

Modification proposal:	Uniform Network Code (UNC) 281: Introduction of an Implementation Timeframe for modification proposals (UNC281)		
Decision:	The Authority ¹ directs that this proposal be made ²		
Target audience:	The Joint Office, Parties to the UNC and other interested parties		
Date of publication:	22 February 2011	Implementation Date:	To be confirmed by the Joint Office

Background to the modification proposal

The issue of modification proposals timing out pending an Authority decision arose in the case of a number of modifications raised to modify the calculation of transmission losses³ under the Balancing and Settlement Code (BSC). The Authority was unable to make a decision on these modifications before the last 'decide by' date set out in the final report, in part in order to carry out a revised assessment of the original proposals owing to uncertainty over some of the original analysis. The Authority subsequently indicated its intention to defer a decision, taking it beyond the 'decide by' date set out within the final report. The decision to defer was subsequently challenged in court by various parties. The judge ruled that the Authority has no power to make a decision about a proposed BSC modification if the implementation date or 'decide by' date, has passed. This ruling highlighted a risk that the Authority may be 'timed out' of its ability to take a decision.

Following the legal challenge, we consulted twice⁴ on how to address the risk of timing out. Each consultation proposed options to modify the licences of the code owners of the BSC, the Connection and Use of System Code (CUSC) and the UNC in order to remove the risk of timing out. We identified the BSC, the CUSC and the UNC as the industry codes with the greatest commercial impact. We considered that the removal of the risk of timing out would be beneficial in two ways:

- preventing wasteful loss and duplication of resources if the timing out of an otherwise valid proposal resulted in it being re-raised and work having to be done again; and
- preventing loss or delay of consumer and industry benefits that would have arisen from the timely, potentially earlier, implementation of the proposal.

The court judgement also highlighted these issues as reasons to avoid 'timing out'.

In the second consultation, we presented an option of a licence change allowing the Authority to require code panels to revise a proposed implementation date for a pending modification where there was a risk of timing out. Panels would undertake a consultation with all interested stakeholders and present a revised proposed implementation date(s). The Authority could also require panels to update any analysis submitted in the final modification report (also after consultation) if this was out of date.

Most respondents to the consultations did not support Ofgem's proposed licence changes for a variety of reasons. The main concerns were that:

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.

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

³ BSC transmission losses modifications P198, P200, P203 and P204 are available on the Elexon website.

⁴ Both consultations (Ref. 152/08, November 2008 and Ref. 51/09, May 2009) appear on the Ofgem website.

- There would be a reduced incentive on the Authority to make timely decisions on pending modifications if all proposed implementation dates were open ended.
- The use of licence powers was disproportionate to the problem of timing out.
- The lack of an Authority decision over an extended period would increase regulatory uncertainty and risks to market participants and consumers.

National Grid (NG), in its responses to our consultations, noted its preference to deal with the issue of timing out through appropriate modifications to the industry codes rather than through licence changes. It subsequently raised proposals to modify the BSC, the CUSC and the UNC⁵.

Suggested implementation dates are generally treated differently under the UNC than the electricity codes. Within the BSC and CUSC, once a proposal is submitted to the respective panel for consideration, responsibility for the proposal, including assessing one or more relevant implementation dates, passes from the proposer to the panel. Within their recommendation to the Authority the panel will set a minimum of one pair of dates consisting of a 'decide by date' for an Authority decision and an associated 'implementation date'. However, under the UNC, whilst a User may include a 'suggested implementation date' as part of their modification proposal, this is treated as an aspiration and generally remains unchanged throughout the development of the proposal. In some cases this date may have expired before the Final Modification Report (FMR) is submitted to the Authority.

Where the modification requires a modification to central IT systems, the implementation plan may be discussed and agreed by the UK Link Committee, but only following receipt of a direction to implement from the Authority. For non-system changes, the implementation date for a proposal will be at the discretion of the Gas Transporters (GTs). In either case, the GTs will only issue a notice of implementation confirming the implementation date after the Authority makes its decision. This has led to a perception that modifications will generally be implemented at a time most cost efficient for GTs, which may or may not coincide with Users' preferences or maximise the value of the modification. This asymmetry is particularly apparent where the proposal is funded under the User Pays principle.

