

# **MANIFEST ERRORS IN RELATION TO ENTRY OVERRUN CHARGES**

[DOCUMENT CONTROL TABLE]

**DRAFT [GUIDANCE] VERSION [1 FOR PUBLICATION]**

[TABLE OF CONTENTS]

## **1 INTRODUCTION:- PURPOSE AND SCOPE OF THIS [GUIDANCE DOCUMENT]**

- 1.1 THIS DOCUMENT IS INTENDED AS A GUIDE TO THE STEPS TO BE TAKEN TO PROCESS A MANIFEST ERROR CLAIM, FROM THE INITIAL RAISING OF A CLAIM TO THE FINAL SETTLEMENTS OF ANY ADJUSTMENTS IN RELATION TO THE CLAIM.
- 1.2 THIS DOCUMENT SHOULD BE READ IN CONJUNCTION WITH [SECTION B .... OF THE UNC] AND IS INTENDED TO PROVIDE [FURTHER EXPLANATION AND A GUIDE TO THE PROCESS.]
- 1.3 IN THE EVENT OF ANY INCONSISTENCY BETWEEN THIS DOCUMENT AND THE UNC, THE PROVISIONS OF THE UNC SHALL APPLY.
- 1.4 [STATUS OF THE DOCUMENT – I.E. THE RULES FOR MODIFYING IT. WE INTEND THAT THE CENTRAL PROCESSES AND CONSIDERATIONS SHOULD RESIDE IN THE UNC, SO A UNC MOD WOULD BE NEEDED TO MAKE CHANGES TO THE MAIN FEATURES OF THE PROCESS INCLUDING THE ADJUSTMENTS PROCESS. THIS DOC WOULD BE A UNC RELATED DOC, AND SO CAPABLE OF CHANGE BY UNC COMMITTEE (UNCC) MAJORITY VOTE/PREVAILING RULES OF UNCC DECISION MAKING, BUT UNC WILL TAKE PRECEDENCE]

## **2 SUMMARY OF THE PROCESS**

- MANIFEST ERROR MAY BE CLAIMED IF A USER INCURS ENTRY CAPACITY OVERRUN CHARGES [OF £50,000/DAY OR MORE] AS A RESULT OF A GENUINE, UNINTENTIONAL ERROR IN ITS CAPACITY BOOKINGS.
- THERE IS A £5000 ADMINISTRATION FEE FOR MAKING EACH CLAIM.
- THE CLAIMANT RAISES A CLAIM TO THE TRANSPORTER AS SOON AS POSSIBLE, AT LATEST 1 MONTH AFTER THE INVOICE ISSUE DATE.
- TRANSPORTER ACKNOWLEDGES RECEIPT OF THE CLAIM IN WRITING
- TRANSPORTER NOTIFIES ALL USERS AS SOON AS POSSIBLE, AT LATEST WITHIN 3 BUSINESS DAYS OF RECEIPT OF THE CLAIM, VIA THE JOINT OFFICE.
- THE JOINT OFFICE ARRANGES FOR THE MATTER TO BE CONSIDERED AT A MEETING OF THE UNC COMMITTEE (UNCC) [AT THE EARLIEST OPPORTUNITY].
- THE CLAIMANT IS REQUIRED TO PRESENT EVIDENCE TO THE UNCC MEETING TO SUPPORT ITS CLAIM, AND THE TRANSPORTER PROVIDES INFORMATION AS REQUIRED
- UNCC CONSIDERS THE CLAIM IMPARTIALLY AND INDEPENDENTLY OF COMPANY INTERESTS, AND DECIDES A) WHETHER THE CLAIM IS VALID, AND IF SO, B) WHAT ADJUSTMENTS SHOULD BE MADE TO THE OVERRUN CHARGES
- UNCC HAS [60] DAYS FROM THE DATE ON WHICH THE CLAIM WAS RAISED TO REACH ITS DECISIONS

- JOINT OFFICE NOTIFIES ALL USERS OF THE CONCLUSION WITHIN 3 BUSINESS DAYS, AND PUBLISHES A REPORT ON THE DECISIONS WITHIN 5 BUSINESS DAYS OF THE DECISION.
- *[CLAIMANT CAN APPEAL DECISION TO OFGEM IF IT BELIEVES THE DECISION HAS NOT BEEN TAKEN IN ACCORDANCE WITH THE UNC/GUIDELINES, PROCEDURE HAS NOT BEEN FOLLOWED, OR IF THEIR CLAIM HAS NOT BEEN CONSIDERED IN AN IMPARTIAL WAY ETC?]- TO BE IN A SEPARATE MOD.*

