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23 August 2021

Dear David,

Statutory Consultation and Final Impact Assessment on proposed combining of two existing Bacton exit points in NGG's Gas Transporter Licence

Thank you for the opportunity to respond to this statutory consultation.

Interconnector Limited ("INT" or "we") appreciates Ofgem's intent to further facilitate cross border competition. We do not, however, support Ofgem's proposal to aggregate the Bacton (IUK) and Bacton (BBL) exit interconnection points (IPs) into a single exit point in National Grid Gas's Licence for reasons outlined in this letter (see Annex 1). We do not believe that the statutory processes and legislation are being followed in this bespoke process.

Regulatory Framework

The GB gas market is governed by a comprehensive set of GB and retained EU legislation. In order to achieve the objectives of protecting consumers' interests and promoting effective competition, it is essential that market participants can rely on this regulatory framework and that it is applied in a proportionate, non-discriminatory and consistent way. Any capacity allocation methodology should apply to all market participants in a non-discriminatory and transparent way, including new or prospective connectees.

We continue to believe alternative solutions are available that (i) enable a capacity offering at the NTS Bacton (BBL) exit point, (ii) are legally and regulatory compliant, and (iii) do not require the degradation or reduction of the capacity offering at other existing connections to the National Transmission System (NTS).

We kindly request Ofgem review its position and, if it should still consider it appropriate to intervene, that it initiates a review of the statutory/legislative processes rather than impose a bespoke solution. We are ready to constructively engage with stakeholders in reviewing the operation of the current rules and remain available for further questions or discussion on the proposed aggregation of exit capacity at Bacton.

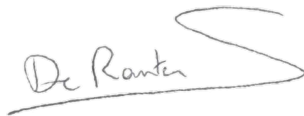
If aggregation continues to be Ofgem's preferred solution, we would ask for specific assurances to be provided that this proposed approach will not set a precedent whereby other infrastructure developers may circumvent the prescribed processes for accessing obligated capacity.

Energy Transition and Regulatory Certainty

As an infrastructure developer with a proven record of delivering innovative and complex engineering projects, we welcome the challenges that the energy transition brings. Bacton is one of the largest entry and exit nodes on the NTS and benefits from access to offshore renewable energy and depleted gas reservoirs. Consequently, it has great potential to deliver sustainable, carbon neutral energy projects that will promote GB consumer welfare and security of supply, whilst helping the transition to net zero. Regulatory certainty is a significant factor that will influence investment in projects in the Bacton area.

We look forward to further conversations with you about the technical and commercial development of the Bacton terminal complex and to working with you to deliver its full potential.

Yours sincerely,

A handwritten signature in blue ink, reading "De Ranter", followed by a large, stylized flourish that extends to the right.

Steven De Ranter
Managing Director

Annex 1: Why Interconnector Limited does not support Ofgem's proposal to aggregate Bacton (IUK) and Bacton (BBL) exit interconnection points (IPs) into a single exit point in National Grid Gas's Licence

1) The proposal is not compliant with the existing legal and regulatory frameworks

Compliance with legislation and regulatory frameworks

We believe this proposal is not compliant with the existing legal and regulatory frameworks applying to IPs as we outlined in our response to Ofgem's minded to consultation (MTC) position¹. It still remains unclear from the Ofgem final impact assessment (FIA)² why the Capacity Allocation Mechanisms (CAM) regulation³ and the IP Planning and Advanced Reservation of Capacity Agreement (PARCA) process⁴ are deemed inapplicable.

It also remains unclear why Ofgem believes a PARCA process "would result in a technical increase at Bacton" and has considered the PARCA/CAM incremental process as inapplicable saying "we don't think this process is a compatible solution for the problem under consideration as it only addresses ways of increasing the technical capacity at the exit point"⁵. National Grid Gas's exit capacity release methodology statement (ExCR)⁶, indicates a technical increase is only one option that National Grid Gas (NGG) could consider in meeting a request for additional commercial capacity. Under the rules NGG is obliged to "confirm how the capacity request can be satisfied; e.g. i. From any Unsold Technical Interconnection Point Capacity; ii. From the use of existing infrastructure; iii. By exit capacity substitution; iv. Through investment and/or contractual alternatives; v. A combination of the above"⁷. We do not believe Stakeholders have seen an assessment of these parameters in this process.

