

# 0560(Urgent):

## Addressing under-allocation of flows from BBL arising from misalignment of reference conditions

- 01 Modification
- 02 Workgroup Report
- 03 Draft Modification Report
- 04 Final Modification Report

This modification seeks to enable a manual correction of energy balancing invoices for Users who will be under-allocated as a result of misalignment of reference conditions between BBL and the NTS, until the Modification 0519 IT solution is in place.



Panel consideration is due on 19 November 2015 (*at short notice by prior agreement*)



High Impact:  
BBL Users



Medium Impact:  
National Grid NTS



Low Impact:  
None

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<b>About this document:</b>		Systems Provider: <b>Xoserve</b>
This Final Modification Report will be presented to the Panel on 19 November 2015.		 <a href="mailto:commercial.enquiries@xoserve.com">commercial.enquiries@xoserve.com</a>
The Authority will consider the Panel's recommendation and decide whether or not this change should be made.		
Ofgem approved the following urgency timetable:		
Ofgem granted Urgent status	21 October 2015	
Workgroup meeting	05 November 2015	
Modification issued for consultation by	10 November 2015	
Close-out for representations	17 November 2015	
Final Modification Report published for Panel	18 November 2015	
UNC Modification Panel Recommendation	19 November 2015	
Ofgem decision expected by	04 December 2015	

# 1 Summary

## Is this a Self-Governance Modification?

It is not proposed that this should be a self-governance modification, since it is likely to have a material effect on competition in the shipping, transportation or supply of gas conveyed through pipes or any commercial activities connected with the shipping, transportation or supply of gas conveyed through pipes.

## Is this a Fast Track Self-Governance Modification?

No, since it is not proposed as a self-governance modification, nor is it properly a housekeeping modification as result of some error or factual change.

## Why Change?

From 1<sup>st</sup> October 2015, there will be a misalignment of reference conditions between BBL and the NTS. BBL is implementing 0/25 reference conditions as part of its implementation of EU-required changes to the nominations process at the Interconnection Point (IP), whereas National Grid NTS is not implementing this requirement until 01 May 2016. As a result, NTS Users allocations at the BBL IP will be under-allocated. This will expose Users shipping gas through the BBL IP ('BBL Users') to an imbalance position, until such time as National Grid NTS implements the systems solution for Modification 0519 – Harmonisation of Reference Conditions at Interconnection Points.

## Solution

It is proposed that there should be a correction for BBL Users to reflect the value of the under-allocation. This would be accomplished by a (monthly) correction to the BBL Users' daily imbalance charges, carried out at the time of invoicing for energy balancing charges.

The modification would be an addition to the text of the transitional arrangements for the implementation of the European Interconnection Document (EID), which is appropriate for a one-off step associated with the transition.

## Urgent Status

This modification has been granted urgent status by the authority and will follow the timetable as detailed above. By addressing this on an 'urgent' basis, this will minimise the period for which the solution has retrospective effect. It would also allow the implementation of the solution to proceed as soon as possible following an Ofgem decision and on a monthly basis thereafter. (Please see further discussion below on the justification for this approach).

## Relevant Objectives

The modification would support relevant objective g) (compliance with the Regulation etc.), by enabling full compliance with the objective of the Balancing Network Code, to enable network users to have certainty that they can trade across balancing zones in an economically efficient and non-discriminatory manner.

The modification would support relevant objective d) (effective competition) because it would:

- address an issue that otherwise would put a certain group of Users at a competitive disadvantage; and
- provide comfort to small and new/prospective Users that unintended, unreasonable and unforeseen outcomes of the introduction of new arrangements may be corrected.

## Implementation

No specific date for implementation is proposed. However it would be beneficial if this modification could be implemented as soon as possible such that the solution can take effect as soon as possible following an Ofgem decision and on a monthly basis thereafter.

### Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

This modification will not have any impact on an SCR or any other industry change projects.

## 2 Why Change?

### Background

The EU Interoperability Code requires harmonisation of reference temperature conditions at 0/25 (0° for volume/25° for CV) at Interconnection Points, whereas the commercial operation of the NTS is carried out using 15/15 (15° for volume/15° for CV) reference conditions.

National Grid NTS raised Modification 0519 to address this requirement, and it has now been implemented. Modification 0519 ring fences the implementation of 0/25 conditions on the NTS to Bacton EU IP, and will only take effect with effect from 01 May 2016, when National Grid NTS is due to deliver a systems solution.

BBL is operating 0/25 conditions as part of its systems package for EU-compliant nominations processing and matching (to deal with both Julianadorp and Bacton) with effect from 01 October 2015.

As a result, there will be a misalignment of reference conditions for gas flows entering the NTS via BBL until the Modification 0519 solution is implemented.

### Impacts of the Misalignment

A quantity of energy expressed at 15/15 conditions is marginally greater than at 0/25 conditions (with a ratio of c. 1:0.9990).

