UNC Final Modification Report

At what stage is this document in the process?

01 Modification
02 Workgroup Report
03 Draft Modification Report
04 Final 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

Purpose of Modification:

The purpose of the Modification is to create new debit and credit charges to reflect the removal of revenues recovered from daily interruptible and within-day Entry Capacity (obligated only) from Capacity Neutrality arrangements between 01 October 2020 and 31 December 2020 (inclusive), consistent with the prospective change introduced from 01 January 2021 by UNC Modification 0748.

Following implementation of UNC Modification 0678A on 01 October 2020, inappropriately high cashflows were subject to the Capacity Neutrality Arrangements (c. £0.5m per day). This Proposal seeks to create a charge to reflect removal of daily interruptible and within-day Entry Capacity (obligated only) revenue from Capacity Neutrality, within the relevant period so that these cashflows contribute to recovery of National Grid NTS' Allowed Revenues rather than redistribution across Entry Users.

Next Steps:

The Panel does not recommend implementation.

Impacted Parties:

High Impact: All parties that hold NTS Entry Capacity and National Grid NTS

Medium Impact: None

Low Impact: None

Contents

Timetable

Modification timetable:

Initial consideration by Workgroup	04 May 2021
Workgroup Report presented to Panel	19 August 2021
Draft Modification Report issued for consultation	20 August 2021
Consultation Close-out for representations	20 September 2021
Final Modification Report available for Panel	27 September 2021
Modification Panel recommendation	21 October 2021
Final Modification Report issued to Ofgem	22 October 2021

Table of Figures

Any questions?

Contact:
Joint Office of Gas Transporters

enquiries@gasgovernance.co.uk

0121 288 2107

Proposer:
Colin Williams
National Grid NTS

colin.williams@nationalgrid.com

07785 451776

Transporter:
National Grid NTS

as above

as above

Systems Provider:
Xoserve

UKLink@xoserve.com

Other:
Phil Lucas

phil.lucas@nationalgrid.com

07825 592518

1 Summary

What

From 01 October 2020 until the implementation of UNC Modification 0748 - *Prospective Removal of Entry Capacity Revenue from Capacity Neutrality Arrangements* on 01 January 2021, National Grid observed a material increase in revenue levels (from specific Entry Capacity auction processes) that were redistributed to Entry Users via the Capacity Neutrality Arrangements. These arrangements historically[1] redistributed circa £100k per month to Users, however within this period 01 October 2020 to 31 December 2020, the redistribution increased to approximately £15m per month. Therefore, these revenues did not contribute towards the collection of National Grid NTS' Allowed Revenue.

These specific revenues - within day Daily NTS Entry Capacity (obligated only) and Daily Interruptible NTS Entry Capacity - were removed from Capacity Neutrality arrangements from 01 January 2021 through the implementation of UNC Modification 0748. As a consequence, such revenue now contributes to National Grid's Allowed Revenue collection. However, this did not address the material quantity of revenue redistributed to Entry Users *prior* to implementation of UNC Modification 0748 (i.e. 01 October 2020 to 31 December 2020).

Why

In its decision letter for UNC Modification 0748[2] Ofgem concluded that the arrangements that provided for material amounts of capacity revenue to be redistributed to firm entry capacity holders were discriminatory, were not objectively justified and had unintended consequences with regards to the existing Capacity Neutrality arrangements. It further observed that this redistribution adversely impacted competition between Shippers and concluded that implementation of the change would stop these undue cross-subsidies.

The combination of the new charging regime and existing Capacity Neutrality arrangements that resulted in these undue cross-subsidies was in place for a three month period between October 2020 and December 2020. It led to an overall value of circa £47m being inappropriately redistributed back to Users via Capacity Neutrality. This was inappropriate as there are Users that received significant payments from this neutrality process who made little or no contribution to the neutrality mechanism (and vice-versa). This has effectively created windfall gains and losses for individual Users.

Whilst recognising that a retrospective change *in principle* is not desirable and is detrimental to overall confidence in the integrity of the market arrangements, in this case National Grid believes such concerns are outweighed by the adverse impacts on competition of the inappropriate revenue redistribution actioned in this period. It should be noted that the retrospective period concerned is relatively short in duration (3 months).

If no action is taken to address the issue, the inappropriate revenue redistribution highlighted above will not be resolved thereby retaining the identified detrimental impact on competition between Shippers.

How

It is proposed that two additional 'transitional' debit and credit charges are levied to effectively recover and re-distribute the revenues received (and re-distributed by National Grid NTS) from within day Daily NTS Entry Capacity (obligated only) and Daily Interruptible NTS Entry Capacity charges from the Capacity Neutrality arrangements between 01 October 2020 and 31 December 2020 inclusive. This will rectify the defect identified

[1] i.e. prior to 01 October 2020
[2] Decision letter for UNC Modification 0748

in the historic arrangements. For the avoidance of doubt this defect has now been prospectively addressed (from 01 January 2021) by the implementation of UNC Modification 0748.

Proposed transitional charges:

- The debit charge will recover from relevant Users part of the revenue which was distributed to them as a consequence of the Capacity Neutrality mechanism. These Users inadvertently received a payment arising from the treatment of that part of the Capacity Revenue Neutrality Charges associated with interruptible and within day obligated Entry capacity during the period October to December 2020;

- The credit charge will re-distribute the revenue collected via the transitional debit charges to all holders of Fully Adjusted Available Entry Capacity (except Existing Available Holding) over the period 01 February 2021 to 30 September 2021 (inclusive). Each relevant User will receive transitional credit charges proportional to their capacity holdings over that period.

For the avoidance of doubt, the total amount of revenue received by National Grid would not be affected by the implementation of this Proposal. The impacts of Implementation are limited to the redistribution of Capacity Revenues to Users on a more equitable and appropriate basis.

2 Governance

Justification for Authority Direction

This Modification Proposal is recommended to be sent for Authority direction as it is likely to have a material effect on commercial activities relating to the shipping, transportation and supply of gas because, if implemented, it will result in the re-distribution of approximately c.£47m revenue (that was initially subject to Capacity Neutrality arrangements) from a retrospective period (i.e. between October and December 2020).

Recognising that retrospective change to the regime *in principle* is not desirable, in this case this principle must be balanced against the adverse impacts on competition of the revenue redistribution actioned in this period if this issue remains un-addressed. The decision as to whether such adverse impacts are sufficiently material to outweigh concerns regarding retrospective change justifies the proposed approach of seeking a decision from the Authority in respect of this Proposal.

Requested Next Steps

This Modification should:

- be considered a material change and not subject to Self-Governance
- be assessed by a Workgroup for a period of 3 months.

3 Why Change?

Capacity Neutrality Arrangements in place between October and December 2020

Between October and December 2020, the UNC TPD Section B2.13.2 detailed the ‘Relevant Capacity Revenues’ which were subject to the Capacity Neutrality mechanism as set out in B2.13.3 to B2.13.7. The UNC EID Section B11.5 added into Relevant Capacity Revenues certain revenues from the equivalent Entry Capacity at Interconnection Points.

Relevant Capacity Revenues for this period included amounts payable to National Grid NTS (before the implementation of UNC Modification 0748) by Users by way of Capacity Charges in respect of:

- Daily NTS Entry Capacity that is registered on the day (TPD Section B2.13.2(a)(i)(1));
- Daily Interruptible NTS Entry Capacity (TPD Section B2.13.2(a)(i)(2));
- any additional Firm NTS Entry Capacity made available in excess of Unsold NTS Entry Capacity (TPD Section B2.13.2(a)(i)(3));
- Monthly NTS Entry Capacity allocated by reason of the acceptance of a rolling monthly surrender offer (TPD Section B2.13.2(a)(i)(4)).
- NTS Entry Capacity allocated in any Interruptible Day-ahead Auction or Within-Day Auction (EID Section B11.5.1(a)(i)); and
- Interconnection Point Capacity comprising quantities subject to Surrender Offers or Withdrawal Offers (EID Section B11.5.1(a)(ii)).

The operation of the Capacity Neutrality arrangements meant that National Grid NTS was held cash neutral by the subsequent return of such revenues to Users of the NTS.

The original purpose of Capacity Neutrality was to ensure that National Grid NTS in no way benefited from any Constraint Management costs, and therefore retained its neutral position. For example, if a User breached its Capacity holding with its physical flows, the subsequent Overrun Charges would be smeared back as a credit across the User Community on a monthly basis and would be based upon how much Firm Capacity each User holds for that specific day.

In the event of a constraint on the NTS, Capacity that had been previously acquired at zero price may suddenly incur a premium and it was important that National Grid NTS in no way benefited financially from subsequent increased revenues in those circumstances. Therefore, revenues from short term Capacity were also captured within Capacity Neutrality. However, the implementation of UNC Modification 0678A from 01 October 2020 changed how reserve prices are determined, including for short term Capacity and this, allied to the likelihood of revenues associated with them, provides justification to review this aspect of Capacity Neutrality for the period 01 October 2020 to 31 December 2020 inclusive.

As a consequence, the revenue that National Grid was entitled to recover from the provision of Entry Capacity on the NTS had to be recovered from Users' procurement of other Entry Capacity products (i.e. those that are not subject to the aforementioned Capacity Neutrality arrangements).

The implementation of UNC Modification 0748 removed the following from the list of Relevant Capacity Revenues[3] from 01 January 2021:

- Daily NTS Entry Capacity. Note this does not include Non-obligated Daily NTS Entry Capacity;
- Daily Interruptible NTS Entry Capacity;
- NTS Entry Capacity allocated in any Interruptible Rolling Day-ahead Auction or Within-Day Auction. Note this does not include Non-obligated Daily NTS Entry Capacity.

Recovery of National Grid's Allowed Revenue

National Grid NTS is permitted by its Licence to recover amounts equal to its Allowed Revenue for provision of Transportation services to Users of its network (the NTS). The NTS Charging Methodology (UNC TPD Section Y Part A) sets out the principles applied by National Grid NTS in the setting of Transportation Charge rates to enable recovery of its Allowed Revenue in each Formula Year.

The NTS Charging Methodology in place prior to October 2020 ('*the previous Methodology*') facilitated recovery of National Grid NTS' Allowed Revenue principally from flow based 'commodity' charges and long-term capacity

[3] For the avoidance of doubt this includes references to Non-Interconnection Point Capacity and Interconnection Point Capacity.

products. Indeed, the vast majority of short-term capacity was available at low or zero unit cost (i.e. Interruptible / Offpeak / Within Day Firm). The socialisation of such relatively low revenue values under the Capacity Neutrality mechanism therefore had no material impact on the recovery of National Grid's Allowed Revenue at that time.

UNC Modification 0678A introduced a new NTS Charging Methodology ('*the new Methodology*') from 01 October 2020 in order to comply with the newly introduced EU Tariff Code. This change was also the consequence of a review of multiple elements of the charging framework for GB, which included assessment of the most suitable Reference Price Methodology for Capacity.

In order to comply with the EU Tariff Code, the new Methodology provides for a principally capacity-based charging regime through which National Grid NTS aims to recover the majority of its Allowed Revenue via capacity charges. Where in the Tariff Year (Gas Year) there is forecast to be a difference between Allowed Revenue and the aggregate amount expected to be collected from capacity charges, the new Methodology provides for an additional Transmission Services Revenue Recovery Charge (TSRRC) to be applied to reconcile the two values.

Impacts of Capacity Neutrality Arrangements in place between October and December 2020

From 01 October 2020 National Grid observed a material increase in revenues (from specific Entry Capacity auction processes) that were redistributed to Entry Users via the Capacity Neutrality Arrangements. These arrangements saw increased revenues between 01 October 2020 and 31 December 2020 inclusive[4], the redistribution of these specific costs and revenues across Entry Users totalling approximately £15m per month within this period, compared to circa £100k per month prior to this point (i.e. an increase by a factor of 150). Therefore, these revenues did not contribute towards the collection of National Grid NTS' Allowed Revenue.

This issue needs to be addressed as this revenue distribution via Capacity Neutrality for this period was not consistent with the objectives of the charging methodology as set out in Standard Special Condition A5(5) of the NTS Licence. Specifically, it was not consistent with relevant methodology objectives:

b) *to take account of developments in the transportation business;* on the basis that the Capacity Neutrality arrangements in place between October and December 2020 were not fit for purpose as they did not take account the implications of the increased proportion of revenue subject to neutrality arrangements from October 2020; and
c) *to facilitate effective competition between shippers;* on the basis that the revenue distributed as a consequence of the operation of the Capacity Neutrality arrangements between October and December 2020 did not effectively target costs to those Users that accrued the benefit of the procurement of capacity.