### **3 MANIFEST ERROR TREATMENT IN THE UNC – DETAILS OF PROCESS STEPS**

#### ***RAISING A CLAIM***

- 3.1 A USER CAN RAISE A CLAIM FOR MANIFEST ERROR IF IT BELIEVES THAT IT HAS INCURRED OVERRUN CHARGES [OF GREATER THAN £50,000/DAY] AS A RESULT OF AN ERROR.
- 3.2 [THE UNCC HAS DISCRETION TO CONSIDER CLAIMS OF LESS THAN £50,000, BUT WILL GENERALLY BE EXPECTED TO REJECT CLAIMS WHICH FALL SHORT OF THIS THRESHOLD.]
- 3.3 THE USER CAN RAISE A CLAIM BY GIVING NOTICE OF SUCH A CLAIM TO THE TRANSPORTER, AS SOON AS REASONABLY PRACTICABLE AND WHERE POSSIBLE BEFORE THE INVOICE DUE DATE. CLAIMS FOR ERRORS OCCURRING AFTER [THE IMPLEMENTATION DATE OF THE MOD] MUST BE RAISED WITHIN [1 MONTH] OF THE INVOICE ISSUE DATE. CLAIMS OCCURRING [PRIOR TO THE IMPLEMENTATION DATE BUT SINCE 1<sup>ST</sup> APRIL 2010] MUST BE RAISED WITHIN [1 MONTH] OF THE IMPLEMENTATION DATE.
- 3.4 A CLAIM FOR MANIFEST ERROR MUST STATE:-
- THAT IT IS A CLAIM FOR MANIFEST ERROR IN RELATION TO ENTRY CAPACITY OVERRUN CHARGES
  - RELEVANT ASEP
  - DATE(S) ON WHICH THE ERROR OCCURRED
  - EXTENT OF ERROR (I.E. APPROX QUANTITY OF CAPACITY NOT BOOKED AND OVERRUN CHARGE APPLICABLE, IF KNOWN)
  - A BRIEF EXPLANATION OF HOW/WHY THE MANIFEST ERROR OCCURRED
- 3.5 A SINGLE AGGREGATE CLAIM MAY BE MADE WHERE MULTIPLE CONSECUTIVE DAYS OF OVERRUN CHARGES HAVE BEEN INCURRED, AND CONSIDERATION OF ANY ADJUSTMENTS MAY BE MADE IN RELATION TO EACH DAY INDIVIDUALLY OR IN AGGREGATE AS THE UNCC SEES FIT (SEE SECTIONS 5 AND 6 ON DETERMINATION OF ADJUSTMENTS).
- 3.6 USERS RAISING A CLAIM WILL BE LIABLE TO PAY A NON-RETURNABLE ADMINISTRATION FEE OF [£5000] TO THE TRANSPORTER OR OTHER SUCH AMOUNT AS DETERMINED BY THE UNCC IN ACCORDANCE WITH SECTION [B ?] OF THE UNC. THIS STATES THAT THE UNCC CAN CHANGE THE FEE PROVIDED IT CONSULTS WITH USERS FIRST AND GIVES 30 DAYS NOTICE OF THE CHANGE.

#### ***ACKNOWLEDGEMENT AND NOTIFICATION***

- 3.7 WHERE A CLAIM IS RAISED, THE TRANSPORTER WILL [WITHIN 3 BUSINESS DAYS] ACKNOWLEDGE THE CLAIM IN WRITING AND NOTIFY ALL USERS VIA THE JOINT OFFICE THAT A CLAIM HAS BEEN RECEIVED. THE JOINT OFFICE WILL

PUBLISH THE NOTIFICATION ON ITS WEBSITE AND NOTIFY ALL USERS ON ITS DISTRIBUTION LIST

- 3.8 THE NOTIFICATION TO ALL USERS MUST CONTAIN THE FOLLOWING:-
- THAT A CLAIM FOR MANIFEST ERROR HAS BEEN MADE
  - RELEVANT ASEP(S)
  - PERIOD (I.E. MONTH) IN WHICH THE ERROR IS CLAIMED TO HAVE OCCURRED
  - DUE DATE OF INVOICE CONTAINING RELEVANT CAPACITY NEUTRALITY AMOUNTS
  - AN INDICATION OF THE MATERIALITY OF THE CLAIM, SPECIFYING A GENERAL RANGE WITHIN WHICH THE CLAIM FALLS.
  - ANY OTHER RELEVANT INFORMATION
- 3.9 THE NOTIFICATION SHOULD NOT EXPLICITLY IDENTIFY THE CLAIMANT UNLESS THE CLAIMANT AGREES.
- 3.10 'ANY OTHER RELEVANT INFORMATION' IN 3.8 ABOVE MAY INCLUDE (IF IT IS KNOWN AT THE TIME) WHETHER OR NOT THE CLAIMANT HAS PAID/WILL PAY THE RELEVANT AMOUNTS, AND HENCE WHETHER OR NOT OTHER USERS WILL RECEIVE OR HAVE RECEIVED PAYMENT THROUGH CAPACITY NEUTRALITY WHICH THEY MAY LATER BE REQUIRED TO PAY BACK.

