



DELIBERATION NO. 2019-226

Deliberation of the Commission de régulation de l'énergie (French Energy Regulatory Commission) dated 17 October 2019 approving the change to the ElecLink interconnection access rules in the event of Great Britain remaining or leaving the single day-ahead market coupling

Present: Jean-François Carencu, President, Christine Chauvet, Catherine Edwige, Ivan Faucheux and Jean-Laurent Lastelle, Commissioners.

1. CONTEXT, LEGAL FRAMEWORK AND REFERRAL TO CRE

1.1 Reminder of the context

1.1.1 ElecLink interconnection's regulatory framework

In a decision dated 28 August 2014¹, the Commission de régulation de l'énergie (hereinafter "CRE") granted, jointly with the British regulatory authority, the Office of Gas and Electricity Markets (hereinafter "Ofgem"), a derogation to ElecLink Limited for the construction and operation of a new electricity interconnection between France and Great Britain (hereinafter "GB"). This interconnection, consisting of a DC cable with a capacity of 1,000MW installed in the Channel Tunnel, is under construction with commissioning currently planned by the first half of 2020.

In the derogation decision referred to above, CRE and Ofgem exempted ElecLink from the application of the provisions of Article 32 of Directive 2009/72/EC², relating to third-party access to networks, only for the multi-year capacity allocation through an "Open Season" procedure. However, no derogation was granted to paragraphs 6 and 10 of Article 37 of this Directive, under which the regulatory authorities are competent to establish or approve the cross-border infrastructure access rules, including capacity allocation and congestion management procedures.

In a decision dated 7 April 2016³, CRE approved a first version of the ElecLink interconnection access rules, consisting, on the one hand, of the rules relating to the "Open Season" procedure and, on the other hand, the rules for allocating unexempted capacities⁴. In this decision, CRE also requested that ElecLink submit for approval access rules taking into account the latest changes to the Interconnexion France-Angleterre (hereinafter "IFA") access rules, no later than three months before the sale of the first unexempted products.

ElecLink Limited has therefore adapted its ElecLink interconnection access rules in order to take into account the changes implemented in the IFA access rules⁵. The proposal to change the existing ElecLink interconnection access rules, which states that the explicit auctions for ElecLink interconnection capacity will be carried out on the Joint

¹ Deliberation of the Commission de régulation de l'énergie dated 28 August 2014 concerning the final decision on the dispensation of the company ElecLink Ltd pursuant to Article 17 of Regulation (EC) No. 714/2009 of 13 July 2009 concerning an interconnection between France and GB: <https://www.cre.fr/Documents/Deliberations/Decision/interconnexion-france-GB2>

² Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 on the common rules for the internal electricity market and repealing Directive 2003/54/EC. Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on the common rules for the internal electricity market repealed Directive 2009/72/EC but this approval will only take effect on 1 January 2021.

³ Deliberation of the Commission de régulation de l'énergie dated 7 April 2016 approving the ElecLink interconnection access rules: <https://www.cre.fr/Documents/Deliberations/Approbation/elecLink-regles-d-acces-a-l-interconnexion>

⁴ Unexempted capacities correspond to capacities sold for time frames less than or equal to one year.

⁵ The adjustment of the ElecLink interconnection access rules took into account the changes to the IFA access rules that were the subject of a public consultation by RTE and NGIC between 23 April 2018 and 21 May 2018. The IFA access rules have since been changed slightly and approved by CRE on 17 October 2019, without these changes being likely to call into question the general economics of the access rules submitted by ElecLink.

Allocation Office allocation platform (hereinafter “JAO”), was the subject of a public consultation organised between 1 April 2019 and 1 May 2019.

In parallel, ElecLink drafted a proposal for ElecLink interconnection access rules to take into account the possible withdrawal of the United Kingdom (hereinafter “UK”) from the European Union (hereinafter “EU”) under the conditions detailed below.

