



UNC Modification	At what stage is this document in the process?
<h1 data-bbox="134 322 657 412">UNC 0777:</h1> <h2 data-bbox="134 450 1046 584">Removal of Obstacles to Market Withdrawal</h2>	<div data-bbox="1209 309 1469 629"> <div data-bbox="1209 309 1469 383">01 Modification</div> <div data-bbox="1209 383 1469 456">02 Workgroup Report</div> <div data-bbox="1209 456 1469 530">03 Draft Modification Report</div> <div data-bbox="1209 530 1469 629">04 Final Modification Report</div> </div>
<p>Purpose of Modification:</p> <p>To remove inappropriate obstacles to Users withdrawing from the Uniform Network Code (UNC) and assigning their rights and obligations under it to successors.</p>	
<p>Next Steps:</p> <p>The Proposer recommends that this Modification should be:</p> <ul style="list-style-type: none"> • Considered a material change and not subject to Self-Governance; and • Assessed by a Workgroup <p>The Modification will be presented by the Proposer to the Panel on 19 August 2021.</p> <p>The Panel will consider the Proposer's recommendation and determine the appropriate route.</p>	
<p>Impacted Parties:</p> <p>High: Users that wish to sell their gas shipping businesses and withdraw from the UNC, and Users and prospective businesses that wish to acquire such gas shipping businesses.</p> <p>Low: N/A</p> <p>None: N/A</p>	
<p>Impacted Codes:</p> <p>N/A</p>	

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Timetable		 0121 288 2107
Modification timetable:		 Contact: Joint Office of Gas Transporters
Pre-Modification Discussed	05 August 2021	 enquiries@gasgovernance.co.uk
New Modification to be considered by Panel	19 August 2021	 carlos.aguirre@pavilionenergy.com
First Workgroup Meeting	02 September 2021	 0121 288 2107
Workgroup Report to be presented to Panel	21 October 2021	Proposer: Carlos Aguirre, Pavilion Energy Spain
Draft Modification Report issues for consultation	22 October 2021	 daren.lond@nationalgrid.com
Consultation Close-out for representations	10 November 2021	Transporter: National Grid
Final Modification Report Available for Panel	12 November 2021	 UKLink@xoserve.com
Modification Panel recommendation	18 November 2021	Systems Provider: Xoserve
Final Modification Report issues to Ofgem	19 November 2021	 nick@waterswye.co.uk
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1 Summary

What

This Modification proposes measures to ensure that:

- Users wishing to withdraw from the Uniform Network Code (UNC) have the ability to assign their rights and obligations under the UNC (including in relation to Capacity rights) to new and/or existing Users;
- Users wishing to withdraw from the UNC are not obstructed from assigning their rights and obligations under the UNC by Transporters unreasonably withholding their consent unless the assignee takes on obligations in respect of the assigned rights (including Capacity rights) that are more onerous than those which would apply to the rights had the assignor continued to hold them.

Why

The provisions of the UNC with respect to the assignment of a User's rights and obligations, as applied by National Grid, present an obstacle for Users seeking to withdraw from the UNC and which intend to transfer their business to an affiliate or to a new or existing User. For example, absent National Grid's consent, such a User would have to transfer the System Capacity to the transferee and pre-pay the Capacity Charges for that capacity in respect of the period subsequent to its withdrawal from the UNC. The requirement for prepayment amounts to a discriminatory expropriation of part of the value of the withdrawing User's business. With a superfluity of System Capacity for the foreseeable future, the impact is particularly severe as there is no incentive on an assignee to reimburse the withdrawing User for costs of such accelerated payment: depending on how the Capacity Charges for the withdrawing User's System Capacity compared to the Capacity Charges that would apply if the Capacity was acquired direct from the Transporter, it could well be cheaper for the prospective assignee to acquire System Capacity direct from the Transporter as and when it needs it.

