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Dear Paul,

Approval of modified Access Rules for the Moyle interconnector (Moyle) including a direction to approve pursuant to Standard Licence Condition 11A paragraph 13 of the Electricity Interconnector Licence

Notice in respect of the Charging Methodology for the Moyle interconnector

On 15 July 2015, Moyle Interconnector Limited¹ ("MIL") submitted proposed modified Access Rules for the Moyle interconnector to the Authority² for approval (the "Moyle Access Rules"). The Authority is the designated National Regulatory Authority (NRA) for Great Britain under Section 3A of the Utilities Act 2000. The proposed modifications were submitted pursuant to Standard Licence Condition (SLC) 11A of MIL's electricity interconnector licence³. The Moyle Access Rules set out the general terms and conditions a user must accept to obtain and use transmission capacity on the Moyle interconnector and were most recently approved on 25 July 2014⁴.

After careful consideration, we have decided to approve the proposed modified Moyle Access Rules. We consider that the proposed modified Access Rules will better achieve the relevant access rules objectives⁵.

This letter contains a direction to approve the proposed modified Moyle Access Rules. It also explains the reasons for our approval as required under section 49A of the Electricity Act 1989.

MIL also confirms that it has reviewed its Charging Methodology and concluded that no modifications are currently necessary. Ofgem is satisfied with MIL's conclusion that no amendments are currently required to the Moyle interconnector's Charging Methodology to enable it to better further the relevant Charging Methodology objectives.

¹ Moyle Interconnector Limited is an incorporated company registered in Northern Ireland and is the owner of the Moyle Interconnector, which is a 500MW High Voltage Direct Current link that runs between Northern Ireland and Great Britain.

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

⁴ <https://www.ofgem.gov.uk/publications-and-updates/approval-modified-access-rules-and-notice-respect-charging-methodology-moyle-interconnector>

⁵ The relevant access rules objectives are set out in SLC11A paragraph 4. They 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.

MIL's proposed modified access rules

The European Network of Transmission System Operators (ENTSO-E) drafted a version of the Forward Capacity Allocation (FCA) European Network Code (ENC)⁶ based on the Framework Guideline published by the Agency for the Cooperation of Energy Regulators (ACER).⁷ In due course the final version of FCA will be voted on by Member States. Once FCA enters into force it will become a directly applicable Regulation.⁸

While we cannot be certain what new obligations FCA will place on GB transmission system operators (TSOs), it is expected to require TSOs to develop a set of harmonised allocation rules (HAR).⁹ Several European TSOs, including the GB interconnectors¹⁰, have chosen to implement this requirement as a voluntary pilot project based on an early version of FCA submitted in April 2014 to ACER for its recommendation (the Pilot Project). We cannot guarantee that the final approved version of FCA will contain a requirement for the HAR or, if the HAR requirement remains, that it will have the same requirements as the April 2014 draft used by ENTSO-E to develop the HAR.

The HAR document drafted by TSOs contains procedures for the allocation of long-term transmission rights and the terms on which market participants may participate in explicit auctions for such rights. MIL proposes to modify its Access Rules in line with the draft HAR document to facilitate participation in the Pilot Project.

Northern Ireland and Ireland are currently in the process of redesigning the Single Electricity Market ("SEM") to implement the European Target Model in accordance with EU Directive 2009/72/EC, Regulation (EC) 714/2009 and Regulation (EC) 713/2009. When completed, the redesigned market will be known as the Integrated Single Electricity Market ("I-SEM"). The current estimated go-live date for the I-SEM is Q4 2017.

The I-SEM work has substantial interactions with the timelines for implementation of the ENCs. Article 83 of Regulation (EU) 2015/1222 on capacity allocation and congestion management (CACM) specifies transitional arrangements for Northern Ireland and Ireland which will apply until 31 December 2017.¹¹ MIL considers that, given the changes the I-SEM project will introduce, it is most appropriate to adopt the HAR on the following phased basis (notwithstanding applicable licence obligations):

- Phase 1 (2015): MIL will amend the Moyle Access Rules to introduce the contractual framework that will allow it to implement the HAR in due course, while acknowledging that from the perspective of a market participant using the interconnector, there will be no practical change;
- Phase 2 (from the date of I-SEM go-live): Moyle will apply the HAR in accordance with FCA requirements for capacity in the forward timeframe, and it will operate local Access Rules for day-ahead and intraday capacity as well as use of capacity across all timeframes to the extent compatible with FCA. The local Access Rules may be amended to account for developments in the I-SEM and/or for other reasons.

