



Making a positive difference
for energy consumers

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Dear Jan,

Approval of the modified Access Rules for the BritNed interconnector to apply at the end of the transition period

On 14 September 2020, 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). The modified Access Rules will apply in the instance GB no longer has access to the Internal Energy Market (IEM). On 10 December 2020, BDL submitted an updated version of the modified Access Rules, superseding the modified Access Rules submitted on 14 September 2020.

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 Transmission System Operator (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 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, these modified Access Rules will come into effect on 31 December 2020 at 11:00pm GMT, which is the point at which the transition period pursuant to Article 126 of the UK-EU withdrawal agreement (the "Agreement") ends.

Background

The UK left the EU on 31 January 2020 (Exit day⁵) at 11pm, when the Agreement came into force. The Agreement sets out the transitional arrangements governing the UK-EU relationship. Article 126 of the Agreement provides for a transition period, ending at 11:00pm GMT on 31 December 2020. This date is reflected in section 39(1) of the European Union (Withdrawal Agreement) Act 2020⁶ and is referred to as the "IP completion day". The transition period started on Exit day and ends on the IP completion day. During the transition period, the UK and all relevant parties in the energy sector are still bound by EU law.

At the end of the transition period⁷, we expect that GB will no longer part of the IEM and therefore will no longer participate in single day-ahead market coupling and single intraday coupling on GB electricity interconnectors. In that event, the modified Access Rules would therefore come into effect at the end of the transition period, 31 December 2020 at 11:00pm GMT.

The modifications to the Access Rules

In accordance with the applicable legal and regulatory framework, BDL organised a public consultation held between 4 August 2020 and 1 September 2020⁸. Following this consultation, BDL submitted the modified Access Rules to the Authority on 14 September 2020. On 10 December 2020, BDL submitted an updated version of the modified Access Rules. The modified Access Rules submission on 10 December 2020 supersedes the Access Rules submitted on 14 September 2020.

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 The term "Exit day" is defined in section 20(1) of the European Union (Withdrawal) Act 2018.

⁶ Available at <https://www.legislation.gov.uk/ukpga/2020/1/contents/enacted>.

⁷ The letter in reference to preparing for the end of the transition period can be found at https://www.ofgem.gov.uk/system/files/docs/2020/12/preparing_for_the_end_of_the_transition_period_-_confirmation_of_the_applicable_electricity_interconnector_access_rules.pdf

⁸ Please see: <https://www.britned.com/news/consultation-britned-no-iem-access-rules/>.

These Access Rules look to further build upon the BritNed Access Rules approved on 17 December 2019⁹ in the following ways:

- Amend the day-ahead nomination closure time to 12:30 GMT and shorten the bidding period by 10 minutes for the explicit day-ahead auctions.
- Implement full firmness arrangements meaning that once capacity is nominated if a curtailment takes place market participants will be kept financially firm.
- Where relevant make amendments to account for a Third Party Allocation Platform being used for long-term and day-ahead trade, including making clear that market participants partaking in trade at these times must sign the Participation Agreement of the Third Party, and as a result abide by the Third Party's rules for trade, and
- To improve the readability and structure of the 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 Regulation (EU) 2019/943 ("Electricity Regulation")¹⁰ and any relevant legally binding decision of the European Commission and/or the Agency for the Cooperation of Energy Regulators.

The end of the transition period will result in changes to the legal and regulatory frameworks in GB. We have taken these changes into account when assessing the modified Access Rules. We have considered the Electricity Regulation, including as amended after the end of the transition period by application of the Electricity and Gas (Internal Markets and Network Codes) (Amendment etc) (EU Exit) Regulations 2020.

The Authority's decision

We have reviewed the proposed modified Access Rules submitted to Ofgem on 10 December 2020. We have concluded that they meet the relevant Access Rules objectives.

⁹ The BritNed Access Rules approved by Ofgem on 17 December 2019 were submitted by BDL in case of GB decoupling in the event UK leaves the EU on 31 January 2020.

¹⁰ See Regulation (EC) No 2019/943 on conditions for access to the network for cross border exchanges in electricity. By application of the European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020, the Electricity Regulation will become retained EU law after the IP completion day. By application of the Electricity and Gas (Internal Markets and Network Codes) (Amendment etc) (EU Exit) Regulations 2020, the Electricity Regulation is amended to take into account the impact of the IP completion day. The terms of the Electricity Regulation will therefore be different before and after the IP completion day.

In reaching our decision, we have considered the consultation responses and have closely cooperated with the Authority for Consumers & Markets (ACM), the Dutch RA, to develop a Joint Opinion (the Joint Opinion) on BDL's proposal. The Joint Opinion was agreed on 18 December 2020. 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. The Direction issued in accordance with SLC 11A(13) 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 17 December 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 at 11:00pm GMT on 31 December 2020 in the event the GB is no longer part of the IEM, the Authority has decided to make an exception and shorten the Publication Period in accordance with SLC 11A(14).

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

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 (EU) 2019/943) 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 10 December 2020, the Licensee furnished the Authority with a report setting out the Licensee's proposed modifications to the Access Rules (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, 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 Licence 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 no longer being a part of the IEM.
8. The Authority therefore hereby directs:
 - a) pursuant to paragraph 13 of Standard Licence Condition 11A of the Licence, 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 December (11:00pm GMT), only in the event that the UK is no longer part of the IEM.
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).

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Natasha Zoe Smith

Head of European Markets

**Signed on behalf of the Authority and authorised for that purpose by the Authority
on 18 December 2020**