

Proposal : COST RECOVERY AND INVOICING

Issue

The process arrangements currently within OAD under Section L2.3 are focussed towards retrospective cost recovery. This can occur at any time and are also not time bound. This presents a number of issues for all operators. If cost recovery is identified after the event there is no guarantee that the other operator's respective project will be still open, and if there has been a significant lapse of time of when a request submitted, i.e. in subsequent financial years, this is also likely to cause issues in funding as this may not be readily available.

Overall, all operators have agreed that cost recovery should be agreed prior to the physical activity taking place so that it allows both parties to plan accordingly. It is therefore recommended that a small number of changes are made to the existing cost recovery arrangements under Section L2 of OAD in line with the business rules provided below.

Business Rules

- Wherever possible, cost recovery should be agreed in advance of the respective work/activity taking place. *(Appendix 2 highlights the current clauses in OAD that refer to cost recovery and provides guidance of when the cost recovery agreement should be considered and agreed.)*
- As the majority of cost recovery clauses are associated with Section B (Connection Facilities) and Section G (Maintenance) requirements, the impacted operator **must** advise the notifying operator of the intent to recover costs either:
 - a) via a formal and timely response to a received OAD notice. The impacted operator **must** reply to the OAD notice advising them of the intent to recover cost ; or
 - b) via the process of sharing of Maintenance Plans (OAD Section G) in a timely response following the issue of the final plan on the 31st March each year.
- Once the intent for cost recovery has been communicated, the impacted party will issue a formal quotation in line with the OAD cost recovery requirements. This will be reviewed by the parties. Once the final value has been agreed the notifying party will confirm formally via the issue of a purchase order reference. If a purchase order cannot be confirmed prior to the work commencing the issuing party should at a minimum confirm in writing to the impacted party acceptance of the agreed quoted costs. If the impacted party does not have a confirmed purchase order or written confirmation to the acceptance of the quoted costs, the impacted party reserves the right not to attend site.
- The clause concerning "omissions" (L2.3.1) needs to be revised and restricted in scope. As OAD notices should be issued 12 months in advance however, at that point in time it may not be possible to know all the impacts that will occur upon the other operator(s). Some impacts may only come to light on the day that the physical changes are being implemented. Where an impact occurs that was not articulated or disclosed as part of the OAD notice process that subsequently requires the impacted party to attend site to make safe or good only, this effort is to be treated as cost recovery. The impacted party is to advise the other party of such an omission and will issue a quotation within 30 days of the stated event. This amended clause will act as a backup provision for anything missed within the OAD notification processes.

- Any cost recovery requirements detailed in OAD Section D (Measurements) and Section F (Determination of Calorific Value) are not associated with modification or maintenance at OAD sites. For these cost recovery items, there should be some advance communication of the intent to follow through with the respective requirements and where a charge is required this should be also agreed in advance where possible.
- Only in specific circumstances will cost recovery be on a retrospective basis where the costs may not be able to be agreed in advance. This would cover any recovery around emergency requirements where applicable or where work has been undertaken where the “interference” conditions, under Section B2.4, have been triggered but only to make safe or reinstate.
- A new cost recovery requirement will be necessary to support the Site Drawings update process that is currently being agreed between the operators. The intent of this new update process is that the site user will update the site owner’s drawings by amending the CAD software files and returning. However, the site owner’s drawings may not always be available when they are requested and potentially unavailable for significant lengths of time. This is likely to impact the site user in closing their projects internally and thus attracting additional cost. To remedy this, it is proposed that where the site owner’s drawings will be unavailable for a significant length of time, the site user can provide red line mark up’s (RLMU) instead. However, if this causes an additional in processing then this can be recovered by the site owner. If this process is followed the site owner must provide a quotation and the site user is to confirm with a PO once the costs have been agreed.
- Where the level of cost recovery has been agreed and the issue of a respective purchase order has been provided, if for any reason the cost recovery value needs to be increased then the impacted part must provide the revised cost information (preferably via the issue of a revised quotation for transparency and audit trail purposes) along with the appropriate justification for the increase to the other party. If agreed the purchase order is to be revised prior to invoicing.

It is anticipated that only Section L2.3 will be impacted by the proposed changes above and it not envisaged any other changes in Section L need occur.

