

Stage 04: Final Modification Report

0429:

Customer Settlement Error Claims Process

At what stage is this document in the process?

- 01 Modification
- 02 Workgroup Report
- 03 Draft Modification Report
- 04 Final Modification Report

This modification creates a claims process that will allow Shippers to correct settlement errors for the period after the close out of reconciliation up to the statute of limitations.



Panel failed to determine to recommend implementation of Modification 0429



High Impact: Suppliers, Shippers, Customers



Medium Impact:



Low Impact:

0429

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About this document:

This Final Modification Report will be presented to the Panel on 20 June 2013.

The Authority will consider the Panel's recommendation and decide whether or not this change should be made.


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1 Summary

Is this a Self-Governance Modification?

The Modification Panel determined that this is not a self-governance modification.

Why Change?

At present the UNC limits all retrospective invoices to a period between 4-5 years, depending on when the invoice is triggered. This creates a mismatch between the current reconciliation window and the Limitation Act that governs all contracts, allowing invoices to be queried and adjusted if necessary for a period up to 6 years from the time of action. This means that any energy invoices between Shippers and Customers that are adjusted for the full period allowed under the Limitation Act cannot be fully reflected in energy allocation in settlement under the current UNC processes. On a case-by-case basis, this could also lead to legal action between Shippers and Transporters where a Shipper has been charged for energy and transportation that it has not used.

The current processes do not recognise the mismatch between the Limitation Act and the UNC reconciliation period. Recognising this mismatch through a claims process and the annual AUGE assessment will, first, reduce the risk that Shippers have no option but to take legal action against the Transporters in order to recover unavoidable losses incurred outside of the reconciliation period and, second, will ensure that costs are more accurately targeted.

Solution

The proposed solution to the problems identified above is the creation of a claims process for Shippers to use when major loss is incurred in the gap between the end of the reconciliation window and the Limitation Act.

The AUGE process may require a separate change through amendment of its guidelines statement to address the impact of a shorter reconciliation process than the Limitation Act and the creation of the proposed claims process. Any such change will be through a separate process under the change procedures for the AUGE Guidelines Statement.

Relevant Objectives

As the risks from the mismatch in periods are often unpredictable and beyond a Shipper's control, but with potentially large financial consequences, the inclusion of a claims process will help ensure that smaller Suppliers and Shippers that are least able to manage such large and unpredictable risks are not unduly disadvantaged, thereby helping to reduce barriers to entry and facilitate effective competition (*Relevant Objective (d)*).

Implementation

For Modification 0429

- 01 December 2013 if a decision is received after 01 April 2013 and prior to or on 01 June 2013
- 01 April 2014 if a decision is received after 02 June 2013 and prior to or on 01 October 2013
- If a decision is received after 01 October 2013 implementation should on the following 01 April that is at least 6 months after the decision date.

2 Why Change?

Mismatch between Limitation Act and UNC reconciliation window

The Limitation Act 1980 limits the enforcement of commercial debt to a period of six years. Furthermore, the effect of Unfair Contract Terms Act 1977 is such that it will prevent Shippers from contractually aligning their and their customer's cost exposure to the timescales of the UNC process when a clear settlement error has occurred. Standard contracts are usually used which means any ability to limit a customer's time to pursue a claim will always be subject to a test of reasonableness which by its very nature will depend on the circumstances in each case. This means that there is currently a gap between the period for which a Shipper or customer can claim back costs incurred under their commercial arrangements, and the period for which settlement accommodates this correction.

In the event that an over-recording of customer consumption is identified, this mismatch in time limits leaves Shippers exposed to repayment of costs to their customers that they are unable to back off in settlement, with the full amount of gas initially, and inappropriately, allocated to that Shipper remaining unchanged. Conversely, when a customer's energy consumption is found to have been under-recorded, then the Shipper is unable to reflect this in settlement, so potentially gaining a windfall since the industry is not compensated for the gas that was inappropriately allocated to each Shipper.

The current reconciliation window is mismatched to the Limitations Act by one to two years for a period four to five years ago. This creates a small amount of risk that any adjustment made to a large meter or a large number of smaller meters in the period of the mismatch may create a significant loss. This risk is relatively low for many Suppliers due to the size of the mismatch, the length of time in the past that this exists and the nature of their portfolios. For a few niche Suppliers, with many larger meters, this risk may be more significant since the scale of any adjustment is potentially large.

Were the industry to consider any further shortening of the current reconciliation window then this would have significant impacts on the settlement process and the market in general. For example, if a reduction to a 2-3 year reconciliation time limit were proposed, the amount of energy that will not be reconciled as a consequence would be in the region of 2.5-3.5% of total throughput. This would represent a significant increase over the current 1.5-2.5%¹ that the current 4-5 year time limit results in.

The impact this may have on the LSP NDM market has been shown by the analysis undertaken by Xoserve on UNC Modification 0395/0398 and presented to the industry on 26 April 2012. The following data shows (as of 31 December 2011) an estimate for the amount of energy (kWh and £) that may be yet reconciled for those years.

Calendar Year	Historic Reconciliation Percentage	Unreconciled Estimate of Rec (mWhrs)	Unreconciled Estimate of Rec £000
2007	-4.62%	-187,084	-3,577
2008	-5.98%	-274,455	-5,247
2009	-4.59%	-202,738	-3,876
2010	-2.47%	-138,807	-2,654
2011	-1.85%	-361,009	-6,902

NB: these figures do not reflect potential adjustments for DM sites, which individually would be much greater.

These figures demonstrate that the current cut-off date creates a situation where a Supplier may be unable to easily correct significant, and for a smaller Supplier, potentially business ending errors in settlement.

A claims process would counter this risk as it would allow the Shipper to claim for significant energy and transportation costs where a consumer had made a claim against them for the period outside of the normal reconciliation process (under the Limitations Act) and would avoid the need for legal challenge to correct the error.

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¹Source: Xoserve presentation to UNC distribution workgroup 26 April 2012.

Impact on AUGE processes

A key finding of the AUGE process has been that many aspects of Unidentified Gas are temporary in nature and will eventually be allocated back to an individual Shipper through the reconciliation process. The Customer Settlement Error Claims Process will not result in changes to reconciliation and so there seems to be a need to recognise, through the AUGE process, that some sources of Unidentified Gas would not be corrected owing to the current reconciliation backstop date.

Why there is a risk of legal challenge

It has been noted above that the current backstop date impacts how Shippers can recover their costs for incorrect gas allocations that have been corrected with their customer. As we have noted the current reconciliation cut-off date limits how far a Shipper can currently undertake adjustments through system processes, but as acknowledged by Ofgem:

“The reconciliation process is not in itself a remedy for contractual breach but a discrete operational process provided for and operated in accordance with the UNC contract. Where contractual obligations are imposed on parties breaches of these obligations may give rise to contractual claims and the Limitation Act provides that such claims would, as a general rule, have to be brought within six years. This is not affected by the length of time within which reconciliation can occur”.

11 October 2007: Ofgem Decision Letter 0152V/AV/VB

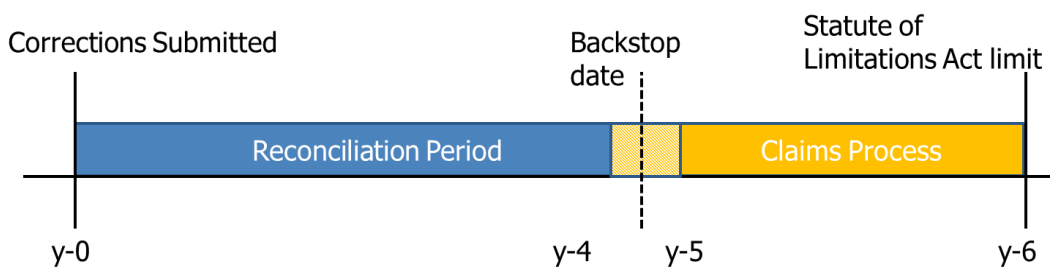
There is agreement with Ofgem’s assessment that Shippers still have the right under contractual law to correct the cost allocation in the event that there has been a clear error. In this case the billing error would sit with the organisation that has undertaken the energy allocation or transportation activity. At present however there is no clear mechanism for this to occur and a Shipper will have to rely on a legal process to correct any significant cost error.

3 Solution

Settlement Claims Process

To remove the financial exposure that Shippers face as a result of this misalignment, it is proposed that a Customer Settlement Error Claims Process is implemented. This process will allow Shippers, to claim back costs for energy and transportation they should not have been allocated or to submit claims to reflect costs they should have been allocated but weren’t. Such claims would be for the period between the Code Cut Off Date and the last Day of Formula Year t-6, as shown below. To ensure only significant adjustments are submitted, it is proposed that such claims would have to be at least £50,000 (energy and transportation) in materiality. The types of claims that could be submitted are those that otherwise would be valid, but have been prevented from doing so due to the Code Cut Off Date.

