



Besluit

Besluit van de Autoriteit Consument en Markt als bedoeld in artikel 5, zesde lid, van de Elektriciteitswet.

Ons kenmerk : ACM/UIT/517159

Zaaknummer : ACM/19/035610

Op 30 april 2019 heeft de Autoriteit Consument en Markt (hierna: de ACM) een aanvraag ontvangen van BritNed Development Limited (hierna: BritNed), tot goedkeuring van gewijzigde nominatieregels voor fysieke transmissierechten op de biedzonegrens Nederland – Groot-Brittannië.

Dit voorstel betreft congestiebeheersprocedures. Op grond van artikel 5, zesde lid, van de Elektriciteitswet 1998 (hierna: E-wet) beslist de ACM over de goedkeuring van congestiebeheersprocedures voor landsgrensoverschrijdende netten. Op grond van artikel 16, vijftiende lid, en artikel 10Aa, derde lid, van de E-wet is BritNed ook verplicht om het voorstel ter goedkeuring voor te leggen aan de ACM voordat de interconnector-beheerder deze procedures hanteert.

Het voorstel betreft tekstuele wijzigingen van de nominatieregels voor fysieke transmissierechten op de biedzonegrens Nederland – Groot-Brittannië en een kleine materiële wijziging. Niet is gebleken dat de nominatieregels voorwaarden bevatten die onredelijk, niet objectief of discriminerend zijn in de zin van artikel 26a van de E-Wet. De ACM keurt de gewijzigde nominatieregels daarom goed op grond van artikel 5, zesde lid, van de E-wet.

Van dit besluit wordt mededeling gedaan in de Staatscourant. Voorts publiceert de ACM dit besluit op haar internetpagina. Dit besluit treedt in werking op de dag na publicatie in de Staatscourant.

's-Gravenhage,

Datum: 28 oktober 2019

Autoriteit Consument en Markt,
namens deze:

w.g.

mr. P.C.M. Bijlenga

Teammanager Directie Energie

Tegen dit besluit kan degene, wiens belang rechtstreeks bij dit besluit is betrokken, binnen zes weken na de dag van bekendmaking van dit besluit een gemotiveerd bezwaarschrift indienen bij de ACM, Directie Juridische Zaken, Postbus 16326, 2500 BH Den Haag. In dit bezwaarschrift kan een belanghebbende op basis van artikel 7:1a, eerste lid, van de Algemene wetbestuursrecht, de ACM verzoeken in te stemmen met rechtstreeks beroep bij de administratieve rechter.



To
Dr. F.J.H. Don
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Date 29/04/2019
Your reference
Our reference BN 19-012
Enclosure(s) 3
Subject Nomination Rules for Physical Transmission Rights

Dear Mr Don,

Please enclosed to this cover letter BritNed Development Limited's submission of the amended proposal for nomination rules for Physical Transmission Rights for the bidding zone borders of the Channel region in accordance with Article 36 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on Forward Capacity Allocation.

Yours faithfully,

BRITNED DEVELOPMENT LIMITED



Regulatory Manager

**Amended Proposal for nomination rules for Physical
Transmission Rights for the bidding zone borders of the
Channel region in accordance with Article 36 of
Commission Regulation (EU) 2016/1719 of 26 September
2016 establishing a Guideline on Forward Capacity
Allocation**

17 April 2019

All Transmission System Operators of the Channel region issuing Physical Transmission Rights (hereafter referred to as TSOs), taking into account the following,

Whereas

- (1) A common proposal developed by TSOs for Nomination Rules for Physical Transmission Rights in accordance with Article 36 of Commission Regulation (EU) 2016/1719 establishing a guideline on Forward Capacity Allocation was developed in October 2017 and subsequently approved by the relevant National Regulatory Authorities in April 2018.
- (2) This document is an amended common proposal developed by the TSOs for Nomination Rules for Physical Transmission Rights (hereafter referred to as the **Amended Proposal**) in accordance with Article 36 of Commission Regulation (EU) 2016/1719 establishing a guideline on Forward Capacity Allocation (hereafter referred to as the **FCA Regulation**).
- (3) Article 31 of the FCA Regulation foresees that long-term cross-zonal capacity shall be allocated to market participants in the form of physical transmission rights ("**PTRs**") pursuant to the UIOSI principle or in the form of financial transmission rights ("**FTRs**"), under the form of FTR Options or FTR Obligations. This Amended Proposal only applies to PTRs acquired in forward capacity allocation. It establishes the rules for Nomination of PTRs for the Bidding Zone borders of the Channel region.
- (4) In accordance with Article 36(2) of the FCA Regulation, this Amended Proposal is subject to consultation. Article 6 of the FCA Regulation requires that the parties submitting proposals at bilateral or at multilateral level shall consult at least the Member States concerned and that the consultation shall last for a period of not less than one month. Accordingly, this Amended Proposal was consulted from 25 February 2019 until 25 March 2019.
- (5) This Amended Proposal is submitted for the approval of all National Regulatory Authorities (hereafter referred to as the NRAs) of the Bidding Zones of the Channel region where PTRs are offered.
- (6) The TSOs consider that the FCA Regulation allows the submission of this Amended Proposal on a Bidding Zone border level, since proposals for nomination rules for electricity exchange schedules between Bidding Zones are not listed in Article 4 of the FCA Regulation. The TSOs acknowledge that Article 36(3) of the FCA Regulation requires all Transmission System Operators to progressively harmonise the nomination rules on all Bidding Zone borders on which PTRs are applied. The TSOs therefore undertake to progressively examine the potential and the need for harmonisation of these rules, taking into account their technical nature. This Amended Proposal therefore is a further step towards the desired harmonisation of the Nomination Rules as envisaged by Article 36(3) of the FCA Regulation.
- (7) This Amended Proposal refers to a Nomination Platform that shall be considered to be the relevant platform of each relevant interconnector.
- (8) For IFA, BritNed and Nemo Link the intention is to move to a common nomination platform.
- (9) This Amended Proposal contributes to the achievement of the objectives of Article 3 of the FCA Regulation. In particular, this Amended Proposal serves the aim of promoting effective long-term cross- zonal trade with long-term hedging opportunities for market participants giving a transparent framework for the Nomination Rules for PTRs.
- (10) This Amended Proposal contributes to the provision of non-discriminatory access to long-term cross- zonal capacity by detailing the process of Nominating PTRs.
- (11) Furthermore, this Amended Proposal ensures fair and non-discriminatory treatment of all affected parties, as it establishes rules to be applied by and to all parties.
- (12) Regarding the objective of transparency and reliability of information on forward capacity allocation, this Amended Proposal includes provisions on the necessary exchange of information between holders of PTRs and the Nomination Platform for executing Nominations of such PTRs.

