

Modification proposal:	<b>Uniform Network Code (UNC) 521: Revision of User Admission Criteria to include Transporter verification of its ability to transact with the Applicant User (UNC521)</b>		
Decision:	The Authority <sup>1</sup> has decided to reject this modification <sup>2</sup>		
Target audience:	UNC Modification Panel, Parties to the UNC and other interested parties		
Date of publication:	11 May 2015	Implementation date:	n/a

## Background

The current criteria for a party (an "Applicant User") to become a User under the UNC are specified in the Transportation Principal Document (TPD) of the UNC. An Applicant User must satisfy these admission requirements before acceding to the UNC. These requirements include putting in place security in relation to energy balancing activities.

As part of the User Admissions process, there is currently no explicit requirement for confirmation that an Applicant User is able to transact with the Transporter for amounts payable under the UNC. The Energy Balancing Credit Committee (EBCC)<sup>3</sup> has concerns that an Applicant User could accede to the UNC and commence trading activities, but be unable to make payments in respect of any consequential Energy Balancing charges. Under the UNC, unrecovered Energy Balancing charges are effectively socialised across all other Users. Similar arrangements also apply for Transportation charges. This may mean other Users are exposed to smearing of any unrecovered costs if a new User is unable to make payments to the Transporter.

## The modification proposal

The modification was proposed by National Grid Gas NTS (NGG). It proposes to introduce additional criteria as an admission requirement to the UNC. The aim of the modification proposal is to ensure that only Applicant Users that are able to transact with the Transporter's account bank can accede to the UNC.

The modification proposes to achieve this by adding additional criteria according to which an Applicant User cannot be admitted if:

- i. the Transporter's account bank has notified the Transporter that it will not deal with the Applicant User; and
- ii. where (i) applies, the Transporter has been informed by at least one other bank or financial institution which, in the Transporter's reasonable opinion, is a major and reputable bank in the United Kingdom, that such bank or financial institution would not deal with the Applicant User; and
- iii. the Transporter has provided to the Applicant User details of the Transporter's account bank to enable the Applicant User to discuss the matter directly with that account bank.

<sup>1</sup> References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document to refer 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.

<sup>2</sup> This document constitutes notice of the reasons for this decision, as required by section 38A of the Gas Act 1986.

<sup>3</sup> The EBCC is a body of User representatives with certain rights and responsibilities relating to the management of Energy Balancing Credit Risk.

NGG consider that the modification proposal would better facilitate UNC Relevant Objective (d) (i.e., the securing of effective competition between relevant shippers) by minimising the risk of unrecovered Energy Balancing and/or Transportation charges accrued by a User that is unable to make payments to the Transporter being socialised across all other Users.

### **UNC Modification Panel<sup>4</sup> recommendation**

The Final Modification Report (FMR) for UNC521 was presented to the UNC Modification Panel on 23 January 2015. Modification Panel members considered representations received in response to the published consultation and additional information provided by the proposer in response to issues raised during consultation.

Eight respondents to the consultation supported implementation and agreed with the views expressed in the FMR. One respondent was not in support.<sup>5</sup> This respondent considered the modification would not better facilitate the Relevant Objectives of the UNC. It raised a number of concerns, including the level of emphasis placed on the views of two banks/financial institutions. It also proposed an alternative solution and suggested that the relevant Applicant User could compensate the Transporter for reasonable costs associated with setting up alternative banking arrangements.

Members of the Modification Panel considered that allowing new applicants to require Transporters to deal with alternative banking arrangements would be complex and expensive. Members also considered that the proposed approach was not discriminatory against new applicants. This was because under the current arrangements a new User, who is unable to transact with the Transporter, could quickly become subject to termination provisions. Members considered that this would be inefficient and therefore the proposed approach would not be unduly discriminatory.

With 9 votes in favour, the Modification Panel recommended that UNC521 should be implemented. We received the FMR for decision on 23 January 2015.

NGG also submitted additional information to us on the indicative costs of interaction with additional banks or financial institutions. This information was submitted to us on 16 February 2015.

### **Our decision**

We have considered the issues raised by the modification proposal and the FMR dated 23 January 2015. We have considered and taken into account the responses to the industry consultation on the modification proposal, summaries of which are attached to the FMR.<sup>6</sup> We have also considered the additional information provided to us by the proposer.

The Modification Panel considered that UNC521 would better facilitate Relevant Objective (d). We have concluded that it has not been demonstrated to us that implementation of the modification proposal would better facilitate the achievement of the Relevant Objectives of the UNC.<sup>7</sup>

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<sup>4</sup> The UNC Modification Panel is established and constituted from time to time pursuant to and in accordance with the UNC Modification Rules.

