

UNC Workgroup 0706R Minutes
Instances where Shippers can exit commercial agreements with an independent supplier

Tuesday 21 January 2020

at Radcliffe House, Blenheim Court, Warwick Road, Solihull B91 2AA

Attendees

Rebecca Hailes (Chair)	(RH)	Joint Office
Karen Visgarda (Secretary)	(KV)	Joint Office
Alan Raper*	(AR)	Joint Office
Andy Clasper	(AC)	Cadent
Carl Whitehouse*	(CW)	Shell Energy Retail
Chris Hooper*	(CH)	CNG
David Mitchell	(DM)	SGN
Derek Clark*	(DC)	Contract Natural Gas
Edd Fyfe*	(EF)	SGN
Ellie Rogers*	(ER)	Xoserve
Fiona Cottam	(FC)	Xoserve
James Rigby	(JR)	Xoserve
Keith Watson*	(KW)	EDF Energy
Kirsty Dudley*	(KD)	E.ON
Liam Gallagher*	(LG)	BU-UK
Liam King*	(LK)	Ofgem
Lorna Lewin*	(LL)	Orsted
Mark Jones	(MJ)	SSE
Mark Palmer*	(MP)	Orsted
Paul Rees*	(PR)	Gazprom
Phil Ivers*	(PI)	Cadent
Rebecca Cailles*	(RC)	BU-UK
Rhys Kealley	(RK)	British Gas
Richard Pomroy*	(RP)	Wales & West Utilities
Rob Johnson*	(RJ)	Waters Wye Associates
Robin Dunne*	(RD)	Ofgem
Steve Mulinganie*	(SM)	Gazprom
Steven Britton*	(SB)	Cornwall Insight
Tracey Saunders	(TS)	Northern Gas Networks

**via teleconference*

Copies of all papers are available at: <http://www.gasgovernance.co.uk/0706/210120>

The Workgroup Report is due to be presented at the UNC Modification Panel by 18 June 2020.

1.0 Outline of Request

Chris Hooper (CH) introduced the Request and explained the purpose was to review the processes and obligations within the Uniform Network Code (UNC) and Supply Licence conditions to identify and enable a clear route for the gas Shipper to exit a commercial relationship with a supplier.

CH explained that at present, there may be instances where a Shipper provides wholesale gas shipping services on behalf of an independent supplier via a contractual and commercial agreement. This places the obligations within the UNC onto the Shipper party, as presently suppliers are not required to accede to the UNC.

CH said that generally, a contract is legally enforceable because it meets the requirements and approval of the law. In the event of breach of contract, the law awards the injured party access to legal remedies such as damages and termination. He added that there are also other instances whereby a party, could be in a position, to exit a commercial relationship, such as the point of contract renewal or the end date.

CH further explained that within the Shipper / supplier relationship outlined above, the UNC and Supply Licence Conditions add extra layers of complexity beyond Contract Law. He stated that presently there is no process for a Shipper to exit a commercial agreement should the supplier party be found in breach of the commercial contract between the Shipper and supplier. This is largely due to the requirement to continue to supply gas to the Supply Points.

CH explained the Request is for the establishment of a Workgroup to:

- Identify and define a clear process for a Shipper to exit a contractual agreement with supplier without impacting the supply of gas to consumers; and
- Agree instances when the process can be initiated.

He also noted that a Modification would need to be raised, however because of the potential complexity of the subject matter, the aim of raising a Request in the first instance was to establish the scope and explore potential options. CH confirmed, when asked, that he was seeking assistance from Workgroup to develop some options with a view to potentially raising a Modification at a later date, once it became clear how any potential solution might work.

Richard Pomroy (RP) enquired if the present situation would alter once the Faster Switching arrangements had been implemented, as the changes involve the switching process becoming-supplier-centric, and he said this area would need to be monitored. CH said that he was aware of the changing landscape, however in relation to a case where a supplier was failing then that situation would still need to be addressed.

A general discussion then took place regarding the Supplier of Last Resort (SoLR) process and if there were issues within this procedure and if so, what these were. CH said that he was aware that Ofgem were trying to reduce the impacts of SoLR, with a lack of payment being one, as the financial impact can be elongated over many months. CH said that the Industry is made aware of any potentially forthcoming SoLR situation, but that there is no formal process up until the time Ofgem intervenes. Phil Ivers (PI) concurred with this statement and added that the Shipper was still liable for the Shipper's Supply Points and costs, including when the invoices were not being paid by the Supplier and this could extend to considerable costs (millions of pounds). Rhys Kealley (RK) said that perhaps if the Shipper had access to a range of specific criteria, then that could help to eliminate poor performers. CH said in essence the files that are sent from the Supplier to Xoserve could be blocked, however these could not be decreased as the formal Withdrawal Request would not have been confirmed.

