

Draft Manifest Error provisions for inclusion in the Uniform Network Code

2.17 Manifest Errors for Entry Capacity Overruns

2.17.1 The meaning of Manifest Error

For the purposes of this section [B2.17], there is a 'Manifest Error' in relation to the application for NTS Entry Capacity where and only where there was a manifest error on the part of the User resulting in that User holding insufficient aggregate Available NTS Entry Capacity (Fully Adjusted) and as a result, the User has incurred System Entry Overrun Charges greater than £50,000.

2.17.2 Claiming Manifest Errors

2.17.2.1 Where a User considers that a Manifest Error has occurred, such User may as soon as reasonably practicable after becoming aware of the error and where possible prior to the Invoice Due Date relating to the relevant System Entry Overrun Charges and in any event no later than 1 month following the relevant Invoice issue date raise a claim to that effect by giving notice of such claim to National Grid NTS (a '**Claim**').

2.17.2.2 Notwithstanding paragraph [B2.17.2.1] Claims relating to the period between 1st April 2010 and [the Implementation Date] must be raised with National Grid NTS by no later than 1 month after [the Implementation Date]. No Claims may be made relating to the period prior to 1st April 2010.

2.17.2.3 A single claim may be raised where a User has incurred overrun charges on a number of Days or at a number of ASEPs as a result of a Manifest Error.

2.17.2.4 A User shall include with its Claim the information set out in paragraph 3.3 of the Manifest Error Guidance Document.

2.17.2.5 Where a User raises a Claim, a fee shall be payable by the User to National Grid NTS for each such Claim the amount of which shall be £5000, or such other amount prevailing at the time the Claim is raised; this fee shall not be reimbursed in any circumstances. The fee may be amended from time to time by the UNCC, after consultation with Users, upon not less than 30 days notice to Users.

2.17.3 Flagging Manifest Errors

Where a User raises a Claim to National Grid NTS under paragraph [B2.17.2.1] or [B2.17.2.2], National Grid NTS shall within 3 Business Days acknowledge the Claim in writing and notify Users that a Claim has been made and shall provide to Users the information set out in paragraph 3.8 of the Manifest Error Guidance Document.

2.17.4 Manifest Error Process

2.17.4.1 The UNCC shall consider Claims in accordance with this paragraph [B2.17].

2.17.4.2 The UNCC may establish or appoint a sub-committee to discharge its functions under this paragraph [B2.17]. The UNCC may not authorise such a sub-committee to make any decision or to adopt any procedure in reaching such a decision, other than in accordance with this section [B2.17].

2.17.4.3 Where a Claim is raised:

- (i) National Grid NTS shall instruct the UNCC Secretary to arrange a meeting of the UNCC giving 5 Business Days notice where possible, and at the latest within 10 Business Days of the relevant User raising the Claim with National Grid NTS. Where the UNCC could consider the Claim before the relevant Invoice Due Date, all parties will use reasonable endeavours to hold the meeting at the earliest opportunity.

