Draft Modification Report
Remedies for Transco's Failure to Hounour it's Entry Capacity Commitments
Modification Reference Number 0437

Version 1.0

This Draft Modifcation Report is made pursuant to Rule 8.9 of the Modification Rules and follows the format required under Rule 8.9.3

1. The Modification Proposal

This proposal provides remedies should Transco, as a consequence of an earlier error, choose to void transactions. A complimentary Modification Proposal "Correction of Transco errors on the RGTA Capacity System", is designed to clarify Transco's actions following such errors and should be considered concurrently.

Remedies for Transco's failure to meet its entry capacity contractual commitments

The obligations outlined in Modification Proposal "Correction of Transco errors on the RGTA RGTA Capacity System" should make it absolutely clear to Transco what they should do should circumstances similar to those of the 5 July happen again. However, it does not prevent Transco acting in a fashion that is again contrary to the code. A remedy is required to protect shippers from the consequences of Transco failing to meet entry capacity contractual commitments. It is not enough for Transco to undertake to cover shippers "direct losses reasonably and demonstrably incurred". Such fine words are welcome but in practice shippers (and Transco know this) find it difficult to clearly demonstrate direct loss particularly if such losses involve substitute gas purchases at the NBP.

In all likelihood Transco will still make errors in their use or operation of the RGTA capacity system - in some cases these errors may not become apparent before it is too late. Hence, this proposal advocates the following remedies for shippers should they fail to meet Network Code obligations:

In the case of any transactions for the sale of capacity amended or voided by Transco:

(a) Shall required to pay an amount under the capacity incentive (Section B2.11) equal to100% of the value of the transactions voided or amended by Transco on that day.

Shippers shall for that Gas Day have the right to overrun at the relevant ASEP up to the quantity of capacity Transco has failed to honour. The failure to honour quantity shall be determined relative to the time at which Transco voids such a transaction as follows:

$$CV = CEOD \times (t + r) / 24$$

Where:

CV = the quantity of capacity against which a shipper would have a legitimate right to overrun against at the relevant ASEP.

CEOD = the end of day capacity that a shipper believes he has in good faith purchased on the RGTA capacity system.

t = the period of the gas day (in hours) which had elapsed at the time of Transco voiding transactions.

r = a reasonable number of hours [say 2 hours] to enable affected shippers to renominate down deliveries at the relevant ASEP.

(b) Any overrun charge payable for overrun quantities, which are less than or equal to the value of Cv at the relevant ASEP shall be charged at a rate equivalent to the daily capacity reserve price. Any overruns in excess of this quantity shall be payable at the normal rate.

(c) Transco shall pay MSEC holders at the relevant ASEP amounts specified under Section B 2.11 based on the income from sales of daily capacity expected prior to any amendment or voiding of such trades by Transco. Such payments shall be considered as part of the Capacity Incentive Cost specified in Section B 2.11.

In the case of any transactions for the purchase of capacity amended or voided by Transco:

(a) compensation shall be payable to shippers for each unit of capacity not honoured by Transco at a rate equivalent to the original accepted offer price prior to voiding or amendment of such transactions by Transco. Such payments shall form part of the Capacity Incentive Costs under Transco's capacity incentive (Section B 2.11).

The above proposals apply prospectively, are designed to be cost reflective and seek to rovide every incentive on Transco to honour contractual commitments with shippers. The remedies for breach of Network Code aim to cover both shippers financial exposure (but nothing more) and to penalise Transco for poor perfomance through the capacity incentive mechanism.

2. Transco’s Opinion

Transco does not support the application of compensation payments similar to that proposed for instances of failures arising from software programming. The elimination of the probability of such failure is subject to diminishing returns as the costs of preventative measures rise. The complete elimination of such failures is not a condition that could ever be guaranteed. That concept is acknowledged in the Network Code (U 7.1) where Transco and UK Link Users agree and acknowledge that it would not be economical for UK Link to be designed, built or operated so as to reduce the probability of its failure below a certain level, and consequently that such failures may occur. Further to this, the Network Code (U 7.3) specifies that Transco will not be liable to any User or other UK Link User for the consequences of any failure, error or defect in or in the operation or performance of UK Link or any other part of the UK Link System.

Not withstanding Transco's ongoing endeavours to establish and operate robust systems it does accept that operator error can occur but maintains that such errors can be remedied by application of the present Network Code arrangements. Those arrangements involve buy-back or sales of Daily System Entry Capacity.

