Representation

Draft Modification Report

0501 0501A 0501B 0501C – Treatment of Existing Entry Capacity Rights at the Bacton ASEP to comply with EU Capacity Regulations

0501 – Treatment of existing Entry Capacity Rights at the Bacton ASEP

0501A – including capacity return option

0501B – including a restricted capacity return option

0501C – including a capped capacity return option and an aggregate overrun regime

Please note that if you wish your representation to be treated as strictly confidential please clearly mark it as such.

Consultation close out date: 12 February 2015

Respond to: enquiries@gasgovernance.co.uk

Organisation: ENI UK Ltd.

Representative: Simon Witter

Date of Representation: 11th February 2015

Do you support or oppose implementation?

0501 - Oppose

Eni UK Limited (**eni**) has significant concerns with the Bacton split implementation proposed by National Grid (**NGG**) in Modification 0501 where existing long term capacity holders are given an arbitrary, one-off opportunity to split their capacity between the two new ASEPs for the remaining contract duration, and notwithstanding such nomination, may through a pro-ration regime, be allocated an entry capacity split that bears little resemblance to their nomination. Moreover Modification 0501 fails to deliver any response to the challenge cited by many respondents to the previous Ofgem consultations as to how to protect and preserve the rights and full commercial value of existing long term capacity holders. Modification 0501 does not deliver continued flexibility to flow across both new Bacton ASEPs and fails to recognise the competitive advantage given to Interconnectors and their users through the allocation of their own asset-specific ASEP at zero cost. The failure to address such fundamental issues mean it is a wholly inappropriate and inadequate response to the complexities of the Bacton split.

Modification 0501 falls significantly short in terms of facilitating compliance with the Relevant Objectives and in our view, is not an appropriate means of implementing the Bacton split.

0501A – Qualified Support

A simple and practical solution to resolve the complexities of the Bacton split and as a consequence does not allow existing capacity holders to choose to continue to hold any of their capacity whilst still enjoying the full flexibility of the original capacity product. As such it is arguably an inferior solution to that proposed in Modification 0501C but may be simpler to implement.

In totality, we believe that Modification 0501A facilitates compliance with the Relevant Objectives in the context of unprecedented, regulatory-driven change at the Bacton ASEP.

0501B - Oppose

Modification 0501B falls a long way short of restoring the value, including flexibility, of the original product as it does not recognise the competitive advantage given to Interconnectors and their users through the allocation of their own asset-specific ASEP at zero cost. The resultant value erosion is further compounded by the lack of any mechanism to allow original capacity flexibility to be retained after the one time, arbitrary, capacity split. The Modification appears to accept that long term holders will be content to receive capacity at one ASEP without the continued provision of valuable flexibility to flow through both ASEPs in future without any compensation. This flexibility is valuable in allowing a long term capacity user to respond to changing market circumstance and its own changing commercial portfolio through time.

Our view is that Modification 0501B does not facilitate compliance with the Relevant Objectives in the context of its significant shortcomings with respect to preservation of value and flexibility for existing capacity holders.

0501C - Support

eni has engaged with Ofgem, NGG and the Industry Modification Workgroup in developing what we believe to be a full and equitable solution to implementing the Bacton split through alternative Modification 0501C; a solution which preserves value and flexibility for long term capacity holders in a new world where significant entry capacity access advantage has been secured for Interconnectors and their users at zero cost through the creation of an asset-specific ASEP, sized precisely to match Interconnector maximum technical capacities.

Whilst alternative Modification 0501A allows for a full capacity return, **eni's** Modification 0501C limits users to return capacity only up to a maximum proportion of their existing entry capacity at Bacton. The proportion will be defined once the Bacton ASEP obligated capacity split is confirmed by Ofgem after its statutory consultation but would be 72.77% under the current proposal (reflecting the capacity allocated to the Bacton IP ASEP at zero cost).