Furthermore, in cases where the System Capacity held by the withdrawing User was allocated to it prior to 06 April 2017, which is the date on which *Commission Regulation (EU) 2017/460 establishing a network code on harmonised transmission tariff structures for gas (TAR)*¹ first came into force (the **Tariff Regulation Effective Date**) additional obstacles arise. Any transfer of such System Capacity pursuant to UNC TPD Section B of the UNC which is agreed after the Tariff Regulation Effective Date results in the transferee becoming liable for Entry Transmission Services Revenue Recovery Charges (**RRC**) for which the withdrawing User was not liable. These additional charges act as a severe and unquantifiable penalty to Users seeking to withdraw from the UNC – this has been evidenced by the fact that the RRC was utilised almost immediately by National Grid after the implementation of Modification 0678A - Amendments to Gas Transmission Charging Regime (Postage Stamp). The imposition of such charges operates to further reduce the value of the business being sold and the underlying rights and obligations that the parties wish to assign, be that to an affiliate or to new and/or existing Users.

The current UNC provisions, as applied by National Grid, penalise Users for withdrawing from the market. In order to avoid the expropriation of business value, Users who are being unfairly prejudiced by these obstacles are opting to remain UNC participants and are entering into complex sleeving arrangements their assignees. This is resulting in inappropriate and unnecessary regulation of Users that wish to withdraw from the market, additional unnecessary operational costs, and grossly inefficient and sub-optimal business practices. Ultimately, it is the consumer that pays the price for such market inefficiencies.

¹ A hyperlink to TAR is provided in section 4.

How

If implemented, the Modification Proposal would:

- clarify the provisions of the UNC relating to the assignment of a User's rights and obligations with respect to System Capacity in connection with their withdrawal from the UNC;
- make clear that a User's entitlement to assign rights and obligations under the UNC includes rights and obligations with respect to System Capacity holdings, including, in the case of long term capacity, with respect to its status as Registered Capacity and as an Existing Available Holding so that on assignment, the capacity becomes Registered Capacity and Existing Available Holding of the assignee; and
- make it explicit that the Transporter may not make its consent to an assignment of a withdrawing User's rights and obligations conditional on the User first transferring its outstanding capacity rights under UNC TPD Section B5 and/or prepaying Capacity Charges in respect of the same under UNC TPD Section V.

2 Governance

Justification for Authority Direction

The Proposer is of the view that this Modification is not suitable for the self-governance procedure. This is due to the refusal of National Grid to agree to the assignment of the full benefit or Users' rights and obligations in circumstances where Users wishing to withdraw from the UNC hold long term capacity. Such refusals inhibit the evolution of the market and result in inefficient practices, ultimately to the detriment of consumers.

The Modification will provide for the proper assignment of rights and obligations with respect to System Capacity between a withdrawing User and its assignee. As a result, where the Capacity Charges and Revenue Recovery Charges (if applicable) associated with the assigned Capacity differ from those which would be applied if those rights and obligations were not properly honoured by the Transporter then there will be wider impacts on NTS Capacity Charges and Revenue Recovery Charges for all Users.

The Modification needs to be progressed as soon as possible. This is to enable Users who wish to leave the market and withdraw from the UNC, including as a result of corporate reorganisation or a sale of their business, to do so in an orderly manner and without suffering from an expropriation of rights that they wish to assign, notably the value of long term capacity holdings. On implementation the proposal will, therefore:

- End an inappropriate restriction of the commercial freedom of Users and the inhibition of the evolution of the market;
- Reduce inefficiencies by enabling Users to transfer their full rights and obligations under the UNC without penalty, thereby eliminating the need for Users that would otherwise withdraw from the market to continue their participation in UNC and gas allocation arrangements, to avoid the loss of the value of their long term capacity booking ; and
- Ultimately benefit consumers as a result of a more efficient and competitive market.

Requested Next Steps

This Modification should:

- be considered a material change and not subject to self-governance;
- be referred to a Workgroup for Workgroup Assessment.