#### ***CONVENING THE UNCC***

- 3.11 IT IS INTENDED THAT CLAIMS SHOULD ALWAYS BE CONSIDERED AS PROMPTLY AS POSSIBLE, BUT THE UNCC HAS A MAXIMUM OF [60] DAYS FROM THE DATE ON WHICH THE CLAIM WAS RAISED] TO REACH ITS DECISIONS. (NB: WHERE THIS IS NOT ACHIEVED, THE DEFAULT POSITION WILL APPLY [SEE 7 BELOW ])
- 3.12 THE JOINT OFFICE WILL ARRANGE FOR THE MATTER TO BE PLACED ON THE AGENDA FOR A MEETING OF THE UNCC AT THE EARLIEST POSSIBLE OPPORTUNITY. A SPECIAL MEETING OF THE UNCC CAN BE CALLED IF IT WOULD FACILITATE CONSIDERATION OF THE CLAIM IN ADVANCE OF THE INVOICE DUE DATE.
- 3.13 THE UNCC WILL MEET TO CONSIDER THE CLAIM. THE RELEVANT SECTION OF A UNCC MEETING MAY BE HELD IN PRIVATE TO PROTECT THE [COMMERCIAL CONFIDENTIALITY] OF THE CLAIMANT, IF THE CLAIMANT WISHES.
- 3.14 IF NECESSARY, THE UNCC MAY APPOINT A SUB-COMMITTEE TO CARRY OUT ITS DUTIES UNDER SECTION [B?]. THE PREVAILING RULES OF GENERAL TERMS GTB SECTION 4 WHICH GOVERN THE UNCC [E.G. ON VOTING RIGHTS, AND 4.3.6 IN RELATION TO INDEPENDENCE] SHALL APPLY.
- 3.15 MEMBERS OF THE UNCC SHOULD DECLARE IF THEY HAVE A SPECIFIC INTEREST WITH THE CLAIMANT [OTHER THAN BENEFITING THROUGH CAPACITY NEUTRALITY] WHICH MAY PRECLUDE THE MEMBER CONSIDERING THE CLAIM FAIRLY. THE UNCC MAY, BY MAJORITY VOTE, PERMIT THE MEMBER TO CONSIDER THE CLAIM IF IT BELIEVES THAT THE MEMBER WILL ACT INDEPENDENTLY.
- 3.16 THE MEMBERS OF THE UNCC DO NOT HAVE PERSONAL INDIVIDUAL LIABILITY IN RELATION TO THEIR CONSIDERATION OF MANIFEST ERROR CLAIMS, AND ARE EXPECTED TO ACT INDEPENDENTLY OF THEIR COMPANY INTERESTS AND IN GOOD FAITH.

#### ***UNCC DECISIONS***

**3.17 THE UNCC WILL DETERMINE:-**

A) WHETHER A MANIFEST ERROR OCCURRED AND IF SO,

B) WHAT ADJUSTMENT SHOULD BE MADE TO THE RESULTING OVERRUN CHARGES.

THE PROCESS, CONSIDERATIONS AND CRITERIA TO BE USED BY THE UNCC IN MAKING THESE DECISIONS ARE COVERED IN SECTIONS 4, 5 AND 6 BELOW.

**REPORTING OF DETERMINATION**

3.18 AS SOON AS PRACTICABLE AND WITHIN [3 BUSINESS DAYS] OF THE UNCC DETERMINATION BEING REACHED, THE TRANSPORTER (I.E. UNCC SECRETARY) WILL FORMALLY NOTIFY THE OUTCOME TO THE CLAIMANT, OFGEM, AND ALL USERS VIA THE JOINT OFFICE.