Illustration of Process (current reconciliation backstop date)



It is intended that this process will be used relatively rarely to correct material errors and will only be used where the nature and materiality of the error can be clearly demonstrated. It therefore will be a relatively manual process with the Shipper expected to submit the claim and evidence supporting the claim to the Transporter’s for validation. For the avoidance of doubt, the Customer Settlement Error Claims Process will not impact the period covered by the reconciliation process, concerning itself with the period after reconciliation has closed out.

Initiation of Customer Settlement Error Claims Process

It is intended that this process will be triggered by the Shipper submitting a Customer Settlement Error Claim to the Transporter’s Agent. It is proposed that there is a lower limit of total materiality (both energy and transportation components) of the error that cannot be corrected by the normal reconciliation processes of £50,000. The materiality criteria would be applied to an individual Supply Point or a group of Supply Points. In the latter case the error would have to be caused by the same root cause (e.g. error identified with a class of meters or systemic errors with correction factors for a class of

customer). These customers can be connected to different networks as the claim is against the system as a whole.

Content of Settlement Error Claim

In addition to this materiality threshold, customer agreement would need to be obtained for any correction (which may mean multiple agreements if a group of customers are impacted). If the error meets the eligibility criteria, the Shipper would be expected to provide to the Transporter's Agent the following:

- Detail on the nature and duration of the error, detailing its materiality in terms of volume of gas as well as an estimate of its financial impact in terms of energy and transportation costs. When determining the cost of the error with regard to energy, it is expected that the Shipper would reference the monthly average of the System Average Prices for the period in the claim. When determining the transportation cost, the Shipper would reference the relevant Transportation charges in effect at the time of the claim.
- Description of the issue that caused the error to occur.
- Details of the methodology used by the Shipper to calculate the materiality of the error, including applicable working.
- Copies of invoices between Transporter and Shipper detailing the original costs incurred by the Shipper. This is to allow Xoserve to verify without significant additional work that the Shipper has been incorrectly invoiced in the first place.
- The dates for which the Customer Settlement Error Claim will apply. This will only cover the period after which normal settlement reconciliation closes out, up to the six year limit.
- Written confirmation from the customer(s) that they agree with the Shipper that an error has taken place and the overall materiality of the error, as well as the timescales that the error covers.
- Evidence of the Shipper and customer bills relating to the Supply Point to demonstrate loss.
- Applicable system files detailing the revised charges to be adjusted to allow Xoserve to process the correction and maintain an appropriate record of the correction.

Processing of Settlement Error Claim

Once received, the relevant Transporters would have 90 days to evaluate the claim and either approve or reject it. During that time the Transporter's Agent would have the ability to ask for additional information (in line with the criteria above) to clarify the Customer Settlement Error Claim.

The relevant Transporters will judge the above information on the basis that an average informed person would be able to understand and agree with the calculations undertaken (such as the calculations provided align with the invoicing methodology) to determine the above. Shipper will warrant no previous claims have been made. If the Transporters considers the information provided is so clearly erroneous on its face that it would be unconscionable for it to stand (e.g. a previous claim for the same error had already occurred) then they would be able to reject the claim and inform the Shipper of the reasons why.

For the avoidance of doubt the Transporter will first attempt to resolve any queries it may have with the Shipper, prior to rejecting the claim.

If the Transporter's Agent rejects the claim then the Shipper will have 14 days to notify the Transporter/s that it intends to appeal. Such a dispute will be dealt with by Expert Determination in accordance with General Terms Section A.

The Transporters will be entitled to claim any reasonable costs (time and materials) from the Shipper for the processing of the claim. For the avoidance of doubt this does not cover costs if the determination by the Transporters is disputed by the Shipper, as General Terms Section A covers how costs are handled when the dispute resolution process is used.

Resolution of Settlement Error Claim - Energy Correction.

In order to preserve the integrity of the settlement process, it is proposed that any energy financial adjustment shall be included in Balancing Neutrality as part of the Monthly Adjustment Neutrality Amount. For the purposes of this process, the value of the Customer Settlement Error Claim will be determined by multiplying the average SAP for the period that the Monthly Adjustment Neutrality Amount will apply by the volume of the Customer Settlement Error Claim. The Shipper will either then pay or be paid this amount as appropriate. Where the Transporter's Agent estimates that charges above £1million are to be applied, the Transporter's Agent will issue a notification to Shippers. In such cases the charges will be applied two months after the Customer Settlement Error Claim is approved.

Resolution of Settlement Error Claim - Transportation Correction.

Any financial adjustment can be taken into account by the Transporter when setting charges for the next financial year.

