NETWORK CODE MODIFICATION PROPOSAL No: 0437

SHORT TITLE: Remedies for Transco's failure to honour its entry capacity commitments

DATE: 13 November 2000
PROPOSED IMPLEMENTATION DATE: 1 December 2000

URGENCY: Non-urgent

JUSTIFICATION:

On the 5 July 2000 Transco accepted bids for capacity via the RGTA Capacity System and then later in the day unilaterally decided to cancel these transactions. Shippers had in good faith entered into contracts with Transco for daily capacity and had expected such contractual commitments to be honoured.

Following rejection by Ofgem of Modification Proposal, "Compensation payments following Transco's failure to meet entry capacity contractual commitments" no effective remedy exists to protect shippers from similar actions by Transco in future. This proposal seeks to clarify the remedies in respect of manifest errors made by Transco in its future use and operation of the RGTA capacity system.

CONSEQUENCE OF NOT MAKING THIS CHANGE:

On 5 July 2000 Transco chose a course of action which shippers believe put Transco in breach of the Network Code (as currently drafted). The industry and Ofgem would have preferred a market-based solution in which Transco bought back capacity. Although Ofgem rejected modification proposal 313 they were sympathetic to the views of shippers. In their decision letter they stated, "Ofgem does not believe its decision on this modification proposal should preclude future modifications being raised that suggest alternative compensation mechanisms to address errors that have been made by BG Transco".

There have been a number of occasions where shippers have made offers on the RGTA system in error. In the absence of manifest error provisions to rapidly 'unwind' such mistakes such shippers have had to face the full commercial, Licence and Network Code consequences of their errors. In contrast, under the current rules Transco seem to be able to avoid responsibility for their own errors. If Transco, having entered into contracts to buy or sell capacity, unilaterally decide to void those contractson the grounds of Transco error it is right that they should face the full commercial consequences of their actions.

Errors by Transco can either be related to the operation of the RGTA system itself (in their role as RGTA system operator) or human error in the way they use the system. Irrespective of the causes or the source of such errors the consequences to shippers of Transco seeking to 'correct' an error, are identical.

Without implementation obligations and mechanisms that both protects affected shippers from the consequences of Transco's actions and incentivises Transco to avoid future errors Transco may continue to use and operate the RGTA capacity system in an inappropriate manner.

AREA OF CODE CONCERNED:

Section B, System Use and Capacity.

NATURE OF 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 be 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:

$$C_V = C_{EOD} \times (t + r) / 24$$

Where:

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

C_{EOD} = 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 C_v 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 provide 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.

PURPOSE OF THIS PROPOSAL

Transco as operator of the Transco RGTA system is in a privileged position in that it can, if it so chooses, unilaterally ‘correct’ errors it makes either in the running or use of that system. This proposal is designed to clarify Transco's Network Code obligations in such circumstances and to provide protection for shippers from the consequences of Transco's actions should they in future void or amend contracts made between Transco and shippers. It is also intended to act as a deterrent and prevent Transco making similar breaches of the Network Code in future.

IDENTITY OF PROPOSERS REPRESENTATIVE:

PROPOSER: Peter Bolitho
SIGNATURE:
POSITION: Gas Trading Arrangements Manager
COMPANY: PowerGen UK plc

MODIFICATION PANEL SECRETARY’S USE ONLY

Reference Number:
Date Received:
Candidate Workstream: