

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:	Julie Cox
Organisation:	Energy UK
Date of Representation:	17 September 2021
Support or oppose implementation?	Oppose
Relevant Objective:	<p>c) Negative/None</p> <p>d) Negative</p> <p>g) Negative</p>

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

Energy UK has a fundamental objection to this modification in that it lifts text from UNC 0748 a prospective modification and seeks to apply those principles retrospectively. It suggests that revenue was 'inappropriately redistributed' via the capacity neutrality arrangements. We contend that revenues flowed according the rules in place at the time which for capacity neutrality had been in place for around 20 years and were well understood. The magnitude of the revenue flows arose following the implementation of UNC 0678A which was approved by Ofgem following extensive consultation and impact assessment. Hence, we conclude that the revenue flows were not inappropriate, rather the market settled according to the rules.

Ofgem¹ agrees that past transactions should not be changed, '*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*'. We emphasise that understanding the rules applying to transactions in advance is paramount for market stability, with

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<https://www.gasgovernance.co.uk/sites/default/files/ggf/Ofgem%20Guidance%20on%20Code%20Modification%20Urgency%20Criteria%2017%20February%202016.pdf>

regulatory risk being a key factor in the attractiveness of a market and credibility of the regulatory regime which could have wider and long-lasting impacts if not respected.

There is limited experience of retrospective proposals and we believe none have ever been implemented in the gas codes. Ofgem provides some criteria in relation to retrospective proposals as part of its guidance on urgency criteria (see ref 1), whilst also reserving assessment on a case-by-case basis.

It is clear that none of the three criteria are met.

The issue did not arise from a fault or error in central arrangements / systems. Following implementation of 0748 National Grid will recover its allowed revenue, whilst seeking to further rectify this issue through this proposal **will** create a new set of cross subsidies, and will not address NBP price impacts.

The issue was foreseen; see 0621 FMR² which raised queries in relation to revenue flows and 0678 FMR³ and impact assessment⁴ which considered changes in booking behaviour.

The possibility of retrospective action was not flagged in advance. Rather the proposal was first flagged as a possibility mid-November but is seeking to apply from the start of October 2020.

Relevant objective c) It is not clear from the workgroup report how simply raising a proposal for a retrospective change can be positive for this relevant objective.

We also note that National Grid does not appear to support retrospective change due to the uncertainty retrospective change brings to the regime. *'National Grid NTS does not support the retrospective nature of Modification Proposal 0341 due to the degrees of uncertainty retrospective application brings to the regime'*⁵

Relevant objective d) This proposal does not further competition; it simply moves revenue between shippers. Rather the market uncertainty and regulatory risk it creates will have a negative impact on competition.

Competition is better served by a stable regulatory and market regime, not one that risks post settlement change.

Relevant objective g) Compliance like competition is something that prevails at a point in time. UNC 0678A was approved as being compliant and implemented, retrospective

² <https://www.gasgovernance.co.uk/sites/default/files/ggf/page/2018-07/Part%20I%20Final%20Modification%20Report%200621%200621ABCDEFHJKL%20v3.0.pdf>

³ <https://www.gasgovernance.co.uk/0678>

⁴ https://www.gasgovernance.co.uk/sites/default/files/ggf/book/2020-06/unc678_-_final%20impact_assessment_%20May%202020.pdf

⁵ <https://www.gasgovernance.co.uk/sites/default/files/ggf/04%20February%202011%20Representation%20-%20National%20Grid%20NTS.pdf>

change will not improve compliance of past events. To even suggest this is possible is bizarre and sets a very concerning precedent for the future.

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

If Ofgem was minded to approve this proposal, we consider it should carry out an impact assessment once all the input data is available, to quantify and explain how reallocating money between shippers avoids introducing distortions whilst furthering competition and benefitting consumers. Essentially how will consumer bills be impacted?

If approved system changes will enter the DSC change process for prioritisation. We request further transparency of this process given recent discussion on implementation of UNC 0759S. This change should not come ahead of that or 0752S and 0755S.

Any implementation timeline should be clearly communicated to the affected shippers so that appropriate accounting provision can be made, given the issue already straddles 2 and maybe 3 or more accounting periods.

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

As a trade association none

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

I have not reviewed the legal text

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 modification report does not take into account how consumers will be impacted if the proposal were implemented, hence why we consider an impact assessment is needed.

It would also be useful to consider the industry time spent on developing and discussing this proposal which could have been better spent on forward looking improvements to the charging regime, which yet again are facing compressed development timescales.

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