This revenue distribution was not consistent with the above objectives. Aggregate revenues from Users contributing to Capacity Neutrality were not redistributed to such Users in the equivalent proportions to which they were received. Specifically, the increased scale of the relevant revenues (as described in this proposal) flowing through Capacity Neutrality from October 2020 following implementation of UNC Modification 0678A. The Capacity Neutrality process is designed to collect costs and revenues and redistribute them and whilst there is never an even balance between what is 'paid in' and 'paid out' to individual Users, the size of revenues flowing through from October 2020 creates an unfair distribution across Users. (Note that this unfair distribution was corrected from January 2021 with the implementation of UNC Modification 0748).

[4] Implementation of UNC Modification 0748 from 01 January 2020 removed a material proportion of these revenues from Capacity Neutrality Arrangements meaning these revenues contributed to National Grid NTS' Allowed Revenue from this point.

This is because Capacity Neutrality as an overall 'pot' is redistributed in the proportions of a User's Fully Adjusted Firm Available NTS Entry Capacity and this presents cases where some Users will receive far more out of this 'pot' than they contributed to it. Therefore, in summary there were distributional impacts on all Users as the method by which neutrality payments are returned to Users differs to the way any National Grid NTS revenue shortfall is recovered via TSRRCs.

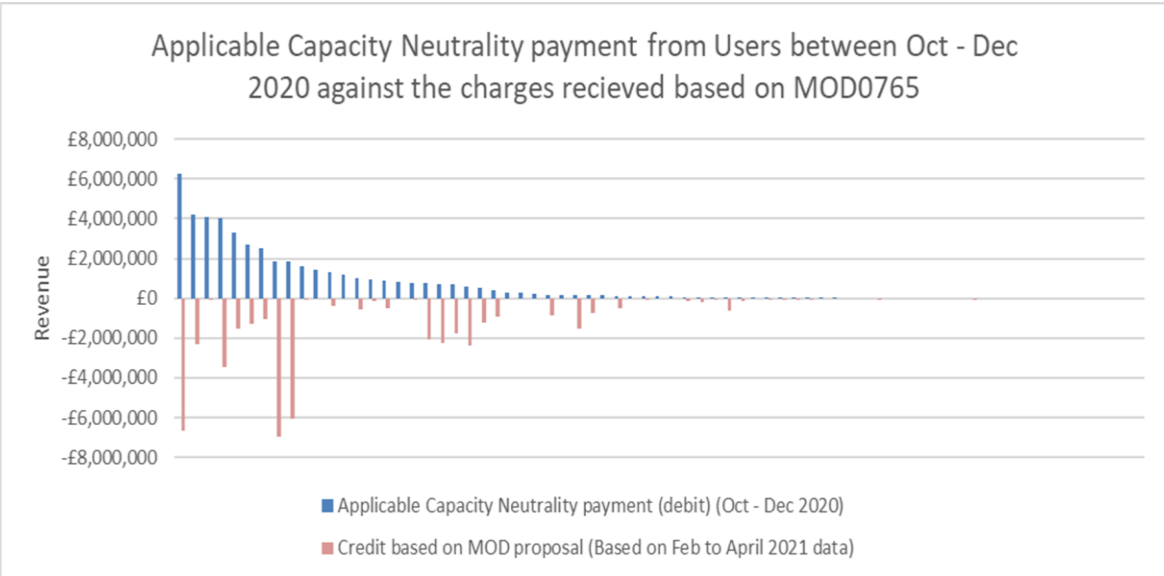
By way of illustration to use two potential scenarios:

- A User may not have had Capacity secured by auction (i.e. by trading the capacity in, where the liability remains with the original holder) and therefore did not pay any Capacity Charges directly to National Grid NTS however this User will have received a proportion for the Capacity Neutrality redistribution;

- a User that only purchased Interruptible Capacity via an auction, however this User would have received no proportion of the Capacity Neutrality redistribution as the redistribution is based on the percentage of firm capacity held by a User.

Analysis of the distributional impacts of how the charge would be distributed along with an illustration of how the credit would be apportioned is shown below which is based on the data which is currently available, using the calculations and principles specified within this Modification.

Within the graph below the red bars represent the amount that would be redistributed to Users (each bar represents User, corresponding to the blue) under UNC0765 based on February 2021 to April 2021 (inclusive) data. This represents a way to show the mechanics of how the distribution proposed in this modification works.



UNC Modification 0748 'Prospective Removal of Entry Capacity Revenue from Capacity Neutrality Arrangements'

National Grid raised UNC Modification 0748 to prospectively address the defect it had identified in the Capacity Neutrality arrangements and Ofgem directed the implementation of this Proposal with effect from 01 January 2021. In its decision letter, Ofgem concluded that the arrangements that provided for material amounts of interruptible capacity revenue to be redistributed to firm entry capacity holders (highlighting added):

- were discriminatory; Ofgem stated

"*…the proposed modification would end the current discriminatory arrangements, whereby holders of within day and daily interruptible entry capacity contribute significant sums to the Capacity Neutrality arrangements which are thereafter paid to holders of firm entry capacity*."

- were not objectively justified and were unintended consequences of the existing arrangements; Ofgem stated
  "…*different users face very different costs for the same service of gas transmission. Some users are currently being paid to use the NTS, while others face very high costs. These differences are not objectively justified and are not based on informed commercial decisions but they are the unintended consequence of the Capacity Neutrality mechanism*."

- adversely impact competition between shippers; Ofgem stated
  "*The current operation of the Capacity Neutrality arrangements…has adverse consequences for competition…[and] are unduly discriminatory*." "…*continuation of the current arrangements would maintain the distortive redistributional effects…whereby one category of network users cross-subsidises another category of network users*"

Ofgem concluded that implementation of the change in UNC Modification 0748 (to remove the stated charges from Capacity Neutrality) would stop these undue cross-subsidies. It stated:

"*Removing these…would stop these undue cross-subsidies, which have an adverse impact on shipper competition, on a prospective basis*."v

It also noted alignment with the specific EU Regulations (which, for the avoidance of doubt, have been incorporated in UK law in accordance with the provisions of the European Union (Withdrawal) Act 2018[5]). It stated:

"…*the principles of … Regulation (EU) 2017/460 …("TAR NC") do not envisage that charges for capacity will be treated other than as part of the allowed revenue. Article 3 explicitly states that transmission services revenue is one of the revenue components comprising 'allowed revenue'. Therefore, treating interruptible and within day firm entry capacity as part of the allowed revenue is consistent with TAR NC*"

"…*Article 13…of Regulation (EC) No 715/2009 … ("Gas Regulation") states that tariffs shall be applied in a non-discriminatory manner, shall facilitate efficient gas trade and competition, while at the same time avoiding cross-subsidies between network users and providing incentives for investment and maintaining or creating interoperability for transmission networks...also…that tariffs … shall neither restrict market liquidity nor distort trade across borders…The proposed modification would further the legal requirements set out…above*."

Given that the deficiencies in the market arrangements (as a consequence of the material increase in revenue subject to neutrality arrangements) recognised above were apparent from October 2020, such deficiencies equally apply to the arrangement in place between this point and 31 December 2020.

The Case for Retrospective Application

The arrangements identified as resulting in undue cross-subsidies were in place for a three-month period between October 2020 and December 2020, resulting in an overall value of circa £47m being redistributed back to a number of Users. Due to the size of revenues from within day and interruptible entry capacity contributing

[5] This legislation (as amended by the European Union (Withdrawal Agreement) Act 2020) incorporated EU law existing immediately prior to the Implementation Period completion day (i.e. 31 December 2020) into UK law. This included EU Regulations 2017/460 and 715/2009 as they stood as at this date.

to the Capacity Neutrality (when they should be contributing to collection of revenues thereby not requiring collection from other Users), this was inappropriate, as a number of Users that received significant payments from this neutrality process made little or no contribution to it (and vice-versa). Further, in some cases beneficiaries from these arrangements do not pay TSRRCs, the charges needed to collect the resulting revenue collection shortfall. This has effectively created windfall gains and losses for some Users as a consequence.

Historically, National Grid NTS has recognised that retrospective changes *in principle* are not desirable and that they are detrimental to overall confidence in the integrity of the market arrangements. However, in this case National Grid NTS believes such concerns are outweighed by the adverse impacts on competition of the revenue redistribution actioned in this period.

In this case, National Grid NTS notes that the retrospective period concerned is relatively short in duration (the 3 month period between October and December 2020).

Ofgem View of UNC Changes that have Retrospective Impacts

Ofgem's Guidance on Code Modification Urgency Criteria (as published on Ofgem's website) includes its views on the inclusion of changes that have retrospective effect in Urgent Modification Proposals. This narrative includes its wider views on UNC Modification Proposals that advocate retrospective change, stating "*it is our view that retrospective modifications should be avoided as they undermine market confidence… However, despite the general principle against retrospective rule changes, we believe that there may occasionally be exceptions that could give rise to the need for a modification which would have retrospective effect.*"

It further states "*it is appropriate to consider any retrospective modifications on a case by case basis…the need for a retrospective change could, for instance, include:*

- *… the fault or error … was directly attributable to central arrangements;*
- *… could not have been reasonably foreseen; or*
- *where the possibility of a retrospective action had been clearly flagged to the participants in advance…"*

National Grid NTS first raised the existence of an issue it had identified with the Capacity Neutrality 'central' arrangements at the Transmission Workgroup on 05 November 2020. This noted the adverse impacts of the arrangements observed from October 2020 and highlighted the potential to seek retrospective change to address this. Further engagement was undertaken with industry via the subsequent Transmission Workgroups, the NTS Charging Methodology Forum (NTSCMF) and a number of subject specific webinars over the following months.

Options Considered to Address the Identified Defect

The increase in Entry Capacity Revenue subject to Capacity Neutrality arrangements from 01 October 2020, and the consequential shortfall in National Grid collected Revenue, necessitated the utilisation of TSRRC charges to recover the projected Gas Year-end shortfall compared to Allowed Revenue. The unit rate of this shortfall recovery ('TSRRC rate') was reduced as a consequence of the implementation of UNC Modification 0748 from 01 January 2021 recognising that this change prospectively addressed the issue, thereby reducing the expected scale of the shortfall.

In respect of a solution for the period October 2020 to December 2020, as part of initial discussions with industry (referred to above), National Grid NTS tabled a draft solution which proposed recovery of the associated capacity revenues from the relevant Users for the period October 2020 to December 2020. In absence of any further arrangements this would have necessitated further reduction of the TSRRC rate on the basis that the projected revenue shortfall will have been recovered from the relevant Users as opposed to via the TSRRC.

However, the solution proposed:

- in response to feedback received and in line with Ofgem's open letter to National Grid NTS dated 23 December 2020, provides for an alternative solution which does not necessitate further change to the TSRRC rate;
- provides for redistribution (via a new charge) of the relevant Entry Capacity revenue to those Users holding capacity that attracts the TSRRC charge in the period February 2021 to September 2021 (inclusive); and
- does not adjust any published Transportation Charge rates.

The net impact of these two elements meets the objective of addressing the previous inappropriate redistribution of the relevant revenues via Capacity Neutrality whilst avoiding further revision of the TSRRC rate.

4 Code Specific Matters

Reference Documents

UNC TPD Section B

UNC EID Section B

UNC TPD Section Y

UNC Modification 0678A

UNC Modification 0748

Knowledge/Skills

Knowledge of the treatment of capacity revenues and charging principles would be beneficial.

5 Solution

Principle

It is proposed that a **Transitional Entry Adjustment Charge (TEAC)** is established to create charges which facilitates that between 01 October 2020 and 31 December 2020 (inclusive) ('the relevant period') the following sources of revenue relating to provision of Entry Capacity were not treated as Relevant Capacity Revenues and were not therefore subject to Capacity Neutrality:

- Daily NTS Entry Capacity. Note this does not include Non-obligated Daily NTS Entry Capacity;
- Daily Interruptible NTS Entry Capacity;
- NTS Entry Capacity allocated in any Interruptible Rolling Day-ahead Auction or Within-Day Auction. Note this does not include Non-obligated Daily NTS Entry Capacity.

It is proposed that the TEAC is invoiced and payable in accordance with UNC TPD Section S and is determined as follows:

- **Receipts: Debit TEAC**
  Users that received payments from Capacity Neutrality which reflected redistribution of revenue from charges associated with provision of the above capacity types (in respect of the relevant period) will be required to pay to National Grid NTS the TEAC.

