

Modification proposal:	Uniform Network Code (UNC) 548: (Urgent) - Project Nexus – deferral of implementation date (UNC548)		
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:	13 Aug 2015	Implementation date:	14 Aug 2015

Background

The suite of industry code modifications developed as part of Project Nexus aim to ensure that the systems underpinning the competitive gas market meet the current and anticipated business requirements of participants in that market. The principal UNC modifications that will give effect to these changes are UNC432³ and 434⁴, which were accepted in February 2014, and UNC440⁵ which was accepted in January 2015. All of these modifications were scheduled to be implemented together on the *Project Nexus implementation date*, which was defined within UNC432 as being 1 October 2015, or such other date as may be determined by the Uniform Network Code Committee (UNCC).

On 15 May 2014 we rejected modification UNC491⁶ to postpone the implementation date of Project Nexus from October 2015 until April 2016 or a later date determined by the UNCC. We did not consider that UNC491 met the relevant UNC objectives. However, we noted in the decision letter that if evidence was later provided to show that the implementation of project Nexus by 1 October 2015 was not possible, we would expect all alternative options to have been fully explored and a robust plan, detailing how the revised deadline would be met, to be provided.

The modification proposal

On 1 May 2015 the Project Nexus Steering Group (PNSG) received an interim report from its independent project assurance manager, PwC, showing that 1 October 2015 was no longer a viable implementation date for the Project Nexus modifications. This was based on an assessment of Gas Transporters' (GTs) and shippers' planning and state of readiness, which, amongst other things, suggested that there was insufficient provision for systems testing ahead of scheduled market trials.

Given the potential risk to consumers and industry parties, Ofgem accepted the recommendation that Project Nexus implementation be delayed in order to allow robust systems testing and market trials. This was communicated to stakeholders both in PNSG minutes and our open letter of 18 May 2015⁷.

On the 1 July 2015, the PNSG unanimously supported⁸ a new proposed plan developed by PwC following stakeholder consultation, which included specific and extended market trials, culminating in an implementation date of 1 October 2016.

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 UNC432: '[Project Nexus – Gas Demand Estimation, Allocation, Settlement and Reconciliation reform](#)'

⁴ UNC434: '[Project Nexus – Retrospective Adjustment](#)'

⁵ UNC440: '[Project Nexus – iGT Single Service Provider](#)'

⁶ UNC491: '[Change Implementation Date of Project Nexus to 1 April 2016](#)'

⁷ www.ofgem.gov.uk/publications-and-updates/open-letter-project-nexus-implementation

⁸ www.gasgovernance.co.uk/sites/default/files/Minutes%20Project%20Nexus%20SG%20010715%20v1.0.pdf

National Grid raised UNC548 '*Project Nexus-deferral of implementation date*', and proposed that the modification should follow urgent procedures. UNC548 proposes that:

- the Project Nexus implementation date is set to 1 October 2016 - in line with PNSG recommendations;
- in addition to the implementation date, a series of interim milestones regarding UNC Parties' readiness for market trials be set out; and
- the Authority is able to determine alternative dates for the implementation date and milestones set out in the modification.

On 16 July 2015 we agreed⁹ that it was appropriate for the modification to follow urgent procedures. We agreed any confusion with implementation dates and the potential for breach of the Code should be removed as quickly as possible. We also felt that the declaration of a new date would re-focus industry efforts for implementation.

UNC Panel¹⁰ recommendation

At the UNC Panel meeting on 5 August 2015, the UNC Panel voted unanimously to recommend that UNC548 be implemented.¹¹

Our decision

We have considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 5 August 2015. We have considered and taken into account the responses to the industry consultation on the modification proposal which are attached to the FMR¹². We have concluded that:

- implementation of the modification proposal will better facilitate the achievement of the relevant objectives of the UNC;¹³ and
- directing that the modification be made is consistent with our principal objective and statutory duties.¹⁴

Reasons for our decision

The FMR noted that there were a number of respondents who had qualified support for the modification. We agree with those respondents who suggested that UNC548 should be considered primarily against relevant objective f) (promotion of efficiency of the implementation and administration of the network code and/or the uniform network code) though we have additionally considered it against the following objectives (we consider the impact on the other objectives to be neutral):

⁹ www.gasgovernance.co.uk/sites/default/files/UNC%20548%20urgency%20decision.pdf

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 Panel minutes and voting record:

www.gasgovernance.co.uk/sites/default/files/Minutes%20and%20Voting%20Record%2005%20August%202015%20v1.0.pdf

¹² UNC modification proposals, modification reports and representations can be viewed on the Joint Office of Gas Transporters website at www.gasgovernance.co.uk

¹³ 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>

¹⁴ 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.

- a) Efficient and economic operation of the pipeline system
- d) Securing of effective competition

Although there was broad support for the new date to be determined as soon as possible to ensure clarity for industry parties, the concerns fell into three groups.

1) Milestones

Several respondents were concerned that there was a lack of visibility of the implementation plan, and therefore questioned the robustness of the timescales for the milestones in the testing phase. Respondents were concerned that this would lead to the implementation date having to be further amended. There were also suggestions that referring to external documents within the legal text was unprecedented, and would obligate parties to abide by the contents of a yet uncompleted document.

The implementation plan was agreed and adopted by the PNSG in July 2015 and it, along with all other PNSG material, is published on the Joint Office website.¹⁵ This revised implementation plan sought to address the deficiencies and risks in the original plan, which was primarily around organisations not having sufficient time to test their own systems in advance of joining market trials. Whilst the revised implementation date provides additional time for such activities, it does not of itself guarantee that they are being undertaken and the time used effectively. The addition of milestones centred around shipper readiness for market trials will provide greater assurance of progress, and if necessary allow for further mitigating actions to be considered before the implementation date itself is again brought into doubt.

