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Dear Ikbal,

Consultation on Request from ElecLink for an exemption under Article 17 of Regulation (EC) 714/2009 for a GB-France interconnector

National Grid Electricity Transmission plc (NGET) welcomes the opportunity to respond to the above consultation. The consultation raises a number of issues that are of relevance to NGET in its capacity as NETSO and we set out our views below and in more detail in the attached Annex.

This response is on behalf of NGET and it is not confidential (a confidential response is provided under separate cover).

As NETSO our primary concern is the efficient, economical and coordinated operation of the GB transmission system. Our obligations as a TSO mean that we need to coordinate and cooperate with other TSOs both in GB, and in the systems with which we are interconnected. As the level of interconnection increases and the EU single market develops, it will become increasingly important for us to be able to coordinate our actions with those of fellow TSOs to ensure the combined network is designed efficiently, operated securely, and optimised to minimise overall costs to benefit the consumers we serve.

We understand the rationale for ElecLink's exemption request in respect of Article 16(6). However their request suggests that they also seek exemption from a number of other areas including complying with EU Network Codes. We have a number of concerns in relation to the requested exemption. Since some of these relate to areas where ElecLink's submissions to Ofgem have been marked as confidential, we are not in a position to analyse the impact of the proposals in detail. That said, we note the comments made in Ofgem's consultation on connection non-GB generation to the GB electricity system that any cost implications for GB consumers arising out of new interconnection must be accompanied by clear benefits to those consumers.

Compliance with Network Codes

Regulations, such as CACM¹, are directly applicable without need for further implementation: they apply to all relevant TSOs (i.e. all interconnectors) and to the relevant market participants. It is not clear whether the third party access rules referred to in Article 32 of Directive 2009/72/EC and from which an exemption under Article 17 of Regulation 714/2009 may be granted include the rules in the CACM Code. Ofgem's consultation does not make this clear and we assume that Ofgem will work with the Commission and other NRAs to clarify this position, especially given CACM (in the draft dated 22 November 2013) on its face states that it will apply to all transmission systems and interconnections except those on islands not connected to other transmission systems. Were it intended that interconnectors could be exempted from complying with CACM then we would have

¹ The draft Capacity Allocation and Congestion Management (CACM) Network Code in common with other Network Codes already implemented (e.g. the gas CAM Code implemented 14 October 2013 [Commission Regulation \(EU\) No 984/2013 of 14 October 2013](#)) are Regulations and are directly applicable in the UK as in all Member States.

expected that this would have been stated on the face of the draft CACM Code in Article 1 (along side the exemption for island systems not connected to other transmission systems).

ElecLink's position regarding the degree to which they will comply with CACM is of concern to us since it appears to be seeking blanket exemption from a wide range of the rules underpinning the single market, without clarifying what other protections should be put in place in order to ensure that GB consumers only face additional costs or risks arising from any exemption where the potential benefit to them is clear.

Some of these European network codes require NGET to work closely with other TSOs (for instance to determine "Interconnector Capacity" under the draft CACM Code). NGET's ability to fulfil its duties might be compromised if the exemption granted is too broad in scope.

In the absence of NGET being able to identify and analyse the potential operational costs that might arise for us (and for consumers) as a result of any non-compliance with the Network Codes, this task must fall to Ofgem. For example:

1. it is unclear to what extent the existence of a single player across a Member State boundary which was not required to abide by the same rules as other interconnections on that same boundary might impose costs or risks on GB consumers,
2. it is not clear to what extent the use of long term contracts, coupled with a UIOSI bulletin board arrangement (especially if ElecLink is seeking not to comply with CACM) will contribute to, or undermine market integration and security of supply (two of the factors mentioned as being potential benefits of interconnection in Ofgem's consultation on connection of non-GB generation)

In this context, we urge Ofgem to assess the operational and market implications of ElecLink not complying fully with the EU Network Codes and weigh them against the impact on GB consumers and the implications on integration of national markets. Given that consumers will have to live with the consequences of any non-compliance through potentially higher BSIS costs and/or network reinforcement, we believe the industry should have an opportunity to review and comment on any analysis.

