STRICTLY PRIVATE AND CONFIDENTIAL

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

5 August 2021

Dear Sir/Madam,

RE: ElecLink Limited's response to the public consultation entitled "NID / Consultation CART définitif et Convention d'exploitation définitive"

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 Please treat our response as strictly private and confidential, not for publication.

Enduring network access agreement (CART définitif)

The enduring network access agreement 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 clear visibility over such contractual rights and obligations and should not be expected to accept being exposed to an unprecedented level of uncertainty and risk (which, we believe, is currently the case). Although RTE has taken into account some of ElecLink's comments on the enduring network access agreement as part of the discussions held in this respect, ElecLink notes that the lack of balance between the rights and obligations of the parties makes the agreement not fit for purpose. It appears that, in general, the provisions of the agreement are in favour of RTE and have or may have a significant detrimental impact on the revenues of the interconnector through no fault of its own. Amendments to this agreement are therefore required and described in further detail below.

1. Planned outages and associated compensation

1.1 ElecLink is concerned with clause 5.1 in relation to outages planned by RTE. ElecLink agrees that RTE needs to plan outages for the maintenance, replacement, development and repair of grid installations. However, the compensation principles associated with such outages are inappropriate and create an unfair situation for exempted interconnectors. Clause 5.1.3 sets outs the compensation principles and specifies that capacity that has not been allocated will not be compensated by RTE. It means that RTE can reduce the capacity of interconnectors following capacity calculations without bearing any risk or consequence[1]. RTE is not financially incentivised to find another solution (e.g. by using costly remedial actions instead of reducing interconnector capacity) and exempted interconnectors will have to assume, on their own, all the financial consequences although

[1] Except in the situation where RTE has carried out a previous capacity calculation and then must reduce such capacity following another capacity calculation if this capacity has already been allocated by the interconnector.

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they could be available during these outage periods. In our view, RTE is proposing to implement a free mechanism to reduce interconnector capacity, which is wholly inappropriate, especially as this will apply for a lengthy period of 8 weeks per year in accordance with clause 8 of the specific conditions. In Great Britain ("GB"), this is a topic that is currently being discussed and NGESO has already stated that non-allocated capacity will be compensated. We believe that RTE must develop and implement a mechanism allowing compensation of non-allocated capacity for interconnectors as this will prevent a situation that is excessively imbalanced and discriminatory.

1.2 As part of the compensation principles described in clause 5.1.3, RTE has proposed to include a cap regarding the compensation payable to interconnectors. The cap referred to in this clause is the cap specified in Commission Regulation (EU) 2016/1719 and the associated harmonised allocation rules. However, they no longer apply to interconnectors located on the FR-GB border following the withdrawal of the United Kingdom from the European Union. As such, it would be unfair for FR-GB interconnectors to limit such compensation on this basis as they may not be able to get compensated up to the amount paid to market parties. Interconnectors must remain financially neutral (i.e. no loss / no gain) and we consider that the specific situation of FR-GB interconnectors must be included in this clause. We think that a reference to the cap in the Access Rules of the interconnector is appropriate given that the interconnector will have to compensate market parties in accordance with such rules which have been approved by the relevant national regulatory authorities. We believe that this principle would not create discrimination between FR-GB interconnectors as firmness provisions (including the cap) in the Access Rules are aligned for all interconnectors on the border. For the avoidance of doubt, the cap should exclusively apply to any compensation paid by the interconnector to market parties but should not, however, take into account any compensation of non-allocated capacity[2].

1.3 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 5.1.1. 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 by RTE if damages occur on this basis.

1.4 Lastly, clause 5.1 does not cover the situation whereby a capacity calculation methodology is not in place at the time of signature of the agreement. ElecLink requests clarification as this leaves room for uncertainty and is a risk for exempted interconnectors. We consider that, in such a case, RTE should only be allowed to plan outages for a duration of 5 days over 3 years in accordance with the terms of the connection agreement entered into

[2] We do not consider compensation of non-allocated capacity as a gain for the interconnector given that the interconnector will not be able to allocate such capacity and as a result, will not generate revenues during the outage periods of RTE although it could be operational.