The Debit TEAC will be payable by Users over a period of three consecutive months from implementation (M1, M2 and M3). For each User, the amount it received from the revenue redistribution (referred to above) for the Billing Period of:

- October 2020, will be invoiced in month M1;
- November 2020, will be invoiced in month M2; and
- December 2020, will be invoiced in month M3.

- **Payments: Credit TEAC**

  National Grid NTS will make Credit TEAC to Users that, in aggregate, are equal to the aggregate Debit TEAC payable by Users. Credit TEAC will be payable to Users over a period of the same three consecutive months from implementation (i.e. M1, M2 and M3).

  The amount payable to each User for each month ($TEAC_u$) will be determined on the basis of the following:

$$TEAC_u = TEACR_m \times \left(\frac{FAEC_u}{AFAEC}\right)$$

where:

$TEACR_m$ means the aggregate of Debit TEAC payable by all Users as invoiced the relevant month;

$FAEC_u$ means the aggregate of the relevant User's Fully Adjusted Available Entry Capacity (excluding Existing Available Holdings) for each day within the period 1st February 2021 to 30th September 2021 (inclusive); and

AFAEC means the aggregate of all Users' Fully Adjusted Available Entry Capacity (excluding Existing Available Holdings) for each day within the period 1st February 2021 to 30th September 2021 (inclusive).

6 Impacts & Other Considerations

Does this Modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

No such impacts have been identified.

Consumer Impacts

Proposer's view:

There will potentially be an impact on different consumer groups (as different Users are impacted based on their individual positions) but the total Allowed Revenue (determined in line with National Grid's Licence) which is collected by National Grid NTS will not change in the event of implementation of this Proposal. This Proposal will essentially apportion Transportation costs to Users of the NTS in a way that National Grid believes is fairer, more proportionate and better aligned to the EU Tariff Code principles than the previous arrangements (in place from October to December 2020) deliver, with a greater proportion of Entry Capacity revenue (regardless of whether they are short or long terms products) contributing towards the collection of National Grid NTS' Allowed Revenue. The Proposal would align (in principle) the treatment of capacity revenue recovered over the relevant period with the arrangements in place from 01 January 2021, following the implementation of UNC Modification 0748.

This proposal makes no changes to any published Transportation charges. Fairness within Transportation charges should support filtering down ultimately to consumers. Any consumer-based impacts would necessitate a range of assumptions that would be too complex to make certain. Decisions related to how Transportation charges are impacting downstream from UNC arrangements are wholly in the gift or obligations of those charging them via their contractual relationships.

Whilst no UNC remedy can ensure that costs feed through accurately to end consumers, this proposal seeks to address the effects of the windfall that has arisen to some Users (via the payments to some Users of the Capacity Revenue Neutrality Charge) at the cost to other Users (via the inflated Entry TSRRC that will be applied to Users during the February – September 2021 period) and restore fairness through the Transportation Charges. Thus, it seeks to address the obvious, and material, distortion that otherwise will occur between Users. Ultimately, the nature of how the Users' Transportation charge liability is charged downstream from UNC arrangements will depend on how Users and other market participants structure their respective contracts and associated service charges.

For those paying Entry TSRRCs currently, where the impact of the £47m may have been factored in to their reciprocal charges, the redistribution they receive from an approved Modification, provides certainty to this amount, which can in turn be accommodated into their charges This should provide some benefit, depending on the timing of how this is ultimately catered for, assuming it is passed on over time through the market.

At 06 July 2021 meeting Workgroup Participants filled out the following table.

Consumer Impact Assessment *(Workgroup assessment of proposer initial view or subsequent information)*	
Criteria	**Extent of Impact**
Which Consumer groups are affected?	Some Workgroup Participants agreed: Due to the retrospective nature of this Modification, consumers will not be affected. It is not possible to draw a line between this Modification and the way in which customers may be impacted. Other Workgroup Participants did not agree with the above and felt that this could not be stated absolutely. Any impact will depend on individual Shippers and any bilateral contracts downstream.
What costs or benefits will pass through to them?	n/a
When will these costs/benefits impact upon consumers?	n/a
Are there any other Consumer Impacts?	On principle, and in regard to the retrospective nature of this Modification, uncertainty might cause an increase in risk and therefore potentially an increase in costs seen by the market.
General Market Assumptions as at December 2016 *(to underpin the Costs analysis)*	
Number of Domestic consumers	*21 million*
Number of non-domestic consumers <73,200 kWh/annum	*500,000*
Number of consumers between 73,200 and 732,000 kWh/annum	*250,000*
Number of very large consumers >732,000 kWh/annum	*26,000*

Cross Code Impacts

No cross-code impacts have been identified.

EU Code Impacts

Proposer's view:

EU Tariff Code principles have been considered as part of this Proposal in respect of the stated purpose of the capacity Reference Price Methodology ("…*the methodology applied to the part of the transmission services revenue to be recovered from capacity-based transmission tariffs*") and Revenue Recovery charges ("…*levied for the purpose of managing revenue under- and over-recovery*").

As the deficiencies in the market arrangements date back to October 2020, the compliance aspects noted by Ofgem in its decision letter in respect of UNC Modification 0748 are also relevant to the arrangements that were in place between October and December 2020. Therefore, implementation of this Proposal would better align historical arrangements with the identified aspects of the two following Regulations:

"…*the principles of … Regulation (EU) 2017/460 …("TAR NC") do not envisage that charges for capacity will be treated other than as part of the allowed revenue. Article 3 explicitly states that transmission services revenue is one of the revenue components comprising 'allowed revenue'. Therefore, treating interruptible and within day firm entry capacity as part of the allowed revenue is consistent with TAR NC*"

"…*Article 13…of Regulation (EC) No 715/2009 … ("Gas Regulation") states that tariffs shall be applied in a non-discriminatory manner, shall facilitate efficient gas trade and competition, while at the same time avoiding cross-subsidies between network users and providing incentives for investment and maintaining or creating interoperability for transmission networks...also…that tariffs … shall neither restrict market liquidity nor distort trade across borders…The proposed modification would further the legal requirements set out…above.*"

Workgroup Participants views on compliance are captured within the Relevant Objectives section.

Central Systems Impacts

There will be impacts on Gemini and UK Link invoicing systems. These impacts can be seen within the ROM.

Rough Order of Magnitude (ROM) Assessment

Rough Order of Magnitude (ROM) Assessment *(Workgroup assessment of costs)* Based on change reference 5353 dated 20 May 2021.	
Cost estimate from CDSP	£80,000 – £110,000
Insert Subheading here	10 – 12 weeks plus 3 month lead time for startup etc.

On 01 June 2021 Workgroup reviewed the ROM change reference 5353 dated 20 May 2021 and sought some further information from the Proposer. Some Participants were concerned that the delivery time might be further extended following a decision to implement. It was confirmed that this could be up to 6 months. Ofgem may also undertake an impact assessment which may add to the time for a decision.

Workgroup Impact Assessment

Panel Questions to be addressed in Workgroup:

Q1. Seek confirmation that there are no leakage effects across to Exit charges

At Workgroup on 04 May, National Grid confirmed this Modification 0765 has no impact on Exit charges. Workgroup Participants had nothing further to add.

Q2. Consider justification for retrospectivity

On 01 June 2021, Workgroup Participants discussed retrospectivity breaking down the issues as follows:

Whether the criteria for retrospectivity[6] have been met

- Some Participants disagreed with the Proposer's points. Parties noted that this was not a system error in the central arrangements so the first bullet on justification is dismissed. The likelihood of higher prices was foreseen and identified by some parties responding to the earlier modification proposal; the implemented arrangement chose not to factor in representations made, thereby essentially dismissing the second bullet as the proposer had been alerted to the possibility of an adverse effect.
- In respect of bullet point 3, a Participant pointed out that the problem was not flagged by National Grid before October 2020. Furthermore, the Participant suggested that the notes of the November 2020 meetings are not explicit on this point so it may be difficult for National Grid to rely on the third leg of the justification in support of this proposal. Some Workgroup Participants felt that the Proposal may need to be amended if the proposer was obliged to rely upon a different date in support of the third leg of justification.
- Ofgem confirmed that the criteria stated in its guidance for considering retrospectivity would be considered and that it would also note the views being expressed.
- A Workgroup Participant noted that the Capacity Neutrality mechanism has been in Code for many years. Given that this was the case even before October 2020, should the Modification be aiming to tackle distortions before October 2020?
- Given that the issue was raised with industry in mid-November 2020 this does not tally with Ofgem's criteria for retrospection.

Redressing previous outcomes

- The Workgroup agreed that this Modification would have no effect on NBP prices already experienced. Furthermore, some parties believe that the market has settled out the positions that occurred during the period in question and that there is no mechanism for the market to reopen and pass money on to consumers.
- Some Participants argued that consumers will have been affected as a result of impact on the NBP and that the implementation of the proposals will do nothing to address that occurrence.
- Some Participants wondered if the effect might have been greater than reported because notification of the revised prices in November indicated a higher RRC. The Proposal may have merit in as far as it is addressing that effect.
- A Participant argued that failure to implement the Modification and address what had occurred would potentially allow a distortion (between Shippers) to perpetuate. A counter to this point was offered stating that not all affected Shippers will be supplying the domestic market, and some may not supply to consumers at all, so there is limited consumer benefit.

[6] Ofgem guidance on Urgency including for retrospectivity https://www.ofgem.gov.uk/publications/ofgem-guidance-code-modification-urgency-criteria-0

- Some parties believe that the Modification will not affect the marginal price of gas and given the likely implementation date may have effect across financial years, further diluting the effect.
- A Workgroup Participant noted that the Capacity Neutrality mechanism has been in Code for many years (potentially 19 years). Given that this was the case even before October 2020, should the Modification be aiming to tackle distortions before October 2020?

Risk of introducing prospective uncertainty

- Some Workgroup Participants felt that on the more general academic context of retrospectivity, under any legal or regulatory regime, retrospectivity is considered to have a negative effect for a market on the grounds that it introduces an uncertainty that any settlement may be re-opened at a future date. This might have a consequence of increasing costs for consumers.

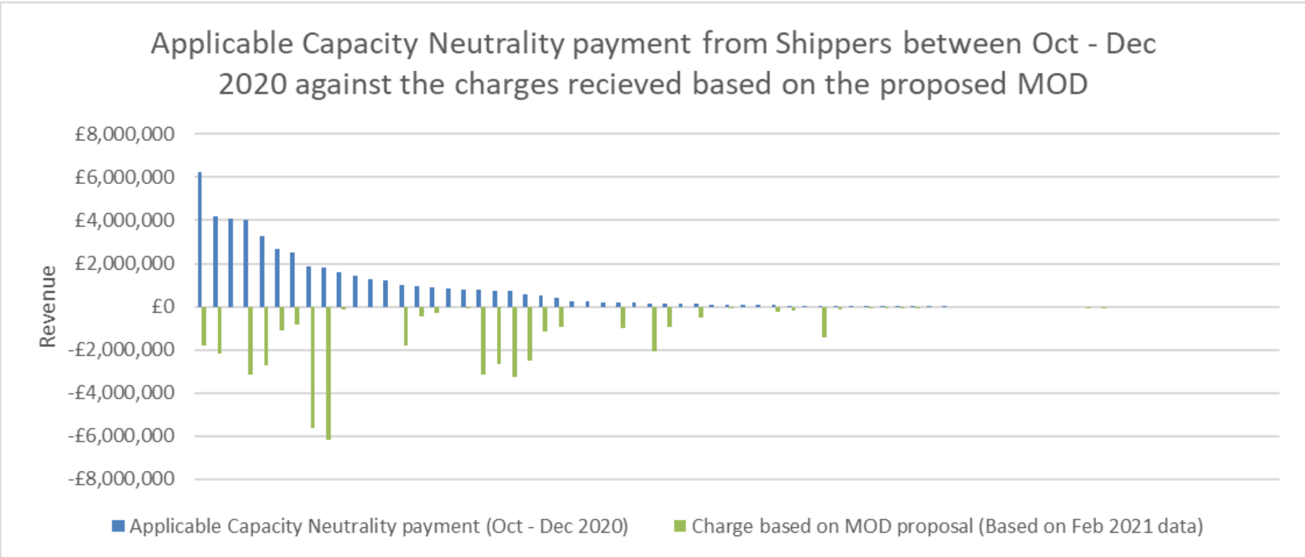
Analysis

Workgroup Participants reviewed the analysis data as it was updated each month from April – August 2021.

At 01 June meeting the Participants reviewed the further analysis showing the credit and debit positions for a sample of the shippers affected. Participants asked for the analysis to be enhanced to illustrate the net position and a Participant went on to state that it appeared that positions were tending to net off.

