

Modification proposal:	Uniform Network Code (UNC) 255: Publication of Objection Rates for Large Supply Points (LSPs) (UNC255)		
Decision:	The Authority ¹ has decided to reject this proposal		
Target audience:	The Joint Office, Parties to the UNC and other interested parties		
Date of publication:	27 January 2010	Implementation Date:	NA

Background to the modification proposal

Consumer switching is an important driver for a competitive energy supply market. By switching supplier, consumers can exert competitive pressure on the market. Therefore, it is important that industry mechanisms governing the switching process function as intended. One of these mechanisms is the ability for an existing supplier to object to a consumer's request to transfer to a new supplier (a 'transfer objection').

In the GB gas market consumers, including those classed as Large Supply Points (LSP), can enter into a contract with a new supplier, transferring away from their existing supplier. When the new supplier intends to take over a supply point, the supplier currently responsible for that supply point receives a loss notification as a dataflow from the transporter. The existing supplier then has seven working days (the 'objection window') in which to determine whether it has grounds to submit a supply point objection to the transporter in order to block the transfer. The rules governing the circumstances under which an objection may be raised are set out in Standard Licence Condition (SLC) 14.2 of the gas supply licence. Given the potential significant impact that supply point objections may have on consumers, the licence requirements aim to ensure that they are only raised in appropriate circumstances. However, in 2007 Ofgem found that this 'objection window' was being used in ways that were not originally intended. In particular, we were concerned that outgoing suppliers were using the notification that they were losing a non-domestic customer as a trigger to contact the customer with a view to entering into a new contract with them. In this case, where a new contract was agreed before the end of the objection window, the supplier would raise an objection to block the consumer from switching to a new supplier.

Following a consultation by Ofgem in 2007 we concluded that this behaviour was "...inappropriate and not the intended use of the rules..."³ and the supply licence was modified. Under SLC 14.2 a supplier can only object to a transfer of a non-domestic consumer if:

- (a) the existing contractual arrangements between the consumer and the supplier allow for transfer blocking; or
- (b) the transfer was initiated in error.

If a transfer objection is raised, SLC 14.3 of the supply licence requires the supplier that raised the objection to notify the consumer of this objection, inform them of the grounds on which it was made and how to resolve the objection. This offers the consumer the opportunity to dispute the objection if they feel it has been made in error.

The objections process is facilitated by rules set out under the UNC. Section G2.8.1(b) of the UNC allows a transfer objection to be raised by an existing supplier within seven working days after the new supplier seeks to confirm the transfer. Suppliers then have

¹ The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

an opportunity to resolve the objection between them or consumers are able to appeal an objection that has been raised. In both cases if a supplier finds that an objection has been raised in error, or the underlying reason for the objection (e.g. consumer debt) is resolved, a supplier may withdraw their original objection to transfer if it is within seven days after the objection was submitted to the transporter.

During the recent energy supply market probe in 2008, Ofgem stated that “we have evidence from suppliers, brokers and consumers, that some suppliers are using the objections process and their flexibility to set contract terms for the purpose of consumer retention”². In addition, we found evidence of suppliers objecting to transfers where consumers were fully within their rights to switch. In some cases, suppliers noted that such objections to transfer can occasionally occur because of supplier system errors.

As outlined in The Energy Supply Probe – proposed retail remedies³ document, as of April 2010 we will be receiving data on suppliers’ consumer numbers, transfers and objections to transfers in the GB non-domestic energy market. We will use this information to monitor supplier activity in the non-domestic retail market, including objection to transfer. We have requested this information on a voluntary basis pursuant to Ofgem’s market monitoring functions⁴. Following a consultation, a decision letter was sent to suppliers in December 2009 requesting this information. Thus far we have received positive feedback from suppliers. This approach has worked effectively in monitoring the domestic market and we believe the same principle should apply in the non-domestic market. However, we may revisit this approach should the voluntary route fail to be effective.