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between RTE and ElecLink in September 2016. The detailed mechanism should be incorporated in the specific conditions of the enduring network access agreement.

2. Unplanned outages on RTE's grid

2.1 In the event of an unplanned outage on the grid, interconnector capacity may be curtailed upon request from RTE in accordance with clause 6.2.3.1. Although in agreement with such a principle, ElecLink would like to highlight that curtailment must be carried out in accordance with the relevant Access Rules. Therefore, RTE cannot oblige the interconnector to curtail capacity if this is not in line with the Access Rules. We request this clarification to be added to the above-mentioned clause.

2.2 As explained in points 1(1) and 1(2) above, ElecLink disagrees with the compensation principles set out in clause 6.2.3.1 (i.e. non-allocated capacity should also be compensated and the applicable cap should be the one referred to in the Access Rules) and requests an amendment.

2.3 Any unplanned outage on RTE's grid will be included in the following capacity calculation(s) as detailed in clause 6.2.3.1. It means that an unplanned outage will then be considered as a planned outage and RTE will be able to reduce interconnector capacity on this basis. We believe it is unfair for exempted interconnectors to bear the financial consequences resulting from an unplanned outage of RTE and request an amendment to this clause. As proposed above, the interconnector should be compensated by RTE for the capacity which has not been allocated.

2.4 Clause 6.2.3.2 sets out the compensation principles applicable in the event there is an unplanned outage on RTE's grid which was first considered as an unplanned outage on the evacuation network. 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. 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 may also incur costs in the balance perimeter of the other country to which it is connected. We strongly disagree with such a 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 given that 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 remain financially neutral (i.e. no loss / no gain) which, we believe, is the only appropriate approach. We also would like to stress that in the deliberation of the Commission de régulation de l'énergie ("CRE") regarding the network access agreement applicable to exempted interconnectors during the testing phase[3], a study was requested by CRE to RTE on the relevance and methods to take into account imbalances in France and GB and RTE had the obligation to provide the results of this

[3] Please see CRE's deliberation at the following link: https://www.cre.fr/Documents/Deliberations/Approbation/Modele-de-contrat-d-acces-au-reseau-public-de-transport-d-electricite-en-periode-d-essais-pour-les-nouvelles-interconnexions-derogatoires

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study before the submission of the enduring network access agreement for approval. We note that such a study has not even been performed, which is an unacceptable behaviour from RTE.

3. Liability

3.1 In accordance with clause 7, RTE and the exempted interconnector are not liable for any indirect damages resulting from specific commitments made towards third parties (penalty clause, fixed penalty, 'take or pay' clause, etc.) except in cases strictly provided for in the agreement ("*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 detail leaves room for uncertainty and potential conflict of interest. On one hand, we request clarification as to the situation in which ElecLink has to pay financial penalties as part of the French Capacity Market due to an outage of RTE. ElecLink should be reimbursed by RTE in the event ElecLink is not available at times of system stress due to such an outage of RTE as there would be no fault of ElecLink and RTE is not considered as a third party. Liability should lie with RTE and the agreement should be clarified in this respect to provide certainty to exempted interconnectors and avoid any potential situation of conflict of interest. On the other hand, we request an amendment to this clause to take into consideration the particular situation of the GB Capacity Market. Like in France, ElecLink will have to pay financial penalties if it is not available at times of system stress and does not import electricity in GB. Any penalty paid by ElecLink to NGESO (a third party under this clause) as part of the GB Capacity Market due to an outage of RTE should be reimbursed by RTE as ElecLink should not bear the consequences resulting from an outage on RTE's grid. Exempted interconnectors should not be expected to accept being exposed to such level of risk.

