0341: Manifest Errors in Entry Capacity Overruns

Workstream Report
Manifest errors in Entry Capacity Overruns
Modification Reference Number 0341

Version 1.0

This Workstream Report is presented for the UNC Modification Panel's consideration. The Transmission Workstream considers that the Proposal is sufficiently developed and should now proceed to the Consultation Phase. The Workstream also recommends that the Panel does not request the preparation of legal text for this Modification Proposal since the Proposer has provided suggested text.

1 The Modification Proposal

Background

This proposal is being raised as a result of a circumstance of a manifest error which resulted in very significant entry capacity overrun charges being incurred for each day in the whole month of April 2010, totalling multiple millions of pounds.

The UNCC currently does not contain any manifest error provisions in relation to overruns, or any other aspects of the UNC, though their introduction has been considered on a number of occasions in relation to overrun charges and the wider activities of capacity trading. Ofgem has consistently supported their development, including in its decisions on several Transco Network Code proposals (402, 413, 419, 432, 436, 437 and 653).

In contrast, manifest error provisions have been provided for in the electricity regime. Modification P37 was a retrospective modification implemented to allow for the correction of specific errors which occurred in the early stages of NETA. Section Q7 of the Balancing and Settlement Code provides for manifest errors in the bid-offer acceptance process. Manifest error provisions are also typically available on most trading platforms, including APX Endex, provider of the OCM platform.

Previous Transco Network Code Modification Proposals (357, 366, 401, 573, 589, 653) sought to reduce the level of overrun charges because their construction in the UNC can result in charges which could be viewed as potentially penal, and because it was considered by some proposers (e.g 366, 401) that there could be separation between the treatment of constrained and unconstrained days. Ofgem has consistently rejected these proposals on the grounds that to do so would undermine the 'ticket-to-ride' principle, and also that the distinction between constrained and unconstrained days is addressed by the inclusion of constraint prices as a basis for determining the overrun charge.

More recently Modification Proposal 119 sought, amongst other things, to make overrun charges potentially higher than currently. The grounds for its rejection included that by incorporating the highest relevant reserve price, a charge which was not related to constraint costs on the day (and therefore may not be cost reflective) could be used as the basis for the overrun charge. In addition, Ofgem noted concerns that it could give rise to perverse incentives on Users to be overly conservative in providing user commitment signals through the long term auctions.

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Clearly therefore, there is a fine balance to be struck between maintaining an appropriate and cost reflective incentive for Shippers to book entry capacity in advance and the un-challengeable application of non-cost reflective overrun charges which could be construed as penal.

The proposer believes that it was never fully anticipated that the 8x multiplier could apply for an extended period and hence result in overrun charges which are correspondingly punitive in the extreme (multiple millions of pounds). Rather it believes that there is an implicit assumption in the design of the charges that overruns would occur only on occasional days and that persistent and/or very large incidences of overrun would be identified by the Transporter and the User, and rectified accordingly promptly. The proposer notes that, while it is the User's responsibility to have robust systems in place and manage its position prudently, there are no proactive warnings in Gemini identifying that nominations exceed booked capacity by a significant amount and/or that this has occurred on a number of consecutive days.

The proposer has, in its opinion, suffered a genuine manifest error but there is currently no mechanism within the UNC for the proposer to even make its case.

For the avoidance of doubt, this proposal does not seek to guarantee any specific outcome for the proposer. Rather, the proposal seeks to introduce permanent arrangements in the UNC to allow manifest errors in relation to entry capacity overruns to be considered, and to permit the use of those arrangements for consideration of the proposer's circumstances.

Purpose

This proposal seeks to introduce Manifest Error provisions into the UNC where, and only where, a User error in booking entry capacity has lead to entry capacity overrun charges being incurred. Under this proposal, a User could raise a claim for manifest error, have it considered by the UNCC, and where the claim is found to be valid, the UNCC would determine an appropriate adjustment to the overrun charges. The processes envisaged are set out under Proposal (p10) below, and additional detail is provided in the appended Guidance document.

Whilst this proposal is limited to the very specific case of entry capacity overrun charges, the general approach could be capable of adaptation for use elsewhere in the UNC (for example by adopting different timescales for consideration of claims and amending the specific decision criteria and adjustment principles to make them relevant to the specific issue).

The proposer is not aware of other areas of the UNC in which Manifest Error provisions of this nature have ever been considered necessary or desirable. Nonetheless it is open to other Users to propose how Manifest Error arrangements could be applied and/or adapted in other areas of the UNC, and this proposal may or may not provide a useful model, depending on the area of concern.

