



Making a positive difference
for energy consumers

Greenlink Interconnector Limited,
cap and floor interconnector
projects and other interested
parties

Direct Dial: 020 3263 2795
Email: cap.floor@ofgem.gov.uk

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Dear colleagues,

Greenlink Interconnector Limited – Decision on a request for a later regime start date for the Greenlink interconnector project

In June 2021, we implemented regulatory arrangements allowing us to approve delays to the Regime Start Date (RSD) for cap and floor interconnector projects caused by events or circumstances of pre-operational force majeure.¹

These arrangements allow interconnector projects that encounter such delays to submit a request for a later RSD for the Authority's² consideration. The RSD is the date on which the interconnector project's cap and floor regime starts.³

In March 2020, Greenlink Interconnector Limited (GIL) submitted a request for the RSD for its Greenlink interconnector project to be adjusted by 36 months, from 1 January 2021⁴ to 1 January 2024. After careful consideration of GIL's request **we have decided to partially accept Greenlink's claim and grant a 16-month relief period.**

This letter considers the circumstances set out in GIL's request as constituting force majeure and provides the reasons for our decision.

¹ Cap and floor interconnectors: Decision on pre-operational force majeure arrangements - <https://www.ofgem.gov.uk/publications/cap-and-floor-interconnectors-decision-pre-operational-force-majeure-arrangements>

² The words "Authority", "we", "our" and "us" are used interchangeably in this decision.

³ The start date of the floor is also subject to the successful completion of a proving period test that demonstrates that the interconnector was available to flow at its rated capacity for a period of 60 continuous days.

⁴ 1 January 2021 is the current 'backstop' date for cap and floor Window 1 interconnector projects on which GIL's cap and floor regime starts regardless of whether the project has started commercial operations. If the interconnector is commissioned earlier than this date, the RSD will instead be that earlier date.

Background

GIL was granted a cap and floor regime in our first application window (Window 1) and is developing a proposed 500MW electricity interconnector between Great Britain (GB) and Ireland. The start date of the cap and floor regime for GIL's interconnector project reflects an element of the minimum eligibility criteria⁵ for Window 1 projects. GIL's RSD was set to be the earlier of:

- (a) the date it starts commercial operations⁶; and
- (b) 1st January 2021, or such later date as may be specified by the Authority.

GIL notes that it has faced delays to the project progress in a number of key areas as a result of exceptional regulatory delay in the Republic of Ireland (ROI). As a result, it was no longer possible for GIL to meet the RSD of 1 January 2021. It has therefore requested a later RSD.

Assessment route

Our June 2021 decision on pre-operational force majeure arrangements for cap and floor interconnector projects provides two routes for assessing a request for a later RSD:

- (a) **a licence mechanism**, set out in a 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 out in a policy decision document** (the Policy Decision Document) that largely mirrors the above licence mechanism - for interconnector projects that have been granted a cap and floor regime in principle but have not yet had their cap and floor regime implemented in their respective interconnector licences.

On 18 June 2021, we published our decision on changes to the electricity interconnector licence held by GIL.⁷ These licence changes became effective on 1 October 2021, when we published our decision on the Final Project Assessment of the Greenlink interconnector.⁸

⁵ Decision on project eligibility for cap and floor Window 1 projects - <https://www.ofgem.gov.uk/publications/cap-and-floor-regime-initial-project-assessment-fab-link-ifa2-viking-link-and-greenlink-interconnectors>

⁶ Following the successful completion of such procedures and tests in relation to the interconnector that are in accordance with, at the time they are undertaken, Good Industry Practice for commissioning that type of interconnector in order to demonstrate that the interconnector is available for the use of conveyance of electricity at the rated capacity

⁷ Decision on changes to the electricity interconnector licence held by Greenlink Interconnector Limited (GIL) and the electricity interconnector licence held by NeuConnect Britain Limited (NBL) - <https://www.ofgem.gov.uk/publications/decision-changes-electricity-interconnector-licence-held-greenlink-interconnector-limited-gil-and-electricity-interconnector-licence-held-neuconnect-britain-limited-nbl>

⁸ Decision on the Final Project Assessment of the Greenlink interconnector to Ireland - <https://www.ofgem.gov.uk/publications/decision-final-project-assessment-greenlink-interconnector-ireland>

However, given that the standard conditions in Section G of GIL’s licence have not yet come into effect, we have considered GIL’s request for a later RSD in accordance with the process set out in the Policy Decision Document.

