

Representation - Modification UNC 0726 (Urgent)

COVID-19 Liquidity Relief Scheme for Shipper

Responses invited by: 5pm on 12 June 2020

To: enquiries@gasgovernance.co.uk

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

Representative:	Gareth Evans
Organisation:	ICoSS
Date of Representation:	12 June 2020
Support or oppose implementation?	Oppose
Relevant Objective:	d) Negative

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

We are supportive of the concept of deferring network charges for shippers and would have supported of a more equitable modification, that would allow all shippers to defer payments, and had some form of underwriting for the bad debt costs that the market will potentially incur (similar to the CfD process).

There are two key drawbacks to this change:

- This proposal has not demonstrated that it will not ultimately increase the level of debt that will have to be mutualised across the market compared to if no support was provided. We do not believe there are adequate controls on shippers to prevent bonuses and dividends being paid whilst these debts are outstanding.
- The proposal will also have a distortive effect on competition as it will benefit some shippers and not others.

The overall negative impact of these issues on competition will outweigh the positive benefit of this deferral and so will have a negative impact on relevant objective (d).

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

We do not believe that this modification should be implemented. Our comments notwithstanding, we are concerned over the timing of any recovery of the deferred costs. It is our belief that any outstanding bad debt from this process will feed into the 2021/22 charging year and so significantly increase costs for shippers with relatively short notice.

The prospect of industry bad debt caused by the ability of financially unstable suppliers in the market deferring industry costs, combined with the requirement to repay CfD and BSUoS deferrals in the electricity market customer bad debt and other mutualised SOLR costs means that customers are likely to see significant increases in energy bills as the market attempts to recover.

This is just at a point when many customers will need price stability to recover from the impact of COVID-19 and we would support a staggering of any bad debt cost recovery to limit the negative impact on the market.

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

Our members who would wish to take advantage of this new facility will need to provide information to CDSP and presumably manage any queries from GTs and CDSP. Those members who chose not to use the service, or are excluded from being able to participate, will need to factor in any bad debt / mutualisation risk costs into their price forecasting for the coming years.

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

The legal text has been provided at very short notice and so we have unable to fully assess it in the limited time available. We have had identified a number of discrepancies as set out in the section below.

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

There are a considerable number of errors, omissions and discrepancies to this modification, even with the legal text provided. It is disappointing that despite the time taken to develop this detailed change, neither the regulator nor the proposer sought to engage with shippers to develop a workable set of proposals prior to formally raising the proposal.

We have set out our findings by section:

Eligibility Criterion and Application

There is a lack of clarity on how the process for defining eligibility for the scheme, with regard to defining company groups. UNC TPD V3.1 allows for a User's Parent or Qualifying Company to provide surety and so relies on the organisation to provide this information. This is a voluntary process and so some organisations may be part of a large corporate group and not be relying on a Parent Company's surety. Information held by the CDSP is not therefore a reliable indicator. The CDSP is expected to confirm the corporate structure of the organisation, but it is not clear what steps they are expected to take to do so. The current process as set out in the legal text does not require the applying party to provide this information.

Shipper with pre-payment agreements

We believe that the intention under this agreement is to exclude Shippers with Pre-Payment Agreements from the scheme. It is not clear from current drafting whether they will become eligible for the scheme if a Shipper is no longer subject to the Pre-Payment Scheme, or if they cease to make payment under it, during the lifetime of the process.

Warranty by Shippers

In the modification it is stated that a warrant will be provided that bonuses to directors, etc will not be paid until the deferred amounts are repaid in full. The legal text by contrast does not require any form of warrant, but instead assumes an implicit agreement to the requirements set out regarding payments to directors, etc. It appears that there is no process anticipated for monitoring or verifying compliance with these requirements.

Applicable Invoice

The modification states that *“UNC TPD Section S1.5 will probably need to be amended to allow Applicable Invoices to be Divided Invoices and to provide for the relevant notices and the payment dates within that amendment.”* It should be noted that there is no reference to UNC TPD Section S1.5 in the legal text.

Additional Minimum Invoice

The mechanism for managing the Additional Minimum Payment, where there is insufficient security is contradictory. In the modification, it is implied that this amount only be notified to eligible Shippers as an invoice, but for “information only” for those who have insufficient security but will be due within 5 business days (page 14).

By contrast, the legal text (Section 9.5) make a clear requirement on all Eligible Users to pay within 5 business days, the Actual Minimum Payment Amount (minus the Initial Payment Amount).

Cessation of Scheme

It is unclear whether withdrawal of the scheme will also place shippers into default as bills can become overdue the day after notification and how this will be handled.

Treatment of Interest

The modification does not cover how interest accrued by the GTs, outside of a high-level statement that the interest will be used to cover “bad debt”; this statement is not included in the solution. It is unclear as to what will happen to this interest if there is no bad debt. As currently drafted these proposals represent a potential profit-making activity for transporters as the only commitment made in the modification is to voluntarily cover bad debt.

We note that the Ofgem letter of 2 June 2020 indicates this will be treated as allowed revenue, but at present the modification does not make any explicit reference to any formal process to require this (such as a licence change) – at present we are reliant on the goodwill of GTs to undertake this.

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

- ICoSS members advocate support for the energy sector and have written to Ofgem and BEIS on that matter with specific suggestions at the start of the COVID-19 pandemic. We do support intervention in relation to deferral of network charges, but this must be universally applied to all suppliers rather than targeted at those energy shippers / suppliers that are least likely to be able to meet their responsibility for paying industry costs.
- UNC modifications 721 and 725 would have provided a fairer solution that targeted all affected shippers and applied only to those customers impacted by demand reductions due to COVID-19.
- The scheme proposed by the ENA on behalf of Energy Networks is only available to the least creditworthy shippers and suppliers. This will therefore distort competition. Some shippers will be able to avoid paying network charges and more creditworthy (and equally affected) competitors will not be able to. It is therefore inappropriate that some shippers are able to defer payments and gain competitive advantage. It will also increase the likelihood of increased mutualisation of costs from supplier failure, a further distortion of the competitive market.
- After reviewing the legal text, it appears that there is no process in the UNC for monitoring or verifying compliance with the requirements to not pay dividends or bonuses whilst this money is outstanding. This makes a breach of these covenants by a shipper about to collapse highly likely.
- We also note that the ability for the GTs to withdraw the scheme with very little notice would cause a significant price shock to those shippers using this scheme if this occurs. As this scheme by its very nature is a last resort as other sources of funding are unavailable), a sudden may precipitate the collapse if this occurs.