

Schedule 1C - Summary of consultation responses on proposed new special conditions for the electricity interconnector licence held by Nemo Link

General Comments

Respondent	Comments	Ofgem view
Volta	If tax law changes were introduced which were specific to interconnectors i.e. were targeted to increase the tax burden of interconnectors, then in our opinion consideration should be given to such targeted tax law changes and how they should be treated. Whilst we do not expect such tax measures to be introduced, there were “windfall tax” measures introduced in previous political administrations in the UK against utilities, and thus some consideration ought to be given to the issue and whether the burden of such tax changes should be fully or partially borne by interconnector.	If “windfall tax” measures are introduced by the Parliament, we should not be seeking to undermine its intention. Nevertheless Ofgem will seek to mitigate the impact the effect of changes in tax legislation (such as the current BEPS proposals) where this mitigation is in the interests of consumers, noting the wide overlap between the categories 'consumers' and taxpayers'.
Volta	We note that the accounting, collation and measurement of currency fluctuations and foreign exchange fluctuations impose quite extensive amounts of work and responsibility upon interconnector licence holders and in our opinion it might be possible to streamline or simplify these requirements so that they impose less burden both on licence holders and Ofgem in the future.	Ofgem's approach to forex is to listen to the proposals put forward by the operating companies and approve those proposals wherever they can be seen to be congruent with the interests of consumers. The arrangements in respect of Nemo Link have been discussed extensively with the licensee but are necessarily complex because of the multi-currency nature of the cap and floor regime.
Volta	Due to the potential BREXIT there are considerable foreign exchange fluctuations that second round interconnectors will be exposed to on Euro-priced equipment such as cable and converter stations, large differences may result between the price at which these capital items are quoted at the Ofgem IPA assessment process in 2016 and the actual outcome prices for equipment which will be realised when legally binding contracts will be procured in say 2017 or 2018. Ofgem has the right to re-open the IPA decision in the event there is a material costs increase between FPA and IPA, in our opinion this is potentially unfair when it is applied to foreign exchange fluctuations, caused by factors such as BREXIT as these foreign exchange movements are completely outside the control of the interconnector developer and also cannot be readily mitigated, as the interconnector developer cannot realistically purchase currency options or other financial hedging products before it has received its IPA decision. We acknowledge that the timing and nature of BREXIT is outside the control of Ofgem and appreciate that Ofgem may not be the appropriate organisation to address such high-level concerns to, however at the same time we believe the right to re-open the IPA for this specific reason should be given due consideration.	We will consider and keep under review the impact of the EU referendum result on interconnector developers and respond pragmatically. Nemo Link has already received a final decision to be granted a cap and floor regime therefore it is not faced with the IPA-FPA issue the respondent raises.
RWE	We do not support the proposed insertion of new cap and floor conditions into the standard conditions of the electricity interconnector licence. We believe that the cap and floor regime should not be established as the default enduring arrangements for interconnectors. The introduction of the relevant licence conditions for the cap and floor regime should be considered on a case by case basis.	The proposed new cap and floor standard conditions will not apply to all holders of an interconnector licence by default. The proposed changes include the insertion of proposed new standard condition 1A: Application of Section G. The effect of this condition is to provide for the cap and floor standard conditions to only apply to licensees that have been granted a cap and floor regime.

RWE	<p>As we stated in our response to previous Ofgem consultations on the cap and floor regime it is our view that collectively the GB carbon floor price, the GB capacity market and the EU target model are capable of creating the conditions for merchant investment in interconnection without the need for regulatory safeguards. The merchant approach should remain the default arrangements for interconnector investment with the merits of the cap and floor approach considered as a last resort and on a case by case basis. Therefore we do not see the need to modify the enduring electricity interconnector licence standard conditions to incorporate the cap and floor regime.</p>	<p>As above, the proposed new cap and floor standard conditions will only apply to licensees that have been granted a cap and floor regime and not all holders of an electricity interconnector licence.</p>
RWE	<p>We recognise that the cap and floor regime requires NGET as system operator to recover the funds required to make the relevant payments to interconnectors or to return surplus funds to customers. The proposed amendments to NGETs electricity transmission licence appear to be the minimum required to facilitate the establishment of the appropriate cash flows. Further work is required to understand the potential impact of the proposed changes on the TNUoS charging regime. In particular we note that Directive 2009/72/EC4 states in the preamble that</p> <p><i>“(36) National regulatory authorities should be able to fix or approve tariffs, or the methodologies underlying the calculation of the tariffs, on the basis of a proposal by the transmission system operator or distribution system operator(s), or on the basis of a proposal agreed between those operator(s) and the users of the network. In carrying out those tasks, national regulatory authorities should ensure that transmission and distribution tariffs are non-discriminatory and cost-reflective, and should take account of the long-term, marginal, avoided network costs from distributed generation and demand-side management measures”.</i></p> <p>The proposed pass-through arrangements which impact TNUoS tariffs and market signals, particularly in relation to demand side peak charges, require further detailed consideration.</p>	<p>It is for NGET to bring forward a modification to the industry codes to give effect to this mechanism for the transfer of monies.</p> <p>We will consider the merits of different approaches when the modification is put to Ofgem for approval.</p>

