

# Supporting document to the Proposed GB Use of Congestion Income Methodology

June 2022

## 1 Introduction

### 1.1 About this Document

As part of the consultation for the GB Use of Congestion Income (UCI) methodology, this document sits alongside the proposed methodology as a supporting document to outline the considerations and reasoning that contributed to the development of the draft proposal.

### 1.2 Background

Article 19(4) of the Retained Electricity Regulation<sup>1</sup> puts a requirement on GB TSOs to propose a methodology outlining conditions for the use of congestion income revenues, in accordance with the provisions of that Regulation.

In February 2022, Ofgem informed interconnector owners and project developers that a joint submission, on behalf of interconnector TSOs, of a proposed methodology is expected to be received. In response to this, a Working Group (WG) for the Use of Congestion Income Methodology was formed to draft a proposed methodology. Membership for the WG was open to all GB interconnector owners and developers and advertised through the GB Interconnectors' Forum (GBIF).

In line with the provisions of the Retained Electricity Regulation, that require that the methodology be consulted on with Ofgem and relevant stakeholders prior to submission for approval, this consultation is being issued to members of the GBIF and to Ofgem.

The purpose of this paper is to highlight the key topics that were discussed by the WG in the drafting process to consultation respondents to support their review of the draft legal text.

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<sup>1</sup> Regulation (EU) 2019/943 as amended by Regulation 7 and paragraph 18 of Schedule 4 of the Electricity and Gas (Internal Markets and Network Codes) (Amendment etc.) (EU Exit) Regulations 2020 (2020 No. 1006) (the "Retained Electricity Regulation"),

## 2 Explanatory remarks on the Proposed GB UCI Methodology

### 2.1 General approach of the WG to drafting the methodology

From the outset, the WG agreed that its approach to drafting would be to aim for the methodology to be as concise and principles-based as possible and, wherever possible, avoid a ‘prescriptive list’ approach to categorising potential uses (of congestion income revenues). The main advantage of this ‘principles-based’ approach is to avoid the requirement for an exhaustive list of possible expenditures which could not anticipate all future potential uses. It was also noted that unlike the more complex approved EU version of the use of congestion income methodology, which focuses on the use of congestion income in the context of onshore TSOs owning and operating interconnectors as part of their main regulated asset base, the GB version takes account of the local regulatory framework in its application to single interconnector TSO companies.

### 2.2 On Article 1 – Subject Matter and Scope

#### ***Should the methodology apply to interconnector congestion income or total revenue?***

*WG recommendation: congestion income*

There is a distinction between congestion income, that is, revenues from the allocation of cross-zonal capacity, and total interconnector revenues, which additionally includes revenues from capacity mechanisms, ancillary services and any other interconnector revenue streams.

Article 19 of the Retained Electricity Regulation applies its requirements to the use of congestion income only. Standard Licence Condition 9 (SLC9) of the electricity interconnector licence is considered to enact the requirements of Article 19 into the interconnector regulatory obligations. SLC 9 refers to the ‘use of revenues’ and this has created some ambiguity around interpretation of scope of the requirement.

However, SLC9 also cites Article 19 as the source legislation and, in paragraphs 2 and 5, stipulates “revenues ... from the allocation of interconnector capacity”. As such, the WG has concluded that the interpretation of SLC9 should be for ‘revenues from congestion income’ and the scope of the proposed methodology should be only to congestion income and not to other revenue streams.

#### ***How to adequately capture the exemption that some interconnectors have from the requirements of Article 19?***

*WG recommendation: see wording in paragraph Article 1(4)*

The WG recommend any representative of an interconnector that has such an exemption review the draft wording to ensure that they are satisfied with the text.

#### ***Does the wording adequately capture the share of congestion income to which the methodology applies?***

*WG recommendation: as far as the WG’s understanding of the different interconnector ownership models it does, however, respondents are encouraged to check this for their own interconnector arrangements*

Due to the nature of interconnectors having different ownership models, and different potential joint venture models, it is likely that in most cases the scope of the methodology will apply to a share of the total interconnector revenue from congestion income (e.g. a 50% share for the GB side of the interconnector). The methodology should apply to the revenues from congestion income regulated within GB’s jurisdiction and not to revenues regulated under the connecting country’s jurisdiction. The WG consider that this is captured by the proposed wording.

## 2.3 On Article 2 – Allocation of Congestion Income

### ***Where and how to categorise the allowed returns (under the interconnector’s regulatory regime) within the methodology?***

*WG recommendation: see wording in paragraph Article 2(2b) of the proposed methodology*

The proposed text uses the phrase “appropriate profit as set out in the applicable regulatory regime for that GB interconnector TSO”. While it is not defined, ‘appropriate profit’ was a term used in the European Court of Justice (ECJ) judgement on the interpretation and validity of the use of congestion income revenues requirement in the Baltic Cable case<sup>2</sup>. While that determination pertained to the EU Methodology, the WG considered that adopting the term ‘appropriate profit’ and linking it to the ‘applicable regulatory regime’ was a means of conveying the intended meaning succinctly but sufficiently in the GB UCI Methodology.

The WG recommends that appropriate profit be allocated to the purpose of Article 19(2)(a) ‘guaranteeing actual availability of allocated capacity’.

### ***Description of costs under Article 19(2)(b) ‘maintaining or increasing cross-zonal capacities’***

*WG recommendation: see wording in paragraph Article 2(3) of the proposed methodology*

“...any total expenditure (TOTEX) not covered by other categories” has been used to capture any expenditures that are not explicitly referenced in the wording of paragraphs 2 and 3.

Investment financing costs (including capital remuneration costs) have been included here, in line with the ACER approved UCI methodology.

### ***Why would the revenues to be taken into account ... for calculating network tariffs be less than zero?***

*WG recommendation: this text accounts for the possibility that payments can be made to an interconnector TSO by NGESO via TNUoS on behalf of consumers, in accordance with the regulatory regime for that interconnector TSO*

For example, subject to certain conditions, under the cap and floor regime an uplift payment may be made to an interconnector TSO where the revenue is beneath the floor for a given assessment period.

## 2.4 On Article 3 – Process

The proposed wording here mirrors the requirements set out in SLC9, making clear that the reported values relate to revenues from congestion income (rather than total revenues).

## 2.5 On Article 4 – Implementation

The proposed wording here suggests implementation shall be effective to revenues from congestion income collected from the date determined by the Authority. This may then be applicable to revenues from congestion income collected in part of calendar year 2022. We welcome feedback from respondents on this point.

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<sup>2</sup> <https://www.lexology.com/library/detail.aspx?g=de60c63e-2819-4154-89c3-e811332a2e4f>

### 3 Consultation Questions

We welcome any feedback on the proposed methodology.

Specific questions that respondents may wish to consider when reviewing the consultation are:

- I. Does the proposed wording sufficiently account for interconnectors with an exemption from the Use of Congestion Income provisions?
- II. Does the proposed wording adequately capture that the methodology only applies to the share of congestion income revenues that is regulated within the GB jurisdiction?
- III. Are there any potential uses of congestion income (i.e. expenditure) that are not captured within the descriptions in Article 2 paragraphs 2-5? If so, please suggest amendments.
- IV. Do you have any views on the effective implementation date?