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Date: 23 September 2022

**DIRECTION UNDER PARAGRAPH 9 OF AMENDED STANDARD CONDITION E12-J4
OF THE OFFSHORE TRANSMISSION LICENCE**

Whereas:-

1. Humber Gateway OFTO Limited (the **Licensee**) is the holder of an offshore electricity transmission licence (the **Licence**) granted under section 6(1)(b) of the Electricity Act 1989 (the **Act**).
2. The Licensee considers that the events causing the transmission service reductions that occurred between 25 and 26 April 2019 and on 22 September 2019 (the **Events**) were wholly or partially caused by an Exceptional Event (as defined in Amended Standard Condition E12-J1 of the Licence);
3. The Licensee notified the Gas and Electricity Markets Authority (the **Authority**) of the reductions in system availability within the 14-day period required by the licence;
4. The Licensee provided details of the reductions in system availability that it considered resulted from the Events and further information requested by the Authority;

5. The Authority gave notice to the Licensee in accordance with paragraph 11 of Amended Standard Condition E12-J4 of the Licence on 9 November 2021 of the proposed terms of this direction (the **Draft Direction**);
6. The Licensee submitted representations on 21 November 2021.
7. For the reasons set out below, the Authority directs that there will be no adjustment in respect of the Events for the purposes of paragraph 9(d) of Amended Standard Condition E12-J4 of the Licence. The details of the Events and reasons for the Authority's decision are set out in the Annex to this Direction.

This direction constitutes notice pursuant to section 49A(1)(c) of the Act.

Stuart Borland
Deputy Director, Offshore Network Regulation

Duly authorised by the Authority

**DRAFT - ANNEX 1 – THE AUTHORITY’S DECISION ON AN EXCEPTIONAL EVENT
CLAIM SUBMITTED BY HUMBER GATEWAY OFTO LIMITED UNDER AMENDED
STANDARD CONDITION E12-J4**

1. Notification

- 1.1 On 26 April 2019 and 2 October 2019, Humber Gateway OFTO Limited (the **Licensee**) notified the Authority that there had been Transmission Service Reductions on one of its export cables. The Transmission Service Reductions ran from 23:09 on 25 April until 13:09 26 April 2019 and between 18:48 and 21:15 on 22 September 2019.
- 1.2 The Licensee submitted an Exceptional Event claim to the Authority on 16 July 2021. The Licensee submitted further information on 16 September 2021.
- 1.3 On 26 April 2019 and again on 22 September 2019, an event on National Grid Electricity Transmission’s transmission system caused a full loss of transmission services on the Licensee’s offshore transmission system (the **NGET events**).
- 1.4 The Licensee states, “*the earth fault protection settings on the [...] 132kV protection relays, applied at the time of construction, were incorrect*” and “*if the relays had been commissioned with the correct protection settings the relays would have remained stable for a fault on the NG system*”.
- 1.5 The Licensee considers that the events were beyond its reasonable control because:
- 1.5.1 the faults on NGET’s system were by their nature and location outside the control of the OFTO, and
- 1.5.2 the relay settings were applied by the contractor during construction and could not reasonably have been discovered by the OFTO until the occurrence of a fault on 25 April 2019.
- 1.6 In advance of purchasing the assets, the Licensee undertook detailed technical due diligence (DD) on the assets and confirmed:
- “The Developer has provided the detailed calculations used to determine the settings to be applied to the protection devices and has also provided the associated commissioning records. We have reviewed this information and the settings align with the settings in the protection design studies. No overall protection coordination studies have been provided. We have instead performed a selective review of the approach to protection coordination in key protection settings. We have found that in these cases the coordination of protection functions has been addressed appropriately. We conclude that the protection settings are acceptable.”*
- 1.7 The Licensee states, “*following the outage on 25 April 2019 the OFTO and the installation contractor conducted an investigation to identify the reason why the OFTO’s relays initiated a trip signal for an earth fault on the NG 275kV system*” and “*the installation contractor visited the OSP on 22 October 2019 and applied the revised protection settings*”. The Licensee claims the delay in revising the protection settings was due to:
- 1.7.1 the installation contractor initially suggesting that the “*protection settings were correct*”;
- 1.7.2 the “*protection engineer who would apply the revised settings*” being “*based in Belgium*”, which made it “*difficult ... to commit to a date for the engineer to attend site*”, and

1.7.3 any action by the Licensee would invalidate the warranty.

- 1.8 In its submission, the Licensee noted NG technical specification PS(T) 010, and the settings that should apply to protection relays.

2 Exceptional Event requirements

- 2.1. Paragraph 9 of Amended Standard Condition E12-J4 (the **Condition**) provides that the Authority shall adjust the value of the monthly capacity weighted unavailability to offset the impact of an Exceptional Event where:
- a) the licensee considers that an event on its Transmission System that causes a Transmission Service Reduction has been wholly or partially caused by an Exceptional Event;
 - b) the licensee has notified the Authority that a possible Exceptional Event had occurred, within 14 days of its occurrence;
 - c) the licensee has provided such information as the Authority may require in relation to the event; and
 - d) the Authority is satisfied that the notified event is an Exceptional Event.
- 2.2. An Exceptional Event is defined in Amended Standard Condition E12-A1 of the offshore transmission licence as follows:

"...an event or circumstance that is beyond the reasonable control of the licensee and which results in or causes a Transmission Service Reduction and includes (without limitation) an act of God, an act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, fire (not related to weather), governmental restraint, Act of Parliament, any other legislation, bye law, or directive (not being any order, regulation or direction under section 32, 33, 34 and 35 of the Act) or decision of a Court of Competent Authority or the European Commission or any other body having jurisdiction over the activities of the licensee provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of the licensee. For the avoidance of doubt, weather conditions which are reasonably expected to occur at the location of the event or circumstance are not considered to be beyond the reasonable control of the licensee."

