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11 December 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 granted under section 6(1)(b) of the Electricity Act 1989 (the **Act**).
2. In accordance with Paragraph 9 of Amended Standard Condition E12-J4:
 - a) the Licensee considers that the transmission service reduction on the Licensee's transmission system commencing on 26 February 2022 and ending on 27 February 2022 was caused by an exceptional event;
 - b) the Licensee notified the Gas and Electricity Markets Authority (the **Authority**) of the event within 14 days of its occurrence;
 - c) the Licensee has provided details of the reduction in system availability that the Licensee considers resulted from the exceptional event; and
 - d) the Authority considers, for the reasons specified in the Annex to this direction, that the event notified under sub-paragraph (b) above does not constitute an exceptional event as defined in Amended Standard Condition E12-J1 of the Licence. Accordingly, the Authority is not satisfied for the purposes of paragraph 9(d) of the Condition that the event was an exceptional event.
3. The Authority gave notice in accordance with Paragraph 11 of Amended Standard Condition E12-J4 of the Licence to the Licensee on 21 February 2023 (the **Notice**).
4. The Licensee submitted representations on 6 March 2023.
5. For the reasons set out below, the Authority directs that there will be no adjustment in respect of the Event for the purposes of paragraph 9(d) of Amended Standard Condition E12-J4 of the Licence. The details of the Event 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.

A handwritten signature in black ink, appearing to be 'Yvonne Naughton', written in a cursive style.

Yvonne Naughton

Head of OFTO Licence and Compliance

Duly authorised by the Authority

ANNEX

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

1 Notification

Gwynt-y-Môr OFTO plc (the **Licensee**) notified the Authority on 26 and 28 February 2022 regarding a transmission service reduction on its subsea export circuit 3 (**SSEC3**). The transmission service reduction ran from 26 to 27 February 2022. The Licensee submitted an exceptional event claim to the Authority on 1 November 2022.

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 (the **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, 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 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 Decision

3.1 The Licensee has acted in accordance with the requirements of subparagraphs 9(a) to (c) of the Condition. However, pursuant to subparagraph 9(d) of the Condition, the Authority is not satisfied that the transmission service reduction was caused by an exceptional event, for the reasons set out below.

4 Reasons for decision

4.1 The Authority has considered this claim, including the representations provided by the Licensee, against the conditions of the Licence and having regard to the general approach on the evaluation of Exceptional Events set out in the open letter dated 22 October 2014 (the **Open Letter**).¹

4.2 An Exceptional Event is defined in Amended Standard Condition E12-J1 of the Licence as “an event or circumstance that is beyond the reasonable control of the Licensee”. We do not consider this Event to have been beyond the reasonable control of the Licensee and therefore do not consider it to constitute an Exceptional Event. There are three reasons for this decision.

1) *The assumption of normal operational risk*

4.3 The Licensee has stated: “*the root cause of the outage was a faulty circuit breaker repeat relay*”. The Licensee has explained that due to the failure of the circuit breaker repeat relay, the back-up protection relay could not detect any voltage on the busbar and tripped circuit breakers, resulting in an unplanned disconnection of a subsea export cable (the **Failure Event**). In addition, the Licensee stated that “*there are no maintenance tests for this type of relay, the intention being that the relay is installed and remains operational for the life of the substation*”. Further, the Licensee said that the failed relay “*is a sealed unit, designed to be maintenance free*”. Finally, the Licensee claimed that “*the failure of the circuit breaker repeat relay could not have been predicted and was completely beyond the control of the OFTO*”.

4.4 A mere fault or failure of apparatus is not listed in the definition of an Exceptional Event as an example of an event which is to be treated as “beyond the reasonable control of the licensee”. It is also not an event which is commensurate with the examples of such events listed in the definition.

4.5 The Licensee has not explained what caused the fault in the circuit breaker repeat relay, stating that “*any attempt to open the sealed for life relay will risk damage that could destroy or distort any evidence of the root cause for the relay’s failure*”. The cause (the **Trigger Event**) of the failure of the circuit breaker repeat relay is not known. We consider that, in the absence of clear evidence showing any ‘exceptional’ cause, it is more likely than not that the failure of the circuit breaker repeat relay was the product of the assets failing during the course of their normal operation. The possibility of there being a fault or failure of a circuit breaker repeat relay is a type of risk that is foreseeable and in respect of which licensees are expected to plan and put in place contingency arrangements.

4.6 Even if the specific fault is not foreseeable, the type of risk is foreseeable. The fact that such assets may be the subject of occasional failure is part and parcel of that normal operational risk and is not an event properly to be considered “exceptional” in the life of those assets. Our view is not changed by the Licensee’s claim that the affected part is a ‘sealed unit’, as it can still be expected that this part can fail during the lifetime of the asset. We also do not consider that the licensee’s claim that it is intended that the relay should remain operational for the life of the substation changes our approach. As to this, we consider that a relay may fail during the life of a substation. While a licensee is unlikely to know exactly how or when its assets may fail, it is reasonable for a licensee to anticipate the risk of asset failure.

