



Manifest Error Mod Principles

For Discussion and Development

Transmission Workstream
5th August 2010

Background

- GasTerra has had an issue with significant (>£m) overrun charges incurred during April, as a result of a ‘manifest error’
 - As presented at July 1st workstream
- Level of charges is extreme, as a result of the application of the 8x multiplier for a whole month
 - We believe this is disproportionate in the circumstances
- Mod is being considered to introduce Manifest Error Provisions into UNC
 - Considered challenging the basis of overruns, but don’t believe this is appropriate, don’t wish to undermine ‘ticket to ride’ principle
 - May also consider proposing Gemini warning signals, separately
- Only in relation to Entry Overrun Charges
 - though process may be adaptable for other areas
- Manifest Errors concept exists in BSC (Section Q7)

Objectives for Manifest Error Process

- Manifest Error to be clearly defined
- Provide process for
 - Claiming Manifest Errors
 - Determining validity, on consideration of specific circumstances
 - Determining and implementing appropriate outcome
- Materiality Threshold to avoid spurious or 'trivial' claims
- Impartial decision making
- Appropriate balance between transparency and confidentiality
- Should not undermine ticket-to-ride principle

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1. Scope

- Entry Capacity Overruns Only
 - Although can try to develop 'generic' process that would be capable of adaptation to other areas of UNC
 - Others can raise Mods as they consider appropriate
- Manifest Error Only
 - Genuine 'administrative' mistakes
 - Unintentional and User unaware at the time
 - Not errors of commercial judgement
- Material Errors only
- Shipper Error only, or include NG error?
- Current Thinking: - exclude errors in allocations

2. Claiming of Manifest Errors

Possible Initial Claim Process

- User makes a claim by notifying transporter ‘as soon as reasonably practicable’, and ‘where possible before the invoice due date.’
 - Contents of notification to be specified

Various timing approaches to consider, for example:-

- Set time window within which claims must be notified to NG
 - Possible that Users won’t know about errors until after invoice due date
 - ‘Claims normally expected to be raised within [1 month] of invoice due date but claims outside this period will be considered at the discretion of the deciding body’
- ‘Effective From’ Date for the Mod
 - Set date based on when overrun occurred, (i.e. simply exclude overruns which occurred before an ‘effective from’ date for the Mod)
 - Start of most recent accounting period ?
- Rolling [5 year] cut-off ? (as Mod 152)
- Separate errors prior to and post implementation date of Mod & set a specific time window after implementation date by which all past claims must be notified
 - This may be appropriate if there were concerns about dealing with too many ‘old’ cases

3. Administrative Fees

Possible Approach

- On starting a claim, User is required to pay an administration fee
 - £5000 is used in BSC
 - Non-refundable in any circumstances
 - Level of fee
 - may be updated by determining body from time to time after consultation with Users and 30 days notice (as in BSC)

Issues

- £5000 is from BSC – Is this appropriate?
- Would a separate Materiality Threshold also be appropriate?
 - for e.g. only claims over [£10,000] will be considered

4 . Notification of Manifest Errors

Possible Process for Notification to Users

- Once National Grid has received notification, it should ensure that all Users are informed, specifying the [relevant period /ASEP/details], 'as soon as reasonably practicable', and where possible before the invoice due date

Issues

- Relevant details could include whether or not the money has been/will be paid into neutrality or not
 - Anything else?
- Could also specifically require Transporter to notify determining body?
- Confidentiality
 - Presume generally preferable for Claimant ID and commercial details to be kept confidential wherever possible ?

