

Modification proposal:	Uniform Network Code (UNC) 0253: Facilitating a Supply Point Enquiry Service for Large Supply Points		
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:	11 January 2010	Implementation Date:	N/A

Background to the modification proposal

Signatories to the UNC can currently request information from the Transporters' Agent (xoserve) on the supply of gas to premises by raising a Supply Point Enquiry. The UNC allows the Transporters' Agent to provide information including the address of the supply point premises, the supply point capacity and proposed off-take rate, the annual quantity (consumption) for each supply meter point, and the relevant supply point transportation charges. Users can submit a Supply Point Enquiry if they are "contemplating submitting a Supply Point Nomination"². This process allows an audit trail of users accessing the data but can take time and resources for Users to operate the process. The modification proposal aims to reduce the time and costs of accessing this information and to reduce the risks associated with providing quotes based on estimated information provided by the customer, i.e. before a response to a Supply Point Enquiry has been received.

The modification proposal

The modification proposal provides for xoserve to produce a report on request by Users. This report contains all the Supply Point Enquiry data relating to Large Supply Points (LSPs) irrespective of whether the User is already supplying or is "contemplating submitting a Supply Point Nomination". Users would be expected to contract directly with xoserve for the provision of this report on a commercial basis through the User Pays Service.

The proposer considers that access to these reports would allow suppliers to compete more intensely for customers. The proposer also considers that the service could lower the costs to Users of accessing the information leading to better prices for customers. Therefore, it is argued, the proposal could be expected to better facilitate relevant objective d), the securing of effective competition between relevant shippers and suppliers.

UNC Panel³ recommendation

The UNC Panel met on 20 August 2009 and voted on the modification proposal. Of the eight voting members present, capable of casting ten votes, six votes were cast in favour of implementing the Proposal. Therefore the UNC Panel recommended implementation.

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 process is set out in more detail in Section G of the UNC.

³ The UNC Panel is established and constituted from time to time pursuant to and in accordance with the UNC Modification Rules.

The Authority's decision

The Authority has considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 2 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 FMR⁴.

The Authority has concluded that:

1. implementation of the modification proposal will not better facilitate the achievement of the relevant objectives of the UNC; and
2. directing that the modification be made would not be consistent with the Authority's principal objective and statutory duties⁵.

Reasons for the Authority's decision

The Joint Office received eight responses to its consultation of which three were supportive and four were against and one offered comments. Ofgem also consulted Consumer Focus which was, on balance, opposed to the proposal. In addition, we received one confidential response from an industry participant who was in favour of the modification proposal.

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

Ofgem considers that the modification may have a number of tangible beneficial impacts on competition, notably in reducing transaction costs associated with securing accurate quotations. However, we note that there is no information of the type that we would ordinarily expect to see from a User Pays proposal, for example an estimate of xoserve's costs, the basis on which they will be apportioned, and indicative charges. Without this information, we are unable to conclude whether the costs of procuring a report will reduce transaction costs or ultimately have any impact on competition.

We note the concerns expressed by MEUC and some other respondents that particular customer groups may be targeted and other groups may find it increasingly difficult to attract supply offers. In a competitive market, suppliers are free to target certain customer groups and the intensity of competition may lead to better tailored product offerings for different groups of customers. As suppliers can access the information if they are "contemplating submitting a Supply Point Nomination" we consider it unlikely that the modification proposal overall will lead to a significant change in the likelihood of customers attracting appropriate offers although we recognise that the timescale for preparing a quotation may be improved.

Overall we are unable to conclude that this relevant objective will be better facilitated.

Relevant objective e) – the promotion of efficiency in the implementation and administration of the Uniform Network Code.

As noted above there is no information of the type that we would ordinarily expect to see from a User Pays proposal, for example an estimate of xoserve's costs, the basis on

⁴ UNC modification proposals, modification reports and representations can be viewed on the Joint Office of Gas Transporters website at www.gasgovernance.com

⁵ 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.

which they will be apportioned, and indicative charges. Without this information, we are unable to conclude whether the proposal would be more or less efficient than the existing arrangements.