Appendix 1 - Existing OAD Requirements

UNIFORM NETWORK CODE – OFFTAKE ARRANGEMENTS DOCUMENT

SECTION L

COST RECOVERY AND INVOICING

2 Costs

2.1 Introduction

2.1.1 This paragraph 2 applies for the purposes of any provision of this Document under which any one Party is entitled to recover from another Party, or that other Party is required to bear or reimburse to the first Party, costs incurred by the first Party.

2.1.2 For the purposes of this Clause:

- a) a "relevant provision" is such a provision of this Document as is referred to in paragraph 2.1.1;
- b) the "Recovering Party" is the Party which incurs the relevant costs;
- c) the "Reimbursing Party" is the Party which is obliged to bear, pay or reimburse, or from which the Recovering Party is entitled to recover, the costs incurred by the Recovering Party;
- d) "recoverable costs" means the costs which (pursuant to a relevant provision) the Recovering Party is entitled to recover from the Reimbursing Party or the Reimbursing Party is required to bear or reimburse to the Recovering Party;
- e) "costs" includes expenses.

2.2 Costs

2.2.1 Subject to any other provision of this Document, the recoverable costs shall be determined in accordance with the following provisions.

2.2.2 The recoverable costs shall not exceed the costs which would have been incurred by a Reasonable and Prudent Operator in the circumstances (pursuant to the relevant provision).

2.2.3 (Without prejudice to any provision of the Transportation Principal Document) recoverable costs shall not include any amount which would fall within Section N7.1.4(b), (c) or (d) (including without limitation any liability or loss of revenue under the Transportation Principal Document).

2.2.4 Where the activities of the Recovering Party in respect of which recoverable costs and expenses arise are activities within the scope of its Condition 4B Statement, the amount of the recoverable costs shall be determined in accordance with that statement.

2.2.5 Subject to paragraph 2.2.2, the amount of the recoverable costs in respect of any external cost shall be the actual amount thereof, provided that where any recoverable costs were incurred under a contract or arrangement with a 33⅓% Affiliate of the Recovering Party which is not on arms length terms, the amount recoverable shall be the amount which would be recoverable by such Affiliate if it were a Party in the capacity of the Recovering Party.

2.2.6 Recoverable costs shall include a reasonable and appropriate amount in respect of internal costs, including cost of capital, personnel and reasonable overhead costs (determined consistent with any relevant determinations made by the Authority in connection with the most recent determination of the principal price control in the Recovering Party's Transporter's Licence, failing which on the basis of cost allocation methodologies recognised as appropriate for determining the fully absorbed costs of a rechargeable activity).

2.2.7 For the avoidance of doubt (unless otherwise provided in this Document) the amount of recoverable costs shall be determined on the basis of actual costs (incurred by the Recovering Party in carrying out the relevant activities), and not on the basis of costs which it would not have incurred but for the relevant act or omission on the part of the Reimbursing Party.

2.3 Process

2.3.1 Where the Recovering Party proposes to recover any recoverable costs:

- a) the Recovering Party shall (as soon as reasonably practicable after the act or omission or other event giving rise to such recovery) give notice to the Reimbursing Party specifying:
 - i. the relevant provision;
 - ii. the act or omission on the part of the Reimbursing Party or other event giving rise to the application of the relevant provision; and
 - iii. the amount which it claims as recoverable costs, and a brief explanation of the basis on which such amount has been determined;
- b) the Reimbursing Party may, within 5 Business Days after receipt of such notice, request a meeting to discuss the matters contained therein, in which case the Parties shall meet as soon as practicable for that purpose; and
- c) the Recovering Party may submit an Invoice in respect of the recoverable costs within 10 Business Days after sending its notice under paragraph (a).

2.3.2 Upon the request of the Reimbursing Party, the Recovering Party shall provide reasonable evidence of the specific amount of recoverable costs incurred by it in any particular case in which such amounts are recoverable under a relevant provision.

