

**Application by BBL Company for an
interconnector licence to participate in the
operation of the Balgzand Bacton Line**

Ofgem Initial views

December 2004 278/04

Summary

The new EU Gas and Electricity Directives¹ and Electricity Regulation² introduce, amongst other things, a regulated third party access (RTPA) regime for interconnectors, amongst other infrastructure facilities. The Directives allow exemption from RTPA for new interconnectors to be given by the relevant regulatory authorities, subject to veto by the European Commission. The Directives and Regulation set down criteria that have to be met in order to justify such an exemption being granted.

These requirements for RTPA in relation to interconnectors have been implemented in Great Britain via the Energy Act 2004. In some respects the Energy Act 2004 goes beyond the requirements of the EU legislation in that it introduces a licensing regime for all gas and electricity interconnectors, through which it is intended that the requirements concerning third party access and, where appropriate, exemptions from these requirements via the switching off of certain licence conditions, will be given effect.

On 10 December 2004, BBL Company submitted to Ofgem³ a formal application under the provisions of the Gas Act 1986 and in accordance with the provisions of The Gas (Applications for Licences and Extensions and Restrictions of Licences) (No.2) Regulations 2004 (The Application Regulations 2004) for an interconnector licence that would authorise the participation of BBL Company in the operation of the Balgzand Bacton Line (BBL). As part of its application BBL Company has requested that the licence conditions relating to the matters referred to in paragraphs (a) and (b) of Part IV, subsection 2, of Schedule 2 of the Application Regulations 2004 not have effect in any licence granted to BBL Company in respect of the BBL interconnector until 1 December 2022.

In its application, BBL Company explains that its application demonstrates that the BBL interconnector satisfies the criteria for exemption set out in Article 22(1) of the Gas Directive. The Authority may grant a direction contemporaneously with a licence, such

¹ Directive 2003/55/EC of the European Parliament and of the Council concerning common rules for the internal market in electricity and repealing Directive 96/92/EC; and Directive 2003/54/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC.

² Regulation No.1228/2003 of the European Parliament and of the Council on Conditions for Access to the Network for Cross-Border Exchanges in Electricity.

³ Ofgem is the office of the Authority. The terms Ofgem and the Authority are used interchangeably in this document.

direction providing that licence Conditions 10 and 11 shall not have effect or will be suspended from operation in that licence, where the criteria for exemption are met.

Ofgem's preliminary view is that all the criteria are met and it would therefore be appropriate to grant BBL a gas interconnector licence authorising it to participate in the operation of the BBL interconnector, and to issue a direction contemporaneously with this licence providing that Conditions 10 and 11 are not in effect or are suspended from operation in that licence for the initial capacity of the BBL interconnector, which equates to approximately 1.8 mcm/hr. Ofgem also considers that licence conditions 10 and 11 should not be in effect or are suspended from operation with respect to any contractual reverse flow of the BBL interconnector.

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1. Introduction

Background

The EU Gas and Electricity Directives

- 1.1. The new EU Gas and Electricity Directives and Electricity Regulation introduce, amongst other things, an RTPA regime for interconnectors. The Directives allow exemption from RTPA by the relevant regulatory authorities, subject to veto by the European Commission. With respect to interconnectors, the Directives and Regulation were implemented in Great Britain via the Energy Act 2004.
- 1.2. In some respects the Energy Act 2004 goes beyond the requirements of the EU legislation in that it introduces a licensing regime for all gas and electricity interconnectors, through which it is intended that the requirements concerning third party access and, where appropriate, exemptions from these requirements via the switching off of certain licence conditions, will be given effect.
- 1.3. On 13 July 2004, the Department of Trade and Industry (DTI) published a consultation document⁴ on the licensing of interconnectors which invited views on proposals for the licensing of existing and new interconnectors. On 15 November 2004, the DTI published a further consultation document⁵ which set out the DTI's conclusions from the first round of consultation and sought final views on a revised version of the standard licence conditions.
- 1.4. When considering the form of any interconnector licence that may be granted to BBL Company, this document refers to the standard licence conditions consulted on in the DTI's document of 15 November 2004.⁶ It should be

⁴ 'Interconnector licences: determination of standard licence conditions and proposed exemption regime: DTI', 13 July 2004.

⁵ 'Interconnector licences: determination of standard licence conditions and proposed exemption regime: DTI', 15 November 2004.

⁶ These are included in Appendix 1.

noted that the form of the interconnector licence is not yet finalised and, following the DTI's consultation⁷ the DTI may consider that further changes to the form of the interconnector licence are required. Obviously any interconnector licence that may be granted to BBL Company will be in the form of the licence as eventually determined by the Secretary of State under section 150(1) of the Energy Act 2004. To the extent that any such changes to the draft interconnector licence materially affect this consultation concerning BBL's application for an interconnector licence, Ofgem may again seek the views of interested parties on the effect of such changes upon any decision to grant an interconnector licence to BBL Company and the form of any licence that may be granted.

- 1.5. The requirements of the EU Gas Directive in relation to RTPA are reflected in Conditions 10 and 11 of the gas interconnector licence. Condition 10 relates to the *"Charging methodology to apply to third party access to the licensee's interconnector"* and Condition 11 relates to the *"Requirement to offer terms for access to the licensee's interconnector"*.
- 1.6. Any exemption given in respect of an interconnector from the requirements of the EU Gas Directive will be implemented by granting an interconnector licence with Conditions 10 and 11 **not** having effect or being suspended from operation in the gas interconnector licence granted in relation to that interconnector, such conditions not being in effect or suspended from operation under certain conditions and for a specified period of time.
- 1.7. The criteria for the granting of an exemption from the requirements of the EU Gas Directive in relation to RTPA (such requirements reflected in Conditions 10 and 11 of the licence) are⁸:
 - a) the investment in the licensee's interconnector enhances competition in gas supply and enhances security of supply;

⁷ The closing date for responses to the DTI consultation was 13 December 2004.

⁸ These criteria for granting an exemption are included within Condition 12 of the licence.

- b) the level of risk attached to the investment is such that the investment would not take place unless an exemption was granted;
- c) the interconnector will be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose system that infrastructure will be built;
- d) charges will be levied on users of the interconnector; and
- e) the exemption is not detrimental to competition or the effective functioning of the internal gas market, or the efficient functioning of the regulated system to which the interconnector is connected.

DTI/Ofgem exemption policy

1.8. In June 2003, the DTI and Ofgem issued a joint consultation document concerning new regulations to apply to LNG facilities and interconnectors.⁹ This document set out our initial views regarding the regulatory regime for interconnectors and LNG facilities. In addition to a quantitative competition analysis, DTI and Ofgem identified three areas that would be minimum requirements for an exempt regime:

- ◆ effective capacity allocation in terms of an initial offer of capacity to market (though under specific circumstances this condition might be loosened);
- ◆ effective mechanisms to ensure that capacity is not hoarded i.e. Use It or Lose It (UIOLI) arrangements; and
- ◆ information provision requirements relating both to the regulator and potentially also to the market.

1.9. In November 2003, the DTI and Ofgem issued final views in relation to the EU Directives and the resulting regulatory regime.¹⁰ By and large, the final

⁹ 'LNG facilities and interconnectors, EU legislation and regulatory regime, DTI/Ofgem initial views', DTI/Ofgem, June 2003.

¹⁰ 'LNG facilities and interconnectors, EU legislation and regulatory regime, DTI/Ofgem final views,'

views document confirmed, and clarified, the position set out in the initial views document. DTI and Ofgem expanded upon grounds for withdrawal of an exemption:

- ◆ breach of exemption criteria;
- ◆ breach of competition law;
- ◆ bankruptcy; or
- ◆ mergers / acquisition activity.

- 1.10. At the time, there were several potential projects that were moving to financial close prior to the EU Directives becoming transposed into GB law. As a result, project developers requested early guidance as to whether they could expect their particular project to be exempt from RTPA. Ofgem said that while it would be prepared to give such guidance, any guidance would need to be informed by consultation on a case-by-case basis, with any such consultation being on the basis of a draft application prepared by the relevant infrastructure developer. Ofgem indicated that while it would aim to ensure, as far as possible, that any potential guidance that was issued gave comfort as to the likely regulatory treatment of particular infrastructure, any such guidance would also be constrained to a significant extent by necessary legal caveats.
- 1.11. Ofgem received draft applications for exemption in respect of three projects.¹¹ In each case, Ofgem consulted upon, and issued regulatory guidance to, each project. The first application was from Gastransport Services (GtS) for the proposed Balgzand Bacton pipeline project (BBL).¹² The second application was received from Qatar Petroleum and ExxonMobil for the proposed South Hook LNG import terminal at Milford Haven in Wales.¹³ The third

DTI/Ofgem, November 2003.

¹¹ As the EU legislation had yet to be transposed into GB law all the draft applications received were for exemption from the RTPA requirements of the EU Gas Directive.

¹² 'Gastransport Services, Draft application for an exemption for the Balgzand Bacton Pipeline project (BBL), Final views', Ofgem, December 2003.

¹³ 'Qatar Petroleum and ExxonMobil, Draft Gas Directive Exemption Application for an LNG Terminal at

application was received from Dragon for the proposed LNG import terminal, also at Milford Haven.¹⁴

- 1.12. In each case, Ofgem expressed the view that the application for exemption would be likely to meet each of the exemption criteria set out in the relevant EU legislation. In these documents, Ofgem stated that once legislative authority was granted to Ofgem in respect of the licensing and exemption of interconnectors and LNG facilities, Ofgem would expect to undertake a formal consultation process in respect of formal applications it received for exemption.
- 1.13. In each case, Ofgem's views were submitted to the European Commission which indicated general support for Ofgem's position.

