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| Modification proposal: | <b>Uniform Network Code (UNC) 696V: Addressing inequities between Capacity booking under the UNC and arrangements set out in relevant NExAs (UNC696V)</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:   | 29 September 2023   | Implementation date: | n/a |

## Background

In certain cases, gas transporters enter into a bilateral contract with users offtaking gas from their gas transportation network, known as a Network Exit Agreement (NExA). A NExA details the user's obligations and rules when offtaking gas, including its allowed limits in respect of Supply Point Capacity and the Supply Point Offtake Rate. The UNC also sets out the allowed Supply Offtake Quantity (SOQ)<sup>3</sup> and Supply Hourly Quantity (SHQ)<sup>4</sup> levels for contracted parties.

Before the approval of UNC701<sup>5</sup>, NExAs were not flagged or instantly visible in central systems. There was also no process in place to ensure the SOQ and SHQ levels in a NExA and those permitted under the UNC were aligned.

<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> At Daily Metered (DM) supply points registered supply point capacity is equal to the Supply Point Offtake Quantity (SOQ), where for Non-Daily Metered (NDM) the SOQ is calculated using the supply point End User Category (EUC) and the appropriate load factor. However, the Final Modification Report (FMR) for this modification generally refers to Supply Point Capacity and SOQ interchangeably.

<sup>4</sup> The FMR refer to Supply Point Offtake Rate and the Supply Hourly Quantity (SHQ) interchangeably, with SHQ being the maximum hourly consumption of a given supply point.

<sup>5</sup> <https://www.gasgovernance.co.uk/index.php/0701>

This could result in discrepancies where a shipper booked more capacity on the system than permitted in its NExA, or a situation where Provisional Monthly Supply Point Capacity (PMSOQ)<sup>6</sup> ratchets up to a greater level than in its NExA.<sup>7</sup>

## **The modification proposal**

On 27 June 2019, Gazprom<sup>8</sup> (the Proposer) raised UNC696 with the aim that any new or additional capacity requested for Daily Metered (DM) Supply Points under the UNC should only take effect from the date set out in the NExA. On 12 November 2019, we sent back UNC696 to Workgroup as the Final Modification Report (FMR) did not contain sufficient information or analysis for us to form an opinion on UNC696.<sup>9</sup> Further to our send back decision, UNC696 was withdrawn on 20 March 2020 and replaced by UNC696V. The FMR for UNC696V was then submitted for Authority direction on 21 May 2020.

UNC696V seeks to introduce three business rules. Firstly, that 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. Secondly, that this change would be effective from 1 September 2018, with the Central Data Service Provider (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. Thirdly, that in the event of a Ratchet occurring that exceed 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.

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<sup>6</sup> As dictated in UNC TPD Section B 6.2, for DM Supply Points the Provisional Monthly Supply Point Capacity (PMSOQ) is either 2 times the prevailing Supply Point Capacity (SOQ) or 16 times the Supply Point Offtake Rate (SHQ), whichever is lesser.

<sup>7</sup> The Ratchet process occurs when a site's Daily Metered Supply Point Capacity (DMSOQ) is breached, and the capacity ratchets up to the point of the breach. The process is designed to stop once the site ratchets up to the PMSOQ level. The Supply Point Ratchet process and calculations are set out in UNC Transportation Principal Document (TPD), Section B 4.7. The TPD can be accessed here: <https://www.gasgovernance.co.uk/TPD>

<sup>8</sup> At the time the modification was raised the Proposer was known by its previous name, Gazprom. As of August 2022, the organisation is now known as SEFE Energy Ltd.

<sup>9</sup> <https://www.ofgem.gov.uk/publications/authority-decision-send-back-uniform-network-code-unc-696-unc696-addressing-inequities-between-capacity-booking-under-unc-and-arrangements-set-out-relevant-nexas>

## UNC Panel<sup>10</sup> recommendation

At the UNC Panel meeting on 21 May 2020, a majority of the UNC Panel (9 out of a possible 14 voting members) considered that UNC696V would better facilitate the UNC objectives and the Panel therefore recommended its approval. Of the members representing consumers, both the Consumer Voting Member and Non-domestic Consumer Voting Member voted to recommend implementation.<sup>11</sup>

## Our decision

We have considered the issues raised by the modification proposal and the FMR dated 21 May 2020. We have considered and taken into account the responses to the industry consultation(s) on the modification proposal which are attached to the FMR<sup>12</sup>. We have concluded that:

- implementation of the modification proposal would not better facilitate the achievement of the Relevant Objectives of the UNC<sup>13</sup>.
- directing that the modification be made would not be consistent with our principal objective and statutory duties.<sup>14</sup>

## Reasons for our decision

The issues addressed in UNC696V are similar to those in modification proposal UNC701, which we have approved. However, there are some differences in the proposed solutions, which are outlined in the FMR for UNC701. The most notable difference is that UNC701 did not include a retrospective element.

