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Date: 11 November 2022

Dear Munti,

Approval of the modified Access Rules for the Nemo Link interconnector pursuant to Standard Licence Condition 11A of the Electricity Interconnector Licence

On 3 August 2022, Nemo Link Limited (NLL) submitted modified Access Rules for the Nemo Link interconnector¹ to the Authority² for approval. On 13 October 2022, NLL submitted an updated version of the modified Access Rules. This version supersedes the modified Access Rules submitted on 3 August 2022.

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

We have decided to approve the modified Access Rules on the basis that we are satisfied the modifications achieve the relevant objectives as required under the Licence⁴. This letter contains a Direction (attached as Annex 1) approving the modified Access Rules.

The proposed modifications to the Access Rules

The modified Access Rules look to further build upon the NLL Access Rules approved by Ofgem on 11 February 2021⁵ by introducing the following amendments:

¹ Nemo Link is a 1000 MW high voltage direct current (HVDC) interconnector, connecting the transmission systems of Great Britain (GB) and Belgium (BE). NLL is a joint venture between National Grid Interconnector Holdings Limited and Elia System Operator NV/SA.

² The Gas and Electricity Markets Authority. Ofgem is the Office of the Authority. The terms "Ofgem", "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

⁴ Please see the heading entitled "Regulatory framework" below for further details.

⁵ The decision letter on the NLL Access Rules approved by Ofgem on 11 February 2021 can be accessed here: <https://www.ofgem.gov.uk/publications/approval-modified-access-rules-and-modified-charging-methodology-nemo-link-interconnector-pursuant-standard-licence-condition-11a-and-10-electricity-interconnector-licence>

1. *Compensation for curtailment*

- 1.1. NLL has proposed to return to a Loss Adjusted Day-Ahead Market Spread (LADAMS)⁶ form of compensation for curtailments to ensure operation remains within Operational Security Limits before the Firmness Deadline (Article 59 of Appendix 1, Rule for Forward Capacity Allocation).
- 1.2. After the UK left the European Union NLL transitioned to the current compensation mechanism, which provides market participants with compensation based on the day-ahead auction clearing price⁷, as it did not consider it possible to continue providing LADAMS-based compensation without the transparency of a single GB day-ahead price. However, both Ofgem and CREG⁸ asked NLL to keep this under review.
- 1.3. NLL's proposal means the compensation would be calculated using the market spread between the Belgium Single Day-ahead Coupling clearing price and the GB price, which would be calculated using a volume-weighted average of the EPEX Spot and Nord Pool GB day-ahead market prices as published by EMR Settlement Limited⁹ until a single GB day-ahead market price may be re-established¹⁰.

2. *Return of Long-Term Transmission Rights (LTRs) in months with planned maintenance periods*

- 2.1. NLL proposes to allow market participants to return capacity from a long-term auction into another subsequent long-term auction, where the delivery period contains a maintenance period for the interconnector.
- 2.2. This follows the introduction of a new functionality in the Joint Allocation Office's (JAO)¹¹ auction system which allows this to take place.

3. *Clarifying the treatment of allocated rights in the event of suspension of the JAO participation agreement*

- 3.1. NLL proposes modifications to ensure consistency with the latest version of the Harmonised Allocation Rules (HARs 2021)¹² and to clarify the rules around

⁶ LADAMS is the Loss Adjusted Day-Ahead Market Spread meaning the difference of power exchange prices on the British and Belgian day-ahead markets less an adjustment to take into account direct current losses on the interconnector.

⁷ Where the day-ahead auction is not held, market participants currently receive the marginal price of the initial auction as compensation.

⁸ Commission de Régulation de l'Électricité et du Gaz, the Belgian regulatory authority.

⁹ <https://www.emrsettlement.co.uk/settlement-data/settlement-data-roles/>

¹⁰ BEIS has consulted on the re-establishment of single GB day-ahead market price, which can be found here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1028393/power-exchange-consultation-gb-wholesale-electricity-market-arrangements.pdf

¹¹ JAO means the Joint Allocation Office www.jao.eu and performs long and short-term auctions of transmission capacity for Nemo Link Limited.

¹² The latest Harmonised Allocation Rules can be found here:

https://acer.europa.eu/Official_documents/Acts_of_the_Agency/Individual%20decisions%20Annexes/ACER%20Decision%20No%2015-2021_Annexes/ACER%20Decision%2015-2021%20on%20the%20Harmonised%20Allocation%20Rules%20for%20Long-term%20Transmission%20Rights%20-%20Annex%20I.pdf

registered participants' rights in the event of suspension from NLL's Allocation Platform. This includes clarification that the Allocation Platform may suspend the participation agreement for intraday, day-ahead and long-term auctions if the registered participant is under economic and trade sanctions.

- 3.2. NLL also clarified the payment obligations in relation to LTTRs for registered participants who are suspended due to economic and trade sanctions. This is driven by Article 71 of the HARs 2021 where a suspended registered participant, is entitled to receive all or part of the amount paid for original product depending on how much has been allocated.