User Pays
Classification of the modification as User Pays, or not, and the justification for such classification
User Pays Modification
Identification of Users, proposed split of the recovery between Gas Transporters and Users for User Pays costs and justification
100% Shippers
Proposed charge(s) for application of Users Pays charges to Shippers
The charging basis for Shippers will be an allocation of the development costs to each Shipper based upon each Shipper's number of supply points in proportion to the total number of all Shippers supply points as measured on the date of the implementation of the modification, excluding Unique Sites.
Proposed charge for inclusion in ACS – to be completed upon receipt of cost estimate from Xoserve
To be completed

4 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.	None
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.	Impacted
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.	None

Relevant Objective (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.

Some workgroup participants consider the proposed process allows Shippers to claim for material settlement inaccuracies that cover the period between the closeout of reconciliation and the Limitations Act. Reducing risk to Shippers will reduce costs to the industry overall, remove a barrier to entry and so benefit competition.

Some workgroup participants consider that the protection of individual parties against what could be the actions of others by allowing them to make a claim after the line in the sand, is a benefit of this modification and should further competition by reducing this risk. It also mitigates against a claim by a customer under the statute of limitations. However, some participants felt that this risk can be managed through commercial arrangements and therefore implementation would not further this relevant objective.

One workgroup participant was concerned that the smearing of costs back to the industry at the time of the claim, rather than the time the incident occurred, could have a negative impact on competition as it may provide a barrier to entry. For example, a new entrant will potentially incur the risk of claims by others without being able to make a claim themselves. However, some participants consider that, following its implementation, Modification 0398 reduces the window and therefore reduces the risk and that new entrants will not need to use this process until they have supplied a site beyond the date of the "line in the sand".

One workgroup participant was concerned that through the actions of one party, risks can be passed to others, as there is no incentive to identify and resolve errors in a timely manner. However, others feel it is unrealistic for all errors at sites to be identified in a timely manner due to the extended maintenance periods for larger meters.

Some workgroup participants were concerned that the process is not robust for the management of such claims and will therefore have a negative impact on competition. However, other participants felt that suitable protection was built into the rules in the modification by the claim process as the consumer is required to submit a valid claim to trigger the process.

British Gas believes the modification could have a detrimental impact on competition. As the modification effectively extends the LSP reconciliation window from 3-4 years to 6 years, they anticipate the following consequences:

1. Pass risk and cost to parties, which cannot control them;
2. Reduce the incentive on shippers to reconcile accounts in a timely manner;
3. Reduce the accuracy of settlement and increase the volume of unreconciled energy;
4. Allocate the energy smear against current throughput not historic; and
5. Claims would become out of control with no validation check in place.

EDF Energy do not believe the modification has a positive impact on the relevant objective (d), as the modification exposes Shippers to a longer period of financial uncertainty and therefore does not contribute to securing effective competition. Shippers should be encouraged to identify and resolve material inaccuracies in a timely manner.

National Grid Distribution agree this could have a negative impact on competition as it may provide a barrier to market entry. A new entrant may potentially incur costs as a result of claims by others. Modification 0429 allows for adjustments for periods beyond the invoicing close out date but the method of redistribution to the community, (via balancing neutrality), may potentially lead to misallocation of costs. Whilst they understand the rationale for choosing this method, that is, its inherent simplicity, to support it could be contrary to the principle that costs are appropriately targeted.

National Grid NTS also had concerns whether this modification meets the relevant objectives. They suggest that the modification could be seen to discriminate against different shippers across the total system. New entrants could be faced with barriers to entry due to exposure of financial risk from use of the Balancing Neutrality mechanism to apportion costs. In addition to this, an NTS User may face costs through the

Balancing Neutrality mechanism due to a meter error contained solely within the LDZ. The impacts have the potential to create a situation of unfair competition and result in the misallocation of costs among the shipping community.

RWE Npower believes that this modification may have a negative impact on competition by use of this process to the detriment of industry settlement when focus should be directed towards resolving root cause issues and avoiding settlement error.

Scotia Gas Networks were unsure how relevant objective D would be met in the event that a claim is disputed by several parties. Furthermore they were concerned that this modification does not incentivise parties to resolve errors in a timely manor.

Scottish Power believes that implementation of this modification would adversely impact competition between Shippers and their suppliers as it would introduce additional risk and uncertainty to the gas settlements regime.

5 Implementation

For Modification 0429

- 01 December 2013 if a decision is received after 01 April 2013 and prior to or on 01 June 2013
- 01 April 2014 if a decision is received after 02 June 2013 and prior to or on 01 October 2013
- If a decision is received after 01 October 2013 implementation should on the following 01 April that is at least 6 months after the decision date.