2.3.3 Paragraph 2.3.1 shall not:

- a) entitle the Reimbursing Party to delay in paying the amount of any recoverable costs (but without prejudice to its right to require a subsequent adjustment where relevant);
- b) require the Recovering Party to provide evidence supporting rates or unit amounts of costs which are provided for in the statement referred to in paragraph 2.2.4

Appendix 2 - Clauses attributed to Cost Recovery (from Cost Recovery Review):

Clause Ref	Clause Text	Understanding	Cost Recovery
B2.2.5	<p><i>Right to Alter, Replace or Relocate</i></p> <p>Any works carried out by a Party in connection with the alteration or replacement of any Connection Facilities shall be planned and carried out as Relevant Maintenance in accordance with Section G.</p>	<p>This clause is stating that any alteration or modification of plant, equipment and buildings and is ultimately covered by an OAD Notice is treated as Relevant Maintenance and therefore any terms under Section G apply. Please now refer to clause G3.6.4.</p>	<p>To be confirmed upfront with OAD Notification process with quotation agreed ahead of work commencing on site where possible.</p>
B2.3.2	<p><i>Offtake Decommissioning</i></p> <p>The downstream Party ("decommissioning" Party) shall be entitled to decommission an Offtake or Individual Offtake Point subject to and in accordance with the following:</p> <p>a) the decommissioning Party shall give not less than 6 months' notice to the upstream Party (and, where it is Site Owner, to each Site User) of its proposal to decommission such Offtake or Individual Offtake Point;</p> <p>b) each other Party at the Offtake Site may:</p> <p>i. carry out itself; or</p>	<p>Either the decommissioning party is to undertake the necessary work or if the other party elects to complete the activity by itself to support the decommissioning party's requirements then the associated cost can be recovered.</p> <p>The planned activity is also treated as "Planned Maintenance" and therefore any terms under Section G apply.</p>	<p>To be confirmed upfront with OAD Notification process with quotation agreed ahead of work commencing on site where possible.</p>

	<ul style="list-style-type: none"> ii. require the decommissioning Party (at its expense) to carry out; the works necessary to give effect to such decommissioning and make safe each System and each Party's Connection Facilities; c) such works shall be planned and carried out as Planned Maintenance in accordance with Section G; d) the decommissioning Party shall bear or reimburse to each other Party the costs of any works carried out by such other Party under paragraph (b)(i); e) where the decommissioning Party is Site Owner, paragraph 3.5 shall apply in relation to any of the Site User's Facilities. 		
B2.6.5	<p>Site Services:</p> <p>The Services Party may recover from the other Party(ies) the capital costs (if any) incurred on or after the Supplemental Agreement Date in supplying or laying any pipes, wires, trenches or other equipment for the purposes of the provision of the Site Services (so far as such costs are in addition to any such costs which the Services Party would incur for its own purposes).</p>	<p>The site owner can only recover the cost if the additions to site services are required to support the ongoing needs for the site user. If the site owner is to use the additional requirements for their own purposes, then cost recovery is not allowed.</p>	<p>To be confirmed upfront with OAD Notification process with quotation agreed ahead of work commencing on site where possible.</p>
B3.3.2	<p>Relocation of Site User's Facilities</p>	<p>If the site user agrees to a site owners request to relocate an</p>	<p>To be confirmed upfront with OAD Notification process with</p>

	<p>The Site Owner shall not be entitled to require such relocation of the Site User's Facilities without the consent of the Site User, nor unless the Site Owner agrees to reimburse to the Site User the costs incurred by the Site User in connection with such relocation.</p>	<p>asset, then the cost of doing so can be recovered or charged to the Site Owner.</p>	<p>quotation agreed ahead of work commencing on site where possible.</p>
B3.4.3	<p><i>Modification of Site User's Facilities</i></p> <p>Where the Site Owner consents to the alteration, relocation or addition of or to Site User's Facilities, the Site Owner shall perform or procure any such minor alterations or works to existing buildings or structures as are referred to in paragraph 3.4.2(d), and the Site User shall reimburse to the Site Owner the costs incurred by the Site Owner in doing so.</p>	<p>If a site user submits an OAD notice and this requires the site owner to make modifications to existing buildings, structures or housing, the cost of doing so can be recovered from the site user.</p>	<p>To be confirmed upfront with OAD Notification process with quotation agreed ahead of work commencing on site where possible.</p>
B3.5.1 (d) & (e)	<p><i>Decommissioning of Site User's Facilities</i></p> <p>(d) the Site Owner shall bear or reimburse to the Site User the costs incurred by the Site User in removing the Site User's Facilities from the Site Owner's Land and where necessary of relocating the Site User's Facilities (and related parts of the Site User's System), including costs of acquiring alternative or additional land reasonably required for the purposes of such relocation, except to the extent that the Site User does not comply with paragraph (b); and</p> <p>(e) if the Site User fails to remove any Site User's Facilities as required by paragraph (b), the Site Owner shall be entitled to remove such Site User's Facilities (other than facilities forming part of any pipeline) from the Site Owner's Land (including, where</p>	<p>If a site owner requires a site user to remove or relocate its assets as a part of decommissioning, then the cost of doing so is to be recovered from the site owner.</p> <p>However, if the site user fails to remove its assets following a request the site owner can proceed with doing so and recover the cost from the site user.</p>	<p>To be confirmed upfront with OAD Notification process with quotation agreed ahead of work commencing on site where possible.</p> <p>However, if the site user fails to comply as per B3.5.1(e) then this will be retrospective Cost Recovery.</p>