Special Condition 1: Definitions and Interpretation

Respondent	Ref	Comments	Suggested alternative drafting (tracked changes represent suggested changes)	Ofgem view
Nemo Link	Definition of "Force majeure/ Page 3	<p>As we have previously stated, we propose that the force majeure definition is expanded so as to include legislative and regulatory changes as an additional limb as per the suggested text alongside this comment. As currently drafted, Nemo's inability to rely on a legislative change (or similar event) that impacts on operation and availability as a force majeure event presents a significant and unacceptable risk to revenues. Our proposal furthermore is in line with the following extract from CREG (Commissie voor de Regulering van de Elektriciteit en het Gas, the Belgian regulator) decision of 31.10.2014 (Annex III page 4 paragraph xi) that shows that the force majeure definition of the Belgian regulatory decision on cap and floor for Nemo does include force majeure: "<i>aanpassing in geval van overmacht: aanpassingen als gevolg van overmacht of van een wijziging van de wetgeving of de regulering met een aanzienlijke impact op het business model van NEMOLINK</i>" The informal translation of the extract is the following: "<i>adjustment in cases of force majeure: adaptations due to force majeure or a change in legislation or regulations with a significant impact on the business model of NEMO LINK</i>". Attachment:</p> <p>It should also be recognised that the requirements of a Force Majeure event under Special Condition 4 (30) (a) include the requirement that the event must, in the Authority's opinion, constitute a Force Majeure event under the special conditions of the licence. Accordingly, for example if the licensee were to raise legislation and / or a court decision as a Force Majeure event it will be for the Authority to assess (along with the Belgian NRA) whether it is of the same opinion. The inclusion therefore provides a confirmation that such events can be considered as Force Majeure (they are outside of the licensee's control) and the licence (Special Condition 4 (29) (a)) provides a safeguard as to what may or may not qualify as a Force Majeure</p>	<p>"Force majeure"</p> <p>means an event or circumstance which is beyond the reasonable control of the licensee and which results in or causes the failure of the licensee to perform any of its obligations under this licence including (<u>without limitation</u>) an act of God, strike, lockout or other industrial disturbance, 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, <u>fire, flood</u>, governmental restraint, <u>Act of Parliament, other legislation, by law or directive or decision of a court of competent authority or the European Commission or any other body having jurisdiction over the activities of the licensee</u>, provided that lack of funds of the licensee or performance or non-performance by an electricity transmission licensee or equivalent entity shall not be interpreted as a cause beyond the reasonable control of the licensee and provided that weather and ground conditions which are reasonably to be expected at the location of the event or circumstance are also excluded as not being beyond the reasonable control of the licensee</p>	<p>We do not accept the proposed insertions.</p> <p>It is clear from our decision that there is no protection for legislative change beyond that which is already specified. The floor provides protection from changes which affect the licensee's revenue and there are further re-openers for opex (once only, and no earlier than 10 years), changes to decommissioning legislative requirements and there are provisions to compensate the licensee for changes to non-controllable operating costs over the regime duration. Nemo Link's cap and floor regime does not include any further re-openers for legislative changes. For example, our December 2014 decision document states that: "We will not include a reopener for policy or regulatory changes... We consider that the floor provides sufficient insulation from such risks and therefore protects developers from such changes".¹</p> <p>Further, we do not accept the proposed deletions related to performance or non-performance by a transmission licensee or equivalent. Amongst other reasons, given that the draft special conditions makes provisions for 'allowed outages', the amendment proposed here by the licensee would introduce double counting.</p>

¹ Our December 2014 decision document is available here:

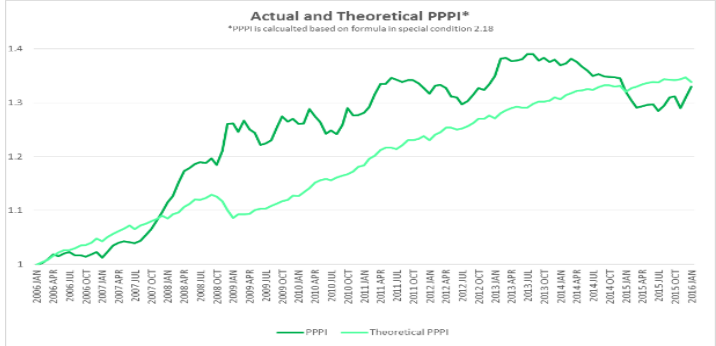
https://www.ofgem.gov.uk/sites/default/files/docs/2014/12/final_cap_and_floor_regime_design_for_nemo_master_-_for_publication_1.pdf

		event.		
NGIH	Definition of "Force majeure"	<p>As drafted, the definition of force majeure does not provide any detail on what would constitute government restraint, nor does it include a change in law or regulation as an event of force majeure. Whilst the definition does not exclude 'change in law' as a force majeure event, it is likely that the list of events referred to in the definition would be interpreted in an exclusive manner particularly given the content of the draft guidance document in this context.</p> <p>As changes in law and regulation are not specified in the definition of force majeure, the interconnector licensee will be left with the risk that such changes would not be considered by the Authority, in consultation with the Belgian National Regulatory Authority, to be a force majeure event. This could result in the interconnector project being penalised for not meeting the Minimum Availability Target in a situation that is outside of its control.</p> <p>Neither the licence nor the decision to award the cap-and-floor regime to the NEMO project by Ofgem contains any change in law provisions or protection from any changes to the overall legal and regulatory regime applicable at the time of granting the licence. As a consequence, the NEMO project will be exposed to political risk arising from government restraint, change in law or simply a change to the licence conditions by the Authority.</p> <p>Given that the cap and floor regime granted to the NEMO project will essentially (i) be implemented by a 'switching on' of the standard conditions in the proposed new section G (Cap and Floor Conditions) following a direction issued by Ofgem; and therefore (ii) be dependent on Ofgem's decisions to maintain or change the regime over time (e.g., through amendments to the licence, in particular to the switching 'off' of SLC 1A or an amendment to the Cap and Floor RIGs), it is appropriate to consider the protections the proposed amendments to the SLC would offer to the NEMO project in case of changes made as a result of government restraint or Change in Law.</p> <p>If the licence drafting were to be implemented in its current form, the NEMO project (and future interconnector projects that are subject to the cap and floor regime) will be exposed to political risk arising from government restraint, change in law or simply a change to the licence conditions by Ofgem. In addition, implementation of the licence drafting in its current form would lead to change in law protection</p>	Not provided	<p>We partially accept some aspects of this argument.</p> <p>We disagree with the principle argument that Nemo Link would be exposed to the risk of government restraint, since this is included in the definition of Force Majeure. As such, we disagree that such an event would prevent floor payments being triggered. Therefore, we have not made any changes to the drafting.</p> <p>We do accept that a Force Majeure event could occur that does not cause a failure of the licensee to meet a licence obligation. We have therefore deleted those words from the definition and further clarified that the need for pre-emptive expenditure associated with terror would also be classified as Force Majeure. This would capture additional measures specified by the Centre for the Protection of National Infrastructure (CPNI) in relation to terror threat.</p> <p>Lastly, we have also amended the definition of Regime Start Date to clarify that construction delays caused by a Force Majeure event may be taken in to account by the Authority.</p>

