



Making a positive difference
for energy consumers

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Date: 14 April 2016

Dear Steven,

Approval of the Access Rules and Charging Methodology submitted by ElecLink pursuant to Standard Licence Condition (SLC) 11A and 10 of the electricity interconnector licence ("the Licence") and Exemption Order issued under SLC 12 of the Licence

On 5 February 2016, ElecLink Limited ("ElecLink") submitted proposed Access Rules and a Charging Methodology for the ElecLink interconnector¹ to the Authority² for approval. SLC 10(7) and 11A(7) allow a three-month period for the Authority to determine whether to approve the Charging Methodology and Access Rules respectively. The Authority is the designated National Regulatory Authority ("NRA") for Great Britain under Section 3A of the Utilities Act 2000.

The proposals were submitted pursuant to SLC 10 and SLC 11A of ElecLink's electricity interconnector licence which respectively require ElecLink to maintain a Charging Methodology which sets out the methodologies for calculation of charges imposed for access to and use of the licensee's interconnector and Access Rules which set out methodologies used to establish terms and conditions for access to, and including use of, the interconnector, both approved by the Authority³. The ElecLink Access Rules set out the general terms and conditions a user must accept to obtain and use transmission capacity on the ElecLink interconnector. The Charging Methodology sets out the methods and principles on which charges for the use of the ElecLink interconnector are based.

We have approved the proposed ElecLink Access Rules and Charging Methodology on the basis that we consider that the proposed Access Rules and Charging Methodology meet the relevant objectives⁴.

This letter contains directions approving the proposed ElecLink Access Rules and Charging Methodology. It also explains the reasons for our approval as required under section 49A of the Electricity Act 1989.

¹ ElecLink is a proposed 1000MW high voltage direct current (HVDC) link, connecting the transmission systems of Great Britain (GB) and France.

² The Gas and Electricity Markets Authority. Ofgem is the Office of the Authority. The terms "Ofgem" and "the Authority," "we" and "us" are used interchangeably in this letter.

³ The electricity interconnector licence standard conditions can be found here: https://epr.ofgem.gov.uk//Content/Documents/Electricity_Interconnector_Standard%20Licence%20Conditions%20Consolidated%20-%20Current%20Version.pdf

⁴ The relevant objectives are set out in SLC10 paragraph 4 and SLC11A paragraph 4. They state that the Charging Methodology and Access Rules shall be transparent, objective, non-discriminatory and compliant with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency.

On 5 February 2016, ElecLink also applied for an Exemption Order pursuant to SLC 12 of the Licence which enables the Authority to suspend relevant conditions from operation in the licence. Following approval of the Access Rules⁵, we have issued the Exemption Order which can be found in Annex 3 of this letter.

Background

On 16 September 2014, Ofgem published its final decision to grant ElecLink a partial exemption⁶ ("the Exemption") from certain provisions of Directive 2009/72/EC ("the Directive") and Regulation (EC) 714/2009 ("the Regulation"), pursuant to Article 17 of the Regulation⁷. The decision was made jointly with the Commission de Régulation de l'Énergie (CRE), the French regulator. The Exemption partially exempted ElecLink from certain elements of EU law, subject to ElecLink complying with conditions imposed by the Authority and CRE (collectively "the NRAs").

One such element was Article 32 of the Directive, relating to third party access. However, the conditions of the Exemption did nonetheless require ElecLink to prepare and submit for NRA approval a set of Access Rules and a Charging Methodology⁸ to facilitate ElecLink's intended sale of up to 800MW of multi-year capacity contracts through an Open Season auction⁹. We must therefore also determine whether the proposed Access Rules and Charging Methodology discussed in this letter are compliant with the Exemption.

ElecLink conducted a consultation on its proposed Access Rules and Charging Methodology between 22 October 2015 and 23 November 2015¹⁰. Seven consultation responses were received. ElecLink provided these responses in full to the NRAs along with a report detailing the changes made to the Access Rules as a consequence of the responses. No changes were made to the Charging Methodology as a result of the consultation.

