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Date	Telephone
4 February 2011	(050) 364 88 89
Our reference	Your reference
S 11.0041	
Subject	
UNC Modification Proposal 341: Manifest Errors for Entry Capacity Overruns	

Dear Bob,

Thank you for the opportunity to comment on this draft Modification Report. As the proposer, GasTerra fully supports the implementation of this Modification Proposal.

As you may be aware, GasTerra is a wholesale company and as a shipper is mainly active within the Netherlands, the only exception being the delivery of gas through the BBL to the UK.

As you know, GasTerra encountered very significant entry capacity overrun charges during the month of April 2010 at the Bacton ASEP. This was caused by a most unfortunate internal error which led to under-booking of entry capacity. The error remained unnoticed during the month of April 2010, though our nominations at Bacton were always correct.

Although it would obviously be impractical and inappropriate for National Grid to continuously monitor all User's commercial positions, a contributing factor in the error going undetected was the lack of any pro-active automated warning or signal in Gemini relating the level of a User's nominations to the level of their entry capacity bookings.

Due to the overrun rules in the UNC, in particular the 8x multiplier which applies when there are no constraint costs, we were confronted with a staggering bill of several million pounds for overrun charges.

Of course we fully acknowledge and support the "ticket to ride principle", i.e. that the overrun rules are there to incentivise shippers to book their capacity requirements correctly in advance, and we acknowledge, and take seriously, our responsibilities to have robust and effective risk management systems in place. Nevertheless, as a prudent operator, we strongly feel that in our situation the rules have not acted as intended (i.e. to incentivise correct behaviour) but instead they have acted as a disproportionate and unfair penalty and lead to totally unreasonable results.

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Therefore, immediately after the discovery of the error, we took corrective action and contacted National Grid and Ofgem to inform them of the situation and to ask in what way the overrun charges could be reduced to a more reasonable level.

Both National Grid and Ofgem told us that at present there are no means of dealing with this situation and that the only way to address it would be to change the UNC, i.e. propose new procedures which would need to be retrospective in their effect. They also told us that in the past several Mod proposals for broadly similar situations have been dealt with (often without success) and that careful consideration of the design of the proposals and detailed consultation with the Industry would be necessary.

We decided to make the necessary efforts (which turned out to be considerable) to develop an appropriate Mod proposal and we are grateful for the support we have received both formally and informally in developing the detailed procedures.

Our proposals would ensure that, if a manifest error was agreed as valid by the UNCC, Shippers still face an absolute minimum charge equivalent to the highest relevant cost of the capacity plus a 5% premium. They also effectively allow the UNCC freedom to set charges at up to 100% of the overrun charges, as it believes appropriate to the circumstances, and particularly where there are constraint costs associated. In this way, we believe that the proposals ensure that it would never be cheaper to pursue a Manifest Error claim than to buy the capacity correctly and maintain the 'ticket to ride' principle.

We further believe the proposal could be adapted to deal with Manifest Errors elsewhere in the UNC, although similar care to maintain the existing incentives within the regime would always be required. By leading this careful development of the proposal, and particularly by establishing the maintenance of incentives as a key principle of Manifest Error procedures, we feel we have offered a service to the Industry.

In addition to developing the principles for Entry Overrun Manifest Error Claims in the UNC, we have also prepared a detailed Guidelines document (to give clarity for all parties on how the procedures would work in practice) and prepared suggested legal text (to reduce the costs for National Grid/Industry).

Also, GasTerra decided to pay the bill for the overrun charges in full and in good faith, pending the development and consideration of our proposal, in order not to hamper normal business. To make sure that all shippers were aware of the situation, and specifically of the possibility of retrospective amendments to capacity neutrality, we clearly flagged the issue in the Transmission Workstream.

GasTerra is acutely aware that retrospective proposals are generally undesirable, but believes that they are acceptable in certain very specific and limited circumstances, as Ofgem has indicated in previous decisions.

We have examined Ofgem's decisions regarding retrospective proposals in detail and believe that the proposal is consistent with Ofgem's previously stated views on retrospectivity.

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Because of this consistency, GasTerra further believes that implementation would provide the opportunity to strengthen, rather than weaken, the application of the informal 'criteria' for retrospectivity to which Ofgem has referred in previous determinations, and so would not 'open the floodgates' for more retrospective proposals, and may even help protect against this.

Further, to ensure that the proposal does not open the doors for a flood of old cases, the administration fee, the materiality threshold and the retrospective time limit of 1st April 2010 are set to provide reasonable limits to the Claims which can be made.

The direct consequence of GasTerra having paid its overrun charges on time is that National Grid, through its capacity neutrality incentive scheme, is due a significant windfall gain at the end of the current financial year. This would appear to be a somewhat perverse reward for not having developed a more user-friendly capacity booking system. Similarly, Shippers have already received their share of the windfall gain through the capacity neutrality mechanism, in proportion to their capacity holdings.

Whilst the procedures proposed do not guarantee any particular outcome for GasTerra, if this Mod Proposal is not implemented with retrospective effect, these significant windfall gains will simply remain unchallenged. We do not believe this outcome to be the intention of the UNC.

Since there are no other consequential implications for any other parties (other than the possible reduction of windfall gains) and because there is no guaranteed outcome for GasTerra, it would be entirely unreasonable and unfair that the procedures be implemented without providing access to GasTerra to raise a Claim and have it considered.

The case for the detailed procedures to provide a clear and transparent mechanism for the raising and determination of Manifest Error Claims have been discussed at length at the Transmission Workstream and is set out in the proposal, so it is not repeated here.

However, by way of conclusion, we would like to emphasise the following important points:

- Although errors should be rare occurrences, the combination of a potentially penal charge for overruns and the lack of a procedure for dealing with Manifest Errors produces an unreasonable contractual situation, and should be amended.
- Since the proposals maintain the existing regime incentives, no party should see the Manifest Error procedures as providing an opportunity to relax their own internal requirements for robust and effective systems and processes.
- We do not believe any specific expertise is required in order to decide whether or not an under-booking of capacity was intentional or a mistake, but in any case where an ultimately subjective view must be taken, a decision made by a body of people where a majority opinion can prevail is appropriate. We therefore think that the UNCC constitutes a capable and appropriate body to determine claims.

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- We are not proposing to annul or cancel GasTerra's overrun charges. We are proposing a new procedure to deal with errors (which could happen to anyone) under which GasTerra would get a fair chance to make its case, and if agreed, to arrive at a reasonable amount of overrun charges to be paid by us.

GasTerra is convinced that there are no adverse consequences for the UNC or its future administration in implementing this proposal with retrospective effect, and we do not believe that any party would have behaved differently had these procedures already been in existence.

We therefore hope that the Panel and Ofgem will consider that the overall benefits of implementation outweigh the reservations some parties may still have for the implementation of a Mod which has retrospective effect.

Please do not hesitate to contact us should you wish to discuss any aspect of these Proposals.

Yours sincerely,

Sue Ellwood, on behalf of

Ale Jan Algra
Gas Transport Manager
GasTerra