As a result of the implementation of nominations matching at the BBL IP, nominations for a quantity of gas on the NTS side will be reduced to match the BBL nomination (the BBL-side nomination prevails in order for BBL to align nominations with those at Julianadorp).

Users will be allocated (at BBL NTS Entry and Exit) as per their prevailing confirmed quantity (their final confirmed nominations i.e. as matched by BBL at 0/25) because of the 'allocate as nominate' rules, which are to be applied.

The Modification 0519 solution will apply a 'balancing allocation' to correct BBL Users' allocations under the UNC, such that the full quantity (under 15/15 conditions) of the gas is reflected in their NTS allocations for the purposes of NTS imbalance charges.

In the absence of the Modification 0519 solution, the quantities in Users' BBL NTS allocations will be under-allocated (by 0.1%).

Some BBL Users have assessed the materiality of the under-allocation, using last year's BBL flows from October '14 to the end of April '15, (data from National Grid's website) and day-ahead prices from Heren,

and it equates to c.£700,160 for deliveries into the NTS from BBL and c.£26,688 for virtual reverse flows<sup>1</sup>.

The under-allocation means that each User at the BBL IP will have an imbalance position arising as a result, as a direct consequence of the misalignment of reference conditions, and it is not appropriate that these additional costs/losses should be borne by those Users.

## Justification for Retrospectivity

This modification is seeking the application of a correction, which would be calculated for each gas day in the period starting from 01 October 2015 until the date of implementation of the Modification 0519 solution. In this way, the modification contains an element which would have retrospective effect, in the sense that the correction calculations would look back to dates falling before the approval/implementation of this modification (i.e. before the 'correction rules' are confirmed).

In the proposers view, the period of 'retrospectivity' of this modification proposal is thus from 01 October 2015 until the date of implementation (if approved) of this modification proposal.

With reference to the criteria for retrospectivity, contained in Ofgem's Guidance on Code Modification Urgency Criteria, the proposer believes retrospective application is justified in this case because:

1. This modification is essentially a temporary 'manual workaround' for the Modification 0519 solution and accordingly, follows the same principles: i.e. applying an adjustment to affected Users' allocations in order to correct their imbalance position, for the purposes of energy balancing invoices only. No further adjustments to any charges are proposed, such that the issue is 'ringfenced' to relevant IPs and no other charges are affected. These principles have already been agreed/implemented by Industry/Ofgem.
2. The modification is being made as a result of a situation where the fault/error giving rise to additional costs/losses is directly attributable to central arrangements. In this case the proposer's view is that the functionality of Gemini and, in the context of the BBL IP, the arrangements concerning reference conditions, nominations matching and allocations, constitute 'central arrangements'. It is the unfortunate lack of alignment between BBL and National Grid NTS's implementation timescales for solutions to the change in reference conditions, which has led to this situation. Ultimately, this is an unintended outcome of the misalignment in the implementation dates for the Balancing Code and the Interoperability Code, as mandated by the EU.
3. The lack of alignment between BBL and National Grid NTS's implementation timescales for solutions to the change in reference conditions was not foreseen, and was only brought to the attention of Industry and Ofgem late in the summer, after the approval of modification 0519, and in a period where the Industry was going through an extremely busy period of intensive preparation for the new Balancing and Interoperability arrangements commencing 01 October 2015 and the CAM arrangements commencing 01 November 2015.
4. The possibility of retrospective action was clearly flagged in advance:
  - a. National Grid identified the issue and stated that it would work with affected parties to develop a solution

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<sup>1</sup> The total quantity of virtual reverse flow was less than 3% of the forward flow quantity over the period 1<sup>st</sup> October 2014 to 30<sup>th</sup> April 2015. Please note that the £26k is slightly lower than the figure mentioned in workgroup (£30k), as it has been corrected to reflect the right period of time.

- b. Users raised the issue as needing to be addressed in the subsequent workgroup meeting, and
- c. The proposer made it clear that retrospective action was intended by raising the modification in advance of 01 October 2015.

## Justification for Urgency/Contracted Timescales

With reference to the criteria for urgency, contained in Ofgem's Guidance on Code Modification Urgency Criteria, the proposer believes it is appropriate that this modification should be considered on a 'shorter-than-normal' timescale, because the issue is a current issue which, if not urgently addressed, will lead to a significant commercial impact for BBL Users.

The proposer believes that it is appropriate that this modification should be considered on an 'urgent'/contracted timescales basis, because it contains a retrospective element. By using a contracted timescale, the period for which this modification is retrospective (i.e. between the issue arising and the rules for a solution being confirmed) will be minimised.

In addition, the use of urgent procedures should enable the solution to be implemented at the first run of energy balancing invoices for October 2015 (in December 2015)<sup>2</sup> minimising any operational impact for National Grid, aligning the correction with normal invoicing, and thereby removing any month-to-month or year-end impact on Users' cashflow.

