

Stage 04: Final Modification Report

0349:

Introduction of a Force Majeure Capacity Management Arrangement

What stage is this document in the process?



This modification proposal addresses the impact upon Users NTS Entry Capacity rights at an Aggregate System Entry Point at which National Grid NTS has issued a Force Majeure Notification by introducing a Force Majeure Capacity Management Arrangement to be used only in these instances.



The Panel recommends implementation of 0349, Introduction of a Force Majeure Capacity Management Arrangement



High Impact:
Entry Shippers, National Grid NTS



Medium Impact:



Low Impact:

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About this document:

This document is a Final Modification Report, which was sent to the Authority on 16 December 2010, on behalf of the Panel. The Authority will consider the Panel's recommendation, and decide whether or not this change should be made.

This Final Modification Report has been amended by the inclusion of a link to the legal text.



Any questions?

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1 Summary



In summary this proposal will require National Grid NTS, where it issues a Force Majeure Notification at an ASEP and there is an impact on Users Registered Firm NTS Entry Capacity rights at that ASEP, to put in place a Force Majeure Capacity Management Arrangement. The Force Majeure Capacity Arrangement will require National Grid NTS to pay Users (ensuring that National Grid NTS share both the risk and cost attributable to the treatment of NTS Entry Capacity at that ASEP) for a Force Majeure Option Arrangement that National Grid NTS may exercise on any Day within the Force Majeure Period where gas tendered for delivery exceeds the level that can be supported under the Force Majeure or exceeds the system capability.

Why Change?

Under current Uniform Network Code (UNC) arrangements National Grid NTS can issue a Force Majeure (FM) Notification (UNC General Terms Section B General) at an Aggregate System Entry Point (ASEP) and claim relief from any liability for any delay or failure in the performance of its obligations under the UNC which is caused by or results from FM.

In circumstances where National Grid NTS is entitled to FM relief in relation to its obligation to accept gas tendered for delivery by Users at an ASEP, Users remain liable for the full value of their NTS Entry Capacity holdings at the affected ASEP yet may be restricted in their ability to flow against them, in effect Users are paying in full for a service which they may not be receiving in full.

This Proposal seeks to address the impact on Users who hold Firm NTS Entry Capacity at an ASEP at which FM has been notified and where their rights to utilise such capacity have been affected by the FM. In this proposal the term Users means such Users and Entry Users includes but is not limited to such Users.

Solution

To address this impact upon Users who are registered as holding Firm NTS Entry Capacity it is proposed that where National Grid NTS issues a FM Notification at an ASEP and it affects Users Registered Firm NTS Entry Capacity rights, National Grid NTS will pay Users to provide a Force Majeure Option Arrangement that National Grid NTS may exercise when on any Day within the Force Majeure Period where gas tendered for delivery exceeds the level that can be supported under the Force Majeure or exceeds the system capability. This approach provides Users with additional flexibility when tendering gas for delivery at an ASEP at which Force Majeure has been notified.

The Force Majeure Option Arrangement will enable National Grid NTS to exercise such an option for each User who held Registered Firm NTS Entry Capacity at the time of Force Majeure Notification. The Force Majeure Option Arrangement quantity for each User will be determined based on their proportion of the Registered Firm NTS Entry Capacity at the ASEP (at which the FM has been notified) that they held at the time of the Force Majeure Notification.

The Uniform Network Code (UNC)

Where can the UNC be found?

The UNC can be found on the Joint Office of Gas Transporters website at: www.gasgovernance.co.uk/UNC

NTS Entry Capacity

What is NTS Entry Capacity?

It is Capacity held at an Aggregate System Entry Point that a Users is treated as utilising when delivering gas into the NTS (and the total system) at that point as per UNC TPD B1.2.3(a)

What is Firm NTS Entry Capacity?

It is Quarterly, Monthly & Daily NTS Entry Capacity that is not subject to curtailment as per UNC TPD B2.1.7(b)

What is Quarterly NTS Entry Capacity?

It is Firm NTS Entry Capacity which may be applied for & registered as held by a User for each day in a particular calendar quarter as per UNC TPD B2.1.4(a). A calendar quarter consists of 3 months i.e. Jan to Mar, April to June, July to Sep, Oct to Dec.

