

Modification proposal:	Uniform Network Code (UNC) 0103: Introduction of the right for the Energy Balancing Credit Committee to instruct National Grid NTS as to appropriate Recovery Steps in respect of Energy Balancing debt (UNC0103)		
Decision:	The Authority¹ directs that this proposal be made²		
Target audience:	The Joint Office, Parties to the UNC and other interested parties		
Date of publication:	23 November 2006	Implementation Date:	To be confirmed by the Joint Office

Background to the modification proposal

Section X of the UNC sets out the obligations, powers and respective roles of National Grid NTS and the Energy Balancing Credit Committee (EBCC) in managing debts that relate to non-payment of Energy Balancing charges.

The EBCC may be the Uniform Network Code Committee (UNCC) or a sub-committee – currently it is the latter.

The modification proposal

UNC0103 sought five key changes to the principles by which Energy Balancing debt is managed. Two of these five principles are provided for within the legal text for the modification itself. We understand that the intention is for the remainder to be introduced through changes to the Energy Balancing Credit Rules (EBCR), although the Modification Report is ambiguous in this regard.

The two principles captured in the legal text are that:

- The decision maker on how Energy Balancing Debt should be pursued will change from National Grid NTS to the EBCC; and
- Any liabilities incurred by National Grid NTS as a result of taking actions directed by the EBCC shall be deemed to be additional Monthly Neutrality Adjustment Amounts (i.e. effectively smeared across Users).

The three additional principles are that:

- National Grid NTS should be obliged to convene an EBCC meeting as soon as is practicable following the issuance of a Termination Notice;
- The scope of that meeting should include consideration of a defined non-exhaustive list of information relating to the defaulting User; and
- Instructions from the EBCC should not prevent or delay NTS in the recovery of NTS Transportation debt.

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 document is notice of the reasons for this decision as required by section 38A of the Gas Act 1986.

UNC Panel³ recommendation

The Modification Panel voted unanimously in favour of implementation at its meeting on 19 October.

The Authority's decision

The Authority has considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 19 October 2006. 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 better facilitate the achievement of the relevant objectives of the UNC⁵; and
2. directing that the modification be made is consistent with the Authority's principal objective and statutory duties⁶.

Reasons for the Authority's decision

Summary of decision

Essentially, three key arguments have been brought forward in support of UNC103. These are that it:

- Would limit the exposure of Users to bad debt relating to Energy Balancing Charges;
- Remove a perceived conflict of interest that results from National Grid NTS determining what recovery actions should be taken; and
- Gives ownership of the debt management process to those affected by that debt (Users, via the EBCC).

We consider that only the second and third of these arguments have been convincingly argued. The weight of those arguments is nonetheless sufficient to demonstrate better facilitation of the applicable code objectives, and is consistent with our wider statutory duties.

Applicable objective (a) – the efficient and economic operation of the pipe-line system to which the Gas Transporter's licence relates

Two arguments have been brought forward in relation to this objective.

The more prominent of these, expressed by several respondents, was that this proposal would limit, or minimise, the exposure of the industry to financial loss for bad debts relating to Energy Balancing.

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

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

⁵ As set out in Standard Special Condition A11(1) of the Gas Transporters Licence, see: http://62.173.69.60/document_fetch.php?documentid=6547

⁶The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Gas Act 1986.

We do not consider that such an outcome can be predicted with any certainty, based on the available evidence. Such an outcome would only be achieved were EBCC to prove better able to successfully pursue bad debt than National Grid NTS has been. But this proposal does not provide the EBCC with any new tools to pursue such debts that were not previously available to National Grid NTS. Whilst it is possible that EBCC may prove more effective in preventing or pursuing bad debts, it appears to also be possible that they may be less effective, or no different.

The second argument that has been brought forward in support of this objective is that it would result in the introduction of best practice and robust procedures for credit management.

