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Dear Nick,

Approval of the modified Access Rules for the Nemo Link interconnector to apply only in the event the UK leaves the EU without a deal

On 14 August 2019, Nemo Link Limited (NLL) submitted modified Access Rules (the modified Access Rules) for the Nemo Link interconnector¹ to the Authority² for approval. The Authority is the designated Regulatory Authority (RA) for Great Britain (GB).

The modified Access Rules were submitted pursuant to Standard Licence Condition (SLC) 11A of NLL's electricity interconnector licence (the Licence)³ which requires NLL 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 modified Access Rules on the basis that we are satisfied the modifications better achieve the relevant Access Rules objectives as required under NLL's licence⁴. This letter contains a Direction (attached as Annex 1) approving the modified Access Rules.

¹ Nemo Link is a 1000MW high voltage direct current (HVDC) interconnector, connecting the transmission systems of Great Britain (GB) and Belgium (BE). NLL is a joint venture between Elia System Operator NV/SA (Elia) (the Belgian TSO) and National Grid Interconnector Holdings Limited.

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.

For the avoidance of doubt, in the event the United Kingdom (UK) leaves the European Union (EU) without a deal on 31 October, the Access Rules approved on 15 March⁵ will apply until the modified Access Rules, approved by this decision, come into effect on the 14 November.

Background

The UK is scheduled to leave the EU on 31 October 2019 and will do so unless agreed otherwise by the UK and the EU. Leaving the EU with an agreement remains the Government's stated intention. However, until this is confirmed, it is responsible to plan for every eventuality, including a no deal scenario.

The modifications to the Access Rules

On 14 August 2019, NLL submitted the modified Access Rules to the Authority for approval. These Access Rules look to further build upon the Nemo Link Access Rules approved on 15 March 2019⁶ (the Nemo Link Access Rules) to include provisions for the long-term and intraday timeframes.

If the UK leaves the EU without a deal on 31 October 2019, the Nemo link Access Rules will apply until the modified Access Rules, approved by this decision, come into effect on the 14 November 2019.

In accordance with the applicable legal and regulatory framework, NLL organised two publication consultations.

The first consultation⁷ focused on the provisions for the long-term timeframes and was held between 9 May 2019 and 14 June 2019. NLL proposed to offer base load long-term Physical Transmission Rights (PTRs) across annual, quarterly, and monthly timeframes. PTR holders who do not nominate their PTRs ahead of the corresponding day ahead auction are entitled to a compensation.

The second consultation⁸ covered the provisions for the intraday timeframes and was held between 2 July 2019 and 5 August 2019. NLL proposed to allocate intraday capacity via explicit auctions. NLL proposed to hold four intraday auctions with twenty four nomination

⁵ Ofgem's decision is available here : <https://www.ofgem.gov.uk/publications-and-updates/approval-modified-access-rules-nemo-link-interconnector-apply-event-uk-leaves-eu-without-deal>

⁶ Ofgem's decision is available here : <https://www.ofgem.gov.uk/publications-and-updates/approval-modified-access-rules-nemo-link-interconnector-apply-event-uk-leaves-eu-without-deal>.

⁷ The consultation for the long-term timeframes is available here: <https://www.nemolink.co.uk/consultation-notice/consultation-on-non-iem-long-term-allocation-and-nomination-rules/>.

⁸ The consultation for the intraday timeframe is available here: <https://www.nemolink.co.uk/consultation-notice/nemo-link-launches-intraday-product-consultation/>.

gates. The intraday explicit auctions will use the Use-It-Or-Lose-It (UIOLI) principle for nomination. The UIOLI principle means an automatic application by which the underlying capacity of the non-nominated intraday transmission rights (ITRs) irrevocably fall back to NLL and whereby the ITR holders that do not nominate their capacity have no right to receive a pay-out. Following these consultations, NLL has submitted the modified Access Rules to the Authority on 14 August 2019.

Regulatory framework

SLC 11A of the Licence introduces relevant Access Rules objectives, against which the Authority will assess the Access Rules and any proposed modifications. The relevant objectives are that Access Rules shall be transparent, objective, non-discriminatory and compliant with the Electricity Regulation⁹ 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 modified 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

We have reviewed the modified Access Rules submitted to Ofgem on 14 August. We have concluded that they meet the relevant Access Rules objectives.

