

30 March 2022

MODIFICATION 0792
AMENDMENTS TO COST RECOVERY UNDER OAD

Proposed Legal Text

OFFTAKE ARRANGEMENTS DOCUMENT

SECTION B – CONNECTION FACILITIES

Amend paragraph 2.4.3 to read as follows:

2.4.3 The Party ("**first**" Party) taking emergency action pursuant to paragraph 2.4.2 above shall:

- (a) where any property of the other Party ("**second**" Party) is damaged as a result of the emergency, only take such action as is required to make such property safe;
- (b) inform the second Party of such action and the interference entailed thereby, wherever practicable in advance and in any event as soon as practicable following the taking of such action;
- (c) exercise all reasonable care to prevent or minimise any damage to or interference with the operation of the second Party's Connection Facilities when dealing with the emergency;
- (d) when the emergency has ended:
 - (i) the first Party shall notify the second Party as soon as reasonably practicable of any damage to the second Party's Connection Facilities (together with reasonable details of such damage and of the affected Connection Facilities);
 - (ii) where the second Party so requests, the first Party shall reinstate (at its cost) any of the second Party's Connection Facilities that have been damaged as a result of the emergency action, save that no reinstatement shall be required where the emergency was caused by any breach or default on the part of the second Party; and
 - (iii) the first Party shall reimburse the second Party where following any action under paragraph (a) or re-instatement under paragraph (d)(ii) the second Party (following its own assessment of the damage) determines further work is required to re-instate, repair or replace its Connection Facilities and the second Party undertakes such works, unless following such an assessment any such further work, where the second Party so requests, is carried out by the first Party.

Commented [ML1]: As discussed at the March review group this appears to be a duplication of obligation B 2.4.2 and is not required. Did Cadent review this?

Commented [ML2]: Parties are informing each other of the interference in 2.4.3 b this obligation is not needed?

Commented [ML3]: We would appreciate feedback on our text that we proposed in this area as to why it doesn't achieve the intent of your change.

Commented [ML4]: Comment above.

SECTION L – COST RECOVERY AND INVOICING

Delete all existing text in paragraph 2.3 and replace with new text to read as follows:

2.3 Process

2.3.1 Where the Recovering Party anticipates an entitlement to recover recoverable costs **will arise** the Recovering Party shall give notice to the Reimbursing Party specifying:

- (a) the relevant provision;
- (b) the act or omission of the Reimbursing Party or other event ("**relevant circumstances**") which the Recovering Party anticipates will give rise to the application of the relevant provision;
- (c) the Recovering Party's intention to recover the recoverable costs in the event the relevant circumstances occur.

Commented [ML5]: Is "will arise" needed?

2.3.2 **The** Recovering Party shall give the notice referred to in paragraph 2.3.1 where the Recovering Party anticipates an entitlement to recover recoverable costs:

- (a) under a relevant provision in Section B, Section D and Section F, as soon as reasonably practicable following submission or receipt of the relevant notice or communication under or relating to the relevant provision;
- (b) as a consequence of the receipt or provision of a final (or updated) Maintenance Programme under Section G, as soon as reasonably practicable following receipt or provision of the final (or updated) Maintenance Programme.

Commented [ML6]: Is this necessary as 2.3.1 covers provision of a notification?

2.3.3 The Recovering Party shall at the same time as giving notice under paragraph 2.3.1 (or as soon as reasonably practicable after such notice) give notice to the Reimbursing Party specifying:

- (a) the amount which it anticipates it will claim as recoverable costs ("**costs estimate**"), which shall be in accordance with the requirements of paragraph 2.2; and
- (b) an explanation of the basis on which the costs estimate has been prepared.

2.3.4 **Where** the Recovering Party subsequently identifies a requirement to increase its costs estimate it will give notice to the Reimbursing Party specifying:

- (a) the revised amount which it will claim as recoverable costs ("**revised costs estimate**"); and
- (b) an explanation of the basis on which the revised costs estimate has been prepared.

Commented [ML7]: Cadent mentioned at the last meeting that revising estimates was standard practise and perhaps did not need to be codified ?

Commented [ML8]: We understand that Cadent wish to increase visibility of costs via a provision of an estimate; and OAD obligations permits a prudent operator to recover reasonable costs, we feel it is appropriate to discuss and consult, however the concept of an estimate being accepted or rejected is not appropriate, as this could lead to one party being out of pocket for costs reasonably incurred. Legally and as a regulated entity we are only permitted to recover actual costs so I am not sure on what grounds you would be able to reject an estimate.

2.3.5 **The Recovering Party and the Reimbursing Party shall consult on the costs estimate (or any revised costs estimate), and the Reimbursing Party may, with seven (7) Business Days of receipt of a notice under paragraph 2.3.3 or 2.3.4 request a meeting to discuss and agree the costs estimate (or revised costs estimate), in which case the Parties shall meet as soon as reasonably practicable for that purpose.**

Commented [Dentons9]: Do we need default – so if notice not given cost estimate deemed agreed by Reimbursing Party?

Commented [Dentons11]: I don't think we need these words.

2.3.6 **In the absence of agreement between the Recovering Party and the Reimbursing Party to the costs estimate (or revised costs estimate) the Recovering Party shall not be required to take any steps or do or agree anything in accordance with this Document under or relating to the relevant provision.**

Commented [ML12]: As stated previously if a Reasonable and Prudent Operator has incurred costs which are recoverable under OAD, the Party should be able to recover these irrespective as to whether an estimate has been provided.

2.3.7 **Unless the Recovering Party and the Reimbursing Party have agreed a costs estimate (or revised costs estimate) the Recovering Party shall not be entitled to recover recoverable**

Would suggest that more dialogue is required between Transporters regarding work so that costs recovery can be discussed. .

costs, provided nothing in this paragraph 2.3 shall prevent the Recovering Party from recovering recoverable costs from the Reimbursing Party not identified in a costs estimate (or revised costs estimate) where the relevant circumstances:

- (a) resulted from an emergency;
- (b) in the case of relevant circumstances under Section G, related to:
 - (i) routine maintenance the extent of which was not known at the time of the receipt or provision of the final (or updated) Maintenance Programme; or
 - (ii) non-routine maintenance not included in a Maintenance Programme;
- (c) could not have been reasonably anticipated by the Recovering Party prior to the relevant circumstances arising

provided in each case that the Recovering Party gives notice to the Reimbursing Party no later than sixty (60) Business Days after occurrence of the relevant circumstances.

2.3.8 Where the Recovering Party proposes to recover any recoverable costs under paragraph 2.3.7 it shall provide reasonable evidence to the Reimbursing Party of the specific amount of recoverable costs incurred by it in any particular case in which recoverable amounts are recoverable under a relevant provision.

2.3.9 This paragraph 2.3 shall not:

- (a) entitle the Reimbursing Party to delay in paying the amount of any recoverable costs (but without prejudice to its right to require a subsequent adjustment where relevant);
- (b) require the Recovering Party to provide evidence supporting rates or unit amounts of costs which are provided for in the statement referred to in paragraph 2.2.4.

Commented [Dentons13]:
To avoid the potential for confusion referred to by NG?