

NeuConnect Britain Limited,
cap and floor interconnector
projects and other interested
parties

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Date: 21 March 2022

Dear colleagues,

NeuConnect Britain Limited – Decision on a request for a later regime start date for the NeuConnect interconnector project

In June 2021, we implemented regulatory arrangements enabling 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 cap and floor interconnector projects that encounter such delays to submit a request for a later regime start date (RSD) for the Authority's² consideration. The RSD is the date on which the interconnector project's 25-year cap and floor regime starts.³

In March 2021, NeuConnect Britain Limited (NBL) submitted a request for the RSD for its NeuConnect interconnector project to be adjusted by 30 months, from 1 January 2024⁴ to 30 June 2026.⁵ This request was accepted by the Authority.⁶

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 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 2024 being the current 'backstop' date on which NBL's 25-year cap and regime starts regardless of the whether the project has commenced commercial operations by this date.

⁵ If the interconnector is commissioned earlier than this date, the RSD will be that earlier date.

⁶ NeuConnect Britain Limited – Decision on a request for a later regime start date for the NeuConnect interconnector project: [NeuConnect - Draft FM decision \(ofgem.gov.uk\)](#)

Following this, in November 2021, NBL submitted a second request for the RSD for its NeuConnect interconnector project to be adjusted by a further 21 months, from 30 June 2026 to 31 March 2028. After careful consideration of NBL's request **we have decided to agree to NBL's request to specify a later RSD of 31 March 2028 for the NeuConnect interconnector project.**

This decision letter considers the events outlined in NBL's request as constituting force majeure and sets out the reasons for our decision.

Background

NBL was granted a cap and floor regime in our second application window (Window 2) and is developing a proposed 1400MW electricity interconnector between Great Britain and Germany. In line with the eligibility criteria for Window 2 cap and floor projects, the start date of the 25-year cap and floor regime for NBL's interconnector project reflects an element of the minimum eligibility criteria⁷ for Window 2 projects. NBL's current RSD is the earlier of:

- (a) the date it starts commercial operations;⁸ and
- (b) 30 June 2026, or such later date as may be specified by the Authority.

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 the new standard condition 26A - 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 not yet had their cap and floor regime implemented in their respective interconnector licences.

⁷ Decision on project eligibility for cap and floor Window 2 projects: https://www.ofgem.gov.uk/sites/default/files/docs/decision_to_open_a_second_cap_and_floor_application_window_for_electricity_interconnectors_in_2016.pdf

⁸ 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 to demonstrate that the interconnector is available for the use of conveyance of electricity at the rated capacity.

Given that the licence changes, published by Ofgem on 18 June 2021⁹ and NBL's cap and floor regime implementation, are yet to take effect, we have considered NBL's request for a later RSD in accordance with the process set out in the Policy Decision Document.

NBL's request for a later RSD

In March 2021, NBL submitted a request for the project's current RSD to be adjusted to 30 June 2026 (the First FM Request). In this submission, NBL set out eight events that it considered to constitute pre-operational force majeure events that were beyond its control. The Authority accepted those events and circumstances that met the force majeure requirements, and these approved force majeure events and circumstances justified delaying the regime start date to June 2026.

In November 2021, NBL submitted a second request for the project's RSD to be adjusted from 30 June 2026 to 31 March 2028 (the Second FM Request). In this submission, NBL has set out specific sets of events and circumstances that it considers constitute pre-operational force majeure events that were beyond its control. Below, we have considered each of these sets of events and circumstances.¹⁰

1. Supply chain constraints

In the First FM Request, NBL included arguments as to why various supply chain constraints constituted force majeure circumstances. We analysed the information contained in the main submission, as well as the supplemental submissions we received from NBL, and we were unable to establish force majeure events or circumstances based on the information and evidence available to us at that time.

In the Second FM Request, NBL explains that since Ofgem published its decision on the First FM Request, the procurement process has matured significantly and in turn, so has the request for relief based on supply chain constraints.

In the Second FM Request, NBL explain that they have undertaken a four sub-lot strategy for the cable manufacture and installation, in order to ensure that the cables were manufactured in parallel rather than sequentially, enabling NBL to meet their RSD. As NBL further explain in their Second FM Request, NBL only received three submissions for the

⁹ 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>

¹⁰ In accordance with paragraph 9 and 10 of the Policy Decision Document, we notified NBL of our minded-to position and have taken their response into account.

four sub-lots of the cable route and this would therefore have led to at least two of the sub-lots being delivered sequentially.

Upon request from the Authority, NBL provided further information about the three bids. To ensure confidentiality, we refer to these bidders as: Bidder A, Bidder B and Bidder C. Given the offer made by Bidder A, it was clear that their delivery timeline was significantly out of scope with the requirement of the NBL project timeline to meet its Regime Start Date. As they detail in their submission, NBL were then left with two bidders, of which only Bidder B could provide the HVDC cable within a reasonable timeframe, whilst being able to meet the overall deliverability requirements for the project.

As part of their Second FM Request, NBL included a report from 4C Offshore,¹¹ which is a supply and demand analysis for the global and European HVDC submarine cable market for the period of 2020-2025, and which provides credible background information to the specific reasoning and evidence put forward by NBL.

We have assessed the suite of evidence provided to us by NBL and the set of circumstances outlined earlier, which has led to the project being left with only one suitable supplier for the cable manufacturing and installation. We agree that the resulting delay is outside the reasonable control of NBL and that the process of cable manufacturing, installation and subsequent system wide testing could not be completed any sooner than March 2028.

In addition, in the Second FM Request, NBL set out very recent changes to the required burial depth in the German nearshore waters and in the UK nearshore waters. These changes were imposed by the competent authorities in both jurisdictions. However, NBL has not specified nor evidenced any periods of delays that impacted the NeuConnect project and were caused by these changed requirements. Therefore, at this time, we are unable to establish causation nor conclude that these circumstances have amounted to force majeure circumstances.

2. TenneT connection agreement

We have duly considered the part of NBL's submission related to the TenneT connection offer. We have also considered the connection agreement that NBL shared with us upon our request, including the original version of the agreement in German and its English version, which we note has now been concluded. We have considered the arguments put forward by NBL in their submission and, based on the information, reasoning and evidence

¹¹ 4C Offshore is a market intelligence organisation targeting global offshore renewable energy markets.

contained in NBL's submission, we were unable to conclude that the experienced delays amounted to force majeure events or circumstances.

Our decision

Whilst we do not consider all claims set out in NBL's Second FM Request to constitute events or circumstances of pre-operational force majeure, we do consider that some events and circumstances experienced by NBL meet the force majeure requirements. We also consider NBL to have provided sufficient explanation and evidence to justify the requested later RSD. Therefore, after careful consideration of NBL's request as well as the mitigating actions taken by NBL to minimise delays, **we agree to NBL's request to specify a later RSD of 31 March 2028 for the NeuConnect interconnector.**

Next steps

As noted 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.¹² We will issue a formal licence direction to reflect this decision in NBL's electricity interconnector licence once the relevant licence conditions¹³ take effect in NBL's licence.

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

Yours sincerely,



Stuart Borland
Deputy Director, Offshore Network Regulation

¹² Policy Decision Document for pre-operation force majeure requests:

https://www.ofgem.gov.uk/sites/default/files/2021-06/annex_1_-_pre-op_fm_policy_doc%20%281%29.pdf

¹³ 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 NBL's electricity interconnector licence.