If the principle of a retrospective correction was otherwise agreed, but a longer timescale for consideration of the modification was taken, this would mean that the adjustments would need to be made later, relative to the gas day to which they relate, and potentially as a one-off adjustment instead of a monthly process. The proposer believes that it is preferable to facilitate correction as close as possible to the relevant gas day, and urgency would help achieve this.

It would also avoid the risk that an implementation of this modification under normal timescales (which would be no earlier than February 2016) could be considered to potentially change the character of past transactions (and hence be unacceptable against the general principle of retrospectivity).

## Balance between Urgency and Retrospectivity

Ofgem's guidance on urgency suggests that retrospective application may negate the need for urgent procedures in some circumstances, or vice versa.

With this modification, whilst it is the case that:

- the possibility of retrospective action has been flagged in advance;
- the solution proposed is in line with principles agreed with modification 0519;
- given this, perhaps the case for urgency could be considered to be reduced,

it is also the case that:

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<sup>2</sup> Following Ofgem's granting of urgent status and publication of the timescales for a decision, it is unlikely to be possible to make the first adjustments at the time of the first energy balancing invoice (which would, under normal timescales, be issued in early December, for the month of October i.e. M+2). National Grid and the proposer have therefore developed the solution and the legal text to enable the first Adjustment Invoice (after the decision date) to include adjustments for all Gas Days from 1<sup>st</sup> October 2015 to the end of the month for which the Adjustment Invoice is issued, and monthly thereafter.

- the raising of this modification in itself creates uncertainty for Users as to whether there will be any correction, and it is this uncertainty which the proposer assumes is particularly undesirable in relation to retrospective changes to rules, so it would be best to minimise this period; and
- the use of urgent procedures will facilitate the application of the solution from the first relevant energy balancing invoice, enabling the correction to be made on normal invoicing timescales, i.e. as soon as possible after the gas day to which it relates.

The proposer considers that the need to minimise periods of industry uncertainty is primarily why Ofgem's criteria on retrospectivity appear in the Guidance on urgent modifications, rather than as general guidance on raising modifications, and that it is likely to be the case that most modifications containing retrospective elements would also be urgent modifications, so as to minimise any period of uncertainty/retrospectivity.

Furthermore, the proposer does not believe that it would be appropriate in this case to raise a modification on an urgent basis, but without a retrospective element, since the financial harm for affected Users is material, is triggered by a transitional misalignment at the start of new arrangements, and is not being caused by any fault of the Users. The proposer believes the criteria for retrospective action are met in this case. It is therefore appropriate, as a point of principle, that the correction should be calculated for each gas day from the start of the new arrangements to provide complete compensation for affected Users.

In addition, it should be noted that the main reason for retrospectivity is that there was not sufficient time prior to the start of the new arrangements (during an exceptionally busy period for the Industry) from the point at which the issue was identified and quantified, for Industry to assess the impacts, discuss and agree amongst the affected parties how to approach it, raise a modification and for it to be implemented.

The main purpose of urgency is to minimise the period of uncertainty/retrospectivity, and to enable a solution to be effective from the time of the first relevant energy balancing invoice but in the proposer's view, urgency does not replace the need for/appropriateness of retrospectivity, when assessed against Ofgem's criteria.

### 3 Solution

It is proposed that this solution should apply for the period from 1<sup>st</sup> October 2015 until the date of implementation of the systems solution for Modification 0519 ('the Correction Period').

It is proposed that National Grid NTS should, when producing energy balancing invoices each month, calculate what the allocations for all NTS Users that have an allocation of gas in respect of BBL IP would have been at 15/15 (using the same conversion factor as specified in Modification 0519) and make adjustments/corrections to BBL Users' imbalance charges and to energy balancing neutrality as further set out below.

National Grid NTS should:

- following the end of each month, calculate what the BBL allocations for each BBL User would have been, had they been made at 15/15, for each day in the month ('Adjusted UDQIs and UDQOs')
  - i.e. the Nominated Quantity in their final prevailing Confirmed Nominations at the end of the gas day, multiplied by the conversion factor used in modification 519,  $F = (1 / 0.9990)$ ;
- calculate the corrected value of such Users' imbalance charges across the whole of the NTS (their 'Adjusted Daily Imbalance Charge'; and

- for each such User, determine the difference ('the Imbalance Adjustment Charge') between their Daily Imbalance Charge before the adjustments above, and their Adjusted Daily Imbalance Charge; and
- perform energy balancing invoice adjustments in accordance with section S i.e.:
  - applying the Imbalance Adjustment Charge for each BBL User;
  - making corresponding adjustments to energy balancing neutrality charges for all Users, such that the sum of the Imbalance Adjustment Charges are treated as 'additional Monthly Adjustment Neutrality Costs/Revenues' as applicable)

In case the implementation date of this modification is such that it is not possible for National Grid NTS to make the adjustments to invoices for October charges at the first opportunity (i.e. in December), the legal text provides for the first adjustments to be made to cover all the gas flow days from 1<sup>st</sup> October, and for adjustments to be made on a monthly basis thereafter until the end of the Correction Period.

