

Modification proposals:	Uniform Network Code (UNC): Re-establishment of Supply Meter Points – measures to address shipperless sites (UNC369) and its alternative (UNC369A)		
Decision:	The Authority ¹ has decided to reject these proposals		
Target audience:	The Joint Office, Parties to the UNC and other interested parties		
Date of publication:	22 March 2012	Implementation Date:	N/A

Background to the modification proposal

Where a consumer no longer requires a gas supply at their premises, a gas shipper may undertake steps to reduce its exposure to energy and transportation charges associated with that site.

A shipper can tell the transporter that it has Isolated the site. In doing so, the gas shipper warrants that it has undertaken physical works and the site is no longer capable of flowing gas. This physical work may involve capping or clamping the meter and may also involve physically removing the meter from the premises.² Where a site has been Isolated, the shipper remains liable for all the charges applied to the site, including transportation charges.³

If a shipper has Isolated a site, it may also submit a Supply Point Withdrawal to the transporter. This indicates that the shipper intends to end its registration for the supply point. This would have the effect of removing the shipper as the party responsible for that supply point in the Supply Point Register. In the instance where the shipper has notified the transporter of an Isolation and a Supply Point Withdrawal, it would not be liable for transportation or energy charges. This is known as Effective Supply Point Withdrawal.

The exception to this is shipperless sites. A shipperless site occurs where the shipper has submitted an Effective Supply Point Withdrawal but a supply meter is still connected and gas is still capable of flowing.⁴ Shipperless sites typically occur where a shipper has not correctly undertaken the necessary physical works or has provided erroneous data to the transporter. It may also occur where the consumer or another third party has reconnected a meter or removed the device preventing the flowing of gas without being authorised to do so.

Currently, where it is established that a supply meter remains connected to a supply point that has been subject to an Effective Supply Point Withdrawal, and it is capable of flowing gas, the shipper is liable for transportation capacity and transportation customer charges as if the request had not been made. Where subsequently it is established that gas has flowed through a meter that has been subject to an Effective Supply Point Withdrawal, the shipper will also be liable for energy and transportation commodity charges.

Where the site has been Isolated, or subject to an Effective Supply Point Withdrawal, there is a requirement to conduct a site visit to disconnect the site under the Gas Safety

¹ The terms 'Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets.

² A scenario may occur whereby the shipper chose to disconnect the meter from the transporters network but elected not to remove the meter from the property.

³ Although if the AQ is set to 1 (the minimum possible) then these charges are likely to be limited.

⁴ Alternatively, a shipperless site is a supply point within the Supply Point Register that has no current registered shipper, but previously had one.

(Installation and Use) Regulations (GSIUR) 1998.⁵ Shipperless sites are typically identified as a consequence of such visits. They may also be identified when a new customer moves into premises. Where, subsequent to either Isolation or an Effective Supply Point Withdrawal, gas is flowing or capable of flowing, the transporter is unable to expedite the disconnection. Statistics presented by Xoserve indicate that the number of shipperless sites is increasing.⁶

Supply arrangements

The Gas Act 1986 sets out where a contract for the supply of gas is deemed to exist in circumstances where there is not an express contract between the supplier and the consumer. In the case of a shipperless site a deemed contract would not apply.⁷

Where a supplier does not have a contract (deemed or otherwise) with the consumer at the premises, the gas transporter is required to investigate and to charge the customer for any gas taken.⁸ Therefore, once the shipperless site is identified, the previous shipper would be liable for energy and transportation charges. However, as the deemed contract provisions do not apply, the supplier would not be able to recover these charges from the consumer.

The modification proposals

UNC369

National Grid Distribution (UNC369 proposer) raised UNC369 in March 2011. UNC369 aims to clarify that a shipper's registration remains in place from the date of a Supply Point Withdrawal, where it is identified that the same meter is installed at the premises and is capable of flowing gas. This would ensure that, where all the elements of the relevant statutory provisions are satisfied,⁹ a deemed supply contract is in place from the date of the Effective Supply Point Withdrawal and would enable the shipper to recover its costs through its supplier arrangements.