Formal application by BBL Company

- 1.14. On 10 December 2004, BBL Company^{15,16} submitted to Ofgem a formal application under the provisions of the Gas Act 1986 and in accordance with the provisions of The Gas (Applications for Licences and Extensions and Restrictions of Licences) (No.2) Regulations 2004 (The Application Regulations 2004) for an interconnector licence that would authorise it to participate in the operation of the Balgzand Bacton Line.¹⁷ As part of its application BBL Company has requested that the licence conditions relating to the matters referred to in paragraphs (a) and (b) of Part IV, subsection 2, of Schedule 2 of the Application Regulations 2004 not to have effect until 1 December 2022.
- 1.15. In its application, BBL Company explains that its application demonstrates that the BBL interconnector satisfies the criteria set out in Article 22(1) of the Gas Directive, for Conditions 10 and 11 of the gas interconnector licence not

Milford Haven, Final views', Ofgem, February 2004.

¹⁴ 'Dragon LNG Ltd, Draft application for an exemption for the Milford Haven LNG import terminal, Final views', Ofgem, June 2004.

¹⁵ Details of the change in ownership are discussed in the next chapter.

¹⁶ BBL Company has also applied for an exemption from the requirements of the EU Gas Directive in relation to third party access under the new article 18h of the Dutch Gas Act.

¹⁷ The requirements for persons participating in the operation of an interconnector to hold a licence are

to have effect or be suspended from operation in any licence granted to BBL Company in respect of the BBL interconnector.

- 1.16. The public version of BBL Company's application for a gas interconnector licence can be found on the Ofgem website.¹⁸

Views invited

- 1.17. This document presents Ofgem's initial views on BBL Company's application for an interconnector licence with Conditions 10 and 11 not having effect or being suspended from operation in that licence. Ofgem would welcome views on the initial views contained in this document and the draft terms and conditions of the licence to be granted to BBL Company which are included in Appendix 1. Any responses to this consultation should be received by close of business on **21 January 2005**. All responses will normally be published on Ofgem's website and held in the Research and Information Centre. However, if respondents do not wish their response to be made public then they should clearly mark their response as confidential. Ofgem prefers to receive responses in an electronic form so they can be placed easily on the Ofgem website.

- 1.18. Responses should be addressed to:

Steve Smith

Managing Director, Markets

Office of Gas and Electricity Markets

9 Millbank

London

SW1P 3GE

- 1.19. Electronic responses should be sent to matthew.buffey@ofgem.gov.uk

discussed in the background section of this chapter.

¹⁸ www.ofgem.gov.uk, under "Europe" area of work.

- 1.20. If you wish to discuss any aspect of this document, Matthew Buffey (telephone 020 7901 7088) would be pleased to help.

Way forward

- 1.21. Ofgem will carefully consider responses received to this formal consultation in making a decision on whether to grant an interconnector licence to BBL Company authorising it to participate in the operation of the BBL interconnector with Conditions 10 and 11 not having effect or being suspended from operation in that licence.
- 1.22. Should Ofgem consider it appropriate that an interconnector licence be granted to BBL Company in respect of the BBL interconnector, Ofgem will then issue an interconnector licence to BBL Company. If Ofgem considers the criteria for Conditions 10 and 11 not having effect or being suspended from operation in the interconnector licence granted to BBL Company have been met then it will issue a direction contemporaneously with that licence providing that Conditions 10 and 11 shall not have effect or are suspended from operation in that licence. A draft of the Direction is included in Appendix 2.
- 1.23. Such a decision by Ofgem can be vetoed by the European Commission. The European Commission has two months in which it can veto a decision by the relevant authority in a Member State to grant an exemption, or request that the regulatory authority amend its decision.¹⁹

Consultation code of practice

- 1.24. If respondents have comments or complaints about the way this consultation has been conducted these should be sent to:

Michael Fews

Head of Licensing

¹⁹ This two month period may be extended by one additional month where additional information is sought by the Commission.

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2. BBL Company's interconnector licence application

The application

- 2.1. On 17 September 2003, Gastransport Services (GtS) submitted a draft application for an exemption for the Balgzand Bacton pipeline from the requirements of the regulatory regime for interconnectors according to Article 22 of the recently adopted EU Gas Directive (2003/55/EC) to Ofgem. This draft application is available on the Ofgem website.²⁰ The draft application requested an indication from Ofgem as to the likely approach it would take concerning the BBL project with regard to the granting of an exemption from the RTPA requirements contained in the Gas Directive.
- 2.2. On 19 September 2003, Ofgem published its initial views on GtS's draft application and requested respondents' views. Having considered respondents' views, on 2 December 2003, Ofgem published its final views on GtS's draft application.
- 2.3. In its final views document, Ofgem explained that formal powers for the giving of an exemption would only be available to Ofgem once the EU Directives had been enacted into GB law. However, its final view was that Ofgem considered that the BBL project would be likely to meet the criteria set out in Article 22(1) of the Gas Directive and therefore that it would be likely that the project would be eligible for an exemption from certain aspects of the EU Gas Directive for the capacity of the underlying contracts that will be negotiated by GtS for the BBL.
- 2.4. On 10 December 2004, Ofgem received from BBL Company²¹ a formal application under the provisions of the Gas Act 1986 and in accordance with

²⁰ At the same time GtS also sought similar indication from the Dutch Ministry of Economic Affairs, who subsequently requested advice from the Dutch energy regulator, Dienst uitvoering en toezicht Energie (DTe).

²¹ Details of the ownership changes in relation to the project are discussed below.

the provisions of The Gas (Applications for Licences and Extensions and Restrictions of Licences)(No.2) Regulations 2004 (The Application Regulations 2004) for an interconnector licence for the BBL.²² BBL requested that the capacity of the BBL to be covered by the interconnector licence would be based on the “initial contracts”²³ concluded in the course of the open season plus a small margin, which will total approximately 1.8 mcm/hr.

- 2.5. As part of its application BBL Company has requested that the licence conditions relating to the matters referred to in paragraphs (a) and (b) of Part IV, subsection 2, of Schedule 2 of the Application Regulations 2004, i.e. Conditions 10 and 11 in the current draft gas interconnector licence, not to have effect in that licence until 1 December 2022. BBL Company has sought these conditions not to have effect for the full capacity of the interconnector, based on the initial contracts and for the duration of the initial contracts.
- 2.6. The BBL Company’s formal application updated information previously provided in its informal application where relevant.

Criteria for the relevant conditions not to have effect

- 2.7. This section summarises Ofgem’s final views on GtS’s draft application for exemption, details of the updated information provided in BBL Company’s formal application and Ofgem’s initial views on BBL Company’s formal application for a gas interconnector licence in relation to each of the conditions that are required to be met for Conditions 10 and 11 (the relevant conditions) not to have effect or to be suspended from operation in that licence from when the licence is granted.

²² The requirement for a person participating in the operation of an interconnector to hold a licence was discussed in the previous chapter.

²³ In BBL Company’s application the term “initial contracts” refers to the commitments made by shippers for the booking of long term transmission capacity in the BBL pipeline on the basis of the open season and thus before the BBL investment decision had been taken. These initial contracts defined the capacity and the technical specifications of the BBL pipeline.

(a) the investment in the licensee's interconnector enhances competition in gas supply and enhances security of supply

Ofgem's view on the draft application

- 2.8. On the basis of the competition analysis presented by GtS in its draft application and Ofgem's own competition assessment, Ofgem considered that the project, when considered in isolation, should, in principle, enhance competition in gas supply to the UK as well as enhancing security of supply.
- 2.9. Ofgem's view was reinforced by the fact that:
- ◆ an open season was conducted to ascertain interest in the project;
 - ◆ capacity reservations will be subject to UIOLI; and
 - ◆ information provision to the market will be, and will continue to be, consistent with prevailing UK practice, and information will also be made available to Ofgem.
- 2.10. However, Ofgem considered that there were issues associated with ExxonMobil's ownership of part of Gasunie when set against the proposals by ExxonMobil/Qatar Petroleum for an LNG import terminal to the UK.
- 2.11. In relation to respondents' specific comments, Ofgem agreed that further detail was necessary on the UIOLI provisions and the level of transparency of the arrangements relating to the use of capacity of the BBL interconnector. Although Ofgem noted that it was satisfied with the broad principles of UIOLI as explained by GtS, Ofgem noted that it would intend to reserve the ability to amend the exemption if the UIOLI provisions offered by GtS did not result in unused capacity being offered to market.
- 2.12. In relation to whether the BBL interconnector should offer capacity in both directions, Ofgem noted that the BBL open season did not provide evidence of a demand for this service.

Updated information provided by BBL Company

- 2.13. In its application BBL Company reemphasised that the BBL pipeline provides the interconnection between the Netherlands and the UK that the European Commission has identified as one of the missing links in the main gas infrastructure in Europe. The pipeline itself will assist in meeting the need for gas in the UK.
- 2.14. It was also noted that the BBL pipeline would have a positive impact on the operation of the internal gas market, by offering an alternative transport route between the Continent and the UK to the existing interconnector that exists between Belgium and the UK. Further, as the BBL interconnector will not be able to completely fill the projected gap between supply and demand in the UK gas market it does not prohibit the development of other projects for (and/or sources of gas to) the UK gas market.
- 2.15. In its earlier submissions BBL Company had argued that the pipeline developer was not in a position to assess the competition effects of the pipeline on competition in the UK market and had therefore commissioned an independent consultant to undertake such a study. In its application, BBL Company reiterated this opinion and provided an updated version of the report by the independent consultant as part of its application.
- 2.16. The main conclusions of the report by the consultant, AD Little, were:
- ◆ The study shows that there is currently a low level of market concentration in the upstream side of the market, which is expected to diminish, especially if the BBL interconnector is built, as gas would be purchased from other producers and would flow through other (new) infrastructure;
 - ◆ There is easy entry and exit to the UK gas market as exemplified by the number of new entrants;
 - ◆ In the downstream market, there is a relatively low level of market concentration in gas sold to power generators. Market concentration has risen in the industrial and commercial sector, however, the significant

changes in market share and the very aggressive marketing in the recent contracting round give no reason to think that there is weak competition;

- ◆ In the residential sector British Gas continues to hold a dominant market position, but does not appear to be using this to engage in predatory pricing nor is it earning excess profits;
- ◆ There is significant headroom to attract new entrants and to maintain the interest of the current players in expanding their customer base, as recent changes appear to have increased profit margins substantially;
- ◆ In terms of its effect on the UK gas market, the BBL interconnector will not increase the level of market concentration in any segment of the market, upstream or downstream. At worst, it has no effect on concentration, and at best, by creating additional capacity it can create additional competition.

