

UNC Modification	At what stage is this document in the process?
<h1>UNC 0696:</h1> <h2>Addressing inequities between Capacity booking under the UNC and arrangements set out in relevant NExAs</h2>	<div style="display: flex; justify-content: space-around;"> 01 Modification 02 Workgroup Report 03 Draft Modification Report 04 Final Modification Report </div>
<p>Purpose of Modification: To the extent to which a Consumer has entered into a bi-lateral Network Exit Agreement (NExA) with the relevant Transporter then any new or additional capacity charging should only apply from the relevant date set out in the NExA.</p>	
	<p>The Workgroup recommends that this Modification should:</p> <ul style="list-style-type: none"> Follow Authority Direction Procedures; and be issued to consultation. <p>The Panel will consider this Workgroup Report on 15 August 2019. The Panel will consider the recommendations and determine the appropriate next steps.</p>
	<p>High Impact: Transporters, Shippers and Consumers</p>
	<p>Medium Impact: None</p>
	<p>Low Impact: None</p>

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Timetable

The Workgroup recommends the following timetable:

Initial consideration by Workgroup	27 June 2019
Workgroup Report presented to Panel	15 August 2019
Draft Modification Report issued for consultation	15 August 2019
Consultation Close-out for representations	06 September 2019
Final Modification Report available for Panel	09 September 2019
Modification Panel decision	19 September 2019

1 Summary

What

An inequity has been identified between the arrangements for capacity as set out in the NExA which can be a bilateral agreement between the Transporter and the Consumer or a Tripartite agreement including the Shipper and the UNC which is an agreement between the Shippers and Transporters.

Context

An example of the issues identified in this Modification is set out in Section 3 and provides the context for the proposed changes to the UNC. A consumer has been disadvantaged by the inconsistencies in the Capacity Referral process not taking into account the limitations set out by the relevant Transporter in the NExA.

Why

If the change is not made, then relevant Consumers will continue to be at risk of incurring charges under the UNC whilst being prohibited from benefiting from the new or additional capacity under the terms of the NExA.

How

It is proposed that any new or additional capacity requested under the UNC should only take effect from the date set out in the NExA. This process would not apply to NTS Supply Points.

2 Governance

Justification for Authority Direction

The Modification Panel determined that as the proposal has a material impact on the Transportation arrangements for Shippers and relevant consumers and proposes a limited element of retrospection, it should be subject to **Authority Direction**.

Requested Next Steps

- This Modification should proceed to consultation; and
- follow Authority Direction procedures for the reasons set out above.

3 Why Change?

Issue

An inequity has been identified between the arrangements for Capacity as set out in the Network Exit Agreement (NExA) which can be a bilateral agreement between the relevant Transporter and the relevant Consumer or a tripartite arrangement including the Shipper, and the Uniform Network Code (UNC) which is an agreement between Shippers and Transporters. Following discussions with the relevant Transporter who may be the only party to both sets of arrangements, an inequity in the current arrangements has been identified which needs to be addressed to enable an equitable outcome for the Consumer and to avoid similar occurrences of Consumer detriment in the future.

Background

Customer A entered into arrangements to increase Capacity at one of their sites with Transporter B.

As the site is a major industrial site (Class 1) this involved considerable effort both in the form of resources, surveys, undertakings, and negotiation between Customer A and Transporter B. Due to this complexity the date that additional gas was required to be available was dynamic in nature.

Customer A was already subject to a NExA with Transporter B.

Transporter B and Customer A finally agreed bilaterally that the additional gas should be available for offtake from 1st December 2018 and a variation to the existing NExA was issued to the customer to this effect.

However, during the project, prior to the variation to the NExA being finalised, a Capacity increase was proceeded by Shipper C (in this case the current Shipper) for a date prior to the 1st December 2018. This was due to both the dynamic nature of the project and pressure to ensure Capacity was available in a timely manner and to avoid the risk of ratchet charges being applied by Transporter B under the UNC i.e. if the site was to use the increased capacity prior to a capacity increase being approved the site would have been subject to penal Ratchet charges.

This capacity increase request was referred to Transporter B.

Despite Transporter B being party to the terms of the revised NExA negotiations and thus aware that this only allowed for offtake from 1st December the referral was accepted for a date prior to the 1st December and the increase registered prior to the 1st December 2018.

This has led to the Customer being charged hundreds of thousands of pounds for additional Capacity that they were prohibited, under the terms of the NExA, from taking prior to the 1st December.

