

# Manifest Errors In Relation to Entry Overrun Charges

## GUIDANCE DOCUMENT

Version 1

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## **1 Introduction:- Purpose and Scope of this Guidance Document**

- 1.1 This document is intended as a guide to the steps to be taken to process a Manifest Error Claim, from the initial raising of a Claim to the final settlements of any adjustments in relation to the Claim. The document is intended to be of use to Claimants, UNC Committee (UNCC) members, Transporters and any other parties who may be concerned with the process for dealing with Manifest Errors relating to Entry Overrun Charges.
- 1.2 This document should be read in conjunction with [section B? of the UNC] and is intended to provide further explanation and a guide to the process. Please note that much of the text of section [B?] is repeated in this Guidance document for ease of reading.
- 1.3 The central processes and considerations associated with Manifest Errors in relation to Entry Overrun Charges reside in the UNC section [B?], and a UNC Modification Proposal would therefore be needed to make material changes to the features of the process including the adjustments process. This document is a UNC Related Document, and the document is capable of amendment by the prevailing rules of UNC V12.
- 1.4 The prevailing terms of General Terms GTB section 4 which govern the UNCC shall apply, in carrying out its duties under this section [B?]. UNCC voting in relation to Manifest Error Claims shall be by simple majority.
- 1.5 The provisions of the UNC take precedence over this document.
- 1.6 All capitalised terms used in this document have the same meaning as assigned to them in the List of Defined Terms in the UNC, or as defined in this document.
- 1.7 Section 2 gives a brief summary of the process, and section 3 goes on to set out the process steps in raising, considering and determining a Claim.

Section 4 sets out guidance on the information required from the Claimant and the Transporter. The criteria and guidance to be used by the UNCC in determining whether or not a Manifest Error is Claim is valid is covered in section 5.

Sections 6 and 7 give an overview and describe the underlying principles of the Reference Cost methodology.

The procedures to be used by the UNCC in determining Adjusted Charges are set out in the sections 8 to 10.

## **2 Summary of the Process**

- Manifest Error may be claimed if a User incurs entry capacity Overrun Charges of £50,000 or more as a result of a genuine, unintentional error in its capacity bookings.
- There is a £5000 Administration Fee for making each Claim.
- The Claimant raises a Claim to the Transporter as soon as possible, at latest 1 month after the Invoice issue date.
- Transporter acknowledges receipt of the Claim in writing
- Transporter notifies Users as soon as possible, at latest within 3 Business Days of receipt of the Claim, via the Joint Office.
- The UNC Secretary arranges for the matter to be considered at a meeting of the UNCC, giving 5 days notice where possible/reasonable, and at latest within 10 days of the Claim being raised.

- The Claimant is required to present evidence to the UNCC meeting to support its Claim, and the Transporter is required to provide certain information.
- UNCC can request further information from the Claimant and/or the Transporter, and then considers the Claim impartially and independently of company interests, and decides firstly a) whether the Claim is valid, and if so, b) what adjustments should be made to the Overrun Charges
- UNCC has 55 days from the date on which the Claim was raised to reach its decisions
- Joint Office notifies Users of the conclusion within 3 Business Days of the determination, and publishes a report on the decisions within 5 Business Days of the determination.

