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Friday, 10 May 2024
via email

Response to Statutory consultation on the temporary facilitative licence condition to support the implementation of the Independent System Operator and Planner.

The Nemo Link Interconnector is a joint venture between National Grid Interconnector Holdings Limited, a subsidiary company of the UK's National Grid Plc, and Elia Transmission Belgium. The interconnector electrically connects Belgium and GB providing both countries with improved grid reliability and access to sustainable generation.

We would like to thank you for the opportunity to comment on the "Statutory consultation on the temporary facilitative licence condition to support the implementation of the Independent System Operator and Planner".

Nemo Link has a number of concerns in respect of the proposed licence conditions and is of the view that the approach to the temporary facilitative licence condition as drafted is too onerous and lacks clarity in many areas.

In response to the questions asked in Appendix 2 of the consultation:

Q1—Are there any foreseeable impacts from the implementation of the temporary licence condition which we should consider?

Nemo Link feels that the temporary license condition is very vague without any specific requirements for us to assess the potential impacts this may impose on licensees. Interconnectors currently provide a range of services to the System Operator (SO) such as cross-border balancing, trading, and SO-SO trades for network/system support. Therefore, changes driven by NESO can have implications on interconnectors which may include but not limited to changes to systems, contractual agreements and operational processes. As currently drafted, the conditions are too broad as it is unclear how these requirements may be exercised and hence it is not possible at this point for us to make an impact assessment.

Nemo Link also feels that if the temporary facilitative licence condition results in amendments to our current business processes or systems to enable the establishment of NESO, this could have as yet undefined costs implications. It is currently unclear, and we would welcome further clarity, that if the scope of the ISOP Change Programme has the potential to result in costs, that a cost recovery mechanism will be established.

Q2 – Does the text of the temporary licence condition capture the policy intent as set out in this consultation document?

Nemo Link understands that the policy intent of the temporary licence condition is to facilitate the implementation of NESO; however, more clarity of intent would be helpful here.

Nemo Link is very concerned at the scope, lack of clarification and indefinite term of the 'Requirement not to Frustrate'. In our view, we question the nature of the condition as it is neither necessary nor appropriate.

It is our view that article 2.8, particularly with the wording '*licensees are prohibited from taking any action or exercising rights that are intended to hinder or frustrate the achievement of the ISOP Implementation Objectives*' is stringently worded and it seems to prevent the ability for licensees to challenge NESO, even in a fair and reasonable merit, throughout the duration of the temporary condition, which is currently envisaged at three years. This condition gives the impression that any necessary steps can be taken unilaterally by NESO in this process. It would be unreasonable to expect licensees to agree to an absolute licence obligation that has such open-ended condition, in the absence of details of the obligations such a licence condition may bring into effect, should be a matter for serious concern to affected licensees.

As a prudent and responsible licensee, Nemo Link is concerned at the implications of compliance with unspecified future obligations. The lack of a provision for "*action or exercising rights that are intended to hinder or frustrate the achievement of the ISOP Implementation Objectives*" would mean that it is open for interpretation, therefore, it is impossible to assess to what limits the licensees would be deemed in breach of licence and subject to enforcement. We do not believe that this is either necessary or proportionate. As we believe that the current licence conditions are sufficient to meet the need. Nemo Link would propose removal of this paragraph.

Q3 – Do you have any other views or comments relating to the temporary licence condition?

1. Nemo Link is keen to understand the requirements under the ISOP Implementation Objectives so that the business can prepare for any upcoming changes and potential impacts to interconnector operators.

2. The intended period of three years for this temporary licence condition to be effective seems rather prolonged in our opinion.

3. It is noted in the consultation that similar approaches have been taken in previous large scale transformation projects, for example the implementation of the British Electricity Trading and Transmissions Arrangements (BETTA). When looking at the wording in the "Annex 2: Legal arrangements associated with the transition to and implementation of BETTA that will affect holders of electricity generation, distribution and supply licences"¹, it is our view that the wording is more acceptable to deliver a similar intent compared to the wording in the proposed licence condition.

'2. Without prejudice to paragraph 1, the licensee shall:

(a) cooperate with other licensees and such other persons as the Authority may determine for these purposes and take such steps and do such things as are reasonable and within its power and as are or may be necessary or expedient to enable such licensees to comply with their licence obligations...'

– ¹ [Microsoft Word - BETTA - Generic licence conditions \(ofgem.gov.uk\)](#)

For your information, this response represents the views of Nemo Link and we are content for it to be published. If you would like to discuss the contents of this response, please do not hesitate to contact me at munti.nguyen@nemolink.co.uk.

Yours faithfully,

Munti Nguyen
Customer, Policy and Regulation Manager
For and on behalf of Nemo Link Limited