

Legal expert meeting on 15 and 16 October 2015 – TenneT Offshore

In the presence of approximately 35 participants of several backgrounds, the second drafts of the offshore model agreements and general terms and conditions were consulted by TenneT. First, the most important topics – based on the input on the previous drafts – were discussed in general, after which the draft model agreements, the general terms and conditions and the annexes were discussed page-by-page. TenneT introduced all topics (see presentation).

Please find below an overview of the main topics discussed. This document does not contain a report of the page-by-page discussions. Feedback on all questions will be provided in a separate feedback document and will, if applicable, be included in the next draft of the agreements. All stakeholders are requested to submit their comments on the second drafts by 27 October 2015 at the latest. TenneT aims to publish final draft documents in early November, prior to concluding the joint legal and technical consultation of 9 November. We will announce each publication via our Newsletter and website. Written feedback on the most recent drafts will be accepted until 13 November 2015 at the latest after which the final model agreement will be published prior to opening of the first SDE+ tender.

1 GENERAL REMARKS AND QUESTIONS

Q: When will TenneT issue the Dutch version of the model agreements?

TenneT: These will be published in the course of November. TenneT will first finalise the English text. After translating the final text to Dutch, the material aspects of the model agreements will not be discussed again because the Dutch language versions will only be a translation of the English drafts and the English versions were the basis for the consultation (in which also non-Dutch parties participated). Comments on the Dutch version should therefore only relate to a correct translation.

Q: What is TenneT's position on the legislative process?

TenneT: The approval of the STROOM Act by the Second Chamber is good news. The First Chamber still has to approve the STROOM Act. Note that the STROOM Act is not only about the offshore grid, but about other topics as well. In particular unbundling of system operators has been discussed intensively. TenneT is optimistic about the STROOM Act being approved by the First Chamber. It is however unclear whether the First Chamber will adopt the Act before 1 January 2016. Regardless of the First Chamber's schedule, TenneT expects to have the model agreements finalised prior to opening of the first SDE+ tender (and therefore most likely before First Chamber votes on the STROOM Act). TenneT is highly motivated to get this process done and to prepare ourselves for the tender process.

2 PLANNING

Introduction by TenneT, see presentation.

TenneT: There were discussions of this topic during the previous legal sessions. TenneT wants to clarify that the only date to agree on will be the date included in the Scenario. That will be the only binding date. Any expectations regarding earlier milestones for realizing the Connection (e.g. the planning for the cable pull in) will be for information purposes only and cannot result in any liability or compensation.

Q: The milestones are important for the Connected Party, so is TenneT's planning.

TenneT: Parties will jointly inform each other of their respective planning. TenneT will inform the Connected Party on a quarterly basis and vice versa; however, parties could agree on a different frequency. Please feel free to let TenneT know if other milestones should be included in the current

basic list of milestones. Note that parties also have the possibility to agree on more or other milestones than those already mentioned in the model agreements.

Q: Cable crossings, onshore constructions, the onshore control building, jackets, SCADA equipment, etc. are important as well and therefore need to be included in the planning.

TenneT: There will be a period in which the Platform is built onshore. During that period, the Connected Party will be given a timeframe to install its equipment. Also, the Connected Party may install certain equipment at the onshore substation. Within the next month, TenneT will launch a website with specific Borssele information, also on planning: www.netopzee.eu. TenneT will invite the parties to provide information on what timeframe the parties would expect to be included, to enable TenneT in its procurement process.

Q: What is the interface risk?

TenneT: There is the promise that the Connection will be finished on 31 August 2019. TenneT has the intention to allow the Connected Party to pull in its cables earlier, but TenneT cannot guarantee this. There is no liability included in the agreements regarding the milestones. TenneT will construct the Platform in the timeframe it envisages. TenneT will not wait to finalise the Connection or the Platform if the Connected Party is not ready on time.

Q: Once there is a winner and all parties are known, could you agree then on penalties for the sake of security (that the planning will be achieved by TenneT)?