1.1.2 Implications of the proposed withdrawal of the United Kingdom from the European Union on access to interconnections between France and Great Britain

On 29 March 2017, the UK notified the European Council of its intention to withdraw from the EU pursuant to Article 50 of the EU Treaty. This withdrawal, which should have taken place on 29 March 2019 in application of the provisions of said Article, was the subject of several extensions. On the date of this deliberation, the UK’s withdrawal from the EU must take place on 31 October 2019 (at 24:00 Central European Standard Time).

If no withdrawal agreement comes into force on 31 October 2019 and in the absence of a new deadline extension, the European legislation would no longer apply to the UK after that date. In particular, the Commission regulations (EU) 2015/1222 of 24 July 2015 establishing guidelines on capacity allocation and congestion management⁶ (hereinafter “CMACM regulation”) and (EU) 2016/1719 of 26 September 2016 establishing guidelines on the allocation of future capacity⁷ (hereinafter “FCA regulation”) would no longer apply to the UK and to electrical interconnections linking France to the UK.

To prepare for this scenario, ElecLink has drafted a version of the interconnection access rules based on the national law applicable in France and that applicable in the UK. This version ensures that allocation mechanisms may, under conditions, be implemented including in the event of GB leaving the single day-ahead market coupling that would result from the UK leaving the EU without a deal⁸. This ElecLink interconnection access rules proposal (hereinafter “rules in the event of GB’s decoupling”) was the subject of a public consultation held between 16 August 2019 and 13 September 2019.

A similar approach was implemented in early 2019 by RTE and NGIC, the transmission system operators (hereinafter “TSOs”) operating IFA. After coordination with Ofgem for the analysis and evaluation of the proposal for IFA access rules in the event of GB leaving the single day-ahead market coupling, CRE approved these rules in a decision dated 14 March 2019⁹.

1.2 Competence and referral to CRE

Article 63(4) of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal electricity market and paragraphs 6 and 10 of Article 37 of Directive 2009/72/CE state that the regulatory authorities are competent to establish or approve the cross-border infrastructure access rules, including capacity allocation and congestion management procedures.

In accordance with the provisions of Article L. 134-1 of the [French] Energy Code, CRE is competent to specify the rules concerning the access and use conditions for networks and the access and connection conditions for the public networks of the new interconnections referred to in Article 17 of Regulation (EC) No. 714/2009 of the European Parliament and of the Council of 13 July 2009 on the access conditions for the cross-border electricity exchanges network¹⁰.

In its deliberation dated 7 April 2016, CRE requested that ElecLink submit, for approval, no later than three months before the sale of the first unexempted products, tElecLink interconnection access rulestaking into account the latest changes in the IFA rules.

ElecLink Limited submitted two sets of access rules to CRE for approval:

⁶ Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing guidelines on capacity allocation and congestion management: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015R1222&from=FR>

⁷ Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing guidelines on future capacity allocation: : <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R1719&from=EN>

⁸ If Article 50 of the European Union Treaty has been implemented by the United Kingdom, decoupling at the French border would only concern Great Britain.

⁹ Deliberation of the Commission de régulation de l’énergie dated 14 March 2019 approving RTE’s proposal on the France-England Interconnection access rules in the event of Great Britain leaving the single day-ahead market coupling: <https://www.cre.fr/Documents/Deliberations/Approbation/Approbation-des-regles-IFA-en-cas-de-sortie-de-la-GB-du-couplage-journalier-europeen>. An update of these rules and the current IFA rules, that primarily reflects the transfer of explicit auctions in different time frames to the JAO allocation platform, was approved by CRE on 17 October 2019.

¹⁰ Now Article 63 of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal electricity market.

- on the one hand, the “ElecLink access rules version 2.0” (access rules in the event of GB remaining in the single day-ahead market coupling), received by post on 4 June 2019; and
- on the other hand, the “ElecLink access rules applicable in the event that the United Kingdom is not part of the European internal energy market”, received by post on 24 September 2019.

