at the DESC meeting held on 10th July 2013 should prevail.