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Date: 20 June 2019

Dear Jasper,

**Approval of modified Access Rules<sup>1</sup> for the BBL interconnector pursuant to Standard Licence Condition 11A of the gas interconnector licence and decision not to apply certain articles of CAM<sup>2</sup> in relation to the Implicit Allocation Mechanism**

**Summary**

On 20 March 2019, BBL Company (BBL) proposed modifications to its Access Rules to the Authority for approval, pursuant to Standard Licence Condition (SLC) 11A of the Gas Interconnector Licence (the Licence). This decision and attached direction sets out our approval of BBL's proposal. This letter also sets out our decision not to apply Articles 8, 9, 10, 19 and 37 of Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on Capacity Allocation Mechanisms in gas transmission systems (CAM) in relation to the Implicit Allocation Mechanism.

**BBL's proposal**

Implicit Capacity Allocation

Article 2(5) of CAM allows for National Regulatory Authorities (NRAs) to decide not to apply Articles 8 to 37 of CAM where implicit allocation methods are applied. Article 3(6) of CAM, 'implicit allocation method' is defined as "a capacity allocation method where, possibly by means of an auction, both transmission and a corresponding quantity of gas are allocated at the same time".

BBL is seeking to offer an Implicit Allocation Mechanism that would require us to exercise our discretion not to apply certain aspects of CAM in relation to that product. BBL has requested that Articles 8, 9, 10, 19 and 37 of CAM are not applied.

Re-profiling Service

BBL are proposing to introduce a service that provides additional flexibility to its longer term users with capacity contracts that are multiple years in duration.

BBL are offering capacity holders with a termination date beyond 1 October 2026 to re-profile its holdings by bringing booked capacity forward. Capacity holders using this facility

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<sup>1</sup> Access rules set out the terms of access to the licensee's interconnector

<sup>2</sup> Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on Capacity Allocation Mechanisms in gas transmission systems <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32017R0459>

would be able to hand back a portion of their allocated capacity, providing they bid for an equivalent amount of capacity in the subsequent annual auction.

In addition, BBL are also proposing changes to set out the terms of non firm physical reverse flow, if and when physical reverse flow is enabled on the interconnector. The terms for virtual reverse flow will remain in effect until if and when physical reverse flow is enabled and if enabled, BBL propose a maximum 18 month temporary status of these terms.

## **Industry Consultation**

BBL consulted on the proposed changes to its Access Rules.<sup>3</sup> The public consultation opened on 5 February 2019 and closed after the mandatory 28 day consultation period on 5 March 2019.

There were three responses to the consultation. One respondent requested that the re-profile service be available to long term contract holders booked prior to 2026 and be available to re-profile between forward and reverse flow. They also noted that the implicit allocation limit on available capacity should be increased from 50% to 75%. BBL amended its proposed limit of implicit allocation to reflect this.

A further respondent felt that the 18 month period of physical reverse flow was unnecessarily long. BBL have shortened the proposal to 15 months as a result. The respondent also felt that 8 weeks' notice period proposed by BBL to request a re-profile was too long, and that the re-profiled capacity should not be constrained to annual auctions.

The third respondent felt that the implementation of an implicit allocation product would devalue long-term capacity bookings on BBL.

## **Ofgem Views**

Ofgem's analysis of the modified Access Rules has been set out below against the four licence objectives.<sup>4</sup>

### Compliance with EU Law

In our view, the Implicit Allocation Mechanism satisfies the definition of an implicit allocation method under Article 3(6) of CAM, namely an allocation method where both transmission and a corresponding quantity of gas are allocated at the same time. This is because capacity allocated implicitly under the proposed modifications will be matched with a corresponding commodity product.

Accordingly NRAs have discretion not to apply certain Articles of CAM under Article 2(5). We as the NRA have decided not to apply Articles 8, 9, 10, 19 and 37 in relation to the proposed Implicit Allocation Mechanism.

Articles 8 and 9 set out the types of capacity that may be auctioned and the sequencing of those auctions. Articles 10, 19 and 37 require capacity to be allocated via a joint booking platform, bundled with an equivalent capacity product and be sold using a standard set of units. In order to allocate capacity at the same time as a commodity product via a broker and independent of the adjacent transmission system operator, we think it is appropriate that these articles do not apply in relation to implicit allocation. We also note the

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<sup>3</sup> <https://www.bblcompany.com/about-bbl/consultations-implementation-information>

<sup>4</sup> SLC11A(4) states that the charging methodology shall be transparent, objective, non-discriminatory and compliant with the Regulation and any relevant legally binding decision of the European Commission and/or Agency (collectively 'the relevant charging methodology objectives')

requirement under Articles 8(6) and (7) of CAM that a proportion of capacity be reserved for allocation in shorter-term auctions and that the standard congestion management procedures applied by BBL will also apply to capacity allocated under the Implicit Allocation Mechanism

BBL is a merchant asset that, in most current market conditions, competes with alternative providers of flexible gas supply (and demand). On the basis that the proposal is compliant with CAM, and taking into account that a portion of BBL's technical capacity will still be allocated via CAM auctions, it is our view that it is appropriate that BBL be able to offer this product outside of the standard CAM auction process.