(13) In conclusion, this Amended Proposal contributes to the general objectives of the FCA Regulation to the benefit of all market participants and electricity end consumers.

SUBMIT THE FOLLOWING AMENDED PROPOSAL TO ALL NATIONAL REGULATORY AUTHORITIES OF THE BIDDING ZONE BORDERS OF THE CHANNEL REGION WHERE PTRs ARE OFFERED:

TITLE 1
General provisions

Article 1
Subject matter and scope

1. This Amended Proposal establishes the binding Nomination Rules on the Bidding Zone borders of the Channel region in terms of:
 - Entitlement of a PTR Holder to Nominate electricity exchange schedules;
 - Minimum technical requirements to submit Nominations;
 - Description of the Nomination process;
 - Nomination timings; and
 - Format of PTR Nominations and communication.
2. This Amended Proposal shall only apply to the Nomination of long-term PTRs.
3. Forward capacity allocation on the Bidding Zone borders of the Channel region takes place through explicit allocation of PTRs through Auctions in accordance with a) harmonised allocation rules for Long-Term Transmission Rights developed as per Article 51 of the FCA Regulation (hereafter **Allocation Rules**) and the associated border specific annexes; b) the proposal for design of Long Term Transmission Rights in accordance with Article 31 of the FCA Regulation (hereafter **Long Term Rights Design**); and c) the proposal for splitting long-term cross zonal capacity in accordance with Article 16 of the FCA Regulation.
4. In accordance with the FCA Regulation and the Allocation Rules and the Long Term Rights Design, this Amended Proposal shall bind PTR Holders, their counterparties where applicable, and eligible third parties acting on their behalf.

Article 2
Definitions and interpretation

1. Capitalised terms used in this Amended Proposal shall have the meaning given to them in either Article 2 of Regulation (EC) 714/2009, Article 2 of Regulation (EC) 2013/543, Article 2 of Regulation (EC) 2015/1222, Article 2 of Directive 2009/72/EC, Regulation (EU) 2016/1719 or in the applicable Allocation Rules as the case may be.
2. In addition, the following definitions shall apply:

Business Rules	Those additional terms and conditions for each applicable Interconnector as set out in the Annexes to this Amended Proposal
Contract Day	In relation to a Contract Day D, means a period of 24 hours commencing at 00:00 hours on day D.

Deemed Metered Volumes	For each Settlement Period, the Deemed Metered Volume of each PTR Holder for a direction is equal to the maximum between 0 and the net of the Long-Term and where applicable Daily and Intraday Mid-Interconnector Nominations (as amended by any curtailment) of that PTR Holder for that Settlement Period integrated over the Settlement Period.
Energy Accounts	The declared energy volume of a balance responsible party used for the calculation of its imbalance.
Information System Rules	Rules related to the technical use of the Nomination Platform as referred to in the Nomination Participation Agreement and published on the websites of the relevant TSOs.
Mid-Interconnector Nomination	For IFA this means Mid-Channel Nomination. For BritNed this mean Mid-North Sea Nomination.
Nomination Gate	Relevant time period in which a PTR Holder is able to Nominate its Long Term PTRs, timings of which are defined within Article 6 of this Amended Proposal.
Nomination Participation Agreement	The binding agreement, between a market participant and the relevant TSO(s) responsible for a particular Interconnector and incorporates the Nomination Rules, the Information System Rules and all other aspects of the Nomination Platform.
Nomination Platform	The relevant system used by PTR Holders to Nominate PTRs on the relevant Interconnector.
PTR Holder	A Registered Participant which has been allocated long term PTRs under the Allocation Rules
Registered Participant	A market participant which has entered into a Nomination Participation Agreement.
Settlement Period	The time unit for which a balance responsible party imbalance is calculated, in each respective imbalance area.

