

**Workstream Report**  
**Manifest Errors in Entry Capacity Overruns**  
**Modification Reference Number 0341**  
Version 1.0

This Workstream Report is presented for the UNC Modification Panel's consideration. The Transmission Workstream considers that the Proposal is sufficiently developed and should now proceed to the Consultation Phase. [The Workstream also recommends that the Panel requests the preparation of legal text for this Modification Proposal.]

## **1 The Modification Proposal**

### **Background**

This proposal is being raised as a result of a circumstance of manifest error which resulted in very significant entry capacity overrun charges being incurred for each day in the whole month of April 2010, totalling multiple millions of pounds.

The UNCC currently does not contain any manifest error provisions in relation to overruns, or indeed any other aspects of the UNC. However, the introduction of manifest error arrangements has been considered on a number of occasions in relation to overrun charges and the wider activities of capacity trading, and Ofgem has consistently supported their development, [including in its decisions on several Transco Network Code proposals - include refs].

In contrast, manifest error provisions have been provided for in the electricity regime. Modification P37 was a retrospective modification implemented to allow for the correction of specific errors which occurred in the early stages of NETA, and Section Q7 of the Balancing and Settlement Code provides for manifest errors in the bid-offer acceptance process. Manifest error provisions are also typically available on most trading platforms, including APX Endex, provider of the OCM platform, and in each case the time required to claim, consider and if appropriate rectify a manifest error is set relative to the trading and settlement periods concerned and the potential for consequential problems for other parties arising from the error.

Previous Mod proposals [include refs] have sought to reduce the level of overrun charges because their current construction in the UNC can result in charges which could be viewed as potentially penal, [and because it was considered by some proposers that there could be separation between the treatment of constrained and unconstrained days]. Ofgem has consistently rejected these proposals on the grounds that to do so would undermine the ticket-to-ride principle, [and also that the distinction between constrained and unconstrained days is addressed by the inclusion of constraint prices as a basis for determining the overrun charge].

More recently Mod 119 sought, amongst other things, to make overrun charges potentially higher than currently. The grounds for its rejection included that by incorporating the highest relevant reserve price, a charge which was not related to

constraint costs on the day (and therefore may not be cost reflective) could be used as the basis for the overrun charge. In addition, Ofgem noted concerns that it could give rise to perverse incentives on Users to be overly conservative in providing user commitment signals through the long term auctions.

Clearly therefore, there is a fine balance to be struck between maintaining an appropriate and cost reflective incentive for Shippers to book entry capacity in advance and the un-challengeable application of non-cost reflective overrun charges which could be construed as penal.

The proposer believes that it was never fully anticipated that the 8x multiplier could apply for an extended period and hence result in overrun charges which are correspondingly punitive in the extreme (multiple millions of pounds). Rather it believes that there is an implicit assumption in the design of the charges that overruns would occur only on occasional days and that persistent and/or very large incidences of overrun would be identified by the Transporter and the User, and rectified accordingly promptly. The proposer notes that, while it is the User's responsibility to have robust systems in place and manage its position prudently, there are no proactive warnings in Gemini identifying that nominations exceed booked capacity by a significant amount and/or that this has occurred on a number of consecutive days.

The proposer has, in its opinion, suffered a genuine manifest error but there is currently no mechanism within the UNC for the proposer to even make its case.

For the avoidance of doubt, this proposal does not seek to guarantee any specific outcome for the proposer. Rather, the proposal seeks to introduce permanent arrangements in the UNC to allow manifest errors in relation to entry capacity overruns to be considered, and to permit the use of those arrangements for consideration of the proposer's circumstances.

### **Purpose**

This proposal seeks to introduce Manifest Error provisions into the UNC where, and only where, a User error has led to entry capacity overrun charges being incurred. Under this proposal, a User could raise a claim for manifest error, have it considered by the UNCC, and where the claim is found to be valid, the UNCC would determine an appropriate adjustment to the overrun charges. The processes envisaged are set out [under Proposal, page 4] below [and additional detail is provided in the appended Guidance document].

