

Modification Report
URGENT Modifications Reference Numbers 243 and 243a

This Modification Report is made pursuant to Rule 9 of the Modification Rules and follows the format required under Rule 8.12.4.

1. Circumstances Making this Modification Proposal Urgent:

In accordance with Rule 9.2(a) Ofgas has agreed that these Modification Proposals should be treated as Urgent because they affect the forthcoming Winter.

2. Procedures Followed:

Transco agreed with Ofgas (and has followed) the following procedures for this Proposal:

Close out for representations:	5:00 pm Friday 28th August 1998
Final Modification Report to Ofgas:	Friday 4th September
Ofgas Decision:	Friday 11th September

3. The Modification Proposal:

Proposal 243 advocated that:

“The protection currently received by Transco for failure to meet a properly nominated withdrawal should be removed. R6.7 will be deleted and the reference struck from R1.3.3. R1.6 (Force Majeure) should correspondingly be removed.”

“Penalties to prevent or deter booking of storage capacity after the start of the storage year should be removed, including R3.8.2 (which prevents interruptible capacity being booked after 30th November), R3.8.8 which dictates that higher charges are paid for late booking, R3.8.9(ii) which defines the booking penalty.”

BG Storage made a counter-proposal 243a including only those aspects it believes should be implemented:

“Remove R3.8.2, the reference to 30th November as the cut-off date for booking Interruptible Storage Capacity.
Remove the interest term ‘Ii’ from R3.8.9(ii), the late booking charge.”

At the Storage Workstream meeting on 11th August, BG Storage undertook to repay interest charges on late booking paid in the current Storage Year, if proposal 243a was approved, in order to achieve equality of treatment and not discriminate (albeit to a minor extent) between shippers booking before and after implementation.

4. **Transco's opinion:**

Force Majeure and 'Transco failure'

In common with other operators of production and delivery facilities, BG Storage should have Force Majeure protection. In other cases of non/under-performance, BG Storage makes appropriate payment under R6.7, and this (together with the damage to BG Storage's reputation and future business) is a sufficient incentive to perform.

Late booking

The value of storage capacity is not evenly spread through the year; for example deliverability is more valuable in the winter. The monthly instalments towards the annual charge do not necessarily reflect the value in the individual month. There is currently an appropriate balance of incentives between early booking to maximise use of the service, and delaying commitment. Therefore no major change should be made. However, for simplicity and ease of administration the small interest element of the late booking charge should be abolished.

BG Storage also supports removal of the 30th November cut-off date for booking Interruptible Storage Capacity, as this no longer has any effect following Modification 220.

5. **Extent to which the proposed modification would better facilitate the relevant objectives:**

Proposal 243 advocates immediate abolition of the late booking charge and this would lead to significant discrimination against shippers who have already booked. The incentive to delay injection would diminish the beneficial role of storage in supply/demand management (including maintenance of other facilities) during the Summer. **Hence this proposal is contrary to the relevant objectives.**

Abolition of late booking interest is a modest simplification and would lead to a small improvement in administrative efficiency.

6. **The implications for Transco of implementing the Modification Proposal, including:**

- a) **implications for the operation of the System and any BG Storage Facility:**
Abolition of the late booking charge would incentivise shippers to delay their storage bookings, making it difficult to fill before the winter, with possible implications for security of supply.
- b) **development and capital cost and operating cost implications:**
Removal of Force Majeure protection could result in major costs for BG Storage.

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:**
BG Storage is allowed a rate of return consistent with a low risk business; removal of existing Force Majeure provisions would represent a significant new risk, making a higher return appropriate.

d) **analysis of the consequences (if any) this proposal would have on price regulation:**
If late booking charges were abolished, BG Storage would propose significantly higher annual capacity prices for 1999/2000 so as to maintain effective prices. It would be difficult to judge how much higher this should be.

7. **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:**

Proposal 243 would significantly increase contractual risk to BG Storage.

8. **The development implications and other implications for computer systems of Transco and related computer systems of Relevant Shippers:**

Changes to AT-Link and BG Storage billing systems would be necessary to implement proposal 243.

9. **The implications of implementing the Modification Proposal for Relevant Shippers:**

Proposal 243 would seriously disadvantage shippers who have already booked storage capacity for 1998/9.

10. **The implications of implementing the Modification Proposal for terminal operators, suppliers, producers and, any Non-Network Code Party:**

Abolition of the late booking charge would delay storage injection, unnecessarily constraining the operation and maintenance of production and delivery facilities.

11. **Consequences on the legislative and regulatory obligations and contractual relationships of Transco and each Relevant Shipper and Non-Network Code Party of implementing the Modification Proposal:**

None.

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

Proposal 243 has the major disadvantages described above. Proposal 243a does not.

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

Thirteen shippers including the proposer of modification 243 made representations.

Force Majeure (FM)

Views on the proposal to remove FM protection were divided: Three shippers favoured removal. Two said FM provisions should be aligned with industry standards (one of these, the proposer, clarifying that this meant reduced FM protection), and another suggested development of these provisions. One said there should be penalties for failure to perform. Two did not want to make changes in 1998/9, or pending the outcome of Ofgas' Review. One saw competition in storage provision as the remedy. Another was agnostic, but saw no reason to change. One was clearly against the proposal.

Remove Late Booking Charge

The proposer of 243 supported its proposal, saying discrimination between those who had booked and those who had yet to book was not an issue, since existing storage customers had been satisfied with the prices they were paying. One shipper in principle opposes within-year changes but sees removal this year as a remedy to over-pricing. On the other hand four opposed removal this year, some giving discrimination as their reason. One would only support removal of the charge if given a refund. Two shippers suggested profiling of charges to reflect the value at different times of year.