RH suggested interaction with Ofgem regarding reviewing a particular Supplier's Licence? CH said that he had discussed this area directly with Ofgem and that they were reluctant to address this, as at present they do not see any personal harm or impacts to the end

consumers. Kirsty Dudley (KD) said from the SoLR perspective it would be useful to consider the fact that the 'gaining' supplier (as part of a SoLR event) might need support during the process, as they might not want the Shipper that is being allocated to them. She added that she was not sure if this area was codified within the process. Rebecca Cailles (RC) also questioned why no support was given to the incumbent Shipper, via an emergency procedure in certain extreme circumstances. RK also mentioned that concerning the Supply Licence allocation, that in the first instance, that the Supplier had to prove that they were 'fit for purpose' to enter the market and be given that licence, from both a financial security and performance perspective. He added there should be a process, if that was no longer the case, to remove them. RP said once Next Day Switching was implemented, then this issue would be resolved.

RH said that the above areas would need to be considered during the development of the Request, specifically in relation to the Relevant Objectives and the associated issues, to enable these to be addressed within the UNC. Steve Mulinganie (SM) and Tracey Saunders (TS) both concurred with RH on this matter. SM added that the Relevant Objectives would need to be put forward by the Proposer.

A general discussion took place concerning the competition element (Relevant Objective d) and the fact the supplier is required to provide substantial capital up front as security to cover the credit position, which in turn, limits the number of suppliers being able to enter the market.

Alan Raper (AR) agreed and said that perhaps a different way of viewing the process would be to force the supplier to become a Shipper, a process which might be instigated by the host Shipper, and then that newly created Shipper would inherit the Supply Points, and then these could be re-registered. A long and protracted discussion took place regarding the re-registering procedure and the contractual impacts between one Shipper and supplier, and the overall impacts of the contractual breach, together with the potential of a 'right to terminate'.

The Workgroup Participants discussed possible options and RH captured these as defined below:

Objective

The UNC needs to recognise the commercial reality that shipping arrangements may be terminated between Shippers and suppliers in instances other than SoLR and provide arrangements for handling these situations.

Relevant Objectives

Workgroup Participants discussed whether any Modification raised might meet the UNC relevant objectives. The conclusion appeared to be that any Modification could potentially fall under Relevant Objective d).

Workgroup Participants brainstormed potential areas where any solution could focus:

Option 1

Force the Supplier to become a Shipper.

This could be initiated by the existing Shipper.

If this had licence backing, the Workgroup Participants thought there may be a possibility of this working.

Option 2a

Shipper sources a new Supplier for a parcel of Supply Points.

This would be an amicable arrangement, thus perhaps doesn't need a Code solution.

Option 2b

Supplier sources a new Shipper for a parcel of Supply Points.

This would be an amicable arrangement, thus perhaps don't need a Code solution.

Option 3

Forced transfer of sites from current Shipper to a new Party which could function temporarily as a special type of Shipper, perhaps something like an Emergency Shipper or 'EmShipper'

There may be difficulties in finding a new Shipper, it may depend on the rates available.

The incoming 'EmShipper' would need the support to operate and provide that service, recognising that they are taking on additional risk.

Note that the Supplier is likely to be on the brink of failure so why would any Shipper or EmShipper want to take it on?

Option 4

Develop additional Emergency type support for incumbent Shippers in certain situations.

Option 5

Incumbent Shipper triggers revocation of Supply licence.

Problems may be found here with the timing of any Ofgem process, there could be 2-3 missed months of payment totalling several £m.

Option 6

Entry tests and ongoing reviews of suppliers.

This could be focused especially around growth of suppliers.

Could there be a different licence solution? Can the licences be adapted to reflect the situation now where supply licence and shipper licence can be a separate Party.

Possibly explore banded licences?

2.0 Initial Discussion

2.1. Issues and Questions from Panel

Rebecca Hailes (RH) Chair, provided an overview of the Individual Terms of Reference which included the following question for consideration as raised in the December meeting by the UNC Panel;

- 1) Consider possible Cross Code Impacts.

This will be covered at the next Workgroup meeting.

2.2. Initial Representations

None received.

2.3. Terms of Reference

As matters have been referred from Panel a specific Terms of Reference have been published alongside the Modification at: <https://www.gasgovernance.co.uk/0706>

3.0 Next Steps

RH confirmed that her aspirations for the February meeting were to further discuss the various Options in order to develop the Request, to encompass the areas below:

- Review of Options
- Consideration of Business Rules
- Review of Impacts and Costs incl. Cross Code Impacts
- Review of Relevant Objectives
- Consideration of Wider Industry Impacts
- Consideration of Legal Text
- Development of Workgroup Request.

4.0 Any Other Business

None.

5.0 Diary Planning

Further details of planned meetings are available at: www.gasgovernance.co.uk/events-calendar/month

Workgroup meetings will take place as follows:

Time / Date	Venue	Workgroup Programme
10:30 Tuesday 25 February 2020	Radcliffe House, Blenheim Court, Warwick Road, Solihull B91 2AA	Detail planned agenda items. <ul style="list-style-type: none">• Review of Options• Consideration of Business Rules• Review of Impacts and Costs incl. Cross Code Impacts• Review of Relevant Objectives• Consideration of Wider Industry Impacts• Consideration of Legal Text• Development of Workgroup Request