3.19 WHERE THE DETERMINATION MEANS THAT USERS WILL BE REQUIRED TO PAY BACK MONEY RECEIVED PREVIOUSLY AS A RESULT OF CAPACITY NEUTRALITY, THE NOTIFICATION WILL SPECIFY THAT THIS WILL BE THE CASE, AND GIVE THE RELEVANT INVOICE DUE DATE. THE NOTIFICATION WILL STATE THAT AN ADJUSTMENT TO CAPACITY NEUTRALITY WILL BE MADE, [BUT NOT NECESSARILY QUANTIFY THE OUTCOME FOR INDIVIDUAL USERS OR THE LEVEL OF ADJUSTED OVERRUN CHARGES PAYABLE].

3.20 AS SOON AS PRACTICABLE, AND WITHIN [A MAXIMUM OF 5 BUSINESS DAYS] OF THE UNCC REACHING ITS DECISIONS, THE UNCC SECRETARY WILL PRODUCE A REPORT EXPLAINING THE DECISIONS OF THE UNCC, FOR PUBLICATION TO THE CLAIMANT, OFGEM AND ALL USERS. AN EDITED VERSION MAY BE PROVIDED FOR USERS IF NECESSARY TO PROTECT THE [COMMERCIAL CONFIDENTIALITY] OF THE CLAIMANT.

**CREDIT ISSUES**

3.21 WHERE A USER WOULD HAVE DIFFICULTY IN PAYING OVERRUN CHARGES, IT SHOULD BRING THIS TO THE ATTENTION OF THE TRANSPORTER IMMEDIATELY, AND THE NORMAL CREDIT RULES AND EBCC PROCEDURES WILL APPLY. [THERE ARE NO SPECIFIC OR ALTERNATIVE CREDIT PROVISIONS ASSOCIATED WITH THIS PROCESS]

**IMPLEMENTATION OF THE OUTCOME**

3.22 THE TRANSPORTER WILL UNDERTAKE THE ADJUSTMENTS NECESSARY (E.G. REVERSE NEUTRALITY CHARGES) TO GIVE EFFECT TO THE DETERMINATION OF THE UNCC, [AT THE TIME OF THE NEXT ENTRY CAPACITY INVOICE DATE PROVIDED THAT THERE IS [X] DAYS NOTICE TO ENABLE THE IMPLEMENTATION TO BE MADE, OTHERWISE AT THE TIME OF THE SUBSEQUENT ENTRY CAPACITY INVOICE.].

3.23 THE ADMINISTRATION FEE WILL BE INVOICED [AT THE NEXT ENTRY CAPACITY INVOICE DATE] [VIA AN AD HOC INVOICE] FOLLOWING THE UNCC DETERMINATION.

**[APPEALS ]**

**[A SEPARATE SIMPLE PROPOSAL WILL BE DEVELOPED FOR APPEALS, WHICH WOULD ESSENTIALLY PROVIDE FOR:-**

- **THE CLAIMANT TO BE ALLOWED TO APPEAL TO OFGEM ON LIMITED GROUNDS ONLY E.G. IF IT BELIEVES [PROCEDURE] HAS NOT BEEN FOLLOWED IN RELATION TO CONSIDERATION OF ITS CLAIM, OR IF IT BELIEVES THE UNCC HAS NOT ACTED IMPARTIALLY.**

- *SHORT TIME LIMIT FOR RAISING APPEALS [5 DAYS AFTER REPORT IS PUBLISHED]*
- *FURTHER FEE OF £5000 PAYABLE TO [OFGEM]?*
- *OFGEM CAN UPHOLD, SEND BACK OR AMEND THE DECISION OF THE UNC]*

## **4 DETERMINATION OF VALID MANIFEST ERROR – CONSIDERATIONS**

### ***EVIDENCE REQUIREMENTS***

- 4.1 IN ORDER FOR THE CLAIM TO BE CONSIDERED, IT IS THE RESPONSIBILITY OF THE CLAIMANT TO PROVIDE EVIDENCE THAT ITS ERROR WAS GENUINE AND UNINTENDED.
- 4.2 THE UNCC CHAIR INVITES THE CLAIMANT TO PROVIDE EVIDENCE TO THE UNCC TO SUPPORT ITS CLAIM, AND THE TRANSPORTER TO PROVIDE INFORMATION IN RELATION TO THE CLAIM.

