

**Special Condition C8C: The NTS system operation activity revenue restriction**

**1. Principal restriction**

- (a) The licensee shall use its best endeavours in setting its charges to ensure that in respect of any formula year the revenue which it derives from its NTS system operation activity ( $SOR_t$ ) shall not exceed the maximum NTS system operation revenue ( $SOMR_t$ ).
- (b) If in respect of any formula year the NTS system operation revenue ( $SOR_t$ ) exceeds the maximum NTS system operation revenue ( $SOMR_t$ ) by more than 4 per cent of the latter, the licensee shall furnish an explanation to the Authority and, in the next following formula year, the licensee shall not effect any increase in prices in respect of services relating to the NTS SO activity unless either:
- (i) it has demonstrated to the reasonable satisfaction of the Authority that the NTS system operation revenue would not be likely to exceed the maximum NTS system operation revenue in that next following formula year; or
  - (ii) the Authority has, on the application of the licensee, consented to such an increase in prices.
- (c) If, in respect of any two successive financial years, the sums of the amounts by which the NTS system operation revenue ( $SOR_t$ ) has exceeded the maximum NTS system operation revenue is more than 6 per cent of the maximum NTS system operation revenue ( $SOMR_t$ ) for the second of those years, then in the next following formula year the licensee shall if required by the Authority adjust its prices such that the NTS system operation revenue would not be likely in the judgement of the Authority to exceed maximum NTS system operation revenue in that next following formula year.

## 2. NTS system operation revenue (SOR<sub>t</sub>)

### (a) Principal formula

For the purposes of paragraph 1 of this condition the revenues which the licensee derives from its NTS system operation activity in respect of any formula year t (SOR<sub>t</sub>) shall be derived from the following formula:

$$\text{SOR}_t = \text{RCOM}_t + \text{SOExRF}_t + \text{SORCAP}_t + \text{SOROC}_t$$

where:

RCOM<sub>t</sub> means the revenue derived by the licensee in respect of formula year t from charges levied on gas shippers and DN operators pursuant to Standard Special Condition A4 (Charging– General) in respect of NTS SO activities provided by the licensee and shall include revenue from charges to recover both costs incurred by the licensee and net payments made to or by the licensee in respect of reducing the costs arising from system operation activities other than revenue earned by the licensee through (i) SOExRF<sub>t</sub> (ii) SORCAP<sub>t</sub> (iii) SOROC<sub>t</sub> and (iv) revenues received by the licensee in respect of formula year t from the sale of gas that had been purchased by the licensee in respect of its use of constrained storage facilities in order to avoid transportation constraints [further drafting to explicitly exclude OM, locational actions under consideration];

SOExRF<sub>t</sub> means the NTS SO revenue derived by the licensee in respect of sales of exit capacity and shall be derived in accordance with Special Condition C8E (NTS gas exit incentives, costs and revenues);

$SORCAP_t$  means the NTS SO revenue derived by the licensee in respect of sales of entry capacity and shall be derived in accordance with Special Condition C8D (NTS gas entry incentives, costs and revenues); and

$SOROC_t$  means the NTS SO revenue derived by the licensee in respect of other defined SO charges and shall be derived in accordance with Special Condition C8F (Other NTS System Operator external incentives, costs and revenues).

### 3. Definition of maximum NTS system operation revenue ( $SOMR_t$ )

#### (a) Principal formula

For the purposes of paragraph 1 of this condition, the term maximum NTS system operation revenue in respect of formula year t ( $SOMR_t$ ) shall be derived from the following formula:

$$SOMR_t = SOEIRC_t + SOExIRC_t + SOOIRC_t + SOIntICR_t + SORA_t - SOK_t$$

where:

$SOEIRC_t$  means the NTS system operation entry incentive revenue and costs in respect of formula year t and shall be derived in accordance with Special Condition C8D (NTS gas entry incentives, costs and revenues);

$SOExIRC_t$  means the NTS system operation exit incentive revenue and costs in respect of formula year t and shall be derived in accordance with Special Condition C8E (NTS gas exit incentives, costs and revenues);

$SOOIRC_t$  means other NTS external cost system operation incentive revenue and costs in respect of formula year t and shall be derived in

accordance with Special Condition C8F (Other NTS System Operator external incentives, costs and revenues);

$SOIntICR_t$  means the NTS system operation internal cost incentive revenue and costs in respect of formula year t and shall be derived in accordance with Special Condition C8G (NTS System Operator internal incentives, costs and revenues);

$SORA_t$  means approved allowance in respect of an income adjusting event (whether of a positive or negative value) to be made in respect of formula year t and shall be derived in accordance with paragraph 3(b) of this condition; and

$SOK_t$  means the NTS SO revenue adjustment factor equal to NTS system operation maximum revenue under or over recovery in respect of formula year t-1 and shall be derived in accordance with paragraph 3(c) of this condition.

