

TRANSCO WORKSTREAM REPORT

"Clarification of Gas Supply Emergency Claims Review Criteria"

Version 2.0

1. Background to the Modification Proposal

Modification Proposal 0636 was raised in order to develop and implement claims review principles originally developed within the Commercial Implications Work Group (CMIWG) of the Gas Industry's Emergency Committee. These principles were incorporated in Modification Proposals 0502: "Changes to Commercial Arrangements in the event of a Gas Supply Emergency" and Modification Proposal 0568: "Changes to Commercial Arrangements in the event of a Network Gas Supply Emergency", both of which were rejected by Ofgem for reasons not associated with the claims review principles. Whilst these principles were also incorporated within Urgent Proposal 0582: "Changes to Commercial Arrangements for a Network Gas Supply Emergency" in order to facilitate a decision the claims review principles were not included within Transco's recommendation within its Urgent Modification Report. Following an additional set of CMIWG meetings in 2003, it became apparent that a specific claims review Modification Proposal would afford an appropriate opportunity to define principles for incorporation in to the Network Code.

The June Modification Panel took the view that this Modification Proposal would benefit from further development and this report highlights the discussions within the PSS Sub-group and the NT&T Workstream.

2. Description of the Modification Proposal

The Modification Proposal is as follows:

It is proposed that in the event of a NGSE, claims 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.

The Workstream recognised that views were divided in respect of the merits of the sixth principle listed above and hence it was agreed this element might be omitted, subject to consideration of any arguments raised in the consultation supporting this principle, although it will dropped for the suggested implementation proposal.

3. Workstream Discussions

3.1 NT&T Workstream 3 July 2003

This Workstream held briefly discussed the areas where further development would be required. These were:

- Better definition of "windfall gains";
- Definition of "market price" in the context of intra-group transfers;
- Potential removal of final bullet relating to PGCA rules.

3.2 PSS Sub-Group 12 August 2003

This Sub-Group discussed these three issues and how they had been addressed in previous legal drafts.

Windfall Gains

PSS took the view that specific wording was not required as the basic principle would be addressed by the requirement that claims should be based on Users' net aggregate costs involved with deliveries to the System. Where a User derived a benefit this would be incorporated in that User's "net aggregate" position and the previous legal drafting reflected this.

Market Price for Intra-Group Transfers

Previous legal drafting had defined an Intra-Group transfer in terms of a transfer to a 33 1/3 % Affiliate which was consistent with the existing Network Code provisions on assignment of rights. PSS confirmed that this was a suitable definition of "Intra-Group". These legal drafts had relied upon distinguishing between a "market price" and a "non-market price" by associating with the latter an "uplift" or "other charge". PSS did not view this as a satisfactory solution and instead suggested the following:

- For Intra-Group transfers, on days where there had been OCM trades, including those struck prior to suspension of normal market arrangements, the SAP for that part day should be taken as the market price;
- On days where there had been no OCM trades, Transco should determine a market price subject to Ofgem's approval (a similar mechanism exists in F1.2.5);
- Where this mechanism fails to obtain an agreed market price, Transco will appoint an expert to determine such a price. Whilst this would not constitute a dispute between Transco and Users, certain Network Code Provisions relating to the appointment of an expert in Section T could apply.

PGCA Rules

It was agreed that this bullet was contentious and should not be part of the revised proposal to be identified in the Draft Modification Report. If any Users believed that this should be adopted they would be able to raise a specific Modification Proposal.

3.3 NT&T Workstream 4 September 2003

This Workstream received a presentation that summarised the PSS Sub-Group development. Some clarification was sought on the subject of windfall gains. Transco suggested that it was appropriate to refer to the legal text definition of 'Net Cost'. In the event of a Network Gas Supply emergency the 'Net Cost' would be the net difference between the initial price of the gas purchased by the User on that Day and the cash-out price on that same Day. Depending on this net difference, a User might, on some of its transactions, benefit and on some lose. The Modification Proposal sought to aggregate these gains (some of which might be classified as windfall gains) and losses in order to ascertain a User's net losses. After discussion the Workstream accepted that this principle had been satisfactorily developed.

On the Market Price issue, the Workstream suggested that the option of Transco determining a Market Price should exist even where there had been OCM trades conducted on that Day. It was agreed that the legal text would reflect this enhancement to the principles proposed by PSS.

4 Conclusion

Having dealt with the three issues requiring further development, the NT&T Workstream recommends that Modification Proposal 0636 should now proceed to consultation.