	relevant, detaching such facilities from the Site Owner's own Connection Facilities) and dispose of such facilities as the Site Owner deems fit, and the Site User shall reimburse to the Site Owner the costs incurred by the Site Owner in so doing.		
B4.1.4	<p><i>Undertaking as to compatibility</i></p> <p>4.1.4 If a Party modifies its Connection Facilities in breach of the requirement in paragraph 4.1.1:</p> <p>(a) the other Party may either:</p> <ol style="list-style-type: none"> I. give notice to the Modifying Party requiring it to undo such modification or otherwise take such steps as may be appropriate to restore the compatibility of the Connection Facilities; or II. after giving notice to the Modifying Party of its intention to do so (and unless the modifying Party has demonstrated, to the reasonable satisfaction of the other Party, that it is taking steps sufficient to restore compatibility as quickly as is reasonably practicable) make such modifications of its own Connection Facilities as are appropriate to restore the compatibility of the Connection Facilities; <p>(b) the Modifying Party shall reimburse to the other Party the costs incurred by the other Party in modifying (where it elects to do so) its own Connection Facilities in accordance with paragraph (a)(ii);</p> <p>(c) the other Party may in any event disconnect the Connection Facilities of the Modifying Party, upon such period of notice as is</p>	If operator A undertakes work that results in operator B's assets being incompatible with the new arrangements, Operator B can elect to restore compatibility, which includes to revert the arrangements back to how they were (via notice), and the cost in doing so can be recovered from Operator A.	To be confirmed upfront with OAD Notification process with quotation agreed ahead of work commencing on site where possible.

	<p>practicable in the circumstances, if the modification materially and adversely affects the safe operation by the other Party of its Connection Facilities or its System.</p>		
B4.2.1	<p>Modification procedure</p> <p>Where a Party wishes to modify any of its Connection Facilities such that they will or may not be compatible with the other Party's Connection Facilities:</p> <ul style="list-style-type: none"> a) the notice given by the Modifying Party under paragraph 2.2.4 shall operate as a request to the other Party for its consent to the modification; b) the other Party shall not unreasonably withhold or delay its consent to the modification; and c) if the other Party consents to the modification, the modifying Party shall reimburse to the other Party the costs incurred by the other Party of modifying, or changing the operation or maintenance of, its Connection Facilities in order to maintain the compatibility between the Parties' Connection Facilities. 	<p>If operator A makes a change to its connection facilities that will result in any requirements becoming incompatible, then any costs Operator B incurs to make the requirements compatible again can be covered from Operator A.</p>	<p>To be confirmed upfront with OAD Notification process with quotation agreed ahead of work commencing on site where possible.</p>
B5.2.4	<p>Provision of Land for Telemetry Facilities</p> <p>The Site User shall reimburse to the Site Owner the costs of a capital nature incurred by the Site Owner in meeting the</p>	<p>The site owner must provide land availability if the site user wants to deploy its own telemetry facilities. However, the capital cost for modifying the site services</p>	<p>To be confirmed upfront with OAD Notification process with quotation agreed ahead of work commencing on site where possible.</p>