<sup>5</sup> All consultation responses are summarised in the FMR.

<sup>6</sup> UNC modification proposals, modification reports and representations can be viewed on the Joint Office of Gas Transporters website at [www.gasgovernance.co.uk](http://www.gasgovernance.co.uk)

<sup>7</sup> As set out in Standard Special Condition A11(1) of the Gas Transporters Licence, see:

## Reasons for our decision

We have assessed the modification proposal against the UNC's Relevant Objectives. We acknowledge the FMR identifies a potential issue with the UNC User Admissions process. However, based on the information provided to us, we do not consider that the modification proposal will better facilitate UNC Relevant Objective (d). It has also not been demonstrated to us that the modification proposal would better facilitate any of the other UNC Relevant Objectives.

### ***Relevant Objective (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***

The proposer considers that UNC521 will better facilitate Relevant Objective (d) by minimising the risk of unrecovered charges being socialised across all other Users.

Accession to the UNC is required in order to engage in a number of activities associated with the gas market in Great Britain. Therefore, it is important to ensure that access to the UNC is not unduly limited. We have a number of specific concerns with the modification proposal, including:

- The potential level of discretion given over market entry to two banks/financial institutions. We do not consider that the FMR provides sufficient evidence to justify the Transporter contacting only one other bank/financial institution. We are also concerned about the potential for a scenario in which one or more banks or financial institutions, which the Transporter reasonably considers to be major and reputable banks in the UK, are willing to transact with an Applicant User but the bank(s) approached by the Transporter would not;
- The potential lack of transparency regarding the way in which discussions with alternative banks are carried out;
- The lack of clarity on the process to be followed if one bank or financial institution, other than the Transporter's existing account bank, which the Transporter reasonably considers to be a major and reputable bank in the UK, indicates that it would deal with the Applicant User. It is not clear that the Transporter is then obliged to set up a second account bank to facilitate the Applicant User making payments. There is also insufficient information on the likely level and proposed treatment of costs associated with setting up a second account bank and the applicability of the additional admission criteria if a second account bank was set up. If the Transporter were to set up a second account bank to facilitate an Applicant User acceding to the UNC, it is not clear how the proposal would apply to a subsequent Applicant User. For example, it is not clear whether the Transporter would have to consult a further bank or financial institution in the event that neither of the Transporter's account banks would deal with the Applicant User; and
- The failure to include a detailed assessment of alternative solutions that have been considered, including the costs of these.

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[http://epr.ofgem.gov.uk/Pages/EPRIInformation.aspx?doc=http%3a%2f%2fepr.ofgem.gov.uk%2fEPRFiles%2fStandard+Special+Condition+PART A - Consolidated - Current+Version.pdf](http://epr.ofgem.gov.uk/Pages/EPRIInformation.aspx?doc=http%3a%2f%2fepr.ofgem.gov.uk%2fEPRFiles%2fStandard+Special+Condition+PART+A+-+Consolidated+-+Current+Version.pdf)

We consider UNC 521 could have the effect of restricting access to the market, which would have a negative impact on competition. We have not received sufficient justification that this potential negative consequence is outweighed by the potential improvement achieved by reducing the risk of additional socialised costs. So, overall, we do not consider that it has been demonstrated that this proposal would better facilitate Relevant Objective (d).

## **Conclusion**

We do not consider the FMR provides sufficient evidence to demonstrate that the proposed modification better facilitates the Relevant Objectives.

If market participants consider that there remains a problem with the current User Admission arrangements, we would encourage them to come forward with a proposal to address the issue, taking account of the concerns outlined above and taking a holistic approach to the impact this issue may have on the gas industry in Great Britain. For example, we would encourage market participants to consider the following areas:

- The treatment of costs associated with interacting with additional banks or financial institutions;
- The applicability of any modification to future Applicant Users and the potential for discrimination between Applicant Users and existing Users;
- The potential impact on efficiency in the implementation and administration of the UNC; and
- The balance between potential restriction of access to the GB gas market and the cost and complexity of alternative banking arrangements.

## **Decision notice**

In accordance with Standard Special Condition A11 of the Gas Transporters Licence, the Authority has decided that modification proposal UNC521: 'Revision of User Admission Criteria to include Transporter verification of its ability to transact with the Applicant User' should not be made.

**Frances Warburton**  
**Partner, Wholesale Markets**

Signed on behalf of the Authority and authorised for that purpose