













UNC Final Modification Report		At what stage is this document in the process?
<h1>UNC 0696V:</h1> <h2>Addressing inequities between Capacity booking under the UNC and arrangements set out in relevant NExAs</h2>		<div>01 Modification</div> <div>02 Workgroup Report</div> <div>03 Draft Modification Report</div> <div>04 Final Modification Report</div>
<p>Purpose of Modification:</p> <p>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>		
	Panel consideration is due on 21 May 2020 <i>(at short notice by prior agreement)</i>	
	High Impact: Transporters, Shippers and Consumers	
	Medium Impact:	
	Low Impact:	

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Timetable		Systems Provider: Xoserve
Modification timetable:		 UKLink@xoserve.com
Initial consideration by Workgroup	27 June 2019	
Workgroup Report presented to Panel	18 July 2019	
Draft Modification Report issued for consultation	18 July 2019	
Consultation Close-out for representations	08 August 2019	
Final Modification Report available for Panel	12 August 2019	
Modification Panel decision	15 August 2019 (<i>at short notice</i>)	
Receipt of Ofgem's 'Send Back Letter' ¹	13 November 2019	
First Reconsideration of Proposal at Workgroup	28 November 2019	
Variation Request submitted by Proposer	21 February 2020	
Variation Request presented to Panel (immaterial)	19 March 2020	
Workgroup Report presented to Panel	16 April 2020	
Draft Modification Report issued for consultation	16 April 2020	
Consultation Close-out for representations	15 May 2020	
Final Modification Report available for Panel	18 May 2020	
Modification Panel decision	21 May 2020 (<i>at short notice</i>)	

¹ [Ofgem letter, dated 12 November 2019, entitled "Authority decision to send back Uniform Network Code \("UNC"\) 696 \("UNC696"\)": 'Addressing inequities between Capacity booking under the UNC and arrangements set out in relevant NEXAs'](#)

1 Summary

What

An inequity has been identified between the arrangements for capacity as set out in the NExA which is a bilateral agreement between the Transporter and the Consumer 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.

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 for DM Supply Points 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

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, we believe, be subject to **Authority Direction**.

Requested Next Steps

This modification should:

- be considered a material change and not subject to self-governance
- following further Workgroup review and development, in accordance with the recommendations in Ofgem's letter¹, ("the send back letter"), be submitted to Panel with a recommendation that it proceeds to consultation

3 Why Change?

Issue

An inequity has been identified between the arrangements for Capacity as set out in the Network Exit Agreement (NExA) which is a bilateral agreement between the relevant Transporter and the relevant Consumer and the Uniform Network Code (UNC) which is an agreement between Shippers and Transporters. Following discussions with the relevant Transporter who are the only party to both sets of arrangements we have identified an inequity in the current arrangements 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 would be 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

Link to: [UNC TPD Section G](#)

Link to: [UNC TPD Section J](#)

Network Exit Agreement (NExA) – Extract relating to issues raised in this Proposal

PART 1 - GENERAL

1. APPLICATION OF SECTION J4 AND J5

1.1 Sections J4 and J5 shall apply as applicable in respect of the Supply Meter Point on the basis that references to:

- (I) Supply Point Network Exit Provisions or Network Exit Agreement;
- (II) a Supply Meter Point (including a NExA Supply Meter Point);
- (III) the consumer;
- (IV) the Prevailing Offtake Rate;
- (V) the Registered User or Sharing Registered Users

shall be construed respectively as references to:

- (VI) this Agreement;
- (VII) the Supply Meter Point;
- (VIII) the Operator;
- (IX) the maximum permitted aggregate rate of offtake specified in Annex A paragraph 1.1 of Part II.
- (X) the Relevant Shippers jointly.

2. RATE OF OFFTAKE

References in this Annex to rates of offtake of gas are to the instantaneous rate (expressed in kWh's) of offtake of gas from the System at the Supply Meter Point.

5 Solution

Solution

It is proposed that any new or additional capacity for DM Supply Points (excluding NTS Supply Points), that is Class 1 or Class 2 Supply Meter Points, requested under the UNC should only take effect from the date set out in the NExA.

Business Rule 1 (BR1)

Any requests for new or additional capacity for DM Supply Points (excluding NTS Supply Points) shall, where a relevant NEXA exists, only take effect from the relevant date set out in the NEXA.

Business Rule 2 (BR2)

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.

Business Rule 3 (BR3)

In the event of a Ratchet occurring that exceeds the SOQ as set out in the NExA then the PMSOQ will not increase in line with normal practice. Instead the PMSOQ will be capped in line with the SOQ set out in the NExA. In such circumstances the Ratchet charge will be based on the SOQ that caused the Ratchet to occur. If in the relevant billing period (as set out in B4.7.13) a subsequent Ratchet occurs, then any Ratchet Charge will not include any charges that have already been incurred under the previous Ratchet.