Finally, we note that a 20 or 25 year exemption period is a very long time in the context of market development and therefore there is a danger that an exemption could restrict how the market might evolve.

Until there is greater clarity regarding exactly what is proposed, we are of the view that if Ofgem were minded to grant an exemption then it should only do so on a conditional basis and that it should not extend to exemption from the requirement to comply with the Network Codes. Given greater understanding of ElecLink's position regarding Network Code compliance it might be possible to demonstrate that any proposed non-compliance with CACM, or other Network Codes, would have no adverse impact:

- on NGET fulfilling its NETSO duties, or
- in facilitating the single market, or
- on consumers (e.g. through higher BSIS costs)

If this could be achieved then appropriate exemptions could then be developed.

It may be that our concerns are unfounded and that the degree of non-compliance with Network Codes that ElecLink are seeking is relatively trivial and will not impact adversely on our ability to fulfil our duties, or costs of fulfilling them.

Article 12 - the Tasks of a TSO

In section 3.4 of ElecLink's Exemption Request states their view that many of the requirements of Article 12 of the Directive are not appropriate for a "single interconnector transmission asset". We recognise that some of the obligations in Article 12 are not relevant to an interconnector and this is reflected in the Standard Licence Conditions of an Interconnector Licence. We consider the obligations contained within Article 12 are important to ensuring that the "efficient, coordinated, and

economic” obligations can be met by all TSOs. In this light, and to the extent relevant, we consider that, at the least, the responsibilities set out in paragraphs (b), (c) (in relation to system security) and (d) to (h) of Article 12 are relevant to ElecLink’s activities. We also note that Article 17 of Regulation 714/2009 does not refer to any exemption from these responsibilities.

NGET welcomes and supports Ofgem’s views set out in 3.72 that the requirements of the Standard Interconnector Licence conditions will apply to ElecLink. We consider this will be important in ensuring economic, efficient and coordinated operation of the system for the benefit of consumers. We also welcome the statement in paragraph 3.86 that all relevant GB Codes will also apply.

Articles 32, 37(6) and 37(10) – Third Party Access

In section footnote 47 (page 18) of ElecLink’s Exemption request they state that they will withdraw interconnector capacity in order to cap their exposure to the consequences of an unplanned outage. NGET is concerned that times of high capacity prices are likely to be driven by generation shortages in one of the markets concerned and withdrawal of capacity at such a time would be highly unwelcome and could put system security at risk, as a result NGET opposes any such capacity withdrawal. The withdrawal of capacity at such a time would also be likely to increase prices for the remaining capacity. It is difficult to see what benefit for consumers can arise from a lowering in interconnection capacity in these circumstances. Furthermore, it is not clear to us that ElecLink is significantly different to other single asset interconnectors who, so far as we are aware, already manage the risks referred to. As such, we consider that this proposal directly undermines one of the key benefits to consumers of interconnection – namely enhanced security of supply².

Article 9 - Unbundling Requirements

ElecLink considers that an exemption from the unbundling obligations in Article 9 of Directive 2009/22/EC (“the Directive”) is necessary to allow STAR Capital to retain the flexibility to invest in future energy projects. The potential for conflicts of interest where network owners have affiliates with generation interests are well recognised in the Directive and elsewhere and we note the fact that, even without an exemption from these rules, STAR Capital would retain the ability to invest in non-licensed (exempt) generation projects. ElecLink states that their shareholders currently have no significant plans to invest in generation projects. However, given duration of the exemption being requested, this position may change in the future and so we believe Ofgem should retain the ability to withdraw or modify the exemption in respect of Article 9 if warranted by a future change in circumstances. This would most likely be in relation to ElecLink’s shareholders’ other investments (e.g. in generation) particularly given the desire of ElecLink to use long-term capacity contracts which may be with generators to underpin their investment.

Connection Location

We have set out in a separate confidential response certain points regarding the choice of Sellindge as a connection point and the terms of the Connection and Use of System Agreement which ElecLink has signed.

We are happy to discuss our views contained within this response further should that be helpful. For further details, please contact Andy Balkwill on 01926 65 59 88.

