

Stage 04: Final Modification Report

What stage is this document in the process?

- 01 Proposal
- 02 Workgroup Report
- 03 Draft Modification Report
- 04 Final Modification Report

0366:

Clarification of legal text for UNC Modification 0229

This Modification seeks to remove the perceived ambiguity caused by the implementation of legal text for UNC Modification 0229



Panel recommends implementation



High Impact:
Shippers, Suppliers



Medium Impact:
Customers



Low Impact:
Transporters

0366
Modification Report

17 March 2011

Version 2.0

Page 1 of 13

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Contents

1	Summary
2	Why Change?
3	Solution
4	Relevant Objectives
5	Impacts and Costs
6	Implementation
7	The Case for Change
8	Legal Text
9	Consultation Responses
10	Panel Discussions
11	Recommendations

About this document:

This document is a Final Modification Report, presented to the Panel on 17 March 2011. The Authority will consider the Panel's Recommendation and decide whether or not this change should be made.



3 Any questions?

4 Contact:
4 **Joint Office**

4  enquiries@gasgovernance.co.uk

5  **0121 623 2115**

6 Proposer:
9 **David Faragher (Total Gas and Power)**

10  david.faragher@total.com

11  **020 7718 6071**

Proposer's
Representative:
**Gareth Evans
(Waters Wye Associates)**

 gareth@waterswye.co.uk

 **01473 822 503**

0366
Modification Report
17 March 2011

Version 2.0

Page 2 of 13

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1 Summary

Is this a Self Governance Modification

This modification will have a material impact on shippers and so is not suitable to be considered as a self-governance modification.

Why Change?

The implementation of UNC Modification 0229 would not reflect the intention of the modification if it were to create the possibility of retrospective charges. Modifications 0339 and 0340, which purportedly seek to clarify the situation, will not do so appropriately as both modifications seek to create a fixed date to which charges may be back-dated. Implementation of either of these would therefore undermine the intent of UNC Modification 0229 which, if allowed to become retrospective, would not be implemented into the UNC as intended.

Solution

The modification seeks to clarify the implementation of UNC Modification 0229 in line with the original intention. In order to remove the uncertainty which has been created around the implementation of Modification 0229, new legal text has been provided.

Impacts and Costs

The modification will align the UNC with the intention of UNC Modification 0229, namely that any cost reallocation will be prospective in nature with no retrospective charges. We do not expect there to be any appreciable additional costs incurred as a result of this modification.

Implementation

The modification can be implemented immediately upon direction.

The Case for Change

This modification clarifies the existing legal text that was implemented as a result of UNC Modification 0229, so providing certainty of its effect. It also removes the possibility of retrospective charges, which would be an inappropriate cost allocation mechanism. By removing uncertainty and avoiding retrospectivity, implementation would facilitate effective competition and efficient administration of the UNC.

2 Why Change?

Uniform Network Code (UNC) Modification Proposal 0229 'Mechanism for correct apportionment of unidentified gas' was implemented with effect from 10th June 2010.

Throughout the development of UNC Modification 0229 the intent was clear that, to be consistent with accepted principles and avoid unfair cost allocation, all charges were to be levied prospectively. Unfortunately the legal text subsequently implemented into the UNC has created ambiguity regarding what the proposal sought to achieve, and has raised the possibility of retrospective charging.

In order to correct this error, National Grid Distribution raised two further changes; UNC Modification 0339 and UNC Modification 0340. During the course of their development, it has become clear that neither of these proposals will resolve the original issue caused by the ambiguous legal text for UNC Modification 0229 and are instead two separate solutions, looking to create fixed dates from which AUGGE charges will be levied, irrespective of when the AUGS is adopted by the Committee, such that retrospective charging remains a possibility. At present therefore there is no change being actively pursued to correct the flawed implementation of UNC Modification 0229 while maintaining its original intent.

3 Solution

This Modification seeks to correct the flawed implementation of UNC Modification 0229 by providing absolute clarity on the legal text that relates to the levying of AUGGE charges. For the avoidance of doubt, this modification proposes, that until the Committee adopts an AUG Table (as specified in TPD E10.4.3(h)) an interim AUG Table shall apply, using the same values as implemented by UNC Modification 0317.