		<p>being available in Belgium but not in the UK which in turn would not only challenge the concept of a 'single regulatory regime' for the NEMO project but would also increase legal uncertainty. It may therefore be difficult for lenders and other investors to get comfortable with the relevant provisions in the drafting approach.</p> <p>The proposed approach to the definition of force majeure means that the protection for the NEMO project and its investors under the cap and floor regime in relation to government restraint or change in law events is materially weaker than that available to projects under the CfD regime. A refusal to make available to the NEMO project and other cap and floor interconnector projects at least the same level of change in law protection as is available to other investors in the UK energy market under the CfD regime could be seen as a regressive step and out-of-step with what has now been established as market standard for comfort in relation to protection against change in law and government restraint in the UK.</p> <p>The proposed approach also offers a lesser standard of protection than is available to the NEMO project pursuant to the CREG decision. Arguably, stronger protection is also available to projects which benefit from an exemption under Article 36 of the Third Gas Directive or Article 17 of Regulation 714/2009 on the basis that changes to the relevant exemption decisions require the consent of the European Commission and possibly ACER in addition to that of the two relevant national regulatory authorities.</p> <p>We believe that interconnectors subject to the cap and floor regime should be protected against the impact of future significant legislative changes that may impact on operability and this should be appropriately reflected in the licence definition of force majeure. We do not think that the floor itself provides sufficient protection for the investor against such changes. Such legislative changes may prevent the floor payment being triggered in the first instance since they may prevent operation at the minimum availability target level.</p>		
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Special Condition 2: Cap Level and Floor Level

Respondent	Ref	Comments	Suggested alternative drafting (tracked changes represent suggested changes)	Ofgem view
Nemo Link	Part F, Paragraph 18	<p>We propose the paragraph should include the proposed text (on the right) in order to provide potential mitigation of adverse effects of significant deviations from the theoretical Purchasing Power Parity (PPP) result. This deviation exposes both Belgian and British consumers and investors to an unacceptable risk. This risk is outside the control of Nemo.</p> <p>This risk is a symmetric risk for investors and consumers. Investors and consumers would lose/benefit depending on the direction of the exchange rate changes and the deviation from the PPP theory (theoretical values below). The macroeconomic theory suggests that in reality there will be a deviation from the PPP principle because 1) the inflation in the formula is Belgian while the currency, EUR is a Eurozone currency and 2) the PPP assumptions do not hold in practice including: demand and supply of currency is not entirely driven by international trade (but influenced by currency speculation, interest rates, government intervention and capital flows) and not all goods are internationally tradable (such as market and government services, buildings).</p> <p>As an illustration of the magnitude and evidence of above issue/ risk please see below analysis of the historical range of GBP/EUR exchange rate between January 2006 and January 2016. The analysis compares the <i>actual GBP/EUR exchange rate</i> and the <i>theoretical GBP/EUR exchange rate</i> calculated with the application of the PPP theory.</p>	<p>The value of the $PPPI_t$ term is calculated in accordance with the following formula:</p> $PPPI_t = 0.5 \times \left(\frac{UK RPI index_t}{UK RPI index_{2013/14}} \right) + 0.5 \times \frac{\left(\frac{Belgium CPI index_t}{Belgium CPI index_{2013/14}} \right)}{\left(\frac{GBP_t/EUR_t}{GBP_{2013/14}/EUR_{2013/14}} \right)}$ <p>The formula weighting can be adjusted by the Authority, following consultation with the Belgian NRA, in Relevant Years when the cap adjusted for actual PPPI is significantly different to the cap adjusted for theoretical PPPI following a request, together with supporting justification, provided by the licensee.</p>	<p>We accept the argument that the PPPI formula specified may not accurately reflect the Authority's intent, as illustrated by the recent volatility since the EU referendum result.</p> <p>Therefore, we have added new drafting to enable this to be reviewed at the Post Construction Review (PCR) stage.</p>

