Representation - Draft Modification Report UNC 0765

New retrospective debit and credit charges to reflect changes to the treatment of Entry Capacity Revenue between October and December 2020

Responses invited by: 5pm on 20 September 2021

To: enquiries@gasgovernance.co.uk

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

Representative:	John Costa
Organisation:	EDF
Date of Representation:	24 September 2021
Support or oppose implementation?	Oppose
Relevant Objective:	**c)** Negative **d)** Negative **g)** Negative
Relevant Charging Methodology Objective:	**a)** Negative **b)** Negative **c)** Negative

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

We do not believe this modification can or should be implemented because, apart from not meeting any of the above Relevant Objectives or Ofgem's retrospective criterion, the methodology proposed will not produce consumer benefits but rather risks introducing further market distortions through a new set of winners and losers. This would undermine market confidence and thus negatively impact consumers. Specifically:

- There was no fault or error – the rules in place at the time introduced through the implementation of UNC678a were followed to the letter by NGG and Shippers. It was rather an oversight by NGG as custodians of this charging regime as to how the monies would flow under the Capacity Neutrality regime which NGG introduced over 15 years ago. This is despite the industry and Ofgem's Impact Assessment clearly explaining how NTS capacity booking would move to closer to real-time. It is also worth clarifying that there are no losses per se – NGG was at a loss but is no longer due to the prospective mod 748 being urgently implemented in December to recover the monies from this oversight. However, what is clear is that a new set of distortions will emerge from the methodology proposed – for example, from the chart on page 7 of the DMR, 2 shippers stand to receive a windfall payment of at least £4m each while others will lose. This is unacceptable and would distort competition.

- Given this NGG cannot state in the DMR that "*it return monies more equitably"* and claim it meets Standard Relevant Objective (RO) C Efficient discharge of the licensee's obligations. Further, this modification is negative against Charging RO (a) because this new charging methodology will not reflect the costs incurred by the licencee as these were already amended by UNC748; rather the new methodology creates a new set of costs. For these same reasons it cannot be argued that it will further Charging RO (b) *that, so far as is consistent with sub-paragraph (a), the charging methodology properly takes account of developments in the transportation business*.

- It would also therefore negatively impact RO D *"Securing of effective competition between relevant shippers* given this temporary manipulation of the UNC and new set of distortions would undermine competition and market arrangements. As such it will negatively impact Charging RO (c) "*effective competition between gas shippers and between gas suppliers";*

- In terms of RO G, we find NGG's statement that this modification will comply "*with the requirements of the Gas Regulation (Regulation (EC) No 715/2009 as a component of Retained EU Law) regarding non-discriminatory arrangements and avoiding cross-subsidies"* strange when it is clear and NGG have admitted in workstream meetings that the redistribution of Debits is not perfect and will create further cross-subsidies. This will therefore create discriminatory arrangements and is also negative against RO G.

- combinations of circumstances that <u>could have</u> been reasonably foreseen – given the above and the fact that many documents throughout this 3 year Transmission Charging review reference (several times) that shippers would move to booking short-term capacity to match real-time flows, culminating in Ofgem's final IA[1] using this assumption as the basis for the analysis, it was clear monies from Daily and Interruptible Entry capacity sales within-day would move into the Capacity Neutrality pot which has been in place for over 15 years.

- Notwithstanding the above, the possibility of retrospective action was not raised in advance, only raised as a possibility in mid-November 2020 while this proposal seeks to apply from October 2020.

Ofgem rightly sets the bar high for retrospective changes to industry codes and market arrangements to succeed and hence why a retrospective mod in gas has never succeeded, not even when, contrary to this situation, there were clear manifest errors

[1] https://www.ofgem.gov.uk/system/files/docs/2020/05/unc678_-_impact_assessment_1.pdf

such as in UNC341 Manifest Errors in Entry Capacity Overruns[2]. Indeed, NGG also opposed UNC341 for the same above reasons stating "*NG NTS does not support the retrospective nature of Modification Proposal 0341 due to the degrees of uncertainty retrospective application brings to the regime*" and we believe the principles behind retrospective modifications need to be respected here also.

This proposal introduces a temporary change "Transitional Entry Adjustment Charge" but the UNC was not designed to be manipulated like this especially where no consumer benefits have been identified as it would completely undermine market and shipper confidence. While the DRM considers consumer impacts no benefits are identified simply because it is unlikely any will materialise as the windfall payments are extremely unlikely to reduce wholesale gas prices if this mod is implemented. Interestingly the DMR does talk about "*Fairness within Transportation charges should support filtering down ultimately to consumers"* however as this modification will cause more unfairness with the re-distribution of monies clawed back, the distortion and damage to market confidence is clearly negative for consumers. Either way, we believe an Impact Assessment should be had to determine this if Ofgem believe there are consumer benefits.

Finally, UNC748 changed the charging arrangements to get rid of Capacity Neutrality arrangements completely to stop this effect despite there being merit to the scheme for the last 15 years. If it wasn't appropriate under the new regime then NGG should have raised modifications to justify removing it before the 1st Oct.2020. We cannot go back after the day to retrospectively implement a prospective mod and state what arrangements should have ideally been in place because this sets a dangerous precedence - what incentive would there be to get things right from the start knowing you could just go back and change contracts to create an ideal world afterwards?

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

We note the c.£100k implementation costs in the ROM and the 6 months that might be needed to implemented it. This is sensible and would provide more time for an Impact Assessment to be conducted to understand how consumers will benefit from the redistribution of £47m should Ofgem decide to implement.

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

There will be some cost and time involved in understanding and validating these new invoices and dealing with any further unintended consequences from this temporary and unprecedented change to the UNC.

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

N/a

[2] 04 February 2011 Representation - National Grid NTS (gasgovernance.co.uk)

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.*

The consequences of breaking retrospective principles and setting a dangerous precedent of introducing a one-off temporary and time-limiting retrospective change to the UNC contract, the market and consumers overall has not been considered.

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

N/a