3 Why Change?

Voluntary Discontinuance Procedure

Voluntary withdrawal from the UNC is dealt with in Section V4.2 of the Transportation Principal Document (TPD). A User may cease to be a party, provided it meets the requirements of UNC TPD Section V4.2.2. Broadly speaking, these requirements provide proportionate protection to Transporters, other Users, the CDSP and consumers. For instance, a User may not withdraw while still a Registered User of any Supply Point. There is no express requirement that the User must not hold System Capacity at the time of withdrawal. However, UNC TPD Section V4.2.2(a) provides that *“all amounts payable or (other than in respect of any recurrent charge becoming payable by reason only of the lapse of time after the date on which the last of the other requirements of ... paragraph 4.2.2 is satisfied) which may become payable by the User to the Transporter pursuant to any provision of the Code”* must have been paid in full. This, in effect, prevents a User withdrawing from the UNC whilst still holding System Capacity, which results in charges that accrue not only by virtue of the lapse of time, but also by virtue of the capacity booking.

UNC TPD Section V4.2.3 provides that where a User has given a discontinuance notice, the System Capacity which it is registered as holding shall not be reduced or cancelled other than in accordance with the relevant provisions of the UNC. Furthermore, UNC TPD Section V4.2.3 states that the User will remain liable for payment of Transportation Charges (which include Capacity Charges and, if applicable to the withdrawing User, RRC) in respect thereof, but may elect to make prepayment of these charges. Hence it appears that charges for long term capacity are not to be regarded as recurrent charges becoming payable by reason only of the lapse of time. (Otherwise a User could book System Entry Capacity, transfer it to another User and then discontinue under the UNC, without having to pay for the Capacity, with the result that the transferee could continue to benefit from the capacity, whilst only having to pay RRC on it but not Capacity Charges.)

As a consequence, where a User holds long term Capacity, voluntary discontinuance would result in a requirement to pay in advance for that Capacity unless the User can assign that Capacity and the obligation to pay for it to another User. In cases where the long term Capacity is subject to annual price changes or subject to RRC because it was transferred to the withdrawing User after the Tariff Regulation Effective Date prepayment would not be a viable option because the level of Capacity Charge and, if applicable to the withdrawing User, RRC payable in respect of that Capacity in subsequent years would be unknown.

Capacity Transfer – Effect of Termination

One way in which a withdrawing User might try to assign the Capacity is by using the Capacity Transfer mechanism. UNC TPD Section B5.4 deals with a situation in which, during the period covered by transfer of Entry Capacity, either the transferor or transferee ceases to be a User of the NTS in accordance with UNCTPD Section V4.3 (*Termination*). With effect from the User Discontinuance Date, the Capacity Transfer will lapse and the transferee User will cease to be treated as holding the transferred Capacity (UNC TPD Section B5.4.1(b)). As a result of termination, the terminated User naturally loses its rights with respect to its Registered Capacity and the ongoing obligation to pay Capacity Charges for it, and, as a consequence, the transferee loses the rights to use the capacity that had been transferred to it. However, under UNC TPD Section B5.4.1(c), the transferee may elect to be registered as holding Capacity (in addition to any other Capacity held by it) on any days within the Transfer Period and after the date on which termination takes effect, in an amount not exceeding the amount that had been transferred to it.

This mechanism extinguishes the original capacity booking but enables the User to make a new booking of capacity in an amount up to the level of the original booking, but this is in the form of a new capacity booking subject to the prevailing terms and prices at the time of this new capacity booking. In summary, as a result of the termination of the original holder of the capacity, the contract under which that capacity was booked is

terminated and the benefit of that contract cannot be passed on. This is a natural and proper consequence of termination in circumstances where the rights have been transferred but the associated payment obligations are retained by the transferee. The transfer mechanism, as currently configured, may present transferees with an ongoing credit risk due to the possible loss of capacity on the terms under which they acquired it, but that is a risk for transferee Users to manage and it is not the subject of this Modification Proposal.