Discriminatory process

This bespoke process and proposal would allow preferential treatment for BBL/BBL users, discriminating against users following the formal process for seeking additional firm NTS capacity. The CAM incremental process and the ExCR arrangements, including PARCA, are objective and should be consistently applied to all market participants.

The proposal to combine exit points risks creating a precedent that increases the chances of inefficient investment and/or regulatory uncertainty contrary to net zero objectives. If this proposal were to progress then other parties may also wish to make investments 'at their own risk' and bypass PARCA processes with a direct request to Ofgem for additional NTS capacity without a positive economic test or user commitment. It would be a fair expectation for that

¹ See Interconnector's response to the Ofgem minded to position: <https://www.ofgem.gov.uk/publications/statutory-consultation-and-final-impact-assessment-proposed-combining-two-existing-bacton-exit-points-nggs-gas-transporter-licence>

² Ofgem final impact assessment: <https://www.ofgem.gov.uk/publications/statutory-consultation-and-final-impact-assessment-proposed-combining-two-existing-bacton-exit-points-nggs-gas-transporter-licence>

³ Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R0459> as incorporated into the domestic law of the United Kingdom by the European Union (Withdrawal) Act 2018 as amended by the European Union (Withdrawal Agreement) Act 2020 on 1 January 2021.

⁴ IP Planning and Advanced Reservation of Capacity Agreement (PARCA) process: <https://www.nationalgrid.com/uk/gas-transmission/connections/reserving-capacity-parca-and-cam>

⁵ See p3 of Ofgem's Final Impact Assessment.

⁶ National Grid Gas's exit capacity release methodology statement: <https://www.nationalgrid.com/uk/gas-transmission/capacity/capacity-methodology-statements>

⁷ See paragraph 222 p58 of the National Grid Gas's exit capacity release methodology statement.

party to presume that a similar process is undertaken. Similarly, it could also mean that any other NTS connectee (*incl. power plants, industrial users, distribution network operators*) is at a higher risk of seeing its capacity connection being impacted by an action outside of the statutory processes.

In this context, we note that other parties⁸, including NGG as the operator of the NTS, shippers, and a large distribution network operator⁹, have also questioned the compliance of the Option 2 proposal and the precedent risk in case this proposal is taken forward.

Reference to Net Zero in Ofgem's assessment

We welcome Ofgem's consideration of Net Zero in its approach to this consultation. Net Zero is an opportunity for all stakeholders to review, consider and adapt their behaviour. Ofgem's Decarbonisation Action Plan¹⁰ highlights that in order to support the move to Net Zero, it will need to provide "enough regulatory certainty to encourage high levels of investment". It is unclear from the FIA why the current rules are deemed inappropriate in the context of Net Zero targets and why these rules, if they are no longer appropriate, have not been amended. Ignoring the legislative framework as proposed does not provide regulatory certainty for investors.

Review of the statutory processes and legislation

Confidence in the statutory process and legislation is important for investors. Ofgem's consultation and assessment highlights that there may be a need to review the statutory processes and legislation related to capacity allocation. We believe the correct process would be to firstly reform these rules so consistent rules can apply to all parties. We are ready to constructively engage with stakeholders to ensure these rules are fit for purpose.

2) Current arrangements have facilitated competition and exports via both Bacton interconnectors

The current arrangements have, consistent with the existing legal and regulatory framework, facilitated GB interconnector export competition via both Bacton interconnectors, with BBL managing to successfully sell a suite of its GB to the Netherlands capacity via implicit allocation sales mechanisms. There has been no barrier to exports and we believe that there still remains no formal request by BBL users or the interconnector itself for additional firm capacity above the Bacton (BBL) NTS baseline capacity. It does not appear that any targeted action is required.

