

**Draft Modification Report**  
**Clarification of Gas Supply Emergency Claims Review Criteria**  
**Modification Reference Number 0636**  
Version 1.0

This Draft Modification Report is made pursuant to Rule 7.3 of the Modification Rules and follows the format required under Rule 8.9.3.

## **1. The Modification Proposal**

The original proposal was as follows:

"It is proposed that in the event of a National Gas Supply Emergency (NGSE), claims by Users for financial loss (existing paragraph Q4.2.5) would be subject to the following principles:

- Allowed costs should be based on an appellant's total costs and not the cost of an individual source;
- Intra-group transfers should be deemed to be made at market price;
- "Windfall gains" should be netted off wherever possible;
- Reasonable administrative/legal costs of making a claim should be allowed, but subsequent costs of pursuing a claim should not be;
- The above costs should be limited to 5% of the net claim; and
- Net income from the value of electricity sold less cost of gas shall be taken into account in the case of a power station "directed on" under PGCA rules."

Discussion within the NT&T Workstream has clarified and amended the original proposal. This has led to the:

1. Withdrawal of the final bullet relating to PGCA rules;
2. Changes to the definition of "intra-group transfers" and "market price"; and
3. Recognition of treatment of "windfall gains"

### **Intra-Group Transfers**

The Workstream suggested that definition of intra-group should reflect the definition of a "33 1/3% Affiliate" as defined in accordance with the Network Code W2.9.7: "An **"Affiliate"** of a specified percentage in relation to a body corporate is:

- i) another body corporate which holds not less than the specified percentage of the voting rights of the first body corporate; or
- ii) a subsidiary of the first body corporate of such a body corporate as is referred to in paragraph (i);

and for these purposes "voting rights", "holding" voting rights and "subsidiary" are to be construed in accordance with Section 736A of the Companies Act 1985."

Thus any transfer by a User to a 33 1/3% affiliate would be deemed to be made at market price.

### **Market Price**

The Workstream suggested that there should be a three stage determination of market price:

1. If the market had not been suspended at the commencement of the Day, the SAP calculated from all the OCM trades that had taken place would set the market price for intra-group transfers.
2. If the market had been suspended at the commencement of the Day or Transco reasonably believed that this SAP was not market reflective it would propose a price to Ofgem for approval.
3. If Ofgem did not approve Transco's proposed market price an expert would be appointed generally in accordance with Section T2 of the Network Code and that expert would determine the applicable market price.

## **Windfall Gains**

The Workstream suggested that this issue would be solved by the satisfactory treatment of allowed costs based on an appellant's total costs . The principle accepted was that claims should be submitted on the basis of the net cost derived from all sources of gas allocated to the User on that Day. This relied upon the assumption that the User would derive a benefit if its average purchase price of gas were lower than the cash-out price for that Day but would face a cost if its average purchase price were higher than the cash-out price.

## **2. Transco's Opinion**

Transco considers that the existing lack of clarity underlying the present claims process could, where discretion exists, be detrimental to the provision of support available from Users in the event of a NGSE.

Transco has considered carefully the principles suggested by the Workstream in respect of market price determination. Whilst the Network Code refers to a "claims reviewer" in the context of Section Q: Emergencies, Transco believes that person would effectively assume the role of expert. Transco therefore proposes that the claims reviewer role include the determination of market price. This would avoid any potential conflict in criteria adopted by the claims reviewer and a separate expert.

Transco agrees that any "part-day" SAP would normally form a reasonable basis for determining market price and proposes that the claims reviewer pay due regard to any such price in deriving a market price.

Transco would not welcome taking on the role of formally nominating a market price but it anticipates that the claims reviewer would wish to consult with parties such as Transco before arriving at any decision. The role of Ofgem in this process as a final arbiter is already embodied within the Network Code and Transco considers that this role is best served if Ofgem is not required to make any formal direction prior to the final stage.

## **3. Extent to which the proposed modification would better facilitate the relevant objectives**

Providing clear criteria for evaluation of claims would increase the confidence with which Users would make gas available to the System in the event of a NGSE. This is consistent with the securing of effective competition between relevant Shippers.

**4. The implications for Transco of implementing the Modification Proposal , including**  
**a) implications for the operation of the System:**

Transco has not identified any implications for operation of the System.

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

Transco has not identified any development; capital cost; or operating cost implications.

**c) extent to which it is appropriate for Transco to recover the costs, and proposal for the most appropriate way for Transco to recover the costs:**

Transco does not propose to recover any costs arising from the implementation of this Modification Proposal.

**d) analysis of the consequences (if any) this proposal would have on price regulation:**

Transco is not aware of any consequences that implementation of this Modification Proposal would have on price regulation.

**5. The consequence of implementing the Modification Proposal on the level of contractual risk to Transco under the Network Code as modified by the Modification Proposal**

Transco is not aware of any change in its level of contractual risk.

**6. The development implications and other implications for computer systems of Transco and related computer systems of Users**

Transco is not aware of any development or other implications for computer systems arising from the implementation of this Modification Proposal.

**7. The implications of implementing the Modification Proposal for Users**

Transco considers that Users would face a lower level of financial risk as a consequence of co-operation with the NEC.