It is intended that, whilst this proposal is limited to the very specific case of entry capacity overrun charges, the approach could be capable of adaptation for use elsewhere in the UNC (for example by adopting different timescales for consideration of claims and amending the specific decision criteria and adjustment principles to make them relevant to the specific issue).

The proposer is not aware of other areas of the UNC in which Manifest Error provisions of this nature have ever been considered necessary or desirable.

Nonetheless it is open to other Users to propose how Manifest Error arrangements could be applied and/or adapted in other areas of the UNC, and this proposal may or may not provide a useful model, depending on the area of concern.

### **Nature**

For the avoidance of doubt, this proposal would apply retrospectively, to the extent that it will (if approved) permit errors which occurred [since 1<sup>st</sup> April 2010] to be considered by the UNC Committee.

The proposer notes that in its decision on P37, Ofgem concluded that even prudent operators may make material errors as a consequence of inexperience with new systems, and that it accepted that the possibility of retrospective rule changes should be allowed in certain very strictly defined circumstances. Whilst the proposer recognises the general undesirability of retrospective UNC changes, it believes that this proposal is addressing such a very strictly defined circumstance. The proposal could be even more strictly defined, if it were to address past errors only, but the proposer believes that enduring Manifest Error provisions for entry capacity overrun charges are something which have been sought for some time by Users and by Ofgem. Rather than raise two proposals (one for retrospective changes and one to endure for the future), the proposer believes that there is no reason why a different process should be required for past and future errors, and so believes it is preferable for the sake of efficiency of administration, and consistency of treatment, to raise a single proposal which provides a very limited scope for past errors to be considered, and at the same time implements enduring arrangements.

**[ Further justification of retrospectivity, and explanation of the approach and choice of parameters for the process to be developed and provided here ]**

### **Proposal**

**It is proposed that the UNC be modified in accordance with the following:-**

#### **1. Claiming Manifest Error**

- a) A User can raise a Claim for Manifest Error ('Claim') if it believes that it has incurred entry capacity overrun charges [of greater than £50,000] as a result of an error.
- b) The User can raise a Claim by giving notice of such a Claim to the Transporter, as

soon as reasonably practicable and where possible before the relevant invoice due date. Claims for errors occurring after [the implementation date of the Mod] must be raised within [1 month] of the invoice issue date to which the error relates. Claims occurring [prior to the implementation date but since 1<sup>st</sup> April 2010] must be raised within [1 month] of the implementation date

c) A Claim for Manifest Error must state:-

- That it is a Claim for Manifest Error in relation to Entry Capacity Overrun Charges
- Relevant ASEP(s)
- Date(s) on which the error occurred
- Extent of Claim (i.e. approx quantity of capacity not booked and overrun charge applicable, if known)
- A brief explanation of how/why the Manifest Error occurred

d) A single aggregate Claim may be made where multiple consecutive days of overrun charges have been incurred, [and/or overrun charges have been incurred at multiple ASEPs on the same day(s)] and consideration of any adjustments may be made in relation to each day[/ASEP] individually or in aggregate as the UNCC sees fit.

e) Users raising a Claim will be liable to pay a non-returnable administration fee of [£5000] to the Transporter, or other such amount as determined by the [UNCC] from time to time and published by the Transporter. [Prior consultation with Users and 30 days notice of changes in the fee will be provided]

## 2. Acknowledgement and Notification

a) Where a Claim is raised, the Transporter will [within a maximum of 3 business days] acknowledge the Claim in writing and notify all Users [via the Joint Office] that a claim has been received. [The Joint Office will publish the notification on its website and notify all Users on its distribution list]

b) The Notification to all Users must contain the following information:-

- That a Claim for Manifest Error has been made
- Relevant ASEP(s)
- Period (i.e. month) in which the error is claimed to have occurred
- Due date of invoice containing relevant capacity neutrality amounts
- An indication of the materiality of the Claim, specifying a general range within which the claim falls.
- Any other relevant information [as set out in the Guidance]

## 3. Convening the UNCC

a) Claims should always be considered as promptly as possible, but the UNCC has a maximum of [55] business days from the date on which the Claim was raised with the Transporter to reach its decisions. (NB: Where this is not achieved, the default position (see 9 below) will apply.)

b) The Transporter will instruct the UNCC Secretary to arrange a meeting of the UNCC at the earliest opportunity and at the latest within [10] business days of the claim being raised with the Transporter.

