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*Promoting choice and value for
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Dear Damian

Approval of the access rules for the BritNed interconnector including a direction to approve pursuant to Standard Licence Condition 11A paragraph 7 of the electricity interconnector licence

On 05 May 2012, BritNed Development Limited¹ (BritNed) submitted access rules (the "BritNed access rules") to the Authority² for approval. These were submitted pursuant to Standard Licence Condition 11A of BritNed's electricity interconnector licence. The BritNed access rules set out the general terms and conditions that a user must accept to obtain and use capacity on the BritNed interconnector³ (the "interconnector"). After careful consideration of the BritNed access rules and the responses to BritNed's public consultation we requested BritNed to amend the BritNed access rules. BritNed re-submitted the BritNed access rules for approval on 22 May 2012.

This letter contains a direction to approve the BritNed access rules and sets out the background and reasons for our approval under section 49A Electricity Act 1989.

Background

2011 approval of the access rules

On 24 February 2011 we approved the BritNed access rules against the criteria in BritNed's exemption order⁴. At that time, we noted that we did not have formal powers to approve the BritNed access rules. However, we anticipated that we would have formal powers following Third Package implementation in 2011. We stated that the approval of the BritNed access rules at that time did not seek to pre-judge the outcome of the Third Package transposition process, which could require future amendments to the access rules⁵.

¹ BritNed Development Limited is a joint venture of Dutch TSO TenneT and British National Grid. The company commercially operates an electricity link between Great Britain and the Netherlands.

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 BritNed interconnector is a 1000MW High Voltage Direct Current link that runs between Maasvlakte in the Netherlands and the Isle of Grain in Great Britain. It started commercial operation on 1 April 2011.

⁴ On 11 January 2007, the Authority granted BritNed an electricity interconnector licence and an exemption order (the "exemption") for a period of 25 years from the start of commercial operations. The exemption is from standard licence conditions 9, 10, 11 and Article 6(6) of EC Regulation No 1228/2003 (the "Regulation").

⁵<http://www.ofgem.gov.uk/Markets/WhlMkts/CompandEff/TPAccess/Documents1/Access%20Rules%20Approval%20Letter.pdf>

Transposition of the Third Package

On 9 November 2011 the regulations under section 2(2) of the European Communities Act 1972 (“domestic regulations”) came into force and transposed the Third Package into GB domestic legislation and into GB licences, including the standard conditions of the electricity interconnector licence. Amendments made by the domestic regulations transposing the Third Package have resulted in wide ranging changes to the GB electricity regulatory framework⁶.

The domestic regulations amended the standard conditions of electricity interconnector licences and, amongst other things, introduced Standard Licence Condition 11A on the approval of terms for access by the Authority⁷.

Standard Licence Condition 11A introduces relevant access rules objectives, against which the Authority will assess the BritNed access rules and any proposed amendment. The relevant access rules objectives are that access rules shall be transparent, objective, non-discriminatory and compliant with the Electricity Regulation⁸ and any relevant legally binding decision of the European Commission and/or the Agency.

Standard Licence Condition 11A also states that access rules must include, in particular, but not limited to: (a) arrangements for maximising the available interconnector capacity, including: the methodology for the calculation of interconnector capacity [...] and (e) arrangements for any ancillary services, such as balancing arrangements, including where users may offer ancillary services to assist with relevant system operator balancing.

BritNed’s proposed amendments

The amendments proposed by BritNed in the re-submitted BritNed access rules are intended to ensure better compliance with the Congestion Management Guidelines which are annexed to, and form part of, the Electricity Regulation⁹.

In 2011, BritNed cooperated with NGIL, RTE, Moyle and EirGrid to identify areas where regional interconnector rules could be aligned. This process was undertaken to facilitate compliance with section 3 of the Congestion Management Guidelines which requires regional coordination in developing common and coordinated congestion management methods and procedures for the allocation of capacity. BritNed consulted its users on these amendments in January 2012.

The other amendments proposed by BritNed were deemed necessary to facilitate the implementation of intraday capacity allocation. Implementing intraday allocation is necessary for BritNed to achieve compliance with Congestion Management Guidelines. Paragraph 1.9 requires mechanisms for intraday congestion management to be established [...], in order to maximise opportunities for trade. BritNed consulted its users on these amendments in April 2012.