For example:

1. SP1's SOQ is currently 90
2. SP1 uses 120 on Day X and Ratchets
3. This exceeds the SOQ set out in the NExA for SP1 of 100
4. The PMSOQ will not exceed 100, as set out in the NExA
5. A Ratchet charge will be based on 120
6. SP1's SOQ is currently 100
7. SP1 uses 110 on Day Y and Ratchets
8. This exceeds the SOQ set out in the NExA for SP1 of 100
9. The PMSOQ will not exceed 100, as set out in the NExA
10. A Ratchet charge will not be applied as the Shipper has already been charged for 120

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 and wish to amend their capacity requirements.

Consumer Impact Assessment

(Workgroup assessment of proposer initial view or subsequent information)

Criteria	Extent of Impact
Which Consumer groups are affected?	<ul style="list-style-type: none"> Domestic Consumers Small non-domestic Consumers Large non-domestic Consumers Very Large Consumers
What costs or benefits will pass through to them?	No implementation costs would transfer directly to the consumer.
When will these costs/benefits impact upon consumers?	Benefits would arise due to an assurance that any capacity booked would be capped and aligned with the NExA, and if the Supply point exceeds the capacity set out in the NExA, a degree of capping of Ratchet Charges would be applied.
Are there any other Consumer Impacts?	None
General Market Assumptions as at December 2016 <i>(to underpin the Costs analysis)</i>	
<i>Number of Domestic consumers</i>	<i>21 million</i>
<i>Number of non-domestic consumers <73,200 kWh/annum</i>	<i>500,000</i>
<i>Number of consumers between 73,200 and 732,000 kWh/annum</i>	<i>250,000</i>
<i>Number of very large consumers >732,000 kWh/annum</i>	<i>26,000</i>

Cross Code Impacts

There should be no known impacts on other Codes

EU Code Impacts

None

Central Systems Impacts

Initially, as Modification 0696 was restricted to specific event, and since there only a limited number of Supply Points where NExAs exist, logically the circumstances envisaged by the proposal could only occur on very small number of occasions. As such, the view of the Workgroup was that any refunds of excess capacity charges could, and should, have simply been processed by way of a manual workaround type solution.

Since receipt of the send-back letter, and following further development discussions at the Workgroup, Modification 0696V has been raised to address a further specific issue regarding the treatment of Capacity Ratchet Charges being incurred while the Supply Point Capacity (SOQ) was effectively capped at the daily capacity value set-out in the NExA.

The view of the Workgroup, and the CDSP, was that this element created a degree of complexity above that of Proposal 0696, and that a semi-systematised solution should be developed

As part of the further Workgroup, this has now been developed and a UK-LINK change, specified in ROM: [XRN 5096](#) has been specified as part of the implementation plan.

The business rules set out in the ROM are detailed below:

For NExA sites the PMSOQ should not exceed the NExA daily capacity confirmed by the Transporter.

1. New or enhanced internal screen for Xoserve business users to update the PMSOQ for any site to a configurable user input value
2. Where the PMSOQ has been set through Xoserve via the internal screen, this should remain the PMSOQ and override the current calculation to obtain the PMSOQ (2 times the SOQ or 16 times the SHQ)
3. The screen should allow Xoserve business users to update the PMSOQ for any site, at anytime
4. Data cleanse/migration activity required to ensure that no NExA sites have a higher PMSOQ than the NExA daily capacity value which will be provided by Transporters.

Rough Order of Magnitude

The following cost statement has been extracted from ROM: Change Reference Number: 5096

An enduring solution will cost at least **£29,000**, but probably not more than **£47,000** to implement.

Workgroup Impact Assessment

Since receipt of the send-back letter in November, the Workgroup has met on 5 occasions with two principal objectives:

1. To expand and enhance the Workgroup Report to cover the Authority's additional request for detail and clarity, as specified in the letter, principally:
 - a. Clarification of the current capacity booking arrangements, as set out in UNC TPD Section G and Section J, (Set out in Section 11.1)
 - b. Detail on the deficiencies in the current arrangements, (Set out in Section 11.3)
 - c. Review of impact on central systems, processes and procedures, (Set out in Section 6)
 - d. Review and Assessment of the legal text, (Set out in Section 9)
2. To develop and provide a solution around the treatment of Capacity and Capacity Ratchet Charges occurring during a period where the NExA daily capacity value was the controlling factor for setting the Supply Point Capacity, identified as a concern during discussions held in Workgroup meetings held post receipt of the send-back letter.

In terms of item 2, discussion of possible enhancements to the rules commenced at the November Workgroup, with comparisons made between the way that PMSOQ caps Registered Supply Point Capacity following a ratchet and the way a NExA daily capacity value would effectively cap any the SOQ. Consideration was given to this point and Xoserve actioned to provide scenarios.

At the December meeting, following consideration of the Scenarios, it was agreed that the Proposal should be amended to account for instances where the daily offtake at a Supply Point exceeded the daily capacity value set-out in the NExA.