The proposal also aims to ensure that where, following either Isolation or an Effective Supply Point Withdrawal, the same meter is found to be connected to the transporter's system and capable of flowing gas, the shipper would be responsible for the costs incurred by transporters for visits carried out under the GSIUR. UNC369 further clarifies that the charges for which a shipper is liable after Isolation include energy charges.

UNC369A

Modification UNC369A was raised by Gazprom (the UNC369A proposer) in July 2011 as an alternative to UNC369. As with UNC369, it seeks to re-establish the supply point registration in the Supply Point Register for shipperless sites where it is identified that the same meter is installed at the premises. Likewise, it also seeks to make shippers responsible for the GSIUR costs associated with aborted visits by gas transporters and clarifying the charges due when an Isolation has been made.

⁵ Once a meter has been cut-off from a gas supply and not replaced within 12 months, there is a requirement under Section 16(3) of the Gas Safety (Installation and Use) Regulations to ensure that the service pipe or service pipework for those premises is disconnected as near as is reasonably practicable to the main and that any part of the pipe or pipework which is not removed is sealed at both ends with the appropriate fitting. Typically this requirement is fulfilled by the gas transporter.

⁶ Xoserve is the gas transporters agent. Statistics on shipperless sites are presented at the Xoserve administered 'Shipperless and Unregistered Sites Working Group', which is working on identifying and advance solutions on the root causes for shipperless and unregistered sites (an unregistered site is a supply point in the Supply Point Register that has never been registered to a shipper).

⁷ In that situation there is no longer a shipper registered to the supply point in the Supply Point Register and gas is not being taken in pursuance of arrangements made with the gas transporter by the shipper. See Gas Act 1986, Schedule 2B paragraph 8(2)(a).

⁸ See Gas Act 1986, Schedule 2B paragraph 9 and Standard Licence Condition 7 of the Gas Transporters Licence.

⁹ This would include, that a supply of gas has previously been made to the premises by a gas supplier and that the owner or occupier of premises has, in fact, taken a supply of gas. See Gas Act 1986, Schedule 2B paragraph 8(2).

In the case of shipperless sites, UNC369A seeks to remove a shipper's liability for energy and transportation charges and not to facilitate a deemed contract with the consumer in two instances. The first is where the meter at the premises is owned by the consumer. Consumer-owned meters cannot readily be removed from a consumer's control, even where suppliers have taken steps to disconnect the relevant metering equipment. The second exception is where transporters themselves have directly undertaken the physical works e.g. responding directly to an urgent requirement to cease the flow of gas.

UNC Panel¹⁰ recommendation

At the UNC Panel (the Panel) meeting held on 16 February 2012, of the ten Panel members, nine voted in favour and one opposed the implementation of UNC369. The ten Panel members voted unanimously for implementation of UNC369A. Therefore the UNC Panel recommended both UNC369 and UNC369A for implementation. When asked to consider both UNC369 and its alternative, six Panel members considered that UNC369 would better facilitate the UNC Relevant Objectives and three Panel members considered that UNC369A would better meet these objectives. The Panel therefore considered that UNC369 would better facilitate the relevant objectives than UNC369A.

The Authority's decision

The Authority has considered the issues raised by each of the modification proposals and the Final Modification Reports (FMRs) dated 16 February 2012. The Authority has considered and taken into account the responses to the UNC's consultation on each of the modification proposals.¹¹ The Authority has concluded that implementation of one or other of the modification proposals may potentially better facilitate achievement of the relevant objectives of the UNC although the case is marginal.¹² We have therefore considered the proposals against our statutory duties. In this regard, we have concluded that approving one or other of the modifications is not consistent with our statutory duties.

Reasons for Authority decision

We have assessed the proposed modifications against the UNC Relevant Objectives. The proposers for each of the modifications considered that they would better facilitate relevant objectives (d) and (f). We have assessed the modification proposals against these relevant objectives and also against relevant objective (a). We consider that the modification proposals have no impact or are neutral when assessed against the remaining objectives.