3) Alternative compliant options do exist to make additional firm capacity available to the NTS Bacton (BBL) exit point and these options should be assessed

We continue to believe other options, as outlined in our response to the Ofgem MTC, are available to facilitate this bespoke request. From the FIA it appears that there has been little evaluation of the merits of improving dynamic calculation in order to improve the offer of non obligated firm capacity to Bacton NTS (BBL) exit. If, as Ofgem believes, there is plenty of available

⁸Ofgem minded to position and initial impact assessment: <https://www.ofgem.gov.uk/publications/initial-impact-assessment-and-minded-position-arrangements-accessing-licence-baseline-exit-capacity-bacton-interconnection-point>

⁹ This potential discrimination was also noted by some other responders to Ofgem's MTC consultation e.g. Cadent noted that if it "wished to increase its firm capacity holding at one of its NTS/LDZ Offtakes which had a Baseline of zero (0) kwh, then we would need to apply for Enduring Annual Capacity and be liable for a User Commitment fee. We do not see why this is not the case for Users at Bacton (BBL)?" See link in footnote 1 to the published responses.

¹⁰ Ofgem Decarbonisation Action Plan: <https://www.ofgem.gov.uk/publications/ofgems-decarbonisation-action-plan>

capacity to serve the needs of both interconnector users¹¹, dynamic calculation of capacity can be improved and more firm capacity offered. It is also unclear why Ofgem believe NGG may not be able to release non obligated firm capacity "going forward"¹². Similarly, Oversubscription and Buy Back and the incentives for NGG around this could have also been reviewed.

Each of these options would increase effective competition and network efficiency in a compliant manner, consistent with net zero objective, by enabling additional firm capacity to be accessed at the Bacton NTS (BBL) exit point and used with the new short haul arrangements.

4) The current allocation of NTS capacity at the NTS Bacton (IUK) exit point meets legal obligations, meets peak demand requirements and is consistent with Bacton entry arrangements;

We reiterate our view that the current allocation of capacity to the Bacton (IUK) exit IP is consistent and fully compliant with the obligations outlined in the CAM code (Article 6) and the EC Security of Supply Regulation¹³. The arrangements ensure a harmonised and coordinated maximisation of technical capacity facilitating cross border trade and supply.

It is also consistent with the arrangements at the Bacton (IP) ASEP where Ofgem specifically stated, when implementing CAM in 2015, that the *"The baseline capacity for the Bacton IP entry point should be set at the sum of the maximum technical capacities of the two interconnectors. We considered this would achieve compliance with Article 6 of the CAM...."*¹⁴ Consistent with these obligations, the technical capacities at both the Moffat and Bacton (IUK) exit points has been ring fenced from substitution in NG's Exit capacity substitution and revision methodology (ExCS). The reason for this ring fencing is compliance with these retained CAM rules. NG in its MTC response noted its ExCS is consistent with Article 6 of the CAM code. Ofgem's FIA also notes this obligation and agrees capacity should not be substituted from IPs¹⁵ yet this proposal would create a technical mismatch. If capacity is allocated to BBL under a competing auction, it effectively substitutes capacity away from Bacton interconnector which, we believe, is in contradiction to these rules and Article 6 of CAM.

5) The need for further assessment on the impact on BE consumers, BE market and Interconnector as cross border infrastructure.

We do not believe the MTC and the FIA have adequately considered the impact on the BE market and its consumers. Its qualitative analysis speaks generically about a positive impact for "European consumers" but appears to focus on the benefits to Dutch consumers. By not seeking to explore alternative options to offer additional firm capacity at Bacton, there will be negative effects for the Belgian market through the technical capacity mismatch.

¹¹ For example in paragraph 3.9 of the Ofgem FIA p23 Ofgem say *"there should be an opportunity to meeting BBL's request to compete for capacity on exit at Bacton on a equal footing with IUK throughout the year without significantly impacting the exit capacity needs of IUK users"*.

