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Thursday, 10 May 2007

Dear Julian,

Re: Modification Proposal 152V/152AV/152BV: Limitation on Retrospective Invoicing and Invoice Correction

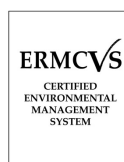
Thank you for the opportunity to comment on the above modification proposal. Statoil (U.K.) Limited (STUK) is not in support of modifications 152V and 152BV. STUK is in support of modification 152AV and would like to make the following comments.

Following discussions in review group 126 British Gas Trading (BGT) raised Modification Proposal 0152v "Limitation on Retrospective Invoicing and Invoice Correction" to limit the ability of transporters to adjust invoices beyond a four to five year period. The proposal by BGT is based on an incorrect assumption that this proposal will have an equal impact on all market sectors and ignores statute which refers to a period of at least six years. STUK does not believe modification 152V or 152BV to be an appropriate, proportionate or cost reflective solution for the I&C sector. STUK raised an alternative proposal to restrict the invoice billing period to a minimum of 6 years and a maximum of 6 years 365 days which is a more appropriate solution for the I&C sector.

Xoserve

Under the current regime xoserve and Shippers in the RbD sector have to consider adjustments going as far back as February 1998. Since the introduction of RbD this had led to increasing amounts of data being held for both calculation and validation of invoices. There are clearly recognised advantages for any business to limit both the data it holds and its liability for past periods. STUK believe any benefit from reducing data and invoice complexity needs to be balanced against the ability of the industry to recognise and correct past billings errors, the ability of the I&C sector to correct these errors with their customers and with suppliers obligations under statute.

Xoserve presented evidence to the Modification 126 Review Group of the cost benefits to terms of reduced data and lowering of complexity of the RbD process of implementing a limit



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on retrospective invoicing. In this regard all three modification proposals (152V, 152AV & 152 BV) are effectively the same.

Effect on RbD Shippers

It has been stated that RbD Shippers are affected to a greater extent by retrospective invoicing corrections. In particular it has been claimed that RbD Shippers are disadvantaged more than other users by large retrospective charges. STUK challenge these statements. As the suppliers to RbD supply points bill their consumers on actual meter reads or estimated reads based on the consumers AQ there is a clear disconnect between the monies charged to consumers and those collected by the Gas Transporter (GT) from the supplier.

Any correction by the GT that results in charges to the RbD sector is simply a correction of a previous undercharge. In the decision letter on UNC modification proposals 117 and 122 it was recognised that reconciliations are corrections not windfalls. Any significant undercharge by the GT should generally be identifiable by the Shipper. If the Shipper so chooses monies could be accrued for the expected correction from the revenue collected from their customers.

STUK recognise there is an issue for RbD shippers whose portfolio changes significantly between the time that the original invoice is issued and when the adjustment is issued. Under current arrangements the RbD Shippers are charged/credited a portion of the adjustment based on their current RbD portion not their portion at the time of the original invoice. STUK suggest the best way to correct this problem would be to change the way in which the adjustment is allocated rather than using the rather arbitrary measure of limiting the time a retrospective adjustment can be made to a shorter time period.

Statute

The STUK believe that proposal 152AV has a greater degree of alignment with the principles of English statute as the Transporter would be able to adjust or reconcile for 6 years. Sections 5 and 9 of The Limitation Act (1980) clearly set the minimum period of exposure for suppliers to their customers to at least six years.

STUK believe the 6 year cut-off suggested in modification proposal 152AV has the correct balance between the advantages identified of having a limitation on retrospective invoicing and the obligations of the supplier. STUK note that in Ofgem's decision letter to Network Code modification 642 it was stated that 'it would be unreasonable to deprive any party of monies they were due by introducing an inappropriate point of cessation' and the example of the six year time limit in statute was stated.

Effect on the I&C Shippers

Unlike the domestic sector where the large numbers of customers ensures that credits and debits will in normal circumstances net over a short period of time in the large I&C sector



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suppliers have much smaller numbers of customers. Statistically therefore the reliability of any such netting effect is much lower.

Shipper Metering Issues

It has been suggested by some in the RbD that the I&C Suppliers are in a position to reduce their risk to reconciliations by either inspecting their meter installations or by replacing meter installations. In this regard STUK notes this argument fails on a number of points. Firstly most large I&C meters are visited for maintenance at least twice a year and on a more regular basis for check reads (often monthly). Where meters have been under or over recovering for a long period of time this is often very difficult to detect even by experts. Secondly the argument ignores the regulated nature of DM meterpoints and therefore the ability of Suppliers to influence the management and maintenance of the metering equipment. Thirdly the argument ignores the huge cost and time involved in replacing large I&C meter installations. Any simple analysis shows that over re-engineering or over engineering of meterpoints will never be an economic solution. Evidence from meter failure rates of relatively new meter installations demonstrates this solution would not solve the problem in the long-term anyway. Fourthly it ignores the issue that some of the data items (such as c.v.) involved in producing a meter read are not owned by the supplier and are supplied by the Gas Transporter. STUK would welcome the opportunity to discuss this specific issue at greater length with Ofgem if it considers this to be of benefit.

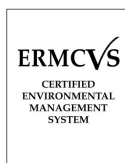
Transporter Metering Issues

It has been suggested that the implementation of a limitation of retrospective invoicing would incentivise Transporters to ensure their off-take meters are operating effectively. STUK is unsure as to how this incentive would work and notes the reluctance of the GT's to accept this argument.

Other Issues

STUK recognise that the implementation of any limitation of retrospective invoicing could lead to inappropriate behaviour if not carefully managed. It could introduce a perverse incentive to deliberately withhold USRVs, reconciliations or adjustments. This incentive would be particularly strong if part or all of the time period when the error or problem occurred will 'time out' in the near future leaving the Shipper with no risk of liability. Clearly in this regard modification proposal 152AV has less risk of inappropriate behaviour. As the shrinkage data demonstrates by year 6 the levels of unreconciled energy are extremely low and therefore the effects and benefit of inappropriate behaviour will be much lower in this period. Despite the benefits of modification 152AV in this regard STUK believes it is important that measures such as appropriate reform of the USRV process are considered in light of any implemented change.

STUK trust that our comments will be given due consideration and would actively welcome the opportunity to discuss any aspect of this response further. I can be contacted on 0207 410 6071 or 07825426633.



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Yours faithfully

Richard Street*
Statoil (UK) Ltd

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