Transco does not support a Proposal that would enable Users to flow gas at overrun rates that are effectively offered at a substantial discount from the overrun rates that are determined by the present Network Code arrangements. In circumstances where Transco has amended or withdrawn a transaction the affected Users would be provided with an ability to overrun at discounted rates. That is despite the possibility that the reason for voiding a transaction may have been to avoid an excessive capacity release. That suggests that the sum of the existing capacity released and the discounted overrun quantity will be in excess of anticipated transportation capability. That implies that application of the Proposed rules would increase the probability of transportation constraints occurring. In such circumstances the Users who have been provided with a discounted overrun will not be able to take part in capacity management by way of offering buy-back capacity and the reduced pool of available capacity that can be offered for buy-back may tend to drive up constraint management costs. It can be expected that the outcome described would also increase standard overrun charges.

Transco does not believe that it is consistent to offer compensation for not honouring capacity transactions whilst simultaneously making available some of the requested capacity at discounted rates. It would appear that if a transportation right is offered, which is suggested by provision of discounted overrun charges, then that quantity should not be considered for further compensatory payment.

3. Extent to which the proposed modification would better facilitate the relevant objectives

Transco does not believe that the Proposal would further the relevant objectives. In particular, the Proposal implies that systems reliability should be increased beyond a level that might be considered economically efficient.

4. The implications for Transco of implementing the Modification Proposal , including

a) implications for the operation of the System:

On application of the proposed rules uncertainties may be expected to arise because the provision of discounted overruns in addition to the primary release of capacity is likely to be in excess of transportation capability. The probability of constraints will therefore be expected to rise.

b) development and capital cost and operating cost implications:

An additional form of overrun charge will need to be developed to enable this Proposal to proceed.

c) extent to which it is appropriate for Transco to recover the costs, and proposal for the most appropriate way for Transco to recover the costs:

It is anticipated that development costs would be part of allowed revenue.

d) analysis of the consequences (if any) this proposal would have on price regulation:

No consequences are anticipated.

5. The consequence of implementing the Modification Proposal on the level of contractual risk to Transco under the Network Code as modified by the Modification Proposal

The level of contractual risk for Transco is increased by this proposal to require Transco to fund compensation payments from its capacity incentive. The Proposal may also increase the probability of transportation constraints which could drive higher buy-back costs.

6. The development implications and other implications for computer systems of Transco and related computer systems of Users

Transco has designed and developed the RGTA systems in accordance with time lines that have as far as possible been formulated to fit the urgent status accredited to these developments by all parties including, Users, Ofgem and Transco. If a greater burden of risk associated with systems development is now placed upon Transco then it is probable that more extensive validation processes will be a manifested in longer lead times to build new or modify existing systems.

7. The implications of implementing the Modification Proposal for Users

If implemented, the Proposal will provide recompense for Users who may be affected by Transco's failure to honour its entry capacity commitments. Risks of buy-back and higher overrun charges will be increased if the Proposal is implemented.

8. The implications of implementing the Modification Proposal for Terminal Operators, Consumers, Connected System Operators, Storage Operators, suppliers, producers and, any Non-Network Code Party

No implications are anticipated.

9. Consequences on the legislative and regulatory obligations and contractual relationships of Transco and each User and Non-Network Code Party of implementing the Modification Proposal

The proposal is in conflict with existing Network Code provisions concerning the service levels to be attained in software development and operation.

10. Analysis of any advantages or disadvantages of implementation of the Modification Proposal

Advantages

The Proposal could encourage Transco to more thoroughly test new developments prior to implementation

The Proposal would incentivise Transco to put in place further procedures to mitigate the risk of errors.

The Proposal will provide recompense for Users affected by Transco's failure to honour its Entry Capacity commitments.

Disadvantages

Systems development costs would increase.

Systems development lead times would increase.

Transportation constraints would be more likely on occasions when the proposed rule is invoked.

11. Summary of the Representations (to the extent that the import of those representations are not reflected elsewhere in the Modification Report)

Representations are now sought on this draft report.

12. The extent to which the implementation is required to enable Transco to facilitate compliance with safety or other legislation

Not applicable

13. The extent to which the implementation is required having regard to any proposed change in the methodology established under Standard Condition 3(5) of the statement; furnished by Transco under Standard Condition 3(1) of the License

Not applicable

14. Program of works required as a consequence of implementing the Modification Proposal

A new form of (discounted) overrun charge would need to be developed.

15. Proposed implementation timetable (including timetable for any necessary information systems changes)

Transco does not recommend implementation of this proposal

16. Recommendation concerning the implementation of the Modification Proposal

Transco does not recommend implementation of this proposal

17. Text

Representations are now sought in respect of this Draft Report and prior to Transco finalising the Report.

Signed for and on behalf of Transco.

Signature:

Tim Davis
Manager, Network Code

Date: