

Modification proposal:	Uniform Network Code (UNC) - Aligning UNC with Licence conditions relating to European legislative change and Alternative Modification Proposals (UNC 448)		
Decision:	The Authority ¹ directs that this proposal be made ²		
Target audience:	The Joint Office, Parties to the UNC and other interested parties		
Date of publication:	5 February 2014	Implementation Date:	To be confirmed by the Joint Office

Background to the modification proposal

The EU Third Energy Package³ was implemented in Great Britain on 10 November 2011 by making amendments to relevant domestic legislation. The changes were given effect by the Electricity and Gas (Internal Markets) Regulations 2011 (the Regulations⁴). As a result of the Regulations coming into force, numerous changes were made to the gas and electricity licences. These included changes to Standard Special Condition A11 (SSC A11) 'Network Code and Uniform Network Code' in the Gas Transporter Licence. The proposed changes provide:

- the Authority with the ability to raise a Uniform Network Code (UNC) or Network Code modification proposal which the Authority reasonably considers is necessary to comply with or implement the Gas Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators
- the Authority with the ability to set a timetable for a UNC or Network Code modification proposal raised by the licensee which the Authority reasonably considers is necessary to comply with or implement the Gas Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators
- that a UNC or Network Code modification proposal which the Authority reasonably considers is necessary to comply with or implement the Gas Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators cannot be withdrawn without prior consent of the Authority.

The existing UNC Modification Rules do not reflect these provisions. In addition, SSCA11 paragraph 9(c) requires the UNC Modification Rules to provide for the making of

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.

³ The term 'Third Package' refers to Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (Electricity Directive); Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (Electricity Regulation); Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (Gas Directive); Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (Gas Regulation); and Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators.

⁴ SI 2011/2704 which can be found here: <http://www.legislation.gov.uk/ukSI/2011/2704/part/1/made>

alternative modification proposals, except in a case where the Authority otherwise directs in writing. The Modification Rules do not currently reflect the Authority's ability to direct that alternative modifications may not be raised.

The modification proposal

Modification proposal UNC448 was raised by National Grid Gas plc (the Proposer) in March 2013. The modification proposes to amend the UNC Modification Rules to align them with the provisions of SSC A11. The modification proposal seeks to introduce:

- arrangements to enable the Authority to raise modifications and alternative modifications which the Authority reasonably considers are necessary to comply with or implement the Gas Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators
- provision for the Authority to direct a timetable for modifications raised by the licensee which the Authority reasonably considers are necessary to comply with or implement the Gas Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators. Licensees could not withdraw such modifications without Authority prior consent.

UNC448 also seeks to modify the UNC Modification Rules to reflect SSC A11(9)(c) whereby the Authority may direct that an alternative modification cannot be raised.

UNC Panel⁵ recommendation

The UNC Panel voted on UNC448 on 19 December 2013. The Panel considered that UNC448 would be expected to better facilitate relevant objectives (c), (f) and (g) and therefore recommended that the proposed modification be made.

Our decision

We have considered the issues raised by the modification proposal UNC448 and the Final Modification Report (FMR) dated 19 December 2013. We have considered and taken into account the responses to the Joint Office's consultation on the modification proposal which are attached to the FMR.⁶ We have concluded that:

1. implementation of the modification proposal will better facilitate the achievement of the relevant objectives of the UNC⁷; and
2. directing that the modification be made is consistent with the Authority's principal objective and statutory duties.⁸

⁵ The UNC Panel is established and constituted from time to time pursuant to and in accordance with the UNC Modification Rules.

⁶ UNC modification proposals, modification reports and representations can be viewed on the Joint Office of Gas Transporter's website at www.gasgovernance.co.uk.

⁷ As set out in Standard Special Condition A11(1) of the Gas Transporter Licence, see: <http://epr.ofgem.gov.uk/Pages/EPRInformation.aspx?doc=http%3a%2f%2fepr.ofgem.gov.uk%2fEPRFiles%2fStandard+Special+Condition+PART+A+-+Consolidated+-+Current+Version.pdf>

⁸ 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 as amended.

Reasons for the Authority's decision

We agree with the Proposer, the UNC Panel and the three⁹ respondents who considered that the modification better facilitates achievement of relevant objectives (c), (f) and (g). We consider that the modification is neutral in relation to the other relevant objectives.

Relevant Objective (c)' so far as is consistent with sub-paragraphs (a) and (b), the efficient discharge of the licensee's obligations under this licence'

The Gas Transporter Licence has been modified as a result of the EU Third Energy Package. The purpose of the changes proposed by UNC448 is to align the UNC Modification Rules with the licence requirements contained in SSC A11, ensuring that gas Transporters can efficiently discharge their relevant licence obligations. We therefore consider that this modification does better facilitate this objective.

Relevant Objective (f) 'promotion of efficiency in the implementation and administration of the Code'

We consider that the proposed changes will promote efficiency in the implementation and administration of the UNC by establishing transparent processes within it to reflect the requirements of SSC A11. We therefore consider that this modification does better facilitate this objective.

Relevant Objective (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'

Changes introduced by this modification will help ensure that the UNC Modification Rules reflect the appropriate governance processes that allow future compliance to take place. We therefore consider that this modification does better facilitate this objective.

Other comments

The drafting of SSC A11(9) prevents the licensee from withdrawing, without the Authority's prior consent, a modification proposal that the Authority reasonably considers is necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators. This includes modification proposals for which the Authority has not directed a timetable. We note that this is not reflected in UNC448, which includes this provision only in relation to modifications for which the Authority has directed a timetable. If the wording of the UNC Modification Rules does not achieve compliance with relevant provisions of the licence we expect the licensees to propose amendments to the Modification Rules.

We also note that the FMR for this modification proposal does not specify an implementation timescale. However, we expect that it will be implemented as soon as possible.

⁹ Four responses were received in total. One respondent considered that UNC448 only better facilitates relevant Objectives (c) and (g).

Decision notice

In accordance with Standard Special Condition A11 of the Gas Transporters Licence, the Authority hereby directs that modification proposal UNC448 '*Aligning UNC with Licence conditions relating to European legislative change and Alternative Modification Proposals*' be made.

Lesley Nugent

Head of Industry Codes and Licensing

Signed on behalf of the Authority and authorised for that purpose