



Manifest Error Draft Mod Principles

For Discussion and Development

Transmission Workstream
2nd September 2010

Background

- GasTerra has had an issue with significant (>£m) overrun charges incurred during April, as a result of a 'manifest error'
 - As presented at last two workstream meetings
- Resulting charges are disproportionate
- Mod is being developed to introduce Manifest Error Provisions into UNC
 - in relation to Entry Overrun Charges
 - Gemini Changes to be considered separately
- Manifest Errors Concept exists in Electricity – BSC section Q7
 - now available on JO Website
- Further to comments received we have developed some of the details and now seek further views

Objectives for Manifest Error Process

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

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1. Scope

- Entry Capacity Overruns Only
 - User Error in booking capacity
 - NG Error in allocating capacity, if necessary ?
- Intention is to provide a ‘narrow’ entry point into a process which might be capable of adaptation for use elsewhere in the UNC
- Possible Approach to legal ‘Definition’ of Manifest Error
 - *For the purposes of this section B: There is a ‘Manifest Error’ where and only where there was a manifest error on the part of the User resulting in that User holding insufficient aggregate Available NTS Entry Capacity.....*
 - Deciding Body will determine
 - whether the Claimant has demonstrated that there was a Manifest Error
 - the outcome

2. Administrative Fees / Materiality

Possible Approach

- On making a claim, User is required to pay an administration fee
 - £5000 is used in BSC
 - Non-refundable in any circumstances
 - Level of fee can be updated by determining body following consultation and 30 days notice

NG has provided this data for daily overruns Dec 2001 to May 2010 (includes negative overruns) (excludes GasTerra)

Views on

- level of fee ?
- requirement for threshold ?

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
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

3. Claiming Manifest Error

Possible Initial Claim Process

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

Written Notification must include the following information

- Specify that it is a claim for Manifest Error in relation to Entry Capacity Overrun Charges
- ASEP
- Date(s) on which the Error occurred
- Extent of Error (i.e. approx quantity of capacity not booked/and overrun charge applicable if known)
- Brief outline of nature of the Manifest Error

Time Limits – Possible Approach

- Claims for errors occurring after implementation date of the Mod must be raised within [1 months] of invoice due date
- Claims for errors which occurred [since ? but] prior to the implementation date of the Mod must be raised within [1 months] of implementation date
 - i.e. could include/not include a specific historic cutoff

4 . Notification of Manifest Errors

Possible Process for Notification to Users

- Once National Grid has received notification, it should ensure that all Users are informed, specifying the relevant information, 'as soon as reasonably practicable', and where possible before the invoice due date
- 'Relevant information' must include:-
 - That a claim for Manifest Error has been made
 - Relevant ASEP
 - Period [month] in which the Error is claimed to have occurred
 - Due date of invoice containing relevant capacity neutrality amounts
- Notification to Users may be made either:-
 - Via Joint Office
 - Via Gemini
 - [Via ANS/website ?]
 - i.e. At NG's discretion ?
- Confidentiality
 - User ID may be kept confidential (though User required to give evidence ?)
 - Details of quantities/charges/specific dates concerned to be kept confidential

5. Determining Body:- UNCC or Expert ?

- UNCC
 - With rights to appoint a sub-committee (including EBCC)
 - Special meeting may be called to facilitate prompt consideration
 - Members required to act independently of company interests
 - No personal liabilities for committee members (as section X 1.2.7 of EBCC)
 - Interests to be declared
 - e.g. if claimant is also a panel member, they cannot participate
 - Voting Rights to be in accordance with prevailing rules applying to UNCC members voting on UNCC business
 - Claims may be considered in private meetings to protect confidentiality
- Expert
 - Appointed by UNCC?
 - List of appropriate experts to be prepared and maintained, though appointment need not be constrained to listed experts
 - Consulting Firms with UNC expertise
 - Tender process required? In each case of a Claim ?
 - Fee to cover costs of expert such that process is self funding
 - Therefore likely to be higher ?

6. Determining Body:- Pros/Cons

UNCC

- Pros

- Established body, existing 'machinery'
- Established regular meeting schedule - facilitates prompt consideration
- Parallel to Electricity BSC/subcommittee approach
- Panel nature facilitates communal decision
- Similar responsibilities to EBCC – in terms of forming judgment on treatment of co-participants in the market
- EBCC provides precedent for members independence and no liabilities
- Mix of transporters as well as shippers aids impartiality

- Cons

- Concerns over independence/impartiality?