Principle 11 of the Code Administration Code of Practice⁶ (CACoP) sets out that there should be flexibility for implementation, with a delivery time proportionate to the realisation of benefits. Various options for implementation should be developed, where appropriate, and form part of the consultation on the modification. The existing UNC rules do not conform to this principle.

The modification proposal

Whilst the risk of proposals timing out may not be as great under the UNC as the electricity codes, NG has raised UNC281 in order to address that residual risk and bring the UNC closer into line with the other codes. UNC281 also seeks to address other concerns with the current process, giving proposers greater influence around implementation dates.

It is proposed to add a requirement into the UNC modification rules such that where a proposer wishes to include a view on implementation timescales then they shall include

⁵ The proposals are BSC modification P250, CAP179 and UNC281.

⁶ The Code of Practice was implemented as part of the recent Code Governance Review changes and appears on the Ofgem website: <http://www.ofgem.gov.uk/Licensing/IndCodes/CGR/Documents1/FinalCoP.pdf>.

at least two 'fixed' implementation dates. One of these dates will be given effect through the timing of the associated Authority decision. For instance, if the decision falls before 1 July, the implementation date will be 1 January in the following year; if the decision is later than 1 July, the implementation will be on a subsequent fixed date.

In order to prevent the risk of the modification 'timing out', there will additionally be an open-ended back-stop date, based on a lead time from the Authority's decision rather than a fixed date, e.g. implementation will be 6 months from the date of the decision.

In both cases, justification for the selection of these dates or lead times should be provided. However, the proposer will continue to have the option of leaving the implementation date blank where they do not consider it to be particularly critical to the merits of their proposal.

In determining⁷ whether a proposal should proceed straight to consultation or sent for further development, the UNC modification panel should consider whether the proposed fixed implementation date and backstop lead time are sufficiently developed.

UNC Panel⁸ recommendation

At its meeting of 21 October 2010 the UNC Panel voted by a majority to recommend implementation of this proposal.

The Authority's decision

The Authority has considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 19 January 2011. 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 FMR⁹. The Authority has concluded that:

1. implementation of the modification proposal will better facilitate the achievement of the relevant objectives of the UNC¹⁰; and
2. directing that the modification be made is consistent with the Authority's principal objective and statutory duties¹¹.

Reasons for the Authority's decision

There were 7 responses to the Joint Office's consultation, of which 5 were in favour and 2 opposed to its implementation.

We agree with the proposer and the UNC panel that this proposal should be assessed against relevant objectives (c) and (f). We consider that the implementation of this proposal may have benefits for both the efficiency of the pipeline system and competition between shippers, though it will do so by facilitating the timely introduction of future

⁷ Under 7.2.3 of the UNC modification rules.

⁸ The UNC Panel is established and constituted from time to time pursuant to and in accordance with the UNC Modification Rules.

⁹ UNC modification proposals, modification reports and representations can be viewed on the Joint Office of Gas Transporters website at www.gasgovernance.com

¹⁰ 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

¹¹ 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.

modifications. However, as these benefits cannot at this time be directly attributable to UNC281, we have not sought to give them any particular weight as part of this decision.

Relevant objective (c): the efficient discharge of the licensee's obligations under the licence

One respondent opposed to the implementation of UNC281 recognised that it seeks to provide a framework for proposers of UNC modifications to set out milestone dates for the implementation of proposals, and the reasons why. They considered that this may help to drive good discipline when proposers submit UNC modifications. However they pointed out that proposers can currently set out an implementation timetable if they wish. UNC281 does not provide a new opportunity to do so but may prompt more thinking about implementation dates when modifications are proposed.