Such an Option will provide Users with a Premium Price (paid irrespective of the Option being exercised) calculated for each qualifying individual User and an Exercise Price which will always be zero.

This Modification Proposal:

- Will cover the treatment of Quarterly NTS Entry Capacity and/or Monthly NTS Entry Capacity at an ASEP where FM has been called by National Grid NTS
- Will cover treatment of Quarterly and/or Monthly NTS Entry Capacity that has been allocated to a User for the FM Period in an auction held prior to the Force Majeure Notification being issued.

Please note that this proposal will not require National Grid NTS to enter into a Force Majeure Option Arrangement for Firm NTS Entry Capacity that is for a Day or Day(s) that fall prior to the Modification Proposal implementation date, but where the Force Majeure notice is issued after the Modification Proposal implementation date, National Grid NTS will be required to enter into a Force Majeure Option Arrangement for Firm NTS Entry Capacity that was Registered to Users prior to the date that the Force Majeure was issued.

The Force Majeure Capacity Management Arrangement:

- will be a Force Majeure Option Arrangement that National Grid NTS will enact on the National Grid NTS system on behalf of each User(s) for a Day(s), Month(s) or Quarter(s) as necessary
- will only put a Force Majeure Option Arrangement in place for Firm NTS Entry Capacity where the amount of Firm Capacity registered by Users (held at the time of the FM Notification) is greater than the flow that can be tendered for delivery as a result of the FM Notification
- will be updated with the relevant information within Five Business Days from the date:
 - on which the Force Majeure notification is issued (where it is issued after the Modification Proposal implementation date); or
 - of the Modification Proposal implementation date where a Force Majeure Notification is already in place.
- Will be assessed by National Grid NTS on a rolling basis quarterly, monthly, weekly, daily, with any subsequent Force Majeure Option Arrangement(s) being put in place as required and only for the period that the Force Majeure is in place.
- will provide relevant details i.e. location, quantity, period, number of exercisable Days and price

Impacts & Costs

The impact of the Proposal would be to:

- Provide clear rules for the treatment of NTS Entry Capacity at an ASEP where



What is Monthly NTS Entry Capacity?

It is Firm NTS Entry Capacity which may be applied for & registered as held by a User for each day in a particular calendar Month as per UNC TPD B2.1.4(b).

What is Registered NTS Entry Capacity?

It is System Capacity in relation to a System Point which the User is registered as holding at that system point on the Gas Flow Day in accordance with UNC TPD B1.4(a)

Force Majeure

Where can I find clarification of the meaning Force Majeure?

In the UNC General Terms (GTB) Section B3.1, which can be found on the Joint Office of Gas Transporters website at: www.gasgovernance.co.uk/general

Users

Who are Users?

Users are Shipper Users or DNO Users in accordance with UNC General Terms (GTB) Section B2.2. For the purposes of this proposal Users refers to Shipper Users.

National Grid NTS has called FM

- Reduce the impact of FM upon Users by ensuring that a payment is made to such Users in respect of costs associated with an instance of FM at an ASEP where such User's Registered Firm NTS Entry Capacity rights are affected. Such payment is made under the Force Majeure Option Arrangement and that the costs of this are borne between National Grid NTS and Entry Users.
- Remove a potential disincentive that may deter Users from investing in capacity at new and existing Entry Points due to non recovery by Users of costs of Registered Firm NTS Entry Capacity which cannot be utilised due to the FM.

Implementation

As this proposal will require new processes to be put in place by National Grid NTS to:

- calculate each User's proportion of the Capacity covered by the Force Majeure Capacity Management Arrangement
 - calculate the prices applied in the Force Majeure Capacity Management Arrangement
 - set up the initial Force Majeure Capacity Management Arrangement on its systems
- an implementation date that is a minimum of 5 Business Days following approval by the Authority is suggested.

The Case for Change

This Proposal will mitigate the risk of Users at new and existing Entry Points having to pay in full for booked capacity where that capacity cannot be utilised in full due to Force Majeure, removing a potential obstacle to the development of new and existing Entry Points which would improve the efficiency and security of the entire network.