In addition, entry capacity which remains at the conclusion of the allocation process would continue to enjoy current Bacton ASEP flexibility through an aggregate overrun regime across the two new Bacton ASEPs and the provision of an entry capacity rebate when bundled products are purchased at the Bacton IP ASEP (to ensure that existing capacity holders are not forced to pay NGG entry charges twice where they purchase a bundled product to flexibly use their entry capacity as they would today).

eni considers that both elements are required to fully restore the value of the original product. The original long term product gave rights over a certain proportion of the total Bacton ASEP obligated entry capacity and allowed gas to enter the NTS completely flexibly between all the entry points within the Bacton ASEP. Under the proposed split, 72.77% of that obligated capacity is proposed to be allocated to the new asset-specific IP ASEP to precisely match the technical capacities of the Interconnectors. This unique new entry capacity product, sized specifically for particular assets, would be allocated without any price signal. The price of capacity would be determined through future CAM auctions with Interconnector users safe in the knowledge that there is no potential shortage of capacity to serve full asset flows and their capacity needs are further protected through having a dedicated ASEP. The price of this unique new 'asset-specific' ASEP product is demonstrably zero on initial allocation to the ASEP and, as such, existing long term holders must be treated equitably with respect to their proportion of the original obligated capacity that has been allocated to this unique new ASEP. A new product priced at zero on initial allocation is exactly equivalent to long term capacity holders handing back the capacity which then allows them to compete equitably for this unique new entry product. Thus, as a first option, long term holders must have the right to return up to this percentage of their long term capacity.

Further, to fully restore original value, capacity that remains after any return should continue to enjoy the flexibility as described above.

Our view is that Modification 0501C represents a fair and equitable position for all participants in the context of unprecedented regulatory change at Bacton and is the most consistent Modification in terms of facilitating compliance with the Relevant Objectives.

If either 0501, 0501A, 0501B or 0501C were to be implemented, which would be your preference?

eni supports Modifications 0501A and 0501C, as these Modifications, as against 0501 and 0501B, most effectively facilitate compliance with the Relevant Objectives.

Please summarise (in one paragraph) the key reason(s) for your support/opposition.

Modifications 0501A and 0501C are the only modifications which attempt to adequately protect the rights of long term entry capacity holders in seeking to restore fully the original value of the long term capacity bookings against the backdrop of significant commercial disturbance and complexity of implementing the Bacton split. The commercial issues need to be as fully addressed as possible in any solution if compliance with the Relevant Objectives is to be facilitated. If such a solution is not chosen then the industry will be ever less inclined to commit to long term capacity bookings which underpin appropriate signals for necessary NTS investment and reinforcement. Lack of investment over time may ultimately leave the consumer facing higher and more volatile prices as short term decision making and pricing dominate in a world of underinvested and constrained infrastructure. Our view is that Modifications 0501 and 0501B are not appropriate given their significant shortcomings in facilitating compliance with the Relevant Objectives.

Modification Panel Members have indicated that it would be particularly helpful if the following questions could be addressed in responses:

Q1: Do you agree Modification 0501C should be considered a User Pays Modification; if so do you agree with the proposed split for recovering costs?

We strongly disagree with Modification 0501C being characterised as a User Pays Modification.

The Modification merely seeks to preserve the current services provided to existing long term capacity holders in response to regulatory change: no User Pays Service would be created or amended by implementation of Modification 0501C and as proposer, we have not, therefore, classified the Modification as a User Pays Modification.

Our further analysis is outlined in the **Appendix**.

Q2: Do you have any specific views on the optionality to flow (as proposed by 0501C) following the proposed creation of the Bacton and IP ASEPs?

Modification 501C delivers the original Bacton ASEP optionality to flow across the two new ASEPs for existing long term Bacton entry capacity holders, nothing more and nothing less.

Q3: 0501C proposes that shippers with Bacton UKCS Residual Capacity, and that need to buy Bacton IP bundled capacity in order to flow via an interconnector, should receive a rebate for the additional Bacton capacity that was purchased. What are your views on whether the shipper should offer one of the elements of the Bacton capacity back to the market in advance of the particular gas day in order to receive the rebate? Conversely, what are your views on providing a rebate if the shipper retains the optionality to flow via both routes (whether or not they actually choose to do so)?

Under the new CAM regime, a holder of residual capacity may have to choose commercially to buy a bundled product at the IP ASEP as the only way to utilise its residual entry capacity at the IP ASEP.

If this occurs it is only reasonable that the user receives a rebate for the UKCS entry charge embedded within the bundled product price, otherwise the user would be penalised by having to pay for NTS entry capacity twice.

A “send-or-pay” capacity product provides the right to flow gas and is paid for whether or not a user chooses to flow at any particular time. It provides the user with an option to flow right up to the deadline by which a flow change nomination needs to be made. On the NTS this lead time is currently two hours. ‘Use It or Lose It rules’ are enshrined in the regulatory regime which ensure that already booked capacity is made available to the meet market demand if a user consistently does not flow over time. Those rules will continue to apply and, in **eni’s** view, there is no reason therefore to make specific adjustments in implementing Modification 0501C.

