

All interested parties

Email: licensing@ofgem.gov.uk

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Consultation on inserting a Special Condition upon grant of a GB gas interconnector licence to Gas Networks Ireland (GNI)

Gas Networks Ireland (GNI) has applied for a Great Britain (GB) gas interconnector licence ("licence") and has requested that Special Condition 1 (see Appendix) is inserted upon licence grant. Upon inserting this condition into the licence (if granted), Standard Licence Conditions (SLC) 10 and 11 would be taken out of effect in GNI's licence unless/until the Authority directs they are brought back into effect.

This letter sets out the background and context to the proposal to include Special Condition 1 as a particular condition of the licence (if granted) in accordance with the provisions of section 7B(4)(a) of the Gas Act 1986,¹ and invites comments from interested parties by 14 April 2020.

Background

Ownership arrangements

The Moffat interconnector consists of gas pipelines connecting Moffat in Scotland with Ballough in Republic of Ireland. The portion of the interconnector that is onshore in Scotland and in United Kingdom (UK) Territorial Waters is owned by Gas Networks Ireland (UK) Limited (GNI (UK)), a wholly owned subsidiary of GNI. GNI owns the remainder of the interconnector (in Manx waters, UK Continental Shelf (UKCS) and Irish waters) and

¹ (4) A licence may include—
(a) such conditions (whether or not relating to the activities authorised by the licence) as appear to [the grantor]] to be requisite or expedient having regard to the duties imposed by [sections 4AA, 4AB and 4A]

currently holds a licence from the Commission for Regulation of Utilities (CRU) in Ireland in respect to the part of the interconnector located in Irish waters.

GNI (UK) holds a licence granted by the Department for Business, Enterprise and Regulatory Reform (BERR²) on 26 February 2008.³ This licence was granted with Special Condition 1 suspending SLCs 10 and 11 from effect. Were the need to arise, Special Condition 1 also makes provision for those SLCs to be brought back into effect by Authority direction.

In 2015 GNI's parent company Ervia consolidated its gas assets into a single subsidiary. During this process it was identified that GNI is required to hold a licence in respect of its operation of the portion of the Moffat interconnector in the UKCS, as required under the Gas Act 1986.

Moffat trading arrangements

The Moffat interconnector forms part of the Irish entry-exit system which has an Interconnector Point at Moffat in Scotland. A set of contractual arrangements are in place at Moffat which facilitate the transportation of gas to both the Republic of Ireland and Northern Ireland (via the Scotland-Northern Ireland Pipeline). In order to offer Irish entry-exit capacity at Moffat, GNI must use GNI (UK)'s interconnector pipelines between Moffat and the interface between UK Territorial Waters and Manx Waters in combination with its own interconnectors. GNI then contracts directly with Irish shippers to offer Irish entry and exit capacity at Moffat.

As a result GNI (UK) has no direct relationship with Irish shippers despite the Irish shippers flowing gas on the GNI (UK) interconnector between Moffat and the edge of UK territorial Waters.

² The functions of BERR have transferred to the Department for Business, Energy and Industrial Strategy (BEIS)

³ The licence was originally granted in the name of BGE (UK) Limited. On 1 April 2015, BGE (UK) notified Companies House of its name change to GNI (UK).

GNI's licence application

GNI have applied to Ofgem for a licence under section 7ZA(1) of the Gas Act. This licence application⁴ relates to the gas interconnector connected to the GNI (UK) system at the limit of UK territorial waters and Ballymore, Co. Dublin in the Republic of Ireland.

In making their licence application, GNI requested that SLCs 10 and 11 of licence should be suspended upon grant, in order to replicate the regulatory arrangements that are already in place under GNI (UK)'s licence. This would be achieved by inserting Special Condition 1 into GNI's licence (if granted), in line with the GNI (UK) licence condition.⁵ This condition allows SLCs 10 and 11 to be brought into effect, be suspended from operation, or be brought back into operation on the direction of the Authority.

The basis for the request is that, in order to ensure operational integrity and efficiency of the interconnector, the same licence conditions should apply to all parts of the interconnector. GNI consider that if SLCs 10 and 11 were in effect in their licence (if granted), this would lead to conflicting regulatory requirements as the aspects covered by these licence conditions are already regulated by CRU.

Ofgem's view and 'minded-to' position

Under section 7B(4)(a) of the Gas Act a licence granted by the Authority may include such conditions as appear to be requisite or expedient having regard to the duties imposed by section 4AA (the Authority's principal objective).

