

Schedule 1 – Proposed modification to the electricity interconnector licence standard conditions

Proposal to insert the following new standard condition into Section G: Cap and Floor Conditions, only applicable to licensees of the Third Window

Condition 26B. Delay to Regime Start Date caused by Pre-Operational Force Majeure (Third Window)

1. The purpose of this condition is to set out the provisions that apply in circumstances where a licensee (and a participant of the Third Window) considers that the Regime Start Date has been delayed due to an event or circumstance of Pre-Operational Force Majeure.
2. If the licensee considers that an event or circumstance of Pre-Operational Force Majeure has occurred and caused a delay to the Regime Start Date, the licensee may, within a reasonable timeframe of that event or circumstance occurring, submit a written request to the Authority for the Regime Start Date to be adjusted to reflect the delay caused by that event or circumstance of Pre-Operational Force Majeure.
3. Any requests made by the licensee under paragraph 2 of this condition shall include:
 - (a) the particulars of the event or circumstance to which the requests relates and the reason(s) why the licensee considers it to be an event or circumstance of Pre-Operational Force Majeure;
 - (b) the length of any resulting delay that the licensee considers to have been caused as a consequence of that event or circumstance;
 - (c) how this resulting delay has been calculated; and
 - (d) any analysis or information, which the licensee considers sufficient to enable the Authority to fully assess the event or circumstance to which the request relates.
4. For the purposes of paragraph 3 of this condition, where any additional analysis or information is not available to the licensee at the time of the request, the licensee shall:
 - (a) specify any such additional analysis or information items in its request together with an indication of when the licensee expects the specified items to become available; and
 - (b) provide these items as soon as reasonably practicable after they become available.
5. The licensee must provide the Authority, within a reasonable timeframe, as specified by the Authority, with any additional information that the Authority may reasonably require for the purposes of the Authority's consideration under this condition.
6. If in the Authority's opinion, the Regime Start Date:
 - (a) has been delayed by an event or circumstance of Pre-Operational Force Majeure and such event or circumstance has been appropriately mitigated and managed by the licensee, the Regime Start Date shall fall on such later date as the Authority may specify in a direction; or

- (b) has not been delayed by an event or circumstance of Pre-Operational Force Majeure, the Authority shall confirm by way of a direction:
 - (i) that the licensee's Regime Start Date shall be revised to fall on a new Regime Start Date; and
 - (ii) that the licensee shall be subject to the Payback Mechanism for Delays and shall repay, during the Payback Period, any received floor top-up payments, incurred during the Exposure Period; and
 - (iii) the start and end dates of the Exposure Period.
7. Before issuing a direction under paragraph 6 of this condition, the Authority shall give notice to the licensee that it proposes to issue a direction, specifying:
- (a) where paragraph 6(a) applies:
 - (i) the length of any delay that, in the Authority's opinion, was caused by an event or circumstance of Pre-Operational Force Majeure; and
 - (ii) a revised Regime Start Date that takes any such delay into account; or
 - (b) where paragraph 6(b) applies:
 - (i) that the licensee's Regime Start Date shall be revised to fall on a new Regime Start Date; and
 - (ii) that the licensee shall be subject to the Payback Mechanism for Delays and shall repay, during the Payback Period, any received floor top-up payments, incurred during the Exposure Period; and
 - (iii) the start and end date of the Exposure Period.
 - (c) the Authority's reasons for proposing to issue the direction under paragraph 6(a) or 6(b); and
 - (d) the period (not being less than 14 days from the date of the notice, or such other period as may be agreed in writing between the licensee and the Authority) within which the licensee may make representations or objections.

8. Before issuing a direction under paragraph 6(a) or 6(b), the Authority shall consider any representations or objections raised by the licensee.

9. The direction issued under paragraph 6(a) or 6(b) shall state the reasons for the Authority's decision.

10. The Authority shall issue a direction under paragraph 6 of this condition as soon as reasonably practicable after receipt of all necessary information that the Authority may reasonably require.