**8. The implications of implementing the Modification Proposal for Terminal Operators, Consumers, Connected System Operators, Suppliers, producers and, any Non-Network Code Party**

The implications of a NGSE would extend to all parts of the gas chain including Non-Network Code Parties. It would therefore be expected that the benefits arising from maximising commercial opportunities through the establishment of clear claims criteria would apply to various gas industry participants.

**9. Consequences on the legislative and regulatory obligations and contractual relationships of Transco and each User and Non-Network Code Party of implementing the Modification Proposal**

Transco is not aware of any such consequences.

**10. Analysis of any advantages or disadvantages of implementation of the Modification Proposal**

Transco has identified the following advantages arising from implementation and no disadvantages:

- Greater clarity for the settlement of claims where Users or their affiliates take gas from a variety of sources and/or have financial interests in various links of the gas chain.
- Avoidance of excessive legal and associated costs flowing through to balancing neutrality. This clarity and constraint on legal costs would assist Users in risk management.

**11. Summary of the Representations (to the extent that the import of those representations are not reflected elsewhere in the Modification Report)**

Transco invites representations to this Modification Proposal.

**12. The extent to which the implementation is required to enable Transco to facilitate compliance with safety or other legislation**

Transco is not aware of any such requirement.

**13. The extent to which the implementation is required having regard to any proposed change in the methodology established under Standard Condition 4(5) or the statement furnished by Transco under Standard Condition 4(1) of the Licence**

Transco is not aware of any such requirement.

**14. Programme of works required as a consequence of implementing the Modification Proposal**

Transco is not aware of any requirement for a programme of works.

**15. Proposed implementation timetable (including timetable for any necessary information systems changes)**

Transco sees no reason why there should be any delay to implementation of this Proposal but would welcome representation on this point.

**16. Recommendation concerning the implementation of the Modification Proposal**

Transco recommends implementation of the Modification Proposal.

**17. Text**

## SECTION Q

Amend paragraph 4.2.5 to read as follows:

“4.2.5 Where a User . . . the relevant price in respect of the aggregate quantity of gas delivered to the System on a Day ...:

- (i) . . . amount of such loss (and which may include an amount in respect of administrative and professional costs incurred by the claimant for the purposes of submitting a claim);
  - (ii) . . . so that it will not suffer such financial loss and in considering the amount which the claimant should be paid the claims reviewer will have regard to the criteria in paragraph 4.2.6;
- ...”

Add a new paragraph 4.2.6 to read as follows:

“4.2.6 The criteria referred to in paragraph 4.2.5(ii) are:

- (a) account will only be taken of the claimant’s aggregate net costs in relation to the aggregate quantity of gas delivered to the System on the relevant Day;
- (b) the maximum amount that may be taken into account in respect of administrative and professional costs incurred in submitting a claim shall be an amount equal to the lesser of the actual costs incurred and 5% of the total amount payable (if any);
- (c) no account will be taken of any administrative or professional costs incurred by the claimant following submission of the claim; and
- (d) the maximum amount that may be taken into account in respect of payments made to a 33 1/3% Affiliate of a claimant for gas shall be an amount equal to the lesser of the actual payment made and an amount equal to the fair market price for gas on the relevant Day. For the purposes of this sub-paragraph (d) such fair market price shall be the amount determined by the claims reviewer as such (and in making such determination the claims reviewer shall, in the event that the Network Gas Supply Emergency Gas Deficit Emergency did not apply for any part of that Day, have due regard to the System Average Price applicable for such part of that Day)".

Amend paragraph 4.3.1 to read as follows:

“4.3.1 Save where paragraph 3.5.1 applies ... suffer a financial loss in respect of the aggregate quantity of gas delivered to the System on a Day ...:

- (a) the claimant may ... on which it believes it will suffer such loss and the amount thereof (which may include an amount in respect of administrative and professional costs incurred by the claimant for the purposes of submitting a claim);”
- (b) Transco will appoint ... the claimant should be paid so that it will not suffer such financial loss (and in considering the amount which the claimant should be paid the claims reviewer will have regard to the criteria in paragraph 4.3.2);”

...”

Renumber paragraph 4.3.2 as paragraph 4.3.3 and insert a new paragraph 4.3.2 as follows:

“4.3.2 The criteria referred to in paragraph 4.3.1(b) are:

- (a) account will only be taken of the claimant’s aggregate net costs in relation to the aggregate quantity of gas delivered to the System pursuant to paragraph 3.3.3 on the relevant Day;
- (b) the maximum amount that may be taken into account in respect of administrative and professional costs incurred in submitting a claim shall be an amount equal to the lesser of the actual costs incurred and 5% of the total amount payable (if any);
- (c) no account will be taken of any administrative or professional costs incurred by the claimant following submission of the claim; and
- (d) the maximum amount that may be taken into account in respect of payments made to a 33 1/3% Affiliate of a claimant for gas shall be an amount equal to the lesser of the actual payment made and an amount equal to the System Average Price for the relevant Day.”

***Representations are now sought in respect of this Draft Report and prior to Transco finalising the Report***

Signed for and on behalf of Transco.

Signature:

**Mike Calviou**  
**Commercial Frameworks Manager**  
**NT & T**

Date: