STRICTLY PRIVATE AND CONFIDENTIAL

Réseau de transport d'électricité
Immeuble Window
7C Place du Dôme
92073 Paris La Défense Cedex
France

21 June 2019

Dear Sir/Madam,

RE: ElecLink Limited's response to the public consultation entitled "NID en période d'essai / Consultation sur le CART et la Convention d'exploitation"

ElecLink Limited ("ElecLink") welcomes the opportunity to respond to the aforementioned consultation. Please treat our response as strictly private and confidential, not for publication.

Introduction

ElecLink is constructing a 1000 MW HVDC electricity interconnector between Great Britain and France. ElecLink has been awarded a 25-year exemption under Article 17 of Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross border exchanges in electricity and repealing Regulation (EC) No 1228/2003.

General remarks

In June 2018, RTE established an industry working group (consisting of representatives from all companies currently constructing or aiming to construct exempted interconnectors in France) to develop the form of and agree the terms and conditions for the *Contrat d'Accès au Réseau Public de Transport pour les Nouvelles Interconnexions Dérogatoires ("CART NID")*. The working group met on numerous occasions during the last 12 months and a significant amount of time and effort was invested by all parties in developing the contractual framework underpinning the CART NID. The final draft version of the CART NID, taking into account input from the different stakeholders, was prepared in April 2019.

On 23 April 2019, RTE informed the working group that the CART NID would be consulted on during the period 13 - 24 May 2019 and would be finalised and signed before the end of June 2019 in accordance the timetable set out in Appendix 1.

We note that, as at 20 May 2019, RTE had not commenced the public consultation on the CART NID or provided any update to the working group. Further to a request for information from ElecLink, RTE subsequently informed the working group on 20 May 2019 that *"a last minute concern about the Long term capacity method delays the consultation process; the fact that the elaboration of this method is going to be delegated to ACER due to the lack of consensus in the CCR CHANNEL may jeopardize the way the CART NID is currently written"*.

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Furthermore, RTE stated that "… *due to the lack of consensus and the transfer to ACER/EC, the method is no longer in the CCR channel group hands where RTE would be able defend its position. Now, with the delegation to other bodies, the method ELECLINK has proposed for instance (LT NTC = technical capabilities of the cable) could be the chosen one. In this case, the way the CART NID is currently written states that this LT capacity would be the one guaranteed by RTE, which means that RTE will not be able to plan any outage without refunding ELECLINK for each MW reduced.*"

On 23 May 2019, RTE announced to the working group that *"RTE will not put under consultation the CART NID we have discussed together"* and that *"because one of the NID – namely ELECLINK – is supposed to be connected soon, we are going to circulate for your comments in the coming days a simplified version of the CART NID template with a limited perimeter. In particular, this CART NID will be limited in time to the testing period, with for instance no or few arrangements related to the outages."*

The reasons put forward by RTE for this fundamental last-minute change are as follows:

1. "*still forthcoming discussions at a European level concerning the said capacity calculation mechanisms*";
2. "*the clean energy package implementation*"; and
3. "*especially for the UK border, the BREXIT conclusions*".

ElecLink wishes to make the following observations:

(a) All of the aforementioned matters were known to the working group and RTE since the very beginning of the discussions on the CART NID (which date back to June 2018) and had not given rise to any concern or objection on the part of RTE;

(b) In respect of point 1 above:

i. the development of the long-term capacity calculation methodology ("LT CCM") in the Channel Region started in October 2017 and, up until 23 May 2019, RTE had not raised any concern whatsoever nor had implied that the contents of the CART NID were conditional on the final form of the LT CCM. The fact that the transmission system operators ("TSOs") in the Channel Region did not reach consensus and decided to refer the matter to ACER for a decision (as they are entitled to in accordance with the mechanisms provided for in the applicable EU regulations), does not alter the fundamental obligation of all TSOs, including ElecLink and RTE, to comply with the decision of the competent authorities on the LT CCM, whatever form the final approved methodology may take;

ii. clause 5.1.3 of the CART NID already recognises the fact that capacity calculation methodologies are or will be implemented in accordance with CACM and FCA: *"Des méthodologies de calcul de capacité sont et seront en œuvre à différentes échéances de temps en conformité notamment avec les réglements européens 2016/1719 du 26 septembre 2016 pour l'allocation de capacité à long-terme et 2015/1222 du 24 juillet 2015 pour l'allocation de la capacité et à la gestion de la congestion. Il est entendu entre les Parties que les méthodologies visées ici sont les méthodologies au sens des codes précités mais également plus généralement toute méthodologie élaborée sur la région de calcul de capacité*

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« Channel » approuvée par toute autorité compétente, que cette méthodologie soit ou non élaborée sur le fondement des règlements dit « codes réseaux. »" ;

iii. the TSOs in the Channel Region have presented to ACER two options:

- a scenario-based approach; and
- a statistical approach.

Neither of the two approaches prohibits RTE from planning outages or advocates the use of the technical capability of the interconnectors as the firm long-term capacity value that cannot be reduced without compensation.

Furthermore, ElecLink wishes to highlight that the objective of the LT CCM in the first place is to determine at what point in time (and up to what volume) the capacity on the interconnectors becomes firm. The decision lies with the relevant competent authorities; not the individual TSOs. The compensation principles in the CART NID must, by definition, respect the LT CCM (as approved by the competent authorities). It will not be legally permissible to deviate from the LT CCM. Therefore, we are not convinced that the argument presented by RTE can stand up to scrutiny;

(c) In respect of point 2, the relevant provisions of the Clean Energy Package are not meant to come into effect until the end of 2025. It would, therefore, appear that the argument put forward by RTE is wholly unfounded unless RTE does not intend to finalise the CART NID until 2025;

(d) In respect of point 3, the working group had agreed to further refine clause 5.1.3 of the CART NID to delete the reference to the Channel Region so as to make the clause compatible with a "hard" Brexit scenario too.

Consequently, the CART NID recognises that the contracting parties will be required to comply with the relevant rules:

i. as set out in European regulations in the event the UK remains part of the internal energy market after Brexit; or

ii. as approved by the relevant competent authorities in the event the UK does not remain part of the internal energy market after Brexit.

Furthermore, ElecLink offered to include an additional *"Change in law"* provision (which is standard industry practice) to alleviate any residual uncertainty in regard to future regulatory, political or legislative developments (to the extent this is not already addressed in clause 5.1.3 of the CART NID). This was not accepted by RTE.

In conclusion:

(a) ElecLink is of the view that none of the arguments presented by RTE constitutes a valid legal or regulatory reason to suspend the finalisation of the CART NID and notes that RTE has yet to provide the working group with a proper substantiated explanation as to why it elected (at the last minute) to depart from the approach discussed and agreed between all parties since June 2018;

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(b) ElecLink wishes to express its concerns about the way the process has been managed by RTE and to highlight that the "take it or leave it" approach it has been presented with is wholly inappropriate. Exempted interconnectors, similar to other entities connecting to the French high voltage grid (e.g. generators), expect to be treated in a fair and transparent way which has clearly not been the case on this occasion. As a result of RTE's decision, ElecLink is now forced to accept entering into a key contract under undue pressure and with very limited time available to conduct its legal due diligence;

(c) ElecLink would like to stress the importance of finalising the CART NID as soon as possible. The CART NID is a key contract for exempted interconnectors. It sets out their rights and obligations and the general terms for access to the French high-voltage grid. Owners of exempted interconnectors are entitled to have visibility over such contractual obligations well in advance of their assets becoming operational (if not prior to making a final investment decision) and should not be expected to accept being exposed to such unprecedented level of uncertainty and risk; and

(d) ElecLink requests that RTE commits to a new short-term timetable for the finalisation of the CART NID. As the CART NID is meant to serve as a framework contract for both existing and new exempted interconnectors, we request that RTE publishes such timetable.

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Network Access Agreement for the Testing Period

Although ElecLink urges RTE to revert to the position originally agreed between the parties (i.e. one network access agreement of indefinite duration to be applicable for the testing period and the operational period), ElecLink welcomes the opportunity to share its view on the network access agreement for the testing period ("CART for the testing period"). We note, nevertheless, that during the discussions held by the working group, RTE dismissed most of the amendments requested by the interconnectors in respect of the network access agreement.

ElecLink believes that the lack of details and balance between the rights and obligations of the parties makes the contract not fit for purpose. It appears that, in general, the provisions of the contract are in favour of RTE. Thus, several amendments should be made to this contract and are described in further detail below:

1. Planned outages

1.1 ElecLink is concerned with clause 5.1 in relation to outages planned by RTE. ElecLink agrees that RTE needs to plan grid outages for the maintenance, replacement, development and repair of grid installations. Despite the definition of a planned outage in the annex of the general conditions of the CART for the testing period, the timing by which RTE can plan an outage remains unclear. The outage planning must take into account the testing programme of the interconnector that will be provided in accordance with the provisions of the bilateral operating agreement for the testing period and of the trilateral operating agreement for the testing period between RTE, the interconnector and the other national transmission system operator to which the interconnector is connected. However, the bilateral operating agreement for the testing period includes the provision of an agreement in principle by RTE regarding such programme one month before the start of the tests while in the current version of the trilateral operating agreement for the testing period between RTE, ElecLink and NGESO (that has not yet been signed by these parties), RTE must approve ElecLink's testing programme at the latest two days before the beginning of each test.

This mechanism leaves room for RTE to plan outages shortly before the start of the relevant test(s). As RTE is not liable for any damages in case of a planned outage, this clause 5.1 presents risks for ElecLink due to the fact that any change in the testing programme shortly before the start of the relevant test(s) may have a financial impact on ElecLink. In order to mitigate risks for the exempted interconnector and make the contract more balanced in this respect, ElecLink proposes to add a clause stating that, following the submission of the testing programme by the interconnector in accordance with the relevant provisions of the bilateral and trilateral operating agreements for the testing period and in the event that RTE would like to plan an outage for the maintenance, replacement, development and/or repair of grid installations that impacts the testing programme, RTE shall provide the exempted interconnector with the reason(s) why this planned outage must be performed at the date and time specified by RTE. This would (a) reinforce the obligation of RTE to ensure outages are planned, to the extent possible, at dates and times that would be less likely to cause difficulty for the interconnector and (b) prevent a situation that could be seen as imbalanced and discriminatory.

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1.2 In addition, there is no provision applicable in the event that a planned outage of RTE lasts longer than the duration notified by RTE to ElecLink according to clause 5.1.2. ElecLink requests RTE to clarify the situation and proposes to add another clause stating that in case RTE exceeds the notified duration of the planned outage, the part of the outage exceeding the notified duration must be treated as an unplanned outage and the provisions of clause 6.2.3 must apply. It will allow exempted interconnectors to get compensated if damages occur on this basis.

1.3 The provisions in respect of the above-mentioned capacity calculation methodologies having been deleted from the CART for the testing period, ElecLink considers that the threshold of five days over three years for planning outages (as well as the method to count these five days) should be incorporated in the contract in order to prevent a situation in which RTE can plan as many outages as it wishes. This threshold is already included in the connection agreement applicable for exempted interconnectors but may be superseded according to clause 2 of the CART for the testing period. This would make the contract more balanced between the rights and obligations of the parties and still allow RTE to plan outages for the maintenance, replacement, development and repair of grid installations.

2. Export and import limitations

2.1 As set out in clause 6.6.1, the exempted interconnector has the obligation to not exceed the level of active power resulting from commercial schedules ("*Ne pas dépasser le niveau de puissance active resultant du programme commercial de l'interconnexion*"). This contract, focusing on the testing period, should not include any provision in relation to commercial schedules as this is outside the scope of the contract and therefore, not relevant. ElecLink requests RTE to delete such unnecessary provision.

2.2 According to the clause mentioned in the previous paragraph, the exempted interconnector must also comply with the obligation to equip its installation with a protection system that eliminates any insulation failure that could create an overcurrent or a deterioration of electricity quality on the grid. This obligation seems general and ElecLink would like to highlight that the connection agreement already contains the annex entitled protection system specifications and performance requirements on fault clearance ("*Cahier des charges pour le système de protection et les performances d'élimination des défauts*"). Therefore, ElecLink would like RTE to specify that this protection system obligation must be completed in accordance with the above-mentioned specifications of the connection agreement in order to not leave room for uncertainty.

3. Liability

3.1 Clause 7.1 of the CART for the testing period states that RTE is liable for (specific) damages except in case of force majeure, fault or negligence of the exempted interconnector. ElecLink reiterates that, in the event of a fault, a proportionality principle should be applied when several causes have contributed to the occurrence of the damage. Therefore, if the fault of the exempted interconnector is not the only cause that has contributed to the occurrence of the damage, RTE should still be liable for damages but

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on a pro-rata basis. The addition of this principle of multiple causes would avoid an unfair situation for the exempted interconnector.

3.2 As set out in clause 7.1 of the CART for the testing period, the exempted interconnector bears the burden of proof in case of fault or negligence of RTE. Although we do not have any concern in this respect, we believe that the principle should apply to RTE as well (i.e. RTE shall bear the burden of proof in case of fault or negligence of the exempted interconnector). We acknowledge that this is a principle of French law, but this addition would make the obligations of the parties mutual.

3.3 In accordance with clause 7, RTE and the exempted interconnector are not liable for any indirect damages resulting from specific commitments with regard to third parties (penalty clause, fixed penalty, take or pay clause, etc.) except in cases strictly provided for in the contract ("*elle est tenue de réparer les prejudices […] causés à l'autre Partie, à l'exclusion des préjudices indirects résultant d'engagements particuliers pris par cette dernière à l'égard de tiers (clause pénale, clause forfaitaire, clause de "take or pay", etc.)*"). ElecLink agrees with the general principle of this clause but the lack of details leaves room for uncertainty and potential conflict of interest in the event the above-mentioned specific commitments are part of an agreement or contract between RTE and the exempted interconnector. As an example, ElecLink will participate in the French Capacity Market which means, in summary, that if ElecLink is not available at times of system stress (the so called "PPI/PP2 days"), financial penalties will apply. If the unavailability of the interconnector results from an unplanned outage of RTE, ElecLink will still pay the financial penalties although there would be no fault of ElecLink. Therefore, in such a situation, RTE should be liable under the provisions of this contract and reimburse the amount of the financial penalties to ElecLink. It is more likely that such situation may occur as part of the enduring CART NID, but we request RTE to amend this contractual provision accordingly to mitigate the risks for the exempted interconnector and avoid any potential situation of conflict of interest.

3.4 In the event of an unplanned outage on RTE's grid, RTE must reimburse to the balance responsible party the imbalance costs which are the costs incurred to balance its perimeter due to the unplanned outage in accordance with clause 6.2.3. This perimeter includes the exports to and imports from the French network. It means that only the imbalance costs incurred in France will be reimbursed by RTE although the exempted interconnector will also incur costs in the balance perimeter of the other country to which it is connected. We strongly disagree with such principle as this compensation provision creates an unfair situation for the exempted interconnector and a significant imbalance between the rights and obligations of the parties as the exempted interconnector would incur costs through no fault of its own. We request RTE to amend this clause to include all the imbalance costs incurred in France and in the country to which the interconnector is connected. This amendment would allow the exempted interconnector to suffer no loss (and not to gain from such a situation) which, we believe, is the only appropriate approach.

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4. Force Majeure

4.1 We agree with the principle of Force Majeure incorporated in clause 7.5 of the contract but are not in agreement with the provision stating that in case of an event of Force Majeure lasting more than three months, each party can terminate the contract. In such a situation, only the party who is not affected by the event of Force Majeure should be able to terminate the contract. We believe this is common practice and creates a fair situation for both parties. We acknowledge that more flexibility may be required so we propose to add that if the event of Force Majeure lasts more than six months, each party can terminate the contract.

5. Contract amendment

5.1 The general conditions of the CART for the testing period can be amended in accordance with clause 9.1.3. The amendment must be discussed within the committee of electricity network users ("*Comité des Utilisateurs du Réseau de Transport d'Electricité*") and then notified by RTE to the exempted interconnector. We request this clause to be further developed and specified. This is a substantial clause for the exempted interconnector as it allows RTE to amend the contract without its consent. As an example, we have understood by a "concerted amendment" ("*modification concertée*") that a public consultation must be organised to allow users to formally share their views and/or concerns in this respect. If this is correct, we believe this should be explained in the contract. In any case, any amendment made to the general conditions of the CART for the testing period after it has been entered into by RTE and the exempted interconnector must not significantly affect or adversely modify the rights and obligations of the parties (except if the amendment or change is required by applicable legislation). Otherwise the contract would create a significant imbalance between the rights and obligations of the parties, which is prohibited by French law.

6. Anti-corruption laws

6.1 ElecLink is committed to conduct its business in accordance with the highest ethical standards and welcomes the introduction of a clause in respect of anti-corruption. This clause 9.3 is, however, one-sided meaning that only the exempted interconnector must comply with the applicable laws, regulations and code. We strongly believe that this clause should be reciprocal to ensure RTE will also be subject to the same requirements. We therefore request this clause to be amended accordingly.

7. Change in shareholding

7.1 RTE recently introduced a new obligation on exempted interconnectors in clause 9.6. The exempted interconnector must notify RTE of any change in the shareholding of the company and any change in the operation of the company that could impact either the exemption granted to the interconnector under Article 17 of Regulation (EC) no. 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity or the certification as transmission system operator granted to the interconnector under Article L.111-3 of the French energy code. We fully reject this clause which goes beyond the powers and

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competence of RTE and interferes with the powers and competence of the national regulatory authority (CRE). The exempted interconnector has the obligation to provide information on the above-mentioned changes to the CRE in France and not RTE. We request the obligation to be completely removed from the contract.

8. Contract termination

8.1 RTE can terminate the contract in the event the exemption or certification as transmission system operator of the exempted interconnector is withdrawn in accordance with clause 9.7.1. Although we are in agreement with the principle whereby the contract can be terminated upon the loss of the exemption (as the contract is designed for exempted interconnectors), we disagree with the other cause of termination (i.e. loss of the certification). The certification of the exempted interconnector is not relevant to this contract as the certification is required in order for the interconnector to become operational, not to perform tests during the testing period. This cause of termination should therefore be deleted from clause 9.7.1 and any reference to this certification in the contract should also be deleted such as, but not limited to, the reference within the definition of "*Client*". We also note the inconsistency between this definition and the definition of exempted interconnector ("Nouvelle Interconnexion Dérogatoire") as the latter makes only reference to the exemption but both definitions refer to the same person.

8.2 In addition, RTE can terminate the contract in the event that the exempted interconnector breaches a material obligation of the contract as set out in clause 9.7.2. ElecLink recognises such principle and agrees with it. However, we note that the obligation mentioned in point 7.1 above is considered as a material obligation. As indicated in point 7.1, we believe the reference to this obligation should be deleted. If this is not removed from the contract, we are of the view that a breach of this obligation should not be considered as a breach of a material obligation for the above-mentioned reasons.

9. Refusal to access the grid or suspension of such access

9.1 RTE may, under the terms of clause 9.7.4, refuse to give access to the grid to the exempted interconnector or suspend this access for specific reasons that are listed in this clause. We accept such clause but consider this should be further detailed. It appears this clause is one-sided as, for example, it is not stated that the burden of proof lies with RTE or there is no provision in relation to the access being resumed. We believe RTE should use its best endeavours to resume access to the grid as soon as possible if the breach is remedied. Moreover, the exempted interconnector will bear the costs associated with the suspension of the grid access as well as the costs to resume this access. We do not oppose this principle but believe that any cost to be paid/reimbursed by the exempted interconnector must be duly justified by RTE by providing the exempted interconnector with supporting documents. We request this clause to be amended accordingly.

10. Contract term

10.1 The duration of the contract is limited to one year in accordance with clause 9.9 of the contract and can be extended exclusively in the event of a delay which is not attributable to the exempted interconnector. We believe there is no reason to have such a strict

clause in this respect (i.e. to prohibit the extension of the contract for any reason). This clause should be more flexible for the exempted interconnector (as, for example, a delay longer than expected due to technical problems can occur) and allow an extension of the contract upon mutual agreement by the parties. As RTE will still have the possibility to refuse an extension, we believe this approach is fair towards both parties.

10.2 The CART for the testing period will expire following the effective date of the enduring CART NID which will be entered into by RTE and the exempted interconnector upon the "acquisition of the definitive access to the grid" by the exempted interconnector ("*la signature du CART NID Définitif étant subordonné à l'acquisition de l'Accès au Réseau Définitif de l'Installation*"). We are of the view that the enduring CART NID should be entered into as soon as possible and in any case, before acquiring the definitive access to the grid. As to the effective date of the enduring CART NID, we agree that the contract should become effective upon the "acquisition of the definitive access to the grid" by the exempted interconnector. Indeed, once this access has been obtained, the exempted interconnector should be able to start immediately the operation of the asset (including commercial operation).

Postponing the signing of the enduring CART NID until the "acquisition of the definitive access to the grid" (which entails, among other things, that all tests have been successfully performed, that the enduring operating agreement has been signed and that RTE carry out certain technical validations on the interconnector) is not an acceptable proposition for the following reasons:

(a) It will cause unnecessary long delays to the start of operations for ElecLink because:

a. Parties normally require weeks to complete their internal governance processes before entering into a binding agreement, especially for such a critical contract;

b. Experience to date (as demonstrated in our introductory remarks) shows that RTE is regularly late in producing the agreed deliverables and exhibits a tendency to introduce fundamental last-minute changes to agreed contract terms;

c. One of the preconditions for the "acquisition of the definitive access to the grid" is the signing of the enduring operating agreement. We note that RTE have yet to produce a draft of this agreement and are reluctant to engage in constructive discussions with ElecLink because such agreement does not appear to be a priority for them (although it is, of course, a priority for ElecLink). We are very concerned that ElecLink will, yet again, be presented with a "take it or leave it" contract at the eleventh hour as it has been the case with the CART for the testing period;

(b) As we have highlighted previously, owners of exempted interconnectors are entitled to have visibility over their contractual rights and obligations well in advance of their assets becoming operational (if not prior to making a final investment decision) and should not be expected to accept being exposed to such unprecedented level of uncertainty and risk.

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11. General comments

11.1 ElecLink expects RTE to correct discrepancies in respect of the references. For example, annex 5 is mentioned in clause 4.4.2 but does not exist and the reference to article 6.1 of the specific conditions in clause 6.1 of the general conditions is incorrect. In addition, RTE should ensure that all defined terms are correctly used throughout the contract. We are referring to "*Installation de Comptage*", "*Interface de communication*", "*convention de raccordement*", "*Informations confidentielles*", "*Société affiliée*", "*Soutirage*", "*CART NID en Période d'essais*", "*Délai de Raccordement*", "*Accord de Participation*", "*Alimentation Principale*", "*Alimentation Complémentaire*", etc.

11.2 Article 7 of the specific conditions in relation to the connection points for voltage recovery tests is not relevant as the corresponding provisions in the general conditions have been deleted. Article 7 should therefore be completely removed.

11.3 ElecLink requests RTE to complete annexes 2 and 3 of the specific conditions to include the general formulas that will be applicable regarding the calculation of export and import at the connection point(s) and the energy data for the balance responsible party respectively.

11.4 ElecLink requests the definition of the reference technical documentation ("*Documentation Technique de Référence*") to be clarified. The documentation is amended from time to time and published on RTE's website. In the connection agreement, the version of the documentation which is applicable to the exempted interconnector is the version that is in force at the date RTE sends the technical and financial proposition (PTF). Therefore, we believe that any reference to the reference technical documentation in the CART for the testing period should be a reference to the version of the documentation that is applicable in the connection agreement and not a reference to the version that is in force at the signature of the contract; otherwise this would be inconsistent with the provisions of the connection agreement and could create an unfair situation for the exempted interconnector (i.e. further and/or different obligations in comparison with the obligations in the relevant version of the documentation).

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Operating agreement for the testing period

We would like to highlight that the discussions held with RTE in this respect were fruitful and that the comments made by the exempted interconnectors were duly considered and taken into account. However, we are surprised by the version of the agreement that has been published for consultation as we have noticed deletions and additions that were not even discussed with the exempted interconnectors and make the agreement imbalanced in regard to the rights and obligations of the parties. We consider that the operating agreement for the testing period should be amended before being finalised and the requested amendments are detailed below:

1. Preamble

   1.1 In the preamble, it was previously stated that the exempted interconnector had the right to appoint a third party to operate (in the technical sense of the term) the interconnector during the testing period. This right has been removed by RTE unilaterally without even discussing the matter with the exempted interconnectors. We believe this is not justified and the exempted interconnectors should be allowed to delegate such task to experienced entities. We request RTE to revert to the position originally agreed between the parties.

2. Telephone recordings

   2.1 We note that clause 1.6 regarding telephone recording has been amended to make it one-sided meaning that only RTE can now record incoming and outgoing calls of RTE's control rooms. For better clarity, in the previous version of the agreement, the exempted interconnector could also record incoming and outgoing calls of its control rooms. In addition, the period by which the information collected can be stored has been extended to six months instead of two. We would like to point out that the removal of this right is inconsistent with the ENTSO-E Operational Handbook and especially its Section F which provides details on phone systems. We believe that F-S1.1 will align with the RTE STS phone while F-S1.3 will align with the ElecLink VoIP system. We have also implemented call recording in line with F-G3 and it is expected that the implementation of communications solutions supporting the Emergency and Restoration Guideline will be aligned with this section of the ENTSO-E Operational Handbook. Furthermore, from a more practical point of view, as TSO-TSO control instructions will be communicated via the ElecLink VoIP system as a backup to the RTE STS system, it will be important to have call recording to facilitate investigation of incidents as required in the Balancing and Ancillary Services Agreement and the tripartite operating agreement. Therefore, we request RTE to amend this clause in order to give the right to exempted interconnector to record telephone conversations in its control rooms.

3. Testing programme

   3.1 A liability provision in the last paragraph of clause 3 has been added which states that the exempted interconnector can carry out tests on its own behalf but is liable to RTE for any direct, present and certain damage due to such tests. Although we are in agreement with such principle, the clause should be completed by "except in the event of fault or negligence of RTE" ("*sauf en cas de faute ou de négligence de la part de RTE*") which is common practice and mentioned in all other contracts of RTE such as the network access agreement.

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3.2 Clause 3.3 states that sheets 7 to 4 must be provided at the latest two months before the energisation of the asset and the first transfer of electricity. These two dates being different, this obligation is incoherent. Clause 3.3 and the tests referred to in sheets 7 to 4 relate to active power flow and not the energisation of the asset. We request RTE to amend the clause by deleting the references to energisation.