Proposal

1. Proposed Access Rules

ElecLink submitted the ElecLink Access Rules for approval as its Access Rules in accordance with SLC 11A(2) of the Licence. The Access Rules include arrangements for obtaining and using capacity on the ElecLink interconnector in the Long-Term (greater than one year), Medium Term (from day-ahead to one year), Short Term (Day-Ahead and Intraday) timeframes. The Access Rules cover the Long-Term exempt capacity (up to 80% of the interconnector's 1GW capacity, i.e. up to 800MW) and remaining non-exempt capacity on the interconnector.

ElecLink note that the ElecLink Access Rules are based on version 9 of the Access Rules of the existing England-France Interconnector ("IFA")¹¹ and have been amended to incorporate ElecLink's individual arrangements, most notably including the introduction of provisions to support its proposed Open Season auction of 800MW of multi-year capacity.

⁵ Paragraph 7 of standard condition 12 of the Licence provides that the Authority cannot make an Exemption Order until the Authority has approved the Access Rules in relation to the Interconnector.

⁶ <https://www.ofgem.gov.uk/publications-and-updates/final-decision-ElecLink-limited%E2%80%99s-request-exemption-under-article-17-regulation-ec-7142009-great-britain-france-electricity-interconnector>

⁷ Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003

⁸ No exemption was given from Articles 37(6) and 37(10) of the Directive which require Access Rules and Charging Methodologies to be approved by the NRAs. These provisions broadly correspond to SLC 11A (Approval of terms for access to the licensee's interconnector and SLC10 (Charging methodology to apply to third party access to the licensee's interconnector) of the Licence.

⁹ Please refer to Schedule A of the Exemption for the conditions the NRAs imposed on ElecLink.

https://www.ofgem.gov.uk/sites/default/files/docs/2014/09/schedule_a_-_nras_final_exemption_decision_0.pdf

¹⁰ <http://www.ElecLink.co.uk/ElecLink-news-downloads.php>

¹¹ <https://www.ofgem.gov.uk/publications-and-updates/approval-england-france-interconnector-ifa-access-rules>

ElecLink based its Access Rules and Charging Methodology on the Access Rules and Charging Methodology used on the IFA interconnector, as in their view this was the best approach to support the Exemption condition that “*products with timeframes identical to timeframes which exist on regulated interconnectors on the same border have to respect the same provisions as these capacities, particularly in terms of firmness, and will converge at the same path towards the target models.*”¹²

The Access Rules contain the following sections:

- Section A: general introduction, parties and participation, definitions and interpretation, amendment procedures;
- Section B: participation requirements, ElecLink user agreement, user systems;
- Section C: financial matters, including invoicing, payment security, credit cover provisions;
- Section D: auction rules for the Open Season, Medium- and Short-Term products;
- Section E: capacity usage rules, including nomination, the secondary market, outages and curtailment arrangements;
- Section F: general conditions, including confidentiality, assignment and subcontracting, force majeure, termination and suspension, liability, dispute resolution, and rights under funding arrangements in relation to Open Season user agreements;
- Ten Schedules, including user agreements for the Open Season and for Medium- and Short-Term products, business rules for use of interconnector capacity, a list of Open Season and Medium Term products, credit rating and tangible net worth requirements, and a market share declaration template.

2. Proposed Charging Methodology

ElecLink’s proposed Charging Methodology sets out the methodologies for calculation of charges imposed for access to and use of the licensee’s interconnector. ElecLink note that it is based on version 2013/2014 0.3 of the IFA Charging Methodology¹³ and has been amended to incorporate ElecLink’s individual arrangements.

The proposed ElecLink Charging Methodology sets out the principles of explicit and implicit auctions and how these will be applied to capacity allocated on the ElecLink interconnector, including through secondary trading. It also sets out payment obligations relating to the use of capacity, including curtailment compensation arrangements.

Decision on the proposed Access Rules and Charging Methodology

Upon review of the documents submitted on 5 February 2016 to Ofgem for approval, with the key features as summarised above, we consider that the proposed Access Rules and Charging Methodology are transparent, non-discriminatory, objective and compliant with the Regulation and relevant legally binding decisions of the European Commission and/or the Agency. We further consider that the proposed Access Rules and Charging Methodology are compliant with the conditions set out in the Exemption.

