



Gas DSR Consumer Contract Consultation Report

July 2023



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This report documents the outcome of NGT's recent consultation on the DSR contract that would apply between NGT and a consumer if the consumer has a DSR option accepted by NGT.

Background

As part of its package of DSR reforms for Winter 2023/24, National Gas Transmission (NGT) is proposing via UNC Modification 0844¹ to be able to contract for DSR options directly with class 1 consumers as well as with shippers by expanding the scope of the annual DSR options tender. Consumers are not parties to the UNC, therefore, if Ofgem directs implementation of UNC0844 and NGT subsequently receives and accepts DSR option offers from consumers, a new contract will be required to set out the terms and conditions that will apply between the parties for the duration of that DSR option.

NGT proposes that these would be standard conditions of contract that would apply to all such consumers and issued a draft contract for consultation, seeking views from the industry and from consumers, that opened on 16th June 2023 and closed on 13th July 2023. The purpose of this report is to publish views received and NGT's response to those views, alongside a revised version of the contract in mark-up form from that issued for consultation.

Views Received & NGT's Response

Two responses were received to this consultation and NGT would like to thank these parties for their review and comments. The first was from SEFE Energy, appended to its consultation response for Modification 0844², and the second was a confidential response from a consumer.

SEFE Energy Response

1. SEFE Energy questioned whether a consumer should be subject to clauses 3.2(b) and 3.2(c) which state:

¹ [0844 - Enabling Direct Contractual Arrangements with Consumers for Demand Side Response | Joint Office of Gas Transporters \(gasgovernance.co.uk\)](#)

² [Representation - SEFE Energy 0844.pdf \(gasgovernance.co.uk\)](#)

- 3.2 In complying with the DSR Option the Consumer shall not knowingly or recklessly pursue any course of conduct (either alone or with some other person) which is likely to prejudice:
- (a) the safe and efficient operation, from day to day, by NGT of the NTS;
 - (b) the safe, economic and efficient balancing by NGT of the NTS; or
 - (c) the due functioning of the arrangements provided for in the UNC.

Whilst NGT would not expect a consumer's conduct to have these detrimental effects, in our view retaining the provisions as drafted should serve to support appropriate communication arrangements being put in place between shippers and consumers to enable shipper communications to NGT in the form of gas flow nominations for which the rules are set out in UNC to function effectively. We therefore propose no change to this clause.

2. SEFE Energy questioned whether clause 4.2 should include a provision where the circumstances under which NGT would not exercise a DSR option would no longer apply, for example in the case of termination.

- 4.2 NGT will not exercise the DSR Option in respect of a Day if:
- (a) the period from (but not including) the last discontinuous Exercise Day to (and including) that Day is less than the Minimum Exercise Interval, where applicable;
 - (b) the number of Exercise Days in the Winter Period would (following such exercise) exceed the Maximum Exercise Period, where applicable;
 - (c) a DSR Cessation Notice has been issued and is in force.

NGT considers that clause 4.2 is a suitable and sufficient description of the circumstances under which NGT would not exercise a DSR option. If the contract were terminated, subject to clause 10.5 which is reproduced below, all rights and obligations of the parties would cease; therefore it is not necessary to list the impact of termination in each section specifically.

- 10.5 Termination of this Agreement shall be without prejudice to the rights and liabilities of NGT and the Consumer accrued prior to or as a result of such termination.

3. SEFE Energy questioned whether the use of facsimile as described in clause 13 Communications is still relevant.

NGT is not proposing to issue any communications to a consumer by fax and recognises that consumers may well not have a fax machine as this is now an old technology. We therefore agree to remove references to fax communications from clause 13.

4. SEFE Energy questioned whether, under clause 14 'Confidentiality', an amendment would be needed to ensure that consumers can advise both existing and potential shippers and suppliers of the existence of DSR arrangements.

14. CONFIDENTIALITY

14.1 Subject to Clause 16.2, neither Party shall disclose the terms of this Agreement or any information relating thereto to any third party save with the prior written consent of the other and shall keep the same strictly confidential.

14.2 The obligations in Clause 16.1 shall not apply:

- (a) to disclosure by the Consumer to the Registered User or the Supplier of the DSR Option or its exercise by NGT;

At present, clause 14.2(a) would permit the consumer to disclose terms of the agreement only to its current registered shipper and supplier, not prospective shippers or suppliers. NGT acknowledges that if a consumer were considering changing either of these parties then potential successor shippers / suppliers would have a legitimate interest in the agreement. We therefore propose to include reference to prospective shippers/suppliers within clause 14.2(a).