Impact of Termination on Transferred Long-term Capacity

In the case of long term capacity acquired prior to the Tariff Implementation Date, this mechanism will result in the transferee's loss of capacity which was secured at a fixed price in the original allocation process but with an option to make a new capacity booking for which charges are determined in accordance with the TAR compliant methodology introduced by Modification 0678A from 01 October 2020.

The Capacity Charge for any new capacity booking made will vary year on year and may be greater or less than the Capacity Charges that applied to the original booking. However, the transferee has the choice as to how much capacity to rebook and can manage any potential exposure. The transferee will reduce its exposure (if any) to RRC if it decides to book less capacity than had been transferred to it, due to the reduction in its Fully Adjusted Available NTS Entry Capacity for a Day at the Entry Point "Excluding Existing Available Holding". However, if it was to rebook the same amount of capacity, the effect of termination would be neutral for the transferee as far as RRC is concerned. If the original transfer had taken place prior to the Tariff Regulation Effective Date, that transfer would be reflected in the level of the transferee's Existing Available Holding. As a result, if the Transferee opted to replace the capacity in full following termination, that capacity would not attract RRC, even though technically it is a new capacity booking. If the original transfer had taken place after the Tariff Regulation Effective Date, the transferred capacity would never have constituted an Existing Available Holding of the transferee and hence the transferee would continue to pay RRC on the replacement capacity in the same way as it would have been paying had the transferred capacity not been terminated as a result of the transferor ceasing to be a party to the UNC.

Assignment of Rights and Obligations under the UNC

Critically though, the provisions of UNC TPD Section B5.4 discussed above only cover situations in which the transferor of Capacity is terminated due to breach of the UNC or an insolvency event. UNC TPD Section B5.4 does not provide a solution for the treatment of transfers in cases where the transferor voluntarily discontinues as a UNC party. It does not need to. The Capacity Transfer mechanism at UNC TPD Section B5 enables Users to trade capacity, in line with legislation originating in the EU in relation to the internal gas market, whilst the transferor is still participating in the market and remaining party to the UNC, subject to the obligation to pay the Capacity Charges for that capacity. But this mechanism is in addition to Users' other rights under the UNC. Those other rights include their right to assign their rights and obligations under Section B6.1 of the General Terms (GT) and it is to that provision that a User which holds long term Capacity, whether as Registered holder of that Capacity or as the holder of Transferred System Capacity.

UNC GT Section B6.1.1 sets out the circumstances in which a party to the UNC may transfer its rights to a third party:

Subject to paragraphs 6.1.4 and 6.1.5, a Party may assign its rights under the Code, a Framework Agreement and any Ancillary Agreement:

- (a) to a 33 ⅓% Affiliate of such Party, provided that the assigning Party shall continue to be bound by and liable under the Code, the Framework Agreement and any such Ancillary Agreement;*
- (b) subject to paragraph 6.1.6, with the prior agreement in writing of each relevant other Party, which shall not unreasonably be withheld, to any person.*

In the case of assignments to 33 ⅓% Affiliates under sub-paragraph (a), the assignor must continue as a User under the UNC, subject to liabilities under it with respect to those assigned rights. In the case of an assignment of rights that includes System Capacity, the obligation to pay for that Capacity remains with the assignor although it is the affiliate that has the right to use it.

By contrast, an assignment under sub-paragraph (b) (which can also be used as a mechanism to assign rights to an affiliate) does not require the assignor to continue to be a party to the UNC. Instead the agreement of each relevant other Party, namely, as provided by UNC GT Section B6.1.2, the Transporter(s), is required. GT Section B6.1.4(b) provides that, in the case of an assignment of rights by a shipper User, the assignee must have a shipper's licence and must have complied with the other accession requirements under UNC TPD Section V2 which the assignee would be required to comply with if it was an Applicant. In the case of existing Shipper Users, these requirements will have been met.