3.3 As set out in clause 3.3.3, the exempted interconnector must provide the testing programme in day D-2 in accordance with the provisions of the operating agreement of the testing period and market mechanisms. These mechanisms have not been detailed in the agreement; thus, we request RTE to further clarify this provision.

4. Contract term

4.1 The duration of the operating agreement for the testing period has been amended to one year instead of two years from the first feed recorded by RTE meters ("*deux ans à compter de la première injection relevée par les appareils de comptage de RTE*") according to clause 5.2. The agreement can be extended exclusively in the event of a delay which is not attributable to the exempted interconnector. This change of the contract term was made unilaterally by RTE without discussing the matter beforehand with the exempted interconnectors. We strongly disagree with such provision as it puts the exempted interconnector at risk in the event of a delay (due to technical problems for example) during the testing period. We would like to point out that, during the call on the CART for the testing period held on 4 June 2019 between RTE and the exempted interconnectors to which the French regulator participated, RTE mentioned that the term of the CART for the testing period could not be changed due to the fact that it had to be aligned with the term of the operating agreement for the testing period. We believe a term of one year creates an unfair and risky situation for the exempted interconnector, so we urge RTE to revert to the position originally agreed between the parties (i.e. duration of two years) and to amend the term of the CART for the testing period accordingly.

4.2 As set out in clause 5.2, each party can terminate the operating agreement for the testing period for no reason. We strongly disagree with this principle which puts the exempted interconnector at risk and therefore request RTE to amend the provision to ensure that only the exempted interconnector can terminate the agreement for no reason. This would also be consistent with the provisions of the CART for the testing period.

5. Suspension or termination for breach

5.1 Each party can either suspend or terminate the operating agreement for the testing period in the event of a breach of any contractual obligation by the other party. The wording of this clause 5.4 seems inappropriate as a party should not be able to terminate an agreement for breach of a non-material obligation. ElecLink requests RTE to amend this clause by stating that only in the event of a breach of a material obligation by a party, the other party can suspend or terminate the agreement. This would also be consistent with relevant provisions of the CART for the testing period.

5.2 In case of suspension or termination of the operating agreement for the testing period, the installation will be disconnected from the grid according to clause 5.4. We agree with such principle, but there is no provision in relation to the access being resumed. Therefore, we would like RTE to provide clarification in this respect in the agreement.

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6. Entire agreement

6.1 The operating agreement for the testing period constitutes the entire agreement between the parties with respect to its purpose and shall supersede all other documents related to the same subject that may have been issued prior to the effective date of the agreement. Although ElecLink is in agreement with this principle laid down in clause 5.6, it may give rise to uncertainty and potential risks for the exempted interconnector. Indeed, the connection agreement, which must be entered into prior to the operating agreement for the testing period, also relates to the tests that must be performed by the exempted interconnector. We note the addition made by RTE in clause 3 stating that the provisions in respect of the testing programme apply without prejudice to the provisions of the connection agreement, but we believe this is not sufficient. This principle should be applied to the entire agreement (and not only to clause 3) and we therefore request RTE to specify in clause 5.6 that the provisions of the operating agreement for the testing period apply without prejudice to the provisions of the connection agreement.

7. Tripartite operating protocol for the testing period

7.1 We note that the operating agreement makes reference several times to the tripartite operating protocol applicable during the testing period ("*Accord d'Exploitation Tripartite*"). We are concerned with the fact that this tripartite operating protocol has not been finalised and entered into by the parties and as of the date of this consultation response, ElecLink is still awaiting comments from RTE. This situation leaves room for uncertainty and potential issues if the two agreements are not fully aligned. We urge RTE to provide all comments it may have in order to finalise the agreement as soon as possible and would like to reiterate that this tripartite operating agreement is not applicable for the entire duration of the testing period but only from the date of the first transfer of electricity between France and Great Britain.

8. General comments

8.1 The operating agreement for the testing period refers to OSMS as a means of communication between RTE and the exempted interconnector. We would like to emphasize on the fact that it has been agreed by RTE, ElecLink and NGESO that OSMS will not be used during the entire duration of the testing period but only following successful trilateral testing.

8.2 The definition of "*Client*" has been added whereby the "*Client*" is the legal person having obtained an exemption under Article 17 of Regulation (EC) No 714/2009 and the certification as a transmission system operator. As mentioned in point 8 above regarding the CART for the testing period, we request RTE to amend this definition and remove any reference to certification. We also note the inconsistency between this definition and the definition of exempted interconnector "*Nouvelle Interconnexion Dérogatoire*" as the latter makes only reference to the exemption but both definitions refer to the same person.