### ***CLAIMANT EVIDENCE***

- 4.3 CLAIMANT EVIDENCE MAY INCLUDE, BUT IS NOT LIMITED TO, THE FOLLOWING:-
- EXPLANATION OF HOW / WHY THE ERROR OCCURRED, INCLUDING WHY CLAIMANT WAS UNAWARE OF THE ERROR AT THE TIME, AND HOW IT BECAME AWARE OF THE ERROR.
  - STEPS TAKEN TO MITIGATE/RECTIFY THE ERROR, INCLUDING WHEN THE STEPS WERE TAKEN.
  - EXPLANATION OF THE CLAIMANT’S INTENTIONS/CIRCUMSTANCES E.G. CONTRACTUAL OBLIGATIONS FOR WHICH GAS WAS BEING DELIVERED, INTENDED BOOKING / AVAILABLE CAPACITY AT THE TIME.
  - EVIDENCE/DEMONSTRATION OF PRUDENT OPERATIONS:- E.G. NO COMMERCIAL GAIN INTENDED, NO SCHEDULING CHARGES INCURRED AS A RESULT AND NOMINATIONS PROCESSES OPERATING EFFECTIVELY, EXPLANATION OF RISK MANAGEMENT PROCEDURES/SYSTEMS.
  - SUCH FURTHER INFORMATION AS IS REASONABLY REQUESTED BY THE UNCC IN ORDER TO ENABLE IT TO ESTABLISH THE VALIDITY OR OTHERWISE OF THE CLAIM.
- 4.4 PERFORMANCE ‘TRACK RECORD’ AND/OR HISTORICAL INFORMATION MAY BE PRESENTED BY THE CLAIMANT AS CONTEXT TO THEIR CLAIM AS APPROPRIATE
- 4.5 NEW SHIPPERS WILL NOT BE JUDGED ON AND WILL NOT BE EXPECTED TO PROVIDE A PERFORMANCE TRACK RECORD, BUT AN APPROPRIATE ALTERNATIVE MAY BE TO PROVIDE EVIDENCE OF ITS EFFORTS TO OPERATE PRUDENTLY, FOR EXAMPLE IN HAVING PROVIDED TRAINING / MADE APPROPRIATE INVESTMENT IN SYSTEMS ETC.
- 4.6 INFORMATION SUCH AS CAPACITY BOOKINGS OR OTHER CLAIMANT PERFORMANCE AND/OR HISTORICAL DATA MAY BE PRESENTED IN SUCH A WAY AS TO PRESERVE [COMMERCIAL CONFIDENTIALITY], AND IF REQUIRED,

VERIFICATION OF THE INFORMATION PRESENTED BY THE CLAIMANT CAN BE SOUGHT BY THE UNCC FROM THE TRANSPORTER.

#### ***TRANSPORTER INFORMATION***

4.7 THE TRANSPORTER IS REQUIRED TO OFFER THE FOLLOWING INFORMATION FOR THE CONSIDERATION OF A CLAIM:-

- DETAILS OF THE CLAIMANT'S ENTRY CAPACITY AUCTION PURCHASES FOR THE RELEVANT ENTRY OVERRUN DAYS AT THE RELEVANT ASEP
- SECONDARY ENTRY CAPACITY TRADE BUYS AND SELLS OF THE CLAIMANT (DETAILING QUANTITIES TRADED BUT NOT THE COUNTERPARTIES) FOR THE ENTRY OVERRUN DAY(S) AT THE ASEP.
- VERIFICATION OF ENTRY CAPACITY OVERRUN CHARGES INCURRED
- DETAILS OF THE SPECIFIC OPERATIONAL CIRCUMSTANCES ON THE ENTRY OVERRUN DAYS IN QUESTION (E.G. CAPACITY UNSOLD AT D-1, INFORMATION REGARDING ANY CONSTRAINTS, SCALEBACKS, BUYBACKS WHICH MAY HAVE OCCURRED ETC.)
- ANY OTHER RELEVANT INFORMATION CHAIR/UNCC MEMBERS REQUESTS, WHILST RESPECTING [COMMERCIAL CONFIDENTIALITY]

BY WAY OF EXAMPLE, 'ANY OTHER RELEVANT INFORMATION' MAY INCLUDE, BUT IS NOT LIMITED TO

- VERIFICATION OF CLAIMANT'S CAPACITY BOOKING TRACK RECORD, OR OTHER EVIDENCE PROVIDED BY THE CLAIMANT
- ANY PREVIOUS INCIDENCES OF OVERRUNS
- THE EXTENT TO WHICH CLAIMANT MAY HAVE BENEFITTED FROM THE OVERRUN (WHETHER INADVERTENTLY OR INTENTIONALLY), WHERE IT IS POSSIBLE FOR THE TRANSPORTER TO ASSESS.
- ENERGY NOMINATION/RE-NOMINATION DETAILS/HISTORY FOR THE RELEVANT DAYS

#### ***CRITERIA FOR A VALID MANIFEST ERROR***

4.8 THE UNCC WILL CONSIDER THE INFORMATION PRESENTED, AND DETERMINE IF IN ITS OPINION A VALID MANIFEST ERROR OCCURRED, TAKING INTO ACCOUNT THE FOLLOWING CRITERIA:-

