

FAO: Stuart Borland

By email: Cap.Floor@ofgem.gov.uk

31 March 2023

Dear Stuart,

Statutory consultation on a proposal to modify the standard conditions of the electricity interconnector licence

Transmission Investment (TI), as one of the UK's leading independent transmission companies, manages one of the largest offshore electricity transmission portfolios. We have successfully participated in the NG ESO Pathfinder programme, securing contracts to provide stability services at four sites in the two recent stability tenders.

TI is developing two GB interconnector projects: one from the First Window where the mechanisms for relief from delays is limited to pre-Operational Force Majeure following implementation of the Special Licence Conditions; and one in the Third Window which would benefit from the proposed additional Reasonable Delay Event mechanism, which allows for a broad range of delays to be considered, not limited by requirement such as being outside of reasonable control of the project.

We would encourage Ofgem to apply these proposed conditions, or reflect the intent, to all interconnectors that are yet to reach the Final Project Assessment stage (regardless of Window), levelling the playing field across all current competing projects - noting Ofgem's previous reassurances to the industry that the events listed in the text of the Force Majeure clause was not intended to be prescriptive¹.

While the introduction of this licence condition does not rely on establishing the detail of the Reasonable Delay Event mechanism or the Payback Mechanism it does specify key features of the Post Regime period. The lack of detail particularly around how the Floor level beyond the end of the regime would be directed and how that fits with the implied equity distribution 'lock-up' mechanism is unclear, alongside how the Payback payments fit within the Retained Electricity Regulation use of revenues.

It may be Ofgem's intent to leave the full detail open to be agreed and directed on a case-by-case basis, however, it is not clear if that detail would be developed at the point of approval of the delay (some 25 years ahead of the Exposure, Payback and Post Regime periods) or allow those to be determined closer to the end of the regime, i.e. if a payback is actually required to be done. We would welcome clarity on the proposed approach for when and how these will be defined, particularly those that impact on the financeability of the project, which would be better defined upfront.

¹ "We would also reiterate that whilst the proposed definition contains a suite of events that could constitute a force majeure, the events listed are not exhaustive and the proposed 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." Ofgem: Decision on pre-operational force majeure arrangements, 08 June 2021, Appendix 5

We would also highlight our comments in the associated consultation response (attached) for improving the alignment of a project's and consumers' interests, by trading accelerated benefits in return for a reduced Exposure Period.

We hope the contents of the letter (and attached overlapping response to the timelines and incentive consultation) are helpful and we would be pleased discuss any points raised.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Mark Fitch', with a long, sweeping underline.

Mark Fitch
Corporate Development and Regulation Manager

ATTACHMENT: 230331_ Ofgem_Project_timelines_incentives-response_FINAL.pdf