

Further Consultation Representation

Final Modification Reports

0395 0398: Limitation on Retrospective Invoicing and Invoice Correction

Consultation close out date: 10 July 2012

Respond to: enquiries@gasgovernance.co.uk

Organisation: EDF Energy

Representative: Stefan Leedham

Date of Representation: 10 July 2012

*Please provide comments on the revised Final Modification Reports available at:
www.gasgovernance.co.uk/03950398*

Do you support or oppose implementation?

0395 Support

0398 Support

Please make clear any differences you perceive between 0395 and 0398.

Prefer 0395 to 0398

Do you have any comments or issues you wish to record against the additional Workgroup considerations?

We presented to the workgroup on 26 April 2012 on the key issues that Ofgem requested the industry to consider. We would refer to this presentation to support our following comments:

1. Quantify the benefits of the modifications in terms of the reduction in Shipper' risk and credit exposure;

As noted in our presentation the additional uncertainty faced by SSP Shippers compared to LSP Shippers is derived through the RbD mechanism as the energy allocated to a site does not have to match the energy that was consumed at the site based on the meter reading. There is therefore a mis-match between the energy that SSP Shippers are allocated (based on AQ) and the energy that SSP Shippers bill their customers for (using actual meter readings).

Therefore in order to develop tariffs SSP Shippers have to estimate how much energy our customers will use, and estimate how much energy we will be allocated through the RbD process. The first step is relatively simple if meter readings are available; however, the second step is much more complex. This is driven by the fact that for SSPs final allocation does not occur until Y+5 due to the reconciliation window. However, due to step changes in energy consumption caused by increased

energy efficiency Y+5 energy allocation does not represent an accurate view of future energy allocation. A more recent energy allocation figure (up to Y+3) would represent a more accurate value, but this has not closed out.

This uncertainty attracts a risk premium in our tariffs. EDF Energy has quantified this risk premium and has shared it in confidence with Ofgem.

2. Determine the causes of energy remaining un-reconciled after 3-5 years;

As noted in our presentation, and also in the workgroup report the main cause of delay in reconciling energy is caused by poor data quality resulting in the inability to gain or submit a valid meter reading. From our perspective all of the causes identified by the workgroup report are within a Shippers' control. As such therefore implementation of either 0395 or 0398 should have no impact on this as Shippers could chose, if they so wished, to action these issues earlier to ensure that a valid meter reading was gained and submitted prior to the settlement window close out.

We note that this view is also supported by Xoserve who noted that with implementation of 0152V the amount of unreconciled energy did not increase, but instead reconciliation occurred in a timelier manner prior to settlement.

Finally we note that the workgroup report states that one of the causes for unreconciled energy after 3-5 years is "delayed due to warrant process to gain access which is more complex in the business LSP arena". We believe that this is the same as the first reason "Vacant premises". We are also unclear why it is any harder to get a warrant for an LSP site than it is for an SSP site. Industry experience has shown that in general warrants are only issued on safety grounds; however, the same safety rules apply to both SSP and LSP meters in that a safety inspection has to occur every two years. We have not seen any evidence demonstrating that it is more difficult to get a LSP warrant than an SSP warrant, and do not believe that this is a valid reason. In particular we note that the data presented by Xoserve to the 395 workgroup on 25 September 2011 has shown that 95% of must reads were actioned and resolved within 20 days. Given that Xoserve was able to resolve these relatively quickly, it would suggest that energy remaining unreconciled after -5 years is not caused by warrants, or the ability to gain meter readings, but poor data quality caused by LSP Shipper inactivity.

3. Set out the typical lead times to resolve settlement disputes or adjustments, together with the estimated scale and age profile of such adjustments;

The UNC requires any settlement (invoice) dispute to be raised within 18 months of it occurring. From EDF Energy's experience any settlement disputes we have had with Xoserve have been resolved in 1-3 months – in line with Xoserve's Service Level Agreement (SLA).

We therefore believe that the worst case scenario would result in settlement disputes being resolved within 21 months of it occurring. However, again we believe that this is in the control of Shippers, and that it could be expected that a reasonable and prudent Shipper would not wait 18 months to raise a dispute, but instead look to

raise one within 3 months. This suggests that the cut off is 6 months.

4. Consider the financial implications of a shortened reconciliation window in terms of re-distribution between Small Supply Point (SSP) and Large Supply point (LSP) sectors (or vice versa);

As previously noted we believe that the majority of causes of un-reconciled energy in the LSP market are within the control of the registered LSP Shipper. As such therefore we believe that implementation of 395, or 398, would not result in an increase in unreconciled energy. Instead we believe that LSP Shippers will seek to ensure their energy is reconciled in a timelier manner. This is also supported by experience from implementation of 0152V.

We therefore do not believe that implementation of either proposal would result in a re-distribution of money from LSP to SSP Shippers. Instead the benefit of this proposal is more timely reconciliation which in turn will reduce the risk premium faced by SSP Shippers.

5. Further consider the impact of these modifications upon UNC parties non-code liabilities, their ability to mitigate any associated risk and the applicability of remedies outside of the normal settlement process;

As noted in our response to 0395 and 0398 we are aware that there are two views of the impacts of the Statute of Limitations. There is a view held by some ICOSS members that the Statute of Limitations represents an encoded back stop date that contracts can not be over ruled. Equally there is a counter view that the Statute of Limitations only applies when these terms are not covered by the contract. We agree with this latter view.