For the avoidance of doubt detailed discussions have taken place to seek to address this matter. However, it has been noted that the current drafting in the UNC needs to be amended to enable an equitable resolution.

This proposal would ensure that Shippers and Customers are not subject to this unfair charging risk in future and would also seek to recover the costs unfairly levied against Shipper C and Customer A i.e. the proposal has a limited degree of retrospection. For the avoidance of doubt this solution will be enduring so preventing this issue from occurring in the future.

Retrospective Arrangements

Ofgem currently applies a number of tests regarding retrospection:

- a situation where the fault or error giving rise to additional [material] costs or losses was directly attributable to central arrangements;
- combinations of circumstances that could not have been reasonably foreseen; or
- where the possibility of a retrospective action had been clearly flagged to the participants in advance, allowing the detail and process of the change to be finalised with retrospective effect.

This issue meets all of these tests, in that restriction in LDZ Capacity becoming available has resulted owing to mismatches in central system processes and processes operated by the Gas Transporters (NExAs). It could not be reasonable foreseen at the time when these discussions were being undertaken to increase capacity that such a mismatch would be allowed to occur by the Gas Transporters.

The impact of retrospection will simply to refund the capacity payments made by the Gas Shipper for the affected meter points. These additional costs come out of allowed revenue, so there will be a minimal impact to the rest of the market as the refund will be spread across the whole DN.

4 Code Specific Matters

Reference Documents

Network Exit Agreement (NExA)

Knowledge/Skills

5 Solution

Solution

It is proposed that any new or additional capacity for Supply Meter Points (excluding NTS Supply Points) requested under the UNC should only take effect from the date set out in the NExA.

Business Rule 1

Any requests for new or additional capacity shall, were a relevant NExA exists, only take effect from the relevant date set out in the NExA.

Business Rule 2

This change would be effective from 1st September 2018, with the CDSP correcting any capacity charges for sites identified by a Shipper as having been affected by the mismatch in NExA and UNC capacity booking processes.

6 Impacts & Other Considerations

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

None

Consumer Impacts

Impacts consumers who are party to NExA arrangements.

Consumer Impact Assessment	
Criteria	Extent of Impact
Which Consumer groups are affected?	<ul style="list-style-type: none">Any consumer with a NExA and is either a Class 1 or Class 2 Supply Meter Point

What costs or benefits will pass through to them?	<ul style="list-style-type: none">• If implemented this Modification would benefit consumers as it would remove a risk of potential charging for capacity, they are prevented from using under the terms of the NExA.• If implemented retrospectively, this should benefit consumers who have previously paid for capacity they were unable to use.
When will these costs/benefits impact upon consumers?	<ul style="list-style-type: none">• Immediately following implementation.
Are there any other Consumer Impacts?	None identified.

Cross Code Impacts

There should be no known impacts on other Codes

EU Code Impacts

None

Central Systems Impacts

There should be no Central System impacts as this proposal can be addressed as part of the existing Transporter referral process.

Workgroup Impact Assessment

There were some concerns raised regarding the obligation for the Shipper to pass on the payment to the affected customer, but it was stated that the proposal would not be modified to clarify this point.

It was noted that one participant had advised that they were considering raising an Alternatives Modification. However, others felt that this Modification was sufficiently developed to be issued to consultation and should be progressed without delay or being subject to a wider review.

Some participants were concerned that the justification for retrospective implementation had not been provided.

Rough Order of Magnitude (ROM) Assessment

A ROM has not been requested as there are no impacts identified on Central Systems.

7 Relevant Objectives

Impact of the modification on the Relevant Objectives:	
Relevant Objective	
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.	None
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.	None
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.	None
Demonstration of how the Relevant Objectives are furthered inserted here	
Relevant Objective f): Implementation of this Modification would further this Relevant Objective as it would ensure the alignment of provisions in both the NExA and UNC to ensure capacity is not booked that can't be used by the consumer.	

8 Implementation

No implementation timescales are proposed and as there are no known Central System Impacts, implementation could be immediately following Authority Direction to implement the Modification.

9 Legal Text

Legal Text and Commentary was not available for consideration by the Workgroup.

10 Recommendations

Workgroup's Recommendation to Panel

The Workgroup asks Panel to agree that:

- This Modification should proceed to consultation. However, it was noted that there has been a relatively short development period allowed, although the Modification is very specific in nature.
- It was also noted that some would prefer any Alternative Modification (if raised) is considered alongside this Modification.