Expert

- Pros

- Independence from other parties

- Cons

- Creates additional requirement to prepare and maintain a list of experts
- Time taken to appoint an expert/ Suitability for ad hoc role?
- Likely higher costs
- Contractual/ payment issues
- Liabilities of the Expert?
- Approach is generally more suited to technical rather than judgmental role

UNCC remains our preference

7. Determination:- Claimant Evidence

Claimant to provide Evidence to support claim, which could include:-

- Explanation of how / why error occurred
 - Including why Claimant was unaware of the error
- Explanation of intentions/circumstances
 - E.g. contractual obligations for which gas was being delivered
 - Intended booking / available capacity at the time
- Evidence/Demonstration of prudent operations:- e.g.
 - No commercial gain resulting
 - No scheduling charges incurred
- ‘Track Record’ / historical information may be presented as context as appropriate
 - Lack of ability to provide track record should not prejudice new entrants ability to evidence a claim
 - New entrants should be able to give other evidence of efforts to act prudently – e.g. appropriate investment/effort on training/systems etc.
- Information may be presented so as to preserve commercial confidentiality
 - at the discretion of the Claimant
 - verification of [e.g. scalar] accuracy can be sought from NG if necessary.

8. Determination:- Transporter Comments & Evidence

- UNCC/Chair to request Evidence &/or Comments from NG, which may include:-
 - Verification of charges incurred and specific circumstances on the day (e.g. available capacity, any buybacks)
 - Verification of Claimants [capacity booking] track record
 - Any previous incidences of overruns
 - Extent to which Claimant may have benefitted from the overrun
 - Any other information NG believes is relevant
 - Any other relevant information Chair/UNCC members request, whilst respecting commercial confidentiality
- Information should all be readily available to NG
- It should be reasonably 'self-evident' what would be required and NG will be aware of the operational circumstances on the day(s) in question

9. Determination:- Criteria for Valid Manifest Error

Determining body to decide if Claim is valid

It may take into account the following criteria, as appropriate

- That it was a genuine, unintended 'administrative' error
 - As opposed to a commercial mis-judgement
- User was unaware at the time
- User intended to operate 'prudently' (i.e. was not gaming)

Business Process Errors ?

- Definition is problematic
- Comfort to new participants is important benefit of introducing Manifest Error Clause
- OVERRUNS are incentives for robust (risk management) systems
 - prudent operators will be seeking to utilise/develop these, but
 - errors are still possible, and business process errors more likely to lead to a material error

Initial View: Include, and view on 'prudence' to be part of decision as to how much should be paid by Claimant

10. Determining Adjustments – What should Claimant Pay ?

Possible Approach:

Use [3] Reference Costs

1. Minimum:- what the capacity should have cost (+5 or 10% perhaps ?)
 2. How much would an 80/20 approach cost ? (as in P37 Mod in electricity)
 - i.e. what would cost be if Claimant were required to pay 20% of amount due?
 3. Context Specific Alternative Costs
 - (dealing for e.g. with situation including buybacks)
- [UNCC] can determine its own view of context specific costs, and use more than 3 or just a minimum of 2 reference costs if it deems appropriate

Determine between these costs according to certain factors as the [UNCC] believes relevant, including but not limited to:-

- Extent of any harm caused
- Prudence / intentions of Claimant
- Proportionality of the charges
- Extent to which attributable to an error in Gemini
- Extent to which attributable to error in published information
- Extent to which scale of charges are attributable to a combination of circumstances which could not reasonably have been foreseen

11. Implementation (Payments/Recovery/Credit Issues)

Possible Process Steps

- Transporter to be required to make necessary adjustments to neutrality and/or carry out ad hoc invoicing to give effect to [UNCC] decision
- Fee to be invoiced [ad hoc] in month following [UNCC] decision
- UNCC to report on decision (within [x] days)
 - and notify Users of affected Invoice due date

Credit Issues:

- Where possible, Claims to be considered before Invoice Due Date
- If not, assumption is that charges will be paid whilst Claim is considered
- Existing provisions for failure to pay (e.g. S 3.5.3)
- If a User has credit issues, EBC Rules will operate as normal
- Raising a Claim for Manifest Error may be circumstances which the EBCC can consider in their determinations on any credit related actions
- No specific provisions for non-payment of charges in relation to ME Claim

12. Appeals

- Appeals to Ofgem could be included or [UNCC] decision could be final
- Simple steps/short time period/limited grounds for appeal envisaged
- Further fee payment required

Pros

- Enable validation/scrutiny of impartiality of UNCC
- Enable a perverse or inappropriate decision by UNCC/an expert to be overturned/reconsidered
- Parallel with self-governance Mods procedures

Cons

- Concerns over whether it is appropriate role for Ofgem?

Likely Next Steps

- Obtain further feedback and integrate as appropriate
- Prepare/publish Guidance for discussion
- Prepare draft Mod for discussion at workstream

Any comments/views –

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