



Making a positive difference
for energy consumers

Jan Hoogstraaten
Regulatory Manager
BritNed Development Limited
Utrechtseweg 310
Building M01
6812 AR Arnhem
The Netherlands

Direct Dial: 020 7901 7000

Email: NatashaZoe.Smith@ofgem.gov.uk

Date: 18 October 2019

Dear Jan,

Approval of the modified Access Rules for the BritNed interconnector to apply only in the event the UK leaves the EU without a deal

On 28 August 2019, BritNed Development Limited (BDL) submitted modified Access Rules (the modified Access Rules) for the BritNed interconnector¹ to the Authority² for approval. The Authority is the designated Regulatory Authority (RA) for Great Britain (GB). On 15 October 2019, BDL submitted an updated version of the modified Access Rules, superseding the modified Access Rules submitted on 28 August 2019.

The modified Access Rules were submitted pursuant to Standard Licence Condition (SLC) 11A of BDL's electricity interconnector licence (the Licence)³ which requires BDL to maintain 'Access Rules', that set out the terms and conditions for access to, and including use of, the interconnector.

¹ BritNed is a 1,000MW high voltage direct current (HVDC) interconnector, connecting the Dutch transmission system to the system of GB, between Maasvlakte in the Netherlands and the Isle of Grain in the UK. BDL is a joint venture of Dutch NLink International B.V. – a subsidiary of TenneT Holding B.V. - and British TSO National Grid Interconnector Holdings Ltd. BDL commercially operates the BritNed interconnector.

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.

We have decided to approve the modified Access Rules on the basis that we are satisfied the modifications better achieve the relevant Access Rules objectives as required under BDL's licence⁴. This letter contains a Direction (attached as Annex 1) approving the modified Access Rules.

For the avoidance of doubt, in the event the United Kingdom (UK) leaves the European Union (EU) without a deal on 31 October, the modified Access Rules will apply.

Background

The UK is scheduled to leave the EU on 31 October 2019 and will do so unless agreed otherwise by the UK and the EU. Leaving the EU with an agreement remains the Government's stated intention. However, until this is confirmed, it is responsible to plan for every eventuality, including a no deal scenario.

The modifications to the Access Rules

On 28 August 2019, BDL submitted the modified Access Rules to the Authority for approval. On 15 October, BDL submitted an updated version of the modified Access Rules, superseding the Access Rules submitted on 28 August 2019.

These Access Rules look to further build upon the BritNed Access Rules approved on 15 March 2019⁵ (the Britned Access Rules) by including an updated intraday auction schedule such that there would be four auctions with twenty-four nomination gates, and to further clarify the existing Access Rules compensation arrangements. These rules require BDL to give market participants 14 calendar days notice of a switch from the original intraday auction schedule to the updated schedule.

If the UK leaves the EU without a deal, the modified Access Rules would enter into force on 31 October at 23:00 GMT, such that the first day-ahead explicit auction would take place on 1 November 2019 for delivery on 2 November 2019.

In accordance with the applicable legal and regulatory framework, BDL organised a public consultation held between 26 July 2019 and 23 August 2019⁶. Following this consultation, BDL has submitted the modified Access Rules to the Authority on 28 August 2019. On 15

⁴ The relevant Access Rules objectives are set out in SLC 11A 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.

⁵ Ofgem's decision is available here : <https://www.ofgem.gov.uk/publications-and-updates/approval-modified-access-rules-britned-interconnector-apply-event-uk-leaves-eu-without-deal>

⁶ The consultation for the No Deal Access Rules is available here: <https://www.britned.com/news/no-deal-access-rules-consultation-july-2019/>

October 2019, BDL submitted an updated version of the modified Access Rules following additional engagement with National Grid Electricity System Operator (NGESO), this was to avoid overlapping intraday auction Unit Validity Times (the individual hours for which the units have been offered in the applicable intraday auction). BDL also further clarified the firmness arrangements that would apply in the case of long-term capacity curtailment in this updated version. Our decision refers to this updated version of the modified Access Rules.

Regulatory framework

SLC 11A of the Licence introduces relevant Access Rules objectives, against which the Authority will assess the Access Rules and any proposed modifications. The relevant objectives are that Access Rules shall be transparent, objective, non-discriminatory and compliant with the Electricity Regulation⁷ and any relevant legally binding decision of the European Commission and/or the Agency for the Cooperation of Energy Regulators (the Agency).