TITLE 2

Nomination Rules

Article 3

Entitlement of a PTR Holder to nominate electricity exchange schedules

1. In order to Nominate PTRs on one of the Interconnectors referenced in the table below, a PTR Holder must comply with the following requirements for such Interconnector:

Interconnectors on the France - Great Britain Bidding Zone border	<p>PTR Holders must have a signed and completed Nomination Participation Agreement along with evidence of the following:</p> <ol style="list-style-type: none"> i. its accession to a Use of System Interconnector Agreement with National Grid Electricity System Operator Limited and the Framework Agreement established under the Connection and Use of System Code; ii. its accession to the Framework Agreement as defined in the Balancing and Settlement Code (BSC) together with full details of the Production and Consumption Interconnector BM Units registered to the PTR Holder under the BSC; iii. Entry into an Accord de Participation with RTE Réseau de Transport d'Electricite.
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BritNed	<p>PTR Holders must have a signed Nomination Participation Agreement along with evidence of the following:</p> <ol style="list-style-type: none"> i. its accession to a Use of System Interconnector Agreement with National Grid Electricity System Operator Limited and the Framework Agreement established under the Connection and Use of System Code; ii. its accession to the Framework Agreement as defined in the Balancing and Settlement Code (BSC) together with full details of the Production and Consumption Interconnector BM Units registered to the PTR Holder under the BSC; iii. its entry into either a Programme Responsible Party (“PRP”) agreement with TenneT TSO B.V. or an agreement with a PRP, in either case, in respect of such Nominations; and iv. completed and returned to TenneT TSO B.V. an authorisation form for Single Sided Transactions in the Dutch market.
Nemo Link	<p>PTR Holders must have a signed Nomination Participation Agreement along with evidence of the following:</p> <ol style="list-style-type: none"> i. its accession to a Use of System Interconnector Agreement with National Grid Electricity System Operator Limited and the Framework Agreement established under the Connection and Use of System Code; ii. its accession to the Framework Agreement as defined in the Balancing and Settlement Code (BSC) together with full details of the Production and Consumption Interconnector BM Units registered to the PTR Holder under the BSC; iii. A signed Access Responsible Party (ARP) contract with Elia

Article 4

Minimum technical requirements to Nominate

1. PTR Holders must comply at all times with the applicable Information System Rules as published by the TSOs on their websites.
2. The Nomination Platform is a web-based application, therefore the minimum technical requirement for a PTR Holder to Nominate is to have internet access.

Article 5

Description of the Nomination process

1. The PTR Holders are entitled to Nominate PTRs acquired pursuant to the Allocation Rules. Such Nominations shall be issued at Mid-Interconnector and on a per direction and per Market Time Unit basis. The Nominations are subject to the terms and conditions of this Amended Proposal and as specified in the relevant Allocation Rules (including curtailment).
2. PTR Holders must comply with the Business Rules for each Interconnector and all Nominations shall be subject to such Business Rules. In the event of any conflict between the Business Rules and the main body of this Amended Proposal then with respect to an individual Interconnector the applicable Business Rules shall prevail.
3. PTR Holder will only be entitled to Nominate long term PTRs allocated under the Allocation Rules to the extent provided for under this Amended Proposal.

4. For each hour in a Contract Day for which a Rights Document has been issued by the Allocation Platform, each PTR Holder may Nominate the PTR to the Nomination Platform at mid-interconnector (as defined in the applicable Business Rules for each Interconnector) up to but not exceeding the amount set out in the Rights Document in the relevant direction in that hour (“**Mid-Interconnector Nomination**”).
5. For the avoidance of doubt, the Nomination Platform will reject a Nomination in its entirety for the Contract Day where the corresponding Mid-Interconnector Nomination(s) in one or more hours exceed(s) the PTR Holder’s rights set out in the applicable Rights Document(s).
6. The Mid-Interconnector Nomination for each hour in the Contract Day must be expressed in whole MW, with a single value, greater than or equal to zero, for each hour.
7. Mid-Interconnector Nominations shall not be subject to any modification by the PTR Holder after the Nomination Gate.
8. In the absence of a Nomination by a PTR Holder in a direction, the corresponding Mid-Interconnector Nominations are assumed to be equal to zero.

Article 6

Nomination timings

1. PTR Holders can submit Long-Term Mid-Interconnector Nominations of PTRs for Contract Day D, from opening of the Nomination Gate at 16h30 CET/CEST on the day D-2 until the closure of the Nomination Gate at 09:30 CET/CEST on day D-1.
2. Under exceptional circumstances Registered Participants will be informed of new timings where these situations arise at the earliest opportunity.

Article 7

Format of nomination and communication

1. Each Registered Participant must notify its Nominations electronically to the Nomination Platform. The Nomination Platform supports two ways of communication of Nominations:
 - Web form interface;
 - Web services communication.
2. Nominations shall be submitted in the formats specified by the relevant TSO(s) of each Interconnector in the Information System Rules and pursuant to any other technical recommendations provided via the Nomination Platform to the Registered Participants.
3. The Nomination Platform will acknowledge receipt of each Nomination to the relevant Registered Participant by a message indicating that the Nomination has been correctly registered.
4. Only Nominations confirmed via the Nomination Platform (or by a TSO pursuant to Article 7 paragraph 5) as correctly registered shall be valid.
5. In the event of a problem of communication between the PTR Holder and the Nomination Platform the PTR Holder may contact the TSO(s) of the relevant Interconnector to request, in

respect of Nominations periods for which Nomination Gate closure has not occurred, the possibility to send applicable Nominations by email or fax to the single point of contact as determined by the TSO(s) of the relevant Interconnector.