Yours sincerely

By Email

Andy Balkwill
Regulatory Policy Manager
National Grid Electricity Transmission

² Ofgem identifies this as a key benefit in its consultation on connection of non-GB generation issued 18/11/2013; DECC also recognise the benefit to security of supply in their statement “More Interconnection: improving energy security and lowering bills” issued in December 2013.

Annex – Responses to Specific Questions

Where we have specific responses to the questions in the consultation document they are set out below.

Question 3: *Do you consider the exemption requested by ElecLink would not be to the detriment of the effective functioning of the internal market in electricity and that it therefore meets test 2 of condition (f)?*

We are concerned about how arrangements could work and be coordinated. However the extent of the issue is unclear because of the confidential nature of Exhibit G (Capacity Allocation and Congestion Management submission). We set out below a number of points in addition to those made above in our covering letter.

We consider that all interconnectors should be required to implement the EU Network Codes (save as needed to allow ElecLink to cope with the restrictions in their connection agreement) to ensure the proper implementation and correct functioning of the pan European Electricity target model. Failure to do so would potentially impact both market parties and NGET. For example, the impact on NGET might be twofold:

1. CACM sets up a governance process to allow TSOs to reach decisions and avoid deadlock situations (e.g. if market harmonisation stalls due to lack of TSO agreement); and
2. CACM sets up a regional process to coordinate the TSO calculation of capacity between market areas required ensuring system security (i.e. cross border capacity is dependent on elements of the wider system).

It is unclear as to the extent that ElecLink will be subject to both of these processes/obligations, or how Ofgem consider that those processes can work effectively if one interconnector is not required to participate in them.

The impact on market parties is hard to quantify as the arguments put forward by ElecLink do not appear to be consistent. At one point they say *“The only aspect of the capacity allocation regime in which ElecLink may differ from the prevailing market arrangements is in seeking to sell longer term capacity rights in order to underpin the project finance required to allow the Project to proceed”*, yet elsewhere within the document they indicate that they will not apply key components of the target model e.g. firmness arrangements. Implicit coupling requires physical firmness and long term rights require financial firmness, both of which ElecLink suggest they will not provide (e.g. interruptible products, capped physical firmness). Further, the target model envisages fostering a pan European solution e.g. a common forward allocation platform/rules, products, common Day Ahead/Intra Day algorithms, etc. all subject to NRA approval. It may not be possible to feed ElecLink’s capacity into this process if it had an exemption from TPA.

Question 11: *Do you think it appropriate to consider different types of products (PTRs or FTRs) for the same delivery hour?*

We note this is not in line with Forward Capacity Allocation Code (FCA) which precludes having PTRs/FTRs for the same delivery hour within the same region as this splits liquidity. We further note the choice of PTR/FTR is a regional decision, i.e. not something that ElecLink (or any other interconnector owner) has total control over and further is subject to NRA approval. The whole aim of the target model is to foster a pan European market and to try and encourage it to grow, splitting liquidity is not something that is supported. This proposal seems incompatible with the development of the target model and so we do not support it.

Question 12: *Do you consider it appropriate for there to be a lower degree of firmness for multi-year products?*

We note this is not in line with FCA which requires either capped financial firmness or financial firmness for forward products.

Question 13: *Do you consider it important (especially, but not only, for the secondary market), that the firmness of multi-year products would improve when coming closer to delivery time?*

We note this is not in line with FCA which requires either capped financial firmness or financial firmness for forward products.

Question 17: *Do you consider it important that remaining capacity after intraday allocation could be used for balancing exchanges? If so, how could this be managed most efficiently?*

Yes, we believe that where capacity is unused then the NETSOs could make use of this to further optimise their systems. This is consistent with normal NETSO activity where after gate closure we are responsible for balancing the systems for which we are responsible and optimising their operation. On the GB transmission system this may include redirecting flows over the network through network reconfiguration, use of flow controllers, managing fault, and voltage levels, minimising largest loss risks. Where multiple interconnectors are preset that form part of a wider European transmission network, TSOs have the ability to undertake similar actions to optimise the overall system³. Therefore we welcome the additional capacity that ElecLink will provide and which should provide greater scope for operational coordination and optimisation.