TenneT: This is not what TenneT envisages. There is one binding date, which is the Scenario date. There will not be any penalties otherwise in that respect. However, when the winners are known and the agreements have been signed, there will be regular planning meetings, etc.

3 LIABILITY

Introduction by TenneT, see presentation.

TenneT will comply with the STROOM Act. There will not be any other liability or compensation for late delivery or unavailability of the Connection. Note that TenneT will also not limit the statutory compensation scheme; this has now explicitly been included in the agreements.

Other situations than the ones dealt with under the statutory compensation scheme (i.e.: other situations than late delivery or unavailability of the Connection) will be dealt with under the agreements, otherwise under general Dutch contract law (DCC). Some situations have already been included in the agreements, such as that TenneT has to rectify any defects to the Connection at its own cost. There will be no specific clause regarding non-compliance (*wanprestatie*), because this is dealt with under general Dutch contract law.

Q: Will there be a joint inspection of the Connection once it is finished? Testing of the Connection is also required.

TenneT: No, no joint inspection is currently envisaged. TenneT will notify the Connected Party once the Connection is finished according to the Scenario and the Realisation Agreement. TenneT can declare the Connection ready; without an inspection by the Connected Party being required. However, TenneT will look into this again keeping the feedback received in mind.

Q: Is TenneT holding on to the final date mentioned in the Scenario? And will that be the date on which TenneT will send a note that the Connection is ready?

TenneT: TenneT will not keep the Connected Party in the dark about the date of finalising the Connection, but TenneT cannot agree on an earlier date. If TenneT should not meet the date, the compensation scheme will kick in. If the Connection is finished earlier than the Scenario date, TenneT

will notify the Connected Party at an earlier date than the Scenario date. Note that the statutory compensation scheme will not apply before the Scenario date.

Q: Parties should agree on the timing and quality of the details of the Connection.

TenneT: TenneT has an obligation to construct the Connection in line with the Realisation Agreement (including the annexes) and the Scenario. There is no approval required from the Connected Party. If the Connected Party believes that the Connection is not timely realised in accordance with the Scenario, the Connected Party can claim its damage under the statutory compensation scheme after that date (currently: 31 August 2015).

Q: Note that consequential damages are ruled out. Is there compensation if TenneT does not comply with the agreements, other than the Scenario?

TenneT: TenneT refers to the liability clause in the agreements and general Dutch contract law (DCC). TenneT will be bound by the agreements, even to the extent they go beyond the Scenario; whether or not compensation applies for late delivery or unavailability depends on the STROOM legislation and is not decided under these agreements.

Q: The Realisation Agreement states that the Connection is ready when it can transport electricity, how much electricity, 1 volt?

TenneT: What is meant by ready is included in the Scenario and the agreements. But TenneT will look into the wording of this clause.

4 TARIFFS

Introduction by TenneT, see presentation.

All tariffs etc. to be charged to the Connected Party will be related to TenneT as a TSO performing its TSO duties and will therefore be reviewed by the Dutch regulator (ACM), either ex ante or ex post. Not all of those costs, such as testing, will be included in the regulated tariffs and tariff decisions by the ACM, but these costs are also to be reviewed by the ACM, because there is a "closed system" of charging tariffs by grid managers. Note that the testing itself is regulated, but the costs are not established upfront. The method to calculate the amount of the (effective) costs should be acceptable to the ACM (cost-reflective, non-discriminatory, etc.), otherwise TenneT will not be allowed to charge those costs to the Connected Party. TenneT has to apply cost reflective tariffs and fees, but is not able to give the numbers/tariffs upfront. *There is no feed-in transmission tariff envisaged, it is unclear if there will be a consumption tariff offshore (Ministry to decide). There is also no connection tariff (aansluittarief) for generators.*

There is always an opportunity to complain with the ACM if a Connected Party disagrees with the tariffs or fees. TenneT is discussing with the ACM, and the activities and costs will be included in the regulated tariffs and which may be included in these agreements. TenneT will seek to provide an estimate of relevant costs, although these may be rough estimates or include a bandwidth.

