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All interested parties,
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Date: 21 October 2016

To whom it may concern,

Consultation on the Congestion Income Distribution Methodology proposed by all Transmission System Operators

We[1] are consulting on the all Transmission System Operator (TSO) proposed methodology for sharing Congestion Income. We are asking for responses by 18 November 2016, in order to assist us in our discussions with all other EU Regulatory Authorities, who are required under EU law to decide on whether to approve the methodology.

Background

Article 73 of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on Capacity Allocation and Congestion Management (CACM)[2] requires all TSOs to develop a proposal for a methodology for sharing Congestion Income (CID Methodology).[3] Congestion Income is defined in CACM as the revenues received as a result of capacity allocation.[4]

Specifically, Article 73 of CACM requires that the CID Methodology shall:

1. *By 12 months after the entry into force of this Regulation, all TSOs shall develop a proposal for a methodology for sharing congestion income.*
2. *The methodology developed in accordance with paragraph 1 shall:*
    a) *facilitate the efficient long-term operation and development of the electricity transmission system and the efficient operation of the electricity market of the Union;*

[1] 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.
[2] CACM is a central component of the internal electricity market, as set in the EU Third Energy Package, which is a suite of EU legislation including Directive 2009/72/of 13 July 1999 EC concerning common rules of the internal market in electricity and repealing Directive 2003/54/EC and Regulation (EC) 714/2009 of 13 July on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003.
[3] See CACM Regulation here: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R1222
[4] CACM Article 2(16)

b) *comply with the general principles of congestion management provided for in Article 16 of Regulation (EC) No 714/2009;*[5]
c) *allow for reasonable financial planning;*
d) *be compatible across time-frames;*
e) *establish arrangements to share congestion income deriving from transmission assets owned by parties other than TSOs.*

3. *TSOs shall distribute congestion incomes in accordance with the methodology in paragraph 1 as soon as reasonably practicable and no later than one week after the congestion incomes have been transferred in accordance with Article 68(8).*

On 20th July 2016 we received a proposal developed by all TSOs[6] outlining how they will share Congestion Income.

All Regulatory Authorities must decide whether or not to approve the CID Methodology within six months of receipt of submission by the last regulatory authority.[7] Once approved by all Regulatory Authorities the CID Methodology will place binding obligations in all Member States. If agreement is not reached within this time, or upon the joint request of all Regulatory Authorities, the Agency for the Cooperation of Energy Regulators (ACER) shall adopt a decision in accordance with Article 8(1) of Regulation (EC) No 713/2009.[8]

Summary of the all TSO proposal for CID Methodology

The all TSO CID Methodology proposal is provided as an Annex to this letter. Our understanding of this proposal, in summary terms, is set out below. Respondents should advise if they feel we have misunderstood or misinterpreted the proposal in any way.

In summary, our understanding of the all TSO proposal is that it provides a process whereby congestion income is first calculated as the product of commercial flow and market spread for each bidding zone border for the day ahead timeframe, and the sum of all revenues from the Capacity Allocation per Market Time Unit (MTU) for the intraday timeframe.

The proposal then appears to provide a sharing key setting out how these calculated incomes will be distributed to TSOs on each bidding zone border. It is then shared between TSOs on either side of a bidding zone border, having first made sure any remuneration for Long Term Transmission Rights has been paid by the relevant TSO.

Our understanding is that the sharing key proposes that income is distributed to respective interconnectors based on respective share in installed capacity of the concerned Interconnectors or, in case of HVDC Interconnectors, based on the allocated capacity. It appears to propose a default 50:50 sharing between TSOs either side of bidding zone border, or that 100% of the income is given to an Interconnector that has a single 100% owner.

However, we note that the proposal provides for a number of specific sharing keys and additional rules that allow for relevant TSOs to propose alternative means of distributing income and sharing between TSOs on either side of the bidding zone border. It proposes that the relevant TSOs would have to first agree and submit these to the relevant NRAs for

[5] See 714/2009 Regulation here: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0015:0035:EN:PDF
[6] We received this proposal from the concerned GB TSOs as per our decision on TSO obligations under CACM, in this case they are BritNed Development Limited, East-West Interconnector Company, Moyle Interconnector Limited and National Grid Interconnectors Limited. See decision on CACM obligations here: https://www.ofgem.gov.uk/publications-and-updates/decision-our-consultations-assignment-transmission-system-operator-obligations-under-capacity-allocation-and-congestion-management-regulation-within-gb
[7] CACM Article 9(6)(m)
[8] As set out in Article 9(10) and (11) of CACM

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approval, where they are competent to do so according to national legislation, unless these agreements have been subject to regulatory consideration.