### **3 Manifest Error Treatment in the UNC – Details of Process Steps**

#### ***Raising a Claim***

- 3.1 A User can raise a Claim for Manifest Error if it believes that it has incurred Entry Capacity Overrun Charges of greater than £50,000 as a result of an error in its Entry Capacity bookings.
- 3.2 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 Invoice Due Date. Claims for errors occurring after the implementation date of Modification Proposal 341 must be raised within 1 month of the Invoice issue date. Claims for errors occurring prior to the implementation date of Modification Proposal 341 but on or after 1<sup>st</sup> April 2010 must be raised within 1 month of the implementation date. No claims may be made for errors occurring prior to 1<sup>st</sup> April 2010.
- 3.3 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 Overruns occurred as a result of the Manifest Error
  - Extent of Claim (i.e. approximate quantity of capacity not booked and Overrun Charges applicable, if known)
  - To the extent that it is understood at the time, a brief explanation of how/why the Manifest Error occurred.
- 3.4 A single aggregate Claim may be made where multiple days of Overrun Charges have been incurred, and/or Overrun Charges have been incurred at multiple ASEPs as a result of an error, and the total Overrun Charges incurred exceed £50,000. Consideration of any adjustments may be made in relation to each day/ASEP individually or in aggregate as the UNCC sees fit. (See 8.9, 8.10 below)
- 3.5 Users raising a Claim will be liable to pay a non-returnable Administration Fee of £5000 to the Transporter, or other such amount prevailing at the time at which a User first raises a Claim as determined by the UNCC in accordance with section [B ?] of the UNC. Section [B?] states that the UNCC can amend the fee provided it consults with Users first and gives 30 days notice of the change. The prevailing level of the fee is as published in this Guidance Document.

#### ***Credit Issues***

- 3.6 Where a User would have difficulty in paying Overrun Charges, it should bring this to the attention of the Transporter immediately, and the normal Credit rules and EBCC procedures will apply. There are no specific or alternative credit provisions associated with raising a Manifest Error Claim.

#### ***Acknowledgement and Notification***

- 3.7 Where a Claim is raised, the Transporter will within a maximum of 3 Business Days acknowledge the Claim in writing and notify Users via the Joint Office that a Claim has been received. The Joint Office will publish the notification on its website and notify Users on its distribution list.
- 3.8 The Notification to Users must contain the following:-
- That a Claim for Manifest Error has been made
  - Relevant ASEP(s)
  - Period in which Overruns are claimed to have occurred as a result of the Manifest Error
  - Due Date of Invoice containing relevant Capacity Neutrality Charges
  - An indication of the financial materiality of the Claim, specifying a general range within which the Claim falls
  - Any other relevant information
- 3.9 The notification should not explicitly identify the Claimant unless the Claimant agrees.
- 3.10 ‘Any other relevant information’ in 3.8 above may include (if it is known at the time) whether or not the Claimant has paid/will pay the relevant Overrun Charges, and hence whether or not other Users will receive or have received payment though capacity neutrality which they may later be required to pay back.

#### ***Convening the UNCC***

- 3.11 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 to reach its decisions. (NB: Where this is not achieved, the Default Adjustment will apply - see section 10 below).
- 3.12 The Transporter will instruct the UNCC Secretary to arrange a meeting of the UNCC at the latest within 10 Business Days of the Claim being raised with the Transporter. A minimum of 5 days notice of the meeting will generally be given in order to allow time for the Transporter and the Claimant to prepare. Where it would be beneficial for the Claim to be considered urgently (for example where it has been raised prior to the Invoice Due Date and can therefore be considered before any payment enters capacity neutrality) all parties should make reasonable efforts to hold the meeting at shorter notice.
- 3.13 If necessary, the UNCC may appoint a sub-committee to carry out its duties under section [B?]. Where a sub-committee is appointed, the requirements of section [B?] will apply equally to the sub-committee and the UNCC may not authorise such a sub-committee to make any decision or to adopt any procedure in reaching such a decision, other than in accordance with the provisions of section [B?].
- 3.14 The members of the UNCC do not have personal individual liability in relation to their consideration of Manifest Error Claims, and are required to act reasonably, independently of their company interests and in good faith.

- 3.15 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 commercial confidentiality of the Claimant, if the Claimant wishes.
- 3.16 The prevailing terms of General Terms GTB section 4 which govern the UNCC shall apply, in carrying out the UNCCs duties under section [B ?]. Voting shall be on a simple majority basis.
- 3.17 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 simple majority vote, permit the Member to consider the Claim if it believes that the Member will act independently.

### ***UNCC Decisions***

- 3.18 The UNCC will determine by a majority vote:-
- a) whether a Manifest Error occurred and if so,
  - b) what adjustment should be made to the resulting Overrun Charges.

The criteria and guidance to be used by the UNCC in determining a) is covered in section 5 below. The procedures used by the UNCC in determining b) are set out in the sections 8 to 10.

