



Electricity generators,  
interconnector owners and  
operators, suppliers, customers  
and other interested parties

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Date: 26 September 2008

Dear Colleague

### **Regulatory arrangements for East West Cable One Ltd's two proposed GB-Irish electricity interconnectors**

On 2 July 2008, Ofgem<sup>1</sup> published a consultation document<sup>2</sup> on the exemption application<sup>3</sup> submitted by East West Cable One Ltd (EWC)<sup>4</sup>. In the consultation document (the July consultation document), Ofgem set out its initial view that exemptions should be granted for each of the proposed EW1 and EW2 interconnectors<sup>5</sup>.

We have on 26 September 2008 issued two separate Exemption Orders. These orders are consistent with those consulted on in the July consultation document. The first states that SLCs 9, 10 and 11 of the electricity interconnector licence and Article 6(6) of Regulation (EC) No 1228/2003<sup>6</sup> (the Regulation) would not apply for a period of 25 years for EW1 from the date on which the interconnector commences commercial operation<sup>7</sup>. The second states that these requirements would not apply for a period of 20 years for EW2 from the date on which the interconnector commences commercial operation. Our decision to grant exemptions for EW1 and EW2 will be notified to the European Commission, which can request Ofgem to amend or withdraw its decision within two months following notification<sup>8</sup>.

This letter sets out the reasons for Ofgem's decision. It should be read in conjunction with the July consultation document.

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<sup>1</sup> The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

<sup>2</sup> Consultation document: Regulatory arrangements for East West Cable One Ltd's two proposed GB-Irish electricity interconnectors, 94/08, 2 July 2008, [www.ofgem.gov.uk](http://www.ofgem.gov.uk).

<sup>3</sup> Imera Ltd - Application for EU Exemption. April 2008. A public version can be found on the Ofgem website [www.ofgem.gov.uk](http://www.ofgem.gov.uk)

<sup>4</sup> EWC is a limited company incorporated in the Republic of Ireland. EWC is owned by Imera Ltd (35%) and Imera Holdings (65%).

<sup>5</sup> Note that EWC was granted two separate interconnector licences by Ofgem for EW1 and EW2. A separate exemption order was therefore requested for each interconnector.

<sup>6</sup> Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity.

<sup>7</sup> This means the time when the interconnector has been commissioned and is available for physical flow of electricity on behalf of capacity holders.

<sup>8</sup> This period may be extended by one month where additional information is sought by the Commission. The veto procedure is detailed in Regulation (EC) No 1228/2003 regarding the conditions of access to the network for cross-border exchanges in electricity, as referred to in Article 7(5).

## Background

EWC, formerly Imera Power Limited<sup>9</sup>, applied to the Authority for electricity interconnector licences in relation to two proposed interconnectors. Two interconnector licences were granted to EWC on 20 November 2007. EWC has requested that the Authority grant an exemption to both EW1 and EW2 from the obligations noted above. These relate to the requirement to offer third party access, to obtain regulatory approval for charging methodologies and to the use of interconnector revenues.

EWC is proposing to build two high voltage DC electricity cables between GB and the Republic of Ireland. EW1 will connect at Pentir, Bangor in North Wales and at Arklow, Co. Wicklow in the Republic of Ireland. EW1 is proposed to commence commercial operation in 2010. EW2 will connect at Pembroke in South Wales and Great Island, Co. Wexford in the Republic of Ireland. EW2 is proposed to commence commercial operation in 2011. EWC has indicated that each interconnector will have a total capacity of 350MW, giving a total capacity of 700MW for the project<sup>10</sup>.

EWC requested an exemption period of 25 years for EW1 and 20 years for EW2. These exemption periods were requested to take effect from the start of commercial operation for each interconnector.

EWC has indicated that it does not intend to buy or sell power itself, but instead it intends to own and operate both interconnectors. Capacity will be offered to the market through an open season auction process. EWC intends to sell capacity on a long-term basis (i.e. with minimum term bids of 10 years).

EWC has indicated that it will have in place effective Use it or Lose it (UIOLI) arrangements and will facilitate a secondary market for capacity trading via an electronic bulletin board system. EWC has also indicated that it will introduce information transparency rules in accordance with those in place for the Interconnexion France Angleterre (IFA) and would welcome views on how to improve these further. EWC has indicated that its arrangements will be in line with the Congestion Management Guidelines<sup>11</sup>.

