

**A UNC Workgroup 0792S Minutes
Amendments to Cost Recovery under OAD
Tuesday 08 April 2022
via Microsoft Teams**

Attendees

Eric Fowler (Chair)	(EF)	Joint Office
Maitrayee Bhowmick-Jewkes (Secretary)	(MBJ)	Joint Office
Ben Hanley	(BH)	Northern Gas Networks
David Mitchell	(DM)	Scotia Gas Networks
Darren Dunckley	(DD)	Cadent
Louise M ^c Goldrick	(LMc)	National Grid
Shiv Singh	(SS)	Cadent
Stephen Ruane	(SR)	National Grid
Tom Stuart	(TS)	Wales & West Utilities

Copies of non-confidential papers are available at: <https://www.gasgovernance.co.uk/0792/080422>

1. Introduction and Status Review

Eric Fowler (EF) welcomed all parties to the meeting.

1.1 Approval of Minutes (08 April 2022)

A minor amendment was suggested to the minutes from the last meeting. The amended minutes were then approved.

1.2 Approval of Later Papers

National Grid submitted a late paper with comments on the Draft Legal Text. The Workgroup accepted this for consideration.

1.3 Review of Outstanding Actions

Action 0301: Cadent (SS) to review the naming convention for parties in OAD Section B, 2.4.3, looking to add a new definition applicable to this section.

Update: Shiv Singh (SS) advised that this will be addressed in the discussions under agenda item 2.0. **Closed**

Action 0302: Cadent (SS) to review the Legal Text reflects the Business Rules agreed in the Modification, including gaining clarity on the following points:

- Who are affected parties during an emergency action?
- Can Asset Owner decide whether they want reinstatement or reimbursement?
- Should party that causes damage bear costs either via reinstatement or reimbursement in accordance with the process?

Update: SS explained that the additional clarity required had been added to the Legal Text and would be addressed under agenda item 2.0. **Closed**

Action 0303: All Workgroup Members to review the Legal Texts submitted by Cadent and National Grid and compare them against the Business Rules and to come to an opinion which one best fulfils the intent of the Business Rules.

Update: Louise McGoldrick (LMc) suggested that the Legal Text for this Modification was unnecessarily complex. Other Distribution Network Operators (DNOs) accepted the Legal Text provided by Cadent. Dave Mitchell (DM) suggested that National Grid could raise an alternative to this Modification if they were disagreed with it. **Closed**

2. Review of Amended Legal Text

SS provided an onscreen review of the amended draft Legal Text alongside National Grid's comments.

The Workgroup discussed the draft Legal Text alongside National Grid's comments. The key points of discussion are noted below:

- LMc suggested that Offtake Arrangements Document (OAD) Section B 2.4.3 (a) and 2.4.3 (d) were duplications as the provisions in these clauses are included elsewhere in the OAD. Ben Hanley (BH) agreed with LMc.
- SS and Darren Dunkley (DD) disagreed with LMc's views stating that these clauses added additional clarity and were therefore required.
- LMc asked if Cadent were willing to amend the current Legal Text with the suggestions proposed by National Grid. SS explained Cadent have reviewed the Legal Text with their solicitors Dentons, who are widely considered the industry Legal Text experts, and are satisfied with the current text and Cadent do not wish to revise it.
- The Workgroup considered OAD Section L 2.3.1. Stephen Ruane (SR), BH and LMc suggested that the wording of this clause needed to be revised. EF agreed with this suggestion. BH noted that the premise of the question is correct, but the language needed to be amended for clarity. EF suggested Cadent could make a minor amendment to grammar and update the document offline, after the meeting.
- LMc asked whether OAD Section L 2.3.2 was required as 2.3.1 covers provision of a notification. SS explained that 2.3.1 lays out the requirement for what a notice should include whilst 2.3.2 lays out the circumstances under which a notice may be issued.
- BH noted that 2.3.2 could be added to 2.3.1. EF suggested checking these clauses against the pertinent Business Rules. The Workgroup discussed the Business Rules and accepted that 2.3.1 and 2.3.2 reflect the intent of Business Rules 4 and 5 and that the provisions of the two clauses are different from one another.

