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Date: 16 February 2023

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

Whereas:-

1. Gwynt y Môr OFTO plc (the **Licensee**) is the holder of an offshore transmission licence (the **Licence**) granted under section 6(1)(b) of the Electricity Act 1989 (the **Act**).
2. Unless otherwise defined, capitalised terms in this Direction and its Annex shall have the same meaning as given to them in the Licence.
3. In accordance with Paragraph 9 of the Amended Standard Condition E12-J4 (the **Condition**):
  - a. the Licensee considers that the Transmission Service Reduction on the Licensee's Transmission System, between 1 October 2021 and 13 July 2022 was caused by an Exceptional Event;
  - b. the Licensee notified the Gas and Electricity Markets Authority (the **Authority**) of the event which resulted in the Transmission Service Reduction within 14 days of their occurrence;
  - c. the Licensee has provided details of the reduction in system availability, for the period 1 October 2021 to 13 July 2022 that the Licensee considers resulted from the Exceptional Event and further information required by the Authority in relation to the event; and
  - d. the Authority is satisfied, based on the evidence provided by the Licensee to date and for the reasons specified in the Annex to this Direction, that the event notified under sub-paragraph (b) above constitutes an Exceptional Event as defined in Amended Standard Condition E12-J1.
4. In accordance with Paragraph 10 of the Condition, the Authority is satisfied, based on the evidence provided by the Licensee, for the reasons specified in the Annex to this Direction, that the Licensee took steps, consistent with Good Industry Practice, to manage the impact of the event on the availability of services (both in anticipation of the event and after the event had occurred), for the majority of the period.
5. However, in the process of restoring transmission services there was an incident where Good Industry Practice was not followed, which led to a total delay of 10

days or 34,787.27 MWh. The Authority considers the Licensee should not be compensated for these delays.

6. The Authority gave the required notice in accordance with Paragraph 11 of the Condition to the Licensee on 25 January 2023 (the **Notice**).
7. The Licensee did not make any representations.

Now therefore:

8. The Authority directs that the Licensee's reported system incentive performance be adjusted to offset the duration of the transmission service reductions from:
  - a) 1 October 2021 to 31 December 2021 the reported system incentive performance for incentive year 7 (beginning 1 January 2021) will be increased by a combined total of 151,453.34 MWh to offset the impact of this event, and
  - b) 1 January 2022 to 13 July 2022 the reported system incentive performance for incentive year 8 (beginning 1 January 2022) will be increased by a combined total of 310,623.68 MWh to offset the impact of this event, and
9. This Direction constitutes notice pursuant to section 49A(1)(c) of the Act.

Yours sincerely,



**Stuart Borland**

**Deputy Director, Offshore Network Regulation**

## REASONS FOR ACCEPTANCE OF AN EXCEPTIONAL EVENT CLAIM SUBMITTED BY GWYNT Y MÔR OFTO PLC UNDER PARAGRAPH 9 OF AMENDED STANDARD CONDITION E12-J4

### 1 Notification

- 1.1 On 15 October 2020, Gwynt y Môr OFTO plc (the **Licensee**) notified the Authority that there had been a Transmission Service Reduction on one of its export cables.
- 1.2 The Authority issued determinations on 10 February 2021, and 30 March 2022 to grant EEs for the period 15 October 2020 to 7 March 2021 and 7 March 2021 to 30 September 2021, respectively.<sup>1</sup>
- 1.3 The Licensee submitted an Exceptional Event claim to the Authority on:
- a) 30 August 2022, covering the remaining period the service cap was applied - 1 October 2021 to 6:21am on 9 June 2022.<sup>2</sup> Transmission services were reduced by approximately 12-13%, and
  - b) 9 September 2022, including details relevant to the period above and the Stage 2 repair undertaken between 6:21am on 9 June 2022 to 13 July 2022 (the **Stage 2 repair**).<sup>3</sup> Transmission services were reduced by 25%.

### 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 reported system incentive performance 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-J1 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."*

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<sup>1</sup> Link to determinations [10 February 2021](#) and [30 March 2022](#).

<sup>2</sup> [Link](#) to claim.

<sup>3</sup> [Link](#) to claim.