These specific sharing keys appear to allow relevant TSOs to reflect different investment costs and asset ownership, net socio-economic benefit effects of a new interconnector, capacity allocation constraints affecting bidding zone borders, or to address other future principles affecting interdependencies between zonal borders. Our understanding of the additional rules is that they allow for TSOs within a capacity calculation region to address external flows outside of their region, and occurrences of non-intuitive flow against market spread and or insufficient incomes on a bidding zone border to remunerate Long Term Transmission Rights.

Minded to decision to not carry out an Impact Assessment

Amongst other factors we have considered whether it will be necessary for us to carry out an Impact Assessment in terms of our statutory duties as contained in Section 5A of the Utilities Act 2000. These duties require that, in certain circumstances where the Authority proposes to do anything that meet the statutory definition of 'important' an assessment on the likely impact of implementing the proposal must be carried out and published or we must publish a statement of reasons of why an assessment is not considered necessary.

We have considered the decision on the proposed CID Methodology against the definition of 'important' as set out in Section 5A of the Utilities Act 2000. In the light of the information available to date, it currently appears to us that making our decision on the CID Methodology is not 'important' in terms of the statutory definition.

Our understanding is that the current proposal will not involve a material change to the way that market revenues are earnt and distributed to GB interconnectors. We therefore do not expect that the proposal would constitute a significant change in GB and it appears to reflect existing solutions developed across the EU. On that basis we are minded to consider that the decision on the proposal would not be likely to have a significant impact on persons listed in the statutory definition,[9] nor would it be likely to have significant effects on the environment. We are therefore minded to consider that our decision on the proposal would not be 'important' in the context of our statutory duty. We also currently do not believe that performing an Impact Assessment would better inform our decision.

We note that the proposal appears to allow for some flexibility through specific sharing keys and additional rules. These would be subject to TSO submissions agreed between TSOs and regulatory approvals (where they are competent to do so according to national legislation, unless these agreements have been subject to regulatory consideration). If alternative approaches were proposed for GB interconnectors, we would at that point assess again whether an Impact Assessment is required in making a decision on whether to approve such alternative approaches.

Consultation issues on which we seek responses

To inform our decision we are seeking stakeholders' views on whether the arrangements proposed in the CID Methodology, published as an Annex to this letter, are compliant with

[9] Section 5A Utilities Act 2000: persons engaged in the shipping, transportation or supply of gas conveyed through pipes or in the generation, transmission, distribution or supply of electricity or in the provision of smart meter communication services (in respect of electricity meters or gas meters); persons engaged in commercial activities connected with the shipping, transportation or supply of gas conveyed through pipes or with the generation, transmission, distribution or supply of electricity; the general public in Great Britain or in a part of Great Britain.

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the specific requirements related to the CID Methodology, as set out in Article 73 of CACM, the wider objectives of CACM, and the Electricity Regulation.[10]

In particular, we welcome views on the potential impacts/implications of having 'specific sharing keys' and 'additional rules for Congestion Income Distribution', as set out within Articles 5, 6, and 7 of the proposal. Specifically, we are interested in views concerning both the process for agreeing these specific sharing keys and additional rules; and whether the proposed specific sharing keys and additional rules are necessary and meet the requirements of the CID Methodology, as per Article 73 of CACM.

We note that the majority of these additional rules are not currently relevant for GB Interconnectors, as they are intended for use in areas that utilise flow-based market coupling. However, we welcome views from stakeholders for how these rules, or indeed the specific sharing keys, may interact with our interconnector regime in GB.[11]

In addition, the proposed CID Methodology under CACM has interactions with the requirements for remunerations of Long Term Transmission Rights (LTTRs). These requirements are set out in the Forward Capacity Allocation guideline (FCA).[12] We would therefore welcome stakeholder views on whether the all TSO proposal is compatible with these LTTR requirements, and more generally the requirements of FCA.[13]

Responses should be received by 18 November 2016 and should be sent to thomas.jones@ofgem.gov.uk

Unless marked confidential, all responses will be published on our library and on our website, www.ofgem.gov.uk. You may request that your response be kept confidential. We will respect this request, unless the law requires us to disclose anything, for example under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. If you'd like your response to remain confidential, clearly mark the document to that effect and include the reasons for confidentiality. Put any confidential material in the appendices to your response.

If you have any queries more generally on the matters referred to in this letter please feel free to contact thomas.jones@ofgem.gov.uk

Yours faithfully,

Ryan McLaughlin
Head of European Wholesale Markets

[10] 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
[11] GB currently utilises the net transmission capacity approach as defined in Article 2.8 of CACM
[12] Article 35 of FCA
[13] Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1719

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