2.17. As discussed above, the BBL interconnector will provide a second physical link between the UK and the Continent thereby enhancing security of supply through the establishment of a connection to new sources and the increased opportunity for new entrants to target the UK market. Further, the BBL interconnector forms a potential part of the Baltic pipeline, enabling a connection with Russian gas reserves. The BBL interconnector could have a positive effect on the establishment of a link to the Baltic pipeline in the Netherlands, thus increasing security of supply for both the UK and the Netherlands.

2.18. Further, as the BBL transmission contracts do not specify a minimum load factor or other limiting requirements as to the use of the transmission capacity (with the exception of the UIOLI rules), the BBL interconnector may also be used to enhance the availability of capacity and flexibility to the UK gas market as well as the continental markets.

2.19. The outcome of the open season means that the physical flow direction of the BBL will be from the Continent to the UK. However, the BBL transmission contracts explicitly allow for contractual counter flows and BBL Company

envisages offering these contractual reverse flow services on an interruptible basis. The reverse flow possibilities (be it through swaps or primary interruptible services) create arbitrage opportunities that have a beneficial effect on competition and security of supply in the Netherlands and the Continent. Because some shippers in the BBL interconnector will carry their gas from further a field than Balgzand, such as the Bunde area, the scope for arbitrage is enhanced to cover gas that was not already available to the Dutch gas market and thus improves the scope for enhancing security of supply in the Netherlands.

- 2.20. It has also recently been announced that the activities of NV Nederlandse Gasunie (Gasunie) are to be reorganised. As a result of the reorganisation, the transport company and the trading company of Gasunie will be legally fully dispersed. The State will take over the interests of Shell and ExxonMobil (each currently has a 25 per cent interest) in the transport company of Gasunie and the State will therefore acquire the full interest in the transport company. The assets of the transport company will include Gasunie's shareholding in the BBL Company. The ownership of the trading company, which includes Gasunie's interests in production, trade, and supply, will remain the same i.e. the State, Shell and ExxonMobil. These changes are intended to take place as of 1 January 2005, with retrospective implementation completed by summer 2005

Ofgem's initial view on the formal application

- 2.21. On the basis of the competition analysis presented by BBL Company in its application and Ofgem's own competition assessment, Ofgem continues to consider that the project should, in principle, enhance competition in gas supply to the UK as well as enhancing security of supply.
- 2.22. Ofgem's own competition analysis has shown that:
- ◆ Ofgem is not aware of evidence to suggest that new entrants and current market participants will not be able to compete within the retail market because of a lack of access to future gas supplies;

- ◆ the GB market is dynamic enough to respond to changes in demand and supply;
- ◆ Ofgem considers that its existing powers under UK and European competition legislation will provide protection against any future abuse within the GB gas market. For example, Ofgem has concurrent powers with the Office of Fair Trading (OFT) to investigate and take enforcement action under the Competition Act 1998 if abuse is found to occur. Further, if BBL Company were to be in breach of the Competition Act 1998, under Condition 12, the Authority can direct the relevant standard conditions to have effect.

- 2.23. Ofgem considers that any concerns that may have arisen as a result of ExxonMobil's role in the BBL interconnector and a proposed LNG import terminal have been resolved by the announcement of the intended change in ownership structure of Gasunie as a result of which there will be no ownership connection between BBL Company and ExxonMobil.
- 2.24. Ofgem considers that the contractual provisions put in place to make unused capacity available to the market should prevent any anti-competitive hoarding of capacity. Further, Condition 13 (which it is proposed will be in effect in BBL Company's licence) requires all capacity to be made available to the market.
- 2.25. In relation to whether BBL Company should offer capacity in both directions, it was noted earlier that the open season did not provide evidence of a demand for this service. However, Ofgem welcomes BBL Company's comments in its application that contractual reverse flow would be possible on the basis of secondary market transactions as well as an interruptible counter flow service to be provided by BBL Company in the primary market. Further, Ofgem notes that the BBL Company will continue to monitor the interest or demand for physical reverse flow capacity in the BBL interconnector with a view to making such physical capacity available when this interest is sufficient to warrant any possible additional investment.
- 2.26. Ofgem therefore considers that this condition is likely to be met.

(b) the level of risk attached to the investment is such that the investment would not take place unless an exemption was granted

Ofgem's view on the draft application

2.27. On the basis of the analysis provided by GtS, and its financial advisors KPMG, and Ofgem's preferred approach to entrepreneurial projects presented in the joint consultation with the DTI, Ofgem considered that it appeared appropriate to conclude that the level of risk attached to the BBL pipeline would merit exemption.

Updated information provided by BBL Company

2.28. In its application, BBL Company confirms that the letters that it had received from the national and European authorities in relation to the granting of an exemption were an essential factor in the decision making process for the BBL investment. BBL Company further notes that had these letters not been forthcoming the decision to proceed with the project would not have been taken.

2.29. In the course of the draft guidance, a number of issues related to the risk assessment (other than the usual risks associated with such projects) of an infrastructure project such as BBL were considered, these were:

- ◆ Size of the investment; in that the total capital expenditure for the BBL pipeline is estimated at 500 million Euros.
- ◆ The competitive position; Interconnector UK (IUK) is currently the main competitor to the BBL interconnector, BBL will also be subject to competition from other possible infrastructure projects. The competitive position of the BBL interconnector is important when considering the risks relating to regulatory involvement in tariff setting and other access conditions such as the duration of contracts and the allocation of capacity.
- ◆ The regulatory environment; the break even period for the BBL project has been shown to be of longer duration than the initial contracts. The

initial contracts for capacity (fifteen and ten years in duration) therefore do not eliminate all of the risk, but are important in reducing the risk for the project developers to an acceptable level. BBL Company considers it absolutely essential that it is allowed to execute the initial contracts in an unfettered manner and therefore the exemption was requested to cover the whole period during which these initial contracts will run.

- ◆ The status of BBL Company as a financially and legally independent company. Further information on the legal structure of BBL Company is provided below.

2.30. GtS also asked KPMG and ABN AMRO Bank to give advice on the risk profile of the BBL project in relation to the exemption request from RTPA. The advice received from KPMG and ABN AMRO supported the exemption application in the early guidance procedure, as well as the required duration of that exemption.

Ofgem's initial view on the formal application

2.31. On the basis of the analysis provided by BBL Company, and its financial advisors KPMG and ABN AMRO, and Ofgem's preferred approach to entrepreneurial projects presented in the joint consultation with the DTI, Ofgem continues to consider that it appears appropriate to conclude that the level of risk attached to the BBL interconnector would merit exemption.

(c) the interconnector will be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose system that infrastructure will be built

Ofgem's view on the draft application

2.32. In its initial views paper, Ofgem noted the possible interests of ExxonMobil and Royal Dutch/Shell in the BBL project. It was also assumed at that stage that GtS would be fully separated (i.e. in ownership terms) from the rest of Gasunie, i.e. beyond the requirements of the Gas Directive.

- 2.33. In the final views document, Ofgem noted that developments since the initial views document had included a decision to proceed only with legal separation, but not ownership, of GtS from the rest of Gasunie. Also that GtS had announced a potential joint venture with Fluxys, the Belgian grid operator.
- 2.34. Ofgem concluded that, at the UK end of the pipeline, it is clear that BBL will be separate from National Grid Transco and therefore this criterion should be met. However, once a formal application was received it was noted that Ofgem would require clarity as to the involvement of ExxonMobil, Royal Dutch/Shell and Fluxys.

Updated information provided by BBL Company

- 2.35. A general partnership by the name of BBL Company was established on 9 July 2004 between legally separate subsidiaries of N.V. Nederlandse Gasunie (Gasunie BBL B.V.) (60 per cent), E.ON Ruhrgas AG (E.ON Ruhrgas BBL B.V.) (20 per cent) and Fluxys N.V. (Fluxys BBL B.V.) (20 per cent).
- 2.36. The objective of the BBL Company is the design, construction and operation of the BBL pipeline. The partnership agreement stipulates that the BBL Company will construct and own its own assets in the form of the BBL pipeline and related facilities.
- 2.37. The partners in the BBL Company have initially provided the financial resources of BBL Company through a capital contribution. Any (future) loans granted by the partners to BBL Company will be granted on commercial terms, with BBL Company financing itself through its own revenues.

Ofgem's initial view on the formal application

- 2.38. Ofgem welcomes the establishment of the BBL Company between the three legally separate subsidiaries: Gasunie BBL B.V., E.ON Ruhrgas BBL B.V. and Fluxys BBL B.V.
- 2.39. As a result of the establishment of this company Ofgem considers it is clear that BBL Company will be separate from National Grid Company (the system

operator in the UK) and GTS (the system operator in the Netherlands) and therefore it appears appropriate to conclude that the level of legal separation with respect to this investment means that the BBL interconnector will be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose system that infrastructure will be built.

