



Electricity generators,  
interconnector owners and  
operators, suppliers and other  
interested parties

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value for all customers*

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15 November 2007

Dear Colleague,

**Amendment to the exemption order issued to BritNed Development Ltd ("BritNed") under condition 12 of the electricity interconnector licence granted to BritNed in respect of the BritNed interconnector**

Following consultation, on 11 July 2007 the Authority granted to BritNed an electricity interconnector licence (the "licence") under section 6(1)(e) of the Electricity Act 1989 and issued an exemption order:

- (a) providing that standard licence conditions 9, 10 and 11 are not in effect or are suspended from operation; and
- (b) exempting BritNed from the provisions of Article 6(6) of Regulation (EC) No 1228/2003 ("the Regulation"),

for a period of 25 years from the date on which the BritNed interconnector commences commercial operation.

In its final views document published on 12 July 2007, Ofgem noted that the European Commission had up to three months in which it could veto a decision by the relevant authority of a Member State to grant an exemption, or request that the regulatory authority amend its decision.

In accordance with Article 7(5) of the Regulation, the European Commission has now requested that the Authority amend the exemption order issued to BritNed in order to include the following conditions:<sup>1</sup>

- "(a) BritNed has to present to the national regulators within ten years after start of operations (as defined in the exemption decisions) a report that contains all the details necessary to scrutinise the total costs and revenues of the project and the*

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<sup>1</sup> In a letter to the Authority on 18 October 2007.

*rate of return on the investment with 2007 as the base year allowing for comparison with the data provided for the exemption request.*

- (b) *If, calculated on the basis of the first 10 years, the estimated internal rate of return for the entire project is more than one percentage point above the internal rate of return estimated when filing the exemption request, BritNed shall have two options:*
- (i) *it shall either increase the interconnector capacity to such an extent that the initially estimated rate of return is met. The additional capacity would not automatically be covered by the scope of the present exemption; or*
  - (ii) *Alternatively, BritNed shall accept that the profits (discounted to 2007 figures) exceeding the initially estimated rate of return by more than one percentage point are capped and used, at equal parts, to finance the regulated asset base in the UK and in the Netherlands."*

In accordance with paragraph D4 of the exemption order, Ofgem has amended the exemption order issued to BritNed consistent with the Commission's request and based on further clarification by the Commission of the intent of its request. BritNed provided its consent to the amendment of the exemption order on 15 November 2007.

The amended exemption order is attached to this letter. In summary, the following amendments have been made:

- (a) definitions of "10 year date", "25 year date", "Additional Profits", "costs" and "Financial Report" have been inserted into section A (Interpretation and Definitions);
- (b) a clarificatory amendment has been made to the definition of "commences commercial operation" in section A. The word "BritNed" has been replaced with "the Interconnector"; and
- (c) new paragraphs D6 to D8 have been inserted in section D (Conditions).

Should you wish to discuss any of the issues raised in this letter please contact Andrew Wallace (email: [andrew.wallace@ofgem.gov.uk](mailto:andrew.wallace@ofgem.gov.uk), tel:020 7901 7067).

Yours sincerely



**Philip Davies**  
**Director, GB Markets**

Cc: Mathew Rose, BritNed Development Ltd  
Andris Piebalgs, Director General, Energy and Transport DG  
Matti Supponen, Energy and Transport DG  
Mark van Stiphout, Energy and Transport DG  
Lineke den Ouden, Ministry of Economic Affairs, the Netherlands

# ELECTRICITY ACT 1989: INTERCONNECTOR LICENCE

## REGULATION (EC) No 1228/2003

### AMENDED EXEMPTION ORDER

Pursuant to:

- (a) paragraph 2 of standard licence condition 12 of the Electricity Interconnector Licence (the "Licence") granted to BritNed Development Limited<sup>1</sup> ("BritNed") under section 6(1)(e) of the Electricity Act 1989, such licence authorising BritNed to participate in the operation of a high voltage DC electricity interconnector between the Isle of Grain in Great Britain and Maasvlakte in the Netherlands;
- (b) Article 7(1) of Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity (the "Regulation"); and
- (c) paragraph D4 of the exemption order issued to BritNed by the Gas and Electricity Markets Authority on 11 July 2007,

the Gas and Electricity Markets Authority hereby issues to BritNed an exemption order:

- (i) providing that standard licence conditions 9, 10 and 11 of the Licence are suspended from operation, and

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<sup>1</sup> Registered in England No. 04251409. Registered Office: 1-3 Strand, London WC2N 5EH.