Following consideration of the scenarios, the view of the Workgroup was that the Solution, Legal Text, System Changes and Implementation requirements would need to change. Consequently:

1. Business Rule 3, (BR3), has been added to the Solution to ensure that the daily capacity value set out in the NExA would cap SOQ in the event of a ratchet, and also sets out the treatment of any associated ratchet charges
2. An amended version of the text has been provided by WWU for consideration at the March Workgroup
3. A ROM has been provided to provide semi-automated "set and reset" functionality for capacity values amended by the circumstance set-out in BR3.

For clarity, it was pointed out at the Workgroup that the refund of any charges would still be undertaken as a manual activity.

Meetings held during 2020 have been spent resolving the detail and method of implementation for BR3, (in anticipation of a Variation Request), and reviewing the legal text.

The workgroup is of the opinion, following the amendment to the Proposal, and introduction of the system changes, the solution, as documented, is sufficiently developed to proceed to a further phase of consultation.

When asked, the Workgroup declined to comment further on the retrospective element of the proposal, suggesting that it was a matter best left to respondents to set out their views in their representations.

7 Relevant Objectives

Impact of the modification on the Relevant Objectives:	
Relevant Objective	Identified impact
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.	Positive
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

The following Relevant Objectives would be furthered by implementation:

Relevant Objective c) because it better aligns the commercial and operational arrangements at a Supply Point and assists with the efficient management of the capacity requirements on the network.

Relevant Objective f) because removes ambiguity & provides clarity for all affected parties, allowing each to better understand the capacity arrangement in place, where a NExA is in force.

8 Implementation

Timescale

The high-level estimate to develop and deliver this change is approximately 16 weeks and includes 2 weeks of Post Implementation Support.

It was noted by the Workgroup that the delivery of the associated system change would need to be assessed and progressed through DSC governance and scheduled into a suitable release.

9 Legal Text

Legal drafting note: This legal text in this report has been provided by WWU. and has been specifically written to accommodate the solution set out this proposal,

While the issues addressed herein are similar to those in Modification Proposal 0701, the legal text for each of these related proposals is specific to its respective solution and, accordingly, the text in the two reports should be assessed individually.

The Workgroup has considered the legal text as part of the production of this report and is satisfied that it meets the intent of the Solution.

Legal Text Commentary

Sections B3.12.10(a) and B4.6.8(c) are amended so that NTS Exit (Flat) Commodity Charges and the LDZ Optional Capacity Rate (if ever relevant) would reflect the changes to Sections G5.1.5 and G5.4.5 discussed below. For the purposes of Sections B3.12.10(a) and B4.6.8(c)(ii), the Shared Supply Meter Points procedures published by the CDSP pursuant to Section G1.7.17 may need to be revised.

The effect of the insertion of the additional restriction at Section G5.1.5(c) is that any application for an increase in capacity at an LDZ Supply Point which specifies a higher rate of offtake than that permitted in the NExA, may only take effect from the date on which the NExA is amended so as to permit such increase. Consequently, any changes to limitations imposed by relevant NExAs on the maximum rate of offtake and the effective date of such changes will need to be notified by Transporters to the CDSP.

The effect of the new Section G5.4.5 is to limit the permitted Supply Point Capacity at any LDZ Supply Point by reference to any maximum offtake rate limit specified in the NExA. It would be preferable to recognise the NExA's role in imposing such limitations by including express provision for it in section J 4.3 or J5.4, though the catch-all provision at J 4.3.2(c) already covers it. Section G 5.4.4 has been amended so that the new rule applies as appropriate to Shared Supply Points.

The definition of "Provisional Maximum Supply Point Capacity" at 5.5.2 is changed so that it is limited to the maximum level of offtake permitted by the NExA if that is a lower level of offtake than currently provided for by paragraph 5.5.2. Consequently, in cases of LDZ DM Supply Points with NExAs, where the offtake exceeds the daily limit specified in the NExA, Section B7.4.3 will, as required by Business Rule 3 of the Modification Proposal, result in a Supply Point Ratchet Charge in respect of a Billing Period calculated by reference to the greatest amount by which the daily offtake limit in the NExA is exceeded in that Billing Period. Sections 5.5.3 and 5.5.4 will be affected by the change in the definition of Provisional Maximum Supply Point Capacity in that, if a Supply Point Nomination or Capacity Revision Application is made which specifies a Supply Point Capacity exceeding the daily offtake limit specified in the NExA for such a Supply Point, the Transporter will be required to determine the feasibility of making the capacity available, and, if it is feasible, required to accept the Nomination or Application. However, thanks to the

new Section G5.1.5(c), the nomination or application will only become effective on the date on which the limit in the NExA is increased.