[c) Where the claim is to be considered as part of a wider UNCC meeting, the relevant section of a UNCC meeting may be held in private to protect the [confidentiality] of the Claimant, if the Claimant wishes.][*just state in guidance doc?*]

d) If necessary, the UNCC may appoint a sub-committee to carry out its duties under [this section]. [The prevailing rules of General Terms GTB section 4 which govern the UNCC e.g. on voting rights, and 4.3.6 in relation to independence shall apply]. [Where a sub-committee is appointed, the requirements of the UNC will apply equally to the sub-committee]

e) Members of the UNCC should declare if they have a specific interest with the Claimant [other than benefiting through capacity neutrality] which may preclude the Member considering the Claim fairly. The UNCC may, by majority vote, permit the Member to consider the Claim if it believes that the Member will act independently.

f) The members of the UNCC do not have personal individual liability in relation to their consideration of a Claim for Manifest Error, and are expected to act independently of their company interests and in good faith.

#### 4. UNCC Determination

The UNCC will determine [by Panel majority]:-

- a) whether a Manifest Error occurred and if so,
- b) what adjustment should be made to the resulting overrun charges.

The process, considerations and criteria to be used by the UNCC in making these determinations are further described in the sections below.

#### 5. Reporting of Determination

a) As soon as practicable and within [a maximum of 3 business days] of the UNCC determination being reached, the [Secretary] will notify the outcome to the Claimant, the Transporter, Ofgem, and all Users [via the Joint Office].

b) Where the determination means that Users will be required to pay back money received previously as a result of capacity neutrality, the notification will specify that this will be the case, and give the relevant invoice due date. The notification will state that an adjustment to capacity neutrality will be made, [and may give the range within which the aggregate figure lies][but will not quantify the outcome for individual Users].

c) As soon as practicable, and within [a maximum of 5 business days] of the UNCC reaching its decisions, the Secretary will produce a report explaining the decisions of the UNCC, for publication to the Claimant, Ofgem and Users. An edited version may be provided for Users to protect the [commercial confidentiality] of the Claimant.

[d) For the avoidance of doubt there are no specific or alternative credit provisions associated with this proposal. ]

#### 6. Implementation of the Outcome

a) The Transporter will undertake the adjustments necessary (e.g. reverse neutrality charges) to give effect to the determination of the UNCC, [at the time of the next entry capacity invoice date provided that there is [x] days notice to enable the implementation to be made, otherwise at the time of the subsequent entry capacity invoice]. Users are obliged to make any repayments required.

b) The administration fee will be invoiced [at the next Entry Capacity Invoice date] [via an ad hoc invoice] following the UNCC determination.

#### 7. Determination of Manifest Error

a) In order for the claim to be considered, it is the responsibility of the Claimant to provide evidence that its error was genuine and unintended [and otherwise meets the criteria to be determined as a valid Manifest Error]. This evidence should be provided at the first meeting of the UNCC held to consider the Claim.

b) The [Guidance document] sets out suggested information which the Claimant may provide, and the UNCC may subsequently request further information from the Claimant if necessary to aid its consideration of the claim.

c) In the event that a Claimant fails to provide further relevant information reasonably requested (with a reasonable [5 day?] notice period) by UNCC to enable the UNCC to make a decision within the [55 day] time limit, the UNCC can decide to reject the claim, and/or will not be obliged in such cases to use the default adjustment set out in [9]

d) The Transporter is required to provide the following information at the first meeting of the UNCC held to consider the Claim.