The proposal will also require that National Grid NTS shares both the risk and cost that is currently borne completely by affected Users and is likely to assist in reducing any perception that there is an incentive on National Grid NTS to call Force Majeure.

This Proposal is likely to promote greater equality between National Grid NTS and Users in the treatment NTS Entry Capacity during incidents of Force Majeure providing some equalisation of both the risk and cost between the Transporter and Shippers in relation to individual projects, hence encouraging future investment and improving effective competition between Shippers making the UK gas regime more attractive to developers when looking to invest.

The Proposal may also help to secure effective competition between Shippers by ensuring that the costs of a Force Majeure event are targeted solely at the Transporter and Entry Users and ensuring that Users at an individual ASEP are not disproportionately affected by Force Majeure.

Recommendations

The Proposer believes this Proposal is sufficiently clear to proceed directly to consultation

2 Why Change?



Under current Uniform Network Code (UNC) arrangements National Grid NTS can issue a Force Majeure (FM) Notification (UNC General Terms Section B General) at an Aggregate System Entry Point (ASEP) and claim relief from its UNC requirement to make payment for any delay or failure in the performance of its obligations under the UNC.

Where National Grid NTS uses Force Majeure to relieve it of its obligation to accept gas tendered for delivery by Users at an ASEP, Users remain liable for the full value of their NTS Entry Capacity holdings at the affected ASEP yet may be restricted in their ability to flow against them, in effect Users are paying in full for a service which they may not be receiving in full.

The UNC does not currently provide for payment to Users in respect of their Firm NTS Entry Capacity rights when National Grid NTS calls Force Majeure at an ASEP, as mentioned this leaves Users in the position whereby they are still required to pay for capacity which they cannot be certain that they will be able to fully utilise as and when they need to do so whilst National Grid NTS can claim relief from their obligations to accept gas that is tendered for delivery. This means the amount of capacity that Users may utilise on a daily basis is reduced whilst leaving them exposed financially.

This proposal will introduce specific rules that will give certainty to Entry Users and ensure that the costs of making payments under the Force Majeure Option Arrangement are apportioned between both Users and National Grid NTS.



NTS Entry Capacity Auctions

Where is there information on NTS Entry Capacity Auctions?

In the UNC TPD B2.2, which can be found on the Joint Office of Gas Transporters website at:

www.gasgovernance.co.uk/TPD

What are annual NTS Entry Capacity Auctions?

They are Auction of Quarterly and Monthly NTS Entry Capacity that are held on an annual basis in accordance with UNC TPD B2.2

Business Day

What is a Business Day?

It is a day other than a Saturday/Sunday or a day that begins at 0.600 hours on a bank holiday in England and Wales

System Capacity Transfer

What is a Transfer?

It is the transfer of available NTS Entry Capacity between Users in accordance with UNC TPD B5.

What is Available NTS Entry Capacity?

It is System Capacity that a User holds at a System point after taking into account any system capacity transfers, as per UNC TPD B1.4(b)

Surrendered Capacity

It is NTS Entry Capacity that Users have submitted via the Rolling Monthly NTS Entry Capacity Auctions in accordance with UNC TPD B2.3 that have been accepted by National Grid NTS plus any NTS Entry Capacity that Users have surrendered via a Forward agreement in accordance with UNC TPD B2.8

Nature of the Proposal

This Modification Proposal will only cover the treatment of Capacity at an ASEP where Force Majeure (FM) has been called by National Grid NTS and the User(s) may be unable to utilise some or all of their Registered Firm NTS Entry Capacity as a result of the FM declaration.

This Modification Proposal will only cover treatment of Quarterly and/or Monthly NTS Entry Capacity that has been allocated to a User for all or part of the FM Period (the FM Period will be the duration that the Force Majeure Notification is in place i.e. until the FM is removed) in an auction held prior to the Force Majeure Notification being issued. National Grid NTS will not be required to enter into a Force Majeure Option Arrangement for:

- Firm NTS Entry Capacity allocated in an auction held after the FM Notification has been issued;
- Firm NTS Entry Capacity that has already been surrendered prior to or post the FM Notification being issued for the FM Period;
- Firm NTS Entry Capacity that Users have acquired via a System Capacity Transfer from another User.