We note that one respondent suggested that the implementation of this proposal would insert additional text into section V while retaining existing text in Section G of the UNC. It considered that covering the release of information in two sections in such a way would not be efficient, though it could not be certain as legal text had not, at that time, been produced. We do not necessarily share this view, as Section V of the UNC sets out provisions in respect of the release of information and confidentiality, albeit the individual data items may be set out elsewhere in the code.

As no arguments have been put forward, and given the lack of information provided in respect of the User Pays implications, we are not able to conclude that this relevant objective would be better facilitated.

Ofgem's Principal Objective to protect the interests of consumers

Data protection

Following the receipt of the FMR, Ofgem asked for draft legal text to be prepared. The relevant GT reported that, given the proposed modification referred to the release of data relating to LSPs, and that there are domestic sites within that group, the proposed modification raised questions on GTs' responsibilities under data protection legislation. It stated that GTs would not be able to provide an implementation date as, if they were asked to provide a report on all LSPs, they may be in breach of the Data Protection Act 1998, particularly as this category would include sites occupied wholly or mainly for domestic purposes.

This position was supported by all of the GTs that are signatories to the UNC. We note that one of the respondents to the consultation also stated that concerns regarding data protection had not been fully identified and satisfied by the proposer. It is unfortunate that, despite requests for clarification on this point during development, and a subsequent response from the proposer, this issue has not been adequately dealt with in the preparation of the modification. Potentially this could have been resolved had the Proposal been targeted at non-domestic customers, although we would still have had the concerns discussed elsewhere.

Data access rules

Another respondent noted that shippers can currently gain access to this information by submitting a Supply Point Enquiry which creates an audit trail enabling a check to be made if there was a question of Users abusing the access they have to the information. Two respondents' considered that the word "contemplating" was intended to require shippers to have had contact with the prospective customer prior to submitting a Supply Point Enquiry.

Ofgem notes that there is considerable ambiguity amongst Users around the use of the word "contemplating" as used in UNC Section G 1.17. Interpreting the word "contemplating" widely as not requiring prior customer contact, would imply that all signatories to the UNC have unfettered access to the data. Therefore, moving to a situation where the information is made available in a report, and thus cutting the costs of accessing the information, could be expected to improve on the current arrangements.

However, the current arrangements provide a record of who is accessing data for a particular site thereby reducing the potential for misuse of the data. If the word “contemplating” implies prior customer contact and intent to enter into a contract, then the proposal would represent a significant reduction in protection for consumers as to when a User could access data relating to their premises.

Signatories to the UNC may want to consider ways in which the circumstances under which they can submit a Supply Point Enquiry can be clarified, in particular on the interpretation of the word “contemplating”. We note that access to similar data in the electricity industry (using the ECOES system) is given on the basis that a supplier warrants that the customer has given their consent for the supplier to access the data.

MEUC in its response noted that a development group had investigated whether a means could be found whereby the consumer could be involved in authorising an enquiry or nomination and the correction of erroneous data. Whilst at the time this was considered too complicated to implement, interested parties may also wish to reconsider this suggestion and what opportunities there may be for providing the data through the use of an online service.

Conclusion

For the reasons set out above and in the absence of clear cost information relating to the proposed service, we have been unable to determine whether this proposal would deliver any significant savings or other benefits. In particular, we have concerns, and note the concerns of Consumer Focus and MEUC, on the extent to which suppliers should have access to customer information without the express permission of customers. Were a modification proposal to be raised along similar lines in the future we would expect this issue to be fully considered. We would also welcome clarification of the intention of the word “contemplating” in the UNC in this context.

We are therefore unable to conclude that directing this proposal to be implemented would further the relevant objectives of the UNC, or be consistent with our principal objective. We therefore consider that this proposal should not be made.

Ian Marlee
Partner, Trading Arrangements

Signed on behalf of the Authority and authorised for that purpose.