### 3 Previous decisions – 15 October 2020 to 30 September 2021

- 3.1 On 10 February 2021, the Authority concluded that the transmission service reduction that occurred between 15 October 2020 to 7 March 2021 was caused by an exceptional event and directed the full level of protection for the period (the **February 2021 direction**).<sup>4</sup>
- 3.2 On 30 March 2022, the Authority concluded that the transmission service reduction that occurred between period 7 March 2021 to 30 September 2021 was caused by an exceptional event and directed the full level of protection (the **March 2022 direction**).<sup>5</sup>

### 4 Decision and reasons for decision - 1 October 2021 to 13 July 2022

- 4.1 The Licensee has acted in accordance with the requirements of subparagraphs 9(a) to (c) of the Condition. Pursuant to subparagraph 9(d) of the Condition, the Authority is satisfied on the evidence provided by the Licensee to date that the Transmission Service Reduction that occurred between 1 October 2021 and 16 July 2022 was caused by an Exceptional Event, for the reasons set out below.
- 4.2 In accordance with Paragraph 10 of the Condition, the adjustment to reported system incentive performance shall be based on the extent to which the Authority is satisfied that the Licensee had taken steps, consistent with Good Industry Practice, to manage the impact of the event on the availability of services (both in anticipation of the event and after the event has occurred).
- 4.3 The Licensee first became aware of breaks in the Fibre Optic Cable (**FOC**) in Subsea Export Circuit 3 (**SSEC3**) in January 2020. The Licensee monitored the FOC for further signs of failure – a number of breaks in the FOC developed on both the spare and main FOC between January 2020 and 15 October 2020, when SSEC3 failed (**the Cable Failure**). FOC breaks continued to develop on SSEC3; the latest being discovered in February and April 2022.
- 4.4 The graphic below shows the total number of FOC breaks identified on SSEC3, to date:



- 4.5 The Licensee repaired the Cable Failure and restored transmission services, at reduced capacity (the **service cap**), on 7 March 2021. The Licensee applied the service cap as

<sup>4</sup> [Link](#) to the February 2021 direction.

<sup>5</sup> [Link](#) to the March 22 direction.

it was concerned that restoration of transmission services at full capacity would cause a further cable failure, resulting from the known FOC breaks on SSE3.

- 4.6 As part of our consideration whether to award an Exceptional Event for the period for 7 March 2021 to 30 September 2021 (ie the March 2022 direction), we considered *"the application of the service cap is within the scope of a range of steps, consistent with Good Industry Practice, to manage the impact of the event on the availability of services"* until 30 September 2021. We also stated we would consider whether the Licensee followed Good Industry Practice warranting an adjustment to reported system incentive performance beyond 30 September 2021 (both in securing replacement cable and undertaking the repair) when transmission services have been restored and the Licensee has provided all necessary information.
- 4.7 The Licensee submitted independent technical reports produced by RINA Tech UK Limited (the **RINA reports**) and Southampton Dielectric Consultants (the **SDC reports**) (the **Technical Reports**).
- 4.8 We have undertaken further analysis since we issued the February 2021 and March 2022 directions and conclude that the FOC breaks that developed before and after the Cable Failure were caused by the same inherent latent defect.
- 4.9 We continue to consider that it is unreasonable for the Licensee to have known about the inherent defects in the FOC, that:
- 4.9.1 led to the failure of the main power core on 15 October 2020, and
- 4.9.2 will likely result in future cable failed if not addressed.
- 4.10 Therefore, based on the information provided by the Licensee to date, we consider that the event constitutes an Exceptional Event.

Did the Licensee follow Good Industry Practice to manage the impact of the event and restore transmission services to full capacity?

- 4.11 In accordance with Paragraph 10 of the Condition, the adjustment to reported system incentive performance shall be based on the extent to which the Authority is satisfied that the Licensee had taken steps, consistent with Good Industry Practice, to manage the impact of the event on the availability of services (both in anticipation of the event and after the event has occurred).
- 4.12 The March 2022 determination states *"We consider the delay in placing the order for replacement cable until March 2021 may have led to a delay to the start of the repair and thus extended the length of time the service cap is in place. In addition, we note there may have been some delays in the shipment of the cable that may be beyond the reasonable control of the Licensee that also need full consideration when transmission services have been restored. We considered it was prudent we take all information into account before deciding whether to penalise the Licensee."*
- 4.13 The Licensee:
- a) disagrees with Ofgem's views, set out in the March 2022 direction, that it could have ordered the replacement cable at an earlier time;

- b) states *"even if it had been possible, then the Latest FOC Breaks would not have been identified or been capable of being removed (not enough cable) in 2021. One of these FOC breaks could then have caused another power core fault, so:
 