Section G5.5.5 has been changed so that for any LDZ DM Supply Point the Ratchetted Supply Point Capacity (as provided for by Section B4.7.3, which is subject to G5.5.5) is limited to the daily offtake limit specified in the NExA (if any) for such a Supply Point. A correction has been made to the first part of this provision by removing the words “the CDSP will inform the Transporter”. Some form of change is necessary for G5.5.5 to make sense and the deletion mirrors the wording of the equivalent provision in the version of Section G in Annex 1 to Transition Document Part IIC.

The Transition Document Part IIC has been amended so that where, after 1 September 2018 but before implementation of the Modification Proposal, the Supply Point Capacity was increased above the maximum daily offtake rate permitted by a NExA (whether as a result of an application to increase the capacity or a Supply Point Confirmation), the Supply Point Capacity shall be treated as being equal to that maximum daily offtake rate until such point as the NExA provides for a maximum daily offtake rate to apply which is equal to or greater than the Supply Point Capacity as so increased or confirmed.

It has been assumed that the SSMP Transitional Phase has completed and that Annex 1 to Transition Document Part IIC is redundant so there is no need to change it.

Legal Text

Transportation Principal Document

SECTION B – SYSTEM USE AND CAPACITY

In paragraph 3.12.10(a) delete “Section G5.4.1” and replace it with “Sections G5.4.1 and G5.4.5”

In paragraph 4.6.8(c) delete “Section G5.4.1” and replace it with “Sections G5.4.1 and G5.4.5”

SECTION G – SUPPLY POINTS

Replace paragraph 5.1.5 with the following new paragraph 5.1.5:

“5.1.5 The date under paragraph 5.1.4(d) shall be:

- (a) 5 Supply Point Systems Business Days after the date upon which the application is submitted, subject to paragraphs (b) and/or (c) below; or
- (b) where it will (in accordance with paragraph 5.5) be necessary for the Transporter to assess the feasibility of making gas available for offtake, 21 Supply Point Systems Business Days after the date upon which the application is submitted; or
- (c) in the case of a NExA Supply Meter Point which is an LDZ Supply Meter Point, where the revised Supply Point Capacity specified in accordance with paragraph 5.1.4(c) exceeds any maximum daily rate of offtake specified in the Network Exit Agreement, the date with effect from which the Network Exit Agreement is amended so that such maximum rate of offtake is no less than the revised Supply Point Capacity so specified.”

At the end of paragraphs 5.4.2 and 5.4.3 insert “or 5.4.5” immediately before the final full stop.

In paragraph 5.4.4 delete the words “in paragraph 5.4.1” and replace them with “in paragraphs 5.4.1 and 5.4.5”.

Insert the following new paragraph 5.4.5:

“5.4.5 A User's Supply Point Capacity in respect of a NExA Supply Meter Point which is an LDZ Supply Meter Point (including any proposed LDZ Supply Point) at any time shall be no greater than any maximum daily rate of offtake specified in the Network Exit Agreement in respect of such time.”

Replace paragraph 5.5.2 with the following new paragraph 5.5.2:

“5.5.2 The “Provisional Maximum Supply Point Capacity” in respect of a DM Supply Point (other than a Proposed Supply Point which comprises a New Supply Meter Point and other than an NTS Supply Point) is whichever is the lesser of:

- (a) 2 times the Prevailing Supply Point Capacity;
- (b) 16 times the Supply Point Offtake Rate or (in the case of a Proposed Supply Point) Nominated Supply Point Offtake Rate; and
- (c) the maximum daily rate of offtake (howsoever expressed) specified in the Network Exit Agreement in respect of such DM Supply Point.”

Replace paragraph 5.5.5 with the following new paragraph 5.5.5:

“5.5.5 Where, following the occurrence of a Supply Point Ratchet in relation to a DM Supply Point, the sum of the Capacity Ratchet Amount and the User's Registered Supply Point Capacity would exceed the Provisional Maximum Supply Point Capacity:

- (a) with effect from the following Day, and until the Transporter has assessed whether it is feasible to make available gas for offtake (in a 24 hour period) in the amount of such sum, the Ratchetted Supply Point Capacity shall be equal to the Provisional Maximum Supply Point Capacity;
- (b) with effect from the time at which the Transporter has assessed such feasibility and notified the CDSP, the Ratchetted Supply Point Capacity shall be equal to the lesser of:
 - (i) the Maximum Supply Point Capacity or, where such Maximum Supply Point Capacity exceeds the prevailing maximum daily rate of offtake (howsoever expressed) specified in the Network Exit Agreement (if any) in respect of an LDZ DM Supply Point, such maximum daily rate; and
 - (ii) the sum of the User's Registered Supply Point Capacity (immediately before the Supply Point Ratchet) and the Capacity Ratchet Amount; and

the CDSP will inform the Registered User of the Ratchetted Supply Point Capacity determined under paragraph (b) as soon as reasonably practicable after such feasibility was assessed by the Transporter and notified to the CDSP.”

