Modification Report
Entry Over-run Charges on Transco Nominations from Constrained LNG Sites
Modification Reference Number 0450

Version 2.0

This Modification 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

2. Transco's Opinion

Transco recognises the benefits provided by Constrained Storage Facilities. These include the ability to nominate at any physically feasible flow rate when Transco believes this is necessary to meet demands. Given this benefit to security of supply, Transco agrees that it appears perverse that Users may face the prospect of over-run charges in respect of gas "constrained on" by Transco.

However, the effect of implementing this Modification Proposal would be to transfer risk from Users that book LNG capacity at the relevant facilities to Users at large. Transco has expressed concern about similar proposals in the past, on the grounds that they could be regarded as introducing complexity and discrimination into the entry capacity regime and because, in practice, cost exposure under the present arrangements is small.

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

The proposer suggested that this Modification Proposal is intended to remove an unintended and unfair feature that tends to discourage use of the Constrained LNG services for no good reason. Given that it could remove an impediment to the booking by shippers of capacity at Constrained Storage Facilities, this could be regarded as promoting efficient and economic operation of the pipeline system.

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

a) implications for the operation of the System:

This Modification Proposal might encourage the booking of constrained LNG, and bookings in excess of the minimum requirement enhance the security of the system and facilitate safe operation.

b) development and capital cost and operating cost implications:

No such costs have been identified.

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:

The Modification Proposal would reduce Transco's revenues, and this would be taken into account in the setting of future charges.

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

See (c) above.

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

By putting the onus on shippers to make a claim, the Modification Proposal does not significantly increase Transco's contractual risk.

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

No such implications have been identified. It is envisaged that claims would arise only rarely, and would be processed manually.

7. The implications of implementing the Modification Proposal for Users

The Modification Proposal would remove a specific risk from Users booking constrained LNG, and transfer it to Users generally.

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

The Modification Proposal would encourage the booking of capacity at constrained LNG facilities.

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

No such consequences have been identified.

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

<u>Advantages</u>
Removal of the potential for what may be regarded as penal over-run charges.
Removal of a disincentive to booking constrained LNG.

<u>Disadvantages</u>
The introduction of additional complexity into the entry capacity regime.

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

Three representations were received, including one from the proposer, British Gas Trading Limited (BGT). All respondents supported the proposal. The following points were made in support of the Modification Proposal:

Modification 0376 introduced the same rules on a temporary basis, expiring in April 2000, and was temporary because it was anticipated that Ofgem's consultations on LNG would have resulted in new arrangements by that time.

Current arrangements constitute an inappropriate disincentive to take-up the Constrained LNG service, and implementation would better facilitate efficient and economic operation of the pipeline system.

Current arrangements are unfair, in that a prudent shipper that has made proper provision is penalised through circumstances beyond its control.

This is essentially a shipper issue, and there is no reason why the community should receive a windfall gain (through 'k') at the expense of shippers booking LNG.

BGT asks why the legal text it provided was not included in the draft Modification Report.

A decision is required urgently, since it affects shippers' bids for LNG capacity in Transco LNG's Annual Storage Invitation, which closes on 4 April. BGT says implementation should be with effect from the beginning of the 2001/02 Storage Year (i.e. 1 May 2001).

<u>Transco's response</u>

Since implementation of Modification 0376, a new entry capacity regime has been introduced under RGTA. This regime incentivises Transco to release adequate daily entry capacity, and sets the reserve price for Constrained LNG facilities to zero. This new regime therefore significantly reduces shippers' exposure to entry costs.

Transco agrees that there is a disincentive (although its magnitude is uncertain) and its removal may better facilitate efficient and economic operation.

Transco understands how current arrangements may be seen as unfair, but would point out that shippers are aware of these arrangements when booking LNG capacity, and can make appropriate arrangements to acquire a range of capacity entitlements.

Transco also has an interest in the outcome, because it has to operate the arrangements and because of the effect on cash-flow.

BGT's draft legal text was omitted to clarify the exact intent of the proposal, and because Transco believed that the legal text required development.

Transco agrees that it would be preferable if a decision was made before the close of Transco LNG's Annual Storage Invitation on 4 April.

Implementation on 1 May 2001 would be appropriate.

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

Implementation is not required for this purpose.

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

Implementation is not required for this purpose.

14. Programme of works required as a consequence of implementing the ModificationProposal

A new procedure for dealing with Users' claims would be required.