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<sup>10</sup> The UNC Panel is established and constituted from time to time pursuant to and in accordance with the UNC Modification Rules.

<sup>11</sup> <https://www.gasgovernance.co.uk/sites/default/files/ggf/2020-05/Panel%20Minutes%20and%20Voting%20Record%20258%2021%20May%202020%20v%201.0.pdf>

<sup>12</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>13</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>14</sup> 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.

In our decision for UNC701, we considered that the modification proposal would better facilitate UNC objectives (a) and (f) and had a neutral impact on the other relevant objectives. Given the similarities between the two modification proposals, we consider that the prospective element of UNC696V will have no impact on the Relevant Objectives. Our decision will therefore focus on the retrospective aspect of the modification. This would be the only considerable impact if we were to approve this modification as UNC701 has already been approved and will apply on a prospective basis.

We consider this modification proposal will not better facilitate UNC Relevant Code Objective (RO) (d).

### **Objective (d) Securing of effective competition between Shippers and/or Suppliers**

In previous decisions, we have said that retrospective modifications can be detrimental to competition as they introduce regulatory uncertainty to the market, which can be damaging to market confidence.<sup>15</sup> In addition, we do not believe that the circumstances surrounding the proposal justify a modification with a retrospective effect (see next section). For these reasons, the proposal does not better facilitate RO (d).

### **Our principal objective and statutory duties and assessment against guidance on retrospective modifications**

The Authority's principal objective is to protect the interests of existing and future consumers in relation to gas conveyed through pipes and electricity conveyed by distribution or transmission systems.

The Authority has published guidance on code modification urgency criteria where we comment on retrospective proposals.<sup>16</sup> In this guidance we consider that retrospective modifications should be avoided due to the negative impact on market confidence. However,

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<sup>15</sup> UNC765: New retrospective debit and credit charges to reflect changes to the treatment of Entry Capacity Revenue between October and December 2020 (28 January 2022) <https://www.ofgem.gov.uk/publications/unc765-new-retrospective-debit-and-credit-charges-reflect-changes-treatment-entry-capacity-revenue-between-october-and-december-2020>

<sup>16</sup> [https://www.ofgem.gov.uk/sites/default/files/docs/2011/05/ofgem-guidance-on-code-modification-urgency-criteria\\_0.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2011/05/ofgem-guidance-on-code-modification-urgency-criteria_0.pdf)

there may be exceptional circumstances that can justify a modification with a retrospective effect. The guidance provides the following examples:

*'We consider that it is appropriate to consider any retrospective modifications on a case by case basis, though the particular circumstances that could give rise to the need for a retrospective change could, for instance, include:*

- a situation where the fault or error giving rise to additional 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'*

As outlined in the guidance, 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 Authority believes that the benefits to consumers have not been shown to outweigh the costs of taking retrospective action.

In the FMR, the Proposer argued that UNC696V meets each of the three criteria for retrospectivity. The Proposer states, *"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."*

Whilst we recognise that the lack of visibility of NExAs in central systems could lead to a shipper booking more capacity on the system than permitted in its NExA, we do not agree that the retrospectivity criteria are satisfied in this case. As we said in our UNC701 decision, it is ultimately the responsibility of shippers to ensure they book capacity correctly. Whilst there is no visibility of the existence of a NExA in industry central systems pre implementation of UNC701, shippers could still take reasonable steps to check whether their customers held NExAs with the relevant gas transporters in order to book capacity in an efficient manner. As such, we disagree with the Proposer's assessment that the error was directly attributable to central arrangements and that the circumstances could not have been reasonably foreseen.

Furthermore, the modification proposes that the refunds of capacity payments made by shippers for affected meter points come out of the Allowed Revenue of Gas Distribution Networks (GDNs). The cost of these capacity payments would therefore be spread across consumers via GDN charges. Approving the socialisation of costs across consumers to finance such refunds would be at odds with our principal statutory duty of protecting the interests of consumers. For this reason, we also consider that directing UNC696V be made would not be consistent with our principal objective and statutory duties.

### **Decision notice**

In accordance with Standard Special Condition A11 of the Gas Transporters Licence, the Authority has decided that modification proposal UNC 696V: *'Addressing inequities between Capacity booking under the UNC and arrangements set out in relevant NExAs'* should not be made.

**Alsarif Satti**

**Acting Head of Gas Charging & Access**

Signed on behalf of the Authority and authorised for that purpose