

To:

**The General Manager
Gwynt y Môr OFTO plc
350 Euston Road
Regents Place
LONDON NW1 3AX**

DIRECTION UNDER PARAGRAPH 10 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 (the "Licence") granted under section 6(1)(b) of the Electricity Act 1989 (the "Act").
2. In accordance with Paragraph 10 of Amended Standard Condition E12-J4:
 - a) the Licensee considers that the transmission service reduction on the Licensee's transmission system commencing on 2 March 2015 and ending on 16 June 2015 was caused by an exceptional event;
 - b) the Licensee notified the Gas and Electricity Markets Authority (the "Authority") of the event on 3 March 2015, 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 further information required by the Authority in relation to the event; and
 - d) the Authority is satisfied, for the reasons specified in the Annex to this direction, that the event notified under sub-paragraph (b) above was an exceptional event.
3. The transmission service reduction took place from 2 March to 16 June 2015, a total of 106 days. In accordance with Paragraph 11 of Amended Standard Condition E12-J4, the adjustment to reported system incentive performance shall be based on the extent to which the Authority is satisfied that the Licensee has taken steps, consistent with Good Industry Practice, to manage the impact of the event on the availability of services. In the process of restoring service, we consider that there was an avoidable incident that led to a delay of 5 days. In this incident, the subcontractors employed by the Licensee did not follow Good Industry Practice in operating a crane on board a service vessel. This caused damage to the crane, which resulted in the vessel needing to return to port for repairs.
4. The Authority gave notice in accordance with Paragraph 12 of Amended Standard Condition E12-J4 of the Licence to the Licensee on 19 April 2016 (the "Notice").

5. The Licensee submitted representations to the Authority on 3 May 2016 and 26 May 2016. We have considered these carefully, and our views are set out in the Annex to this direction.

Now therefore:

6. The Authority directs that the Licensee's reported system incentive performance be adjusted to offset the duration of the outage as follows:-
 - the total reduction in capacity arising from this outage was 365,426 MWh;
 - the Authority agrees to make an adjustment for the full outage period of 106 days, 2 hours and 32 minutes, minus 5 days;
 - reported system incentive performance for incentive year 3 (beginning 1 January 2015) months 3 to 6 (March to June) will therefore be increased by 348,206 MWh, to offset the impact of this event.¹

This direction constitutes notice pursuant to section 49(1)(c) of the Act.

Dated: 22 June 2016

A handwritten signature in black ink that reads "S3 Beel". The signature is written in a cursive style with a large, stylized "S3" followed by the name "Beel".

Stephen Beel
Partner, Competitive Networks

Duly authorised by the Authority

¹ Availability is measured in Megawatt Hours (MWh). The impact on the event on system availability was 365,426 MWh. The interruption lasted for 106 days, 2 hours and 32 minutes (2546 hours and 32 minutes). The system capacity of each cable at Gwynt y Mor is 138 MW. The duration in hours multiplied by the system capacity gives the total impact of the interruption in MWh.

ANNEX - THE AUTHORITY'S REASONS FOR ISSUING A DIRECTION UNDER PARAGRAPH 10 OF AMENDED STANDARD CONDITION E12-J4

1 Introduction

- 1.1 This Annex sets out the reasons for the Authority's decision to issue a direction under Paragraph 10 of Amended Standard Condition E12-J4 of the offshore transmission licence (the "Licence"), granted to Gwynt y Môr OFTO plc (the "Licensee") under section 6(1)(b) of the Electricity Act 1989.
- 1.2 The direction adjusts the Licensee's reported system incentive performance for the incentive period commencing on 1 January 2015.
- 1.3 The structure of the rest of this Annex is as follows:
 - Section 2 sets out the exceptional event notification submitted by the Licensee for consideration under Paragraph 10 of Amended Standard Condition E12-J4 of the Licence;
 - Section 3 sets out the Authority's reasons for its decision on whether the notified event was an exceptional event; and
 - Section 4 sets out the Authority's directed adjustment to the Licensee's reported system incentive performance.

