



Manifest Error Draft Mod Principles

For Discussion and Development

Transmission Workstream
4th November 2010

Background

- GasTerra has had an issue with significant (>£m) overrun charges incurred during April, as a result of a 'manifest error'
 - Discussed at July, August, September and October Transmission Workstreams
- Mod to introduce Manifest Error Provisions into UNC
 - in relation to Entry Overrun Charges
 - Gemini Changes to be considered separately
- Manifest Errors Concept exists in Electricity – BSC section Q7
 - available on JO Website, under September Workstream
- Draft Guidance Document published (September)
- Mod Proposal 341 now raised (and Guidance v2)
 - sent to Workstream for development

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1. Process Summary (a)

- Manifest Error may be claimed if a User incurs entry capacity overrun charges [subject to threshold].
- £5000 fee for making each claim.
- The Claimant raises a claim to Transporter as soon as possible, at latest [1 month] after the invoice issue date.
 - For errors prior to implementation but since April 1st 2010, within 1 month of implementation date,
- Transporter acknowledges receipt of the claim
- Transporter notifies all Users as soon as possible (via the Joint Office).
- The Joint Office arranges for the matter to be considered at a meeting of the UNCC at the earliest opportunity.

1. Process Summary (b)

- The Claimant is required to present evidence to the UNCC meeting to support its claim, and Transporter provides information as required
- UNCC decides a) whether the claim is valid, and if so, b) what adjustments should be made to the overrun charges
- Adjustments determined using Reference costs and Factors
- UNCC has [55] days from the date on which the claim was raised to reach its decisions
- Joint Office notifies all Users of the conclusion, and publishes a report on the decisions.
- [Claimant can appeal decision to Ofgem if it believes the decision has not been taken in accordance with the UNC/Guidelines, procedure has not been followed etc?] – *Separate Mod*

2. Outstanding Issues: Materiality & Fee

Materiality Threshold

- £50,000 currently proposed
- Aggregate – i.e. not per day
- Not per ASEP either
- Overruns at multiple ASEPs as a result of single error?
 - Amend guidance to provide further clarity
 - Also re treatment of aggregate claims for multiple days

Fee

- Proposal allows for NG to charge a fee to cover its costs
- Level of fee to be set by UNCC on request from NG
 - Subject to prior consultation with Users and 30 days notice of change
 - Fee level to be specified in the Guidance
- £5000, though arbitrary, is consistent with electricity, so is suggested starting point
- Fee to be invoiced [via ad hoc invoice, within [1 month] of UNCC determination]

3. Outstanding Issues: Confidentiality & Roles

Confidentiality

- Notification to all Users – No Claimant ID / just specify materiality range
- Hearing evidence – can be done in private
- Notification of outcome – to include range within which the aggregate figure lies
- Report on outcome - can be blacklined if necessary

Who does the calculations of the Reference Costs ?

- Is Sub-committee necessary ?
- Intend to propose that NG does the calculations
- Sub-committee can be appointed, UNC obligations/timescales remain the same

Clarity on Notification Roles

- Transporter Notifies all Users of Claim (via Joint Office)
- UNCC Secretary schedules and notifies UNCC members of meeting
- UNCC Secretary notifies all Users of Outcome (via Joint Office)

4. Outstanding Issues: Guidance Status

Guidance document status and Modification Rules

- Guidance document to be a UNC 'Ancillary Document'
- Guidance document can be modified by UNCC majority vote
- However, UNC terms to include all process steps, timescales, obligations etc. including the construction and use of Reference Costs
- UNC Mod needed to materially alter the process being proposed
- Suggested legal text of the mod will be provided
- Guidance document intended to provide explanation, background, and additional guidance for UNCC decision making.

5. Outstanding Issues: Further Questions

Is Reference Cost 1 sufficiently high ?

- Ref Cost 1 – ‘What the Capacity should have cost’
- Proposal: Highest price bid in most recent monthly auction relating to the day(s) in question/ ASEP + 5% (or reserve price + 5% if no bids accepted)
- What if daily prices spike/are higher?
- Will amend proposal – ‘higher of monthly or daily accepted auction prices’ + 5%
- NB: already ‘punitive’ where Claimant would usually have bought in daily auctions at zero price
- Have removed references to ‘normal practice’ of Claimant

What if 50% of overrun capacity was available ? Partial Claim Validity ?

- UNCC will consider specific circumstances
- If buybacks occurred – then ref cost 3 applies and Claimant likely to pay cost of buybacks
- If no buybacks, then was any harm done?
- Should application of different prices to different parts of overrun quantity be permitted ?
 - Expect that Claim should be determined valid or not as a whole
 - Possibility of circumstances where different prices apply to different quantities
 - Will allow for this in proposal

6 Outstanding Issues: UNCC Decision Making Process

Voting Rules

- Normal rules apply – decisions by majority vote

Provision for extension of time limit for decision ?

- Included in Proposal under 9) Default Adjustment
- By Mutual Agreement, confirmed in writing, of specific revised timescale

Default Position if no UNCC decision made in the time limit

- Mid point of reference cost 1 and reference cost 2 applies

Timescales for further information provision ?

- UNCC can decide in the absence of evidence
- UNCC can request further information from Claimant &/or NG
- 5 days notice to be given of requests for further information
- 'in time for UNCC to make decision within 55 day limit'
 - Avoid late requests for information
 - Will try and clarify this intention further
 - NB – Manifest Errors should not be difficult to evidence

7. Outstanding Issues: Criteria for Valid Manifest Error

Clarity requested over application of Criteria

Should be simple - 'Was it a genuine mistake?'