4.7 Where the event is one which can reasonably be expected to occur in the course of operating the assets under normal conditions, it is irrelevant whether the specific fault

¹ [Open letter on the Authority’s approach towards exceptional events for offshore transmission owners | Ofgem](#)

was foreseen by the licensee. The condition of a licensee's assets under normal conditions is considered to be within its reasonable control from the point of asset transfer. It is and always has been the clear policy intent of the offshore regime that, at licence grant, the licensee assumes normal operational risk of the transferred assets.

2) Consideration of previous Authority directions

4.8 As it has done in a previous direction² in a similar situation, the Authority has considered the relevance of the Open Letter. In the Open Letter, the Authority outlined an approach which asked two key questions to determine whether or not the event in question was beyond the licensee's reasonable control, namely:

- i. whether it was reasonable for the licensee to know about all the relevant triggers or contributory factors; and
- ii. whether it was reasonable for the licensee to control or change some or all of these relevant triggers.

4.9 However, the two questions in the Open Letter apply only in circumstances where the event is not one which is reasonably expected to occur in the normal course of events. This is plain, for example, in relation to the example of weather conditions which are reasonably expected to occur at the relevant location; in such circumstances, it would not be appropriate for the Authority to apply the two questions in the Open Letter, given that the licensee cannot control or change the triggers for bad weather, yet it is expressly not an Exceptional Event. Similarly, in respect to the present facts, the fact that the Trigger Event can be reasonably expected to occur in the normal course of events means that it is not appropriate for the Authority to apply the two questions in the Open Letter.

4.10 The Authority has previously allowed certain claims for Exceptional Events in respect of fault or failure of apparatus in circumstances where the Trigger Event leading to the transmission services reduction occurred prior to asset transfer. The Authority may consider, on a case-by-case basis, that it is not appropriate to deem such events as being within the licensee's reasonable control. However, the present facts are plainly distinguishable from such examples. There is no evidence that the Trigger Event for this claim occurred in the period prior to asset transfer.

3) OFTO representations

4.11 We have considered the Licensees' representations, received on 6 March 2023. They do not change our minded-to-decision as outlined in the Notice shared with the Licensee.

4.12 In its representations, the Licensee stated: *"The failure of this small 110V relay is no different to the failure of a 400kV circuit breaker (for example the failure of the X190 circuit breaker that the Authority agreed was an Exceptional Event in its direction dated 5 January 2021)³ or any of the three 132kV subsea cable failures (that the Authority agreed were Exceptional Events), in that the failure of the relay was beyond the control of the Licensee and results in a transmission service reduction."*

4.13 The root cause of the X190 circuit breaker and the three 132kV subsea cable failures referred to by the Licensee in its representations are not comparable to the current situation. The defect on the 400kV circuit breaker was confirmed by the manufacturer as a crack occurring between the main and tank bores within the circuit breaker drive

² [Blue Transmission London Array Limited – Direction under paragraph 10 of Amended Standard Condition E12-J4 | Ofgem](#)

³ [Gwynt y Môr OFTO plc – Decision on exceptional event claim | Ofgem](#)

mechanism, caused by a manufacturing defect.⁴ There was evidence that the cause of the 132kV subsea cable failures was inherent defects, causing multiple fibre optic cable breaks that subsequently led to the failure of the subsea cables.⁵ The Authority was satisfied that the failure of the X190 circuit breaker and the 132kV subsea cable failures did in fact occur prior to asset transfer and were beyond the reasonable control of the Licensee. The circumstances that lead to this direction are different, as we do not have any evidence to suggest that the root cause of the failure occurred before asset transfer.

- 4.14 For completeness, we note that SSEC3 was subject to the application of an export cap at the time of the event (the Licensee states the export cap did not play any part in the further reduction in transmission services) and that prior to the occurrence of the event, the export circuits were configured for normal operation.
- 4.15 For the above reasons, the Failure Event does not constitute an exceptional event as defined in Amended Standard Condition E12-J1. Accordingly, the Authority is not satisfied for the purposes of paragraph 9(d) of the Condition that the Failure Event was an exceptional event.

⁴ Please see [DIRECTION UNDER PARAGRAPH 9 OF AMENDED STANDARD CONDITION E12-J4 OF THE OFFSHORE TRANSMISSION LICENCE \(ofgem.gov.uk\)](#).

⁵ Please see the following directions: [22 June 2016 \(SSEC1\)](#); [13 April 2017 \(SSEC2\)](#); [12 February 2021 \(SSEC3\)](#); [10 December 2021 \(SSEC3\)](#); [6 April 2022 \(SSEC3\)](#), and [16 February 2023 \(SSEC3\)](#).