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Nature

1. Retrospectivity

The proposal would implement an enduring arrangement whereby overrun charges could be amended after the event, in agreed circumstances of manifest error.

For the avoidance of doubt, this proposal would also constitute a limited retrospective rule change, to the extent that it will (if approved) permit errors which occurred since 1st April 2010 (and exceeding £50,000) to be considered by the UNC Committee.

The proposer notes that in its decision on P37 (para 45), Ofgem concluded that it accepted that the possibility of retrospective rule changes should be allowed in certain very strictly defined circumstances. Whilst the proposer recognises the general undesirability of retrospective UNC changes, it believes that this proposal is addressing such a very strictly defined circumstance as it relates only to errors in booking entry capacity leading to entry capacity overruns. The proposal could be even more strictly defined, if it were to address past errors only, but the proposer believes that enduring Manifest Error provisions for entry capacity overrun charges are something which have been sought for some time by Users and by Ofgem. Rather than raise two proposals (one to apply retrospectively and one to endure for the future), the proposer believes that there is no reason why a different process should be required for consideration of past and future errors, and so believes it is preferable for the sake of efficiency of administration, and consistency of treatment, to raise a single proposal which provides a very limited scope for past errors to be considered, and at the same time implements enduring arrangements.

In its decision on P37 (and in connection with its earlier rejection of its predecessor Modification Proposal P19) Ofgem further identified a small number of circumstances in which a retrospective rule change could be acceptable, including:-

- where the possibility of retrospective action had been clearly flagged in advance.
  The proposer believes that it has taken reasonable steps to ensure that the possibility in this case (including the possible requirement to return a portion of capacity neutrality payments) has been flagged to the industry through the Transmission workstream, and to National Grid.
- that the loss sustained would need to be material.
  The proposer can confirm that it has faced a material loss (although the implementation of proposal in itself will not guarantee any specific outcome for the proposer).
- where the fault occasioning the loss was directly attributable to central arrangements. Although the proposer acknowledges its own responsibilities, it notes that the fact that there are no warning systems in Gemini has contributed to this situation.

P37 was raised in the context of the introduction of NETA. In its decision Ofgem

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also acknowledged the argument that even prudent operators may make material errors as a consequence of inexperience with new systems, and considered that given the uncertainty over whether this had occurred, it was appropriate to allow the BSC Panel to determine whether or not charges should be rectified (retrospectively) subject to the criteria and procedures set out in the proposal.

GasTerra believes that whilst the introduction of new industry systems for all parties may indeed create a higher probability of errors even for prudent operators, any party may at any time introduce its own new systems and create a similar situation. New market entrants and smaller participants undoubtedly face particular challenges on this point, but they may also be experienced and prudent operators.

The proposer therefore believes that the start of new industry regimes is not the only time at which retrospective changes may be appropriate. This proposal would deliver enduring arrangements which would provide comfort to new or smaller operators, and would also provide benefits to all market participants by allowing for reasonable treatment in the event of an agreed Manifest Error. These benefits can only be provided by allowing for the possibility of retrospective amendment of charges in limited circumstances, and the question of prudence of the operator is addressed in the proposed approach to the adjustment of charges.

Ofgem also stated that modifications generally ought not to change the character of past transactions completed on the basis of the then existing rules. The proposer does not believe that implementation of this proposal could have such an effect:-

- Entry capacity overruns are levied after the day as an incentive and do not entail any allocation or reallocation of capacity rights, and so do not form the basis for a trading ‘transaction’ completed between parties.
- Capacity buybacks may be required as a consequence of capacity overruns. Although there is not a direct commercial transaction between buybacks and overruns, it is a situation where consequences and costs may arise as a result of an error. The proposal deals with the treatment of capacity buybacks (see p9) but in this case, no capacity buybacks were required at the relevant ASEP in April 2010.
- Since the proposer paid its Overrun charges in good faith in relation to April 2010, Users will have received their proportional share of the benefit through the capacity neutrality mechanism (and National Grid is likely to benefit under its capacity neutrality performance incentive). If this Proposal were implemented, and the UNCC were to determine that the Proposer’s error was valid and make an adjustment to the Overrun charges, Users would be required to pay back part of the money they received in capacity neutrality, (and National Grid would not make any gain). The proposer believes that the loss of this windfall gain to Users/National Grid does not constitute a change in past transactions, and that the loss is outweighed by the wider benefits of introducing manifest error provisions on entry capacity overruns.