Please note that for the purposes of this Proposal the term Firm Capacity will be used as a proxy of Firm Quarterly NTS Entry Capacity and Firm Monthly NTS Entry Capacity having deducted any Surrendered NTS Entry Capacity (excluding System Capacity Transfers relating to NTS Entry Capacity) unless otherwise stated.

It is proposed that in these instances of FM where Users are registered as holding Firm Capacity (at the affected ASEP) that, in aggregate, entitles Users to flow gas in excess of the level that can be supported under the FM, National Grid NTS will be required to put in place a Force Majeure Capacity Management Arrangement.

National Grid NTS will under such Force Majeure Capacity Management Arrangement enter into a Force Majeure Option Arrangement(s) for an amount of Firm Capacity that is in aggregate equal to the level that is constrained by the FM as outlined within the FM Notification (the FM Amount). National Grid NTS will only exercise a FM Option Arrangement for Firm Capacity where the amount held by the Users is greater than the flow that can be accommodated as a result of the FM Notification, i.e. it will be subject to the level of Firm Capacity that has been sold prior to the FM Notification. For example:

NTS SO Baseline Entry Capacity = 1000 GWh/day

Firm Capacity sold (when FM notification issued) = 900 GWh/day

Force Majeure Notification = 300 GWh/day

Quantity that National Grid NTS will enter into a Force Majeure Option Arrangement(s) for = Firm Capacity sold – (NTS SO Baseline Entry Capacity less Force Majeure Amount) = 200 GWh/day

Where a FM Notification (that may affect Firm Capacity):

- has been issued prior to the Modification Proposal implementation date, National Grid NTS will put in place a Force Majeure Capacity Management Arrangement (and be able to exercise the Option to reduce the registered Firm NTS Entry Capacity on the above basis) no later than 5 Business Days from the Modification Proposal implementation date.
- is issued after the Modification Proposal implementation date, National Grid NTS will be able to put in place a Force Majeure Capacity Management Arrangement (and exercise the Option to reduce the registered Firm NTS Entry Capacity on the above basis) no later than 5 Business Days from the FM Notification date;

Force Majeure Capacity Management Arrangement

For the purposes of this Modification Proposal a Force Majeure Capacity Arrangement will be a Force Majeure Option Arrangement that National Grid NTS will enact on the National Grid NTS system on behalf of a User(s). For the avoidance of doubt, this process will utilise the same system functionality as an Option Agreement but will not require the User(s) to undertake any actions on National Grid NTS' systems or National Grid NTS to issue an Option Agreement Tender Invitation Notice.

National Grid NTS will enact a Force Majeure Option Arrangement, or Arrangements as required, until such time as the Force Majeure Notification ceases to apply. Such Force Majeure Option Arrangements may be for a Day(s), Month(s) or Quarter(s), or combination thereof as is required, depending upon whether the User(s) hold the same levels and proportion of Firm Capacity for such Day, month or quarter, throughout the duration of the Force Majeure.

National Grid NTS will update it's systems on behalf of each User, with the initial Force Majeure Option Arrangement within Five Business Days of the date:

- on which a Force Majeure notification is issued, where it is issued after the Modification Proposal implementation date;
- of the Modification Proposal implementation date where a Force Majeure Notification is in place on such a date. National Grid NTS will assess the Force Majeure Amount on a rolling basis with any subsequent Force Majeure Option Arrangement(s) being enacted as they are required.

National Grid NTS will only enact a Force Majeure Capacity Management Arrangement(s) within the period that the Force Majeure is in place.

A Force Majeure Option Arrangement will detail for each User that holds Registered Firm NTS Entry Capacity at the ASEP at which Force Majeure applies:

- ASEP – the ASEP at which the Force Majeure notification has been put in

place

- The duration of the Force Majeure Option Arrangement, this may be for a Day, Month and/or Quarter. This may result in there being a number of Force Majeure Option Arrangements over the duration of the Force Majeure Notification.
- The Maximum Option Quantity (kWh/day) – The Firm Capacity that must be surrendered by a User when the Force Majeure Option Arrangement is exercised and based on the amount by which the Registered Firm NTS Entry Capacity at the affected ASEP is to be reduced, as outlined in the FM notification (the FM Amount) and adjusted to take into account the quantities of Registered Firm NTS Entry Capacity sold, adjusted for any surrendered NTS Entry Capacity at the affected ASEP at the time that the Force Majeure Notification was issued, prorated between those Users Registered as holding Firm NTS Entry Capacity (excluding any impacts of Capacity acquired/sold via System Capacity Transfers) at the ASEP (the Prorated Option Quantity).