"Phase 1" of HAR implementation requires the following amendments to the Moyle Access Rules:

⁶ The term European Network Code has been used to describe the new Regulations developed under the Third Package. We use the terms network code, guideline and Regulation interchangeably.

⁷ http://www.acer.europa.eu/Electricity/FG_and_network_codes/Electricity%20FG%20%20network%20codes/FG-2011-E-002.pdf

⁸ The latest draft of FCA, dated 30 September 2015, is available at: <http://www2.nationalgrid.com/WorkArea/DownloadAsset.aspx?id=39980>

⁹ FCA (30 September 2015 draft) Articles 51-52.

¹⁰ The four operational GB interconnectors are Interconnection France-Angleterre (IFA), BritNed, Moyle and East-West Interconnector (EWIC).

¹¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R1222&from=EN>

- Introduction of the HAR document and associated border-specific annex to cover forward capacity allocation from the date of I-SEM go-live, while acknowledging that these documents may undergo further development before being used on the GB-SEM border.
- No amendment proposed to the existing Moyle Access Rules (version 4). These will remain the principal operational document until I-SEM go-live (notwithstanding any future amendments which may be proposed or required).

This approval is in relation to “Phase 1” as described above.

Consultation and responses

ENTSO-E conducted a consultation (“the ENTSO-E Consultation”) on the HAR and border-specific annexes (including the GB-SEM annex) between 2 and 30 March 2015. MIL and EirGrid Interconnector Limited¹² conducted a parallel consultation (“the SEM Consultation”) between 20 April and 20 May 2015 on the proposed changes to their respective Access Rules required to adopt the HAR.¹³

The ENTSO-E Consultation received nearly 200 comments on the main body of the HAR from 16 different respondents. A public summary of the ENTSO-E Consultation was published.¹⁴ On the basis of market feedback, ENTSO-E made changes to Chapters 1, 2, 3, 4, 7, 8, 9 and 11. Where changes were requested but ENTSO-E did not make them, reasons were provided in the summary. ENTSO-E relayed responses relating to the border-specific annexes to the concerned TSOs.

The ENTSO-E Consultation received three responses in relation to the GB-SEM border-specific annex. The SEM Consultation received one response.

One respondent to the ENTSO-E Consultation raised a general concern regarding incompatibility of the proposed changes with Article 8(7) of Regulation 714/2009. MIL’s assessment is that no such incompatibility exists, and it elected to continue with the proposed amendments.

The respondent to the SEM consultation requested MIL to offer weekly and single-priced (as opposed to hourly-priced) daily products on the interconnector. MIL’s assessment is that it is not clear that there is a wider market demand for these products, and in any case it would not be necessary to amend the wording of the access rules to introduce the products, so no change was proposed as a result of the response.

Respondents raised the following points in both consultations:

- 1) Requested removal of the provision in the SEM border-specific annex allowing ramping constraints to be considered when remunerating long-term transmission rights. This was requested on the basis that the respondents believe technical limitations should not be permitted to impinge on commercial revenues to the extent possible.
 - MIL have proposed not to amend the article as they consider that ignoring a physical ramping restriction for the purposes of FTR pay-outs transfers risk and cost to the end consumer underwriting the interconnector.

¹² EirGrid Interconnector Limited is a wholly owned subsidiary of EirGrid Plc, the Irish transmission system operator. EIL commercially operates the EirGrid East-West Interconnector.

¹³ <http://www.mutual-energy.com/electricity-business/moyle-interconnector/access-arrangements/>

¹⁴ https://www.entsoe.eu/Documents/Network%20codes%20documents/NC%20FCA/150630_HAR_assessment_of_comments.pdf

- 2) Requested removal of the possibility to curtail for “capacity shortage” as the respondents believe this could introduce risk for rights holders and impact cross-border trade and forward market liquidity.
- MIL have proposed not to amend the article as they believe the provisions relating to “capacity shortage” provide additional clarity to users while not increasing the amount of curtailment.

Submission of proposed modified access rules

Following the consultation, and pursuant to SLC 11A paragraph 10 of MIL’s electricity interconnector licence, on 15 July 2015 MIL submitted the following suite of documents to Ofgem (“the Access Rules Submission”):

For approval:

- Allocation Rules for Forward Capacity Allocation (HAR)
- Annex 12 – Border-Specific Annex: GB-SEM
- Moyle Access Rules (version 4)

The first three documents forming the proposed modified Access Rules.

