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Date: 30 November 2017

Dear Jan,

Approval of modified Access Rules for the BritNed interconnector (BritNed) including directions to approve pursuant to Standard Licence Condition 11A of the Electricity Interconnector Licence

On 1 September 2017, BritNed Development Limited¹(BritNed) submitted proposed modified Access Rules (the BritNed Access Rules) for the BritNed interconnector to the Authority² for approval. The Authority is the designated National Regulatory Authority (NRA) for Great Britain.

The BritNed Access Rules were submitted pursuant to Standard Licence Condition (SLC) 11A of BritNed's electricity interconnector licence (the Licence)³. The BritNed Access Rules set out the general terms and conditions a user must accept to obtain and use transmission capacity on the BritNed interconnector. They were most recently approved by the Authority on 14 October 2016⁴.

We have decided to approve the BritNed Access Rules on the basis that they better achieve the relevant access rules objectives⁵. This letter contains a direction (attached as Annex 1) approving the BritNed Access Rules. It also explains the reasons for our approval as required under section 49A of the Electricity Act 1989.

The proposed modifications to the Access Rules

On 17th October 2016, European Commission Regulation (EU) No 2016/1719⁶ establishing a guideline on forward capacity allocation (the FCA Regulation) came into effect. Amongst

¹ BritNed Development Limited is a joint venture of Dutch TSO TenneT and British TSO National Grid. The company commercially operates the BritNed interconnector, a 1000MW high voltage direct current link between Maasvlakte in the Netherlands and the Isle of Grain in Great Britain.

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 October 2016 BritNed Access Rules approval:

https://www.ofgem.gov.uk/system/files/docs/2016/10/britned_2016_ars_decision_letter_-_for_publication_0.pdf

⁵ The relevant access rules objectives are set out in SLC11A and state that 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.

⁶ Regulation (EU) No 2016/1719 establishing a guideline on forward capacity allocation:

<http://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32016R1719&qid=1475008140812&from=EN>

other things, the FCA Regulation requires Transmission System Operators (TSOs) to develop a set of harmonised allocation rules (HAR) for the allocation of long-term capacity.

Several European TSOs, including BritNed, chose to implement this requirement as a voluntary pilot project (the HAR Pilot Project) based on a draft version of the FCA Regulation. Accordingly, the European Network of Transmission System Operators (ENTSO-E) developed an early version of the HAR (HAR v1).

On 15 October 2015, the Authority approved modified Access Rules submitted by BritNed that aligned the BritNed Access Rules with the HAR v1.⁷ The HAR v1 was subsequently updated by ENSTO-E to HAR v2 to further align it with the post-comitology version of the FCA Regulation⁸. On 14 October 2016, the Authority approved modified Access Rules submitted by BritNed that aligned the BritNed Access Rules with the HAR v2.

Recent approval of HAR and GB-NL regional annex

In April this year, in line with FCA Regulation requirements⁹, the GB TSOs¹⁰ (alongside TSOs from other Member States) submitted a number of proposals for approval by all NRAs. These proposals included the HAR and associated regional annexes.

NRAs could not reach agreement on the proposals submitted for the HAR. In such an event, the FCA Regulation provides for the Agency for the Cooperation of Energy Regulators (ACER) to adopt a decision on submitted proposals. Accordingly, the HAR was submitted to ACER for decision on 16 August 2017. ACER adopted a decision on the HAR on 2 October 2017¹¹.

On 13 October 2017, we approved the regional annexes for the Ireland-United Kingdom (IU) region and the Channel region. Further information on these approvals can be found on our website.¹²

BritNed's proposed modifications to the BritNed Access Rules seek to:

- align its access rules with the approved HAR and approved GB-NL regional annex, and
- provide for the possibility for capacity to be allocated through implicit intraday auctions.

This requires some consequential changes to the BritNed Access Rules in order to align the them with the approved HAR and approved GB-NL regional annex, particularly with respect to rules relating to curtailment of capacity. In addition, BritNed has also proposed changes to Section A and Section C of the BritNed Access Rules to provide for the possibility for BritNed to allocate capacity through implicit intraday auctions.

Consultation and responses

In accordance with 11A, BritNed consulted between 20 July and 18 August 2017 on the proposed changes to its Access Rules that are required to adopt the HAR. BritNed considered responses to the consultation and made minor clarificatory amendments to the proposed modified Access Rules to take account of the responses received.

⁷ October 2015 approval of BritNed Access Rules:

https://www.ofgem.gov.uk/sites/default/files/docs/2015/10/britned_decision_letter.pdf

⁸ Following the successful adoption of the FCA at comitology on 30 October 2015.

⁹ In accordance with Article 31 and Articles 49-52 of the FCA Regulation.

¹⁰ The relevant GB TSOs are BritNed, National Grid Interconnectors Limited, EirGrid Interconnector Designated Activity Company (EIDAC), and Moyle Interconnector Ltd.

