

Representation

Draft Modification Report

0429: Customer Settlement Error Claims Process

Consultation close out date: 07 June 2013

Respond to: enquiries@gasgovernance.co.uk

Organisation: British Gas

Representative: Andrew Margan

Date of Representation: 07 June 2013

Do you support or oppose implementation?
Not in Support

Please summarise (in one paragraph) the key reason(s) for your support/opposition.

British Gas is not in support of the implementation of Modification 429, because we are concerned it does not better facilitate competition between shippers, it allows a competitive advantage to some market participants and it places unfair risk to others.

The main points are -

1. The proposal is not in line with the rest of the industry working towards shortening the reconciliation window (Mod 398 3-4 years)
2. It allows LSP Shippers to circumvent the intent of Mod 398
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

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. As a result we do not support it.

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

No new issues have been identified.

Relevant Objectives:

How would implementation of this modification impact the relevant objectives?

British Gas believes Modification 429 could have a detrimental impact to competition which is not in line with the relevant objective (d) to better facilitate competition between shippers and suppliers. Modification 429 will effectively extend the LSP reconciliation window from 3-4 years to 6 years. We believe this proposal has 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
5. Claims would become out of control with no validation check in place

Reconciliation

Modification 429 will increase the risk of unreconciled energy being passed to another party 6 years after the gas flowed. This is an unacceptable time period for the risk to apply. We believe that timely and accurate settlement facilitates competition, as it allows for the accurate allocation of costs and efficient use of capital. It is clearly undesirable for shippers to be unable to fully close out accounts for several years, pending confirmation of an unquantified liability.

British Gas supported Modification 398 because it reduces the reconciliation window from 4-5 years, (Modification 152) to 3-4 years. The reconciliation window of 3-4 years will be applied to all industry parties equally. Modification 429 allows some parties to mitigate the intent of Modification 398 by allowing them to reconciling to 6 years, by raising a claim. This is clearly unfair and potentially discriminatory.

The concern of allowing parties to reconcile to 6 years is it will reduce the incentive on some parties to conduct regular checks of their assets and data. To manage the risk of an error, such as meter failure or erroneous correction factors, we believe a shorter reconciliation window will encourage more frequent asset checks and read submissions. We believe regular and accurate allocation of cost is good for customers.

Further to the above, the variables which could create an adjustment are within the control of the shipper. We believe that the risk of an error existing past 3-4 years should sit with that party, because regular asset checks and energy reconciliations will mitigate the risk of an unidentified error. We do not believe it is right to pass that risk to another party that cannot control the risk.

Smearing Allocation and Barriers to Competition

Modification 429 will create a claims process with the energy being smeared back to the industry as a monthly debit. This will result in the throughput being based on current values, rather than historic throughput. We believe the claim should be over the same period, and not within month. This is clearly a mismatch between the error and the remedy.

As a result should a claim be raised and smeared to the industry a new entrant will be required to pick up this additional cost without being able to benefit from the proposal. The new entrant could be exposed to 6 years of unreconciled energy smear, before they have started trading. We believe this will act as a barrier to new entrants.

British Gas believes the £50,000 threshold will also acts a barrier to competition because it only allows established LSP Shippers to make a claim. The concern is that a domestic supply error is unlikely to reach this value. This obstacle is likely to be a barrier to competition as it supports commercial shippers, but not domestic shippers. We believe this is discriminatory to the non-domestic market.

Claim Process Controls

Under the claim arrangements xoserve will be required to process a claim, but no party is required to validate the claim. This is a control weakness and should not be introduced to the UNC arrangements. A further control weakness is there is no validation to ensure an even-handed approach regarding the raising of debit/credit claims.

These weaknesses could result in claimants going outside of the Modification 398 process and using the Modification 429 mechanism as a default reconciliation process. With the lack of controls to validate the claim this could lead to a situation where only credit claims raised, resulting in one market sector subsidising another. Also our concern would be because of the lower incentive to reconcile sites the volume of gas left unreconciled will increase. The will add cost to the industry to manage this risk which we do not support.

We believe the lack of controls and the potential for increased cross subsidisation will negatively impact competition.

Impacts and Costs:

What analysis, development and ongoing costs would you face if this modification were implemented?

Development of system and process costs would be minimal.

Implementation:

What lead-time would you wish to see prior to this modification being implemented, and why?

No lead time has been identified

Legal Text:

Are you satisfied that the legal text and the proposed ACS (see www.gasgovernance.co.uk/proposedACS) will deliver the intent of the modification?

Whilst we add the business rules are very difficult to understand we believe the Legal Text reflects the intention of the modification.

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

Conflict between Limitation Act and with UNC Governance

British Gas would like to take this opportunity to convey our Legal view regarding the UNC Governance arrangements (Contract Law) and the provisions under the Limitation Act 1980.

It would appear to us that the 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 152) and 3 - 4 years (Modification 398) 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 we do 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 we do not support the UNC Modification 429 - Customer Settlement Error Claims Process proposal.