Nemo Link	Part F (cont.)	<p>As second evidence please see below analysis of actual and theoretical PPPI index development in the same period where the theoretical PPPI value was calculated with the application of the PPP theory. This analysis implies that there is a significant deviation from the PPP theory over the 10 year period between January 2006 and January 2016. The cap and floor regime will be in place for 25 years where uncertainty is even higher than in the illustrated period.</p>  <p>Nemo will face the exposure above because of the fact that the 50-50% EUR-GBP weighting applied in the formula is not in line with Nemo cost structure of approximately 75% EUR and 25% GBP.</p>		As above
Nemo Link	Page 8/9	Nemo understands that Ofgem’s intent is to pause for the exact duration in hours and minutes. To ensure this is reflected in the special conditions need to insert “and time” as indicated.	For the purposes of paragraph 7(b)(i) of this condition, “shall be discounted” shall have the meaning: the 60 days continuous operation shall be paused on the date and time of the start of the event or circumstance and shall resume on the date and time that normal operation re-commences.	We accept this proposal as it clarifies the intent of the Authority and have amended the drafting accordingly.
Nemo Link	Page 8 /Paragraph 10(b)	Propose to use defined term “Floor Start Date”.	if so, direct the date on which the Full Commissioning Date falls (such date being the date on which the Floor Level comes in to force Floor Start Date).	We accept this proposal as it clarifies the intent of the Authority and have amended the drafting accordingly.
FAB Link	Part A / Paragraph 7	<p>The test as set requires 60 days of continuous operation at Rated Capacity, necessary to set the Floor start Date.</p> <p>(i) The test should be based on available capacity (whether or not utilised) to ensure market conditions do not prevent successful test completion of the test;</p> <p>(ii) Industry standard is for EPC contractors to demonstrate the</p>	7(b) "that falls before the successful completion of 60 days of continuous operation at the Rated Capacity Availability Target Level "	<p>We do not accept this proposal on the basis that:</p> <p>(a) Paragraph 8(c) addresses the concern expressed about market conditions</p> <p>(b) We disagree that the standard for</p>

		<p>Availability Target level in contracts rather than 100%.</p> <p>Therefore the test should be based upon achieving the Availability Target level over a period of 60 days rather using Rated Capacity as the measure to trigger the Floor Start Date.</p>		<p>EPC contractors is to demonstrate the Availability Target, since the calculation of the Availability Target takes account of outages for planned maintenance which should not be occurring within the proving period.</p>
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Special Condition 3: Cap and Floor Assessment

Respondent	Ref	Comments	Suggested alternative drafting (tracked changes represent suggested changes)	Ofgem view
GreenLink	Part J	<p>In discussion with Ofgem staff, we noted that for project financed interconnectors, the ability to receive timely floor payments is essential to avoid locking up the returns structure to investors, and potentially causing higher costs of capital as result (this also formed part of the discussion on the financeability of the cap and floor prior to Ofgem’s Open Letter on 16 December 20151).</p> <p>In the licence drafting, it has been raised to our attention that defining a “Relevant Year” as a calendar year may provide for injection of floor payments to flow relatively quickly to the project – from the following April.</p> <p>Our interpretation is that the drafting allows for a licensee to raise a request with Ofgem in September of a Relevant Year (in Nemo’s case a calendar year), for Ofgem to approve by December. We believe that this must allow National Grid Electricity Transmission (NGET) enough time to make changes to Transmission Network Use of System (TNUoS) charges that it starts collecting in the following April, meaning that floor payments would start flowing to the project from April.</p> <p>We have not been able to test these timescales with financiers, but ask that Ofgem retains flexibility in definition of a Relevant Year for IPA interconnectors to allow for a determination to be quickly followed by TNUoS adjustments and payments as soon as possible. While we do not think that this system will mitigate the need for Ofgem’s alternative proposals in its Open Letter to assist the financeability of project-financed cap and floor interconnectors (as this may still be necessary for investors and lenders under a project finance model), the within-year adjustment as set out in this licence draft will probably form the starting point for financing conversations.</p> <p>Further, we ask that Ofgem considers the details of this mechanism for application to the IPA interconnectors, and whether it can be</p>		No changes to Nemo Link’s special conditions are required.

		<p>improved to minimise the risk of a delayed floor payment to a project² to improve the financeability of the five year regime.</p> <p>It is also vital to understand whether NGET can process an adjustment in revenue requirement into TNUoS charges for an upcoming financial year, following an Ofgem decision in the preceding December.</p>		
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² For example, pulling back the constraints on when licensees can make requests, so that Ofgem can make its determination earlier

