Feedback in response to the public consultation regarding the revision of the access contract

In this reaction, Belgian Offshore Platform responds to the public consultation regarding the revision of the access contract as launched by Elia on 9th of July 2021.

BOP remains at disposal for further questions and clarifications when deemed necessary.

Drop-off procedure

In several bilateral meetings and working groups Belgian Grid, BOP had explained its concerns and position regarding the drop-off procedure. We would like to thank all the involved stakeholders for hearing our concerns.

We would like to endorse the compromise as found in the working group Belgian Grid of 15th of June 2021. The opt-out option, which can be formalized via Annex 2 and Annex 3, is a crucial element in this compromise and is considered as a minimum to respond to our concerns.

Nevertheless, BOP has some remaining questions and remarks:

1. The opt-out option is only valid if all parties involved (i.e. Access Contract Holder, BRP, and Supplier) have agreed to the opt-out. BOP does not understand why this restriction is put in place. Considering that the drop-off procedure itself, can be initiated by each of these parties individually without requiring consent across the parties. We do not see why the opt-out cannot be linked to every party individually without requiring a collective agreement. BOP understands from Elia that the reason is to obtain a simple operational procedure, reducing the administrative workload.. In this regard, BOP would like to firstly point out that an opt-out prevents the execution of the drop-procedure, which is very burdensome on Elia. Secondly, requiring a collective "tri-partite" agreement for the opt-out, also means that with every change in supplier (or any of the other parties for that matter) the grid-user is to negotiate a new tri-partite agreement, leading to much more administrative changes than necessary at the Elia side in updating the "opt-out register". Lastly, BOP would like to point to Elia's role as service provider and enabler for the energy sector and its actors, a role that indeed carries with it a certain load of operational procedures.

2. The articles in the access contract describing the drop-off procedure refer to the "relevant legislation", which defines the terms "wanbetaling" and "verslechtering van zijn financiële situatie" (e.g. art. 19.1, first paragraph, "conform de toepasselijke regelgeving"). Can Elia please repeat the exact legislation this refers to? We suggest including references to the relevant legislation in the Access Contract, to avoid any room for interpretation.

   In addition, with the current wording, it is unclear that these triggers (wanbetaling and verslechtering van de financiële situatie) need to relate to the relationship at hand. If the supply agreement includes the balancing and/or access holder services, a "wanbetaling" under the supply agreement could indeed trigger a drop-off from all parties at hand (i.e. ACH, BRP and supplier). However, as these roles are split up in the legislation, certain Grid Users also have separate contracts dealing with these aspects separately. In such a set-up, a missed

payment from the Grid User with respect to its access tariffs to its ACH constitutes "wanbetaling" in relation to the ACH and could therefore trigger the start of the drop-off procedure by that ACH. But it does not constitute "wanbetaling" in relation to the Supplier or the BRP. Is our interpretation correct that in this instance, only the ACH can trigger the drop-off procedure?

In order to avoid this situation, whereby a Party is granted the right to start the drop-off procedure based on an event that did not harm / affect them, the Party needs to prove the "wanbetaling" or "verslechtering van de financiële situatie" is affecting them, before the drop-off procedure can be started.

For example Art 19.1: *"De Toegangshouder stuurt een formele kennisgeving naar de Netgebruiker, waarin hij de Netgebruiker informeert dat deze zich in de toestand van wanbetaling* ***tegenover de Toegangshouder*** *of verslechtering van zijn financiële situatie* ***(met gevolgen voor de Toegangshouder)*** *bevindt, conform de toepasselijke regelgeving, en hem in kennis stelt over zijn beslissing om zijn aanduiding als Toegangshouder éénzijdig stop te zetten. De Toegangshouder vraagt de Netgebruiker om een nieuwe Toegangshouder aan te duiden of zelf zijn eigen Toegangshouder te worden.*
De Toegangshouder stuurt eveneens een aangetekend schrijven, te bevestigen via e-mail, naar Elia. In dit schrijven vraagt de Toegangshouder aan Elia om zijn aanduiding als Toegangshouder voor het (de) betrokken Toegangspunt(en) (opgenomen in Bijlage 2) te beëindigen. De Toegangshouder voegt bij dit schrijven het bewijs omtrent de notificatie van zijn beslissing aan de Netgebruiker om zijn aanduiding als Toegangshouder éénzijdig op te zeggen en de reden hiertoe ***met bewijs van het nadelig effect op de Toegangshouder****. De Toegangshouder stuurt tevens een kopie van dit schrijven naar de Netgebruiker alsook naar de bevoegde regulator(en)"*

3. In our understanding, the drop-off procedure is to be understood as a last resort measure, which can only be initiated after all means of the underlying contract are exhausted.
   Although this has been discussed during the WGs Belgian Grid and this was part of the previous iterations of the drop off procedure, in particular as included in the proposed Federal Grid Code amendment (art. 198 FGC), we do not see this reflected in the current wording.

   Will this principle be included in the revision of Art. 198 FTR? *("Wanneer de […] alle bemiddelings-of aanmaningsacties zoals opgenomen in het leverancierscontract doorlopen heeft [...]"*)

   As, in the future, the drop off procedure would no longer be regulated via the Federal Grid Code, it should be governed in the Access Contract in a comprehensive manner. There should be no room for interpretation, considering the potential consequences of triggering the drop off procedure.

   Therefore, this principle / wording should be included in the relevant wording of art. 19.1 and art. 22.1. For example in art. 22.1: "*De Evenwichtsverantwoordelijke,* ***nadat hij alle contractuele remedies heeft uitgeput en alle bemiddelings- en aanmaningsacties werden doorlopen****, stuurt een formele kennisgeving naar de Toegangshouder en de Netgebruiker, waarin hij beide partijen informeert dat de Netgebruiker zich in de toestand van wanbetaling of verslechtering van de financiële situatie bevindt, conform de toepasselijke regelgeving, en hen in kennis stelt over zijn beslissing om éénzijdig zijn aanduiding als Evenwichtsverantwoordelijke stop te zetten."*

Other elements

On page 45, a subtitle “Bijlage 6bis en 6ter” is followed by a description of “Bijlagen 10 en 10bis”. We assume this is a typo?