The withdrawal of the UK from the EU will result in changes to the legal and regulatory frameworks in GB. To take these changes into account when assessing the Britned Access Rules, we considered the Electricity Regulation as amended after exit day by application of the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019.

The Authority's decision

We have reviewed the modified Access Rules submitted to Ofgem on 15 October 2019. We have concluded that they meet the relevant Access Rules objectives.

In reaching our decision we have considered the consultation responses and have consulted and closely cooperated with the Authority for Consumers & Markets (ACM), the Dutch RA, to develop a Joint Opinion⁸ (the Joint Opinion) on BDL's proposal. The Joint Opinion was agreed on 17 October 2019. It is included as a subsidiary document with this decision.

In line with the Joint Opinion, the Authority approves the modified Access Rules on the basis that they meet the relevant Access Rules objectives set out in SLC 11A(4) of the Licence.

⁷ See Regulation (EC) No 714/2009 on conditions for access to the network for cross border exchanges in electricity. By application of the European Union (Withdrawal) Act 2018, the Electricity Regulation will become retained EU law after exit day. By application of the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019, the Electricity Regulation is amended to take into account the impact of the withdrawal of the UK from the EU. The terms of the Electricity Regulation will therefore be different before and after exit day.

⁸ Joint Opinion of the Authority for Consumers & Markets (Netherlands) and the Gas and Electricity Markets Authority (Great Britain) on the BritNed Access Rules for the BritNed interconnector in the event that Great Britain no longer participates in single day-ahead market coupling.

The Direction issued in accordance with SLC11A(7) of the Licence can be found in Annex 1 of this letter.

For the avoidance of doubt, the modified Access Rules will supersede the Britned Access Rules approved on 15 March 2019.

Next steps

Publication of the modified Access Rules

In accordance with SLC 11A(14) of the Licence, BDL is required to publish (at least on its website) the approved Access Rules for a period of 28 days prior to their coming into effect (the Publication Period), unless the Authority directs otherwise.

To allow for the modified Access Rules to come into effect on 31 October 2019 at 23:00 GMT in the event the UK leaves the EU without a deal, we have decided to make an exception and shorten the publication period.

The Authority has therefore decided to direct, in accordance with SLC 11A(14), that the Publication Period be shortened. We expect BDL to publish the modified Access rules on its website as soon as reasonably practicable after publication of this decision.

Future modifications

BDL should keep the modified Access Rules under review to ensure they remain fit for purpose, and submit any proposed modifications, to the Authority for approval, in good time and in accordance with the requirements set out in SLC 11A of the Licence.

Yours sincerely,
Natasha Zoe Smith

Head of European Markets, Wholesale Markets and Commercial

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, 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").
3. 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.
4. 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.
5. In accordance with Standard Licence Condition 11A, paragraph 10, on 15 October 2019, the Licensee furnished the Authority with a report setting out the Licensee's proposed modifications to the Access Rules that would apply in the event that the UK leaves the EU without a deal (the "modified Access Rules").

6. After careful consideration of the report and the responses to the public consultation and after consulting and closely cooperating with the Dutch regulatory authority in order to reach a Joint Opinion, 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 accompanying this Direction.
7. Standard License Condition 11A, paragraph 14 requires that, unless the Authority directs otherwise, the modified Access Rules shall be published 28 days prior to coming into effect. The Authority considers that it is important to ensure that the modified Access Rules come into effect as soon as possible in the event that GB no longer participates in single day-ahead market coupling as a result of the UK leaving the EU without a withdrawal agreement.
8. The Authority therefore hereby directs:
 - a) pursuant to paragraph 13 of Standard Licence Condition 11A of the Licence, that the Licensee's modified Access Rules are approved, and
 - b) pursuant to paragraph 14 of Standard Licence Condition 11A of the Licence, that the modified Access Rules be published as soon as practicable and come into effect on 31 October 2019 at 23:00, only in the event that the UK leaves the EU without a deal.
9. This Direction shall take effect immediately 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).

.....
Natasha Zoe Smith

Head of European Markets,

**Signed on behalf of the Authority and authorised for that purpose by the Authority
on 18 October 2019**