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Okon Enyenihi,
Office of Gas and Electricity Markets,
Systems and Networks
10 South Colonnade,
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12 April 2021

by email to cap.floor@ofgem.gov.uk

Dear Okon

RE: Response to Statutory consultation on the proposal to insert new special conditions into the electricity interconnector licences held by Greenlink Interconnector Limited and NeuConnect Britain Limited to implement the cap and floor regime

Enclosed with this letter is NeuConnect's response to the Statutory Consultation on the proposal to insert new special conditions into NeuConnect's electricity interconnector licence. Our response is set out in the form requested in the consultation.

Our response only considers the amendments you are proposing to make to NeuConnect's electricity interconnector licence.

We are generally in agreement with the proposed licence modifications and believe these reflect the variations to the default cap and floor regime published in May 2020. These variations are welcome and are necessary to deliver the desired increase in competition of funding sources for electricity interconnectors; increasing the possibility of interconnection between the UK and its neighbours. We do, however, continue to disagree with Ofgem's rejection of variation 5, as explained in more detail below in respect of the definition of Regime Start Date.

Delivering these changes to the cap and floor regime will help to substantially reduce the UK's Carbon emissions and deliver considerable socio-economic welfare benefits for UK consumers; for NeuConnect alone this will be 16Mt CO₂e reduction and up to £3.2bn of consumers benefits. On top of this, additional interconnection will assist the UK with increasing security and resilience of its electricity supplies.

Should you have any questions please do not hesitate to contact me. This response is not confidential.



Yours sincerely,

A handwritten signature in blue ink, appearing to read 'C. Vanhove'.

Christophe Vanhove
Chief Executive Officer NeuConnect Britain Ltd.

Licence Consultation response template

Respondent details			NeuConnect Britain Ltd Christophe Vanhove		
Licence/Document name	Condition /Section number	Condition/Section name	Page/ Paragraph Ref	Comments	Suggested alternative drafting (please use tracked changes wherever possible)
NeuConnect Britain Licence	Definitions	Actual Floor Level (AFLt)	1	The proposed definition is circular. It cannot be right to define the Actual Floor Level to be the level of Assessed Revenue because the Assessed Revenue is being compared to the Actual Floor Level.	An alternative would be to delete " <i>level of Assessed Revenue</i> " and replace with " <i>the value</i> "
	Definitions	Allowed Outage	2	Refers to Interconnector Outage for which no definition is given in the Definitions sectors. The term is only defined in Special Condition 4, Part G.	Move the definition of Interconnector Outage from SC4 to the main Definitions section.
	Definitions	Assessed Revenue	2	The value of the Assessed Revenue is calculated under SpC 5(4). The definition of "Assessed Revenue" therefore needs to be consistent with SpC 5(4). SpC 5(4) provides for Assessed Revenue to be calculated as the difference between the Gross Revenue and the Market Related Costs to the extent such difference is greater than zero. By contrast, the proposed wording for the definition of Assessed Revenue is "revenue earned by the Licensee's Interconnector". There is a potential clash between this definition and SpC 5(4) – the definition may imply that the Assessed Revenue is the actual gross	Ideally, the definition of "Assessed Revenue" would simply cross-refer to paragraph 4 of special condition 5. As an alternative, we would propose the following amendments: <i>"means the amount of revenue ascribed to earned by the Licensee's Interconnector for any Relevant Year, and calculated, in accordance with Part A paragraph 4 of special</i>

				revenue generated by the interconnector, rather than a specific set of revenues less a specific set of costs as set out in SpC 5.	<i>condition 5 (Assessed Revenue) of this licence</i> ”.
	Definitions	Cap Level (CLt)	2	Similar to AFL – definition is circular	Replace “ <i>level of Assessed Revenue</i> ” with “ <i>the value</i> ”
		Cap Start Date	2 and 10	This is related to the definition of Regime Stat Date issue (see below). Revenues being earned in the trial operations period would not be subject to the cap, if the changes proposed to the Regime Start Date are implemented as described below	Delete the current definition of Cap Start Date and replace it with “ <i>date of the successful completion of such procedures and tests in relation to the Licensee’s interconnector as set out in Paragraph 7(a) of special condition 2 of this licence</i> ” Also delete “ <i>which shall be the Regime Start Date</i> ” in paragraph 5 on page 10
	Definitions	Exceptional Event	3	The words “below the Minimum Availability Target” do not serve a useful purpose here and create ambiguity. The wording is not needed to clarify that an EE is recognised as such only when the EE occurs in a year where MAT is not met. This is already clear from the operative provisions, i.e. Special Condition 4, Part E – this process only applies where the MAT is not met in a year. The issue with including these words within the definition of an EE is that it may suggest that to be an EE the event alone must cause the AA to fall below the MAT – which does not reflect Ofgem’s policy and the wider drafting. It would be helpful if this point could be reconsidered to avoid any confusion on the point in the future.	Delete “ <i>below the Minimum Availability Target</i> ” in part (a) of the definition. And add the word “ <i>reasonable</i> ” after “ <i>Authority’s</i> ” and before “ <i>opinion</i> ” in the first line of limb (b)
	Definitions	Notional Floor Level (NFLt)	5	As with the cap and actual floor level, to avoid circularity it is necessary to remove a dependence on Assessed Revenue in this definition	Replace “ <i>level of Assessed Revenue</i> ” with “ <i>the value</i> ”

	Definitions	Regime Start Date	6	<p>Is now linked only to paragraph 7(a) of SpC 2, or a long stop date of 1st Jan 2024 as amended by the proposed pre-operational FM process in new standard condition 26A. This now makes the regime duration begin before the Full Commissioning Date (“FCD”) which results in the Floor tenor period being less than 25 years unless there is:</p> <ol style="list-style-type: none"> 1. no delay from first energisation to commencing trial operations; and 2. trial operations achieve 60 consecutive days without a failure which restarts the 60 day test clock (which rarely happens). <p>This is different to Ofgem’s window 2 specification published in October 2019 which states that the Regime Start Date commences on the earlier of the FCD or 1st Jan 2024 (as amended). It is also different from the “cap and floor regime summary for the second window” published by Ofgem in May 2016.</p>	<p>Remove the “(a)” after “7” in the first limb of the definition so that the Regime Start Date picks up the entire definition of paragraph 7 in SpC 2 thus aligning the Regime Start Date with the earlier of the Full Commissioning Date or 1st Jan 2024 (as amended by the new SC26A).</p>
	Definitions	Regime Start Date	6	<p>We note that Ofgem has rejected NeuConnect’s “variation 5” proposal to make provision for the Regime Start Date to be delayed if the delay is in the interests of consumers. We continue to consider that this position is wrong because it is inconsistent both with Ofgem’s principal objective and statutory duties and with Ofgem’s recognition (in its May 2020 decision) of the significance (to financing requirements) of full project cost recovery within the 25 year regime duration. Given the challenges faced by developers in financing (for the first time) large, complex, cross-border infrastructure projects, a flexible approach is important and Ofgem should not take an unduly restrictive approach where this is not in the interests of consumers.</p>	<p>Amend limb (b) of the definition of “Regime Start Date” as follows:</p> <p><i>“1st January 2024, or such later date as the Authority may specify either (i) in a direction issued pursuant to Standard Licence Condition [xx] Delay to Regime Start Date caused by Pre-Operational Force Majeure; or (ii) in a direction issued by the Authority where the Authority determines such later date to be in the interests of consumers.”</i></p>

				In addition, in limb (b) the reference to “ <i>the direction</i> ” should be replaced with “ <i>a direction</i> ” to reflect the fact that it is possible that there may be more than one direction issued pursuant to Standard Licence Condition [XX].	
	SpC 2	(12)	12	The proposed draft does not clearly address the cells in the NCCFM1 model where these values will be picked up from	Insert correct cell references (after and if the NCCFM1 is subject to any adjustments following this consultation)
	SpC 2	(12)(d)	12	We do not think the new language is correct. The process set out in SpC 8 does not involve an amendment to any of the terms referred to in this provision. This is because of the way in which the formula in SpC 2 (4) works.	Delete the words, “ <i>until any amendments made by the Authority in accordance with the process set out in Special Condition 8 (Process for determining the value of the Post Construction Adjustment terms) of this licence</i> ” and replace with, “ <i>for the remainder of the Regime Duration</i> ”.
	SpC 4	5	22	Typographical error in use of defined term.	Replace “ <i>licensee’s Interconnector</i> ” with “ <i>Licensee’s Interconnector</i> ”.
	SpC 4	6	22	The addition of the words “ <i>to achieve a specific megawatt hours (MWh) of Interconnector Availability in any Relevant Year</i> ” may cause confusion with SpC 4(7).	Delete the words “ <i>to achieve a specific megawatt hours (MWh) of Interconnector Availability in any Relevant Year</i> ”.
	SpC 4	17	25	The purpose of this provision is unclear. The AIN _F /AIA _F terms are only one component of the calculation of the Notional Floor Level/Actual Floor Level under SpC 2.	Delete SpC 4(17) in its entirety.
	SpC 4	16	24	As written, the definition of CAPOTS _{Nt} and CAPOTS _{At} are circular because they are a function of TS _{Nt} and TS _{At} , which in turn depend on AIN _{Ft} and	Remove the circularity by treating CAPOTS _{Nt} and CAPOTS _{At} in the same way NFL _t and AFL _t have been treated. For example, in (b)(i) rewording to say “... <i>with both the CAPOTS_{Nt}</i> ”