i) Details of the Claimant's entry capacity auction purchases for the relevant entry overrun days at the relevant ASEP

ii) Secondary entry capacity trade buys and sells of the Claimant [i.e. trades which were notified to the Transporter, detailing quantities traded but not the counterparties] for the entry overrun day(s) at the ASEP.

iii) Verification of entry capacity overrun charges incurred

iv) Details of the specific operational circumstances on the entry overrun days in question [e.g. capacity unsold at D-1, information regarding any constraints, scalebacks, buybacks which may have occurred etc.]

e) The Transporter is also required to provide any other relevant information which the UNCC reasonably requests, with a reasonable [5 day?] notice period, to enable the UNCC to make a decision within the [55 day] time limit, [whilst respecting commercial confidentiality]. [The Guidance document sets out what may typically constitute 'other relevant information']

f) The UNCC will consider the information presented, and determine if in its opinion a valid Manifest Error occurred, taking into account the following criteria:-

- That it was a genuine, unintended [‘administrative’] error (as opposed to a commercial mis-judgement)
- That the User was unaware at the time
- That the User was intending to operate [prudently] [(i.e. was not seeking unfair commercial advantage)]

*[NB: criteria to be considered further – including the extent to which each element must be passed]*

### 8. Determination of Adjusted Overrun Charges

a) In the event that the UNCC determines that a valid Manifest Error has occurred, it shall then determine an adjustment to the original overrun charges incurred, in accordance with [the following process][and the Guidance Document], to set the charges which the Claimant will be required to pay instead (‘the adjusted overrun charges’). If the UNCC determines that a Manifest Error Claim is not valid, the overrun charges will stand as incurred without adjustment.

b) The UNCC shall determine 2 or 3 reference costs [which are relevant to the capacity which was not booked for the entry overrun day(s) in question and to the circumstances associated with the manifest error], as follows:-

- Reference Cost 1 in respect of any day is the cost of the quantity of entry capacity which the Claimant should have bought, priced at the highest priced accepted bid in the most recent monthly auction relating to capacity at the relevant ASEP(s) on the day in question (or the reserve price if there were no bids) + 5%
- Reference Cost 2 in respect of any day is 20% of the entry overrun charges as originally incurred for that day.
- Reference Cost 3, if required, in respect of any day, should be any further relevant specific costs associated with the Claim, i.e. those directly associated with any consequences resulting from the Manifest Error, which would not have occurred otherwise. Reference cost 3 may be up to 100% of the original overrun charges.

c) For any entry overrun day in question, the reference costs as calculated [in b above] will provide a range within which the UNCC shall then determine a figure for the adjusted overrun charges using the factors in [f] below.

d) Where overrun charges have been incurred on more than one day and have been raised as a single aggregate claim, the UNCC can choose as it sees fit to deal with the application of the factors to the maximum/minimum reference costs in aggregate, (for example where the circumstances are straightforward and the same on each day in question), or in discrete periods of a day (should the UNCC believe different

treatment might be warranted in respect of different days in an aggregate claim).

e) Where overrun charges have been incurred at more than one ASEP and have been raised as a single aggregate claim, the UNCC should determine the appropriate reference costs for each ASEP, and then can choose as it sees fit to deal with the application of the factors to the reference costs in aggregate, in discrete periods of a day and/or otherwise individually at each ASEP.

### ***Review of Relevant Factors***

f) The UNCC shall make its determination of the appropriate level of adjusted overrun charges within the range established pursuant to this section [8b above], by having regard to the following factors, where the UNCC considers such factors to be relevant.

- i. how promptly the Claimant acted in relation to informing the Transporter of the error and took all reasonable steps to avoid repetition of the error, following its discovery.
- ii. the extent to which the magnitude of the aggregate charges incurred as a result of the error was wholly disproportionate due weight being given to the desirability of incentivising Users to avoid mistakes in capacity bookings
- iii. the extent to which the Claimant had taken reasonable steps to ensure that it had prudent systems and processes in place at the time the error was made
- iv. the extent to which the error was attributable to a failure of [centrally provided][Transporter] systems
- v. the extent to which the error was attributable to an inaccuracy in published information, e.g. levels of capacity available

f) In its concluding report the UNCC will explain its assessment of the individual factors and the due weighting that it has applied to them in arriving at its final determination of the appropriate level of adjusted overrun charges.

