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Date: 15 March 2019

Dear Jan,

Approval of modified Access Rules for the BritNed interconnector to apply only in the event that GB no longer participates in single day-ahead market coupling as a result of the UK leaving the EU without a deal

On 19 February 2019, BritNed Development Limited (BDL) submitted proposed modified access rules (the BritNed access rules) for the BritNed interconnector¹ to the Authority² for approval. The Authority is the designated National Regulatory Authority (NRA) for Great Britain (GB).

The BritNed access rules were submitted pursuant to Standard Licence Condition (SLC) 11A of BDL's electricity interconnector licence (the Licence)³ which requires BDL to maintain 'access rules', that set out the terms and conditions for access to, and including use of, the interconnector.

We have decided to approve the BritNed access rules on the basis that they better achieve the relevant access rules objectives⁴. This letter contains a direction (attached as Annex 1) approving the BritNed access rules.

The proposed modifications to the access rules

The United Kingdom (UK) is scheduled to leave the European Union (EU) on 29 March 2019. Leaving the EU with a deal remains the Government's priority. However, until this is confirmed, it is responsible to plan for every eventuality, including a no deal scenario.

BDL therefore submitted the BritNed access rules to the Authority for approval. The BritNed access rules seek to ensure that the current allocation mechanisms evolve to remain

¹ BritNed is a 1,000MW direct current cable connecting the Dutch transmission system to the system of GB, between Maasvlakte in the Netherlands and the Isle of Grain in the UK. BDL is a joint venture of Dutch NLink International B.V. – a subsidiary of TenneT Holding B.V. - and British TSO National Grid, and commercially operates the BritNed interconnector

² The Gas and Electricity Markets Authority. Ofgem is the Office of the Authority. The terms "Ofgem" and "the Authority," "we" and "us" are used interchangeably in this letter.

³ The electricity interconnector licence standard conditions can be found here:
https://epr.ofgem.gov.uk//Content/Documents/Electricity_Interconnector_Standard%20Licence%20Conditions%20Consolidated%20-%20Current%20Version.pdf

⁴ The relevant access rules objectives are set out in SLC 11A and state that access rules shall be transparent, objective, non-discriminatory and compliant with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency.

operable in the event that GB no longer participates in the single day-ahead market coupling as a result of the UK leaving the EU without the entry into force of a withdrawal agreement. The BritNed access rules are intended to enter into force only in the event that the UK leaves the EU without the entry into force of a withdrawal agreement.

Regulatory framework

SLC 11A of the Licence introduces relevant access rules objectives, against which the Authority will assess the access rules and any proposed amendments. The relevant objectives are that access rules shall be transparent, objective, non-discriminatory and compliant with the Electricity Regulation⁵ and any relevant legally binding decision of the European Commission and/or the Agency for the Cooperation of Energy Regulators (the Agency).

The withdrawal of the UK from the EU will result in changes to the legal and regulatory frameworks in GB. To take these changes into account when assessing the BritNed access rules, we considered the Electricity Regulation as amended after exit day by application of the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019.

The Authority's decision

Following a review of the BritNed access rules, we consulted and closely cooperated with the Authority for Consumers & Markets (ACM), the Dutch NRA, to develop a Joint Opinion⁶ on BDL's proposal. The Joint Opinion was agreed on 14 March 2019. It is attached as Annex 2 to this decision letter and constitutes the reasons for our decision as required under section 49A of the Electricity Act 1989.

In line with the Joint Opinion, we have decided to approve the BritNed access rules. It is our view that the BritNed access rules meet the relevant access rules objectives. The Authority has therefore decided to approve the proposed modifications to the BritNed access rules. A direction issued in accordance with SLC 11A(13) of the Licence can be found in Annex 1 of this letter.

The BritNed access rules shall only come into effect in the event that GB no longer participates in single day-ahead market coupling as a result of the UK leaving the EU without a withdrawal agreement. In that case, these approved access rules shall apply from the day following the UK's withdrawal from the EU.

The BritNed access rules that were last approved by the Authority on 1 December 2017⁷ shall remain in force unless and until the access rules approved by this decision come into effect.

⁵ See Regulation (EC) No 714/2009 on conditions for access to the network for cross border exchanges in electricity. By application of the European Union (Withdrawal) Act 2018, the Electricity Regulation will become retained EU law after exit day. By application of the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019, the Electricity Regulation is amended to take into account the impact of the withdrawal of the UK from the EU. The terms of the Electricity Regulation will therefore be different before and after exit day.

⁶ Joint Opinion of the Authority for Consumers & Markets (Netherlands) and the Gas and Electricity Markets Authority (Great Britain) on the Access Rules for the BritNed interconnector in the event that United Kingdom no longer participates in single day-ahead market coupling

⁷ December 2017, BritNed Access Rules approval:

<https://www.ofgem.gov.uk/publications-and-updates/approval-modified-access-rules-britned-interconnector>
Current BritNed access rules: <https://www.britned.com/participants-portal/key-links-and-documents/britned-access-rules-and-harmonised-allocation-rules/>

Next steps

Publication of access rules

In accordance with SLC 11A(14) of the Licence, BDL is required to publish (at least on its website) the approved access rules for a period of 28 days prior to their coming into effect (the Publication Period), unless the Authority directs otherwise.

The Publication Period serves an important purpose as it provides an opportunity for market participants to become familiar with the approved access rules ahead of their coming into effect. We would normally expect interconnector owners to strictly abide by this requirement.