Q: We have to put in a bid and we have to assume certain costs. Is TenneT going to do all the testing, or is TenneT going to witness the testing by the Connected Party?

TenneT: TenneT might witness some of the testing by the Connected Party, but will do most of the testing itself (or have a third party perform the tests on TenneT's behalf). TenneT can give indications for the testing activities and the costs for these activities. TenneT can only make those estimates after which the requirements have been set. After that, testing requirements can be set, from that point; TenneT can make an estimate about the costs.

Q: Timing of that indication?

TenneT: Before 1 December 2015. TenneT intends to attach an annex with regard to compliancy tests, this can be finalised once it is clear which requirements have to be met. TenneT will not come up with exotic testing. The only testing requirements are those requirements stated in the annex or stated in the (future) Codes. There is no unlimited right for compliance testing.

Q: Testing has to be done in cooperation.

TenneT: The compliancy testing paper will be discussed next Wednesday, during the technical sessions. Those findings will be included in the annex.

Q: TenneT provides many services, rooms onshore and offshore, room for filters, etc. Are these services free of charge?

TenneT: If those services are provided to perform the mandatory tasks as a grid operator, and they are necessary to transmit electricity, those services will not be charged individually. Activities TenneT has to perform for a Connected Party's activities will be charged to that Connected Party.

Q: Is rent to be paid for the use of the onshore building? If yes, how much?

TenneT: TenneT will provide clarity on this.

5 PHASING IN OF AGREEMENTS

Introduction by TenneT, see presentation.

TenneT: It has now been clarified that the Realisation Agreement relates to TenneT realising the Connection. Once that has been done (which is not dependent on whether the Connected Party has already attached any cables to the Platform), the Connection and Transmission Agreement kicks in. All the testing of the Connected Party's cable will only take place once the Connection has been put into use. The Connected Party will still be entitled to a phased in approach to the cables (i.e. commission these cable per cable, if desired), but the commissioning of each cable is now dealt with under the Connection and Transmission Agreement.

Q: Does the Realisation Agreement end as soon as TenneT sends the notice?

TenneT: That is correct. TenneT can and will only send such notice once the Connection is finished and ready. After receiving the notice, it is up to the Connected Party when to start using the Connection (which may also be a phased in use).

Q: If TenneT is late, will the Realisation Agreement extend beyond 31 August 2019?

TenneT: That is correct, if the realisation has not been completed before the Scenario date, the Realisation Agreement will endure.

6 INTERFACE MANAGEMENT

Introduction by TenneT, see presentation.

7 METERING

Introduction by TenneT, see presentation.

Q: Will there be one metering party on all platforms?

TenneT: Yes, this is desired by TenneT and is intended to be accomplished through a joint selection process.

Q: Who will have to make sure that there are communication facilities for the metering?

TenneT: The contracted Acknowledged Metering Responsible Party.

Q: Who will pay for the metering services?

TenneT: the costs will be divided according to the metering code.

TenneT will facilitate a procurement process. Ultimately, there will be individual agreements between TenneT and the Acknowledged Metering Responsible Party and between the Connected Party and the Acknowledged Metering Responsible Party, respectively. Aim is to make sure that is the same party acting on one platform.

Q: Will it be a joint decision?

TenneT: To be checked with the procurement team. TenneT will get back on this.

8 AMENDMENTS

Introduction by TenneT, see presentation.

TenneT: TenneT has (i) limited the number of annexes to which unilateral amendments apply and (ii) where unilateral amendment is still possible, linked this to changes in legislation or its statutory duties as a TSO. There were in particular concerns regarding Annex 2: that annex is not to be changed unilaterally by TenneT. This is in line with the practice onshore.

9 STATUS OF ANNEXES

Introduction by TenneT, see presentation.

TenneT: The actual tariff list cannot be provided before or during the tender, because the tariffs for 2019 and further are not known yet. TenneT doesn't know the future tariffs because they are set annually. As there are no feed-in transmission tariffs expected, the tariff decision is likely to only include transmission fees for consumption.

