

## Memo

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**Date** 25 June 2020

**Re** In the matter of modification proposal UNC 0727  
Summary note of advice

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1. The Joint Office of Gas Transporters launched a consultation on 15 June 2020 (the "**Consultation**")<sup>1</sup> regarding Storengy UK Ltd's ("**Storengy**") proposed modification UNC 0727 (storage discount) (the "**Modification Proposal**")<sup>2</sup>.
2. The Modification Proposal follows extensive consideration of the topic as part of the Transportation Charging Methodology review during the development of UNC Modifications 0621 and 0678.
3. The Modification Proposal has two key components:
  - (a) Storage Discount Increase: Storengy proposes that the discount applied to storage related NTS (Entry & Exit) Capacity should be increased from 50% to 80%. This would be achieved by amending the NTS Charging Methodology (due to come into effect on 1 October 2020 and contained within UNC TPD Section Y) so that the Specific Capacity Discount applied to the Reserve Prices in respect of Firm and Interruptible/Off-peak Capacity for a given Gas Year will be equal to 80%; and
  - (b) Implementation Date: Storengy suggests that the modification is implemented from 1 October 2020 or as soon as possible thereafter.

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<sup>1</sup> [https://gasgov-mst-files.s3.eu-west-1.amazonaws.com/s3fs-public/ggf/book/2020-06/Consultation%20Response%20Template%200727%20%28Urgent%29%20v1.0\\_0.doc?YZCFAPcvt8nTdv7uSvnMI94gFKCKGKCd=](https://gasgov-mst-files.s3.eu-west-1.amazonaws.com/s3fs-public/ggf/book/2020-06/Consultation%20Response%20Template%200727%20%28Urgent%29%20v1.0_0.doc?YZCFAPcvt8nTdv7uSvnMI94gFKCKGKCd=)

<sup>2</sup> [https://gasgov-mst-files.s3.eu-west-1.amazonaws.com/s3fs-public/ggf/book/2020-06/Modification%200727%20v2.0.pdf?ySWGGuoGp9LAWtpE8ZSDy9lAN7nwQ5U\\_b=](https://gasgov-mst-files.s3.eu-west-1.amazonaws.com/s3fs-public/ggf/book/2020-06/Modification%200727%20v2.0.pdf?ySWGGuoGp9LAWtpE8ZSDy9lAN7nwQ5U_b=)

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4. The Consultation asks for views as to whether the solution provided within the Modification is fully compliant with the relevant legislation (including, but not limited to, Articles 28-32 of the EU Tariff Code<sup>3</sup>).
5. In our opinion both the Storage Discount Increase and the Implementation Date are compliant for the reasons noted below.
6. This opinion is addressed to and for the sole benefit of Storengy. We understand that this opinion may be submitted as part of Storengy's response to the Consultation, but we accept no liability to any other party, nor does Storengy intend to waive any privilege in any other advice received by doing so.

#### **Storage Discount Increase**

7. The EU Tariff Code (Article 9) provides that “a discount of **at least** 50% should be applied to capacity-based transmission tariffs at Entry Points from and Exit Points to Storage Facilities”. The apparent intention of a minimum discount specific to storage is to reduce the impact of double charging and in recognition of the general contribution to system flexibility and security of supply of such infrastructure.
8. It is clear from Article 9 that a 50% discount is the minimum permissible level under the EU Tariff Code. Therefore, the Storage Discount Increase is, in our view, fully compliant with the relevant legislation.

#### **Implementation Date**

9. Article 28.1 of the EU Tariff Code provides as follows:

***"Article 28 Consultation on discounts, multipliers and seasonal factors***

*1. At the same time as the final consultation carried out in accordance with Article 26(1), the national regulatory authority shall conduct a consultation with the national regulatory authorities of all directly connected Member States and the relevant stakeholders on the following:*

*(a) the level of multipliers;*

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<sup>3</sup> Regulation 2017/460: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R0460>. The EU Tariff Code was published in the Official Journal of the EU on 17 March 2017. It entered into force, pursuant to Article 38, on 6 April 2017.

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*(b) if applicable, the level of seasonal factors and the calculations set out in Article 15;*

*(c) the **levels of discounts set out in Articles 9(2)** [referring to the storage discount] and 16.*

*After the end of the consultation a motivated decision shall be taken in accordance with Article 41(6)(a) of Directive 2009/73/EC on the aspects referred to in points (a) to (c) of this paragraph. Each national regulatory authority shall consider the positions of national regulatory authorities of directly connected Member States."*

10. Article 28.2 provides that this process of consultation and decision-making must be repeated for each subsequent tariff period.
11. We are not aware of any provision in the EU Tariff Code or in any other legislation which would prohibit further, subsequent consultation on such a matter, especially in circumstances where a regulatory authority has indicated that it "remains open" to a higher storage discount (as stated by Ofgem in its minded to decision on Modification 0678).
12. Articles 29 and 30 set out various categories of information which must be published before the annual yearly capacity auction or the tariff period respectively. We do not believe that these Articles are problematic because:
  - (a) Article 29 applies to "interconnection points and, where the national regulatory authority takes a decision to apply Regulation (EU) 2017/459, points other than interconnection points". We understand that Ofgem has decided not to apply Regulation (EU) 2017/459 to Storage Points, so this Article is not relevant to the Modification Proposal.
  - (b) Article 30 applies to other points (and therefore to Storage Points). Article 32(b) requires such information to be published no later than thirty days before the start of the relevant tariff period, which can be done if the decision to increase the discount to 80% is made before October and the information is published by the beginning of September.
13. If the Transmission Services Revenue Recovery Charge were to be used to account for the revenue which needs to be recovered in Gas Year 2020/21 as a result of the Modification Proposal being implemented, it is consistent with Articles 17 and 18 of the EU Tariff Code. Article 17 requires that under and over recovery is minimised, however we would note that:

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- (a) it is clearly envisaged that there will be circumstances in which under or over recovery occurs and that reconciliations can occur to account for this; and
- (b) we understand that the amount of revenue which would need to be recovered in Gas Year 2020/21 as a result of the Modification Proposal being implemented would be minimal compared to the uncertainty on the overall network revenues that will be a far greater driver of the Revenue Recovery Charge.

*Orrick, Herrington & Sutcliffe (UK) LLP*

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**25 June 2020**