- (ii) At the initial meeting of the UNCC to consider the Claim, the relevant User shall provide evidence and information supporting that Claim.
- (iii) At the initial meeting of the UNCC National Grid NTS shall provide information in relation to the Manifest Error Claim including:
 - (1) verification of the System Entry Overrun Charges incurred (the '**Original Overrun Charges**');
 - (2) verification of the User's relevant entry capacity auction purchases;
 - (3) verification of relevant secondary entry capacity trade buys and sells of the User;
 - (4) and details of the specific operational circumstances including the quantity of capacity unsold at D-1, and information regarding any relevant constraints, curtailments and buybacks which may have occurred.
- (iv) The UNCC may make reasonable requests for further information, giving 5 Business Days notice, to National Grid NTS and to the relevant User.
- (v) If the relevant User fails to provide any evidence or comply with a reasonable request for further information from the UNCC within 5 Business Days (or such other time as was agreed when the request was made) then the UNCC may reject the Claim and paragraph [B2.17.7.3] shall not apply.
- (vi) The UNCC shall within 55 Business Days of the Claim being raised, determine whether a valid Manifest Error occurred in accordance with paragraph [B2.17.5] and taking into account the evidence and information submitted by the relevant User and the information submitted by National Grid NTS.
- (vii) If the UNCC determines that a Claim constitutes a valid Manifest Error the UNCC shall also determine the level of System Entry Overrun Charges that the User should be liable to pay in accordance with paragraph [B2.17.6] ('**Adjusted Overrun Charges**'). The difference between the Original Overrun Charges and the Adjusted Overrun Charges shall be the '**Adjustment Amount**'.
- (viii) If the UNCC determines that the criteria set out in paragraph [B2.17.5.1] are not satisfied, the UNCC shall reject the Claim.
- (ix) The UNCC shall notify its determinations to National Grid NTS, Users and the Authority within 3 Business Days of making a determination.
- (x) The UNCC shall within 5 Business Days issue a report setting out the reasons for its determinations to National Grid NTS, Users and the Authority.
- (xi) The fee under paragraph [B2.17.2.5] shall be invoiced by Ad-hoc invoice within 1 month of the determination.
- (xii) Where the UNCC determines that the Original Overrun Charges should be adjusted the User shall:
 - (1) without prejudice to the User's liability under section S3.5, if the User has not paid the Original Overrun Charges, pay only the Adjusted Overrun Charges; and
 - (2) if the User has paid the Original Overrun Charges, National Grid NTS shall pay to the User the amount equal to the Adjustment Amount together with interest on the Adjustment Amount at the Applicable Interest Rate set out in paragraph S3.6.4(b), calculated on a Daily basis to the Adjustment Amount from the date the User paid the Original Overrun Charges to but not including the date National Grid NTS pays the Adjustment Amount.
- (xiii) National Grid NTS shall undertake the adjustments necessary to give effect to the determination of the UNCC, either at the time of the next entry capacity Invoice

date provided that there are 10 Business Days notice available or otherwise at the time of the subsequent entry capacity Invoice date .

- (xiv) Users shall pay any invoices issued by National Grid NTS to give effect to the determination of the UNCC.

2.17.5 Valid Manifest Error

2.17.5.1 For a Claim to constitute a valid Manifest Error, the UNCC shall determine by a simple majority vote that the following criteria are satisfied:

- (i) it was a genuine, unintended error; and
- (ii) the User was not seeking unfair commercial advantage.

2.17.6 Adjustments to Original Overrun Charges

2.17.6.1 Having reviewed the evidence and information provided by the User and information provided by National Grid NTS, the UNCC shall for each Day and each ASEP which is the subject of a Claim calculate Reference Cost 1 and Reference Cost 2, and may also calculate Reference Cost 3 and any further Reference Costs, in accordance with this paragraph [B2.17.6] (each a '**Reference Cost**').

- (i) Reference Cost 1 in respect of any Day is the cost of the quantity of NTS Entry Capacity which the relevant User required but did not hold. This will be calculated as follows:

$$X * (Y + 0.05 * Y)$$

Where:

X = the amount of the overrun quantity; and

Y = the highest of:

- 1) the highest priced accepted bid in the most recent monthly auction relating to NTS Entry Capacity at the relevant ASEP for the relevant Day (or the reserve price if there were no higher priced accepted bids);
- 2) the highest priced accepted bid in the daily auction relating to NTS Entry Capacity for the relevant Day at the relevant ASEP; and
- 3) an appropriate price to reflect the amount that the relevant User could reasonably have been expected to pay for the NTS Entry Capacity that it required for the relevant Day, when capacity has been surrendered at or transferred from the relevant ASEP on the relevant Day. This shall be based on a detailed assessment of the specific circumstances on the relevant Day.

- (ii) Reference Cost 2 in respect of any Day shall be 20% of the Original Overrun Charges relating to that Day.
- (iii) Reference Cost 3, if required, in respect of any Day, shall be any costs incurred by National Grid NTS directly associated with any consequences resulting from the Manifest Error, which would not have been incurred, but for the Manifest Error.
- (iv) The UNCC may calculate and use further Reference Costs for any Day where it believes that their use is objectively justified in the specific circumstances of the Claim.
- (v) Reference Cost 3 and further Reference Costs may be amounts up to 100% of the Original Overrun Charges.

