

Modification proposal:	<b>Uniform Network Code (UNC) 0746: Application of Clarificatory Change to the AQ Amendment Process Within TPD G2.3 from 1<sup>st</sup> April 2020</b>		
Decision:	The Authority <sup>1</sup> has decided to reject this modification <sup>2</sup>		
Target audience:	UNC Panel, Parties to the UNC and other interested parties		
Date of publication:	27 September 2022	Implementation date:	n/a

## Background

The Uniform Network Code (UNC) allows for the amendment of a Supply Point Annual Quantity (AQ) under UNC Section G2.3.20 when the AQ does not reflect the expected consumption of gas over the following 12-month period. Three 'eligible causes' are outlined in UNC Section G2.3.21, which a User<sup>3</sup> can use to justify an AQ amendment.<sup>4</sup> Eligible causes can be used to cover circumstances where a 'new' User takes over a site and is required to initiate corrective action. One of these eligible causes, "the commencement of a new business activity or discontinuance of an existing business activity at the consumer's premises", is referred to as Reason Code 3. The Distribution Network Charging Methodology Forum (DNCMF) identified a "large scale utilisation" of Reason Code 3 in the AQ amendment process.<sup>5</sup>

UNC736S was raised as clarificatory change to the AQ amendment process within Transportation Principal Document (TPD) G2.3 as a self-governance modification. Under UNC736S a User within the same organisation or an Affiliate<sup>6</sup> of the previously registered User cannot utilise Reason Code 3 to justify an AQ amendment.<sup>7</sup> This modification aimed to ensure that Reason Code 3 was only utilised for new registrations following a switching event and

<sup>1</sup> References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers 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 is notice of the reasons for this decision as required by section 38A of the Gas Act 1986

<sup>3</sup> 'User' is defined in UNC General Terms B 2.2.1.

<sup>4</sup> [UNC Section G – Supply Points](#)

<sup>5</sup> The DNCMF is a UNC Workgroup that develops modifications to the distribution charging methodologies in TPD Section Y of the UNC.

<sup>6</sup> 'Affiliate' is defined in UNC General Terms C 2.9.7.

<sup>7</sup> [UNC Modification 0736S: Clarificatory change to the AQ amendment process within TPD G2.3](#)

could not be used by a User to facilitate mass AQ amendment process changes. Therefore, bringing the AQ amendment process in line with what was defined in UNC432: Project Nexus – Gas Demand Estimation, Allocation, Settlement and Reconciliation reform and refined by UNC610: Project Nexus – Miscellaneous requirements.<sup>8</sup>

UNC736S standardised the AQ amendment process in order to ensure all future adjustments could not utilise Reason Code 3 when the User making the amendment is an Affiliate or is within the same organisation of the previous registered User. UNC746 is the retrospective counterpart to UNC736S.

### **The modification proposal**

UNC746 'Application of clarificatory change to the AQ amendment process within TPD G2.3 from 1st April 2020' was raised by Gazprom Energy (the "Proposer") on 19 May 2021.

The modification seeks to retrospectively address the potential detrimental transfer of costs identified by the Proposer to other Users arising from the use of these AQ amendment arrangements by a User. This would mean that all relevant AQ amendments using Reason Code 3 between 01 April 2020 and 14 January 2021 will be considered in accordance with modification UNC736S. As part of this process, the Central Data Service Provider (CDSP) will request the relevant User to confirm that any AQ amendments that used Reason Code 3 made between 01 April 2020 and 14 January 2021 comply with the requirements set out in UNC736S.<sup>9</sup>

If the User confirms the relevant AQ amendment was not done in accordance with UNC736S or fails to submit a response, then the CDSP will recover any avoided costs. The modification states that the period of recovery will be from the date the AQ amendment became effective until one of the following:

- The earliest date of any subsequent AQ revision to the AQ which determines the Transportation Charges<sup>10</sup>
- The earliest data at which a change of supplier event occurred

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<sup>8</sup> [UNC Modification 0432: Project Nexus – Gas Demand Estimation, Allocation, Settlement and Reconciliation reform](#)

<sup>9</sup> 'Supply Point Systems Business Days' is defined in UNC General Terms C 2.2.1.

<sup>10</sup> "Transportation Charges" is defined in UNC TPD B1.7.1(a)

- In absence of the above, the date of implementation of this modification.

UNC746 proposes to allow the CDSP the ability to amend an erroneous AQ. The full legal text can be found in the Final Modification Report (FMR).<sup>11</sup>

### **UNC Panel<sup>12</sup> recommendation**

At the UNC Panel meeting on 15 July 2021, 8 out of 13 present members of the UNC Panel considered that UNC746 would not better facilitate the UNC objectives and the UNC Panel therefore did not recommend its approval.<sup>13</sup>

### **Our decision**

We have considered the issues raised by the modification proposal and the Final Modification Report prepared by the UNC Panel dated 15 July 2021. We have considered and taken into account the responses to the industry consultation on the modification proposal which are attached to the FMR.<sup>14</sup> We have concluded that implementation of the modification proposal will not better facilitate the achievement of the relevant objectives of the UNC (Relevant Objectives).<sup>15</sup>

### **Reasons for our decision**

We consider this modification proposal will not better facilitate the UNC Relevant Code Objective (d)<sup>16</sup> and UNC Charging Methodology Relevant Objective (c)<sup>17</sup> and has a neutral impact on the other Relevant Objectives.

