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Dear Ikbal,

National Grid Ventures' response to the Ofgem consultation on the 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

National Grid Ventures (NGV) welcomes the opportunity to respond to this consultation. NGV is responsible for the management of National Grid's operational interconnectors and the development of interconnector projects. This includes:

- National Grid Interconnectors Limited (NGIC): owns and manages the NGV assets in the IFA interconnector. IFA has been operational since 1986.
- National Grid IFA2 Limited (NGIFA2): owns and manages the NGV share of the IFA2 interconnector. IFA2 has been operational since 22 January 2021. NGIFA2 is regulated via the cap and floor regime and already has a cap and floor licence.
- National Grid North Sea Link Limited (NGNSL): owns and manages the NGV share of the North Sea Link interconnector. North Sea Link is under construction and is expected to be operational at the end of 2021 (subject to the COVID-19 impact). NGNSL is regulated via the cap and floor regime and already has a cap and floor licence.
- National Grid Viking Link Limited (NGVL): owns and manages the NGV share of the Viking Link interconnector. Viking Link is under construction and is expected to be operational at the end of 2023 (subject to the COVID-19 impact). NGVL is regulated via the cap and floor regime but does not yet have a cap and floor licence.

In addition, NGV has a 50% interest in the incorporated joint ventures BritNed Development Limited and Nemo Link Limited. Both of these interconnectors are operational, and Nemo Link is regulated via the cap and floor regime.

NGV, in conjunction with its partners, is investing several billions of pounds in interconnectors that will be subject to cap and floor regulatory arrangements. A single response is being submitted reflecting our interests in all of our interconnectors, regardless of their stage of development or operation, and whether they are regulated via the cap and floor regime. This response is not confidential, and can be published on the Ofgem website.

Specific areas that we would like to comment on are:

1. Update to the Force Majeure definition for Nemo Link, NGIFA2 and NGNSL

Nemo Link, NGIFA2 and NGNSL are currently the only interconnectors with cap and floor licence conditions.¹ Those licence conditions include a definition of Force Majeure during operations, which serves as a reference to this consultation.

As part of its May 2020 decision on the project finance variations consultation, Ofgem decided to amend the existing Force Majeure definition to include 'strike, lockout and other industrial disturbance'.² Ofgem indicated that this change would apply to all the cap and floor interconnectors, including those that already had a cap and floor licence at the time of the decision. Ofgem is now making those changes in the Nemo Link, NGIFA2 and NGNSL licences. NGV welcomes those changes, which are consistent with the cap and floor regime principle of a level playing field among cap and floor licensees.

NGV notes that if the common elements of the cap and floor regime were to be included within the standard licence conditions, instead of the special licence conditions, it would avoid the requirement for retrospective licence amendments.

2. The reference point for the assessment of delays to the regime start date

The cap and floor Regime Start Date (RSD) definition serves as a reference point for the assessment of delays in circumstances where an interconnector project has been delayed in the pre-operational period due to events that are beyond the reasonable control of the interconnector developer. The RSD varies depending on the relevant cap and floor application window, as stated by Ofgem:

- For Window 1 projects - this is the earlier of the actual connection date or 1 January 2021;
- For Window 2 projects – this is the earlier of the actual connection date or a date up to 12 months after the target connection date of the end of 2022 (by 1 January 2024).

¹ At the time of writing this response, Ofgem has consulted on Greenlink and Neuconnect cap and floor licence conditions. NGV has submitted a response to that consultation, which can be published on the Ofgem website.

² Decision on proposed changes to our electricity interconnector cap and floor regime to enable project finance solutions: <https://www.ofgem.gov.uk/publications-and-updates/decision-proposed-changes-our-electricity-interconnector-cap-and-floor-regime-enable-project-finance-solutions>

NGV considers that the level playing field principle requires that Ofgem should provide to Window 1 projects (including those that already have a cap and floor licence) the same flexibility as it has provided to Window 2 projects. That is, Window 1 projects should also have the RSD determined by considering 'a date up to 12 months after the target connection date', which in the case of Window 1 project would then be by 1 January 2022.

NGV notes that the Window 1 and Window 2 application windows were open by Ofgem less than 2 years apart, which brings further support to the view that the Window 1 RSD should be amended before any consideration of requests for delays to the RSD.^{3,4}

3. The framework for the assessment of requests to delay the regime start date

In NGV's experience, the development and construction of interconnector businesses is a complex and multi-disciplinary activity covering areas such as engineering, commercial, financial, joint venture agreements, procurement, regulatory (in both countries), planning and consenting (in all jurisdictions). Each of these areas has a wide range of stakeholders, any of which might take actions that are beyond the reasonable control of an interconnector developer and can impact the timescales of the development and construction of the interconnector.

