

Decision

Decision of the Gas and Electricity Markets Authority to close its investigation into National Grid Electricity Transmission plc and SP Transmission plc and their compliance with obligations relating to the Western HVDC subsea link

Publication date: 30 November 2021

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This investigation was opened in January 2020 to investigate whether National Grid Electricity Transmission plc (“NGET”) and SP Transmission plc (“SPT”) breached licence conditions and/or statutory obligations relating to the delivery and operation of the Western High Voltage Direct Current (“WHVDC”) subsea link between Scotland and Wales.

Special Condition (“SC”) 6I of both companies’ Electricity Transmission Licences relates to the specification of Baseline Wider Works Outputs and Strategic Wider Works Outputs and Assessment of Allowed Expenditure, including the WHVDC Output. This SC requires that the WHVDC Output be delivered by regulatory year 2016/17.

In addition, we investigated potential breaches of standard licence condition (“SLC”) D2 of the Electricity Transmission Licence which relates to failures to provide transmission services (provision of a system capable of allowing electricity flow and fit for those purposes) and section 9(2) of the Electricity Act 1989 relating to the obligation to develop and maintain an efficient, co-ordinated and economical system of electricity transmission.

This document sets out what we found, the action taken by NGET and SPT to resolve the issues, and our reasons for closing this investigation following agreement of appropriate ‘Alternative Action’ settlement measures.

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1. Investigation Outcome

- 1.1. The WHVDC link is a c.£1.2 billion transmission project consisting mainly of a subsea cable between Scotland and Wales, jointly developed by NGET and SPT. It was intended to provide an additional 2250MW of capacity to transmit electricity between Scotland and Wales. The link was due to be delivered no later than regulatory year 2016/17 (i.e. by 31 March 2017).
- 1.2. The project encountered a number of issues which resulted in the delivery of the link after the 31 March 2017 deadline, which NGET and SPT acknowledge resulted in the WHVDC link being delivered later than the date set out in Special Condition 6I of their respective Transmission Licences. The link was formally handed over from the Contractor to the Joint Venture¹ (the project delivery vehicle owned by NGET and SPT), “the JV”, on 22 November 2019².
- 1.3. In June 2020 Ofgem appointed a large engineering consultancy, with relevant expertise, to conduct a review of the circumstances leading to the delay of delivery and operation of the WHVDC link. The report they produced concluded that the root cause of the delay derived from problems with land acquisition, manufacturing processes, installation of cables and commissioning tests. It also acknowledged that no circumstances were identified where the actions of NGET and SPT may have exacerbated or caused delays nor was there additional action which could have been taken by NGET and SPT to accelerate delivery following the issues encountered. The delay has contributed to higher energy bills for consumers.
- 1.4. It is acknowledged that SPT and NGET took commercial steps to seek to protect the interests of present and future consumers. However, NGET and SPT were responsible, through their licences, for the timely delivery and operation of the link, including being responsible for their supply chain. The delay to delivery and operation of the link resulted in gains accruing to NGET and SPT through contractor delay payments and deferred spending upon completion of works which can now be returned to consumers.

¹ A separate legal entity

² The link was available from October 2018 for unidirectional operation and from June 2019 for bidirectional operation (both subject to early use arrangements and prior to its formal handover in November 2019).

1.5. Having considered the outcome of our investigation, we have decided that the case is suitable for resolution via Alternative Action under Ofgem’s Enforcement Guidelines³. This enables Ofgem to agree a package of remedial action to address the impact on customers that can be targeted and timely. Ofgem has assessed this as appropriate because:

- a) NGET and SPT have acknowledged that the WHVDC link was delivered later than the date set out in Special Condition 6I of their respective Transmission Licences and agreed to pay voluntary redress which is a proportionate overall financial package reflecting the present circumstances to compensate consumers for the delay;
- b) It is an important principle for price control delivered projects that liability for delivery under a licence obligation cannot be contracted away, and this is recognised by NGET and SPT;
- c) The WHVDC link is delivered and operational;⁴
- d) The Ofgem commissioned external experts did not identify any additional actions that ought to have been taken, or omissions made by NGET and SPT in the contracting and management of the delivery of the WHVDC;
- e) The matter was self-reported with NGET and SPT maintaining good lines of communications with and regular reports to Ofgem throughout the delay periods;
- f) NGET and SPT have co-operated fully with the investigation and Alternative Action process.

³ Enforcement Guidelines (ofgem.gov.uk)

⁴ We are aware of multiple faults on the link since its commissioning, including most recently between 18 June and 27th July

1.6. Implemented in draft financial models prepared as part of the November 2021 Annual Iteration Process⁵, NGET and SPT have offered a package of measures totaling £158m.

a) £15m of this amount will be paid into Ofgem’s Redress Fund, operated on its behalf by the Energy Saving Trust, by no later than 3 calendar months after the publication of this decision.

b) The remainder will be returned to consumers via TNUoS⁶ charges. To enable reduced TNUoS charges Ofgem will adjust the respective Network companies’ allowed revenue. The necessary adjustments to RAV⁷ and revenue will occur in 2022/23.

1.7 The use of the TNUoS mechanism to return the bulk of the monies is the preferred method for the return of such large redress sums, so that consumers benefit because network charges will be lower than they otherwise would have been. Resolution of the enforcement investigation, including consumer redress on this basis, is in line with Ofgem’s overriding objective to protect the interests of consumers, present and future.

1.8 As part of this settlement, NGET and SPT will reset the allowances received for WHVDC to equal actual expenditure. This will return to consumers:

- the overall underspend on the WHVDC project
- any cashflow benefit of receiving allowances ahead of the delayed expenditure.

1.9 This will be part of the £158m package of measures as set out above. This will ensure that NGET and SPT will not benefit financially from the delay and represents a proportionate overall financial package for energy consumers.

1.10 Ofgem also recognises consumers have already benefited by £100m because of the companies’ efficient financial management of the project and their contract management strategy. Our price control ensures this is returned to customers by lower system charges.

⁵ The models used for calculating the impact were mutually agreed by Ofgem and the JV, and contains updates for 2020/21 totex and inflation, for example

⁶ Transmission Network Use of System charges

⁷ Regulatory Asset Value

- 1.11 For the purposes of this Alternative Action, GEMA does not propose to include reference to any outcomes relating to SLC D2 of the Transmission Licence or section 9(2) of the Electricity Act 1989.
- 1.12 Our decision to resolve this matter via Alternative Action, to close the present investigation and release NGET and SPT and the JV from any and all liabilities and enforcement action relating to the present investigation is subject to NGET and SPT issuing the necessary redress as agreed in full and in the manner and timeframe as set out in this document.

Gas and Electricity Markets Authority

30 November 2021