As such therefore if there are any non-code impacts, we believe that this can be mitigated through the supply contracts.

6. Provide evidence on whether further reconciliation subsequent to the proposed cut off would ordinarily be expected to simply confirm the original allocations, or involve a significant redistribution of costs;

We believe that Xoserve is best placed to provide this analysis and would point to the information they have provided to the workgroup meetings on 26 April 2012 and 24 May 2012.

7. Provide evidence of the extent to which suppliers' tariffs currently anticipate the risk of reconciliation and the likely effect that its removal may have on tariff structures;

As previously noted we have quantified our risk premium associated with length reconciliation and will share this with Ofgem. We will also provide a more substantive response to this question directly to Ofgem.

8. Assess the extent to which meter reading performance is influenced by the prevailing settlement window;

As noted in our presentation to the 26 April 2012 workgroup EDF Energy has numerous meter reading initiatives that support our meter reading strategy.

The key driver for our meter reading performance is to improve customer experience by ensuring accurate bills and reducing their exposure to unexpected debits as a result on an over reliance on estimated bills. Although we aim to ensure that the benefits from this strategy are maximized, such as through supporting the AQ amendment process, our main driver is not settlements but customer experience.

We will provide our detailed meter reading strategy to Ofgem in confidence.

9. Assess the impact on the relevant objectives of the differences between the two modifications, namely the relative length of the proposed settlement windows and their respective implementation dates;

Please see EDF Energy's original response to the Draft Modification Reports on 0395 and 0398, for our view on how we believe these modifications facilitate the relevant objectives.

We believe that this question is directed towards the UNC Panel than the workgroup or Shippers. In particular we note that in Ofgem's letter on the way forward for 395 and 398 they stated:

"We note that the UNC Modification Panel made contrasting recommendations with respect to UNC395 and UNC398, yet there were few, if any, comments relating to the differences between the two proposals, namely the relative length of the proposed settlement windows and their respective implementation dates. Some further explanation of the Panel's rationale would therefore be welcome, together with an assessment of the optimum implementation date."

We agree with Ofgem's concerns and would encourage Panel members to clearly articulate why they took contrasting recommendations with regards to 395 and 398.

10. Assess the optimum implementation date for each modification;

EDF Energy would support a 6 month implementation lead time for 0395. This would provide 6 months notice for Shippers to resolve any outstanding USRVS before these were passed to Xoserve, who in turn would also have 6 months to resolve these.

11. Identify alternative remedies under the UNC, in equity and in law, including consideration of how the Limitation Act 1980 would be applied and its effect on any right of recovery.

As noted in our response to question 5 above, we believe that the Limitation Act 1980 only applies when there are no contract terms to cover this. As such we believe that this could be covered by amending the standard contract terms so that this was aligned with the UNC if this was required.

We would also note that if the Limitation Act 1980 represented a hard coded back stop date that could not be over written by a contract, then this would overwrite any UNC terms. As such any I&C Shipper could seek to rely on the Act to recover any monies past the cut off date within the UNC. The fact that this has never occurred in either gas or electricity suggests that either this issue is not as significant as is purported or the Limitation Act 1980 only applies when there are no contract terms to cover this, and so amending the standard I&C Contract terms would resolve this.

Finally we would also refer to the BSC arrangements. Under the BSC the Final Settlement Run occurs at 14 months. BSC Parties are able to raise a request to the disputes committee prior to the 20 month window passing. The Dispute Final Run occurs at 28 months and BSC parties are able to raise a dispute up to 1 month after this, provided that the issue only became apparent in this Dispute Final Run. This means that normally the settlement process is closed for any further adjustments after 20 months in electricity, although some adjustments occur at 28 months. This compares to the average settlement window of 30 months under 395.

EDF Energy has a large volume of I&C Supply contracts in electricity and from our perspective the mis-match between the settlement window and the Limitation Act 1980 does not cause any issues, as this is mitigated through contract terms and arrangements. We also note that the data quality and timeliness of reconciliation is much better in electricity than it is in gas. In part we believe this is due to the shorter settlement windows requiring Suppliers to pro-actively ensure that meter readings are submitted in a timely manner and to address data quality issues when they occur.

Do you have any further information that can be provided in response to Ofgem's questions?

Please refer to Section 12 of Final Modification Report

Please see above.

Is there anything further you wish to be taken into account?

Please provide any additional comments, supporting analysis, or other information that that you believe should be taken into account or you wish to emphasise.

Throughout discussions on 0395 and 0398 there have been concerns raised at the risk and exposure that implementation of either mod will place on the I&C Shippers. This has been caused by their inability to collect meter readings more frequently than every two years, even though this is a License and safety requirement. This would also appear to run counter to the information and facts presented by Xoserve which suggests that this issue is applied to a minority of sites.

However, we would also note that through discussions and development of 0395 the target was for implementation in October 2012. As this has now passed the target date for implementation is now 1 October 2013, with no change to the settlement window until 1 April 2014. This also coincides with the Supply License requirements on I&C Shippers to ensure that they only supply customers with an AMR device installed. We believe that this should address all of the concerns regarding the ability to gain and submit timely meter readings. We would also note that the roll out of AMR should have provided I&C Suppliers and Shippers with an opportunity to clean their data and ensure that it was up to date and accurate. We therefore believe that the delay to implementation of 395 so that it now coincides with the completion of the roll out of AMR ensures that all of the issues and concerns raised should have been addressed.

Are there any new or additional issues that you believe should be recorded in the Modification Report?

No new issues.