The cap and floor regime was designed to bring the benefits of interconnection to GB consumers for at least 25 years. A too rigid interpretation of the RSD provisions risks reducing consumer benefits and even eliminating them altogether if some developers choose not to progress with their projects due to a shorter regime. NGV recognises the importance of timely delivery but also considers that developers already have a strong commercial incentive to deliver their projects in a timely manner. NGV therefore welcomes Ofgem's proposal for a framework for the assessment of requests to delay the RSD, which provides necessary flexibility to the cap and floor RSD arrangements.

The proposed framework appears to be flexible enough to accommodate requests to delay the RSD of cap and floor interconnector developers at different stages of development and construction of their interconnector. NGV supports the approach proposed by Ofgem, with a formal mechanism set out in a standard licence condition alongside an equivalent policy process for interconnector projects that have not yet had the cap and floor regime implemented into their licence (e.g. NGVL).

NGV would like to see the proposed framework applied in a consistent and transparent manner. Consistency means that the threshold for granting requests to delay the RSD is the same for all cap and floor interconnectors, as required by the level playing field principle. Transparency implies that all licensees are able to review and understand the rationale behind Ofgem's decisions on requests to delay the RSD in a timely manner. This should lead to more targeted requests by developers, reducing the assessment work that Ofgem will need undertake.

³ Ofgem's decision to open Window 1 on 6 August 2014, which opened on the same day:
<https://www.ofgem.gov.uk/publications-and-updates/decision-roll-out-cap-and-floor-regime-near-term-electricity-interconnectors>

⁴ Ofgem's decision to open Window 2 in November 2015, which opened on 31 March 2016:
<https://www.ofgem.gov.uk/publications-and-updates/decision-open-second-cap-and-floor-application-window-electricity-interconnectors-2016>

NGV notes that Ofgem does not appear to intend to consult on requests to delay the RSD or publish its decisions as standalone documents, instead only issuing a licence direction/policy decision letter to the licensee making the request. This could make it difficult for licensees to observe how the framework for the assessment of delays to the RSD is being implemented, and whether the level playing field principle is being followed. NGV would like Ofgem to confirm that decisions on requests to delay the RSD will be published as standalone documents, and consider whether it is appropriate to consult on them, particularly in the early stages of the framework implementation.

4. The proposed definition of Pre-operational Force Majeure

The proposed definition of Pre-operational Force Majeure is identical to the definition of Force Majeure in the Nemo Link, NGIFA2 and NGNSL licences (as adapted by the May 2020 decision). Ofgem set out this position in the project finance variations decision, so this is the first opportunity that NGV has had to comment on it. In NGV's opinion, it is important for Ofgem to be aware of the distinct challenges that interconnector developers face during the development phase. To illustrate some of them, they might include:

- Supply market constraints that materialise after the IPA submission, meaning that it is not feasible or efficient for a developer to proceed according to its original timeline. Maintaining the RSD in that case could create a perverse incentive for developers to compromise efficiency in procurement in order to reduce procurement timescales.
- Planning and consenting delays beyond the reasonable control of the developer, in any jurisdiction in which the project is involved.
- Speculative claims to the procurement outcome, where they are not vindicated by a court decision.
- The effects of a pandemic on construction progress, where appropriately mitigated by the developer.

NGV interprets the proposed definition of Pre-Operational Force Majeure as encompassing these events, which are all 'beyond the reasonable control of the developer'.

5. NGNSL specific comments

The North Sea Link interconnector is expected to be operational by the end of 2021. Based on the point raised in section 2, NGNSL would expect to have a 25-year cap and floor regulatory regime. If that were not the case, NGNSL would consider submitting a request to delay the RSD with its Post Construction Review (PCR) submission.

As part of this consultation, Ofgem is proposing to provide NGNSL with flexibility on the timing of its PCR submission, following the same provisions as in the NGIFA2 licence.⁵ NGV welcomes this proposal, as it considers that it will allow the NGNSL submission to contain a more accurate valuation of the costs that are in scope of Ofgem's PCR assessment.

⁵ The same flexibility on the timing of the PCR submission has been included in the Greenlink and Neuconnect licence conditions that Ofgem is consulting on.

6. NGVL specific comments

As part of its Final Project Assessment (FPA) submission, NGVL included a request to delay the RSD to the earliest of the connection date and 1 January 2024. Ofgem indicated in its Viking Link FPA decision that it intended to make a decision on it in 2021.

In light of this consultation, NGVL will now withdraw its request and resubmit it after Ofgem has finalised its development of the proposed framework to assess requests to delay the RSD. At that stage NGVL will resubmit it based on the new framework, engaging with Ofgem on any information that might be required for Ofgem to undertake its assessment under the new rules.

NGV expects that the NGVL request will be assessed following the cap and floor regulatory principle of a level playing field, so that there is a common threshold for what constitutes 'events beyond the reasonable control of the licensee', which is applied equally to all the cap and floor interconnector developers.

Thank you again for the opportunity to comment on this consultation. Please contact me if you would like to discuss any of it any further.

Yours sincerely

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National Grid Interconnector Holdings Limited