### **9. Default Adjustment**

a) Where the UNCC fails to reach a determination within the [55] day time limit, unless a specifically quantified extension to the time limit within which a decision is to be reached is mutually agreed and confirmed in writing between the UNCC and the Claimant, the default adjustment will apply.

b) The default adjustment will be that the adjusted charges will be set at the mid-point of reference cost 1 and reference cost 2, calculated pursuant to [section 8] above.



## 2 User Pays

### a) Classification of the Proposal as User Pays or not and justification for classification

No systems [UK LINK][GEMINI] changes are required for this proposal to be implemented, therefore this proposal is not classified as a User Pays proposal.

### b) Identification of Users, proposed split of the recovery between Gas Transporters and Users for User Pays costs and justification

No User Pays charges applicable.

### c) Proposed charge(s) for application of Users Pays charges to Shippers

No User Pays charges applicable to Shippers.

### d) Proposed charge for inclusion in ACS – to be completed upon receipt of cost estimate from xoserve

No charges applicable for inclusion in ACS.

## 3 Extent to which implementation of the proposed modification would better facilitate the relevant objectives

**Standard Special Condition A11.1 (a): *the coordinated, efficient and economic operation of the pipe-line system to which this licence relates;***

[The proposer believes that the proposal may better facilitate special condition [A11.1 (a)] – furthering of efficient and economic operation of the system, as follows:

to the extent that greater comfort for participants increases the likelihood of their more active participation in secondary trading [as contemplated in Ofgem’s decision on Transco Mod Proposal 589], this may lead to more efficient use of the system.]

**Standard Special Condition A11.1 (b): *so far as is consistent with sub-paragraph (a), the (i) the combined pipe-line system, and/ or (ii) the pipe-line system of one or more other relevant gas transporters;***

Implementation would not be expected to better facilitate this relevant objective.

**Standard Special Condition A11.1 (c): *so far as is consistent with sub-paragraphs (a) and (b), the efficient discharge of the licensee's obligations under this licence;***

Implementation would not be expected to better facilitate this relevant objective.

**Standard Special Condition A11.1 (d):** *so far as is consistent with sub-paragraphs (a) to (c) the securing of effective competition: (i) between relevant shippers; (ii) between relevant suppliers; and/or (iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers;*

[The proposer believes that the proposal will better facilitate special condition [A11.1 (d)] – furthering of effective competition between suppliers by:

Providing comfort to Users, especially new entrants and/or smaller participants, that circumstances of genuine error in relation to entry capacity overruns are capable of fair consideration and reasonable treatment.]

**Standard Special Condition A11.1 (e):** *so far as is consistent with sub-paragraphs (a) to (d), the provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards (within the meaning of paragraph 4 of standard condition 32A (Security of Supply – Domestic Customers) of the standard conditions of Gas Suppliers’ licences) are satisfied as respects the availability of gas to their domestic customers;*

Implementation would not be expected to better facilitate this relevant objective.

**Standard Special Condition A11.1 (f):** *so far as is consistent with sub-paragraphs (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code.*

[The proposer believes that the proposal will better facilitate special condition [A11.1 (f)] – furthering of efficiency in the implementation and administration of the UNC by:

- Providing an appropriate mechanism for the consideration and resolution of possible manifest error circumstances in relation to entry capacity overruns

Reducing the risk of contractual disputes arising from unreasonable and unintended consequences associated with the existing arrangements.]

**4 The implications of implementing the Modification Proposal on security of supply, operation of the Total System and industry fragmentation**

No implications on security of supply, operation of the Total System or industry fragmentation have been identified.

**5 The implications for Transporters and each Transporter of implementing the Modification Proposal, including:**

**a) implications for operation of the System:**

There are no implications for operation of the System.