Intend to propose:

UNCC to be reasonably convinced that **both** the following criteria are met:-

- That it was a genuine, unintended, administrative error
 - If this is the case, then the User will generally have been unaware at the time
- That the User was not seeking unfair commercial advantage

Also will provide further guidance on the interpretation of the criteria

8. Outstanding Issues: Balance between Discretion and Structure

Current formulation

- UNCC sets 2 or 3 reference costs, which sets a range
 - 1 = Alternative cost of capacity
 - 2 = 20% of overrun charges incurred
 - 3 = Other costs incurred (e.g. buybacks)
- Discretion ('factors') apply within the range

Challenge

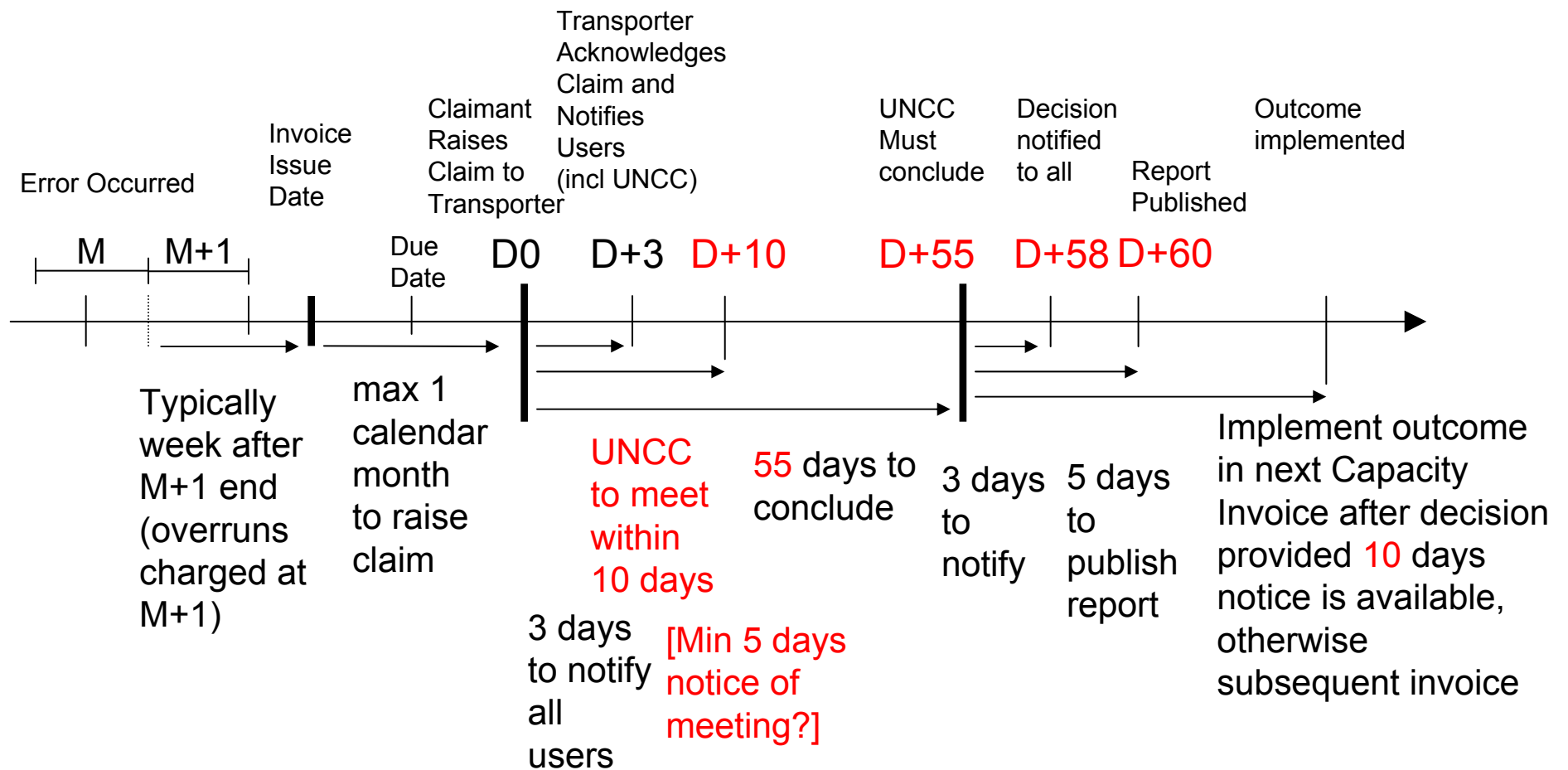
- UNCC should have more scope to set charges above 20% (where no other costs (eg buybacks) associated)
- But UNCC prefer mechanical approach over too much discretion

Possible Approach

- Allow UNCC to choose to use a higher reference cost if it believes it is appropriate
 - Consider materiality/ proportionality / effectiveness as an incentive
 - Justify reasoning objectively
 - Still apply factors within the range

9. Timescale Limits

1. All process steps should be undertaken by all parties 'as soon as reasonably practicable'
2. If it is possible, all reasonable efforts should be made to consider the claim before the invoice due date, including calling special meetings of UNCC at short notice if feasible.
3. Where due date passed, following timescales are proposed as outside limits



Revisions from last time shown in red

10. Next Steps

- Finalise Guidance & Proposal for December Workstream
- Also suggested legal text
- Aiming for December Panel to submit Mod for Consultation
- January Panel Decision
- Ofgem - February
- Appeals Mod (in parallel)
- and Gemini Changes Mod (to follow, if necessary)

Any comments/views –

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