**(b) Determination of any adjustment factor to be applied to  $SOMR_t$  ( $SORA_t$ )**

(i) An income adjusting event may arise from any of the following:

(A) an event or circumstance constituting force majeure under the network code;

(B) an event or circumstance resulting in the declaration of a network gas supply emergency (having the meaning given to such term in the network code);

(C) where the revenues derived by the licensee from the sale of obligated entry capacity pursuant to paragraph [ ] of Special Condition C8D (NTS gas entry incentives, costs and revenues) are less than the revenues that would have been derived from the original sale of that capacity had the original purchaser of the capacity not been served

with a termination notice (having the meaning given to that term in the network code); and

- (D) an event or circumstance other than listed above which is, in the opinion of the Authority, an income adjusting event and is approved by it as such in accordance with paragraph 3(b)(ix) of this condition,

where the event has, for relevant formula year t, increased or decreased the value of “relevant system operation costs” (having the meaning given to that term in Special Condition C8A (Revenue restriction definitions in respect of the NTS transportation owner activity and NTS system operation activity)) by more than £2,000,000 (the “threshold amount”). This threshold amount does not apply in respect of sub-paragraphs 3(b)(i)(B) or 3(b)(i)(C) above.

- (ii) Where the licensee considers, and can provide supporting evidence that, in respect of relevant formula year t, there have been costs and/or expenses that have been incurred or saved by an income adjusting event, then the licensee shall give notice of this event to the Authority.
- (iii) Where any shipper considers, and can provide supporting evidence that, in respect of formula year t, there have been costs and/or expenses that have been incurred or saved by an income adjusting event, then that shipper may give notice of this event to the Authority.
- (iv) A notice provided to the Authority under paragraphs 3(b)(ii) or 3(b)(iii) shall, in the case of the licensee, and should in so far as is practicable in the case of any shipper, give particulars of:

(A) the event to which the notice relates and the reason(s) why the person giving the notice considers this event to be an income adjusting event;

(B) the amount of any change in costs and/or expenses that can be demonstrated by the person giving the notice to have been caused or

saved by the event and how the amount of these costs and/or expenses has been calculated;

(C) the amount of any allowed income adjustment proposed as a consequence of that event and how this allowed income adjustment has been calculated; and

(D) any other analysis or information which the person submitting the notice considers to be sufficient to enable the Authority and shippers to fully assess the event to which the notice relates.

(v) If the Authority considers that the analysis or information provided in subparagraphs 3(b)(iv)(A) to 3(b)(iv)(D) above is insufficient to enable both the Authority and shippers to assess whether an income adjusting event has occurred and/or the amount of any allowed income adjustment that should be approved, the Authority can request that the supporting evidence be supplemented with additional material that it considers appropriate.

(vi) A notice of an income adjusting event shall be given as soon as is reasonably practicable after the occurrence of the income adjusting event, and, in any event, not later than three months after the end of the relevant formula year  $t$  in which it occurs.

(vii) The Authority will make public, excluding any confidential information, which it has received under paragraph 3(b)(ii) or 3(b)(iii) of this condition.

(viii) Any notice submitted to the Authority under either paragraphs 3(b)(ii) or 3(b)(iii) above shall clearly identify whether any of the information contained in the notice is confidential information. The Authority shall make the final determination as to whether the information is confidential information for the purpose of paragraph 3(b)(vii) having regard to:

(A) the need to exclude from disclosure, so far as is reasonably practicable, information whose disclosure the Authority considers would or might

seriously prejudicially affect the interests of a person to which it relates; and

(B) the extent to which the disclosure of the information mentioned in sub-paragraph 3(b)(viii)(A) is necessary for the purpose of enabling shippers to fully assess the event to which the notice relates.

(ix) Following consultation with such parties as the Authority considers likely to be affected by its determination, including the licensee and shippers, the Authority shall determine:

(A) whether any or all of the costs and/or expenses referred to in a notice pursuant to paragraphs 3(b)(ii) or 3(b)(iii) of this condition were incurred or saved as a result of an income adjusting event;

(B) whether the event or circumstance has increased or decreased the value of relevant system operation costs by more than the threshold amount, save in the case of sub-paragraphs 3(b)(i)(B) and 3(b)(i)(C) where the threshold amount shall not apply; and

(C) if so, whether the amount of the proposed income adjustment ensures that the financial position and performance of the licensee are, insofar as is reasonably practicable, the same as if that income adjusting event had not taken place, and if not, what allowed income adjustment would secure that effect.

(x) In relation to formula year  $t$ , the approved allowance in respect of an income adjustment ( $SORA_t$ ) shall be:

(A) the value determined by the Authority under paragraph 3(b)(ix) of this condition; or

(B) if the Authority has not made a determination under paragraph 3(b)(ix) of this condition within three months of the date on which the notice of an income adjusting event was provided to the Authority, the amount

of the allowed income adjustment proposed as a consequence of the event in the notice given to the Authority under paragraph 3(b)(iv)(C);  
or

(C) in all other cases zero, including situations where the Authority has not made a determination under paragraph 3(b)(ix) of this condition within three months of the date on which notice under paragraphs 3(b)(ii) or 3(b)(iii) was provided to the Authority and the Authority has, before the end of that three month period, informed the relevant parties that the Authority considers that the analysis or information provided in accordance with paragraphs 3(b)(iv) and/or 3(b)(v) is insufficient to enable the Authority and shippers to assess whether an income adjusting event has occurred and/or the amount of any allowed income adjustment.

(xi) The Authority's decision in relation to any notice given under paragraphs 3(b)(ii) or 3(b)(iii) shall be in writing, shall be copied to the licensee and shall be published.

(xii) The Authority may revoke an approval of an income adjusting event and allowed income adjustment with the consent of the licensee, following consultation with the licensee and shippers. Revocation of any income adjusting event and allowed income adjustment shall be in writing, shall be copied to the licensee and shall be in the public domain.

**(c) NTS SO revenue adjustment factor ( $SOK_t$ )**

For the purposes of paragraph 3(a) of this condition, the NTS system operation revenue adjustment factor (whether of a positive or negative value) in respect of formula year  $t$  ( $SOK_t$ ) shall be derived in the following manner:

In respect of the formula year commencing on 1 April 2007,

$$SOK_t = [x]$$

In respect of any formula year commencing on 1 April 2008 or on 1 April in any subsequent year:

$$SOK_t = (SOR_{t-1} - SOMR_{t-1}) \times \left( 1 + \frac{I_t}{100} \right)$$

where:

$SOR_{t-1}$  shall have the meaning given to the term  $SOR_t$  in paragraph 2(a) of this condition where t equals t-1;

$SOMR_{t-1}$  shall have the meaning given to the term  $SOMR_t$  in paragraph 3(a) of this condition where t equals t-1; and

$I_t$  means the percentage interest rate in respect of formula year t which is equal to, where  $SOK_t$  (taking no account of  $I_t$  for this purpose) has a positive value, the average specified rate plus 3 or, where  $SOK_t$  (taking no account of  $I_t$  for this purpose) has a negative value, the average specified rate.

#### **4. Reporting obligations**

(a) Where the licensee publishes any statement or revised or amended statement as to its NTS SO transportation charges under Standard Special Condition A4 (Charging - General), the licensee shall not later than twenty-eight days prior to the time of such publication provide the Authority with:

- (i) a written forecast of maximum NTS system operation revenue, together with its components, in respect of the formula year in which the change in such charges is to take effect and also in respect of the next following formula year; and
- (ii) a written estimate of the maximum NTS system operation revenue, together with its components, in respect of the formula year immediately preceding the formula year in which the change in such charges is to take effect unless a

statement complying with paragraph 4(d) of this condition in respect of that first mentioned formula year has been furnished to the Authority before the publication of the proposed change in such charges.

- (b) If, within three months of the commencement of any formula year, the licensee has not published or effected any such change in its NTS SO transportation charges, the licensee shall provide the Authority with a written forecast of the maximum NTS system operation revenue, together with its components, in respect of that formula year.
- (c) Any forecasts referred to in paragraphs 4(a) and 4(b) of this condition shall be accompanied by such information as may be necessary to enable the Authority to be reasonably satisfied that the forecasts have been properly prepared on a consistent basis.
- (d) Not later than six weeks after the commencement of a formula year, the licensee shall send to the Authority a statement as to whether or not, in its opinion, paragraphs 1(a) to 1(c) inclusive of this condition above apply in respect of that formula year and its best estimate of what  $SOK_t$  (as defined in paragraph 3(d) of this condition) is likely to be in that formula year.
- (e) The licensee shall send to the Authority, not later than three months after the end of each formula year, a statement showing the NTS system operation revenue in respect of that formula year that shall be certified by a Director of the licensee on behalf of the licensee stating that the information is correct to the best of his knowledge and belief having made all reasonable enquiries.
- (f) The statement referred to in paragraph 4(e) of this condition shall be accompanied by a report from the appropriate auditors that, in their opinion, that statement fairly presents the NTS system operation revenue in accordance with the requirements of this condition.

## **5. Disapplication of the NTS SO activity revenue restriction**

- (a) The NTS system operation activity revenue restriction conditions shall apply so long as this licence continues in force but shall cease to have effect in such circumstances and at such times as are described in paragraphs 5(b) to 5(g) of this condition.
- (b) The NTS system operation revenue restrictions conditions shall cease to have effect (in whole or in part, as the case may be) if the licensee delivers to the Authority a disapplication request made in accordance with paragraph 5(c) of this condition or notice is given to the Authority by the licensee in accordance with either paragraph 5(f) or paragraph 5(g) of this condition.
- (c) A disapplication request shall
  - (i) be in writing addressed to the Authority;
  - (ii) specify NTS SO revenue restriction conditions (or any part or parts thereof) to which the request relates; and
  - (iii) state the date (being not earlier than the date referred to in paragraph 5(e) of this condition) from which the licensee wishes the Authority to agree that those conditions shall cease to have effect.
- (d) The licensee may withdraw a disapplication request at any time.
- (e) No disapplication following delivery of a disapplication request pursuant to paragraph 5 of this condition shall have effect until a date being the earlier of:
  - (i) not less than 18 months after delivery of the disapplication request; and
  - (ii) [ ] in the case of a disapplication request which relates to the following parts of the NTS SO revenue restriction set out in this Special Condition or Special Condition C8D (NTS gas entry incentives, costs and revenues), Special Condition C8E (NTS gas exit incentives, costs and revenues), Special

Condition C8F (Other NTS System Operator external incentives, costs and revenues) or Special Condition C8G (NTS System Operator internal incentives, costs and revenues): [Need to consider whether an earlier date is appropriate in respect of any of the provisions]

- (iii) 31 March 2012 in the case of a disapplication request relating to any other Part of the NTS SO revenue restriction.
- (f) If the Authority has not made a reference to the Competition Commission under section 24 of the Act relating to the modification of this Special Condition or Special Condition C8D (NTS gas entry incentives, costs and revenues), Special Condition C8F (Other NTS System Operator external incentives, costs and revenues), Special Condition C8F (Other NTS gas incentives, costs and revenues) or Special Condition C8G (NTS System Operator internal incentives, costs and revenues) or the part or parts thereof specified in the disapplication request before the beginning of the period of 12 months which will end with the disapplication date, and the licensee has not withdrawn the disapplication request the licensee may deliver written notice to the Authority terminating the application of this Special Condition or Special Condition C8D (NTS gas entry incentives, costs and revenues), Special Condition C8E (NTS gas exit incentives, costs and revenues), Special Condition C8F (Other NTS gas incentives, costs and revenues) or Special Condition C8G (NTS System Operator internal incentives, costs and revenues) or the part or parts thereof specified in the disapplication request with effect from the disapplication date or a later date.
- (g) If the Competition Commission makes a report on a reference made by the Authority relating to the modification of this Special Condition or Special Condition C8D (NTS gas entry incentives, costs and revenues), Special Condition C8E (NTS gas exit incentives, costs and revenues), Special Condition C8F (Other NTS System Operator external incentives, costs and revenues) or Special Condition C8G (NTS System Operator internal incentives, costs and revenues) or the part or parts thereof specified in the disapplication request and such report does not include a conclusion that the cessation of such charge restrictions, in whole or in part, operates or may be expected to operate against the public interest, the licensee may within 30 days after the publication

of the report by the Authority in accordance with section 25 of the Act deliver to him written notice terminating the application of this Special Condition or Special Condition C8D (NTS gas entry incentives, costs and revenues), Special Condition C8E (NTS gas exit incentives, costs and revenues), Special Condition C8F (Other NTS System Operator external incentives, costs and revenues) or Special Condition C8G (NTS System Operator internal incentives, costs and revenues) or the part or parts thereof with effect from the disapplication date or later.

DRAFT