On this specific occasion, we have decided to make an exception and shorten the publication period in order to ensure that appropriate access rules can apply to the BritNed interconnector in the event that GB no longer participates in single day-ahead market coupling as a result of the UK leaving the EU without a withdrawal agreement.

The Authority has therefore decided to direct, in accordance with SLC 11A(14), that the Publication Period be shortened. We expect BDL to publish the approved BritNed Access Rules on its website as soon as reasonably practicable after publication of this decision.

Future modifications to the BritNed access rules

Going forward, we expect to work with BDL and ACM to refine these arrangements. To that end, BDL should keep the BritNed access rules under review and submit any proposed modifications⁸, for Authority approval, in good time and in accordance with the requirements set out in SLC 11A of the Licence.

Yours sincerely,

David Hall
Head of European Markets, Wholesale Markets and Commercial

⁸ Including, but not limited to, modifications that aim to address the issues outlined in the Joint Opinion

ANNEX 1

Direction issued to BritNed Development Limited pursuant to paragraph 13 of Standard Licence Condition 11A (Approval of terms for access to the licensee's interconnector) of its Electricity Interconnector Licence

1. This Direction is issued by the Gas and Electricity Markets Authority (the "Authority") pursuant to paragraph 13 of Standard Licence Condition 11A of the electricity interconnector licence (the "Licence") granted or treated as granted under section 6(1)(e) of the Electricity Act 1989 (the "Act") to BritNed Development Limited (the "Licensee") in relation to the BritNed interconnector.
2. Standard Licence Condition 11A of the Licence provides that the Licensee shall prepare and submit for approval by the Authority a statement setting out the Access Rules, being the methodologies used to establish terms and conditions for access to and use of the BritNed interconnector.
3. Standard Licence Condition 11A, paragraph 4, requires that the Access Rules must be transparent, objective, non-discriminatory and compliant with the Regulation (Regulation (EC) No 714/2009 on conditions for access to the network for cross border exchanges in electricity) and any relevant legally binding decision of the European Commission and/or Agency for the Co-operation of Energy Regulators (collectively the "relevant access rules objectives").
4. Standard Licence Condition 11A, paragraph 8, requires that the Licensee reviews its Access Rules at least once in each calendar year and make such modifications to the Access Rules as may be requisite for the purpose of ensuring that the Access Rules better achieve the relevant access rules objectives.
5. Standard Licence Condition 11A, paragraph 10, requires the Licensee to take all reasonable steps to ensure that all persons, including those in other Member States that may have a direct interest in the Access Rules, are consulted and allow them a period of not less than 28 days within which to make written representations. The Licensee must also furnish to the Authority a report setting out the terms originally proposed for the modification, the representations, if any, made by interested persons and any change in the terms of the modification intended as a consequence of such representations.
6. In accordance with Standard Licence Condition 11A, paragraph 10, on 19 February 2019 the Licensee furnished the Authority with a report setting out the Licensee's proposed modifications to the Access Rules (the modified BritNed Access Rules). The proposed modifications relate to changes necessary to ensure that the Licensee's Access Rules remain operable in the event that the UK leaves the EU without the entry into force of a withdrawal agreement.
7. After careful consideration of the report and the responses to the public consultation and after consulting and closely cooperating with the Dutch regulatory authority in order to reach a Joint Opinion, the Authority has decided that the Licensee's proposed modified Access Rules meet the relevant Access Rules objectives for the reasons set out in the Joint Opinion.
8. SLC 11A(14) of the Licence requires that, unless the Authority directs otherwise, the modified BritNed Access Rules shall be published 28 days prior to coming into effect. The Authority considers that it is important to ensure that appropriate access rules can apply to the BritNed interconnector in the event that GB no longer participates in single day-ahead market coupling as a result of the UK leaving the EU without a withdrawal agreement.
9. The Authority therefore hereby directs:

- (a) pursuant to paragraph 13 of Standard Licence Condition 11A of the Licence, that the Licensee's proposed modified BritNed Access Rules are approved, and
- (b) pursuant to paragraph 14 of Standard Licence Condition 11A of the Licence, that the approved Access Rules be published as soon as practicable and come into effect only in the event that GB no longer participates in single day-ahead market coupling as a result of the UK leaving the EU without a withdrawal agreement. In which case, these approved BritNed Access Rules shall apply from the day following the UK's withdrawal from the EU.

10. The BritNed Access Rules last approved by the Authority on 1 December 2017 will remain in force unless and until the modified BritNed Access Rules approved on the date of this Direction are implemented.

11. The Licensee shall implement these approved BritNed Access Rules only in the event that GB no longer participates in single day-ahead market coupling as a result of the UK leaving the EU without a withdrawal agreement. In which case, these approved BritNed Access Rules shall apply from the day following the UK's withdrawal from the EU.

12. This Direction shall take effect on immediately and shall remain in effect until such time as the Authority may revoke or vary the Direction in writing upon reasonable notice.

13. The Joint Opinion attached to this decision constitutes notice of the Authority's reasons for the decision pursuant to section 49A of the Act. Copies of the documents mentioned in this Direction can be found on the Ofgem website (www.ofgem.gov.uk).

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David Hall

Head of European Markets, Wholesale Markets and Commercial
Signed on behalf of the Authority and authorised for that purpose by the Authority
on 15 March 2019