

Modification proposal:	Uniform Network Code ("UNC") 188 and 188a: Introduction into the UNC of the Agency Charging Statement ("User Pays")		
Decision:	The Authority ¹ directs that proposal 188 be made ²		
Target audience:	The Joint Office, Parties to the UNC and other interested parties		
Date of publication:	7 April 2008	Implementation Date:	To be confirmed by the Joint Office

Background to the modification proposal

On 31 March 2008 the Authority directed the modification of Standard Special Condition A15 'Agency' (SSC A15) of the Gas Transporters (GTs) licence. As a prerequisite to this, on 28 March 2008 the Authority accepted the Agency Charging Statement (ACS)³ provided by xoserve on behalf of the GTs in accordance with that modified licence. The reasons why the Authority has made these changes and their effect are mainly set out in various documents published on behalf of the Authority, including:

1. 'Gas Distribution Price Control Review Initial Proposals Document, 29 May 2007, ref: 125/07;
2. 'GDPCR: Initial Licence Drafting Consultation: 10 September 2007, ref: 22 1/07;
3. 'Gas Distribution Price Control Review Updated Proposals Document Ofgem 24 September 2007, ref: 226/07;
4. 'Open letter on Ofgem's proposals to implement revised standards of performance arrangements for gas transporters', November 2007, ref: 279/07;
5. 'Gas Distribution Price Control Review: Final Proposals Decision and Supplementary Appendices Documents, December 2007, ref: 285 and 285a/07; and
6. 'GDPCR: Second Licence Drafting Consultation', 11 December 2007, ref: 290/07.

The modification proposal

UNC188

The proposal seeks to give full effect to, and give recognition within the UNC to the ACS. Invoices raised under these arrangements would have the same status as other transportation invoices raised under UNC Section S and shippers would be required to pay these invoices in accordance with the code even though the revenues do not form part of the GTs' regulated revenue.

The ACS covers services that comprise two types of arrangement, which have been referred to within the proposal as "code ACS Services" and "non-code ACS Services". A code service is an activity that is currently undertaken by a transporter and is defined in the UNC; the code ACS services are located in UNC Sections M3 and V2.

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 Available on the Ofgem website at:

<http://www.ofgem.gov.uk/Networks/GasDistr/GasDistrPol/Documents1/Xoserve%20Charging%20Statement%20Decision%20ltr.pdf>

The ACS also contains methodologies and charges for non-code services; these are currently provided by xoserve, either in its own right or on behalf of GTs. They are currently scoped and defined outside of the UNC in separate contractual arrangements.

Proposal UNC188 is concerned only with code ACS Services, which are as follows:

Must Reads - the provision of a Meter Read in accordance with UNC Section M3.6.1. This charge associated with this ACS service would cease to be included in the Transportation Charging Statement. This service would be invoiced by the GT.

Shipper Agreed Reads - the receipt by the GT of an Agreed Opening Meter Read submitted by a Proposing User in accordance with UNC Section M3.8.7. This service would be invoiced by the GT.

User Admission - the completion activities listed in UNC Section V2.1.2, resulting in an Applicant User becoming a User. This service would be invoiced by National Grid National Transmission System (NG NTS)⁴.

The proposer considers that if this proposal is not implemented, the UNC would be inconsistent with the ACS arrangements, particularly with respect to Must Read charges which would continue to be recovered in accordance with the GTs transportation statement. More generally they consider that the proposal gives greater clarity on the new arrangements and the treatment of associated revenues.

UNC188a

The alternative proposal to UNC188 also seeks to recognise the introduction of the ACS within the UNC, but additionally seeks to bring the ACS and associated documents such as the User Pays contract into UNC governance as '*Ancillary Documents*'. Again, invoices raised under these arrangements would have the same status as other transportation invoices raised under UNC Section S and shippers would be required to pay these invoices in accordance with the code even though the revenues do not form part of GTs regulated revenue.

However, unlike UNC188 this proposal is not limited to those services which are currently provided for under the UNC, but also seeks to bring non-Code ACS services under the governance of the UNC. The proposer of 188a considers that including the documents relating to all such services as UNC Ancillary Documents will ensure appropriate governance and enable Users to propose change without the requirement for a licence condition change. They considered that this would ensure that the terms included in these documents were developed to promote competition between Shippers and ensure that all Shippers benefited, rather than just those who were best placed to work within the contractual requirements that were 'imposed' upon them.

UNC Panel⁵ recommendation

At its meeting held on 20 March 2008, the UNC modification panel recommended that 188 be implemented. It did not recommend the implementation of 188a.

⁴ This charge may be split into two parts, one to reflect the IX connection costs, and one to reflect the rest of the User set up charge.

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

The Authority's decision

The Authority has considered the issues raised by the modification proposal and the Final Modification Report ("FMR") version 3.0 dated 20 March 2008. The Authority has considered and taken into account the responses to the Joint Office's consultation on the modification proposal which are attached to the FMR⁶ and has concluded that:

1. implementation of modification proposal 188 will better facilitate the achievement of the relevant objectives of the UNC⁷, whereas 188a would not; and
2. directing that modification 188 be made is consistent with the Authority's principal objective and statutory duties⁸.