Further, since the proposal would mean that it was never cheaper to pursue a manifest error claim than to book the capacity correctly in the first place, the

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proposer believes that Users would not have taken any different approach to booking entry capacity had this mechanism been in place previously.

In October 2007 Modification 152V 'Limitation on Retrospective invoicing and Invoice Correction' introduced a rolling 4 year period over which meter errors may be retrospectively rectified. It defined the 'Code Cut Off Date', which for formula year 't' is defined as '1st April in formula year t-4'. The Modification also restricted any invoice from containing items or amounts relating to days prior to the Code Cut Off date, and hence could be considered to be a code-wide ruling on appropriate limits for retrospective amendments to invoices.

This proposal 341 also introduces the possibility of retrospective amendments to invoices, but the proposer has taken a different approach. Its reasoning is explained below.

Like Meter errors, manifest errors leading to entry capacity overruns can only be identified after they have occurred, and hence any correction has to be made after the event. However, meter errors are fundamentally different, since they may have persisted for periods of years, and hence complex reconciliation of costs/gas between Users' portfolios may be required over similar time periods. In contrast, Entry Overrun charges are explicit at the point of Invoice issue, and hence this is the latest point at which Users can be reasonably expected to become aware of a Manifest Error situation. 'Reconciliation' in this case is simply a matter of reversing a proportion of neutrality charges, and does not involve gas or capacity reallocation.

The proposer believes that these differences justify the use of different (shorter) timescale limits for invoice amendments resulting from future Manifest Error Claims. Therefore the proposal requires (future) Manifest Error Claims to be raised as soon as reasonably practicable and at latest within 1 month of the relevant invoice issue date. Given the outside time limits proposed, adjustment of neutrality (where appropriate) would follow within about 6 months of the period in which the error occurred, and all parties would be aware of the possibility of an amendment within about 2 months of the error occurring.

Modification 152V also constituted a retrospective rule change, and in its development (in review group 126) the potential materiality of the impact of different cut-off dates for Users was investigated to inform the conclusion about the most appropriate retrospective cut-off point for application of the proposal. Following this approach, the proposer has reviewed the following data provided by National Grid.

Overruns per day and per ASEP Dec 2001 – May 2010 (excluding Proposer's)

Overrun Charge - £'s	total number of overruns	percentage of overruns - %	cumulative percentage - %
0 to 1,000	3862	80.6	80.6
1,000 to 5,000	531	11.2	91.8

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5,000 to 10,000	133	2.8	94.6
10,000 to 50,000	196	4.3	98.9
50,000 to 100,000	12	0.4	99.3
100,000 to 200,000	5	0.6	100.0
200,000+	2	0.0	100.0

This indicates that there have been 19 occasions of overruns greater than £50,000 since December 2001, and it is unlikely that all of those would have resulted from a Manifest Error. Even using a 'per claim' rather than 'per day' threshold of £50,000 (see p8), the proposer does not believe that the number of claims which could potentially be raised as a result of a retrospective change would be material. No parties have indicated that they would be disadvantaged by the 1st April 2010 'effective from' date contained in the proposal. Further, National Grid indicated that re-opening capacity neutrality charges from previous closed-out financial years would be cumbersome, although it also indicated that provided that it has notice of Claims (as provided for in the proposal) the financial year need not be a 'cut-off' point for any future claims.

The proposer therefore believes that aligning the date from which the Mod would take effect with the current financial year (i.e. 1st April 2010) is the most reasonable approach to take in relation to this Proposal. Although this is not consistent with Mod 152V, the proposer believes that shorter timescales are preferable and appropriate in this case.

The proposer further believes that National Grid NTS has had sufficient notice to make appropriate arrangements in relation to capacity neutrality for this current year, should a delay in the implementation of this proposal mean that the proposers claim could not be considered until the next financial year.

Finally, on the question of retrospectivity, the proposer has attempted to lay out its arguments in specific detail because it should be helpful in assessing the specific justification for implementing this proposal. If approved, clarity on the arguments for its implementation should reduce the likelihood of retrospective changes in relation to entry capacity overruns which may otherwise be needed in future, and also help to protect against 'opening the floodgates' for retrospective proposals in general.

2. Requirements of Manifest Errors Procedures

Manifest Error procedures have been contemplated previously in relation to gas and specifically for capacity transactions. Modification Proposal 419 'Avoidance or correction of shipper errors in purchasing and selling entry capacity' sought to introduce error management arrangements, incorporating shipper error avoidance mechanisms and manifest error provisions similar to those available on the OCM to the daily capacity market.