(d) charges will be levied on users of the interconnector

Ofgem's view on the draft application

- 2.40. Ofgem was content that on the basis that tariffs will be published, it was likely that the criterion that charges will be levied on users of the interconnector was likely to be met.

Updated information provided by BBL Company

- 2.41. Access to the BBL interconnector through long term contracts was offered to shippers on the basis of an open season, the registration period for which ran from 17 March 2003 until 16 May 2003. Some eighteen companies expressed an initial interest in the project. During the exploratory meeting stage of discussions some twelve companies withdrew their interest. Further discussions were held with the remaining six companies with the aim of concluding a letter of intent to commit to capacity in the BBL pipeline.
- 2.42. Transportation contracts were agreed with shippers E.On Ruhrgas, Gasunie Trade & Supply and Wingas. The initial contracts have durations of ten and 15 years, as well as differing start dates. These initial contracts justify a 36" pipeline and the terms and conditions were determined on the basis of the final pipeline configuration.
- 2.43. The transportation contracts allow the capacity contracted in the initial contracts to be freely tradable on the secondary market, which will be facilitated by means of a bulletin board provided by BBL Company. Additionally, unused capacity will be made available to the primary market on an interruptible basis, with BBL Company developing the interruptible

services in order that they are available for when the pipeline commences operation. There are also contractual UIOLI provisions, which are a backstop measure to prevent shippers deliberately tying up transport capacity.

- 2.44. Some capacity may be available between the first gas and the start of the initial contracts. A limited amount of capacity may also be available over and above the contracted long-term capacities. BBL Company will offer any such capacity that becomes available to the market under suitable terms.
- 2.45. There was no demand from potential shippers for long-term physical reverse flow capacity. The possibility for contractual reverse flow was discussed and it was agreed that this would be possible in the basis of secondary market transactions as well as an interruptible counter flow service to be provided in the primary market by BBL Company to be detailed at a later stage. All BBL shippers will be able to enter into these counter flow contracts should they so wish, as they are not restricted by their contracts. The BBL Company will continue to monitor the interest or demand for physical reverse flow capacity in the BBL pipeline with a view to making such physical capacity available when this interest is sufficient to warrant any possible additional investment. The terms and conditions of any such capacity would need to be consistent with the initial contracts.

Ofgem's initial view on the formal application

- 2.46. Based on the information provided by BBL Company in its application, Ofgem maintains its view that it is likely that the criterion that charges will be levied on users of the interconnector is met.

(e) having any or all of the relevant conditions under consideration not in effect, or suspended from operation, is not detrimental to competition or the effective functioning of the internal gas market, or the efficient functioning of the regulated system to which the interconnector is connected

Ofgem's view on the draft application

- 2.47. In its initial views document, Ofgem considered that the connection of the BBL pipeline to the UK system would not be detrimental to the effective functioning of the internal gas market. Ofgem had also noted that entry capacity to the Transco system would be booked consistent with other entry capacity and that Ofgem expected that any technical implications of the connection to be resolved by GtS and NGT.
- 2.48. In its final views document Ofgem noted the concern of a respondent concerning gas quality issues and that NGT also had concerns with respect to gas quality issues. On the basis that NGT's concerns could be allayed Ofgem considered that the criterion relating to the operation of the exemption not being detrimental to competition or the effective functioning of the internal gas market, or the efficient functioning of the regulated system to which the interconnector is connected would be likely to be met.

Updated information provided by BBL Company

- 2.49. BBL Company has reiterated that in the early guidance procedure it was indicated that the contractual and technical specifications of transmission through the BBL pipeline would be compatible with the requirements of the Dutch and UK gas networks. In its application BBL Company noted that it is the responsibility of shippers using the BBL pipeline to ensure sufficient capacity is booked in the UK NTS and the Dutch Gas Transport Services' grid.
- 2.50. In a letter to the Dutch energy regulator, Dienst uitvoering en toezicht Energie (DTe) dated 30 August 2004, GTS indicated that in order to enable BBL shippers to bring their gas to the BBL in Juliandorp from their entry points in the GTS grid, Gasunie Technology & Assets will carry out a substantial investment programme in the GTS grid. It was further explained that this would mean that there is no impact on existing transit volumes or domestic gas transport flows and thus security of supply in the Netherlands will not be harmed. Earlier in this document it is discussed how the BBL pipeline could improve security of supply in both the UK and the Netherlands and how the

BBL Company expects the BBL pipeline to have a positive effect on competition.

Ofgem's initial view on the formal application

- 2.51. Ofgem continues to consider that the connection of the BBL Pipeline to the UK system would not be detrimental to the effective functioning of the internal gas market.
- 2.52. Ofgem considers that any concerns that might be raised with respect to gas quality issues should be resolved by BBL Company and National Grid Transco via the system operator to system operator agreement that BBL Company will be required to have in place under Condition 3 of the draft gas interconnector licence.

Duration of an exemption

Ofgem's view on the draft application

- 2.53. Ofgem envisaged that it would be appropriate to grant an exemption for the capacity and the duration as requested by GtS. Further, that if there were contracts with different durations and/or starting points, Ofgem would envisage an exemption for 15 years. Ofgem also noted that in this scenario, GtS has confirmed that any such available capacity during the period of the exemption would be offered back to the market.

Updated information provided by BBL Company

- 2.54. BBL Company has confirmed that transportation contracts have been agreed with shippers Ruhrgas, Gasunie Trade & Supply and Wingas. These initial contracts have durations of ten and 15 years, as well as differing start dates. These initial contracts justify the development of a 36" pipeline and the terms and conditions of the various contracts were determined on the basis of the final pipeline configuration. BBL Company has requested that Conditions 10 and 11 are not in effect in its gas interconnector licence until 1 December 2022 for the full capacity of the pipeline, based on the initial contracts concluded in the course of the open season and for the total

duration of the initial contracts. This is because BBL Company wishes to execute the initial transmission contracts that underpin the investment in the BBL pipeline in an unfettered manner.

- 2.55. In its application, BBL Company notes that the initial contracts have different durations, as well as different starting dates in order to match shippers' needs. In order to create a level playing field for all shippers, existing and future, utilising the BBL pipeline, BBL Company considers that an exemption for the period sought is appropriate. BBL Company has requested this duration on the basis that unused capacity will be made available to the market (through a variety of measures preventing the hoarding of capacity) and that freed-up capacity due to the expiration of initial contracts will be offered to the market in a non-discriminatory and transparent way, via an open season or other suitable process. BBL Company proposes that capacity is offered to the market in a way which is consistent with the conditions in the initial contracts.
- 2.56. In its application, BBL Company also notes that that whilst the capacity and technical specifications of the BBL interconnector have been determined by the contracted long term capacity rights, some capacity may be available between first gas and the start of other initial contracts and that a limited amount of capacity²⁴ may be available over and above the long-term capacities. BBL Company states that it will offer any such capacity to the market under suitable terms, with the terms and conditions needing to ensure that the initial contracts are not prejudiced. BBL Company therefore expects the exemption to apply to the contracts for the sale of any such "spare" capacity.
- 2.57. Furthermore, BBL Company has requested that the exemption apply to the whole of the BBL interconnector capacity, and thus include any (interruptible or other) reverse flow services offered by BBL Company.

²⁴ BBL Company has indicated to Ofgem that this is likely to be between one and three per cent of the total capacity.

- 2.58. BBL Company notes in its application that the BBL transmission contracts explicitly allow for contractual counter flows (on the basis of the secondary capacity market) and BBL Company envisages offering reverse flow services on an interruptible and non-discriminatory basis in the primary market. Further, that the terms and conditions for reverse flow interruptible services are currently under consideration, and it is the view of BBL Company that these terms and conditions should – insofar as is appropriate and taking into account the different nature of interruptible services as well as the duration of services – reflect the terms and conditions of the initial contracts that ultimately underpin the investment. BBL Company considers that if the exemption applies to the reverse flow contracts the secondary market will not be adversely affected.
- 2.59. As detailed above, BBL Company notes that the break even period for the BBL project has been shown to be of longer duration than the initial contracts. The initial contracts therefore do not eliminate all risk, but are important in reducing the risk for the project developers to an acceptable level. The BBL Company considers it absolutely essential that it is allowed to execute the initial contracts in an unfettered manner and therefore has requested the exemption to cover the whole period during which these initial contracts would run. The BBL Company has provided confidential information to support this break-even calculation to both the national and European authorities.
- 2.60. The BBL Company considers that if the exemption did not cover the whole period during which the initial contracts run then any capacity that became “non-exempt” and was then sold on under RTPA terms could have a significant impact on the initial contracts. In particular, any regulated tariffs for this “non-exempt” capacity could result in changes to tariffs being required in the initial contracts. Further, if any RTPA tariff methodology was approved by regulators under a cost based approach this would mean that access to the BBL interconnector would no longer be made available on a non-discriminatory basis.

2.61. As noted above, the BBL Company will continue to monitor the interest or demand for physical reverse flow capacity in the BBL interconnector with a view to making such physical capacity available when this interest is sufficient to warrant any possible additional investment. BBL Company notes that the terms and conditions of such capacity need to be consistent with the initial contracts. BBL Company therefore expects the exemption to apply to future contracts for the sale of any reverse flow transport capacity.

