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UNC753 Removal of Pricing Disincentives for Secondary Trading of Fixed Price NTS System Entry Capacity: Urgency Application

On 29 January 2021, the Joint Office of Gas Transporters (JO) received a request from Total Gas and Power Limited (the Proposer) that Uniform Network Code (UNC) modification UNC753 'Removal of Pricing Disincentives for Secondary Trading of Fixed Price NTS System Entry Capacity'¹ should be treated as 'urgent' and proceed under a timetable approved by Ofgem.² After considering the justification provided by the Proposer for this request, we have decided not to grant urgent status for UNC753. We set out our reasons below.

Background

The Proposer raised UNC753 on 29 January 2021 and requested that it should be treated as urgent and proceed under a timetable approved by the Authority. This modification proposes changes to the charging methodology to disapply the Entry Transmission Services revenue Recovery Charge ('Entry TSRRC') from NTS Capacity which a User³ acquires directly from another User where that capacity forms part of the other User's Existing Available Capacity.

Our decision on urgency

We have considered the Proposer's justification for urgency in respect of the modification. We have assessed the request against the urgency criteria set out in our published guidance.⁴ The guidance sets out the factors that we will consider in reaching a decision on urgency in the context of industry code modification proposals – it is intended to be illustrative and not exhaustive. Each request for urgency will be considered on its merits on

¹ <https://www.gasgovernance.co.uk/0753>

² Ofgem is the Office of the Gas and Electricity Markets Authority. The terms 'Ofgem', 'the Authority', 'we', 'our' and 'us' are used interchangeably in this letter.

³ See Uniform Network Code – Transportation Principal Document, Section B (System Use and Capacity) §1.1

⁴ Ofgem Guidance on Code Modification Urgency Criteria: <https://www.ofgem.gov.uk/publications-and-updates/ofgem-guidance-code-modification-urgency-criteria-0>

a case by case basis by reference to our guidance, and in circumstances where we depart from it, we will explain the reasons why. Ordinarily we take the view that an urgent modification should be linked to an imminent issue⁵ or a current issue that if not urgently addressed may cause:

- i. A significant commercial impact on parties, consumers, or other stakeholder(s); or
- ii. A significant impact on the safety and security of the electricity and/or gas systems, or;
- iii. A party to be in breach of any relevant legal requirements.

In their request for urgency, the Proposer states:

*"Urgent status is sought on the basis that, as it stands, the Code's provisions as regards RRC place the Transporter in breach of legal requirements [...]. That is particularly the case when that person is the Transporter whose actions affect all other Users. The breach must be more than minor, and its impact significant: a further criterion is that the Modification Proposal addresses an issue that has a significant commercial impact on parties, consumers or other stakeholders. Both of these criteria are satisfied as indicated in Section 3, the breach of legal requirement is flagrant as regards legislation and licence requirements specifically governing gas transportation, and given National Grid's monopoly on gas transmission, wider competition law is also engaged."*⁶

The first grounds for urgency invoked by the Proposer (based on criterion (iii) above) would require us to make an assessment on whether UNC753 better facilitates compliance with Commission Regulation (EU) 2017/460 of 16 March 2017 'establishing a network code on harmonised transmission tariff structures for gas' ('TAR NC') as amended by UKSI 2019/531⁷ relative to the baseline implemented by UNC678A. UNC678A/B/C/D/E/F/G/H/I/J were raised in order to ensure compliance with TAR NC, which has now been incorporated into UK law⁸. When we decided to implement UNC678A we said that "...UNC678 and UNC678A are compliant with the requirements of TAR NC and the Gas Regulation...". The Proposer states that the Entry TSRRC implemented by UNC678A contravenes TAR NC. However, as we have already opined on the compliance of UNC678A and concluded that UNC678A is compliant with the requirements of TAR NC, we would need to undertake an assessment on the substance of the modification. This falls outside the scope of this letter.

The Proposer also states that the charging methodology for the Entry TSRRC in relation to Existing Contracts as implemented by UNC678A renders National Grid Gas in breach of Standard Special Condition A6: Conduct of Transportation Business of its gas transporter's licence. The Proposer says that this is because application of the Entry TSRRC "is not applied in a non-discriminatory manner; does not facilitate efficient gas trade and competition; [and] restricts market liquidity in capacity rights." We note that the question of whether secondary traded 'existing contracts' (within the meaning of Article 35 TAR NC) should be subject to the TSRRCs was raised by respondents to our UNC678 consultation.⁹ However, the specific legal arguments put forward by the Proposer of UNC753 have not been raised by industry to date. Therefore, consideration of these arguments in respect of

⁵ The imminent issue may be date related.

⁶ Modification Document, page 4, 'Justification for Urgency', paragraph 2.

⁷ Schedule 5 of UKSI 2019/531 was in turn amended by UKSI 2019/1393 to address issues caused by the delay of exit day from 29 March 2019 to 31 January 2020. The Treaties of the European Union ("the Treaties") were due to cease to apply to the United Kingdom at 11.00 p.m. on 31st October 2019 however this was extended to 31 January 2020 by The European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) (No. 1) (2) and (3) Regulations 2019.

⁸ TAR NC was incorporated in UK law by the European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020, as amended by Schedule 5 of the Gas (Security of Supply and Network Codes) (Amendment) (EU Exit) Regulations SI 2019/531.

⁹ Amendments to Gas Transmission Charging Regime: Decision and Final Impact Assessment (UNC678/A/B/C/D/E/F/G/H/I/J) (28 May 2020), page 9: <https://www.ofgem.gov.uk/publications-and-updates/amendments-gas-transmission-charging-regime-decision-and-final-impact-assessment-unc678abcdefghij>

urgency would require us to undertake an assessment of the substance of the modification. This, too, is therefore outside the scope of this letter.

We also consider that the urgency request is not justified based on criterion (i) of Ofgem's guidance. Urgency constitutes a deviation from standard governance procedures. Charging arrangements by their very nature may cause commercial impacts on UNC parties. For urgency to be justified, it is not sufficient for proposers simply to invoke a commercial impact. It must be clearly demonstrated that the commercial impact is "significant".

For these reasons, we consider that the request for urgency is not justified based on criteria (i) and (iii). We note that criterion (ii) has not been mentioned by the Proposer, nor do we consider it to be relevant to this request.

For the avoidance of doubt, in reaching our decision on urgency we have made no assessment of the substance of the proposed modification, and nothing in this letter in any way fetters the discretion of the Authority in respect of UNC753 or any other modification proposal.

David O'Neill

Head of Gas Systems and Markets

Signed on behalf of the Authority and authorised for that purpose