¹¹ ACER's decision can be found on its website here:

http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Pages/Individual-decision.aspx

¹² This can be found on our website here:

https://www.ofgem.gov.uk/system/files/docs/2017/10/batch_9_decision_letter_har_sap_ltrns_final.pdf

Submission of proposed modified Access Rules

Following consultation and pursuant to SLC 11A, BritNed submitted its proposed modified Access Rules for Authority approval.

We note that BritNed considers the proposed amendments satisfy the 'relevant access rules and objectives' (in particular the requirement to be 'compliant with Regulation 2009/714/EC (on cross border exchanges) and any relevant legally binding decision of the Commission'), by aligning the BritNed Access Rules with the approved HAR and approved GB-NL regional annex.

BritNed anticipates the proposed modified BritNed Access Rules entering into force at same time as the approved HAR and approved GB-NL regional annex. In accordance with its Licence, BritNed is required to publish a notice to users on its website 28 calendar days prior to the implementation date¹³.

Notes and considerations

We note that the objectives of allocation of forward capacity, as specified in the FCA Regulation, broadly overlap with the relevant access rules objectives.¹⁴ The objectives require that access rules shall be "compliant with the Regulation and any relevant legally binding decision of the European Commission and/or Agency".

We consider that the proposed modified BritNed Access Rules are objective and non-discriminatory as the changes will apply equally to, and will facilitate trade for, all market participants. We also consider the proposed modified BritNed Access Rules to meet the relevant objective of being transparent. The introduction of harmonised allocation rules for long-term capacity is intended to make it easier for users to trade across interconnectors between GB and other markets.

With regards to the changes to introduce an implicit intraday auction, we do not consider that this creates a conflict with the aims or ongoing implementation of the Capacity Allocation and Congestion Management guidelines¹⁵ (CACM). While implementation of single intraday coupling as set out in CACM should be the goal, BritNed's proposals are a step towards this and an improvement on the current arrangements.

The Authority's decision

We have decided to approve the proposed modified BritNed Access Rules. It is our view that the proposed modified BritNed Access Rules better meet the relevant access rules objectives. A direction to this effect, issued in accordance with SLC 11A of the Licence, can be found in attached Annex 1 to this letter.

Next steps

BritNed should, in accordance with its Licence, arrange for the updated versions of the BritNed Access Rules to be published on its website no fewer than 28 calendar days ahead of the implementation date.

We would encourage BritNed to provide further clarity to market participants on its plans for implementing its proposed intraday auctions.

We also note that, in light of the anticipated implementation of an intraday market under CACM on the GB-NL border. BritNed's Access Rules will need to be updated to ensure

¹³ SLC 11A(14).

¹⁴ Article 3 of the FCA Regulation.

¹⁵ Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management.

compliance with relevant CACM provisions. We expect BritNed to keep its Access Rules under review and submit revised Access Rules for Authority approval at the appropriate time.

Yours sincerely,

Akshay Kaul
Partner, Networks

ANNEX 1

Direction issued to BritNed Development Limited pursuant to paragraph 13 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 paragraph 13 of Standard Licence Condition 11A 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 BritNed Development Limited (the "Licensee") in relation to the BritNed interconnector.
2. Standard Licence Condition 11A of the Licence provides that the Licensee shall prepare and submit for approval by the Authority a statement setting out the Access Rules, being the methodologies used to establish terms and conditions for access to and use of the BritNed interconnector.
3. Standard Licence Condition 11A, paragraph 4, requires that the Access Rules must 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 (collectively the "relevant access rules objectives").
4. Standard Licence Condition 11A, paragraph 8, requires that the Licensee reviews its Access Rules at least once in each calendar year and make such modifications to the Access Rules as may be requisite for the purpose of ensuring that the Access Rules better achieve the relevant access rules objectives.
5. Standard Licence Condition 11A, paragraph 10, 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 for the modification, the representations, if any, made by interested persons and any change in the terms of the modification intended as a consequence of such representations.
6. In accordance with Standard Licence Condition 11A, paragraph 10, on 1 September 2017 the Licensee furnished the Authority with a report setting out the Licensee's proposed modifications to the Access Rules. The proposed modifications relate to introduction of the Harmonised Allocation Rules as required under Commission Regulation (EU) No 2016/1719 establishing a guideline on Forward Capacity Allocation and BritNed's intention to offer implicit intraday products.
7. The Authority has decided that the Licensee's proposed modified Access Rules meet the relevant access rules objectives for the reasons set out in the letter notifying approval to the Licensee dated 30 November 2017.
8. The Access Rules approved on 14 October 2016 will remain in force until the modified BritNed Access Rules approved on the date of this Direction are implemented. The Licensee will implement the modified BritNed Access Rules on 1 January 2018. In line with Standard Licence Condition 11A, paragraph 14, the Licensee will publish the modified BritNed 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. Pursuant to Standard Licence Condition 11A, paragraph 13 of the Licence, the Licensee's proposed modified Access Rules are approved by the Authority. 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.

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Akshay Kaul

Partner, Networks

**Signed on behalf of the Authority and authorised for that purpose by the Authority
on 30 November 2017**