Question 19: *If you consider an exemption from Article 9 to be appropriate, should such an exemption be:*

(a) granted in full with no conditions imposed by the NRAs?

(b) granted subject to additional conditions imposed by the NRAs?

As set out in our covering letter, if Ofgem is minded to grant an exemption then it should be subject to conditions.

Question 20: *Should an exemption subject to additional conditions be deemed appropriate what conditions do you consider it would be appropriate for the NRAs to impose?*

The requirements on TSOs to coordinate activities and share information would mean that in the event ElecLink's shareholders acquired significant interests in generation or supply activities at some point in the future then conflicts of interest could arise and there would be the potential for confidential TSO information to be transferred to ElecLink's generation or supply affiliates. We would suggest that if Ofgem is minded to grant an exemption then it should be subject to conditions regarding ownership unbundling that would allow the issue to be revisited at any time in the event of ElecLink's shareholders, or their affiliates, acquiring a material interest in electricity generation or supply (or gas production, shipping or supply).

Question 21: *Do you consider inclusion of such provisions necessary to ensure the exemption is not detrimental to the efficient functioning of the internal market?*

Yes.

Question 22: *Do you consider inclusion of such provisions would be enough to ensure the exemption is not detrimental to the efficient functioning of the internal market?*

This would depend on the effectiveness of any conditions drafted, however in principle - yes.

Question 23: *Do you consider inclusion of any such provisions may be harmful for ElecLink's interconnector project?*

No, we do not.

Chapter 4: *Level of risk attached to investment*

Question 25: *Taking into consideration existing and planned regulated interconnectors between France and GB, do you consider that the risk attached to ElecLink's project is such that the investment would not take place unless an exemption is granted and that it therefore meets condition (b) of Article 17?*

³ NB that such actions do not in any way undermine the underlying commercial transfers

It is not clear to us that this is the case. While we understand the need for exemption from Article 16(6) we do not understand the need for exemptions beyond this as these risk impairing the development of the single market (we note that the BridNed Interconnector sought only exemption from Article 6(6) of Directive 2003/54/EC – equivalent to 16(6) of Regulation 714/2009).

Question 27: *Do you consider the scope of the exemption, as requested by ElecLink, is necessary to realise the investment?*

If not, which of the following would you consider to be the most appropriate and effective means to reduce the exemption in order for it to be proportionate to the risks born by ElecLink?

- ☐ reduction of the scope of the exemption on Third Party Access
- ☐ reduction of the scope of the exemption on use of revenues?
- ☐ reduction of the scope of the exemption on ownership unbundling
- ☐ other (please explain)

As noted elsewhere, we have considerable concerns regarding the extent of the exemption being sought in relation to Third Party Access if this impacts on compliance with Network Codes. We consider Ofgem should approve initial capacity allocation rules and the ongoing access rules: they can they assess these in the context of the rules that they similarly approve for other interconnectors and ensure that they are compatible, that they facilitate trade (e.g. the development of bundled products) and the development of the single market.

We also consider that any exemption in relation to ownership unbundling should be conditional on no material changes being made to ElecLink's shareholders' interests in generation or supply without leading to a "reopener" to the ongoing existence of the exemption.

We have one other area of concern where we consider Ofgem should retain the ability to review and amend any exemption that they were minded to grant – this is set out in the confidential response that we have provided under separate cover.

Question 31: *Should an exemption be given for the duration requested by ElecLink (25 years), or should it be shortened (If so, by how much)?*

NGET has no view on this.

Question 32: *Should this exemption cover all of the provisions for which ElecLink has sought exemption, or should it be an exemption from only some of/parts of the concerned provisions? For this question, you may refer, in particular, to question 27*

Please refer to our responses to question 27 and our confidential response.

Question 33: *Do you have any other remarks on ElecLink's exemption request?*

None.

Question 34: *In your opinion, is there any reason to consider that conditions (c), (d) and (e) are not fulfilled? If so, which condition(s) and why?*

None.