GIL’s request for a later RSD

In March 2020, GIL submitted a request for the project’s RSD to be adjusted by 36 months. Following discussion with Ofgem, GIL submitted additional evidence supporting their request in July 2020. In June 2021, following the publication of our decision on pre-operational force majeure arrangements for cap and floor interconnector projects, we sent some specific questions to GIL on its request for a later RSD.

In its submission, GIL sets out that the project has experienced delays to a number of key activities and explains that these were caused by exceptional regulatory delays in the ROI which GIL considers amounted to force majeure. These identified regulatory delays include the delays to:

- the connection and grid access policy;
- the consultation on assessment criteria for interconnector projects; and,
- the consultation on GIL’s request for a cap and floor regime in Ireland.

Exceptional Regulatory delays in the Republic of Ireland

In their submission, GIL set out that it had made assumptions, when developing the project programme, relating to the timeframe over which a regulatory framework in ROI could be developed and the timing of the subsequent regulatory approval process. Greenlink applied for a cap and floor regime in GB with a regime that started by 1 January 2021 on the assumption that this framework would be in place in the ROI. GIL outlines that these assumptions were driven by its engagement with the regulatory authorities in the ROI and general guidance to all National Regulatory Authorities (NRAs) through the EU Third Energy Package provisions⁹ and the TEN-E Regulation.¹⁰ GIL suggests that due to exceptional regulatory delays in the ROI, that were outside of its control, these assumptions were not met and as a result the project programme has been delayed. In their submission GIL set out the impact of those delays on a number of key activities including:

- Seabed surveys
- Applications for permits
- Entering into the Irish connection agreement

⁹ The provisions of the EU Third Energy Package have been replaced by the relevant provisions of the EU Clean Energy Package.

¹⁰ [_ Regulation \(EU\) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure](#)

- Procurement for construction of the project
- Financing the project

We note that GIL first engaged with the relevant regulatory authorities in the ROI, specifically the Commission for Regulation of Utilities (CRU)¹¹, in June 2014 and the evidence submitted by Greenlink demonstrates engagement with the CRU since then throughout the period covered by this request. However, we consider that during certain periods more could have been done by GIL to be proactive in their engagement with the regulatory authorities in Ireland. We have not been presented with evidence of a firm commitment from the CRU to have a framework to assess interconnectors and to subsequently assess the Greenlink project in place to meet the timeframes as assumed in Greenlink's initial project plan.

However, we have been presented with some evidence of commitment from the CRU to progress with the development of interconnector policy following the date of submission of Greenlink's application for a cap and floor regime in GB. In November 2015, the CRU published an information paper stating its intention to seek incentive measures to support Projects of Common Interest (PCI)¹², such as Greenlink, including consideration of regimes in other jurisdictions, such as the cap and floor. This was followed in August 2016 by an information paper on policy for interconnectors¹³, in which the CRU stated that it would conduct a consultation paper on the policy for interconnectors.

We consider this to be the first point in time which the CRU committed to starting work on specific interconnector policy. However, we have received evidence from GIL which suggests that resource was not allocated to the project by the CRU until 1st January 2018. From the evidence submitted by Greenlink, we understand that the CRU flagged resource constraints from as early as November 2014, given other urgent priorities, and continued to notify GIL of these issues until January 2018. Specifically, for the period August 2016 to January 2018 evidence suggests that resource constraints resulting from competing demands on the CRU, most notably the implementation of the Irish Single Electricity market (I-SEM) and outcome of the Brexit referendum in the UK, meant that resource could not be allocated to developing interconnector policy as initially planned in the CRU's August 2016 information paper. Once resource had been allocated to the project in January 2018, the CRU published papers on the intended process and Greenlink's application for a cap and floor regime in March and June 2018 respectively.

¹¹ The CRU was originally established as the Commission for Energy Regulation (CER) in 1999. The CER changed its name to the CRU in 2017 to better reflect the expanded powers and functions of the organisation. For simplicity, throughout this decision we refer only to the CRU.

¹² Projects of Common Interest are key cross border infrastructure projects that link the energy systems of EU countries.

¹³ Policy for Electricity Interconnectors – Consultation Process and Call for Initial Comments - <https://www.cru.ie/wp-content/uploads/2016/07/CER16239-Policy-for-Electricity-Interconnectors-Consultation-Process-and-Call-for-Initial-Comments.pdf>

Overall, we do consider that the CRU's noted resource constraints over the period between August 2016 and January 2018 were outside of the control of Greenlink and had a direct impact on the delivery of expectations set out in August 2016. We consider the exceptional regulatory delays during the 16-month period from the information paper published in August 2016 to when resource was allocated to the work in January 2018, to be force majeure circumstances.