Ofgem's initial view on the formal application

2.62. Based on the additional information provided by BBL Company, Ofgem's initial view is that the relevant conditions²⁵ in BBL Company's gas interconnector licence should not have effect or should be suspended from operation until 1 December 2022 for the initial capacity, which equates to approximately 1.8 mcm/hr. Ofgem also considers that these licence conditions should not have effect or should be suspended from operation in respect of any contractual reverse flow. In reaching this initial view Ofgem has taken account of BBL Company's comments on making any additional capacity available to the market and has also taken account of the avenues within Condition 12, through which the Authority can direct that the relevant conditions can have effect. These avenues are discussed further below.

2.63. At this time, Ofgem does not consider that a decision should be taken on whether this view should extend to cover any future physical capacity (for either flow to the UK or reverse flow) that the BBL Company makes available in the BBL interconnector as a result of additional investment. This view is based on Ofgem's ability to assess whether the additional investment would meet criterion (b) *"the level of risk attached to the investment is such that the investment would not take place unless an exemption was granted"*. Ofgem does not consider it possible to come to a view as to whether this criterion is met in respect of any future physical capacity until firm plans are made for any such investment. Under the process contained in Condition 12, BBL Company would be able to apply for licence conditions 10 and 11 not to

²⁵ Conditions 10 and 11 of the gas interconnector licence.

have effect or to be suspended from operation in respect of any future physical capacity of the BBL interconnector.

Withdrawal of an exemption

2.64. In all the documents published by the DTI and Ofgem regarding the award of an exemption from RTPA, it has been highlighted that there will remain grounds to revoke an exemption, or, more specifically in the case of the licensing of interconnectors, to bring those licence conditions relating to RTPA into operation in a licence where they were not in effect or were suspended from operation. These circumstances are included in paragraph 5 of Condition 12 of the interconnector licence and are:

- (a) where, as a direct result of any act or failure to act by the licensee, any of the conditions in paragraph 2(a), (c), (d) or (f) above cease to be met;
- (b) where the licensee:
 - (i) has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed; or
 - (ii) has an administration order under section 8 of the Insolvency Act 1986 made in relation to it.
- (c) where the licensee is found to be in breach of the Competition Act 1998;
- (d) where merger or acquisition activity in relation to or by the licensee changes the competitive nature of the interconnector; or
- (e) where the European Commission has requested the Authority amend or withdraw the decision that any or all of the relevant conditions not be in effect or be suspended from operation.

2.65. As noted in the previous chapter, the European Commission has a right of veto over any decision by the Authority to grant an exemption from the

requirements of the EU legislation. Circumstance (e) above is the mechanism by which some or all of the relevant conditions would have effect were the European Commission to exercise its power of veto.

- 2.66. It is important to bear in mind that the analysis of the request for an interconnector licence with the relevant conditions not to have effect has been, and the subsequent review by the European Commission will be, undertaken on the basis of the facts put to Ofgem. Significant changes in this underlying data could represent grounds for review of any decision.
- 2.67. That is not to say that the relevant conditions would be automatically brought into effect should there be material changes in the nature of the BBL interconnector project. Rather, that it would be open to Ofgem to review the appropriateness of having Conditions 10 and 11 not in effect in any particular licence in the event that any of the specified circumstances arise. In the event that any of the circumstances occur which allow for the relevant conditions to be brought back into effect Ofgem would likely undertake a consultation explaining why it considered that to be the case and on whether Conditions 10 and 11 should be in effect in that particular licence.

Summary

- 2.68. In summary, Ofgem's preliminary view is that all of the five relevant criteria as specified in the EU Gas Directive appear to have been met in respect of the BBL interconnector and, as such, this project could be expected to have an overall positive impact on competition and security and diversity of supply for the UK. Therefore, Ofgem's initial view is that it would be appropriate to grant BBL Company a gas interconnector licence authorising it to participate in the operation of the BBL interconnector and to contemporaneously with the issue of this licence, issue a direction that Conditions 10 and 11 shall not have effect, or are suspended from operation, in that licence until 1 December 2022 for the initial capacity, which equates to approximately 1.8 mcm/hr. Ofgem also considers that any contractual reverse flow should also not be subject to Conditions 10 and 11 for this period. However, at this time Ofgem does not consider that this view can be extended to cover any future

physical capacity (for either flow to the UK or reverse flow) that the BBL Company makes available in the BBL pipeline as a result of additional investment. An assessment of any such investment will be made if and when the BBL Company were to develop plans for such investment.

- 2.69. For the avoidance of doubt, Ofgem's analysis has been carried out against the criteria for the relevant conditions not to have effect and is specific to the application for an interconnector licence that Ofgem is considering. Any decision that Ofgem may make in relation to this application for an interconnector licence does not preclude or impact in any way on the operation of the Competition Act 1998 or the Enterprise Act 2002. Further, as the analysis contained in this document is in relation to a specific situation, the analysis may or may not necessarily be relevant to a consideration of any related issues that may arise, for example under the Gas Act 1986, the Competition Act 1998 or the Enterprise Act 2002.

3. Way forward

- 3.1. Ofgem will carefully consider responses received to this consultation on BBL Company's application for an interconnector licence with the relevant conditions not having effect or being suspended from operation. Should Ofgem consider it appropriate that an interconnector licence be granted to BBL Company in respect of the BBL interconnector, Ofgem will then grant an interconnector licence to BBL Company.²⁶ If the interconnector licence granted to BBL Company has one or both of the relevant conditions not in effect Ofgem will submit the licence together with all supporting documentation to the European Commission. As mentioned previously, the European Commission has two months in which it can veto a decision by the relevant authority in a Member State to grant an exemption to the requirements of the EU Gas Directive in relation to RTPA, or request that the regulatory authority amend its decision.²⁷
- 3.2. Provided that the European Commission does not veto the decision to grant an interconnector licence with the relevant conditions not in effect, or request that Ofgem amends its decision, no further action would be required (although Ofgem will inform BBL Company of the European Commission's decision). Were the European Commission to veto the decision then the Authority will issue a direction such that some or all of the relevant conditions have effect in the licence that may have been granted to BBL Company.

²⁶ Subject to Ofgem having the powers to issue such a licence and the standard licence conditions having been determined by the Secretary of State.

²⁷ This two month period may be extended by one additional month where additional information is sought by the Commission.

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Appendix 1 Draft Licence

GAS ACT 1986

SECTION 7ZA

GAS INTERCONNECTOR LICENCE

FOR

BBL COMPANY

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PART I – TERMS OF THE LICENCE

1. This licence, granted under section 7ZA of the Gas Act 1986 (“the Act”), authorises BBL Company (a partnership registered in the Netherlands under company number 02085020) (“the licensee”) whose registered office is situated at PO Box 225, 9700 AE Groningen, the Netherlands, to participate in the operation of the gas interconnector specified in Schedule 1 to this licence during the period specified in paragraph 3 below, subject to -

(a) the standard conditions of gas interconnector licences referred to in –

(i) paragraph 1 of Part II below, which shall have effect in the licence;
and

(ii) paragraph 2 of Part II below which shall only have effect in the licence if brought into effect in accordance with the provisions of the standard conditions,

subject to such amendments to those conditions, if any, as are set out in Part III below (together “the conditions”);

(b) the special conditions, if any, set out in Part IV below (“the special conditions”);

(c) such Schedules hereto, if any, as may be referenced in the conditions, the special conditions or the terms of the licence.

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2. This licence is subject to transfer, modification or amendment in accordance with the provisions of the Act, the special conditions or the conditions.
3. This licence shall come into force on [Date] and unless revoked in accordance with the provisions of Schedule 2 shall continue until determined by not less than 25 years' notice in writing given by the Authority to the licensee. Such notice must not be served earlier than a date being ten years after the licence comes into force.
4. The provisions of section 46(1) of the Act (service of notices etc.) shall have effect as if set out herein and as if for the words "this Part or regulations made under this Part" there were substituted the words "this licence".
5. Without prejudice to sections 11 and 23(1) of the Interpretation Act 1978, Parts I to IV inclusive of, and the Schedules, to this licence shall be interpreted and construed in like manner as an Act of Parliament passed after the commencement of the Interpretation Act 1978.
6. References in this licence to a provision of any enactment, where after the date of this licence –
 - (a) the enactment has been replaced or supplemented by another enactment, and
 - (b) such enactment incorporates a corresponding provision in relation to fundamentally the same subject matter,

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(c) shall be construed, so far as the context permits, as including a reference to the corresponding provision of that other enactment.

The Official Seal of the Gas and

Electricity Markets Authority

hereunto affixed is authenticated

by:-

.....

NAME

Authorised in that behalf by the

Gas and Electricity Markets Authority

Date

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PART II – THE STANDARD CONDITIONS

1. Standard conditions in effect in this licence

Section A	Section B	Section C	Section D
Condition 1	Condition 3	Condition 9	Condition 12
Condition 2	Condition 4		Condition 13
	Condition 5		Condition 14
	Condition 6		
	Condition 7		
	Condition 8		

2. Standard conditions not in effect or suspended from effect in this licence

Section D
Condition 10
Condition 11

These standard conditions are not in effect or suspended from effect in this licence in accordance with the terms of standard condition 12 and any direction issued by the Authority under standard condition 12 of this licence. These standard conditions may be brought into, or back into, operation in accordance with any direction issued by the Authority under standard condition 12 of this licence. In any case, these licence conditions will come into effect in this licence on the earlier of:

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- (a) any direction so issued by the Authority under standard condition 12 that any or all of these licence conditions be in effect in relation to the whole or part of the interconnector to which this licence relates; or

- (b) 2 December 2022.

Note: A copy of the standard conditions of gas interconnector licences as determined by the Secretary of State together with subsequent modifications can be inspected at the principal office of the Authority. The above lists are correct at the date of this licence but may be changed by subsequent modifications to the licence.