### ***Reporting of Determination***

- 3.19 As soon as practicable and within a maximum of 3 Business Days of the UNCC determination being reached, the UNCC Secretary will formally notify the outcome to the Claimant, the Transporter, Ofgem, and Users via the Joint Office.
- 3.20 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 Charges will be made, and may give the range within which the aggregate figure lies but will not quantify the outcome for individual Users or the level of adjusted Overrun Charges payable
- 3.21 As soon as practicable, and within a maximum of 5 Business Days of the UNCC reaching its decisions, the UNCC Secretary will produce a report explaining the decisions of the UNCC, for publication to the Claimant, Ofgem and all Users. An edited/blacklined version may be provided for Users to protect the commercial confidentiality of the Claimant, if the Claimant so wishes.

### ***Implementation of the Outcome***

- 3.22 The Transporter will undertake the adjustments necessary (e.g. reverse Capacity 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 10 Business Days notice period available, otherwise at the time of the subsequent entry capacity Invoice. Users are obliged under the UNC to make any repayments of capacity neutrality required.
- 3.23 The Administration Fee will be invoiced via an Ad-hoc Invoice within 1 month following the UNCC determination.

### **Determination of Valid Manifest Error**

## **4 Information Requirements for UNCC Determination**

### ***Evidence Requirements and Further Information Requests***

- 4.1 In order for the Claim to be considered, it is the responsibility of the Claimant (and/or its representative) to provide evidence that its error 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.
- 4.2 The UNCC may make reasonable requests for further information from the Claimant if necessary to aid its consideration of the Claim. Such information shall be provided within 5 Business Days (or such other time as may be agreed when the request is made).
- 4.3 In the event that a Claimant fails to provide any evidence, or to provide further information reasonably requested by UNCC within 5 Business Days (or as otherwise agreed), the UNCC can decide to reject the Claim and for the avoidance of doubt, the Default Adjustment set out in section 10 of this document [and B?] will not apply.

### ***Claimant Evidence***

- 4.4 Claimant evidence may include, but is not limited to, the following:
  - Explanation of how / why the error occurred, including why the Claimant was unaware of the error at the time, and how it became aware of the error.
  - Steps taken to mitigate/rectify the error, including when the steps were taken.
  - Explanation of the Claimant's intentions/circumstances e.g. contractual obligations for which gas was being delivered and intended booking / available capacity at the time.
  - Evidence/demonstration of prudent operations: e.g. no commercial gain intended, no scheduling charges incurred as a result and nominations processes operating effectively, explanation of business processes and risk management procedures/systems.
  - Such further information as is reasonably requested by the UNCC in order to enable it to establish the validity (or otherwise) and circumstances of the Claim.
- 4.5 Performance 'track record' and/or historical information may be presented by the Claimant as context to their Claim as appropriate
- 4.6 New Shippers will not be judged on and will not be expected to provide a performance track record, but an appropriate alternative may be to provide evidence of its efforts to operate prudently, for example in having provided training / made appropriate investment in systems etc.
- 4.7 Information such as capacity bookings or other Claimant performance and/or historical data may be presented in such a way as to preserve commercial confidentiality, and if required, verification of the information presented by the Claimant can be sought by the UNCC from the Transporter.

### ***Transporter Information***

- 4.8 The Transporter is required to provide the following information at the first meeting of the UNCC held to consider the Claim:
  - Verification of Entry Capacity Overrun Charges incurred.

- Verification of the Claimant’s entry capacity auction purchases for the relevant days at the relevant ASEP(s).
  - Verification of the relevant 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 relevant day(s) at the relevant ASEP(s).
  - Details of the specific operational circumstances on the relevant days (e.g. capacity unsold at D-1, information regarding any constraints, scalebacks, buybacks which may have occurred etc.)
- 4.9 The Transporter is also required to provide any other relevant information which the UNCC reasonably requests, given a 5 Business Day notice period.
- 4.10 By way of example, ‘any other relevant information’ may include, but is not limited to
- Verification of Claimant’s capacity booking track record, or other evidence provided by the Claimant.
  - Any previous incidences of overruns by the Claimant, and the surrounding circumstances.
  - Energy Nomination/re-nomination details/history for the relevant days.