				AIAFt and in some situations AINft and AIAFt depend on CAPOTSnt and CAPOTSAt.	and NFLt terms being calculated as if the AINft was equal to 1.00...
	SpC 5	6	33	<p>Definition of RI: The drafting in this definition does not appear to work, as:</p> <ul style="list-style-type: none"> it is unclear in what sense “lost revenue” can be considered to have been “received” by the licensee. This can be fixed by changing the order where the word “received” is used so it is clear it relates to insurance receipts; amounts received under insurances may relate to previous Relevant Years as well as the current Relevant Year (and it is not clear what is meant by “for” Relevant Year t); and receipts from insurance should be considered to constitute revenue only insofar as they are kept by the licensee and not paid to a third party. 	<p>Amend as follows:</p> <p><i>“means the Receipts from Insurance term for insurance claims related to the compensation <u>received for</u> of lost revenue (such as business interruption insurance) received, in respect of the Licensee’s Interconnector, for Relevant Year t <u>or an earlier Relevant Year</u> and is:</i></p> <p><i>(a) equal to the sum of any payments received, as a result of such insurance claim(s) <u>during</u> for Relevant Year t, <u>excluding any proportion of such payments that the licensee and/or its affiliates are required to pay to any third party</u>; and...”</i></p>
	SpC 5	12	35	This paragraph seems to be circular: it is not clear what criteria apply such that a licensee could identify – or reasonably be expected to identify – that any source of revenue qualifies as an Additional Revenue Source. An Additional Revenue Source is defined as a source of revenue which is the subject of a direction by the Authority.	Ofgem to clarify intent and drafting. If the licensee is to have an obligation to review and flag sources of revenue that Ofgem may consider to constitute Additional Revenue Sources, the licence will need to set out clear criteria for this exercise – e.g. that the revenue source must be something new that has come into existence after the date the special conditions come into force.
	SpC 7	15	42	The list of non-controllable operational costs should be expanded to specifically include any TNUoS charges or BSUoS charges that could be levied because of a policy change now the UK has left the European Union and is no longer bound by the EU rules preventing the levying of such charges. This would then be consistent with the position set out in Ofgem’s October 2019 document setting out its policy	<p>Add in new (d) to cover GB Network Charges</p> <p>Add a definition for GB Network Charges i.e. to cover TNUoS charges and BSUoS charges (if either are levied)</p> <p><i>GB Network Charges means any charges payable to the GB System Operator in connection with the connection by the</i></p>

				for Window 2 projects which referred to network rates (see Appendix 1, Table A1), as well as its May 2016 document that set out the default regime that will apply to such projects (see Annex 1, Table 1).	<i>Licensee' Interconnector to the national electricity transmission system in GB (including any transmission use of system charges ("TNUoS") and balancing use of system charges ("BSUoS"))</i> .
	SpC 7	29 and 30	45	The interconnector will be decommissioned as a whole – the licensee will not just decommission the part it owns. The costs of decommissioning the interconnector will not be borne exclusively by the licensee – it will be shared with NeuConnect Deutschland. These provisions should be amended to be consistent with the approach in the Assessed Revenue provisions in SpC 5 in this regard – i.e. they should reflect the fact that NeuConnect Britain will bear 50% of the costs of decommissioning the whole interconnector.	In SpC 7(29), delete "licensee's" before "obligations with respect to decommissioning" In SpC 7(30), delete "faced by the licensee"
	SpC 10	(2)(c)	57	The ICF true-up is limited to forecasting or reporting errors. It may be that adjustments required are not either of these but are necessary i.e., Some things which are not errors, but which are adjusting values so they take account of time lags that stem from actual events being different to forecast.	Explicitly include other adjustments other than errors in the SpC 10 (2) (c). Similar edits required in SpC 10 (5) and (6)(c)
	SpC 10	(28)(c)	69	Definition of Equity Distribution. The use of the term "distribution" in this term means that payments made between group companies may be caught. For NeuConnect that will mean between NeuConnect Britain Ltd ("NCB") and NeuConnect Deutschland GmbH & Co. KG ("NCD") where the German regulatory regime specifically requires costs to be reimbursed or revenues to be transferred. We understand that the intent of the "rider" regarding the 50% sharing principle is to avoid such transfers being caught, but it would be helpful to explicitly recognise that paying revenues to NCD from NCB or	Make specific explicit reference to revenue transfers and cost reimbursements from NCB to NCD in pursuit of the 50% sharing principle as being distributions that are not prohibited.

			<p>reimbursing costs as required by the German regulatory regime does not fall within the meaning of Equity Distribution.</p> <p>In addition:</p> <ul style="list-style-type: none"> • we do not think that the language at the end of the definition of Equity Distribution, “<i>irrespective of the proportion of the Licensee’s Interconnector that is owned by the licensee or that the licensee is authorised to participate in the operation of by virtue of this licence</i>”, is needed as a result of the construction principle contained in Special Condition 1(5), and therefore should be deleted to avoid any confusion; and • The meaning of the wording from “<i>taking into account any funds contained in a ring-fenced account for the benefit of the GB System Operator</i>” onwards in SpC 10(28)(c) is unclear 	<p>Delete the language “<i>irrespective of the proportion of the Licensee’s Interconnector that is owned by the licensee or that the licensee is authorised to participate in the operation of by virtue of this licence</i>” at the end of the definition of Equity Distribution.</p> <p>Amend the language at the end of SpC 10(28)(c) as follows: “taking into account <u>provided that the amount of</u> any funds contained in a ring-fenced account for the benefit of the GB System Operator (with the approval of the Authority), <u>such funds</u> to be paid to the GB System Operator at the relevant time as determined in accordance with this condition and the CUSC), <u>shall be deducted from the value of the OTSBED, term for this purpose.</u>”</p>
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