In its rejection of 419, Ofgem set out the following list of matters which it said 'should be carefully considered' in the development of manifest errors procedures,

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drawing on its conclusions on previous proposals as well as on work on Manifest Errors for NETA:

1. The establishment of sufficiently independent procedures to address manifest error claims;
2. The extent to which manifest errors claims in the capacity market need to be addressed in real time;
3. The time scale within which a shipper can apply for a trade to be unwound;
4. The value of any fee that would need to be paid;
5. The criteria by which a manifest error is to be identified;
6. The nature of the remedial action to be taken once a manifest error has been identified, particularly with respect to the capacity allocation process; and
7. The extent to which any manifest error correction mechanism should apply to both shippers and Transco

It should be noted that this proposal does not provide a mechanism for within day amendment of errors in capacity trades; it addresses only the circumstances where a shipper error in its capacity bookings has lead to overrun charges being incurred. Nonetheless, Ofgem's list of issues is relevant to designing effective and appropriate manifest error procedures. How this proposal attempts to address each concern is therefore set out below, along with some further points of broader justification for the approach proposed.

1. Sufficiently independent procedures:
The proposal requires Manifest Error Claims to be considered and determined by the UNCC. The proposer believes this is the best approach in this case, because:-

- The UNCC comprises experienced professionals elected to a responsible role on the Mod Panel, which includes recommending/deciding on potential UNC changes. It is therefore an appropriate body in terms of its expertise and position in relation to the UNC contract.
- No specific expertise should be required to determine whether an error was 'manifest', nor to adjudicate on appropriate adjustments to Overrun charges.
- Given that the decisions in Manifest Error Claims would be ultimately subjective, a panel determination by majority vote is the most appropriate means of determining claims.
- The proposal contains terms like those which apply to the Energy Balancing Credit Committee (EBCC) to require that members consider claims independently of their company interests and also to protect against individual liability.
- The UNCC is already established and so is capable of being convened promptly and without additional cost.
- Manifest Error Claims are likely to be rare occurrences, so the additional time/effort/cost which would be associated with appointing other parties to make a determination is not warranted.
- The proposal details and guidance document set out sufficient explanation, structure and methodology to facilitate independent determination of Claims.

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The proposer is aware that there could be a range of interests among the UNCC members, in that Users and National Grid stand to benefit through capacity neutrality, whilst the Independent Gas Transporter members have no such interest. The proposer believes that the terms proposed requiring members to consider Claims independently, and the transparency of a committee-based process, provide reasonably robust measures to guard against biased decision making. The EBCC make judgments with potentially greater impacts on their peers, and the presence of independent gas transporters on the UNCC in this case further improves the independence of the proposed process.

2. Timescales for addressing Claims. Since the proposal does not deal with errors in relation to capacity trades, 'real time' consideration of Claims is not required. 55 days was selected as the outside limit for the UNCC to determine Claims, (i.e. a maximum of 10 days to convene a meeting to give reasonable time for information preparation, and at least 45 days for consideration). It is important that there should be a specific limit to ensure consistent treatment of all Claims, but it should also allow reasonable time for more than one meeting of the UNCC. The proposal provides for an extension to the time limits if necessary, and a default position to clarify what would happen if the UNCC fail to make a decision within the time limit. However in general it is preferable that Claims should be determined as promptly as possible to enable charges to be adjusted as soon after the event as possible, and this intention is clear in the proposal. Where Claims could be considered before the Invoice Due Date it is preferable to do so, and the proposal also provides for this.

3. Timescales within which Shippers can apply for a trade to be unwound. In this case, there are no trades to be unwound, so this consideration is not necessary in relation to this proposal.

4. Value of fee (Threshold): The proposal uses the same fee level (£5000) as used in the Manifest Error procedures in Q7 of the BSC, and the fee is to be paid to National Grid to cover its costs in providing information to the UNCC and implementing the outcome of the determination. Should National Grid find that this is not a cost-reflective level of charge, the proposal contains terms to allow for it to be amended following UNCC consultation with Users and 30 days notice.

The fee is not set to provide a 'threshold' for Claims, although it would obviously have some role in deterring trivial Claims. The Proposal contains a separate specific threshold of £50,000 per Claim to set a level for sufficiently material loss to warrant consideration of possible retrospective amendment. This figure is based on the information provided by National Grid (shown on p5) indicating the volume of Claims and their materiality since 2001. National Grid's data gives Overruns charges per day and per ASEP, whereas the proposal contains only a 'per Claim' threshold. This is more loosely based on the scale of materiality of daily overruns indicated in the data, rather than strictly on the daily nature of the analysis. The proposer believes this is appropriate because:

- Larger participants may pass the threshold easily as a result of an error on one day, whereas a smaller participant may make a genuine error leading to several days or even a month of overruns totalling more than £50,000 but would not be

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able to raise a Claim under a daily threshold.