Under the current supply licence and UNC arrangements there is no requirement on existing suppliers to provide transporters or the new supplier with details of why they raised an objection in the non-domestic market. Depending on what details are volunteered to third parties by the objecting supplier, it may be that only consumers are aware of the objecting supplier’s reason(s) for raising the objection. This limits industry oversight regarding the validity of the objection raised. When an invalid objection is raised, this can negatively impact on the market. It can lead to frustration among consumers attempting to engage with the market, damaging the reputation of the industry. It may also increase consumer acquisition costs for suppliers due to additional administrative burden and the risk of a supplier winning a consumer who is able to switch, only to have its transfer prevented.

The modification proposal

Modification UNC255 was raised by Gazprom Marketing and Trading-Retail (the proposer). The modification proposed that xoserve⁵ publish by shipper licensee the percentage of successful supply point transfer objections compared to the total number of supply point objections raised by that shipper⁶. A threshold of 10 objections raised per

² Energy Supply Probe – Initial Finding Report ref 140/08 October 2008 can be found on the Ofgem website www.ofgem.gov.uk

³ Energy Supply Probe – Proposed Retail Market Remedies ref 99/09, August 2009 can be found on the Ofgem website www.ofgem.gov.uk

⁴ For the avoidance of doubt, the existing and additional information is being requested by Ofgem pursuant to the Gas and Electricity Markets Authority’s general functions under section 34 of the Gas Act 1986 and section 47 of the Electricity Act 1989.

⁵ Provides transportation transactional services on behalf of all the major gas network transportation companies for gas Shipper companies

⁶ Please note the original proposal raised by Gazprom Marketing and Trading put forward that xoserve produce a quarterly report on supply point transfer objections. This report would detail, for each shipper licensee, the

shipper would trigger inclusion in the report to prevent low transfer figures from distorting the information.

The proposer considered that UNC255 is likely to further relevant UNC objectives (d) and (f) by increasing market transparency, discouraging anti-competitive behaviour and reducing the administrative burden on shippers.

UNC Panel⁷ recommendation

At the Modification Panel (the "Panel") meeting held on 19 November 2009, of the 10 Voting Members present capable of casting 10 votes, 5 votes were cast in favour of implementation of the proposal, one member abstained and 4 were against the implementation of the proposal. Therefore, the Panel recommended by simple majority that the proposal is implemented.

The Authority's decision

The Authority has considered the issues raised by the modification proposal and the revised Final Modification Report (FMR) dated 18 December 2009. The Authority has considered and taken into account the responses to the Joint Office's consultation on the modification proposal which are attached to the FMR⁸.

The Authority has concluded that implementation of the modification proposal will not better facilitate the achievement of the relevant objectives of the UNC⁹.

Reasons for the Authority's decision

We note that the Joint Office received twelve responses to its consultation on UNC255 of which four were supportive, six were opposed, one offered qualified support and one provided comments only.

The Authority considers that UNC255 would not facilitate the relevant objectives of the UNC, specifically relevant objectives (d) and (f). We consider that UNC255 is neutral regarding the remaining relevant objectives. We have set out our reasons below:

Relevant Objective (d) - so far as is consistent with sub-paragraphs (a) to (c) the securing of effective competition between relevant shippers, suppliers and DNs

Those respondents who were supportive of UNC255 argued that the proposed publication of objections data would publically highlight any misuse of the objections process by an individual shipper. They considered that this would provide shippers with sufficient incentives to use the objections process as intended and not as a consumer retention tool. This approach would improve competition by reducing the administration costs of the acquiring shipper and increasing the ability of LSP consumers to transfer supplier.

percentage of supply point transfer objections which were raised, compared to the total number of supply points transferring away from that shipper. For each shipper, some context would be given to the objections data by providing information on total number of proposed transfers within that quarter via a banded range.

⁷ The UNC Panel is established and constituted from time to time pursuant to and in accordance with the UNC Modification Rules.

⁸ UNC modification proposals, modification reports and representations can be viewed on the Joint Office of Gas Transporters website at www.gasgovernance.com

⁹ As set out in Standard Special Condition A11(1) of the Gas Transporters Licence, see: http://epr.ofgem.gov.uk/document_fetch.php?documentid=6547

Some respondents who did not support UNC255 considered that the proposed report would not provide sufficient detail to highlight misuse of the objections process and would only indicate which shippers had a higher rate of objections subsequently withdrawn, and not necessarily where inappropriate use of the objections occurs. Some of these respondents also argued that the report would lead to incorrect conclusions being drawn regarding misuse of the objections process.