The legal text further provides for additional Monthly Adjustment Neutrality Costs/Revenues to be treated correctly in terms of the UNC provisions for bad debt, as set out in the legal text commentary.

To further clarify, modification 0519 provides a systems solution which will automatically apply a 'balancing allocation' to each relevant Users' imbalance account after each day, and this balancing allocation will then automatically feed in to the calculation of imbalance charges and neutrality.

This modification is identical in terms of financial effect to modification 0519 for all parties, but instead of the balancing allocation being visible to BBL Users in Gemini after each day, the adjustment to imbalance charges and neutrality will be made at the invoicing stage (at M+2).

In line with the principles of modification 0519, no changes to any of a Users' other charges will be made as a result of this modification, as the effect of the Europe Reference Conditions is to be 'ringfenced' to the IPs.

## Modification to the Transition Document

It is proposed that this solution should be contained in the Transition Document Part VA, as an addition to paragraph 2, which relates to the implementation date of the Modification 0519 solution for reference conditions. This would enable this manual correction to be performed over a specific period only, which is appropriate in this period of transition to the new reference conditions regime.

User Pays	
Classification of the modification as User Pays, or not, and the justification for such classification.	No User Pays service would be created or amended by implementation of this modification and it is not, therefore, classified as a User Pays Modification.
Identification of Users of the service, the proposed split of the recovery between Gas Transporters and Users for User Pays costs and the justification for such view.	<i>Not applicable</i>
Proposed charge(s) for application of User Pays charges to Users.	<i>Not applicable</i>
Proposed charge for inclusion in the Agency Charging Statement (ACS) – to be completed upon receipt of a cost estimate from Xoserve.	<i>Not applicable</i>

## 4 Relevant Objectives

Impact of the modification on the Relevant Objectives:	
Relevant Objective	Identified impact
a) Efficient and economic operation of the pipe-line system.	None
b) Coordinated, efficient and economic operation of (i) the combined pipe-line system, and/ or (ii) the pipe-line system of one or more other relevant gas transporters.	None
c) Efficient discharge of the licensee's obligations.	None
d) Securing of effective competition: (i) between relevant Users; (ii) between relevant suppliers; and/or (iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant Users.	Positive
e) Provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards... are satisfied as respects the availability of gas to their domestic customers.	None
f) Promotion of efficiency in the implementation and administration of the Code.	None
g) Compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.	Positive

### Relevant Objective g) (compliance with the Regulation etc):

This modification will support relevant objective g) because it supports compliance with a key objective of the Balancing Network Code (EU312/2014), Recital 2 which states that:

*“In order to move towards greater market integration, it is important that rules on gas balancing of transmission networks facilitate gas trading across balancing zones thus contributing towards the development of market liquidity. This Regulation therefore sets out harmonised Union-wide rules on balancing that have the objective to give network users the certainty that they can manage their balance positions in different balancing zones throughout the Union in an economically efficient and non-discriminatory manner.”*

If Users at one Interconnection Point face a loss of value of their gas through a simple administrative misalignment of reference conditions, this would not constitute having ‘the certainty that they can manage their balance positions...in an economically efficient and non-discriminatory manner’. Affected Users would be both losing money and being discriminated against, and so this objective of the Balancing Code would not be being complied with.

### Relevant Objective d) (effective competition):

The modification would support relevant objective d) because it would address an issue that otherwise would put a certain group of Users at a competitive disadvantage. Without this modification, Users flowing gas through the BBL IP will have imbalance charges arising as a result of an administrative misalignment between National Grid NTS and BBL. With this modification, the issue will be fully corrected, with no further impacts. Furthermore, the solution proposed is essentially a manual 'workaround' for a solution, the principles of which have already been agreed and implemented by Ofgem in Modification 0519.

Some participants, in recognition of the requirement within the Gas Regulation 715/2009 Article 14(1) that requires Transmission System Operators to provide access to their networks on a non-discriminatory basis, believed that without this modification there was a potential to disadvantage affected Users at BBL, which would adversely affect competition.

### **Retrospectivity**

In its decision on Modification to the BSC P37, in the electricity industry, which sought retrospective correction of energy notification errors following the introduction of significant industry process changes in the form of NETA in 2002, Ofgem concluded (paragraph 45) that the use of retrospective correction should be allowed in certain limited circumstances, and where this is appropriate, it provides comfort to existing and prospective market participants (that unintended, unreasonable and unforeseen outcomes of the introduction of new arrangements may be corrected), and this thereby promotes effective competition. In the proposer's view, implementation of this modification 0560 would provide such comfort to existing and prospective Users in this case, which is similarly driven by the introduction of new industry arrangements, and hence would support relevant objective d) by promoting effective competition.

