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Dear John,

Re: UNC Modification Proposal 0262 - Treatment of Capacity affected by Force Majeure

E.ON UK does **not support** this proposal.

Although compared to the current UNC rules, this proposal provides some compensation for Shippers affected by a Force Majeure (FM) claim, we are concerned that there are inadequate safeguards to prevent this proposed mechanism being misused by National Grid NTS (NG NTS) to avoid the expense of having to buy-back capacity. This may lead to circumstances where FM is then claimed in inappropriate circumstances, significantly undermining the contractual rights of Shippers by allowing NG NTS to escape its commitments.

In any other circumstance apart from where FM is claimed, there is a mechanism in place should NG NTS not be able to accommodate the gas entering or leaving the System: it buys-back the capacity. This provides the appropriate incentive for National Grid to meet its obligations and commitments to provide capacity where it has previously agreed to do so. Where a buy-back is deemed necessary by NG NTS, it will ask for buy-back offers from Shippers at the required terminals. Shippers will then place offers on the Gemini system, where all offers can be seen by the community. This mechanism appropriately provides Shippers with the opportunity to make an offer to NG NTS which reflects the extent of the commercial loss they would suffer as a result of NG NTS buying-back that capacity. We note

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that a weighted average price-based rebate, as proposed in this instance is not likely to cover the full extent of a Shipper's loss in the event of a FM claim.

Buying-back capacity from Shippers has the potential to be very costly for NG NTS, as we have seen in practice in recent years. However, avoiding significant cost should not be used as a reason for NG NTS to declare FM and thereby bypass the established buy-back mechanism. By definition, FM should be used only in exceptional circumstances and even then it is legitimately subject to challenge by any Shipper. Given the very serious ramifications of an FM declaration, we would be surprised if no affected Shipper(s) were to contest a FM claim. We note that bouncing Shippers into a zero-priced surrender of capacity will have a major impact where a Shipper is contesting the FM claim. If NG NTS calls FM at short notice, it should not (as proposed here) be able to force Shippers to surrender capacity, as what would happen in respect of Shipper compensation if the FM claim is later successfully challenged (i.e. determined not to be Force Majeure)? How would the price that NG would have had to pay under the buy-back arrangements be determined? In our view, it is only reasonable that NG NTS should have to buy-back capacity first and if it later successfully defended its claim of FM, then the buy-back could be reclaimed by NG NTS, less the compensation the shipper is entitled to keep.

We are also concerned that loose definition of the "Force Majeure Option Agreement" and "Force Majeure Forward Agreement" permits considerable discretion for NG NTS, which the Shipper appears to have little or no control over.

We note that this proposal intends to replace the current UNC TPD Section J 3.6. For ease of reference, this states:

3.6 Force Majeure

3.6.1 Where:

- (a) by reason of Force Majeure affecting the Transporter, the Transporter is relieved from liability in respect of its obligation to make gas available for offtake from the Total System at a System Exit Point; and
- (b) the occurrence of Force Majeure continues for a period of more than 7 Days,

for each Day after the 7th Day on which the Transporter continues to be relieved of such obligation, the User(s) registered as holding System Capacity at such point will cease to be liable to pay the Capacity Charges referred to in paragraph 3.6.2.



By introducing this proposal, the relief from liability for exit capacity charges for Shippers would no longer cease after 7 days. It is difficult to assess whether it would be more costly overall for Shippers under the current arrangements compared to those proposed, as much depends on the length of the FM claim (i.e. whether it is greater or less than 7 days in duration). Therefore, we struggle to take a view on whether this proposal provides true benefits for Shippers in respect of exit capacity.

Overall, although we see benefit in providing affected Shippers with compensation in the event of an FM claim (albeit fairly limited in quantity), we believe this proposal would have adverse implications for Shippers wishing to contest the validity of a National Grid FM claim. As such it has the potential to seriously affect the balance of power between Shippers and NG NTS to the detriment of the former. We would also not want to see this proposed rebate being used as a 'sweetener' to affected Shippers to ensure they are less inclined to contest an FM claim, since after the rebate has been applied their loss will be less significant than before. This diverts attention away from the fundamental issue – of whether the FM claim is valid in the first place. As highlighted above, our key concern is that FM could be claimed more regularly by NG NTS, potentially leading to its use in inappropriate circumstances. This would not be a desirable outcome.

Yours sincerely,

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