  - i. a further repair campaign would have been required;
  - ii. it may have required a further cable order to complete such a repair, and
  - iii. Inevitably even more disruption for the connected generator";*
- c) argues that the time taken to order the replacement cable has been beneficial in hindsight; because *"The issues with SSEC3 have continued to evolve since the first FOC break was identified in January 2020 [...] two further FOC breaks had been identified on SSEC3 prior to the start of the Stage 2 repair, which "almost certainly resulted from breaches in the PE sheath prior to October 2020"*
- d) considers that a further repair campaign would have been required had the Stage 2 repair been undertaken sooner".<sup>6</sup>
- e) states *"it is common for cable suppliers to provide budgetary responses with a provisional indication of the estimated shipping schedule" and "securing an actual shipping date requires a check with the factory" but only when an order is firm. This is confirmed by the cable suppliers that state:
 
  - a. *if the OFTO had issued a purchase order by 30 November 2020, the estimated shipping schedule would have been September 2021, no different from when the OFTO actually issued the purchase order", and*
  - b. *"From the point at which the Licensee received detailed proposals capable of acceptance from its preferred suppliers to the point of order placement, there was no delay in the expected manufacturing slot offered by either supplier".**

4.14 On 29 March 2021, the Licensee placed an order for 8km of replacement cable, with a shipment (manufacture) date of September 2021 and delivery estimated as November 2021.

4.15 Transmission services were fully restored on 13 July 2022.

4.16 We accept the Licensee would need some time to consider a repair strategy to repair the Cable Failure and remove the remaining FOC breaks on SSEC3, thus could not have ordered replacement cable on or around 15 October 2020 when the Cable Failure occurred. We consider the placement of an order by 30 November 2020 is a reasonable time and that the time between 30 November 2020 and placement of the order in March 2021 did not affect the manufacture or delivery date.

4.17 Having further analysed the information provided by the Licensee we are satisfied that the Licensee followed Good Industry Practice in ordering the replacement cable in a timely fashion.

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<sup>6</sup> See 5 April 2022 submission.

- 4.18 The Authority is satisfied that the Licensee acted in accordance with Good Industry Practice for the majority of the period.
- 4.19 However, there was one incident where Good Industry Practice was not evidenced, which led to a delay of approximately 10 days or 34,787.27 MWh. The Authority considers that the Licensee should not be compensated for these delays.
- 4.20 On 26 June 2022, work stopped on one of the vessels used in the repair process when damage to the cable chute was observed; the root cause appears to be a cable roller support which crumpled with the result that the cable moved and applied force to the side wall of the cable chute resulting in the chute being damaged.
- 4.21 The Licensee took prompt action to devise a plan to repair the cable chute damage whilst the vessel was at anchor, redesigning the cable highway to prevent reoccurrence and utilising additional fabricators/welders to accelerate the work to minimise the time the vessel was out of service. The cable chute was repaired, and the vessel returned to service on 6 July 2022.
- 4.22 The Licensee has not provided an explicit explanation as to why the cable roller support crumpled, however, based on the solution applied by the vessel contractor ie to take pressure off the cable roller supports, we conclude the cable chute was not able to withstand the pressure applied to it during the normal operations. We consider the Licensee's contractor has caused an avoidable delay from failing to take steps consistent with Good Industry Practice.
- 4.23 It is the Licensee's obligation to manage the impact of the event on availability. If a Licensee chooses to appoint contractors to restore the service following an outage, the Licensee remains responsible under the Licence for that obligation. The risk of a contractor default impacting the Licensee's ability to comply with its licence obligations is a risk for a Licensee to contemplate. The Licensee is best placed to manage that risk and it is reasonable to expect them to do so.
- 4.24 Therefore, where a Licensee chooses to appoint a contractor, the acts of the contractor will be relevant in how the Authority determines that that Licensee, pursuant to the obligations under its Licence, has acted consistent with Good Industry Practice. It is not simply a matter of contracting itself, and doing the preparatory work to enable the contractor to work, that will mean a Licensee has acted in a manner consistent with Good Industry Practice, however experienced the contractor is.
- 4.25 With respect to the contracting out of repair services, the Authority considers it is for the Licensee to mitigate and manage the associated risks, including the performance and/or default of a contractor. How the Licensee chooses to do this and the commerciality of the terms it can negotiate, is a matter for the Licensee.

## **5 The Authority's Direction**

- 5.1 Therefore, the Authority directs that the Licensee's reported system incentive performance be adjusted to offset the duration of the Transmission Service Reduction from 1 October 2021 to 13 July 2022 as follows: 151,453.34 MWh reported system incentive performance for incentive year 7 (1 January 2021 to 31 December 2021) and 310,623.68 MWh from 1 January 2022 to 13 July 2022 for incentive year 8 (1 January 2022 to 31 December 2022).