In its application, EWC stated that its motivation for seeking an exemption is "related to the commercial and regulatory risk of the project". In relation to the regulatory risk EWC noted that even though the proposed access regime is in line with the current regulated Third Party Access (rTPA) regime, an exemption from this rTPA regime is necessary to eliminate the risk that it changes during the period of the exemption.

In addition, EWC has stated that in terms of the commercial risk of the project, investors need the assurance that they will not just face the downside risks to project returns but will also benefit fully from the potential upside. EWC considers that if the interconnector was subject to Article 6(6), SLC 9 and the relevant provisions in Irish law there would be a danger that, if the interconnector is commercially successful, the returns to investors would be capped, if not entirely removed. However, if it is unsuccessful, there is no mechanism for compensating investors. EWC therefore considers that proceeding without an exemption would present too great a risk to be able to secure investment.

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<sup>9</sup> Both interconnector licences were granted to Imera Power Ltd. Imera Power Ltd has (from 7 March 2008) changed its name to East West Cable One Ltd.

<sup>10</sup> Further information concerning the details of the proposed interconnectors is contained in EWC's application document.

<sup>11</sup> Revised binding Guidelines on the management and allocation of available transfer capacity of interconnections between national systems were adopted by formal Decision of the European Commission in November 2006, as provided for under Regulation 1228/2003. These Guidelines reflect advice provided to the Commission by ERGEG, and they set out among other things guidelines for efficient and market based mechanisms to allocate cross border interconnector capacity.

## Ofgem's initial view

As indicated above, our initial view was that the two exemptions should be granted to EWC. The July consultation document explained the grounds on which we considered that EWC had met each of the relevant criteria for the exemptions to be granted. Respondents were asked to comment on this assessment. They were also asked for views on: our proposal to treat EW1 and EW2 as a single project for the purposes of our evaluation of the exemption criteria, the proposed scope and duration of the exemptions, and conditions for the exemptions' revocation.

## Respondents' views

Ofgem received five responses to the July consultation document. Responses were from SSE, Centrica, EDF Energy, E.On and National Grid. These responses have been published on Ofgem's website ([www.ofgem.gov.uk](http://www.ofgem.gov.uk)) along with the July consultation document.

All of the five respondents offered support for Ofgem's initial view that EWC had met the criteria for the two exemptions to be granted. Respondents provided a number of further comments. These comments are reviewed in the section below on Ofgem's final views.

## Ofgem's final views

In order to form our final views on the basis of the most accurate information, we have asked EWC to provide us with all necessary updates of the project's financial information. Ofgem has also continued to liaise with the Commission for Energy Regulation<sup>12</sup> (CER) as well as the European Commission on this exemption application.

After taking into consideration the responses received to the July consultation and other relevant information we continue to consider that the requested exemptions should be granted. We note that this view is supported by respondents. We have at the same time as publishing this decision document granted the final exemption orders to EWC<sup>13</sup>.

In this section we set out our views on the responses to the three specific questions that we asked in the July consultation document and the further issues raised by respondents.

*Consultation question 1: Do you agree with our proposal to treat the EW1 and EW2 interconnectors as a single project for the purpose of our evaluation of the exemption criteria?*

Four of the respondents supported Ofgem's proposal. National Grid commented that "this is consistent with the former Anglo-Scottish interconnector which comprised a number of circuits connected at different points to the England and Wales Transmission System".

EDF Energy held a different view and said that "it is difficult to see how the two proposed interconnectors can be seen as one project". The reasons given for this view were that: separate licences were granted for EW1 and EW2 and separate exemptions will apply, the differences in construction timetables meant that it was only possible to bid for the capacity on EW1 in the first instance and lastly that EW2 (or EW1) might not proceed. However, EDF Energy concluded that despite these views "the arguments for granting exemption for one of the links is exactly the same as for the other and, as such, EDF Energy would have no objection to both being considered for exemption at the same time and on the same basis as each other".

Ofgem continues to consider that it is appropriate to treat the EW1 and EW2 interconnectors as a single project for the purpose of our evaluation of the exemption criteria. EWC has confirmed that it intends to build both interconnectors as a single project (i.e. in terms of financing and tendering). We have considered the issues and granted the

<sup>12</sup> The CER is the regulator for the electricity and natural gas sectors in Ireland.