¹² P2 of the FIA – Ofgem say "In June 2021, NGG also released non-obligated firm capacity on some days. However this may not be the case going forward,"

¹³ Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R0459> as incorporated into the domestic law of the United Kingdom by the European Union (Withdrawal) Act 2018 as amended by the European Union (Withdrawal Agreement) Act 2020 on 1 January 2021.

¹⁴ See: https://www.ofgem.gov.uk/sites/default/files/docs/2015/02/cam_final_decision_letter_final_1.pdf

¹⁵ See paragraph 4.29 p32 of the FIA.

The argumentation for Option 2 suggests that most of the capacity remains available to be used with Interconnector and that further BBL expansion is something unlikely *"in the foreseeable future"*. Ofgem would however need to undertake a further assessment if BBL did unilaterally expand its capacity and we would expect statutory processes to be followed. This assessment would need to include the effects on the Belgian market/consumers, and the sustainability of Interconnector itself - as a strategic infrastructure supporting the security of supply of both Belgium and Great Britain.

6) Further analysis required in assessment

Implementation Feasibility

The FIA does not consider the feasibility or consequences of the implementation of competing auctions at Bacton. More specifically, how competing auctions at the Bacton IP may lead to capacity mismatches between the Bacton and Zeebrugge IP, given Interconnector operates an IN = OUT model with 2 auctions running simultaneously. The uncertainty of being allocated NTS capacity affects Belgian imports via GB and Interconnector shippers' business opportunity. This 2 IP interaction and need for concurrent allocation at both IPs needs to be assessed.

Discounted options

We do not believe the FIA has done a valid assessment of the available options. It is unclear why an incremental option has been automatically dismissed for assessment and comparison against other options, and why there is no analysis of the other parameters NG would ordinarily assess if the PARCA route was being used. It is also unclear why *"long term capacity optimisation"* is considered unsuitable when other countries like Germany (in the merger of NCG and Gaspool) are using optimisation mechanisms such as Oversubscription and Buy Back as key instruments to meet capacity demands.

Inconsistency in approach to choosing options

Whilst IP PARCA is deemed to be inapplicable upfront for assessment, the FIA does make an assessment under option 3 of reallocating capacity (substitution). It is unclear why one option is considered inapplicable (incremental) yet substitution included when Ofgem also says *"the rules and circumstances that are unique to IPs prevent substitute on of capacity on exit at Bacton"*¹⁶ and *"option 3 does not comply with Article 6.1 EC CAM NC"*¹⁷. Ofgem is right to acknowledge and respect the ExCS rules and CAM Article 6. We believe that must equally apply to the ExCR and CAM demand assessment rules.

Limited quantitative assessment

The direct arbitrage benefits analysis is unclear and not accurate. Even then we note it only provides a small positive monetary value. The spread analysis, as presented in the FIA, misses several elements. Firstly it would need to take into account the transportation costs (i.e. the capacity and commodity costs of each of the 3 TSOs involved in transporting either to the Netherlands or Belgium). It also needs to take into account the fact that existing bookings would be treated differently (i.e. as a sunk capacity) compared to bookings on the day. The spreads at the time the capacity was purchased are also relevant, noting via both PRISMA and implicit allocation mechanisms gas capacity can and is often purchased further out then on the day. It would also need to note that Shippers acquire both the intrinsic and extrinsic value of capacity

¹⁶ Footnote 31 on p32 of the Ofgem FIA.

¹⁷ See paragraph 6.23 of the Ofgem FIA.

they hold. Taking account of all these elements, the pipeline flows and capacity purchases can be shown to be efficient.

The short haul analysis also assumes no firm capacity would be provided to the Bacton (BBL) Exit point and therefore the BBL shippers would miss out on the future short haul charging arrangement – without further justification or consideration. Options other than Option 2, including long term optimisation and improved dynamic capacity calculation could enable short haul to be used on the Bacton (BBL) NTS exit point. Also, a minor reform to the short haul charging arrangement would be sufficient to address this issue in a proportionate manner.