The examination of these two sets of access rules, which address the allocation and nomination of cross-border capacities on the ElecLink interconnection for various time frames, is the subject of this decision.

2. DESCRIPTION AND ANALYSIS OF THE ELECLINK ACCESS RULES PROPOSALS

This section first examines the proposal for changes to the ElecLink interconnection access rules in the event that GB remains in the single day-ahead market coupling (2.1) and, secondly, the proposed ElecLink interconnection access rules in the event that the UK leaves the EU and, consequently, GB’s decoupling (2.2).

2.1 Proposal for a change to the ElecLink access rules in the event that GB remains in the single day-ahead market coupling

2.1.1 Description of the proposed changes

Compared with the ElecLink interconnection access rules approved by CRE on 7 April 2016, the main changes proposed in the ElecLink access rules in the event that GB remains in the single day-ahead market coupling correspond to the reorganisation of the general structure of the rules, the alignment of the content of the rules with the European CACM and FCA regulations and with the content of the IFA access rules, as well as a change to the intraday auction times.

Structure of the ElecLink Interconnection access rules

The first version of the ElecLink interconnection access rules generically described the rules for the allocation and nomination of capacity for all time frames (very long-term, long-term, day-ahead and intraday). The general provisions relating to participation and the financial conditions did not change for the different time frames.

The change proposal distinguishes the rules relating to the “Open Season” procedure (very long-term allocation) from the rules for explicit allocation and nomination of capacity in the day-ahead time frame, in the event of explicit fallback auctions, and in the intraday time frame. Each rule is now the subject of a dedicated section which describes the applicable general provisions.

The explicit allocation and nomination of the ElecLink interconnection capacities for long-term time frames, i.e. annual and monthly, will be governed by the provisions of the FCA regulation, if it is to be applied to the UK on the ElecLink commissioning date. The implicit allocation of the ElecLink interconnection capacities for a day-ahead time frame will be governed by the provisions of the CACM regulation, if applicable to the UK on the ElecLink commissioning date.

Alignment with CACM and FCA regulations and IFA access rules

ElecLink has adapted its access rules to comply with the provisions and definitions of the methodologies for allocating and nominating interconnection capacities under the CACM and FCA regulations. In particular, the provisions on the use of the capacities introduced by the harmonised rules on long-term transmission rights¹¹ have been introduced into the rules on the “Open Season” procedure.

In addition, ElecLink aligned the content and structure of its access rules with those of the IFA access rules. Thus, the allocation model for the intraday time frame corresponds to explicit auctions followed by capacity nomination gates¹².

Changes to the intraday auction times and nomination gates

To provide for the explicit allocation of its capacities for the intraday time frame on the JAO allocation platform, ElecLink has adapted the intraday auction timings so that they take place during JAO’s opening times. In practice, the first intraday auction will take place at 3:40 p.m. on D-1 and the second intraday auction at 9:20 a.m. on D. The nomination gate timings have been adapted accordingly.

¹¹ Decision of the Agency for the Cooperation of Energy Regulators No. 03/2017 of the Electricity Transmission System Operators’ proposal for Harmonised Allocation Rules for Long-Term Transmission Rights: https://acer.europa.eu/Official_documents/Acts_of_the_Agency/Individual%20decisions/ACER%20Decision%2003-2017%20on%20HAR.pdf

¹² The CACM regulation establishes an implicit allocation as a target model on an ongoing basis for the allocation of capacity for the intraday time frame. However, this form of allocation has not, to date, been implemented on the border between France and GB.

2.1.2 Feedback from the public consultation

ElecLink organised a public consultation on the updating of its access rules applicable to GB remaining in the single day-ahead market coupling between 1 April 2019 and 1 May 2019. When referring the ElecLink interconnection access rules to CRE, a consultation report summarising the responses received and ElecLink’s position on the issues raised by the respondents was provided.

