

UNC Energy Balancing Credit Committee Minutes
Monday 23 November 2020
via Teleconference

Attendees

Loraine O’Shaughnessy (Chair)	(LOS)	Joint Office	Non-Voting
Karen Visgarda (Secretary)	(HV)	Joint Office	Non-Voting
Sharon Bright	(SB)	CDSP	Non-Voting

Shipper Members (Voting)

David Holland	(DH)	ScottishPower
Jane Morrison	(JM)	SSE
Joanna Bulley	(JB)	E.ON
Thomas Grove	(TG)	Centrica

Copies of all papers are available at: <http://www.gasgovernance.co.uk/ebcc/231120>

1. Introduction and Status Review

Loraine O’Shaughnessy (LOS) welcomed all members and confirmed the meeting was quorate.

1.1. Apologies for absence

One apology was received for Brendan Gill from Xoserve

1.2. Note of Alternates

Joanna Bulley explained that James Hutton (Alternate) was in attendance as she would be going on maternity leave in February 2021.

1.3. Approval of Minutes (17 August 2020)

The minutes were approved.

1.4. Approval of Late Papers

LOS explained that there had been couple of late papers submitted by Sharon Bright (SB) regarding the Corporate Governance and Insolvency Act 2020 (CIGA), which SB would be drawing attention to later in the meeting. All agreed to accept this paper.

1.5. Review of Outstanding actions

0504: Xoserve/CDSP (BG) to provide further clarity on the powers under X1.2.6 and to share these findings with the Committee.

Update: Sharon Bright (SB) said that Xoserve had contacted the National Grid Lawyers in relation to this action regarding how to apply the governance route of the Modification process from an Energy Balancing perspective on the powers under X1.2.6. SB then verbalised the response from David Byrne National Grid Lawyer on this matter as detailed below:

David Byrne, National Grid wrote:

“It is difficult to set out a clear guidance without a context, but using examples from section X:

Para 2.6.1 “Where the amount of a User’s Outstanding Relevant Balancing Indebtedness exceeds the amount of its Cash Call Limit, National Grid NTS will as soon as reasonably practicable on or after the calculation Day submit to the User a Cash Call.”

I don't see that NGG could be authorized by the EBCC to not submit the Cash Call to the User as the UNC places an obligation on NGG to do this ("will").

Para 2.2.6(b) "Where any published credit rating of a provider of security is revised downwards to the extent that the said credit rating following such revision is less than the minimum prescribed credit rating as set out in the Energy Balancing Credit Rules, a User's Secured Credit Limit may be immediately reviewed and revised by National Grid NTS in accordance with the Energy Balancing Credit Rules, on notice to the User.

Here, if the EBCC authorise it, NGG may decide not to review and revise the User's credit limit in accordance with the EBCC immediately, but delay the review until a later date.

I hope this helps the EBCC but they may need to take specific legal advice if they want to rely on X1.2.6 in the future."

SB said that this action should be carried forward as Steve Mulinganie (SM) was not present at the meeting and he had originally requested this area was investigated further. **Carried Forward**

Action 0801: All Committee members to confirm their acceptance of the EBCC Credit Rules to Brendan Gill Brendan.gill@xoserve.com

Update: SB advised this action should be carried forward, in light of the new legislation Corporate Governance and Insolvency Act 2020 ('CIGA'), as detailed in Section 7. Any Other Business below and the implementation of Modification 0743S - Revisions to User Termination Provisions. **Carried forward**

Action 0802: Xoserve (BG) to investigate the reason why the February 2020 Energy Balancing Adjustment invoicing figure was high and provide feedback.

Update: SB said this action could now be closed as this information had been supplied within the Operational Update and was detailed in Section 3.0 below. **Closed**

2. Operational Update

2.1. Energy Cash Collection

Sharon Bright (SB) reported the following Cash Collection performance had been consistently high, for August, September and October achieving target for 2020.

Month	Payment Due Date	Payment Due Date +2	Failure to Pay Notices Issued
August 2020	99.48%	100%	1
September 2020	99.99%	100%	2
October 2020	99.72%	100%	7

2.2. Cash Calls

SB confirmed that during August 2020 there were 3 Cash Call notices issued with 4 Cash Call notices issued in October 2020. which were both paid in full, and there were no Cash Calls were issued in September 2020.

SB clarified there were no issues or signals that customers were having difficulties paying in light of COVID-19.

2.3. Further Security Requests (FSRs)

SB confirmed there was 1 Further Security Request issued in October 2020.