6 Legal Text

Text

The following Text has been prepared by National Grid Distribution:

Transportation Principal Document – Section E

Amend paragraph 1.3.9 to read as follows:

Subject to paragraph 1.3.10 below, no Individual Reconciliation, DM Reconciliation, Individual CSEP Reconciliation or Aggregate NDM Reconciliation shall be undertaken in respect of any Day or period prior to the Code Cut Off Date.

Add new paragraph 1.3.10 to read as follows:

Where an Individual NDM Reconciliation, DM Reconciliation, Individual CSEP Reconciliation or Aggregate NDM Reconciliation identifies an adjustment in gas off-taken in the period of time between the Code Cut Off Date and the last Day of Formula Year t-6 which results in an over-payment by, or under payment to, the User of £50,000 (fifty thousand pounds) or more in respect of an Individual Supply Point or group of Supply Points (where the adjustment has been made, in the case of a group of Supply Points, as a result of the same root cause) then, notwithstanding paragraph 1.3.9 above, the User is entitled to make a claim in respect of the time between Code Cut Off Date and the last Day of Formula Year t-6 in accordance with paragraph 1.3.11 below.

Add new paragraph 1.3.11 to read as follows:-

Where a User wishes to make a claim as referred to in paragraph 1.3.10 above, the following process shall be followed:

- (a) the User shall submit to the Transporter Agency the following information:
 - (i) detail in relation to the nature and duration of the error resulting in the adjustment, including copies of the invoices between the Transporters

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- and the User and the User and the consumer (such information to be applicable to the claim, for example at Supply Meter Point level);
- (ii) the relevant system files and supporting information (to include workings and methodology);
 - (iii) the materiality of the claim in terms of volume of gas, including details of the methodology used to calculate such materiality;
 - (iv) the exact financial impact of the adjustment including energy (by reference to the monthly average of the System Average Prices) for the period of the claim and transportation costs (with reference to the Transportation Charges prevailing at the time of the claim);
 - (iii) the dates in respect of which the claim will apply in accordance with paragraph 1.3.10 above;
 - (iv) evidence of the financial impact relating to the Supply Point or group of Supply Points the subject of the claim including written confirmation that the consumer(s) connected to the Individual Supply Point or group of Supply Points in question agree(s) that:
 - (a) an adjustment in gas off-taken in the period of time between the Code Cut Off Date and the last Day of Formula Year t-6 should be made;
 - (b) the materiality of the claim as referred to in paragraph 1.3.11(a)(ii) is correct; and
 - (c) the dates in relation to which the User's claim applies are correct; and
 - (v) a warranty that no previous claims which are the same in nature and/or are in relation to the same dates as the claim being made by the User have been made;
- (b) the Transporters shall consider the claim and communicate to the User its approval or rejection of such within 90 days of receipt of the claim, during which time the Transporter Agency shall be entitled to raise queries in relation to the claim and/or to request further information from the User in respect of its claim;
 - (c) the Transporters shall be entitled to reject the claim if it is considered that the information provided by the User is so clearly erroneous on its face that it would be unconscionable for the claim to be accepted, in which case the Transporters shall reject the claim and inform the User of the reason(s) for such rejection;
 - (d) if the Transporters consider that an amount exceeding £1 million (one million) pounds is to be re-paid to any User, the Transporter Agency shall issue notification of such fact to Users and that the amount determined as payable to the User shall be paid within 2 (two) months of approval of the claim.

Add new paragraph 1.3.12 to read as follows:

In the event that the Transporters reject the User's claim, the User shall be entitled to appeal the Transporters' rejection of the claim within 14 days of its receipt of communication of such rejection in accordance with UNC General Terms Section A. Expert Determination (specific part of GT A).

Transportation Principal Document Section F

Add new paragraph 4.4.2(i) to read as follows:

- (i) the amount determined as being receivable by National Grid NTS in the event of a claim by a User in accordance with Section E paragraph 1.3.10 above.

Add new paragraph 4.4.3(f) to read as follows:

- (f) the amount determined as payable by National Grid NTS in the event of a claim by a User in accordance with Section E paragraph 1.3.10 above.

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Transportation Principal Document Section S

Amend paragraph 1.4.4 to read as follows:

Subject to the provisions of Section E, paragraphs 1.3.9-1.3.12, no Invoice Document shall contain an Invoice Item or Invoice Amount that shall relate to any Day or period prior to the Code Cut Off Date.

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7 Consultation Responses

Representations were received from the following parties:

Company/Organisation Name	Support Implementation or not?
British Gas	Not in Support
Corona Energy	Support
EDF Energy	Not in Support
E.ON	Support
Gazprom	Support
National Grid Distribution	Not in Support
National Grid NTS	Comments
RWE npower	Not in Support
Scotia Gas Networks	Not in Support
Scottish Power	Not in Support
SSE	Not in Support
Wingas UK	Support

Of the twelve representations received four supported implementation, one provided comments and seven were not in support.