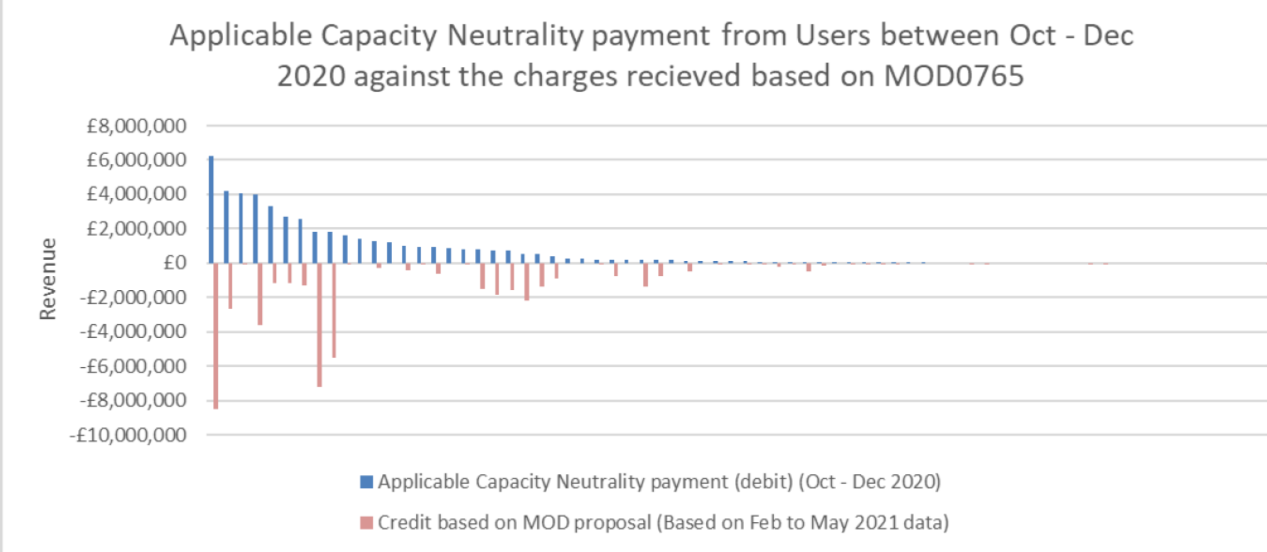
Workgroup Participants observed that the positions appeared to change as the new monthly data was added and that, in practice, an accurate position would not be determinable until September, just before the time when the Workgroup Report is due to report back to the Panel. The Proposer conceded that the final positions would not be resolved until that time.

Figure 1: Analysis graph presented at May 2021 Workgroup which includes data from February to March 2021



At Workgroup on 06 July the following analysis was discussed (see Figure 2). Workgroup Participants noted very little change from the data including May 2021 and the data including June 2021.

Figure 2: Analysis graph presented at July 2021 Workgroup which includes data from February to May 2021



The red bars represent the amount that would be redistributed to Users (each bar represents User, corresponding to the blue) under UNC0765 based on February to May 2021 data only.

At 06 July 2021 Workgroup Participants reviewed the changing picture for particular Shippers (on a sample basis). This is illustrated in Table 1. The right hand column shows the net position relating to each Shipper and their portfolio. At 03 August 2021 National Grid confirmed that there was no change to the Table 1.

National Grid confirmed that the data would be brought to Workgroup each month for as long as the Modification is under discussion, prior to reporting back to Panel, however that in their view there is no need to wait until the end of September to finalise the Modification.

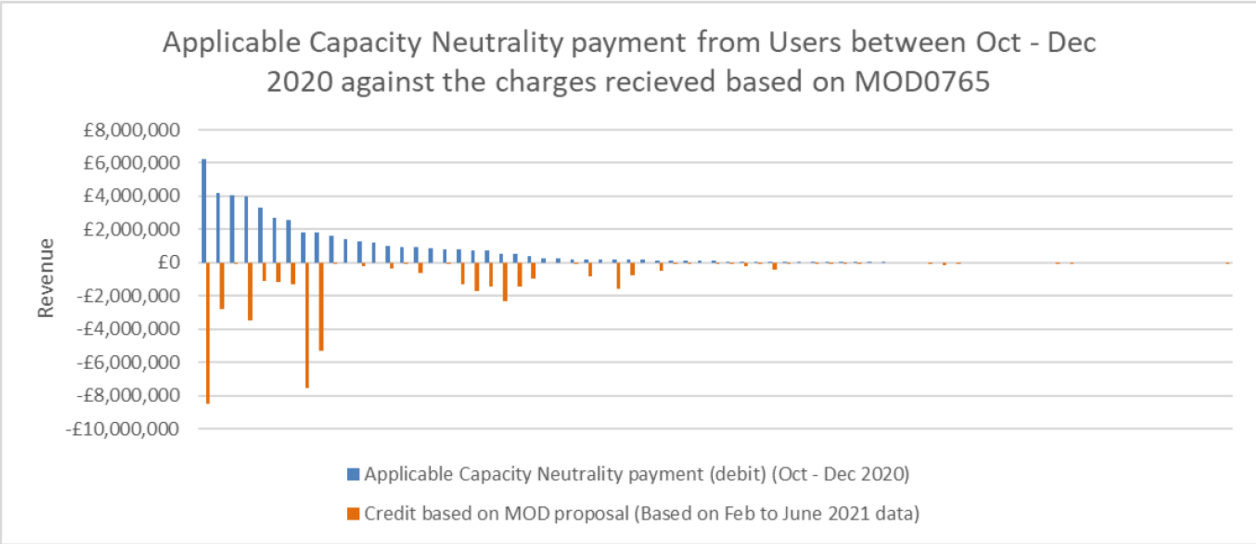
A Workgroup Participant confirmed they agreed that there was no need to wait until after September to finalise the Modification.

Table 1: Example positions of top 7 Shippers as at 06 July 2021

User	Oct – Dec 2020 Capacity Neutrality (REV) Credit Already Received	Oct – Dec 2020 Debit to pay (aggregate over 3 months)	Credit to pay (aggregate over 4 months)	Net position (Credit minus Debit)
A	£6m	£6m	£8m	£2m
B	£4m	£4m	£0m	-£4m
C	£3m	£3m	£1m	-£2m
D	£2m	£2m	£7m	£5m
E	£1m	£1m	£2m	£1m
F	£0m	£0m	£2m	£2m
G	£0m	£0m	£0m	£0m [4]

At 03 August 2021 Workgroup Participants reviewed the changing picture for particular Shippers (on a sample basis). This is illustrated in Figure 3.

Figure 3: Analysis graph presented at August 2021 Workgroup which includes data from February to June 2021



Some Workgroup Participants at 03 August 2021 continued to assert that the graphs in Figures 1, 2 and 3 do not accurately show the final effect of the Modification should it be implemented. The data shown in Figures 1-3 are only indicative.

At Workgroup on 03 August 2021, further commentary relating to Figures 1-3 was made to observe that for some points there may not be corresponding orange bars where there are blue bars. This was explained by the Proposer:

- Blue bars are fixed based on firm capacity held in the period October to December 2020 and will not change up to September 2021.
- The orange bars represent the payments Users would receive (based on positions up to the end of June 2021), based on their Fully Adjusted Available capacity holdings net of any Existing Available Holdings. Save for some nuances related to trading, this will predominantly apply to new capacity.
- The larger the orange bar, the greater the proportion that User has of the available capacity holdings (excluding existing available holdings) – i.e. the basis of levying Entry Revenue Recovery charges introduced from February 2021.
- It is the Proposer's opinion that whilst this proportion comparing February to June may change when looking at the period February to September, that it is unlikely to materially change the shape of the distribution across the orange bars.

Some Workgroup Participants asserted that any new bookings (made June – September 2021) may change the shape of the distribution of the orange bars.

Other Workgroup Participants noted that the blue bars are likely to be dominated by credits going back to the Existing Contract holders. Whereas the orange bars are related to cashflows associated with non-Existing Contracts.

Note the following 6 topics stem from the initial representation from Energy UK, received on 30 April 2021.

Governance and regulatory risk

Workgroup Participants comments are captured for this topic under the Standard Relevant Objective d).

Market impacts

A Workgroup Participant noted that the market impacts may be a material increase in the perceived risk whilst the effect of the Modification itself is relatively immaterial. The Participant pointed out that there does not appear to be any party actually trading in the market who is actively lobbying in favour of the Modification, even amongst those who might be expected to gain financially.

Shipper impacts and competition

Workgroup Participants comments are captured for this topic under the Standard Relevant Objective d).

Compliance

Workgroup Participants comments are captured for this topic under the Standard Relevant Objective g).

Incentives

At the time this Modification was raised this issue was not being addressed, however as at 03 August 2021, this issue is now being addressed by Ofgem.

Cash flows

Workgroup Participants had no further comments to be made above what has already been captured in this report.

7 Relevant Objectives

Impact of the modification on the Relevant Objectives:	
Relevant Objective	Identified impact
a) Efficient and economic operation of the pipe-line system.	None
b) Coordinated, efficient and economic operation of (i) the combined pipe-line system, and/ or (ii) the pipe-line system of one or more other relevant gas transporters.	None
c) Efficient discharge of the licensee's obligations.	Positive
d) Securing of effective competition: (i) between relevant shippers; (ii) between relevant suppliers; and/or (iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers.	Positive
e) Provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards… are satisfied as respects the availability of gas to their domestic customers.	None
f) Promotion of efficiency in the implementation and administration of the Code.	None
g) Compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.	Positive

Proposer's view of Demonstration of how the Standard Relevant Objectives are furthered:

c) Efficient discharge of the licensee's obligations.

Implementation of this Proposal would charge back most of the capacity neutrality payments between October and December 2020 and redistribute this amount across the specified basis in the solution of this Modification. This continues with the principles established under UNC Modification 0748 that the capacity neutrality payments without change were excessive, effectively driving up the charges for other Shippers. Through this proposal it would charge amounts that should have contributed towards the allowed revenue collection based on the principles established implementing UNC Modification 0678A and return monies more equitably. It avoids necessitating an alternative approach of recovering a material proportion of National Grid NTS' Allowed Revenue via adjusting any published charges (i.e. TSRRC (Entry) or Transmission Services Entry Capacity Reserve Prices).

On 03 August 2021 National Grid clarified that this relates to SSC A5:

Except in so far as the Authority consents to the licensee not doing so, the licensee shall, subject to paragraphs 2, 2A, 10A and 10B of this condition and paragraph 10(ab) of Standard Special Condition A11 (Network code and Uniform Network Code) from time to time make such modifications of the methodology established in pursuance of paragraph 5 of Standard Special Condition A4 (Charging – General) ("the charging methodology") as may be requisite for the purpose of achieving the relevant methodology objectives.

This is an obligation to keep the charging methodology under review and it must further (or achieve) the relevant methodology objectives.

d) Securing of effective competition between relevant shippers;

The proposed changes in this Modification are expected to address the aforementioned revenue re-distributional impacts thus costs will have been targeted at Users in a more appropriate and fair manner. This is more consistent with the principles of the Charging Methodology which was implemented on 01 October 2020, thereby enhancing effective competition.

g) Compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.

The proposed changes in this Modification will ensure that the revenue recovery arrangements in place between October and December 2020 better align with the EU Tariff Code (Regulation 2017/460 as a component of Retained EU Law) principles relating to the purposes of the Reference Price Methodology and the TSRRC. The revised arrangement will also better align 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.

<u>Workgroup Participants views on Standard Relevant Objectives:</u>

c) Efficient discharge of the licensee's obligations.

Some Workgroup Participants asserted that this Modification effectively swaps one magnitude of Shipper distortion for another. The Modification does not completely reverse the distortion which has happened. In this way the redressing is not perfect. This appears to be negative for Relevant Objective c) and d).

A Workgroup Participant did not agree with the above and asserted that this Modification is compensating back those Shippers who have paid under the original regime which appeared to have been discriminatory.

Workgroup participants debated the extent to which the mechanism in the Modification properly reverses the distortion seen between October – December 2020.

A Workgroup Participant noted that National Grid is effectively disrupting the market by introducing this retrospective Modification, retrospective change appears to be negative for Relevant Objective c).

Most Workgroup Participants did not agree that this Modification was positive for Relevant Objective c) because it is unclear which license obligation the Modification is aimed at furthering. Some Workgroup Participants felt that the additional comments by National Grid on 03 August 2021 would be relevant to every charging modification and therefore render its achievement as irrelevant.