	<p>requirements of paragraph 5.2.1(d)(ii) above (but for the avoidance of doubt, Site</p> <p>Services shall thereafter be provided by the Site Owner to the Site User free of any charge or payment of any kind, in accordance with paragraph 2.6.6).</p>	<p>i.e. gullies and connection points undertaken by the site owner to support these new requirements can be recovered back from the site user.</p>	
D3.3.7	<p>Exceptional Validation</p> <p>The costs of an Exceptional Validation shall be borne:</p> <ul style="list-style-type: none"> a) by the upstream Party, where the Measurement Equipment (or relevant component thereof, as the case may be) is found to read without bias and accurately within the Permitted Range; and b) by the downstream Party, in all other circumstances. 	<p>Under Clause D3.3.1 the upstream party can request a validation of the Measurement Equipment providing notice is given along with the reasons why.</p> <p>If the equipment is found to be working as expected the cost of validation is to be covered by the upstream operator but if the equipment is not working correctly the cost is to be covered by the downstream operator.</p>	<p>To be confirmed upfront where possible with the request for Exceptional Validation and the quotation agreed ahead of work commencing where possible.</p>
D7.2.1	<p>Access to Records and Inspection Rights Facilities</p> <p>The downstream Party shall, as soon as reasonably practicable and without charge, provide to the upstream Party on request a copy of such records maintained in accordance with paragraph 7.1 above (provided that if the upstream Party requires more than one copy, or a copy on more than one occasion, of records relating to the</p>	<p>In relation to measured data, the upstream operator can request from the downstream operator a copy of the respective records.</p> <p>If the request requires more than one copy to be provided, or the same data has to be provided</p>	<p>To be confirmed upfront with either the initial request or the request for additional copies.</p>

	same matter, the downstream Party may charge the upstream Party the costs incurred in providing such additional or further copies).	again, the downstream operator may charge in such circumstances.	
G3.6.4	<p>Maintenance Co-operation</p> <p>Where:</p> <ul style="list-style-type: none"> (a) such cooperation requires the affected Party to operate, adjust or control any part of its System in a particular way; and (b) such operation, adjustment or control cannot be effected remotely from the affected Party's control centre; <p>the affected Party may, provided it indicated its intention of doing so when was first requested (in the draft Maintenance Programme or otherwise) to provide such cooperation, recover its costs incurred in</p> <p>sending send any personnel to such part of its System to effect such operation, adjustment or control.</p>	<p>To be read in conjunction with clause B2.2.5</p> <p>Where co-operation is required for "Relevant Maintenance" (this is what operators would see as maintenance activity per se as well as investment activity requiring an OAD notice), and the impacted operator needs to incur cost for the operation, adjustment or control of the planned activity then is can be recovered providing it is indicated as such from the outset.</p>	To be confirmed upfront with OAD Maintenance Plan with quotation agreed ahead of work commencing on site where possible.
F3.2.2	<p>Continuance of data provision</p> <p>3.2.2 The first Party shall be entitled, upon giving notice of not less than 6 months to the second Party:</p> <ul style="list-style-type: none"> a) to discontinue the provision of such CV data; b) (b) to impose on the second party a reasonable charge for (reflective of the incremental costs incurred by it in) the provision of CV data to the second party; 	<p>Provided a minimum 6 months' notice has been given by the first Party to discontinue the service, they are entitled to recover reasonable and incremental charges incurred to continue to provide said service.</p>	To be confirmed upfront with quotation agreed ahead of changes being implemented.

F4.3.3	<p>Changes</p> <p>If National Grid NTS incurs any costs:</p> <ul style="list-style-type: none"> a) in order to implement a relevant change; or b) in determining daily CVs following a relevant change, in excess of the costs which it would have incurred in determining daily CVs in the absence of the change; <p>the DNO shall reimburse to National Grid NTS the amount of such costs in accordance with Section L.</p>	<p>This clause relates to “relevant changes” for the daily CV. If such changes are required and this attracts a cost the upstream party can recover this from the DNO(s).</p>	<p>To be confirmed upfront with quotation agreed ahead of changes being implemented.</p>
Section L	<p>Cost Recovery & Invoicing</p>	<p>The section provides the overview of what costs can be recovered and the process for doing so if “recovery” or “reimbursement” needs to take place in line with respective clauses in OAD.</p> <p>Section L2.2.3 states that the loss of any transportation revenue cannot be recovered.</p>	<p>Not applicable.</p>
Section N7	<p>Liability</p>	<p>The general rule is that you cannot recover loss or liability <u>even if another operator is in breach of the OAD framework.</u> as each operator is responsible for its own</p>	<p>To be confirmed upfront where possible along with the intent to remediate Interference.</p>

requirements and insurance thereof.

This may not always be possible as the remedial activity may have to be undertaken as part of an emergency and therefore this will be retrospective or after the event Cost Recovery.