## **5 Implementation**

The proposer believes that the implementation costs should be minimal, as it would require manual re-calculation of a relatively small number of Users' imbalance charges and uses existing energy balancing invoice adjustment/correction processes to complete the production of invoices, for a transitional period only.

Therefore there will be no requirement for new/permanent systems, and as such, the proposer believes that there should be no formal implementation costs associated with this modification.

No specific date for implementation is proposed. However it would be beneficial if this modification could be implemented as soon as possible such that the solution can take effect as close to normal invoicing timescales as possible.

## **6 Impacts**

### **Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?**

This modification will not impact any SCR or any other significant industry change projects.

### **Impact on Neutrality and Energy Balancing Credit**

The solution involves a correction of daily imbalance charges for BBL Users, and correspondingly an adjustment of energy balancing neutrality charges to ensure that the correct amount goes into the 'smear'.

The correction in this modification proposal produces the same financial effect that will be performed by the IT solution for Modification 0519, except that in the case of the Modification 0519, BBL Users will be

shown the additional quantity of gas as a separate line item in their imbalance positions after the day in Gemini, and this will automatically feed into imbalance charges and neutrality.

In the absence of the automated solution, under this modification proposal, BBL Users will not see the additional allocation in Gemini, but the financial discrepancy arising will be corrected in their energy balancing invoices.

There is a potential for BBL Users to incur an imbalance position, which could increase Energy Balancing exposure, potentially leading to credit sanctions. The Workgroup felt this was a small additional risk and was best managed by the monthly solution being proposed rather than a one-off adjustment at the end of the period.

The impact on other Users is the same as for Modification 0519 – whereby the energy balancing neutrality charge will reflect the value of the ‘balancing allocation’ adjustments for BBL Users.

### **Does the solution impact any other charges?**

In the same way as Modification 0519, the modification does not involve recalculation of any other charges other than imbalance charges and energy balancing neutrality.

### **Does the solution impact Shrinkage?**

National Grid NTS has previously identified that if a User were to seek to mitigate its imbalance risk arising from the misalignment of reference conditions, for example by procuring an additional quantity of gas on the day equal to its expected under-allocation on its deliveries to the NTS, then this would be expected to have the effect of tending to reduce the quantity of shrinkage purchased. This is because physically correcting for the commercial under-allocation would lead to a corresponding physical over-delivery which would feed into linepack, hence reducing the quantity of shrinkage needed<sup>3</sup>. This effect would be in the direction of reducing SO commodity charges.

However the quantities of under-allocation (0.1% of BBL flows) are marginal when considered against the much larger routine influences on the shrinkage account. National Grid NTS has undertaken further analysis in light of this modification proposal, and confirmed that any such physical over-delivery would not be expected to be sufficiently material to cause a change in SO Commodity charges. Furthermore, any correction via the shrinkage account would need to take into account the costs of shrinkage procurement which vary over time (using a mix of prompt and forward purchasing) and are therefore not likely to correspond directly to the value of the costs/losses to Shippers on the day.

It is also not practical or realistic to expect BBL Users to address the imbalance themselves, given the small daily quantities concerned. The material financial impact for BBL Users is cumulative.

The solution proposed in this modification instead seeks (in line with the principles of Modification 0519) to correct for the value loss to Shippers as it is directly experienced, through imbalance charges. As a consequence, the anticipated (minimal) impact on Shrinkage of the misalignment is not expected to materialise.

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<sup>3</sup> This example is for the forward flow direction into the NTS. The opposite is true for reverse flows, but reverse flows are generally much smaller than forward flows, so this discussion focuses on the aggregate effect.

## 7 Legal Text

### Text Commentary

National Grid NTS has provided a commentary to support the Legal Text. An explanatory table is published alongside this document.

### Legal Text

National Grid NTS has provided Legal Text – Transition Document Part VA – that is published alongside this document. The Workgroup has considered the Text and raised no issues.

## 8 Consultation Responses

Of the 9 representations received 7 supported implementation, 1 provided comments and 1 was not in support.

