

Conclusions report on the responses received on the consultation of the modifications to BBLC's General Terms & Conditions

7 October 2015

Introduction

BBLC is proposing to amend its Access Rules, (General Terms and Conditions), to ensure the Company meets the Standard Conditions of its Interconnector Licence. The proposed changes apply to all non-exempt capacity and relate to the introduction of multiple European Network Codes and related regulations: the Network Code on Capacity Allocation Mechanisms, the Congestion Management Procedures, the Network Code on Gas Balancing of Transmission Networks and the Network Code on Interoperability and Data Exchange Rules.

Licence Condition 11 requires that prior to submitting the proposed modifications to the Authority for approval the licensee shall take all reasonable steps to ensure that all persons, including those in other Member States, who may have a direct interest in the Access Rules are consulted on the proposed modifications and allow them a period of not less than 28 days within which to make written representations, furnish to the Authority a report setting out the terms originally proposed for the modifications, the representations, if any, made by interested persons, any changes in the terms of the modification intended as a consequence of such representations, how the intended modifications better achieve the relevant access rules objectives, and a timetable for the implementation of the modification and the date from which the modification is to take effect.

BBLC consulted its Access Rules from 2 September 2015 until 1 October 2015 with a proposed implementation date of 1 November 2015. The proposed modifications were published on BBLC's website. Stakeholders were invited to comment on the modifications and, in addition, active shippers received an email with the invitation to do so. Two responses, of which one was confidential, were received. The italicized text below are the responses received from the respondents. All comments have been included in full. BBLC has not edited the text in any way. The name of the respondent whose response is confidential is not included.

Response from Econgas:

Econgas

- *Article 3.1.d)
In our view the definition set out in Article 3.1 d), also in respect of Article 13 (termination) is not precise enough.*

Response BBLC

In article 1.58 "Reasonable and Prudent" is defined and article 3.1 d) states that BBL Shipper should behave as a Reasonable and Prudent BBL-Shipper. For determining whether this is the case or not such behaviour is linked to an objectified standard, being the degree of diligence, skill, prudence and foresight as reasonably and ordinarily exercised by parties engaged in the same line of business under the same or similar circumstances and conditions and in accordance with good practice. Furthermore BBL Company could not trigger article 3.1 d) out of the blue for no reason and without any warning, notice or upfront communication with BBL Shipper.

Changes to the GT&C in response of this view

None

- *Article 11.1*

Commodity charge is variable and related to the costs of electricity for gas compression and heating:

- *This definition is very undefined and shippers are not able to control any charge adjustment. The commodity charge should be incorporated in the transmission tariff or at least transparent to the shippers when auctioning capacity on the Prisma platform.*

Response BBLC

Article 11.1 states that "Each year before the first of January of a calendar year BBL Company will determine and publish on its Web Site the commodity charge applicable to transmission service agreements in such calendar year". The commodity charge is fixed during the whole calendar year. Thus the commodity charge is transparent and known to BBL-Shippers before they decide to book capacity on the Prisma platform.

Changes to the GT&C in response of this view

None

- *Article 11.3*
The time limits, whenever indices or components of the indices are not published any more, are very long.

Response BBLC

Article 11.3 states that "Whenever any of the indices or components of the indices have not been published and are unlikely to be published for a period of twelve (12) months or any shorter period to be agreed between the Parties....." and enables Parties to deviate from this 12 months period. Furthermore the indexation itself only takes place once a year. Therefore non-publication during a period of several months, but less than 12 months, does not necessarily mean that Parties need to find an immediate solution. In addition non publication of indices over a period longer than 12 months has never occurred, and is unlikely to occur in the future which indicates that a change in this article is not required.

Changes to the GT&C in response of this view

None

- *Article 12.5*
If there is in the reasonable opinion of BBL a deterioration, "Reasonable opinion" is not acceptable. This must be stated more precisely and must depend on objective criteria.

Response BBLC

Article 12.5 states that "Notwithstanding the credit control protocol, if in the reasonable opinion of BBL Company, a material deterioration in the financial resources.....including but not limited to a downgrading of the public credit rating by Moody's and/or Standard & Poor's,". This means that objective criteria are taken into account.

Changes to the GT&C in response of this view

None

- *Article 13.3:*

"Reasonable period" shall be defined more precisely.

Response BBLC

Reasonable period in respect of Article 13.3 originates from a provision in Dutch law with regard to giving notice of default and therefore mentioned as such in this article. Since the interpretation of 'a reasonable period' depends on the circumstances of each case an absolute term is not given here.

Changes to the GT&C in response of this view

None

- *Article 16*
Article 16.3 article 3:42 of the Dutch Civil code is unknown to shippers which is why we request that the article to be mentioned word by word.

Response BBLC

For convenience purposes only we translated this article but we prefer not to include it in the agreement. Many more articles of the Dutch law, which are not explicitly mentioned in the agreement are applicable to it, but we do not think it is necessary to include them all. This is the consequence of the choice of law. Furthermore the reference to article 3: 42 Dutch Civil Code is for clarity reasons only. The article would still apply even if this reference were removed.

Article 42.