<sup>13</sup> Available on the Ofgem website ([www.ofgem.gov.uk](http://www.ofgem.gov.uk)).

exemption orders on this basis. If only one interconnector was to become operational then Ofgem would consider whether one or both exemptions should be revoked or amended.

*Consultation question 2: Do you agree with our overall assessment that the exemptions should be granted based on our examination of whether the exemption criteria have been met?*

Four of the respondents specifically stated their support for the exemptions to be granted based on Ofgem's examination of whether the exemption criteria had been met. One respondent did not specifically comment on this question. This respondent suggested some adjustments to the allocation of capacity which they considered would more deeply contribute to the anticipated benefits of promoting new market entry, through reducing barriers to entry in both connected markets and assisting in the developments of a meaningful regional market, and enhancing security of supply. These proposals are considered in detail later in this document.

Ofgem continues to consider that the exemption criteria<sup>14</sup> are met by EWC for the reasons set out in the July consultation document.

*Consultation question 3: Do you agree with the proposed scope and duration for the exemption, and the conditions for revocation?*

In relation to the proposed duration of the exemptions for EW1 and EW2, two respondents said that, whilst the economic modelling was not visible to them, the proposed exemption duration periods were not unreasonable and that they therefore gave their support. One respondent also gave its support whilst another said that without the confidential financial information it was not possible to comment.

Ofgem considers that the proposed exemption duration for EW1 of 25 years and for EW2 of 20 years from the start of commercial operation continues to be appropriate. The financial information provided by the applicant and our analysis indicates that the requested exemption durations are equal to or less than the modelled project payback periods. We have therefore applied these duration periods to the final exemption orders issued to EWC<sup>15</sup>.

In respect of the scope of the exemption, no specific comments were received. Ofgem therefore proposes that the scope of the exemptions as set out in the July consultation document is retained.

One respondent provided general comments on the conditions for inclusion in the exemptions orders. Centrica expressed concern that the conditions set out in sections D (Conditions) and E (Revocation) of the exemption orders were expressed in general terms only as this left much of the detail on Ofgem's approach to be gleaned from the original application and Ofgem's subsequent consultation and final views documents. Centrica argued that it would be beneficial to set out key conditions and terms on the face of the exemption order in all cases. It considered that this would improve clarity in the regulatory regime and would reduce uncertainty for all parties.

We have considered the issues raised by Centrica. Where specific terms are appropriate we have included provisions on the exemption orders. For example, in this instance we have requested information on the outcome of the initial open season as a specific condition of the exemption. However, we consider that there are potential dangers in attempting to set out all of the issues that could potentially arise and all of the information and operational arrangements that EWC has included as part of its application on the face of the

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<sup>14</sup> See pages 11 to 36 of the July Consultation Document for a full overview of the criteria.

<sup>15</sup> In the event that there is a material change to the commitments that EWC has provided in its application, in this case in relation to the anticipated interconnector operational start dates, this would be grounds for the Authority to review and potentially revoke the exemption orders.

exemptions. In particular, this is because the terms of the exemption are anticipated to be in place for a significant time period, i.e. up to a maximum of 25 years following the start of commercial operation and it would be difficult to cover every possible eventuality. Instead, our approach has been to include general conditions in the exemption orders that would provide for Ofgem to re-examine whether there has been a material change to the extent to which the exemption criteria<sup>16</sup> have been met as a result of any action or omission by EWC.

In relation to the specific conditions included in the draft exemption orders, Centrica has requested further guidance on what Ofgem would use to decide whether the initial open season conducted by EWC to allocate capacity on each interconnector had led to a material change in the degree to which the requirements 6(a), (b) or (f) of standard licence condition 12 of the interconnector licence or Article 7(1)(a), (b), or (f) of the Regulation are met.

In EWC's application it gave its commitment to conduct an open season type process for the allocation of capacity on EW1 and EW2. We would therefore expect such a process to be conducted on an open, transparent and non-discriminatory basis<sup>17</sup>. We note that the open season process is underway for EW1. Following notification of the outcome of the open season Ofgem will look to see whether the allocation of capacity is in line with the capacity caps indicated by EWC in its application and that this has been conducted on an open, transparent and non-discriminatory basis. Where it is shown that the open season or its outcome does not meet these requirements, Ofgem would need to re-examine whether the specified exemption criteria notified above continued to be met. Paragraph E3 of the exemption orders allows for the exemption orders to be revoked in these circumstances.