2.4. Terminated Shipper Update

SB explained one Shipper had been terminated this reporting month and that the outstanding invoices had been settled with a Deposit Deed fund held as their security. She noted that the appointment of a practitioner to start proof of debt for any upcoming charges had very recently been confirmed. SB explained that there had been 3 terminated Shippers since 2018 with a total debt of £4,835,497.04 which was being pursued through the appointed administrators via regular updates and the debt would be smeared two months after the invoice due date to the community. Jane Morrison (JM) requested that updates were provided in relation to the overall debt recovery specifically in relation to the total debt amount of £4,835,497.04 and SB said she would provide this detail going forward.

New Action 1101: Xoserve/CDSP (SB) to provide updates on the outstanding debt position recovery and how it is being shared.

SB noted that the Committee decision made on 09 October 2020 was to terminate a failing Shipper from the UNC following their failure to pay an Energy invoice which was due on 06 October 2020 and was still unpaid by payment due date +2, 08 October 2020.

2.5. Energy Balancing Credit Rules

SB advised in light of the new legislation regarding the Corporate Governance and Insolvency Act 2020 ('CIGA'), as detailed in Section 7. Any Other Business below, the Energy Balancing Credit Rules would be further updated in due course.

3. Outstanding Energy Balancing Adjustments

SB provided an overview of the schematic of the latest Energy Balancing Adjustments for November 2020 and advised that she had spoken to the Xoserve Invoicing Manager regarding the high volume of energy in February 2020 (as questioned by Steve Mulinganie (SM) in the last meeting) was not caused by any particular reason and would have been a combination of factors such as particular issues with meters on site and revised allocations being received after D+ 5 closeout. SB added that this peak in February was not caused by any trend and the volumes Xoserve receive were random depending on the various meter issues. SB explained that the invoicing team continued to liaise closely with National Grid and communicate frequently to manage the adjustments.

Direct Debit

SB said that in July 2020 an email had been sent to ascertain the appetite for Direct Debits as a method of paying energy invoices. She explained that 18 customers had noted their interest in setting up an energy invoicing process. SB explained that following an audit on Xoserve by BDO the recommendation was that the name on the Neutrality Bank account should clearly reflect that this was not an Xoserve account. She said the plan was to novate the account on 17 December 2020 and that the name on the account would become National Grid Gas Plc – Neutrality, with the aim that the Direct Debit process would be confirmed by 31 March 2021.

4. Corporate Governance and Insolvency Act 2020 ('CIGA')

SB explained that due to new legislation the DSC Credit Rules would now be updated following the changes as defined with the 'Corporate Governance and Insolvency Act 2020 ('CIGA')' as detailed in the Any Other Business Section 7.

A new piece of legislation has been enacted from 26 June 2020 called the Corporate Governance and Insolvency Act 2020 ('CIGA') and that this legislation affects Transporters' rights to terminate a shipper under the UNC. Whilst the CIGA was brought in quickly (as it contains some Covid19 related measures) the relevant change that directly has the above effect is permanent.

The operative provision of CIGA is section 14:

<https://www.legislation.gov.uk/ukpga/2020/12/section/14/enacted>

Under UNC TPD V4.3.1 Transporters can deem a Shipper to be in a “User Default” and terminate the User if the User has an administrator or receiver appointed. However, the CIGA provisions make ineffective any contractual right suppliers may have to terminate contracts if their customers enter into an insolvency process. The direct impact for the UNC is that the CIGA takes away that right from the Gas Transporters, meaning Gas Transporters must continue to supply services to a User who has gone into administration.

SB explained that Modification 0743 - Revisions to User Termination Provisions had therefore been raised by National Grid on 06 November 2020 to look at changes to the UNC in light of the change in legislation. SB drew attention the proposed text as detailed below:

UNC TPD V4.3 Proposed Text

4.3 Termination

Amend paragraph V4.3.1(e) as follows:

“(e) save if and to the extent the provisions of section 233B of the Insolvency Act 1986 apply, where:

Amend paragraph V4.3.3 as follows:

“Upon the occurrence of a User Default, and at any time after such occurrence at which the User Default is continuing the Transporter may (subject to the provisions of section 233B of the Insolvency Act 1986) give notice (“Termination Notice”) to the Defaulting User to the effect that the User shall cease to be a User of or in relation to its System(s) with effect from the date (which may be any date on or after the date on which the notice is given) specified in the notice.