We agree with several respondents' views that the proposed report is too limited in scope. The proposed report would only provide negligible improvement in transparency and this negligible improvement would be outweighed by certain drawbacks. For example, it would look at data concerning only a particular aspect of the objections process and would not provide sufficient data and context to enable a clearer understanding of how the objections process is used by suppliers. The proposed report alone does not provide adequate detail to assist in securing effective competition in the LSP gas market.

The proposed report would illustrate which shippers operate in the LSP objections process and over a sustained time period, could provide an indication of which shippers may need further investigation. However, several factors having a bearing on whether any misuse of the objections process can be identified and therefore further information and data would be required. For instance, for each shipper, the total number of transfers, the total number of objections, consumer numbers involved and reasons for objections are also to understand how relevant objections are used. For that reason, we do not feel that UNC255 seeks sufficient detailed data about transfer objections. Consequently, we are concerned that the proposed report could be misinterpreted and incorrect inferences made due to its public availability. However, our views do not preclude UNC parties from raising future proposals concerning the publication of LSP objection rates if they see fit, that address our concerns noted in this letter.

We appreciate that the aim of this modification proposal is to deter anti-competitive behaviour by suppliers regarding the objections process through increased transparency of suppliers LSP transfer objections. However, as a result of the limited scope of the proposed report there is also a risk that publication of this information may result in perverse incentives for suppliers. We are concerned that this proposal has the potential to encourage suppliers to use objections to manipulate the information being published rather than being used where warranted and that this could therefore potentially have a negative effect on competition.

For the reasons above, we do not consider that UNC255 will better facilitate the achievement of Relevant Objective (d).

Relevant 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 argued that the publication of the proposed report would result in a reduction in administrative costs for shippers, by decreasing the number of illegitimate objections raised by shippers and furthering Relevant Objective (f).

In our view, we do not consider that this report will accurately identify misuse of the objections process and we have concerns regarding how the data will be interpreted. We therefore do not believe there will be a reduction in the number of invalid objections by shippers as a result of this publication.

Therefore, we consider that the proposal will not further facilitate Relevant Objective (f).

Other Issues

We note the concerns of some respondents on whether misuse of the objections process ought to be tackled through the UNC or through licence provisions. The purpose of SLC 14.2 of the supply licence is to govern the rules under which a supplier can raise an objection, whereas the UNC oversees the process of objections.

We recognise that the supply point objections are an important issue. We have indicated through the Energy Supply Probe findings¹⁰ that we will be receiving comprehensive information regarding suppliers' transfers and objections in the GB non-domestic energy market on a monthly basis to enable us to monitor them more closely. We will also be taking into account other data and information relevant to understanding how well the objections process is being used by suppliers. Through collection of these data, we anticipate that we will have enhanced visibility on supplier objections, which should help incentivise correct use of the objections process.

If we suspect any misuse of the objections process based on this or any other information, we will consider whether there are grounds for taking enforcement action. We do not consider that the publication of the proposed report will enhance Ofgem's visibility on supplier activity relating to transfer objections beyond the monitoring action we have outlined above.

We consider that implementation of this proposal will not further our principal objective or statutory duties. The proposed publication would provide insufficient data to identify potential misuse of the objections process and therefore will not promote effective competition. As a result, UNC255 will not facilitate our principal objective to protect the interests of current and future consumers, through promoting effective competition where appropriate.

Decision notice

In accordance with Standard Special Condition A11 of the Gas Transporters Licence, the Authority, hereby directs that modification proposal UNC255:
"Publication of Objection Rates for Large Supply Points (LSPs)" not be made.

Andrew Wright
Senior Partner, Markets
Signed on behalf of the Authority and authorised for that purpose.

¹⁰ Energy Supply Probe – Initial Finding Report ref 140/08 October 2008 can be found on the Ofgem website www.ofgem.gov.uk