UNC GT Section B6.1.3 confirms that obligations as well as rights may only be assigned with the consent of the relevant Party under UNC GT Section B6.1.2 and therefore provides that the only way in which a User may assign such rights and obligations under the UNC is with the Transporter's consent.

The UNC distinguishes between an assignment of the entirety of a User's rights under UNC GT B6.1.1, and a Capacity Transfer under UNC TPD Section B5, under which only specific rights with respect to Capacity are transferred, without the associated obligation to pay the Capacity Charge, which is retained by the transferor. (Although a Capacity Transfer would normally result in the transferee also incurring RRC charges which, in cases of transfers of long term capacity allocated to the transferor prior to the Tariff Regulation Effective Date but transferred after that date, did not apply to the transferred capacity prior to the transfer.) Where the withdrawing User's rights under the UNC include rights with respect to Capacity that has been transferred to it under TPD section B5, those rights, along with the obligations associated with them (if any), should be assigned to the assignee along with the rest of the withdrawing User's rights and obligations under the UNC pursuant to GT Section B 6.1. Where the original transfer took place after the Tariff Implementation Date, such an assignment should result in the assignee picking up the withdrawing Users' obligation to pay RRC on the transferred capacity. But if the original transfer had taken place prior to that date, the withdrawing User would not be liable for RRC on the Capacity and neither should the assignee. In this second scenario there are no payment obligations under the UNC which need to be assigned with the transferred Capacity, and the assignment should not result in additional obligations being imposed on the assignee. In both cases the Registered Holder of the transferred Capacity would remain the Registered Holder, liable to pay the Capacity Charges for it.

UNC GT Section B6.1.1(b) provides that the Transporter's consent to the assignment must not be unreasonably withheld. Under GT Section B6.1.6, the assignee is required to enter into an agreement requiring it to be bound by the UNC and any Ancillary Agreements. Although an assignee which is an existing User will have already entered into such agreement in the form of an accession agreement, it would not be unreasonable for the Transporter to require the assignee to enter into an agreement confirming that it accepted the rights and obligations of the assignor, in addition to its own existing rights and obligations, not least because the Transporter needs to be clear as to when the assignment takes effect.

UNC GT Section B6.1.8 provides that a reference in the UNC, a Framework Agreement or any Ancillary Agreement to a Party shall include a reference to that Party's successors and assigns. So, when it comes to determining the assignees' rights and obligations under the UNC in respect of the period after the assignment, references to the assignor are to be treated as references to the assignee. In the case of System Capacity, this means that when it comes to establishing the level of a withdrawing User's Existing Registered Holding, for the purposes of determining the assignee's liability for Capacity Charges, and its Fully Adjusted Available NTS Entry Capacity, Excluding Existing Available Holding, for the purposes of determining the assignee's liability for RRC, the Existing Registered Holding and Existing Available Holding of the withdrawing User should be taken

into account in addition to the Existing Registered Holding and Existing Available Holding of the assignee. As regards the assigned rights and obligations, the assignee should be in the same position after the assignment as the withdrawing User was before it. UNC GT Section B6.1.7, makes an exception to this general rule by making it clear that the withdrawing User may not assign its UNC Credit Limit. Naturally, the assignee may need to take steps to ensure that it does not exceed its UNC Credit Limit as a result of the addition of the assignor's payment obligations with regard to the assigned Capacity to its payment obligations in respect of the Capacity that it already holds.

The assignment mechanism under UNC GT Section B6.1.1(b) can be used both in cases where, due to a corporate reorganisation, a User wishes to withdraw from the UNC completely and transfer its obligations as well as its rights thereunder to an affiliate, or where a User wishes to sell its business and withdraw from the market entirely. Once the assignment comes into effect, then, pursuant to UNC GT Section B6.1.6(b), the assignor ceases to be bound by any subsequent obligations arising under the UNC. The voluntary discontinuance mechanism and criteria under UNC TPD V4.2 are not engaged (as there is no need for them to be engaged). With effect from the assignment date, the assignee has taken on the obligations of the withdrawing User. In the same way that it becomes the Registered User of the withdrawing User's Supply Points, it becomes the registered holder of the withdrawing User's Registered Capacity on the same terms as those on which it had been held by the withdrawing User prior to the assignment.

