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Our Ref.
Your Ref.

9 November 2007

Dear Julian,

RE: Modification Proposal 0181: "Scheduling charges for gas flow days 22, 23, 24, 25, & 26 October 2007"

Thank you for the opportunity to comment on this proposal. British Gas Trading is not in support of its implementation.

The Gemini failing was clearly an unplanned and exceptional event. In such circumstances, we recognise that it is not necessarily appropriate, desirable, or indeed legally sustainable to require parties to a contract to adhere rigidly to the terms of that contract where compliance is impossible. In this particular case, however, we do not believe that compliance with the terms of the UNC - dealing with gas nominations - was sufficiently difficult, or complicated, so as to warrant special dispensation from the established terms of the UNC for the purposes of administering scheduling charges.

Robust contingency arrangements were swiftly implemented by National Grid, and remained in place for the duration the Gemini outage. Those arrangements enabled all shippers to continue to nominate gas volumes as required by the UNC, and equally enabled National Grid to act upon those nominations. We are not aware of any evidence to the contrary.

We acknowledge that given the nature of the contingency arrangements, i.e. being reliant upon faxes and manual inputting, such nominations may have been subject to time delays, and that in certain circumstances these time delays could give rise to invoice queries or disputes. However, the UNC contains established procedures for raising and resolving invoice disputes, and we are confident that these UNC dispute procedures are applicable to circumstances such as these.

We acknowledge that the fall out from this event, in particular invoice dispute resolution, may take some time and effort to complete. However, we believe that such time and effort is likely to be commensurate with the nature and scale of the Gemini failing, and this should not be used as reason to deviate from established UNC rules. Ultimately, it is up to individual shipper parties to decide whether to raise invoice disputes or not. Where shippers choose to, we believe that the UNC provides an adequate framework.

We would also express concern on two further points. First, implementing this proposal would deliver a reward for any shippers who, for whatever reason, chose not to fully utilise the contingency arrangements that were in place during the Gemini outage. (Where a shipper was genuinely prevented from placing a nomination, that should be raised as part of a dispute resolution process).

Secondly, this proposal raises serious questions about the circumstances that are required in order for the terms of the UNC to be amended. In this case, the Gemini outage was clearly unprecedented but, as set out above, the contingency arrangements provided adequate functionality, and we believe that established UNC processes will cope with invoice queries and disputes. In our view, the circumstances are insufficient to justify a UNC change on this occasion.

We are concerned that changing the Code in these circumstances would potentially set as unwelcome precedent for any future events. We are also concerned that amending the Code on this occasion could send the wrong signal in respect of parties' behaviour for any future abnormal events (i.e. parties may act inappropriately either deliberately or through lack of diligence, potentially making a situation worse, in the belief that a retrospective UNC amendment will protect them from the implications of those inappropriate actions).

In terms of relevant objectives, we agree with the proposer that A11 1(d) – the securing of effective competition between relevant shippers is the most relevant. However, we strongly disagree that this proposal would better facilitate its achievement. As far as we're aware, shippers were not absolutely prevented from submitting nominations to National grid, and National Grid was not absolutely prevented from inputting those nominations to Gemini and acting upon them. All parties, therefore, should be held financially accountable for their actions or inactions during the course of the event.

While this proposal seeks to prevent erroneous charges being levied, we believe that it is more appropriate to levy charges as best as they are known at present, and where erroneous charges are levied, established UNC processes can be applied to disputes.

Should you have any queries with regard to this response please do not hesitate to contact me.

Yours sincerely,

Chris Wright
Commercial Manager