In reaching our decision we have considered the consultation responses and have consulted and closely cooperated with the Commission de Régulation de l'Énergie et du Gaz (CREG), the Belgian RA, to develop a Joint Opinion¹⁰ (the Joint Opinion) on NLL's proposal. The Joint Opinion was agreed on 17 October 2019. It is included as a subsidiary document to this decision letter.

In line with the Joint Opinion, the Authority approves the modified Access Rules on the basis that they meet the relevant Access Rules objectives set out in SLC 11A(4) of the Licence.

⁹ 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.

¹⁰ Joint Opinion of the Commission de Régulation de l'Électricité et du Gaz (Belgium) and the Gas and Electricity Markets Authority (Great Britain) on the Access Rules for the Nemo Link interconnector in the event that Great Britain no longer participates in the single day-ahead market coupling.

The Direction issued in accordance with SLC 11A(7) of the Licence can be found in Annex 1 of this letter.

For the avoidance of doubt, the Nemo Link Access Rules approved by the Authority on 15 March 2019¹¹ would apply in the event that GB no longer participates in the single day-ahead market coupling as a consequence of the UK leaving the EU without a deal, until the modified Access Rules approved by this decision come into effect on 14 November 2019.

Next steps

Publication of the modified Access Rules

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

To allow for the implementation timeline proposed by NLL for its first intraday auctions on 14 November and its auctions of long-term capacity, we have decided to make an exception and shorten the publication period.

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

Future modifications

NLL should keep the modified Access Rules under review to ensure they remain fit for purpose and submit any proposed modifications, to the Authority for approval in good time and in accordance with the requirements set out in SLC 11A of the Licence.

Yours sincerely,

Natasha Zoe Smith

Head of European Markets, Wholesale Markets and Commercial

¹¹ Ofgem's decision to approve the Access Rules in case of GB decoupling is available here: <https://www.ofgem.gov.uk/publications-and-updates/approval-modified-access-rules-nemo-link-interconnector-apply-event-uk-leaves-eu-without-deal>

ANNEX 1

Direction issued to Nemo Link 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 Nemo Link Limited (the Licensee) in relation to the Nemo Link interconnector.
2. 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).
3. 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.
4. 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.
5. In accordance with Standard Licence Condition 11A, paragraph 10, on 14 August 2019, the Licensee furnished the Authority with a report setting out the Licensee's proposed modifications to the Access Rules that would apply in the event that the UK leaves the EU without a deal (the modified Access Rules).
6. After careful consideration of the report and the responses to the public consultation and after consulting and closely cooperating with the Belgian 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 letter accompanying this Direction.

7. Standard License Condition 11A, paragraph 14 requires that, unless the Authority directs otherwise, the modified Access Rules shall be published 28 days prior to coming into effect. The Authority considers that it is important to ensure that the long term and intraday provisions come into force as soon as possible.
8. The Authority therefore hereby directs:
 - a) pursuant to paragraph 13 of Standard Licence Condition 11A of the Licence, that the Licensee's modified Access Rules are approved, and
 - b) pursuant to paragraph 14 of Standard Licence Condition 11A of the Licence, that the modified Access Rules be published as soon as practicable and come into effect on 14 November 2019, only in the event that the UK leaves the EU without a deal.
9. In the event GB no longer participates in single day-ahead market coupling as a result of the UK leaving the EU without a deal on 31 October, the Nemo Link Access Rules approved by the Authority on 15 March 2019 will apply and remain in force until the modified Access Rules approved on the date of this Direction are implemented.
10. The Licensee shall implement these approved Nemo Link Access Rules only in the the UK leaves the EU without a deal. In that case, these approved modified Access Rules shall apply from 14 November 2019.
11. This Direction shall take effect immediately and shall remain in effect until such time as the Authority may revoke or vary the Direction in writing upon reasonable notice.
12. This Direction 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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Natasha Zoe Smith

Head of European Markets, Wholesale Markets and Commercial

**Signed on behalf of the Authority and authorised for that purpose by the Authority
on 18 October 2019**