The Requirement for Change to Secure that User's Existing Rights of Assignment are Respected

For the reasons explained above, in the Proposer's opinion the UNC already adequately caters for the assignment of rights and obligations without the imposition of additional obligations on the assignee. However, in view of the stance currently taken by National Grid, the due operation of the UNC in this regard is being frustrated. The Proposer's understanding is that National Grid is insisting that following any assignment, the assignee takes on the capacity as if it was the creation of a *new* contract rather than the assignment of rights under an *existing* contract and refusing to agree to any assignment except on this basis – a stipulation that is entirely outside the provisions of the UNC and which ignores the distinction drawn in the UNC between the transfer of Capacity (in respect of which the obligation to pay Capacity Charges excluding RRC remains with the transferor) under UNC TPD B5 and the assignment of the totality of a User's rights and obligations under the UNC under UNC GT B6.1. National Grid's refusal to agree to an assignment except on such terms is unreasonable and in breach of GT B6.1.1(b). Accordingly, the proposed Modification is required in order to clarify the Transporter's obligations as regards consent to assignments and as to the consequences of any such assignments and remedy this ongoing impediment to the natural evolution of the market.

4 Code Specific Matters

Reference Documents

[Commission Regulation \(EU\) 2017/460 establishing a network code on harmonised transmission tariff structures for gas](#)

[Authority decision on Modification Proposals UNC 678/A/B/C/D/E/F/G/H/I/J – Amendments to Gas Transmission Charging Regime](#)

Knowledge/Skills

An understanding of provisions of the UNC relating to assignment (GT B6.1), Termination and Voluntary Discontinuance (TPD V4.2 and 4.3) Capacity Transfers (TPD B5) would be beneficial, as would familiarity with the legal issues associated with the assignment of contractual rights and obligations.

5 Solution

UNC GT Section B6.1 should be amended to make it clear that the Transporter is not entitled to make it a condition of its agreement to an assignment of rights and obligations under the UNC that the assignee enters into an agreement for the transfer of any System Capacity held by the withdrawing User under UNC TPD Section B5, or otherwise accepts obligations with respect to that Capacity which are more onerous than the obligations that applied to the withdrawing User in respect of the same prior to the assignment. This principle is without prejudice to any requirement as regards the assignee's provision of Code Credit Cover in respect of its User's Relevant Code Indebtedness taking into account the additional payments that will become due from the assignee in respect of the assigned Capacity.

To avoid any confusion as to whether or not such additional charges may be imposed subsequent to the assignment, the general principle at GT Section 6.1.8 that any reference in the UNC, a Framework Agreement or any Ancillary Agreement to a Party shall include a reference to that Party's successors and assignees, should be amended to make it clear that this principle applies also to the determination of the level of the Registered System Capacity and Existing Available Capacity of that Party's successors and assigns (but taking into account the successor's or assignee's existing rights and obligations with respect to its own System Capacity held in relation to the relevant period prior to the assignment taking effect). As a result:

- the assignee's Registered Capacity after the assignment would be the sum of its Registered Capacity prior to the assignment (if any) and the withdrawing User's Registered Capacity, as assigned to the assignee;
- the assignee's Existing Available Capacity after the assignment would be the sum of its Existing Available Capacity prior to the assignment (if any) and the withdrawing User's Existing Available Capacity, as assigned to the assignee.

6 Impacts & Other Considerations

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

No.