5. Determining Body – Purpose & Requirements

- Determining Body is to
 - Review Claim & Supporting Evidence
 - Decide whether or not claim is valid
- If claim is not determined to be valid, Claimant pays full overrun charge.
- If a claim is determined to be valid, overrun charge is to be adjusted
 - Determining Body decides on the adjustment (i.e. what amount the Claimant should pay instead)
- So, Determining Body is required to:-
 - Exercise a degree of discretion (within some principles/factors)
 - Act impartially / independently

6. Determining Body – Options

- UNC Committee (can appoint sub-committee)
 - Established body, appropriate UNC role
 - Mix of Shippers and Transporters should ensure impartiality
- Expert
 - What kind of expert would be required?
- Ofgem
 - Probably not appropriate role
 - Possible appeals role? (e.g. assuring process is followed, impartially)
- Appoint a specific independent panel for each case
 - Procedures required
 - Who would do the appointing ?
- EBCC
 - Not within its current remit
 - Previous proposals for capacity issues to be considered by EBCC have been rejected
 - Could permit but not require EBCC to be used
- In electricity, BSC Panel. Assume UNCC is used for time being.....

7. Determining Body - Process

Possible Process Steps

- “ ‘For the avoidance of doubt’ the UNC Committee can establish or appoint a Sub-Committee to discharge its functions “
- ‘Where there is a claim for manifest error’ the UNCC [Chair] arranges to place the matter on the UNCC Agenda, and requests
 - Claimant to provide evidence /explanation
 - NG to provide any supporting information the UNCC [Chair] thinks necessary
- Claimant presents its case to UNCC, UNCC reviews it, and any other evidence to determine if the Manifest Error Claim is valid
 - “Administrative” Errors rather than commercial mis-judgement
- If the UNCC decides there was a valid manifest error, it decides what adjustments are to be made using a defined approach
- Wherever practicable, UNCC to consider the claim in time for any such adjustments to be taken into account before the invoice due date;
- UNCC to produce a report explaining its decision/ indicating its reasons
- UNCC [Secretary] to notify determinations to Claimant and all Users and Ofgem

8. Determining Adjustments – What should User Pay ?

- Avoid prescribing a cap/collar or price level in advance – (which could otherwise undermine ticket-to-ride)
- Provide a balance of discretion and structure for [UNCC as determining body], to both deal with the specific circumstances and facilitate conclusion

Possible Approach:

Use [3] Reference Costs

1. Minimum:- what the capacity should have cost (+5 or 10% perhaps ?)
2. How much would an 80/20 approach cost ? (as in P37 Mod in electricity)
 - i.e. what would cost be if Claimant were required to pay 20% of amount due?
3. Context Specific Alternative Costs
 - (dealing for e.g. with situation including buybacks)

Determine between these costs according to certain factors e.g.

- Extent of any harm caused
- Prudence / intentions of Claimant
- Proportionality
- Extent to which attributable to an error in Gemini
- Extent to which attributable to error in published information

9. Implementation (handling payments/recovery)

Possible Process Steps

- Transporter to be required to make necessary reversal of neutrality and/or carry out ad hoc invoicing to give effect to [UNCC] decision
- Fee to be invoiced [ad hoc] [as part of smear] in month following [UNCC] decision

Issues

- Any notifications needed?
- When/how should fee be invoiced?

10. Appeals

Possible Process Steps for Appeals:-

- no later than [5] Business Days after the decision is notified to all Users
- by notice in writing to the Authority, copied to the [UNCC Chair], setting out the grounds upon which the reference is made
- subject to payment of a fee of [£5000] (for each such reference)

Grounds for appeal could be

- the process/procedures set out have not been followed
- new information has emerged since the relevant decision was made ?

Outcome: If Ofgem upholds the appeal it can:-

- Substitute its own decision for that of the [UNCC]
- Remit the matter back to the [UNCC] to be decided again, or
- Uphold the [UNCC] decision

Issues:

- Appropriate for [UNCC] impartiality & procedural accuracy to be capable of review ?
- Is Ofgem the right party to consider appeals ?

Likely Next Steps

- Obtain further feedback and integrate as appropriate
- Further develop details
 - Definition of Manifest Error
 - Thinking on
 - Materiality Threshold
 - 'Timing' issues
 - Determining Body & Process
 - Approach to Adjustments & Factors

Any comments/views –

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