Two respondents participated in the afore-mentioned public consultation. The respondents estimated the timing of the first intraday auction to be too far from real time and the number of nomination gates to be insufficient. Due to the constraints of the JAO’s opening times and the changes that would be required in NGESO’s information systems in the event of a change to the number of nomination gates, ElecLink considered that its proposal represented the best compromise, given the situation. ElecLink, however, proposed re-assessing the design of the intraday auctions and nomination gates following commissioning of the interconnection.

2.1.3 CRE analysis

CRE carried out a detailed analysis and assessment of the proposal to develop the ElecLink interconnection access rules in the event of GB remaining in the single day-ahead market coupling, in coordination with Ofgem.

CRE considers that the developments proposed by ElecLink are aligned with the European regulatory framework, which will apply as long as the UK is part of the EU, and are consistent with the content and structure of the IFA access rules. They also allow better readability of the provisions applicable to the allocation and nomination of capacities for each time frame.

In addition, ElecLink’s responses to the issues raised by the public consultation respondents are considered satisfactory at this stage.

2.2 Proposal for ElecLink access rules in the event of Great Britain’s decoupling

2.2.1 Description of the proposed changes

The ElecLink interconnection access rules in the event of GB’s decoupling respect the general principles and economics of the IFA access rules in the event of GB’s decoupling approved by CRE on 14 March 2019, which, in particular, introduce an explicit allocation of capacities in the day-ahead auction.

In a similar way to the IFA access rules in the event of GB’s decoupling, ElecLink submitted a single set of rules covering all time frames (very long-term – specific to ElecLink, long-term, day-ahead and intraday). These rules contain several sections covering, on the one hand, the rules for intraday, day-ahead and long-term allocation time frames and, on the other hand, the rules relating to the so-called “*Open Season*” procedure, and, finally, the nomination rules.

Allocation rules for the different time frames

The content of the rules relating to the “*Open Season*” procedure has not been substantially changed compared to the ElecLink interconnection access rules in the event of GB remaining in the single day-ahead market coupling. The rules are now based on the national law applicable in France and on that applicable in the UK rather than on the European legislation.

For the long-term time frame, ElecLink adapts the provisions relating to the allocation of long-term transmission rights contained, in particular, in the harmonised allocation rules. ElecLink therefore proposes retaining an allocation of long-term capacity in the form of physical transmission rights subject to the “*Use-It-Or-Sell-It*” principle through explicit auctions on the JAO platform. However, the “*Sell-It*” regime and the firmness provisions in the event of a reduction in capacity are changing in order to take into account the effects of GB leaving the single day-ahead market coupling, in particular, the unavailability of a day-ahead reference price in GB¹³.

For short-term time frames, ElecLink plans to introduce an explicit allocation of the day-ahead capacity on ElecLink via auctions on the JAO platform. This will take place between 9:40 a.m. and 10:00 a.m. on D-1 with the possibility for day-ahead right holders to nominate between 12:05 p.m. and 2:00 p.m. on D-1.

¹³ Similarly to the IFA access rules in the event of a decoupling approved by CRE on 17 October 2019, the compensation in the event of a reduction in long-term capacity distinguishes the reduction situations before and after the day-ahead firmness limit time in the event of an explicit day-ahead auction.

In addition, ElecLink proposes using the same intraday capacity allocation mechanism as for the ElecLink interconnection access rules in the event of GB remaining in the single day-ahead market coupling¹⁴.

Nomination rules

The content of the nomination rules has not been changed compared to the ElecLink interconnection access rules in the event of GB remaining in the single day-ahead market coupling. The rules are now based on the national law applicable in France and on that applicable in the UK rather than on the European legislation.