4. Force Majeure

4.1 We agree with the principle of Force Majeure incorporated in clause 7.5 but are not in agreement with the provision stating that in case of an event of Force Majeure lasting more than six months, each party can terminate the contract. By way of example, a fire in the Channel Tunnel caused by a third party is likely to suspend operations for more than six months. In such a case, it would be unfair if RTE could terminate the contract as it means that the entire project would cease. This situation presents a significant risk that cannot be accepted by exempted interconnectors which take all the risks associated with such projects (including the financial risks). We believe that the principle of good faith in the execution of contracts under French law is not sufficient to mitigate the risks and as such, we request an amendment to this clause.

5. Anti-corruption laws

5.1 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 codes. We strongly believe that this

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clause should be reciprocal to ensure RTE will also be subject to the same requirements. We therefore request this clause to be amended accordingly.

6. Suspension of access to the grid or refusal to access the grid

6.1 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 a 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. We request this clause to be amended accordingly.

7. Contract term

7.1 The agreement will come into effect on the date specified in the specific conditions which must be the first day of the month. ElecLink requests additional information on the reason(s) why this date must be the first day of the month. Exempted interconnectors should not be expected to wait a few days or weeks to start operations if all the conditions attached to the definitive grid access are satisfied in accordance with the terms of the network access agreement applicable during the testing phase.

8. Specific conditions

8.1 Clause 8.1 of the specific conditions provides for a period of 8 weeks during which RTE can reduce the capacity of the interconnector in accordance with the (unilateral) interim long-term capacity calculation methodology which is currently consulted on ("LT CC Interim Solution") without having to compensate at all the interconnector. This period of 8 weeks does not include any outage carried out by the interconnector. We request further detail on how the 8-week period has been calculated and strongly disagree with such a principle as it is completely disproportionate and inadequate, particularly compared to the mechanism in place in the connection agreement entered into between RTE and ElecLink (i.e. RTE can plan outages during 5 days over 3 years until a coordinated capacity calculation methodology is developed and implemented) which, we believe, should apply instead of the LT CC Interim Solution. It is an increase of 3360% which is wholly inappropriate. We believe that the inclusion of such a long period of potential unavailability hinders the achievement of several objectives of the EU-UK Trade and Cooperation Agreement, namely the objective of promoting effective long-term cross-border trade with long-term cross-border hedging opportunities for market participants and the objective of optimising the calculation and allocation of long-term cross-border capacity. In addition, the revenues of the interconnector may be significantly reduced through no fault of its own. ElecLink considers that this situation is unfair and creates a significant imbalance between the rights and obligations of the parties. Exempted interconnectors should not be exposed to such high level of uncertainty and risk and we demand an amendment in this respect.

8.2 Clause 8.2 of the specific conditions sets out the compensation methods and formulas related to the LT CC Interim Solution. Exempted interconnectors will be compensated based on the average prices of the annual auctions held by all the FR-GB interconnectors over the past 3 years. This compensation principle is not in line with clause 5.3.1 of the

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general conditions stating that exempted interconnectors should be compensated for the amount of compensation paid to market parties. Also, we strongly disagree with the principle whereby the auction prices of the other interconnectors on the border should be taken into account as each interconnector is an independent entity which decides the auction timing and the amount of capacity to be allocated during each auction based on its own auction strategy; this seems completely irrelevant and inappropriate. Exempted interconnectors should remain financially neutral and cannot accept a compensation which is lower than the amount they have to pay to market parties. This is, once again, an unfair situation for exempted interconnectors and demonstrates the lack of balance between the rights and obligations of the parties. We request an amendment to this clause and believe the principle of clause 5.3.1 should apply.

8.3 The terms of clause 8.1 may be amended in accordance with clause 8.4 of the specific conditions. However, it is not clear whether the amendment must be approved by CRE as clause 8.4 only refers to the consultation process under clause 9.1.1 of the general conditions. In our view, clause 9.1.1 imposes a consultation process and an approval from CRE. We request clause 8.4 to be clarified and believe that any amendment to clause 8.1 must be approved by CRE.

9. General comments

9.1 ElecLink expects RTE to correct discrepancies in respect of the references. For example, clause 5.4.1 refers to clauses 6.1 and 7.3 of the specific conditions which do not exist; reference to Annex 4 of the specific conditions in clause 6.2.1 is incorrect; reference to clause 8.2 of the specific conditions in clause 6.3.1 is incorrect; there are no footnotes 4 and 5; etc.