Transition Document Part IIC

1 - UNIFORM NETWORK CODE

Insert the following new paragraphs 1.17.13 and 1.17.14:

“1.17.13 Where a Capacity Revision Application has been made in respect of a NExA Supply Meter Point which is an LDZ Supply Meter Point and, as a consequence of such application, the Supply Point Capacity became, with effect from a date between 1

September 2018 and the implementation date of Modification Proposal 0696V, greater than any maximum daily rate of offtake specified in the Network Exit Agreement, such increase in Supply Point Capacity shall be deemed not to have come into effect until the date with effect from which the Network Exit Agreement is amended so that such maximum rate of offtake is equal to or greater than the Supply Point Capacity which, but for this paragraph 1.17.13, would otherwise have applied. `1.17.14 Where a Supply Point Confirmation in respect of a NExA Supply Meter Point which is an LDZ Supply Meter Point came into effect on a date between 1 September 2018 and the implementation date of Modification Proposal 0696V, and, as a result of such Supply Point Confirmation, the Supply Point Capacity of such NExA Supply Meter Point became greater than the maximum daily rate of offtake specified in the relevant Network Exit Agreement, then the Supply Point Capacity of such Supply Meter Point shall be deemed to be equal to such maximum daily rate of offtake from the date on which the Supply Point Confirmation became effective until the date with effect from which the Network Exit Agreement is or was amended so as to specify a maximum daily offtake rate which is no less than the Supply Point Capacity specified in such Supply Point Confirmation (at which point the Supply Point Capacity shall increase to the amount which, but for this paragraph 1.17.14, would otherwise have applied).”

10 Consultation

Panel invited representations from interested parties on 16 April 2020. The summaries in the following table are provided for reference on a reasonable endeavours’ basis only. It is recommended that all representations are read in full when considering this Report. Representations are published alongside this Final Modification Report.

Of the 7 representations received 4 supported implementation and 3 were not in support.

Representations were received from the following parties:

Organisation	Response	Relevant Objectives	Key Points
Cadent	Oppose	d) - negative f) - positive	<ul style="list-style-type: none"> • Believes the Modification, if implemented, would ensure that the Supply Point Capacity (SOQ) held on central systems would never exceed the SOQ detailed in the relevant NExA. It will also ensure that any requests for additional capacity will only take effect from the specified dates within the NExA. Therefore, Cadent agrees that this would further Relevant Objective f). • Voices concerns around the retrospective element of the modification and whether it fully meets the Ofgem tests, and whilst it agrees that this Modification will improve the process going forward and should eliminate the situation (which directly led to the drafting of the Modification) reoccurring, it is not fully convinced this was wholly down to central arrangements or could not have been reasonably foreseen. The situation which occurred was due to a combination of factors including

			<p>the Shipper not carrying out adequate checks. Therefore, Cadent believes the retrospective element of the modification would negatively impact Relevant Objective d).</p> <ul style="list-style-type: none"> • Suggests that implementation would need to be agreed between DSC parties given the system changes necessary but would expect a minimum of 6 months would be required. • Points out that given the retrospective element of the Modification (which would be in effect for circa 2 years from September 2018), it (Cadent) may be subject to as yet unknown impacts and costs of reconciling any payments. • Is satisfied that the legal text meets the intent of the Modification.
E.ON	Support	c) - positive f) - positive	<ul style="list-style-type: none"> • Believes that the NExA capacity agreement should be seen as the primary value and should not contradict, exceed nor predate the value and effective from date of the NExA. • Would be in favour of the retroactive element of this modification as it would deliver the principles which it supports prior to the implementation date. • Believes it does meet Ofgem's test for retrospection and feel the consumer does have the right for updates back to the cut-off point of 1 September 2018. • Is satisfied with the proposed solution with regards to ratchets, and that the PMSOQ will not exceed the value of the NExA in the event of a daily capacity breach. • Believes that implementation should be aligned with the CDSP delivery date with no less than 6 months' notice for implementation. • Believes that minimal system impacts may be required to retrospectively correct any incorrect capacity values and manual reviews, E.ON does not believe this is, however, a project level deliverable, but there will be system enhancements which is why it also supports 6 month's implementation to give time to design, build and test these changes.
Gazprom	Support	c) - positive f) - positive	<ul style="list-style-type: none"> • Originally raised Modification 0696(V) on the 27 June 2019, (nearly 12 months ago), with the intention of addressing undue detriment as a result of a contradiction arising in the arrangements as set out in a NExA agreement, which is an agreement between a Consumer and a Transporter, and the arrangements

