

Mme Maria-Isabella Detand
Commission de Régulation de l'Electricité et du Gaz
Rue de l'Industrie 26-38
B-1040 Bruxelles
Belgium

16 March 2018

Dear Isa,

Decision BC 1729-CDC-180301 of the proposal submitted by Interconnector (UK) Limited regarding the IUK Access Agreement, the IUK Access Code, the Natural Gas Transportation Services provided by IUK between GB and Belgium and the implicit allocation method and the dis-application of Articles 8, 9, 10, 19 and 37 of Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) no. 984/2013

In its decision dated 1 March 2018, the Commission de Régulation de l'Electricité et du Gaz (“CREG”) has requested that Interconnector (UK) Limited (“IUK”) provides further information in relation to the certain terms of the Interconnector Access Agreement (“IAA”).

The purpose of this letter is to provide the further information requested by CREG:

1. *IUK to provide some additional clarification of what is meant by Article 8.1 (b): ‘any special or incidental loss(es) or damage’*

Special loss: In English law this term is more frequently used in tort (negligence) cases than in contract cases, however it is a term which is increasingly being used in English contracts. To the extent that it has been considered in the context of contracts¹, the courts have equated special damages to the second limb of Hadley v Baxendale ((1854) 9 Exch.341). The second limb of Hadley v Baxendale applies when the loss flowing from the breach of a particular contract is greater than or different from what it would have been in normal circumstances. Where the defendant has actual knowledge of these losses, then the second limb test operates so that the defendant may be liable for exceptional losses resulting from the breach.

Incidental loss: The precise meaning of this term has not been analysed by English courts. A recent case² has addressed a clause excluding “indirect, special, incidental and consequential damages”, and the judge focused on the meaning of “indirect...and consequential” only. However, commentators

¹ (Monarch SS Co v Karlshamns Oljefabriker [1949] AC 196)

² (McCain Foods (GB) Ltd v Eco-Tec (Europe) Ltd [2011] EWHC 66 (TCC))

have taken the view that "incidental loss" is likely to have the same meaning as "indirect" and "consequential" loss, although the point is an open one.

2. *CREG would also invite IUK to provide an explanation of the maximum amounts which apply for IUK and of the reference in Article 8.10 to Article 8.1 of which it is stated that Article 8.10 has no influence thereon:*

The maximum amount which IUK would pay to all IAA Shippers for breach(es) of contract in any Gas Year is £4M. The maximum amount which IUK would be liable to pay to an individual IUK Shipper for breach(es) of contract in any Gas Year is £2M.

In Clause 8.10, the reference to Clause 8.1 underlines that IUK will not be liable to the IAA Shipper for Consequential Losses (as defined) or special or incidental loss or damage.

3. *As regards the correlation between Article 8.11 and Article 8.1, IUK is also expected to provide CREG with further clarification as stated in paragraph 89 of the present decision.*

In Clause 8.11, the reference to Clause 8.1 underlines that the IAA Shipper will not be liable to IUK for Consequential Losses (as defined) or special or incidental loss or damage.

I trust that this fully answers your questions. However, if you would like further clarification or require further information please do not hesitate to let me know.

Yours sincerely,



MARY SIMMONS
General Counsel

Mr Ivo Van Isterdael & Mme Maria-Isabella Detand
Commission de Régulation de l'Electricité et du Gaz
Rue de l'Industrie 26-38
B-1040 Bruxelles Belgium

27 March 2018

Dear Ivo and Isa,

Decision BC 1729-CDC-180301 of the proposal submitted by Interconnector (UK) Limited regarding the IUK Access Agreement, the IUK Access Code, the Natural Gas Transportation Services provided by IUK between GB and Belgium and the implicit allocation method and the dis-application of Articles 8, 9, 10, 19 and 37 of Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) no. 984/2013 (the "Decision")

In its decision dated 1 March 2018, the Commission de Régulation de l'Electricité et du Gaz ("CREG") has requested that Interconnector (UK) Limited ("IUK") responds by letter to the questions raised by CREG in paragraphs 86, 92, 155, 157 and 161 of the Decision.