Review of the access rules

As part of our 2011 approval, BritNed committed to undertake future reviews of the BritNed access rules. The first review within the first six months of operation, and a second comprehensive review in the third quarter of 2012. The regular review of access rules is also a requirement of Standard Licence Condition 11A.

⁶ More information can be found here: <http://www.legislation.gov.uk/ukxi/2011/2704/contents/made>

⁷ The revised electricity interconnector licence standard conditions can be found here: <http://epr.ofgem.gov.uk/EPRFiles/Electricity%20Interconnector%20Standard%20Licence%20Conditions%20Conso%20dated%20-%2010-11-2011%20-%20Current%20Version.pdf>
<http://www.legislation.gov.uk/ukxi/2011/2704/schedule/8/made>

⁸ Regulation (EC) No 714/2009 on conditions for access to the network for cross-border exchanges in electricity

⁹ The Guidelines on the management and allocation of available transfer capacity of interconnectors between national systems annexed to the Electricity Regulation.

We would encourage BritNed to undertake its second review with the anticipated implementation of coordinated market coupling over BritNed and IFA and the forthcoming Network Code on Capacity Allocation and Congestion Management in mind.

Yours sincerely,

Martin Crouch
Partner, European Wholesale

Direction issued to BritNed Development Limited pursuant to paragraph 7 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 7 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 to BritNed Development Limited ("BritNed").
2. Standard Licence Condition 11A provides that the licensee shall prepare and submit for approval by the Authority a statement setting out the Access Rules (as defined in the Standard Licence Conditions for electricity interconnector licences).
3. Standard Licence Condition 11A paragraph 4 requires that the Access Rules shall 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 (collectively the 'relevant access rules objectives').
4. Standard Licence Condition 11A paragraph 5, requires interconnector licensees to take all reasonable steps to ensure that all persons, including those in other Member States who 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 interconnector licensees shall also furnish to the Authority a report setting out the terms originally proposed in the Access Rules, the representations, if any, made by interested persons and any change in the terms of the Access Rules intended as a consequence of such representations.
5. In accordance with Standard Licence Condition 11A paragraph 5, on 05 May 2012 BritNed furnished the Authority with a report setting out the terms originally proposed in its access rules (the "BritNed access rules") including any changes as result of a public consultation. On 14 May 2012 BritNed submitted the responses it received to its public consultation¹⁰.
6. After careful consideration of the report submitted on 05 May 2012 and the responses to the public consultation, in accordance with Standard Licence Condition 11 paragraph 6, the Authority requested BritNed to amend the BritNed access rules. The requested amendment was to clarify that the entire technical capacity of the interconnector will be made available for either medium term auctions or day-ahead implicit allocation. The amendment was requested to ensure compliance with Standard Licence Condition 11A paragraph 3(a) which requires that the Access Rules include arrangements for maximising interconnector capacity.
7. BritNed accepted the requested amendment and, in accordance with Standard Licence Condition 11A paragraph 6, re-submitted the BritNed access rules to the Authority for approval on 22 May 2012.
8. Having regard to the relevant access rules objectives set out in SLC 11A paragraph 4 and to our principle objective and statutory duties, the Authority has decided to approve the version of the BritNed access rules submitted on 22 May 2012. The Authority considers that the BritNed access rules meet the relevant access rules objectives. In particular, the BritNed access rules ensure compliance with the

¹⁰ Further details of BritNed's consultation can be found here:
<http://www.britned.com/News%20overview/Consultation%20BritNed%20Access%20Rules>

Congestion Management Guidelines, which are an annex to, and form part of, the Electricity Regulation.

9. The Authority hereby directs, pursuant to paragraph 7 of Standard Licence Condition 11A of the Licence, that the BritNed access rules submitted by BritNed to the Authority on 22 May 2012 are approved.

10. This Direction shall have immediate effect and shall remain in effect until such time as the Authority may revoke or vary the Direction in writing upon reasonable notice.

Dated: 7 June 2012

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Martin Crouch

Partner, European Wholesale

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