Consumer Impacts

The impact of the Modification would be to remove a significant obstacle to efficient corporate reorganisations of Users' gas shipping businesses and their sale to expanding Users actively seeking to compete with incumbents. It would remove the need for companies to engage in inefficient sleeving arrangements to avoid the imposition of additional changes with respect to long term capacity bookings. Consumers would also benefit from the resultant enhancement of competition and efficiency improvement.

What is the current consumer experience and what would the new consumer experience be?

The Modification will not directly impact consumers, save to say that it will improve the workings of the gas shipping market. As explained previously, the Modification will enable Users to withdraw from the UNC who currently are maintaining their gas shipping operations to sleeve gas on behalf of counterparties, in order to protect Existing Contract rights, rather than transferring capacity rights to the same counterparties, thereby

forfeiting their Existing Contract rights. As such this Modification will simply move the rights and obligations associated with Existing Contracts, and any other NTS Entry Capacity holdings, from the withdrawing User to the nominated counterparty and remove any additional and unnecessary costs from the supply chain generated by gas sleeving arrangements.

Impact of the change on Consumer Benefit Areas:	
Area	Identified impact
<p>Improved safety and reliability</p> <p>No direct impact on safety and reliability</p>	None
<p>Lower bills than would otherwise be the case</p> <p>No direct impact on consumers beyond a marginal benefit in improving the efficiency of the gas shipping market. NTS Entry Capacity is efficiently and cost-effectively assigned between Users, rather than engaging in “gas sleeving” services which will add extra costs into the gas supply chain.</p>	Positive
<p>Reduced environmental damage</p> <p>No environmental impacts from assigning NTS Entry Capacity rights between Users</p>	None
<p>Improved quality of service</p> <p>A marginal benefit to consumers as NTS Entry Capacity is efficiently and cost-effectively assigned between Users, rather than engaging in “gas sleeving” services which will add extra costs into the gas supply chain.</p>	Positive
<p>Benefits for society as a whole</p> <p>No direct impacts on society.</p>	None

Cross-Code Impacts

None.

EU Code Impacts

None. The EU Code which governs transmission charge methodologies, TAR, is not engaged by the assignment of existing capacity contracts, only by the establishment of new ones. Article 35 of TAR provides that the Regulation “*shall not affect the levels of transmission tariffs resulting from contracts or capacity bookings concluded before 6 April 2017 where such contracts or capacity bookings foresee no change in the levels of the capacity- and/or commodity-based transmission tariffs except for indexation, if any.*” It was accepted by Ofgem in its approval of Modification Proposal UNC 0678A that long term capacity bookings are protected by the grand-fathering provisions of Article 35. Although Ofgem dismissed concerns that secondary traded contracts should also be exempted from RRC, none of the 11 alternative versions of Modification UNC 0678 actually made provision for such an exemption.

As explained above, the secondary trading of Capacity under the Code (under which the Capacity remains the Registered Capacity of the transferor, who thus remains obliged to pay for the Capacity) is very different from

the assignment of Capacity as part of an assignment of the entirety of a withdrawing User's other rights and the attendant obligations under UNC GT B6.1. In these circumstances, in contrast to the position when the transferor of Capacity under TPD B5 is terminated as a User under UNC TPD V4.3, necessitating a new capacity booking in respect of the capacity which it wishes to hold following termination of the transfer, the Capacity assigned to the assignee under UNC GT B6.1 is the existing capacity contract or capacity booking, assigned intact. Therefore it falls within the ambit of Article 35 as a capacity booking or contract concluded before the TAR Regulation Effective Date. It is an existing booking which the assignee is entitled to assign along with its other rights an obligation under the UNC in the event of its withdrawal, and the new User is entitled for the assignment to be recognised as the assignment of an existing contract booking, not the creation of a new one.

The clarification of the current arrangements and a introduction of measures specifying that it is not reasonable for the Transporter to insist on the assignee incurring liabilities that are different to those which applied to the withdrawing User, makes no difference to the current position as far as TAR is concerned, other than to secure that, as regards assignments of a withdrawing User's rights and obligations (including as to System Capacity), the requirements of Article 35 of TAR are properly respected.