Q4: What do you think the impact will be on the TO entry commodity charge of the possibility to hand-back capacity in each of the alternatives 0501A, 0501B and 0501C?

Some users may be concerned that these alternatives allow other users to hand back some or all capacity, despite having previously committed to holding capacity under a long term user commitment. The concern is that an ability to return capacity may result in a redistribution of cost, from those who booked Bacton NTS Entry to all other system users via the NTS commodity charge. However the actual effect cannot be known today because future capacity bookings are unknown, future charging methodologies may change and it cannot be assumed that capacity will not be re-booked following any such hand-back, potentially at higher prices.

CAM aims to improve the access and encourage utilisation of Interconnectors to drive market efficiencies across Europe to deliver lower prices for consumers. Both these benefits offset any potential redistribution (although we remain unconvinced that there will be such a redistribution).

Are there any new or additional issues that you believe should be recorded in the Modification Report *(please specify by each modification)*?

Only in so far as the Modification Panel wishes to take into account those further issues raised in the final section of this Representation.

Self Governance Statement

Do you agree with the Modification Panel's decision that these modifications should not be self-governance modifications?

Yes

Relevant Objectives:

How would implementation of one of these modifications impact the relevant objectives (please specify by each modification)?

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

eni believes that the impacts outlined in the Industry Workgroup Report of 9th January 2015 appropriately summarise the arguments for and against each Modification's facilitation of compliance with Relevant Objective b).

eni's position is that Modifications 0501A and 0501C are favourable in terms of facilitating compliance with this Relevant Objective, whereas Modifications 0501 and 0501B are not.

d) Securing effective competition between shippers

eni believes that the impacts outlined in the Industry Workgroup Report appropriately summarise the arguments for and against each Modification's facilitation of compliance with Relevant Objective d).

eni's position is that Modifications 0501A and 0501C are favourable in terms of facilitating compliance with this Relevant Objective, whereas Modifications 0501 and 0501B are not.

g) Compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators

eni believes that the impacts outlined in the Industry Workgroup Report appropriately summarise the arguments for and against each Modification's facilitation of compliance with Relevant Objective g).

eni's position is that all Modifications are favourable in terms of facilitating compliance with this objective.

Impacts and Costs:

What analysis, development and ongoing costs would you face if one of these modifications were implemented (please specify by each modification)?

No substantive on-going operational costs are envisaged in respect of any of the Modifications.

Implementation:

What lead-time would you wish to see prior to one of these modifications being implemented, and why (please specify by each modification)?

All Modifications present an acceptable implementation timeline to deliver CAM compliance by 1st November 2015.

Legal Text:

Are you satisfied that the legal text will deliver the intent of each of these modifications?

Yes

Is there anything further you wish to be taken into account?

Please provide any additional comments, supporting analysis, or other information that that you believe should be taken into account or you wish to emphasise (please specify by each modification).

Splitting the Bacton ASEP is a unique and complex challenge. It should allow the Modification Panel and Ofgem the opportunity to consider the acceptability of capacity hand-back to minimise impacts on all users and establish a competitive level playing field for capacity at Bacton moving forward and only accept the need for costly complexity where it delivers a more balanced solution in meeting the Relevant Objectives.

In aiming to deliver the lowest prices to consumers through bringing the full European market opportunity to bear it is important that pricing signals allow the Interconnectors to flow in both directions in a timely and consistent manner. Therefore it is essential that any decision ensures that the entry and exit capacity regimes are as aligned as they can possibly be.

A decision has already been taken to end date the Enduring Exit Capacity product at the IP as the product is non CAM compliant. However, under all 0501 modifications any user's capacity that remains could exist at the IP ASEP and reflecting existing bookings consist only of winter quarterly strips (4Q and 1Q bookings) for many years to come. Such a product is non CAM compliant as the only medium to long term products allowed are annual capacity strips over the following 15 years or quarterly capacity strips sold only on a year ahead basis. Such residual capacity is not recognised by CAM and therefore cannot gain matching Interconnector capacity to secure its use through a CAM Capacity Auction until the year ahead. Therefore its long term nature, usefulness and value have disappeared, further justifying capacity return which at the same time ensures equal treatment of the non CAM entry product.