			<p>under the Uniform Network Code (UNC), which is an agreement between a Shipper and a Transporter. As a result of this inherent unfairness detrimental costs have been incurred.</p> <ul style="list-style-type: none"> • In raising Modification 0701², addressing the same issues but without retrospection, believes Transporters have acknowledged the inherent flaws within the existing process but due to the lack of retrospection are unwilling to provide the relevant parties directly impacted by the flaw, fair and reasonable remediation. Accordingly, it believes Modification 0696V to provide a fairer outcome for relevant parties than Modification 0701. • Makes reference to their original response dated 12 September 2019³ to avoid repetition. • Requests implementation ASAP and would note that the original intention was that this Modification would have been implemented in August 2019. • Points out that in raising the Modification in a timely fashion and thus seeking a short period of retrospection, it believed it was striking a fair balance between minimising the period of uncertainty introduced by the retrospection, addressing the issue, and also ensuring the relevant parties are fairly treated. • Believes the decision to effectively intrinsically link the process for Modification 0696V and Modification 0701 has negated the decision made in August 2019 that Modification 0701 was not an alternative thus undermining the role of the UNC Panel. This has also led to a considerable delay in determining on Modification 0696V thus impacting the scope of retrospection and increasing the period of uncertainty for all involved. • Points out that as a result of the delay imposed by intrinsically linking Modification 0696V and Modification 0701, Gazprom has been able to establish that generally the teams within Transporters dealing with nomination referrals would also be familiar with the content of the relevant NExA. As the only party directly involved in both the NExA arrangements and the
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² [Modification 701: Aligning Capacity booking under the UNC and arrangements set out in relevant NExAs](#)

³ [Gazprom response to the original August 2019 consultation](#)

			nomination process it believes the Transporter has a duty of care to ensure all relevant parties are treated fairly and should have acted accordingly to avoid undue detriment.
ICoSS	Support	c) - positive f) - positive	<ul style="list-style-type: none"> • Supports this Modification, for the reasons previously provided in its response from September 2019, repeated below. • Believes that the current arrangements with regard to the interaction of the UNC and Network Exit Agreements (NExA) are inadequate. This has been recognised by both the Gas Transporters and Shippers, both through development of this change and through the attempted raising of alternate proposals to address the contradictions between the two documents. • Suggests that the issue has been recognised as needing addressing and this Modification achieves that. Creating a clear order of precedent between UNC and NExA arrangements furthers both the administrative efficiency of the code and improving competition by preventing unnecessary costs being incurred by Shippers. • Believes that retrospection in this case is justified in light of the previous failures of the process and the additional costs that customers have unjustly incurred. The date of September 2018 seems appropriate to strike a balance between protecting historic arrangement and addressing known problems. • Whilst noting that this process has a retrospective element, to provide certainty to the market, ICoSS would recommend that this Modification is implemented as soon as possible. • Believes that ICoSS members will see a positive impact from this change as it will reduce the risk of capacity being booked which cannot then be utilised. It will also reduce operational costs for the need to manage both the NExA agreements and UNC capacity bookings in parallel.
Northern Gas Networks	Oppose	d) - negative f) - positive	<ul style="list-style-type: none"> • Agrees that the visibility and linking of existing and new Network Exit Agreements (NExA) with central systems is something which needs to be improved and, in principle, that any new or additional Capacity for NExA sites should only take effect from the relevant NExA date. • Also agrees with the introduction of a Provisional

			<p>Maximum Supply Point Capacity (PMSOQ) cap for sites with an active NExA.</p> <ul style="list-style-type: none"> • Believes that the above-mentioned changes should further Relevant Objective f) <i>Promotion of efficiency in the implementation and administration of the Code</i> by giving visibility of where a NExA exists and enhancing the requirements relating to NExAs under TPD Section J – Exit Requirements. • Points out that whilst this proposal is now very similar to proposal 0701 'Aligning Capacity booking under the UNC and arrangements set out in relevant NExAs', it does not agree with the introduction of a retrospective payment element. The ability for Users to delay the taking of capacity to a specific date is an existing process, therefore Users who are already following this process would now gain no benefit against Users who are not. • Believes the Modification negatively impacts Relevant Objective d) <i>the securing of effective competition</i>, as per their comments. • Does not believe the justification provided for retrospective payments meets the quoted Ofgem circumstances regarding retrospection and feels that the loss specified is not <i>directly</i> attributable to central arrangements due to the existing ability of a Shipper to control the confirmation effective date; therefore, the combination of circumstances could have reasonably been foreseen. • Notes that as there are system changes expected to deliver this solution and is of the opinion that at least six months' notice needs to be provided so that parties can make any necessary internal system changes. • Notes that whilst the proposal should result in process improvements, it could also result in it (NGN) receiving requests from Shippers to recover costs due to the proposed retrospective element. • Is satisfied that the legal text will deliver the intent of the solution as set out in the proposal.
Total Gas & Power Ltd	Support	c) – positive f) - positive	<ul style="list-style-type: none"> • Supports this Modification as per their previous submission and believes that arrangements between Consumers and Transporters under a NExA should align with the UNC which is a code operating between Shippers and Transporters. • Believes that the current arrangements with regard to