The Authority has therefore decided to approve the proposed Access Rules and Charging Methodology on the basis that they meet the relevant Access Rules objectives and the relevant Charging Methodology objectives set out respectively in SLC 11A(4) and SLC 10(4) of the Licence:

- In respect of objectivity, we consider that the Access Rules and Charging Methodology set out logical, efficient terms of access based on factual evidence.

¹² Exemption Decision, Schedule A, condition 1.6.

¹³ <https://www.ofgem.gov.uk/publications-and-updates/approval-england-france-interconnector-ifa-charging-methodology>

- We consider that the Access Rules and Charging Methodology are transparent. The documents clearly set out the network user's rights and obligations to access the interconnector and will be published by ElecLink providing general access.
- We consider that the Access Rules and Charging Methodology satisfy the non-discrimination objective. All users have access to the interconnector and the rules are applied uniformly to all users as appropriate.
- We consider that the Access Rules and Charging Methodology are compliant with the Regulation and relevant legally binding decisions of the European Commission and/or the Agency.

Directions issued in accordance with SLC 10(7) and SLC 11A(7) of the Licence can be found in Annexes 1 and 2 of this letter.

Application for an Exemption Order

ElecLink's Access Rules submission on 5 February 2016 was accompanied by a request from ElecLink for the Authority to issue an exemption order ("Exemption Order") under SLC 12 of the Licence.

We note that, pursuant to paragraph 1.52 of the Exemption decision, the Exemption comes into force in GB when an Exemption Order has been issued. We also note that this includes the provisions of Part I of the Exemption which provides ElecLink a partial exemption from the provisions of Article 9 of the Directive with respect to ownership unbundling requirements.

Following our joint decision with CRE to grant the Exemption to ElecLink and approval of the Access Rules, we are satisfied that it is appropriate to issue an Exemption Order to ElecLink to give effect to the Exemption in Great Britain.

Accordingly we are issuing an Exemption Order that suspends from operation in ElecLink's licence the following SLCs:

- SLC 9 (Use of Revenues) for a period of 25 years from the start of commercial operation of the ElecLink Interconnector;
 - This is a partial exemption and requires ElecLink to comply with the Exemption conditions relating to a profit sharing mechanism, whereby any profit above the level specified in the Exemption must be used in accordance with Article 16(6) of the Regulation
- SLC 11 (Requirement to offer terms for access to the licensee's interconnector) for a period of 20 years from the start of commercial operation of the ElecLink Interconnector – with respect to multi-year capacity allocated through an Open Season;
 - The Exemption stipulates that ElecLink is exempt from the third party access element only with respect to multi-year capacity that has been allocated through an Open Season. Accordingly, SLC 11 shall continue to apply for capacity that is not allocated through an Open Season.

Next steps

We understand from ElecLink that this regulatory approval is one of the prerequisites for it to conduct the intended Open Season auction. ElecLink has informed the NRAs that the Open Season is expected to be held shortly after our approval of the Access Rules.

We anticipate further changes will be required to ElecLink's Access Rules and Charging Methodology in the coming years, particularly to support implementation of the ENC's. We also note that, in accordance with the Joint NRA Opinion published alongside the Exemption, the NRAs will need to approve ElecLink's split of non-exempt capacity between Medium-Term and Short-Term Products¹⁴. Therefore, before the first sale of Medium or Short-Term products, we require ElecLink to submit a proposed capacity split for the non-exempt capacity for NRA approval.

We note that ElecLink's Licence will require modification to implement a mechanism that allows, where profit sharing conditions are triggered, for the transfer of funds from ElecLink to the GB National Electricity Transmission System Operator. We look forward to working with ElecLink to develop these licence modifications in due course.

We will continue to monitor ElecLink's progress in developing the interconnector and implementing the Exemption. We also expect ElecLink to comply with all obligations set out in the GB regulatory framework.

Yours sincerely,

Stephen Beel
Partner, Competitive Networks

¹⁴ https://www.ofgem.gov.uk/sites/default/files/docs/2014/09/annex_1_final_joint_opinion_0.pdf, paragraph 1.87.