Standard Special Condition A11.1 (a): the efficient and economic operation of the pipe-line system

We consider that both proposals could facilitate improvements to network planning and therefore support the efficient and economic development of the pipeline system. The proposers of each of the modifications and the majority of respondents to the consultation noted that both proposals would mitigate the risk of shipperless sites occurring. We would expect this to provide transporters with a clearer view of where and when gas is being used, which transporters could use to determine the scale of investment needed in system capacity. The likely scale of shipperless sites may mean that this benefit would be small.

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

¹¹ UNC modification proposals, modification reports and representations can be viewed on the Joint Office of Gas Transporters website at www.gasgovernance.com

¹² As set out in Standard Special Condition A11(1) of the Gas Transporters Licence, see: <http://epr.ofgem.gov.uk/index.php?pk=folder590301>

Standard Special Condition A11.1 (d): the securing of effective competition

In circumstances where gas continues to flow to a shipperless site that has not yet been identified, the energy and transportation charges would be borne by shippers in the Smaller Supply Points (SSPs) sector¹³ through the Reconciliation by Difference (RbD) mechanism.¹⁴ It is anticipated that an element of the energy cost would also be apportioned to shippers on the Larger Supply Points (LSPs)¹⁵ market by the Allocation of Unidentified Gas Export (AUGE).¹⁶ As noted above, we would expect that both proposals could help reduce the occurrence of shipperless sites. This would promote the accuracy of energy and transportation cost allocation, and mitigate the risks of such costs being smeared across other shippers. We agree with the majority of respondents and both proposers that UNC369 and UNC369A are therefore likely to facilitate competition in the gas market in this regard.

However, we note that the alignment between cost liability and cost recovery for suppliers would only occur for the shipperless sites where the same meter is found to be fitted and capable of flowing gas. We are concerned that the proposals do not clarify the arrangements where a different meter is found to be connected and capable of flowing, or has flowed gas following Isolation or Effective Supply Point Withdrawal. Under the current arrangements, a shipper would be liable for any energy and transportation charges. The effect of the modification proposals is to remove a shipper's liability for energy and transportation charges in instances where a different meter is found to be in place. In such instances, these costs would be smeared across other shippers. Whilst we acknowledge that both proposals have the potential to lead to more accurate allocation of charges, we do not consider that the benefits of changing the current provisions for the instances where a different meter is found to be in place have been fully considered under this proposal and may contribute, on balance, to the relevant objective not being better met.

We note that some shippers were concerned that they would not be able to mitigate their potential liabilities under UNC369 where the consumer owns its own meter. In particular this was because a shipper was unable to remove the customer-owned meter from the site. We recognise these concerns but we consider that the competition model in the GB market, which is supported by the consumer protection measures, established in the Gas Supply Licence, means that where achievable, the relationship with the consumer should be managed by the supplier.¹⁷ We also note that the Gas Act envisages that a supplier will have the primary responsibility for tackling instances where a meter is reconnected without the consent of a supplier.¹⁸ We therefore consider that it is appropriate to retain this primary role for the supplier where possible. We also consider that retaining the allocation of charges to the shipper last responsible for that site will help to encourage action to minimise the instances of this occurring and seeking to remedy it once identified, even where the supplier is not able to remove the meter from the premises.

As noted above, whilst we consider that both proposals could lead to improvements, the exemptions provided under UNC369A would have the effect of preventing deemed

¹³ A supply point with an annual consumption of less than 73,200kWh (2,500 therms).

¹⁴ RbD is the method of reconciling the difference between actual (metered) and deemed (estimated) measurements of gas allocated to Small Supply Points (SSPs). Gas flowing through shipperless sites would not be metered and therefore would be allocated to shippers in the SSP market for the purposes of calculating energy and transportation commodity charges.

¹⁵ A supply point with an annual consumption greater than 73,200kWh (2,500 therms).

¹⁶ The AUGE is an independent expert appointed by the gas transporters. It aims to provide a methodology to identify the sources of Unaccounted for Gas and apportion a fixed volume of UAG to the LSP sector.

¹⁷ The gas supplier's licence includes a number of conditions that warrant protection to consumers (eg Standard Licence Condition 25 to 30) which do not exist in the gas transporter's licence.