**b) development and capital cost and operating cost implications:**

The proposal makes use of the existing UNC Committee (UNCC) arrangement, and provides for National Grid to receive a fee to cover its costs. Adjustments can be made using existing functionality (see 7 below). No systems changes are required. Therefore there are no further development or other cost implications.

**c) extent to which it is appropriate to recover the costs, and proposal for the most appropriate way to recover the costs:**

No cost recovery is required.

**d) Analysis of the consequences (if any) this proposal would have on price regulation:**

The proposer believes that the proposal will reduce the risk of disputes or other litigation with the Transporter, by providing for a reasonable, industry led, process for consideration of possible manifest error circumstances in relation to entry capacity overruns.

**6 The consequence of implementing the Modification Proposal on the level of contractual risk of each Transporter under the Code as modified by the Modification Proposal**

No such consequence is anticipated.

**7 The high level indication of the areas of the UK Link System likely to be affected, together with the development implications and other implications for the UK Link Systems and related computer systems of each Transporter and Users**

The proposer understands that, where the UNCC determines there should be an adjustment to overrun charges, this can be implemented using existing functionality of the Gemini systems. Therefore there are no systems development implications.

**8 The implications of implementing the Modification Proposal for Users, including administrative and operational costs and level of contractual risk**

***Administrative and operational implications (including impact upon manual processes and procedures)***

The proposer believes implementation would require the following additional administrative procedures for Users:

- The UNC Committee would be required to hear and determine manifest error

cases

- Users may be required to account for and pay back monies received through capacity neutrality.

The proposer believes that the frequency of which these additional procedures are required is likely to be extremely low.

***Development and capital cost and operating cost implications***

The proposer believes that there should be no additional development or capital cost requirements for Users, and that any additional operating costs for Users in dealing with accounting for neutrality amounts would be very low (and infrequent), and that the proposed process provides for Users to have sufficient information and notice to address this issue in a satisfactory manner.

***Consequence for the level of contractual risk of Users***

The proposer believes that implementation of the proposal would reduce the level of contractual risk that Users face under the UNC at present, as it provides for fair and reasonable consideration and treatment of genuine manifest error circumstances in relation to entry capacity overruns, and this is not currently available.

**9 The implications of implementing the Modification Proposal for Terminal Operators, Consumers, Connected System Operators, Suppliers, producers and, any Non Code Party**

No implications have been identified.

**10 Consequences on the legislative and regulatory obligations and contractual relationships of each Transporter and each User and Non Code Party of implementing the Modification Proposal**

No consequences have been identified.

**11 Analysis of any advantages or disadvantages of implementation of the Modification Proposal**

**Advantages**

- [to be confirmed]

**Disadvantages**

- [to be confirmed]

**12 Summary of representations received (to the extent that the import of those**

**representations are not reflected elsewhere in the Workstream Report)**

No written representations have been received.

**13 The extent to which the implementation is required to enable each Transporter to facilitate compliance with safety or other legislation**

No such requirement has been identified.

**14 The extent to which the implementation is required having regard to any proposed change in the methodology established under paragraph 5 of Condition A4 or the statement furnished by each Transporter under paragraph 1 of Condition 4 of the Transporter's Licence**

No such requirement has been identified.

**15 Programme for works required as a consequence of implementing the Modification Proposal**

No programme of works would be required as a consequence of implementing the Modification Proposal.

**16 Proposed implementation timetable (including timetable for any necessary information systems changes)**

[This Proposal could be implemented with immediate effect following direction from Ofgem.]

**17 Implications of implementing this Modification Proposal upon existing Code Standards of Service**

No implications of implementing this Modification Proposal upon existing Code Standards of Service have been identified.

**18 Workstream recommendation regarding implementation of this Modification Proposal**

The Transmission Workstream considers that the Proposal is sufficiently developed and should now proceed to the Consultation Phase. [The Workstream also recommends that the Panel request the preparation of legal text for this Modification Proposal.]