Reasons for the Authority's decision

We agree with the discussion at the UNC Panel that the introduction of the User Pays concept is a feature of the recent modifications to the GT licence rather than a direct consequence of implementing either of these proposals; therefore our decision is specific to the impacts of modifying the UNC in the manner proposed. However, whilst the UNC Panel based its determination to recommend UNC188 entirely against relevant objective c) '*the efficient discharge of the licensee's obligations under [its] licence*', some respondents also provided comments against relevant objectives d) and f); we have therefore considered the proposals in the context of each of these three objectives.

We consider that the benefits to the efficient and economic operation of the pipeline system(s), i.e. relevant objectives a) and b) have been achieved as a result on the Gas Distribution Price Control Review and subsequent ACS rather than as a consequence of these proposals. We therefore do not consider relevant objectives a) or b) to be pertinent to this decision.

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*'

We welcomed the Joint Office initiating a second phase of consultation on these proposals in order to allow respondents to consider them in parallel with our statutory consultation on modification to SSC A15 of the GT licence, which introduced the obligation upon GTs to produce an ACS covering both 'Core' and 'User Pays' services. The statutory consultation ended 20 March 2008 and the licence modifications were subsequently directed on 31 March 2008.

We agree with those respondents who suggested that the implementation of either proposal would efficiently discharge an obligation placed upon the GTs, insofar as they reflect the modifications to SSC A15. As mentioned, three of the services which are currently referenced in the UNC and previously funded through transportation charges as set out in the GTs Transportation Statements will now be subject to the ACS and

⁶ UNC modification proposals, modification reports and representations can be viewed on the Joint Office of Gas Transporters website at www.gasgovernance.com

⁷ As set out in Standard Special Condition A11(1) of the Gas Transporters Licence, see: http://epr.ofgem.gov.uk/document_fetch.php?documentid=6547

⁸The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Gas Act 1986.

separate charges. The prevailing UNC is therefore inconsistent with the actual arrangements and either of these modifications would remove that inconsistency.

However, UNC188a seeks to go further than remove the inconsistency and to bring the ACS and associated documents under the UNC governance as Ancillary Documents. Whilst we have some sympathy with those shippers who supported UNC188a on the basis that it would give them a greater degree of control over the content of the ACS and associated documents, we consider that it contains a number of serious flaws. Primarily, we consider that moving the ACS under the UNC as an Ancillary Document would be inconsistent with the requirements of SSC A15. Under that licence condition, GTs are directly accountable to Ofgem for the production and ongoing revision of the ACS, with obligations to ensure that the ACS remains cost-reflective and doesn't unduly discriminate between any person or class.

The User Pays services are not available solely to Shippers, as suggested by the proposer. In the case of the Internet Access to Data (IAD) service which makes up the bulk of the User Pays revenues, this is also currently available to Suppliers, independent GTs and end users. Along with the telephone enquiry service, the IAD is one of the mediums through which the GTs discharge their obligations under Standard Special Condition A31 '*Supply Point Information Service*' of their licence.

Historically, the information service was subject only to guidelines. However, work carried out under the Customer Transfer Programme (CTP) identified a requirement for a national on-line meter point enquiry service, which became known as the Single Centralised Online Gas Enquiry Service (SCOGES), incorporating the services previously set out in the guidelines. This was developed under the Supply Point Administration Agreement (SPAA) and subsequently accepted by the Authority as a mandatory schedule to that agreement, to which all GTs are party. In recognition of the status of SCOGES within SPAA and in order to avoid dual governance of the service, on 3 November 2006 the Authority directed the implementation of UNC087⁹, which removed obligations in respect of the Supply Point Information Service from the UNC.

We therefore consider that moving the governance of this service back into the UNC would be a retrograde step, recreating the dual governance which prompted UNC087. The dual governance issue would again need to be addressed, but this time potentially through annexation of SCOGES from the SPAA schedule; this could disenfranchise classes of Party who currently have the ability to raise modifications through the SPAA. It is also unclear how such a move could better facilitate the GTs obligations under licence, including their obligations to accede and adhere to the SPAA. Although the contract between xoserve and relevant users currently sits outwith the SPAA, xoserve as the agent of the GTs should ensure that the User Pays contract continues to discharge the GTs obligations under both SPAA and the ACS. We therefore consider the contract to be subject to those agreements, which are in turn subject to licence.

As acknowledged in the FMR, in defining the scope of the Industry Codes Governance Review we are considering whether and how to make charging methodologies more accessible to users in terms of their ability to propose changes. However this work has not commenced and to accept UNC188a at this time would ignore many of the issues associated with this, including any potential conflicts between the relevant objectives of the UNC and those of the charging methodologies. In the absence of this, it is not clear

⁹ [UNC087: 'Single Central On-line Gas Enquiry Service – Removal of redundant Network Code Provisions'](#)

from the proposal how the GTs will be assured of discharging their wider licence obligations.