A further illustration of the complexity that comes with a Bacton split is the Ofgem indication that in future entry capacity at the IP ASEP can be substituted away to the UKCS ASEP leaving the Interconnectors short. The substitution process itself demonstrates the inequality of the IP ASEP being assigned its optimum obligated capacity without any price signal as, for the UKCS ASEP to then regain that capacity through substitution, a user would have to submit a price commitment through a QSEC bid meeting a significant investment threshold before capacity could be substituted across some 42 months later. This also assumes that no low cost retention reservation existed at the donor ASEP. In addition we understand the Interconnectors' position, presented in submissions to Ofgem's recent consultation on the licence change to deliver the Bacton split, arguing for the IP ASEP entry capacity to be protected from substitution for all time to ensure that full Interconnector flows are available at the shortest possible notice to meet sudden and unexpected supply constraints at the least possible cost for consumers. Of course Ofgem always has a veto right to prevent any such substitution. Any protection from substitution enjoyed by the IP ASEP further enhances the competitive advantage that would be afforded to the Interconnectors and their users under Modification 0501 and compounds the value erosion of current long term capacity bookings.

Further complexity arises from the proposed PARCA regime whereby a user at a fully sold out UKCS ASEP could seek to reserve capacity, made available via substitution from the IP ASEP through PARCA, for only winter quarters over a number of years ahead. Before substitution can be confirmed an ad-hoc auction must be held at the potential donor ASEP to allow capacity demand in response to the threat of substitution to be satisfied. The CAM compliant auction process at the potential donor IP ASEP can necessarily only be for annual strips of capacity. How then are you able to ensure competition for entry capacity on two very different products, one able to demonstrate the real price seasonality of capacity, the other not?

Such scenarios also beg the question if entry capacity is to be substituted away from the IP ASEP what happens to the level of exit capacity? If it is not correspondingly reduced is it appropriate in protecting the UK consumer that there is as a result an increased Interconnector opportunity for the market to export gas away from the UK and raise UK prices than to import gas and lower prices?

In raising Modification 0501C **eni** sought to respond to the challenge from Ofgem to explore a full value solution, including an aggregate overrun regime to deliver flexibility to flow across both new Bacton ASEPs, whilst also seeking to highlight the complex commercial and competitive impact of the Bacton split. The proposed enduring solution necessarily has some complexity and associated cost. Those complexities, combined with the further issues highlighted above, may lead the

Modification Panel and Ofgem to the decision that the simplest and easiest way to deliver the CAM split and serve the consumer well across an uncertain future is to allow full capacity hand-back in Modification 0501A given the fundamentally changed competitive landscape, combined with Ofgem choosing to safeguard IP ASEP capacity from substitution. If not, then Modification 0501C is the appropriate solution (including having regard to facilitating compliance with the Relevant Objectives).

Appendix

The Industry Workgroup consensus is that Modifications 0501A and 0501B do not establish User Pays Services on the basis of commonality with Modification 0501 and the fact that the hand-back processes contained therein are essentially ‘paper-based’ exercises.

In our view, Modification 0501C should benefit from the same characterisation because:

(a) but for the addition of the maximum return cap, the hand-back elements of Modification 0501C are analogous to Modification 0501A;

(b) the aggregate overrun and bundled rebate regimes are most appropriately categorised as ‘core services’ excluded from the ambit of the User Pays Service regime;

(c) the aggregate overrun and bundled rebate regimes are not in the nature of:

(i) *new services from xoserve* *<u>either in the form of additional services or as enhancements to existing services, such as a quicker response on an existing service</u>; or*

(ii) *changes* *<u>that users wish to make to existing services;</u>* and

(d) existing capacity holders receive no additional benefit from Modification 0501C, which, in response to the extraordinary regulatory change impacting Bacton, merely seeks to maintain the existing services they contracted for.

The Gas Distribution Price Control Review (**GDPCR**) – Final Proposals document published in December 2007 detailed Ofgem’s proposals to introduce a User Pays element to the funding of existing Transporter Agency services and the funding of future industry change.

As part of the GDPCR, Ofgem recognised that the then current funding model provided poor incentives both on the GTs to provide anything more than a minimum level of service and on users to manage xoserve's costs. Pertinently, in the GDPCR, Ofgem summarised the intended solution as follows:

> *8.3. As part of the GDPCR we recognised that the current funding model may provide* *<u>poor incentives both on the Gas Transporters to provide anything more than a minimum level of service and on users (primarily shippers and suppliers)</u>* *to manage xoserve's costs. We noted that there were a wide range of funding options possible but, through early consultation, identified that there was little industry appetite for any significant change such a short time after GDN sales.*

8.4 We propose to change the funding arrangements for xoserve to improve the incentives for Gas Transporters to be proactive with users in the services they offer via xoserve and to encourage users to consider more carefully the costs they impose.