Remove Late Booking Interest Charge

Six shippers supported removal of this charge (one of whom thought change should be deferred pending the outcome of the Ofgas Review).

Removal of Deadline for booking Interruptible Storage Capacity

One shipper explicitly supported this, pointing out that clause R3.8.2 is anyway ineffectual. Another supported all aspects of proposal 243a.

Transco Response:

Force Majeure (FM)

Considering the potential benefit to shippers, support for removal of FM protection was limited. Most shippers recognised that BG Storage should have some FM protection. One said there should be penalties for failure to perform, but there already are (see 'Transco failure' R6.7). BG Storage agrees with the shipper who sees competitive pressures as the incentive to provide attractive contract terms. There is no consensus to make changes to FM provisions, and more significant developments in the storage market should take priority.

Remove Late Booking Charge

BG Storage agrees with the general view that changes should not be made this year. Profiling of charges in future years is a logical approach, which BG Storage may consider depending

on circumstances. However we share the concerns about incentives to delay injection, with possible security of supply implications.

Remove Late Booking Interest Charge

Given the unanimous support of those shippers who commented, this element of proposal 243a should be implemented. BG Storage has undertaken to repay late booking interest charges for the storage year to date, to avoid discrimination (however minor).

Removal of Deadline for booking Interruptible Storage Capacity

The limited response reflects the fact that this is a clarification, not a substantive change.

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

None.

15. The extent to which the implementation is required having regard to any proposed change in the methodology established under Standard Condition 3(5) of the statement; furnished by Transco under Standard Condition 3(1) of the Licence:

None.

16. Programme of works required as a consequence of implementing the Modification Proposal:

Abolition of the late booking charge would require changes to billing systems (see 8. above).

17. Proposed implementation timetable (inc timetable for any necessary information systems changes):

BG Storage recommends implementation of proposal 243a on 1st October 1998. No information system changes are required (the late booking interest charge calculation will no longer be required). BG Storage will repay late booking interest charges for the current storage year as soon as practicable following implementation.

18. Recommendation concerning implementation of the Modification Proposal:

Proposal 243a and not proposal 243 should be implemented.

19. Restrictive Trade Practices Act:

If implemented this proposal will constitute an amendment to the Network Code. Accordingly the proposal is subject to the Suspense Clause set out in the attached Annex.

20. Transco's Proposal:

This Modification Report contains Transco's proposal to modify the Network Code and Transco now seeks direction from the Director General in accordance with this report.

21. Text provided pursuant to Rule 9:**Section R BG Storage Facilities**

Amend 3.8.9 (ii) as follows:

Delete the term in brackets from the equation;

Delete all after "... N is the number of Days in the period ("interest period") from the 20th Day ...".

Delete 3.8.2 and renumber following subsections.

Signed for and on behalf of Transco.

Signature:

John Lockett
Manager, Network Code

Date:

7.9.98

Director General of Gas Supply Response:

In accordance with Condition 7 (10) (b) of the Standard Conditions of Public Gas Transporters' Licences dated 21st February 1996 I hereby direct Transco that the above proposal (as contained in Modification Report Reference 243/243a version 1.0 dated 04/09/98) be made as a modification to the Network Code.

Signed for and on behalf of the Director General of Gas Supply.

Signature:

Nick Fincham

Name:

NICK FINCHAM

Title:

DIRECTOR, SUPPLY REGULATION

Date:

21st SEPTEMBER 1998

The Network Code is hereby modified, with effect from 1st October 1998, in accordance with the proposal as set out in this Modification Report, version 1.0.

Signature: *Dr D. Richmond*

**Process Manager - Network Code
Transco**

Date: 23/9/98.

ANNEX

Restrictive Trade Practices Act - Suspense Clause

For the purposes of the Restrictive Trade Practices Act 1976, this document forms part of the Agreement relating to the Network Code which has been exempted from the Act pursuant to the provisions of the Restrictive Trade Practices (Gas Conveyance and Storage) Order 1996. Additional information inserted into the document since the previous version constitutes a variation of the Agreement and as such, this document must contain the following suspense clause.

1. Suspense Clause:

- 1.1 Any provision contained in this Agreement or in any arrangement of which this Agreement forms part by virtue of which this Agreement or such arrangement is subject to registration under the Restrictive Trade Practices Act 1976 shall not come into effect:
- (i) if a copy of the Agreement is not provided to the Director General of Gas Supply (the "Director") within 28 days of the date on which the Agreement is made; or
 - (ii) if, within 28 days of the provision of the copy, the Director gives notice in writing, to the party providing it, that he does not approve the Agreement because it does not satisfy the criterion specified in paragraph 2(3) of the Schedule to The Restrictive Trade Practices (Gas Conveyance and Storage) Order 1996.

provided that if the Director does not so approve the Agreement then Clause 1.2 shall apply.

- 1.2 Any provision contained in this Agreement or in any arrangement of which this Agreement forms part by virtue of which this Agreement or such arrangement is subject to registration under the Restrictive Trade Practices Act 1976 shall not come into effect until the day following the date on which particulars of this Agreement and of any such arrangement have been furnished to the Office of Fair Trading under Section 24 of the Act (or on such later date as may be provided for in relation to any such provision) and the parties hereto agree to furnish such particulars within three months of the date of this Agreement.