

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