8.3 We note a few discrepancies in respect of the references and request RTE to correct term. For example, the references to clause 5.4.3 in clause 4.4.2, clause 4.5 in clause 4.4.3 and paragraphs 5.1 and 5.3 in annex 4 are incorrect. In addition, some defined terms are not correctly used throughout the agreement such as, but not limited, to "*CART*", "*Centre de Conduite*", "*Convention*", "*Séparation*", "*Travaux*" and some capitalised terms are not

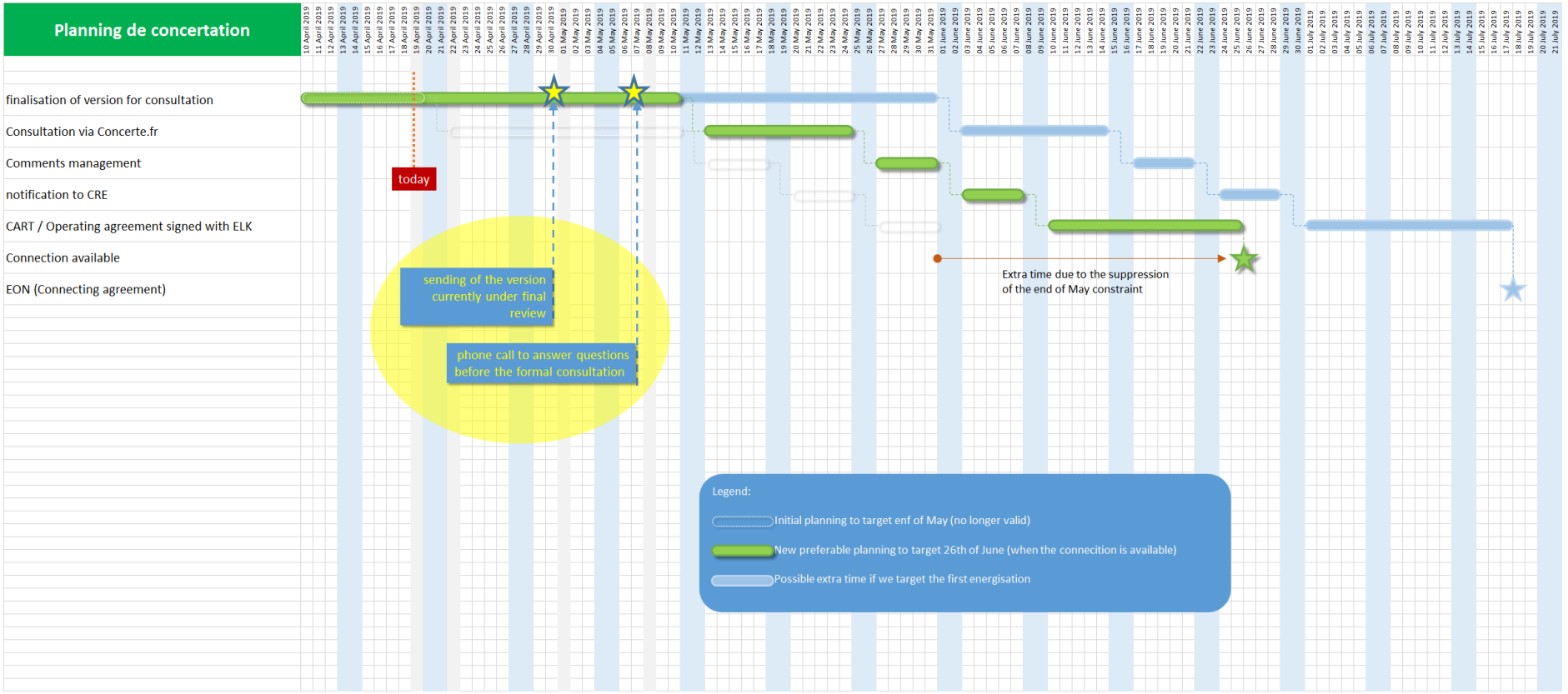
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defined like "*Retrait De la Conduite des Réseaux*", "*Heure Limite d'Accès au Réseau*", "*Système d'Alerte et de Sauvegarde*", "*Renvoi Manuel de Tension*", "*Documentation Technique de Référence*", etc.

8.4 Timings are mentioned in the agreement but it is not specified whether these timings refer to CET/CEST time. We request RTE to clarify the relevant provisions.

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Appendix 1 – CART NID consultation timetable announced by RTE on 23 April 2019



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