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Part II – THE STANDARD CONDITIONS

PART II - SECTION A: INTERPRETATION, APPLICATION AND PAYMENTS

Condition 1. Definitions and interpretation

1. In these licence conditions unless the context otherwise requires:

the “Act”	means the Gas Act 1986
the “Authority”	means the Gas and Electricity Markets Authority established under section 1 of the Utilities Act 2000
“information”	includes (without limitation) any documents, accounts, estimates, returns, records or reports and data (whether in written, verbal or electronic form) and/or information in any form or medium whatsoever (whether or not prepared specifically at the request of the Authority) of any description specified by the Authority
“licensee’s interconnector”	means the gas interconnector specified in Schedule 1 to this licence that the licensee is authorised to participate in the operation of by virtue of this licence
“regulatory authority”	means any body designated by a member state whose responsibilities include the oversight or

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regulation of the gas industry

“relevant gas transporter”

means any holder of a gas transporter licence under section 7 of the Act owning a transportation system within Great Britain to which the licensee’s interconnector is connected or with whom the licensee interfaces with as a system operator

2. Any words or expressions used in Part I of the Act, the Utilities Act 2000 or the Energy Act 2004 shall, unless the contrary intention appears, have the same meaning when used in these conditions.
3. Except where the context otherwise requires, any reference to a numbered condition (with or without a letter) or Schedule is a reference to the condition or Schedule (with or without a letter) bearing that number in this licence, and any reference to a numbered paragraph (with or without a letter) is a reference to the paragraph bearing that number in the condition or Schedule in which the reference occurs, and reference to a Section is a reference to that Section in these conditions.
4. These conditions shall have effect as if, in relation to a licensee who is a natural person, for the words “it”, “its” and “which” there were substituted the words “he”, “him”, “his”, and “whom”, and similar expressions shall be construed accordingly.
5. Except where the context otherwise requires, a reference in a condition to a paragraph is a reference to a paragraph of that condition and a reference in a paragraph to a sub-paragraph is a reference to a sub-paragraph of that paragraph.

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6. Any reference in these conditions to:

(a) a provision thereof;

(b) a provision of the standard conditions of gas supply licences;

(c) a provision of the standard conditions of gas transporter licences;

(d) not used; or

(e) a provision of the standard conditions of gas shipper licences,

shall, if these conditions or the standard conditions in question come to be modified, be construed, so far as the context permits, as a reference to the corresponding provision of these conditions or the other standard conditions in question as modified.

7. In construing these conditions, the heading or title of any condition or paragraph shall be disregarded.

8. Any reference in a condition to the purposes of that condition generally is a reference to the purposes of that condition as incorporated in this licence and as incorporated in each other licence under section 7ZA of the Act (whenever granted) which incorporates it.

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9. Where any obligation placed on the licensee under this licence is required to be performed by a specified date or time, or within a specified period, and where the licensee has failed so to perform by such date or time, or within such period, such obligation shall continue to be binding and enforceable after the specified date or time, or after the expiry of the specified period (but without prejudice to all rights and remedies available against the licensee by reason of the licensee's failure to perform by that date or time, or within that period).

10. Anything required by or under these conditions to be done in writing may be done by facsimile transmission of the instrument in question or by other electronic means and, in such case:
 - (a) the original instrument or other confirmation in writing shall be delivered or sent by pre-paid post as soon as is reasonably practicable, and

 - (b) where the means of transmission had been agreed in advance between the parties concerned, in the absence of and pending such confirmation, there shall be a rebuttable presumption that what was received duly represented the original instrument.

11. The definitions referred to in this condition may include some definitions which are not used or not used exclusively in Sections A, B, C or D (which sections are incorporated in all gas interconnector licences). Where:
 - (a) any definition is not used in Sections A, B, C or D that definition shall, for the purposes of this licence, be treated:

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- (i) as part of the condition or conditions (and the Section) in which it is used; and
 - (ii) as not having effect in the licence until such time as the condition in which the definition is used has effect within the licence in pursuance of that condition;
- (b) any definition which is used in Sections A, B, C or D and is also used in one or more other Sections:
- (i) that definition shall only be modifiable in accordance with the modification process applicable to each of the conditions in which it is used; and
 - (ii) if any such condition is modified so as to omit that definition, then the reference to that definition in the condition shall automatically cease to have effect.

Condition 2. Payments by the licensee to the Authority

1. The licensee shall, at the times stated, pay to the Authority such amounts as are determined by or under this condition.

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2. In respect of each relevant year at the beginning of which the licensee holds this licence, the licensee shall pay to the Authority the aggregate of:
 - (a) an amount that is the relevant proportion of the estimated costs incurred by the Competition Commission in the previous relevant year in connection with any reference made to it with respect to the licence or any other licence;
 - (b) an amount that is the relevant proportion of the difference (being a positive or negative amount), if any, between:
 - (i) any costs estimated by the Authority in the previous relevant year under sub-paragraph 2(a); and
 - (ii) the actual costs of the Competition Commission (in connection with that reference) for the relevant year prior to the previous relevant year.
3. The amounts determined in accordance with paragraph 2 shall be paid by the licensee to the Authority in one instalment being due for payment by 31 October in each year, provided that if the Authority has not given notice of the amount of the instalment at least 30 days before the payment date stated above, the licensee shall pay the amount due within 30 days from the actual giving of notice by the Authority to the licensee (whenever notice is given).
4. When the licensee fails to pay the amount determined in accordance with paragraph 2 within 30 days of the due date set out in paragraph 3, it shall pay simple interest

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on the amount at the rate which is from time to time equivalent to the base rate of NatWest Bank plc or, if there is no such base rate, such base rate as the Authority may designate for the purposes hereof.

5. In this condition:

“estimated costs”	means costs estimated by the Authority as likely to be the costs incurred by the Competition Commission, such estimate having regard to the views of the Competition Commission
“relevant proportion”	means the proportion of the costs attributable to the licensee in accordance with any direction issued by the Competition Commission under section 177(3) of the Energy Act 2004 and otherwise with principles determined by the Authority for the purposes of this condition generally and notified to the licensee
“relevant year”	means a year beginning on 1 April of each calendar year and ending on 31 March of the following calendar year

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PART II – SECTION B: GENERAL

Condition 3. Compliance with bilateral agreements

1. The licensee shall comply with the relevant bilateral system-to-system operator agreements as required by any relevant gas transporter. The licensee must provide such agreements to the Authority for its approval.

Condition 4. Provision of information to the Authority

1. Subject to paragraphs 2 and 4 below, the licensee shall furnish to the Authority, in such manner and at such times as the Authority may reasonably require, such information and shall procure and furnish to it such reports, as the Authority may reasonably require or as may be necessary for the purpose of performing:
 - (a) the functions conferred on the Authority by or under the Act;
 - (b) any functions transferred to or conferred on the Authority by or under the Utilities Act 2000; and
 - (c) any functions conferred on the Authority by or under the Energy Act 2004.

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2. The licensee shall not be required by the Authority to furnish it under this condition with information for the purpose of the exercise of the Authority's functions under section 34 of the Act.
3. The licensee shall, if so requested by the Authority, give reasoned comments on the accuracy and text of any information or advice (so far as relating to its activities as holder of a gas interconnector licence) that the Authority proposes to publish pursuant to section 35 of the Act.
4. This condition shall not require the licensee to produce any documents or give any information which it could not be compelled to produce or give in evidence in civil proceedings before a court.
5. The power of the Authority to call for information under paragraph 1 is in addition to the power of the Authority to call for information under or pursuant to any other condition. There shall be a presumption that the provision of information in accordance with any other condition is sufficient for the purposes of that condition, but that presumption shall be rebutted, if the Authority states in writing that in its opinion such further information is, or is likely to be, necessary to enable it to exercise functions under the condition in question.

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Condition 5. Provision of information to a relevant gas transporter

1. The licensee shall furnish to any relevant gas transporter, information concerning the operation and technical specifications of the interconnector in such manner and at such times as may reasonably be required:
 - (a) for that relevant gas transporter to enable it to comply with its obligations under its own licence or applicable industry codes; or
 - (b) as is specified in directions issued from time to time by the Authority to the licensee for the purposes of this condition, having taken into consideration any representations made to the Authority by the licensee and any relevant gas transporter, and in accordance with any conditions contained in such directions.
2. The licensee shall be entitled to refuse to provide an item of information on the grounds that its disclosure would seriously and prejudicially affect the commercial interests of the licensee unless and until the Authority, by notice in writing given to the licensee, directs it to provide that item of information on the ground that provision thereof is necessary or expedient for any of the purposes mentioned in paragraph 1.
3. This condition shall not require the licensee to produce any documents or give any information which it could not be compelled to produce or give in evidence in civil proceedings before the court.

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4. Sub-paragraph 1(a) shall not apply in respect of any relevant gas transporter which has not established, whether in pursuance of a licence condition or otherwise, effective arrangements designed to secure that information provided in pursuance of this condition is not communicated, directly or indirectly, to any gas shipper or gas supplier.

5. Not used

Condition 6. Separation of accounts

1. The licensee shall, in their internal accounting, keep separate accounts for each of their gas: transmission (which includes, for the purposes of this licence condition, interconnector activities); distribution; storage; LNG; and supply activities as if such activities were carried out by separate undertakings, to avoid cross-subsidisation between these activities.

Condition 7. Compulsory acquisition of land etc

Not used

Condition 8. Other powers etc

Not used

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PART II – SECTION C: REVENUE

Condition 9. Use of revenues

Not used

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PART II – SECTION D: THIRD PARTY ACCESS

Condition 10. Charging methodology to apply to third party access to the licensee's interconnector

1. Unless otherwise determined by the Authority, the licensee shall only enter into agreements for access to the licensee's interconnector on the basis of the charging methodology last approved by the Authority either before the licensee enters into the agreement or before the tariffs under the agreement fall due.