Summary Comments

British Gas is concerned that the modification does not better facilitate competition between shippers, it allows a competitive advantage to some market participants and places unfair risk to others. British Gas believes this proposal could dilute the incentive on LSP Shippers to accurately settle in a timely manner which could add increased cost, error and risk to the industry.

They raised four areas of concern:

1. The modification is not in line with the rest of the industry working towards shortening the reconciliation window.
2. It allows LSP Shippers to circumvent the intent of Modification 0398.
3. It passes un-allocation risk to SSP Shippers who cannot back-off the liability.
4. The reconciliation process sits outside of the Limitation Act.

EDF Energy supports the accurate targeting of costs and believes that Shippers should attract the correct charges due to them over their period of supply. However, EDF Energy thinks there are not enough controls or suitable criteria in place to accurately validate these significant adjustments and that shippers should not have to wait several years in order for invoices to be fully finalised. They feel any disputes process needs to be a lot more transparent for all market participants in order to work properly. They are also concerned that this modification will reduce the incentive for Shippers to identify and resolve errors in a timely manner. EDF Energy believes that Shippers should be working together to reduce the reconciliation window and cost targeting of gas consumption which will reduce the magnitude of prior year adjustments and level of risk Shippers have to absorb.

National Grid Distribution understands how long-running errors may have a material impact on Users in a particular sector of the gas market. While they fully appreciate that the commercial regime could leave Users exposed to costs which cannot be reconciled through UNC processes, they have some concerns regarding the mechanism by which these claims would be processed by Xoserve.

National Grid NTS highlights that the claims process proposes to utilise the Balancing Neutrality mechanism, resulting in claims being smeared across industry based on throughput at the time the error is reconciled. This disconnects from the prevailing reconciliation process and principles, provided within the UNC. Under current arrangements, Daily Metered (DM) and Non-Daily Metered (NDM) reconciliation within the LDZ re-apportions energy costs on the basis of Aggregate NDM market share within the LDZ, at the time of the error. By using the Balancing Neutrality mechanism at the time of correction for this process, both existing and newly established shippers within the market, (who may not have even been operating when the error occurred), could be exposed to financial risk. This could reasonably be perceived as a barrier to the market and create unfair competition between shippers. National Grid NTS is also concerned that the modification could expose shippers who may have only flowed gas through the NTS to unexpected financial risk resulting from an error contained solely within an LDZ. Use of the Balancing Neutrality mechanism will result in each NTS shipper picking up a proportion of the cost based on their NTS throughput, at the time of the claim resolution. This may also create a situation of unfair competition between shippers and result in a misallocation of costs within the industry.

National Grid NTS also highlight that Ofgem have recently approved Modification 0398. One of the benefits sought by this modification is to incentivise industry participants to resolve and reconcile meter errors in a timely manner. It would appear that Modification 0429 has the potential to create a divergent impact to Modification 0398.

RWE Npower believes that correct cost allocation is imperative to energy markets. Reducing the reconciliation period on a progressive basis is necessary to achieve accurate customer billing and settlement costs in the future. With the introduction of the Smart Energy Code, aligning both gas and electricity settlement processes would be a positive step, however can only be achieved with full transparency of these costs backed by an encompassing performance assurance framework that gives market participants assurance in the quality of data. RWE have significant concerns around the robustness of the process detailed in the modification and the governance structure around it. They believe this modification may result in significant changes in what they believe should be crystalized costs, creating uncertainty and risk in future pricing based on historical settlement costs. It is their view that the industry should be striving to prevent future errors whilst reducing reconciliation timescales appropriately and in line with this progress.

Scotia Gas Networks feel that the Transporter would become unduly responsible for settling the Shipper error claims process based upon data submitted by Shippers. The modification specifies a requirement to submit evidence in support of a Shipper's claim but does not give specific details of the nature of this evidence or what it must contain. They believe that a more in depth framework needs to be developed which would detail the level of evidence required to justify a valid claim. The modification does not allow the Transporters to carry out an audit of how the Shipper's analysis was collated, this in itself could undermine the process. While the modification allows the Transporters to claim reasonable costs from the Shipper for processing a claim, it does not allow for costs to be recovered if the determination by the Transporters is disputed by the Shipper. In such instances the disputes resolution process may be utilised which would no doubt be a long and costly process to both parties involved.