- THAT IT WAS A GENUINE, UNINTENDED 'ADMINISTRATIVE' ERROR (AS OPPOSED TO A COMMERCIAL MIS-JUDGEMENT)
- THAT THE USER WAS UNAWARE AT THE TIME
- THAT THE USER WAS INTENDING TO OPERATE 'PRUDENTLY' (I.E. WAS NOT SEEKING UNFAIR COMMERCIAL ADVANTAGE)

## **5 DETERMINATION OF ADJUSTED OVERRUN CHARGES**

### **OVERVIEW**

- 5.1 IN THE EVENT THAT THE UNCC DECIDES THAT A VALID MANIFEST ERROR HAS OCCURRED, IT SHALL THEN DETERMINE AN ADJUSTMENT TO THE ORIGINAL OVERRUN CHARGES INCURRED IN ACCORDANCE WITH [UNC B? AND THIS DOCUMENT], TO SET THE CHARGES WHICH THE CLAIMANT WILL BE REQUIRED TO PAY INSTEAD ('THE ADJUSTED OVERRUN CHARGES'). IF IT IS NOT VALID, THE OVERRUN CHARGES WILL STAND AS INCURRED WITHOUT ADJUSTMENT.
- 5.2 IN DETERMINING THE ADJUSTMENT, THE UNCC MUST CONSIDER BOTH THE SPECIFIC CIRCUMSTANCES AND ANY CONSEQUENCES OF THE ERROR. IT MUST CALCULATE 2 OR 3 REFERENCE COSTS WHICH RELATE DIRECTLY AND SPECIFICALLY TO THE CLAIM, AND CONSIDER RELEVANT FACTORS ASSOCIATED WITH THE CIRCUMSTANCES. THE UNCC THEN DETERMINES A FIGURE FOR THE ADJUSTED OVERRUN CHARGES, AS A PERCENTAGE OF THE ORIGINALLY INCURRED OVERRUN CHARGES, USING THE FACTORS TO GUIDE ITS DECISION BETWEEN THE UPPER AND LOWER REFERENCE COSTS.
- 5.3 THE REFERENCE COST PROCESS IS INTENDED TO PROVIDE THE UNCC WITH DISCRETION TO SET THE LEVEL OF ADJUSTED OVERRUN CHARGES WITHIN A REASONABLY ASSESSED RANGE, SUCH THAT A FAIR BALANCE IS STRUCK BETWEEN THE NEED TO MAINTAIN INCENTIVES TO BOOK CAPACITY, THE PARTICULAR CIRCUMSTANCES OF THE ERROR, AND THE REASONABLENESS OF CHARGES WHICH SHOULD BE PAID AS A RESULT OF AN ERROR.
- 5.4 THE RELEVANT FACTORS ARE PROVIDED TO GUIDE THE DECISION OF THE UNCC BETWEEN THE MINIMUM AND MAXIMUM LEVEL OF COSTS SET BY THE REFERENCE COSTS.

### **ADJUSTMENT PRINCIPLES**

- 5.5 IN CALCULATING ANY ADJUSTMENT TO OVERRUN CHARGES, THE UNCC SHOULD HAVE REGARD TO THE FOLLOWING GENERAL PRINCIPLES:
- OVERRUN CHARGES ARE INTENDED TO PROVIDE AN INCENTIVE TO BOOK ADEQUATE CAPACITY IN ADVANCE THROUGH THE AVAILABLE PROCESSES.
  - IT SHOULD NOT BE CHEAPER TO PURSUE A MANIFEST ERROR CLAIM THAN TO PURCHASE THE CAPACITY CORRECTLY IN ADVANCE.
  - A PROCESS OF DETERMINATION BETWEEN MULTIPLE REFERENCE COSTS IS USED TO AVOID THE FINANCIAL OUTCOME OF A VALID MANIFEST ERROR CLAIM BEING PREDICTABLE AHEAD OF THE EVENT, OTHERWISE THE PROCESS COULD CREATE A PERVERSE INCENTIVE TO CLAIM MANIFEST ERROR.
  - THE UNCC IS REQUIRED TO CONSIDER:-
    - THE SPECIFIC OPERATIONAL CIRCUMSTANCES OF THE CLAIM ON THE DAY(S) IN QUESTION.
    - ANY CONSEQUENCES RESULTING FROM THE ERROR.
    - THE FACTORS LISTED [IN 6 BELOW], AND ANY OTHER FACTORS IT CONSIDERS RELEVANT TO THE CLAIM.
  - IF BUYBACKS HAVE OCCURRED, THE CLAIMANT WILL GENERALLY BE EXPECTED TO PAY THE FULL OVERRUN CHARGE FOR THAT DAY SINCE IT IS LIKELY THAT THE OVERRUN WILL HAVE CONTRIBUTED TO THE REQUIREMENT TO BUYBACK CAPACITY, AND THE ASSOCIATED COSTS. HOWEVER, THE UNCC