In response to the request for BBL to increase the amount of Implicit Allocation from 50% to 75% of the available capacity. We recently approved a proposal from Interconnector (UK) (IUK) to increase its limit of implicit allocation from 50% to 75% of available firm capacity.<sup>5</sup>

We have considered carefully whether BBL's increase from 50% to 75% in response should require further consultation however we consider that on this occasion it is appropriate to allow this change without further consultation. We consider this change to be a minor variant that was requested by a respondent to BBL's consultation. There were also no comments in opposition to BBL's Implicit Allocation product.

IUK consulted on its proposals at the end of 2018 and we do not think anything that was raised in IUK's consultation or anything has changed since that would give us reason to think a further consultation would reveal any new information in BBL's case. We have also considered the differences between these products carefully, and on balance do not think there is any material difference in terms of the percentage of available capacity that would be available on each, nor the category of user wishing to use this product given that BBL and IUK users compete for same entry capacity entering the GB national transmission system.

We will monitor the arrangements and welcome stakeholder feedback. We expect BBL to keep this aspect of the Access Rules under review to ensure arrangements remain appropriate.

The re-profiling service concerns the contractual arrangements between BBL and its long term contract holders that were concluded long before the implementation of and therefore outside the scope of CAM as capacity that is already allocated and uncongested is not subject to CAM or other applicable capacity allocation rules. We also note that any capacity that is converted will be made available to all network users in the relevant CAM auctions, whilst the existing capacity released from re-profiled contract will also become available in subsequent CAM auctions.

#### Transparency/non-discriminatory/objectivity

We have not identified anything in the proposed modifications that raise a concern for these objectives.

With regards to the comment about implicit allocation devaluing existing long term contracts, it is for BBL to introduce new products as it sees fit in order to adapt to changing conditions in the market over time.

With regards to the consultation response requesting that the re-profiling service be offered to pre-2026 contract holders and that the re-profiled capacity apply to reverse flow products, we think it is appropriate for BBL to set appropriate limits on the product to ensure they are achieving the right balance between providing flexibility and ensuring an appropriate return of revenues.

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<sup>5</sup> [https://www.ofgem.gov.uk/system/files/docs/2019/03/iuk\\_decision\\_letter\\_-\\_access\\_rules\\_18032019.pdf](https://www.ofgem.gov.uk/system/files/docs/2019/03/iuk_decision_letter_-_access_rules_18032019.pdf)

## **The Authority's decision**

Upon review of the documents submitted on 20 March 2019 to Ofgem for approval with the main features as summarised above, the Authority considers the proposed modified access rules to be transparent, non-discriminatory, objective and compliant with any relevant legally binding decision of the European Commission and/or Agency.

Directions issued in accordance with SLC 11A(14) of the licence to this effect can be found in the annex of this letter.

For the avoidance of doubt we have decided in accordance with Article 2(5) not to apply Articles 8, 9, 10, 19 and 37 of CAM in respect to the maximum 75% of available capacity that will be allocated via implicit allocation only. For the available capacity allocated through CAM auctions, CAM shall continue to apply in full.

## **Publication of BBL's Access Rules**

In accordance with SLC11A(15) of the Licence, BBL is required to publish the access rules 28 days prior to it coming into effect unless the Authority directs otherwise.

We have decided however it that it is appropriate on this occasion to direct that access rules come into effect 10 days after their publication. We are doing this as BBL had given advanced warning in its consultation as to when it considered the access rules should take effect. In accordance with SLC11A(15) we hereby direct that the access rules come into effect not earlier 10 days after publication by BBL.

If you have any questions relating to this decision, please contact [Robin.Dunne@Ofgem.gov.uk](mailto:Robin.Dunne@Ofgem.gov.uk)

Yours Sincerely

Chris Thackeray  
**Head of GB Wholesale Markets**

## **ANNEX 1 – Access Rules**

### **Direction issued to BBL Company pursuant to Standard Licence Condition 11A (Approval of terms for access to the licensee’s interconnector) paragraph 14 of its Gas Interconnector Licence**

1. This Direction is issued by the Gas and Electricity Markets Authority (the “Authority”) pursuant to Standard Licence Condition 11A (“SLC 11A”) paragraph 14 of the gas interconnector licence (“the Licence”) granted or treated as granted under section 7ZA of the Gas Act 1986 (“the Act”) to BBL Company (“BBL” or “the licensee”).
2. SLC 11A paragraph 9 requires the Licensee to review 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. Following such a review and in accordance with SLC11A paragraph 11, on 20 March 2019 BBL submitted its proposed modified Access Rules to the Authority for approval.
3. SLC 11A paragraph 4 requires that the Access Rules be objective, transparent, non-discriminatory and compliant with the Regulation (Regulation (EC) No 715/2009 on conditions for access to the national gas transmission networks) and any relevant legally binding decision of the European Commission and/or Agency (collectively the ‘relevant Access Rules objectives’).
4. Having regard to the relevant Access Rules objectives set out in SLC 11A paragraph 4, and to our principal objective and statutory duties, the Authority considers that BBL’s proposed modified Access Rules meet the relevant Access Rules objectives.
5. The Authority hereby directs, pursuant to SLC 11A paragraph 14, that BBL’s proposed modified Access Rules are approved.
6. Pursuant to SLC 11A paragraph 15, the Authority directs that the Access Rules be published without undue delay and shall not come into effect earlier than 10 days after publication.
7. This Direction shall remain in effect until the Authority revokes or varies the Direction in writing upon reasonable notice.

Dated: 20 June 2019

Chris Thackeray

**Head of GB Markets, Wholesale Markets**

**Duly authorised on behalf of the Authority**