10 INSURANCE

Introduction by TenneT: Regarding insurance, there is a variety of different interests and preferences, which follows from the previous consultation responses. Some parties state that insurance should be a matter for each party, because there is a wish for flexibility. Another view is that insurance should be dependent on the other party's financial strength. Also, other parties stated that there should be a CAR insurance for all parties, in which they can reallocate/reduce costs for themselves. In this context, efficiency arguments were made. TenneT has chosen an option in between: there should be a minimum consensus, meaning that parties should take out reasonable liability coverage. TenneT prefers the system of insurance which is as flexible as possible. For now, we have included this in the General Terms and Conditions, but this might be moved to the agreements.

CAR insurance: this is not a client-contractor relationship, meaning that it is not necessary in the relationship between TenneT and the Connected Party. That is why TenneT will not include the obligation for a CAR insurance in the agreements. Please let TenneT know if this is fine for the Connected Party. Note that TenneT will have a CAR insurance including a third-party liability provision. The policy will not be included in an annex to the agreements.

Third-party liability: a reasonable limit of indemnity should apply. TenneT will discuss internally if a cap (or floor) could be included in the agreement. Please let TenneT know if the Connected Party would require a number/cap to be included in the agreements (in relation to the bid), or if a general description would be preferred. If the Connected Party prefers a number/threshold, will this be the same number

under the Realisation Agreement and under the Connection and Transmission Agreement and what should the (respective) number(s) be?

Q: During normal operations, who is responsible for switching and safety? Having the responsibility means having some risks.

TenneT: Operating the Offshore Transmission System is TenneT's responsibility. TenneT has the obligation to do so. Commissioning tests will be carried out. The Connected Party will be responsible for its Installation and its own conduct.

11 OVERPLANTING

TenneT: In the Connection and Transmission Agreement, TenneT captured that TenneT has the intention to provide the Connected Party with overplanting capacity, as stated in the position paper. Note that even though this is TenneT's explicit intention, TenneT cannot guarantee that the overplanting capacity will be available. This is a topic to be assessed by the potential Connected Party before making its bid. There will be no compensation if the overplanting capacity is not available.

Q: TenneT is to provide us with some additional technical information, as discussed before.

TenneT: That is correct. As stated in the position paper, this information will become available in January 2016, so not before 1 December 2015.

Q: Could you write down that the overplanting will be guaranteed until the point of temperature overloading of the cable?

TenneT: This has been discussed during the technical session. TenneT can and will only guarantee the feed-in capacity (350 MW). TenneT cannot give an exhaustive or full list when the overplanting capacity will be available. However, TenneT will look into the wording.

12 OTHER

Q: Could we postpone the date of 1 December 2015, meaning that the model agreements will be finalised after the start of the tender? Some parties feel that this would be better because the Scenario is not known yet in its final form and there are still some disagreements and uncertainties regarding the content of the agreements, such as the delivery of the Connection and the statutory compensation mechanism.

TenneT: TenneT appreciates that parties take the model agreements seriously. TenneT could be flexible in its planning, but has been asked by the Ministry to finalise the model agreements before 1 December 2015. If the Ministry were to ask TenneT to delay the process, TenneT would be willing to facilitate. However, TenneT currently does not see any reason to postpone and will be able to meet the 1 December 2015 deadline, which would also give the parties certainty before the opening of the tender.

13 ANNEXES TO REALISATION AGREEMENT

During the last part of the legal expert meeting, all annexes were discussed.

13.1 Annex 1

TenneT noted that this annex is very factual and is in line with the onshore practice.

13.2 Annex 2

The basic design is part of this annex (see the separate document) and contains further details of the Connection, such as what connection points are, details on metering, optic cables, etc.

The designated room for the Connected Party is to be added to the drawings, so parties can see which part of the Platform will be designated for the Connected Parties. The number of square meters has already been discussed in the technical session (see annex 3).

13.3 Annex 3

This annex refers to the offshore installations, such as the number of J-tubes etc.

Q: Some details are missing here, such as where do you put the cable and cable protection?