4. *Earlier opening of long-term nomination gate*

- 4.1. The long-term nomination gate currently opens at 16:30 CE(S)T D-2 and NLL proposes to open the gate three hours earlier at 13:30 CE(S)T D-2 to aid customer operational activities.
- 4.2. This change is driven by market participant feedback requesting earlier opening of the long-term nomination gate.

5. *Housekeeping changes in light of the revised HARs*

- 5.1. NLL proposes to make changes to Access Rules to take account of provisions made under the HARs in 2019¹³ and 2021. These include housekeeping changes such as permitting electronic signature of the JAO participation agreement as well as third country changes including permitting non-EU VAT registration numbers and tax settlement clarification. These changes are intended to ensure alignment with the latest version of the HARs which have been consulted on and agreed by the Agency for the Cooperation of Energy Regulators (ACER).

Correction of consulted long-term nomination gate time

NLL provided a resubmission of the Access Rules on 13 October 2022 to correct an error made in its consultation, and original submission to Ofgem, regarding the long-term nomination gate closing time. The consultation had incorrectly changed the long-term nomination gate closing time to 9:00 CE(S)T D-1. NLL has since confirmed that there was no intention to change the long-term nomination gate closing time and it should remain as 8:45 CE(S)T D-1 as per the NLL Access Rules approved by Ofgem on 11 February 2021.

We note NLL provided a notice of its correction of the long-term nomination gate closing time in a customer email communication, and also published the notice of this correction on its website on 14 October 2022¹⁴.

¹³ 2019 Harmonised Allocation Rules can be found here:

https://acer.europa.eu/Official_documents/Acts_of_the_Agency/ANNEXESTOTHEDECISIONOFTHEAGENCYFORTHECOOPERATIO4/Annex%2520I_HAR%2520amendment%2520decision.pdf

¹⁴ <https://www.nemolink.co.uk/news-news/nemo-link-access-rules-updates/>

Consultation responses

In accordance with the applicable legal and regulatory framework, NLL conducted a public consultation¹⁵ on the Access Rules from 29 April 2022 to 3 June 2022¹⁶.

NLL received four written responses on the modified Access Rules. The respondents broadly supported the proposed changes to the Access Rules.

1. *Compensation for curtailment*

- 1.1. Three respondents supported NLL's proposal. Specifically, one respondent noted that a return to a LADAMS-based compensation for curtailments will bring more confidence to market participants who trade in long-term auctions.
- 1.2. One respondent welcomed the proposal however preferred the compensation to be based on one auction price rather than a weighted average of two day-ahead spot prices. In response, NLL appreciated the feedback while highlighting that some market participants use the other day-ahead power exchange in GB. Therefore, the use of one auction price reference would be discriminatory against the other power exchange while the two day-ahead spot prices represent as close as possible the actual market price.
- 1.3. NLL did not make further changes in response to the consultation feedback.

2. *Return of LTTRs in months with planned maintenance periods*

- 2.1. Most respondents welcomed this proposal as it provides greater flexibility for market participants that were not able to resell LTTRs in months which contained maintenance periods.
- 2.2. NLL did not make further changes in response to the consultation feedback.

3. *Clarifying the treatment of allocated rights in the event of suspension of JAO participation agreement*

- 3.1. One respondent noted a contradiction around whether suspended registered participants are subject to their payment obligations in relation to LTTRs following the introduction of new text in Article 71(4)¹⁷. NLL acknowledged this and has removed the contradictory text. It has also ensured that the modified Access Rules reflect the latest version of Article 71 of the HARs.
- 3.2. One respondent stated that it considers that suspended market participants should be refunded the full resale price rather than the initial price paid. In response, NLL

¹⁵ The consultation for the Access Rules is available here: <https://www.nemolink.co.uk/news-news/nemo-link-consults-on-access-rules/>

¹⁶ NLL originally consulted from 29 April 2022 to 31 May 2022. NLL decided to extend the consultation to 3 June 2022.

¹⁷ Appendix 1: Rules for Forward Capacity Allocation on the GB-Belgian border is available here: <https://www.nemolink.co.uk/news-news/nemo-link-consults-on-access-rules/>

clarified that market participants suspended due to economic and trade sanctions will receive part, or all, of the amount paid for the original product, depending on whether the capacity has been used or not. NLL also confirmed that if the original product contains resales, and all returned capacity has been allocated, capacity holders of this product will receive the price paid at the resale auction.

4. *Earlier opening of long-term nomination gate*

4.1. There were no objections to this proposal from the respondents and therefore NLL did not make further changes in response to the consultation feedback.

5. *Housekeeping changes in light of the revised HARs*

5.1. One respondent highlighted a number of housekeeping changes from the revised 2019 and 2021 HARs which were not included in the consulted Access Rules. The respondent requested these Access Rules changes are implemented to ensure they are harmonised with JAO's processes.