A Workgroup Participant felt that there was clearly something wrong with the cash flows which occurred between October and December 2020. Though it is unclear which license obligation is being furthered (regarding Relevant Objective c), it appears that some consideration should be given to try and address what has clearly been an underlying problem, given the clear detrimental effect. The inter-Shipper distortion apparent in the data presented can be tackled and this Modification is the only option on the table at this moment. This aspect clearly furthers Relevant Objective d).

A Workgroup Participant noted in relation to the failure, that the Capacity Neutrality mechanism has been in Code for many years. Given that this was the case even before October 2020, should the Modification be aiming to tackle distortions before October 2020? Why only correct this failure for a very limited period?

d) Securing of effective competition between relevant shippers;

A Workgroup Participant noted that there were no Shippers present at Workgroup on 06 July 2021 who believed the Modification is positive for competition (Relevant Objective d) and Charging Relevant Objective c))

A Workgroup Participant noted that the market impacts may be a material increase in the perceived risk whilst the effect of the Modification itself is relatively immaterial. The Participant pointed out that there does not appear to be any party actually trading in the market who is actively lobbying in favour of the Modification, even amongst those who might be expected to gain financially. This supports the argument that the Modification is negative for competition (Relevant Objective d) and Charging Relevant Objective c)).

A Workgroup Participant noted that the cornerstone of competition is the sanctity of contract and thus this Modification is effectively re-opening the contract and because of this undermining competition, the Modification is negative for competition (Relevant Objective d) and Charging Relevant Objective c))

Some Workgroup Participants wished to note that from a Shipper point of view, and in terms of the relative weighting of Relevant Objectives, the impact of retrospective decisions on competition is paramount. The negative impact on competition as a result of retrospectivity outweighs any particular benefits. The magnitude of the redistribution proposed in this Modification does not appear to warrant the use of retrospectivity.

No Shipper Workgroup Participants at the meeting on 06 July 2021 disagreed with the view above. At the 03 August 2021 there was no change to this position.

A Workgroup Participant wished to draw attention to slide 6 of the slide pack for 03 August 2021 which is the Figure 3 shown above. In relation to competition, the blue bars they represent the monies which will be taken from Shippers and are equivalent to the payments made between Oct – Dec 2020 under the capacity neutrality mechanism. If we were to compare these bars with those which occurred Oct - Dec 2019 they would be approximately 1/150th and would be more in the range £15,000-£40,000 rather than £2m - £6m in 2020. This must have triggered some question as to whether Shippers were expecting this significant change in the payment level. Intuitively this feels like a mistake which should be corrected. The orange bars then show what Shippers would get as a credit as a result of this Modification, if it is implemented. The Modification is attempting to unwind something that was not appreciated or understood to be coming. The Workgroup Participant suggested an additional consultation question could ask Shippers whether they were genuinely expecting the payments made Oct – Dec 2020 under capacity neutrality.

Another Workgroup Participants wished to note that the significant credits Oct – Dec 2020 were indeed noticed. Slide 6 (shown in this report as Figure 3) can only complete the picture once we have seen all of the payment – this will not be seen until October 2021 when the September invoice has been issued. As of 03 August 2021, 3 months remain to be invoiced. The credits seen Oct – Dec 2020 were corrected by a significant change in RRC from February 2021 as shown by Figure 3.

Another Workgroup Participant noted that if a risk premium must be factored in when considering investment in the UK due to an uncertain and a risky regulatory regime, this will reduce investment in the UK as a direct result of any implementation of a retrospective modification.

A further Workgroup Participant did not agree that the payments from capacity neutrality were erroneous, as implied by the commentary above. The payments were correct and in line with the rules as written. There is now a review being undertaken into the change in methodology from 01 October 2020 as a result of the significant price increase in the Entry Capacity prices, though it does not appear that there is an intention to go back and address this retrospectively. The contract works by make incremental changes as it runs.

Another Workgroup Participant noted that Shippers must have known that there may have been a possibility of the large payment being 'recalled'.

A Workgroup Participants noted that charges and Revenues will be changed in a different financial year to which they relate. This is likely to cause significant distortion of yearly accounts (financial records) for affected businesses, and potentially impact shareholders/valuations.

g) Compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.

Some Workgroup Participants asserted that it was difficult to use the arguments in Ofgem's decision on Modification 0748 in a retrospective argument for this Modification – can retrospective changes be considered positive for compliance and therefore be considered positive for Relevant Objective g)? It is unclear whether this is even possible.

Some Workgroup Participants asserted that it is surely better to correct mistakes where it is clear they occurred.

Some Workgroup Participants noted that it is not clear how this Modification better facilitates compliance and thus the Modification may be neutral at best for Relevant Objective g).

Impact of the modification on the Relevant Charging Methodology Objectives:	
Relevant Objective	Identified impact
a) Save in so far as paragraphs (aa) or (d) apply, that compliance with the charging methodology results in charges which reflect the costs incurred by the licensee in its transportation business;	Positive
aa) That, in so far as prices in respect of transportation arrangements are established by auction, either: (i) no reserve price is applied, or (ii) that reserve price is set at a level - (I) best calculated to promote efficiency and avoid undue preference in the supply of transportation services; and (II) best calculated to promote competition between gas suppliers and between gas shippers;	None
b) That, so far as is consistent with sub-paragraph (a), the charging methodology properly takes account of developments in the transportation business;	Positive
c) That, so far as is consistent with sub-paragraphs (a) and (b), compliance with the charging methodology facilitates effective competition between gas shippers and between gas suppliers; and	Positive
d) That the charging methodology reflects any alternative arrangements put in place in accordance with a determination made by the Secretary of State	None

under paragraph 2A(a) of Standard Special Condition A27 (Disposal of Assets).	
e) Compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.	None

Proposer's view of Demonstration of how the Charging Relevant Objectives are furthered:

a) charges reflect the costs incurred by the licensee in its transportation business

Implementation of this Modification will adjust the revenue that has already been invoiced and distributed under the operation of the Capacity Neutrality arrangements prior to the implementation of UNC Modification 0748 as these arrangements did not enable National Grid to recover material amounts of revenue from the sale of capacity in its network.

b) properly takes account of developments in the transportation business

Implementation of this Modification will effectively adjust the arrangements from the point at which increasing proportions of revenue being subject to neutrality arrangements was observed, this being 1 October 2020 up to 31 December 2020. On this basis, for this period the arrangements will have appropriately taken account of developments in the transportation business observed since 1 October 2020.

c) facilitates effective competition between gas shippers and between gas suppliers

implementation of this Modification will adjust the retrospective revenue distribution (as a consequence of the operation of the Capacity Neutrality arrangements) from 1 October 2020 up to 31 December 2020 as these arrangements did not effectively target cost incurred by National Grid with the capacity neutrality taking into account the capacity and capacity revenues, the capacity neutrality payments made and the impacts of in terms of recovery from adjusting other charges. Effective targeting of costs and charges is a necessary cornerstone of competition.

Workgroup Participants views on Charging Relevant Objectives:

a) charges reflect the costs incurred by the licensee in its transportation business

Some Workgroup Participants noted that the costs incurred by National Grid have not changed, the Modification is seeking to recover and re-allocate these costs incurred in a different way. This does not appear to be positive for Relevant Charging Objective a).

b) properly takes account of developments in the transportation business

Some Workgroup Participants asserted that the development in this case appears to be that there was a change in Shipper behaviour and that this was foreseeable. It is unclear what the change in National Grid's Business is to warrant the Modification being considered positive for Relevant Charging Objective b).

A Workgroup Participant noted that the major change was the move from a zero pricing of capacity to a significant price change for capacity, though this appears to be a pricing change rather than a business change.

c) facilitates effective competition between gas shippers and between gas suppliers

Those Workgroup Participants who had any comments to make agreed that the discussions captured above under standard Relevant Objective d) would apply for charging Relevant Objective c).

8 Implementation

No implementation timescales are proposed. However, implementation is requested as soon as practicable following an Authority direction to do so, noting that implementation is required to take effect from the first calendar day of a month and will need to consider the timelines specified within the ROM.

In respect of the TEAC, month 'M1' will be the calendar month following the month of implementation.

9 Legal Text

Legal Text has been provided by National Grid and is published alongside this report, here: https://www.gasgovernance.co.uk/0765 . The Workgroup considered the Legal Text at its meeting on 01 June 2021 and is satisfied that it meets the intent of the Solution. National Grid as Proposer assured Workgroup on 03 August 20201 that the changes to Legal Text since 01 June 2021 were minimal and only related to updates in the Modification from v1.0 to v2.0. Workgroup were satisfied with this explanation.

10 Consultation

Panel invited representations from interested parties on 19 August 2021. The following table provides a high-level summary of the representations received and are provided for reference on a 'reasonable endeavours' basis only. It is recommended that all representations are read in full when considering this Report. Representations are appended to this Final Modification Report.

Of the 17 representations, one representation offered support and 16 were not in support.

Organisation	Response	Relevant Objectives	Relevant Charging Methodology Objectives
Centrica	Oppose	c) - negative d) - negative g) - negative	a) - negative b) - negative c) - negative
EDF	Oppose	c) - negative d) - negative g) - negative	a) - negative b) - negative c) - negative
EDF Trading	Oppose	c) - negative d) - negative g) - negative	a) - negative b) - negative c) - negative
Energy UK	Oppose	c) – negative/none d) - negative g) - negative	
ENI Global Markets	Oppose	c) - negative	a) - negative

SpA		d) - negative g) - negative	b) - negative c) - negative
Equinor	Oppose	c) - negative d) - negative g) - negative	a) - negative b) - negative c) - negative
Exxon Mobil	Oppose	c) - negative d) - negative g) - negative	
Gazprom	Oppose		
National Grid NTS	Support	c) - positive d) - positive g) – positive	a) - positive b) - positive c) - positive
Pavilion Energy	Oppose	c) - negative d) - negative g) - negative	a) - none b) - none c) - negative
Scottish Power	Oppose	c) - negative d) - negative g) - negative	a) - negative b) - negative c) - negative
Shell Energy Europe Limited (SSEL)	Oppose	c) - negative d) - negative g) - negative	
Sonatrach Gas Marketing	Oppose	c) - none d) - negative g) - none	
South Hook Gas	Oppose	c) - negative d) - negative g) - negative	a) - negative b) - negative c) - negative
SSE	Oppose	c) - negative d) - negative g) - negative	a) - negative b) - negative c) - negative
Storengy UK	Oppose	c) - negative d) - negative g) - negative	a) - negative b) - negative c) - negative
Uniper	Oppose	c) - none d) - negative g) - none	

Please note that late submitted representations will not be included or referred to in this Final Modification Report. However, all representations received in response to this consultation (including late submissions) are published in full alongside this Report and will be taken into account when the UNC Modification Panel makes its assessment and recommendation.

11 Panel Discussions

Discussion

The Panel Chair summarised that Modification 0765 would introduce a mechanism that would be applied for the 3-month period prior to implementation of UNC Modification 0748 (i.e. 01 October 2020 to 31 December 2020). The consequence of this change would be to recover payments from some shippers and to reallocate payments to others. The Panel noted that the Workgroup had been provided with a considerable amount of analysis of the potential effects.

The Panel Chair noted that there were 17 consultation responses of which one supported implementation and 16 opposed.

Panel Members recognised that the primary issue in this proposal is the question whether the criteria for retrospective changes had been met. The Panel noted that this issue had been debated at length in Workgroup and highlighted for the consultation. Most Panel Members agreed that the criteria for retrospective changes has not been met.

Most Panels Members were concerned that the approach set out in this Modification for retrospective changes has not been justified against the relevant criteria and regardless of support or not for the Modification, seeking retrospective changes is setting a precedent that is not considered to offer benefits to the industry.

The Domestic Consumer Representative commented:

> "That overall this Modification does not clearly demonstrate that the application of credit and debit charges would bring about consumer benefits that would not be outweighed by the impact of perceived regulatory risk. We agree with Ofgem's assertion that it is appropriate to consider any retrospective modifications on a case-by-case basis and believe it is important to test these criteria. On this occasion we do not believe the criteria for retrospection have been met and consider it negative against relevant objective D. However, Ofgem should also consider the overall impact on consumers, including through additional costs as a result of the £47million cross-subsidy arising from the unintended consequences of capacity neutrality arrangements, and how such impacts can be avoided in the future."

This view was supported by other Panel Members.