2.2.2 Feedback from the public consultation

ElecLink organised a public consultation on the proposed ElecLink interconnection access rules in the event of GB's decoupling between 16 August 2019 and 13 September 2019. When referring the ElecLink interconnection access rules to CRE, a consultation report summarising the responses received and ElecLink's position on the issues raised by the respondents was provided.

One respondent participated in the afore-mentioned public consultation. Similarly to the responses to the public consultation on the ElecLink interconnection access rules in the event of GB remaining in the single day-ahead market coupling, the respondent estimated the first intraday auction timing to be too far from real time and the number of auctions and of intraday nomination gates to be insufficient. ElecLink proposed re-assessing the design of the auctions and intraday nomination gates following commissioning of the interconnection.

2.2.3 CRE analysis

CRE conducted a detailed analysis and assessment of the proposal to change the ElecLink interconnection access rules in the event of GB's decoupling.

The proposed ElecLink interconnection access rules in the event of GB's decoupling is based on the same principles as the IFA access rules in the event of GB's decoupling approved by CRE on 14 March 2019 and by Ofgem on 15 March 2019¹⁵. CRE shares ElecLink's proposed approach for long-term, day-ahead and intraday time frames, based, in particular, on the introduction of an explicit day-ahead auction.

In addition, the format of the ElecLink interconnection access rules in the event of GB's decoupling, which comprises the allocation and nomination rules for all time frames in a single document organised into dedicated sections, is considered sufficiently clear and accessible. ElecLink's responses to the issues raised by the respondent to the public consultation are considered satisfactory at this stage.

3. CRE'S CONCLUSIONS ON THE ELECLINK ACCESS RULES

3.1 CRE's agreement with the ElecLink access rules

CRE approves:

- the ElecLink interconnection access rules in the event that GB remains in the single day-ahead market coupling; and
- the ElecLink interconnection access rules in the event that GB leaves in the single day-ahead market coupling.

Once approved by CRE and Ofgem¹⁶, ElecLink will have to publish these two sets of rules on its website and ensure that they are effective in accordance with the schedule detailed by CRE in its decision.

¹⁴ Unlike the day-ahead time frame, the explicit intraday allocation does not result from the application of the necessary methodologies relating to the single day-ahead market coupling developed under the CACM regulation. It may, therefore, be maintained, including in the event of the UK leaving the EU without a withdrawal agreement coming into force.

¹⁵ Ofgem's decision is available on the website: <https://www.ofgem.gov.uk/publications-and-updates/approval-modified-access-rules-ifa-interconnector-apply-event-uk-leaves-eu-without-deal>

¹⁶ Ofgem approved the change to the ElecLink interconnection access rules on 27 August 2019. The decision letter is available at: <https://www.ofgem.gov.uk/publications-and-updates/approval-access-rules-and-charging-methodology-submitted-eleclink-pursuant-standard-license-slc-11a-and-10-electricity-interconnector-license>

3.2 Entry into force of the ElecLink access rules

3.2.1 ElecLink access rules in the event that GB remains in the single day-ahead market coupling

The ElecLink interconnection access rules in the event that GB remains in the single day-ahead market coupling referred to in point 2.1 of this deliberation shall enter into force on the day following the publication of this deliberation.

3.2.2 ElecLink access rules in the event of Great Britain's decoupling

The ElecLink interconnection access rules in the event of GB's decoupling submitted to CRE and Ofgem shall enter into force in the event of GB leaving the single day-ahead market coupling resulting from the UK leaving the EU without a withdrawal agreement having been concluded. In this case, the ElecLink interconnection access rules referred to in point 2.2 of this deliberation shall enter into force from the day following the UK's withdrawal from the EU without a withdrawal agreement having been concluded.

On the date of this decision, the UK's withdrawal from the EU must take place on 31 October 2019 (at 24:00 Central European Standard Time). Therefore, unless this deadline is extended or a withdrawal agreement comes into force by 31 October 2019, the ElecLink access rules in the event of GB leaving the single day-ahead market coupling will apply from 1 November 2019.