			<p>the interaction of the UNC and Network Exit Agreements (NExA) are inadequate. This has been recognised by both the Gas Transporters and Shippers, both through development of this change and through the attempted raising of alternative proposals to address the contradictions between the two documents. The issue has been recognised as needing to be addressed and this modification achieves that. Creating a clear order of precedent between UNC and NExA arrangements furthers both the administrative efficiency of the code and improving competition by preventing unnecessary costs being incurred by Shippers.</p> <ul style="list-style-type: none"> • Believes that retrospection in this case is justified in light of the previous failures of the process and the additional costs that customers have unjustly incurred. The date of September 2018 seems appropriate to strike a balance between protecting historic arrangement and addressing known problems. • Commented that it had not reviewed the legal text.
Wales & West Utilities	Oppose	<p>c) - negative d) - negative f) - negative</p>	<ul style="list-style-type: none"> • Has not fundamentally changed its view compared to its response to Modification 0696 before it was varied. • Opposes this Modification because it is retrospective, and they do not believe that it passes any of the tests for a retrospective Modification. • Believes it is negative for Relevant Objective f) efficient implementation and administration of Code. • Also believes that a secondary reason for being negative for Relevant Objective f) is that no system changes are envisaged to implement this Modification, and this will result in manual interventions with the risks they involve. • Believes it is negative for Relevant Objective c) efficient discharge of the licensee's obligations because it potentially denies capacity to other customers and, therefore, is also negative for Relevant Objective d) competition. • Believes that Business Rule 3 added by the variation request is a useful addition to the Modification, although its benefit is reduced by the lack of system changes to implement it, but the benefit of Business Rule 3 in no way outweighs the overwhelming problem of the retrospective effect of this Modification. • Believes that Modification 0701 delivers the improvements required to better link capacity in NExAs

		<p>to system capacity without the retrospective element and therefore it is supporting implementation of Modification 0701.</p> <ul style="list-style-type: none"> • Believes that this Modification could be implemented immediately after an Ofgem direction to do so. • Points out that it could be exposed to cost for a retrospective claim but is not aware of any. <p>Analysis</p> <ul style="list-style-type: none"> • Has commented further on the grounds for retrospection, the process leading to the booking of the capacity and the impact of given a refund. <p>Retrospection</p> <ul style="list-style-type: none"> • The Ofgem tests for retrospection are: <ul style="list-style-type: none"> ○ 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. • In noting the Proposer claims that all the tests are satisfied by this Modification, they disagree for the reasons set out below. <p>Fault or error directly attributable to central systems</p> <ul style="list-style-type: none"> • Appreciates that there is no flag in central systems indicating that a Network Exit Agreement (NExA) exists, Shippers and Suppliers should be aware of their existence and should therefore ask customers whether one is in place. • Gazprom, the proposer, are a well-established business serving this market. • Believes the error could have been avoided by the Shipper and the error was not “directly attributable to central arrangements”. • Although based on the statements in the Modification it (WWU) accepts that the value is material, this is not in itself sufficient grounds for retrospection as the central systems element is also required. <p>Combination of circumstances could not be</p>
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		<p>reasonably foreseen</p> <ul style="list-style-type: none"> Does not believe that this ground is satisfied as this situation could have been foreseen by a Shipper, particularly one that is well established and the risk could have been controlled. <p>Retrospection clearly flagged</p> <ul style="list-style-type: none"> This is not satisfied; the proposal was not raised until after the event had occurred. To satisfy this test the potential for the event and the outline of the solution would have had to have been raised in advance of the event occurring. <p>Comments on the process leading to capacity being booked</p> <ul style="list-style-type: none"> In regard to the case described in the Modification, it is unclear why the Shipper confirmed the capacity increase. It would have been sensible to delay confirming the capacity increase until the NExA had come into effect. It may well be that the customer did not need to take the increased capacity from 1 December. <p>Section 1 of the Modification under “Why Change” has the following statement:</p> <p><i>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.</i></p> <ul style="list-style-type: none"> This suggests that the customer considered that NExA constrained its daily capacity. <p>Section 3 of the Modification proposal states:</p> <p><i>Customer A was already subject to a NExA with Transporter B.</i></p> <p><i>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.</i></p> <p><i>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</i></p>
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			<p><i>site would have been subject to penal Ratchet charges.</i></p> <ul style="list-style-type: none"> • Believes that it is not clear why Shipper C confirmed the capacity increase before the NExA was signed on the 1 December. Given the statement in Section 1 of the modification there was no risk of a ratchet occurring. It would have been more sensible to submit the confirmation to the CDSP once the NExA had been signed - believes that the Shipper could have managed the situation to avoid confirming capacity that was not required. <p>Impact of refund</p> <ul style="list-style-type: none"> • If this refund is given, then the financial effect is to recover this from all the other Shippers. However, by taking capacity the Shipper is effectively depriving other Shippers from using that capacity. In constrained parts of the network this will mean that any other customer that wants more capacity will be told that reinforcement is required. There is, therefore, a potential impact on other customers - opposes a refund in this case.
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Please note that late submitted representations will be included on a best endeavours basis in this Final Modification Report. However, all representations received in response to this consultation (including late submissions) are published in full alongside this Report and will be taken into account when the UNC Modification Panel makes its assessment and recommendation.