Representations were received from the following parties:

Organisation	Response	Relevant Objectives	Key Points
BBL Company	Support	d) - positive g) - positive	<ul style="list-style-type: none"> <li>Recognises the need for a solution to address the issue of under-allocation and welcomes the temporary solution proposed under this modification.</li> </ul>
British Gas Trading Ltd	Support	d) - positive g) - positive	<ul style="list-style-type: none"> <li>Accepts that the modification seeks to correct a temporary, but material, problem identified for the delivery of gas to the UK from the BBL Interconnector.</li> <li>Recognises that should the problem be left unaddressed then the loss of gas to BBL shippers would place them at an unfair disadvantage, through no fault of their own – leaving BBL shippers with no option other than to avoid flowing gas via BBL.</li> <li>Recognises that the proposed solution is based on the provisions approved under UNC Modification 0519, thereby providing a consistent and acceptable approach to managing energy measurement issues arising from differing temperature reference conditions.</li> <li>Believe that implementation asap would provide BBL shippers with confidence to flow gas to the UK without incurring energy losses.</li> </ul>
Energy Balancing Credit Committee (EBCC)	Comments	d) – no comment g) – no comment	<ul style="list-style-type: none"> <li>Highlights that, whilst the proposal acknowledges the impact on charges billed and makes provision for adjustment of such, Users' exposures are reported at an earlier date than charges are levied and the current calculation (as outlined under UNC TPD Section X2.5) will only account for any adjustment to</li> </ul>

			<p>charges at such time as the adjustment is recorded as Outstanding Relevant Balancing Indebtedness in accordance with paragraph X2.5(d)iii.</p> <ul style="list-style-type: none"> <li>• This has the potential to either over or under state a Users Indebtedness that may result in action either being taken inappropriately (because the Users position is overstated) or action not being taken (because a Users indebtedness is being under recorded), in effect having the potential to create an avoidable financial exposure.</li> <li>• The EBCC concludes that following review of the credit positions of the organisations currently active at BBL that it does not believe that the values indicated present a material risk in exposure terms.</li> </ul>
EDF Energy	Oppose	d) - negative g) - negative	<ul style="list-style-type: none"> <li>• Whilst supportive of the principles and proposed solution, feel that they cannot support the modification on the grounds that it proposes retrospective application from 01 October 2015.</li> <li>• Notes that Ofgem highlighted the issue for BBL shippers in its June 2015 0519 decision letter.</li> <li>• Believes that there is merit in this modification given that it resolves the problems the BBL shippers are experiencing by reconciling actual physical delivery through a manual correction of energy balancing invoices of the affected shippers.</li> <li>• Suggests that should the implementation date be changed to a prospective date, they would be more inclined to support the modification on the grounds that it would better facilitate the relevant objectives under such conditions.</li> <li>• Believes that should the modification be approved, it could be implemented from the earliest date possible going forwards.</li> <li>• Suggests that some of the text contained within the Workgroup Report (as utilised for the consultation) is incorrect / misleading and that provision of additional clarity around key points would benefit the readers who may not be so familiar with these complex Interconnection Point (IP) arrangements.</li> </ul>
E.ON UK	Support	d) - positive g) - positive	<ul style="list-style-type: none"> <li>• Supports the modification on the grounds that it seeks to avoid BBL Shippers becoming adversely impacted by the under-allocation of flows on the BBL pipeline, resulting in an increased energy imbalance exposure.</li> <li>• In suggesting that the problem stems from the TSOs</li> </ul>

			<p>failing to fully co-ordinate implementation of European Network Code obligations, E.ON believes that it is not appropriate for the BBL Shippers to bear the brunt of the misalignment of implementation, over which they had no control.</p> <ul style="list-style-type: none"> <li>• Believes that implementation should be as soon as possible in order to minimise the period of retrospection whilst at the same time minimising the impact of the unavoidable costs on the BBL Shippers.</li> <li>• Highlights that should the modification be rejected, BBL Shippers could / would incur costs related to increased imbalance exposure.</li> <li>• Highlights the challenges of implementing single market rules at cross-border points, and points to the need for Ofgem to have a greater role in co-ordinating the practical implementation of European level market rule changes with its fellow regulators.</li> </ul>
Gazprom Marketing & Trading Ltd	Support	d) - positive g) - positive	<ul style="list-style-type: none"> <li>• Believes implementation of the modification would remove the negative and unfair impact on Users by applying an appropriate correction, in line with the principles and financial impacts of UNC Modification 0519.</li> <li>• Believes that this modification proposes a sensible and appropriate solution given the development and outcome of 0519.</li> <li>• Believes that implementation should be as soon as possible in order to minimise the period of retrospection and minimising the undue negative impact on Users.</li> <li>• Believes that the modification prevents cross-subsidisation via the shrinkage mechanism due to additional gas entering the NTS from BBL.</li> </ul>
National Grid NTS	Support	d) - positive g) - positive	<ul style="list-style-type: none"> <li>• Supports implementation on the grounds that it represents a pragmatic and proportional solution to the effect on some Users caused by a temporary lack of alignment in reference conditions used for nominations (and, by default, allocations) at the BBL IP.</li> <li>• Considers that where a User's position is distorted, it would be corrected by the proposed methodology.</li> <li>• Believes that the modification should become effective on the day after the decision to implement is made, if approved.</li> <li>• Expect the Ofgem decision will be made after the date</li> </ul>