Central Systems Impacts

There may be impacts on Gemini and UK Link invoicing systems, although the systems should be capable of accommodating the assignment of UNC Rights and Obligations as contemplated by GT B6.1. The Proposer believes that if necessary a manual fix could be implemented before the full system solution can be delivered. There should be no problem if the assignee is a new User. It will just be allocated the assignee's shipper code etc. with respect to rights and liabilities arising on or after the effective date of assignment. If the assignee is an existing shipper it may be necessary for the assignee to operate under two shipper codes with respect to such rights and liabilities one for rights and liabilities acquired on its own account and the other for rights and liabilities assigned to it by the assignor.

7 Relevant Objectives

Impact of the Modification on the Transporters' 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.	Positive
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.	Positive

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.	Positive

Demonstration of how the Relevant Objectives are furthered:

(c) Efficient discharge of the licensee's obligations

The grounds on which National Grid believes that the assignee of the entirety of the UNC rights and obligations of a User which holds Registered long term capacity could be compelled to pay different Capacity Charges and RRC charges than applied to the capacity when it was held by the assignee are unclear. One possibility is that prior to accepting a User's discontinuance or as a condition of its agreement to the assignment of such rights under GT B6.1, it insists on the User transferring the capacity to its prospective assignee, then, on the assignment of the rest of the discontinuing User's rights and obligations (or where the User does not have any other continuing rights or obligations, on its voluntary discontinuance), requires the transfer to enter into a new, ad hoc, capacity booking for the transferred capacity, even though such a facility only exists in the case where a User is terminated under TPD V4.3 for insolvency or breach, and is not available under the terms of the UNC in cases of voluntary discontinuance. Such an approach would be in breach of National Grid's obligation under Standard Special Condition A7 of its licence only to enter into transportation arrangements which are in conformity with any relevant provisions of the UNC (except where permitted to do so by the Authority).

By making it clear that the Transporter cannot impose additional obligations on an assignee than applied to the assignor as a condition of its agreement to assignment, the Modification Proposal forestalls a breach or threatened breach of Special Condition A7(1).

(d) Securing of effective competition

As explained above, the imposition of obstacles to Users assigning their business to successors (whether pursuant to a company organisation or to a former competitor or prospective new entrant to the market) is inefficient and stymies the natural evolution of the market. The current stance of the Transporter as regard the impact of assignment on the charges payable by the assignee for a long term capacity booking is inherently obstructive to more effective competition between willing participants.

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

The Modification Proposal would remove obstacles to holders of long term Entry Capacity withdrawing from the UNC and assigning their rights and obligations to successors. The removal of these obstacles would improve the efficiency of the overall operation of the system and obviate the need for such Users who wish to withdraw from the UNC having to continue to participate and engage in unnecessarily complex sleeving arrangements in order to preserve the value of the long term capacity, that they should be able to assign to new entrants or erstwhile competitors if National Grid was not, contrary to the requirements of GT B6.1.1(b), unreasonably withholding its consent,.

(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.

TAR is a regulation introduced as a result of a decision of the European Commission, made in consultation with the Agency (ACER). As explained in section 6 of this Modification Proposal under the heading EU Code Impact, the implementation of this Modification will secure full compliance with Article 35 of TAR as regards the status of System Capacity assigned by a User which is ceasing to participate in the UNC and assigning its capacity booking, along with all of its other rights and obligations under the UNC, under GT B6.1.1.

8 Implementation

No implementation timescales are proposed. However, implementation should be as soon as possible after an Authority direction to do so.

9 Legal Text

Text Commentary

To be provided.

Text

To be provided.

10 Recommendations

Proposer's Recommendation to Panel

Panel is asked to:

- Agree that Authority Direction should apply.
- Refer this proposal to a Workgroup for assessment.