For information:

- Letter requesting approval
- SEM consultation document
- Consultation responses from ENTSO-E and SEM consultations and MIL assessment
- Moyle Charging Methodology

MIL stated in its letter requesting approval that it is their view that the Access Rules and Charging Methodology “are operating in line with and charging for interconnector capacity in an open, transparent and non-discriminatory manner” which is why no changes have been proposed to the Access Rules other than those necessary to adopt the HAR, and no changes are proposed to the Charging Methodology.

Notes and considerations

We note that the draft FCA guideline includes the following objectives¹⁵, which we consider overlap with the relevant access rules objectives:

- *promoting effective long-term cross-zonal trade with long-term cross-zonal hedging opportunities for market participants;*
- *optimising the calculation and allocation of long-term cross-zonal capacity;*
- *providing non-discriminatory access to long-term cross-zonal capacity;*
- *ensuring fair and non-discriminatory treatment of TSOs, the Agency, regulatory authorities and market participants;*
- *respecting the need for a fair and orderly forward capacity allocation and orderly price formation;*
- *ensuring and enhancing the transparency and reliability of information on forward capacity allocation;*
- *contributing to the efficient long-term operation and development of the electricity transmission system and electricity sector in the Union.*

Access Rules shall be “compliant with the Regulation and any relevant legally binding decision of the European Commission and/or Agency”. We consider that not only are the proposed Access Rules compliant with this currently but they also aim to implement expected elements of FCA ahead of legally binding deadlines. We therefore consider that this Pilot Project is a positive step towards facilitation of this objective in due course. As

¹⁵ FCA (30 September 2015 draft) Article 3.

noted above a consultation respondent raised a question about potential incompatibility between the proposed changes and EU law. We do not consider such an incompatibility exists at this time.

We consider that the proposed modified Access Rules are objective and non-discriminatory as the changes will apply equally to, and will provide further trading opportunities for, all market participants.

Although we would ideally like to see a less complex contractual structure (similar to the existing Access Rules which consist of a single document), we consider that the proposed modified Access Rules meet the relevant objective of being transparent. The introduction of harmonised elements of the Access Rules is intended to make it easier for users to trade across interconnectors between GB and other markets, and the same or a similar structure is expected to be required under FCA in due course.

We note that some of the consultation responses queried elements of the GB-SEM border specific annex which MIL has proposed to retain in the annex. We do not consider at this time that the inclusion of these elements would have a detrimental impact on the market. Nonetheless we encourage MIL to carefully consider all of the consultation responses to ensure that, throughout the phased implementation process for the HAR set out above, no provisions in the border-specific annex have a detrimental effect on the market as outlined by the respondents.

We note that the introduction of the HAR will coincide with the period required to design and implement the I-SEM arrangements. We therefore consider that it is acceptable for MIL to implement the HAR on the proposed phased introduction basis, recognising that the HAR will not become operational on the Moyle interconnector until the I-SEM go-live date. We recognise that this is consistent with the transitional arrangements for Ireland and Northern Ireland permitted under CACM. We understand that this means that there will be no change to the Access Rules from a user's perspective in 2015, but future amendments may be proposed as part of the annual review obligation under SLC 11A, which will remain in effect.

We recognise that the HAR Pilot Project is an important step towards implementing the FCA requirements for harmonised allocation rules. Nonetheless, we note that it is an interim measure based on a draft version of the network code. The code has undergone substantial revisions and further changes may yet occur during the comitology process. The HAR and associated annexes will therefore need to be revisited to ensure compliance with FCA once the guideline becomes binding and its requirements are clear.

We note that, by the expected I-SEM go-live date of Q4 2017, it is expected that FCA will be in force following the EU comitology process, therefore the enduring requirements that MIL will need to implement will be clear. We will expect MIL to comply at all times with all applicable requirements of the ENCs. In particular, further modification may be required to the HAR (in collaboration with other TSOs), the GB-SEM annex (in collaboration with EIL) and the Moyle Access Rules and Charging Methodology, as well as to other documents as appropriate.

We wish to highlight two elements of particular interest in this regard:

Curtailment/firmness

We note that MIL's current firmness regime varies from the regime proposed by ENTSO-E in the HAR. We recognise that there is still some uncertainty regarding the specific firmness requirements that FCA will impose, and that there is a certain level of technical complexity involved to implement changes of this nature. Therefore we consider it acceptable for MIL to retain its current firmness regime until such time as FCA becomes binding, at which time we will expect MIL to amend its firmness regime to comply with the FCA requirements in accordance with applicable deadlines.

