

**IN THE MATTER OF THE EU NETWORK CODE ON HARMONISED
TRANSMISSION TARIFF STRUCTURES FOR GAS (TAR NC)**

SUMMARY NOTE OF ADVICE

1. Ofgem has been consulting on the implementation of Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas ('the TAR NC').¹ The GB domestic charging regime must comply with the TAR NC by 31 May 2019.

2. Article 35 of the TAR NC provides some protection for existing contracts. It states:

“This Regulation shall not affect the levels of transmission tariffs resulting from contracts or capacity bookings concluded before 6 April 2017 where such contracts or capacity bookings foresee no change in the levels of the capacity- and/or commodity-based transmission tariffs except for indexation, if any.”

3. ‘Transmission tariffs’ are defined in Article 3(7) TAR NC as “the charges payable by network users for transmission services provided to them.” Transmission services revenue is defined in Article 3(6) as that part of the allowed or target revenue (for the transmission system operator ('TSO')) which is recovered by transmission tariffs.

4. The apparent intention of the EU legislature was to protect the legitimate expectations of those network users which benefited from fixed levels of transmission tariffs under their domestic charging regime, subject only to changes for indexation (for example, to reflect a pricing index accounting for inflation, such as the RPI or CPI).

5. The TAR NC was published in the Official Journal of the EU on 17 March 2017. It entered into force, pursuant to Article 38, on the 20th day following that publication. It therefore entered into force on 6 April 2017 and applied from that date. The terms of Article 35 therefore protect contracts entered into immediately prior to the entry into force of the Regulation.

¹ OJ [2017] L No. 72, 17.3.2017, p. 29.

6. The key question for analysis is whether the contracts or capacity bookings under the GB domestic charging regime in issue foresaw “no change in the levels of the capacity-and/or commodity-based transmission tariffs” (save for indexation). In the GB charging regime applied as at 5 April 2017, transmission tariffs (i.e. charges generating transmission revenue) were governed by the charging methodology set out in the Uniform Network Code (‘UNC’).
7. The transmission revenue charges under the UNC at the time encompassed a reserve price and a revenue recovery charge (‘RRC’) for entry capacity bookings. These two distinct charges together comprised and set the “capacity and/or commodity based transmission tariff level” for entry capacity in the GB charging regime. While the reserve price was a fixed component of the tariff level, the RRC was variable. The UNC foresaw that the RRC would change over time, since it was a fluctuating adjustment to the allowed revenue. Moreover, in practice the RRC charged did vary over time.
8. The contracts which were established under the charging methodology set by the UNC necessarily foresaw transmission tariff levels that included both the reserve price and the RRC. As the RRC component was variable, the transmission tariff level as a whole was foreseen to be variable. Moreover, in practice, the transmission tariff level (as defined by Article 35(1)) was variable. Since the level of the transmission tariff foreseeably changed year on year, the relevant contracts do not benefit from protection under Article 35(1) of TAR NC. In short, the transmission tariff level was variable and accordingly does not benefit from the protection afforded by Article 35(1) for fixed tariff levels.
9. The legal analysis provided by another network user (Eni) appears to proceed on the basis that the RRC (residual revenue recovery collected via the NTS TO Entry Commodity Charge) is not properly to be considered as a component of the transmission tariff level. That does not appear to be borne out by paragraphs 2.5.4 and 3.1. of Section Y of the Transportation Principal Document, which forms part of the UNC.

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