Consumer Response

This respondent considered that the failure to comply regime and credit requirements are an obstacle to its participation. The respondent drew comparisons to the Electricity Demand Flexibility Scheme where there is no equivalent liability or credit requirement and to the Electricity Capacity Market where no credit requirements exist for proven assets.

This respondent considered the proposed rules if a consumer fails to reduce its demand if DSR is called to be harsh, whereby a 1 kWh breach could put at risk the entire winter's option payment plus 10% and that application of an average over multiple events is an unlikely mitigation if the

likelihood of DSR being called is low. This respondent suggested that repayment of the option fee contained to the month of the breach with no premium would be a more suitable approach.

NGT Views

We do not believe that a comparison between gas DSR options and the ESO's Demand Flexibility Service (DFS) in respect of credit arrangements is valid because payments made under the DFS are based solely on delivered demand reduction; option payments do not apply. Additionally, the credit risk associated with consumer contracted gas DSR impacts on other parties, i.e. shippers, who have no ability to manage that risk.

Our proposal on credit seeks to find a compromise position to balance the interests of shippers (given that it is shippers that would fund gas DSR option and exercise payments via energy balancing neutrality) and consumers so that the requirements are not so onerous as to render participation in DSR prohibitive. The original suggestion was that 110% of the entire winter option payment should be securitised whereas we are now proposing that credit would only be required in respect of any shortfall between a recommended annual contract sum in respect of the relevant consumer determined by an independent rating agency and that 110% figure. Therefore, the provision of credit may not even be required for some consumers. If it is required and the consumer does not provide it then the DSR option would simply lapse without penalty.

The respondent notes that there is a credit requirement for unproven assets within the electricity Capacity Market, but none following capacity that is proven. To the extent that this translates into gas DSR, we would note that there are no provisions in our proposals for tests of a consumer's ability to respond and that gas DSR has never been exercised in its 8 year history.

This consumer respondent also suggested that greater leniency should apply for failure to deliver if DSR is called. We have some sympathy with the respondent's point that a 1 kWh breach could result in the entire winter's option payment being forfeit plus a 10% premium. On the other hand we wish to incentivise the right behaviours and promote good value of DSR options, and currently consider that if a party is in receipt of an option payment then (a) if that party fails to deliver DSR when called they should be liable to repay at some level of premium and (b) that the liability should be based on the whole winter's option fee rather than a monthly instalment given the low likelihood of DSR being called.

Aside from the above, the UNC legal text for Modifications 0844 and 0845 establishes failure to comply rules for both shipper DSR and consumer DSR and the text within these Modifications cannot now be amended. We therefore propose to retain the contract text as drafted and include a review of these rules within our planning for DSR reform ahead of winter 2024/25.

NGT Proposed Amendments

NGT also reviewed the draft DSR contract during the consultation period, following which we propose to make the following amendments:

- Within the definition of ‘DSR Option’ correct the reference to ‘NTS’ to read ‘NGT’;
- In the definition of ‘Early Termination Event’, correct the reference to Clause 7 to read Clause 8;
- In the definition of ‘Option Quantity’, correct the reference to ‘DSR Quantity’ to read ‘DSR Reduced Quantity’
- Insert a new clause 4.10 to ensure that NGT may access relevant data for the purposes of assessing compliance with a DSR exercise instruction (and renumber existing clause 4.10 to read 4.11);
- Amend renumbered clause 4.11 to state that where NGT exercises the option, it shall notify the relevant DN operator and any other party as may be required under the UNC;
- Improve the drafting of 6.1 (but not changing the intent);
- Make minor drafting amendments in 6.3 and 6.4;
- Correct the reference in 8.2 to read ‘Required Credit Amount’;
- Add a new clause 8.8 to clarify the circumstances in which NGT would draw on a consumer’s security (if such security is required);
- Remove the reference to NGT in clause 10.3;
- Redraft clause 13.3, adding that electronic communications shall be deemed to have been received provided that the party send the communication is not in receipt of any non-delivery message;
- Correct the reference 16.2 in clause 14.1 to state 14.2; and
- Correct the reference in 14.2 to clause 16.1 to read 14.1.

Next Steps

NGT will publish a marked-up version of this DSR contract on its [DSR webpage](#), alongside this consultation report. If Ofgem approves UNC Modification 0844 and the associated changes to the DSR methodology, NGT will publish a final clean version of the DSR contract on its website, the terms of which shall serve as standard conditions of contract for any DSR option that is offered by a consumer and accepted by NGT.



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