9.2 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. We understand that the enduring network access agreement will be published in the current reference technical documentation and any new version of such an agreement that has been approved by CRE will apply to ElecLink. However, the version of the documentation which is applicable to the exempted interconnector in the connection agreement is the version that is in force at the date RTE sends the technical and financial proposition. Therefore, we consider that the enduring network access agreement cannot impose stricter or new requirements regarding the scope of the connection agreement and this should be clarified in the enduring network access agreement to ensure certainty for interconnectors.

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Enduring operating agreement (Convention d'exploitation définitive)

We would like to highlight that the discussions held with RTE in this respect were fruitful and that most of the comments made by the exempted interconnectors were duly considered and taken into account.

However, it appears that a significant part of the agreement has been removed in the consultation version (e.g. Chapter 5, Chapter 6 and part of Chapter 7). We do not understand the reason(s) why this is the case and request a detailed explanation in this respect. We consider that the enduring operating agreement is no longer fit for purpose, particularly due to the lack of provisions on the operation of the interconnector in the event of an incident, liability, contract term, termination and/or suspension of the agreement, amendments and dispute resolution (amongst others). The current version of the agreement creates a high level of uncertainty and risk for exempted interconnectors, which is not appropriate. We therefore request the agreement to be amended accordingly and consulted on again. In addition, we request further amendments which are detailed below.

1. Preamble

   1.1 The preamble states that the enduring operating agreement constitutes the contractual framework between the parties with respect to the operation of the interconnector, notwithstanding any contrary provision in agreements that may have been or may be entered into, including the tripartite operating protocol. Both agreements will be legally binding on RTE and ElecLink so each party will have to comply with their terms. As such, we consider that this provision should be amended as there should be no hierarchy between them. This could create a risk for the exempted interconnector given that in the event of a conflict between the two agreements, the interconnector (not RTE) is likely to be in breach of contract. RTE and ElecLink should use their best endeavours to ensure both agreements are aligned and consistent. In addition, we believe that clause 1.2 of the operating agreement for the testing phase on hierarchy between the different agreements should be incorporated in the enduring operating agreement (i.e. the enduring network access agreement shall prevail over the operating agreement and the tripartite operating protocol in the event of a conflict). We request this clause to be added to ensure greater certainty and clarity for exempted interconnectors.

   1.2 The enduring operating agreement makes various references to the connection agreement entered into between the parties. The provisions of the enduring operating agreement should apply without prejudice to the provisions of the connection agreement. We would like the enduring operating agreement to clarify that in the event of a conflict between the enduring operating agreement and the connection agreement, the terms of the connection agreement shall prevail. Exempted interconnectors must be assured that the requirements of the connection agreement will not be amended by the enduring operating agreement. Please see point 2.1 below which provides an example in this respect.

2. Modification of performance regarding protection system

   2.1 Performance levels are defined in the connection agreement but clause 4.6 of the enduring operating agreement provides RTE with the possibility to request a modification of these performances in the event there is a modification of the grid configuration or operation. The interconnector must agree with the modification or be consulted. Such wording leaves room for uncertainty as it is not clear whether agreement by the interconnector will be required in all cases. We request clarification and believe that RTE cannot

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unilaterally modify the performance levels set out in the connection agreement without approval from the interconnector.

2.2 The wording of the second last paragraph of clause 4.6 is not clear and comprehensible. It seems that two different paragraphs have been combined into one. In addition, RTE has added a last paragraph in which it is stated that disputes must be submitted to the jurisdiction of the Paris commercial court. We do not understand why this has been included and the type of dispute that may occur in this respect. We request further clarification on both points.

We are happy to engage with RTE in order to clarify or elaborate on any of the points raised as may be required. If you have any queries regarding this response, please contact the ElecLink Regulation Team – regulation@eleclink.co.uk.

Yours sincerely,



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