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To all cap and floor  
interconnector projects and other  
interested parties

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Date: 8 June 2021

Dear stakeholders,

## **Cap and floor interconnectors: Decision on pre-operational force majeure arrangements**

In March 2021, we published a consultation (the Consultation)<sup>1</sup> on our proposed approach to providing a means for cap and floor interconnector projects that have encountered delays caused by force majeure events, during the pre-operational period, to request a later regime start date (RSD) for the Authority's consideration.

This included a statutory consultation on proposed modifications to the standard conditions of the electricity interconnector licence and to the special conditions of the licences held by Nemo Link Limited (Nemo Link), National Grid IFA 2 Limited (IFA2) and National Grid North Sea Link Limited (NSL). The proposed licence changes were required to:

- Insert a new standard condition 26A (Delay to Regime Start Date caused by Pre-Operational Force Majeure) into Section G of the electricity interconnector licence; and
- Make a small number of minor modifications to the licences held by Nemo Link, IFA2 and NSL.

We also sought views on our proposal to put in place a complementary process for considering requests for a later RSD submitted by interconnector projects, before licence

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<sup>1</sup>Consultation on our proposed approach in circumstances where an interconnector projects' cap and floor regime start date has been delayed due to force majeure events in the pre-operational period  
<https://www.ofgem.gov.uk/publications-and-updates/consultation-our-proposed-approach-circumstances-where-interconnector-projects-cap-and-floor-regime-start-date-has-been-delayed-due-force-majeure-events-pre-operational-period>

conditions implementing their cap and floor regime take effect in their respective licences. This process largely mirrors the mechanism contained in proposed new standard condition 26A. The aim of our proposed approach was to provide both:

- (a) **a formal mechanism, set out in a proposed new standard condition** - for interconnector projects that have had their specific cap and floor regime implemented in their respective interconnector licences; and
- (b) **a complementary process set in a policy decision document** (the Policy Decision Document) that largely mirrors the above formal mechanism - for interconnector projects that have not yet had their cap and floor regime implemented in their respective interconnector licences.

Following consideration of responses to the Consultation, we have decided to proceed with making these licence modifications and to finalise the draft Policy Decision Document. Notices of licence modification are attached in Appendix 1 to 4 of this letter and a final version of the Policy Decision Document is attached in Annex 1.

### **Consultation responses**

We received six responses to the Consultation, one of which was marked confidential and one marked partially confidential. All non-confidential responses have been published alongside this decision on the Ofgem website. We are pleased to note that respondents were generally supportive of our proposals. We discuss the main issue raised in consultation responses below. A summary of the other points raised, together with our views and whether they require further changes to the licence drafting, is set out in Appendix 5.

#### Definition of 'Pre-operational Force Majeure'

We note that respondents generally raised similar points with respect to our proposed approach and that these were primarily focused on the scope of our proposed definition of 'Pre-operational Force Majeure'.

A number of respondents consider it necessary and appropriate to broaden the scope of the proposed definition of 'Pre-operational Force Majeure' so as to expressly include other events that are not currently listed in the suite of events, contained in the definition, that could constitute a force majeure event.

## Our view

As noted in our May 2020 decision<sup>2</sup> on changes to the cap and floor regime to enable project finance solutions - we continue to consider the definition of Pre-operational Force Majeure, which is identical to the Force Majeure definition discussed in our May 2020 decision, to be neither overly wide nor completely prescriptive.

We also note that, whilst there is some overlap, views varied amongst respondents as to what specific additional events should be expressly included in the definition. We do not consider it necessary or appropriate to broaden the definition of Pre-operational Force Majeure by inserting multiple additional events.

We would also reiterate that whilst the proposed definition contains a suite of events that could constitute a force majeure event, the events listed are not exhaustive and the proposed definition of Pre-operational Force Majeure can also accommodate other events that are not expressly included – so long as such events can be demonstrated by the licensee to have been beyond its reasonable control.

