

Representation - Draft Modification Report UNC 0746

Application of Clarificatory change to the AQ amendment process within TPD G2.3 from 1st April 2020

Responses invited by: **5pm on 09 July 2021**

To: enquiries@gasgovernance.co.uk

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

Representative:	Chris Hooper
Organisation:	Contract Natural Gas
Date of Representation:	08/07/2021
Support or oppose implementation?	Oppose
Relevant Objective:	None
Relevant Charging Methodology Objective:	None

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

We object to the implementation of the modification and challenge the legitimacy of the retrospective request being raised through the UNC change management process.

We feel that the fundamental issues outlined in the modification have been resolved by the implementation of UNC 0736S - Clarificatory change to the AQ amendment process within TPD G2.3. UNC TPD G2.3.24(b) has been amended to disallow Users from utilising the AQ amendment process as per 'reason code 3' where the relevant Supply Point has moved between Users within the same organisation group with an Affiliate level of 25% or above.

UNC 0736S has amended the previously agreed process that was developed through a major industry review. The existence of a number of organisation groups with multiple Users means that the transfer of MPRNs between Affiliates could have been reasonably foreseen within that review process.

The responsibility for the assessment, approval, or rejection of the AQ amendments sits within the remit of CDSP as per Uniform Network Code (UNC) sections G1.6.23 – G1.6.29 inclusive. It is our understanding that any submitted AQ amendments were approved in line with the UNC and CDSP processes, therefore all accepted amendments complied fully with relevant provisions set out within the UNC at the time.

In general, the majority of changes raised within the UNC are to address gaps / issues within the code and usually, they follow the cleaner 'line in the sand' solution rather than requiring retrospectivity, we feel that UNC 0736S has addressed any 'grey areas' within

the AQ amendment process in a much more appropriate, transparent and effective manner.

With regards to the request for retrospective application, we point to Ofgem's statement which highlights several reasons against the approval of modifications which have retrospective elements:

- Retrospective changes to industry codes will damage market confidence in, and the efficient operation of, the trading arrangements.
- Rather than protecting participants from "unforeseen unfairness" we take the view that signatories would generally prefer the assurance and certainty of rules that are unlikely to be changed retrospectively.
- There are generally accepted and well understood legal reasons why retrospective modifications are to be avoided and it is a general principle of law that rules ought not to change the character of past transactions completed based on the then existing rules.

Few modifications with retrospective elements have recently been approved by Ofgem and they related to aligning the Code to EU Legislation or addressing the unforeseen circumstances brought about by the Covid-19 pandemic, rather than addressing a commercial issue raised by a Shipper. Ofgem have shown a consistency in their view of retrospective mods in the past as set out below:

- UNC 117: Amendment to Invoice Billing Period, and 122: Restriction of Invoice Billing Period to Price Control [Ofgem Rejected]
 - Ofgem Comments: Because both proposals would take retrospective effect, participants' credits or debits may be significantly changed without having the opportunity to change their behaviour to maximise or mitigate these cash-flows.
 - We consider that such a move would have a detrimental impact on market certainty. We also do not consider that either proposal passes the third of the tests as the possibility of retrospective changes to the reconciliation regime has not been clearly flagged to participants"
- Re-establishment of Supply Meter Points – measures to address shipperless sites (UNC 369) and its alternative (UNC 369A) [Ofgem Rejected]
 - Ofgem Comments: In general, we do not consider that it is in the interests of consumers to be exposed to charges that are calculated retrospectively on the basis of arrangements that were not in place at the time that the supply of gas was made.
 - We generally hold the view that modifications which contain retrospective elements should be avoided. This has been a consistent feature in our modification decisions on proposals.

- UNC 551: Protecting consumers who are disaggregated under Modification 0428 from Ratchet charges for Winter 2015/16 [Ofgem Rejected]
 - Ofgem Comments: We have previously published guidance on code modification urgency criteria. This also considers retrospective adjustments. We wish to avoid retrospective modifications as they can undermine market confidence.
 - It is a general principle that rules ought not to change the character of past transactions, completed on the basis of the then existing rules.

The Work Group report states that, participants advocating retrospectivity were doing so on the basis of the detrimental transfer of costs. However, we are aware that the proposer previously requested that AQ corrections highlighted in the modification were investigated by the Networks, challenging the legitimacy of the transactions. This led to an investigation into the transactions which ultimately resulted in these transactions being validated by the Network group. The outcome of that formal investigation was to validate that all transactions were completed in Good Faith and in line with the UNC, so the costs referred to in the proposal were attributed correctly to Users.

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

We object to the implementation of this modification as we feel this is purely a commercial issue across Shippers that has been dealt with by the implementation of UNC 0736S, which draws a line in the sand and provides clarity for future instances.

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

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

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Modification Panel Members have requested that the following questions are addressed:

Q1. Do Transporters have a view as to when the additional revenue would flow back to users; would this be within the Formula Year, (FY), it is collected or during the FY following collection?

N/A

Q2. Reasoning behind 01 April 2020 retrospective date?

N/A

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.*

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

We support the status of this modification requiring Authority Direction as the uncertainty from allowing retrospective changes will have a material impact upon competition in the shipping and supply of gas.