ANNEX 1 – Access Rules

Direction issued to ElecLink Limited pursuant to paragraph 7 of Standard Licence Condition 11A (Approval of terms for access to the licensee’s interconnector) of its Electricity Interconnector Licence

1. This Direction is issued by the Gas and Electricity Markets Authority (the “Authority”) pursuant to Standard Licence Condition 11A(7) of the electricity interconnector licence (the “Licence”) granted or treated as granted under section 6(1)(e) of the Electricity Act 1989 (the “Act”) to ElecLink Limited (the “Licensee”).
2. Standard Licence Condition 11A provides that the Licensee shall prepare and submit for approval by the Authority a statement setting out the Access Rules (as defined in the Standard Licence Conditions for electricity interconnector licences).
3. Standard Licence Condition 11A(4) requires that the Access Rules be transparent, objective, non-discriminatory and compliant with the Regulation (Regulation (EC) No. 714/2009 on conditions for access to the network for cross border exchanges in electricity) and any relevant legally binding decision of the European Commission and/or Agency for the Co-operation of Energy Regulators (the “relevant access rules objectives”).
4. Standard Licence Condition 11A(1) requires that the Licensee, sufficiently in advance of new interconnector capacity becoming operational, or by such date as the Authority may direct in writing, prepare and submit for approval by the Authority a statement setting out the Access Rules. The licensee may, subject to the approval of the Authority, submit a statement which includes both the Charging Methodology and Access Rules.
5. Standard Licence Condition 11A(5) requires the Licensee to take all reasonable steps to ensure that all persons, including those in other Member States that may have a direct interest in the Access Rules are consulted and allow them a period of not less than 28 days within which to make written representations. The Licensee must also furnish to the Authority a report setting out the terms originally proposed in the Access Rules, the representations, if any, made by interested persons and any change in the terms of the Access Rules intended as a consequence of such representations.
6. In accordance with Standard Licence Condition 11A(5), on 5 February 2015 the Licensee furnished the Authority with a report setting out the Licensee’s proposed Access Rules.
7. The Authority has decided that the Licensee’s proposed Access Rules meet the relevant access rules objectives. The reasons for this decision are set out in the letter accompanying this Direction.
8. In line with SLC 11A(14), the Licensee will publish the Access Rules as soon as practicable after they have been approved by the Authority and, at a minimum, 28 days prior to them coming into effect.
9. THE AUTHORITY HEREBY DIRECTS, pursuant to paragraph 7 of Standard Licence Condition 11A of the Licence, that the Licensee’s proposed Access Rules are approved. This Direction shall have immediate effect and shall remain in effect until such time as the Authority may revoke or vary the Direction in writing upon reasonable notice.

10. This Direction constitutes notice of the Authority's reasons for the decision pursuant to section 49A of the Act. Copies of the documents mentioned in this Direction can be found on the Ofgem website (www.ofgem.gov.uk).

Stephen Beel

Partner, Competitive Networks

**Signed on behalf of the Authority and authorised for that purpose by the Authority
on 14 April 2016**

ANNEX 2 – Charging Methodology

Direction issued to ElecLink Limited pursuant to paragraph 7 of Standard Licence Condition 10 (Charging methodology to apply to third party access to the licensee’s interconnector) of its Electricity Interconnector Licence