Consideration of the Relevant Objectives

Most Panel Members did not agree that this Modification had a positive impact on the Relevant Objectives and is likely to have a negative impact on Relevant Objective *d) Securing of effective competition between relevant shippers* and Charging Objective *c) facilitates effective competition between gas shippers and between gas suppliers*. Implementing this Modification would create a precedent for the use of retrospective actions which would reduce certainty for the industry and the negative impacts would outweigh any other benefits established against other Relevant Objectives. Some Panel Members did not agree with this view, noting that each case for retrospective action should and would be tested individually against the relevant criteria.

Some Panel Members did not agree that Relevant Objective *c) Efficient discharge of the licensee's obligations,* and *g) Compliance with the Regulation and any relevant legally binding decisions of the European Commission* *and/or the Agency for the Co-operation of Energy Regulators* were furthered by the Modification due to the negative impacts identified above. Other Panel Members disagreed with this view.

Some Panel Members did not agree that Charging Objectives *a) charges reflect the costs incurred by the licensee in its transportation business*, or *b) properly takes account of developments in the transportation business* were furthered by the Modification due to the negative impacts identified above. Other Panel Members disagreed with this view.

Determinations

Panel Members voted unanimously that no new issues were identified as part of the consultation.

Panel Members voted unanimously that Modification 0765 does not have an SCR impact.

Panel Members agreed that Modification 0765 does not have any Cross Code impacts.

Panel Members voted with 1 vote in favour (out of a possible 14) and did not agree to recommend implementation of Modification 0765.

12 Recommendations

Panel Recommendation

Panel Members recommended that Modification 0765 should not be implemented.

13 Appended Representations

Representation - Centrica
Representation - EDF
Representation - EDF Trading
Representation - Energy UK
Representation - Eni Global Energy Markets SpA
Representation - Equinor
Representation - Exxon Mobil Gas Marketing Europe Ltd (EMGME)
Representation - Gazprom Marketing & Trading Limited
Representation - National Grid NTS
Representation - Pavilion Energy
Representation - Scottish Power
Representation - Shell Energy Europe Limited
Representation - Sonatrach Gas Marketing UK Limited
Representation - South Hook Gas (SHG)
Representation - SSE
Representation - Storengy UK
Representation - Uniper

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:	Jack Presley Abbott
Organisation:	Centrica Energy Limited
Date of Representation:	23/09/2021
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 strongly oppose the retrospective charges proposed in UNC 765. As a matter of principle, retrospective regulatory changes should be avoided, except in exceptional circumstances. In this case, exceptional circumstances have not arisen. Ofgem's own guidance[1] states that retrospective modifications should be avoided as they undermine market confidence and lays out the conditions that Ofgem believes could possibly justify retrospectivity. These include:

- a situation where the fault or error giving rise to additional costs or losses was directly attributable to central arrangements;
- combinations of circumstances that could not have been reasonably foreseen; or

[1] Can be found here.

- where the possibility of a retrospective action had been clearly flagged to the participants in advance, allowing the detail and process of the change to be finalised with retrospective effect.

None of these conditions have been met and therefore retrospectivity is not justified

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

Regarding the first condition: No fault or errors were made. The neutrality payments were administered exactly as required according to the Uniform Network Code (UNC), albeit that the sums of money involved were larger than had been experienced previously due to higher tariffs in UNC678A. Furthermore, UNC 748, which we supported, was urgently developed, and implemented to accommodate the new circumstances on a prospective basis.

Regarding the second condition: The circumstances that led to higher neutrality payments could clearly have been foreseen, as the rules that led to them were well known and part of the UNC. The issue was also raised in industry discussions prior to implementing UNC678A.

Regarding the third condition: The possibility of a retrospective action was not flagged to the participants in advance of UNC678A implementation. National Grid states that the issue, and option for retrospective action, was raised more generally at an industry meeting in mid-November 2020. However, this was still several months after the possible impacts of higher neutrality payments were deliberated in the industry discussions for Modification UNC678A. We therefore do not agree that this criterion can be relied upon for retrospection.

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

We do not believe this modification should be implemented.

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

We believe the legal text delivers the intent of the solution.

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.*

No further comments.

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

No further comments.

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

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:	Giulia Barranu
Organisation:	EDF Trading
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)

EDF Trading welcomes the opportunity to respond to this consultation.

We believe that this modification should not be implemented since it does not meet any of the Relevant Objectives for the following reasons:

- It creates a significant regulatory risk for the GB market due to the proposed retrospective nature of the solution.
- It states that the revenue was not appropriately collected. We disagree with this statement, since the process was administrated according to the rules in place at that time.
- Although the revenue was allocated according to the rules, the solution forces a redistribution of this revenue among shippers, creating winners and losers. This action would have a negative impact on competition.

- It states that consumers will benefit from this proposal but it does not clearly indicate how. Instead, we see a negative impact on consumers due to the retrospectivity of the solution, which undermines market confidence.

Further, the proposal doesn't meet the three Ofgem's criteria on retrospectivity, since, for the reason mentioned above, the fault or error was not directly attributable to central arrangements; the combinations of circumstances could have been foreseen; and the possibility of retrospective action had not been clearly flagged to the participants in advance. The possibility to apply a retrospective solution was mentioned in a meeting in November 2020 but this was not a formal announcement to the whole industry and there was no indication that the retrospective actions would have been applicable from October 2020.

We wish to stress the importance of certainty and predictability of the rules applied to the market and express our concerns on the distortions that this modification will create if implemented.

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

We recommend for this proposal to be rejected.

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

-

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

-

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.*

We believe that the Modification Report should have highlighted in a comprehensive way the detrimental impact on the GB market due to the application of retrospective changes.

The report does not include a detailed impact assessment on how the redistribution of the revenues will take place and on how consumers will be impacted by the solution

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

-

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:	**c)** Negative/None **d)** Negative **g)** Negative

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.

Ofgem[1] 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

[1] 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 FMR[2] which raised queries in relation to revenue flows and 0678 FMR[3] and impact assessment[4] 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

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:	Anna Shrigley
Organisation:	Eni Global Energy Markets SpA
Date of Representation:	20/09/2021
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 opposition:

We oppose the UNC Mod 765 because the retrospective changes proposed by this mod cannot be sufficiently justified. This is because:

- End users are not likely to see any benefit from this retrospective change because all contracts for the Gas Year 2020/21 have already settled. Any retrospective changes are likely to undermine market confidence.
- The proposed changes do not impact on NGG's revenue because a RRC was used to resolve the problem of a revenue under-recovery. The market traded and settled invoices based on the level of an RRC that was applicable in Gas Year 2020/21. Any retrospective changes are likely to affect only shippers and are likely to increase the insecurity and bring instability to the market.
- NGG issued the original capacity invoices for Gas Year 2020/21 in accordance with the legitimate rules at the time, including the prospective changes introduced by UNC Mod 748. Therefore, legitimate invoices were issued by NGG and settled in accordance to legitimate rules at the time.
- In a large mashed gas network, such as NTS, the retrospective changes would result in one set of cross-subsidies to be replaced by another set of cross-subsidies on a retrospective basis. That will do more harm than good to the industry and the gas market. It is unreasonable to expect that the market can include retrospective changes in its forecasting and trading activities.

- Both NGG and the industry identified in the past that revenues from certain short-term auctions fed into neutrality arrangements and it was reasonably foreseen how the charges worked in the absence of any changes. NGG did not make any changes that affected neutrality arrangements before January 2021. Hence, a retrospective adjustment cannot be justified.

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:	Terry Burke
Organisation:	Equinor
Date of Representation:	20th 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)

Equinor strongly opposes this modification due to its retrospective nature even though the capacity neutrality arrangements have been in place for over 20 years and were well understood by the industry. A retrospective mod has never been approved in the gas market and to approve this one would set a bad precedent while undermining market confidence. Equinor is concerned that approval of this mod also poses a risk of instability in the market where predictability is very important on the basis that further retrospective mods could be approved in the future. Ofgem have outlined their concerns on retrospection previously in rejecting mod 0341 [1]

It should be noted the capacity neutrality revenue allocation rules were not affected by the implementation of the new transmission charging regime on 1 October 2020. That was approved with knowledge of the neutrality framework. Oversight of existing rules or not fully understanding their impact is not a sufficient justification for a retrospective modification.

1 Ofgem UNC 0341 Decision Document Letter (gasgovernance.co.uk)

Equinor does not agree that any of Ofgem's criteria in relation to retrospection are met while none of the relevant objectives are furthered by this mod.

• a situation where the fault or error giving rise to additional costs or losses was directly attributable to central arrangements.

Equinor does not believe these criteria was met as the central arrangements have been in place for more than 20 years and have been widely understood by industry.

• combinations of circumstances that could not have been reasonably foreseen;

The issue was foreseen; during the very lengthy discussions within the charging workgroups which raised queries in relation to revenue flows and likely changes in short term capacity booking behaviour.

• where the possibility of a retrospective action had been clearly flagged to the participants in advance, allowing the detail and process of the change to be finalised with retrospective effect.

National Grid originally flagged their concerns to the industry in November 2020 but there was no reference to a proposal with retrospective action at that time. The mod itself specifically applies back to October 2020 therefore these criteria cannot be applied.

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

No lead time given as the modification should not be implemented.

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

The impacts are outlined above in our response.

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

No view

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.*

N/A

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

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:	Chris Wright
Organisation:	ExxonMobil Gas Marketing Europe Limited (EMGME)
Date of Representation:	20 September 2021
Support or oppose implementation?	Oppose
Relevant Objective:	**c)** Negative **d)** Negative **g)** Negative

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

EMGME is strongly opposed to retrospective changes, i.e. those that seek to amend the contractual arrangements that apply to periods and events that have already occurred.

During the period covered by this modification proposal (October-December 2020), EMGME will have made countless decisions, each of potentially very high value, relating to its GB gas operations. We will have done so having carefully weighed the balance of risks, opportunities, costs, and benefits applicable to the rules and conditions prevailing at that time.

Within these decisions we would have applied appropriate provisions, e.g. risk premiums, to factors where there was uncertainty, for example future gas prices. However, we would not have applied any form of provision to the component of those decisions relating to the framework of commercial rules established under the UNC, as we would have held these to be sacrosanct.

If the rules now being proposed had been in place at that time, we may have made different decisions. Further, if the risk of retrospective change had been flagged in advance we may well have built an additional risk premium in to our decisions, but it wasn't.

Notwithstanding any financial impact on EMGME from this proposal, any retrospective change undermines our confidence in future transactions conducted under the auspices of the UNC. Indeed the very fact that a retrospective proposal has been raised for consideration introduces concern around precedent setting.

We also note that this proposal is not obviously covered by the criteria published by Ofgem to apply to matters of retrospection:

- *a situation where the fault or error giving rise to additional costs or losses was directly attributable to central arrangements;* As far as can be ascertained, the current cash neutrality rules within the UNC have been in place and unchanged for approaching two decades. We are not aware that any concerns were raised during that period about the efficacy of those rules, or the way in which central systems applied them. We therefore do not classify this situation as a fault or error, in that the rules relating to cash neutrality are long standing, clear, and functioned as designed.

- *combinations of circumstances that could not have been reasonably foreseen*; This root cause of this issue is the significant change in NTS capacity purchase and utilisation behaviour resulting from the implementation of new gas charging rules, effective from 1 October 2020. The potential for a change in behaviour was reasonably foreseen during the extensive preceding gas charging discussions, due to the significant increase in capacity prices that many shippers would experience.

- *where the possibility of a retrospective action had been clearly flagged to the participants in advance, allowing the detail and process of the change to be finalised with retrospective effect.* The potential for this retrospective change was not flagged to industry participants in any way ahead of the period in question.

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

This proposal should not be implemented.

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

To the extent that this proposal undermines confidence in the stability and predictability of GB gas market rules, we will be more inclined to include risk premiums in our decisions and future transactions in order to cover the possibility that further retrospective UNC changes are implemented.

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

Yes.

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.*

N/A

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

N/A

Gazprom Marketing & Trading Limited
20 Triton Street
London
NW1 3BF

Joint Office of Gas Transporters
Radcliffe House,
Blenheim Court,
Warwick Road, Solihull, B91 2AA

Sent by e-mail to: enquiries@gasgovernance.co.uk

20 September 2021

To: Joint Office of Gas Transporters, relevant Gas Transporters, Shippers and other interested partiers

GM&T response to UNC Mod 765 - New retrospective debit and credit charges to reflect changes to the treatment of Entry Capacity Revenue between October and December 2020

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

Ofgem's guidance on modifications with retrospective elements highlights that *"retrospective modifications should be avoided as they undermine market confidence*". It also goes further to state that the cost/loss incurred needs to be material in order to permit such a change. With consideration to this guidance, we believe the issues identified by National Grid in UNC Mod 675 are not severe enough to require the introduction of retrospective charges for the following reasons:

1) Retrospective regulatory change hinders market development, particularly during a time when the GB gas charging framework has lacked clear direction and certainty for a number of years, resulting from the implementation of NC TAR. Enabling this mod is highly likely to set a precedent, leading to an influx of modifications requesting retrospective consideration. For example, backdating the application of UNC Mods 727, 728, 729 where "shorthaul" and storage discounts will apply from October 21.

