

Modification proposal:	Uniform Network Code (UNC) 0525: Enabling EU Compliant Interconnection Agreements (UNC525)		
Decision:	The Authority ¹ directs this modification be made ²		
Target audience:	UNC Panel, Parties to the UNC and other interested parties		
Date of publication:	19 August 2015	Implementation date:	To be confirmed by the Joint Office but no later than 1 October 2015

Background

The final report of the European Commission's sector inquiry into competition in gas and electricity markets (published in January 2007) noted (amongst other things) the lack of effective competition in European markets.³

In response, a suite of legally binding European Union (EU) legislation, referred to as the Third Package, on European electricity and gas markets was introduced and adopted on 13 July 2009.⁴ The Third Package was transposed into law in Great Britain (GB) by regulations that came into force on 10 November 2011.

The Third Package creates a new legal framework to promote cross-border trade. It requires a number of legally binding Guidelines and 'Network Codes' to be established and implemented.⁵ Taken together, these aim to promote liquidity, improve integration between Member States' gas markets and promote the efficient use of interconnectors to ensure that gas flows according to price signals, ie to where it is valued most.

One such code is the Network Code on Interoperability and Data Exchange (INT).⁶ INT was published in the Official Journal of the European Union (OJEU) on 1 May 2015 and applies from 1 May 2016.

Interoperability is a prerequisite for the good functioning and integration of cross-border gas markets. A lack of harmonisation poses barriers to cross-border gas transport and to the creation of an integrated and competitive internal European energy market. The main objective of INT is therefore to facilitate cross-border gas flows and effective market integration through the application of a number of harmonised principles and common rules on issues such as:

¹ References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

² This document is notice of the reasons for this decision as required by section 38A of the Gas Act 1986.

³ Inquiry pursuant to Article 17 of Regulation (EC) No 1/2003 into the European gas and electricity sectors (Final Report): http://ec.europa.eu/competition/sectors/energy/2005_inquiry/index_en.html.

⁴ In relation to gas, the Third Package includes 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 (the "Gas Directive") and 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 (the "Gas Regulation").

⁵ See Article 6 (Establishment of network codes) of the Gas Regulation which sets out the process for establishing EU-wide network codes for gas: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009R0715>.

⁶ Commission Regulation (EU) 2015/703 establishing a network code on interoperability and data exchange rules. <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0703&from=EN>.

- the establishment and/or amendment of Interconnection Agreements (IAs) between Transmission System Operators (TSOs) at cross-border points (including default rules on, for example, flow control, measurement principles, matching processes & allocation of gas quantities, exceptional events and amendment procedures for IAs);
- a common set of units to be applied;
- the managing of gas quality differences & the monitoring of gas quality;
- odourisation;
- common data exchange solutions; and
- dispute resolution.

The UNC currently only considers, and prescribes governance for, a limited number of elements of the TSO-TSO Interconnection Agreements (IAs) - specifically, Network Entry and Network Exit Agreements. There is currently no requirement in the UNC for National Grid Gas (NGG) to include, in its IAs, rules on, for example, nominations matching, gas allocation and communication procedures in exceptional events. Given the requirements of the INT code, the UNC will hence need to be expanded to mandate a larger number of elements in the IAs. Furthermore, INT recognises that these additional required elements in the IAs may affect Users. INT therefore requires TSOs to invite network users to comment on the revised IA before amending them. As INT extends the scope of what must be included in a TSO-TSO IA, and also what needs to be consulted upon, a change to the UNC is required to ensure compliance with INT.

In addition, the new matching rules arising from UNC493 (EU Gas Balancing Code - Daily Nominations at Interconnection Points)⁷ foresee a new role for the TSOs. Furthermore, UNC510V (Reform of Gas Allocation Regime at GB Interconnection Points)⁸, if approved, could also give rise to issues of TSO liability. UNC525 seeks to address these issues.

Furthermore, the Connected System Exit Point Ancillary Agreement (CSEP AA), in respect of the Moffat and Bacton Interconnection Points (IPs), contains provisions in relation to both operational rules and User Agent arrangements.⁹ The provisions within the CSEP AAs relevant to the User Agent role will no longer be required if UNC510V is approved and any enduring operational rules will need to be incorporated into the UNC.

Finally, some unique issues in respect of the implementation of European Network Codes at the Moffat IP need to be addressed.¹⁰

The modification proposal

NGG¹¹ raised UNC525 on 4 February 2015 to facilitate compliance with INT in respect of the establishment and/or amendment of IAs between adjacent TSOs.¹²

⁷ UNC493 EU Gas Balancing Code - Daily Nominations at Interconnection Points (<http://www.gasgovernance.co.uk/0493>).