#### *Further issues – Market operational issues*

Respondents raised several points concerning the market arrangements that would be in place to support the operation of the EW1 and EW2 interconnectors. The following section sets out Ofgem's views on these specific operational issues.

In general we would consider that these issues should be debated at the national fora already in existence and charged with the role of developing market arrangements. Where more general concerns are evident there may be merit in considering these in the European or regional fora.

We have received commitment from EWC to both contribute to any such discussions at national and regional fora and also to develop its interconnector arrangements to reflect the market requirements.

#### 1) Market integration and secondary capacity trading

Several respondents requested further information on the market integration arrangements that would operate on the EW1 and EW2 interconnectors and the functioning of the secondary market for capacity trading.

We consider that EWC has strong incentives to put in place effective market integration arrangements and to facilitate secondary trading. By doing this it is able to increase the potential value of capacity sold to primary holders. Putting in place effective secondary trading arrangements is also a requirement of SLC 13 of the electricity interconnector licence.

We have received further assurances from EWC that it is working to put in place effective operational arrangements and that it is responding to the requests of potential capacity

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<sup>16</sup> Excluding condition (b).

<sup>17</sup> See 'LNG facilities and interconnectors, EU legislation and regulatory regime, DTI/Ofgem final views', DTI/Ofgem, November 2003. <http://www.ofgem.gov.uk/Europe/Archive/15003.pdf>

holders to do so. EWC has indicated that it is developing a set of Access Arrangements for both interconnectors that will set out the operational rules for the interconnectors and that these arrangements will be published. The Access Arrangements will, amongst other things, cover the general arrangements for capacity holders, the secondary trading arrangements and the UIOLI arrangements.

As noted above, EWC has committed to continue to develop these arrangements. Ofgem welcomes this commitment from EWC.

## 2) TSO utilisation

In its response, National Grid said that it would be beneficial for Transmission System Operators (TSOs) to have access to any spare capacity (during real time) when required. This, it argued, would be consistent with similar arrangements that are currently in place with the IFA interconnector. National Grid further notes that access to any spare capacity should be subject to commercial terms being agreed between the TSOs and the interconnector owner.

Ofgem agrees that benefits may be accrued as suggested by National Grid. We therefore welcome the commitment received from EWC to put in place such arrangements and notification that it has made arrangements to discuss the issue further with National Grid. We further note that such arrangements are a requirement of the Irish Trading and Settlement Code (TSC), with which EWC will be required to comply.

## 3) UIOLI arrangements

Several respondents asked for further clarification on EWC's proposed UIOLI arrangements. EWC has reiterated its commitment to putting in place effective UIOLI arrangements. It has also clarified that it will include a clause in its contracts with capacity holders to implement UIOLI arrangements and allowing for the arrangements to change from time to time.

However, EWC notes that the current requirements for interconnectors, as set out in the Irish TSC, restrict the application of UIOLI arrangements. In response to this EWC has in the first instance committed to put in place the best reasonably possible UIOLI provisions given these market rules. In particular, specific consideration will be given to requiring primary capacity holders to declare intended usage a few hours before gate closure in the Irish market so that any unused capacity can be released to the market. EWC has further indicated that it will consider proposing a change to the market rules at the Irish TSC Modification Panel. The aim of this will be to facilitate more effective UIOLI arrangements that are compatible with the newly formed Irish Single Electricity Market (SEM) more generally. EWC argues that it would be appropriate to develop general rules to facilitate UIOLI rather than specifically target these requirements on EWC.

We welcome EWC's commitment and note the relevance of SLC 13 of the electricity interconnector licence which places a requirement on EWC to ensure that all available capacity is offered to the market. We further note that the exemptions are granted on the basis of effective UIOLI arrangements being in place. We will monitor the development of these arrangements. Where effective arrangements are not demonstrated to be in place we will consider whether the exemptions should be revoked or amended<sup>18</sup>.