TITLE 3 Miscellaneous

Article 8 Effective date and application

1. The Nomination Rules described in this document shall apply for an Interconnector at the latest from the issuance of the first Rights Documents for such Interconnector by the Single Allocation Platform (as defined under Commission Regulation (EU) 2016/1719). The date on which the Nomination Rules shall become operational for an Interconnector shall be published by the relevant TSOs for such Interconnector on their websites at least one month in advance.

Article 9 Additional Nomination Information

1. Cancellation of a Nomination Gate;
 - a. In the event of technical difficulties with the Nomination Platform, the Nomination Platform may cancel a Nomination Gate. In that case, the Nomination Platform shall inform all affected PTR Holders as soon as practicable of such cancellation and in any event before the Nomination Gate closure, and all affected PTRs shall be considered as non-Nominated and accordingly the PTR Holders shall be remunerated by the relevant TSO(s) for the non-Nomination of such PTRs in accordance with Article 48 of the Allocation Rules. With respect to the relevant TSO's obligation to remunerate any individual PTR Holder the relevant TSO(s) shall be deemed to have satisfied such obligation in full by procuring payment of the applicable remuneration by the Single Allocation Platform to such individual PTR Holder in accordance with the provisions of the Allocation Rules.
2. Treatment of Nominations following curtailment:
 - a. In case of curtailment due to Force Majeure or to ensure that operation remains within Operational Security Limits ahead of the Long-Term Nomination Gate Closure, the Rights Documents will be updated, and the following will apply:
 - i. Where a PTR Holder has already issued a Nomination above its updated Rights Document, the Nomination Platform will automatically reduce the Nomination in line with the updated Rights Document and inform the PTR Holder of such reduction.
 - ii. Where a PTR Holder has not issued a Nomination above its updated Rights Document, then the original Nomination will be retained.
 - iii. Where a PTR Holder has not issued a Nomination and in the case of re-Nomination is greater than the updated Rights Document then the rule in Article 5(5) shall apply.
 - b. In case of curtailment between the Long Term Nomination Gate Closure and the day-ahead firmness deadline the nominations submitted by the PTR

Holders may be curtailed in accordance with the procedure described in the Allocation Rules.

3. Default Nominations:

- a. Default Nominations can be activated by a PTR Holder for Long-Term Nominations. Where a default Nomination is activated, all Mid-Interconnector Nominations would be automatically generated at the value set out in the Rights Document for each hour of that Contract Day.
- b. The registered default Nomination is considered as a schedule of Mid-Interconnector Nomination submitted by a PTR Holder at the opening of the Nomination Gate. This Mid-Interconnector Nomination is considered as valid once confirmed as such by the Nomination Platform or by the relevant TSO(s).
- c. A PTR Holder may modify the Mid-Interconnector Nomination resulting from the default Nomination within the Nomination Gate in accordance with the normal Nomination process.
- d. A PTR Holder may deactivate its default Nomination on the Nomination Platform at any time. Where such deactivation is received by the Nomination Platform after the Nomination Gate, any existing valid Mid-Interconnector Nomination resulting from a Default Nomination remains unchanged.

4. Deemed Metered Volumes:

- a. When a PTR Holder submits a valid Mid-Interconnector Nomination, then the Nomination Platform will ensure that a corresponding Deemed Metered Volume, adjusted for losses on the applicable Interconnector and for any reductions in Mid-Interconnector Nominations as a result of curtailment pursuant to the Allocation Rules, is allocated to the relevant PTR Holder using the allocation rules set out for each Interconnector in the applicable Business Rules.

Article 10
Amendment of the nomination rules

1. Any amendment to the present proposal shall be in accordance with Article 4 of the FCA regulation.

Article 11
Liability

1. Each TSO and each PTR Holder is solely and individually responsible for the fulfilment of any obligation they undertake or are subject to and which arises from or is in connection with the Nomination Rules and the Nomination Participation Agreement.
2. Subject to any other provisions of the Nomination Rules each TSO shall only be liable for damages caused by:
 - (a) fraud, gross negligence or wilful misconduct.
 - (b) death or personal injury arising from its negligence or that of its employees, agents or subcontractors.

3. A PTR Holder shall indemnify and keep indemnified each TSO and its officers, employees and agents from and against any and all loss or liability (including legal costs) related to a damage that it has caused, which (i) any of them may suffer or (ii) incur by reason of any claim by any third party on account of any and all loss (whether direct or indirect) suffered by the claimant or any of the claimant's officers, agents, subcontractors or employees in connection with the Nomination Rules and the PTR Holder's use of the Nomination Platform.
4. Each TSO and each PTR Holder acknowledges and agrees that it holds the benefit of paragraph 3 of this Article for itself and as trustee and agent for its officers, employees and agents.
5. The PTR Holder shall be solely responsible for its participation in Nominations including but not limited to the following cases:
 - (a) the timely submission of Nominations by the PTR Holder;
 - (b) technical failure of the information system on the side of the PTR Holder preventing the communication via the channels foreseen in accordance with the Nomination Rules.
6. PTR Holders shall not be entitled to compensation for breach of the Nomination Rules other than the remuneration described in Article 9(1) of the Nomination Rules and for damages relating to those causes set out in paragraph 2 above.
7. In addition to paragraph 3 of this Article, the PTR Holder shall be liable to each TSO with respect to any sanctions, penalties, or charges that may be imposed by financial authorities on the applicable TSO(s) for incorrect tax treatment due to wrong or incomplete information provided by the Registered Participant.
8. This Article survives the termination of the PTR Holder's Nomination Participation Agreement.

