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for energy consumers

Steven Moore
Chief Executive Officer
ElecLink Limited
4 Kingdom Street
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Date: 29 June 2021

Dear Steven,

Decision on ElecLink Limited's request to extend the validity period of its exemption

On 31 March 2021, Ofgem received a request from ElecLink Limited (ElecLink) to extend the validity period of its exemption, specifically to move forward the Operational Deadline from 30 June 2021 to 15 August 2022. This letter sets out our decision on that request.

Background

ElecLink holds a partial exemption from having to comply with certain aspects of European legislation¹ for the ElecLink Interconnector.² The exemption was given effect in Great Britain by an Exemption Order³ that suspends the corresponding licence conditions from operation in ElecLink's electricity interconnector licence.

On 16 September 2014, Ofgem published its final decision to grant ElecLink a partial exemption.⁴ The exemption decision (Exemption Decision) was made jointly with the Commission de Régulation de l'Énergie (CRE), the French regulator.

¹ Covering third party access (TPA) and use of revenues requirements.

² ElecLink is a 1000MW high voltage direct current (HVDC) link currently under construction, that connects the transmission systems of Great Britain (GB) and France through the Channel Tunnel.

³ ElecLink exemption order - suspending standard licence condition 9 (Use of Revenues) and SLC 11 (Requirement to offer terms for access to the licensee's interconnector).

https://www.ofgem.gov.uk/sites/default/files/docs/2016/04/ofgem_decision_letter_on_eleclink_initial_approval.pdf

⁴ Final decision on ElecLink Limited's request for an exemption under Article 17 of Regulation (EC) 714/2009 for a Great Britain-France electricity interconnector <https://www.ofgem.gov.uk/publications/final-decision-eleclink-limiteds-request-exemption-under-article-17-regulation-ec-7142009-great-britain-france-electricity-interconnector>

Part O of Schedule A of the Exemption Decision stated that ElecLink's exemption would expire if ElecLink had:

- not commenced construction within 2 years; and
- not become operational within 5 years;

from the date of adoption of the decision by the European Commission, unless the European Commission decides that any delay is due to major obstacles beyond the control of ElecLink.

In October 2017, the Inter-Governmental Commission (IGC)⁵ withdrew its conditional consent for the installation of the interconnector cable through the Channel Tunnel. The withdrawal of the IGC's consent prevented ElecLink from completing construction and progressing to commercial operations.

Consequently, ElecLink has previously requested extensions to the Operational Deadline specified in the Exemption Decision. The European Commission has granted these extensions on the basis that the withdrawal of the IGC's consent constituted a major obstacle beyond ElecLink's control. The previous extensions granted by the European Commission are listed as follows:

The First Extension Decision⁶

- The Construction Deadline was extended from 28 July 2016 to 31 July 2017
- The Operational Deadline was extended from 28 July 2019 to 31 July 2020

The Second Extension Decision⁷

- The Operational Deadline was extended from 31 July 2020 to 31 December 2020

The Third Extension Decision⁸

- The Operational Deadline was extended from 31 December 2020 to 30 June 2021

⁵ The IGC fulfilled the role of "safety authority" for the channel tunnel in accordance with Directive 2004/49/EC of 29 April 2004 on rail safety until 31 December 2020.

⁶ Commission Decision of 10/8/2016:

https://ec.europa.eu/energy/sites/ener/files/documents/2016_eleclink_decision_en.pdf

⁷ Commission Decision of 28/7/2020

https://ec.europa.eu/energy/sites/ener/files/documents/2020_eleclink_decision_en.pdf

⁸ Commission Decision of 17/12/2020:

https://ec.europa.eu/energy/sites/ener/files/documents/2020_eleclink2_decision_en.pdf

On each occasion, the European Commission decided that ElecLink experienced major obstacles beyond its control, which in turn meant that the prescribed deadlines could not be met and should therefore be extended. The Operational Deadline was most recently extended to 30 June 2021.

ElecLink's extension request

The basis on which the European Commission granted the two previous extensions to the Operational Deadline relates to the absence of a positive decision in relation to ElecLink's safety consent from the IGC. This meant the project was unable to complete construction and proceed to commercial operations and meet the conditionality prescribed in the Exemption Decision.⁹ Furthermore, in the absence of the safety consent, ElecLink was unable to estimate a definitive date on which the interconnector could start commercial operations.

In the absence of the IGC's consent, ElecLink states in its request that every possible measure was taken to keep the project as near to on schedule as possible. We note the following points:

- ElecLink obtained all regulatory approvals required prior to the start of operations;
- In preparation of operations, an operations and maintenance agreement was arranged alongside the recruitment of relevant personnel;
- Construction activities outside the tunnel continued as per the original timetable and we note these were completed at the end of 2019;
- ElecLink held a number of risk assessment workshops with safety experts and technical specialists as well as conducted additional safety studies; and
- ElecLink appointed additional independent experts and external advisors in order to validate the safety case for the project.