## **Other proposed licence modifications**

We also proposed to make the following modifications to the special conditions of the electricity interconnector licences held by Nemo Link, NSL and IFA2:

<b>Licenses</b>	<b>Proposed modifications</b>
Nemo Link	<u>Special condition 1: Definitions and Interpretation</u> <ul style="list-style-type: none"><li>in line with our May 2020 decision<sup>3</sup>, modify the definition of “Force Majeure” to include three additional events (strike, lockout, and other industrial disturbance)</li></ul>
IFA2 and NSL	<u>Special condition 1: Definitions and Interpretation</u> <ul style="list-style-type: none"><li>modify the definition of “Force Majeure” to include three additional events (strike, lockout, and other industrial disturbance); and</li></ul>

<sup>2</sup> Overview of Force Majeure provisions section on page 26 of Decision on proposed changes to our electricity interconnector cap and floor regime to enable project finance solutions: [https://www.ofgem.gov.uk/system/files/docs/2020/05/regime\\_variations\\_decision.pdf](https://www.ofgem.gov.uk/system/files/docs/2020/05/regime_variations_decision.pdf)

<sup>3</sup> Decision on proposed changes to our electricity interconnector cap and floor regime to enable project finance solutions: [https://www.ofgem.gov.uk/system/files/docs/2020/05/regime\\_variations\\_decision.pdf](https://www.ofgem.gov.uk/system/files/docs/2020/05/regime_variations_decision.pdf)

	<ul style="list-style-type: none"> <li>make a consequential modification to the current definition of "Regime Start Date" to include a reference to proposed new standard condition 26A: Delay to Regime Start Date caused by Pre-operational Force Majeure</li> </ul>
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We also proposed to make the following additional minor modifications to special condition 2 and special condition 8 of the NSL licence:

Licensee	Proposed modifications
NSL	<u>Special condition 2: Cap Level and Floor Level</u> <ul style="list-style-type: none"> <li>Correct a typographical error in paragraph 19 by inserting a missing formula for calculating the value of the <math>RPI_t</math> term.</li> </ul>
	<u>Special condition 8: Process for determining the value of the Post Construction Adjustment terms</u> <ul style="list-style-type: none"> <li>Amend paragraphs 4 and 5 to allow the licensee to request that the Authority agree to an earlier or later submission of the Post Construction Adjustment (PCA) terms.</li> </ul>

We note that National Grid Ventures (NGV) was the only respondent to comment on these additional licence modifications and was generally supportive of our proposed changes. We have therefore decided to proceed with making these licence modifications.

### Changes to licence drafting since the Consultation

We have made two small changes to the licence drafting for SLC 26A (and a corresponding change to the Policy Decision Document)<sup>4</sup> in order to:

- clarify that appropriate mitigation and management by the licensee of any events or circumstances specified in its request for a later RSD forms part of our assessment of that request. This amendment also aligns the drafting with similar force majeure process related provisions in the cap and floor special conditions and the OFTO licence conditions; and
- clarify that the Authority's direction<sup>5</sup> specifying the RSD shall be issued "*as soon as reasonably practicable*" (from the date of receipt of all necessary information that

<sup>4</sup> Paragraphs 6(a) and 8(a) of SLC 26A and the Policy Decision Document respectively.

<sup>5</sup> Or where the request is considered under the Policy Decision Document, a decision under paragraph 8 of the Policy Decision Document.

the Authority may reasonably require in order to consider any request for a later RSD).

### Licence modification decisions

Modification decision notices together with relevant schedules have been published alongside this letter as follows:

Appendix 1 – Decision to insert new standard condition 26A: Delay to Regime Start Date caused by Pre-Operational Force Majeure, into Section G: Cap and Floor Conditions, of the electricity interconnector licence	• Schedule 1 - Modifications to the electricity interconnector licence standard conditions
Appendix 2 – Decision on modifications to the special conditions of the electricity interconnector licence held by Nemo Link	• Schedule 2 - Modifications to special condition 1 of the electricity interconnector licence held by Nemo Link
Appendix 3 - Decision on modifications to the special conditions of the electricity interconnector licence held by IFA2	• Schedule 3 - Modifications to special condition 1 of the electricity interconnector licence held by IFA2
Appendix 4 - Decision on modifications to the special conditions of the electricity interconnector licence held by NSL	• Schedule 4 - Modifications to the special conditions of the electricity interconnector licence held by NSL
Appendix 5 – Summary of consultation responses	

Our decision to make these licence modifications will **take effect from 3 August 2021**. The Policy Decision Document takes effect from the date of this decision letter.

If you have any questions in relation to this letter, please contact Ikbal Hussain by email ([Ikbal.Hussain@ofgem.gov.uk](mailto:Ikbal.Hussain@ofgem.gov.uk)).

Yours sincerely,



**Stuart Borland**  
Head of Interconnectors