

CODE MODIFICATION PROPOSAL No 0234
To Correct Drafting Inconsistencies between Sections X and V of the UNC in Respect of
User Default and Termination
Version 1.0

Date: 31/10/2008

Proposed Implementation Date: 01/01/2009

Urgency: Non Urgent

1 The Modification Proposal

a) Nature and Purpose of this Proposal

Uniform Network Code (UNC) referenced Sections are to the Transportation Principal Document except where stated otherwise.

In light of unprecedented recent events in financial markets and the failure of Lehman Brothers Commodity Services Inc, the Energy Balancing Credit Committee (EBCC) has carried out a review of both the Energy Balancing Credit Rules (EBCR) and Section X - Energy Balancing Credit Management. This identified potential areas where, through the effective management of energy balancing credit, controls could be further tightened in pursuit of minimising Users' exposures to avoidable financial loss.

It is worthy of note that in reviewing the potential areas of concern, the EBCC has already authorised amendments to the EBCR which were republished on 15th October 2008 and can be found on the Joint Office of Gas Transporters website. EBCC will continue its work in this area.

This is one of three Proposals that have resulted from discussions within EBCC. Each Proposal is essentially stand-alone and can be evaluated on its own merits. EBCC believes, however, that implementation of each Proposal would further reduce the risk of exposure of Users to financial loss as a result of User Default.

Nature

It is proposed that the provisions within Section X2.9.3 pertaining to payment of Cash Calls, Section X2.10.10 pertaining to the satisfaction of Further Security Requests, Section X3.2.2 pertaining to the payment of Energy Balancing Invoices and provisions pertaining to the issue of Termination Notice pursuant to X4.3 contained within section V 4.3.11 (a) and (b) be amended to be consistent with the provisions of Section V 4.3.3. (The relevant wording has been highlighted in the excerpt below and change marked in the Suggested Text).

Section V 4.3.3

Upon the occurrence of a User Default, and at any time after such occurrence at which the User Default is continuing the Transporter may give

notice (“Termination Notice”) to the Defaulting User to the effect that the User shall cease to be a User of or in relation to its System(s) with effect from the date (which may be any date on or after the date on which the notice is given) specified in the notice.

It is also proposed, for the purpose of clarity, that the list of events and circumstances in Section V4.3.1, where a User Default has occurred, be extended to include the circumstances set-out in Sections X2.9.3, X2.10.10 and Section X3.2.2 where National Grid NTS would be entitled to issue a Termination Notice.

Purpose

EBCC’s review has highlighted drafting inconsistencies between the provisions in respect of Energy Balancing defaults covered in Section X and those within Section V. At present where a User fails to comply with its obligations in respect of Energy Balancing Credit Management Cash Call, Further Security Request, Payment of Energy Balancing Invoice and the appointment of a receiver the Code specifies that a Termination Notice issued to a User shall be effective the Day following the date of the Termination Notice. All such default situations refer issue of the Termination Notice to Section V4.3.3 which has no such restriction and provides for the Termination Notice to be effective from the date specified in the notice. These drafting inconsistencies have the potential to increase Users’ financial exposures by preventing a Termination Notice resulting from a User Default driven by one or all of the Energy Balancing Credit Management process outlined above, from becoming effective until, at the earliest, the start of the following Day. Where the User participates in Trade Nominations in accordance with Section C, this prevents avoidance of exposure to an additional Day’s activity. Although the recent failure of Lehman Brothers Commodity Services Inc did not expose Users to such avoidable financial loss as a result of this inconsistency, it has highlighted the risk of increasing financial exposure that could be avoided.

Implementation of this Proposal would remove this inconsistency and reduce Users’ exposure, in the event of a decision to Terminate, by one Day.

In respect of the proposed amendments to Section V4.3.1, implementation would add clarity to this Section of the UNC.

b) Justification for Urgency and recommendation on the procedure and timetable to be followed (if applicable)

Urgency is not requested.

c) Recommendation on whether this Proposal should proceed to the review procedures, the Development Phase, the Consultation Phase or be referred to a Workstream for discussion.

The proposer believes that this Proposal is relatively straightforward and is sufficiently well developed to go immediately to consultation. Additionally it is requested that a shortened consultation period of 10 Business Days be allocated.

Discuss at Transmission Workstream	06 November 2008
Discuss at Modification Panel	20 November 2008
Draft Modification Report Issued	21 November 2008
Consultation Closed	5 December 2008
Discuss at Modification Panel	18 December 2008
Final Modification Report Issued	30 December 2008
Ofgem Decision	January 2009

2 Extent to which implementation of this Modification Proposal would better facilitate the achievement (for the purposes of each Transporter's Licence) of the Relevant Objectives

(d)... the securing of effective competition: (i) between relevant shippers; (ii) between relevant suppliers....

Implementation of this Modification Proposal would facilitate this objective by reducing Users' exposure to unnecessary risk. Whilst not directly enhancing competition, it would help secure effective competition by minimising any potential costs to all shippers and suppliers from a User Default.

(f) – so far as is consistent with sub-paragraphs (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code;

Implementation of this Modification Proposal would result in consistent processes for similar situations.