- Introducing any threshold (including the indirect one provided by the fee) gives rise to the possibility of a User attempting to 'game' in order to pass the threshold. This implies that a User making a smaller value error would subsequently attempt a 'deliberate' error to increase the value of its claim past the threshold.
- A successful claim would not yield cheaper capacity than booking correctly in the first place, and requires the User to provide evidence to the UNCC to demonstrate that their error was unintended. The risks of the Claim being rejected must outweigh the benefits from 'gaming' by letting an overrun charge increase to reach the £50,000 threshold.

5. Criteria for a Manifest Error: The proposal contains two clearly specified and very simple criteria for a valid Manifest Error, namely that the error should be genuine and unintended, and that the Claimant was not seeking unfair advantage. The guidance document further sets out some points of interpretation intended to assist the UNCC in its determination. Other considerations, including the extent to which the Claimant had taken reasonable steps to ensure it had prudent systems in place, feature in the adjustment of charges. The proposer believes that clean simplicity is desirable on the criteria, hence the simple statement that the error should be genuine and unintended. This criterion also appears consistent with typical manifest error arrangements on trading platforms.

The proposer believes that the burden of proof resting on the Claimant, and use of reference cost 1 makes it risky and therefore unlikely that Users would deliberately underbook capacity and then seek to attempt to falsely Claim Manifest Error. However the question of possible 'gaming' is specifically addressed in the criteria to make it clear that this approach is unacceptable and to provide the UNCC with grounds for rejecting a Claim where they believe this to be the case.

6. Nature of Remedial Action: Since there are no transactions to be unwound, for valid Manifest Errors leading to entry capacity Overrun charges the only remedial action necessary is to determine what level of charges should be paid instead of the Overrun charges incurred, and then to implement that where necessary through a reversal of Capacity Neutrality (which can be achieved with existing functionality).

The proposal states that in its determination the UNCC should seek 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.

The proposal therefore contains a structured approach to the determination of Adjusted Charges which uses Reference Costs to provide a framework for the determination, and also provides discretion for the UNCC.

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The principles on which this approach is based are set out in the Guidance document in section 7, and its key characteristics are as follows:

- Discretionary determination between Reference Cost points means that the outcome is not predictable ahead of the event and can take better account of the specific circumstances.
- 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 that it is never cheaper to pursue a Manifest Error Claim than to book correctly, and hence maintains the 'ticket to ride' principle.
- Reference Cost 2 sets 20% of the Overrun charges as a generally reasonable reference point to create a framework for determination, and the UNCC also has discretion to set Further Reference Costs where justified in the circumstances, and can thereby define its own framework for consideration.
- The proposal contains a presumption that any buyback costs incurred as a result of a Manifest Error should still be faced by the Claimant (unless there are extenuating circumstances), and Reference Cost 3 provides for this. This is because it is appropriate that Users generating costs on the system, even as a result of an Error, should still face the consequences. This approach maintains the link with the capacity market such that an explicit distinction between constrained and unconstrained days is not needed within the capacity regime.
- Discretionary application of the Relevant Factors allows the UNCC to increase or decrease the Adjusted Charges depending on their assessment of the circumstances.

The proposer therefore believes that the remedial action proposed is appropriate to the specific nature of Manifest Errors in entry capacity bookings which is under consideration.

7. Application to both National Grid and Users: This proposal is not intended to address circumstances of National Grid error, so it is not appropriate to make the procedures also apply to National Grid.

However, it is conceivable that National Grid could make a Manifest Error in handling capacity bookings such that Users incur Overrun charges. If it was considered that National Grid should be able to make use of the Manifest Error procedures in this proposal to cover circumstances in which National Grid Errors might lead to Overruns, other Users and National Grid are free to propose it, and to propose any specific adaptations (e.g. to timescales or the approach) which might be appropriate.

