

Representation For. 0026

"Application of Charges consistent with Late Payment of Commercial Debts (interest) Act 1998"
Version 1.0

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External Contact: Simon Howe (R W E Npower Plc)
Slant: Against
Strictly Confidential: No
Abstract

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Mod 0026

Dear Julian,

Thank you for inviting us to respond to Mod Proposal 0026. RWE npower recognises that this Proposal reflects discussion points raised in Ofgem's conclusion document "Best Practice Guidelines for Gas and Electricity Network Operator Credit Cover" 58/05. However, there are aspects of the legal drafting which mean that we can not support the proposal.

The first point in the drafting is that the title of the Act is incorrect in the proposed paragraph 3.6.5. It is quoted as the "Late Payment of Commercial Debts (Interest) Debts Act 1998." When it should be the "Late Payment of Commercial Debts (Interest) Act 1998". It is a minor point and we all know to what the section refers, but as this is a legal document this error is unacceptable.

The second point is much more important. The current paragraph 3.6.4 states:

The Applicable Interest Rate shall be the base rate for the time being of Barclays Bank PLC plus:

(a) except as provided in paragraph 0, three (3) percentage points per annum;

and

(b) for the purposes only of paragraphs 1.5.4(a) (ii), 4.2.5 and 4.3.2., or where otherwise expressly provided in the Code one (1) percentage point per annum.

The purposes of clause b is to allow bona fide invoice disputes or challenges to be raised without the user incurring excessive charges. So that if the dispute is not found to be valid then the User would currently pay interest on the unpaid monies at Base Rate +1%. If the invoice is paid and a subsequent dispute is found to be valid then the Transporter pays interest on the unpaid monies at Base Rate +1%. Thus neither side is vulnerable to overly high interest rates.

The wording of the proposed clause 3.6.4 is "The Applicable Interest Rate shall be the rate of interest set for the relevant period as the statutory interest rate for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998." There is no mention of exceptions for paragraphs 1.5.4(a) (ii), 4.2.5 and 4.3.2.

Thus if the proposed clause is used then not only will interest be charged on any late payments, which we believe is the intent of the proposal, but will have an adverse impact upon the User's costs in querying invoices. In fact it may have the perverse effect of encouraging Users, where they are very confident of their challenge, to pay the full amount and then dispute it so that they can earn high levels of interest.

Additionally, there are three issues with the text that deals with the level of fixed charge that the creditor may recover from the debtor in the event of late payment. The first is with the wording "the creditor shall be entitled", this seems to allow for the creditor to chose whether or not to impose the fixed penalty. This is discriminatory and therefore should not be permitted. The second issue is that it is unclear how a creditor, if that creditor were a User rather than a Transporter, would raise a fixed charge and interest invoice. As the Agency is separated from the payment and collection of monies it is not in a position to raise any interest or fixed fee charges on its own and must rely upon the creditor for this information. The Agency is contracted to the Transporter, and the Users have a relationship with the Agency, but it has no contractual obligation with them. So could a User instruct the Agency to invoice the Transporter, or would the User have to rely upon the Transporter to furnish the Agency with the information with which to bill it?

The third issue is that it is not clear how the Transporter will treat the situation where several invoices are due but all or some are paid late. Would this be dealt with one compensation charge or multiple compensation charges?

As a result of these issues we can not support the proposal as it stands.

Yours sincerely,

Simon Howe.
Gas Network Codes Manager