The purpose of this letter is to provide answers to these questions:

1. *Paragraphs 86, 89 and 92 related to Article 8 of the IUK Access Agreement ("IAA"): Liability*

Please refer to the letter dated 16 March 2018 from IUK's General Council, Mary Simmons, that answers these questions – appendix 1 attached.

2. *Paragraphs 157 and 161 related to Annex B-3 of the IUK Access Code ("IAC"): Implicit Allocation Rules*

IUK intends to enter into a contract with HPC SA to act as the Implicit Allocation Partner – see appendix 2 for the terms of this agreement.

As part of this agreement, Plexhub is used as the Implicit Allocation Platform to market the capacity. IAA Shippers will be able to view the IUK Matched Products on this platform and then transact via HPC. Appendix 3 contains the contract that IAA Shippers will need to sign with HPC and appendix 4 the Plexhub terms and conditions for IAA Shippers to access the platform.

3. *Paragraph 155 related to the official forms used for requesting and confirming all transportation services that IUK offers – explicit and implicit – and signs with the IAA Shipper.*

Requests

The form that an IAA Shipper uses for requesting capacity depends on the type of Allocation Mechanism:

- a. For capacity offered under Capacity Auctions the IAA Shipper submits a request by entering a bid on the PRISMA capacity booking platform in accordance with the PRISMA terms and conditions.
- b. For capacity offered via Implicit Allocation the IAA Shipper can click on a product displayed on Plexhub and send an email to HPC with the details of the product and its reference number and register their interest in purchasing the product. In addition the IAA Shipper can contact HPC via recorded phone line, Eikon (which is a recorded direct messaging system), or email with the details of the product and its reference number.
- c. For capacity offered under Subscription Processes the request will take the form specified in the Subscription Rules. In the “first 2015 sale of post 2018 capacity” subscription process the request took the form of a signed subscription form.
- d. For capacity offered under Overnomination the IAA Shipper submits a nomination through the IUK Information System (known as ISIS - Interconnector Shipper Information System) which results in the a total nomination exceeding their capacity rights.

Confirmation

- a. For capacity allocated through Capacity Auctions, Implicit Allocation or Overnomination the confirmation will be through the IUK Information System.
- b. For capacity allocated under Subscription Processes the request will take the form specified in the Subscription Rules. In the “first 2015 sale of post 2018 capacity” subscription process the confirmation took the form of a signed letter based on the template in Annex B-3 of IAC issue 2.

4. *Confidential information in the Decision document*

For completeness please find the text of the email we sent on 14th March regarding confidential information in the Decision document, reproduced below:

We believe that there are two points within the decision which draw upon confidential information.

It is our understanding that the comment below has been taken from a confidential response to the second consultation that IUK held. We would ask that this comment is removed from the non-confidential version of the decision.

“IAM increases the risk of discrimination of long-term contracts which are signed in the context of the rules for explicit capacity allocation as determined by the CAM NC;”

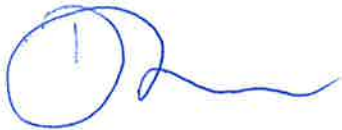
Paragraph 180 of the decision notes that a price guarantee has been included in the IUK Access Code on behalf of the IAA Shipper who purchased Registered Capacity as part of the 2015 Subscription Process. However, the number of subscribers in the 2015 process is confidential so we therefore ask that the wording is changed to reflect this. We have included a suggestion below:

180. To address the concerns of market participants, after the end of the consultation IUK added – in point 5.4 of this section – a price guarantee for ~~the~~ any IAA Shipper who holds Registered Capacity for a Capacity Period of five years or more allocated to ~~the~~ any IAA Shipper for the Subscription Process held in 2015. This principle is in line with the idea on which IUK consulted in January 2015.

Additionally we note that the introduction section refers several times to “implicit auction method” and we ask if this can be corrected to “implicit allocation method”.

I trust that this fully answers your questions. However, if you would like further clarification or require further information please do not hesitate to let me know.

Yours sincerely



DANIELLE STOVES
Commercial Manager

Attachments:

Appendix 1 – letter dated 16 March 2018 from Mary Simmons (IUK) to Maria-Isabella Detand (CREG)

Appendix 2 – proposed contract between IUK and HPC SA

Appendix 3 – HPC SA proposed Implicit Allocation Broking Agreement

Appendix 4 – Plexhub terms and conditions