- SS queried LMc's comment that Cadent mentioned at the last meeting that revising estimates was standard practise and perhaps did not need to be codified. SS explained, the idea of revising an estimate was added to the Legal Text on request of National Grid. EF agreed that the Workgroup had discussed revised estimates at the last meeting in instances where an underestimate must be revised. The Workgroup accepted this.
- LMc commented that for clause 2.3.5, whilst National Grid agrees it is appropriate to discuss and consult on costs, the concept of an estimate being accepted or rejected is not appropriate, as this could lead to one party being out of pocket for costs reasonably incurred. SS explained, this clause reflects Business Rule 7. DD added that Cadent has recently rejected a National Grid estimate, noting that under OAD certain aspects of an estimate can be rejected but otherwise costs should be agreed. However, under the Cost Recovery framework, if the Reimbursing Party feels costs are too high they can reject them and both parties should discuss and agree the cost estimate.
- SR noted that acting as a reasonable prudent operator, the Recovering Party would determine the best way to perform a task, so it is unclear how the other party can reject those costs.
- DD clarified that sometimes there are activities being proposed by the Recovering Party which the Reimbursing Party may not agree with, and they can reject those elements of the costs and both parties should then discuss and agree a new estimate.
- LMc stated that it appears Modification 0792S is seeking to limit the recovery of costs. DD disagreed saying that the Modification is instead looking to add clarity and transparency to cost recovery and the aim of this clause is to prevent a Recovering Party from adding additional cost recovery elements to their estimate beyond what is reasonable and facilitate dialogue between parties if there are any concerns on the estimate produced.
- SS noted that the Business Rules for this Modification were agreed between all parties and the Legal Text has been drafted to reflect these Business Rules. SS asked why National Grid had not raised any concerns with these Rules previously. LMc explained that that these views had evolved since the initial review of the Business Rules.
- SS suggested if costs are not agreed between parties, it could be progressed through a dispute.
- EF noted that the Workgroup Report would capture National Grid's concern that clause 2.3.5 appears to limit a Recovering Party's ability to recover costs.
- LMc noted 2.3.7 also appears to be limiting the costs that can be recovered. SS explained this clause is setting out the criteria for cost recovery. The Workgroup discussed the time limit of 60 Business Days set out for this and agreed this was a reasonable timeframe to produce a notice.

EF asked the Workgroup if they were satisfied that the queries around the Legal Text had been addressed and that it reflected the Business Rules set out in the Modification. The Workgroup agreed this had been achieved.

3. Completion of Workgroup Report

The Workgroup reviewed the draft Workgroup Report onscreen. EF captured comments from the Workgroup Members and finalised the Workgroup Report.

4. Next Steps

EF confirmed the Workgroup Report will be presented at the April UNC Modification Panel.

5. Any Other Business

None.

6. Diary Planning

6.1 2022 meeting dates

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

Time/Date	Paper Publication Deadline	Venue	Programme
None			

Action Table (as of 08 March 2022)

Action Ref	Meeting Date	Minute Ref	Action	Owner	Target Date	Status Update
0201	04/02/22	2.	To review the existing versus proposed paragraph 2.3 Legal Text amendments and also the Scotia Gas Network comments, with a view to providing revised Legal Text, if appropriate.	Cadent (SS / DD) & National Grid (LMc)	08 March 2022	Closed
0301	08/03/22	2.0	Cadent (SS) to review the naming convention for parties in OAD Section B, 2.4.3, looking to add a new definition applicable to this section.	Cadent (SS)	08 April 2022	Closed
0302	08/03/22	2.0	Cadent (SS) to review the Legal Text reflects the Business Rules agreed in the Modification, including gaining clarity on the following points: <ul style="list-style-type: none"> - Who are affected parties during an emergency action? - Can Asset Owner decide whether they want reinstatement or reimbursement? - Should party that causes damage bear costs either via reinstatement or reimbursement in accordance with the process? 	Cadent (SS)	08 April 2022	Closed
0303	08/03/22	2.0	All Workgroup Members to review the Legal Texts submitted by Cadent and National Grid and compare them against the Business Rules and to come to an opinion which one best fulfils the intent of the Business Rules.	All	08 April 2022	Closed