The specific proration calculation will be:

$((R - S) \text{ divided by } (T - \text{RMSO})) * \text{AFMA}$

- R is the Users Registered Firm NTS Entry Capacity holdings at the ASEP;
- S is any accepted rolling monthly surrender offer(s) by the User and any Firm NTS Entry Capacity surrendered via a Forward Agreement on the date that the Force Majeure Notification is issued at the ASEP;
- T is the total amount of Registered Firm NTS Entry Capacity at the ASEP;
- RMSO is any accepted rolling monthly surrender offer(s), on the date that the Force Majeure Notification is issued, at the affected ASEP;
- AFMA is an Adjusted Force Majeure Amount.

- An Adjusted FM Amount - the FM Amount as outlined within the FM Notification minus any Unsold Capacity at the time of the FM Notification and for any Days where any Daily Firm NTS Entry Capacity has been allocated prior to the FM Notification for a Day within the FM Period. It does not include any Capacity that has been acquired after the FM Notification.
- Premium Price – the price that National Grid NTS will pay to Users for the option of exercising the Force Majeure Option Arrangement whether it is exercised or not. This price will be the Weighted Average Price (p/kWh/day) of each specific User's Registered Firm NTS Entry Capacity Holdings (excluding any impacts of Firm NTS Entry Capacity acquired/sold via Capacity Transfers) at the ASEP at the time that the Force Majeure notification was issued. The Weighted Average Price for each individual User at an ASEP will be calculated as follows:

Sum of (each successful Firm NTS Entry Capacity bid quantity * each bid price)

– Sum of (any surrendered Firm NTS Entry Capacity Offer Quantity * bid price) / the registered Firm Capacity holding of the User – any surrendered Firm NTS Entry Capacity

- Exercise Price – the price that National Grid NTS will pay for the surrender of Firm Capacity when the Force Majeure Option Arrangement is exercised, which in all cases will be zero.
- The number of exercisable Days – in all cases this will be all Days included in the duration of the Force Majeure Option Arrangement
- For the purposes of this Modification Proposal Registered Firm NTS Entry Capacity holdings will mean Firm NTS Entry Capacity acquired through the Annual NTS Entry Capacity and (where applicable) the Monthly NTS Entry Capacity Auctions registered at the time of the FM Notification.

Once National Grid NTS has updated the relevant systems it will provide each individual User, at the ASEP at which Force Majeure applies, their:

- Maximum Option Quantity (kWh/day)
- Premium Price (p/kWh/day)
- Exercise Price (p/kWh/day)
- Exercisable Days
- Latest Exercisable Time (which will be 01:00 hours on the Day, please note that the Force Majeure Option Arrangement may be exercised ahead of the Day)

When a Force Majeure Option Arrangement is entered into National Grid NTS will provide the following to all Users:

- Total Exercisable Quantity (kWh/day)
- WAP (p/kWh/day) of all Premium Prices

When a Force Majeure Option Arrangement is exercised National Grid NTS will provide notification to all Users within one hour of the Force Majeure Option Arrangement being exercised:

- that a Force Majeure Option Arrangement has been exercised;
- the ASEP at which it has been exercised

The Force Majeure Option Arrangement may only be exercised if the aggregate gas tendered for delivery exceeds the level that can be supported under the FM or exceeds the system capability.

Any Firm NTS Entry Capacity exercised through this process shall reduce the Users Capacity entitlements and be considered in respect of calculating the Users Overrun Quantity and the Overrun Price.

The Force Majeure Option Arrangement will be treated as an NTS Entry Capacity Constraint Management Cost and feed into NTS Entry Capacity Neutrality in

accordance with UNC TPD B2.13.2 and the Operational Entry Capacity Buyback incentive.

Amounts payable from the Force Majeure Option Arrangement(s) will be treated as Capacity Surrender Charges and be invoiced and payable in accordance UNC TPD Section S.

