

National Grid Gas plc;
all holders of a gas transporter licence;
the UNC modifications panel;
the Joint Office of Gas Transporters;
interested parties.

1 December 2017

Dear Stakeholders

Decisions on proposals relating to the implementation of Regulation (EU) 2017/460¹ ("TAR NC") in GB and statutory consultation on a proposal to modify the gas transporter licence

Summary

Today we² publish notice of a statutory consultation proposing changes to the gas transporter licence ("the Licence").³ This consultation follows our 4 October 2017 consultation on various matters relating to the implementation of TAR NC in GB.⁴

In our 4 October consultation, we sought views on our proposals to:

1. make National Grid Gas plc (NGG) responsible for undertaking certain tasks arising under TAR NC and to direct a timetable for their completion;
2. align and extend the scope of the consultations required under TAR NC and industry procedures;
3. change Standard Special Condition (SSC) A5 (7) of the Licence to enable us to issue NGG with a direction which will facilitate the implementation of TAR NC (subject to statutory consultation);
4. issue NGG with a direction requiring it to undertake certain tasks according to our timetable.

We received seven responses to our consultation and we published these on our website. Our responses to the issues raised by these are included at Annex 1 of this letter.

Following careful consideration, we have decided to proceed with three of the four proposals we set out in October. Specifically, we have decided: to make NGG responsible for undertaking certain tasks arising under TAR NC and to direct a timetable for their completion; to align and extend the scope of the consultations required under TAR NC and

¹ Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0460&from=EN>

² The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably. Ofgem is the Office of the Gas and Electricity Markets Authority. We are the National Regulatory Authority (NRA) in GB.

³ <https://www.ofgem.gov.uk/publications-and-updates/decisions-proposals-relating-implementation-regulation-eu-2017460-tar-nc-gb-and-statutory-consultation-proposal-modify-gas-transporter-licence>

⁴ <https://www.ofgem.gov.uk/publications-and-updates/consultation-proposals-implement-aspects-regulation-eu-2017460-european-network-code-harmonised-transmission-tariff-structures-gas-tar-nc>

industry procedures; to consult on our proposed Licence modifications, with one minor adjustment to terminology made in light of stakeholder feedback. We will make a decision on our proposed direction to NGG once our statutory consultation on our proposed Licence modification has closed.

Our decisions will require that the consultations required under TAR NC and industry processes will be launched at the same time, on a date to be confirmed in our subsequent direction. We consider this a necessary measure to enable TAR NC implementation deadlines to be met.

We are seeking your views on the text of our proposed Licence changes. Subject to the responses we receive, we propose to amend the Licence and issue NGG with a direction to implement our proposals. We anticipate this will take place in January 2018.

Statutory consultation on a proposal to modify the gas transporter licence

In our statutory consultation we propose to add a new paragraph 7B to SSC A5 (Obligations as Regard Charging Methodology) of the Licence and to renumber existing paragraph 7 as paragraph 7A. New paragraph 7B will enable us to issue a direction requiring a licensee to undertake certain activities, and to do so in such form, manner and timeframe and with such frequency as directed. The new paragraph 7B will specify that such a direction may be issued where we reasonably consider it would better facilitate the implementation of, and/or compliance with Regulation (EC) 715/2009⁵ and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Cooperation of Energy Regulators (ACER).

We consider the proposed Licence change necessary to facilitate the timely implementation of the requirements of TAR NC into the GB gas transmission charging regime. Specifically, we wish to direct that NGG undertakes various tasks arising under TAR NC and to direct a timetable for their completion. Currently, the Licence does not make provision for us to issue such a direction.

In our 4 October consultation, we sought views on, amongst other things, our proposed Licence change. One respondent suggested that we should more clearly define the term "Agency". We agree and have amended the draft text to say "Agency for the Co-operation of Energy Regulators" (ACER). This same respondent also raised two other issues on the legal text. First, they said that SSC A5 5(e) of the licence already legally binds transporters to comply with decisions of the EC and/or ACER. Second, they said that any licence change should be made to Part B of the SSCs since this part applies to National Transmission System (NTS) licensees only (ie NGG) and our associated draft direction is intended for NGG only.

On the first issue, we note that whilst SSC A5 5(e) places an obligation on gas transporters to ensure that the relevant charging methodology objectives are compliant with binding decisions of the European Commission/ACER, it stops short of obliging gas transporters to comply with an Authority direction requiring them to undertake certain activities in the circumstances outlined earlier. Consequently, we consider the proposed Licence change to be necessary. On the second issue, we understand the consultee's concerns about exposing gas transporters on the distribution network to a Licence condition paragraph which aims to resolve an issue relating to the NTS. However, we consider it necessary to place the new paragraph in Part A of the SSCs since this is where charging methodology obligations are situated, and the new paragraph is concerned with charging. We recognised this in our consultation when we stated that we proposed to address the subsequent direction to NGG alone.

⁵ REGULATION (EC) No 715/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0036:0054:en:PDF>

How to respond to this consultation

We seek your views on the drafting of the Licence changes we are proposing to make. We invite any representations on or before 4 January 2018. Responses should be sent to Gas.TransmissionResponse@ofgem.gov.uk, or posted to Sean Hayward at our London office at the address below.

Unless you mark your response confidential, we will publish it on our website, www.ofgem.gov.uk, and put it in our library. You can ask us to keep your response confidential, and we'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. If you want us to keep your response confidential, you should clearly mark your response to that effect and include reasons.

If the information you give in your response contains personal data under the Data Protection Act 1998, the Gas and Electricity Markets Authority will be the data controller. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. If you are including any confidential material in your response, please put it in the appendices.

We prefer to receive responses in an electronic form so we can place them on our website.

Next steps

The responses to this consultation will inform the decisions we shall make on our proposals. Subject to these responses, we intend to make a decision on our proposed Licence change in January 2018. We will also make a decision on our proposed direction, and, subject to this decision, will issue a direction to NGG pursuant to the new paragraph 7B of SSC A5 of the Licence.

If you have any queries regarding this letter, please contact Sean Hayward at sean.hayward@ofgem.gov.uk or on 0207 901 3924.

Yours faithfully

Cathryn Scott

Partner, Energy Systems, Ofgem

Annex 1

Responses to our consultation

We received seven responses to our October 2017 consultation – these are published on our website.⁴ Four responses were from gas shippers, one was from an industry organisation, one was from a transporter on the gas distribution network and one was from National Grid Gas (NGG: transporter on the national transmission network). The responses are summarised and discussed below.

Our proposal to make NGG responsible for undertaking certain tasks arising under TAR NC and to direct a timetable for their completion

Five respondents supported our proposal to make NGG responsible for undertaking the tasks, although some concern was expressed about our proposal to direct a timetable for their completion. Specifically, concern was raised by three respondents about NGG's ability to deliver UNC modification proposal 0621 (UNC0621)⁶ within the prescribed timetable. These respondents thought that our proposed deadline⁷ was too soon and would result in the UNC process being compressed. Further, it was suggested that it is not within the gift of NGG to ensure the timetable is met, with one respondent noting that alternative Modification Proposals can be raised at any time, rendering a "reasonable endeavours" direction, in its opinion, meaningless.

To mitigate the risk of delay in implementing TAR NC, one respondent advocated a "slimmed-down charging methodology proposal to provide an acceptable and justifiable level of EU TAR compliance". Another respondent accepted our rationale for wishing to impose a deadline on UNC0621 of being presented to the March 2018 UNC Modification panel, but asked whether we would instead consider focussing our direction on completion of "all necessary processes and governance so that GB was compliant with the EU Tariff Code, by no later than 31 May 2019".

Our view

We note respondents' concerns about NGG's ability to deliver UNC0621 within the prescribed timetable. However, we note that paragraph 12.5.3 of the UNC Modification Rules⁸ provides that where we direct a Transporter specifying or amending a timetable in respect of a modification proposal, that modification proposal shall proceed on the basis of the timetable specified in the direction. Our view is that this places an obligation on the UNC modification panel since it determines the terms of reference for each modification proposal referred to a Workgroup. Consequently, we consider our timetable to be one that can be met if both NGG and the UNC modification panel fulfil their obligations. We will notify the Secretary of the UNC Modification Panel of our direction to NGG as soon as is reasonably practicable after issuing the direction.