WILL EXAMINE THE SPECIFIC SITUATION ON THE DAY(S) IN QUESTION IN CASE THERE SHOULD BE ANY EXTENUATING CIRCUMSTANCES, AND MAKE ITS DECISION ABOUT WHETHER TO INCORPORATE BUYBACK COSTS AS A REFERENCE COST AND/OR MAKE ADJUSTMENTS ACCORDINGLY.

***DETERMINING REFERENCE COSTS***

- 5.6 THE UNCC MUST DETERMINE 2 OR 3 REFERENCE COSTS WHICH ARE RELEVANT TO THE CAPACITY WHICH WAS NOT BOOKED FOR THE ENTRY OVERRUN DAY(S) IN QUESTION AND TO THE CIRCUMSTANCES ASSOCIATED WITH THE MANIFEST ERROR.
- 5.7 REFERENCE COST 1 IN RESPECT OF ANY DAY IS THE MINIMUM DAILY 'CORRECT' COST ASSOCIATED WITH PURCHASING THE APPROPRIATE QUANTITY OF CAPACITY IN ADVANCE THROUGH THE DAILY AUCTIONS, ACCORDING TO THE NORMAL PURCHASING PRACTICE AND INTENTIONS OF THE CLAIMANT. (I.E: WHAT IT WOULD HAVE BEEN IF THE CLAIMANT HADN'T MADE THE ERROR). IF THE CLAIMANT INTENDED TO HAVE BOUGHT CAPACITY AT THE MONTHLY AUCTIONS, THE MONTHLY PRICE WOULD APPLY FOR EACH DAY. WHERE THE CLAIMANT INTENDED TO USE THE DAILY AUCTIONS, AND CAPACITY WOULD HAVE BEEN AVAILABLE AT ZERO COST, THE RESERVE PRICE FOR CAPACITY MADE AVAILABLE AT THE MOST RECENT MONTHLY AUCTION PROCESS FOR THE PERIOD IN QUESTION WILL BE USED. (THIS IS TO AVOID REFERENCE COST 1 BEING SET AT ZERO FOR ANY DAY.)
- 5.8 REFERENCE COST 2 IN RESPECT OF ANY DAY IS 20% OF THE OVERRUN CHARGES AS ORIGINALLY INCURRED FOR THAT DAY. THIS MAY BE LOWER OR HIGHER THAN THE OTHER REFERENCE COSTS, DEPENDING ON THE CIRCUMSTANCES AND THE SCALE OF THE OVERRUN CHARGES CONCERNED. IN GENERAL THOUGH, CLAIMANTS WOULD NOT BE EXPECTED TO RECOVER MORE THAN 80% OF THE OVERRUN CHARGES INCURRED.
- 5.9 REFERENCE COST 3, IF REQUIRED, IN RESPECT OF ANY DAY, SHOULD BE ANY FURTHER RELEVANT SPECIFIC COSTS ASSOCIATED WITH THE CLAIM, I.E. THOSE DIRECTLY ASSOCIATED WITH ANY CONSEQUENCES RESULTING FROM THE MANIFEST ERROR, WHICH WOULD NOT HAVE OCCURRED OTHERWISE. THIS MAY BE APPLICABLE WHEN BUYBACKS HAVE OCCURRED ON THE SAME DAY ON WHICH A MANIFEST ERROR HAS OCCURRED, OR IN OTHER EXCEPTIONAL CIRCUMSTANCES. WHERE REFERENCE COST 3 IS CALCULATED, THE UNCC SHOULD EXPLAIN ITS RATIONALE SPECIFICALLY IN ITS CONCLUDING REPORT. REFERENCE COST 3 MAY BE UP TO 100% OF THE ORIGINAL OVERRUN CHARGES.
- 5.10 FOR ANY ENTRY OVERRUN DAY IN QUESTION, THE REFERENCE COSTS AS CALCULATED [ABOVE] WILL PROVIDE A RANGE WITHIN WHICH THE UNCC MUST THEN SETTLE A FIGURE FOR THE ADJUSTED OVERRUN CHARGES USING THE FACTORS IN [6] BELOW.