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<sup>11</sup> [UNC 0746: Application of Clarificatory Change to the AQ Amendment Process Within TPD G2.3 from 1<sup>st</sup> April 2020 Final Modification Report](#)

<sup>12</sup> The UNC Panel is established and constituted from time to time pursuant to and in accordance with the UNC Modification Rules.

<sup>13</sup> The UNC Panel is comprised of consumer, non-domestic consumer, shipper and transporter voting members.

<sup>14</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>15</sup> As set out in Standard Special Condition A11(1) of the Gas Transporters Licence, see: <https://epr.ofgem.gov.uk/Content/Documents/Standard%20Special%20Condition%20-%20PART%20A%20Consolidated%20-%20Current%20Version.pdf>

<sup>16</sup> UNC Relevant Code Objective (d): Securing of effective competition between relevant shippers, suppliers and DN operators.

<sup>17</sup> UNC Charging Methodology Relevant Objective (c): Compliance with the charging methodology facilitates effective competition between gas shippers and between gas suppliers.

***(d) so far as is consistent with sub-paragraphs (a) to (c) the 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 Relevant Objective (d) would be positively impacted by this modification as by correcting the potential under payment of capacity charges by Users, the cross subsidy paid by other Users would be removed. The implementation of this modification, according to the Proposer and some Panel members, would ensure that costs are targeted more accurately than is currently the case, and appropriate cost targeting is positive in terms of promoting competition between Suppliers.<sup>18</sup>

We consider that the issues highlighted in this modification have been resolved through the implementation of its predecessor UNC736S as set out above. The retrospective nature of UNC746 would negatively impact Users who were compliant with and acted in accordance with the UNC at the time of use. We agree with UNC Panel members that this modification would have a negative impact on Relevant Objective (d) as the implementation of this modification would revise over a years' worth of AQ charges which could have a detrimental effect on the market due to the impact of retrospective changes being implemented into code.

As above, the AQ amendments this modification seeks to review were approved in line with UNC and CDSP processes at the time. We also note from the consultation responses that the AQ amendments in question were investigated, with the Transporter investigation concluding that there was no evidence that a User had not acted in "good faith" throughout the process.<sup>19</sup>

Considering the retrospective nature of this modification and that the issue the modification seeks to address has been rectified by UNC736S on a prospective basis, we consider that this modification proposal would not better facilitate Relevant Objective (d).

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<sup>18</sup> 'Supplier' is defined in UNC General Terms C 2.9.2(b).

<sup>19</sup> [UNC 0746 Final Modification Report](#)

***That, so far is consistent with sub-paragraphs (a) and (b), compliance with the charging methodology facilitates effective competition between gas shippers and between gas suppliers; (and Charging Objective)***

The Proposer asserts that this modification is positive in respect of UNC Charging Methodology Relevant Objective (c). The Proposer states that by applying these arrangements retrospectively and remedying the detrimental transfer of costs to other Users arising from the use of these arrangements by a User which will ultimately be borne by consumers. It also states that it further improves cost reflectively of capacity charges by better aligning them with a customer's actual system usage, thereby furthering competition between Users and Suppliers.

We have not been provided with any tangible evidence within the FMR to substantiate these claims. In fact, we are of the view that retrospective modifications could have potentially negative effects on competition and the market as a whole. We therefore do not believe that this modification better facilitates UNC Charging Methodology Relevant Objective (c).

**Our principal objective and statutory duties**

We recognise that retrospective modifications can introduce uncertainty into the market and so there needs to be strong evidence that the benefits of any proposed action will sufficiently outweigh the potential risks. The Authority's principal objective is to protect the interests of existing and future energy consumers

**Assessment against guidance on retrospective modifications**

Retrospectivity is considered on a case-by-case basis, but generally the Authority believes that its use in relation to charging should be exceptional and needs-based. In this instance, the Proposer has not adequately shown that consumers will benefit from the implementation of UNC746. For UNC746, the benefits to consumers have not been shown to outweigh the negative impact on the market of taking retrospective action, nor has it been demonstrated with a satisfactory level of evidence that this modification would better facilitate any of the identified Objectives.

## **Decision notice**

In accordance with Standard Special Condition A11 of the Gas Transporters Licence, the Authority has decided that modification proposal UNC 0746: Application of clarificatory change to the AQ amendment process within TPD G2.3 from 1<sup>st</sup> April 2020 should not be made.

**Michael Walls**

**Head of Retail Market Operations**

Signed on behalf of the Authority and authorised for that purpose