- (vi) The UNCC shall specifically explain its rationale for the calculation and use of each Reference Cost in its report issued pursuant to paragraph [B2.17.4.].
- 2.17.6.2 Except where paragraph [B2.17.6.3] applies the UNCC shall make its determination of the appropriate level of the Adjusted Overrun Charges within the range established by the highest and lowest Reference Costs by:
- (i) applying the factors set out in paragraph [B2.17.6.4] (the '**Factors**'); and
 - (ii) complying with the requirements of paragraphs [B2.17.6.5 to B2.17.6.7 inclusive].
- 2.17.6.3 Where costs (other than the Original Overrun Charges and the associated Neutrality Charges) have been incurred by National Grid NTS on a relevant Day at a relevant ASEP as a result of the Manifest Error, the UNCC may conclude that Reference Cost 3 is the appropriate level of Adjusted Charges for the relevant Day, without considering the relevant Factors, unless the UNCC believes there are extenuating circumstances which justify an alternative Adjustment Amount.
- 2.17.6.4 The UNCC shall consider each of the following Factors:
- (i) how promptly the User acted in relation to informing National Grid NTS of the Manifest Error and took all reasonable steps to avoid repetition of the error, following its discovery;
 - (ii) the extent to which the User had taken reasonable steps to ensure that it had prudent systems and processes in place at the time the error was made;
 - (iii) the extent to which the magnitude of the aggregate charges incurred as a result of the error was wholly disproportionate, due weight being given to the desirability of incentivising Users to avoid mistakes in capacity bookings;
 - (iv) the extent to which the error was attributable to a failure or inadequacy of National Grid NTS systems; and
 - (v) the extent to which the error was attributable to an inaccuracy in published information.
- 2.17.6.5 The UNCC shall consider the contribution of each of the Factors, where it believes them to be relevant, and the relative weight it attaches to each in order to determine the level of the Adjusted Overrun Charges.
- 2.17.6.6 In deciding on the application of the Factors the UNCC should ensure that its proposed level of the Adjusted Overrun Charges achieves a fair and reasonable balance between:
- (i) the need to maintain incentives to book capacity in advance;
 - (ii) the particular circumstances and nature of the Manifest Error; and
 - (iii) the reasonableness of charges which the User should pay as a result of a Manifest Error.
- 2.17.6.7 Where the UNCC considers that different treatment is justified in respect of different Days, ASEPs or overrun quantities covered by a Claim, it may calculate the Reference Costs and apply relevant Factors to determine Adjusted Overrun Charges for each Day or each ASEP individually.
- 2.17.6.8 In its concluding report the UNCC should explain its assessment of the individual Factors and the weighting that it has allocated to each of those Factors in arriving at its determination of the level of the Adjusted Overrun Charges.
- 2.17.7 Default Adjustment
- 2.17.7.1 Where the UNCC fails to reach a determination within 55 Business Days of the Claim being made or within such extended period as agreed in writing by the relevant User and the UNCC (the '**Determination Period**'), the level of the Adjusted Overrun Charges will be set in accordance with this paragraph [B2.17.7].

2.17.7.2 Neither the relevant User nor the UNCC shall unreasonably withhold or delay consent to a request for an extension to the Determination Period.

2.17.7.3 If paragraph [B2.17.7.1] applies, then subject to paragraph [B2.17.4.3v)] the level of the Adjusted Overrun Charges will be the mid-point between Reference Cost 1 and Reference Cost 2, calculated pursuant to paragraph [B2.17.6] above.

2.17.8 Manifest Error Guidance Document and UNCC members' liability

2.17.8.1 The "Manifest Error Guidance Document" is the document from time to time established, published and revised by National Grid NTS (subject to prior approval by Panel Majority of the UNCC) and which provides a guide to the process for determining whether a Manifest Error has occurred and if so the process to set the levels of the Adjusted Overrun Charges. The terms of the Code prevail over the terms of the Manifest Error Guidance Document.

2.17.8.2 In relation to the exercise of their functions under this paragraph [B2.17], no member of the UNCC shall be liable (whether in contract or tort including negligence or otherwise) to National Grid NTS or any of the Users for anything done when acting properly or in connection with his office under this paragraph [B2.17], or anything done in what such member believes in good faith to be the proper exercise and discharge of the powers, duties, functions and discretions of that office in accordance with this paragraph [B2.17]; and each User and National Grid NTS waives any such liability that any such member may have in respect of any claim in respect thereof.

2.17.8.3 In relation to the exercise of their functions under this paragraph [B2.17], each member of the UNCC shall act reasonably, in good faith and independently of the interests of the Users by whom they are employed.

2.17.8.4 The determination of the UNCC under this paragraph [B2.17] has the power to bind National Grid NTS and each of the Users.

Section V.12 of the Uniform Network Code shall be amended as follows:

"12.1(f) the Manifest Error Guidance Document"