3 The implications of implementing this Modification Proposal on security of supply, operation of the Total System and industry fragmentation

No implications on security of supply, operation of the Total System or industry fragmentation have been identified.

4 The implications for Transporters and each Transporter of implementing this Modification Proposal, including:

a) The implications for operation of the System:

No implications for the operation of the System have been identified

b) The development and capital cost and operating cost implications:

No development nor capital costs have been identified

c) Whether it is appropriate to recover all or any of the costs and, if so, a proposal for the most appropriate way for these costs to be recovered:

No such costs have been identified.

d) The consequence (if any) on the level of contractual risk of each Transporter under the Uniform Network Code of the Individual Network Codes proposed to be modified by this Modification Proposal

No consequence to the level of contractual risk to transporters has been identified.

5 The extent to which the implementation is required to enable each Transporter to facilitate compliance with a safety notice from the Health and Safety Executive pursuant to Standard Condition A11 (14) (Transporters Only)

No such requirements have been identified.

6 The development implications and other implications for the UK Link System of the Transporter, related computer systems of each Transporter and related computer systems of Users

No such implications have been identified.

7 The implications for Users of implementing the Modification Proposal, including:

a) The administrative and operational implications (including impact upon manual processes and procedures)

No such implications have been identified.

b) The development and capital cost and operating cost implications

No such implications have been identified.

c) The consequence (if any) on the level of contractual risk of Users under the Uniform Network Code of the Individual Network Codes proposed to be modified by this Modification Proposal

Implementation of this Modification Proposal should reduce the level of contractual risk of Users by reducing the time period before a Termination Notice issued to a Defaulting User becomes effective.

8 The implications of the implementation for other relevant persons (including, but without limitation, Users, Connected System Operators, Consumers, Terminal Operators, Storage Operators, Suppliers and producers and, to the extent not so otherwise addressed, any Non-Code Party)

No such implications have been identified.

9 Consequences on the legislative and regulatory obligations and contractual relationships of the Transporters

No such consequences have been identified.

10 Analysis of any advantages or disadvantages of implementation of the Modification Proposal not otherwise identified in paragraphs 2 to 9 above

Advantages

- Reduces the exposure of Users in the event of a User Default by up to one Day.

Disadvantages

No disadvantages have been identified.

11 Summary of representations received as a result of consultation by the Proposer (to the extent that the import of those representations are not reflected elsewhere in this Proposal)

None.

12 Detail of all other representations received and considered by the Proposer

None.

13 Any other matter the Proposer considers needs to be addressed

None.

14 Recommendations on the time scale for the implementation of the whole or any part of this Modification Proposal

It is proposed that this Modification be implemented with immediate affect following approval by the Authority.

15 Comments on Suggested Text

The changes reflect the timing of the effectiveness of a Termination Notice issued to a Defaulting User in Section X.

The changes that will extend the list of circumstances and events that constitute a User Default are in preparation.

16 Suggested Text

UNIFORM NETWORK CODE – TRANSPORTATION PRINCIPAL DOCUMENT SECTION X – ENERGY BALANCING CREDIT MANAGEMENT

Amend Section X2.9.3 as follows:

“2.9.3 Where National Grid NTS has given notice to a User under paragraph 2.9.1, and the User has not paid the amount referred to in the notice in full after one Business Day following the date of such notice, National Grid NTS shall be entitled to and after such Business Day subject to paragraph 2.9.7 may give Termination Notice (for the purposes of Section V4.3.3) to the User to the effect that the User shall cease to be a User with effect from the ~~Day following the date of the Termination Notice~~ date (which may be any date on or after the date on which the notice is given) specified in the notice.”

Amend Section X 2.10.10 as follows:

“2.10.10 Subject to paragraph 2.10.12, where the User has not provided the further, additional or revised Security in accordance with the Further Security Request by 12:00 hours on the Business Day following the date the Failure to Supply Further Security Notice was submitted and irrespective of the User's Outstanding Relevant Code Indebtedness as at any Day after the submission of the Further Security Request, National Grid NTS shall be entitled to, and as soon as reasonably practicable thereafter may, give Termination Notice to the User (for the purposes of Section V4.3.3) to the effect that the User shall cease to be a User with effect from the ~~Day following the date of the Termination Notice~~ date (which may be any date on or after the date on which the notice is given) specified in the notice and National Grid NTS shall send a copy of any notice given under this paragraph 2.10.10 to the Authority.”

Amend Section X 3.2.2 as follows:

“3.2.2 Where National Grid NTS has given notice to a User under paragraph 3.2.1 and the User has not paid the outstanding amount of the Net Invoice Amount in full by the Business Day following the date of such notice, National Grid NTS shall be entitled to and, subject to paragraph 3.2.5, as soon as reasonably practicable after such Business Day may, give Termination Notice (for the purposes of Section V4.3.3) to the User to the effect that the User shall cease to be a User with effect from the ~~Day following the date of the Termination Notice~~ date (which may be any date on or after the date on which the notice is given) specified in the notice.”

Code Concerned, sections and paragraphs

Uniform Network Code

Transportation Principal Document

Section(s) Section V4,3,1; Section X2.9.3; Section X 2.10.10; Section X 3.2.2

Proposer's Representative

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