## **5 Criteria for a valid Manifest Error**

- 5.1 The UNCC will consider the information presented, and determine by a simple majority vote whether a valid Manifest Error occurred.
- 5.2 For a valid Manifest Error, the UNCC should be reasonably convinced that both the following criteria apply:
- a) That it was a genuine, unintended error
  - b) That the Claimant was not seeking unfair commercial advantage

### ***Guidance on the Criteria***

- 5.3 The following points (5.4 - 5.6) are provided to assist with UNCC consideration and interpretation of the criteria for a valid Manifest Error.
- 5.4 a) ‘Genuine, unintended error’
- i. ‘Manifest’ means plain and obvious, therefore it should generally not be difficult to explain how a genuine error (mistake) was made.
  - ii. The circumstances may be complex because of the situation on the day (e.g. on a busy winter’s day). The UNCC may need reasonably detailed understanding of the circumstances in order to consider a Claim. Complexity in the circumstances should be distinguished from whether or not the mistake was genuine.
  - iii. ‘Unintended error’: If a mistake was unintended, the User will not have known about it, and hence where a User can explain fully the reasons why it was unaware of the error initially, and how it subsequently became aware of the error, this should aid its case.
  - iv. Errors may be administrative in nature, for example a data entry error or a calculation error.
  - v. Genuine errors may also occur in wider business processes and are therefore not excluded as valid Manifest Errors, per se.

- 5.5 b) ‘Not seeking unfair commercial advantage’
- i. The use of Reference Cost 1 (which sets a ‘minimum’ cost for capacity based on the relevant capacity prices at the time) is intended to minimise the extent to which it could be attractive for Users to seek a successful Manifest Error Claim for unfair commercial reasons.
  - ii. However, it is conceivable that a User may deliberately adopt a high risk commercial strategy to minimise capacity costs (e.g. deliberate under-booking) and then seek to claim Manifest Error to mitigate its losses. This would be an example of a User seeking unfair commercial advantage.
  - iii. The UNCC may reject claims where it believes that the User was seeking such unfair commercial advantage.
  - iv. Whether or not a Claimant was seeking unfair commercial advantage might be evident in nominations and trading patterns (and scheduling charges).
- 5.6 All material Claims should be given fair and independent consideration. Previous incidences of overruns by the Claimant may have occurred for similar or entirely different reasons, but should not be a reason for rejection of a Claim. Where repeated Claims are made for errors of the same nature, this may indicate issues with the Claimant’s business processes which they are consistently failing to address, and the UNCC may choose to reflect this in the level of the Adjusted Charges.



## **Determination of Adjusted Overrun Charges:- Background**

### **6 Overview of the Process for Determining Adjusted Overrun Charges**

- 6.1 In the event that the UNCC decides that a valid Manifest Error has occurred, it shall then determine an adjustment to the original Overrun Charges incurred in accordance with [UNC B? i.e. the procedures set out in sections 8, 9 and 10], to set the charges which the Claimant will be required to pay instead ('the Adjusted Overrun Charges'). If the Manifest Error Claim is not valid, the Claim will be rejected and the Overrun Charges will stand as incurred without adjustment.
- 6.2 In determining the adjustment, the UNCC considers both the specific circumstances and any consequences of the error. It calculates 2 or more reference costs which relate directly and specifically to the Claim, and considers Relevant Factors associated with the circumstances. The UNCC then determines a figure for the adjusted Overrun Charges, as a percentage of the originally incurred Overrun Charges, using the Factors to guide its decision between the highest and lowest Reference Costs.