On 10 December 2020 the safety consent was, subject to certain conditions, reinstated by the IGC. Subsequently, on 31 March 2021, ElecLink submitted a request to Ofgem to extend the validity period of its exemption. In its extension request ElecLink states that it will require 88 weeks (from 10 December 2020, as the date the IGC reinstated the safety consent) to complete the following:

⁹ As amended by the First, Second and Third Extension Decisions.

1. Cable pulling activities inside the tunnel
2. Testing and commissioning of the interconnector
3. Securing IGC authorisation to commence commercial operations

Therefore, ElecLink have requested an extension to the Operational Deadline from 30 June 2021 to 15 August 2022.

Legal considerations

We have considered and assessed ElecLink's request of 31 March 2021 under the applicable domestic legal framework. The applicable legal framework has changed as a result of the United Kingdom leaving the European Union (EU).

The previous exemption extension decisions in respect of ElecLink's interconnector project have been taken by the European Commission. This decision is being taken by Ofgem but only for the purposes of its jurisdiction in Great Britain.

As ElecLink is a cross-border and cross-jurisdictional project connecting GB to an EU member state (France), the European Commission is the relevant decision maker for exemption extension requests made in respect of electricity interconnectors connecting to EU member states.

As far as our domestic jurisdiction is concerned, the European Union (Future Relationship) Act 2021 implemented the Trade and Cooperation Agreement (TCA) agreed between the United Kingdom and the EU. The TCA (Treaty Series No.8 (2021) provides under Article 309 (Existing exemptions for interconnectors) that:

"each Party shall ensure that exemptions granted to interconnections between the Union and the United Kingdom under Article 63 of Regulation (EU) 2019/943 of the European Parliament and of the Council and under the law transposing Article 36 of Directive 2009/73/EC of the European Parliament and of the Council in their respective jurisdictions, the terms of which extend beyond the transition period, continue to apply in accordance with the laws of their respective jurisdictions and the terms applicable".

Regulation (EU) 2019/943 has been retained in our domestic law in the modified form. Pursuant to Article 63(9), as modified by Regulation 7 and paragraph 32 of Schedule 4 of the Electricity and Gas (Internal Markets and Network Codes) (Amendment etc.) (EU Exit) Regulations 2020 (2020 No. 1006), "paragraphs 1 to 4A apply to the decision to modify an exemption decision, taking into account the particularities of the existing exemption".

Consequently, for the purposes of our decision on ElecLink's exemption extension request, we applied relevant provisions of paragraphs 1 to 4A of Article 63 to assess whether ElecLink would still meet the relevant conditions contained in Article 63 if the extension was granted.

We have also carefully considered the detail of ElecLink's extension request with respect to ElecLink's view that the causes of further delays were major obstacles beyond ElecLink's control.

Our decision

We note that it would not have been feasible for ElecLink to meet the current 30 June 2021 Operational Deadline, given that the remaining construction activities could only continue following the IGC reinstating its consent on 10 December 2020.

We note that the need for a further extension to the Operational Deadline was clearly anticipated by the European Commission in its last decision to extend the Operational Deadline to 30 June 2021, in which it states that *"once that consent is granted, it will be possible to estimate a definitive date when the interconnector could start operations. ElecLink will then need to request a new extension of the Operational Deadline"*.

The European Commission stated in its two previous extension decisions that *"the Commission takes the view that, based on the information received, the delay is due to major obstacles beyond the control of ElecLink"*.

We share the European Commission's view that the delayed reinstatement of the IGC's consent constituted a major obstacle to the final commissioning of the project, an obstacle which was beyond the control of ElecLink. We consider this latest extension request to have been necessary due to a continuation of that same obstacle, namely, securing the IGC's consent.

We consider the time requested by ElecLink to be appropriate and necessary in order to complete the remaining construction activities and progress to commercial operations.

We consider that ElecLink continues to meet the relevant conditions contained in Article 63 of Regulation (EU) 2019/943, as retained in our domestic law and as amended by the relevant provisions of the Electricity and Gas (Internal Markets and Network Codes) (Amendment etc.) (EU Exit) Regulations 2020 (2020 No. 1006).

We note that, according to ElecLink, 88 weeks¹⁰ are required to complete the required timetable of works and the current Operational Deadline is 30 June 2021. **We therefore agree to, and approve, ElecLink's request to extend the Operational Deadline from 30 June 2021 to 15 August 2022.**

Yours sincerely,

A handwritten signature in black ink, consisting of a stylized 'S' followed by a long, horizontal, slightly wavy line.

Stuart Borland
Head of Interconnectors

¹⁰ From the 10 December 2020 date that IGC reinstated its consent.