4 Legal Text

The text for this modification has been published in a separate document next to this report at www.gasgovernance.co.uk/0349

5 Impacts and Costs

Costs

Include here any proposal for the apportionment of implementation costs amongst parties.

Indicative industry costs

None Identified

Impacts

Impact on Transporters' Systems and Process

Transporters' System/Process	Potential impact
UK Link	<ul style="list-style-type: none"> National Grid NTS will need to set up Force Majeure Option Arrangements on the Gemini system on a rolling basis
Operational Processes	<ul style="list-style-type: none"> National Grid NTS will be required to calculate a Users prorated share of the FM amount & the Weighted average Price to be applied
User Pays implications	<ul style="list-style-type: none"> None

Impact on Users

Area of Users' business	Potential impact
Administrative and operational	<ul style="list-style-type: none"> The Proposal will ensure that shippers will have certainty as to their capacity rights in the event of Force Majeure type event.
Development, capital and operating costs	<ul style="list-style-type: none"> Shippers will not be required to pay for unusable capacity and users affected by Force Majeure have the opportunity to recover some of their costs by selling capacity back to NGG. Some of these costs will be passed on to the shipping community as a whole.
Contractual risks	<ul style="list-style-type: none"> The Proposal allows better management of risks associated with Force Majeure type events.
Legislative, regulatory and contractual obligations and relationships	<ul style="list-style-type: none"> None

Impact on Transporters

Impact on Transporters	
Area of Transporters' business	Potential impact
System operation	<ul style="list-style-type: none"> None
Development, capital and operating costs	<ul style="list-style-type: none"> National Grid NTS will be required to put new processes in place to calculate a Users prorated share of the FM amount & the Weighted average Price to be applied
Recovery of costs	<ul style="list-style-type: none"> None
Price regulation	<ul style="list-style-type: none"> None
Contractual risks	<ul style="list-style-type: none"> None
Legislative, regulatory and contractual obligations and relationships	<ul style="list-style-type: none"> None
Standards of service	<ul style="list-style-type: none"> None

Impact on Code Administration	
Area of Code Administration	Potential impact
Modification Rules	<ul style="list-style-type: none"> None
UNC Committees	<ul style="list-style-type: none"> None
General administration	<ul style="list-style-type: none"> None

Impact on Code	
Code section	Potential impact
UNC Transportation Principle Document (TPD) Section B	TPD B will need to be amended to include the Force Majeure Capacity Arrangement

Impact on UNC Related Documents and Other Referenced Documents	
Related Document	Potential impact
Network Entry Agreement (TPD I1.3)	None
Network Exit Agreement (Including Connected System Exit Points) (TPD J1.5.4)	None
Storage Connection Agreement (TPD R1.3.1)	None
UK Link Manual (TPD U1.4)	None
Network Code Operations Reporting Manual (TPD V12)	None

Impact on UNC Related Documents and Other Referenced Documents	
Network Code Validation Rules (TPD V12)	None
ECQ Methodology (TPD V12)	None
Measurement Error Notification Guidelines (TPD V12)	None
Energy Balancing Credit Rules (TPD X2.1)	None
Uniform Network Code Standards of Service (Various)	None

Impact on Core Industry Documents and other documents	
Document	Potential impact
Safety Case or other document under Gas Safety (Management) Regulations	None
Gas Transporter Licence	None
Transportation Pricing Methodology Statement	None

Other Impacts	
Item impacted	Potential impact
Security of Supply	Improved by ensuring that on notification of Force Majeure affecting an Aggregate System Entry Point, shippers can be confident as to the extent of their ability to deliver gas taking into account the actions that will be taken by National Grid NTS. The Proposal will remove a significant disincentive to shippers investing in capacity at new and existing entry points.
Operation of the Total System	Improved
Industry fragmentation	None
Terminal operators, consumers, connected system operators, suppliers, producers and other non code parties	

6 Implementation

7 The Case for Change

The Proposer believes that 0349 will better facilitate the achievement of **Relevant Objectives a, b and d**

