



The Mod Panel Secretary
Joint Office of Gas Transporters
Ground Floor Red
51 Homer Road
Solihull
West Midlands
B91 3QJ

09 November 2010

Dear Sir,

Re: Draft Modification Report 0349 - Introduction of a Force Majeure Capacity Management Arrangement

Petgas Trading (UK) Ltd ("Petgas") would like to submit the following in response to the above draft modification report.

Summary

Petgas supports the implementation of this Modification Proposal 0349 as overall we believe that the proposal better facilitates the relevant objectives required for a modification to the UNC.

Petgas is one of the shippers directly impacted by the ongoing FM event which is currently restricting access to booked entry capacity at Milford Haven. National Grid continues to charge for the affected capacity – a situation which is fairly unique when compared to other markets, including the provisions of other international energy infrastructure providers. Petgas is firmly of the view that the continuation of this practice is unsustainable as it is detrimental to both competition and security of supply. We will expand on these points later.

In its decision letter in relation to Modification Proposal 0262¹ Ofgem concurred with this view, stating:

"We consider that in the event of a capacity related FM, the parties whose capacity holdings are affected by the notice should be able to seek relief from the associated charges for at least part of the notice period." and

"We agree that the sentiment that those shippers who are willing to commit to long term capacity should not be unduly penalised through no fault of their own..."

¹ Modification Proposal 0262 - Treatment of Capacity affected by Force Majeure

Similar to Modification Proposal 0262 this proposal seeks to relieve affected shippers from the associated charges which they are currently incurring and on this basis we recommend that the overarching principle is consistent with that which was previously endorsed by Ofgem. We assume that Ofgem will be consistent in its approach in this regard.

The main "stumbling blocks" identified by Ofgem in the aforementioned decision letter have, in our view, been addressed by this Modification Proposal and should provide, therefore, Ofgem the necessary comfort to direct implementation.

In summary, Ofgem identified three main concerns with Modification Proposal 0262, as follows:

- a) an unfair distribution of costs onto consumers; and
- b) an inadequate incentive on National Grid to limit and/or resolve FM events; and
- c) dilution on the incentives of shippers to challenge the validity of a FM event.

In relation to the first two concerns, on the basis that the costs associated with entering into FM Option Agreements will feed into the Operational Buy Back Incentive this means that National Grid will be exposed to a proportion of those costs. In turn, this will dilute the possible impact on consumers and encourage National Grid to manage the network in such a way as to limit the incident and duration of FM events.

The third concern is, in our view, not a realistic one. The level of "compensation" identified in the Proposal relates purely to the cost of capacity, which is minor when compared to the costs associated with non-optimisation of the terminal capacity – these may be direct costs associated with diversion or deferral of planned deliveries, or more indirect opportunity costs related to the loss of potential revenues. In the event that a third party believes that the FM event is spurious then it is highly probable that it would consider taking legal steps to seek more reasonable financial redress. Petgas is of the view that, in common with other compensation arrangements provided for in the UNC, signatories are at liberty to pursue legal action in the event that they believe National Grid, or indeed any transporter, is not adhering to its contractual obligations.

Common to other contractual arrangements which allow for FM, the level of compensation provided for in this Proposal is directed at the non-fulfilment of service delivery and reflects the cost of the service. In this case the service is the non-provision of a volume of entry capacity and the level of compensation tallies with the cost of the service – the capacity charges.

The structure of the proposal allows for ease of implementation and operation whilst protecting the rights acquired by the respective Users. This ensures that

compensation is forthcoming, but the option is only exercised when the aggregate gas tendered for delivery exceeds the level that can be supported under the FM or exceeds the system capability – this in turn ensures gas delivery at the ASEP can be optimised.

Detailed comments on the areas of the Draft Modification Report

1. Extent to which implementation of the proposed modification would better facilitate the relevant objectives

A11.1 (a) the efficient and economical operation of the pipe-line system.

As stated previously, unlike Modification Proposal 0262, this Proposal requires that National Grid is exposed to at least some of the costs incurred in compensating the affected Users. For this reason, National Grid has less incentive to call a FM event, or prolong one which it has initiated. On this basis, it might be assumed that the pipe-line system will operate on a more efficient basis as deliveries into the System will be optimised.

A.11.1 (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.

In the event that objective A11.1(a) is better facilitated then by extension this will provide for achievement of this objective as more generally gas flows into the system and which are subsequently delivered to other systems, are optimised.

A11.1 (d) the securing of effective competition (i) between relevant shippers and (ii) between relevant suppliers.

On the basis that Users hold and pay for capacity which they are unable to utilise it is clear that they are being unfairly treated. The proposal properly recognises that compensation should be paid to affected Users to ensure that they are not disproportionately impacted. The costs associated with the scheme are targeted through the buy-back incentive which provides a share of costs and risks between National Grid and other Users. The combined effect is to better facilitate competition between relevant shippers and through the optimisation of supplies into the market, relevant suppliers.

2. The implications of implementing the Modification Proposal on security of supply, operation of the Total System and industry fragmentation

Parties who are considering investing in the GB gas market to provide either new import facilities, or the extension of existing facilities may find the current practices in relation to FM to be unreasonable. This approach is inconsistent with arrangements in place in other markets. The implementation of this

Proposal would improve the attractiveness of the GB market for potential investors.

3. The implications of implementing the Modification Proposal for Terminal Operators, Consumers, Connected System Operators, Suppliers, producers and, any Non Code Party

Clearly, the Proposal would allow for compensation to be paid to Users which in some cases will be related to upstream producers – in the case of Milford Haven the producers/suppliers of LNG.

Petgas has no further comments to make on the remaining sections of the draft modification report.

We trust you find our comments useful and if you have any questions then do not hesitate to get in touch.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Ezura Ghazali', with a long horizontal stroke extending to the right.

Ezura Ghazali
Senior Executive
Commercial & Business Devt.