¹⁸ See Gas Act 1986 Schedule 2B, paragraph 11. Where the customer commits such an offence under the Gas Act, the supplier is permitted to cut-off the premises until such time as the matter is remedied (including the recovery of associated charges).

contracts and the allocation of charges in certain circumstances. In these cases transporters, and not suppliers, would be required to seek to recover charges from the consumer. In this situation, even if transporters were able to recover charges, costs would be socialised. We consider therefore that whilst UNC396A would improve the accuracy of cost allocation, this effect would partially be offset by the exemptions in this proposal. For this reason we consider that UNC369 would be likely to achieve a higher level of net benefits for the industry and consumers than UNC369A.

Standard Special Condition A11.1 (f): promotion of efficiency in the implementation and administration of the code

Some respondents considered that the measures identified within both modifications would promote efficiency in implementing and administering the code. We note that there are likely to be benefits in clarifying the arrangements following Isolation or Effective Supply Point Withdrawal where the same meter is found to be flowing, or capable of flowing gas. We therefore consider that both proposals could potentially contribute to further relevant objective (f) although we are concerned that the arrangements where a new meter is found to be in place are less clear. Due to the additional complexity of UNC369A, we consider that UNC369 could better facilitate this relevant objective.

We further note that, as a result of the legal uncertainty described below, there is a likelihood of disputes arising between customers, supplier and transporters that result from the proposed modifications to the UNC. We consider that this may not promote efficiency in the implementation and administration of the code.

Statutory duties

The effect of the modifications is to potentially put in place a deemed contract before the implementation date of the modifications. This could provide a supplier with a mechanism to make retrospective charges to the customer for a period before the modification had been implemented. For this reason, and on the basis of the potential effects set out below, we consider that approving either of the modifications would not be consistent with the Authority's principal objective of protecting the interests of consumers.

In general, we do not consider that it is in the interests of consumers to be exposed to charges that are calculated retrospectively on the basis of arrangements that were not in place at the time that the supply of gas was made. This could be disputed or challenged by consumers who may question the basis for charges which were not evident at the time that the gas was consumed. In these circumstances, it may be argued that it is the role of the gas transporter to make such charges.

In some instances, a transporter may already have recovered (or sought to recover) charges from the consumer at a shipperless site as required under SLC7 of the Gas Transporters Licence. As the proposed modification would provide a potential route for a supplier to seek to recover charges for the same supply of gas under a deemed contract, the consumer may be asked to pay twice for the supply of gas.¹⁹ Exposure to such contractual confusion is not in the interest of consumers.

We generally hold the view that modifications which contain retrospective elements should be avoided. This has been a consistent feature in our modification decisions on proposals²⁰ and in our published guidance on urgency criteria.²¹ We acknowledge that

¹⁹ We also note that the retrospective effect of the proposals may mean that there is uncertainty as to whether a transporter had a legal basis for seeking, recovering and retaining charges from consumer and therefore the transporter could potentially face criminal or civil liability as a result. Consequentially, it may lead to uncertainty on the application of SLC 7 of the Gas Transporters Licence in relation to the requirement to investigate and levy charges for the period prior to implementation of the proposed modifications.

²⁰ For instance, UNC341: 'Manifest Errors in Entry Capacity Overruns'. Available at www.gasgovernance.co.uk

²¹ See: www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=213&refer=Licensing/IndCodes/Governance

modifications which contain retrospective elements may be appropriate in certain circumstances which are set out in the guidance referred to above. However, we do not consider there is anything in these modification proposals that makes this a special case.

Additional comments

We agree that a deemed contract should be capable of applying on shipperless sites and consider that this supports an important principle of supply being made by a gas supplier, where possible. However, to avoid concerns relating to retrospective application, we consider that it would only be appropriate for a code modification to have the effect of ensuring that a deemed contract would be capable of applying to shipperless sites from the date of implementation of the modification, and the recovery of supply charges prior to this date would be a role for the transporter. We therefore encourage the industry to further consider the issues in this letter and make proposals to allow deemed contracts to apply where appropriate. We also encourage the industry to address instances where a different meter has been fitted.

Colin Sausman

Partner, Smarter Markets

Signed on behalf of the Authority and authorised for that purpose