

All,

I agreed to write to all operators that attend the O646r workgroup to outline the basic requirements behind OAD's Loss & Liability provisions set out in Section N of the framework. This is covered by the Action 0206 that was recorded at the last workgroup.

Section N7.1.2 is the main clause for the knock for knock principle as follows:

*7.1.2 Subject to paragraph 7.2, each Party shall be responsible for its own Loss and Liability, irrespective of whether any such Loss and Liability results from:*

- (a) the breach by any other Party of any provision of this Document; or*
- (b) any act or omission (negligent or otherwise) by any other Party, or any officer, employee, agent or Affiliate of another Party, in the course of the performance of or otherwise in connection with the subject matter of this Document.*

The liability regime in Section N7.1 is viewed as comprehensive. N7.1.1 outlines the types of loss covered by the exclusion in N7.1.2. This includes damage to property, and not just property comprising the Connection Facilities, but also damage to property comprising the party's wider System. Section N covers the loss suffered due to (i) the other party's breach of contract, for instance a breach of the non-interference obligation in B2.4 and (ii) the other party's negligence. Where a duty of care exists, and the duty of care is breached and the loss arising is foreseeable then the person suffering loss may have a claim in tort for negligence. However OAD purposefully excludes claims in both contract and tort for negligence.

There are some limited qualifications to the knock for knock regime. N7.2.4 outlines essentially that beyond a party agreeing to the exclusions in N7.1, in effect a waiver of rights to bring a claim of breach of contract or in tort, the party is not giving up other rights it might have due to the other party being in breach of some other applicable legal requirement, e.g. under statute, regulations or licence.

As pointed out by National Grid at the last workgroup, there are interference clauses within clause B2.4. These detail the obligation not to interfere or do anything which would damage the other party's Connection Facilities. Sadly, the clause is silent on the consequences of a party damaging Connection Facilities except in the case of an emergency. If any damage is the result of a party taking emergency action it must repair/reinstate the damaged Connection Facilities at its own cost. However, any such repairs are likely to be undertaken by the impacted party rather than the damaging party due to competence requirements. It is therefore anticipated that the cost recovery rules would come into play in such a scenario.

I hope that you can see from the above that where breach of the OAD requirements occurs and/or one operator incurs damage to their assets/system as a result of another party's actions, there is no recourse for the impacted party to claim back any costs or loss that are subsequently incurred. The current arrangements also do not seem to take into consideration the level of risk, as one operator may have more risk exposure than another depending upon the type of incident involved and where they are in the supply chain.

It may be prudent that the current OAD loss & liability arrangements are re-visited and amended to one that accommodates and supports a 'whole system' approach.

Kind Regards, Darren Dunkley