2 Exceptional event notification submitted by the Licensee

- 2.1 The Licensee notified the Authority on 3 March 2015 that it considered a transmission service reduction that commenced on 2 March 2015 (and subsequently concluded on 16 June 2015) was caused wholly by an exceptional event.
- 2.2 The Licensee submitted a supporting narrative and a technical report provided by the independent consultants Edif ERA (ERA) to the Authority in support of this claim. The ERA report explained that a copper conducting cable and the fibre optic cable running alongside it seemed to have been damaged in storage. It was not possible for ERA to say at exactly what stage the cables were damaged, but the fact that both cables were damaged in the same place showed that there must have been some mechanical damage during storage or the coiling process that took place before the outer layers of the cable and the armour were wrapped around the inner strands. Construction work at Gwynt y Môr was completed in 2013, around eighteen months prior to the date on which the Licence was granted to the Licensee.

3 Authority's reasons for its decision on the event

- 3.1 The Authority considered this claim against the terms of the licence using the general approach on the evaluation of exceptional events set out in an open letter published on 22 October 2014. The Authority is satisfied that the event was an exceptional event as defined under Amended Standard Condition E12-J1 of the Licence for the following reasons:-

- The Licensee identified that the transmission service reduction resulted from damage that had been caused to the copper conducting cable and fibre optic cable on circuit 1 during storage, before the separate cables were wrapped into the collective cable.
- The cables were laid on the sea floor and covered by concrete mattresses at least eighteen months prior to the date the Licence was granted on 12 February 2015 and the point at which the offshore transmission system was transferred to the Licensee. As such the Licensee could not reasonably have known about this fault.
- There was no indication prior to the failure on 2 March 2015 that any installation defect was present. The Licensee conducted due diligence of the transmission assets prior to asset transfer which did not disclose the fault. There was also no indication that the developer of the assets was aware that the cable had been damaged. Since asset transfer, the Licensee had adequate systems and processes in place to monitor the operation of the transmission assets. These did not indicate that there was any defect in the cable. As such the Licensee could not have reasonably acted to prevent the failure event, especially as it occurred just 13 days after the assets were transferred to the Licensee.

The event was therefore beyond the reasonable control of the Licensee.

4 Authority's adjustment to the reported system incentive performance under Paragraph 10 of Amended Standard Condition E12-J4.

- 4.1 In accordance with Paragraph 11 of Amended Standard Condition E12-J4, the adjustment to reported system incentive performance shall be based on the extent to which the Authority is satisfied that the Licensee had taken steps, consistent with Good Industry Practice, to manage the impact of the event on the availability of services (both in anticipation of the event and after the event has occurred).
- 4.2 The Authority is satisfied that the Licensee has in place (and had in place prior to the cable failure) operational and maintenance procedures which are consistent with Good Industry Practice. Further, after the occurrence of the cable failure, the Licensee took prudent and timely steps to identify the root cause of the fault and mobilised appropriate resources to repair the fault in a timely manner. The Authority is satisfied that, except as set out below, the actions of the Licensee and those acting on its behalf in restoring transmission services were reasonable, proportionate and efficient.
- 4.3 However, in the process of restoring service, there was an incident that led to a 5 day prolongation of the outage. In this incident, a subcontractor employed by the Licensee damaged a crane on board a service vessel requiring it to return to port for repair works.
- 4.4 On 19 April 2016, the Authority issued the Licensee with a draft direction, noting its intention to reduce the adjusted reported system performance incentive by 5 days, on the basis that the Licensee's subcontractor did not follow Good Industry

Practice in operating the crane, and that its actions had prolonged the outage. The Licensee has subsequently written to the Authority on 3 May 2016 and 26 May 2016, objecting to this reduction. We have considered the representations made by the Licensee set out in two categories below.

First objection: the Licensee followed Good Industry Practice at all times

- 4.5 The Licensee argues it acted in accordance with Good Industry Practice in all instances during the service restoration process. The Licensee contends that it should therefore not be responsible for delays that resulted from its sub-contractors not following Good Industry Practice. The Licensee further contends that to deny relief in these circumstances would be unreasonable and contrary to the guidance provided by the Authority in its open letter of 22 October 2014.
- 4.6 The Licensee's view is that "it would be dis-proportionate [sic] to hold the OFTO accountable for the actions of the employees of the appointed sub-contractors".
- 4.7 The Licensee continued that it ran a tender process, appointed a well-known and experienced subcontractor to manage the repair process and ensured that all the necessary risk assessments and preparatory works were done to industry standards prior to the subcontractor starting work. The Licensee contends that, as it had subcontracted the repair work, the repair works vessel was not within the Licensee's reasonable control and so it could not reasonably have predicted or mitigated the effects of the crane failure. The Licensee considers that in the circumstances it has followed Good Industry Practice and should be entitled to the full adjustment to the reported system incentive performance figure.