11. For the purposes of this condition:

Pre-Operation Force Majeure	<p>means</p> <ul style="list-style-type: none"> (a) an event or circumstance which is beyond the reasonable control of the licensee, including act of God,
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	<p>act of the public enemy, strike, lockout and other industrial disturbance, war declared or undeclared, threat of war, terrorist act (or threat of), blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, governmental restraint, provided that lack of funds of the licensee or performance or non-performance by an electricity transmission licensee or equivalent entity shall not be interpreted as a cause beyond the reasonable control of the licensee and provided that weather and ground conditions which are reasonably to be expected at the location of the event or circumstance are also excluded as not being beyond the reasonable control of the licensee; and</p> <p>(b) where such event or circumstance has occurred or commenced between:</p> <p>(i) the date of the Authority's Initial Project Assessment Decision with respect to the licensee's interconnector; and</p> <p>(ii) the successful completion of such procedures and tests in relation to the licensee's 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 licensee's interconnector is available for the use of conveyance of electricity at the Rated Capacity.</p>
Backstop Date	means 31 st December 2032, the date set by the Authority and by which the licensee's interconnector project must connect to the grid and must achieve its Regime Start Date.
Exposure Period	<p>means a period in the final years of the licensee's Regime Duration which:</p> <p>a) corresponds to the length of the delay(s), experienced by the licensee's interconnector:</p>

	<ul style="list-style-type: none"> i) which were not approved by the Authority under the Pre-Operational Force Majeure mechanism or the Reasonable Delay Event mechanism; and/or ii) for which no request under the Pre-Operational Force Majeure mechanism or the Reasonable Delay Event mechanism was submitted by the licensee; and <p>b) exposes the licensee to the repayment obligation of any incurred floor top-up payments during this period.</p>
Good Industry Practice	has the meaning given to that term in the Special Conditions of this licence.
Initial Project Assessment (IPA) Decision	means the Authority's decision, published on its website, on the initial project assessment for the licensee's interconnector.
Payback Mechanism for Delays	<p>means a mechanism:</p> <p>1) that applies in circumstances where the licensee's Regime Start Date:</p> <ul style="list-style-type: none"> (a) has been delayed beyond the Backstop Date and has not been approved by the Authority under the Pre-Operational Force Majeure mechanism; or (b) has been delayed to a date that falls before the Backstop Date and that delay has not been approved by the Authority: <ul style="list-style-type: none"> (i) under the Reasonable Delay Event mechanism; or (ii) under the Pre-Operational Force Majeure mechanism, or (c) has been delayed but no request has been submitted by the licensee under the Reasonable Delay Event mechanism or the Pre-Operational Force Majeure mechanism; and

	2) through which, the licensee repays, during the Payback Period, any received floor top-up payments, incurred during the Exposure Period.
Payback Period	<p>means a period:</p> <ul style="list-style-type: none"> - that is triggered by the licensee receiving the first floor top-up payment, incurred during the Exposure Period; - during which the licensee repays any received floor top-up payments incurred during the Exposure Period; and - which applies until the licensee repays, during the Regime Duration and during the Post Regime Duration (if relevant), all received floor top-up payments incurred during the Exposure Period.
Post Regime Duration	<p>for the purposes of this condition, means the period falling immediately after the end of the Regime Duration:</p> <ul style="list-style-type: none"> - during which the licensee repays any outstanding floor top-up payments that it has incurred during the Exposure Period and which fall under the Payback Mechanism for Delays; and - which lasts and applies until the licensee repays all received floor top-up payments incurred during the Exposure Period.
Rated Capacity	has the meaning given to that term in the Special Conditions of this licence.
Regime Duration	means a period of 25 years.
Regime Start Date	<p>means the earlier of</p> <ul style="list-style-type: none"> (a) the successful completion of such procedures and tests in relation to the licensee's 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 licensee's interconnector is available for the use of conveyance of electricity at the Rated Capacity;

	(b) the latest Regime Start Date approved by the Authority.
Reasonable Delay Event	has the meaning given to that term in the Decision on Timelines and Incentives changes for the Third Cap and Floor Window for Interconnectors, dated [15/02/2023].
Final Project Assessment (FPA) Decision	means the Authority's decision, published on its website, on the final project assessment for the licensee's interconnector.
Third Window	means the third round of the cap and floor regime, with the application period between 1 st September 2022 and 10 th January 2023.