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Dear Sean

Decisions on proposals relating to the implementation of Regulation (EU) 2017/460 (“TAR NC”) in GB and statutory consultation on a proposal to modify the gas transporter licence

We welcome an opportunity to provide our further views on Ofgem’s decisions on proposals relating to the implementation of TAR NC in the GB market.

We note Ofgem’s position on the industry responses received to October 2017 consultation on TAR NC. While Ofgem seems to have taken time to consider these responses, we are alarmed that none of the issues raised by the industry have been taken into account by Ofgem. In particular, we are concerned that Ofgem continues to believe that using the UNCO621 Draft Modification Report (DMR) as an extended final Article 26 consultation and launching this consultation under a very tight timeline is the best way forward for implementing TAR NC in GB.

In line with the above, we are concerned that, following this statutory consultation, Ofgem will have an ability to direct a timetable for completion of the tasks arising under TAR NC by NGG, while the industry would not have seen a sight of this timetable and would not have had a chance to provide their views on the specifics of this timetable.

We are also apprehensive about the fact that Ofgem, while proposing to direct NGG to perform certain tasks under TAR NC, has not explicitly outlined the tasks that they, as a NRA, are required to perform to deliver the required compliance with TAR NC. Specifically, we note that Article 26 of the TAR NC requires that the final Article 26 consultation is compliant with the requirements of Article 27. Article 27 (2)(b)(2) specifically requires that ACER

assesses whether the elements consulted on in accordance with Article 26 comply with the requirements set out in Article (4)(3) of the TAR NC, among other things. Further, Article 4 (3)(b) prescribes that, where a part of the transmission services revenue is recovered through a 'complementary revenue recovery charge', Ofgem makes an assessment of its cost reflectivity. In layman's terms, the TAR NC seems to contain certain tasks that an NRA must complete to ensure compliance with TAR NC. We would welcome a formal position from Ofgem, as the NRA of the GB market, on the scope of their responsibilities arising from TAR NC implementation.

In line with the above, we also note that, Ofgem states on their website¹ that their approach to regulation is such that they "carefully consider whether any regulatory requirement they are proposing to introduce is proportionate and necessary to protect customers." More formally, Ofgem's Impact Assessment (IA) guidance² states that Ofgem has a duty to perform an IA of the proposals that appear to be "important". In line with this, we would welcome further clarity from Ofgem, as the GB NRA, on their duties in respect of TAR NC implementation in the GB market.

To conclude, we would like to emphasise the importance of a careful consideration and proportionate approach to the TAR NC implementation in the GB market. In our view, an unnecessarily tight implementation timeline might result in a solution that would lead to important issues not being fully explored and unintended consequences arising as a result. We note NGG's request to consider focusing the Direction, which is to be issued by Ofgem to NGG, on the completion date of May 2019, as opposed to a start date, in order to deliver the required compliance with TAR NC. We see this proposal as a sensible approach and a practical way forward. We urge Ofgem to consider the scope of work that is required to be done by NGG, the industry and Ofgem itself, as the NRA of the GB market, and issue a Direction that facilitates a sensible and well-paced timeline for implementation of TAR NC in GB.

If you have any questions on the position outlined in this response, please do not hesitate to get in touch.

Kind regards,

Polina Kharchenko

Regulation Manager

¹ <https://www.ofgem.gov.uk/about-us/how-we-work/our-approach-regulation>

² <https://www.ofgem.gov.uk/publications-and-updates/impact-assessment-guidance>