Credit rating and collaterals

We noted that ENTSO-E's consultation summary highlighted a point of contention regarding the most appropriate credit rating requirements for issuers of bank guarantees in favour of the allocation platform in respect of payment for long-term transmission rights allocation. ENTSO-E's consultation summary outlines the various views put forward and concludes that the most appropriate requirement for the HAR is BBB+ by Standard and Poor's Corporation, BBB+ by Fitch or Baa1 by Moody's Investors Service Inc.

MIL has not proposed to adopt this compromise and instead would retain the A/A2 rating currently required under the Moyle Access Rules.

We consider that, in the near term, this approach is acceptable as it is consistent with MIL's existing credit requirements and it may not be practicable to deviate from those. We also recognise that the Moyle interconnector currently operates on a different allocation platform from the majority of continental European TSOs, and it is reasonable for rules (including credit ratings) to differ among allocation platforms.

Nonetheless, we note that FCA is expected to require all TSOs to propose a single allocation platform for NRA approval.¹⁶ If this requirement becomes legally binding, MIL will need to demonstrate compliance, and that may require it to harmonise its credit rating requirements with the prevailing European approach. We encourage MIL to remain aware of this issue so that it can take appropriate steps to comply with any requirements of FCA relating to allocation platforms.

The Authority's decision

In light of the above views, and upon review of the Access Rules Submission, consideration of the consultation responses and supporting evidence, and close coordination with the Utility Regulator for Northern Ireland¹⁷ (UREGNI), we have decided to approve the proposed modified Access Rules. It is our view that the proposed modified Access Rules better meet the relevant access rules objectives.

A direction to this effect, issued in accordance with paragraph 13 of SLC 11A of the electricity interconnector licence, can be found in the annex to this letter.

Next steps

We encourage MIL to continue participating in the I-SEM work, and we will have a particular interest in areas where this work could have an impact on cross-border trade with GB. One key element will be the forthcoming decision about whether to offer financial transmission rights on interconnectors in the form of options or obligations.¹⁸ We will expect to see full implementation of FCA, including the HAR, and other ENC's in accordance with relevant deadlines set out in EU legislation and/or by the I-SEM project plan as appropriate.

More generally, we request that MIL continue to consider modifications it can make to the Access Rules to facilitate implementation of the existing and forthcoming ENC's, including CACM and FCA. If any steps can be taken ahead of I-SEM go-live then we would be supportive. We particularly encourage MIL to consider elements relating to firmness and the allocation platform based on our comments in this letter. We urge MIL to provide regular updates to its users on the implications of the ENC's and I-SEM and on MIL's progress in implementing them.

¹⁶ FCA (30 September 2015 draft) Articles 48-50.

¹⁷The Utility Regulator for Northern Ireland is an independent non-ministerial government department set up to ensure the effective regulation of the Electricity, Gas and Water and Sewerage industries in Northern Ireland.

¹⁸ http://www.allislandproject.org/en/wholesale_overview.aspx?article=50e36f89-7232-40a0-a371-15cbcbe19c93

We also expect MIL to comply with all obligations set out in the GB regulatory framework.

Yours sincerely,

Mark Copley
Associate Partner, Markets

ANNEX

Direction issued to Moyle Interconnector 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 Moyle Interconnector Limited (the "Licensee").
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 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 for the Co-operation of Energy Regulators (collectively the "relevant access rules objectives").
4. Standard Licence Condition 11A paragraph 8 requires that the Licensee review 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.
5. 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.
6. In accordance with Standard Licence Condition 11A paragraph 10, on 15 July 2015 the Licensee furnished the Authority with a report setting out the Licensee's proposed modifications to the Access Rules. The proposed modifications relate to the voluntary introduction of the Harmonised Allocation Rules as expected to be required under the binding version of the Commission Regulation establishing a guideline on Forward Capacity Allocation in due course.
7. The Authority has decided that the Licensee's proposed modified Access Rules meet the relevant access rules objectives.
8. THE AUTHORITY HEREBY DIRECTS, pursuant to paragraph 13 of Standard Licence Condition 11A of the Licence, that the Licensee's proposed modified Access Rules are approved. 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.
9. This Direction constitutes notice of the Authority's reasons for the decision pursuant to section 49A of the Act.

Mark Copley

Associate Partner, Markets

Signed on behalf of the Authority and authorised for that purpose by the Authority on 15 October 2015