Proposal

It is proposed that the UNC be modified in accordance with the following:-

1. <u>Claiming Manifest Error</u>

a) A User can raise a Claim for Manifest Error ('Claim') if it believes that it has

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incurred Entry Capacity Overrun Charges of greater than £50,000 as a result of an error in its Entry Capacity bookings.

b) 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 relevant invoice due date. Claims for errors occurring after the implementation date of the Modification Proposal must be raised within 1 month of the Invoice issue date to which the error relates. Claims for errors occurring prior to the implementation date but on or after 1st April 2010 must be raised within 1 month of the implementation date of the Modification Proposal. No Claims may be made for errors occurring prior to 1st April 2010.

c) 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)
- A brief explanation of how/why the Manifest Error occurred

d) 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.

e) 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 the Claim is first raised, as determined by the UNCC from time to time and published in the Guidance Document. The UNCC will first consult with Users and provide 30 days notice, prior to determining any changes to the fee.

d) For the avoidance of doubt there are no specific or alternative credit provisions associated with this proposal.

2. Acknowledgement and Notification

a) Where a Claim is raised, the Transporter will within a maximum of 3 Business Days acknowledge the Claim in writing and notify Users that a Claim has been received.

b) The Notification to Users must contain the following information:-

- 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

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- Any other relevant information (see Guidance document)

3. Convening the UNCC

a) 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 with the Transporter to reach its decisions. (NB: Where this is not achieved, the Default Adjustment (see 9 below) will apply.)

b) The Transporter will instruct the UNCC Secretary to arrange a meeting of the UNCC giving 5 days notice where possible, and at the latest within 10 business days of the Claim being raised with the Transporter. Where the Claim could be considered before the relevant Invoice Due Date, all parties should make reasonable efforts to hold the meeting at the earliest opportunity.

c) 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.

d) The prevailing terms of General Terms GTB section 4 which govern the UNCC shall apply, in carrying out its duties under this section [B?]

e) If necessary, the UNCC may appoint a sub-committee to carry out its duties under this section [B?]. Where a sub-committee is appointed, the requirements of this 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 this section [B?].

f) 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 majority vote, permit the Member to consider the Claim if it believes that the Member will act independently.

g) The members of the UNCC do not have personal individual liability in relation to their consideration of a Claim for Manifest Error, and independently of their company interests and in good faith.

4. UNCC Determination

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 procedures to be used by the UNCC in making these determinations are further described in the sections below.

5. Reporting of Determination

a) As soon as practicable and within a maximum of 3 business days of the UNCC determination being reached, the Secretary will notify the outcome to the Claimant, the Transporter, Ofgem, and Users.

b) Where the determination means that Users will be required to pay back money

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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.

c) As soon as practicable, and within a maximum of 5 business days of the UNCC reaching its decisions, the Secretary will produce a report explaining the decisions of the UNCC, for publication to the Claimant, Ofgem and Users. An edited/blacklined version may be provided for Users to protect the commercial confidentiality of the Claimant.

6. Implementation of the Outcome

a) 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 days notice period available, otherwise at the time of the subsequent entry capacity invoice. Users are obliged to make any repayments required.

b) The administration fee will be invoiced via an ad hoc invoice within 1 month following the UNCC determination.

7. Determination of Manifest Error

a) 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.

b) The Guidance document sets out suggested information which the Claimant may provide, and the Claimant may provide any other information it believes relevant.

c) 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).

d) 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 9 will not apply.

e) The Transporter is required to provide the following information at the first meeting of the UNCC held to consider the Claim.

i) Verification of entry capacity Overrun Charges incurred
ii) Verification of the Claimant's entry capacity auction purchases for the relevant days at the relevant ASEP(s)
iii) 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).

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iv) 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.)

f) The Transporter is also required to provide any other relevant information which the UNCC reasonably requests, given a 5 Business Day notice period. The Guidance document gives a non-exhaustive list of what may typically constitute 'other relevant information'.

g) The UNCC will consider the information presented, and determine by a majority vote whether a valid Manifest Error occurred.

h) For a valid Manifest Error, the UNCC should be reasonably convinced that both the following criteria apply:

- That it was a genuine, unintended error
- That the User was not seeking unfair commercial advantage

8. Determination of Adjusted Overrun Charges

a) In the event that the UNCC determines that a valid Manifest Error has occurred, it shall then determine an adjustment to the original Overrun Charges incurred, in accordance with this section and the Guidance Document, to set the charges which the Claimant will be required to pay instead ('the Adjusted Overrun Charges'). For the avoidance of doubt, if the UNCC determines that a Manifest Error Claim is not valid, the Overrun Charges will stand as incurred without adjustment.

b) Having reviewed the evidence provided by the Claimant and information provided by the Transporter, the UNCC shall calculate Reference Cost 1 and Reference Cost 2, and may also calculate Reference Cost 3 and any Further Reference Costs, in accordance with this section.