Article 12

Dispute Resolution

1. Without prejudice to paragraphs 6 and 7 of this Article, where there is a dispute the TSO(s) and the PTR Holder shall first seek amicable settlement through mutual consultation pursuant to paragraph 2 below. For this purpose, the party raising the dispute shall send a notification to the other party indicating:
 - (a) the existence of a Nomination Participation Agreement between the disputing parties;
 - (b) the reason for the dispute; and
 - (c) a proposal for a future meeting, physical or not, with a view to settle the dispute amicably.
2. The Parties shall meet within twenty (20) Working Days after the matter has been referred to them and seek to resolve the dispute. If no agreement is reached or no response received within a period of thirty (30) Working Days from the date of the aforementioned notification, either Party may refer the matter to the senior management of the Parties to resolve the dispute pursuant to paragraph 3.
3. The senior representative of each of the TSOs and the PTR Holder with authority to resolve the dispute shall meet within twenty (20) Working Days of a request to meet and seek to

resolve the dispute. If the representatives are unable to resolve the dispute within twenty (20) Working Days of the meeting or such longer time as may be agreed then the dispute shall be determined by arbitration in accordance with paragraph 4.

4. Where a dispute is to be referred to arbitration under paragraph 3, either the TSO or the PTR Holder may give notice to the other stating the nature of the dispute and referring the dispute to arbitration. Arbitration shall be conducted in accordance with the Rules of Arbitration of the Chamber of Commerce (ICC). The arbitration shall be conducted before one (1) arbitrator to be nominated upon agreement of the Parties unless a Party requests the appointment of three (3) arbitrators. In case of one (1) arbitrator, the Parties shall agree on the nomination of the arbitrator within two (2) months after the notice was given by the Party referring the dispute to arbitration. If no agreement can be found, the arbitrator shall be appointed by the ICC Court. In case of three (3) arbitrators the claimant shall nominate one (1) arbitrator and the respondent shall nominate one (1) arbitrator. The arbitrators nominated by each Party shall then nominate the chairman of the arbitral tribunal within three (3) Working Days from the confirmation of the appointment of the second arbitrator by the respondent. If the arbitrators nominated by each party cannot agree on the appointment of the chairman, the chairman shall be appointed by the ICC Court. The arbitration shall take place in the location of one of the TSOs premises unless otherwise defined in the Nomination Participation Agreement and in accordance with the governing law of these Nomination Rules while the language of the arbitration proceedings shall be English. The emergency arbitrator provisions according to the Rules of Arbitration of the Chamber of Commerce shall not apply but the interim or injunctive relief measures under the governing law shall apply.
5. Arbitration awards shall be final and binding on the TSO and the relevant PTR Holder as from the date that they are made. TSO and the Registered Participant shall carry out any award of an arbitration relating to any dispute without delay and each waive their right to any form of appeal or recourse to a court of law or other judicial authority, in so far as such waiver may validly be made.
6. Notwithstanding paragraphs 3 and 4 of this Article, the parties may jointly agree to apply court proceedings instead of arbitration to settle a dispute arisen in connection with the Nomination Rules.
7. The Parties agree that proceedings referred to in paragraph 6 may be brought in any competent court to hear such claim. The PTR Holder irrevocably waives any objection which it may have now or hereafter regarding the venue of such proceedings in any competent court and any claim that any such proceedings have been brought in an inconvenient forum.
8. Notwithstanding any reference to amicable settlement, or arbitration under this Article, the TSO and the Registered Participant shall continue to perform their respective obligations under the Nomination Rules and the PTR Holder's Nomination Participation Agreement.
9. This Article survives the termination of the Registered Participant's Nomination Participation Agreement.

Article 13

Force Majeure

1. A TSO or a PTR Holder, which invokes Force Majeure, shall promptly send to the other party a notification describing the nature of Force Majeure and its probable duration and shall continue to furnish reports with respect thereto with reasonable frequency during the period of Force Majeure. The party invoking the Force Majeure shall make every possible effort to limit the consequences of the Force Majeure.

2. The affected obligations, duties and rights of a party subject to Force Majeure shall be suspended from the beginning of Force Majeure, with the exception of the confidentiality provisions in accordance with Article 15.
3. Suspension under paragraph 2 is subject to the following:
 - (a) suspension will be of no greater scope and of no longer duration than is required by the Force Majeure;
 - (b) the suspension applies only for so long as the Party invoking to Force Majeure is using reasonable efforts to remedy their inability to perform.
4. The consequences of a Force Majeure event, which is not subject to any discussion or litigation between a TSO and the PTR Holder, are:
 - (a) the party invoking Force Majeure cannot be held responsible to pay compensation for any damage suffered, due to the non-performance or partial performance of all or any of its obligations under the Nomination Rules during the Force Majeure and when such non-performance or partial performance is due directly to Force Majeure;
5. If the Force Majeure continues for a period longer than six (6) months, each TSO or each PTR Holder may, by notice to the other given at any time while the Force Majeure continues beyond that period, unilaterally terminate the Nomination Participation Agreement. The termination shall take effect ten (10) Working Days after the notice is given or any later date specified in the notice.