### **7 Principles underlying the Reference Cost Methodology**

- 7.1 The purpose of the Manifest Error Claim process is to allow for the adjustment of Overrun Charges in valid circumstances of Manifest Error, such that a fair and reasonable balance is struck between:-
- a) the need to maintain incentives to book capacity in advance
  - b) the particular circumstances and nature of the Manifest Error, and
  - c) the reasonableness of charges which should be paid as a result of a Manifest Error.
- 7.2 The procedures for determining Adjusted Overrun Charges are intended to provide the UNCC with discretion to set the level of Adjusted Charges within a reasonable and objectively assessed range.
- 7.3 The following principles have been used to establish the Reference Cost Methodology, and are provided here by way of background and explanation.
- a A process of determination between multiple Reference Costs is used to avoid the financial outcome of a valid Manifest Error Claim being predictable ahead of the event, otherwise the process could create a perverse incentive to raise a Claim.
  - b Overrun Charges are intended to provide an incentive to book adequate capacity in advance through the available processes, and therefore, to maintain this incentive, it should never be cheaper to pursue a Manifest Error Claim than to purchase sufficient capacity correctly in advance. The construction and use of Reference Cost 1 as a minimum Adjusted Charge level based on capacity costs plus a 5% premium is intended to ensure this, and hence maintains the 'ticket to ride' principle.
  - c It should be noted that, where a discounted or zero reserve price typically applies in the daily auctions, Reference Cost 1 (which is based on highest of monthly or daily prices) may still be significantly higher than the actual cost at which a Claimant could have bought the capacity.
  - d Reference Cost 2 is used because, where the UNCC has determined that a Manifest Error Claim is valid (and where there are no other consequences/costs

resulting from the error), 20% of the Overrun Charges incurred is generally expected to provide an appropriate reference point for Adjusted Charges.

- e Reference Cost 3 is used in order to incorporate consideration of any material financial consequences (other than the Overrun and associated Capacity Neutrality Charges) resulting from the error. This may be applicable when buybacks have occurred on the same day on which a Manifest Error has occurred, or possibly in other exceptional circumstances.
- f If buybacks have occurred, the Claimant will generally be expected to pay the full overrun charge for that day since it is likely that the overrun will have contributed to the requirement to buyback capacity, and the associated costs. Therefore the procedure (in section 8 below) requires the UNCC to examine the specific situation on the day(s) in question in case there are any extenuating circumstances, and make its decision about whether to incorporate buyback costs as Reference Cost 3 and/or make adjustments accordingly.
- g Further Reference Costs are intended to provide the UNCC with discretion to set Reference Costs as it sees fit, provided that their use can be objectively justified in the circumstances and is consistent with the purpose of the Manifest Error Claim process.
- h In setting Reference Cost 3 and any Further Reference Costs, the UNCC should justify its reasoning objectively and in detail.
- i The use of Reference Costs which can be calculated on an objective basis is intended to provide the UNCC with a sufficiently structured approach to the determination of adjusted Overrun Charges to facilitate decision making.
- j However the UNCC is also required to use its discretion to make a final determination, and the Relevant Factors set out in 9 below are intended to provide guidance for the UNCC in applying its discretion.

## **Determination of Adjusted Overrun Charges:- Procedure**

### **8 UNCC Procedure for Determining Reference Costs**

- 8.1 Having reviewed the evidence and information provided by the Claimant and information provided by the Transporter, the UNCC must calculate Reference Cost 1 and Reference Cost 2 and may also calculate Reference Cost 3 and any Further Reference Costs, in accordance with [B?, i.e. the following sections].
- 8.2 Reference Cost 1 in respect of any Day is the cost of the quantity of NTS Entry Capacity which the relevant User required but did not hold. This will be calculated as follows:

$$X * (Y + 0.05*Y)$$

Where:

X = the amount of the overrun quantity; and

Y = the highest of:

- 1) the highest priced accepted bid in the most recent monthly auction relating to NTS Entry Capacity at the relevant ASEP for the relevant Day (or the reserve price if there were no higher priced accepted bids);

2) the highest priced accepted bid in the daily auction relating to NTS Entry Capacity for the relevant Day at the relevant ASEP; and