			<p>on which balancing neutrality charges are calculated and processed for the month of October 2015. As a result, the earliest time at which the first adjustments would be made would be December 2015 – such adjustments would be made in respect of the months October and November 2015, appearing on invoices issued to Users in early January 2016 which is commensurate with the legal text provisions.</p> <ul style="list-style-type: none"> <li>• Accepts that whilst they (NG NTS) will incur costs associated to performing the recalculation of relevant User’s imbalances, the development and ongoing costs, should be negligible and the time period limited.</li> </ul>
RWE Supply & Trading GmbH	Support	<p>d) - positive g) - positive</p>	<ul style="list-style-type: none"> <li>• Observes that the misalignment of reference conditions between the two TSO’s is outside the control of the affected Users and that until the enduring solution proposed by 0519 is implemented, BBL User’s would face an under-allocation on the NTS and therefore be exposed to additional costs – the proposed adjustment of the energy balancing invoice each month avoids these inappropriate costs.</li> <li>• Believes that implementation should be immediately after Authority approval in order to minimise the period of retrospective application.</li> </ul>
TPA (on behalf of Gas Terra)	Support	<p>d) - positive g) - positive</p>	<ul style="list-style-type: none"> <li>• Believes that implementation should be as soon as possible commensurate with the urgent status granted to the modification in order that National Grid can proceed with applying the correction asap after the decision date.</li> <li>• Suggests that as the potential for increased risk of Energy Balancing Credit exposure (and potentially inappropriate application of credit sanctions) was identified in the Workgroup and explains that GasTerra considers that since the daily under-allocation is a very small percentage of each User’s flow; the modification addresses the issue on a monthly basis; only a relatively small number of Users are affected (the BBL Users) - this means that the additional risk in this case is sufficiently small not be a material concern.</li> <li>• Points out that the modification is targeted at BBL Users, and the solution is ‘ringfenced’ to the correction of energy balancing invoices and neutrality, and as such, there are no impacts for other Users.</li> </ul>

Representations are published alongside the Final Modification Report.

## Views expressed in response to additional Workgroup question for this Consultation

**Q1: Are any of the Ofgem conditions for retrospectivity satisfied? (see 11 Appendix - Ofgem Criteria for Urgency and Retrospectivity, below for more details)**

Views were received from the following parties:		
Organisation	Response	Key Points
BBL Company	No comments	<ul style="list-style-type: none"> <li>no response provided.</li> </ul>
British Gas Trading Ltd	Conditions Satisfied	<ul style="list-style-type: none"> <li>Supports retrospective application of the modification to 01 October 2015, as this is a reasonable outcome.</li> <li>Sees the modification as resolving a problem that only came to light late in the EU Network Code implementation timeline.</li> <li>Believes that there would not have been sufficient time to properly develop an urgent modification prior to 01 October 2015.</li> </ul>
Energy Balancing Credit Committee (EBCC)	No comments	<ul style="list-style-type: none"> <li>no response provided.</li> </ul>
EDF Energy	Conditions Not Satisfied	<ul style="list-style-type: none"> <li>Do not believe that the three Ofgem conditions for retrospectivity as defined within the Workgroup Report have been met.</li> <li>Whilst sympathetic to the plight of the Proposer and BBL Users, EDF Energy believes that some work was being undertaken over the summer months to address the issue, and as such, the modification could have been raised earlier therefore negating the need for a retrospective application.</li> <li>In considering the third criteria <i>“flagging the possibility of a retrospective action clearly to participants in advance, allowing the detail and process of the change to be finalised with retrospective effect”</i>, EDF notes that while there was discussion about a solution over the summer they were unaware of any solution that was shared with participants in advance.</li> </ul>
E.ON UK	Comments	<ul style="list-style-type: none"> <li>Remains of the general view that retrospection is an unwelcome aspect of any Modification Proposal, as it has the potential to “open the floodgates” with regards to re-visiting past costs incurred and decisions made, introducing significant uncertainty for all market participants.</li> <li>Notwithstanding these concerns, E.ON notes that Ofgem has recently approved UNC Modification Proposal 0534 – “Maintaining the efficacy of the NTS Optional Commodity ('shorthaul') tariff at Bacton entry points”, which includes a retrospective element and, therefore, E.ON would not expect Ofgem to reject 0560 on the grounds of retrospection.</li> </ul>