Article 14 **Notices**

1. Unless otherwise expressly provided in the Nomination Rules, all notices or other communications shall be in writing between each TSO and each PTR Holder and shall be sent to the email address and if not possible, by letter and marked for the attention of the other Party's representative as set out in the applicable Nomination Participation Agreement.
2. All notices or other communications shall be given by letter delivered by hand against receipt or sent by registered mail or courier in the following cases:
 - (a) the conclusion of the Nomination Participation Agreement;
 - (b) the suspension and termination of the Nomination Participation Agreement.
3. All notices or other communications shall be deemed to have been received:
 - (a) in the case of delivery by hand, when delivered against receipt; or
 - (b) in the case of recorded delivery prepaid post, on the day following the recorded day of delivery; or
 - (c) in case of facsimile, on acknowledgement of receipt by the addressee's facsimile receiving equipment; or
 - (d) in the case of email, when delivered to the other party but only if an acknowledgement of receipt is requested and obtained by the party sending the e-mail.

4. If a notice or other communication has been received outside normal Working Hours on a Working Day, it is deemed to have been received at the opening of business on the next Working Day.

Article 15

Confidentiality

1. The Nomination Participation Agreement and any other information exchanged relating to its preparation and the application of a market participant shall be considered as confidential.
2. Each TSO and each PTR Holder who is a recipient of confidential information in relation to these Nomination Rules shall preserve the confidentiality of such information and shall not directly or indirectly reveal, report, publish, disclose, transfer or use any item of the confidential information otherwise than for the purpose for which it was disclosed.
3. Notwithstanding paragraph 2 of this Article, each TSO or a PTR Holder may disclose confidential information of the disclosing party to a third party with the other party's prior consent expressed in writing and subject to the condition that the receiving party has given assurance that such third party is bound by equivalent confidentiality obligations as set out in the Nomination Rules directly enforceable by the other party.
4. Notwithstanding paragraph 2 of this Article each TSO or a PTR Holder may disclose confidential information of a disclosing party:
 - (a) to the extent expressly permitted or contemplated by the Nomination Rules;
 - (b) to any person who is one of the directors, officers, employees, agents, advisers or insurers of the recipient and who needs to know the confidential information in connection with the Nomination Rules;
 - (c) as far as required in order to comply with applicable national or EU legislation such as, but not limited to, REGULATION (EU) No 1227/2011 and REGULATION (EU) No 543/2013 or any other relevant European or national regulatory, legislative or administrative acts such as grid codes;
 - (d) as far as required by a competent regulatory authority, court, arbitrator or administrative tribunal or an expert in the course of proceedings before it to which the recipient is a party;
 - (e) as may be required by the relevant TSOs for the proper fulfilment of their mission and their obligations in accordance with applicable laws and these Nomination Rules by themselves or through agents or advisers; or
 - (f) as far as required in order to obtain clearances or consents from a competent authority (including the National Regulatory Authorities).
5. Moreover, the obligations arising from this Article shall not apply:
 - (a) if the party which receives the information can prove that at the time of disclosure, such information was already publicly available;

- (b) if the receiving party provides proof that, since the time of disclosure, the said information has been legally received from a third party or has become publicly available;
 - (c) to confidential information communicated, in accordance with the legal and regulatory provisions, in an incorporated form from which no item of information specific to a market participant can be deduced;
 - (d) to information whose publication is explicitly provided for by the present Nomination Rules.
6. The obligations of confidentiality in this Article shall remain valid for a period of five (5) years after termination of a PTR Holder's Nomination Participation Agreement.
 7. The signature of a Nomination Participation Agreement and the exchange of confidential information do not confer any rights to patents, knowledge or any other form of intellectual property concerning information or tools made available or sent by one Party to the other under the terms of the Nomination Rules.

Article 17

Assignment and Subcontracting

1. Each TSO may assign, novate or otherwise transfer any of its rights or obligations under a Nomination Participation Agreement or the Nomination Rules to another party. The TSO shall notify an affected PTR Holder of the change by sending an email with acknowledgment of receipt as soon as possible and in any event at least ten (10) Working Days before the date on which the change takes effect.
2. A PTR Holder may not assign, novate or otherwise transfer any of its rights or obligations under its Nomination Participation Agreement(s) or the Nomination Rules without the prior written consent of the relevant TSO(s).
3. Nothing in this Article shall prevent a TSO or PTR Holder from entering into a subcontracting agreement in relation to the Nomination Rules. Entry into a subcontracting agreement by a PTR Holder does not relieve the Registered Participant of any obligation or liability under its Nomination Participation Agreement(s) or the Nomination Rules.

Article 18

Intellectual Property

No party shall acquire any right, title, licence or interest in or to any intellectual property rights of the other party in connection with the Nomination Rules.

Article 19

Relationship of the Parties

1. The relationship of each TSO and the PTR Holder via the applicable Nomination Participation Agreement is that of service provider and service user respectively. Except as expressly provided in the Nomination Rules, nothing contained or implied in the Nomination Rules constitutes or is deemed to constitute a TSO or a Registered Participant, the partner, agent or legal representative of the other for any purpose whatsoever or to create or be deemed to create any partnership, agency or trust between a TSO and a PTR Holder.