- Reference Cost 1 in respect of any day is the cost of the quantity of entry capacity which the Claimant should have bought plus 5%. This will be the amount of the overrun quantity multiplied by whichever is the greatest of

  a) the highest priced accepted bid in the most recent monthly auction relating to capacity at the relevant ASEP on the day in question (or the reserve price if there were no higher priced accepted bids) plus 5%.

  b) the highest priced accepted bid at the relevant ASEP in the relevant daily auction processes plus 5%.

  c) an appropriate price to reflect what the Claimant could reasonably have been expected to pay for the capacity it should have bought (plus 5%) where capacity has been surrendered or transferred to or from the ASEP(s) in question. The UNCC should determine this price based on a detailed assessment of the specific circumstances on the day(s) in question.

- Reference Cost 2 in respect of any day is 20% of the entry Overrun Charges as originally incurred for that day.

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- 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 resulting from the Manifest Error, which would not have occurred otherwise.
- 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.
- The UNCC should specifically explain its rationale for the calculation and use of each Reference Cost in its concluding report. Reference Cost 3 and Further Reference Costs may be up to 100% of the original Overrun Charges.

c) The UNCC should then consider the Relevant Factors to arrive at a final figure for the Adjusted Overrun Charges, in accordance with d - k below and the Guidance document

Treatment of Aggregate Claims

d) 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.

e) 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.

Review of Relevant Factors

f) 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 section 8.

g) 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.

h) The UNCC shall consider each of the following Factors.

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

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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.

i) 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.

j) 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

- the need to maintain incentives to book capacity in advance,
- the particular circumstances and nature of the Manifest Error, and
- the reasonableness of charges which should be paid as a result of a Manifest Error.

k) 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.

9. Default Adjustment

a) Where the UNCC fails to reach a determination within the 55 day time limit, unless a specifically quantified extension to the time limit within which a decision is to be reached is mutually agreed and confirmed in writing between the UNCC and the Claimant, the Default Adjustment will apply. UNREASONABLY WITHHELD

b) The Default Adjustment will be that the adjusted charges will be set at the mid-point of Reference Cost 1 and Reference Cost 2, calculated pursuant to section 8 above.

2 User Pays

a) Classification of the Proposal as User Pays or not and justification for classification

Implementation would not affect xoserve systems or procedures and therefore would not be affected by User Pays governance arrangements.

b) Identification of Users, proposed split of the recovery between Gas Transporters and Users for User Pays costs and justification

No User Pays charges applicable.

c) Proposed charge(s) for application of Users Pays charges to Shippers

No User Pays charges applicable to Shippers.

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d) Proposed charge for inclusion in ACS – to be completed upon receipt of cost estimate from xoserve

No charges applicable for inclusion in ACS.

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

Standard Special Condition A11.1 (a): ***the coordinated, efficient and economic operation of the pipe-line system to which this licence relates;***

Implementation would not be expected to better facilitate this relevant objective.

Standard Special Condition A11.1 (b): ***so far as is consistent with sub-paragraph (a), the (i) the combined pipe-line system, and/ or (ii) the pipe-line system of one or more other relevant gas transporters;***

Implementation would not be expected to better facilitate this relevant objective.

Standard Special Condition A11.1 (c): ***so far as is consistent with sub-paragraphs (a) and (b), the efficient discharge of the licensee's obligations under this licence;***

Implementation would not be expected to better facilitate this relevant objective.

Standard Special Condition A11.1 (d): ***so far as is consistent with sub-paragraphs (a) to (c) the securing of effective competition: (i) between relevant shippers; (ii) between relevant suppliers; and/or (iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers;***

Implementation may better facilitate this relevant objective by providing comfort to Users, especially new entrants and/or smaller participants, that circumstances of genuine error in relation to entry capacity overruns are capable of fair consideration and reasonable treatment. The approach at present is black and white and provides no way to deal with manifest errors. The real world is not clear cut and there should be a procedure to deal with human error. Allowing for this would encourage participation in the industry. Implementation would therefore promote effective competition because it would reduce barriers to entry and increase participation in the industry.

Implementation may better facilitate this relevant objective to the extent that implementation provides greater comfort for participants that any errors will be treated reasonably. This increases the likelihood of more active participation, including secondary trading (as contemplated in Ofgem's decision on Transco Mod Proposal 589), and may lead to more liquidity in the market that, in turn, supports effective competition.