Given the above, we consider that UNC188 would better facilitate relevant objective c), but that UNC188a would not.

Relevant objective d) *'so far as is consistent with sub-paragraphs (a) to (c) the securing of effective competition between relevant shippers; suppliers; and/or between DN operators...'*

Whilst the proposer of UNC188 did not suggest that their proposal had any impact upon this relevant objective, the proposer of UNC188a suggested that the inclusion of all of the documents associated with User Pays as Ancillary Documents would enable industry parties to propose changes to them which meet the relevant objectives. The proposer considers this will allow the documents to be developed in such a way as to promote competition between shippers rather than simply adhering to conditions which have been imposed upon them. In their response to the second consultation, the proposer of UNC188a suggested that there is no guarantee that xoserve's charges will be cost reflective, to the detriment of effective competition. They considered that UNC188a would give the UNC Committee the ability to develop cost reflective charges.

We do not consider that either proposal would of itself ensure the provision of cost reflective charges, though as mentioned, the GTs remain obligated under SSC A15 to ensure that the ACS is cost reflective. We also note xoserve's commitment to hold User Group meetings to discuss the contract and consider that they should provide a means for Users to contribute to development of the contract.

We note that the proposed modification to Section V 2 *'User Admission'* of the UNC would introduce a charge for the services provided to prospective UNC Parties, which includes the provision of UK Link User systems and software. We consider that it is appropriate for Users to be invoiced for their access to the UK Link system. Currently there are a number of non-physical traders who are party to the UNC and trade in gas, but are not currently exposed to transportation charges. While systems costs were recovered entirely through transportation charges, the costs were not effectively targeted to non-physical parties who benefitted from them. The inclusion of User admission charges within the User Pays framework will therefore ensure that costs are more accurately targeted and allow all trading parties to operate on a more level playing field. We therefore consider that as both of these proposals would implement user admission charges, they would each make a marginally positive contribution to effective competition.

However, given that there are existing protections contained within the SSC 15 Agency methodology to ensure that user pays services are provided on a cost reflective and non-discriminatory basis, it is not clear at this point what additional benefits would be provided by transferring the user pays framework into the UNC as provided for in modification proposal 0188a.

These issues are similar in nature to those raised by the Industry Codes governance review and, whilst there may be merit in terms of transferring charging arrangements such as this into code governance such that all parties can raise changes, we are not satisfied on the evidence that this proposal 188a better facilitates against objective (d) when compared with proposal 0188, particularly given the existing protections contained within SSC A15. To the extent that parties wish to explore these issues further, it is

appropriate that this is done within the context of a broader exercise such as the Industry Codes Governance Review which can consider the wider impacts of moving charging methodologies such as the Agency Charging arrangements into the code.

Relevant objective f) *'so far as is consistent with sub-paragraphs (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code'*

A number of respondents believed that the implementation of 188a would further this relevant objective by ensuring that changes to the ACS are made under UNC governance. However, others did not share this view as the ACS is already subject to governance under the GT licence and questions of precedence might occur. One respondent noted that even in the event that a change to the ACS was approved by the UNC Committee it may still require the Authority's consent.

There were differences in the interpretation of the terms 'Ancillary Document' in UNC188a as it is not a defined term. There was therefore confusion as to whether UNC188a was intended to refer to an 'Ancillary Agreement', which is bi-lateral in nature, or a 'UNC Related Document'.

It is our understanding that the proposer intended to refer to a UNC related document, which is provided for under Section V 12 of the UNC. Whereas UNC related documents can be modified with the majority agreement of the UNC Committee, (i.e. in the manner the proposer referred to the ACS being amended), Ancillary Agreements cannot. Nor can it be modified through a normal modification; Section V 1 of the UNC states:

"An Ancillary Agreement may be amended by agreement of the Transporter and the User(s) party to that Agreement and not otherwise; and accordingly an Ancillary Agreement shall not be subject to modification pursuant to the Modification Rules"

Notwithstanding this discrepancy, for the reasons set out earlier in this decision we do not consider that it would be appropriate for the ACS to come under the UNC as either a related document or an ancillary agreement. As noted in the FMR, there is already governance around the ACS in the form of SSC A15, which would take precedence. We also consider that it would be inappropriate to move services which are currently subject to commercial agreement into the UNC. This would create an additional and unnecessary burden upon the UNC administrative processes, particularly where it duplicates and potentially runs counter to governance elsewhere. We therefore consider that UNC188a would be detrimental to the achievement of relevant objective f).

Decision notice

In accordance with Standard Special Condition A11 of the Gas Transporters Licence, the Authority, hereby directs that modification proposal UNC188: *'Introduction into the UNC of the Agency Charging Statement ("User Pays")'* be made.



Mark Feather
Director, Industry Codes & Licensing

Signed on behalf of the Authority and authorised for that purpose.