

To all cap and floor
interconnector projects and other
interested parties

Email: Cap.Floor@ofgem.gov.uk
Date: 14 November 2023

Dear stakeholders,

Decision on our proposed approach to project delivery delays as part of the timelines and incentives framework applied to the Third Window

In our Interconnector Policy Review (ICPR) decision¹ of December 2021, we committed to create a more flexible regime for interconnector developers by maintaining a 25-year regime for all projects and accommodating project-specific connection dates to maximise project deliverability. We have designed an improved timelines and incentives framework to implement these commitments. In our Application Guidance for the Third Cap and Floor Window for Electricity Interconnectors², published in July 2022, we shared our policy thinking at that stage and noted that we would consult on our final proposals in the coming months.

Hence, in March 2023 we consulted on changes to the timelines and incentives framework to be applied to the Third Window to improve our treatment of project delivery delays. Our approach was guided by maintaining or improving the risk-reward balance between developers and consumers as well as protecting consumers from the impacts of undue delays. As part of this, we consulted on proposals for:

- a modified approach to the **Regime Start Date** (RSD) concept. RSD replaces the Connection Date (CD), introduced in our Application Guidance for the Third Cap and Floor Window for Electricity Interconnectors publication. To increase flexibility for developers, the RSD can now be updated, and this approach delivers on maintaining a 25-year regime in the Third Window for interconnector developers.

¹ <https://www.ofgem.gov.uk/publications/interconnector-policy-review-decision>

² <https://www.ofgem.gov.uk/publications/application-guidance-third-cap-and-floor-window-electricity-interconnectors>

- the **Reasonable Delay Event** (RDE). This mechanism was introduced to manage delays which are reasonable and have been managed diligently by the developer.
- the **Payback Mechanism for Delays**. This mechanism was introduced to manage undue delays – delays that have not been approved under the Reasonable Delay Event mechanism or the Pre-Operational Force Majeure mechanism, and delays for which no request for our consideration was submitted.
- a modified approach to **the Backstop Date**. Considering the Payback Mechanism for Delays, the Backstop Date concept is applied differently to the approach taken in our cap and floor Window 1 and Window 2.

Alongside the above, we also published a consultation on our proposed approach to providing a mechanism for cap and floor interconnector projects that have encountered delays, qualifying as pre-operational force majeure events, in the Third Window. This mechanism largely mirrors the existing approach for addressing delays caused by pre-operational force majeure events for projects from Window 1 and Window 2, in that it included a policy mechanism and a related new electricity interconnector standard licence condition. The aim of our proposed approach was to provide both:

- a licence mechanism, set out in the new standard condition 26B** (Delay to Regime Start Date caused by Pre-Operational Force Majeure (Third Window)), in Section G of the electricity interconnector licence – for interconnector projects that have had their specific cap and floor regime implemented in their respective interconnector licences; and
- 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.

This letter's main aim is to discuss the consultation responses received to this licence and complementary mechanism.

Consultation responses

We received 3 responses to the Consultation. All non-confidential responses have been published alongside this decision on the Ofgem website. We are pleased to note that respondents were generally supportive of our proposals. We discuss the main points raised in consultation responses below.

Pre-Operational Force Majeure definition

Two respondents expressed issue with the exclusion of a specific event from the definition of the Pre-Operational Force Majeure. One respondent particularly advocated for the inclusion of the event concerning the *performance or non-performance by an electricity transmission licensee or equivalent entity*, as a resulting delay would sit outside of the control of a developer and posed a real issue in the pre-operational phase of interconnector development. The other respondent sought to have this event included in the Reasonable Delay Event mechanism that we introduced through a separate policy consultation on changes to the timelines and incentives framework to be applied to the Third Window.

Payback Mechanism for Delays

One respondent highlighted their comments made to our related Mind-to Decision on Timelines and Incentives changes for the Third Cap and Floor Window for Interconnectors. In this response they suggested improving the risk-reward balance between developers and consumers by enabling the trading of accelerated benefits for a reduced Exposure Period. Cap payments to consumers and increases in capacity on offer were brought forward.

Our view

In accordance with the responses, we accept the issue raised and agree that the *performance or non-performance by an electricity transmission licensee or equivalent entity* - wording is relevant for the operational phase of an interconnector but not the pre-operational phase and hence needs to be removed.

We want to reiterate here that this definition of Pre-Operational Force Majeure for the purpose of SLC 26B still contains a suite of events that could constitute a force majeure event, the events listed are not exhaustive and the definition of Pre-Operational Force Majeure can also accommodate other events that are not expressly included – so long as such events can be demonstrated by the licensee to have been beyond its reasonable control.

We have addressed the options for improving the Payback Mechanism for Delays in the Decision on Timelines and Incentives changes for the Third Cap and Floor Window for Interconnectors document.

Change made to licence drafting since the Consultation

Following consideration of responses to the Consultation, we have decided to proceed with making the licence modifications with one small change to the licence drafting for SLC 26B (and the corresponding change to the Policy Decision Document) in order to reflect the issue raised on the Pre-Operational Force Majeure definition.

Meaning of the Pre-Operational Force Majeure

- Modify the definition by deleting the exclusion of the event of "*performance or non-performance by an electricity transmission licensee or equivalent entity*".

The notice of licence modification is attached in Annex 1 of this letter, Schedule 1 contains the wording for the licence modification, and a final version of the Policy Decision Document is attached in Annex 2.



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Nick Pittarello

Head of Future Interconnection

Duly authorised on behalf of the
Gas and Electricity Markets Authority

14 November 2023