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Dear Jasper

BBL: Authority Motivated Decision for the EU Network Code on Gas Tariffs pursuant to Article 27(4)

Introduction

The European Network Code on harmonised transmission tariff structures for gas (TAR)¹ aims to contribute to European market integration, enhance security of supply and promote interconnection between gas markets. It does this by introducing a number of requirements for transmission system operators (TSOs). In particular, it sets out how TSOs must design reference price methodologies and how corresponding reserve prices are calculated. There are also requirements in TAR that aim to increase the transparency of tariffs. These relate to requirements to publish and consult on various pieces of information.

In order to implement TAR, BBL Company (BBL) has made modifications to its charging methodology.² Under Article 37, BBL were also granted a derogation from certain articles in TAR that if applied would have negative consequences on BBL as a merchant interconnector.³

Article 26 Consultation

Article 26(1) of TAR requires either the National Regulatory Authority (NRA) or the TSO (as decided by the NRA) to consult on information relating to the reference price methodology (RPM), including indicative prices, technical characteristics of the transmission system and an assessment of the RPM against Article 7 of TAR. On 13 October 2017 we decided to assign the duty for carrying out this consultation to BBL.⁴ BBL ran its Article 26 consultation from 21 February 2019 to 25 March 2019. There were no responses received in relation to this consultation.

Agency Recommendation

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0460&from=EN>

² https://www.ofgem.gov.uk/system/files/docs/2019/03/ofgem_2019_bbl_charging_methodology_decision_publish_version.pdf

³ https://www.ofgem.gov.uk/system/files/docs/2019/01/190118_ofgem_bbl_derogation_decision.pdf

⁴ https://www.ofgem.gov.uk/system/files/docs/2017/10/ofgem_tar_assignment_of_tasks_decision_003.pdf

Pursuant to Article 27(3) of TAR, the Agency for the Cooperation of Regulators (the Agency) published a report⁵ setting out its analysis of BBL's Article 26 consultation. Its recommendations were that:

- In order to satisfy Article 7(a)⁶ of TAR BBL should specify the period for which the proposed tariff conditions are applicable, in order for network users to forecast the reference prices that will apply to the available capacity.
- In order to satisfy Articles 7(c) and 7(e)⁷ of TAR, BBL should assess the compliance of the long term booking assessments and its fixed payable price approach. It notes that the long term booking incentives are not foreseen by TAR and that a fixed payable price approach would lead to multiple tariffs being applied for the same capacity products.
- BBL should clarify that the proposed commodity-based tariff is a flow-based charge.

Motivated Decision

Article 27(4) of TAR requires the respective NRA to take and publish a motivated decision on all items set out in Article 26(1). Ofgem is the NRA for Great Britain. This letter sets out our motivated decision for BBL.

Ofgem Assessment

The final consultation carried out by the TSO prior to this decision, referred to in Article 27(4) shall comply with the requirements set out in Article 26 and 27 of TAR, and shall include the information set out in Article 26(1). The consultation by BBL is the final Article 26(1) consultation prior to the motivated decision required by Article 27(4) of TAR.

The BBL consultation sets out where the information required by Article 26(1) can be accessed. It also indicates where information is not published either due to derogation from the requirement, or the requirement not being applicable to BBL given its nature. This is set out below.

- Information required by the following Articles are published on BBL's website:
 - Article 26(1)(a)(i) which requires the publication of indicative information from Articles 30(1)(a)(i) and (iv). Articles 26(1)(a)(c)(i)(1) and (3).
- Information required by the following Articles are not included due to BBL being granted derogations under Article 37 of TAR:
 - Article 26(1)(a)(ii),⁸ Article 26(1)(a)(iii), Article 26(1)(a)(iv)⁹ Article 26(1)(a)(v),¹⁰ Article 26(1)(a)(vi), Article 26(1)(b)¹¹ Article 26(1)(d).¹²
- Information required by the following Articles are not applicable to BBL as it is a merchant operator with no allowed revenue and is not connected to captive

⁵ <https://acer.europa.eu/Media/News/Pages/Analysis-published-on-Tariff-Code-implementation-for-the-BBL-interconnector-between-the-UK-and-the-Netherlands-.aspx>

⁶ Article 7a) states that the RPM should aim at allowing network users to calculate accurate forecasts

⁷ Article 7b) and e) states that the RPM should aim at not discriminating between network users or distorting cross border trade respectively.

⁸ NA due to derogation from Articles 30(1)(a)(ii) and (iii)

⁹ NA due to derogation from Article 5

¹⁰ NA due to derogation from Article 7a)

¹¹ NA due to derogation from Articles 30(1)(b)(i), (iv), (v)

¹² NA due to derogation from Article 30(2)

customers, storage sites or LNG:

- o Article 26(1), Article 7(d) (Article 26(1)(a)(v)), Article 26(1)(c)(2), Articles 6(1)(c)(ii) and Article 26(1)(e).

In its consultation BBL also provided an assessment as to how its RPM meets the requirements of Article 7 of TAR, as required by Article 26(1)(a)(v). BBL notes that with no captive demand and allowed revenue, it needs to respond to market developments and adjust the RPM accordingly based on relative spreads between the GB and Dutch markets.

Authority Decision

Upon reviewing the consultation and the documents referred to by that consultation and we are satisfied that BBL has fulfilled the requirements of Article 26(1) of TAR.

With regards to the Agency's recommendation on setting out an applicable tariff period to allow users to accurately forecast prices, we have derogated BBL from this requirement as set out in article 7(a) of TAR in our recent derogation decision.

In terms of the long term booking incentives, TAR does not prevent BBL offering discounts to users wishing to book this type of capacity. BBL make their prices transparent by publishing them in advance of a given auction. Neither is this arrangement unduly discriminatory as the incentive is available to all network users.

We also do not consider that BBL's fixed payable price approach is discriminatory as it does not differentiate between classes of users at the point a contract is concluded. We granted BBL derogation from requirements in TAR that would prevent BBL from changing the price of its short term products. We did this because such requirements would distort competition with other operators that offer services of similar nature to BBL. For example, some storage and LNG facilities have the ability to adjust their pricing dynamically in response to market conditions. Given the competitive environment, we think it is appropriate for BBL, as a merchant interconnector, to have more tariff setting flexibility than what is allowed for under TAR.

We agree with the Agency's view that BBL should clarify that the proposed commodity-based tariff is a flow-based charge. We ask that BBL address this point in the next review of its Charging Methodology.

This decision satisfies the requirement to take and publish a motivated decision in accordance with Article 27(4) of TAR. Upon publication we will send this decision to the European Commission and the Agency.

If you have any questions relating to this decision, please contact Robin.dunne@ofgem.gov.uk

Yours Sincerely

Chris Thackeray
Head of GB Wholesale Markets