











UNC Final Modification Report	At what stage is this document in the process?
<h1 data-bbox="132 320 1078 427">UNC 0790 (Urgent):</h1> <h2 data-bbox="132 450 991 591">Introduction of a Transmission Services Entry Flow Charge</h2>	<div data-bbox="1209 315 1473 636"> <div>01 Modification</div> <div>02 Workgroup Report</div> <div>03 Draft Modification Report</div> <div>04 Final Modification Report</div> </div>
<p>Purpose of Modification:</p> <p>This Modification would revise the method of the determination of National Grid Entry Transmission Services Capacity Reference Prices and introduce a new flow-based Transmission Services Entry charge (payable by all Users). The purpose of these changes is to achieve a greater degree of year on year stability in the pricing of Transmission Services Entry Capacity and reduce the overall price differential between Existing Contracts and Non-Existing Contracts.</p>	
<p>Next Steps:</p> <p>Panel consideration is due on 16 December 2021 <i>(at short notice by prior agreement)</i></p>	
<p>Impacted Parties:</p> <p>High: Shipper Users at Entry, National Grid NTS</p> <p>Low:</p> <p>None:</p>	
<p>Impacted Codes:</p> <p>None</p>	

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Timetable		 as above
Modification timetable:		 as above
Pre-Modification Discussed	05 October 2021	Contact: Joint Office of Gas Transporters
Modification Proposal sent to Ofgem	08 November 2021	
Ofgem decision on Urgency	15 November 2021	 enquiries@gasgovernance.co.uk
Modification Proposal issued for consultation	16 November 2021	 0121 288 2107
Consultation Close-out for representations	06 December 2021	Proposer: Colin Williams National Grid NTS
Final Modification Report available for Panel	07 December 2021	 colin.williams@nationalgrid.com
Modification Panel recommendation	16 December 2021	 07785 451776
Final Modification Report issued to Ofgem	17 December 2021	Transporter: National Grid NTS
		 as above
		 as above
		Systems Provider: Xoserve
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1 Summary

What

The current determination of Reference Prices for Transmission Services Entry Capacity is calculated *net* of any capacity or revenue associated with Existing Contracts (i.e. capacity allocated prior to 06 April 2017). As Transmission Services Entry Capacity charges are the only means of recovery of Transmission Services Entry Allowed Revenue (aside from Entry Transmission Services Revenue Recovery charges) and as the 'fixed' unit price of Existing Contract capacity is relatively low, recovery of the bulk of National Grid's Allowed Revenue at Entry is currently recovered in respect of Entry Capacity allocated from 06 April 2017 ('new Entry Capacity').

The comparatively low quantities of new Entry Capacity allocated mean that the Entry Capacity Reference Price (and therefore Entry Reserve Prices) which are redetermined each Gas Year are significantly higher than the typical price for Existing Contract Capacity and are extremely sensitive to variations between forecast new Entry Capacity allocations year-on-year. This has led to material variations (i.e. volatility) in the year-on-year Reference Price rates (and therefore Reserve Price rates) of Entry Capacity to facilitate recovery of Allowed Revenue at Entry.

Why

The key aims of the changes proposed are two-fold:

1. Reduction of the current differential in the overall level of Transmission Services Entry Charges payable by holders of Existing Contract Capacity compared with holders of other Entry Capacity

The price protection afforded to Existing Contract Capacity results in **a significant price differential between the unit cost of Existing Contract Capacity and new Entry Capacity**, with Users allocated the latter paying on average 23 times¹ the unit price paid for the equivalent product under an Existing Contract. The proposer believes this is **detrimental to competition** between Shipper Users.

We believe that existing arrangements which effectively target the recovery of the entry revenue shortfall (created by the pricing of Existing Contract Capacity) on holders of new Entry Capacity (only) is not appropriate and that **a more equitable approach** (i.e. fairer distribution of charges across Users) would be to socialise such costs across all gas flowed at Entry Points (aside from two stated exceptions).

It is important to note that in respect of this objective, the Proposal is seeking to *reduce* the differential in question (representing an improvement when compared to the prevailing arrangements) but does not seek to *eradicate* this differential.

As part of discussions on potential further reforms of the charging regime (i.e. separate to this modification) National Grid intends to separately engage with industry stakeholders to further discuss implications and impacts of supporting 'Existing Contracts' within the NTS Transportation Charging Arrangements.

2. Reduction in the level of year-on-year volatility in Entry Capacity Reserve Price rates

The existing arrangements which provide for recovery of a significant proportion of Transmission Services Allowed Revenue at Entry via a smaller quantity of new Entry Capacity increases the **risk of material variations (i.e. volatility) in the Entry Capacity Reference Prices** (and by default Reserve Prices) year-on-year which is **detrimental to market confidence** and is specifically contrary to the aims of the new NTS

¹ Based on October 2021 data where the average Reserve Price for Existing Contracts (ECs) is 0.0036p/kWh/d and the average Reserve Price for 'new' Entry Capacity is 0.0827p/kWh/d.

Transportation Charging Methodology which was introduced from 01 October 2020 with implementation of UNC0678A.

How

The solution proposed would **revise the determination of the Transmission Services Entry Capacity Reference Price** by removing the current exclusion of Existing Contracts Capacity and Existing Contracts Revenue from the respective aggregate capacity quantity and overall Allowed Revenue value used to determine the Entry Capacity Reference Price. *This is expected to reduce the year-on-year volatility in Entry Capacity Reference Prices (and consequently, Entry Capacity Reserve Prices) and contribute to the reduction of the current differential in the level of Transmission Services Entry Charges payable by holders of Existing Contract Capacity compared with holders of other Entry Capacity.*

The anticipated sum of:

- revenue to be recovered from new Entry Capacity (attracting the 'standard' capacity charge rate); and
- revenue recovered in respect of Existing Contract Capacity (attracting the lower rate agreed at the point of allocation)

would drive an under recovery of Transmission Services Entry revenue. An **additional flow-based entry charge** is therefore proposed to be applied to recover this resultant shortfall (relative to Allowed Revenue at Entry). This new charge would be payable in respect of gas flows at all System Entry Points, except those at Storage Connection Points and Interconnection Points. A discount to this charge rate would be afforded in respect of relevant System Entry Points subject to a Conditional NTS Capacity Charge Discount.

This additional flow-based entry charge would effectively cease upon expiry of the Existing Contracts in 2032 as the stated shortfall would, at this point, be equal to zero. *This is expected to contribute to the reduction of the current differential in the level of Transmission Services Entry Charges payable by holders of Existing Contract Capacity compared with holders of other Entry Capacity.*

2 Governance

Justification for Urgency

This Modification should be treated as urgent and should proceed under a timetable approved by the Authority. A proposed timeline is provided in the 'Timetable' section of this Proposal.

Urgent status is sought on the basis of the consequential impacts of the current arrangements representing a current issue that, if not urgently addressed at the earliest opportunity, may cause a significant commercial impact on gas shippers and in turn, may have impacts for the consequential charges levied to consumers, potentially across multiple years.

The price protection afforded to Existing Contract Capacity results in a significant price differential between Existing Contract Capacity and new capacity as illustrated in the table below. The proposer believes this is detrimental to competition between Shipper Users.

Entry Capacity Product	Average Entry Reserve Price (October 2021)	Magnitude Above EC Average Reserve Price
Existing Contracts (EC)	0.0036 p/kWh/d	
All Entry Capacity (EC and 'New')	0.0267 p/kWh/d	7.4 times

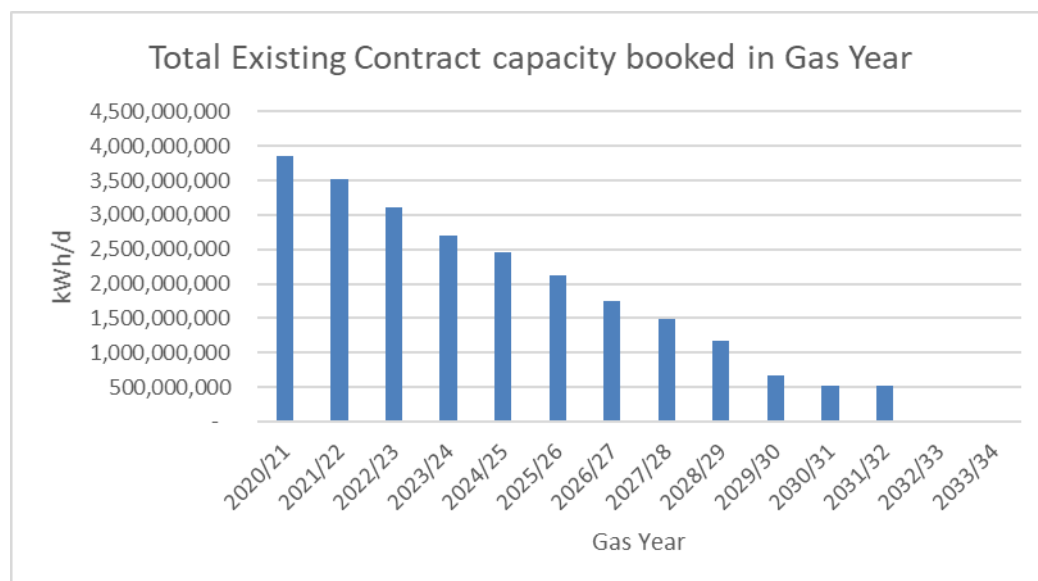
'New' Entry Capacity	0.0827 p/kWh/d	23 times
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In principle, this Proposal seeks to reduce the above differential between the costs of EC capacity and New Entry Capacity. A further benefit of this change will be to increase the stability of Entry Capacity Reference Prices.

Urgent resolution seeks to introduce the proposed charge at the earliest opportunity to achieve greater stability in the pricing of Transmission Services Entry Capacity, the earliest opportunity (in terms of implementation) being for Gas Year commencing 01 October 2022. Should Urgent procedures not be applied, is it highly unlikely this benefit could be realised for 01 October 2022 thus the risk of material difference in the pricing of Transmission Services Capacity will continue beyond this point. Hence, a timely resolution will minimise, as much as possible, the volatility of the Transportation Charges.

Implementation of a new NTS Transportation Charging Methodology from 01 October 2020 was expected to impact capacity booking behaviours on the basis of the removal of zero-priced capacity. This was expected to result in capacity booking levels closer to levels of flow however, the unanticipated extent of the reduced capacity bookings at Entry in conjunction with the extent of Existing Contracts (with relatively low fixed charge rates) means that a material proportion of Allowed Revenue needs to be recovered from a relatively small proportion of Entry Capacity allocations. This has resulted in highly volatile pricing for Transmission Services Entry Capacity (other than Existing Contracts) which is not consistent with the objectives of the charging methodology, as set out in Standard Special Condition A5(5) of the NTS Licence.

The table below shows that the levels of Existing Contracts remains high for some time, highlighting the continued impact they will have on the Transmission Services Entry Capacity Reference Prices.



Justification for Authority Direction

As the Proposal seeks to adjust the proportion of costs borne by Shippers Users dependent upon the profile of their Entry Capacity allocations (between Existing Contracts and new Entry Capacity) and proportions of entry gas flows the Proposer is of the view that there is sufficient materiality to require a decision from the Authority. The materiality of this change is as set out in the Impact Analysis set out in the 'Why Change?' section.

Requested Next Steps

This Modification should:

- be considered a material change and not subject to Self-Governance.

- be treated as urgent and should proceed as such under a timetable agreed with the Authority.

As referred to above, application of Urgent procedures is sought on the basis of obtaining a decision in a timely manner in order to meet an 01 October 2022 implementation date and thus curtail the distortive impact of the current arrangements on competition as soon as reasonably practicable.

National Grid NTS ('National Grid') has highlighted in concerns in this area in a number of meetings of the NTS Charging Methodology Forum culminating in the issue of an [open letter](#) to industry on 28 May 2021 which set out our belief that further change to the charging regime was essential and a commitment to work with stakeholders and the Ofgem to achieve this. [Ofgem's response](#) to this letter dated 04 June 2021 expressed support for this action noting the need to avoid interventions in the charging regime that undermine market confidence. Ofgem also encouraged National Grid and stakeholders to "*progress...at pace...committing to an ambitious and realistic timetable for the completion of the necessary steps to effect change*".

These actions (and resultant Modification Proposal) are entirely consistent with the ACER recommendation² to "*closely monitor the impact of this 'dual regime' [the pricing of Existing Contracts and 'new' Entry Capacity] ... and to implement remedies if detrimental effects were such that that they would significantly affect competition in a negative way*"

Engagement

In addition to discussions at National Transmission System Charging Methodology Forum (NTSCMF), National Grid has hosted a number of workshops to allow those Stakeholders interested in doing so, to discuss the calculations used and the data that underpins them that help show the potential impact of these proposals. It also provided an opportunity to complement the UNC pre-modification discussions to facilitate the timescales being pursued to implement at the earliest opportunity. Materials used in these workshops is available on the National Grid website³.

In addition to the assessment in this modification and in the linked workshop materials, National Grid has also commissioned an economic assessment by Frontier Economics to assess the impacts of this proposal. This is being provided in order help support industry understanding and assessment of the impacts and to help inform any representations. It is also being provided to provide additional material that may help Ofgem in its processes to assess the impacts of this proposal and making a decision on the modification recognising the timescales needed in order to implement to set prices for October 2022.

3 Why Change?

Overall Aims

The key aims of the changes proposed are two-fold:

1. Reduction of the current differential in the overall level of Transmission Services Entry Charges payable by holders of Existing Contract Capacity compared with holders of other Entry Capacity; and
2. Reduction in the level of year-on-year volatility in Entry Capacity Reserve Price rates.

² See para 63 of the ACER Report '[Analysis of the Consultation Document on the Gas Transmission Tariff Structure for Great Britain](#)' (24th April 2020)

³ <https://www.nationalgrid.com/uk/gas-transmission/charging/gas-charging-discussion-gcd-papers>

Context

National Grid's Allowed Revenue for the provision of Transmission Services is principally recovered via the application of capacity charges to Users. The unit cost of this capacity is set by the determination of 'Reference Prices' which are then used to calculate Reserve Prices for capacity marketed via auctions. Reference Prices are re-determined for each Gas Year (reflecting variations in the annual revenue to be recovered and the forecast quantities of capacity allocated) hence the actual price payable by User will change year on year (i.e. a 'floating price') according to period to which the capacity right applies and the Reference Price for that period.

The only capacity allocations which are not subject to the floating price principle are 'Existing Contracts' which is capacity subject to fixed terms under Article 35 of the EU Tariff Code (as incorporated into UK law). This applies in respect of any capacity allocated prior to 06 April 2017 and effectively fixes the terms under which this capacity was allocated (including the price payable) regardless of the period to which the capacity right applies. In GB, as Exit Capacity is subject to a 'floating price' principle, the fixed price nature of Existing Contracts only manifests itself in respect of Entry Capacity.

The current determination of Reference Prices for Transmission Services Entry Capacity (as set out in TPD Section Y Part A-I 2.4.1) is calculated *net* of:

- any capacity associated with Existing Contracts (the '*Net Forecast Contracted Capacity*' as per TPD Section Y Part A-I 2.5.1(b)(i); and
- any revenue associated with Existing Contracts (the '*Net Allowed Transmission Services Entry Revenue*' as per TPD Section Y Part A-I 2.3.1(c))

This means that the recovery of National Grid's Allowed Revenue at Entry, net of the revenue recovered from Existing Contracts, is recovered exclusively from new Entry Capacity and as the 'fixed' unit price of Existing Contract capacity is on average significantly below that for new Entry Capacity, this means that recovery of the bulk of National Grid's Allowed Revenue at Entry (in monetary terms) is currently recovered from new Entry Capacity. In terms of proportion, the Existing Contract capacity for Gas Year 2021/22 equates to **71%** of total forecast Entry Capacity quantity (kWh) to be booked however it is forecast to only collect **10%** of the total Allowed Revenue (£) at Entry⁴.

The comparatively low quantities of new Entry Capacity allocated mean that the Entry Capacity Reference Price (which is redetermined each Gas Year) is significantly higher than the typical price for Existing Contract Capacity and is extremely sensitive to variations between forecast new Entry Capacity allocations year-on-year. This has led to material variations in the year-on-year Reference Prices (and therefore Reserve Prices) of Entry Capacity which is detrimental to market confidence and is specifically contrary to the aims of the new NTS Transportation Charging Methodology which was introduced from 01 October 2020.

By way of illustration, the following table shows the charge rate which would need to be applied to recover the specified allowed revenue dependent upon differing scenarios of aggregate quantities of capacity allocated to Users. Whilst there are equal incremental increases in the quantity of capacity (kWh) in each of the subsequent scenarios, the increasing overall capacity quantity (as the denominator) means that the proportional change to the price reduces. Hence, it can be concluded that a lower denominator value increases the sensitivity of the charge rate to change in aggregate capacity quantities.

⁴ These values can be seen within the latest version of the published [Transmission Services Model](#).

Allowed Revenue	
£	100,000,000

Scenario	Capacity (kWh/d)	p/kWh/d to recover Allowed Revenue	Change in Capacity (kWh/d) from previous scenario	Change in Price (%)
1	500,000,000,000	0.0200		
2	1,000,000,000,000	0.0100	500,000,000,000	-50.00%
3	1,500,000,000,000	0.0067	500,000,000,000	-33.33%
4	2,000,000,000,000	0.0050	500,000,000,000	-25.00%
5	2,500,000,000,000	0.0040	500,000,000,000	-20.00%
6	3,000,000,000,000	0.0033	500,000,000,000	-16.67%
7	3,500,000,000,000	0.0029	500,000,000,000	-14.29%
8	4,000,000,000,000	0.0025	500,000,000,000	-12.50%
9	4,500,000,000,000	0.0022	500,000,000,000	-11.11%
10	5,000,000,000,000	0.0020	500,000,000,000	-10.00%
11	5,500,000,000,000	0.0018	500,000,000,000	-9.09%
12	6,000,000,000,000	0.0017	500,000,000,000	-8.33%

We believe that existing arrangements which effectively target the recovery of the entry revenue shortfall (created by the pricing of Existing Contract Capacity) on holders of new Entry Capacity (only) is not appropriate and that a more equitable approach would be to socialise such costs across all gas flowed at Entry Points (aside from two stated exceptions). We believe this is a more equitable and efficient approach on the basis of the following:

- we are of the view that the focus of the recuperation of this shortfall in Entry revenue should be focussed on **system utilisation (flows)** as opposed to the reserving of space in it (capacity);
- Existing Contracts are currently only contributing a small amount towards capacity-based revenue collection and there are **restrictions on the application of a capacity-based** additional charge that would target a small User base undermining its fairness (see below). Under a flow-based approach for this charge, broadly all flows will be required to pay it making it fairer across Users;
- the proposed approach that treats Existing Contracts and Non-Existing Contracts the same would not require a distinction to be drawn between the two i.e. **not requiring the identification of Existing Contracts and Non-Existing Contracts and matching/allocation of flows** to these capacity types. The complexities of changes required to central systems to deliver any such allocation of flows to capacity types is understood to preclude (or at the very least put at material risk) the deliverability of the necessary changes for October 2022; and
- the proposed application does not need to consider the impacts arising from circumstances where **the party liable for the capacity to National Grid is different to the party that is flowing** (allocated the gas at Entry).

Determining the Specific Proposal

In determining the Specific Proposal Rationale, we considered other options that were not pursued as it was thought the option presented in this Proposal is the one that provides the optimal outcome.

Any approach where the method of calculating and applying an additional charge needs to fulfil the objectives and be implementable and in meeting those objectives, doing so in a fitting manner.

A flow-based charge distributed across all flows (save for the noted exemptions to Storage and Interconnection Points and providing for the relevant discount to Entry Eligible Quantities) has the benefit of being applied over

a larger base. This helps with the stability of any such charge given any movement in the numerator (i.e. flows) is spread across a larger base than any capacity charge would be applicable to. Using flows also provides for greater stability in the denominator as flow forecasting by National Grid has historically been relatively accurate, more so than capacity forecasting to actuals.

We discounted an approach where the additional charge is levied on capacity. With the restrictions on how this could be applied (i.e. not to Existing Contracts in line with the Entry Revenue Recovery Charge application) then it would by and large replicate the arrangements in place now through applying two charges instead of one. We do not see how this approach would add any benefits in reducing overall price volatility and the redistribution of charges to make the charging on Entry more equitable, more stable and less volatile. It would, in essence be charging the same amount to the same Users in a more complex manner. This, we concluded, would not further any of the Relevant Objectives.

Specific Proposal Rationale

In this Proposal, the desired outcome is achieved via two distinct aspects:

- *inclusion of all Entry Capacity quantities and full Entry Allowed Revenue in the calculation of Entry Reference Prices.*

This will reduce the susceptibility of the Entry Reference Price rate to material change year-on-year by reducing its sensitivity to changes in Entry Capacity quantities (as *all* Entry Capacity quantities will be used in the calculation) and therefore increase the stability of this charge rate.

- *Establishment of a new flow-based charge to recover the shortfall in revenue recovered as a consequence of the price-protection applied in respect of Existing Contracts.*

EU Tariff Code and Form of Charge

The NTS Transportation Charging Methodology effective from 01 October 2020, as implemented by UNC Modification 0678A, exempted Existing Contracts (as set out in Article 35 of the EU Tariff Code) from exposure to capacity-based Revenue Recovery Charges. These capacity holdings were excluded on the basis that levying such an additional capacity charge would impact the level of transmission tariffs resulting from Existing Contracts which is explicitly precluded by Article 35. If the proposed charge was capacity based it could not be applied to Existing Contracts for the above reason, hence this charge would be applied exclusively to new capacity. Given that new capacity effectively incurs these costs under *current* arrangements (as identified above), the additional charge, in a *capacity* form, would in essence achieve no change from the existing arrangements.

On this basis of these considerations, we have concluded that in order to remain consistent and compliant with Article 35 and to deliver the desired change to the funding of the shortfall in Allowed Revenue at Entry driven by the pricing arrangements for Existing Contracts, the proposed charge needs to be flow-based in nature.

We are of the view that this flow-based charge falls within the remit of Article 4(3)(b) of the EU Tariff Code. This article permits, by exception, an additional 'commodity-based' transmission charge. It sets out a number of criteria which such a charge should comply with as follows:

- i. *levied for the purpose of managing revenue under- and over-recovery;*

the proposed charge would be used solely for the purpose of managing the under-recovery arising from the 'fixed' pricing afforded to Existing Contracts. The proposed method of determining the Entry Capacity Reference Price gives rise to an under recovery which is the basis on which the additional charge is set. Managing under recovery (and over recovery) is consistent with the principle in Article 17. This aims to minimise any under or over recovery and to recover

Transmission Services Revenue in a timely manner. The under recovery in this methodology is predictable given the nature of how prices are set and applied, enabling the ex-ante view of under recovery to be catered for;

- ii. *calculated on the basis of forecasted or historical capacity allocations and flows, or both;*

the proposed charge would be calculated on the basis of forecast flows such that application of the flow-based charge would recover the intended quantity of revenue;

- iii. *applied at points other than interconnection points; and*

the proposed charge would not be applicable at Interconnection Points. The rationale for non-application of the charge at Storage is detailed below.

- iv. *applied after the national regulatory authority has made an assessment of its cost-reflectivity and its impact on cross-subsidisation between interconnection points and points other than interconnection points.*

We anticipate that Ofgem's assessment of cost-reflectivity will, in part, be considered as part of the cost allocation assessment undertaken in respect of this Proposal

This modification would apply a flow-based charge to flows other than Storage and Interconnection Point flows. Therefore, compared with the current charging arrangements the Transmission Services Entry Reference price (and by default, the Reserve Prices) will be lower for the time where the additional charge exists. The additional charge, by virtue of complying with the EU Tariff Code, cannot be applied to Interconnection Points. Therefore, the additional charge is borne at Non-Interconnection Points. An example, looking at October 2022 is shown below.

Category of ASEP	Current Regime	% contribution to overall collection from Current Regime	Total including Additional Charge	% contribution to overall collection including Additional Charge
	£m	%	£m	%
Storage Site	£7.50	1.60%	£7.1m	1.70%
Interconnection Point	£28.90	6.30%	£16.8m	3.90%
Beach Terminal	£365.70	80.00%	£343.2m	80.60%
Onshore Field	£4.40	1.00%	£3.2m	0.70%
Biomethane Plant	-	-	-	-
LNG Importation Terminal	£50.90	11.10%	£55.3m	13.00%
TOTAL	£457.40		£425.60	

Considering the potential impact on cross-subsidisation between interconnection points and points other than interconnection points looking at the data above, there is a reduction in the amount that charges at Interconnection Points will recover. Therefore, as the target revenue will not change in terms of what is needed to recover for any given year, the amounts effectively not collected from Interconnection Points will be spread across other Entry Points.

Within the EU Tariff Code there is a specific Cost Allocation Assessment (CAA) prescribed under Article 5 (Cost allocation assessments). The purpose of the CAA is around the periodic consultation conducted under Article 26 of the EU Tariff Code. Any references to the CAA therefore for this proposal may provide some insight for the CAA however it is not prescribed in its need for changes outside of the consultation required under Article 26.

This CAA can provide some figures showing the resulting distribution of capacity and commodity for Transmission Services however given that the flow-based charge cannot be applied to Interconnection Points, the results may not provide more information than the commentary above related to the distribution across points.

The CAA calculations are more prescribed for Capacity. However, the same calculation can be applied for commodity to provide one each for capacity and commodity (it can be shown Entry and Exit and total). The calculations below are shown for October 2022 values and applied consistent with previous use of the CAA.

	Entry Capacity CAA Comparison Index	Exit Capacity CAA Comparison Index	Total Capacity CAA Comparison Index
Current Regime	8.0%	29.2%	17.2%
Proposed Regime	13.7%	29.2%	17.8%

	Entry Commodity CAA Comparison Index	Exit Commodity CAA Comparison Index	Total Commodity CAA Comparison Index
Current Regime	0.0%	0.0%	0.0%
Proposed Regime	200.0%	0.0%	200.0%

Comparing the two shows that on Exit it is unchanged, for Entry the CAA ratio for Entry reduces in an understandable direction due to the ratio of capacity divided by revenue for Interconnection Points slightly increasing relative to the ratio of capacity divided by revenue for Non-Interconnection Points. The commodity percentage will naturally result in a one-sided percentage due to the non-application of the additional flow-based charge at Interconnection Points.

It is arguably more relevant to show that overall, the contribution from Interconnection Points in terms of financial value would naturally reduce, however no single category of ASEPs bear most of these changes when looking at then overall charge distribution.

A flow-based charge is also consistent with Article 4(3)(b) and we believe is most appropriate in these circumstances because it is more equitable in its application compared to a capacity-based charge that would have more limitations on which Users would pay it (as set out above), lessening its impact compared to the current methodology. A capacity-based charge for revenue recovery is already in place and highlights the limited application of such a charge.

We view the proposed socialisation of the shortfall in Allowed Revenue at Entry created by the fixed price nature of Existing Contract capacity (via the proposed flow-based charge) as similar in principle to the arrangements to 'fund' the provision of discounts to Capacity Reserve Prices for interruptible capacity, storage capacity and conditional discounts for avoiding inefficient bypass. The shortfall in revenue that would ordinarily be generated by provision of these discounts is funded via an upscaling of all capacity Reserve Prices. In this way all Users paying capacity charges 'fund' the provision of discounts. In a similar vein, the proposed flow-based charge will socialise the funding required (to maintain the price protection for Existing Contract capacity) between all Users flowing gas into the NTS.

In terms of the application of the proposed charge to all flows, including those pursuant to Existing Contract capacity allocations, Article 35 of the EU Tariff Code affords protection to the level of transmission tariffs for Existing Contracts where a change in such a level was not foreseen. The NTS Transportation Charging Methodology in place when Existing Contracts were struck included provision for flow-based entry charges (at all Entry Points except at Storage Connection Points), one of the

purposes of which was to recover shortfalls in allowed revenue at entry (arising from low entry capacity revenue).

On the basis that a flow based charge to manage revenue shortfall was apparent when Existing Contracts were entered into (up until April 2017), we do not believe that the application of the proposed charge to all flows other than at Storage Connection Points (including those flowed pursuant to an Existing Contract capacity allocation) represents a change to the level of transmission tariff *which was not foreseen*.

Exemptions

Initial considerations for the additional charge focused on application of the charge to all Entry flows and then determination of any justifiable exemptions. For this charge, two exemptions are proposed for Interconnection Points and Storage Connection Points.

The exception of **Interconnection Points** is prescribed by Article 4(3)(b) of the EU Tariff Code which precludes application of such charges at Interconnection Points.

The exception of **Storage Connection Points** is, in part, as a consequence of Article 35 of the EU Tariff Code preventing change to the level of charges applicable for capacity bookings concluded before 6th April 2017 *aside from where such change were foreseen*. As noted above, whilst the NTS Transportation Charging Methodology in place when Existing Contracts were struck included provision for additional flow-based entry charges, these charges were *not* applied at Storage Connection Points. Given that such change was not therefore *foreseen* at Storage Connection Points, to levy the Entry Flow Charge to such points would be in conflict with Article 35.

Whilst there are perspectives on Storage within the charging framework related to the history of applying commodity charges within the Transportation Charging Methodology and consistency with other charges, notably the Non-Transmission Charges, the position in relation to compliance with the EU Tariff Code presents the dominant case for the exemption.

It should be noted that the compliance with the EU Tariff Code is focused on the flows associated to Existing Contracts, the materiality associated to non-Existing Contract Storage flows is extremely small and unlikely to trigger any influence to the overall additional charge rate were they to be included. We note some additional points below that also can help consider why they might be excluded.

In a wider context, non-application of flow based (commodity) gas transportation charges to gas flows to and from storage facilities:

- was a feature of the NTS Transportation Charging Methodology in place prior to 01 October 2020, specifically in respect of the both SO (System Operator) and TO (Transmission Owner) commodity charges). TO commodity charges were conceptually, the closest in nature and form to the proposed Transmission Services Entry Flow Charge in terms of managing variances between allowed revenue and collected revenue; and
- is applied in the current NTS Transportation Charging Methodology in respect of the General Non-Transmission Services Charge. This essentially replicates the purpose of the previous SO commodity charge and thus retained an exemption for storage on the basis of the rationale for such in respect of the SO commodity charge.

In all cases, the rationale for exempting storage⁵ was to prevent ‘multiple payment’ as commercial flows at Storage Connection Points may not necessarily result in a physical flow, for example concurrent injection of 100 units and a withdrawal of 100 units would result in zero physical flow but 200 units of commercial flow. Consequently, application of a flow-based charge would dis-advantage the ‘cycling’ nature of gas injection/withdrawal at Storage. On this basis the absence of an exception would disproportionately impact storage.

We note that as part of the implementation of UNC0727 Ofgem, in their decision letter, noted they “consider that an exemption of storage from gas charges (i.e. 100% discount) would not be consistent with the principle of fair recovery of costs”. This was in relation to a modification increasing the capacity discount for storage and we note the challenge to be considered within the charging regime where a potential full exemption (or 100% discount) is being proposed.

With the points above notably on the compliance with EU Tariff Code, we believe this addresses this point whilst recognising the aspiration that charges should be considered to apply before any exemption or discount is proposed.

Discounts

A discount will be applied to entry flows which are subject to the **Conditional NTS Capacity Charge Discount**⁶, more commonly referred to as short-haul. The flow volume eligible to receive the discount will be equivalent to the Entry Eligible Quantity value used in the short-haul calculation and will receive a discount equal to that afforded to the Transmission Services Entry Capacity Charge.

The discount will apply to not unduly impact those availing of the new Conditional Discount for managing inefficient bypass. Overall, the impact to those able to access the conditional discount would be much higher than to other Users. Therefore, the application of a discount would unlike increase any charge exposure (given the new lower capacity rates to discount from) and in many cases result in lower charges than the current regime, certainly in the earlier years of the additional charge.

The discount structure established by UNC Modification 0728B in respect of short-haul was intended to replicate the potential costs of building a new pipeline and the associated savings on Capacity charges. While it excluded a discount to General Non-Transmission Services charges on the basis that they provided a proxy for maintenance costs of the new pipeline, this new flow based charge is different in that it aims to recover some of the same revenues previously incorporated in the Transmission Services Capacity charges. As these revenues were used to determine the methodology behind the short-haul discount, it is logical to extend the discount to the Transmission Services Entry Flow Charge.

Interactions and Scope

For the avoidance of doubt the proposed charge does not replace or impact the application of the Entry Transmission Services Revenue Recovery Charge which is in place to address any variations between Allowed Revenue and actual revenue expected to be recovered (i.e. this is not limited to instances of revenue shortfall expected as a consequence of the fixed terms, including price, afforded to Existing Contracts).

⁵ See Ofgem [decision in respect of UNC Modification Proposal 0120V](#), Ofgem [decision in respect of NTS GCM03](#) and [National Grid discussion document NTS GCD 05](#).

⁶ As introduced from 01 October 2021 by UNC Modification 0728B

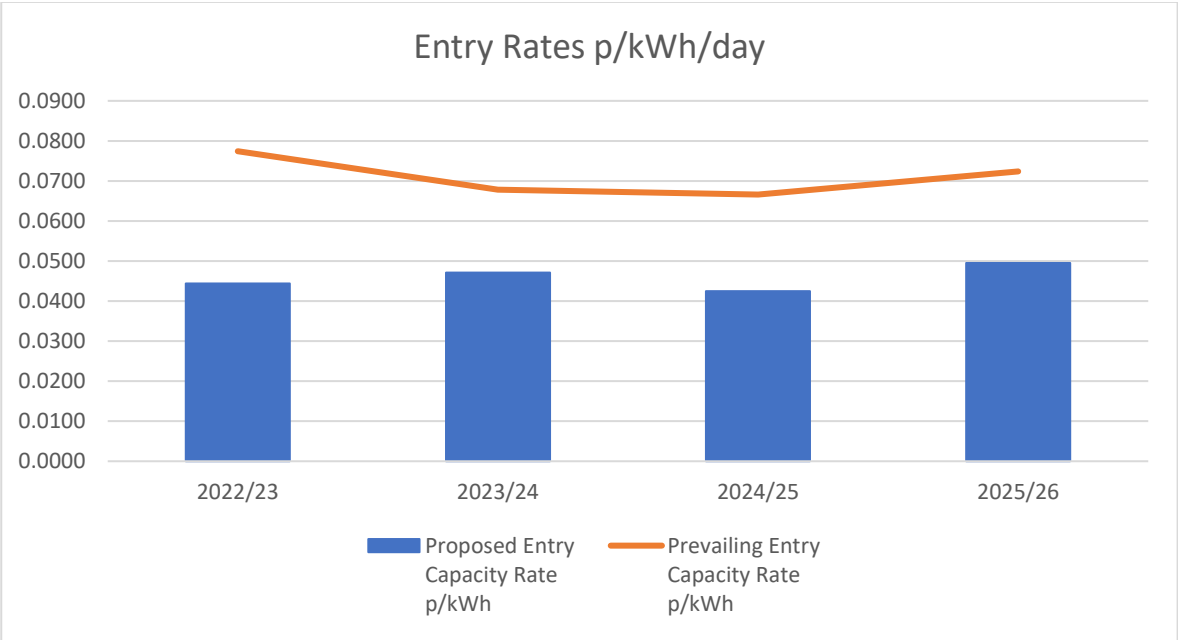
Impact Analysis

In the tables and graphs below, we compare the current published and indicative Transmission Services Entry Capacity Reference Prices⁷ against indicative Transmission Services Entry Capacity Reference Prices calculated based on the proposed method set out in the Solution (see “Transmission Services Entry Capacity Reference Price”).

Table 1

	Prevailing Entry Capacity Rate p/kWh	Proposed Entry Capacity Rate p/kWh
2022/23	0.0774	0.0444
2023/24	0.0678	0.0471
2024/25	0.0666	0.0425
2025/26	0.0724	0.0495

Fig.1



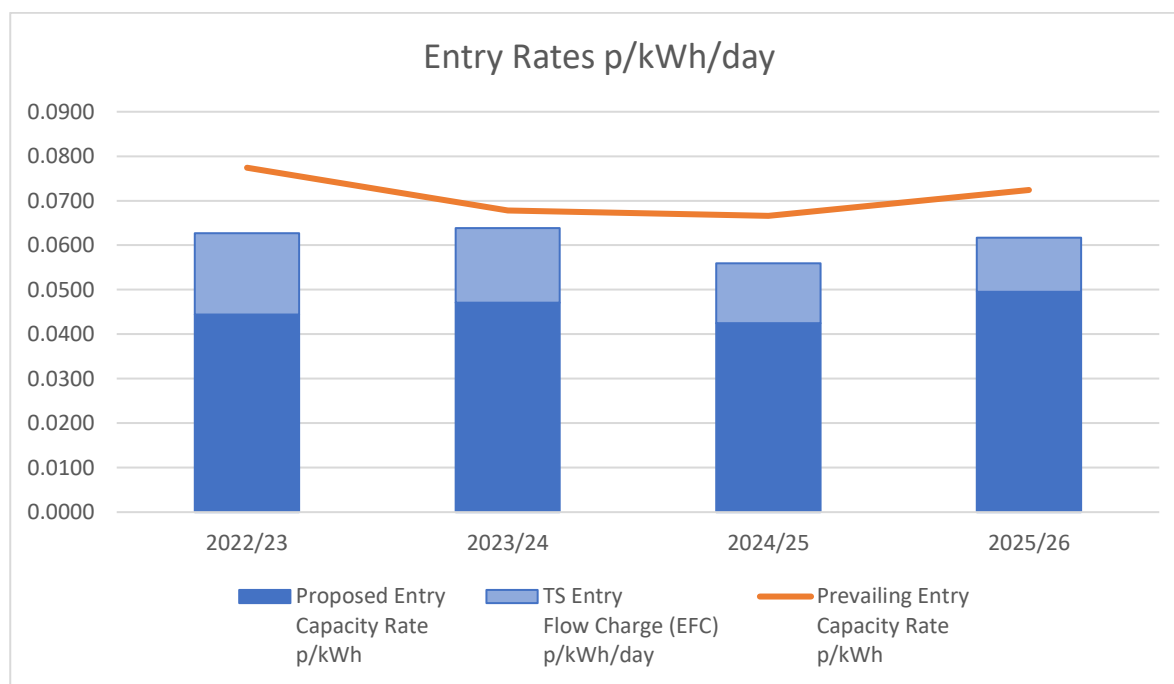
The proposed Transmission Services Entry Flow Charge (EFC) would be payable on Entry flows. Where Entry Capacity is utilised, the two rates can be combined to provide the full cost of booking and flowing that unit of energy. Where Entry Capacity is not utilised, only the Transmission Services Entry Capacity Reserve Price would be payable.

The dark blue boxes displayed in Fig.1 (which demonstrate the payable Entry Capacity Price) are repeated below. Here the light blue boxes stacked on top highlight the EFC which is payable if all capacity is utilised i.e. gas flows are equal to Entry Capacity quantity. If gas is not flowed and the Entry Capacity is not utilised, only the rate represented by the dark blue box is payable.

Table.2

	Prevailing Entry Capacity Rate p/kWh	Proposed Entry Capacity Rate p/kWh	Combined Rate p/kWh/day
2022/23	0.0774	0.0444	0.0627
2023/24	0.0678	0.0471	0.0638
2024/25	0.0666	0.0425	0.0560
2025/26	0.0724	0.0495	0.0617

Fig.2

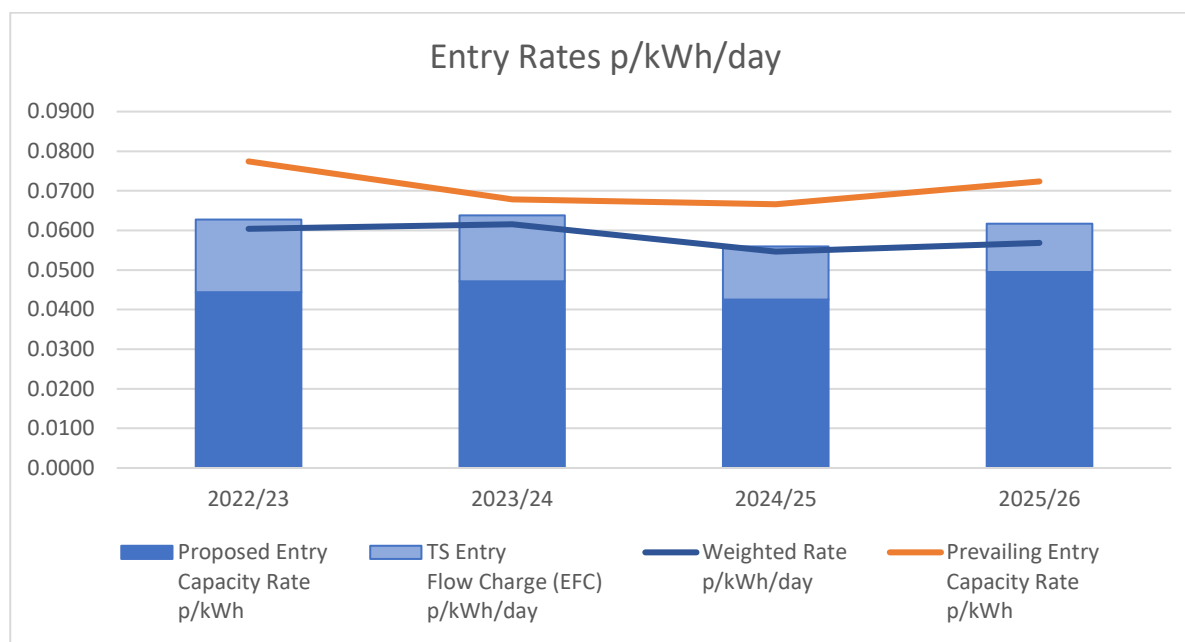


Based on the utilisation of Entry Capacity across the NTS, regardless of booking type, a weighted rate can be inferred, for both utilised Entry Capacity and Entry Capacity booked but unused, for the average User. Users who regularly maximise usage of their Entry Capacity bookings would generate a weighted rate higher than the average User and Users who utilise less than the average will have a weighted rate lower than this line, but both will still fall between the limits defined by the light blue box displayed previously in Fig.2 and repeated in the illustration below.

Table.3

	Prevailing Entry Capacity Rate p/kWh	Proposed Entry Capacity Rate p/kWh	Combined Rate p/kWh/day	Weighted Rate p/kWh/day
2022/23	0.0774	0.0444	0.0627	0.0604
2023/24	0.0678	0.0471	0.0638	0.0615
2024/25	0.0666	0.0425	0.0560	0.0546
2025/26	0.0724	0.0495	0.0617	0.0569

Fig.3



Using the same data as above and applying a 90% discount. We can see the impact on a User able to benefit from the maximum available discount relating to the Conditional NTS Capacity Charge Discount (short-haul).

Table.3a

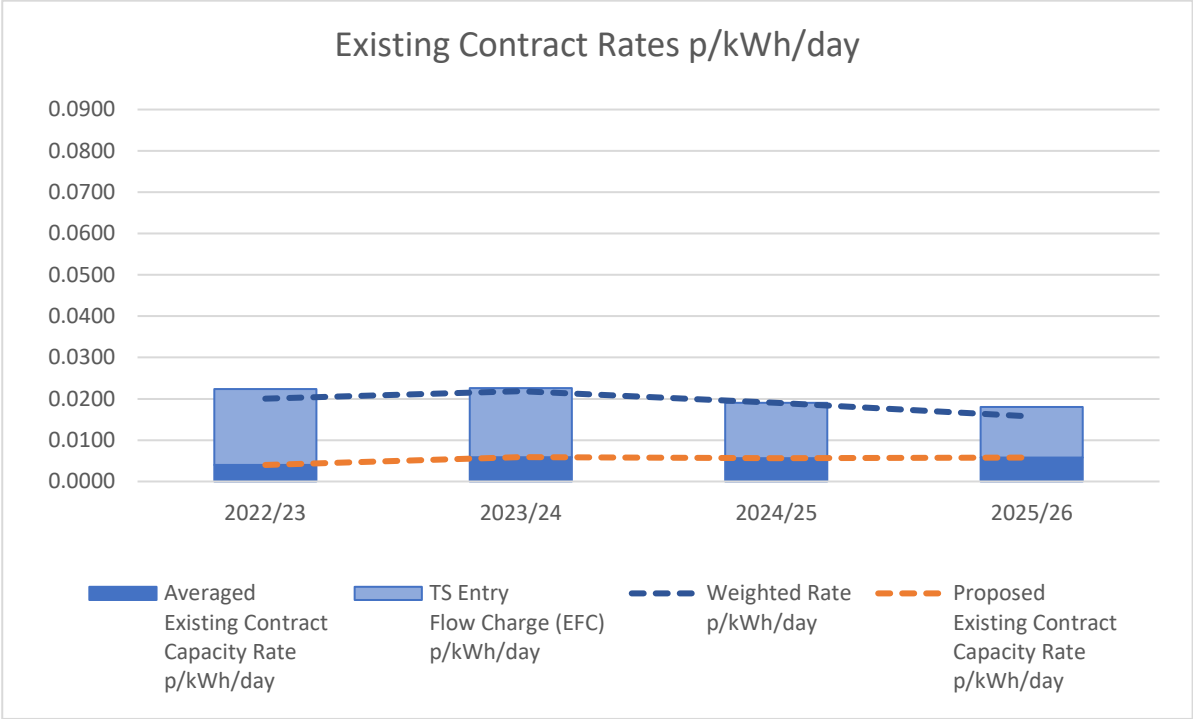
	Prevailing Entry Capacity Rate p/kWh	Proposed Entry Capacity Rate p/kWh	Combined Rate p/kWh/day	Weighted Rate p/kWh/day
2022/23	0.0077	0.0044	0.0063	0.0060
2023/24	0.0068	0.0047	0.0064	0.0062
2024/25	0.0067	0.0043	0.0056	0.0055
2025/26	0.0072	0.0050	0.0062	0.0057

The same logic can be applied to holders of Existing Contract Capacity. Below is a table and graphical representation of the impact of the mean EFC payable when combined with the weighted average Entry Capacity Price paid by holders of Existing Contracts. Note that the Capacity Price Payable by Existing Contract holders, represented by the orange line, remains unchanged as this Proposal does not impact the protected capacity price arrangements already in place for holders of Existing Contracts.

Table.4

	Averaged Existing Contract Capacity Rate p/kWh/day	Proposed Existing Contract Capacity Rate p/kWh/day	Combined Rate p/kWh/day	Weighted Rate p/kWh/day
2022/23	0.0040	0.0040	0.0223	0.0200
2023/24	0.0059	0.0059	0.0226	0.0219
2024/25	0.0056	0.0056	0.0191	0.0190
2025/26	0.0058	0.0058	0.0180	0.0157

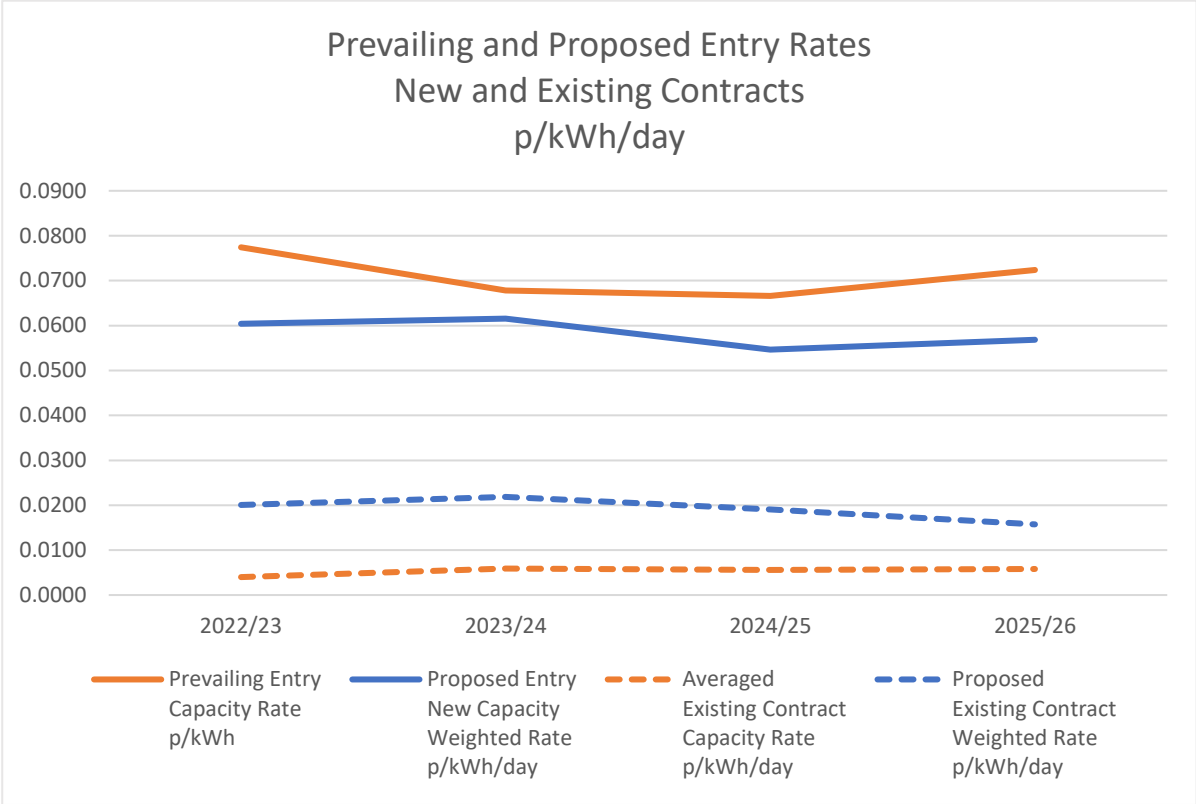
Fig.4



Comparing the proposed weighted rates for both New and Existing Contact Capacity below, we see that the differential between the expected costs associated with standard New Capacity Bookings (excluding any discounts associated with; Storage, Interruptible or Conditional NTS Capacity Charge Discount) are now approximately three times higher than the expected costs associated with the average Existing Contract, as compared with the previous figure of 23 times higher (inclusive of discounts) demonstrated in the Justification for Urgency section.

When comparing the non-discounted New Capacity Booking costs to the highest price Existing Contract Capacity price for each of the years below, rather than the average Existing Contract Price, the ratio seen would be closer to, but still below, 1:1.

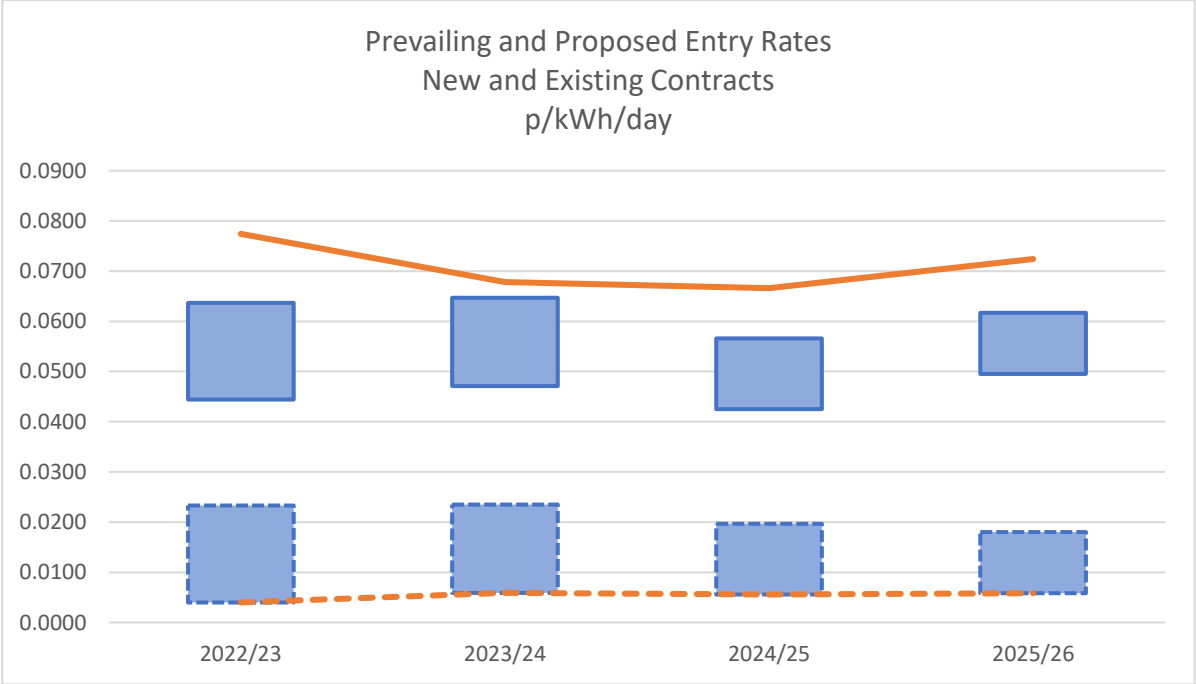
Fig.5



We repeat this graph below, but using the potential ranges, either side of the weighted average usage line, rather than the weighted average line seen previously, to give Users an idea of the potential upper and lower limits of the cost for New Capacity vs. the Average Existing Contract User.

Individual Users will be able to make an informed assessment about where they would expect their average to fall based on how they use their capacity bookings currently.

Fig.6



4 Code Specific Matters

Reference Documents

[UNC TPD Section Y](#) (including Part A-I: NTS Transportation Charging Methodology)

[UNC TPD Section B](#)

[May 2021 - Open Letter on the Future Of Gas Transmission Charging](#)

- open letter
- subsequent materials

[Ofgem Response to National Grid Open Letter](#)

ACER Report '[Analysis of the Consultation Document on the Gas Transmission Tariff Structure for Great Britain](#)' 24th April 2020

Knowledge/Skills

Knowledge of the NTS Transportation Charging Methodology and evolution from that in place prior to October 2020 would be beneficial.

5 Solution

For the avoidance of doubt, there are no changes proposed to the derivation of the Transmission Services Exit Capacity Reference Price nor General Non-Transmission Services Charges.

Transmission Services Entry Capacity Reference Price

It is proposed that the determination of the Transmission Services **Entry** Capacity Reference Price for a Gas Year (in principle, the quantity of entry revenue to be collected (£) over this period divided by the quantity of entry capacity (kWh) expected to be booked over this period) is revised as follows:

Component	Current Method	Proposed Method
Quantity of Revenue (£)	Transmission Services Allowed Revenue at Entry <i>minus revenue from Existing Contracts</i>	Transmission Services Allowed Revenue at Entry
Quantity of Capacity (kWh)	Current Forecast Contracted Capacity (Entry) <i>minus Existing Contract capacity</i>	Proposed Forecast Contracted Capacity (Entry)

Transmission Services Entry Flow Charge

It is proposed that a new Transmission Services charge is introduced, this being the Entry Flow Charge as follows:

- **Application**

The Transmission Services Entry Flow Charge (EFC) will be payable as a flow-based charge in respect of all Entry Gas Allocations (i.e. Entry Gas Allocation multiplied by the EFC rate) at all System Entry Points except those at Storage Connection Points and Interconnection Points ('Qualifying Entry Points').

The EFC is set via an iterative calculation that takes into account the flows that will attract 100% of the rate and those Entry Eligible Quantities that will attract a discount in line with the Conditional NTS Capacity Charge Discount, if applicable.

- **Overview of the Charge Rate calculation**

The EFC rate (p/kWh), which will account for any applicable discounts mentioned above, will principally be based on the following formula (noting the iterative calculation referred to above):

$$EFC = \frac{RD \times 100}{FEF}$$

where

FEF is a forecast of the aggregate of input gas flows at all Qualifying Entry Points on the Total System (kWh) in the forthcoming Gas Year; and

RD is the Revenue Difference (£), calculated as follows:

$$RD = ATSER - ACCR$$

where

ATSER is the Allowed Transmission Services Entry Revenue (£) in the forthcoming Gas Year; and

ACCR is the Actual Collectable Capacity Revenue at Entry (£) in the forthcoming Gas Year, calculated as follows:

$$ACCR = ECR + NECR$$

where

ECR is the expected revenue (£) from Existing Contracts in the forthcoming Gas Year; and

NECR is the forecast of the revenue (£) from Entry Capacity other than that associated with Existing Contracts in the forthcoming Gas Year.

The EFC Rate at a Qualifying Entry Point which is (for the purposes of the Conditional NTS Capacity Charge Discount) a Nominated Entry Point for a current CNCCD Election will be subject to a discount equal to the CNCC Discount. This discounted Charge Rate will be applied to the Eligible Entry Amount for that CNCCD Election.

For the avoidance of doubt, any 'residual' Entry Gas Allocations at such Qualifying Entry Points (that is not an Eligible Entry Amount) will pay 100% of the EFC Rate.

- **Invoicing**

The EFC will be invoiced and payable in accordance with TPD Section S.

6 Impacts & Other Considerations

Does this Modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

None.

Consumer Impacts

There will potentially be an impact on different consumer groups but the Entry Allowed Revenue (determined in line with National Grid NTS' Licence) which is collected by National Grid NTS will not change in the event of implementation of this Proposal. This Proposal will essentially apportion the shortfall in recovery of National Grid's Allowed Revenue at Entry Points (driven by the fixed pricing of Existing Contracts) to Users of the NTS at Entry Points in a way that National Grid NTS believes is fairer, more proportionate and better aligned to the objectives of the NTS Transportation Charging Methodology than the current arrangements.

The nature of how the Users' Transportation charge liability is charged downstream from UNC arrangements will depend on how Users and other market participants structure their respective contracts and associated service charges.

Where the published prices for Transportation Charges are accommodated into NBP prices the result of this proposal would be that the combined rate of capacity (updated as per this proposal) and the additional charge would be lower than the single capacity price under the current methodology. Therefore, one assertion that can be made is that this provides a benefit with the lower combined rate of published prices than would otherwise be. Ultimately, costs do find their way to Customers and Consumers.

Whilst it cannot be shown precisely how, given the contractual structure and reciprocal charging onwards from Transmission, it can be reasonably assumed that this lower charging value would ultimately find its way downstream from Transportation charging towards Customers and Consumers.

National Grid has commissioned Frontier Economics to conduct a broader economic assessment than is traditionally contained in modification proposals. This assessment can be seen in its entirety on the modification pages for this proposal. In terms of consumers, there is expected to be a consumer benefit as a result of this proposal given the changes to the distribution across Customers and how the updated Transportation charges are expected to be passed on to consumers.

What is the current consumer experience and what would the new consumer experience be?

The nature and extent of any change in consumer experience is not clear for the reason explained above.

Impact of the change on Consumer Benefit Areas:	
Area	Identified impact
<p>Improved safety and reliability</p> <p>No impact.</p>	None
<p>Lower bills than would otherwise be the case</p> <p>Individual consumers bills may change as a consequence of implementation dependent upon the nature and type of relevant shippers' capacity allocations and how the associated transportation costs are recovered from downstream stakeholders under the relevant contractual terms.</p>	For individual consumers: positive (lower bills), negative (higher bills) and potentially none (no change)

Reduced environmental damage No impact.	None
Improved quality of service No impact.	None
Benefits for society as a whole No impact.	None

Cross-Code Impacts

No impact.

EU Code Impacts

No impact.

Central Systems Impacts

There will be impacts on Gemini and UK Link invoicing systems. These impacts are being assessed.

7 Relevant Objectives

Impact of the Modification on the Transporters' Relevant Objectives:

Relevant Objective	Identified impact
a) Efficient and economic operation of the pipe-line system.	None
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.	None
c) Efficient discharge of the licensee's obligations.	None
d) 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.	Positive
e) Provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards... are satisfied as respects the availability of gas to their domestic customers.	None
f) Promotion of efficiency in the implementation and administration of the Code.	None
g) Compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.	None

Demonstration of how the standard Relevant Objectives are furthered:

d) Securing of effective competition between relevant shippers;

The proposed changes in this Modification are expected to provide a more stable and predictable Reference Price for Entry Capacity hence Users will have a greater level of confidence in their forecasts of prospective use of network costs and therefore set their own service costs more accurately (potentially with a lower risk margin), thereby enhancing effective competition. Further, implementation would enable a more equitable recovery of Allowed Revenue at Entry (as provided for in the Special Conditions of National Grid's Licence) across all Shipper Users as opposed to the existing approach which effectively targets recovery of the aforementioned deficit on holders of new capacity only.

Impact of the Modification on the Transporters' Relevant Charging Methodology Objectives:

Relevant Objective	Identified impact
a) Save in so far as paragraphs (aa) or (d) apply, that compliance with the charging methodology results in charges which reflect the costs incurred by the licensee in its transportation business;	None
aa) That, in so far as prices in respect of transportation arrangements are established by auction, either: <ul style="list-style-type: none"> (i) no reserve price is applied, or (ii) that reserve price is set at a level - <ul style="list-style-type: none"> (I) best calculated to promote efficiency and avoid undue preference in the supply of transportation services; and (II) best calculated to promote competition between gas suppliers and between gas shippers; 	Positive
b) That, so far as is consistent with sub-paragraph (a), the charging methodology properly takes account of developments in the transportation business;	None
c) That, so far as is consistent with sub-paragraphs (a) and (b), compliance with the charging methodology facilitates effective competition between gas shippers and between gas suppliers; and	Positive
d) That the charging methodology reflects any alternative arrangements put in place in accordance with a determination made by the Secretary of State under paragraph 2A(a) of Standard Special Condition A27 (Disposal of Assets).	None
e) Compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.	None

Demonstration of how the charging Relevant Objectives are furthered:

aa) That, in so far as prices in respect of transportation arrangements are established by auction (ii) that reserve price is set at a level - best calculated to promote competition between gas suppliers and between gas shippers;

The proposed changes in this Modification are expected to provide a more stable and predictable Reference Price (and therefore a more stable and predictable Reserve Price) for Entry Capacity. Further, in conjunction with the additional flow-based charge proposed, this is expected reduce the material differentiation in Users' Transportation Charges for the equivalent Transportation service which is apparent under the current arrangements.

c) facilitates effective competition between gas shippers and between gas suppliers

The proposed changes in this Modification are expected to provide a more stable and predictable Reference Price for Entry Capacity hence Users will have a greater level of confidence in their forecasts of prospective use of network costs and therefore set their own service costs more accurately (potentially with a lower risk margin), thereby enhancing effective competition. Further, implementation would enable a more equitable recovery of Allowed Revenue at Entry (as provided for in the Special Conditions of National Grid's Licence) across all Shipper Users as opposed to the existing approach which effectively targets recovery of the aforementioned deficit on holders of new capacity only.

8 Implementation

Implementation of this Proposal should take effect in time to be reflected in the Transportation Charges which will apply from 1 October 2022 or the next 1 October following the Authority direction to implement.

9 Legal Text

Legal Text has been provided by National Grid NTS and is published alongside this report.

Text Commentary

Please refer to the document published at: <https://www.gasgovernance.co.uk/0790>

Text

Please refer to the document published at: <https://www.gasgovernance.co.uk/0790>

10 Consultation

Ofgem invited representations from interested parties on 16 November 2021. All representations are encompassed within the Appended Representations section.

The following table provides a high-level summary of the representations. Of the 16 representations received 5 supported implementation, 1 offered qualified support, 2 provided comments and 8 were not in support.

Representations were received from the following parties:

Organisation	Response	Relevant Objectives	Relevant Charging Methodology Objectives
BBL Company V.O.F.	Support	d) positive	a) positive c) positive
British Gas Trading Limited	Oppose	d) negative	aa) negative c) negative
Citizens Advice	Support	d) positive	aa) positive c) positive
Eni Global Energy Markets Spa	Oppose	d) negative	aa) negative c) negative
Energy UK	Oppose	d) none g) negative	aa) none c) none e) negative
Equinor	Oppose	d) negative	aa) negative c) negative
Interconnector Limited	Support	d) positive	aa) positive

			c) positive
National Grid NTS	Support	d) positive	aa) positive c) positive
OGUK	Comments	d) -	aa) - c) -
PETCO Trading (UK) Limited	Support	d) positive	aa) positive c) positive
RWE Supply & Trading GmbH	Oppose	a) negative b) negative d) negative g) negative	aa) negative c) negative
Scottish Power	Oppose	d) negative	aa) negative c) negative
South Hook Gas Company Ltd	Comments	d) negative	aa) none c) negative
SSE	Oppose	d) none g) negative	aa) none c) none e) negative
Storengy UK Limited	Qualified Support	d) negative	aa) none c) negative
Vermilion Energy Ireland Limited ("Vermilion")	Oppose	d) negative	aa) negative c) negative e) negative

Please note that late submitted representations will not be included or referred to in this Final Modification Report. However, all representations received in response to this consultation (including late submissions) are published in full alongside this Report and will be taken into account when the UNC Modification Panel makes its assessment and recommendation.

11 Panel Discussions

Discussion

Consideration of the Relevant Objectives

Determinations

12 Recommendations

Panel Recommendation

Panel Members recommended:

- that Modification 0790 (Urgent) [should [not] be implemented.

13 Appended Representations

Representation – BBL Company V.O.F.

Representation – British Gas Trading Limited

Representation – Citizens Advice

Representation – Eni Global Energy Markets Spa (inc. separate legal opinion document)

Representation – Energy UK

Representation - Equinor

Representation – Interconnector Limited

Representation – National Grid NTS

Representation - OGUK

Representation – PETCO Trading (UK) Limited

Representation – RWE Supply & Trading GmbH

Representation – Scottish Power

Representation – South Hook Gas Company Ltd

Representation – SSE

Representation – Storengy UK Limited

Representation – Vermilion Energy Ireland Limited (“Vermillion”)

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Date
30 November 2021

Telephone
+31 50 521 2365

Our reference
BBL VOF 21.082

Your reference

Subject
Response to consultation on UNC Modification Proposal
0790

Dear Joint Office,

BBL Company (BBLC) supports the proposal. BBLC agrees that the current differential between the level of National Grid (NGG) Transmission Services Entry Charges payable by shippers holding Existing Contract Capacity (ECC) compared with holders of more recently purchased Entry Capacity is having a detrimental impact on markets and cross border trading and does not, therefore, facilitate competition between shippers.

In BBLC's opinion NGG has demonstrated that, post the implementation of UNC Modification 0678A, the transmission tariff protections applied to ECC has resulted in a significant differential between the unit cost of holding and utilising ECC compared to that applied to more recently purchased Entry Capacity. As such, it is clear to BBLC that shippers holding a significant amount of ECC have a commercial advantage over those without such capacity holdings. Moreover, the current treatment of ECC within the Entry Capacity Reserve Prices tariff methodology, and the effect of the market's utilisation of ECC on NGG's ability to accurately forecast tariff revenues, has led to tariff volatility and uncertainty which undermines markets and shipper competition.

However, BBLC also considers that it is appropriate for those shippers that booked NGG entry capacity prior to April 2017 to retain any accrued benefit from the foresight of booking longer duration capacity. Longer term capacity bookings in general provide efficient signals to transporters for asset provision and they should therefore be encouraged where it is efficient to do so. Therefore, where such benefits have accrued under approved market conditions, BBLC considers that it is right that these shippers should retain such benefits. Indeed, BBLC notes that such protection is in line with Art.35 of the EU Tariff Network Code.

BBLC also notes that at the time of booking the ECC the acquiring shipper would have also understood that, under the prevailing terms of the UNC, the utilisation of such capacity would incur "flow based" commodity charges. Such commodity charges were largely removed with the introduction of Modification 0678A. 0678A therefore arguably facilitated a further additional advantage for ECC holders over holders of more recent capacity.

BBL Company V.O.F.

Date: 30 November 2021

Our reference: BBL VOF 21.082

Subject: Response to consultation on UNC Modification Proposal 0790

BBLC therefore agrees with the Proposer that the current situation requires that a more apposite balance be struck between protecting the legitimate accrued benefits of long-term entry capacity bookings made by the holders of ECC and the revenue recovery and market/competition issues identified by NGG in its proposal.

BBLC believes that NGG has demonstrated that the current magnitude of the differential between the capacity and "flow based" tariffs applied to ECC and other entry capacity holdings is adversely impacting competition between shippers to a sufficient degree as to warrant changes to the tariff regime. BBLC also agrees with both NGG's and Ofgem's previous statements that changes to the current entry capacity tariff regime are needed 'at pace' and therefore supports the objective of seeing such changes made prior to the setting of the tariffs that will be applied from October 2022.

BBLC understands, and concurs with, NGG's assessment that in order for the proposed new tariffs to be considered to be compliant with Art.35 of the EU Tariff Network Code, and therefore capable of being applied to ECC holders, such tariffs should be "flow based" in accordance with Art. 4(3). BBLC also agrees that this Article precludes the application of such "flow based" tariffs to Interconnection Points.

The relevant objectives:

BBLC agrees that implementation of NGG's proposals would strike a better balance between the charges levied on ECC and new entry Capacity holders and will result in a more equitable and cost reflective recovery of its 'Entry' Allowed Revenues across all shippers compared to the existing arrangements. BBLC also agrees that the proposal is likely to result in more stable and predictable Entry tariffs. As such, BBL considers that the proposal better facilitates Relevant Objective (d) "*Securing of effective competition: (i) between relevant shippers*" and Charging Relevant Objectives a) "*Save in so far as paragraphs (aa) or (d) apply, that compliance with the charging methodology results in charges which reflect the costs incurred by the licensee in its transportation business*" and c) "*That, so far as is consistent with sub-paragraphs (a) and (b), compliance with the charging methodology facilitates effective competition between gas shippers and between gas suppliers*".

Looking forward

Whilst BBLC supports NGG's proposal it also believes that there are still further benefits to GB end consumers that could be achieved through additional reforms of NGG's tariffs and revenue recovery methodology. Specifically, BBLC and Interconnector Ltd have previously presented the output of a report by CEPA to the NTSCMF meeting in June¹ which identified the benefits to end consumers of changing the current 50/50 Entry / Exit revenue recovery split. This study identified a consumer benefit of over £100 million per annum if the current 50/50 entry split is changed to 20/80. BBLC notes that NGG have previously committed to

¹ [PowerPoint Presentation \(gasgovernance.co.uk\)](https://www.gasgovernance.co.uk)

BBL Company V.O.F.

Date: 30 November 2021

Our reference: BBL VOF 21.082

Subject: Response to consultation on UNC Modification Proposal 0790

considering such additional changes as part of a second workstream and looks forward to working with NGG on these further options.

Yours sincerely,



Rudi Streuper
Commercial Manager

Representation - Modification UNC 0790 (Urgent)

Introduction of a Transmission Services Entry Flow Charge

Responses invited by: **5pm on 06 December 2021**

To: enquiries@gasgovernance.co.uk

Please note submission of your representation confirms your consent for publication/circulation.

Representative:	Ricky Hill
Organisation:	British Gas Trading Limited
Date of Representation:	6 th December 2021
Support or oppose implementation?	Oppose
Relevant Objective:	d) Negative
Relevant Charging Methodology Objective:	aa) Negative c) Negative

Reason for support/opposition: Please summarise (in one paragraph) the key reason(s)

British Gas Trading Limited opposes this modification as it is not compliant with UK NC TAR. This has been confirmed by external advice which we will make available to Ofgem on request. The lack of compliance stems from the fact that the exception in Article 4(3)(b) cannot be used in the manner that National Grid proposes. The proposed charge cannot lawfully be used to recover an entirely different 'under-recovery' calculated by reference to the fixed prices applying to Existing Contracts. Furthermore, we do not believe a credible case has been made in favour of National Grid's argument that the current arrangements are detrimental to competition between Shipper Users, and that the proposed commodity charge would better facilitate competition. We elaborate on these points below.

The Article 4(3) of UK TAR NC states that "*the transmission services revenue shall be recovered by capacity-based transmission tariffs*". As an exception, subject to the approval of the national regulatory authority, a part of the transmission services revenue may be recovered only by the following commodity-based transmission tariffs which are set separately from each other:

(a) a flow-based charge, which shall comply with all of the following criteria (i) levied for the purpose of covering the costs mainly driven by the quantity of the gas flow; (ii) calculated on the basis of forecasted or historical flows, or both, and set in such a way that it is the same at all entry points and the same at all exit points; (iii) expressed in monetary terms or in kind.

(b) a complementary revenue recovery charge, which shall comply with all of the following criteria: (i) levied for the purpose of managing revenue under- and over-recovery; (ii)

calculated on the basis of forecasted or historical capacity allocations and flows, or both; (iii) applied at points other than interconnection points; (iv) applied after the national regulatory authority has made an assessment of its cost-reflectivity and its impact on cross-subsidisation between interconnection points and points other than interconnection points.”

The additional flow-based entry charge proposed by UNC790 is a charge for transmission services, and so can only be compliant with this Article 4(3) if it falls within the permitted exceptions outline above. In UNC790, National Grid seeks to argue that the proposed flow-based entry charge would be compatible with Article 4(3)(b) because it would be used to manage under-recovery arising from the fixed prices afforded to Existing Contracts. However, this is an incorrect interpretation of under-recovery in Article 4(3). In Article 18, under- or over-recovery is stated to be calculated by subtracting the allowed transmission services revenue from the actual revenue obtained, such that an under-recovery arises where the result is negative. Under UNC790 the reference price is calculated as if existing contracts did not exist, thereby artificially creating an under-recovery.

It is clear that the exception in Article 4(3)(b) can only be used to recover differences between actual and allowed revenue (revenue allowed by National Grid's revenue control licence conditions). Therefore, the exception in Article 4(3)(b) cannot be used in the manner that National Grid proposes. It cannot be used to recover an entirely different 'under-recovery' calculated by reference to the fixed prices paid by Existing Contracts.

For completeness, the exception at Article 4(3)(a) also appears not to apply, as the proposed charge does not reflect costs mainly driven by the quantity of the gas flow.

Notwithstanding that our legal advice shows this modification is unlawful, the entire case of these proposals appears to rest on National Grid's assumption that the arrangements implemented on 1st October 2020 are detrimental to competition between Shipper Users and that the proposed commodity charge would better facilitate competition. British Gas Trading Limited does not believe a credible case has been made with regards to competition and therefore this should not be used as a pretext for implementation. National Grid's own assessment, conducted by Frontier Economics, is also unable to make the case convincingly.¹

In its assessment of whether UNC790 has a positive impact on competition, Frontier say there are “likely to be *Mixed effects (though unlikely to be material). Could reduce existing distortions to dispatch and barriers to entry (by reducing shipper risks). But exempting interconnection from the flow-based charge could create a new distortion*” (slide 7). On the current arrangements, Frontier goes on to say “*there are economic reasons why the presence of ECs should not result in distortions to competition (between sources at a given Entry Point)*” (slide 10) and the “*use of ‘beach swaps’ might mean the opportunity cost of EC capacity differs from the Reference Price, but it is unlikely to distort the merit order*” (slide 11).

¹<https://www.gasgovernance.co.uk/sites/default/files/ggf/book/2021-11/NGG%20Charging%20Reform%20-%20Impact%20Assessment%200790%20%28Urgent%29.pdf>

We do not believe there is a credible scenario whereby the current arrangements would negatively impact competition or distort gas flows. Any capacity purchased, whether it is existing or new capacity, is a sunk cost, and shippers may choose to flow against it if the NBP price is above the marginal cost of its source of gas, regardless of what they paid for it. Rather, it is adding a commodity charge, which is not cost-reflective, that would create a distortion and feed through to the NBP price. Furthermore, the regulatory framework allows for gas transportation capacity to be sold on the secondary market, and as in all free markets, the price for that capacity will increase or decrease according to supply and demand.

Implementation: *What lead-time do you wish to see prior to implementation and why?*

We do not believe UNC790 should be implemented for the reasons noted above.

Impacts and Costs: *What analysis, development and ongoing costs would you face?*

We believe we would be negatively impacted from a commercial point of view, but we will not quantify this in a public response.

Legal Text: *Are you satisfied that the legal text will deliver the intent of the Solution?*

Yes.

Are there any errors or omissions in the Modification that you think should be taken into account? *Include details of any impacts/costs to your organisation that are directly related to this.*

As a flow-based charge, the Entry NTS Transmission Services Commodity Charge would feed directly through to the NBP price, increasing it proportionately and negatively impacting consumers and security of supply. We do not believe that sufficient consideration has been given to this area, either in the mod or the assessment by Frontier Economics.

Please provide below any additional analysis or information to support your representation

More generally, NGG's concern with the current arrangements appears to be the perceived inequity of 'existing' capacity holders benefitting from grandfathered low-cost capacity, whilst other users are 'locked into' buying relatively expensive new capacity. This portrayal of the problem is not correct because of the secondary market. Shippers that do not directly own 'existing' capacity can source it from those that do on the well-operating, liquid, secondary market. Therefore, buying new, relatively high-cost capacity, is not the only option available to Shippers.

Furthermore, the current two-tier system will disappear on its own without intervention, because 'existing' capacity is naturally expiring and will not be replaced². We do not therefore believe it is proportionate, for a perceived issue that will reduce in the coming

² We estimate that in 4 years, around 50% of 'existing' capacity will have expired.

years, to introduce an entirely new flow-based charge, which will also impact the NBP price and therefore costs to consumers.

Representation - Modification UNC 0790 (Urgent)

Introduction of a Transmission Services Entry Flow Charge

Responses invited by: **5pm on 06 December 2021**

To: enquiries@gasgovernance.co.uk

Please note submission of your representation confirms your consent for publication/circulation.

Representative:	Sam Hughes
Organisation:	Citizens Advice
Date of Representation:	6/12/21
Support or oppose implementation?	Support
Relevant Objective:	d) Positive
Relevant Charging Methodology Objective:	aa) Positive c) Positive

Reason for support/opposition: Please summarise (in one paragraph) the key reason(s)

Citizens Advice welcomes this modification. Ofgem was clear in its letter on [4th June 2021](#) that the “*transmission charging regime may need further changes to ensure stable and predictable prices and promote effective competition, which are core principles of the Tariff Network Code*”. At present a clear market distortion exists in the dual regime which means that new entry capacity pays 23 times the price that holders of existing contracts pay due to most of the recovery of Transmission Services Revenues being targeted to holders of new Entry Capacity. For Gas Year 2021/22, National Grid states that Existing Contract capacity is 71% of total forecast Entry Capacity quantity, yet is forecasted to only collect 10% of the total Allowed Revenue at Entry. We believe that the introduction of a flow-based charge goes some way in addressing this disparity but we would also note that this modification does not remove the distortion entirely.

Although the Frontier Economics analysis does not offer a quantification of this benefit they assert that overall the modification is positive for competition by reducing the price differential paid by different shippers. We would recommend that any further Impact Analysis conducted by Ofgem should seek to specifically consider the impact on competition in order to quantify the benefit.

As a result of spreading the recovery of transmission services revenues over a wider charging base we agree that this will decrease the risk of material volatility in the Entry

Capacity Reference Prices and, consequently, Entry Capacity Reserve Prices. As a result the expectation is that users can have more market confidence in their own forecasted use of network costs, expected to reduce the cost of risk.

The impact analysis shows a potential distributional impact which could deliver a net present value consumer benefit of between £200million and £400million between the period of implementation and when existing contracts expire in 2031/32. We agree with Frontier Economics' assertion that while these figures contain assumptions and sensitivities, it remains reasonable to assume that the implementation of 0790 would result in positive customer benefits. National Grid similarly assert that they do not believe that concerns such as shipper-specific behaviour differing from those assumed in the analysis would negate the customer benefit. We therefore consider that the modification is better than the baseline arrangements in UNC.

Implementation: *What lead-time do you wish to see prior to implementation and why?*

We agree that implementation of this modification should take effect in time to be reflected in the Transportation Charges which apply from 1 October 2022.

Impacts and Costs: *What analysis, development and ongoing costs would you face?*

N/A

Legal Text: *Are you satisfied that the legal text will deliver the intent of the Solution?*

We have not reviewed the legal text.

Are there any errors or omissions in the Modification that you think should be taken into account? *Include details of any impacts/costs to your organisation that are directly related to this.*

The modification would have benefited from a quantification of the benefits on competition but nevertheless presents a helpful impact analysis. As described earlier, any impact analysis conducted by Ofgem could carry out this quantification.

Please provide below any additional analysis or information to support your representation

N/A

Representation - Modification UNC 0790 (Urgent)

Introduction of a Transmission Services Entry Flow Charge

Responses invited by: 5pm on 06 December 2021

To: enquiries@gasgovernance.co.uk

Please note submission of your representation confirms your consent for publication/circulation.

Representative:	Donatella Anna Ranco
Organisation:	Eni Global Energy Markets Spa
Date of Representation:	06/12/2021
Support or oppose implementation?	Oppose
Relevant Objective:	d) Negative
Relevant Charging Methodology Objective:	aa) Negative c) Negative

Reason for support/opposition: Please summarise (in one paragraph) the key reason(s)

Eni Global Energy Markets (EGEM) opposes MOD790 because of the following reasons:

- The governance of the process is detrimental to market confidence. The proposal presented by National Grid, if approved, will drastically change the charging methodology without giving market participants the opportunity to properly examine, understand and discuss the implications of such a reform.
- The proposal is not compliant with the UK Tariff Network Code (our below-described analysis is confirmed by the attached leading counsel's Opinion)
- National Grid failed to demonstrate the proposal is needed in order to address the stated objectives. In particular:
 - The lack of stability and predictability of the Reference Price for Entry Capacity is not caused by Existing Contracts but by the low level of forecast accuracy that National Grid performed in relation to Forecasted Contracted Capacity (FCC) for Gas Year 2020/21
 - The exclusion of Existing Contracts from the calculation of the Reference Price was extensively discussed in the process that led to the adoption of the current methodology and it was supported by National Grid and Ofgem
 - The existence of differentials in revenue recovery levels and capacity charges between Existing Contracts and other capacity users was already well known and analysed by National Grid, Baringa and Ofgem when the

current regime was approved and implemented. The differentials have not changed materially in the meantime.

- The price differential for capacity between Existing Contracts and other users does not undermine competition, as demonstrated by Baringa in 2019 and by Frontier Economics in the Impact Assessment on Modification Proposal 790 in 2021
- The Frontier Economics distributional analysis is flawed and not a relevant criterion for approving implementation of the Proposal.

Implementation: *What lead-time do you wish to see prior to implementation and why?*

We do not believe that this Mod should be implemented for the reasons explained in the summary above and in the “additional comments” box below.

Impacts and Costs: *What analysis, development and ongoing costs would you face?*

See below our answer in the additional comments box.

Legal Text: *Are you satisfied that the legal text will deliver the intent of the Solution?*

We do not believe that this Mod should be implemented for the reasons explained in the summary above and in the “additional comments” box below.

Are there any errors or omissions in the Modification that you think should be taken into account? *Include details of any impacts/costs to your organisation that are directly related to this.*

The Mod is not compliant with the UK Tariff Network Code as further detailed in the “additional comments” box below.

Please provide below any additional analysis or information to support your representation

We welcome this opportunity to provide our comments and views to the MOD 0790 proposed by National Grid.

As a general remark, we would like to highlight our concerns on the way this process is being carried out. The proposal presented by National Grid, if approved, will have significant implications for the gas portfolios of individual shippers and we are of the opinion that an adequate modification process cannot be carried out in such a short period of time with the market participants only having limited opportunity to properly understand and discuss the implications of such a reform. Given the significance of the changes being proposed, we believe that a consultation period of at least two months, as provided for under Article 26 of the UK TAR NC, would have been much more appropriate. We have significant concerns about the way this reform is being carried out and we believe that this is very detrimental to market confidence. Our concerns are further exacerbated given that a major review of the Gas Transmission Charging Regime was implemented only one year ago, on 1 October 2020; it took several years to conclude this thorough Charging Review. It is not clear why another significant change has been proposed now so soon after the previous review and in the absence of any changes in circumstances since the last change (see below).

The above is further exacerbated by the timing of publication of the final impact assessment. In fact, providing the final impact study just seven days (28/11) before the deadline for a consultation with such an impact is inappropriate, as it compounds the inadequate time for accurate and detailed analysis even more.

Regarding the merit of the proposal, we believe that there are major concerns with regards to (i) the compliance with the UK Tariff Network Code and (ii) the objectives that it tries to achieve.

1. The proposal is not compliant with the UK Tariff Network Code

In its proposal, National Grid states that the new Entry Flow Charge is compliant with article 4(3)(b) of the UK Tariff Network Code. However, by reading the above-mentioned article in combination with other relevant articles of the TAR NC, it is clear that there are major compliance issues.

In particular, article 4(3)(b) allows the use of a commodity-based charge only under specific circumstances as an exception to the main rule by which *“The transmission services revenue shall be recovered by capacity-based transmission tariff”* (article 4(3)). In this framework, one of the criteria to be fulfilled under article 4(3)(b) is that the relevant commodity-based charge is *“levied for the purpose of managing under- and over-recovery”*.

The concept of “under- and over-recovery” is clearly defined under article 18 of the TAR NC which states the following:

“1. The under- or over-recovery of the transmission services revenue shall be equal to:

RA – R

Where: RA is the actually obtained revenue related to the provision of transmission services;

R is the transmission services revenue.

The values of RA and R shall be attributed to the same tariff period [...]

2. Where the difference calculated in accordance with paragraph 1 is positive, it shall indicate an over-recovery of the transmission services revenue. Where such difference is negative, it shall indicate an under-recovery of the transmission services revenue.”

The above definition leaves no room for interpretation on the fact that an under- (or over-) recovery is the difference between the transmission service revenue and the **actually obtained** revenue. This clearly means that this is an ex-post calculation based on what has been actually collected by the relevant TSO in a specific tariff period.

On the contrary, the proposal presented by National Grid aims at **artificially** creating an **ex-ante expected** under-recovery which will never materialise in practice. Specifically, in order to create this artificial and ex-ante under-recovery, it is proposed to calculate the Entry Capacity Reference Price in an abstract way, without taking into consideration the presence of Existing Contracts’ fixed tariffs (and the related revenues) when calculating the Entry Capacity Reference Price. This is clearly described on page 20 of MOD 0790 where it is stated that *it is proposed that the determination of the Transmission Services Entry Capacity Reference Price for a Gas Year (in principle, the quantity of entry revenue to be collected (£) over this period divided by the quantity of entry capacity (kWh) expected to be booked over this period) is revised as follows:*

Component	Current Method	Proposed Method
Quantity of Revenue (£)	Transmission Services Allowed Revenue at Entry <i>minus revenue from Existing Contracts</i>	Transmission Services Allowed Revenue at Entry
Quantity of Capacity (kWh)	Current Forecast Contracted Capacity (Entry) <i>minus Existing Contract capacity</i>	Proposed Forecast Contracted Capacity (Entry)

By including Existing Contracts capacity and revenues in the calculation of the capacity reserve price, NG is now proposing to do exactly what it advised against when it proposed the current methodology: “The alternative approach of inclusion of capacity already booked and revenue levels already ‘set’ via Existing Contracts in the CWD RPM effectively ‘double counts’ any capacity and revenue for the relevant Entry Points and would have the consequence of setting Reference Prices at Entry Points too low to recover the target revenue.”¹ As noted below (page 7 of this document) Ofgem also stated that it was not appropriate to include Existing Contracts in the calculation because the booked capacity and associated revenues are already known.

By including Existing Contracts, the proposed methodology identifies ex-ante that the application of the wrongly calculated Entry Capacity Reference Price generates an expected (**and not actually obtained**) under-recovery. It cannot be otherwise, as the methodology voluntarily miscalculates the Entry Capacity Reference Price in the first place. The theoretical shortfall in revenues is then recovered via the newly introduced Entry Flow Charge which is set upfront without any realistic visibility over the actually obtained revenue by the TSO. The above explanation clearly demonstrates that the proposal is not compliant with article 4(3)(b) of the TAR NC as it is not making a like-for-like comparison between the allowed transmission services revenue, and the actual revenue collected in the same period. The TAR NC allows for flow-based charges to adjust for any under- or over-recoveries associated with the discrepancies between forecasts and outcomes, as it is recognised that forecasts are rarely 100% accurate.

The above-described non-compliance issue is further exacerbated by the fact that an additional charge already exists in the UK, aimed at addressing any potential under- and over-recovery generated by the system. We refer to the Revenue Recovery Charge (implemented on 01/10/2020), which would continue to exist under the proposal presented in MOD 0790. This means that in the system envisaged by National Grid there would be two separate charges, both aimed at addressing under- and over- recoveries with the only difference that one (the Entry Flow Charge) addresses ex-ante artificially created under-recoveries and the other one (the Revenue Recovery Charge) the ex-post actually created under-recoveries. Besides not being compliant with the TAR NC, such a double charge to address the same issue would generate excessive complexity in the charging system.

Additionally, we highlight that article 17(1)a of the UK TAR NC states that “the under- or over-recovery of the transmission services revenue shall be minimised ...”. This principle means that the amendment would contravene the UK TAR NC as the principle of minimising under- or over-recovery of revenues under Article 17(1)(a) would not be respected.

¹ <https://www.gasgovernance.co.uk/sites/default/files/ggf/book/2019-03/Modification%200678%20v4.0%20%28Change%20Marked%20from%20v3.0%29.pdf> Para 3.39

We attach leading counsel's Opinion confirming our analysis of breach of the TAR NC, and also explaining why this may also be an abuse of National Grid's dominant position in breach of the Competition Act 1998. This Opinion forms part of this response.

2. National Grid failed to demonstrate the proposal is needed in order to address the stated objectives

2.1 The lack of stability and predictability of the Reference Price for Entry Capacity is not caused by Existing Contracts but by the low level of forecast accuracy that National Grid performed in relation to Forecasted Contracted Capacity for Gas Year 2020/21

National Grid (NG) identifies two key aims of the Proposal:

- Reduction of the current differential in the overall level of Transmission Services Entry Charges payable by holders of Existing Contract Capacity compared with holders of other Entry Capacity.
- Reduction in the level of year-on-year volatility in Entry Capacity Reserve Price rates.

NG justifies both of its key objectives for the Proposal in terms of 'providing a more stable and predictable Reference Price for Entry Capacity' and thereby enabling Users 'to set their own service costs more accurately (potentially with a lower risk margin), thereby enhancing effective competition.' However, NG fails to address the main driver of the Reference Price which is National Grid's Forecasting Accuracy. Put simply, the more accurately National Grid forecasts Users future bookings, and hence the revenue that NG will recover, the more stable Reference Prices will be. Forecasting Users' booking behaviour is a function of demand for natural gas in the Great Britain (GB) market, and the sources of supply for this gas. The drivers of supply and demand are well understood. NG's Proposal will not remove the uncertainties associated with supply and demand for gas in GB. Moreover, NG does not address the reasons why its FCC methodology failed to forecast capacity bookings so badly. The only reference to this key issue is as follows:

"Implementation of a new NTS Transportation Charging Methodology from 01 October 2020 was expected to impact capacity booking behaviours on the basis of the removal of zero-priced capacity. This was expected to result in capacity booking levels closer to levels of flow however, ***the unanticipated extent of the reduced capacity bookings at Entry*** in conjunction with the extent of Existing Contracts (with relatively low fixed charge rates) means that a material proportion of Allowed Revenue needs to be recovered from a relatively small proportion of Entry Capacity allocations." (Page 5). (***Emphasis added***)

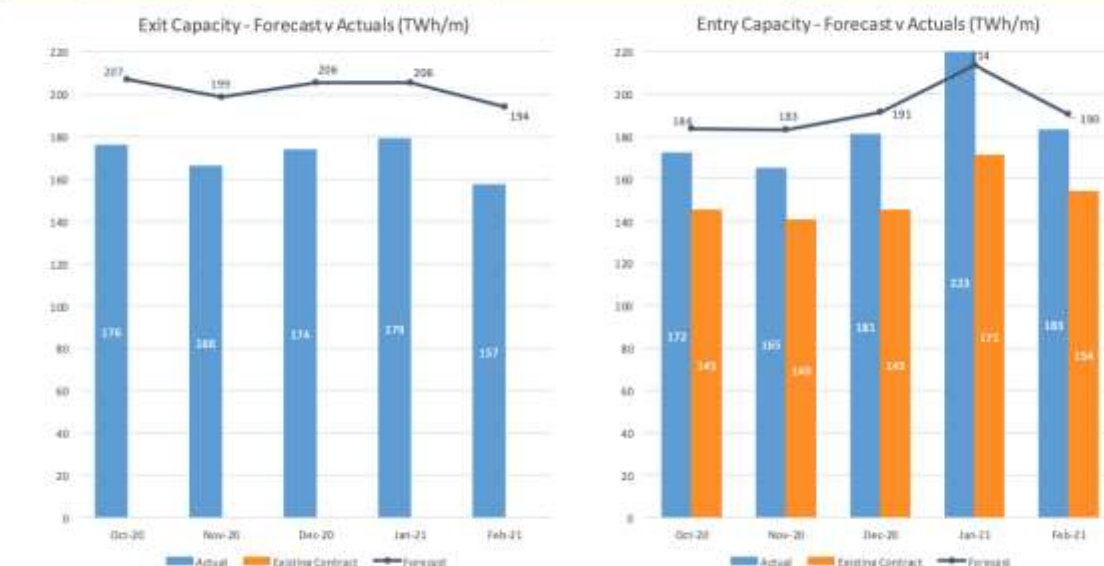
NG explains that it was the 'unanticipated extent' of reduced capacity bookings which caused the problem alongside the Existing Contracts low charge rates. However, the low charge rates of Existing Contracts were well known at the time that the current Charging Methodology was approved. (This issue is examined in more detail below). Therefore, the only material change in circumstances has been the actual level of capacity booking levels compared to the forecast. NG makes no effort to explain or examine why this occurred in the Proposal, and therefore foregoes the opportunity to propose a solution that is more appropriate to solving the underlying problem. It also does not consider if the 'unanticipated' reduction in capacity bookings is a transitory issue, for example due to COVID 19, and therefore not warranting a radical change to the Charging Methodology, or a structural issue requiring reform. If it is the latter, then a much more

detailed analysis of the problem is required. NG has not provided any such analysis in its Proposal.

NG has chosen to propose changes to the Charging Methodology which reverse changes approved and implemented in 2019 and 2020 respectively. Such sudden changes to the Charging Methodology are not conducive to a more stable and predictable Reference Price for Entry Capacity for Network Users. NG is simply failing to solve one problem, the inaccurate forecasting of capacity bookings, and in so doing is creating more uncertainty for Existing Contracts capacity holders. The sudden change in NG's position is even more egregious when considered in the context of the long development of the current regime which extended over the best part of a decade, and involved much discussion between Users, NG and Ofgem.

Separately to the Proposal NG has looked at the FCC methodology. The fact that it is the FCC methodology which is at fault is illustrated by NG's own analysis, shown in the charts below.²

Comparison between Forecast (from FCC 2020/21) to actuals Oct 20 – Feb 21



National Grid

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As can be seen the Forecast overstates the quantity of capacity bookings (black line) compared to the actuals (blue bar). It should be emphasised that the quantity of Existing Contracts capacity, and the revenue associated with it, is known and fixed in advance. Therefore, all that NG has to do to set stable reference prices for capacity is to forecast future capacity bookings reasonably accurately and divide the revenue it requires (excluding the already known revenue from Existing Contracts) by this number. The availability of actual capacity booking data for the first Gas Year 2020/21 of the New Charging Regime will provide a good basis for NGG to improve the level of its Forecasting Accuracy in relation to future FCC.

² Forecasted Contracted Capacity (FCC) Methodology Consultation Webinar on 24th March 2021. Slide 10. <https://www.nationalgrid.com/uk/gas-transmission/document/135091/download>

In addition, the task of forecasting future capacity bookings should be simpler than under the previous Charging Methodology because now most of the entry capacity is priced the same, both by location and duration. There are no longer discounts on firm entry capacity charges with the exception of storage, and the Conditional NTS Capacity Charge Discount ('short haul tariff').

As the GB system has plentiful entry capacity this makes it more likely that Users will book capacity in line with expected flows, and that they will book capacity nearer to the time when they know that they are going to flow gas. Therefore, a reasonable forecast of gas flows should enable a reasonable forecast of capacity bookings. Any variation between forecast capacity bookings and actual will be the result of variations in gas flows. As NG has noted in its Proposal: 'Using flows also provides for greater stability in the denominator as *flow forecasting by National Grid has historically been relatively accurate*, more so than capacity forecasting to actuals.'³ (*Emphasis added*). NG has used this statement to justify a move towards a flow-based charge, but it is not clear why it cannot use the same expertise to forecast capacity bookings more accurately.

In its "UNC678/A/B/C/D/E/F/G/H/I/J: Amendments to Gas Transmission Charging Regime: minded to decision and draft impact assessment"⁴ on 23rd December 2019, Ofgem highlighted the importance of the FCC in setting capacity prices and noted that there was a risk that the FCC would lead to over-forecasting of bookings and hence under-recovery of revenues. It identified that reliance on historic booking levels could make the problem worse in the context of declining gas demand and flows in the future. (Paras 4.46 and 4.47). However, it expected 'relatively small deviations between the FCC and actual bookings.' Nonetheless Ofgem said 'We would also expect amendments to the FCC methodology to be made to ensure that lessons learned from forecasting errors are quickly acted on.' (Para 4.48). NG has not made any attempt to address this issue in the Proposal despite the FCC methodology being the root cause of the changes to the Reference Price. As noted above NG has not allowed any time for the impact of the changes in the FCC methodology to be analysed prior to proposing a further change to the charging regime.

2.2 The exclusion of Existing Contracts from the calculation of the Reference Price was extensively discussed in the process that led to the adoption of the current methodology and it was supported by National Grid and Ofgem

The issues raised by NG, namely the exclusion of Existing Contracts from calculations underlying the Reference Price, and their protection from changes to capacity prices, were explicitly considered in the approval of the current regime. Indeed, it was NG's original proposal to change the charging methodology, UNC Modification Proposal 678, which created the different treatment of Existing Contracts.

Ofgem explicitly addressed the exclusion of the Existing Contracts from the reference price. 'We consider that excluding the capacity and revenue from Existing Contracts from the calculation of the reference price is more appropriate than including them. This is because the revenue to be recovered from Existing Contracts is already known and fixed at the time of the reference price calculation.' (Para 4.49). NG fails to give any reason why the logic of Ofgem's position should be overturned, other than the fact that capacity charges under the new FCC methodology were higher and more volatile than anticipated by NG. As explained above this is the fault of the forecasting, not the exclusion of the

³ <https://www.gasgovernance.co.uk/sites/default/files/ggf/book/2021-11/Modification%200790%20v1.0.pdf> Page 9.

⁴ <https://www.ofgem.gov.uk/publications/amendments-gas-transmission-charging-regime-minded-decision-and-draft-impact-assessment>

Existing Contracts from the calculations. NG already knows how much revenue it will receive from Existing Contracts, so the inclusion of such revenue in the calculation of the reference price does not increase the certainty of that reference price.

Ofgem confirmed the ‘principle based’ analysis (explained above) of the current Charging Methodology in its approval of Modification Proposal UNC 678A on 20th May 2020 (Page 5).⁵ Ofgem also said that it received no specific comments on the exclusion of Existing Contracts from the FCC methodology during the consultation process, indicating that no market participants considered this an issue.

Moreover, it is significant that NG itself, in its Modification Proposal 678 (March 2019) excluded Existing Contracts from the FCC calculation. (The difference between Modification Proposal 678, which was not approved, and the current pricing methodology in Modification 678A is the use of Postage Stamp methodology. Other aspects such as the treatment of the FCC and Existing Contracts was the same.) NG explained that: ‘The alternative approach of inclusion of capacity already booked and revenue levels already ‘set’ via Existing Contracts in the CWD RPM effectively ‘double counts’ any capacity and revenue for the relevant Entry Points and would have the consequence of setting Reference Prices at Entry Points too low to recover the target revenue. Inclusion of these elements in the CWD RPM would therefore be inconsistent, and arguably non-compliant, with Article 17 (of the EU TAR Network Code).’ (Para 3.39 *Emphasis added.*)⁶ NG does not adequately explain its reversal of position, and hence fails to justify the need to change the current methodology under Modification Proposal 790.

2.3 The existence of differentials in revenue recovery levels and capacity charges between Existing Contracts and other capacity users was already well known and analysed by National Grid, Baringa and Ofgem when the current regime was approved and implemented. The differentials have not changed materially in the meantime.

NG argues that the current methodology leads to unit charges for new Entry Capacity being ‘on average 23 times’ the unit price paid for capacity under Existing Contracts. However, this calculation is wrong on two counts. Firstly, it takes no account of the utilisation of the capacity under Existing Contracts. According to the Frontier Economics note ‘Gas Transmission charging reform: Response to comments on Frontier’s assessment of National Grid UNC modification proposal. 25th November 2021’ the actual utilisation for Existing Contracts capacity was 52% in 2020/21 (Page 2). This would mean that the effective unit cost for Existing Contracts Capacity is double the figure which NG uses as the basis for its justification for the Proposal. Even if NG’s arguments in favour of reducing the differential are justified under the UNC Relevant Objectives (which they are not – see below), the differential is much smaller than NG claims. Whilst new capacity users are able to profile their capacity bookings in line with their expected usage by booking close to the time of gas flow, this opportunity is not available to Existing Contracts capacity holders who have taken a long-term position well in advance of the gas flows. The true cost to Existing Contract holders is not therefore the unit price, but the total cost of the Existing Contracts capacity divided by the actual flows i.e. the utilisation.

This also underpins the second reason why NG’s comparison of unit prices is flawed. It takes no account of the risk that Existing Contracts capacity holders have taken on by

⁵ https://www.ofgem.gov.uk/sites/default/files/docs/2020/05/unc678_-_decision_0.pdf

⁶ <https://www.gasgovernance.co.uk/sites/default/files/ggf/book/2019-03/Modification%200678%20v4.0%20%28Change%20Marked%20from%20v3.0%29.pdf>

making a long-term booking. Existing Contracts holders have a long-term liability which they must account for on their balance sheet as they are committed to pay for the capacity irrespective of their actual usage. The Frontier Economics analysis makes great play of the risk management costs that new capacity users and NG incur because of the volatility of the capacity prices. As shown above this volatility is the fault of NG's Forecasted Contracted Capacity (FCC) methodology. But the Frontier Economics' analysis makes no reference to the costs of managing risk that Existing Contracts capacity holders face, namely the long-term liability of the Existing Contracts. The Frontier Economics analysis is therefore one-sided, and any comparison of Existing Contracts and new capacity users should also take into account risk management costs faced by Existing Contract holders as a result of taking long term positions on capacity bookings.

NG argues that 'implementation would enable a more equitable recovery of Allowed Revenue at Entry.' It attempts to justify its proposed changes on the grounds that there is significant disparity between the capacity charges that Existing Contracts pay, and the charges that other users pay under the current pricing methodology. However, the existence of any differences in capacity prices paid is not enough, on its own, to merit a change to the current methodology. As noted above the issue of Existing Contracts was clearly identified in both NG's and Ofgem's analysis of the current charging methodology. Therefore, it is necessary to see if there has been a significant change in the price differentials compared to the analysis undertaken in 2019, or if there has been a fundamental change to competition between network Users in the GB gas market that undermines the rationale for approval of the current charging methodology. NG has failed to demonstrate that either is the case and therefore fails to justify the need for the changes in Modification Proposal 790.

In its "UNC678/A/B/C/D/E/F/G/H/I/J: Amendments to Gas Transmission Charging Regime: minded to decision and draft impact assessment" on 23rd December 2019, Ofgem noted that Existing Contracts would face lower charges. Both NG Modification Proposal 678 and the approved Modification 678A treated Existing Contracts in the same way. Ofgem further noted:

'While we consider that protection of Existing Contracts may therefore lead to a 'dual regime', we also consider that this presents a transitional arrangement which provides appropriate price protection for a limited period of time. We note that the volume of Existing Contracts will reduce over time as Existing Contracts come to the end of their contractual period (see Figure 0.2). Therefore, the issues presented will be transitional.' Para. 4.71.

This has not changed, so it is not clear why a transitional issue, and one which NG supported in its own Modification Proposal 678, has now become one which warrants urgent change. As only contracts signed before 2017 can claim to be Existing Contracts, the issue will remain a transitional one.

In 2019 NG commissioned Baringa to look at the impact of price differentials between new and existing contracts.⁷ Baringa found that for 2021-22 Existing Contracts would account for 60% of Forecast Contracted Capacity using NG's methodology but only 12% of revenues.⁸ This would mean that new users would have to make up for the remaining revenues, which in turn implies tariff differentials. In other words, the existence of

⁷ [https://www.gasgovernance.co.uk/sites/default/files/ggf/book/2019-](https://www.gasgovernance.co.uk/sites/default/files/ggf/book/2019-04/Tariff%20differentials%20between%20new%20and%20existing%20contracts%20-%20Baringa%20report...pdf)

[04/Tariff%20differentials%20between%20new%20and%20existing%20contracts%20-%20Baringa%20report...pdf](https://www.gasgovernance.co.uk/sites/default/files/ggf/book/2019-04/Tariff%20differentials%20between%20new%20and%20existing%20contracts%20-%20Baringa%20report...pdf)

⁸ Ibid. Page 8.

significant tariff differentials was already known, and taken into account when the current Charging Methodology was approved and implemented based on the sound compliance with EU TAR NC and common sense that was captured by Baringa's report commissioned by NGG: "To limit regulatory risk and to provide investors with a degree of certainty that enables them to undertake significant investments, regulators generally seek to avoid retroactive changes to contracts already agreed." There has not been a significant change to the relative shares of Existing Contracts and new users. NG now states that 'the Existing Contract capacity for Gas Year 2021/22 equates to 71% of total forecast Entry Capacity quantity (kWh) to be booked however it is forecast to only collect 10% of the total Allowed Revenue (£) at Entry.'⁹ This change is driven by the 'unanticipated' reduction in actual capacity bookings compared to the FCC, not because of any change to the quantity or pricing of Existing Contracts, or their protection under the Charging Methodology. The change in outcome is also small - Existing Contracts share of revenues only declines slightly. It is therefore not clear why there needs to be a change to the current methodology as the order of magnitude of revenue recovery differentials between Existing Contracts and other users is broadly the same.

2.4 The price differential for capacity between Existing Contracts and other users does not undermine competition, as demonstrated by Baringa in 2019 and by Frontier Economics in the Impact Assessment on Modification Proposal 790

The issue of a 'dual regime' whereby Existing Users pay lower prices than other users was extensively considered by NG, Ofgem and the European Agency for Cooperation of Energy Regulators (ACER) prior to the adoption of the current pricing methodology. In particular, the analysis focused on the impact of such a 'dual regime' on competition between network users. The findings were that such a differential did not cause competition problems, and hence the current treatment of Existing Contracts was proposed and supported by NG and approved by both Ofgem and ACER. As nothing has changed, that was not considered at the time with the exception of NG's FCC methodology failure to take account of the 'unanticipated' reduction in capacity bookings by other users, NG's proposal to change the methodology cannot be justified.

Nonetheless NG attempts to argue that large price differentials for capacity between Existing Contracts and other users now does undermine competition. It is therefore worth examining the original analysis supporting such differentials, and whether this analysis is still valid.

Significant differentials in prices paid for entry capacity have existed for many years and are not a new feature of the Charging Methodology. Under the previous methodology entry capacity prices were based on a capacity charge and commodity charge. Under a policy encouraged and sustained by Ofgem over many years, there were significant discounts on the entry capacity charge, including 33% for capacity booked day-ahead and 100% for capacity booked on the day. All users had to pay the same commodity charge based on gas flowed. However, the capacity booking rules and plentiful capacity compared to gas flows meant that it was possible for many network users to profile their capacity bookings for when they needed it, and also enjoy discounted capacity costs. By contrast Existing Contracts capacity holders paid the full price for entry capacity and the commodity charge. Any 'advantage' enjoyed by Existing Contracts capacity holders must be weighed against the 'disadvantage' they faced over many years under the previous regime. This reflects a wider truth about competitive markets, namely that costs facing market participants reflect decisions taken at a certain point in time, and the competitive

⁹ <https://www.gasgovernance.co.uk/sites/default/files/ggf/book/2021-11/Modification%200790%20v1.0.pdf> Page 7.

strategy of the individual participants. It is notable that gas market participants face similar differences in costs when buying or selling gas. For example, market participants who bought gas forward in 2020 when prices were very low will currently enjoy an advantage compared to those who rely on the spot market.

The key question is whether the different capacity costs facing network users results in an advantage which is detrimental to competition. The views of NG, Ofgem and ACER were unanimous in 2019 and 2020 that it did not.

Baringa, in the analysis commissioned by National Grid in 2019, concluded that any impact of tariff differentials would be limited because of the following:

- Overbooking of capacity relative to expected demand meant that there would be a secondary market in capacity which would give Existing Contracts capacity holders an incentive to sell excess capacity to new entrants, potentially at a discount to the Existing Contracts capacity tariff.
- “[...] normal variation in the price of gas can create significant differences in wholesale cost of gas between different shippers. Also, tariff variation for new contracts is of a similar order of magnitude as the tariff variation across new and existing contracts. Both effects introduce random variation in the merit order that is likely to dominate any cost differential between new and existing contracts and limit the magnitude of the effects of the price differential between new and existing contracts on gas market dynamics.” (Page 28)
- ‘The tariff differential will fall away over time as the share of existing bookings in total flows falls and the extent of tariff under-recovery decreases. This will mean that the extent of any adverse effects on competition, consumer welfare, and broader gas market dynamics, is also set to fall over time.’ (Page 28)

All these factors continue to hold true, so it is not clear why NG no longer feels comfortable with its current methodology. Moreover, the large increase in wholesale natural gas prices mean that the impact of any capacity charge differential is likely to be even less relevant to gas market dynamics than it was at the time of the Baringa analysis.

NG has since commissioned Frontier Economics to provide an Impact Assessment on Modification Proposal 790.¹⁰ The Frontier Economics analysis supports the earlier Baringa analysis, and thereby undermines the NG case for the changes to the Charging Methodology. Specifically, it says that:

‘There could be a concern that the existence of cheap long-term booked capacity results in a distortion to gas supplies but *there are economic reasons why the presence of ECs should not result in distortions to competition* (between sources at a given Entry Point).’ (Page 10. *Emphasis added.*)

Frontier goes on to explain that there is an opportunity cost of holding Existing Contract if someone is willing to pay the Entry Capacity Price (i.e. the price paid by other capacity users). This makes the cost of using Existing Capacity the same as new capacity; whilst this may result in a windfall for Existing Capacity holders it will not drive a change in behaviour in terms of which party flows gas and supplies the GB market, and hence will not impact competition.

¹⁰ <https://www.gasgovernance.co.uk/sites/default/files/ggf/book/2021-11/NGG%20charging%20reform%20-%20impact%20assessment%20-%20final%20-%2020291121%20stc.pdf>

Although Frontier identifies two possible situations where Existing Contracts could distort competition, Frontier is not convinced of the materiality of their impact on competition. Frontier says, ‘*To the extent that such distortions exist, they will be reduced in the factual by introducing a flow-based charge.*’ (Page 13 *Emphasis added.*) Frontier further notes that ‘While distortions (to competition) are possible in practice, in our view they are unlikely to be material.’ (Page 14). This is because the costs of entry capacity charges, and the changes between the current and proposed capacity charges, are so small compared to the NBP gas price. In effect the Impact Assessment of Modification Proposal 790 commissioned by NG undermines the case for Modification Proposal 790.

The Frontier Economics analysis attempts to justify Modification Proposal 790 by arguing that ‘Charges are difficult to set accurately, principally due to the presence of Existing Contracts, and therefore there is the potential for significant under- or over-recovery which must be addressed as part of charges for future years’ and that this creates risks for market participants. This is wrong. The level of Existing Contracts revenue and capacity bookings is known and fixed for any given gas year. The level of Existing Contracts revenue only changes as contracts expire, and NG knows the expiry dates in advance. In fact, charges are difficult to set accurately because of the uncertainty surrounding users’ capacity booking behaviour, and NG’s inadequate FCC methodology, as explained above.

ACER, in its report Analysis of the Consultation Document on the Gas Transmission Tariff Structure for Great Britain (2020),¹¹ concluded that the proposed methodology ‘should not lead to undue discrimination between network users in Great Britain.’ (Page 13). NG points out that ACER also recommended ‘Ofgem to closely monitor the impact of this ‘dual regime’ in the coming years and to implement remedies if detrimental effects were such that they would significantly affect competition in a negative way.’ However, NG has failed to demonstrate that it is the dual regime which is the cause of the problem which NG seeks to fix, as opposed to the FCC methodology. In its final decision approving Modification 678A¹² Ofgem concluded that the current methodology would better facilitate ‘securing effective competition’ than the previous methodology despite the existence of the dual regime and the expected differentials in tariffs.

2.5 NG has allowed insufficient time for robust analysis, and its constant changes are undermining market confidence.

The urgent status granted to this Mod did not give enough time for a robust analysis, although the extent of the proposed changes requires a thorough impact assessment. Thus NG’s constant changes to the Charging Methodology and key components such as the FCC are themselves undermining market confidence and the ability of shippers to set their own service costs accurately. The current methodology was only introduced in October 2020. The FCC methodology was itself updated for the Gas Year 2021/2022. The new FCC methodology, which makes use of historical flows as a basis for the FCC methodology, results in a reduced forecast of Forecast Contracted Capacity,¹³ and therefore might be expected to result in a lower level of under-recovery and hence more stable capacity charges than has been experienced to date. NG has not allowed time for the impact of the changes in the FCC methodology to be considered before proposing

¹¹ https://documents.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/Agency%20report%20-%20analysis%20of%20the%20consultation%20document%20for%20Great%20Britain.pdf

¹² https://www.ofgem.gov.uk/sites/default/files/docs/2020/05/unc678_-_decision_0.pdf

¹³ Based on initial analysis shown in the Forecasted Contracted Capacity (FCC) Methodology Consultation Webinar on 24th March 2021. Slide 16. <https://www.nationalgrid.com/uk/gas-transmission/document/135091/download>

another change to the Charging Methodology. In addition, the impact of changes to short haul is expected to be important, but as there is only two months of data available so far, it is not yet possible to analyse the full impact of these changes.

2.6. The Frontier Economics distributional analysis is flawed and not a relevant criterion for approving implementation of the Proposal.

The Frontier Economics Impact Analysis involves a number of “key simplifications / conceptual assumptions.” (Slide 29), such as “full pass-through of capacity charges” (slide 33) and “if EC holders are marginal, they may still be able to price capacity at the full value of the capacity charge” (slide 34). Without a full and detailed economic study with robust assumptions and detailed modelling looking at the impact on supply and demand for the UK gas market in relation to marginal sources of gas supply and demand and the interaction with other competing markets throughout the year, we find the simplified aggregate approach taken by Frontier Economics to be flawed and the resulting (very limited) consumer benefits cannot be supported. The Frontier Economics analysis has not taken into account the potential impact on marginal imports to the UK in the form of LNG and pipeline gas from Norway. For example, Norwegian pipeline gas has the choice of flowing into the UK via pipelines such as Langeled, or of flowing to continental Europe via pipelines to Belgium, France and Germany. Norwegian gas therefore has the opportunity of arbitrage between these markets, and any tariff increase in flowing gas into the GB market will make alternative markets more attractive. The same logic applies to LNG cargoes which can land in the UK, or at terminals in northern France, Belgium, and the Netherlands. Moreover, if the impact of the new charges is to make it more attractive to export gas that enters at Bacton UKCS to either Belgium or The Netherlands via the interconnector or BBL using short haul tariffs, then less gas may flow to into the GB market with a consequent increase in wholesale gas prices that has not been considered in any analysis.

It should also be noted that the questionable distributional effects highlighted by Frontier Economics are not a valid criterion for approving the Proposal. The key criteria are:

- Transporters’ Relevant Objective (d) – “Securing of effective competition (i) between relevant shippers; (ii) between relevant suppliers”
- Transporters’ Relevant Charging Methodology Objectives (C) - “Compliance with the charging methodology facilitates effective competition between gas shippers and between gas suppliers.”

Neither the Frontier Economics analysis, nor the Proposal itself have demonstrated that the Proposal meets the above two objectives, either directly or as a result of the distributional effects. Therefore, the distributional effects are not a valid ground for approving the Proposal.

Conclusion

On the basis of the concerns expressed in this document we strongly oppose MOD 0790. The proposal cannot be implemented without a broader discussion aimed at clearly identifying the objectives of the reform and finding the proper solutions. Such a broader assessment should carefully analyse the compliance with the TAR NC and any potential changes to such Code that would need to be made before this proposal can be implemented.

IN THE MATTER OF:

THE UK TARIFF NETWORK CODE (“UK TAR NC”)

MODIFICATION UNC 0790 (Urgent)

INTRODUCTION OF A TRANSMISSION SERVICES ENTRY FLOW CHARGE

OPINION

A. INTRODUCTION AND SUMMARY OF ADVICE

1. I am asked by Eni Global Energy Markets SpA (“Eni”) whether the proposed introduction by National Grid Gas Plc (“National Grid”) of a Transmission Services Entry Flow Charge (“the Entry Flow Charge”) as set out in Modification UNC 0790 (Urgent) (“the Modification”) is compatible with the UK TAR NC¹ and whether there are any other legal issues which arise for consideration.
2. In my opinion, for the reasons set out below, if the Modification were given effect, it would more likely than not be held to be:
 - in breach of Article 4(3)(b) by calculating under-recovery on an *ex ante* basis; and
 - in breach of Article 17(1)(a) by contravening the principle against under- or over-recovery of revenue;
 - thus giving grounds for appeal under section 173 Energy Act 2004 or for a claim for judicial review; and further,

¹ The UK TAR NC is set out in Commission Regulation (EU) 2017/460 of 16 March 2017, OJ 2017 L 72/29, establishing a network code on harmonised transmission tariff structures for gas, now 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 (none of the amendments in Schedule 5 apply to the provisions cited in this Opinion). References herein to Articles are to the UK TAR NC, as amended, unless otherwise indicated.

- the Entry Flow Charge levied in accordance with the Modification may also be an abuse of a dominant position by National Grid through the imposition of an unfairly high price, contrary to section 18 of the Competition Act 1998 (“the Chapter II prohibition”), for which injunctive relief and/or damages could be available, as well as providing a ground for appeal or for judicial review.

B. ANALYSIS

UK TAR NC

3. As a starting point, it should be noted that there is no relevant jurisprudence at either EU or UK level on the interpretation of the UK TAR NC, which therefore falls to be interpreted in accordance with its terms under normal principles of construction applicable to EU derived legislation.
4. Article 4 is headed “Transmission and non-transmission services and tariffs”.
5. Article 4(3) sets out as a basic principle that “The transmission services revenue shall be recovered by capacity-based transmission tariffs.”²
6. Article 4(3) then goes on to set out exceptions to this general principle in paragraphs (a) and (b). It is a accepted principle of construction that exceptions to a general principle are to be interpreted strictly and thus not to be given a broad construction.³
7. National Grid relies upon the exception in Article 4(3)(b). This exception provides:

As an exception, subject to the approval of the national regulatory authority, a part of the transmission services revenue may be recovered only by the following commodity-based transmission tariffs which are set separately from each other:

...

² “Transmission services” is defined by Article 3(12) to mean “the regulated services that are provided by the transmission system operator within the entry-exit system for the purposes of transmission”, i.e. National Grid’s regulated services in issue here.

³ As the European Court of Justice has emphasised, “exceptions are to be interpreted strictly so that general rules are not negated”. See Case C-346/08 *Commission v United Kingdom* [2010] ECR I-03491, [39] “In accordance with settled case-law, exceptions are to be interpreted strictly so that general rules are not negated (see, to this effect, Case C-476/01 *Kapper* [2004] ECR I-5205, paragraph 72).” See, by way of recent illustration in relation to exceptions to the general principle of public access to documents, judgments of 18 December 2007, *Sweden v Commission*, C-64/05 P, EU:C:2007:802, [66], and of 21 July 2011, *Sweden v MyTravel and Commission*, C-506/08 P, EU:C:2011:496, [75].

(b) a complementary revenue recovery charge, which shall comply with all of the following criteria:

- (i) levied for the purpose of managing revenue under- and over-recovery;
- (ii) calculated on the basis of forecasted or historical capacity allocations and flows, or both;
- (iii) applied at points other than interconnection points;
- (iv) applied after the national regulatory authority has made an assessment of its cost-reflectivity and its impact on cross-subsidisation between interconnection points and points other than interconnection points.

8. Chapter IV of the UK TAR NC is headed “Reconciliation of revenue”. Article 17(1) provides that:

Where and to the extent that the transmission operator functions under a non-price cap regime, the following principles shall apply:

- (a) the under- or over-recovery of the transmission services revenue shall be minimised having due regard to necessary investments ...

9. There is therefore a principle under the UK TAR NC against under- or over-recovery of revenue.

10. Revenue under- and over- recovery is defined in Article 18:

1. The under- or over-recovery of the transmission services revenue shall be equal to:

$$R_A - R$$

Where:

R_A is the actually obtained revenue related to the provision of transmission services;

R is the transmission services revenue. The values of R_A and R shall be attributed to the same tariff period and,

where an effective inter-transmission system operator compensation mechanism referred to in Article 10(3) is established, shall take such mechanism into account.

2. Where the difference calculated in accordance with paragraph 1 is positive, it shall indicate an over-recovery of the transmission services revenue. Where such difference is negative, it shall indicate an under-recovery of the transmission services revenue.

11. Article 18 specifically refers to R_A as being “the actually obtained revenue”. This means that it is revenue calculated on an *ex post facto* basis.

12. Article 4(3)(b) thus enables and requires flow-based charges to be adjusted on an *ex post facto* basis for any under- or over-recoveries arising from discrepancies between forecasts and outcomes, to allow for the fact that forecasts are rarely completely borne

out in practice. It is clear from the wording of Article 4(3)(b) – “which shall comply with all of the following criteria” – that the *ex post facto* basis is a mandatory requirement which cannot be disregarded.

13. However, this is not what National Grid has proposed in the Modification. National Grid’s Modification instead proposes calculating under-recovery on an *ex ante* basis. In my opinion, this is in breach of the UK TAR NC,
14. The proposal presented by National Grid aims at artificially creating an *ex ante* expected under-recovery which will never materialise in practice. Specifically, in order to create this artificial *ex ante* under-recovery, National Grid proposes to calculate the Entry Capacity Reference Price in an abstract way, without taking into consideration the presence of Existing Contracts’ fixed tariffs (and the related revenues) when calculating the Entry Capacity Reference Price.⁴
15. This is set out in the Modification at page 20 under the heading “Transmission Services Entry Capacity Reference Price”

It is proposed that the determination of the Transmission Services Entry Capacity Reference Price for a Gas Year (in principle, the quantity of entry revenue to be collected (£) over this period divided by the quantity of entry capacity (kWh) expected to be booked over this period) is revised as follows:

Component	Current Method	Proposed Method
Quantity of Revenue (£)	Transmission Services Allowed Revenue at Entry <i>minus revenue from Existing Contracts</i>	Transmission Services Allowed Revenue at Entry
Quantity of Capacity (kWh)	Current Forecast Contracted Capacity (Entry) <i>minus Existing Contract capacity</i>	Proposed Forecast Contracted Capacity (Entry)

16. National Grid is therefore proposing to include Existing Contracts’ capacity and revenues in the calculation of the capacity reserve price. This is what it advised against doing when it proposed the current methodology.
17. It stated in UNC 0678: Amendments to Gas Transmission Charging Regime at ¶3.39:

The alternative approach of inclusion of capacity already booked and revenue levels already ‘set’ via Existing Contracts in the CWD RPM effectively ‘double counts’ any capacity and revenue for the relevant Entry Points and would have the consequence of setting Reference Prices at Entry Points too low to recover

⁴ Existing Contracts are defined by Article 35, broadly, as those concluded before 6th April 2017.

the target revenue. Inclusion of these elements in the CWD RPM would therefore be inconsistent, and arguably non-compliant, with Article 17.⁵

18. Ofgem has also stated that:

We consider that excluding the capacity and revenue from Existing Contracts from the calculation of the reference price is more appropriate than including them. This is because the revenue to be recovered from Existing Contracts is already known and fixed at the time of the reference price calculation.⁶

19. National Grid's current proposal in the Modification is therefore, on its own analysis, arguably non-compliant with Article 17.
20. Indeed, I would go further. In my opinion, if the Modification were given effect, it would more likely than not to be held to be in breach of the UK TAR NC by:
- (i) calculating under-recovery on an *ex ante* basis in breach of Article 4(3)(b); and
 - (ii) contravening the principle against under- or over-recovery of revenue under Article 17(1)(a).
21. Breach of the UK TAR NC in these ways would be a ground for appeal under section 173 Energy Act 2004 or for a claim for judicial review.

Chapter II prohibition under the Competition Act 1998

22. Recital 10 of the UK TAR NC makes it clear that:

This Regulation should be without prejudice to application of Union and national competition rules, in particular the prohibitions of restrictive agreements (Article 101 of the Treaty on the Functioning of the European Union) and of abuse of a dominant position (Article 102 of the Treaty on the Functioning of the European Union). The harmonised transmission tariff structures put in place should be designed in such a way as to avoid foreclosure of downstream supply markets.

23. The UK national competition rules equivalent to Articles 101 and 102 TFEU are set out in the Competition Act 1998. In particular, the prohibition of abuse of dominance

⁵ Version 4.0, 21st March 2021.:

<https://www.gasgovernance.co.uk/sites/default/files/ggf/book/2019-03/Modification%200678%20v4.0%20%28Change%20Marked%20from%20v3.0%29.pdf>

⁶ UNC678/A/B/C/D/E/F/G/H/I/J: Amendments to Gas Transmission Charging Regime: minded to decision and draft impact assessment, 23rd December 2019, ¶4.49.

<https://www.ofgem.gov.uk/publications/amendments-gas-transmission-charging-regime-minded-decision-and-draft-impact-assessment>

in the UK or any part of the UK is imposed by the Chapter II prohibition under section 18 of the 1998 Act.

24. Section 18 provides:

(1) ... any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market is prohibited if it may affect trade within the United Kingdom.

(2) Conduct may, in particular, constitute such an abuse if it consists in —

(a) directly, or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

(b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.

(3) In this section —

“dominant position” means a dominant position within the United Kingdom; and

“the United Kingdom” means the United Kingdom or any part of it.

(4) The prohibition imposed by subsection (1) is referred to in this Act as “the Chapter II prohibition”.

25. National Grid states that it “runs a natural near-monopoly of the British high-pressure transmission pipeline network”.⁷ The European Commission has consistently considered each gas transmission network to constitute a separate relevant product market.⁸ It therefore follows that National Grid is in a dominant position in the UK for the purposes of the Chapter II prohibition.

26. Non-exhaustive categories of abuse are set out in section 18(2). These include in section 18(2)(a) directly or indirectly imposing unfair purchase prices or other unfair trading conditions.

⁷ National Grid, End-to-end balancing guide, November 2017, page 5.

<https://www.nationalgrid.com/sites/default/files/documents/End%20to%20End%20Balancing%20Guide.pdf>

⁸ European Commission decision AT.40335 *Romanian Gas Interconnectors* [2021] 4 CMLR 11, [15]-[17]. Post-Brexit, European Commission decisions are still a relevant source of interpretative authority under the Chapter II prohibition pursuant to section 60A of the 1998 Act.

27. It is plainly arguable that creating an *ex ante* expected under-recovery which will never materialise in practice, and which will have the result of pushing prices higher, is the abuse of directly or indirectly imposing an unfairly high purchase price.
28. In the leading case on the abuse of unfair pricing, *United Brands*, the European Court of Justice held that the question was:
- “whether the difference between the costs actually incurred and the price actually charged is excessive, and, if the answer to this question is in the affirmative, whether a price has been imposed which is either unfair in itself or when compared to competing products.”⁹
29. This is arguably the case here because National Grid proposes creating an *ex ante* under-recovery which will never materialise in practice, which must lead to a price which is excessive as it does not reflect costs actually incurred. This in turn could be said to be unfair in itself, as demonstrated by the fact that National Grid had previously argued against such an approach. And there is no need to consider other competing products, as there are none because National Grid has a natural near-monopoly,
30. I would also place reliance on *Der Grüne Punkt – Duales System Deutschland* (“*DSD*”)¹⁰ in establishing this head of abuse. The facts of *DSD* were as follows. DSD imposed contractual restrictions within a trade mark agreement (requiring application of the Green Dot recycling mark to all packaging used by the customer regardless of whether the customer actually used DSD for recycling) that led to customers being forced to pay for services they did not use.¹¹ The price was “clearly disproportionate” to the costs of providing the service given that part of the service was simply not being used.¹² There was no way for customers to avoid paying the higher price since it was not economically viable for customers to engage in selective labelling of their packaging with a view to part of their packaging requirements falling outside the DSD recycling service.¹³ DSD therefore forced customers through unfair contractual terms to pay for unused services.

⁹ Case 27/76 *United Brands* EU:C:1978:22, [252].

¹⁰ Commission Decision 2001/463/EC of 20 April 2001 relating to a proceeding pursuant to Article 82 [EC] (Case COMP D3/34493 – DSD), OJ 2001 L 166/1. Upheld on appeal in Case T-151/01, EU:T: and Case C-385/07 P, EU:C:2009:456.

¹¹ Commission Decision, recitals 102 and 111; Case T-151/01 [48] and [119].

¹² Commission Decision, recital 111; Case T-151/01 [48], [119] and [121].

¹³ Commission Decision recitals 102-108; Case T-151/01, [48].

31. In addition to a finding of unfair prices, the contractual terms in DSD constituted unfair trading terms on the basis they were disproportionate in the sense that DSD had “no reasonable interest” in linking the price charged not to the extent to which the service was actually used by customers but rather to the extent to which customers applied the Green Dot on their packaging for recycling.¹⁴
32. In *DSD*, it was thus held abusive to charge customers for a service they did not use and abusive to impose trading terms that in effect forced customers to pay for the unused services. The abusive price was linked to the abusive trading terms.
33. More recently, in *Preventx v Royal Mail*¹⁵, on an application for an interim injunction, the High Court held that the introduction by the Post Office of a requirement that for prepaid returns of medical testing kits, its Tracked service must be used instead of its cheaper Freepost Standard service, although Preventx had no requirement for a tracked service, was arguably an exploitative abuse of dominance. As with *DSD*, the abuse lay in charging more than was necessary and was sufficiently arguable to justify interim injunctive relief.
34. Finally, in this regard, I also note that the UK’s Competition Appeal Tribunal has recently certified two collective proceedings orders brought on behalf of consumers (rail users in southern England) alleging abuse of dominance by train operators through double-charging for certain rail fares. The Tribunal rejected the proposed defendants’ application to strike out as unsustainable in law the claims of abuse.¹⁶ In particular, the Tribunal placed reliance on the *DSD* infringement decision.
35. Certification thus means that the allegations of abuse through unfair pricing in both claims are fit to proceed to trial.
36. The *DSD* infringement decision appears to me to be analogous to the present case where the issue is artificially creating an *ex ante* expected under-recovery which will never materialise in practice. Therefore, Eni (and other shippers in the same position) would be required to pay the Entry Flow Charge for which there is no justification in fact.

¹⁴ Commission Decision, recital 112.

¹⁵ [2020] EWHC 2276 (Ch), Roth J.

¹⁶ *Gutmann v South West Trains/London and South Eastern Railway* [2021] CAT 31, [51]-[75].

37. As well as providing a further ground for appeal or for judicial review, in addition to the Articles 4(3)(b) and 17(1)(a) issues, this would also provide a ground for Eni to seek injunctive relief against Ofgem and National Grid and/or damages against National Grid to recover over-payment, consequential losses and interest.

AIDAN ROBERTSON QC

3rd December 2021

Brick Court Chambers

7-8 Essex Street

London WC2R 3LD

Representation - Modification UNC 0790 (Urgent)

Introduction of a Transmission Services Entry Flow Charge

Responses invited by: 5pm on 06 December 2021

To: enquiries@gasgovernance.co.uk

Please note submission of your representation confirms your consent for publication/circulation.

Representative:	Julie Cox
Organisation:	Energy UK
Date of Representation:	6 December 2021
Support or oppose implementation?	Oppose
Relevant Objective:	<p>d) None</p> <p>g) Negative</p>
Relevant Charging Methodology Objective:	<p>aa) None</p> <p>c) None</p> <p>e) Negative</p>

Reason for support/opposition: Please summarise (in one paragraph) the key reason(s)

Energy UK does not support this proposal, as it does not seem to be compliant with TAR NC which now sits within EU retained law. We have therefore assessed it as negative for relevant objective (g) and charging objective 9(e).

An approach very similar to this was raised in charging workgroups and in modifications in the past, where the volume and revenue associated with existing contracts was retained in the calculation of reference prices and a revenue recovery charge applied to all capacity to recover the 'missing money' from existing contract prices being lower than new capacity prices.

This approach was rejected and it seems that this proposal faces similar challenges with compliance as below, because it:

- Fails to set capacity based transmission charges to recover allowed revenue (Art 4.3)
- Applies a commodity charge not as an exception but on an ongoing basis (Art 4.3)

- Applies only at non-interconnection points which will inevitably increase any cross subsidy between non-interconnection and interconnection points (Art 4.3 (b) iv)) – notwithstanding Ofgem is required to assess this.
- Fails to set transmission tariffs that ensure transmission services revenue is recovered in a timely manner (Art 17.1 (b))
- Applies a commodity charge to existing contracts which is not allowed (Art 35.1)

Energy UK has not assessed whether other relevant objectives are furthered since historically if a proposal is not compliant it cannot be implemented and any further assessment is not necessary.

If the proposal is deemed to be compliant then it would seem that a more relaxed approach to compliance is being adopted post Brexit, even though the TAR NC framework is now part of UK law. If this is the case then this needs to be explained more explicitly as there may be other aspects of EU code compliance that could be re-visited that may be of benefit to the GB gas market. Some clarity on this would be appropriate otherwise having to fully develop UNC modifications does not seem to be an efficient way of managing market enhancements and testing compliance.

Implementation: *What lead-time do you wish to see prior to implementation and why?*

Energy UK does not support implementation.

However, if Ofgem wishes to consider approving this proposal we consider an impact assessment will be necessary due to the material nature of the change. An implementation timescale beyond the normal 1 or 2 months' notice of changes to charge should be considered due to the impact on how charges are included in customer tariffs.

Impacts and Costs: *What analysis, development and ongoing costs would you face?*

As a trade association none

Legal Text: *Are you satisfied that the legal text will deliver the intent of the Solution?*

Legal text has not been reviewed

Are there any errors or omissions in the Modification that you think should be taken into account? *Include details of any impacts/costs to your organisation that are directly related to this.*

Insert Text Here

Please provide below any additional analysis or information to support your representation

Energy UK does not agree that this proposal warranted urgent status, it has effectively bypassed governance processes by holding informal workshops (which are not minuted) and then raised as urgent when timescales are becoming tight for implementation for the

start of the next gas year. We hope this abuse of process is not repeated. As a point of principle we think that only on very rare occasions should charging related modifications be urgent, as by their very nature they will have diverse commercial impacts on market participants, which need detailed assessment to properly understand those impacts and avoid the risk of unintended consequences.

Finally, we note that the ROM response¹ suggests that implementation of this proposal may need to be prioritised and that a shorter than 3 month mobilisation timescale may be possible. We would like to better understand these issues and whether there would be any risk to the agreed delivery of UNC modifications that have already been approved. We request that the NTS CMF and Transmission WG is kept fully informed, should the modification be approved.

¹<https://www.gasgovernance.co.uk/sites/default/files/ggf/book/202111/XRN5425%20ROM%20Response%20V2.0.pdf>

Representation - Modification UNC 0790 (Urgent)

Introduction of a Transmission Services Entry Flow Charge

Responses invited by: 5pm on 06 December 2021

To: enquiries@gasgovernance.co.uk

Please note submission of your representation confirms your consent for publication/circulation.

Representative:	Terry Burke
Organisation:	Equinor
Date of Representation:	6 th December 2021
Support or oppose implementation?	Oppose
Relevant Objective:	d) Negative
Relevant Charging Methodology Objective:	aa) Negative c) Negative

Reason for support/opposition: Please summarise (in one paragraph) the key reason(s)

Equinor opposes this modification for the following reasons:

- Equinor believes this proposal is not compliant with UK Tariff Network Code in the following areas:
 - The modification is not compliant with Article 4.3(b). This article states that a commodity charge should be levied for the purpose of managing under- and over-recovery. This modification would create an artificial under recovery which is then recovered by a new charge levied across all entry users.
 - The modification is not compliant with (Article 4.3) as it fails to set capacity-based transmission charges to recover allowed revenues but instead would apply as a commodity charge on an ongoing basis out to 2032.
 - The modification is not compliant with (Article 17.1 (b) as it fails to ensure transmission services revenues are recovered in a timely manner which suggests this charge could vary widely from year to year in the future.

- The modification is not compliant with (Article 35.1) as it applies a commodity charge to existing contracts. This has been the subject of extensive discussion over several years and there is a strong consensus across the industry that this is not permitted. This was also supported by Ofgem in its approval letter for 678A.
- The lack of stability and predictability of the Reference Price for Entry Capacity is not caused by Existing Contracts but by National Grid's Forecasted Contracted Capacity methodology (FCC).
 - During the 678 Modification process it was brought up on several occasions that the FCC calculation needed to be reviewed. Unfortunately, due to the compressed timetable of the workgroups this did not happen. The methodology has now been changed but we do not feel enough time has adequately elapsed to measure the impact of the changes on bookings and revenues. This could produce unforeseen consequences in setting tariffs during future years.

Implementation: *What lead-time do you wish to see prior to implementation and why?*

Equinor does not support implementation of this modification.

Impacts and Costs: *What analysis, development and ongoing costs would you face?*

Equinor cannot answer this question accurately due to the indicative nature of the information provided so far on the cost of future tariffs and the proposed charge.

Legal Text: *Are you satisfied that the legal text will deliver the intent of the Solution?*

Equinor does not support implementation of the modification.

Are there any errors or omissions in the Modification that you think should be taken into account? *Include details of any impacts/costs to your organisation that are directly related to this.*

Equinor has outlined our concerns within our response.

Please provide below any additional analysis or information to support your representation

Equinor disagrees that this proposal should have been awarded urgent status. While we welcome the informal workshops, which were run by National Grid, we are concerned a precedent has been set for future "urgent modifications" and Joint Office should have been formally asked to run the meetings as is currently the case within the UNC. The workshops were not minuted and the modification has bypassed existing governance processes which should not be the case for any modification relating to charging. Going forward Equinor would like to say that charging related modifications should only be granted urgency in extreme circumstances to ensure they go through the appropriate

governance processes and that all parties are given the appropriate time to properly understand the impacts. This will also help avoid the risk of unintended consequences.

Equinor also notes in its urgency decision letter that Ofgem makes the following comment “However, stakeholders should be aware that were modification UNC790 to be approved, implementation in October 2022 may not be possible given the significance of the proposed changes and the need to carry out robust analysis for this modification.”. This would appear to be contradictory in granting urgency in the first place and while we welcome Ofgem taking further analysis in their decision-making process we would also request this also applies in the form of a legal compliance assessment against the concerns raised in our response and in other parties’ responses.

Representation - Modification UNC 0790 (Urgent)

Introduction of a Transmission Services Entry Flow Charge

Responses invited by: 5pm on 06 December 2021

To: enquiries@gasgovernance.co.uk

Please note submission of your representation confirms your consent for publication/circulation.

Representative:	Pavanjit Dhesi
Organisation:	Interconnector Limited
Date of Representation:	06 December 2021
Support or oppose implementation?	Support
Relevant Objective:	d) Positive
Relevant Charging Methodology Objective:	aa) Positive c) Positive

Reason for support/opposition: Please summarise (in one paragraph) the key reason(s)

The problems with the current GB NTS charging regime are well recognised by stakeholders. New bookings pay 23 times the price that holders of existing legacy contracts pay which distorts competition and is not sustainable. This modification helps tackle the distortion to competition created by this dual regime. Effective competition between the users of different NTS entry points will be furthered as it increases the contribution of existing contracts to allowed revenue whilst also reducing the price paid by new bookings.

Implementation: *What lead-time do you wish to see prior to implementation and why?*

In order to provide the market with certainty about GB charges in 2022/23, a timely decision by Ofgem would be appreciated. We understand a decision would be needed by May 2022 in order to be reflected in the charges that National Grid Gas (NGG) publish for the October 2022 gas year.

Impacts and Costs: *What analysis, development and ongoing costs would you face?*

-

Legal Text: *Are you satisfied that the legal text will deliver the intent of the Solution?*

Yes

Are there any errors or omissions in the Modification that you think should be taken into account? *Include details of any impacts/costs to your organisation that are directly related to this.*

No

Please provide below any additional analysis or information to support your representation

This modification helps tackle the distortion to competition created by the dual regime. Effective competition between the users of different NTS entry points will be furthered as it increases the contribution of existing contracts to allowed revenue whilst also reducing the price paid by new bookings. The current situation of new bookings being 23 times the cost of existing legacy entry bookings is not sustainable and impacts entry points like the Bacton IP with relatively few legacy contracts remaining. We also note that the accompanying analysis by Frontier Economics estimates a significant benefit for consumers from this modification, estimated to be £174 – £382m to 2031/32.

We therefore agree with the proposer that this modification furthers Relevant objective d) and Relevant Charging Methodology Objectives (aa) and (C), by improving effective competition. The changes should also improve stability/predictability of the capacity charges.

It is important to continue respecting legacy contracts in order to provide confidence to the market when considering long term commitments. This modification appears consistent with this principle as legacy capacity holders continue to pay the same capacity charges whilst returning to paying a TO entry commodity charge, a flow based charge familiar to the market when those legacy contracts were acquired.

Whilst this modification narrows the dual regime gap, a sizable difference persists. More therefore needs to be done to tackle the distortion to competition. We continue to believe that there should be a review of the 50/50 Entry/Exit split. Interconnector and BBL Company has previously presented to Industry the results of a study by CEPA consultants¹. This study demonstrated that lowering the allocation of revenue to be collected at entry points relative to exit points will have a positive impact of wholesale prices and result in benefits of over £100m p.a. for GB consumers. Whilst we note NGG have previously committed to undertaking a review in the medium term, we strongly advocate that this review should be expediated.

¹ The benefits of a change to the Entry/Exit split (allocating a lower % of allowed revenue collection from Entry) was demonstrated in a study by CEPA https://www.cepa.co.uk/news-insights/view/IUK_BBL_Consideration_of_adjustments_to_the_NTS_Charging_Regime

Representation - Modification UNC 0790 (Urgent)

Introduction of a Transmission Services Entry Flow Charge

Responses invited by: 5pm on 06 December 2021

To: enquiries@gasgovernance.co.uk

Please note submission of your representation confirms your consent for publication/circulation.

Representative:	Colin Williams
Organisation:	National Grid NTS
Date of Representation:	01 December 2021
Support or oppose implementation?	Support
Relevant Objective:	d) Positive
Relevant Charging Methodology Objective:	aa) Positive c) Positive

Reason for support/opposition: Please summarise (in one paragraph) the key reason(s)

We see benefits of this proposal on competition grounds and linked to this, it can ultimately benefit end consumers by reducing the overall pricing disparity Users pay for Transmission Services Entry charges.

One of the challenges faced under the current regime is the price payable for Transmission Services Entry Capacity given the availability and use of Existing Contracts. The use of these at the expense of new capacity is high, greater than forecasted ahead of October 2020, when the updated postalised regime was implemented. Existing Contracts have fixed capacity charges from when they were allocated.

Their influence has been visible through the high Transmission Services Entry Capacity reserve prices across Gas Years 2020 and 2021, prompting National Grid to take remediating measures to defer £45m¹ of Entry revenue to reduce some of this impact and lower the level of the Entry Reserve Prices from what they would have been. We recognise that change was needed to manage this to some levels for the benefit of Users and Consumers.

This prompted National Grid to issue its open letter² in May 2021 that highlighted a number of issues notable a need to address the pricing differential on Transmission

¹ <https://www.nationalgrid.com/uk/gas-transmission/document/135731/download>

² <https://www.nationalgrid.com/uk/gas-transmission/document/135746/download>

Services Entry charges between access and use of Existing Contracts and that of new capacity (i.e. capacity bought on or after 6 April 2017).

There are two key positive changes this proposal delivers on against the noted relevant objectives, related to competition:

- Adjusting the reference / reserve price calculation to make the reference prices more stable, less susceptible to large changes due to small changes in capacity or revenue inputs in the Entry reference/reserve price calculations. This results in Transmission Services prices that will be lower than they would otherwise be in the current methodology, especially while levels of Existing Contracts remain high;
- Introducing a new Transmission Services Entry Flow Based charge that will only exist whilst Existing Contracts are also present. The charge will reduce in line with the levels of Existing Contracts and will be zero when there are no Existing Contracts remaining. The Entry flow based charge, noting the exemptions for Interconnection Points and Storage, produces a charge that is more equitable across Entry Users and applies across all flows providing a larger base than that used for the purposes of setting Transmission Services Entry Reference / Reserve Prices. Like the adjustments to the calculation of Transmission Services Entry reference prices, the method of calculating this is less susceptible to large changes when there are small changes to calculation inputs than if the additional charge were capacity based, for example.

On the grounds of competition we believe this furthers Relevant Objective d and Charging Relevant Objectives aa and c:

We believe that existing arrangements which effectively target the recovery of most of the Transmission Services Revenues on holders of new Entry Capacity is not appropriate. This is largely driven by the impact of the levels of Existing Contracts and their use at the expense of new Entry Capacity. The Transmission Services Entry revenue shortfall borne by new capacity (created by the pricing of Existing Contract (EC) Capacity being fixed) is not appropriate and has been shown to be greater than anticipated post implementation of new arrangements from 01 October 2020.

In our view, this is detrimental to competition between Users, notably between those with or access to Existing Contracts and those without. The impact of this proposal:

- Reduces the price disparity for Capacity prices. This is achieved by changing the denominator on the reference price calculation linked to the impact Existing Contracts would have.
- Reduces the reference price from what it would be without this change (i.e. Under the current method) and has the additional benefit of not being as susceptible to large changes due to small changes in capacity or revenues.
- Reduce the overall transportation charging rates that could be ultimately passed on to consumers.

Even with Users that may hold a mix of these, the impact overall is that any 'new' capacity currently bears the brunt of Transmission Services Entry revenue recovery.

The Modification proposes a more equitable approach to socialise such costs across all gas flowed at Entry Points (save for the noted exemptions to Storage and Interconnection Points and providing for the relevant discount to Entry Eligible Quantities). The extension of the conditional capacity discount to eligible quantities maintains the integrity of the inefficient bypass product keeping any discount on flow based charges linked to any actual discount applied to eligible quantities. Overall, this we believe will positively increase the competition between Users of the network.

On the Price Differential between Existing Contracts and Non-Existing Contracts we believe these changes further Relevant Objective d and Charging Relevant Objectives aa and c:

The price protection afforded to Existing Contract Capacity results in a significant price differential between the unit cost of Existing Contract Capacity and new Entry Capacity, with Users allocated the latter paying on average 23 times the unit price paid for the equivalent product under an Existing Contract as demonstrated within the Modification.

A flow-based charge distributed across all flows (save for the noted exemptions to Storage and Interconnection Points and providing for the relevant discount to Entry Eligible Quantities) has the benefit of being applied over a larger base. The charge is paid by all flows whether they are Existing Contract Capacity or other Entry Capacity booked.

The Modification is expected reduce the material differentiation in Users' Transportation Charges for the equivalent Transportation service which is apparent under the current arrangements. The Proposal is seeking to reduce the differential in question (representing an improvement when compared to the current arrangements) but does not seek to or fully eradicate this differential.

Volatility and sensitivity from Year on Year:

We believe these changes on introducing the Charging Relevant Objective aa

A flow-based charge distributed across all flows (save for the noted exemptions to Storage and Interconnection Points and providing for the relevant discount to Entry Eligible Quantities) has the benefit of being applied over a larger base. This helps with the stability of any such charge given any movement in the numerator (i.e. flows) is spread across a larger base than any prevailing capacity charge would be applicable to.

Using flows also provides for greater stability in the denominator as flow forecasting by National Grid has historically been relatively accurate, more so than capacity forecasting to actuals. This would also have the benefit of a reduction in the level of year-on-year volatility in Entry Capacity Reserve Price rates.

If implemented this Modification is expected to provide a more stable and predictable Reference Price for Entry Capacity leading to Users having a greater level of confidence in their forecasts of prospective use of network costs and therefore set their own service costs more accurately (potentially with a lower risk margin), thereby enhancing effective competition.

Implementation: *What lead-time do you wish to see prior to implementation and why?*

As set out in the Proposal, implementation should take effect in time to be reflected in the Transportation Charges which will apply from 01 October 2022 or the next 01 October following the Authority direction to implement.

Impacts and Costs: *What analysis, development and ongoing costs would you face?*

The ROM estimate provided by Xoserve indicates that an enduring solution will cost at least £210,000 but probably not more than £280,000.

This change would need to be prioritised through the DSC Change Management Committee alongside other changes within Xoserve's planned Gemini programme. The high-level estimate to develop and deliver this change is approximately 14 to 21 weeks for Analysis through to Post Implementation Support.

Please note a lead time of 3 months for startup/sanction/mobilisation should be considered though there is the potential for this to be shortened subject to the delivery mechanism and availability of resources.

Legal Text: *Are you satisfied that the legal text will deliver the intent of the Solution?*

We are satisfied that the legal text delivers the intent of the solution identified in this Proposal.

Are there any errors or omissions in the Modification that you think should be taken into account? *Include details of any impacts/costs to your organisation that are directly related to this.*

We have not identified any such error or omissions.

Please provide below any additional analysis or information to support your representation

We note that Frontier Economics produced a further assessment of the potential impacts of this modification to introduce a Transmission Services Entry Flow Based charge. This was updated following feedback on the initial version and the updated note and material we believe provides clarity on the assessment and its application for Stakeholders to comment on both now and as part of any further assessment from Ofgem.

This assessment goes beyond the typical level of assessment performed at this stage in the modification process. The purpose to this assessment is to provide more views on the potential impacts beyond those typically presented. Its aim is to consider broader market assessments can help inform representations at this stage and support, as much as possible, any assessment Ofgem may carry out on the back of this modification proposal prior to any decision.

Whilst there is substantial detail in the assessment, we support the aggregation taken in the assessments when considering the overall impact. This ensures a level that cannot reasonably account for Shipper specific decision making which will produce some

variances against the assessment that can be brought out in any response to a broader impact assessment.

To comment on one aspect related to consumer impact, we feel that whilst there is a likely range when it comes to consumer benefits (taking into account that some shipper behaviours may be different to those assumed but not reasonable to assess when considering broader, aggregated impacts) there are a few points that is worth taking account of:

- We believe competition will benefit from this change that, when looking at the Transmission Services Entry Reserve Prices compared to Existing Contracts and when brining in the new Entry flow-based charge. This reduces, not removes, price disparity that is significant in the current regime and its reduction should better facilitate competition by providing a more level playing field than now.
- Whilst it is reasonable to consider a range for consumer benefits, we believe there is a consumer benefit from these change proposals. Consumer benefit will not be negatively impacted and should deliver a benefit in overall lower, more stable total prices for Entry Transportation charges than they would be without this change.

Representation - Modification UNC 0790 (Urgent)

Introduction of a Transmission Services Entry Flow Charge

Responses invited by: 5pm on 06 December 2021

To: enquiries@gasgovernance.co.uk

Please note submission of your representation confirms your consent for publication/circulation.

Representative:	Will Webster
Organisation:	OGUK
Date of Representation:	6 December 2021
Support or oppose implementation?	Comments
Relevant Objective:	
Relevant Charging Methodology Objective:	

Reason for support/opposition: Please summarise (in one paragraph) the key reason(s)

The proposed modification represents a fundamental change to the approach taken by Ofgem and the industry in the gas charging review. This process ran over several years and to unwind a key element of those changes (i.e. a partial reinstatement of the commodity charge) via an urgent code modification seems questionable. Evolution in the charging arrangements is expected. However, the current trend of implementing changes via urgent processes does not give sufficient time for robust analysis and discussion and creates instability and additional risk for businesses.

That being said, the size of the emerging disparities between charges for existing contracts versus other bookings, although not totally unexpected, is something that does need to be dealt with. This is particularly relevant to the need to encourage continued investment in gas production in UKCS. This is required to ensure a diverse range of gas resources is available, and as a basis for development of hydrogen for energy supply. It is therefore important that new gas resources do not bear a disproportionately large proportion of National Grid's costs.

Implementation: *What lead-time do you wish to see prior to implementation and why?*

The urgent process leaves limited time for analysis or reflection, especially given that the recent modifications to address the short haul tariffs (0727) and the Removal of Entry Capacity Revenue from Capacity Neutrality Arrangements (0748) were only recently implemented.

Even with the urgent process it is doubtful that the changes can be completed in time for a tariff announcement in May 2022 and implementation in October 2022. OGUK members would prefer not to have changes to tariffs during the gas year as this, as explained on numerous occasions, creates uncertainties in pricing contracts in wholesale and retail markets.

Impacts and Costs: *What analysis, development and ongoing costs would you face?*

The analysis supplied by Frontier is less than convincing, especially when read alongside the impact assessment by Baringa for 0621\0678 which came to the opposite conclusion in that it was considered less likely that capacity-based charges could be passed through into the wholesale price. Baringa's analysis also more accurately took into account the fact that capacity can be transferred between shippers so that cheaper existing contracts would be used first.

Price formation in wholesale gas markets is, in any case, not a simple merit curve, cost-plus model. Most gas is traded in forward markets on the basis of expectations of conditions in the wider global energy markets. Either way, the impact of transmission charges on either wholesale prices or consumers' bills is likely to be negligible.

Legal Text: *Are you satisfied that the legal text will deliver the intent of the Solution?*

The proposed change raises a number of legal questions regarding the treatment of existing contracts which were a feature of the 0621/0678 discussions and on compliance with the tariff code. It is questionable, for example, whether the calculation of the proposed throughput charge really represents "under recovery" in a true sense as the charges being paid by existing contracts were determined in a regulatory process designed and overseen by Ofgem at the time. On the other hand, it is also clear that existing contracts have been subject to a commodity related charge in the past. There may also be questions around the extent to which the existence of such large differences in entry charges are anti-competitive.

Finally, it is incorrect for the proposed modification to refer only to the European Tariff Network Code which is no longer applicable in the UK. It should, in addition, refer to Gas Tariffs Code (Amendment) (EU Exit) Regulations 2019 and Schedule 5 to the Gas (Security of Supply and Network Codes) (Amendment) (EU Exit) Regulations 2019

Are there any errors or omissions in the Modification that you think should be taken into account? *Include details of any impacts/costs to your organisation that are directly related to this.*

No comments

Please provide below any additional analysis or information to support your representation

No further comments

Representation - Modification UNC 0790 (Urgent)

Introduction of a Transmission Services Entry Flow Charge

Responses invited by: 5pm on 06 December 2021

To: enquiries@gasgovernance.co.uk

Please note submission of your representation confirms your consent for publication/circulation.

Representative:	Claire Procter
Organisation:	PETCO Trading (UK) Limited
Date of Representation:	6 December 2021
Support or oppose implementation?	Support
Relevant Objective:	d) Positive
Relevant Charging Methodology Objective:	aa) Positive c) Positive

Reason for support/opposition: Please summarise (in one paragraph) the key reason(s)

We support this Modification as the prevailing charging regime is anti-competitive given Entry Capacity Contracts entered into post Apr-17 are cross-subsidising Existing Contracts, when there should be fair competition and a level playing field facing the shipping community. This modification will help address this imbalance by reducing the substantial price gap between the two types of contracts.

Implementation: *What lead-time do you wish to see prior to implementation and why?*

As soon as possible. The uncertainty and volatility surrounding the pricing regime that we have experienced since Summer 2020 is detrimental to a functioning market. The ability of the Shipping community to plan their future business is seriously hampered by what has happened and needs to be addressed.

Impacts and Costs: *What analysis, development and ongoing costs would you face?*

Legal Text: *Are you satisfied that the legal text will deliver the intent of the Solution?*

Are there any errors or omissions in the Modification that you think should be taken into account? *Include details of any impacts/costs to your organisation that are directly related to this.*

Please provide below any additional analysis or information to support your representation

The analysis carried out by Frontier Economics highlights that the under recovery of NGT entry point revenue is explicitly caused by Existing Contracts, whose prices are 23 times lower than new capacity. Meanwhile clause 3 of article 4 of the EU Tariff Network Code indicates this to be a valid approach to take towards closing the price gap. The current mechanism has created an issue around volatility in prices which is extremely detrimental to the effective functioning of the market. We note that the change would still result in a substantial difference in pricing of capacity contracts and highlight this as anti competitive.

The TO Entry Commodity Charge was an integral part of the charging regime up until the last reform in October 2020. Therefore Existing Contracts would have originally anticipated this type of charge when they bought the capacity.

Representation - Modification UNC 0790 (Urgent)

Introduction of a Transmission Services Entry Flow Charge

Responses invited by: 5pm on 06 December 2021

To: enquiries@gasgovernance.co.uk

Please note submission of your representation confirms your consent for publication/circulation.

Representative:	Lauren Jauss
Organisation:	RWE Supply & Trading GmbH
Date of Representation:	6 December 2021
Support or oppose implementation?	Oppose
Relevant Objective:	<p>a) Negative</p> <p>b) Negative</p> <p>d) Negative</p> <p>g) Negative</p>
Relevant Charging Methodology Objective:	<p>aa) Negative</p> <p>c) Negative</p>

Reason for support/opposition: Please summarise (in one paragraph) the key reason(s)

We oppose the proposal for a number of major reasons outlined below.

Firstly, we are concerned that the proposed arrangements unnecessarily restrict the eligibility for a Conditional Discount for Avoiding Inefficient Bypass of the NTS (shorthaul discount) on the Commodity Charge and is therefore negative against objective a) and b). The unnecessary restriction arises in the scenario where the Entry Capacity has been procured as Secondary Capacity, where it is proposed that the associated Entry Commodity Charge will be ineligible for a shorthaul discount. This proposed arrangement does not adhere to the principles agreed in UNC728B, which is that volumes are eligible where they have been transacted at a known, uniform price that are not transacted via Secondary Transactions. Whilst the Entry Capacity might not qualify because it has been procured on a secondary basis and the price is not known, this is not the case for the associated Commodity Charge. In this scenario, the Commodity Charge meets all the criteria on its own merits and therefore in our view should qualify

for a discount. This proposed distortion will encourage overbooking because it will always be cheaper for some routes to buy additional primary capacity in order to qualify for the discount on both the capacity and commodity charge rather than purchasing secondary capacity (even if it is purchased at zero price) and paying the full commodity charge. If Users cannot access the shorthaul discount due to a technicality in the arrangements then in our view the discount is not working as intended, and inefficient NTS bypass remains a significant risk.

Secondly, the proposal introduces a new market distortion that does not currently exist and will be detrimental to competition, because the proposed arrangements will exempt Interconnection Points from the commodity charge. For this reason we have assessed the proposal as negative against objective d) and negative against charging objectives aa) and c). Given that IPs would be expected to be price setting ASEPs, this distortion is material. Further, we note that in the proposal document, LNG Importation Terminal ASEPs are expected to make a greater contribution to collection of allowed revenue i.e. the (Entry Capacity cost will increase), and since these are also price setting ASEPs, we would expect these costs to be fully passed through to the consumer. Whilst Frontier Economics have acknowledged that the assumptions made in their initial analysis were flawed, their amended analysis in response to stakeholder comments is still overly simplistic and inconclusive in our view.

Thirdly, we do not believe that the proposal is compliant with TAR NC which is a retained element of EU law and therefore have assessed the proposal as negative against objective g).

Implementation: *What lead-time do you wish to see prior to implementation and why?*

We do not support implementation, and do not agree that this modification should be prioritised ahead of and impact on the delivery of other modifications.

Impacts and Costs: *What analysis, development and ongoing costs would you face?*

We expect to require additional resources to account for and process the commodity charge but these are not yet quantified.

Legal Text: *Are you satisfied that the legal text will deliver the intent of the Solution?*

We have not reviewed the full legal text due to the complexity and limited time available, but that which we have reviewed appears to deliver the intent of the solution.

Are there any errors or omissions in the Modification that you think should be taken into account? *Include details of any impacts/costs to your organisation that are directly related to this.*

No comment

Please provide below any additional analysis or information to support your representation

We do not agree with the approach that has been taken to develop this modification because the unofficial workshops that have been held outside of the normal process have resulted in a very limited opportunity for stakeholders to raise alternatives. Since there are no minutes from these workshops, there is no record of the comments, concerns or discussion at these meetings and therefore no opportunity to reference this material.

Representation - Modification UNC 0790 (Urgent)

Introduction of a Transmission Services Entry Flow Charge

Responses invited by: 5pm on 06 December 2021

To: enquiries@gasgovernance.co.uk

Please note submission of your representation confirms your consent for publication/circulation.

Representative:	Gerry Hoggan
Organisation:	Scottish Power
Date of Representation:	6 th December 2021
Support or oppose implementation?	Oppose
Relevant Objective:	d) Negative
Relevant Charging Methodology Objective:	aa) Negative c) Negative

Reason for support/opposition: Please summarise (in one paragraph) the key reason(s)

We do not believe the case has been made that the proposal is compliant with the EU Tariffs Network Code which is fully applicable in UK law. In particular, it appears to be at odds with Article 4.3, which requires that “transmission services revenue shall be recovered by capacity-based transmission tariffs”, and Article 35 which details the protection afforded to existing contracts.

Whilst we understand and appreciate the difficulty trying to be resolved and the resultant impacts on the charge setting process, those issues would not appear to justify any less of a regard for the compliance issues involved, nor subjecting the proposal to a less rigorous compliance examination than has been the case in previous charging proposals.

Moreover, we believe that the use of urgent procedures has not allowed for a full examination of the issues or appropriate development, either of this proposal or any possible Alternative(s). Nor is it clear to us that some other expedited process could not have been utilised that would still have allowed the proposal to be completed within the timescales necessary for implementation ahead of October 2022, while, more significantly, still retaining the full governance safeguards lost by the adoption of urgent procedures.

Implementation: *What lead-time do you wish to see prior to implementation and why?*

We do not believe that the proposal should be implemented without a rigorous compliance assessment

Impacts and Costs: *What analysis, development and ongoing costs would you face?*

None anticipated although time has not allowed for any full assessment to be carried out.

Legal Text: *Are you satisfied that the legal text will deliver the intent of the Solution?*

No legal review has been conducted of the full legal text in the time available

Are there any errors or omissions in the Modification that you think should be taken into account? *Include details of any impacts/costs to your organisation that are directly related to this.*

None identified to this point

Please provide below any additional analysis or information to support your representation

None

Representation - Modification UNC 0790 (Urgent)

Introduction of a Transmission Services Entry Flow Charge

Responses invited by: 5pm on 06 December 2021

To: enquiries@gasgovernance.co.uk

Please note submission of your representation confirms your consent for publication/circulation.

Representative:	Adam Bates
Organisation:	South Hook Gas Company Ltd.
Date of Representation:	6 th December 2021
Support or oppose implementation?	Comments
Relevant Objective:	d) Negative
Relevant Charging Methodology Objective:	aa) None c) Negative

Reason for support/opposition: Please summarise (in one paragraph) the key reason(s)

South Hook Gas (SHG) cannot currently support this Modification due to indirect impact on processes outside the UNC and would like to offer comments. Primarily, this Modification once again highlights the significant uncertainty which arises from having multiple governance processes which are not aligned. Specifically, this UNC Modification will increase the cost of Funded Incremental Entry Capacity¹ disproportionately when compared to prevailing capacity, potentially creating a barrier to entry for new entrants and new investment to the UK. Despite the materiality of this change, as the Methodology Statements sit outside the UNC governance process, there is no mechanism for changes to be suggested or considered by any party other than National Grid or Ofgem.

This issue has been raised by SHG both bilaterally with National Grid and within wider industry forums. National Grid have responded that, as the NPV test does not sit within the UNC, it is not capable of being amended or clarified in the UNC governance process. Instead, this would have to be addressed through updates to the Capacity Release Methodology Statements themselves. As per the current process (and as suggested by

¹ Where a premium is required to pass the Funded Incremental Entry Capacity NPV test. The Funded Incremental Entry Capacity NPV test is contained within the Entry Capacity Release Statement (ECRM)

National Grid), the next iteration of Methodology Statement changes would be due to be completed by July 2023 (18 months after this consultation response). It does not seem acceptable that industry must wait nearly two years for an impact resulting from a UNC change to be potentially rectified in another governance process, which could create a significant amount of uncertainty for customers following these processes.

If the NPV test were contained within the UNC, then the Modification would have identified any impacts and proposed subsequent resolutions. If the issues were not addressed, then SHG (or another party) would have at least been able to raise an Alternate Modification to include a resolution to the identified impacts. Should an impact have been identified in the Modification but no resolution included, then it is expected that the Modification would be deemed insufficiently developed, especially as an Urgent Modification.

It is worth noting that SHG has identified the impacts on the NPV test due to its current PARCA application. It may be that there are other processes (within the Methodology Statements and other governance processes) which are impacted and have not been identified or assessed. As noted above, if other unidentified and unassessed impacts do manifest upon implementation, then on the current timetable industry would be subject to these impacted processes for at least the next 18 months.

Implementation: *What lead-time do you wish to see prior to implementation and why?*

If the Modification is to be implemented, it should coincide with the start of a new Gas Year and not be implemented mid-year.

Impacts and Costs: *What analysis, development and ongoing costs would you face?*

SHG does not foresee incurring any additional costs resulting from implementation of this Modification outside of those noted above.

Legal Text: *Are you satisfied that the legal text will deliver the intent of the Solution?*

Yes, however a full legal review has not been conducted

Are there any errors or omissions in the Modification that you think should be taken into account? *Include details of any impacts/costs to your organisation that are directly related to this.*

As discussed above, this Modification impacts processes that sit outside the UNC which have not been fully discussed through this process.

Please provide below any additional analysis or information to support your representation

None

Representation - Modification UNC 0790 (Urgent)

Introduction of a Transmission Services Entry Flow Charge

Responses invited by: **5pm on 06 December 2021**

To: enquiries@gasgovernance.co.uk

Please note submission of your representation confirms your consent for publication/circulation.

Representative:	Jeff Chandler
Organisation:	SSE
Date of Representation:	
Support or oppose implementation?	Oppose
Relevant Objective:	<p>d) None</p> <p>g) Negative</p>
Relevant Charging Methodology Objective:	<p>aa) None</p> <p>c) None</p> <p>e) Negative</p>

Reason for support/opposition: Please summarise (in one paragraph) the key reason(s)

SSE does not support this proposal, as it is not compliant with EU TAR NC which now sits within UK retained law (Gas Tariffs Code (Amendment) (EU Exit) Regulations 2019). It is therefore assessed as negative for relevant objectives (g) and charging objective (e) for compliance.

The specific aspects of the modification that fail compliance are:

1. It does not set capacity based transmission charges to recover allowed revenue because it deliberately seeks to under-recover allowed revenue. (Art 4.3)
2. It applies a commodity charge not as an "exception" but on a deliberate permanent basis. (Art 4.3)
3. The commodity charge is not applied at interconnection points which will increase the level of cross subsidy between non-interconnection and interconnection points (IP) (Art 4.3 (b) iv)). The workgroup report shows how the revenue collected from IP will halve. The issue to be resolved is between new entrants and existing capacity but this modification will introduce other cross subsidy and distortion.

4. It applies a “commodity charge” to existing contracts which is specifically worded as not being allowed (Art 35.1), with only indexation being permitted. Ofgem previously determined against a capacity top up charge on existing contracts and we now see no difference between a capacity or commodity charge from a compliance perspective when both are specifically listed in Article 35.

Implementation: *What lead-time do you wish to see prior to implementation and why?*

SSE does not support implementation. If Ofgem wishes to consider approving this proposal we expect an Impact Assessment will be necessary due to the material nature of the change. This should consider the disconnect introduced between wholesale market prices that have already been hedged by prudent suppliers and shippers under the existing charging regime for the forward 2 year market period and priced into Customer contracts and tariffs. And the change in charges and subsequent wholesale market price that will be introduced if this modification is introduced from October 2022. Indeed, to minimise wholesale market price impact and distortion to customer contracts a 2 year notice period should be given for this fundamental change, which questions the pseudo Urgent process used by NGG in progressing this modification.

Impacts and Costs: *What analysis, development and ongoing costs would you face?*

N/A

Legal Text: *Are you satisfied that the legal text will deliver the intent of the Solution?*

Not reviewed.

Are there any errors or omissions in the Modification that you think should be taken into account? *Include details of any impacts/costs to your organisation that are directly related to this.*

N/A

Please provide below any additional analysis or information to support your representation

The different tariffs available to new entrants and existing contracts was well understood in previous modification reports for 621 and 678 and in ACER comments on Ofgem’s minded to decision for 678. The issue of existing contracts will decline over time as they expire, again this trajectory was well explored and understood prior to this modification being raised. It is unfortunate that deliberate mis-interpretation of UK retained law is being used to seek UNC change, when the correct approach would be to change the legislation and then the code.

Representation - Modification UNC 0790 (Urgent)

Introduction of a Transmission Services Entry Flow Charge

Responses invited by: 5pm on 06 December 2021

To: enquiries@gasgovernance.co.uk

Please note submission of your representation confirms your consent for publication/circulation.

Representative:	Alex Nield
Organisation:	Storengy UK Limited
Date of Representation:	3 rd December 2021
Support or oppose implementation?	Qualified Support
Relevant Objective:	d) Negative
Relevant Charging Methodology Objective:	aa) None c) Negative

Reason for support/opposition: Please summarise (in one paragraph) the key reason(s)

Storengy UK welcomes proposals to provide more stability to industry charging. However, we have concerns over proposals being rushed through the modification process, as this provides little reassurance that they have been properly considered and assessed, that the benefits perceived will be realised, and that any potential negative effects will be mitigated or avoided.

The use of urgent status for proposals provides little opportunity for industry review and investigation of proposals, and the potential for errors and unintended consequences to be introduced at short notice is far greater. This treatment only increases current market uncertainty, unnecessarily inflating both commodity and operational costs, and therefore resulting in higher costs passed on to consumers. This is in addition to the additional development costs (ROM) for these proposals of £210k to £280k, which will also be passed on to consumers.

In assessing these proposals with regards to the Relevant Objectives, Storengy UK believe that the proposals will have a negative effect on market competition as they potentially provide unnecessary distortion to the market and existing financial and commercial arrangements. Although these proposals could potentially provide longer term stability to network charging, the time constraints introduced by urgent status mean

we cannot be sure that these benefits will be realised, and cannot be sure that proposals are compliant with European legislation.

Implementation: *What lead-time do you wish to see prior to implementation and why?*

Although Storengy UK would welcome more stable capacity charging, we have concerns around the level of discussion and investigation into the effects of these proposals. Therefore, we would welcome more time for proposals to be reviewed and potentially perfected to ensure that they provide the perceived benefits, and not just add to industry and consumer costs. With this in mind, we would welcome a potential implementation date of 1st October 2023.

Impacts and Costs: *What analysis, development and ongoing costs would you face?*

It is difficult to assess the potential impact of proposals as the new charging regime is still in a stage of constant fluctuation. This situation is not helped in the short term by proposals for further changes and uncertainty on short term charging, however, we would like to believe that these new charges will help to provide more certainty over charging for the longer term. Further time for the industry to try to assess the potential impacts of these proposals would be welcomed, as well as avoiding unnecessary market impacts due to uncertainty caused by rushing proposals to possible implementation.

Storengy UK supports the proposer's position on excluding storage flows from the Transmission Services Entry Flow Charge. This is consistent with the treatment of the historical TO and SO charges. This also aligns with EU TAR legislation in avoiding potential double charging for storage flows, and avoids creating an additional barrier to the cycling of gas at storage facilities which helps to mitigate the effects of market price volatility. This exemption should have negligible effects on the new charge itself and the monies collected by the proposer, but makes a huge difference to storage facilities in allowing them to continue to operate.

Legal Text: *Are you satisfied that the legal text will deliver the intent of the Solution?*

Storengy UK has no comment on the legal text itself, but do have concerns as to whether proposals are compliant with EU legislation, and would welcome further investigation into this issue.

Are there any errors or omissions in the Modification that you think should be taken into account? *Include details of any impacts/costs to your organisation that are directly related to this.*

Further investigation and review by the industry of the potential impacts of proposals, and timescales for possible implementation.

Further assessment on whether or not proposals are compliant with EU law.

Please provide below any additional analysis or information to support your representation

N/A

Representation - Modification UNC 0790 (Urgent)

Introduction of a Transmission Services Entry Flow Charge

Responses invited by: 5pm on 06 December 2021

To: enquiries@gasgovernance.co.uk

Please note submission of your representation confirms your consent for publication/circulation.

Representative:	Henk Kreuze
Organisation:	Vermilion Energy Ireland Limited ("Vermilion")
Date of Representation:	3 December 2021
Support or oppose implementation?	Oppose
Relevant Objective:	d) Negative
Relevant Charging Methodology Objective:	aa) Negative c) Negative e) Negative

Reason for opposition: Please summarise (in one paragraph) the key reason(s)

Vermilion is of the opinion that domestically produced natural gas should be treated on a more favourable (or at least equal) basis to imported gas, given the fact that domestically produced natural gas has a lower CO2 footprint than imported natural gas. The MOD results in lower tariffs for new bookings and flows at Interconnection Points (IPs) compared to domestic entry points, as the IPs are exempted from the proposed commodity charge. So the Mod proposal reduces effective competition, resulting in a "Negative" score for Relevant Objective d) and Relevant Charging Methodology Objectives aa) and c).

Furthermore Vermilion is of the opinion that the GB tariff system has already a very large commodity component via the non-transmission charges. Adding another commodity element, as proposed by National Grid, brings the GB tariff system in conflict with the principles laid down in the European Network code on Tariffs (NC-TAR). This is the background for the "Negative" score for Relevant Charging Methodology Objective e).

Implementation: What lead-time do you wish to see prior to implementation and why?

We do not support implementation. Nevertheless, in case Ofgem decides it should be implemented, it should be effective as per 1st October of a calendar year (i.e. at the start

of new Gas Year). This implies that an Ofgem decision should be taken ultimately at the end of the month of May which enables National Grid to publish its new entry tariffs for the upcoming Gas Year (starting 1st October) sufficiently in advance of the annual auction (first Monday in July) on the Prisma platform.

Impacts and Costs: *What analysis, development and ongoing costs would you face?*

Insert Text Here

Legal Text: *Are you satisfied that the legal text will deliver the intent of the Solution?*

No comments from Vermilion

Are there any errors or omissions in the Modification that you think should be taken into account? *Include details of any impacts/costs to your organisation that are directly related to this.*

This MOD exempts entry flows at Storage Points from this commodity charge. In our opinion entry flows at Storage Points should not be exempted. This is further explained in the next section.

Please provide below any additional analysis or information to support your representation

Page 11 of the MOD proposal provides the Entry Capacity CAA Comparison Index. In the current regime this is 8.0%, while the proposed regime results in 13.7%. For the commodity charge there is an increase for this Index from 0.0% to 200.0%.

NC-TAR prescribes that in case a CAA Comparison Index is higher than 10%, the national regulatory authority shall provide the justification for such results in its decision. The MOD doesn't provide such a justification. This high figures of 13.7% for capacity and 200% for commodity are additional proof of Vermilion's statement that the proposed MOD is detrimental for effective competition (between domestically produced gas and imported gas via IPs).

On page 13 National Grid argues that rational for exempting storage was to prevent 'multiple payment' as commercial flows at Storage Connection Points may not necessarily result in a physical flow. With the new tariff methodology in place since October 2020 with both entry and exit capacity to be paid in any case, the occasions with commercial flows in two directions at the same time will be vary rare; parties have an incentive to exchange positions (swap) of gas in the storage in return for exchange of gas at the NBP. Cycling gas at storage implies use of the NG transmission system for exit (for injection into storage) and for entry (for withdrawal from storage). In both cases the shipper uses NG transmission system, so it would be fair to have storage users paying the same charges as other users. So there is no need for exempting these users from the commodity charge.