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Standard Special Condition A11.1 (e): ***so far as is consistent with sub-paragraphs (a) to (d), the provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards (within the meaning of paragraph 4 of standard condition 32A (Security of Supply – Domestic Customers) of the standard conditions of Gas Suppliers' licences) are satisfied as respects the availability of gas to their domestic customers;***

Implementation would not be expected to better facilitate this relevant objective.

Standard Special Condition A11.1 (f): ***so far as is consistent with sub-paragraphs (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code.***

Implementation may better facilitate this relevant objective by:

- Providing an appropriate and cost-effective mechanism for the consideration and resolution of possible manifest error circumstances in relation to entry capacity overruns; and
- Reducing the risk of contractual disputes arising from unreasonable and unintended consequences associated with the existing arrangements, with legal disputes having the potential to increase costs for all industry participants.

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

No implications on security of supply, operation of the Total System or industry fragmentation have been identified.

5 The implications for Transporters and each Transporter of implementing the Modification Proposal, including:

a) implications for operation of the System:

There are no implications for operation of the System.

b) development and capital cost and operating cost implications:

There are no cost implications.

c) extent to which it is appropriate to recover the costs, and proposal for the most appropriate way to recover the costs:

Not applicable.

d) Analysis of the consequences (if any) this proposal would have on price regulation:

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No consequences have been identified.

6 The consequence of implementing the Modification Proposal on the level of contractual risk of each Transporter under the Code as modified by the Modification Proposal

Implementation will reduce the risk of disputes or other litigation with the Transporter, by providing for a reasonable, industry led process for consideration of possible manifest error circumstances in relation to entry capacity overruns.

7 The high level indication of the areas of the UK Link System likely to be affected, together with the development implications and other implications for the UK Link Systems and related computer systems of each Transporter and Users

It is the proposer's understanding that, where the UNCC determines there should be an adjustment to overrun charges, this can be implemented using existing functionality of the Gemini systems, therefore no changes to systems would be required as a result of implementation of this Proposal.

8 The implications of implementing the Modification Proposal for Users, including administrative and operational costs and level of contractual risk

Administrative and operational implications (including impact upon manual processes and procedures)

Implementation would require the following additional administrative procedures for Users:

- The UNC Committee would be required to hear and determine manifest error cases
- Users may be required to account for and possibly pay back monies received through capacity neutrality.

It is believed that the frequency of which these additional procedures are required is likely to be extremely low.

Development and capital cost and operating cost implications

It is believed that there should be no additional development or capital cost requirements for Users. Any additional operating costs for Users in dealing with accounting for neutrality amounts would be very low (and infrequent), and that the proposed process provides for Users to have sufficient information and notice to address this issue in a satisfactory manner.

Consequence for the level of contractual risk of Users

Implementation of the proposal would reduce the level of contractual risk that Users

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face under the UNC at present, as it provides for fair and reasonable consideration and treatment of genuine manifest error circumstances in relation to entry capacity overruns, and this is not currently available.

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

The implications for Users and Transporters are set out above.

10 Consequences on the legislative and regulatory obligations and contractual relationships of each Transporter and each User and Non Code Party of implementing the Modification Proposal

Implementation of the proposal would reduce the risk of contractual disputes as discussed above.

11 Analysis of any advantages or disadvantages of implementation of the Modification Proposal

Advantages

- Helps to mitigate the perverse incentive which National Grid may have to not draw attention to manifest errors.

Disadvantages

- None identified

12 Summary of representations received (to the extent that the import of those representations are not reflected elsewhere in the Workstream Report)

No written representations have been received.

13 The extent to which the implementation is required to enable each Transporter to facilitate compliance with safety or other legislation

No such requirement has been identified.

14 The extent to which the implementation is required having regard to any proposed change in the methodology established under paragraph 5 of Condition A4 or the statement furnished by each Transporter under paragraph 1 of Condition 4 of the Transporter's Licence

No such requirement has been identified.

15 Programme for works required as a consequence of implementing the Modification Proposal

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No programme of works would be required as a consequence of implementing the Modification Proposal.

16 Proposed implementation timetable (including timetable for any necessary information systems changes)

Proposal could be implemented with immediate effect following direction from Ofgem.

17 Implications of implementing this Modification Proposal upon existing Code Standards of Service

No implications of implementing this Modification Proposal upon existing Code Standards of Service have been identified.

18 Workstream recommendation regarding implementation of this Modification Proposal

The Transmission Workstream considers that the Proposal is sufficiently developed and should now proceed to the Consultation Phase. The Workstream also recommends that the Panel does not request the preparation of legal text for this Modification Proposal since the Proposer has provided suggested text.