Again, there is a lack of evidence to support such a conclusion. As highlighted earlier in this letter, a number of the proposed changes suggested in the modification proposal are not mandated in the legal text, although they may be introduced through the EBCR in practice. These principles are that:

- National Grid NTS should be obliged to convene an EBCC meeting as soon as is practicable following the issuance of a Termination Notice;
- The scope of that meeting should include consideration of a defined non-exhaustive list of information relating to the defaulting User; and
- Instructions from the EBCC should not prevent or delay National Grid NTS in the recovery of Transportation debt.

We note, and agree with, the view of one respondent that the legal text does not deliver the first of these principles. Regarding the second, it has not been demonstrated that EBCC consideration of the defined list of information is currently prohibited. Finally, we do not consider that it has been demonstrated that instructions from the EBCC will result in any changes to the timescale by which NTS may seek recovery of Transportation debt.

We have not identified any other arguments that are relevant to this applicable code objective, and have concluded that it would be neither better facilitated, nor impeded, by this proposal.

Applicable objective (b) – the co-ordinated, efficient and economic operation of (i) the combined pipeline system and/or (ii) the pipeline system of one or more other relevant gas transporters

It has been argued that implementation would align the Transportation Debt Recovery arrangements of National Grid NTS with those of other Transporters, thereby removing any perceived advantage that they have over them in this regard and promoting the co-ordinated, efficient and economic operation of pipeline systems.

We understand from EBCC discussions that there may have been occasions where National Grid NTS has been offered different terms as a creditor in relation to transportation debt than it has been offered in relation to balancing debt.

We accept that such circumstances may leave National Grid NTS and Users in an undesirable position, particularly where repayment terms offered in relation to transportation debt are acceptable but where those in relation to balancing debt are not (or vice versa).

We agree that the removal of this potential conflict of interest should better facilitate this code objective.

Applicable objective (d) – the securing of effective competition

Several respondents argued that effective competition would be better facilitated through a reduction in risk of financial loss to Users.

As previously highlighted in our comments under objective (a), we do not consider that it has been convincingly demonstrated that EBCC will be able to more effectively pursue bad debt than National Grid NTS has been.

Notwithstanding this, we do consider that effective competition will be aided by this proposal. The costs of Energy Balancing bad debt are smeared across Users. This proposal will shift the ownership of the pursuit of such debts from National Grid NTS to Users – through the EBCC. This shift should foster confidence in the accountability and transparency of the debt management process. Increased accountability and transparency in governance should encourage participation in the market.

We have concluded that this objective would be better facilitated by the proposal.

Applicable objective (f) – promotion of efficiency in the implementation and administration of the network code and/or uniform network code

Several respondents argued that this proposal would result in more robust and transparent procedures and thereby promote efficiency in the implementation and administration of the code.

We agree that procedures will be more transparent, and that this is a major benefit of the proposal, but a causal link between this and the efficient implementation and administration of the code has not been clearly demonstrated for this proposal.

We have not identified any other arguments that are relevant to this applicable code objective, and have concluded that it would be neither better facilitated, nor impeded, by this proposal.

Other code objectives

We concur with respondents and the Modification Panel that objectives (c) and (e) are not relevant to the consideration of this proposal.

Our wider statutory duties

As highlighted against code objective (d), we consider that the proposal will have a beneficial impact on competition, through fostering confidence in market governance processes, and that it is therefore consistent with our principal objective.

We also consider that the proposal is consistent with the principles of better regulation. Moving the decision making process for how Energy Balancing debt should be pursued from one that is internal to National Grid NTS, to one that is led by a committee representing Users, should make this process more accountable and transparent to those Users who may be financially affected by any residual bad debt that is smeared.

Decision notice

In accordance with Standard Special Condition A11 of the Gas Transporters Licence, the Authority, hereby directs that modification proposal UNC0103: *Introduction of the right for the Energy Balancing Credit Committee to instruct National Grid NTS as to appropriate Recovery Steps in respect of Energy Balancing debt* be made.

Yours sincerely

A handwritten signature in black ink, appearing to read 'N. Simpson', written over a horizontal line.

Nick Simpson

Director, Industry Codes and Licensing

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