⁸ UNC510V - Reform of Gas Allocation Regime at GB Interconnection Points (<http://www.gasgovernance.co.uk/0510>) will be considered by the UNC Panel on 20 August 2015 before being submitted to the Authority for approval.

⁹ These are supplementary agreements to the UNC, in this case between National Grid NTS and IP Users. A User is required to become a signatory to the relevant CSEP AA in order to become a Registered User at that particular IP.

¹⁰ There is one IP between GB and the island of Ireland ('the Moffat IP'). There is a single interconnection agreement between NGG and Gas Networks Ireland (UK) (GNI(UK)) at Moffat. However GNI(UK) does not enter into transportation agreements with shippers; instead this is done by GNI, for gas flowing from GB to the Republic of Ireland, and Premier Transmission Ltd (PTL) for Northern Ireland. Furthermore the Stranraer distribution network is supplied by gas taken from the NTS and transported in the PTL pipeline to Stranraer on behalf of Scotia Gas Networks.

In line with the set of issues summarised above, key aspects of the proposal include:

1. Enabling Users to be consulted on changes to the IAs that affect them outside of the UNC Modification process

Under normal circumstances NGG would (i) negotiate changes to an IA with their adjacent TSO, then (ii) develop an 'enabling' UNC modification and then (iii) consult with Users to make changes to the IA, in a sequential manner. However, the revised IAs will contain some elements relevant to the implementation of the Network Code on Gas Balancing of Transmission Networks¹³ (BAL) and Capacity Allocation Mechanisms in Gas Transmission Systems¹⁴ (CAM). These codes are to be implemented by 1 October 2015 and 1 November 2015 respectively. As such the normal timescales do not allow enough time for the revised IAs to be in place for 1 October 2015.

UNC525 allows parallel, yet independent timeframes for the development of all aspects of this modification, IA negotiations and User consultation in order to facilitate changes to the IAs in time for 1 October 2015.

2. Establishing UNC governance arrangements for future amendments to the IAs that affect Users

UNC525 retains the current UNC requirement for consultation with Users in respect of changes to the Network Entry and Exit Agreements, whilst extending this to cover the new aspects required by INT, as summarised above.

Where NGG and an Adjacent TSO do not agree on a change to a relevant IA provision which affects Users, NGG will nonetheless raise a modification and seek to engage Users. UNC525 then provides the Adjacent TSO with the ability to submit its point of view in the form of an alternate modification specifically in those situations where NGG has raised a modification which relates to Relevant Interconnection Provisions.¹⁵

UNC525 also introduces a formal route to allow Users to request an amendment to a relevant interconnection provision of an IA and obliges NGG to respond.

3. Inclusion of a liability provision within UNC

UNC525 proposes that the European Interconnection Document (EID)¹⁶ will include a clause that Users agree that NGG may indemnify any adjacent TSO for any costs,

¹¹ The legal text for UNC525 refers to National Grid NTS (NG NTS) whereas we refer to NGG in this letter (that is, the holder of the gas transporter licence in respect of National Transmission System). These are used interchangeably for the purposes of this decision.

¹² UNC525 - Enabling EU Compliant Interconnection Agreements (<http://www.gasgovernance.co.uk/0525>)

¹³ Commission Regulation (EU) No 312/2014 of 26 March 2014 establishing a Network Code on Gas Balancing of Transmission Networks: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.091.01.0015.01.ENG.

¹⁴ Commission Regulation (EU) No 984/2013 of 14 October 2013 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0984&from=EN>.

¹⁵ Relevant Interconnection Provisions are defined in the legal text for UNC525 and relate to Network Entry and Exit Provisions, capacity bundling, nominations matching, allocations and communications in exceptional events. Under normal circumstances only UNC signatories may raise a modification or alternate modification to the UNC.

¹⁶ The EID is a UNC document which sets out the rules which apply at IPs where they are different to those which the UNC describes for other system points.

losses or damages incurred by that adjacent TSO as a result of a successful claim, in tort or otherwise, by any User due to any failure by that Adjacent TSO. Further, where NG NTS agrees to indemnify the adjacent TSO, each User undertakes that it will not make, and will waive, any relevant claim in relation to any Adjacent TSO, and agrees to indemnify NG NTS in respect of any liability to an Adjacent TSO resulting from a claim, in tort or otherwise, by the user. For clarity, Premier Transmission Ltd (PTL) and Gas Networks Ireland (GNI) will be treated as if they were adjacent TSOs at the Moffat IP for the purposes of the UNC only.¹⁷

UNC525 also introduces a new process for the correction of errors in nominations, allocations and matching by NGG or the Adjacent TSO.