In granting a licence to GNI (UK), the Secretary of State included Special Condition 1 in that licence and suspended the operation of SLCs 10 and 11. This was to avoid conflicting regulatory arrangements between the GB and Ireland regulators when applying access arrangements.

SLC 12⁶ contains provisions for SLCs 10 and 11 to be brought into effect, be suspended from operation, or be brought back into operation but only in relation to either new capacity, a significant increase in capacity or modification of the interconnector which

⁴ <https://www.ofgem.gov.uk/publications-and-updates/gas-networks-ireland-notice-application-gas-interconnector-licence>

⁵ GNI (UK) Limited licence: [https://epr.ofgem.gov.uk/Content/Documents/BGE%20\(UK\)%20Limited%20-%20Gas%20Interconnector%20Licence%20-%202026-02-2008.pdf](https://epr.ofgem.gov.uk/Content/Documents/BGE%20(UK)%20Limited%20-%20Gas%20Interconnector%20Licence%20-%202026-02-2008.pdf)

⁶ <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/licence-conditions>

enables the development of new sources of gas supply. The proposed Special Condition 1 allows for these same provisions in relation to existing capacity.

Having considered the case put forward by GNI, it is our view that the insertion of Special Condition 1 is requisite to retain clear trading arrangements and avoid conflicting regulatory arrangements across the Irish interconnectors. We consider that the drafting of GNI's Special Condition 1 should align with that of GNI (UK)'s licence. The factors behind the existing arrangements for Special Condition 1 in GNI (UK)'s licence have not changed and it is therefore appropriate to reflect this framework for GNI. This will achieve alignment with the provisions in the GNI (UK) licence, and provide a mechanism to change the regulatory arrangements in the future should this be required.⁷

Next steps

Appendix 1 contains the proposed Special Condition. [This condition will apply to the GNI licence \(if granted\) only.](#) If you wish to make representations in respect of the proposed Special Condition, please email licensing@ofgem.gov.uk by 14 April 2020.

Any responses will be placed on our website unless marked as confidential. You can ask for your response to be kept confidential and we will respect this subject to any obligations to disclose information, for example under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

If you would like your responses to be kept confidential, clearly mark the document to that effect and include the reasons for confidentiality.

Yours sincerely

Chris Thackeray

Head of GB Wholesale Markets

⁷ We note that future changes to this condition may be required at the end of the transition period for the UK leaving the EU, to ensure that the condition remains fit for purpose.

Appendix 1 – Draft Special Condition 1 for proposed gas interconnector licence as applied for by Gas Networks Ireland.

PART IV. SPECIAL CONDITIONS

Special condition 1. Application of standard licence conditions 10 and 11

1. In accordance with this condition, standard conditions 10 and 11 (“the relevant conditions”) may:
 - (a) be brought into effect;
 - (b) be suspended from operation; or
 - (c) be brought back into operation,on the direction of the Authority to the licensee.
2. The Authority may issue a direction under paragraph 1 to bring the relevant conditions into effect or to bring them back into operation if it appears to the Authority to be necessary or appropriate for it to do so to enable it to:
 - (a) Carry out its functions under Part 1 of the Gas Act 1986; or
 - (b) Comply with its obligations under Directive 2009/73/EC (“the Directive”) or the Regulation 715/2009 (the “Regulation”) or any legislation repealing and/or replacing the Directive or the Regulation or, in either case, any part thereof.
3. The Authority may issue a direction under paragraph 1 to suspend the relevant conditions from operation if it appears to the Authority that the continuance of the relevant conditions in operation is no longer necessary or appropriate to enable it to:
 - (a) Carry out its functions under Part 1 of the Gas Act 1986; or

(b) Comply with its obligations under the Directive or the Regulation or any legislation repealing and/or replacing the Directive or the Regulation or, in either case, any part thereof.

4. Before issuing a direction under paragraph 1 the Authority shall give notice;

(a) Stating that it proposes to issue such a direction and the reasons for doing so; and

(b) Specifying the time (not being less than 28 days from the date of publication of the notice) within which representations with respect to the proposal may be made,

And shall consider any representations which are duly made in respect of the proposals and not withdrawn.

5. The notice required by paragraph 4 shall be given:

(a) by serving a copy of the notice on the licensee, the Secretary of State and, where the obligation in question arises under the Directive or the Regulation, the Commission of the European Union; and

(b) by publishing the notice in such a manner as the Authority considers appropriate for bringing it to the attention of the other persons who may be affected by it.