3 Reasons for decision

- 3.1 The Authority has considered this claim against the conditions of the licence and the open letter published by Ofgem on 22 October 2014.¹
- 3.2 We do not consider the events to have been beyond the reasonable control of the Licensee, and therefore do not consider they constitute an Exceptional Event.

The NGET events

- 3.3 We have considered whether, and to what extent, the NGET events contributed to the events.
- 3.4 Lightning is considered an expected event on the transmission network. Barring the cases where lightning events are above and beyond expected level, protection systems should work and protect equipment and the network. The Licensee has not claimed that the events on NGETs system were 'above and beyond' expected levels.

¹ Available at:

https://www.ofgem.gov.uk/sites/default/files/docs/2014/10/open_letter_on_exceptional_events_0.pdf.

- 3.5 Transmission services were restored after the NGET events and the Licensee has not indicated that the NGET events caused any damage to its offshore transmission system.
- 3.6 As such, the NGET events is not considered to be the root cause of the Transmission Service Reductions that are the subject of this claim.

Failure of the Licensee system to withstand the NGET events

- 3.7 We disagree that the relay settings applied by the contractor during construction *"could not reasonably have been discovered by the OFTO until the occurrence of a fault of the type that occurred on 25 April 2019."*
- 3.8 We consider the Licensee failed to follow good industry practice and should have identified the protection setting issue during the due diligence process.
- 3.9 We expect licensees undertaking due diligence prior to purchasing the offshore transmission assets will check both the process (as the Licensee seems to have done) and the calculations (which the Licensee has failed to do) used in protection settings.
- 3.10 Further, we consider the event that occurred on 22 September 2019 could have been avoided had the Licensee taken action to address the caused of the April event in a timely manner. We note the protection settings were only changed in October 2019 and consider a delay of approximately six months to address the April event has not been justified in this case.

Response to representations by Licensee

- 3.11 As noted above, the Licensee submitted representations on 21 November 2021. In summary, the Licensee:
- a) disagrees that the relay settings applied by the contractor during construction *"could not reasonably have been discovered by the OFTO until the occurrence of a fault of the type that occurred on 25 April 2019"*. A full system study would be necessary to check and confirm the protection relay settings (over 30 in total); *"a significant piece of work that has not been budgeted for"*;
 - b) *"believes it acted in accordance with Good Industry Practice in the level of due diligence carried out prior to purchasing the OFTO assets"*, stating *"it is not practicable for a due diligence assessment to review all protection settings across the full OFTO network"*;
 - c) considers *"Checking protection setting calculations is a significant piece of work that should not need to be repeated if it had been done correctly in the first place"* and *"Good Industry Practice for a prospective OFTO to check that the developer has followed appropriate processes and procedures when conducting studies in advance of and during the construction of OFTO assets"*;
 - d) *"the suggestion of an annual review of all protection settings is [...] excessive and beyond recognised Good Industry Practice"* and *"the OFTO would expect to be notified by the ESO should there be any changes that might be expected to have a material impact on the OFTO's protection settings"*;
 - e) the event that occurred on 22 September 2019 could not have been avoided had the Licensee taken action to address the April event in a timely manner as *"the Licensee was reliant on the contractor (CG Power) conducting their own protection investigation"* and *"the absence of UK based resource [contractor], led to delays which were beyond the OFTO's control"*.

3.12 We disagree with the Licensee's representations.

- 3.12.1 With regards to the Licensee's representations set out in bullets a) and b) above, we consider the incorrect setting could reasonably have been discovered by the Licensee prior to the events occurring; the information provided to the Licensee was sufficient for the incorrect setting to have been identified during due diligence and remedial action taken by the Licensee to resolved the issues.

We note the "*protection engineer who would apply the revised settings*" was "*based in Belgium*". It is our view that Licensees should ensure they have sufficient arrangements in place to respond quickly to incidents on the transmission system.

- 3.12.2 With regards to the Licensee's representations set out in bullets c) and d) above, the Draft Direction stated our view that it is "*good industry practice that all TOs (including OFTOs) carry out a yearly review of their protection settings, because fault levels can change year on year due to events such as connection or disconnection of power stations and changes in network configurations*". On further consideration we acknowledge that yearly reviews of protection settings may be onerous in some circumstances. However, we note the timing as to when a Licensee should undertake a review of its protection settings is not directly relevant to this decision, as the protection settings were incorrect at installation.

- 3.12.3 With regards to the Licensees representations set out in bullet e), we consider the time taken to identify and resolve the issue after the events of April 2019 resulted in the subsequent transmission service reduction that occurred in September 2019.

Conclusion

- 3.13 For the reasons set out above, we do not consider that the events notified to us constitute an Exceptional Event.
- 3.14 Where there is no Exceptional Event, we have no discretion to make any adjustment to the monthly capacity weighted unavailability pursuant to the Licence.