Gazprom Marketing & Trading Ltd	Conditions Satisfied	<ul style="list-style-type: none"> <li>• Agrees with the Proposer that all three of Ofgem’s conditions for retrospectivity are satisfied.</li> <li>• Do not believe that qualifying as an urgent modification should exclude any modification from having partially retrospective elements, as urgency and retrospectivity should be judged separately on their own respective merits.</li> <li>• Believe it was unavoidable that the modification was developed post 01 October 2015.</li> <li>• Notes that National Grid Gas has stated that the impact of implementing the modification on Users who are not active at the BBL IP is not material, taking into account the total value of ‘lost’ gas during the 7 month period.</li> </ul>
National Grid NTS	Conditions Satisfied	<ul style="list-style-type: none"> <li>• Would like to make it clear that whilst it does not normally support modifications that seek to make retrospective changes to the commercial regime on the grounds that these undermine regulatory stability and market confidence, it believes that in the case of this modification, retrospectivity may be relevant because the issue and the possibility of a Modification with application from this date had been discussed in advance with the industry; it was raised prior to the date on which it proposes to take effect from; and it would, in effect, implement a temporary solution that delivers equivalent outcomes for Users active at the BBL IP as the enduring solution for GB to manage the common units required by the EU Codes under Modification 0519 that was proposed by National Grid NTS and has been approved by Ofgem.</li> <li>• Also notes in respect of the modification that the period of retrospectivity would be partial; the majority of its application would be prospective; the period of retrospectivity is minimised due to the urgent timescales under which it is being progressed; and NG NTS are not aware that industry parties would have taken any different decisions or engaged in different transactions since 1st October 2015 if it is approved.</li> <li>• Considers that in the case of this modification: <ul style="list-style-type: none"> <li>○ the definition of ‘central arrangements’ could include Gemini functionality and the UNC arrangements for reference conditions. Analysis presented during the development of this Modification suggests that Users active at the BBL IP would face additional costs as a result of a difference between these arrangements and those applicable for the BBL side of the IP.</li> <li>○ National Grid NTS first raised the issue that this Modification seeks to address in its representation for Modification 0519 and subsequently discussed the potential impact for Users active at the BBL IP in July 2015. National Grid NTS communicated its intention not to raise a Modification but to work with any party that wished to do so in early August 2015. We therefore</li> </ul> </li> </ul>

		<p>consider that it would have been difficult for affected Users to have foreseen the issue and that there was insufficient time for a Modification to be raised, appropriately developed and implemented prior to 1st October 2015.</p> <ul style="list-style-type: none"> <li>○ The prospect of action to resolve the issue was flagged to the industry in advance of 1st October 2015 and this Modification was raised proposing a degree of retrospective action prior to this date.</li> </ul>
RWE Supply & Trading GmbH	Conditions Satisfied	<ul style="list-style-type: none"> <li>• Believes that the modification meets two of the Ofgem conditions, namely: <ul style="list-style-type: none"> <li><i>“a situation a situation where the fault or error giving rise to additional costs or losses was directly attributable to central arrangements”</i> and</li> <li><i>“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”.</i></li> </ul> </li> </ul>
TPA (on behalf of Gas Terra)	Conditions Satisfied	<ul style="list-style-type: none"> <li>• Believes that all three of Ofgem’s conditions for retrospectivity are satisfied.</li> <li>• Also believes that the retrospective action is justified, when considered against each of the three criteria set out in Ofgem’s guidance, in this case.</li> </ul>

## 9 Panel Discussions

## 10 Recommendation

### Panel Recommendation

Having considered the Modification Report, the Panel recommends:

- that proposed Modification 0560 should / should not be made.

Panel identified the following issues that it believes Ofgem should take into consideration:

- issue from Panel etc

## 11 Appendix – Ofgem Criteria for Urgency and Retrospectivity

### What criteria would the Authority use to determine urgency?

The Guidance sets out the factors the Authority will consider in reaching a decision on urgency in the context of industry code modification proposals – it is intended to be illustrative and not exhaustive. Each request for urgency will be considered on its merits on a case by case basis by reference to the Guidance, and in circumstances where we depart from it, we will explain the reasons why. Our current view is that an urgent modification should:

- Be linked to an imminent issue or a current issue that if not urgently addressed may cause:
  - a. A significant commercial impact on parties, consumers or other stakeholder(s); or
  - b. A significant impact on the safety and security of the electricity and/or gas systems; or
  - c. A party to be in breach of any relevant legal requirements.

### Can an urgent modification proposal contain retrospective elements?

As indicated in past decision letters, it is our view that retrospective modifications should be avoided as they 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. However, despite the general principle against retrospective rule changes, we believe that there may occasionally be exceptions that could give rise to the need for a modification which would have retrospective effect.

We consider that it is appropriate to consider any retrospective modifications on a case by case basis, though the particular circumstances that could give rise to the need for a retrospective change could, for instance, include:

- a situation where the fault or error giving rise to additional 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.

We also consider that in any event, any cost/loss incurred due to the prevailing rules would need to be material in order to warrant a retrospective modification.

Notwithstanding the points raised above, we recognise that a retrospective application of a modification may negate the need for its development to follow an urgent or otherwise contracted timetable, and vice versa. A proposer may therefore wish to consider where the balance between these considerations might appropriately lie, ahead of submitting their proposal.