1. This Direction is issued by the Gas and Electricity Markets Authority (the “Authority”) pursuant to Standard Licence Condition 10(7) of the electricity interconnector licence (the “Licence”) granted or treated as granted under section 6(1)(e) of the Electricity Act 1989 (the “Act”) to ElecLink Limited (the “Licensee”).
2. Standard Licence Condition 10(2) provides that the Licensee shall prepare and submit for approval by the Authority a statement setting out the Charging Methodology.
3. Standard Licence Condition 10(4) requires the Charging Methodology to be transparent, objective, non-discriminatory and compliant with the Regulation (Regulation (EC) No 714/2009 on conditions for access to the network for cross border exchanges in electricity) and any relevant legally binding decision of the European Commission and/or Agency for the Co-operation of Energy Regulators (the “relevant charging methodology objectives”).
4. Standard Licence Condition 10(2) requires that the Licensee, sufficiently in advance of new interconnector capacity becoming operational, or by such date as the Authority may direct in writing, prepare and submit for approval by the Authority a statement setting out the Charging Methodology. The licensee may, subject to the approval of the Authority, submit a statement which includes both the Charging Methodology and Access Rules.
5. Standard Licence Condition 10(5) requires the Licensee to take all reasonable steps to ensure that all persons, including those in other Member States that may have a direct interest in the Charging Methodology are consulted and allow them a period of not less than 28 days within which to make written representations. The Licensee must also furnish to the Authority a report setting out the terms originally proposed in the Charging Methodology, the representations, if any, made by interested persons and any change in the terms of the Charging Methodology intended as a consequence of such representations.
6. In accordance with Standard Licence Condition 10(5), on 5 February 2015 the Licensee furnished the Authority with a report setting out the Licensee’s proposed Charging Methodology.
7. The Authority has decided that the Licensee’s proposed Charging Methodology meets the relevant charging methodology objectives. The reasons for this decision are set out in the letter accompanying this Direction.
8. In line with SLC 10(14), the Licensee will publish the Charging Methodology as soon as practicable after it has been approved by the Authority and, at a minimum, 28 days prior to it coming into effect.
9. THE AUTHORITY HEREBY DIRECTS, pursuant to paragraph 7 of Standard Licence Condition 10 of the Licence, that the Licensee’s proposed Charging Methodology is approved. This Direction shall have immediate effect and shall remain in effect until such time as the Authority may revoke or vary the Direction in writing upon reasonable notice.

10. This Direction constitutes notice of the Authority's reasons for the decision pursuant to section 49A of the Act. Copies of the documents mentioned in this Direction can be found on the Ofgem website (www.ofgem.gov.uk).

Stephen Beel

Partner, Competitive Networks

**Signed on behalf of the Authority and authorised for that purpose by the Authority
on 14 April 2016**

ANNEX 3 – Exemption Order

EXEMPTION ORDER ISSUED UNDER STANDARD CONDITION 12 OF THE ELECTRICITY INTERCONNECTOR LICENCE GRANTED TO ELECLINK LIMITED

Whereas:

1. ElecLink Limited¹⁵ ("ElecLink") holds an electricity interconnector licence (the "Licence") granted by the Gas and Electricity Markets Authority (the "Authority") under section 6(1)(e) of the Electricity Act 1989 (the "Act") authorising ElecLink to participate in the operation of a high voltage direct current electricity interconnector between Sellindge in Great Britain and Les Mandarins in France (the "Interconnector").
2. Paragraph 2 of standard condition 12 of the Licence provides that on application by the licensee the Authority must issue an Exemption Order providing that any or all of the following standard conditions of the Licence:
 - a. standard condition 9 (Use of Revenues);
 - b. standard condition 10 (Charging methodology to apply third party access to the licensee's interconnector); and
 - c. standard condition 11 (Requirement to offer terms for access to the licensee's interconnector),

are suspended from operation in the Licence where the Authority is satisfied that it has complied with the requirements placed on the Authority by Article 17 of Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity (the "Regulation") and in the issuing of the Exemption Order is otherwise compliant with that Regulation.

3. Article 17(1) of the Regulation provides that new direct current interconnectors may upon request be exempted for a limited period of time by the National Regulatory Authorities (NRA) of the Member State concerned, with approval from the European Commission, from the provisions of:
 - a. Article 16(6) (Use of Revenues) of the Regulation;