11 Panel Discussions

12 Recommendations

Panel Recommendation

Members recommended:

- that Modification 0696V should [not] be implemented

13 Supplementary Information

Following the receipt of the send back letter, which set out the Authority's decision to "send-back the proposal back to industry for further discussion at Workgroups and revision", this report has been produced address the matters set-out in the letter as requiring more detail and information as to why a modification to the UNC should be made.

11.1 Overview of the current arrangements, such as they relate to capacity booking and NExAs

Synopsis of Procedures & Responsibilities

This synopsis should be read in conjunction with Section G5 and Section J of the UNC, and in the event the two documents do not strictly align, the UNC TPD has primacy.

Section G - Supply Point Capacity

The principal underlying the basis for booking capacity at LDZ DM, (Class 1 & Class 2), Supply Meter Points, is that the Shipper has the responsibility for registering the appropriated level of capacity at individual supply points.

To increase a capacity booking, using information obtained as the registered user, or as a prospective registered user, the Shipper should assess the requirement of the supply point and submit capacity increase request, through UK-Link, to the Transporter for authorisation.

The request will either be auto-approved using pre-set parameters in the system, (within 5 business days of the request being submitted), or referred to the network operator for network analysis and subsequent approval or disapproval, (which may take up to 21 business days).

Both in terms of hourly offtake rate and daily capacity, the quantity of gas offtaken during a hour or within day is not [commercially] restricted, although once the daily quantity has been verified on D+1, should the daily quantity exceed the registered capacity the process for dealing with these events is as follows

The full marginal capacity utilised would be subject to a ratchet charge and would automatically be registered to the Shipper but the registration would be capped at the Provisional Maximum Supply Point Capacity, (PMSOQ), (which is set at 16 x the hourly offtake rate).

Any element of capacity between the PMSOQ and the full marginal capacity utilised would be subject to additional network analysis, before being allocated / disapproved.

Nothing in the UNC, in terms of daily offtake rates and daily capacity registrations, prevents the network operator from taking action to reduce the rate at which gas is offtaken if, in its opinion, a consumer is prejudicing the safe operation of the network.

Section J - Exit Requirements

Section J establishes that Supply Points, particularly large offtakes or offtakes with complex requirements, may be governed by separate agreements to supplement the standard UNC arrangements. These supplementary arrangements are known as Network Exit Provisions (NEPs) and the separate agreements are known as Network Exit Agreements, (NExAs)

A NExA can be either a bilateral agreement, (between the Transporter and customer), or tripartite agreement, (between the Transporter, customer & Shipper(s)), that contains site specific terms relating to

a range of Network Exit Provisions. For the purposes of this proposal, a NExA may contain values pertaining to capacity.

In terms of amending the NEPs in a NExA, the governance arrangements are contained in the provisions of J4.3.6, which requires that the registered user is informed of, and consents to, amendments that come into effect during its period of registration.

Additionally, under Section J5.2, there is a requirement for the Transporter to inform a nominating Shipper of the existence of a NExA, (although it is not required pass on specific terms). Thereafter, the UNC states that the Shipper is responsible for contacting the customer and obtain details of the NExA and the User shall be responsible for ascertaining the terms thereof from the relevant consumer; and where the User subsequently submits a Supply Point Confirmation the User shall be deemed to be fully informed of such terms.

The key point being made in the proposal is that, in terms of a relationship between the capacity booked through Section G and the capacity arrangements set out in a NExA, there is no UNC rule-based correlation between the two, a situation that the proposal seeks to remedy by capping the Section G capacity bookings at the level set out in the NExA.

11.2 Workgroup Comments on these statements:

The unamended version of Section 11.1 of this document was circulated to the Modification 0696 Workgroup on 17th December 2019, with the Workgroup being actioned to review and comment.

One response was received, from SGN, whose comments have been incorporated into this version

11.3 Detail on the deficiencies in the current arrangements – as described in the proposal

The deficiency, according to the proposer, is that while there are informational pathways in place intended to help prevent this type of capacity mismatch occurring, there is no absolute rule, nor systematised block, to prevent the Section G Capacity Bookings being greater than the daily capacity value, (or equivalent terms depending on the actual drafting of the NExA), recorded as part of the Network Exit Provisions.

11.4 Review of impact on central systems, processes and procedures

Initially, as part of the solution for Proposal 0696, given the very low volume of transactions, the view was that any refunds would be authorised by the Transporter and invoiced as an ad-hoc credit. Following the development of BR3 as part of the Variation request, the level of complexity associated with managing instances of NExA capped capacity ratchets warranted the development of a semi-automated solution for setting and resetting Supply Point Capacity.

Consequently, the proposal now has an XRN and a UK-LINK change specified as part of implementation

System changes associated with the implementation of this proposal are captured in more detail in Section 6 of the Workgroup Report for Modification 0696V.