

Representation - Draft Modification Report UNC 0696V

Addressing inequities between Capacity booking under the UNC and arrangements set out in relevant NExAs

Responses invited by: **5pm on 15 May 2020**

To: enquiries@gasgovernance.co.uk

Please note submission of your representation confirms your consent for publication/circulation.

Representative:	Richard Pomroy
Organisation:	Wales & West Utilities
Date of Representation:	15 th May 2020
Support or oppose implementation?	Oppose
Relevant Objective:	<p>c) Negative</p> <p>d) Negative</p> <p>f) Negative</p>

The consultation is aimed at establishing if the content/effect of the variation have caused you to change a view that you previously expressed, or to take a view that you had not previously considered. Please note any representation received in respect of Modification 0696 will be carried forward should parties not wish to change their original representation.

Reason for support/opposition: Please summarise (in one paragraph) the key reason(s)

We have not fundamentally changed our view compared to our response to 0696 before it was varied and oppose this modification because it is retrospective and we do not believe that it passes any of the tests for a retrospective modification. Our reasons are given in the Additional Information section. It is therefore negative for relevant objective (f) *efficient implementation and administration of Code*. A secondary reason for being negative for relevant objective (f) is that no system changes are envisaged to implement this modification and this will result in manual interventions with the risks they involve. It is negative for relevant objective (c) *efficient discharge of the licensee's obligations* because it potentially denies capacity to other customers and therefore is also negative for relevant objective (d) *competition*.

Business Rule 3 added by the variation request is a useful addition to the modification, although its benefit is reduced by the lack of system changes to implement it, but the benefit of Business Rule 3 in no way outweighs the overwhelming problem of the retrospective effect of this modification.

We believe that modification 0701 delivers the improvements required to better link capacity in NExAs to system capacity without the retrospective element and therefore we are supporting implementation of 0701.

Implementation: *What lead-time do you wish to see prior to implementation and why?*

This could be implemented immediately after an Ofgem direction to do so.

Impacts and Costs: *What analysis, development and ongoing costs would you face?*

We could be exposed to cost for a retrospective claim but are not aware of any.

Legal Text: *Are you satisfied that the legal text will deliver the intent of the Solution?*

Yes

Are there any errors or omissions in this Modification Report that you think should be taken into account? *Include details of any impacts/costs to your organisation that are directly related to this.*

No.

Please provide below any additional analysis or information to support your representation

We comment below on the grounds for retrospection, the process leading to the booking of the capacity and the impact of given a refund.

Retrospection

The Ofgem tests for retrospection are:

- a situation where the fault or error giving rise to additional [material] costs or losses was directly attributable to central arrangements;
- combinations of circumstances that could not have been reasonably foreseen; or
- where the possibility of a retrospective action had been clearly flagged to the participants in advance, allowing the detail and process of the change to be finalised with retrospective effect.

The proposer claims that all the tests are satisfied by this modification, we disagree for the reasons set out below.

Fault or error directly attributable to central systems

- 1) Although we appreciate that there is no flag in central systems indicating that a Network Exit Agreement (NExA) exists Shippers and Suppliers should be aware of their existence and should therefore ask customers whether one is in place. Gazprom who are the proposer are a well-established business serving this market. In our view the error could have been avoided by the Shipper and the error was not “directly attributable to central arrangements”.

Although based on the statements in the modification we accept that the value is material this is not in itself sufficient grounds for retrospection as the central systems element is also required.

Combination of circumstances could not be reasonably foreseen

We do not believe that this ground is satisfied as this situation could have been foreseen by a Shipper particularly one that is well established and the risk could have been controlled.

Retrospection clearly flagged

This is not satisfied; the proposal was not raised until after the event had occurred. To satisfy this test the potential for the event and the outline of the solution would have had to have been raised in advance of the event occurring.

Process leading to capacity being booked

In regard to the case described in the modification, it is unclear why the Shipper confirmed the capacity increase. It would have been sensible to delay confirming the capacity increase until the NExA had come into effect. It may well be that the customer did not need to take the increased capacity from 1st December.

Section 1 of the modification under “Why Change” has the following statement.

If the change is not made, then relevant Consumers will continue to be at risk of incurring charges under the UNC whilst being prohibited from benefiting from the new or additional capacity under the terms of the NExA

This suggests that the customer considered that NExA constrained its daily capacity.

Section 3 of the modification proposal states:

Customer A was already subject to a NExA with Transporter B.

Transporter B and Customer A finally agreed bilaterally that the additional gas should be available for offtake from 1st December 2018 and a variation to the existing NExA was issued to the customer to this effect.

However, during the project, prior to the variation to the NExA being finalised, a Capacity increase was proceeded by Shipper C (in this case the current Shipper) for a date prior to the 1st December 2018. This was due to both the dynamic nature of the project and pressure to ensure Capacity was available in a timely manner and to avoid the risk of ratchet charges being applied by Transporter B under the UNC i.e. if the site was to use the increased capacity prior to a capacity increase being approved the site would have been subject to penal Ratchet charges.

It is not clear why Shipper C confirmed the capacity increase before the NExA was signed on the 1st December. Given the statement in section 1 of the modification there was no risk of a ratchet occurring. It would have been more sensible to submit the confirmation to the CDSP once the NExA had been signed.

We therefore believe that the Shipper could have managed the situation to avoid confirming capacity that was not required.

Impact of refund

If this refund is given then the financial effect is to recover this from all the other Shippers. However, by taking capacity the Shipper is effectively depriving other Shippers from using that capacity. In constrained parts of the network this will mean that any other customer that wants more capacity will be told that reinforcement is required. There is therefore a potential impact on other customers. WWU therefore opposes a refund in this case.