¹⁵ A company registered in England and Wales under company number: 07595420

- b. Article 9 (unbundling of transmission systems and transmission system operators) of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity (the "Directive");
 - c. Article 32 (Third Party Access) of the Directive; and/or
 - d. Article 37(6) and (10) (Approval of charging methodologies) of the Directive,
- provided certain conditions set out in Article 17 are satisfied.
4. In accordance with Article 17 of the Regulation, the Final Joint Opinion and Exemption Decision¹⁶ of the NRAs in Great Britain and France (the "Exemption Decision"), respectively the Authority and the Commission de Régulation de l'Energie, exempted ElecLink from the following provisions to the extent set out below:
- a. Article 16(6) of the Regulation subject to the conditions set out in Part H of the Exemption Decision;
 - b. Article 9 of the Directive subject to the conditions set out in part I of the Exemption Decision;
 - c. Article 32 of the Directive for multi-year capacity allocated through an Open Season subject to the conditions set out in Parts A to G of the Exemption Decision,
- for a period of:
- (i) twenty years with respect to Article 32 of the Directive for multi-year capacity allocated through an Open Season; and
 - (ii) twenty five years with respect to Article 16(6) of the Regulation and Article 9 of the Directive
- from the date that the Interconnector Commences Commercial Operation, as defined in the Exemption Decision, and subject to the conditions set out in the Exemption Decision.
5. Paragraph 1.52 of schedule A to the Exemption Decision provides that the Exemption Decision comes into force in Great Britain when the Authority issues an Exemption Order under paragraph 2 of standard condition 12 of the Licence.

¹⁶ [Final Joint Opinion and exemption decision on ElecLink Limited's request for an exemption under Article 17 of Regulation \(EC\) 714/2009 for a Great Britain-France electricity interconnector published on the Ofgem website on 16 September 2014](#)

6. On 5 February 2016 ElecLink applied to the Authority for an Exemption Order providing that standard conditions 9 and 11 of the Licence are suspended from operation consistent with the Exemption Decision.
7. The Authority is satisfied that it has complied with the requirements placed on the Authority by Article 17 of the Regulation and the issuing of the Exemption Order is otherwise compliant with Article 17 of the Regulation; making this Exemption Order is consistent with the Exemption Decision to grant ElecLink a partial exemption from the provisions of Article 16(6) of the Regulation and Article 32 of the Directive subject to the conditions in that Exemption Decision, and so compliant with Article 17 of the Regulation for the reasons given in the Exemption Decision.
8. Paragraph 7 of standard condition 12 of the Licence specifies that the Authority can make this Exemption Order once the Authority has approved the Access Rules in relation to the Interconnector. The Authority approved ElecLink's Access Rules in relation to the Interconnector on 14 April 2016 in accordance with standard condition 11A (Approval of terms for access to the licensee's interconnector) of the Licence.

Therefore:

9. In accordance with paragraph 2 of standard condition 12 of the Licence and subject to paragraph 10 of this Exemption Order, the Authority issues to ElecLink this Exemption Order in respect of the Interconnector suspending from operation in the Licence:
 - a. standard condition 9; and
 - b. standard condition 11 but only in relation to multi-year capacity allocated through an Open Season as described in the Exemption Decision. For the avoidance of doubt, standard condition 11 remains in effect in relation to capacity that is not allocated through an Open Season in accordance with the Exemption Decision.
10. Pursuant to sub-paragraph 4(b) of standard licence condition 12 of the Licence, this Exemption Order applies subject to the conditions set out in parts A to P of schedule A to the Exemption Decision.
11. The Authority notes that, in accordance with paragraph 1.52 of schedule A to the Exemption Decision, the Exemption Decision comes into force when this Exemption

Order has been issued by the Authority. This Exemption Order is issued on 14 April 2016 and therefore the Exemption Decision comes into force on this date.

12. Subject to part M of schedule A to the Exemption Decision and pursuant to subparagraph 4(a) of standard licence condition 12 of the Licence, this Exemption Order is granted for a period of:

- (a) twenty-five years with respect to standard condition 9; and
- (b) twenty years with respect to standard condition 11

from the date that the Interconnector Commences Commercial Operation in accordance with the Exemption Decision.

13. Pursuant to paragraph 5 of standard licence condition 12 of the Licence, this Exemption Order shall be revoked in the event that the Exemption Decision is revoked in accordance with part M of schedule A to the Exemption Decision. In accordance with paragraph 5 of standard licence condition 12 of the Licence, this Exemption Order must be revoked if the approval of the European Commission to the Exemption Decision expires in accordance with paragraph 8 of Article 17 of the Regulation.

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Stephen Beel
Partner, Competitive Networks
Signed on behalf of the Authority and authorised for that purpose by the Authority
14 April 2016