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

If approved, implementation should be no later than 1st December 2001 so that the revised rules are in place when constrained LNG is most likely to be used, and ideally a decision would be made prior to the close of Transco LNG's Annual Storage Invitation on 4 April 2001.

16. Recommendation concerning the implementation of the Modification Proposal

Having reviewed the representations, all of which support the Modification Proposal, Transco recommends implementation.

17. Restrictive Trade Practices Act

If implemented this proposal will constitute an amendment to the Network Code. Accordingly the proposal is subject to the Suspense Clause set out in the attached Annex.

18. Transco's Proposal

This Modification Report contains Transco's proposal to modify the Network Code and Transco now seeks direction from the Gas & Electricity Markets Authority in accordance with this report.

19. Text

SECTION B

1. In the first line of paragraph 2.12.3 before the words "The System Entry Overrun Charge" insert the words "Subject to paragraph 2.12.5"

2. Renumber paragraph 2.12.5 as 2.12.6 and insert a new paragraph 2.12.5 as follows:

"Where on any Day Transco makes a Constrained Storage Renomination in respect of the Storage Connection Point of an LNG Facility then, subject to the proviso below, the System Entry Overrun Charge for a User in respect of that LNG Facility shall be zero for any overrun quantity but only to the extent and for such part of that Day that the implied rate derived from the Constrained Storage Renomination exceeds the implied rate derived from that User's Registered Storage Deliverability (as defined in Section Z) (in both cases for that LNG facility). This paragraph shall only apply in respect of a User where that User sends written notification to Transco within three Business Days of the relevant Day stating (a) that the zero rate is to apply; (b) the overrun quantity and the period for which it is to apply; and (c) reasonable evidence to support its claim."

Signed for and on behalf of Transco.

Signature:

Tim Davis
Manager, Network Code

Date:

Gas and Electricity Markets Authority Response:

> In accordance with Condition 7 (10) (b) of the Standard Conditions of Public Gas Transporters' Licences dated 21st February 1996 I hereby direct Transco that the above proposal (as contained in Modification Report Reference **0450**, version **2.0.** dated **02/04/2001**) be made as a modification to the Network Code.

Signed for and on Behalf of the Gas and Electricity Markets Authority.

Signature:

The Network Code is hereby modified with effect from, in accordance with the proposal as set out in this Modification Report, version **2.0**.

Signature:

Process Manager - Network Code

Transco

Date:

Annex

1. Any provision contained in this Agreement or in any arrangement of which this Agreement forms part by virtue of which The Restrictive Trade Practices Act 1976 ("the RTPA"), had it not been repealed, would apply to this Agreement or such arrangement shall not come into effect:

   (i) if a copy of the Agreement is not provided to the Gas and Electricity Markets Authority ("the Authority") within 28 days of the date on which the Agreement is made; or

   (ii) if, within 28 days of the provision of the copy, the Authority gives notice in writing, to the party providing it, that he does not approve the Agreement because it does not satisfy the criterion specified in paragraphs 1(6) or 2(3) of the Schedule to The Restrictive Trade Practices (Gas Conveyance and Storage) Order 1996 ("the Order") as appropriate

   provided that if the Authority does not so approve the Agreement then Clause 3 shall apply.

2. If the Authority does so approve this Agreement in accordance with the terms of the Order (whether such approval is actual or deemed by effluxion of time) any provision contained in this Agreement or in any arrangement of which this Agreement forms part by virtue of which the RTPA, had it not been repealed, would apply this Agreement or such arrangement shall come into full force and effect on the date of such approval.

3. If the Authority does not approve this Agreement in accordance with the terms of the Order the parties agree to use their best endeavours to discuss with Ofgem any provision (or provisions) contained in this Agreement by virtue of which the RTPA, had it not been repealed, would apply to this Agreement or any arrangement of which this Agreement forms part with a view to modifying such provision (or provisions) as may be necessary to ensure that the Authority would not exercise his right to give notice pursuant to paragraph 1(5)(d)(ii) or 2(2)(b)(ii) of the Order in respect of the Agreement as amended. Such modification having been made, the parties shall provide a copy of the Agreement as modified to the Authority pursuant to Clause 1(i) above for approval in accordance with the terms of the Order.

4. For the purposes of this Clause, "Agreement" includes a variation of or an amendment to an agreement to which any provision of paragraphs 1(1) to (4) in the Schedule to the Order applies.