4 Relevant Objectives

Implementation will better facilitate the achievement of **Relevant Objectives d and f.**

Proposer's view of the benefits against the Code Relevant Objectives

Description of 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.	None
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.	Yes, see below
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	Yes, see below

Standard Special Condition A11.1 (d): so far as is consistent with subparagraphs (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;

This modification looks to correctly implement UNC Modification 0229 and so is ensuring that the objectives of that modification are achieved, whilst removing the prospect of potential retrospective charges that would nullify its benefits. The prospect of retrospective charging creates uncertainty for Shippers and Suppliers, and the principle of avoiding retrospectivity in the interest of effective competition is well established. By clarifying that there will be no retrospective element, implementation of this proposal would remove the uncertainty that can lead to higher charges (with a risk premium otherwise potentially added to charges); can deter entrants to the energy market; and can deter competition among those already active in the market

Standard Special Condition A11.1 (f): so far as is consistent with subparagraphs (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code;

Implementation of this Modification Proposal is necessary to ensure the requirements and terms of UNC Modification 0229 are accurately implemented within the UNC. Removing any perceived ambiguity would be consistent with efficient implementation of the UNC.

0366
Modification Report
17 March 2011

Version 2.0

Page 5 of 13

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5 Impacts and Costs

Costs

Indicative industry costs – User Pays	
Classification of the proposal as User Pays or not and justification for classification	
No changes to User Pays Services are proposed. Consequently this modification is not classified as User Pays.	
Identification of Users, proposed split of the recovery between Gas Transporters and Users for User Pays costs and justification	
No User Pays charges applicable.	
Proposed charge(s) for application of Users Pays charges to Shippers	
No User Pays charges applicable to Shippers.	
Proposed charge for inclusion in ACS – to be completed upon receipt of cost estimate from xoserve	
No charges applicable for inclusion in ACS.	

Impacts

Impact on Transporters' Systems and Process	
Transporters' System/Process	Potential impact
UK Link	None
Operational Processes	None
User Pays implications	None

Impact on Users	
Area of Users' business	Potential impact
Administrative and operational	None
Development, capital and operating costs	None
Contractual risks	Provides certainty with regard to the AUGÉ process, so reducing contractual risk.
Legislative, regulatory and contractual obligations and relationships	None

Where can I find details of the UNC Standards of Service?

In the Revised FMR for Transco's Network Code Modification **0565 Transco Proposal for Revision of Network Code Standards of Service** at the following location:
<http://www.gasgovernance.com/networkcodearchive/551-575/>

Impact on Transporters	
Area of Transporters' business	Potential impact
System operation	None
Development, capital and operating costs	None
Recovery of costs	None
Price regulation	None
Contractual risks	None
Legislative, regulatory and contractual obligations and relationships	Provides certainty on the Transporter obligations under the code.
Standards of service	None

Impact on Code Administration	
Area of Code Administration	Potential impact
Modification Rules	None
UNC Committees	None
General administration	Provides clarity on the AUGE process.

Impact on Code	
Code section	Potential impact
Transition Document TPD Section E10	Removal of current provisions with new legal text.

Impact on UNC Related Documents and Other Referenced Documents	
Related Document	Potential impact
Network Entry Agreement (TPD I1.3)	None
Network Exit Agreement (Including Connected System Exit Points) (TPD J1.5.4)	None
Storage Connection Agreement (TPD R1.3.1)	None
UK Link Manual (TPD U1.4)	None
Network Code Operations Reporting Manual (TPD V12)	None
Network Code Validation Rules (TPD V12)	None

Impact on UNC Related Documents and Other Referenced Documents	
ECQ Methodology (TPD V12)	None
Measurement Error Notification Guidelines (TPD V12)	None
Energy Balancing Credit Rules (TPD X2.1)	None
Uniform Network Code Standards of Service (Various)	None

Impact on Core Industry Documents and other documents	
Document	Potential impact
Safety Case or other document under Gas Safety (Management) Regulations	None
Gas Transporter Licence	None

Other Impacts	
Item impacted	Potential impact
Security of Supply	None
Operation of the Total System	None
Industry fragmentation	None
Terminal operators, consumers, connected system operators, suppliers, producers and other non code parties	Provides certainty as to the costs and benefits that would result from the AUGGE process and remove the potential of retrospective charges.

6 Implementation

As the modification seeks to clarify an existing process, it can be implemented immediately upon direction.

7 The Case for Change

In addition to that identified the above, the Proposer has identified the following:

Advantages

1. Clarifies the existing legal text that was implemented as a result of a UNC Modification 0229, so providing certainty of its effect.
2. Removes the possibility of retrospective charges, which would be an unfair cost allocation mechanism.