Special Condition 4: Interconnector Availability Incentive

Respondent	Ref	Comments	Suggested alternative drafting (tracked changes represent suggested changes)	Ofgem view								
Nemo Link	Part B, Paragraph 18	<p>Nemo requests that Actual Availability (AA) is adjusted for both Force Majeure and Allowed Outages but we have presented them separately to allow them to be individually considered.</p> <p>We propose the actual availability formula should include potential adjustment for force majeure related outages.</p> <p>The licence draft does not take account of adjustments for Force Majeure (FM) in the calculation of actual availability at the cap. FM is an exceptional event and Nemo's view is that FM should apply at the cap. This is because the cap availability incentive is not a functional incentive if the availability at cap is not in the control of the licensee due to exceptional events not being taken into account.</p> <p>The current draft is not in line with Ofgem's "Decision on the cap and floor for the GB-Belgium interconnector project Nemo" of 2 December 2014 (Ofgem Decision document) because the document does not state that "exceptional events" do not apply at the cap.</p> <p>If FM is considered for the cap availability calculation Ofgem will still have considerable control over what is directed to be FM under SPC 4 (23) and (29) which should provide the Authority with comfort that consumer interests are safeguarded.</p> <p>Additionally as business interruption insurance compensation is included in Assessed Revenue then for symmetry purposes it is appropriate that the link should be treated as being available during periods of FM.</p>	<p>Subject to paragraph 27 of this condition, the value of the Actual Availability term is calculated in accordance with the following formula:</p> $AA_t = (RC \times 8766) - \sum IO_t + \sum FO_t$ <p>Where:</p> <table border="1"> <tr> <td>AA_t</td> <td>means the Actual Availability of the licensee's Interconnector in Relevant Year <i>t</i> and is calculated in accordance with paragraph 19 of this condition</td> </tr> <tr> <td>$\sum IO_t$</td> <td>means the total Interconnector Outage (in MWh) in Relevant Year <i>t</i> reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <i>t</i></td> </tr> <tr> <td>$\sum FO_t$</td> <td>means the total Force Majeure related Outage (in MWh) in Relevant Year <i>t</i> reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <i>t</i> as directed under paragraphs 23 and 29 of this condition.</td> </tr> <tr> <td>RC</td> <td>means the Rated Capacity of the licensee's Interconnector and has the value given to that</td> </tr> </table>	AA _t	means the Actual Availability of the licensee's Interconnector in Relevant Year <i>t</i> and is calculated in accordance with paragraph 19 of this condition	$\sum IO_t$	means the total Interconnector Outage (in MWh) in Relevant Year <i>t</i> reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <i>t</i>	$\sum FO_t$	means the total Force Majeure related Outage (in MWh) in Relevant Year <i>t</i> reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <i>t</i> as directed under paragraphs 23 and 29 of this condition.	RC	means the Rated Capacity of the licensee's Interconnector and has the value given to that	<p>We reject this proposal. Our policy documents make clear that Force Majeure outages will only be considered at the floor. The purpose is to ensure that the licensee can recover sufficient revenues to service its financial commitments when it has missed the minimum availability target as a result of a Force Majeure event. Therefore, it is a limited circumstance where, for the purposes of financability, consumers take on some additional risk related to the performance of the asset in addition to the market/revenue risk that the cap and floor regime is principally designed to address. Thus, the mechanism only applies at the floor and not at the cap, and this policy decision cannot be re-opened.</p>
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				term in paragraph 6 of this condition (1,000MW)								
Nemo Link	Part B, Paragraph 18	<p>Nemo requests that Actual Availability (AA) is adjusted for both Force Majeure and Allowed Outages but we have presented them separately to allow them to be individually considered.</p> <p>We propose the actual availability formula should include potential adjustment for allowed outages.</p> <p>The licence draft does not take account of adjustments for Allowed Outages (AO) in the calculation of actual availability at the cap. AO is exceptional event and Nemo's view is that AO should apply at the cap. This is because the cap availability incentive is not a functional incentive if the availability at cap is not in the control of the licensee due to exceptional events not being taken into account.</p> <p>The current draft is not in line with Ofgem's "Decision on the cap and floor for the GB-Belgium interconnector project Nemo" of 2 December 2014 (Ofgem Decision document) because the document does not state that "exceptional events" do not apply at the cap.</p> <p>If AO is considered for the cap availability calculation Ofgem will still have considerable control over what is directed to be AO under SPC 4 (23) and (30) which should provide the Authority with comfort that consumer interests are safeguarded.</p> <p>Additionally as curtailment and business interruption insurance compensation are included in Assessed Revenue then for symmetry purposes it is appropriate that the link should be treated as being available during periods of AO.</p>	<p>Subject to paragraph 27 of this condition, the value of the Actual Availability term is calculated in accordance with the following formula:</p> $AA_t = (RC \times 8766) - \sum IO_t + \sum AO_t$ <p>Where:</p> <table border="1"> <tr> <td>AA_t</td> <td>means the Actual Availability of the licensee's Interconnector in Relevant Year <i>t</i> and is calculated in accordance with paragraph 19 of this condition</td> </tr> <tr> <td>∑IO_t</td> <td>means the total Interconnector Outage (in MWh) in Relevant Year <i>t</i> reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <i>t</i></td> </tr> <tr> <td>∑AO_t</td> <td>means the total Allowed Outage (in MWh) in Relevant Year <i>t</i> reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <i>t</i> as directed under paragraphs 23 and 30 of this condition.</td> </tr> <tr> <td>RC</td> <td>means the Rated Capacity of the licensee's Interconnector and has the value given to that term in paragraph 6 of this condition (1,000MW)</td> </tr> </table>	AA _t	means the Actual Availability of the licensee's Interconnector in Relevant Year <i>t</i> and is calculated in accordance with paragraph 19 of this condition	∑IO _t	means the total Interconnector Outage (in MWh) in Relevant Year <i>t</i> reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <i>t</i>	∑AO _t	means the total Allowed Outage (in MWh) in Relevant Year <i>t</i> reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <i>t</i> as directed under paragraphs 23 and 30 of this condition.	RC	means the Rated Capacity of the licensee's Interconnector and has the value given to that term in paragraph 6 of this condition (1,000MW)	<p>We accept this argument as it better reflects the Authority's intent. The Availability Incentive is intended to measure the availability of the licensee's interconnector, as opposed to onshore network issues that are managed via the curtailment of the interconnector by the national system operators.</p> <p>Further, we agree that the exclusion of Allowed Outages at the cap whilst including any business interruption compensation as revenue would be asymmetric. We are not inclined to address this asymmetry via other means (such as introducing alternative definitions of Assessed Revenue) as this would be unduly complex.</p> <p>We therefore agree that amendments to the drafting are required here. However, we consider that the respondent's proposal to net off the outages via the IO_t term and then add such outages back on again via a new AO_t term is unnecessarily complex. Instead, we prefer to adjust the definition of the IO_t term to discount Allowed Outages and manage this calculation via the RIGs reporting templates. We have adjusted the drafting accordingly.</p>
AA _t	means the Actual Availability of the licensee's Interconnector in Relevant Year <i>t</i> and is calculated in accordance with paragraph 19 of this condition											
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∑AO _t	means the total Allowed Outage (in MWh) in Relevant Year <i>t</i> reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <i>t</i> as directed under paragraphs 23 and 30 of this condition.											
RC	means the Rated Capacity of the licensee's Interconnector and has the value given to that term in paragraph 6 of this condition (1,000MW)											

