



# FAB PROJECT

An interconnector to provide electricity  
between France and Britain via Alderney

SENT BY EMAIL ONLY TO: [cap.floor@ofgem.gov.uk](mailto:cap.floor@ofgem.gov.uk)

Correspondence address:  
FAB Link Ltd  
17<sup>th</sup> Floor, 88 Wood Street  
London EC2V 7DA  
United Kingdom

Ikbal Hussain  
10 South Colonnade  
Canary Wharf  
London  
E14 4PU

26<sup>th</sup> April 2021

Dear Ikbal

**FAB Link Limited response to Ofgem's "Consultation on our proposed approach in circumstances where an interconnector project's cap and floor regime start date has been delayed due to force majeure events in the pre-operational period".**

The FAB project is a proposed 1,400MW electrical interconnector between France and Britain via the channel island of Alderney. The project has been under development by FAB Link Limited ("FAB Link") in the UK and Réseau de transport d'électricité (RTE) in France since 2013.

We welcome the opportunity to provide our views on the new Standard Condition 26A and minded-to position regarding the process to follow if an interconnector has not yet had their cap and floor regime implemented. Generally, we are supportive of the wording used in the Interconnector Standard Licence Conditions (SLC) condition 26A for interconnectors that have had their specific cap and floor regime implemented. We are also generally supportive of the wording in the policy decision document for interconnectors that have not yet had their cap and floor regime implemented. We are therefore not providing any suggested amendments to either of these documents beyond the definition of Pre-operational Force Majeure.

There are two issues in relation to both the proposed Standard Condition 26A of the SLC's and the minded-to policy decision document. The first issue relates to the proposed definition of Pre-operational Force Majeure and the second relates to the implication of Schedule 2 of the project specific Licence terms with this process. Both issues should be addressed by Ofgem to ensure the new licence terms and policy fulfil the aim of providing projects that have experienced pre-operational delays relief from consequential impacts where such delays are caused by external factors beyond the reasonable control of the developer.

### Force Majeure Definition

In the Ofgem 2019 consultation on proposed changes to the interconnector cap and floor regime to enable project finance solutions Ofgem took the decision to widen the definition of FM to add strike, lockout and other industrial disturbance in the Interconnector Licence Special Conditions. The terms

of this new definition of FM have been used for the definition of “Pre-operational Force Majeure” within the policy decision document relevant to this consultation. This definition is prescriptive in terms of events or circumstances that may be considered as FM and, given the wording is identical to that used in Interconnector Licence Special Conditions, is focused on the operational phase. A pre-operational FM definition, if prescriptive in its drafting needs to consider events and circumstances beyond the reasonable control of the developer that could occur in the pre-operational phase. In addition to those currently included, the “Pre-operational Force Majeure” definition should also allow for relief from:

- *Government action in GB or any other relevant jurisdiction* - Government action may change the development landscape and result in delay to the consenting/regulatory process and therefore delay to the project that could not be foreseen and is beyond the control of the project. This could be implemented in the definition by replacing ‘Government restraint’ with ‘Government action’.
- *Delays and costs in obtaining consents and/or approvals from public authorities in GB or any other relevant jurisdiction.*
- *Delays and costs due to insolvency of the Engineer, Procure, Construct (EPC) contractor.*
- *Delays to the project due to uncontrollable and unexpected conditions such as severe weather and unexpected ground conditions in GB or any other relevant jurisdiction.*
- *Force Majeure exclusions under EPC Contracts available in the market* – This addition is to support aligning the regulatory terms with those available through the competitive EPC tender process and avoid conflict with project financing.

Furthermore, and given recent events, epidemic should be added to the definition. This should be applied to both the pre-operational FM definition and the SLC FM definition to make clear that any unforeseen impacts of an epidemic in GB or any other relevant jurisdiction are beyond the reasonable control of a developer.

### **Interaction with Schedule 2 of the project specific Licence**

Schedule 2 of the project specific interconnector Licence sets out that Ofgem may at any time revoke a Licence, (giving 30 days’ notice) if the licensee has failed to commence participation in the operation of the interconnector within 3 years of the date the licence came into force. In a letter to FAB Link, Ofgem stated that this power is discretionary and Ofgem would not invoke it in the pre-operational phase if the developer consistently shows progress towards the project delivery. Delays due to FM events or circumstances may result in an inability for the developer to demonstrate consistent progress and so this power is available to Ofgem in this situation. The definition of FM requires the Licence to be in force and so the powers under Schedule 2 give Ofgem absolute discretion over the outcome of any FM case regardless of the legal merit of the FM claim. To ensure the credibility of the process set out in the Policy Decision the ability of Ofgem to revoke a licence on the grounds of project delay should be removed. A FM claim provision should therefore be considered in Schedule 2 of the project specific interconnector licence preventing Ofgem from invoking this power in this situation.

Finally, we would like to highlight difficulties in reviewing the proposed changes to Interconnector Licence conditions as presented. A consolidated version of the IC Licence is not currently available and so reviewing changes must be completed based on Licences that have been superseded or in themselves contain tracked changes. We urge Ofgem to publish a consolidated set of Standard Licence Conditions and non-project specific Special Licence Conditions for ease of future reference.

If you would like to discuss any aspect of this response, please do not hesitate to contact me directly.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Richard Sidley', with a long horizontal stroke extending to the right.

Richard Sidley  
Commercial and Regulatory Manager