



Julian Majdanski  
Joint Office of Gas Transporters  
First Floor South  
31 Homer Road  
Solihull  
West Midlands  
B91 3LT

**E.ON UK plc**  
Newstead Court  
Sherwood Park  
Little Oak Drive  
Annesley  
Nottinghamshire  
NG15 0DR

[www.eon-uk.com](http://www.eon-uk.com)

Please respond to:  
Brian Durber  
Tel: 01538 386923  
Mob: 07768 031942

[Brian.durber@eonenergy.com](mailto:Brian.durber@eonenergy.com)

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## **Response to UNC Modification Proposal 0196 : Alterations to shipper penalties for end user failure to interrupt**

Dear Julian

E.ON UK is in support of Modification Proposal 0196.

Our understanding is that the 5 strikes rule was introduced during the early stages of competition in the Industrial & Commercial market as a consequence of some shippers failure to put in place proper measures to ensure that interruption was carried out effectively. Since then shippers have gained experience in developing and administering adequate interruption processes. Also during this time interruptible consumers have acknowledged their responsibilities by signing onto supply terms and conditions that bind them into site specific penalties and ultimately the threat of isolation.

It is an established industry principle that penalties or incentives should be appropriate. A shipper faces substantial site specific penalties in the event of failure to interrupt. In order that they are able to pass on these penalties it is reasonable to assume that they would have to have appropriate contracts in place and be in a position to demonstrate to their customer that they had taken appropriate steps to inform the customer of the need to interrupt. It would seem therefore that the site specific penalty would be an adequate incentive to shippers and consumers.

The proposer makes a particularly important point in relation to the term 'reasonable'. The transporters are unable to define precisely what this means and would therefore appear to sit as 'judge and jury' in any adjudication.

The rule therefore represents a risk that may be quantifiable in terms of assessing its potential financial impact, but is unquantifiable in assessing its likely application. Even though technically a shipper may seek appeal against any transporter ruling the risk of an unpredictable outcome remains.

This risk may well have proven an obstacle to participation in this market sector to potential entrants and therefore could be seen as a barrier to entry.

We understand that the new interruptible arrangements that take effect in October 2011 will not by definition contain this rule as all sites will pay firm transportation charges. Whilst the number of interruptible sites will reduce as part of the reforms the levels of actual interruption may not change substantially, subject of course to system requirements at the time. Therefore it would appear that the transporters do not feel that such a rule is required and naturally becomes redundant.

In conclusion our view is that the 5 strikes penalty is not proportionate, open to indiscriminate application by the transporters and as demonstrated via Mod 90 rules not necessary.

Yours sincerely

Brian Durber (by email)  
Retail Regulation