TenneT: Everything from the technical sessions will be included in the agreements, insofar as relevant. Some information is simply not known yet and therefore not included. That information will be covered in the installation interface part. The annex contains the general guidelines, details to be agreed on with winner, such as cable protection.

Q: It is important to understand that there is a right to put equipment at the Platform. Will there be a cable protection system?

TenneT: The most important things we know at the time of finalising the model agreements will be included in the annex. The basic design will be included in the model agreements; further design could be included in annexes to the individual agreements with the Connected Party.

Q: What is in the scope of TenneT, what is in the scope of the Connected Party? Such as who provides electricity for hanging in the winch?

TenneT: Please see the position paper on this topic. There is agreement to define the scope and the property on the Platform.

It is necessary to clearly define the connection points (see the annex). Seen from the grid, everything up to the Connection Point is TenneT's scope, after it is the Connected Party's.

TenneT: No references to position papers have been made in the annexes because the position papers are the input for the annexes. Ultimately, the conclusions from the position papers must be included in the annexes (those will be part of the binding documents, i.e. the agreements). It is therefore very important that the parties also check (as is done by TenneT as well) that all relevant positions are transposed to the Annexes.

Q: Is the position paper on technical terms for installation included in annex 3?

TenneT: Annex 3 contains positions from several position papers, not only from the position paper mentioned. TenneT will provide an overview that states which position paper has been included in which annex.

Q: Do we understand that the annexes do not contain the complete position paper, but just a summary?

TenneT: Yes, the conclusions/positions from the position paper are included in the annexes.

13.4 Annex 4

Annex 4 is the implementation of the RfG approach we explained before. Neither RfG nor the Codes are applicable yet. TenneT included the RfG requirements in this annex. In addition, the Dutch Grid Code (*Netcode*) and System Code (*Systeemcode*) will be applied by reference, except for some provisions that are not applicable offshore.

Q: During the technical session, we agreed a power set point suitable for all turbines available.

TenneT: Page 17 contains a statement on reactive power capability. Those paragraphs should reflect the outcomes of the technical meeting.

Additional clarification after the meeting: during the technical sessions, we agreed that if the reactive power capabilities of an OWF are limited at very low loads, TenneT could adjust the reactor sizes.

TenneT refers to document ONL 15-356 "Reactive power strategy – background information.

Q: We discussed that if the Connected Party is not able to comply with the Grid Code, TenneT would set another set point.

TenneT: This is to be discussed in the technical meeting.

13.5 Annex 5

This annex is to be discussed in the technical session, before discussing this annex in a legal session.

13.6 Annex 6

The arrangements in this annex largely mirror the onshore operational arrangements.

This annex will contain somewhat more information regarding interface management, to be discussed in the technical session.

13.7 Annex 7

This annex will probably be taken out (see comments regarding insurance).

14 ANNEXES CONNECTION AND TRANSMISSION AGREEMENT

Many of the annexes are similar or in line with the annexes to the Realisation Agreement.

Q: How about contradictions within annexes?

TenneT: We have to consider this. Generally, European law would prevail over national standards, unless European law allows deviating on a national level. TenneT will include wording to clarify.

14.1 Annex 1

Other than in the Realisation Agreement, the transmission details will be included in this annex to the Connection and Transmission Agreement. Note that these details will not be included in the model agreements.

14.2 Annex 2

In time, this annex will be replaced with the as built information. Parties start with the basic design. Once the Connection is ready, the as built information will be included in this annex. This inclusion is not to be decided unilaterally by TenneT, this will be done jointly. When the as built information is included, parties could also include pictures.

14.3 Annex 3

This annex is the same as that in the Realisation Agreement.

14.4 Annex 4

This annex is the same as that in the Realisation Agreement.

14.5 Annex 5

This annex is the same as that in the Realisation Agreement.

14.6 CTA Annex 6

This annex will probably be taken out.

14.7 CTA Annex 7

The information in this annex has been included for information purposes only; to give an example of what the annex could look like (the actual tariffs for 2019 will be set by the ACM in 2018). According to current information, the annex will only apply to electricity consumed.