

Representation - Draft Modification Report UNC 0696

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

Responses invited by: **5pm on 12 September 2019**

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:	2 nd September 2019
Support or oppose implementation?	Oppose
Relevant Objective:	c) Negative f) Negative

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

This modification has been raised to address a particular issue for one Shipper hence its retrospective element. We do not believe that retrospection is justified for the reasons given in the additional information section. This is sufficient grounds to reject the modification.

The main reason for the problem that arose seems to be that the customer was not asked by the Shipper whether they had a NExA and the Shipper then booking more system capacity than the customer required. Although it might seem that giving the Shipper a refund is fair by booking the capacity another User would have been prevented from booking it which may have led to detriment for that second User and its customer. The modification is therefore negative for relative objective d (competition)

Notwithstanding the lack of justification for retrospection, the modification does not provide a good solution for handling inconsistencies between Network Exit Agreements and system capacity as it fails to address the wider combination of circumstances that could result in a conflict between the two. It also does not put in place process changes to improve information provision. We disagree that this modification has a positive effect on relevant objective f (efficient administration of Code) because it does not put in place appropriate measures to enable it to work smoothly.

We note that modification proposal 0701 has been raised by NGN to address this area.

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

Implementation could follow immediately after an Ofgem direction to implement.

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

A number of system change are required to provide a robust long-term solution not least having at least some indication in UK Link that a NExA exists. We would expect the proposer to raise the necessary Xoserve change proposals, these may put some costs on WWU.

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

Legal text not available at time this was written.

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.*

Having legal text with the modification report would have been better but the proposer was keen for the modification to go out to consultation as soon as possible.

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 giving 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 is therefore opposed to this type of refund.