Proposer's view of the benefits of 0349 against the Code Relevant Objectives	
Description of Relevant Objective	Identified impact
a) Efficient and economic operation of the pipe-line system.	See explanation below
b) Coordinated, efficient and economic operation of (i) the combined pipe-line system, and/ or (ii) the pipe-line system of one or more other relevant gas transporters.	See explanation below
c) Efficient discharge of the licensee's obligations.	None
d) 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.	See explanation below
e) Provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards... are satisfied as respects the availability of gas to their domestic customers.	None
f) Promotion of efficiency in the implementation and administration of the Code	None

The Applicable sections of the Transporter Licences

- Standard Special Condition A11 a). The Proposer believes that this Proposal would introduce additional certainty into the UNC that will enable optimisation of Supply at an Entry Terminal under circumstances of Force Majeure affecting Capacity rights (whether or not such Force Majeure is agreed between parties). The proposal will require that National Grid NTS shares the risk and cost that is currently borne completely by affected Shippers and is likely to assist in reducing any perception that there is an incentive to call Force Majeure.
- Standard Special Condition A11 b). The Proposer believes that removal of the risk of Shippers at new Entry Points having to pay in full for booked capacity where that capacity cannot be utilised in full due to Force Majeure, will remove potential obstacles to the development of new and existing Entry Points which would improve the efficiency and security of the entire network
- Standard Special Condition d). This Proposal is likely to promote greater equality in the treatment of incidents of Force Majeure providing an equalisation of both the risk and cost between the Transporter and Shippers in relation to individual projects, hence encouraging future investment and improving effective competition between Shippers making the UK gas regime more attractive to developers when looking to invest. The Proposal may also secure effective competition between Shippers by ensuring that the costs of a Force Majeure event are targeted solely at the

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Transporter and Entry Shippers whilst ensuring that Users at a individual ASEP are not disproportionately affected by Force Majeure.

8 Consultation Responses

Representations were received from the following parties:

Respondent	
Company/Organisation Name	Support Implementation or not?
BG Group	Supports
BP	Supports
British Gas	Not in Support
E.ON UK	Not in Support
EDF Energy	Supports
ExxonMobil	Supports
National Grid NTS	Supports
Petgas	Supports
Shell Gas Direct	Supports
South Hook Gas	Supports
SSE	Supports
Statoil (UK)	Supports
Total E&P UK	Supports

Of the 13 responses received 11 representations supported the modification and two were not in support.

Summary Comments

BG Group clarify that this modification does not restrict a shipper's ability to take legal actions against National Grid Gas (NGG) for claiming FM, but it does protect the shipper from the financial exposure of the entry capacity that NGG have failed to make available.

They also clarify that this Modification is not retrospective although it would apply to capacity impacted by prior declaration of FM, from the date of the implementation onwards. They believe that this modification improves the relevant objectives and provides a practical solution for the treatment of capacity costs in the event of NGG declaring FM. It is time critical given the continued failure at Milford Haven and represents the best way of ensuring a fair outcome to a significant, but absent subject to FM, piece of infrastructure.

British Gas agrees with the proposer that the way entry FM events are managed at present is flawed. However British Gas believes that this modification gives rise to the potential for cross subsidies between shippers who may be able to recover costs and those who may not; a situation which they view as harmful to competition between shippers.

EDF Energy understands the intent of this modification is to ensure that National Grid is exposed to some of the costs associated with a force majeure event. However, they were not convinced that this modification places an incentive on National Grid to manage a force majeure event. EDF also believes that this modification fails to address the issue that implementation may reduce, or even remove, the incentive on Shippers to challenge a force majeure.

Although E.ON agrees that the current UNC provisions on Force Majeure (FM) are deficient by exposing Shippers to all the risk, and whilst they fully support the principle

of affected Shippers being appropriately compensated in the event of FM being declared by NG NTS, they do not believe the generality of Shippers at all other unaffected entry points should have to fund this; at least not until NG NTS's current capacity buy-back 'pot' of £13.5M p.a. has been exhausted.

E.ON recognises that this modification goes some way to relieving Shippers of their current obligation to pay for capacity which they cannot utilize. However, it fails to address NG NTS's refusal to refund the cost of capacity entirely at its *own cost*.