4. Inclusion of relevant clauses from CSEP AAs within the EID

UNC525 will transfer certain provisions from the CSEP AAs relevant to Users into the UNC. This includes certain operational rules to the extent they are not redundant or replaced by the new rules already implemented under UNC493¹⁸ and UNC500.¹⁹

5. Provision of a clause to terminate the CSEP AAs

As stated above, UNC525 will transfer certain provisions from the CSEP AAs relevant to Users into the UNC. The rules set out in the remainder of the CSEP AAs are made redundant and/or are replaced by other modifications implementing the European Network Codes; the CSEP AAs are therefore no longer required. UNC525 will hence introduce provisions within the CSEP AAs which will have the effect of terminating them, pursuant to UNC Section J6.6.

6. Moffat specific IA arrangements

UNC525 will introduce provisions into the UNC to address certain issues that arise from the multi-party nature of the Moffat IP in connection with the implementation of the new processes required for compliance with INT.

NGG considers that all of the above changes are necessary to facilitate compliance with INT and so facilitates the achievement of UNC relevant objective (g).²⁰

UNC Panel²¹ recommendation

At the UNC Panel meeting on 16 July 2015, the UNC Panel unanimously considered that UNC525 would better facilitate UNC relevant objective (g) and therefore recommended its approval.

¹⁷ The IA is between NGG and GNI(UK). A tripartite agreement exists between NGG, GNI(UK) and PTL, as well as a further tripartite agreement between NGG, GNI(UK) and GNI. The tripartite agreements cover the various commercial relationships at Moffat. The UNC considers GNI(UK), GNI and PTL to be adjacent TSOs to NGG depending upon the particular process being considered at that time.

¹⁸ See footnote 7.

¹⁹ UNC500 - EU Capacity Regulations - Capacity Allocation Mechanisms with Congestion Management Procedures (<http://www.gasgovernance.co.uk/0500>)

²⁰ UNC 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.

²¹ The UNC Panel is established and constituted from time to time pursuant to and in accordance with the UNC Modification Rules.

Our decision

We have considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 16 July 2015. We have considered and taken into account the responses to the industry consultation on the modification proposal which are attached to the FMR.²² We have concluded that:

- implementation of the modification proposal will better facilitate the achievement of the relevant objectives of the UNC;²³ and
- directing that the modification be made is consistent with our principal objective and statutory duties.²⁴

Reasons for our decision

We consider this modification proposal will better facilitate UNC objective (g) and has a neutral impact on the other relevant objectives.

(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

The FMR states that this modification will facilitate compliance with European legislative requirements as it sets out the arrangements to be applied at IPs that are consistent with INT. We agree with this view and consider UNC relevant objective (g) is better facilitated by the implementation of UNC525.

The legal text for UNC525 does not include the final version of the Moffat Designated Arrangements (MDA) as was originally envisaged by the proposer. The purpose of the MDA is to draw together the various agreements at Moffat and set out how they impact the UNC in a single document.

We understand this omission is because the MDA were still being negotiated at the time the workgroup report was completed. We consider that the MDA is not necessary for the other features of UNC525 to be implemented and are comfortable with its removal from the modification. We do think though that such a document would be useful in clarifying the arrangements at Moffat and should be in place by 1 October 2015 or as soon as is practicable thereafter.

Section A1.4 of the EID provides for NGG to establish and designate the MDA either by code modification or with Condition A11(18) Approval.²⁵ We note that NGG has decided to follow the latter approach and published a consultation on the MDA on 6 August 2015.²⁶ We look forward to receiving the final version of the MDA along with any representations made during the consultation and will make our decision following that.

²² UNC modification proposals, modification reports and representations can be viewed on the Joint Office of Gas Transporters website at www.gasgovernance.co.uk

²³ As set out in Standard Special Condition A11(1) of the Gas Transporters Licence, available at: <https://epr.ofgem.gov.uk/Content/Documents/Standard%20Special%20Condition%20-%20PART%20A%20Consolidated%20-%20Current%20Version.pdf>.

²⁴ 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.

²⁵ Condition A11(18) Approval is an approval by Ofgem under the gas transporter licence of a decision by a Transporter to take a particular action under the UNC.

²⁶ Moffat Designated Arrangements <http://www.gasgovernance.co.uk/0525>.

Decision notice

In accordance with Standard Special Condition A11 of the Gas Transporters licence, the Authority hereby directs that modification proposal UNC525: *'Enabling EU Compliant Interconnection Agreements'* be made.

Maxine Frerk

Senior Partner, Smarter Grids & Governance

Signed on behalf of the Authority and authorised for that purpose