In its response Centrica expressed concern that Ofgem had not provided a copy of the Moyle UIOLI arrangements. We appreciate that this would have been helpful. The

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<sup>18</sup> As with UIOLI/UIOSI, EWC also intends to apply netting on the interconnectors to the extent that this is reasonably possible under the current codes and market rules. EWC has provided its commitment to work with the relevant authorities to improve these codes and rules so that netting can be applied more effectively. As with UIOLI/UIOSI we note that it is in EWC's interest to do so as this will allow users to make greater use the interconnector. We further note that the exemptions are granted on the basis of EWC's commitments being met. We will monitor the development of these arrangements. Where effective arrangements are not demonstrated to be in place we will consider whether the exemptions should be revoked or amended.

arrangements for use of the Moyle interconnector are publicly available<sup>19</sup>. In terms of UIOLI arrangements we note that the Moyle interconnector is subject to the same constraints that EWC has noted above.

#### 4) Use it or Sell it (UIOSI) arrangements

Centrica argued that, in addition to the proposed UIOLI arrangements, EWC should be encouraged to consider UIOSI arrangements. Centrica states its view that UIOSI arrangements are preferable to UIOLI arrangements. It suggests that there is nothing in Regulation 1228/2003/EC on conditions for access to the network for cross-border exchanges in electricity which should oblige independent players to surrender firm capacity holdings without compensation, at a point where these holdings still retain material option value.

EWC has indicated that it will put in place effective UIOLI arrangements and a secondary capacity market. We expect effective UIOLI arrangements supported by a secondary capacity market to ensure that all capacity in the interconnector is made available for use by the market.

However, we note that UIOSI arrangements are being developed elsewhere. The possibility of implementing UIOSI arrangements is supported by EWC. EWC notes the current Trilateral Market Coupling arrangement between France, Belgium and the Netherlands, whereby unused yearly and monthly capacity will be notified to the power exchanges who will then use it for market coupling<sup>20</sup>. We understand that consideration is being given here for income associated with the sale of spare capacity via the power exchanges to be returned to the original holders of the monthly and yearly capacity contracts.

#### 5) Short-term capacity allocation

E.On set out its thoughts on how the allocation of capacity should be amended to improve the access of market participants with short-term optimisation goals to capacity on the interconnectors. E.On made a number of suggestions for how the capacity allocation rules should be amended, for example it argued that 30% of total capacity should be offered on a short-term basis through explicit auctions with year-ahead, month-ahead and day-ahead time horizons.

Ofgem notes the intention of E.On's response to ensure that capacity is available to those that do not want to purchase capacity on a long-term basis, however the purpose of the exemption request has been to avoid such an outcome being enforced through regulation. We note that the purpose of the exemption request from EWC has been to mitigate the perceived risks associated with this project so that it is able to secure finance. These risks include the imposition by the regulator of access arrangements and the restriction on its ability to enter into long-term contracts.

Ofgem has assessed EWC's application against the exemption criteria and considers that these criteria have been passed. We therefore do not consider that there is a requirement to impose additional rules on the allocation of capacity at this stage. We further note that EWC intends to facilitate an effective secondary market for capacity trading via an electronic bulletin board and to put in place effective UIOLI arrangements. This should enable capacity to come to market on a short-term basis. We further note that this is backed up by the requirements of SLC 13 of the electricity interconnector licence to make available the full interconnector capacity.

<sup>19</sup> <http://www.soni.ltd.uk/upload/Moyle%20Interconnector%20Procedures%20V2.0%20Final.doc>

<sup>20</sup> Market coupling is a method for integrating electricity markets in different areas. With market coupling the daily cross-border transmission capacity between the various areas is not explicitly auctioned among the market parties, but is implicitly made available via energy transactions on the power exchanges on either side of the border. It means that the buyers and sellers on a power exchange benefit automatically from cross-border exchanges without the need to explicitly acquire the corresponding transmission capacity.

## 6) Information transparency

In its response Centrica noted EWC's intention to put in place information transparency rules in accordance with those on the IFA. Centrica states that it would like to see suggested improvements built into the arrangements for new interconnectors rather than a straight read across from the IFA being applied.

It is difficult to comment on this point in detail as suggested improvements to information transparency requirements have not been made in the Centrica response. We note that any such concerns are likely to be relevant for new interconnectors and for existing interconnectors. We would welcome the further thoughts of Centrica in this area and also note that EWC has requested further thoughts from the industry on how its proposed transparency arrangements could be improved.