(ii) exempting BritNed from the provisions of Article 6(6) of the Regulation  
in relation to the Interconnector,

subject to the terms and conditions in the attached Schedule.

A handwritten signature in black ink, appearing to read 'Philip Davies', with a long horizontal flourish extending to the right.

**Philip Davies**

Authorised in that behalf by the

Gas and Electricity Markets Authority

15 November 2007

*SCHEDULE*

*PERIOD, CONDITIONS, AND REVOCATION OF EXEMPTION ORDER*

**A. Interpretation and Definitions**

In this exemption order:

The "10 year date"	means the date which is 10 years after the date on which the Interconnector commences commercial operation;
the "25 year date"	means the date which is 25 years after the date on which the Interconnector commences commercial operation;
"Additional Profits"	means an amount which, in relation to the Interconnector:  (a) is equal to the additional costs that would have needed to have been added to the actual costs (whether incurred or committed) in the year ending on the 25 year date in order to reduce the internal rate of return to a value that does not exceed by more than one percentage point the internal rate of return estimated by BritNed for the purposes of its application for this exemption order; and  (b) reflects:  (i) the actual costs (whether incurred or committed) and the time at which they were incurred;  (ii) the actual revenues received and the time at which

	<p>they were received; and</p> <p>(iii) all facts that have affected such costs and revenues;</p>
the "Authority"	<p>means the Gas and Electricity Markets Authority established by section 1(1) of the Utilities Act 2000, as amended from time to time;</p>
the "Act"	<p>means the Electricity Act 1989, as amended from time to time;</p>
"BritNed"	<p>means BritNed Development Limited (Registered No. 04251409; registered office 1-3 Strand, London WC2N 5EH), a company authorised by licence to participate in the operation of the Interconnector;</p>
"commences commercial operation"	<p>means the time when the Interconnector has been commissioned and is available for physical flow of electricity on the market through implicit and explicit auctions;</p>
"costs"	<p>includes, for the avoidance of doubt, all investment and development costs in relation to the Interconnector prior to, on and after the date on which the Interconnector commences commercial operation;</p>
"Financial Report"	<p>means a report prepared by BritNed which sets out, in relation to the Interconnector:</p> <p>(a) the actual costs (whether incurred or committed) and the time at which they were incurred, and the</p>

	<p>revenues received and the time at which they were received up to the 10 year date;</p> <p>(b) a revised forecast of the costs expected to be incurred and when they are expected to be incurred and the revenues expected to be received and when they are expected to be received during the 15 years immediately following the 10 year date;</p> <p>(c) a revised forecast of the internal rate of return which is derived from the information set out in paragraphs (a) and (b) of this definition;</p> <p>(d) a comparison of all the data used in the calculation required by paragraph (c) of this definition together with the equivalent data to that required by paragraph (a) and (b) of this definition provided as part of BritNed’s application for this exemption order; and</p> <p>(e) a statement in which BritNed demonstrates that it has taken account of all relevant material factors known to it in making any revised forecasts;</p>
<p>the “Interconnector”</p>	<p>means the high voltage DC electricity interconnector between the Isle of Grain in Great Britain and Maasvlakte in the Netherlands, with respect to:</p> <p>(i) the maximum capacity of the interconnector in both directions as at the date that the interconnector commences commercial operation; or</p> <p>(ii) a maximum capacity of 1320 MW in both</p>

	directions, whichever shall be the less;
the "Licence"	means the Electricity Interconnector Licence granted to BritNed under section 6(1)(e) of the Act on 11 July 2007, such licence authorising BritNed to participate in the operation of a high voltage DC electricity interconnector between the Isle of Grain in Great Britain and Maasvlakte in the Netherlands;
the "Regulation"	means Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity.