Amend paragraph V4.3.5(b) as follows:

“(b) (subject to the provisions of section 233B of the Insolvency Act 1986) the receiver, administrator, trustee-in-bankruptcy or foreign insolvency practitioner (as appropriate) fails to provide adequate assurances to National Grid NTS in compliance with the principles established in Section X and the Energy Balancing Credit Rules (such assurances not to exceed a legal and binding commitment by the receiver, administrator, trustee-in-bankruptcy or foreign insolvency practitioner (as appropriate), to pay to National Grid NTS all Energy Balancing Debt accruing from (and including) the date of appointment of the receiver, administrator, trustee-in-bankruptcy or foreign insolvency practitioner (as appropriate), as soon as reasonably practicable after being appointed (but for the avoidance of doubt not within two Business Days of its appointment).”

‘save if and to the extent the provisions of section 233B of the Insolvency Act 1986 apply

Energy Balancing

UNC TPD X4.2 Before National Grid NTS shall take the action envisaged by paragraph 4.1 - (Termination Notice) National Grid NTS shall convene a meeting of the Energy Balancing Credit Committee as soon as reasonably practicable following the failure of the receiver, administrator, trustee-in bankruptcy or foreign insolvency practitioner (as appropriate) to provide those assurances referred to in Section V4.3.5(b) and shall consult with the Energy Balancing Credit Committee to determine whether National Grid NTS should be obliged to issue the Termination Notice, pursuant to paragraph 4.1, or whether National Grid NTS should defer taking such step.

Energy Balancing Credit Rules

Section 3.4. National Grid Gas NTS may ignore a request to return funds if the User was in administration, receivership or default. (Propose retain this statement within 3.4 to allow security to be utilised if company is in administration/receivership post cessation)

Section 7 – Appointment of an Insolvency Practitioner - Where an Insolvency Practitioner is appointed, they have two Business Days to provide an undertaking. Should the IP (as detailed in Section V4.3.5(b)) fail to provide an undertaking within two Business Days of its appointment, an emergency meeting of the EBCC shall be convened to determine if a Termination Notice should be issued. (Propose removal of strikethrough wording)

SB confirmed that the appropriate draft versions showing the updated EBCC policy and rules following the reference to the change in legislation would be circulated to Committee Members for approval in due course. She noted that these would not be confirmed until the implementation Modification 0743.

LOS said that in relation to the new Modification 0743S - Revisions to User Termination Provisions, this was raised at the November Modification Panel, and would subsequently be discussed within the Transmission Workgroup, on 03 December 2020, should any Committee Members want to attend the meeting.

5. Modifications

None.

6. Key Messages

There were no key messages noted for escalation to UNCC.

LOS provided the new proposed 2021 meeting dates as detail below and all Committee Members noted and agreed these dates.

- 24 February 2021
- 25 May 2021
- 24 August 2021
- 23 November 2021

7. Any Other Business

Letter of Credit

SB explained that a Letter of Credit had been received by one the Energy Balancing customers who was a new customer to the market. They wanted to use the Letter of Credit in association with using a bank that was not presently on the EBCC listing. The nominated bank was Danske Bank and SB was seeking authorisation from the Committee Members to add this bank to the EBCC listing, adding that Danske Bank did have representation in the UK. Both JM and David Holland (DM) sanctioned this request, as the bank in question did have a UK presence.

8. Diary Planning

Further details of planned meetings are available at: <https://www.gasgovernance.co.uk/events-calendar/month>

Time / Date	Venue	Workgroup Programme
10:30 – 11:30 24 February 2021	Teleconference	Standard agenda items
10:30 – 11:30 25 May 2021	Teleconference	Standard agenda items
10:30 – 11:30 24 August 2021	Teleconference	Standard agenda items
10:30 – 11:30 23 November 2021	Teleconference	Standard agenda items

Action Table (as at 23 November 2020)

Action Ref	Meeting Date	Minute Ref	Action	Owner	Status Update
0504	18/05/20	6.3	Xoserve/CDSP (BG) to provide further clarity on the powers under X1.2.6 and to share these findings with the Committee	Xoserve (BG)	Carried forward
0801	17/08/20	1.4	All Committee members to confirm their acceptance of the EBCC Credit Rules to Brendan Gill Brendan.gill@xoserve.com	All	Carried forward
0802	17/08/20	3.0	Xoserve (BG) to investigate the reason why the February 2020 Energy Balancing Adjustment invoicing figure was high and provide feedback.	Xoserve (BG)	Closed
1101	23/11/20	2.4	Xoserve/CDSP (SB) to provide updates on the outstanding debt position recovery and how it is being shared.	Xoserve (SB)	Pending