Initial approval and review of charging methodology

2. Before this condition comes into effect (or by such date or dates as determined by the Authority) the licensee shall determine and submit to the Authority for approval a charging methodology for access to the licensee's interconnector.
3. The charges and the application of the underlying charging methodology shall be:
 - (a) objective;
 - (b) transparent; and
 - (c) non-discriminatory.

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4. Prior to submitting the charging methodology to the Authority the licensee shall:
 - (a) take all reasonable steps to ensure that all persons who may have a direct interest in the charging methodology are consulted and allow them a period of not less than 28 days within which to make written representations; and
 - (b) furnish to the Authority a report setting out:
 - (i) the terms originally proposed in the charging methodology;
 - (ii) the representations, if any, made by interested persons; and
 - (iii) any change in the terms of the methodology intended as a consequence of such representations.

Review of the charging methodology by the licensee

5. The licensee shall review its charging methodology at least once a year and, subject to paragraphs 8, 9 and 10, make such modifications to the charging methodology as may be requisite for the purpose of better achieving the relevant charging methodology objectives as set out in paragraph 3 of this condition.

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6. The licensee shall also review its charging methodology where the Authority so requests. Such review must cover any suggestions or comments made by the Authority on the licensee's charging methodology. The licensee shall complete any such review and provide the Authority with a report on the review within three months of the Authority's request. The licensee shall then, subject to paragraphs 8, 9 and 10, make such modifications to the charging methodology as may be requisite for the purpose of better achieving the relevant charging methodology objectives as set out in paragraph 3 of this condition.

Resubmission of charging methodology to the Authority for approval

7. Where the Authority so requests, the licensee shall re-submit its charging methodology to the Authority for approval by such date as may be determined by the Authority and notified to the licensee.

Modification of charging methodology

8. Subject to paragraph 10, the licensee shall not make a modification to the charging methodology unless the licensee has:
 - (a) taken all reasonable steps to ensure that all persons who may have a direct interest in the charging methodology, including the Authority, are consulted on the proposed modification and has allowed such persons a period of not less than 28 days within which to make written representations; and
 - (b) furnished the Authority with a report setting out:

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- (i) the terms originally proposed for the modification;
 - (ii) the representations, if any, made by interested persons;
 - (iii) any change in the terms of the modification intended in consequence of such representations;
 - (iv) how the intended modification better achieves the relevant charging methodology objectives; and
 - (v) a timetable for the implementation of the modification and the date with effect from which the modification (if made) is to take effect, such date being not earlier than the date on which the period referred to in paragraph 10 expires.
9. The licensee shall not make a modification to the charging methodology more than once a year unless the Authority consents otherwise.
10. The licensee will not make any modification to the charging methodology where the Authority has, within 28 days (or within 90 days if the Authority intends to undertake an impact assessment) of the report being furnished to it under paragraph 8, given a direction that the modification shall not be made.

Publication of charging methodology statement

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11. The licensee shall publish (at least on its website) a charging methodology statement that sets out its charges and how the charges have been derived in accordance with its methodology, as soon as practicable after the charging methodology has been approved by the Authority, or, where the charging methodology has been modified, any approved changes to the charging methodology. Unless the Authority directs otherwise, the charging methodology statement shall be published 28 days prior to it coming into effect.

Provision of statement, revision, or amendment or notice to any person

12. The licensee shall send a copy of any such statement, revision, or amendment or notice given under this condition to any person who requests such statement, revision, or amendment or notice. The licensee may impose a reasonable charge upon a person who requests the sending of a statement, revision or amendment of a statement, or notice. Such charge should be equivalent to the licensee's reasonable costs of meeting the request but shall not exceed the maximum amount specified in any directions that may be issued by the Authority for the purposes of this condition.

Where tariffs or a tariff methodology has been established or approved by a regulatory authority other than the Authority

13. Where the licensee's interconnector either:

- (a) forms part of an integrated transmission system and the tariffs and/or the tariff methodology that applies to access to the licensee's interconnector have been established or approved by a regulatory authority; or

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- (b) does not form part of an integrated transmission system and the tariffs and/or the tariff methodology that applies to access to the licensee's interconnector have been established or approved by a regulatory authority,

the Authority may issue a notice to the licensee that the establishment or approval by that regulatory authority meets the requirements of this licence condition. Such notice will constitute approval of a charging methodology for the purposes of this licence condition.

14. A notice issued under paragraph 13 will expire on the earlier of:

- (a) the date, if any, provided for expiry in the notice, or
- (b) when the Authority gives notice to the licensee that the establishment or approval by that regulatory authority of the licensee's charging methodology no longer meets the requirements of this licence condition.

15. Where the Authority has issued a notice to the licensee under paragraph 13 and the charging methodology that has been established or approved by the regulatory authority has been modified or is to be modified, the licensee shall furnish the Authority with a report setting out:

- (a) the terms originally proposed for the modification;

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- (b) the representations, if any, made by interested person;
- (c) any change in the terms of the modification intended in consequence of the representations;
- (d) how the intended modification better achieves the relevant charging methodology objectives; and
- (e) a timetable for the implementation of the modification and the date with effect from which the modification (if made) is to take effect.

16. Where the Authority has issued a notice to the licensee under paragraph 12, until that notice expires, paragraphs 2 and 4 – 11 of this condition do not apply to the licensee.

Agreements entered into before 1 July 2004

17. This licence condition does not apply to contracts for access to the licensee's interconnector that were entered into before 1 July 2004 and which were:

- (a) subject to an exemption granted under Article 81(3) (ex 85(3)) of the EC Treaty; or

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- (b) entered into on the basis of a pricing methodology that was subject to approval by the Authority.

18. Paragraph 17 does not apply where the Authority has issued a direction to the licensee that a contract that would be covered by paragraph 17 is to be subject to this licence condition. A direction may be issued under this paragraph in any of the following circumstances:

- (a) the Authority considers that such contracts are operating in a manner that is detrimental to competition or the effective functioning of the internal gas market, or the efficient functioning of the regulated system to which the interconnector is connected;
- (b) the licensee is found to be in breach of the Competition Act 1998;
- (c) the European Commission requests that such contracts be subject to approved tariffs and/or methodologies;
- (d) there is merger or acquisition activity in relation to or by the licensee that changes the competitive nature of the licensee's interconnector; or
- (e) the licensee:
 - (i) has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act

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1986) of the whole or any material part of its assets or undertaking appointed; or

- (ii) has an administration order under section 8 of the Insolvency Act 1986 made in relation to it.

19. In addition to the circumstances listed in paragraph 18, contracts entered into before 1 July 2004 shall also be subject to this licence condition where:

- (a) any material term or terms of the contract, that is, one relating to either the tariffs or the term of the contract, is renegotiated; and/or
- (b) where the contract is extended beyond its original term.

Provision of information to Authority in relation to the charging methodology

20. The licensee shall comply with any direction given by the Authority to furnish it with a statement showing, so far as is reasonably practicable, the methods by which, and the principles upon which, its charging methodology has been derived.

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Condition 11. Requirement to offer terms for access to the licensee's interconnector

1. On the application of any person for access to the licensee's interconnector the licensee shall offer to enter into an agreement with such person for access to the licensee's interconnector.
2. Non-price terms and conditions of access shall be transparent and non-discriminatory.
3. The licensee shall not be in breach of this condition where there is a lack of capacity in respect of which to grant access to the licensee's interconnector.
4. Where the licensee refuses access on the grounds that it lacks the necessary capacity, duly substantiated reasons for such refusal, demonstrating that it was either not economic or not technically feasible to provide the additional capacity, must be given to both the person seeking access and to the Authority within 28 days of a refusal.
5. Where the licensee refuses access on the grounds that it lacks the necessary capacity and the person seeking access so requests, the licensee shall provide relevant information on measures that would be required to reinforce the network in order to provide that capacity. The licensee may impose a reasonable charge upon a person who requests the sending of this information. Such charge should be equivalent to the licensee's reasonable costs of meeting the request but shall not exceed the maximum amount specified in any direction issued by the Authority for the purposes of this condition.

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6. A dispute arising from refusal of access on the grounds of lack of necessary capacity will be resolved in accordance with condition 14.

7. The licensee shall keep and maintain records for at least seven years or the length of any concluded contract (whichever is the longer in each case), detailing all access terms and conditions offered to any person (whether or not access is in fact granted or utilised) including details of the charges or tariffs and non-price terms and conditions of access offered.

Condition 12. Application of licence conditions 10 and 11

2. Licence conditions 10 and 11 (collectively referred to as 'the relevant conditions') may be directed not to have effect, be suspended from operation, or be brought into or back into operation, in accordance with this licence condition.

3. On the application of the licensee in accordance with paragraph 7, the Authority may (either before, at the same time, or after this licence has been granted to the licensee) issue a direction that any or all of the relevant conditions may not have effect or are suspended from operation or (where the licence has not yet been granted) will be suspended from operation where the Authority is satisfied (at the time of issuing the direction) that all of the following conditions have been met:
 - (a) the investment in the licensee's interconnector enhances competition in gas supply and enhances security of supply;

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- (b) the level of risk attached to the investment is such that the investment would not take place or would not have taken place unless a direction issued under paragraph 2 of this condition was so issued;
 - (c) the interconnector will be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose system that infrastructure will be built;
 - (d) charges will be levied on users of the interconnector; and
 - (e) Not used
 - (f) having any or all of the relevant conditions under consideration not in effect, or suspended from operation, is not detrimental to competition or the effective functioning of the internal gas market, or the efficient functioning of the regulated system to which the interconnector is connected.
4. Where a direction has been issued under paragraph 2, the licence condition or conditions to which that direction relate will be brought into, or back into, operation in accordance with paragraphs 4 or 5.
5. Where a direction issued under paragraph 2 specifies a date upon which the direction will expire, the licence condition or conditions to which that direction relates will be brought into, or back into, operation on the earlier of the date so specified, or the date of the Authority issuing a direction under paragraph 5.