On the respondents' proposals to mitigate potential delays, we consider our timetable to be one which offers the best chance of avoiding delay since it will ensure that sufficient time is set aside for subsequent activities to take place ahead of the TAR NC implementation deadline. We are unclear what is meant by a "slimmed-down charging methodology proposal to provide an acceptable and justifiable level of EU TAR compliance", or what the respondent is proposing should be omitted from the proposal. However, we expect industry to bring forward proposals which are compliant with TAR NC and consistent with our policy view on the GB gas transmission charging regime.⁹ We would be unable to approve a modification proposal that would result in GB being non-compliant with TAR NC.

⁶ <https://www.gasgovernance.co.uk/0621>

⁷ In our October 2017 consultation, we proposed that the UNC0621 draft modification report (DMR) should be submitted to the March 2018 UNC Modification Panel meeting.

⁸ <https://www.gasgovernance.co.uk/general>

⁹ <https://www.ofgem.gov.uk/publications-and-updates/open-letter-european-union-network-code-harmonised-transmission-tariff-structures-gas-tar-nc>

On the proposal that we focus our direction on the completion date (ie compliance with the EU Tariff Code by no later than 31 May 2019) rather than the intermediate steps of UNC modification panel submission and consultation launch, we make two comments. First, we are of the view that NGG already has an obligation under the Licence to be compliant with TAR NC. SSC A4 (Charging – General) and SSC A5 (Obligations as Regard Charging Methodology) oblige NGG to establish and conform to a charging methodology which itself has an objective of compliance with Regulation (EC) 715/2009⁵ and any relevant legally binding decisions of the European Commission and/or ACER. Our proposals do not release NGG of this existing responsibility – they add to it. Second, and stated earlier, we are of the view that by directing a timetable for the consultations required under TAR NC and the UNC, we can ensure that sufficient time is set aside for subsequent activities to take place in a timely manner. Consequently, we remain of the view that we should direct a timetable for the intermediate steps of submission to the UNC modification panel and consultation launch to enable implementation deadlines to be met.

Our proposal to align and extend the scope of the consultations required under TAR NC and industry procedures

Whilst one respondent supported our proposal, others expressed concerns over our proposal to use the UNC0621 Draft Modification Report (DMR) as the consultation document for the extended final article 26 consultation required under TAR NC. One respondent was concerned that ACER¹⁰, which is required to analyse the consultation documents, could be overburdened. Others felt that the DMR would be too complex and unrefined for this purpose. One stated that TAR NC does not envisage “competing options” being presented to ACER and that our proposal extends uncertainty for market participants. One respondent was concerned that the views of ACER on the DMR might carry undue weight with Ofgem in regards to its subsequent decision on the Final Modification Report (FMR). The same respondent also expressed concerns about UNC processes being disrupted and imposed upon, and suggested this might result in a loss of process and decision-making transparency.

Alternative approaches which were suggested included using the UNC0621 FMR for the TAR NC consultations, either with, or without, an Ofgem ‘minded-to’ decision. Some respondents were of the view that since the FMR would have already been consulted on as part of the UNC modification procedure, and would contain the views of stakeholders as well as the UNC modification panel recommendation, it would be of greater value to ACER than the DMR. Others thought that a single modification proposal which Ofgem was ‘minded-to’ approve should be sent to ACER. Some respondents suggested that in addition to the FMR, ACER should also be supplied with a modification report impact assessment, undertaken by Ofgem.

No respondents disagreed with our proposals to include both TAR NC article 26 and 28 matters in a single consultation document.

Our view

We note consultees’ concerns about our proposal to use the UNC0621 DMR for the consultations required under TAR NC, but make three observations on this matter. First, ACER is aware of our proposal to use the DMR for the consultations and has not expressed any concerns with this approach. Moreover, it has developed a consultation template, as it is required to do under TAR NC article 26(5), which makes specific provision for multiple proposals to be included. We therefore disagree with the assertion that our proposal is neither envisaged by TAR NC nor expected by ACER. Furthermore, and as stated in our 4 October consultation, we do not consider it appropriate for us to issue a minded-to decision without first taking into account the wider views of ACER and other stakeholders. Second, we have given consideration to using the FMR, or a variant of, for the consultations required under TAR NC, but have concluded that this would put unnecessary pressure on an already tight implementation timetable since it would require the UNC and TAR NC

¹⁰ ACER is the Agency for the Cooperation of the Energy Regulators.

consultations to run consecutively. We do not believe this represents an efficient use of time or resources. In contrast, our proposal will see the consultations run simultaneously. Third, TAR NC article 27(2) details the aspects of the consultation document which ACER should analyse and report on. These do not include any matters which relate to stakeholder views, Ofgem's 'minded-to' view or an Ofgem impact assessment. Consequently, we remain of the view that our proposal to use the UNC0621 DMR for the consultations required under TAR NC is time and resource efficient and consistent with the requirements TAR NC.

On the concern that we might be unduly influenced by ACER's views, we will remain mindful of the issues raised in our consultation, the relevant objectives of the UNC, and our wider statutory obligations when making our decision on the modification proposals. We note the concerns about the impact of our proposals on UNC processes, but feel, on this occasion, that intervention is necessary if we are to ensure the timely implementation of TAR NC in GB. We also remind stakeholders that we are only able to take such action in relation to a modification proposal which falls within the scope of paragraph 15CE of SSC A11 of the Licence.

Our proposal to change Standard Special Condition A5 (7) of the gas transporter licence to enable us to issue NGG with a direction

Only one of the respondents to our consultation commented on our proposed Licence change. The respondent suggested that we should more clearly define the term "Agency". They also stated that standard special condition A5 5(e) of the Licence already legally binds transporters to comply with decisions of the EC and/or ACER. Furthermore, they suggested that any new condition should be added to Part B of the Standard Special Conditions since this part applies to National Transmission System (NTS) licensees only (ie NGG) and our associated draft direction is intended for NGG only.

Our view

On the suggestion that we should more clearly define the term "ACER", we agree and have amended the draft text of the Licence change to say "Agency for the Co-operation of Energy Regulators" (ie ACER)(see Annex 1 of our statutory consultation). On the comment that gas transporters are already legally bound to comply with decisions of the EC and/or ACER, we note that standard special condition A5 5(e) places an obligation on gas transporters to ensure that the relevant charging methodology objectives are EC and/or ACER compliant. However, it stops short of obliging gas transporters to comply with an authority direction requiring them to undertake certain activities in the circumstances outlined earlier. Consequently, we remain of the view that the proposed Licence change is necessary.

On the suggestion that any new condition should be added to Part B of the Standard Special Conditions, we understand the consultee's concerns about exposing gas transporters on the distribution network to a Licence condition which aims to resolve an issue relating to the NTS. However, we consider it necessary to place the new condition in Part A of the Standard Special Conditions. Part A is where charging methodology obligations are situated, and the new condition is concerned with charging. We recognised this issue in our consultation when we stated that we proposed to address the subsequent direction to NGG alone. Consequently, we will continue with our proposal to add the new condition to Part A of the Licence.

Our proposal to issue NGG with a direction requiring it to undertake certain tasks according to our timetable.

Two respondents disagreed with our proposal to align and extend the scope of the consultations required under TAR NC and industry procedures, and consequently they disagreed in principle with our proposed direction to NGG. As noted earlier, in its response, NGG asked us to consider focussing our direction on completion of "all necessary processes and governance so that GB was compliant with the EU Tariff Code, by no later than 31 May 2019", instead of the current focus which is to ensure the consultation are launched in April 2018.

Our view

We remain of the opinion that the best way of ensuring that relevant legally binding decisions of the European Commission are adhered to, ie that TAR NC implementation deadline is met, is to issue a direction which timetables the start of the consultations required under TAR NC and the UNC. We consider this necessary to ensure sufficient time remains available for subsequent activities to take place ahead of the TAR NC implementation deadline.