5.2. NLL therefore submitted an updated version of the modified Access Rules on 13 October 2022 as a result of this consultation feedback.

Regulatory framework

SLC 11A of the Licence introduces relevant Access Rules objectives, against which the Authority assesses the Access Rules and any proposed modifications. The relevant objectives are that the Access Rules shall be transparent, objective, non-discriminatory and compliant with Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast following the UK's exit from the EU) (the Electricity Regulation) and any relevant legally binding decision of the European Commission and/or the Agency for the Cooperation of Energy Regulators retained following the UK's exit from the EU.

At the end of the transition period¹⁸ the legal and regulatory frameworks changed. We have taken these changes into account when assessing the modified Access Rules, considering also impending amendments to the relevant licence conditions¹⁹. This includes considering the Electricity Regulation, 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 2020²⁰.

¹⁸ Defined as the "IP completion day" in section 39(1) of the European Union (Withdrawal Agreement) Act 2020 here: <https://www.legislation.gov.uk/ukpga/2020/1/section/39/enacted>

¹⁹ The consultation page for proposed licence changes can be accessed here: <https://www.ofgem.gov.uk/publications/preparing-end-transition-period-statutory-consultation-consequential-licence-modifications-due-end-transition-period>

²⁰ Statutory Instrument 2020/1006 here: <https://www.legislation.gov.uk/uksi/2020/1006/made>

The Authority's decision

We have reviewed the modified Access Rules submitted to Ofgem on 13 October 2022 and considered the responses to NLL's consultation. We have concluded that the proposed changes meet the relevant Access Rules objectives for the following reasons:

1. Compensation for curtailment

- 1.1. We are satisfied with NLL's proposal and its response to the consultation feedback.
- 1.2. This change is objective as it's a move towards a market-reflective way of compensating market participants, and enables market participants to participate in long-term auctions with more confidence and less risk.
- 1.3. We also consider this change to be non-discriminatory because, as outlined in NLL's response to the consultation feedback, NLL proposes to use a volume-weighted average of two day-ahead spot prices in GB rather than one day-ahead spot price which would be discriminatory towards the other power exchange and its customers.
- 1.4. We also consider the change is transparent as it provides market participants with clear information on LADAMS-based compensation for curtailments.

2. Enable the return of LTTRs in months with planned maintenance periods

- 2.1. We consider this modification achieves the relevant Access Rules objectives. The change offers market participants increased flexibility to return long-term capacity in months with planned maintenance periods.
- 2.2. We also consider this provides clarity to market participants.

3. Clarifying the treatment of allocated rights in the event of suspension of JAO participation agreement

- 3.1. We consider this change complies with the Access Rules objectives. This change provides market participants with clear terms on suspensions and now reflect the latest version of the HARs (on suspensions due to economic and trade sanctions), which was consulted upon and approved by ACER at a European level.

4. Earlier opening of long-term nomination gate

- 4.1. We consider the proposed change aids market participants' operational activities as noted by NLL. It also provides market participants with clear communications on the opening of the long-term nomination gate.
- 4.2. We therefore consider this change meets the relevant Access Rules objectives.

5. Housekeeping changes in light of the revised HARs

- 5.1. The Authority is satisfied with these changes and considers that they achieve the relevant Access Rules objectives. We note the modified Access Rules now reflect

the 2019 and 2021 HARs that were consulted upon by ACER at a European level and are aligned with JAO's processes. In addition, the changes are clear and understandable.

In making our decision we have also closely cooperated with CREG, the Belgian regulatory authority, to ensure we make consistent regulatory decisions.

The Authority approves the modified Access Rules on the basis that it meets the relevant Access Rules objectives set out in SLC 11A(4) of the Licence.

The direction relating to the approval of the modified Access Rules and, issued in accordance with SLC 11A(13) of the Licence, can be found in Annex 1 of this letter.

Next steps

Publication of the modified Access Rules

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

Yours sincerely,

Holly MacDonald

Head of Cross Border Market Arrangements, Energy Systems Management & Security

ANNEX 1

Direction issued to Nemo Link 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 Nemo Link Limited (the "Licensee") in relation to the Nemo Link 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, as amended following the UK's exit from the EU) and any relevant legally binding decision of the European Commission and/or Agency for the Cooperation of Energy Regulators retained following the UK's exit from the EU (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 makes 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 Member States that may have a direct interest in the Access Rules, are consulted and allowed 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 certain information, including 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 13 October 2022, 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 Belgian 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 on the basis of facilitating efficient cross border trade.
8. The Authority therefore hereby directs that:
 - 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 come into effect when the Licensee publishes them on its website.
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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Holly MacDonald

Head of Cross Border Market Arrangements, Energy Systems Management & Security

Signed on behalf of the Authority and authorised for that purpose by the Authority on 11 November 2022