2. The PTR Holder acknowledges that neither a TSO nor any person acting on behalf of or associated with a TSO makes any representation, gives any advice or gives any warranty or undertaking of any kind in respect of the Nomination Rules, the Nomination Participation Agreements or the disclosed information or otherwise in relation to or in connection with the Nomination Rules, the Nomination Participation Agreements and the disclosed information or arrangement contemplated by the Nomination Rules, the Nomination Participation Agreements and the disclosed information except as specifically provided in these Nomination Rules or a Nomination Participation Agreement.

Article 20

No Third Party Rights

Each TSO and each PTR Holder acknowledges and agrees that a person who is not a party to the applicable Nomination Participation Agreement between them, including any other market participant, has no rights to enforce the Nomination Rules or the applicable Nomination Participation Agreement as between the TSO and the PTR Holder.

Article 21

Waiver

1. No omission to exercise or delay in exercising any right, power or remedy provided by law or under the Nomination Rules shall impair or constitute a waiver of such or any other right, power or remedy. No single or partial exercise of any such right, power or remedy precludes or impairs any other or further exercise thereof or the exercise of any other right, power or remedy provided by law or under the Nomination Rules.
2. Any waiver of any right, power or remedy under the Nomination Rules must be in writing and may be given subject to any conditions thought fit by the grantor. Unless otherwise expressly stated, any waiver is effective only in the instance and only for the purpose for which it is given.

Article 22

Remedies Exclusive

The rights and remedies provided by the Nomination Rules and the applicable Nomination Participation Agreement to each TSO and each PTR Holder are exclusive and not cumulative and, to the extent permissible by law, shall exclude and be in place of all substantive (but not procedural) rights or remedies expressed or implied and provided by law or statute in respect of the subject matter of the Nomination Rules and the applicable Nomination Participation Agreement. Accordingly, each TSO and each PTR Holder hereby waives to the fullest extent possible all such rights and remedies provided by law or statute, and releases each other of them if it is liable to any other of them, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by law or statute in respect of the matters dealt with in the Nomination Rules and the Nomination Participation Agreement and undertakes not to enforce any of the same except as expressly provided herein.

Article 23

Language

1. The reference language for this Amended Proposal shall be English. For the avoidance of doubt, where TSOs need to translate this Amended Proposal into their national language(s), in the event of inconsistencies between the English version published by TSOs in accordance with Article 4(13) of the FCA Regulation and any version in another language the relevant TSOs shall, in accordance with national legislation, provide the relevant NRAs with an updated translation of the Amended Proposal.

Annex 1
Business Rules for Interconnectors on the France - Great Britain Bidding
Zone border

Deemed Metered Volume Allocation

1. Introduction

When a PTR Holder submits a valid Mid-Interconnector Nomination, then the Nomination Platform will ensure that a corresponding Deemed Metered Volume, adjusted for losses on the Interconnector and for any reductions in Mid-Interconnector Nominations as a result of curtailment, is allocated to the relevant PTR Holders using the Deemed Metered Volume allocation rules set out in this annex.

2. Losses

The physical flow on each Interconnector on the France - Great Britain Bidding Zone border is subject to losses. The Nomination Platform will apply a Loss Factor (“ LF_{FR-GB} ”) for each Interconnector to calculate each PTR Holder’s share of the losses in accordance with paragraph 3 of this Annex. The Loss Factor is calculated on half of each interconnector between Mid-Interconnector and either end of the Interconnector (Great Britain and France) and is symmetrical between Mid-Interconnector and either end of each Interconnector (Great Britain and France).

A separate loss factor is applied for each Interconnector on the France – Great Britain Bidding Zone border. The Loss Factor to be applied is published on the relevant TSO(s) websites. If there is a requirement to change the Loss Factor(s) at any time, then the affected PTR Holders shall be notified at least five (5) working days before the change is to take effect.

3. Adjustment for losses

For the purposes of the Balancing and Settlement Code, the Nomination Platform will send to the Settlement Administration Agent (as defined in that Code) a program called BM Unit Metered Volume expressed in kWh at the Great Britain connection point in half-hourly points and calculated by this formula:

a. for a BM Unit in the direction from France to Great Britain:
 $BMUMV = (1-LF_{FR-GB}) * DMV$; and

b. for a BM Unit in the direction from Great Britain to France:
 $BMUMV = (1+LF_{FR-GB}) * DMV$.

For the purpose of the RTE Settlement Arrangements and for an export from France to Great Britain, the Nomination Platform will send to RTE (in its capacity as Transmission System Operator) a program expressed in kWh at the France connection point in half-hourly points and calculated by this formula:

$$(1+LF_{FR-GB}) * DMV$$

For the purpose of the RTE Settlement Arrangements and for an import from Great Britain to France, the Nomination Platform will send to RTE a program expressed in kWh at the France connection point in half-hourly points and calculated by this formula:

$$(1-LF_{FR-GB}) * DMV.$$

In the above paragraphs, "DMV" means the Deemed Metered Volume calculated for that Registered Participant for that Settlement Period.