Scottish Power believes if this modification was implemented this would introduce additional risk and uncertainty to the SSP market sector. As any adjustment made to

settlement volumes as a result of this regime would be applied through the current RbD settlement mechanism, SSP Shippers/Suppliers and ultimately their customers would bear the risk of any adjustment. In addition they are concerned at the lack of verification or audit process to ensure that a balanced approach to settlement claims/adjustments is operated. They believe that Shippers require to be incentivised to correct any data issues at the earliest possible opportunity either through timely adjustment to settlement volumes or via contract terms. They understand that on occasions delays can occur in the identification of issues relating to meter standing data; however they believe that Suppliers and customers require to make adequate provisions within their commercial metering contracts to back off any potential liabilities that may arise.

SSE believes the modification increases uncertainty within gas settlements and risks can be passed on to parties by others not acting in a proper and correct manner. Implementation of this modification would reduce the incentive to identify errors in a timely manner. A large amount of risk and uncertainty would be borne by the SSP sector, which is not an equitable position and as the proposal is to smear claims to other shippers based on the balancing neutrality process, shippers could pick up costs based on a market share that was very different to their market share at the time the error occurred. Within the gas industry we should be working to a position where the gas settlement period is reduced further from the 3 to 4 year reconciliation period due to be implemented from next April and this modification goes against this aim.

Wingas believes the modification could have a positive impact. They recognise that additional provision for reconciliation back to the parameters set by the statute of limitations in cases where no one is at fault for the lack of data integrity is sometimes required. As a small supplier, they are much more exposed to the risks associated to undetected imbalance and find that the requirement for additional reconciliation is especially necessary in the segment of the I&C sector it occupies as just one case of retrospective reconciliation to the customer which cannot be passed on could have a detrimental impact to profitability.

Additional Issues Identified in Responses

British Gas conveyed their legal view regarding the UNC governance arrangements (Contract Law) and the provisions under the Limitation Act 1980. It appears that gas industry parties have entered into a contract which specifically limits the timescale within which any "invoicing error claims" can be brought which under the current rules is 4–5 years (Modification 0152) and 3-4 years (Modification 0398) as of the 1st April 2014. Under the Limitation Act, any breach of contract claim can be brought within 6 years (ignoring any fraud or mistake issues which arise). Although the Act is silent on the industry invoicing subject, subject to a term not falling foul of the requirements set out in the Unfair Contract Terms Act 1977 ("UCTA"), limitation periods may be reduced or extended by agreement for claims in tort or contract law, therefore the Shippers and Transporters are entirely within their rights to agree and be bound by a shorter contract claim limitation period to that set out within the Limitation Act. Whilst Unfair Contract Terms Act 1977 will play an important role in protecting consumers on any variation to the Limitation Act periods (particularly those which shorten the time within which a consumer may bring a claim) the Courts will take a far less interventionist approach where the parties are commercial entities of equal bargaining power. Therefore British Gas does not agree that the Limitation Act limits the enforcement of commercial debt to a set period of 6 years (the Shippers and Transporters are able to, and have already agreed to reduce this time period) and as a result they do not support Modification 0429.

National Grid NTS believes that the Limitation Act 1980 is not applicable in the context of UNC. By virtue of being a shipper, the User is agreeing to the contractual obligations of the UNC. The UNC states that the current cut-off date of the reconciliation period is y-4 (y-3 as of 1st April 2014 due to implementation of Modification 0398), therefore a

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shipper is agreeing that they will not be able to reconcile any outstanding commercial debt outside of that period. If there was no provision of a time limit for reconciliation specified within the UNC, then a claim may be able to be brought under the Limitation Act 1980; however in this instance it is National Grid NTS' view that the Limitation Act 1980 is not relevant to UNC contractual relationships.

Corona Energy believes there has been an incorrect suggestion that this modification will extend reconciliation to a 5-6 year period. If this were the case then any claims submitted under this process would adjust energy allocation for each day for that site automatically, with a corresponding energy correction being undertaken for the rest of the market. Claims under this process do not follow this route, but instead is a manual correction process to account for large and proven material errors that cannot be corrected by the reconciliation process, by undertaking a single large correction to balancing neutrality. It should therefore be recognised that UNC Modification 0429 does not seek to reopen the debate about the suitability of the current reconciliation cut-off.

National Grid NTS highlighted that Modification 0429 outlines that the settlement of errors within this process is achieved through both energy and transportation corrections. In any claim the Transportation charges that are relevant at the time of the claim will be referenced. If a claim from this process is identified on an NTS meter, then this will have an impact on NG NTS and its adjustment of allowed revenue. The over or under recovery of allowed revenue generated from this process would result in a financial adjustment that impacts upon Transportation charges. Under the transmission price control period which ended on 31 March 2013 (TPCR4), any adjustments would be reflected in the following year's Transportation charges, which the modification reflects. However, the new RIIO-T 1 price control (1 April 2013 to 31 March 2021) has changed this and there is now a 2 year time delay to when adjustments are reflected in the Transportation charges, unless costs are for a period prior to April 2013. The modification does not reflect this change brought about under RIIO-T1.