NGIH	Paragraph 18	We propose Actual Availability should be adjusted for Allowed Outages and Force Majeure events because the interconnectors do not, by definition, have control over Allowed Outages and Force Majeure events. This amendment is required for the availability incentive at the cap to be effective and equitable.	Not provided	We accept the argument to include Allowed Outages but reject the proposal to include Force Majeure events for the reasons noted above.
Nemo Link	Page 21/ Paragraph 2(f)	Typo – replace “this “ with “the”	Part F sets out the adjustments to the Availability Target and this the Minimum Availability Target to account for partial years; and	We accept this proposal and have amended the drafting accordingly.
Nemo Link	Page 21/Part A	First paragraph numbering is shown as (a) when should be 3. This has an impact on all subsequent paragraph numbers.		We accept this proposal and have corrected the drafting accordingly.
Nemo Link	Page 24 / Paragraph 17	Typo – brackets around AIF _t term are not required.	The licensee’s Assessed Revenue is assessed against the Floor Level as adjusted by the (AIF_t) term for each Relevant Year over the Regime Duration in accordance with special condition 3 of this licence.	We accept this proposal and have amended the drafting accordingly.
Nemo Link	Page 27/ Paragraph 32 and 33	Typo – Sub-references in paragraphs 32 and 33 need to be amended – there are two sub-paragraphs (a) and a.		We accept this proposal and have corrected the drafting accordingly.

Special Condition 5: Assessed Revenue

Respondent	Ref	Comments	Suggested alternative drafting (tracked changes represent suggested changes)	Ofgem view		
Nemo Link	Part C (Paragraphs 3 or 8 and 10)	<p>We propose a new term called Additional Costs (ADC). This could either be included in the Notional Assessed Revenue (NAR) formula (SPC 5.3) or added to the market related cost (MRC) formula (SPC5.8).</p> <p>Additional Revenues (ADR) are part of the Gross Congestion Revenues but no allowances are provided for additional cost and costs associated with these additional revenues.</p> <p>This misalignment will have an adverse effect as it will dis-incentivise licensees to engage in new services offerings or in identifying and developing new services and offerings that would otherwise be for the benefit of consumers. This is not in line with the principle of the guidance document entitled: DRAFT: Guidance on the cap and floor conditions in Nemo Link Limited’s electricity interconnector licence, page 7, paragraph 1.3.</p>	<p>Propose update to either paragraph 3 or paragraph 8.</p> <p>3. $NAR_t = GCR_t - MRC_t - ADC_t$</p> <p>8. $MRC_t = EAC_t + FC_t + TCC_t + ADC_t$</p> <p>10.</p> <table border="1"> <tr> <td>ADC_t</td> <td> <p>means the additional revenue related costs for Relevant Year t and is :</p> <p>a) equal to costs incurred by the licence pursuant to provision of ADR products and services; and</p> <p>b) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year t</p> </td> </tr> </table>	ADC_t	<p>means the additional revenue related costs for Relevant Year t and is :</p> <p>a) equal to costs incurred by the licence pursuant to provision of ADR products and services; and</p> <p>b) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year t</p>	<p>We reject this proposal. The list of Market Related Costs set out in our policy decision document is exhaustive, and cannot be reopened.</p>
ADC_t	<p>means the additional revenue related costs for Relevant Year t and is :</p> <p>a) equal to costs incurred by the licence pursuant to provision of ADR products and services; and</p> <p>b) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year t</p>					
Nemo Link	Part C (Paragraphs 7, 8 and 10)	<p>We propose adding Capacity Provider Penalty Charges (CPP) to the market related cost (MRC) formula.</p> <p>Capacity market revenues (CMR) are part of the Gross Congestion Revenues but no allowances are provided for the capacity provider penalty charges incurred.</p> <p>The exclusion of the highly uncertain capacity provider penalty charges from the MRC poses an unacceptable level of risk for Nemo. This risk is outside the control of Nemo.</p>	<p>8. $MRC_t = EAC_t + FC_t + TCC_t + CPP_t$</p> <p>10.</p> <table border="1"> <tr> <td>CPP_t</td> <td> <p>means the Capacity Provider Penalty Charges for Relevant Year t and is:</p> <p>a) equal to capacity provider penalty charge incurred by the licensee ; and</p> <p>b) reported by the licensee</p> </td> </tr> </table>	CPP_t	<p>means the Capacity Provider Penalty Charges for Relevant Year t and is:</p> <p>a) equal to capacity provider penalty charge incurred by the licensee ; and</p> <p>b) reported by the licensee</p>	<p>We reject this proposal. The list of Market Related Costs set out in our policy decision document is exhaustive, and cannot be reopened.</p> <p>Further, it would undermine the Government’s policy intent if interconnectors could recoup their penalties incurred under the Capacity Provider Penalty Charges from consumers via floor payments.</p> <p>Noting this, we have amended the definition of Capacity Market Revenue to clarify that it is</p>
CPP_t	<p>means the Capacity Provider Penalty Charges for Relevant Year t and is:</p> <p>a) equal to capacity provider penalty charge incurred by the licensee ; and</p> <p>b) reported by the licensee</p>					

				in its Annual Cap and Floor RIGs Submission for Relevant Year t	the net figure that is considered in the cap and floor regime, as long as such figure is not less than zero. This approach means that Capacity Market revenues can reduce the need for consumers to provide floor payments in the cap and floor regime whilst at the same time ensuring that floor payments cannot be used to fund Capacity Market Penalty Charges. This approach therefore ensures that the intentions of both the Capacity Market and cap and floor regime are met.
NGIH	Part C	<p>It is intended by Ofgem to incentivise developers to identify and develop projects in a way that maximises benefits to both consumers and investors (<i>Reference: DRAFT: Guidance on the cap and floor conditions in Nemo Link Limited's electricity interconnector licence. 1.3, page 7</i>). However there are at least two asymmetries in the current drafting proposals that would dis-incentivise the development of new services even if these services would benefit consumers and the wider economy:</p> <ul style="list-style-type: none"> ➤ No allowance or adjustment is provided in the regime for Capacity Provider Penalty charges or for other new market related costs that may arise in the future but the associated revenues such as capacity market revenues are included for cap and floor revenue assessment. ➤ Similar to above no allowance or adjustment is provided in the regime for additional revenue related additional costs but there is an adjustment for additional revenues meaning that the licensee is not incentivised to develop and offer additional new services because the business risk (investment and opex) may be significant but its upside potential is limited by the cap. 	Not provided		As above
FAB Link	Part C	All costs associated with the derivation of revenues, including but not limited to, market operations of the link (such as Capacity Market penalties) should be included in MRC and netted in the calculation of		Add a term in equation Part C.8 and definition in Part C.10 introducing all costs associated with the market operations of the link (such as capacity market penalties)	We partially accept some aspects this proposal as outlined above.