2) The increase in neutrality revenue was highly predictable due to the implementation of UNC 0678A which resulted in the cost of capacity increasing significantly from a reserve price of zero, and therefore a change in booking behaviour favouring shorter term capacity purchases. This was foreseen by industry and communicated during the development of UNC 0678A and the associated final workgroup report.

3) An RRC was implemented on 1st February 2021, pricing the under recovery into the NBP and subsequently passing this cost onto end-consumers. There is no evidence in UNC Mod765 to suggest the consumer will benefit from the proposed Transitional Entry Adjustment Charge, with National Grid simply citing on page 11 that the downstream impact will depend on shippers' contractual relationships and whether they wish to "gift" the payments. On this basis, there is little evidence that this mod will "restore fairness".

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

We do not support implementation.

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

No comment

Legal text: are you satisfied that the legal text will deliver the intent of the Solution?

No comment

Are there any errors or omissions in this Modification that you think should be taken into account?

National Grid has failed to prove that the industry was informed a retrospective charge would take place with reasonable notice; this also features as part of Ofgem's criteria for retrospective mod changes.

Please provide any additional analysis or information to support your representation

We note that there is overwhelming opposition to this modification, including opposing views from shippers that will be net beneficiaries of this mod if implemented.

We hope the comments above prove helpful. Please do not hesitate to contact me on +44 (0)20 7756 9732 or at sinead.obeng@gazprom-mt.com if you wish to discuss any aspect of our response in further detail.

Yours faithfully,

Sinead Obeng

Regulatory Affairs Advisor
Gazprom Marketing & Trading

Mauricio Cepeda

Regulatory Affairs Manager
Gazprom Marketing & Trading

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:	Colin Williams
Organisation:	National Grid NTS
Date of Representation:	20 September 2021
Support or oppose implementation?	Support
Relevant Objective:	**c)** Positive **d)** Positive **g)** Positive
Relevant Charging Methodology Objective:	**a)** Positive **b)** Positive **c)** Positive

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

As the proposer, National Grid NTS supports the implementation of this Modification Proposal.

<u>Purpose of Modification</u>

The purpose of the Modification is to create new debit and credit charges to reflect the removal of revenues recovered from daily interruptible and within-day Entry Capacity (obligated only) from Capacity Neutrality arrangements between 01 October 2020 and 31 December 2020 (inclusive), consistent with the prospective change introduced from 01 January 2021 by UNC Modification 0748. Following implementation of UNC Modification 0678A on 01 October 2020, inappropriately high cashflows were subject to the Capacity Neutrality Arrangements (c. £0.5m per day). This Proposal seeks to create a charge to reflect removal of daily interruptible and within-day Entry Capacity (obligated only) revenue from Capacity Neutrality, within the relevant period, 01 October 2020 and 31 December 2020 inclusive, totalling approximately £47m. it would also put in place a mechanism to credit Entry Users who have picked up the impact of this via their

Transmission Services Entry Revenue Recovery Charges in the period 01 February 2021 to September 2021.

Application

The Entry Transmission Services Revenue Recovery Charge (TSRRC) is applied to the aggregate amount of NTS Entry Capacity that a User holds at an Entry Point on a given day "Fully-Adjusted Available Capacity" minus the "Existing Available Holdings", which are defined as User's Available NTS Entry Capacity for such Entry Point and Day as at the Tariff Regulation Effective Date (06 April 2017). Part of the Entry TSRRC which was introduced on the 01 February 2021 was the revenue proportion which reflects the removal of revenues recovered from daily interruptible and within-day Entry Capacity (obligated only) from Capacity Neutrality arrangements between 01 October 2020 and 31 December 2020 (inclusive). Who pays the Entry TSSRC will be dependent on what capacity they hold and have available at the time that the Entry TSSRC is applicable.

Within UNC Modification 0765 proposal a debit charge will recover from relevant Users part of the revenue which was distributed to them as a consequence of the Capacity Neutrality mechanism. These Users inadvertently received a payment arising from the treatment of that part of the Capacity Revenue Neutrality Charges associated with interruptible and within day obligated Entry capacity during the period October to December 2020 (inclusive). The proposal then produces a credit charge that will re-distribute the revenue collected via the transitional debit charges to all holders of Fully Adjusted Available Entry Capacity (except Existing Available Holding) over the period 01 February 2021 to 30 September 2021 (inclusive). Each relevant User will receive transitional credit charges proportional to their capacity holdings over that period.

Retrospectivity

The modification is retrospective in nature, correcting a position where we believe the capacity neutrality payments were excessive and drove up charges to those Entry Users who are liable to pay Transmission Services Entry Revenue Recovery charges across the period 01 February to 30 September 2021. This modification is consistent with the principles established under UNC Modification 0748 that the capacity neutrality payments from October 2020 onwards were unduly high and should be corrected, albeit in this case on a retrospective nature for the period October to December 2020.

Retrospective changes in principle are not desirable and, depending on the proposal, could be seen to impact confidence in market arrangements, in this case National Grid believes such concerns are outweighed by the adverse impacts on competition of the inappropriate revenue redistribution actioned in this period.

By making this change to address the issue and correcting the inappropriate revenue redistribution caused by the high capacity neutrality payments we believe this should reduce the detrimental impact on competition between Entry Users.

Impact

Impact on each User will be different depending on what types of Entry capacity they held between 01 October 2020 and 31 December 2020 (inclusive) and the capacity that they hold between 01 February 2021 and 30 September 2021 (inclusive). The impact on customers will be dependent on if the benefits or costs will get passed on or were previously passed on by the Users of the NTS.

We note in the analysis, that is also reflected in the workgroup report, that there are charts that show the likely distribution of the credit in comparison to the actual distribution of the debit charge. Were these two distributions the same, i.e. a debit that is mirrored with a credit of the same amount, then this modification would not redistribute monies differently and therefore not be needed. However, we note that there is a very different profile for debits compared to credits, as shown in the draft workgroup report (Figure 3: Analysis graph presented at August 2021 Workgroup which includes data from February to June 2021). Whilst this analysis brings the data up to the end of June 2021 as an illustration, we agree with some comments made that the shape of this is unlikely to materially change once data is available to take it out to the end of the affected Gas Year, September 2021.

This shows that the impact of the credits paid out in the period affected Entry Users in a way which did not fit the intent of the Charging Regime, and therefore shows the disproportionate impact of the credits that were given to some Entry Users and the negative impact to the charges Entry Users affected have subsequently picked up. Two examples can help illustrate this:

- One example to look at here is where there has been a large payment via capacity neutrality but no subsequent contribution to charging via the Transmission Services Entry Revenue Recovery charges.

- A second example to consider is where there is a small capacity neutrality payment and a substantially larger impact to charges via Transmission Services Entry Revenue Recovery charges.

On this basis, addressing issues such as the disproportionate impact and that this is not fitting with the intent of the methodology, we believe implementation would better facilitate the identified Relevant Objectives and Relevant Charging Methodology Charging Objectives for the reasons we set out in the Proposal.

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

As set out in the Proposal, implementation should take effect as soon as practicable noting that this should be the first calendar day of a month taking into account the timescales for system development which are within the Modification. The payments will be processed in M+1 following the implementation of the Modification

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

An enduring solution will cost at least £80,000, but probably not more than £110,000 to implement.

This change would need to be prioritised through the Change Management Committee alongside other changes within Xoserve's planned Gemini programme. The high-level estimate to develop and deliver this change is approximately 10 to 12 weeks for Analysis through to Post Implementation Support. Please note a lead time of 3 months for startup/sanction/mobilisation should be considered though there is the potential for this to be shortened subject to the delivery mechanism and availability of resources.

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

We are satisfied that the legal text delivers the intent of the solution identified in this Proposal.

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.*

We have not identified any such error or omissions.

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

N/A

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.

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:	Gerry Hoggan
Organisation:	Scottish Power
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 believe that it should be a fundamental principle that, other than in the most exceptional of circumstances, regulatory changes should not be applied retrospectively as to do so has the unwelcome effect of undermining market confidence and causing regulatory uncertainty.

As regards when any such exceptional circumstances may arise such as to merit consideration of retrospectivity, we agree with the conditions set out by Ofgem in their guidance on “Urgency Criteria”[1] and in previous decision letters, namely

- a situation where the fault or error giving rise to additional costs or losses was directly attributable to central arrangements – no such faults or errors arose in this

[1] Ofgem Guidance on Code Modification Urgency Criteria

case where the payments concerned were otherwise processed and attributed in accordance with the UNC rules as they then applied;

- combinations of circumstances that could not have been reasonably foreseen – the circumstances were clearly foreseeable and indeed were highlighted during discussions as the Modification was developed and indeed is highlighted in the Final Modification Report for MOD0678A; or

- where the possibility of a retrospective action had been clearly flagged to the participants in advance, allowing the detail and process of the change to be finalised with retrospective effect – National Grid refer to the matter being flagged in general at an industry meeting in mid-November 2020, although it should be noted that the participants at that meeting were not representative of the industry as a whole and this in itself was some time after MOD0678A had been determined and implemented.

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

We do not consider that this Modification should be implemented

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

We would not anticipate being materially impacted although there would be some administrative costs in processing the resultant adjusting invoices

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

No assessment of the legal text has been undertaken

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.*

No

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

None

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:	Christiane sykes
Organisation:	Shell Energy Europe Limited (SSEL)
Date of Representation:	20 September 2021
Support or oppose implementation?	Oppose
Relevant Objective:	**c)** Negative **d)** Negative **g)** Negative

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

SEEL does not support this proposal as it undermines stability and regulatory certainty in the UK market, further exacerbating the regulatory and charging uncertainty, which has prevailed since Oct 2020.Moreover, this retrospective proposal is detrimental to overall confidence in the integrity of the arrangements of the UK gas market.

We do not agree that this proposal has a positive effect on competition as redistribution of previous revenues, which were correctly allocated in compliance with the regulatory rules at the time, will not impact the current competitive landscape, nor will it have any effect on NBP prices already experienced, following the volatility faced by the market at the time of implementation of Modification Proposal 0678 – Amendments to Gas Transmission Charging Regime.

We agree with the point made by a Workgroup Participant, 'that the cornerstone of competition is the sanctity of contract and thus this Modification is effectively re-opening the contract and because of this undermining competition.'

SEEL supported UNC Modification 0748, which served to prevent any undue cross-subsidisation by removing the relevant charges from Capacity Neutrality, mitigating the risk of future unfair distribution, which could have an adverse impact on shipper competition on a prospective basis. Prospective changes to the UK gas regulation support an evolving and liquid market but retrospective changes have the opposite effect and create market risk and uncertainty and undermine existing contracts made in good faith.

Any benefits that shippers may have accrued through capacity neutrality in the period Oct-Dec 2020 as the result of unintended consequences of the existing arrangements may have been passed on to counterparties, depending on the terms in their contract and there is unlikely to be any legal recourse to pass on a retrospective charge so this proposal risks creating further cross-subsidies and legal challenges.

The issue of capacity neutrality was raised as part of the proposed changes to the UK charging regime, which were discussed over several years and yet National Grid failed to carry out any analysis to understand the extent of the issue and the potential impact on the market. This contributed to the significant uncertainty and market volatility following implementation of 0678. Market participants should not be exposed to further uncertainty and risk, which this retrospective proposal would create.

Furthermore, we concur with the point made in the Draft Modification report that the market will have settled out positions that occurred during the period in question and that there is no mechanism for the market to reopen and pass money on to consumers, further arguing that consumers will have been affected as a result of impact on the NBP and that the implementation of the proposal will do nothing to address that occurrence.

Implementation of a retrospective proposal would set a bad precedence for the UK energy market as it creates an unquantifiable risk for market participants, which could be built into a premium passed on to end users and negatively impacts the attractiveness of the UK gas market, compared to neighbouring markets.

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

Insert Text Here

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

Insert Text Here

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

Insert Text Here

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.*

Insert Text Here

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

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.

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:	Adam Bates
Organisation:	South Hook Gas Company Ltd. (SHG)
Date of Representation:	20 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)

SHG opposes the implementation of UNC Modification 0765 on the basis that the retrospective nature of the modification is unwarranted and could lead to a significant degree of uncertainty within the market.