We recognise that any implementation plan must balance certainty for stakeholders against the need to flexibly adapt to circumstances. We consider that the inclusion of the high level milestones within the UNC, together with reference to the implementation plan strikes the appropriate balance. We acknowledge that it is unusual for the UNC to refer to an external document in this way, but consider this to be a practical and reasonable measure in this specific circumstance.

2) Governance

Several respondents were concerned about the governance of any future amendment to the implementation date, in particularly the discretion to change that date being given to the Authority rather than the UNCC. Respondents were concerned at the precedent this sets, suggesting that any further change to the implementation date would lack transparency as it would not require industry engagement. Some respondents were additionally concerned that such a decision could be made without right of appeal to the Competition and Markets Authority (CMA)¹⁶.

Having aligned the Project Nexus implementation date with the agreed implementation plan, we would not expect to revisit this again. However, we consider that it is sensible for the UNC548 drafting to provide for such a contingency.

Although the UNC (as modified by UNC432) currently suggests that an alternative implementation date could be determined by the UNCC, the basis on which the UNCC would make such a decision and the process it would follow have not been fully established. Whilst the UNCC sought legal advice on its ability to change the

¹⁵ See: www.gasgovernance.co.uk/NexusSG

¹⁶ The right to appeal certain decision of the Authority in relation to designated industry codes is provided for under the Energy Act 2004

implementation date¹⁷, we remain concerned that the UNCC may not have the *vires* to make such a decision and, in the absence of robust and specific governance, that it is not equipped to do so.

It is widely recognised that the suite of Project Nexus modifications go beyond the incremental improvements that the UNCC and its sub-groups routinely deal with, they represent a step change for the gas industry, both in terms of business rules and supporting systems. These changes have been compared with, for instance, those required for the Review of Gas Metering Arrangements (RGMA) or the introduction of domestic competition. We also have regard to the fact that Project Nexus will impact upon a wider range of stakeholders than UNC Parties alone.

We established the PNSG in order to provide for more effective governance of Project Nexus¹⁸. Having done so, we consider it appropriate that any consideration of the implementation timetable, including the implementation date itself, is made by that group. In the case of changing the implementation date, the PNSG would be able to make a recommendation to Ofgem, consistent with the PNSG Terms of Reference¹⁹. Although UNC548 would give the Authority the *vires* to change the implementation date without the need for a further UNC modification proposal, we would only do so having considered evidence presented to the PNSG that the 1 October 2016 cannot be met, and also the views of stakeholders.

We therefore consider that UNC548 is consistent with the strengthened governance of the PNSG, whose Terms of Reference received strong support from stakeholders. Whilst we acknowledge that in the absence of a modification to the UNC, there would not be an opportunity for parties to submit an appeal to the CMA, this would not have been available had that decision been taken by the UNCC. We also note that Ofgem has successfully adopted a similar approach on industry change programmes such as RGMA.

3) Proportionality

One respondent opposed the modification, as they did not believe that sufficient thought had been given to smaller shippers, for example whether they need to be involved in a rigorous trials process, given the significant costs this will impose on them.

We agree that the testing should be robust but proportionate. Whilst some shippers have very few registered supply points and therefore may not be included in systems to the same extent as larger shippers, it must nonetheless be confirmed that they will be able to operate effectively once the Nexus modifications and supporting systems are implemented, safeguarding their own, their customers' and other UNC parties' interests. We have asked Xoserve and PwC to provide further clarity on any non-standard approach that may be adopted in respect of these small parties, and they have confirmed that this will be addressed in the market trials documentation.

Relevant objective a) Efficient and economic operation of the pipeline system & relevant objective d) Securing of effective competition

We acknowledge that delaying the implementation date of Project Nexus will delay some of the benefit expected to come from the new UNC rules and systems. Those benefits were set out in our previous decision letters and are not repeated here; we considered that they would further relevant objectives (a) and (d). However, given the information

¹⁷ UNCC 17 July 2014: www.gasgovernance.co.uk/sites/default/files/Minutes%20UNCC%20124%20v1.0.pdf

¹⁸ See: [Ofgem open letter – strengthening Project Nexus governance, management and assurance, 6 Feb 2015](#)

¹⁹ See: www.gasgovernance.co.uk/sites/default/files/Nexus%20SG%20ToR%20v1.0.pdf

that has been made available through the PwC project assurance work, it was apparent that the original implementation date was no longer feasible, or at best could only be achieved at considerable risk of subsequent systems failure and therefore detriment to consumers.

Now that the PNSG has identified an alternative implementation date which has widespread support of relevant industry stakeholders, we consider that the effect of UNC548 is to align the UNC with that new deadline. This will remove an uncertainty that may have arisen from the conflicting date references and ensure that stakeholders are able to more efficiently plan for the transition to new systems and business rules, to the furtherance of relevant objectives a) and d).

Relevant objective (f): the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code

It was suggested by National Grid that this objective would be better met by the modification. One respondent to the consultation did not agree with this, and two had no comment.

We agree with those respondents who stated that amending the Project Nexus implementation date will facilitate objective (f). Although it has been shown by independent assurance that the 1 October 2015 implementation date is not viable, UNC parties could be faced with being in breach of the UNC if it continues to refer to that date as being the Project Nexus implementation date. This would not be an example of efficient administration. In addition, a clear and common vision of the new implementation date and milestones to work will facilitate the efficient implementation of the Code, as it will minimise the chance of further amendment.

Decision notice

In accordance with Standard Special Condition A11 of the Gas Transporters licence, the Authority hereby directs that modification proposal UNC548: *'Project Nexus – deferral of implementation date'* be made.

Rob Church
Partner, Retail Markets

Signed on behalf of the Authority and authorised for that purpose