		Assessed Revenue		
Nemo Link	Paragraph 15	<p>We propose that Firmness definition includes the Network Code on Forward Capacity Allocation.</p> <p>We propose Trip Contract limb (b) text be amended for formatting where text should read as shown below where blue text has moved up to join the end of limb (b).</p>	<p>“Firmness” has the meaning given to that term in Commission Regulation (EU) No 2015/1222 on establishing a Guideline on Capacity Allocation and Congestion Management and Network Code on Forward Capacity Allocation (FCA).</p> <p>“Trip Contract” means:</p> <p>(a) contracts; and/or</p> <p>(b) other forms of agreement</p> <p>specified in writing by the Authority following consultation with the Belgian National Regulatory Authority,</p> <p>providing for energy sales and/or purchases on the intraday markets or other contracts with a third party to deliver/off-take power in the market for the purposes of managing trip events</p>	We accept this proposal and have amended the drafting accordingly.
Nemo Link	Page 31, 32 / Paragraph 10	Insert full name for BSC i.e. Balancing Settlement Code in definition for EAC	<p>(a) equal to costs, whether positive or negative, incurred by the licensee in settling any energy imbalance due to any difference in metered volume between the physical flow on the interconnector and the aggregate position of all interconnector users as notified, in accordance with the BSC Balancing Settlement Code, to the Balancing and Settlement Code Company by the interconnector administrator for Relevant Year t; and</p>	We accept this proposal and have clarified the drafting accordingly.
Nemo Link	Page 31, 32 / Paragraph 10	Nemo request that Error Accounting Costs definition is expanded to include the equivalent costs in Belgium i.e. Balancing Rules approved by CREG. Part (a) of the definition remains the same, a new part (b) is inserted and current part (b) becomes part (c).	<p>(b) equal to costs, whether positive or negative, incurred by the licensee in settling any energy imbalance due to any difference in metered volume between the physical flow on the interconnector and the aggregate position of all interconnector users as notified, in accordance with the Balancing Code approved by CREG, by the interconnector administrator for Relevant Year t; and</p>	We accept this proposal and have amended the drafting accordingly.

Special Condition 6: Within Period Adjustment – No comments received

Respondent	Ref	Comments	Suggested alternative drafting (tracked changes represent suggested changes)	Ofgem view

Special Condition 7: Non-Controllable Costs

Respondent	Ref	Comments	Suggested alternative drafting (tracked changes represent suggested changes)	Ofgem view
Nemo Link	Paragraph 17	<p>Additional text is proposed allowing the Authority in their “opinion” to classify an event as IAT even though not specified as an event of Force Majeure. The proposal is needed because without this addition the IAE relies on an event of FM only and so does not cater for significant unforeseen cost shocks. These will be costs that were not foreseen at the time of agreeing / setting the cap and floor. They will be unavoidable costs but, unlike limb (a), do not result from the licensee being unable to perform its obligations. Rather they are increased costs resulting from performing obligations. This limb is subject to the opinion of the Authority and so affords the Authority the comfort as to whether or not to accept the event as an IAE.</p> <p>This proposed adjustment is in line with the paragraph 4.55 in the Ofgem Decision document that allowed the Authority in their “opinion” to classify an event as IAE even though not specified as Force Majeure.</p> <p>This formulation is also consistent with IAE provisions used in other electricity licences.</p>	<p>An Income Adjusting Event for Relevant Year t may arise from:</p> <ul style="list-style-type: none"> (a) an event or circumstance which in the Authority’s opinion constitutes Force Majeure under the licence; and (b) an event or circumstance other than referred to in paragraph 17(a) which in the opinion of the Authority is an Income Adjusting Event and is approved by it as such in accordance with paragraph 23 of the condition where the costs and/or expenses incurred as a result of that event exceeds 5 per cent of the Floor Level for Relevant Year t calculated in accordance with paragraph 4(b) of special condition 2 of this licence with the additional requirement that the Availability Incentive at Floor (AIF_t) term be treated as if the Minimum Availability Target has been met. 	<p>We partially accept this proposal. We agree that Force Majeure events could occur that do not result in a failure to perform a licence obligation and that the cap and floor regime is intended to take such events in to account. However, the respondent’s specific proposal risks giving the impression of a greater scope for the licensee to re-open its cost allowances than the regime provides for.</p> <p>The regime provides re-openers and risk shares for specific items: Non-Controllable Operating Costs, Market Related Costs, Decommissioning Costs and Force Majeure events. All operating costs can be reviewed once, and not earlier than 10 years into the regime, at the Opex Reassessment Adjustment stage. If an aspect of the licensee’s operating costs have changed then it is appropriate to review this at the opex re-opener stage, and not consider changes in a piecemeal and one-sided way.</p> <p>Therefore, we have amended the definition of Force Majeure to exclude the need for a failure to perform a licence obligation. This ensures that genuine Force Majeure events are taken in to account whilst ensuring that non-Force Majeure related cost changes are considered through the appropriate mechanisms.</p>
NGIH	Paragraph 17	<p>The current drafting proposals do not provide protection for investors in relation to events that are force majeure type events which do not result in the failure to perform obligations but which do result in significant cost increase. We propose a mechanism should be developed in order that the efficient costs imposed by these types of events can be approved as income adjusting events at the discretion of Ofgem (following consultation).</p>	N/A	<p>We partially accept this proposal and have amended the drafting as noted above.</p>