Ofgem state in their Guidance on Code Modification Urgency Criteria[1] that *"retrospective modifications should be avoided as they undermine market confidence"* and then list examples of three circumstances in which exceptions could be made to allow for retrospective modification. Taking each specified circumstance in turn, the situation did not arise as a result of a fault or error directly attributable to central arrangements (circumstance 1) and this is not required as a result of a combination of circumstances that could not have been reasonably foreseen (circumstance 2) as the process was

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

conducted as per the rules in the UNC at the time. The third particular circumstance listed in the guidance document states that retrospective modification may be appropriate where the possibility of retrospective action has been clearly flagged to market participants in advance. NGG claim industry was first made aware of retrospectivity mid-November, however, the earliest documented suggestion of retrospective SHG could find is from the minutes of NTSCMF on 1st December 2020 – 2 months after the suggested issue started. SHG does not consider the case for the retrospective modification as stated in the draft mod report (adverse effects on competition objectives set out in the Ofgem decision letter) to have been sufficiently made out or to be in the same order of materiality as the specific circumstances set out in the guidance document.

Therefore, SHG does not believe that this Modification fulfils Ofgem's criteria for retrospective action and believes that implementation of the Modification would create uncertainty in and thereby be detrimental to the GB market. As such, the Modification should not be implemented.

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

This modification should not be implemented.

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

N/A

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

SHG doesn't not have any comment on 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.*

N/A

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

N/A

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:	Jeff Chandler
Organisation:	SSE
Date of Representation:	16/9/21
Support or oppose implementation?	Oppose
Relevant Objective:	**c)** Negative **d)** Negative **g)** Negative
Relevant Charging Objective:	**a)** Negative **b)** Negative **c)** Negative

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

If this modification is implemented it will have damaging consequences for the GB energy market. A retrospective change to the UNC contract will undermine confidence and trust in the GB regulatory regime and may result in higher risk premiums being applied to future investments in the GB market. This increased risk premium arising from the retrospective loss of sanctity of contract would increase costs for customers or reduce investment in GB and consequent de-carbonisation efforts.

The modification fails to further the relevant objectives as claimed by the proposer. This has mainly occurred as the text from UNC 0748, a prospective modification, has been applied to a retrospective modification. Whilst SSE supported 0748 we cannot support 0765, as the relevant objectives will not be furthered because it is impossible to retrospectively unwind the market impact on wholesale prices that occurred as a result of Capacity Neutrality and varying Transmission Revenue Recovery Charges from October 2020 to 30th September 2021. Therefore, claims that competition and compliance can be improved retrospectively for events already passed are easily dismissed. Whereas, the risk of damage to the credibility of the GB energy market from retrospective change is negative for competition.

The modification suggests that revenue was 'inappropriately redistributed' via the capacity neutrality arrangements. Whereas, the revenues flowed according to the rules in place at the time which for capacity neutrality had been in place for 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 responded according to the contract rules.

Ofgem[1] 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'.*

Certainty over the contractual rules that apply to transactions in advance is critical for market stability, with regulatory risk being a key factor in the attractiveness of a market and credibility of the regulatory regime. Ofgem provides written criteria in relation to retrospective proposals as part of its guidance on urgency criteria [1] critiqued below:

1.The issue did not arise from a fault or error in central arrangements / systems. The UNC contract was followed.

2. The Capacity Neutrality issue was foreseen; documented in the FMR[2] of modification 0621, which raised queries in relation to revenue flows and in the FMR[3] of modification 0678 and the associated impact assessment[4] which flagged changes in booking behaviour.

3. The possibility of retrospective action was not flagged in advance. Rather the proposal was first flagged as a possibility in mid-November but is seeking to apply from the start of October 2020. This technical inconsistency may form a basis for judicial referral of a decision to implement this modification as Ofgem will not have followed its own published guidelines.

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

Finally, if implemented this modification is very unlikely to have any impact on a customer's bill nor have an impact on competition as claimed by the proposer. The work group report fails to provide evidence in this regard and without this evidence it is a bold

---

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

[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

assumption. Any re-circulation of monies between Shippers that will occur from this modification will need to find its way to separate suppliers covering a period of three years of financial reporting. As Shippers and Supplier interests have evolved over this period it is unlikely to impact competition, for example during this period SSE has sold its upstream interests and no longer ships for its own account for upstream gas and a number of suppliers have exited the market.

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

If Ofgem was minded to approve this proposal, we expect it should carry out an impact assessment once all the data is available, to quantify and explain how reallocating money between shippers and suppliers over three financial reporting periods, given a six month I.T. implementation period, avoids introducing distortions whilst furthering competition and benefitting consumers. Essentially an impact assessment will need to demonstrate how consumer bills will be impacted.

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:	Alex Nield
Organisation:	Storengy UK Limited
Date of Representation:	22nd 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)

Storengy UK strongly oppose the proposals in UNC Mod 765 as we believe that changing historic financial transactions is highly detrimental to many aspects of the industry, creating huge uncertainty in the market and in business finances, eroding confidence in the industry, increasing business risks and market volatility, and increasing costs to consumers. In addition, we believe that these proposals do not address many of the problems created during this period and will only distort the markets further for the period in question and for future periods, reducing market stability.

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

Storengy UK do not believe that it is beneficial for the industry to implement these proposals. However, if the proposals are to be implemented then they should be implemented as soon as possible to minimise the detrimental effects, with monies redistributed over as long a period as is reasonable to minimise further distortions of the energy markets and market competition.

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

Storengy UK has major concerns about the impacts of these proposals, as we believe that they will have a detrimental impact on many aspects of the industry.

Changing historic financial transactions many months after the event sets a dangerous precedent, creating significant uncertainty in the industry going forwards, adding risk and cost to businesses in the industry in managing the risk of changes to historic transactions going forwards. This added burden will hamper businesses both operationally and financially within the industry, and therefore reduce the ability of the industry to respond to changes in gas demand and supply, increasing gas prices and price volatility. We believe it will damage the competitive environment, increasing business risks, increasing the likelihood of supply shortages as the market becomes less responsive to changes in demand, and seeing resultant risks and costs passed on in higher bills for consumers.

Resultant Debits and Credits for these proposals may be as high as £8m (from National Grid' analysis) for individual businesses, which may cause cashflow issues for some businesses. With net transactions potentially being as high as £5m, these proposals could cause significant financial issues for some businesses, especially for those such as gas storage facilities where large amounts of gas are moved at small trading margins. This will add to the significant unnecessary financial pressures for businesses in the industry who move large amounts of gas or are new businesses looking to establish themselves within the industry. With any potential implementation of these proposals there are already significant accounting impacts for businesses as resultant transactions will be taking place one to two financial years later than the period in question, impacting on profits/losses in different financial years, and ultimately shareholder valuations of businesses.

These proposals potentially undermine the NBP market in changing the nature of trading transactions after the event. This will reduce confidence in the UK market, potentially encouraging investors to move finances to other industries and markets, shrinking the UK market and competitive environment, and potentially seeing an increase in gas prices and price volatility. This again is likely to have an impact on consumers in increasing energy costs.

Storengy also has concerns in the way that the issues raised in this modification and modification 0748 have been managed. Major industry and financial uncertainty has been created by National Grid in:

- raising of these proposals
- minimalist justification for the changes proposed, and investigation of the issues
- announcements made in relation to these issues and the resultant RRCs, and
- assessment of the impacts of neutrality arrangements prior to the implementation of the new charging

The way in which these issues have been managed has caused significant distortion to markets, prices, and competition in the UK industry; creating far greater issues than the original problem. If implemented, then these proposals are likely to exacerbate the situation further and cause additional damage for the UK industry.

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

No, Storengy UK does not believe that these proposals provide a solution to the problems during this period, or that changing payments and receipts retrospectively is feasible or legal, and so therefore does not believe that the legal text will deliver an effective solution.

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 only looks at the redistribution of monies resulting from the higher neutrality charges/rebates than the previous charging regime. It fails to consider the trade and gas price impacts, individual business (financial and operational) impacts, increase in ongoing uncertainty, distortion of competition, or the impacts of the actions taken by National Grid both over the period in question and since.

The Modification fails to assess the reasoning for the original calculation of the neutrality charges/rebates, whether this reasoning should still apply, and whether these calculations should have been applied in periods prior to the introduction of the new charging regime. This reasoning is especially important as changes to the neutrality calculations were not considered to be needed in proposals for the new charging regime prior to its implementation.

Storengy UK also does not believe that the proposals have been fully assessed against both EU legislation and UK business law, as they primarily appear to apply more uncertainty to the market and businesses finances, further distorting the balance of the competitive environment, and providing further uncertainty on the pricing of energy going forwards.

The proposals do not address the overall effects on consumers, who are likely to see higher costs due to increased business risk, loss of market confidence, reduced market responsiveness to demand, and reduced competition. It is vital that further analysis of these effects is carried out prior to any suggested changes, as the increase in consumer costs could be significant.

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

Storengy UK does not believe that any of the criteria set by Ofgem for retrospective changes to the industry have been met as:

- the issue is not caused as a result of a fault or error in the charging calculations.
- the change in booking behaviour was foreseen, impacts reviewed, and no change was considered necessary prior to the implementation of the new charging methodology.
- the possibility of changes to neutrality charges was not flagged until half way through the period in question, and remained unclear for a long time afterwards.

Many of the issues raised in our response, and more issues across the industry were also shared by Energy UK in their initial representation for this modification early in the review process. This representation can be found at: https://www.gasgovernance.co.uk/sites/default/files/ggf/book/2021-04/Initial%20representation%200765%20-%20Energy%20UK.pdf

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:	Richard Fairholme
Organisation:	Uniper
Date of Representation:	17/9/2021
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 **do not support** implementation of this proposal. The key reason is that it is retrospective in nature by seeking to correct an administrative oversight by National Grid, which Users played no part in, but became unwitting recipients of neutrality funds. The responsibility for updating their processes to reflect new UNC arrangements is the sole responsibility of NGG. It is something that Shippers have no direct control over. The Final Modification Report for 0678A was published in April 2019, at which point the proposals were finalised. The Ofgem decision was published in April 2020 and implemented 1 October 2020. This provided up to 18 months for NGG to consider the impact of a revised charging methodology on capacity neutrality and to make the required changes. However, this seems not to have occurred. As a result, we can only conclude that NGG failed to act diligently in this instance.

NGG has argued that they never intended for the neutrality funds to be distributed in the way they were, but in our view, the intention is irrelevant. For example, in UNC Proposal 0341[1] it was clearly never the intention of the User to under-book capacity and incur significant overrun charges. There are many parallels between these Modification proposals, as both were raised to correct an internal error or oversight. It should be noted that UNC 0341 proposal was rejected by Ofgem[2] and opposed by NGG[3], primarily

[1] 0341- Manifest Errors in Entry Capacity Overruns

[2] https://www.gasgovernance.co.uk/sites/default/files/ggf/FINAL_UNC%200341%20Decision%20Document.pdf

because of the retrospective approach and concerns that this may have on the wider market.

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

We do not support implementation.

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

No new costs are likely to be incurred beyond invoice validation, if this proposal is implemented.

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

No view.

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.*

No.

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

Retrospectivity and regulatory decision making

In any regulated industry retrospective decision making should, as a matter of principle, be avoided as far as possible. The effect of decisions with retrospective effect is to increase future legal uncertainty, thereby undermining confidence in the market, damaging investor certainty and increasing operating risks. In turn, this can harm competition in the market and increase the costs to end consumers. In a recent paper published in the Journal of Energy & Natural Resources Law – "Retrospective application of legal rules in the European Union: recent practice in the energy sector", the author notes that:

"*The continual availability of energy is economically and socially essential, but is primarily reliant on private operators and investments to be maintained and developed. Investments in the energy sector are typically highly capital intensive and require long payback periods. This in turn calls for legal and regulatory stability for such investments by the legislator. While changes to laws are inevitable, such changes should be implemented prospectively and take into account the legitimate expectations attached to existing investments*."

Whilst the context is different, the point is that retrospective decisions have impacts which can go well beyond the issue at stake. It is for these sound and rational reasons

[3] 04 February 2011 Representation - National Grid NTS (gasgovernance.co.uk)

that we have yet to see a retrospective UNC proposal implemented since the inception of the Network Code in 1996. Our primary concern, therefore, is that 25 years of good regulatory practice is not undermined by a desire to unwind what is nothing more than an error caused by inadequate internal checks. In the past, this has not been sufficient to justify retrospective action, as highlighted by the Ofgem rejection of UNC 0341.