The Authority's view

- 4.8 It is the Licensee's obligation to manage the impact of the event on availability. If a Licensee chooses to appoint subcontractors to restore the service following an outage, the Licensee remains responsible under the licence for that obligation. The risk of a subcontractor default impacting the Licensee's ability to comply with its licence obligations is a risk for a Licensee to contemplate. The Licensee is the best placed to manage that risk and it is reasonable to expect them to do so.
- 4.9 Therefore, where a Licensee chooses to appoint a subcontractor, the acts of the subcontractor will be relevant in how the Authority determines that that Licensee, pursuant to the obligations under its licence, has acted in accordance with Good Industry Practice. It is not simply a matter of subcontracting itself, and doing the preparatory work to enable the subcontractor to work, that will mean a Licensee has acted in accordance with Good Industry Practice, however experienced the subcontractor is.
- 4.10 In considering whether an event was beyond the reasonable control of the Licensee for the purposes of determining if an exceptional event has occurred, our open letter of October 2014 makes it clear that the actions and inactions of the OFTO's agents, employees, contractors etc working on its behalf will be attributed to the OFTO. The Authority considers that holding the Licensee responsible for the actions

or inactions of its sub-contractors in respect of the obligation to manage the impact of the event on availability is consistent with this principle set out in the open letter, which is reasonable and proportionate.

- 4.11 The evidence we have been provided shows that the subcontractor retained by the Licensee operating the on-board crane did so with inadequate management control and exhibited poor safety awareness. The subcontractor's actions led to damage to the crane, which resulted in the vessel needing to return to port for repairs, and work to restore service had to stop for five days. The Authority considers that the Licensee's subcontractor did not act in accordance with Good Industry Practice. Therefore the Authority is not satisfied that the Licensee has taken steps, consistent with Good Industry Practice, to manage the impact of the event on the availability of services in respect of this aspect of the restoration of services.

Second objection: the Licensee's subcontract was an industry standard

- 4.12 The Licensee's second objection is that it had taken reasonable steps, consistent with Good Industry Practice, to manage the impact of the event on the availability of services by engaging an experienced contractor using an industry standard form. The Licensee considers that, in the context of the particular circumstances, it followed "industry norms and benchmarks" in contracting for works on the terms set out in the contract.
- 4.13 Our open letter states that there may be circumstances where the Authority would expect the OFTO to have in place insurance or commercial agreements to mitigate the financial impact of any transmission service reduction. In such circumstances we may, subject to the facts at the time, take these commercial arrangements, or their absence, into account when directing any adjustment to the availability incentive. The Licensee is concerned that the Authority is seeking to deny a full adjustment on the basis the Licensee should have had "commercial agreements to mitigate the financial impact of the transmission service reduction" for the 5 days that it took to resolve the crane incident.

The Authority's view

- 4.14 In these circumstances, the detail of the terms of the contract, and whether or not these followed "industry norms and benchmarks" has had no direct bearing on the level of adjustment that the Authority considers appropriate.
- 4.15 In considering how to perform its obligation to manage the impact of the event on the availability of services, it is for the Licensee to mitigate and manage the associated risks, including the default of a subcontractor. How the Licensee chooses to do this and the commerciality of the terms it can negotiate, is a matter for that Licensee.

The Authority's Direction

4.16 For the reasons given above, the Authority directs that the Licensee's reported system incentive performance be adjusted to offset the duration of the outage as follows:

4.16.1 The total reduction in capacity arising from this outage was 365,426 MWh;

4.16.2 The transmission service reduction took place from 2 March to 16 June 2015, a total of 106 days, 2 hours and 32 minutes;

4.16.3 The Authority agrees to make an adjustment for this outage period, minus 5 days, owing to the period of prolongation of the outage caused by the Licensee's subcontractor; and

4.16.4 The Authority therefore agrees to increase the reported system incentive performance for incentive year 3 (beginning 1 January 2015) months 3 to 6 (March to June) by 348,206 MWh.