## 7) Reserve price

In response to a request for clarification by E.On, EWC has confirmed that the reserve price for capacity allocation will not include the costs of physical losses for transmission for the EW1 and EW2 interconnectors. EWC indicates that electricity flowing across the interconnector will have a losses adjustment factor applied to it. So for example, where the losses adjustment factor is 0.02, if 100 units are off-taken for transmission across an interconnector, 98 units will be available for use for entry into the connected market. This is also the manner in which transmission losses are taken into account across the GB transmission network.

As set out in the July consultation document, we note that the reserve price that EWC intends to apply will be reflective of operating costs, debt servicing requirements and a fair/reasonable rate of return. If EWC offered capacity with a reserve price significantly over that level, which meant that capacity was not being used, we would need to consider whether this was compliant with the requirement of SLC 13. Under SLC 13 EWC is required to make available the maximum capacity of the interconnector, taking into account system integrity and efficient network operation. In addition, EWC has set out the principle behind its intended reserve price as part of its exemption application and Ofgem has considered the application on this basis. In the event that there is a material change to the commitments that EWC has provided in its application, this would be grounds for the Authority to review and potentially amend or revoke the exemption orders.

### *Further issues - Joint consultation with other Member States*

Centrica expressed disappointment that Ofgem and CER did not jointly consult on EWC's exemption application. They noted the different timings for the consultations issued by each regulatory body and said that a joint consultation and decision would be more efficient and effective, as well as being better for regulatory and investor certainty.

Each relevant National Regulatory Authority (NRA) is required to take its own view on whether the relevant exemption criteria have been met. In many instances this requires analysis to be undertaken on the specific impact of the exemption on the market for the relevant Member State. Practically, each Member State will need to consider the impact of the exemptions in relation to its own market and legal framework. We note that in some important instances analysis is required on matters that impact on both Member States for example on market integration arrangements. In these instances it is appropriate and important for both NRAs to work together to understand the impact of these cross-border issues.

We also note that co-operation and co-ordination is required between NRAs in order to reach their individual conclusions. We are sympathetic to the concerns raised on timing and agree that there may have been benefits to both Ofgem and CER's consultations being issued at the same time to give the opportunity for respondents to consider them both



together. We will look to co-ordinate the timings of consultations for future exemption applications as far as possible.

#### *Further issues - Regulatory regime*

National Grid argued that, where new infrastructure is developed on a merchant basis in a competitive market and where other parties could develop competing infrastructure that provide alternative means for transmitting electricity into the UK, then exemptions should be seen as the default position and the regulation should be "light touch".

It is our current view that exemptions should be granted exceptionally and on a case by case basis.<sup>21</sup> However, it is also noted that exemptions are available and necessary in order to facilitate investment that would not otherwise be brought forward (whilst ensuring that such unregulated investment would not be detrimental to the market).

#### *Further issues - Linking the exemption to the commercial start date for interconnectors*

In its response National Grid said that it would be inappropriate to limit the validity of exemptions by imposing a condition that the project must be completed and operational within a certain fixed time period. It considered that the use of fixed time periods was inappropriate in circumstances of technically challenging projects, where planning consents are uncertain or in relation to unforeseen circumstances that may be out of the developer's control.

Ofgem did not include a condition in the draft exemption orders to make them conditional on the project being operational by a defined time period. We have also not included such a requirement in the exemption orders granted on 26 September 2008.

The Authority has granted the exemption orders based on information provided by EWC in its application, further information requested by Ofgem and on our analysis of this information. For example, the exemption orders have been granted on the basis of the information provided by EWC that the EW1 and EW2 interconnectors will commence operation in 2010 and 2011 respectively. In the event that there is a material change to the commitments that EWC has provided in its application, or if there is any material change to the underlying data provided by EWC, this would be grounds for the Authority to review and potentially revoke the exemption orders (in the event that there is a material change in the degree to which the relevant tests are met)<sup>22</sup>.

#### *Further issues - Transmission charging methodology*

In its response SSE noted that there are certain aspects of the regulatory arrangements into which the proposed merchant interconnectors will connect that it did not believe had been fully considered, namely perceived deficiencies in the operation of National Grid Electricity Transmission plc (NGET's) electricity transmission charging methodology. In response to these points, we note that:

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<sup>21</sup> See also: DG Tren implementation note, *Exemptions from certain provisions of the third party access regime 30.1.2004*, page 1.