**B. Full description of the interconnector to which this exemption order relates**

This exemption order relates to the high voltage DC electricity interconnector between the Isle of Grain in Great Britain and Maasvlakte in the Netherlands, with respect to (a) the maximum capacity of the interconnector in both directions as at the date that the interconnector commences commercial operation; or (b) a maximum capacity of 1320 MW in both directions, whichever shall be the less.

**C. Period**

Subject to section E below, and pursuant to sub-paragraph 4(a) of standard licence condition 12 of the Licence and Article 7(4)(b)(ii) of the Regulation, this exemption order shall come into effect on the date that it is issued and will continue for a period of 25 years from the date that the Interconnector commences commercial operation.



## D. Conditions

Pursuant to sub-paragraph 4(b) of standard licence condition 12 of the Licence, this exemption order is made subject to the following conditions:

1. The material provided by BritNed to the Authority in respect of this exemption order must be accurate in all material respects.
2. BritNed must notify the Authority within ten days after the date on which the Interconnector commences commercial operation.
3. Should any of the grounds for revocation arise under section E of this exemption order, the Authority may, with the consent of BritNed, amend this exemption order rather than revoke the exemption order.
4. The Authority may, with the consent of BritNed, amend this exemption order where the Authority has been requested to amend the decision to grant this exemption order by the European Commission (such request being made in accordance with Article 7(5) of the Regulation).
5. This exemption order is transferable where the Authority has given its written consent to such a transfer. For the avoidance of doubt, all of the conditions contained in this exemption order (as amended from time to time) continue unaffected in respect of any person to whom this exemption order may be transferred.
6. BritNed must, as soon as is reasonably practicable after the 10 year date, provide to the Authority a Financial Report.
7. BritNed must either
  - (a) use any Additional Profits as a contribution towards the financing of an increase in the capacity of the Interconnector; or
  - (b) pay any Additional Profits, in equal parts, to each transmission system operator to whose system the Interconnector is connected in order that each

transmission system operator can use such sums to finance the regulated asset base in Great Britain and the Netherlands.

8. The increase in the capacity of the Interconnector referred to in paragraph D7(a):
  - (a) must be commissioned and made available for physical flow of electricity on the market by the 25 year date; and
  - (b) will not automatically be covered by the scope of an exemption order.

#### **E. Revocation**

Pursuant to paragraph 5 of standard licence condition 12 of the Licence and Article 7(4)(b)(ii) of the Regulation, this exemption order may be revoked in the following circumstances:

1. The Authority may revoke this exemption order where the European Commission has requested (in accordance with Article 7(5) of the Regulation) that the Authority withdraw the decision to grant this exemption order.
2. The Authority may revoke this exemption order where the European Commission has requested (in accordance with Article 7(5) of the Regulation) that the Authority amend the decision to grant this exemption order and BritNed does not agree (under paragraph D4 above) that this exemption order be amended in the manner so requested by the European Commission.
3. The Authority may revoke this exemption order by giving a notice of revocation to BritNed not less than four months before the coming into force of the revocation where:
  - (a) in the Authority's reasonable opinion there is a material change in the degree to which the requirements of sub-paragraphs 6(a), (c), (d), (e) or (f) of standard licence condition 12 of the Licence or Article 7(1)(a), (c), (d), (e) or (f) of the Regulation are met with respect to the Interconnector as the result of any action or omission of BritNed;

- (b) BritNed has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986 and/or an administrative receiver within the meaning of Article 215 literate 2 of the Bankruptcy Act of the Netherlands, as amended from time to time) of the whole or any material part of its assets or undertaking appointed;
- (c) BritNed has entered administration under section 8 of and Schedule B1 to the Insolvency Act 1986 and/or has an administration order under Article 218 literate 2 of the Bankruptcy Act of the Netherlands, as amended from time to time, made in relation to it;
- (d) BritNed is incorporated or has assets in a jurisdiction outside England and Wales and anything analogous to any of the events specified in sub-paragraphs (b) and (c) above occurs in relation to BritNed under the law of any such jurisdiction;
- (e) BritNed is found to be in breach of any national or European competition laws, such breach relating to the Interconnector; or
- (f) there is merger or acquisition in relation to or by BritNed that is, or is likely to be, detrimental to competition.