3) an appropriate price to reflect the amount that the relevant User could reasonably have been expected to pay for the NTS Entry Capacity that it required for the relevant Day, when capacity has been surrendered at or transferred from the relevant ASEP on the relevant Day. This shall be based on a detailed assessment of the specific circumstances on the relevant Day.<sup>1</sup>

- 8.3 Reference Cost 2 in respect of any day is 20% of the Overrun Charges as originally incurred for that day.
- 8.4 Reference Cost 3, if required, in respect of any day, is any further relevant specific costs associated with the Claim, i.e. those directly associated with any consequences (e.g. buybacks) resulting from the Manifest Error, which would not have occurred otherwise
- 8.5 Further Reference Costs may be calculated and used by the UNCC where it believes that their use is objectively justified in the specific circumstances of the Claim.
- 8.6 Reference Cost 3 and Further Reference Costs may be up to 100% of the original Overrun Charges.
- 8.7 The UNCC shall specifically explain its rationale for the calculation and use of each Reference Cost in its concluding report.
- 8.8 The UNCC should then consider the Relevant Factors to arrive at a final figure for the Adjusted Overrun Charges, in accordance with section 9 below.

#### ***Treatment of Aggregate Claims***

- 8.9 Where the UNCC believes different treatment might be warranted in respect of different days, ASEPs or overrun quantities in an aggregate Claim, it can choose as it sees fit to calculate the Reference Costs and apply Relevant Factors as appropriate to arrive at an Adjusted Charge for each day individually.
- 8.10 Where the circumstances are straightforward and the same on each day in question the UNCC may consider the application of Relevant Factors to the aggregate of the daily Reference Costs.

### **9 UNCC Procedure for Review of Relevant Factors to Determine Adjusted Charges**

- 9.1 The UNCC shall make its determination of the appropriate level of Adjusted Overrun Charges within the range established by the highest and lowest Reference Costs calculated by the UNCC pursuant to [B?: i.e. section 8 above].
- 9.2 Where costs (other than overrun and the associated neutrality charges) have been incurred on any day as a result of the error, for example as a result of buybacks, the UNCC may conclude that Reference Cost 3 is the appropriate level of Adjusted Charges for the day(s) in question, without considering the Relevant Factors, unless the UNCC believes there are extenuating circumstances which justify an alternative adjustment of Overrun Charges.
- 9.3 The UNCC shall consider each of the following Factors.

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<sup>1</sup> Where capacity has been surrendered the price may still be reflected in the 'highest accepted bid' price, for example if surrendered capacity was available at less than reserve price. If it is not, then the UNCC is free to determine its view of how the capacity the Claimant should have bought would have been priced based on the specific circumstances.

- 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 Claimant had taken reasonable steps to ensure that it had prudent systems and processes in place at the time the error was made
  - iii. 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
  - iv. the extent to which the error was attributable to a failure or inadequacy of centrally provided and/or Transporter systems.
  - v. the extent to which the error was attributable to an inaccuracy in published information.
- 9.4 The UNCC should consider the contribution of each of these Factors, where it believes them to be relevant, and the relative weight it attaches to each in order to arrive at a figure for the Adjusted Overrun Charges.
- 9.5 In deciding on the application of the Factors the UNCC should ensure that its proposed figure for the Adjusted Overrun charges achieves a fair and reasonable balance between
- a) the need to maintain incentives to book capacity in advance,
  - b) the particular circumstances and nature of the Manifest Error, and
  - c) the reasonableness of charges which should be paid as a result of a Manifest Error.
- 9.6 In its concluding report the UNCC should explain its assessment of the individual Relevant 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.

## **10 Default Adjustment**

- 10.1 Where the UNCC fails to reach a determination within the 55 day time limit, unless a specifically quantified extension to the time limit is mutually agreed and confirmed in writing between the UNCC and the Claimant, the Default Adjustment will apply.
- 10.2 Neither the relevant User nor the UNCC shall unreasonably withhold or delay consent to a request for an extension to the time limit.
- 10.3 The Default Adjustment will be that the Adjusted Overrun Charges will be set at the mid-point of Reference Costs 1 and Reference Cost 2, calculated pursuant to [B? i.e. section 8 above].