<sup>22</sup> We further note that the terms of each licence granted to EWC for EW1 and EW2 allow for them to be revoked if EWC "has not commenced participation in the operation of the interconnector to which the licence relates within five years of the date on which the licence comes in to force". Both licences were granted by the Authority on 20 November 2007. For clarification, this licence term does not require that the licence be revoked in this circumstance but provides for the Authority to exercise this power. Where a licensee has not commenced licensable activities within the time specified in the revocation conditions, we would not 'automatically' revoke that licence. Rather, we would look at each potential licence revocation on a case by case basis, and in accordance with our principal objective and general statutory duties. We would ordinarily provide the licensee with a reasonable opportunity to make representations, take into account any representations received and consider any other relevant factors.

- the underlying rationale behind transmission charging arrangements is that charges should not be unduly discriminatory either for or against different classes of user and that network charges users pay should accurately reflect the costs that they incur on the network. This contributes towards the economic development of the transmission system across GB and helps protect consumers from unnecessary costs. We consider that NGET's current transmission charging arrangements meet these requirements;
- individual parties should take into account the relevant costs that they incur on the network when making decisions about whether it is efficient to trade electricity between specific locations;
- the transmission charging methodology is subject to constant review by NGET; and
- we consider that in relation to electricity transmission charges, Great Britain is currently compliant with all applicable European legislation given current exchange rates.

### *Summary*

We do not consider that any of the points raised by respondents changes the view that Ofgem has previously set out to grant exemptions from the use of revenue or third party access arrangements to EWC for the proposed EW1 and EW2 interconnectors.

### **Ofgem's decision**

For the reasons set out in this letter we have on 26 September 2008 issued an Exemption Order in relation to the interconnector licence held by EWC for EW1 stating that that SLCs 9, 10 and 11 of the electricity interconnector licence and Article 6(6) of the Regulation will not apply for a period of 25 years from the start of its commercial operation. On this date we have also issued an Exemption Order in relation to the interconnector licence held by EWC for EW2 stating that that SLCs 9, 10 and 11 of the electricity interconnector licence and Article 6(6) of the Regulation will not apply for a period of 20 years from the start of its commercial operation.

As noted above, the Authority has granted the exemption orders based on information provided by EWC in its application, further information requested by Ofgem and on our analysis of this information. In the event that there is a material change to the commitments that EWC has provided in its application, or if there is any material change to the underlying data provided by EWC, this would be grounds for the Authority to review and potentially revoke the exemption orders (in the event that there is a material change in the degree to which the relevant tests are met).

For the avoidance of doubt, Ofgem's analysis has been carried out against the relevant criteria for granting an exemption from rTPA requirements and is specific to the application that Ofgem is considering. Our decision in relation to this application does not preclude or impact in any way on the operation of the Competition Act 1998 or the Enterprise Act 2002. Further, as the analysis contained in this document has been carried out in relation to a specific situation, the analysis may or may not necessarily be relevant to a consideration of any related issue that may arise, for example, under the Electricity Act 1989, the Competition Act 1998 or the Enterprise Act 2002.

### **Way forward**

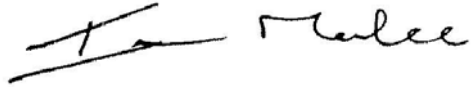
Our decision to grant two exemptions from the requirements regarding use of revenues and third party access for EWC will be notified to the European Commission, which can request Ofgem to amend or withdraw its decision within two months following notification.

Ofgem will continue to monitor EWC's implementation of arrangements to secure the allocation and use of capacity on the EW1 and EW2 interconnectors for example through its

development of effective UIOLI arrangements and facilitation of a secondary market for capacity trading via an electronic bulletin board.

Should you wish to discuss any aspect of our decision in more detail, please feel free to contact me or Andrew Wallace (tel: 020 7901 7067 or email: [andrew.wallace@ofgem.gov.uk](mailto:andrew.wallace@ofgem.gov.uk)).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ian Marlee'. The signature is written in a cursive style with a long horizontal stroke at the end.

Ian Marlee  
**Director, Trading Arrangements**