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:	Alan Wood
Organisation:	Sonatrach Gas Marketing UK Limited
Date of Representation:	20-September 2021
Support or oppose implementation?	Oppose
Relevant Objective:	**c)** None **d)** Negative **g)** None

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

We oppose this proposal because we do not support retrospective application of commercial rules. We also consider that the basis of this proposal is flawed and actually fails to make a case for its implementation. This modification proposal is a question about retrospectivity, i.e. whether or not the already-implemented UNC Modification 0748 should apply retrospectively. However the proposal fails to make any coherent argument for retrospectivity, and largely seeks instead to simply rely for its justification on the merits of UNC Modification 0748 (which is not in question), without providing a clear argument for why the retrospective implementation of UNC Mod 0748 meets the relevant objectives.

We disagree with the proposer's suggestions that REV charges arose due to fault, error and/or oversight. The outcomes were fully in line with the provisions set out in UNC Mod 0678A, which had been subject to rigorous and comprehensive discussion and examination. That those outcomes were then considered to be *undesirable* (albeit fully in line with the agreed provisions of UNC Mod 0678A) led to a further UNC Mod 0748, which was also subject to full scrutiny. Our view is that if UNC Mod 0748 had included a proposal for a retrospective effect it would have been strongly opposed.

Further, we believe that the proposal will have no impact on customers and could result in an outcome which is detrimental to competition between shippers.

We therefore strongly oppose this modification proposal UNC 0765.

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

We do not wish to see this proposal implemented.

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

The proposal fails to provide enough information for users to quantify the financial impact. Graphs included in the proposal imply that a user may even be required to repay greater amounts under the proposal than the REV amounts it received.

If implemented, we will however face the unjustifiable repayment of 'REV' neutrality revenues legitimately received by us under the UNC mechanism prevailing at the time.

We see no obvious reason why the proposed repayment period should match the 3-month duration when the REV amounts arose. Our view is that, should this modification be implemented, the period for users to be required to repay the REV amounts should be extended significantly, to alleviate the difficult cash flow impacts which would arise. We argue that since these REV amounts arose legitimately as a direct consequence of each user's firm capacity holding at that time, the repayment being retrospectively applied should be considered to be repaid across the remaining <u>duration</u> of each user's long-term capacity holdings at that time.

Certain REV neutrality amounts would have arisen during the retrospective period in question, just as they continue to arise post-UNC Mod 0748; any such proposal should to make its arguments more accurately with reference only to REV amounts which would have otherwise not arisen, with analysis which allows each user to clearly identify the impact it will face.

There is no evidence to suggest that the proposal will deliver benefits to consumers and for the reasons explained here and later in this response will inadvertently harm competition between shippers.

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

We do not offer an opinion.

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 contains flawed analysis and contentious statements.

We disagree with the assertions made that the proposal has a positive impact on the stated Relevant Objectives.

We challenge certain phrases and assertions which appear throughout the proposal, which give misleading impressions, including spurious reference to Ofgem's opinion for implementation of UNC Mod 0748; the opinions in support of UNC Mod 0748 are not transferable to UNC Mod 0765.

The proposal should exclude wording which represents contentious opinion, including such words and phrases as 'inappropriately'; 'errors'; 'unfair'; 'undue cross-subsidy'; 'defect'; and others including:

"windfall gains and losses"
"adverse impacts on competition"

"noted that the retrospective period concerned is relatively short in duration"
"identified detrimental impact on competition"
"inadvertently received a payment"

In particular we disagree with the assertion of 'undue cross-subsidy'. The UNC system capacity regime is a series of cross-subsidies, which were set up by design to allow users to manage their specific commercial requirements by use of different capacity products offered by National Grid NTS, thus allowing users to take commercial decisions based on their appetite for risk.
For many years it has been an accepted feature of the capacity regime that some users were able to take advantage of low-priced short-term and interruptible capacity products, because other shippers had secured long-term capacity holdings which underpinned NG NTS's capacity revenues. This itself is an obvious cross-subsidy, yet which has been widely accepted. Therefore we disagree that the presence of a cross-subsidy must be removed, and no case is made why this particular cross-subsidy should be treated as 'undue' and made an exception.

Inclusion of the above contentious opinions results in an unbalanced analysis by the proposer. We expect that modification proposals should be impartial to the greatest extent possible.

In relation to competition, we disagree with the assertion that this proposal will result in tangible benefits to the gas shipping market. The RRC introduced in February 2021 was largely levied to redirect revenues to National Grid's Transmission Services Allowance, which previously had been allocated to shippers through Capacity Neutrality. In response, the market factored in these new RRC's through increases in NBP prices, and where contractually feasible, directly to counterparties, including customers. As a result, those shippers who incurred RRC charges were able to recoup the costs associated with the allocation of Capacity Neutrality payments. Were this proposal to be implemented, shippers' cash positions will be impacted in various ways (as shown in figures 1 and 2 in the draft modification report). Some shippers will have benefited from the initial Capacity Neutrality Credit and we assume, benefited from the increase in the NBP price following the application of the RRC charge. Were these shippers to receive further credits from the implementation of this proposal, then it can be argued that their competitive advantage is exacerbated to the detriment of others.

It is clear that the market responded to the application of a RRC and that any attempts to re-engineer historical events via retrospective changes to the UNC will disrupt market mechanisms and lead to inferior outcomes.

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

We strongly support the comments raised in the 01 June 2021 Workgroup that the criteria for retrospectivity have not been met.

We strongly support the comment contained in the proposal that "retrospective change to the regime *in principle* is not desirable" – we expect this principle to be asserted. Selective disregard for this principle diminishes competition between market participants, by degrading confidence in the outcome of market actions taken in good faith under prevailing commercial rules.