***TREATMENT OF AGGREGATE CLAIMS***

- 5.11 WHERE OVERRUN CHARGES HAVE BEEN INCURRED ON MORE THAN ONE DAY AND HAVE BEEN RAISED AS A SINGLE AGGREGATE CLAIM, THE UNCC CAN CHOOSE AS IT SEES FIT TO DEAL WITH THE APPLICATION OF THE FACTORS TO THE MAXIMUM/MINIMUM REFERENCE COSTS IN AGGREGATE, (FOR EXAMPLE WHERE THE CIRCUMSTANCES ARE STRAIGHTFORWARD AND THE SAME ON EACH DAY IN QUESTION), OR IN DISCRETE PERIODS OF A DAY (SHOULD THE UNCC BELIEVE DIFFERENT TREATMENT MIGHT BE WARRANTED IN RESPECT OF DIFFERENT DAYS IN AN AGGREGATE CLAIM).
- 5.12 THE MINIMUM CHARGE THAT SHOULD APPLY TO AN AGGREGATE PERIOD OF DAYS FOR CONSIDERATION OF RELEVANT FACTORS PURSUANT TO SECTION 6 IS THE



SUM OF THE LOWEST OF THE DAILY REFERENCE COSTS APPLICABLE FOR EACH DAY IN THE PERIOD. (FOR THE AVOIDANCE OF DOUBT, WHERE NO REFERENCE COSTS 3 HAS BEEN ESTABLISHED FOR A PARTICULAR DAY THEN THE APPLICABLE MINIMUM CHARGE WILL BE THE LOWER OF REFERENCE COSTS 1 AND 2.)

- 5.13 THE MAXIMUM CHARGE THAT SHOULD APPLY TO AN AGGREGATE PERIOD OF DAYS FOR CONSIDERATION OF RELEVANT FACTORS PURSUANT TO SECTION 6 IS THE SUM OF THE MAXIMUM OF THE DAILY REFERENCE COSTS APPLICABLE FOR EACH DAY IN THE PERIOD.

## **6 REVIEW OF RELEVANT FACTORS**

- 6.1 IN DETERMINING THE APPROPRIATE LEVEL OF ADJUSTED OVERRUN CHARGES, THE UNCC SHALL MAKE ITS DETERMINATION WITHIN THE RANGE ESTABLISHED PURSUANT TO SECTION [5], BY HAVING REGARD TO THE FOLLOWING FACTORS, WHERE THE UNCC CONSIDERS SUCH FACTORS TO BE RELEVANT.

- I. HOW PROMPTLY THE CLAIMANT ACTED IN RELATION TO INFORMING THE TRANSPORTER OF THE ERROR AND TOOK ALL REASONABLE STEPS TO AVOID REPETITION OF THE ERROR, FOLLOWING ITS DISCOVERY.
- II. 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
- III. THE EXTENT TO WHICH THE CLAIMANT HAD TAKEN REASONABLE STEPS TO ENSURE THAT IT HAD PRUDENT SYSTEMS AND PROCESSES IN PLACE AT THE TIME THE ERROR WAS MADE
- IV. THE EXTENT TO WHICH THE ERROR WAS ATTRIBUTABLE TO A FAILURE OF [GEMINI/UKLINK/CENTRALLY PROVIDED SYSTEMS]
- V. THE EXTENT TO WHICH THE ERROR WAS ATTRIBUTABLE TO AN INACCURACY IN PUBLISHED INFORMATION, E.G. LEVELS OF CAPACITY AVAILABLE

- 6.2 IN ITS CONCLUDING REPORT THE UNCC WILL EXPLAIN ITS ASSESSMENT OF THE INDIVIDUAL FACTORS AND THE DUE WEIGHTING THAT IT HAS APPLIED TO THEM IN ARRIVING AT ITS FINAL DETERMINATION OF THE APPROPRIATE LEVEL OF ADJUSTED OVERRUN CHARGES.

## **7 DEFAULT POSITION**

- 7.1 WHERE THE UNCC FAIL TO REACH A DETERMINATION WITHIN THE [60] DAY TIME LIMIT, THE DEFAULT POSITION WILL APPLY.
- 7.2 THE DEFAULT POSITION WILL BE THAT [THE ERROR IS DEEMED TO BE VALID, AND] THE ADJUSTED CHARGES WILL BE SET AT THE MID-POINT OF REFERENCE COSTS 1 (CALCULATED USING THE HIGHER OF THE MONTHLY OR DAILY COSTS OF PURCHASING THE CAPACITY CORRECTLY) AND REFERENCE COST 2.