

Representation For. 0025

"Notice Period for Credit Limit Downgrade and Remedies for Non-compliance"
Version 1.0

Date of Communication: 20/09/2005
External Contact: Simon Howe (R W E Npower Plc)
Slant: Against
Strictly Confidential: No

Abstract

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Mod 0025 "Notice Period for Credit Limit Downgrade and Remedies for Non-compliance"

Dear Julian,

Thank you for the opportunity to respond on Mod 0025. RWE npower can not support this proposal because we believe that the legal text is seriously flawed.

This proposal is in two parts, the first is to reduce the time scale for a review of a User's Code Credit Limit in the case of a downgrading from 30 days to 2 days. The second aspect is to introduce financial penalties if the User fails to provide additional security within the new time scale.

The matter of reviewing the Code Credit Limit following a downgrading of the User's Credit Rating was discussed at length at various Distribution Workstream Meetings. It was generally understood why a Transporter might wish to protect themselves, and by implication the other Users, if another User suffers a downgrading of its Credit Rating. Whilst not everyone was happy with the reduction of 30 to 2 days, it was accepted in the main as the appropriate time scale due to the fact that this was identified in Ofgem's conclusion document "Best Practice Guidelines for Gas and Electricity Network Operator Credit Cover" 58/05.

However, in the proposed legal text V. 3.2.4 it refers to "or 2 Business Days in the case of (c)". The text of c is "where any published credit rating of the User or any person providing surety for the User is revised downwards;" (the writer's underlining). The consequence of the legal text is that a perfectly sound User, whose credit rating is unaffected, will be faced with having to find

additional security at 2 days notice because the credit rating of another person or company is downgraded. I do not believe that this was the intention of the Proposal, but it would be the result if the Mod is approved. Whilst a User will be aware of its own financial position, it can only be aware of the financial condition of another company through information in the public domain. Credit Rating Agencies are often in privileged positions in order to perform their duties and so can react quickly when necessary.

The second new paragraph in the proposal 3.2.9 states "... User must where notified by the Transporter provide additional surety or security no later than 0559 on the second Business Day after the date of the notice". The implication of the inclusion of the 0559 timetable (whilst being the end of a Gas Day) in effect means that the Users has only 1 Business Day after the notice day to arrange the required additional surety or security. We believe that the time should have been 2359 on the second Business day.

The second part of the Proposal deals with the financial penalties that will be levied upon a User if the User fails to provide the additional security within the 2 business days. If it were not for the fact that there are already significant penalties for a User not to comply with the requirement we might have a degree of sympathy with this level of charging. Although this has been identified in the Best Practice Guidelines as a solution to the late provision of additional security, we are not aware of, and Transco did not provide, any evidence that the extra incentive was required. Any User who wants to remain in business will comply with the request for additional security, rather than be subject to penalties as described in the UNC.

Further, the "Late Payment of Commercial Debt Act" is an act that was introduced to penalise large companies, who as a result of their size were late in paying invoices to small companies. Subsequently the law was revised to apply to all companies. This Modification is contrary to this principle as it is concerned with payment of security not invoices.

We believe that these provisions are too onerous and could fatally contribute to financial problems that the User might be facing.

Considering these important points RWE npower believe this proposal to be flawed. We can not support it in its current form.

Yours sincerely,

Simon Howe.
Gas Network Codes Manager