E.ON firmly believes the current capacity buy-back mechanism remains the most effective means of dealing with FM. It is market-based, allows Users to price the cost of an FM event into their buy-back offer and, by imposing appropriate costs on NG NTS, promotes a timely resolution of the capacity constraint. E.ON acknowledge that under the current UNC arrangements there is no obligation on NG NTS to buy-back any capacity in the event of FM, but the removal of this exemption would, in their view, be the most acceptable way forward in terms of maintaining an appropriate risk / reward balance between NG NTS and Shippers.

National Grid NTS is of the opinion, that the introduction of a Force Majeure Capacity Management Arrangement (and the subsequent Force Majeure Option Arrangement(s)), in these instances of Force Majeure where Users are registered as holding Firm NTS Entry Capacity, and such Registered Firm NTS Entry Capacity rights are affected by Force Majeure, is a practical solution that addresses some of the issues that Users experience arising from National Grid NTS's use of Force Majeure.

South Hook Gas, whilst supportive of the proposal, note that the option arrangement is between National Grid Gas and the registered holder of the NTS Entry Capacity, rather than the actual holder of the capacity. This means that the arrangements to affect secondary transfers of capacity between Users will have to take account of the deemed option, such that there will be a deemed option for buy-back in place between the actual holder of the capacity and the registered holder. However they believe that this is manageable within the current arrangements.

9 Panel Discussions

The Panel considered Modification 0349 on 16 December 2010.

The Panel Chair summarised that the modification seeks to change the incidence of costs when holdings of entry capacity cannot be used and force majeure has been declared. At present, capacity holders are required to pay for capacity held irrespective of the fact that it cannot be utilised as a result of a force majeure situation. This modification seeks to put in place a process whereby National Grid NTS would be obliged to buy-back the capacity concerned. Half of National Grid's costs for doing this would be met by all holders of entry capacity. The costs which are presently faced solely by those who cannot utilise the capacity concerned, through no fault of their own, would therefore effectively be partly socialised and partly met by National Grid NTS.

Some Members considered that reallocating costs in this way would be equitable, providing an incentive to National Grid NTS to minimise the non-availability of capacity and protecting User's from facing a cost through no fault of their own. However, others argued that the reallocation gives rise to the potential for inappropriate cross subsidies since it moves costs away from Users who may be able to recover those costs (for example by insuring against the risk) to Users who cannot.

A Member was unclear the Proposal could work as intended since the SO incentives and associated revenue flows are specified in the Transporter Licence and, as such, cannot be changed by a UNC modification.

Some Members considered that there was potential for discrimination between entry points in the event of force majeure affecting more than one entry point at the same time. This may be introduced since, as a result of financial exposure, National Grid NTS may be incentivised to focus efforts on the entry point(s) creating the highest costs to itself.

Panel's view of the benefits of 0349 against the Code Relevant Objectives

Description of Relevant Objective	Identified impact
a) Efficient and economic operation of the pipe-line system.	National Grid NTS would be incentivised to operate the system with a view to minimising any the cost of constraints due to force majeure (which may be discriminatory if more than one entry point affected)

<p>b) Coordinated, efficient and economic operation of</p> <p>(i) the combined pipe-line system, and/ or</p> <p>(ii) the pipe-line system of one or more other relevant gas transporters.</p>	None
<p>c) Efficient discharge of the licensee's obligations.</p>	None
<p>d) Securing of effective competition:</p> <p>(i) between relevant shippers;</p> <p>(ii) between relevant suppliers; and/or</p> <p>(iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers.</p>	<p>Equitable allocation of unavoidable costs would be consistent with facilitating competition between shippers. However, the reallocation of costs may create inappropriate cross-subsidies and so not be equitable.</p> <p>Removal of the possibility of facing costs due to force majeure removes a potential barrier to entry, which is consistent with facilitating competition.</p>
<p>e) Provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards... are satisfied as respects the availability of gas to their domestic customers.</p>	None
<p>f) Promotion of efficiency in the implementation and administration of the Code</p>	None

10 Recommendations



Recommendation

That 0349 should be implemented

Panel Recommendation

Having considered the 0349 Modification Report, seven Panel Members voted in favour of recommending that the modification should be implemented, and three did not.

The Panel therefore recommends, by majority vote:

- that Modification 0349 should be implemented.