8.5. It is proposed to introduce a core services plus user pays approach. Under this approach, regulated services provided by xoserve would be classified as one of:

- *Core services. Regulated services that it is appropriate to fund using price control allowed revenues. The costs associated with these services are spread across all customers through gas transportation charges.*

- *User pays services. Regulated services that it is appropriate to fund using charges levied directly upon the user(s) requesting the service. For the purposes of the price control, such services would be excluded services.*

8.7. An industry working group in conjunction with the gas transporters and xoserve have considered the existing services provided by xoserve and identified a number of services which are candidate user pays services. These are:

- *provision of information;*
- *reporting;*
- *user admission;*
- *must reads;*
- *AQ amendments & appeals; and*
- *shipper agreed reads.*

8.9. User pays services are expected to increase during the price control period in two main areas. Firstly, user(s) requesting new services from xoserve either in the form of additional services or as enhancements to existing services, such as a quicker response on an existing service. In the main these are unlikely to impact on other users and would be expected to be contracted on a bilateral basis. Secondly, there will be changes that users wish to make to existing services which do impact on other users as they change the way the service is provided for a number of users or market segment. These changes are likely to be through amendments to the Uniform Network Code (UNC). This is discussed further below. In both cases these areas will be considered to be excluded service income. GDNs will be required to report on all user pays services through the cost and revenue reporting packs.

The Agency Charging Statement (most recently updated with effect from 1 September 2014) provides as follows:

2.1 User Pays Services are those services listed in Appendix 1.

2.2 The number and scope of User Pays Services are as shown in Appendix 1 of this document but such number may be revised from time to time by a modification to the Agency Charging Statement made in accordance with SSC A15.

2.3 Core Services are those services which are <u>Transporter Agency Activities</u> as defined in Section V6.5 of the Transportation Principal Document of the Uniform Network Code <u>and which are not User Pays Services</u>.

4.2 The principles for charging for User Pays Modification Proposals are set out in UNC MOD213V and shall be in accordance with UNC Modification Rules, and pursuant to the User Pays Guidance Document.

Relevantly, TPD Section V 6.5 provides that *"Transporter Agency Activities"* include:

(a) those activities necessary for:

……;

(vii) the calculation of Invoice Amounts, the submission of Invoice Documents and the resolution of Invoice Queries in accordance with Section S;

……;

(b) the provision, operation, maintenance and development of computer systems;

(c) to support the implementation of Sections B, C, D, E, F, G, H, M, S, U and X;

In terms of process, the User Pays Guidance Document, relevantly, provides as follows:

It is envisaged that any Modification Proposal which has the potential, or where it can not be ruled out, to incur incremental Transporter Agency costs (associated with any Transporter Agency systems or processes) <u>and/or creates or amends a User Pays Service</u>, will be classified as a User Pays Modification Proposal.

At the conception of a Modification Proposal the Proposer may not have in-depth knowledge of what, if any, impacts there will be on the Transporter Agency through development and/or implementation of the Modification Proposal. Where there is the potential for incremental costs to be incurred by the Transporters' Agency during the analysis stage, implementation stage <u>and / or on going support for a User Pays Service</u> (which may include development/implementation) connected to a Modification Proposal, the

Modification Proposal shall be classified as a User Pays Modification Proposal.

Where the Modification Proposal is not classified as a User Pays Modification Proposal this implies the Proposer is fully aware that there will be no incremental Transporter Agency costs associated with the Modification Proposal <u>and/or that implementation of the Modification Proposal does not create/amend a User Pays Service</u>.

Where during development of a Modification Proposal the Proposer is made aware or becomes aware that the Modification Proposal will require changes to the Transporter Agency's systems or processes, that result in incremental costs being incurred by the Transporter's Agency <u>and/or creates/amends a User Pays Service</u>, then the Proposer should amend the Modification Proposal such that it takes the form of a User Pays Modification Proposal prior to the Modification Proposal entering the Consultation Phase.