Disadvantages

1. None identified.

8 Legal Text

There is no specific requirement in the UNC for the Gas Transporters to utilise the exact form of the legal text shown below however the proposer would expect, to avoid a repeat of the problems experienced with UNC Modification 0229, that any deviation from the suggested text is undertaken after consultation with the proposer.

Suggested legal text

Transition Document TPD Section E10:

"1. It is acknowledged that the steps (including appointment of AUG Expert, establishing AUG Methodology and establishing AUG Table) first required under TPD Sections E10.2 and E10.4 will not be completed by the start of the first AUG Year (1 April 2011).

2. Accordingly, for the purposes of TPD Section E10 and notwithstanding anything to the contrary in Section E10:

(a) the first AUG Table to be established and adopted by the Committee as provided in TPD Section E10.4.3(g) to (i) shall apply for the purposes of TPD Section E10.5 in relation to the AUG Year commencing 1 April 2011, or in the event that an AUG Table has not been adopted by the Committee before the 31 March 2011, the next AUG Year commencing 1 April following the adoption of such AUG Table, and

(b) for each AUG Year preceding the AUG Year which commences on 1 April following the adoption of the AUG Table to be established under TPD Section E10.4.3 (g) to (i) the following table will apply ;

INTERIM AUG Table

<i>LSP Apportionment</i>	<i>£2.75m</i>
<i>DM</i>	<i>£0</i>
<i>NDM</i>	<i>£2.75m</i>

"

9 Consultation Responses

Representations were received from the following parties:

Respondent	
Company/Organisation Name	Support Implementation or not?
British Gas	Not in Support
EDf Energy	Not in Support
First Utility	Supports
Gazprom	Supports
RWE npower	Not in Support
Shell Gas Direct	Support

Of the six representations received three supported implementation and three did not.

Summary Comments

Shell, Gazprom and First Utility support the views put forward by the Proposer.

British Gas consider that Modification Proposal 0366 exposes SSP Shippers to inaccurate costs for an undefined period of time, creating significant risk in the process. The inability to financially plan around the relief of these unfair costs damages Shipper's ability to appropriately price for their customers and therefore impacts their ability to compete fairly. This is especially true for those SSP Shippers with a presence in the LSP market, trying to compete against those Shippers who are present only in the LSP market.

EDF do not concur that the current arrangements are retrospective, and instead follow normal UNC arrangements to ensure that energy is accurately allocated. Instead we believe this proposal will have a negative impact on competition as it will re-instate a cross subsidy from SSP to LSP Shippers and requires SSP Shippers to forecast and model LSP UAG even if they do not have any exposure to this market. We believe that the risks associated with LSP gas should reside with LSP Shippers.

As this modification potentially lengthens the time until an accurate reallocation methodology is applied RWE believe it does not further the relevant objectives.

10 Panel Discussions

The Panel Chair summarised that the modification seeks to clarify the application date for energy reconciliations in accordance with the first Allocation of Unidentified Gas Statement. It is proposed that this will be from the first 1st April following approval of the initial AUGS.

Members recognised that the modification seeks to clarify the existing UNC text, which some have suggested is ambiguous. To this extent, therefore, implementation could be regarded as consistent with promotion of efficiency in the implementation and administration of the Code.

Some Members considered that the avoidance of retrospective reconciliations under any circumstances would provide certainty and reduce risk, and therefore facilitate the securing of effective competition.

Other Members were concerned that costs are being incorrectly allocated at present and wished to see this corrected at the earliest possible opportunity, with more accurate cost targeting being expected to remove cross subsidies and facilitate the securing of effective competition. They considered that implementation could introduce a significant delay before reconciliations are undertaken in line with the initial AUGS, and could therefore incentivise some parties to seek to delay completion of the AUG process. They did not consider, therefore, that implementation would be expected to facilitate effective competition.

5 votes were cast in favour of implementing Modification 0366.

2 votes were cast against implementation of Modification 0366.

Therefore the Panel determined to recommend implementation of Modification 0366.

Panel's view of the benefits of implementation against the Code Relevant Objectives

Description of 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.	None
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.	Impacted
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	Impacted

0366
Modification Report

17 March 2011

Version 2.0

Page 12 of 13

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11 Recommendations

Panel Recommendation

Having considered the 0366 Modification Report, the Panel recommends:

- that proposed Modification 0366 should be made;