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Date 3 July 2018
Your reference
Our reference BN 18-018
Subject Response to the consultation on an updated minded-to position to cost sharing and cost recovery

Dear Sirs

We refer to Ofgem's consultation dated 5 June 2018 on an updated minded-to position with respect to its proposed approach to cost sharing and cost recovery under Commission Regulation 2016/1222 on capacity allocation and congestion management (CACM). BritNed Development Limited (BritNed) is pleased to have the opportunity to provide a response to the proposals.

BritNed wrote to Mark Copley at Ofgem on 14 May summarising its views on cost sharing and recovery. The comments made in that letter remain valid and should be treated as part of BritNed's response [albeit that letter is not an open response and is to be treated as confidential].

1. Pilot projects

1.1. BritNed supports Ofgem's proposal, in respect of costs incurred up to 14 February 2017¹:

1.1.1. to align the end dates for both the NWE and XBID pilot projects to 14 February 2017 so that all costs committed to contractually prior to that end date are recoverable; and

¹ Being the date specified in the "Request for amendment by all NRAs agreed at the Energy Regulators' Forum on all NEMOs' proposal for the plan on joint performance of MCO functions (MCO Plan), 26.09.2016"

1.1.2. to allow all efficiently incurred, reasonable and proportionate development and operational costs arising from the pilot projects to be recovered through TNUoS charges.

1.2. In our view, this approach is consistent with:

1.2.1. the principle under Article 75 of CACM that reasonable, efficient and proportionate costs incurred by TSOs relating to TSO tasks set out in Article 8 shall be recovered through network tariffs or other appropriate mechanisms; and

1.2.2. the principle under Article 76 of CACM that reasonable and proportionate costs incurred by NEMOs relating to NEMO tasks set out in Article 7 shall be recovered through fees or other appropriate mechanisms through national agreements with the NRA.

2. Enduring arrangements

Cost sharing

2.1. BritNed supports Ofgem's proposal in respect of costs incurred after 14 February 2017 ("enduring costs") to:

2.1.1. allocate costs to NEMOs and TSOs on the basis of a purely functional split as this will be consistent with the principles set out in Articles 75 and 76 of CACM; and

2.1.2. to split the joint NEMO-TSO costs on an equal basis.

2.2. BritNed cannot however support the proposal that TSOs should bear NEMOs' enduring development costs. Article 76(1) of CACM expressly provides for these costs to be borne by NEMOs, save only to the extent that TSOs agree to contribute to their costs in accordance with Article 76(2) on the basis of a proposal approved by the NRA. Neither BritNed nor, to its knowledge, any of the other GB Interconnector TSOs, has made any such proposal. Ofgem's consultation document does not explain why it considers that it has the vires to reallocate NEMO enduring development costs in the absence of such a proposal. As explained in paragraph 2.4 below, BritNed considers that NEMOs should recover these costs direct from the GB consumer.

Recovery of NEMO Enduring Operating and Development Costs

2.3. BritNed supports the proposal that NEMOs should recover clearing and settlement and other operating costs through fees charged to traders on their respective power exchanges. That is consistent with the principle set out in Articles 76 and 77 of CACM. We would however ask that Ofgem clarifies its comment in footnote 26 of the consultation regarding the provision of services by NEMOs under the methodology for accommodating more than one NEMO in the GB bidding zone. To the extent that a NEMO's proposal concerns the discharge of its functions under CACM, the methodology expressly states that fees are not chargeable to TSOs.

2.4. BritNed considers that the GB NEMOs should be entitled to recover their enduring development costs directly from GB consumers in accordance with an agreement with Ofgem as provided in Article 76(3) of CACM.

Recovery of TSO Enduring Operating and Development Costs



- 2.5. BritNed cannot support the proposal that TSOs' enduring operating costs should be 'recovered' through congestion revenues. As Ofgem is aware, the regulatory settlement for BritNed, reflecting the European Commission's requirements, provides for returns above those initially estimated to be reinvested or used to finance the transmission network. Below the cap, congestion revenues, to the extent that they arise, belong to BritNed and are used to finance its activities and to recover the cost of developing the interconnector. Simply 'allowing' BritNed to retain monies to which it is already entitled does not represent 'cost recovery' in economic terms, neither does it reflect the natural meaning of those words. Ofgem's proposal would both undermine the regulatory settlement relied upon by BritNed in making its investment decision and fail to implement its right under Article 75(1) to cost recovery, subject only to Ofgem's assessment as to whether the costs are reasonable, efficient and proportionate.
- 2.6. Ofgem's consultation fails to address the right of TSOs under Article 75(1) to recover their enduring development costs. Any proposal on the sharing and recovery of costs incurred under CACM must address this.
- 2.7. TSOs should be permitted to recover their enduring operating and development costs through TNUoS charges for the following reasons:
- 2.7.1. Article 75(1) grants to TSOs the right to recover costs relating to their obligations under Article 8, to the extent that those costs are reasonable, efficient and proportionate;
- 2.7.2. cost recovery through TNUoS would ensure equal treatment of costs incurred before and after 14 February 2017 in circumstances where there does not appear to be any rational basis for a change in approach; and
- 2.7.3. this would ensure that the costs of achieving the social benefits² for GB consumers are borne by the consumer and also ensure equal treatment with TSOs in other member states.

3. Cost sharing keys

BritNed considers that some greater clarity is needed around the sharing of enduring costs between TSOs. In particular, and without prejudice to our views on the rights of TSOs to recover their costs under CACM, if new interconnectors are only required to start bearing costs from the date on which they commence participation in coupling, there will be an element of free-loading which could amount to an unfair competitive advantage. In BritNed's view, to the extent that the TSOs are unable to achieve full recovery of reasonable, efficient and proportionate costs, new interconnectors should bear a share of all TSO enduring costs incurred after 14 February 2017.

4. Impact on TSOs and NEMOs

The consultation states Ofgem's expectations regarding a reduced impact on NEMOs and their customers (traders) and an increased impact on TSOs compared with its initial

² Recital (1) of CACM states that the objectives of the Guideline are to maintain security of supply, increase competitiveness and to ensure affordable energy prices.

Date 3 July 2018
Reference BN 18-018
Page 4 of 4



mind-ed-to position. However, we are not aware that there has been any detailed analysis of the nature and extent of the impact. Does Ofgem intend to publish an impact assessment?

Without prejudice to BritNed's views explained above regarding the allocation of costs and the rights of cost recovery under CACM, we note that the NEMO designation criteria set out in Article 6 of CACM include having adequate financial resources for the purposes of market coupling.

This response is not confidential.

Yours faithfully,

BRITNED DEVELOPMENT LIMITED



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Regulatory Manager