8 Panel Discussions

The Panel Chair summarised that this modification seeks to establish a manual process allowing Shippers to claim back costs for inappropriately allocated energy and transportation charges. These must have been incurred in the period between the end of the reconciliation process and the last Day of formula year t-6. Any adjustment is also subject to a £50,000 minimum, and requires the customer's confirmation that an error has occurred.

Panel Members held diverse views regarding the impact of this modification on the relevant objectives. Some Members argued that appropriate cost allocations are an essential underpinning of a competitive market, and this modification would generate improved cost allocations. In addition, they noted that the scale of some errors can be extremely large, thereby creating a significant risk for Shippers and Suppliers since customers may successfully claim an adjustment is due while the reconciliation cut-off date in the UNC prevents the Shipper's position being corrected. By reducing this risk, implementation would be expected to facilitate the securing of effective competition.

Other Panel Members noted that the industry has been moving to shorten the reconciliation period, with Ofgem having determined that doing so supports the securing of effective competition and that "it is clearly undesirable for a commercial organisation to be unable to fully close out its accounts for several years, pending confirmation of an as yet unquantified liability (or credit)". They regarded this modification as effectively lengthening the reconciliation period and so increasing risk and uncertainty for those Shippers who would pick up the costs of any successful claim, and that implementation would be counter to the securing of effective competition. While some Panel Members felt the safeguards built in to the proposed claims process would avoid any significant detriments arising, there was no consensus that this was the case.

A concern was raised that implementation would weaken incentives to resolve problems quickly and that this would not be in the interests of consumers nor competition, and hence the relevant objectives would not be furthered by implementation.

Members then voted and with 4 votes in favour, failed to determine to recommend that Modification 0429 should be implemented.

9 Recommendation

Panel Recommendation

Having considered the Modification Report, the Panel recommends:

- that proposed Modification 0429 should not be made.

10 Appendix 1

AUGE Process Adjustment

This aspect of the change will be raised as a separate change to the AUGE guidelines statement. It is detailed here in order to give a comprehensive view of the implications of this proposal.

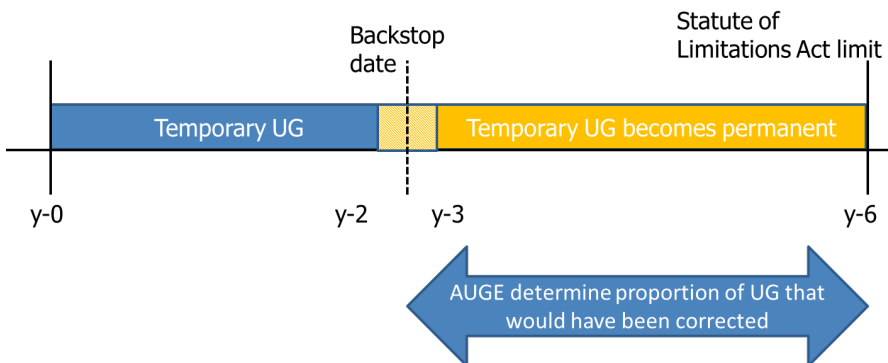
The current AUGE process attempts to determine the scale of Unidentified Gas that is present in the settlements process. A key factor in determining the amount of Unidentified Gas that exists is determining which sources of unidentified gas are permanent (i.e. will never be allocated to an individual Supply Point) or temporary (i.e. will eventually be corrected at some point and allocated to an individual Supply Point).

Shortening the current reconciliation time period will shorten the period in which settlement errors are corrected. It will therefore increase the amount of Unidentified Gas and other energy in the system that cannot be corrected through the reconciliation process and so be classified as permanent Unidentified Gas. The Settlement Error

Claim process above will allow for a process to correct settlement errors beyond the reconciliation window, which may include corrections for sources of gas use which would have been originally classified as Unidentified Gas.

It will therefore be proposed that the AUGE should make an assessment of the amount of energy that would have been corrected (and so be classed as temporary Unidentified Gas) were it not for the close out of the reconciliation window. For the avoidance of doubt, this aspect of the change will be raised as a separate change to the AUGE guidelines statement. It is detailed here for the sake of completeness.

Illustration of Proposed AUGE process adjustment.



The AUGE would detail the materiality of this “fossilized” Unidentified Gas and adjust the resulting Unidentified Gas volumes accordingly.