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*
extended to 5pm on 24 September 2021

To: enquiries@gasgovernance.co.uk

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

Representative:	Carlos Aguirre
Organisation:	Pavilion Energy Spain, S.A.U.
Date of Representation:	23rd of September 2021
Support or oppose implementation?	Oppose
Relevant Objective:	**c)** Negative **d)** Negative **g)** Negative
Relevant Charging Methodology Objective:	**a)** None **b)** None **c)** Negative

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

We **do not support the implementation** of this proposal.

We consider that this proposal is **retrospective** and hinders market confidence.

It **does not favour the competition** (as the proposer suggests) **but the opposite** as it retrospectively modifies the established regulation at a point in time. If the rules had been different, companies would have acted differently.

The selection of the specific period of three months (October 2020 – December 2020) is, in our view, **arbitrary and without any justification** (even more considering that the regulation has remained unchanged for more than 15 years).

We consider that **National Grid does not even have the competence** to change the stablished regulation under the pretext of seeking a better “redistribution of capacity revenues on a more equitable and appropriate basis between shippers”.

For all the above reasons, this proposal is, from our view, retrospective, introduces regulatory uncertainty and constitutes a negative precedent for the regulation. Therefore, we consider that it should not be implemented.

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

Not applicable as we consider that this proposal should not be implemented.

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

The introduction of a retroactive regulatory change generates uncertainty and regulatory risk in the market. It also constitutes a negative precedent against the principles of fair regulation that, in our opinion, should be avoided.

In the case of implementing this retroactive regulation the cost is twofold:

i. Companies will introduce a risk premium on their prices because of the regulatory uncertainty (and the possibility of further changes), and this will end up being passed on to consumers.

ii. Companies compete (and usually operate) worldwide and will consider the regulatory uncertainty in their business decisions as a negative factor. Therefore, they will prioritize investments in other markets with lower regulatory risk.

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

Not applicable

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.*

Not applicable

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

1) The proposal is retrospective and hinders market confidence.

We consider that market stability and predictability is paramount. However, this proposal introduces a retrospective change as it refers completely to a past period (October 2020 – December 2020). Apart from retrospective applications of regulation being strongly restricted by law, this is strongly detrimental to market confidence, introduces regulatory and legal uncertainty and undermines legitimate expectations of operators.

In addition, if this proposal is finally implemented, it would surely generate legal litigation, which is not desirable at this moment (also considering the numerous regulatory changes that have been introduced recently, which will make it difficult for agents to plan their business in the medium and long term).

2) The proposal will have adverse consequences for market competition.

The applicable regulation for the selected period (October 2020 – December 2020) has been public and already known by all the market players. According to this regulation, such companies took certain decisions. Obviously if the rules had been different, the companies would have acted differently, so the introduction of retrospective regulation would make such companies defenceless and unable to prepare for new regulation.

Therefore, the retroactive change that is being proposed, far from favouring competition as (the proposer indicates) would in fact produce the opposite effect as it would modify, by an administrative decision (ex post), the revenues freely obtained by the companies in a competitive market.

This retrospective change undermines the stability and predictability of the regulatory framework and will have adverse consequences for future market confidence and market competition.

3) The selected period is arbitrary and has no objective justification.

The regulation on this particular issue has remained unchanged over the last +15 years.

Therefore, in our view, seeking a retrospective change for a limited past period (in this case 3 months) is arbitrary and has no objective justification.

This circumstance constitutes a negative precedent from the regulatory perspective and must be avoided.

4) National Grid does not have the competence to introduce this retrospective change, that will cause a distortion in the market.

We consider that National Grid does not have the competence to change the stablished regulation under the pretext of seeking, from its point of view, a better "redistribution of capacity revenues on a more equitable and appropriate basis between shippers".

The proposal, as it tends to change a past and closed situation retrospectively, doesn't add anything related to the Relevant Charging Methodology Objectives a) ('better reflect the costs incurred by the licensee in its transportation business') or b) ('properly takes account of developments in the transportation business'). Regarding the Relevant Charging Methodology Objective c) ('facilitates effective competition') the proposal even has a negative impact as previously described.

Although the proposer indicates that this proposal has similarities to the UNC Modification 0748 'Prospective Removal of Entry Capacity Revenue from Capacity Neutrality Arrangements', we consider that it is not the case, and that this proposal is not comparable with 0748 for the following main reasons:

- UNC Mod 0748 adjusted a regulatory situation prospectively and not retrospectively as in this case.
- UNC Mod 0748 corrected National Grid's revenues in a situation of under-recovery of the system, granting greater financial stability for the gas system. In this case, the present proposal does not affect National Grid's revenues at all and has no

favourable impact on consumers but only redistributes revenues between shippers.

Therefore, and for all the above reasons, this proposal is, from our view, retrospective, introduces regulatory uncertainty and constitutes a negative precedent for the regulation. Therefore, we consider that it should not be implemented.