The wording contained in the User Pays Guidance Document should not be misconstrued: it is not enough for the Modification Proposal to trigger actual or potential incremental Transporter Agency costs; the Modification Proposal must **also** contain a User Pays Service in order for it to constitute a User Pays Modification Proposal.

This position is supported by the definition a "User Pays Modification Proposal" set out in paragraph 2.1 of the Modification Rules:

""User Pays Modification Proposal": a Modification Proposal which contains a proposal for a User Pays Service;"

Our view, as further supported below, is that Modification 0501C does not contain a proposal for a User Pays Service, and as such, cannot reasonably be characterised as a User Pays Modification Proposal.

Key Principle	**Application to Modification 0501C**
"core services" are not "User Pays Services".	- In our view, the aggregate overrun and rebate rights fall within the scope of Transporter Agency Activities, and are therefore best categorised as core services. This is because, at their essence, the aggregate overrun and rebate rights involve the calculation of invoices in accordance with Section S of the TPD. The proposal is not creating a new service; the aggregate overrun service is already provided by the GT insofar as invoices for System Entry Overrun Charges are not triggered where Users flow gas within the bounds of their existing

	capacity entitlements across the current Bacton ASEP. In the alternative, we would argue that the aggregate overrun and rebate rights should be characterised as core services insofar as those rights are consistent with supporting the implementation of some or all of Sections B, C, D, E, F, G, H, M, S, U and X in the context of substantive European regulatory change.
The principles set out in UNC Mod 213V are relevant in determining whether a service should be a User Pays Service.	- Importantly, Modification Proposal 0213V does not purport to define what a User Pays Modification Proposal is; rather the principles elucidated in the GDPCR Final Conclusions document are incorporated by reference into the Modification: *"As noted by Ofgem in the GDPCR Final Conclusions document:* *For this revised funding arrangement to be effective in promoting the introduction of services between price control reviews, the parties need to be able to agree how much the service should cost, and who should bear the cost associated with the service. In particular, there need to be contractual arrangements to support these services.* *The purpose of this Modification Proposal is to introduce changes to the UNC Modification Rules to ensure that they reflect this revised approach and provide an appropriate governance framework under which Modification Proposals with a User Pays Service and/or User Pays Charges should be progressed. Business Rules have been provided as part of this Proposal to indicate how the revised rules are to be applied."* Accordingly, the GDPCR sets out the relevant principles for determining whether a service should be characterised as a User Pays Service. - In respect of the GDPCR:

(a) the reference to the GTs "being proactive with users in the services they provide", in our view, is referring to the provision of a new service or a bespoke upgrade to an existing service driven by a User's own commercial motivations.

(b) a User Pays service will either take the form of:

(i) *new services from xoserve <u>either in the form of additional services or as enhancements to existing services, such as a quicker response on an existing service</u>; or*

(i) *changes <u>that users wish to make to existing services.</u>*

(c) a number of examples of potential User Pays Services are cited:

(i) provision of information;

(ii) reporting;

(iii) user admission;

(iv) must reads;

(v) AQ amendments & appeals; and

(vi) shipper agreed reads,

none of which can be said to be analogous to the aggregate overrun and rebate regimes proposed by Modification 0501C.

(d) Modification 0501C cannot be said to constitute an addition or enhancement to existing services enjoyed by capacity holders at Bacton; the aggregate overrun and rebate regimes, constitute an attempt to preserve the flexibility and value attributable to existing capacity products.

In summary, Modification 0501C merely seeks to maintain an existing service.

	(e) In relation to the second category of User Pays Service, it cannot reasonably be said that Modification 0501C, and particularly the aggregate overrun and rebate regimes, are in the nature of a voluntary or discretionary change to an existing service. Modification 0501C is borne out of the implementation of European CAM, in an attempt to preserve the value and flexibility inherent in existing capacity products. All Modification 0501C seeks to do is replicate, as far as possible, the existing rights which capacity holders contracted for. The key point is that Users do not have the choice whether to contract for the service or not; the aggregate overrun and rebate regimes are simply attempting to maintain their existing rights. - From a process perspective, the User Pays Guidance Document identifies two elements which must be present to trigger a User Pays Modification Proposal: (1) potential or actual incremental Transporter Agency Costs (associated with any Transporter Agency systems or processes); <u>and</u> (2) the creation or amendment of a User Pays Service. As proposer of Modification 0501C, we have not classified the modification as a User Pays Modification on the basis that we do not believe that the modification creates or amends a User Pays Service.