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6. Where the Authority has issued a direction that any or all of the relevant conditions do not have effect or are suspended from operation, the Authority may issue a direction that any or all of the relevant conditions are brought into, or back into, operation in any of the following circumstances:
- (a) where, as a direct result of any act or failure to act by the licensee, any of the conditions in paragraph 2(a), (c), (d), or (f) above cease to be met;
 - (b) where the licensee:
 - (iii) has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed; or
 - (iv) has an administration order under section 8 of the Insolvency Act 1986 made in relation to it.
 - (c) where the licensee is found to be in breach of the Competition Act 1998;
 - (d) where merger or acquisition activity in relation to or by the licensee changes the competitive nature of the interconnector; or

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- (e) where the European Commission has requested the Authority amend or withdraw the decision that any or all of the relevant conditions not be in effect or be suspended from operation.
7. Any direction issued by the Authority under this licence condition may be in respect of a whole interconnector or in relation to part of an interconnector.
8. A licensee may make a request in writing to the Authority for the Authority to issue a direction that any or all of the relevant conditions do not have effect or are suspended from operation. The request shall specify the relevant conditions to which the request relates and must set out all relevant information that would allow the Authority to determine whether such a direction should be issued given the matters of which the Authority must be satisfied before issuing a direction, as set out in paragraph 2.
9. An application made under paragraph 7 may relate to a new interconnector or to a part of an interconnector in so far as that part represents either:
- (a) a significant increase of capacity to that interconnector; or
 - (b) a modification to the interconnector which enables the development of new sources of gas supply.
10. In this licence condition:

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“new interconnector” means an interconnector not completed by 3 August 2003

Condition 13. Capacity utilisation

1. The licensee will make available the maximum capacity at all entry and exit points, taking into account system integrity and efficient network operation.
2. The licensee shall implement and publish on its website non-discriminatory and transparent capacity allocation mechanisms.
3. The licensee shall develop procedures on the primary market to facilitate the secondary trade of capacity between primary capacity holders and any person seeking to acquire capacity rights from such primary capacity holders. The licensee will recognise the transfer of primary capacity rights where notified by users of the interconnector. The licensee shall take all reasonable steps to allow and facilitate capacity rights to be freely tradable in a secondary market.
4. When the licensee concludes new contracts or renegotiates existing contracts, these contracts shall take into account the following principles:
 - (a) the licensee shall offer unused capacity on the primary market,

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- (b) users of the licensee's interconnector who wish to re-sell their unused contracted capacity on the secondary market shall be entitled to do so.

- 5. Where capacity contracted under existing contracts remains unused and contractual congestion occurs, the licensee shall apply subparagraphs 4(a) and (b) above unless this would infringe existing contracts. Where this would infringe the existing contracts, the licensee shall endeavour to make available this capacity in order for the principles in subparagraphs 4(a) and (b) above to be applied.

- 6. The licensee shall publish on its website detailed and current information regarding the services it offers and the relevant conditions applied, together with the technical information necessary for users of the interconnector to gain effective access.

- 7. For the services offered by the licensee, the licensee shall publish current information on technical, contracted and available capacities on a numerical basis for all entry and exit points on a regular and rolling basis and in a user-friendly standardised manner.

- 8. Where the licensee considers that for reasons of confidentiality the licensee should not have to publish the information required to be published by paragraphs 6 and 7 of this licence condition, the licensee may seek the consent of the Authority to limit the publication for the entry or exit points in question.

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9. In this condition:

“capacity”	means the maximum flow, expressed in normal cubic meters per time unit or in energy unit per time unit, to which the user of the licensee’s interconnector is entitled in accordance with the provisions of the agreement for access to the licensee’s interconnector
“contractual congestion”	means a situation where the level of firm capacity demand exceeds the technical capacity, that is, where all technical capacity is contracted as firm
“firm capacity”	means transmission capacity contractually guaranteed by the licensee
“primary market”	means the market of the capacity traded directly by the licensee
“secondary market”	means the market of the capacity traded otherwise than on the primary market

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Condition 14. Dispute resolution

1. Upon the application of any person who wishes to dispute the tariffs or non-price terms and conditions of access offered to that person in respect of access to the licensee's interconnector (including a refusal by the licensee to offer access on the grounds that insufficient capacity is available), the Authority may, pursuant to section 7B(5)(a)(iii) of the Act, settle any terms of the agreement in dispute between the licensee and that person or persons (as the case may be) in such manner as it appears to the Authority to be reasonable.

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**PART III - AMENDED STANDARD CONDITIONS
PARTICULAR TO THIS LICENCE**

There are no amendments to the standard conditions

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PART IV - SPECIAL CONDITIONS

There are no special conditions

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SCHEDULE 1

This licence authorises the participation of BBL COMPANY in the operation of the BALGZAND BACTON LINE, an interconnector from Julianadorp near Balgzand in the Netherlands to Bacton in the United Kingdom.

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SCHEDULE 2

REVOCATION OF LICENCE

1. The Authority may at any time revoke the licence by giving no less than 30 days' notice (24 hours' notice, in the case of a revocation under sub-paragraph 1(f)) in writing to the licensee:
 - (a) if the licensee agrees in writing with the Authority that the licence should be revoked;
 - (b) if any amount payable under standard condition 2 (Payments by the Licensee to the Authority) is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Authority has given the licensee notice that the payment is overdue - provided that no such notice shall be given earlier than the sixteenth day after the day on which the amount payable became due;
 - (c) if the licensee fails:
 - (i) to comply with a final order (within the meaning of section 28 of the Act) or with a provisional order (within the meaning of that section) which has been confirmed under that section and (in either case) such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice in writing of such failure to the licensee - provided that no such notice shall be given by the Authority before the expiration of the period within which an application under section 30 of the Act could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined; or

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- (ii) to pay any financial penalty (within the meaning of section 30A of the Act) by the due date for such payment and such payment is not made to the Authority within three months after the Authority has given notice in writing of such failure to the licensee – provided that no such notice shall be given by the Authority before the expiration of the period within which an application under section 30E of the Act could be made questioning the validity or effect of the financial penalty or before the proceedings relating to any such application are finally determined;

- (d) if the licensee fails to comply with an order made by the court under section 34 of the Competition Act 1998;

- (e) if the licensee:
 - (i) has not commenced participation in the operation of the interconnector to which this licence relates within five years of the date on which the licence comes into force;

 - (ii) has ceased to participate in the operation of the interconnector to which this licence relates;

- (f) if the licensee:

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- (i) is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986, but subject to paragraphs 2 and 3 of this schedule) or has any voluntary arrangement proposed in relation to it under section 1 of that Act or enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);

 - (ii) has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed;

 - (iii) has an administration order under section 8 of the Insolvency Act 1986 made in relation to it;

 - (iv) passes any resolution for winding-up other than a resolution previously approved in writing by the Authority; or

 - (v) becomes subject to an order for winding-up by a court of competent jurisdiction; or
- (g) if the licensee is convicted of having committed an offence under section 43 of the Act in making its application for the licence.
2. For the purposes of sub-paragraph 1(f)(i), section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there was substituted “£100,000” or such

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higher figure as the Authority may from time to time determine by notice in writing to the licensee.

3. The licensee shall not be deemed to be unable to pay its debts for the purposes of sub-paragraph 1(f)(i) if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by the licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Authority under paragraph 1.

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Appendix 2 Draft Direction

Direction to BBL Company by the Gas and Electricity Markets Authority under paragraph 2 of Standard Licence Condition 12 of the Gas Interconnector Licence

1. This Direction is issued by the Gas and Electricity Markets Authority (the “Authority”) under paragraph 2 of Standard Licence Condition 12 of the Gas Interconnector Licence of BBL Company (the “Licensee”) granted under section 7ZA of the Gas Act 1986 (as amended from time to time) (the “Licence”).
2. The Licence granted to BBL Company authorises the participation of BBL Company in the operation of the Balgzand Bacton Line, a gas interconnector from the Netherlands to the United Kingdom.
3. Paragraph 2 of Condition 12 provides that the Authority may (either before, at the same time, or after a licence has been granted to a licensee) issue a direction that any or all of Conditions 10 and 11 may not have effect or be suspended from operation or (where the licence has not yet been granted) will be suspended from operation where the Authority is satisfied that the specified considerations listed in paragraph 2 are met.
4. A direction pursuant to paragraph 2 of Standard Licence Condition 12 may be issued from the date the Secretary of State determines the standard licence conditions pursuant to sub-section 150(1) of the Energy Act 2004.
5. The Authority hereby directs that the provisions contained in Conditions 10 and 11 shall (subject to paragraph 5 below) not be in effect or are suspended from operation in the Licensee’s Licence with respect to the following services:
 - ◆ physical flow of the Balgzand Bacton Line from the Netherlands to the UK up to a maximum capacity of approximately 1.8 mcm/hour; and
 - ◆ contractual reverse flow.
6. This Direction shall have effect from [Date of granting of licence] and shall remain in effect until the earlier of:

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(a) a further Direction being issued in accordance with Condition 12 of the Licensee's Licence (as amended from time to time) that any or all of Conditions 10 and 11 are brought into operation; or

(b) 2 December 2022.

Name

Duly authorised on behalf of the Authority

Date