Nemo Link	Page 38/ Paragraph 1	Paragraph 1 sub paragraph numbering has gone astray and needs to be amended.		We accept this proposal and have amended the drafting accordingly.
Nemo Link	Page 43 / Paragraph 28(a)	Typo – insert “to”	the Authority’s assessment, at the Post Construction Review stage, of the legislative requirements relating to the decommissioning of the licensee’s Interconnector and the economic and efficient costs associated with such requirements; and	We accept this proposal and have amended the drafting accordingly.
FAB Link	Paragraph 15	Include a definition of (b) Property Rates and Property Taxes		We accept this proposal and have amended the drafting accordingly. We have merged the definitions of Property Rates and Property Taxes with that of Network Rates for clarity. We have also updated the definition so that the definition remains valid in the event that future legislation amends or replaces the enactments specified in the definition.
FAB Link	Paragraph 15	In the event that new regulation dictates that interconnectors incur specific unavoidable costs to conduct its business (operation, maintenance, access to energy markets etc), this should be considered a Non-Controllable Cost	Should new EU or UK regulation be introduced after FPA that has a direct impact on the Assessed Revenue, this should be added to the Non-Controllable Costs that will feed into the revenue adjustment	We reject this proposal as it is contrary to the Authority’s intent as set out in the policy decision documents.
InterGen (UK) Ltd		We object to this amendment. We don’t believe it is in consumer interest to have the non-controllable costs of the interconnector passed on to consumers. We don’t think it’s in consumer interest for Interconnectors to be supported by the cap and floor regime- this is an un-level and advantageous playing field they compete in within the GB energy market.	Not provided	We reject this proposal as it is contrary to the Authority’s intent as set out in the policy decision documents.

Special Condition 8: Process for determining the value of the Post Construction Adjustment terms

Respondent	Ref	Comments	Suggested alternative drafting (tracked changes represent suggested changes)	Ofgem view
Nemo Link	Paragraph 7	<p>We propose that Ofgem issue the PCA (Post Construction Adjustment) guidance specifying the relevant information to be provided by the licensee for Post Construction Assessment as soon as possible but not later than 12 months after the special conditions of this licence come into force.</p> <p>The rationale for this proposal is that the licensee needs to implement appropriate processes and systems to collect and record information in accordance with the licence and for submission into the Post Construction Review.</p>	<p>For the purpose of paragraph 6(c), the Authority may <u>will</u> issue guidance <u>not later than 12 months after the special conditions of this licence come into force</u> specifying the relevant information to be provided by the licensee. Such guidance may contain appropriate provisions and / or requirements in respect of the format and content of submission to be made by the licensee to the Authority under this condition, including the areas to be covered and the type of information and evidence to be provided.</p>	<p>We reject this proposal as we do not consider it is appropriate. The licensee will be provided construction reporting templates and guidance (the RIGs) that are sufficient for the licensee to implement processes and systems to collate and record information. The licensee's FPA decision from the Authority also specifies what will be considered at the PCR. It is not clear at this stage that any further guidance will be needed. Further, if it is needed it would certainly be more appropriate to issue any such guidance closer to the PCR itself. This would enable both the licensee and the regulators to reflect on the construction experience.</p>

Special Condition 9: Process for determining the value of the Opex Reassessment Adjustment terms – No comments received

Respondent	Ref	Comments	Suggested alternative drafting (tracked changes represent suggested changes)	Ofgem view

Special Condition 10: Calculation of adjustments to the licensee's Interconnector Revenue (GB share)

Respondent	Ref	Comments	Suggested alternative drafting (tracked changes represent suggested changes)	Ofgem view
Nemo Link	Page 51 / Paragraph 2 (d)	Possible Typo - all references to Payment Uplift Factor (PUF) have been removed except this. Propose that 2 (d) is deleted.	The Payment Uplift Factor applied to take account of the timescales of payment	We partially accept this proposal. We agree to remove references to Payment Uplift Factor but we consider it important to clarify that the ICF_t term takes into account the timescales of payment.

Special Condition 11: Cap and Floor Financial Model Protocol

Respondent	Ref	Comments	Suggested alternative drafting (tracked changes represent suggested changes)	Ofgem view
Nemo Link	Paragraph 1	We propose adjustment to the paragraph 1 because we acknowledge that Nemo will be able to submit the CFFMP (Cap and Floor Financial Model Protocol) within three months after the special conditions come into force however Nemo is not in a position to ensure that the Authority has approved it within a given timescale.	The licensee shall as soon as practicable and, in any case, not later than three months after the special conditions of this licence come into force, establish and submit for approval by the Authority maintain the Cap and Floor Financial Model Protocol (the “CFFMP”) in a form approved by the Authority.	<p>We partially accept this proposal. We accept that the licensee is not in a position to ensure the Authority has approved the CFFMP within a given timescale. However, the licensee’s proposed deletions give us concern because it removes the need to <i>maintain</i> the CFFMP in a form agreed by the Authority. The CFFMP may need updating from time to time, which is one of the reasons why the contents are delegated from the licence rather than set out in the licence.</p> <p>Therefore, we propose to delete the time limit from the drafting, because the requirement for the CFFMP to be established “as soon as reasonably practicable” is sufficient for this purpose.</p> <p>We have also made equivalent changes to Special Condition 10 paragraph 13 on the same basis.</p>
Volta		It would be beneficial for Ofgem to provide more details on the Cap and Floor Financial Model Protocol (the “CFFMP”), so that greater clarity is offered to other interconnector developers.		We accept this comment and have elaborated on the CFFMP in the drafting.