The submission from GIL also references obligations imposed upon National Regulatory Authorities (NRAs) with respect to PCIs pursuant to the TEN-E Regulation. Greenlink has been a PCI project since the first PCI list was published in October 2013. Specifically, in its request, GIL referenced obligations under Article 13 of the TEN-E Regulation relating to the methodology and the criteria used to evaluate investments and to the provision of appropriate incentives where a project promoter incurs higher risks. We agree with GIL that their PCI status does therefore set a legitimate expectation that they would be provided with appropriate regulatory incentives in a reasonable timeframe. However, we note there is no deadline in place for NRAs to meet this obligation and that it is reasonable to expect it to take time for these obligations to be implemented in the relevant jurisdictions. In the case of Greenlink, we note that at the time of granting of PCI status there was not an appropriate existing assessment framework nor incentive mechanism in the ROI.

We consider that the CRU did make progress towards meeting those expectations in a reasonable timeframe for Greenlink outside of the 16-month period of regulatory delay already discussed in this letter. As set out above, in November 2015 the CRU published an information paper noting its intention to seek incentive measures to support PCI projects, such as Greenlink, followed in August 2016 by an information paper which set out a commitment to consult on specific interconnector policy. The next evidence of progress comes after the 16-month period of regulatory delay already discussed, from an information paper published by the CRU in March 2018¹⁴ on specific interconnector applications, including Greenlink. This was followed in July 2018 by a consultation on the CRU's initial assessment of Greenlink¹⁵, and a determination in October 2018 confirming that Greenlink has passed the public interest test.¹⁶ From this point onwards it is our view that the CRU continued to progress towards establishing a cap and floor regime for Greenlink in Ireland. This was confirmed on 1st October 2021. Other than the 16 months period of August 2016 to January 2018, we consider that the CRU has taken reasonable steps in meeting obligations towards Greenlink as a PCI project.

¹⁴ Electricity Interconnectors – Information Paper - [Microsoft Word - 180302 Information Note on Electricity Interconnectors EN - AME Notes.docx \(cru.ie\)](#)

¹⁵ Greenlink Electricity Interconnector - [CRU18119-Greenlink-Interconnector-Application-Consultation-Paper.pdf](#)

¹⁶ Greenlink Electricity Interconnector Determination - [CRU18216-Greenlink-determination-paper-1.pdf](#)

Greenlink also refer to a delay to the connection agreement which was not progress by EirGrid until after the CRU issued a direction on 21 October 2017. The proposed delay by the CRU to provide a direction to EirGrid relates back to the concurrent challenges the regulator faced and we believe is also outside of Greenlink’s control. The connection agreement application was made in October 2016 and was not progressed by EirGrid until after the CRU issued a direction to progress the application in October 2017. However, given that we have decided to provide Greenlink relief for exceptional regulatory delays over a period which ends by 1 January 2018, any delay related to lack of progress to the connection agreement is subsumed by the relief already being provided for exceptional regulatory delays.

Our decision

Whilst we do not consider that the entire duration of regulatory delays experienced by GIL amounted to force majeure circumstances, we do consider that a part of this period meets the force majeure criteria. Therefore, after careful consideration of GIL’s request, we have decided to provide GIL with 16 months relief to their RSD for exceptional regulatory delays experienced in the connecting state (ROI). This amends the RSD for Greenlink from the 1st January 2021 to the 1st May 2022.

Next steps

As stated above, this decision has been made in accordance with the assessment and decision-making framework set out in our published Policy Decision Document for pre-operational force majeure requests.¹⁷ We will issue a formal licence direction to reflect this decision in GIL’s electricity interconnector licence, once the relevant licence conditions¹⁸ have taken effect in GIL’s licence.

If you have any questions in relation to this decision letter, please contact Aliabbas Bhamani (Aliabbas.Bhamani@ofgem.gov.uk).

Yours sincerely,



Stuart Borland

Head of Interconnectors

¹⁷ Policy decision document on our assessment and decision-making framework for pre-operational force majeure requests - https://www.ofgem.gov.uk/sites/default/files/2021-06/annex_1_-_pre-op_fm_policy_doc%20%281%29.pdf

¹⁸ By issuing a direction under paragraph 6(a) of SLC 26A (Delay to Regime Start Date caused by Pre-Operational Force Majeure) that updates the date specified in the definition of Regime Start Date in special condition 1(Definitions and Interpretation) of GIL’s electricity interconnector licence.