Another respondent supported the adoption of firm implementation dates, consistent with that of the BSC and CUSC. They considered that this would provide a means of clearly setting out implementation options, whilst ensuring that they can align and manage their IT system change programmes. They considered that requiring a proposer to indicate an implementation date or lead time with an explanation is evidence of clear and efficient practice. They also noted that this was one of the CACoP principles and might ensure the Authority is aware of the benefits provided to the industry from prompt implementation. Notwithstanding these benefits, the respondent welcomed the fact that Users are not obliged to provide their views on possible implementation timescales where it is not critical or practical to do so.

We agree with the proposer that the implementation of this proposal will improve the mechanism by which UNC modification proposals, and any alternative or variation, are raised by ensuring clarity regarding any suggested implementation dates and accompanying justification. This improved mechanism will aid both the understanding of the proposed changes and the subsequent Authority decision.

One of the respondents in favour of the proposal noted that it may not go far enough as it does not provide a binding mandate for implementation to take place on the dates specified by the proposer. They considered that further benefit could be gained by making the specified dates binding. We agree that it may have been preferable if the proposal had clearly provided a power for the Authority to direct a particular implementation date. However, we do have the ability under the GT licence¹² to direct the implementation of a proposal submitted to us; to the extent that this proposal expressly provides for a specified implementation date, we consider that it can appropriately form part of the direction.

We consider that the implementation of UNC281 will bring the UNC more closely into line with the principles of the CACoP, in particular principle 11. To the extent that GTs are obliged by Amended Standard Special Condition A11 of their GT licence to be consistent with the principles set out in the CACoP, we consider that it will more efficiently discharge their obligations under their licence.

Relevant objective (f): the promotion of efficiency in the implementation and administration of the UNC

¹² As set out in Standard Special Condition A11(15)(b) of the Gas Transporters Licence, see: http://epr.ofgem.gov.uk/document_fetch.php?documentid=6547

We note that the UNC Panel considered that this proposal will provide greater clarification of a suggested implementation timescale to all interested parties. As such, interested parties will be able to include in their representations views on the effect on them of any suggested implementation date.

If the benefits of a proposal will be affected by the date of an Authority decision or by the date of implementation, these effects should be accurately captured and defined within the proposal. For instance, there may be situations where the additional costs of an earlier implementation date would be outweighed by the additional benefits that may be realised in that time. Equally, the benefits of a proposal may be negated if it cannot be implemented ahead of an external event, such as the start of a charging period or auction round. A structured range of implementation dates and sufficient accompanying justification for these dates should improve transparency to all parties and better inform any subsequent decisions.

One respondent noted that UNC281 differs from the model that was adopted by the BSC following the implementation of P250 (the alternative proposal), and therefore fails to align the UNC with other industry codes. We agree that UNC281 adopts a different model to address the problem of timing out. We consider that these differences reflect, in part, the differing nature of the respective codes. We consider that UNC281 offers the ability to tie implementation dates to release dates, but with the added safeguard of a backstop date. We consider that this negates the need for the Authority to request a revised implementation and/or decision date from the panel.

Another respondent, while supporting a number of aspects of the proposal raised a concern about the implications of a backstop lead time period. They noted that, by convention, the issue of an implementation date 'timing out' has not been a concern in the UNC. They considered that more prescriptive rules may remove some of the inherent flexibility within the UNC, which is valuable in tailoring solutions to particular issues. We do not agree that UNC281 will reduce flexibility within the UNC. In particular, we note that the proposer can leave the proposed implementation date blank if they consider that it is not time critical. If an implementation date subsequently proves to be impractical to achieve, the GTs may, with the consent of the Authority, issue a revised notice of implementation. As set out above, we consider that there should be very good reasons why an implementation date is anything other than that suggested by the proposer and/or identified as offering the most value through the course of assessment.

For the reasons set out above, we consider that UNC281 better facilitates relevant objective (f) than the current baseline.

Decision notice

In accordance with Standard Special Condition A11 of the Gas Transporters Licence, the Authority, hereby directs that modification proposal UNC281: '*Introduction of an Implementation Timeframe for modification proposals*' be made.

Mark Cox

Associate Partner, Industry Codes and Licensing

Signed on behalf of the Authority and authorised for that purpose