In the event that the scope of a void legal act conforms to another valid legal act to such an extent that it should be assumed that the other legal act would have been carried out, if the former had been renounced because of its invalidity, the operation of that other act will be accorded to it, unless this would be unreasonable with respect to the interested party who did not act as a party in that legal act.

Changes to the GT&C in response of this view

None

- *Article 18*
Article 18.2 International Arbitration Rules shall be applicable

Response BBLC

BBL Company believes that "Dutch Arbitration Institute" is a well known and professional institute that fulfils its tasks adequately under a contract under Dutch law: this also applies if foreign parties are involved. The procedure itself is in the English language.

Changes to the GT&C in response of this view

None

- *In addition to the GT&Cs, we would also like to stress that shippers require a clear ruling on the implementation of CMP measures. In particular the surrender mechanism needs to be defined in such a way that the unsold part of surrendered capacity will fall back to the surrendering shipper after the respective auction has been concluded. As an example if the surrender for gas yearly capacity has not been remarketed in the respective long term auction, it MUST NOT be automatically rolled over to shorter term auctions such as month-ahead or day-ahead. This agreement has been concluded on an EFET/ENTSO level this*

summer, with the majority of involved parties agreeing that a different handling of surrenders (“indefinite remarketing”) clearly disincentives shippers to surrender long term capacity.

Response BBLC

BBL Company agrees with this conclusion.

Changes to the GT&C in response of this view

In Exhibit G the following sentence is added to the paragraph on surrender of capacity:

“Any unsold part of surrendered capacity for a yearly, quarterly, monthly or daily auction will roll back to Shipper after conclusion of the respective auction.”

Confidential response

- *Slight rewording proposed to the definition of ‘Interconnection Point’ – maybe specifically including a reference to the BBL pipeline connecting with the NTS at Bacton & GTS at Julianadorp?*

Response BBLC

A further clarification of the definition of “Interconnection Point” which is linked to Bacton as well as to Julianadorp is given in article 1.23 and 1.19 respectively.

Changes to the GT&C in response of this view

None

- *Slight rewording proposed to the ‘PRISMA’ definition ‘means the internet based PRISMA Capacity platform at www.prisma-capacity.eu operated at the date of this agreement by PRISMA European Capacity Platform GmbH on which secondary entry and exit gas capacities can be traded’.*

Response BBLC

BBLC agrees with this comment. The definition of PRISMA will be adjusted as follows: “shall mean the internet based PRISMA Capacity platform at www.prisma-capacity.eu operated by PRISMA European Capacity Platform GmbH on which primary entry and exit capacities of the European transmission system operators (TSO’s) are marketed and secondary entry and exit capacities can be traded”.

Changes to the GT&C in response of this view

As stated in above mentioned response.

- *Clause 4 – there is no reference to assignment of rights and responsibilities. Requires inclusion.*

Response BBLC

Article 14 states the possibility of assignment and does not exclude any rights or responsibilities. BBL Company believes that a further reference to this article would not add any value to the content of article 14 as such. Article 14 is applicable to the entire agreement, including article 4.

Changes to the GT&C in response of this view

None

- *Article 11 has removed the detail of the allocation of the commodity charges, nor does the allocation detail feature in the Charging Methodology. We are of the opinion that such apportionment needs to be clearly set out in the GTC.*

Response BBLC

Article 11 will be adjusted such that it clearly states that the commodity charge will be allocated on a usage basis, meaning that the commodity charge will be invoiced based on BBL Shipper's allocations (i.e. pay as used).

Changes to the GT&C in response of this view

In article 11 the following sentence will be added:

"This commodity charge will be invoiced after the month based on allocations (pay as used)".

- *T1 & T2 charges have been removed yet these are applicable to long term contract commitments. Why have they been removed?*

Response BBLC

The T1 and T2 charges are removed from this GT&C because they are not applicable to CAM capacity bookings. Existing capacity bookings pre CAM will remain under the T1&T2 regime as specified in the applicable GT&C for those bookings.

Changes to the GT&C in response of this view

None

- *Clause 12.7 for transparency purposes BBL should provide a statement of electricity costs.*

Response BBLC

With reference to BBL Company's reaction as stated in (5) above such statement of electricity costs is deemed to be not applicable.

Changes to the GT&C in response of this view

None

- *LTUIOLI processes should be referenced.*

Response BBLC

BBL Company has decided to describe the LTUIOLI process separately in Exhibit G to the GT&C which together with the other exhibits is part of the GT&C.

Changes to the GT&C in response of this view

None

- *Surrender of capacity should be referenced.*

Response BBLC

BBL Company has decided to describe the surrender of capacity process separately in Exhibit G to the GT&C which together with the other exhibits is part of the GT&C.

Changes to the GT&C in response of this view

None

Conclusion

BBLC welcomes the input received from the respondents. Econgass suggested that surrendered capacity that is not successfully reallocated must not be automatically rolled over to shorter term auctions. BBLC agrees with this comment and has amended the GT&C accordingly. In the GT&C this is now made clear. Also the confidential response has led to proposed changes to the GT&C to further clarify the definition of Prisma and to clarify the application of the commodity charge.

BBLC has considered all the comments made by the companies that responded to the consultation and BBLC's considered replies are given in this report. Apart from the revisions mentioned BBLC does not propose to amend the original GT&C proposal any further for the reasons given above.