3.2.3 Next changes to the rules

CRE requests that ElecLink submit an amended version, for approval, of the ElecLink interconnection access rules in the event of substantial changes to the ElecLink interconnection commissioning conditions or the FR-GB interconnection operating conditions. In the event of a change to the IFA/IFA 2 access rules before commissioning of the ElecLink interconnection, CRE requests that ElecLink submit an amended version of the ElecLink interconnection access rules for approval, taking into account the latest changes to the IFA/IFA 2 access rules, within three months of CRE's approval.

DECISION

In application of the provisions of Article 63(4) of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal electricity market and paragraphs 6 and 10 of Article 37 of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 on the common rules for the internal electricity market, the Commission de régulation de l'énergie (CRE) is competent to approve the cross-border infrastructure access rules. To this end, CRE ensures coordination with the UK regulatory authority, the Office of Gas and Electricity Markets (Ofgem).

In accordance with the provisions of Article L. 134-1 of the French Energy Code, CRE is competent to specify the rules concerning the access and use conditions for networks and the access and connection conditions for the public networks of the new interconnections referred to in Article 17 of Regulation (EC) No. 714/2009 of the European Parliament and of the Council of 13 July 2009 on the access conditions for the cross-border electricity exchanges network.

In its Decision dated 7 April 2016, CRE asked ElecLink to submit, for approval, no later than three months before the sale of the first unexempted products, the new ElecLink interconnection access rules, taking into account the latest changes to the France-England (IFA) interconnection rules.

ElecLink therefore referred the following to CRE for approval:

- on the one hand, the "ElecLink access rules version 2.0" on 4 June 2019; and
- on the other hand, the "ElecLink access rules applicable in the event that the United Kingdom is not part of the European internal energy market" on 24 September 2019.

The main purpose of these rules is to align them with developments in the IFA/IFA 2 access rules and provide ElecLink with a set of rules allowing the use of the ElecLink interconnection, including in the event that Great Britain (GB) decouples from the single European day-ahead market, which would result in a withdrawal from the United Kingdom from the European Union without a withdrawal agreement having been concluded.

CRE considers ElecLink's proposals to be justified and consistent with the IFA/IFA 2 access rules. Consequently, CRE approves the applicable ElecLink interconnection access rules, on the one hand, in the event of GB remaining in the single day-ahead market coupling and, on the other hand, in the event of GB leaving the single day-ahead market coupling.

The rules that are the subject of this deliberation shall come into force, subject to their approval by Ofgem:

- for the ElecLink interconnection access rules in the event of GB remaining in the single day-ahead market coupling, on the day following the publication of this deliberation;
- for the ElecLink interconnection access rules in the event of GB's decoupling, from the day following GB leaving the single day-ahead market coupling.

CRE requests that ElecLink submit an amended version, for approval, of the ElecLink interconnection access rules in the event of substantial changes to the ElecLink interconnection commissioning conditions or the FR-GB interconnection operating conditions. In the event of a change to the IFA/IFA 2 access rules, before commissioning of the ElecLink interconnection, CRE requests that ElecLink submit an amended version of the ElecLink interconnection access rules for approval, taking into account the latest changes to the IFA/IFA 2 access rules, within three months of CRE's approval.

ElecLink will publish these rules on its website.

This deliberation will be published in the *Journal Officiel de la République Française* and published on CRE's website. It will be forwarded to the Minister of Ecological Transition and Solidarity, the Minister of Europe and Foreign Affairs, the Directorate-General for Energy of the European Commission and the regulatory authority of the United Kingdom (the Office of Gas and Electricity Markets). It is notified to ElecLink Limited.

Deliberated in Paris, on 17 October 2019.

**For the Commission de régulation de l'énergie (French Energy
Regulatory Commission)**

The President,

Jean-François Carencio

APPENDIX

The referral files submitted by ElecLink to CRE are appended to this deliberation.