Annex 2 Business Rules for BritNed Interconnector

1. Introduction

When a PTR Holder submits a valid Mid-Interconnector Nomination, then the Nomination Platform will ensure that a corresponding Deemed Metered Volume, adjusted for losses on the Interconnector and for any reductions in Mid-Interconnector Nominations as a result of curtailment, is allocated to the relevant PTR Holder using the Deemed Metered Volume allocation rules set out in this annex.

2. Losses

The physical flow on the Interconnector is subject to losses. The Nomination Platform will apply a Loss Factor (“ LF_{Britned} ”) to calculate each PTR Holders’ share of the losses in accordance with paragraph 3 of this annex. The Loss Factor is symmetrical between Mid North Sea and either end of the Interconnector (Isle of Grain and Maasvlakte).

The Loss Factor to be applied by the Nomination Platform is published on the Relevant TSO(s) website. If there is a requirement to change the Loss Factor at any time, then the PTR Holders shall be notified and such notification to be made at least five (5) Business Days before the change takes effect.

3. Adjustment for losses

For the purpose of the Balancing and Settlement Code, the Allocation Platform will send to the SAA (as defined in that Code) a program called BM Unit Metered Volume (BMUMV) expressed in MWh at Grain in half-hourly volumes and calculated by this formula:

- a. for a BM Unit in the direction from The Netherlands to GB:

$$\text{BMUMV} = (1 - (LF_{\text{Britned}}/2)) * \text{DMV}; \text{ and}$$

- b. for a BM Unit in the direction from GB to The Netherlands:

$$\text{BMUMV} = (1 + (LF_{\text{Britned}}/2)) * \text{DMV}.$$

For the purpose of the TenneT TSO B.V. settlement arrangements and for an export from The Netherlands to GB, BritNed will send to TenneT TSO B.V. (in its capacity as Transmission System Operator) a program called “Export Transaction at Maasvlakte” as part of the NL Energy Programme expressed in kWh at Maasvlakte in quarter hour volumes and calculated by this formula:

$$ETM = 1 + (LF_{\text{Britned}}/2) * DMV$$

For the purpose of the TenneT TSO B.V. settlement arrangements and for an import from GB to The Netherlands, the Allocation Platform will send to TenneT TSO B.V. a program called “Import Transaction at Maasvlakte” as part of the NL Energy Programme expressed in MWh at Maasvlakte in quarter hour volumes and calculated by this formula:

$$ITM = (1 - (LF_{\text{Britned}}/2)) * DMV.$$

In the above paragraphs, “DMV” means the Deemed Metered Volume calculated for that Registered Participant for that Settlement Period.

Annex 3 Business Rules for Nemo Link Interconnector

Deemed Metered Volume Allocation

1. Introduction

When a PTR Holder submits a valid Mid-Interconnector Nomination, then the Nomination Platform will ensure that a corresponding Deemed Metered Volume, adjusted for losses on the Interconnector and for any reductions in Mid-Interconnector Nominations as a result of curtailment, is allocated to the relevant PTR Holder using the Deemed Metered Volume allocation rules set out in this annex.

2. Losses

The Deemed Metered Volume will be adjusted for losses according to paragraph 3 below.

The Loss Factor to be applied is referred to in the Border Specific Annex for the Nemo Link Interconnector of the Allocation Rules. If there is a requirement to change the Loss Factor at any time, then Registered Participants shall be notified at least five (5) Business Days before the change is to take effect.

3. Adjustment for losses

In the following formulas “DMV” means the Deemed Metered Volume calculated for that Registered Participant for that Settlement Period and “ LF_{NemoLink} ” represent the Loss Factor.

For the purpose of the Balancing and Settlement Code, the Nomination Platform will send to the Settlement Administration Agent (SAA) (as defined in the Balancing and Settlement Code) a program called BM Unit Metered Volume (BMUMV) expressed in kWh at Richborough in half-hourly points and calculated by this formula:

- a. for a BM Unit in the direction from Belgium to England:
$$\text{BMUMV} = (1 - LF_{\text{NemoLink}}/2) * \text{DMV}; \text{ and}$$

- b. for a BM Unit in the direction from England to Belgium:

$$\text{BMUMV} = (1 + LF_{\text{NemoLink}}/2) * \text{DMV}.$$

For the purpose of the Elia imbalance settlement arrangements and for an export from Belgium to England, the Nomination Platform will send to Elia a notification of the energy to be allocated to the Energy Accounts of the PTR Holders in the form of a program expressed in MW at Zeebrugge with a Hourly or Quarter-Hourly time resolution and calculated by this formula:

$$\text{Export BE to GB} = (1 + LF_{\text{NemoLink}}/2) * \text{DMV}$$

For the purpose of the Elia imbalance settlement arrangements and for an import from England to Belgium, the Nomination Platform will send to Elia a notification of the energy to be allocated to the Energy Accounts of the PTR Holders in the form of a program expressed in

MW at Zeebrugge with a Hourly or Quarter-Hourly time resolution and calculated by this formula:

$$\text{Import GB to BE} = (1 - \text{LF}_{\text{NemoLink}}/2) * \text{DMV}.$$

This notification will be sent to Elia after the Nomination Gate Closure and will be updated and resent to Elia with a new version of the file in case of nomination curtailments. Elia will adjust the Energy Accounts (this is the BRP perimeters) of the Registered Participants in the Elia Local Hub in accordance with aforementioned notification received from the Nomination Platform.