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for energy consumers

Nemo Link Limited, National Grid
Interconnectors Limited, National
Grid Electricity Transmission Plc,
electricity interconnector
licensees, future cap and floor
applicants and other interested
parties

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Dear stakeholders

Decision on proposed changes to the standard conditions of the electricity interconnector licence, the electricity interconnector licences held by Nemo Link and NGIL and the electricity transmission licence held by NGET to implement the cap and floor regime and use of revenues compliance

In August 2016 we conducted a statutory consultation (the Consultation) on proposed changes to the standard conditions of the electricity interconnector licence, the electricity interconnector licences held by Nemo Link Limited (Nemo Link) and National Grid Interconnectors Limited (NGIL) as well as the electricity transmission licence held by National Grid Electricity Transmission Plc (NGET). These changes were required in order to implement the cap and floor regime and NGIL's use of revenues compliance related provisions.

Following consideration of responses to the Consultation, we have decided to proceed with making these licence modifications. Notices of licence modification are attached at Appendices 1 to 4 of this letter. Our decision to make these licence changes takes effect from 18 January 2017.

Consultation responses

We received two responses to the Consultation from Nemo Link and National Grid Interconnector Holdings Limited (NGIHL). The issues raised by both respondents were substantively similar and relate only to our proposed changes to the interconnector licence held by Nemo Link. The responses were non-confidential and have been published on the Ofgem website. A summary of the points raised by Nemo Link and NGIHL, together with our views on the points raised and whether they impact the licence drafting, is set out in Part 1 of Appendix 5. No comments were received with respect to any of our other proposed licence changes.

Minor changes to licence drafting since the Consultation

We have made a small number of changes, for clarification and to correct minor typographical and formatting errors, to the licence drafting set out in the Consultation. These changes are set out in Part 2 of Appendix 5.

Licence modification decisions

Following consideration of the responses received we are now proceeding to make the licence changes. Modification decision notices together with relevant schedules have been published alongside this letter as follows:

Appendix 1 – Decision on proposed insertion of new special conditions into the electricity interconnector licence held by Nemo Link	Schedule 1 – New special conditions for the electricity interconnector licence held by Nemo Link
Appendix 2 – Decision on proposed modifications to the standard conditions of the electricity interconnector licence	Schedule 2A – Modifications to the electricity interconnector licence standard conditions Schedule 2B – Relevant Licence holders
Appendix 3 – Decision on proposed insertion of new special conditions into the electricity interconnector licence held by NGIL	Schedule 3 - New special conditions for the electricity interconnector licence held by NGIL
Appendix 4 – Decision on proposed modifications to the special conditions of the electricity transmission licence held by NGET	Schedule 4 - Modifications to special conditions 1A and 3B of the electricity transmission licence held by NGET

Alongside this letter we have also published updated guidance on the cap and floor conditions of Nemo Link's licence.¹ We anticipate publishing an updated version of the Cap and Floor Regulatory Instructions and Guidance (RIGs) shortly.

We encourage NGET to bring forward the necessary modifications to the Connections and Use of System Code (CUSC) to facilitate these licence changes in due course.

If you have any questions in relation to this letter please contact Ikbal Hussain by email (ikbal.hussain@ofgem.gov.uk) or on 0207 901 7049.

Yours sincerely,

Stephen Beel
Partner, Competitive Networks

¹ We previously published a draft version of the guidance as part of our informal consultation on the proposed licence changes:
https://www.ofgem.gov.uk/system/files/docs/2016/02/guidance_on_the_cap_and_floor_conditions_in_nemo_link_limiteds_electricity_interconnector_licence_0.pdf

Appendix 5

PART 1: Summary of consultation responses

Respondent	Condition Ref	Comments	Our view	Changes to licence drafting
Nemo Link / NGIHL	Special condition 1: Definitions and Interpretation	The respondents proposed that the definition of Force Majeure is changed so that interconnectors subject to the cap and floor regime are protected against the impact of future legislative or regulatory changes that may impact on their operability or availability.	<p>We have previously made clear that we do not consider it appropriate for the cap and floor regime to provide any additional protection from future regulatory and legislative changes beyond that which is already specified in the licence. We consider that the floor sufficiently insulates a developer's exposure to such changes.</p> <p>The cap and floor regime is not intended to provide the same level of protection or consumer underwriting as a traditional price control regime. Rather, the regime is designed to encourage efficient investment in interconnectors by providing specified and limited protection from downside risk.</p> <p>The cap and floor regime is intended to reduce the developer's exposure to volatility of arbitrage opportunity, and we would therefore expect the developer to manage this risk as part of its normal business risk the same as a merchant interconnector.</p> <p>The cap and floor regime is built with specific re-openers for opex, Non-Controllable Operating Costs, decommissioning costs and we do not consider it appropriate for there to be any additional re-openers.</p> <p>We note that governmental restraint is included in the current definition of force majeure and that the licence also provides for outages as a result of curtailment by the System Operator to be deducted from calculation of actual availability.</p>	No change
Nemo Link / NGIHL	Special condition 1: Definitions and Interpretation	The respondents note that Ofgem is proposing to remove 'strike, lockout or other industrial disturbance' from the definition of force majeure. Both respondents comment that they do not understand the rationale for this proposal, as these words were included in the definition in the informal consultation and no respondents commented upon their inclusion at that time. The respondents believe that implementation of this proposal would be inappropriate and would result in a situation where interconnector licences are inconsistent with OFTO licences. (The generic Round 3 OFTO licence refers to the definition of Force Majeure	<p>We do not consider it appropriate for risks from the events described here to be borne by consumers. We consider such risks to be normal business risks that may be encountered by any merchant interconnector and should be managed by them. Accordingly, we expect the licensee to consider these risks as part of its normal business risk management procedures.</p> <p>The OFTO and cap and floor regimes are different. The cap and floor regime is designed to encourage efficient investment in interconnectors. The regime provides specified and limited protection from downside risk.</p>	No change

		in the SO-TO code, which does include 'strike, lockout or other industrial disturbance')		
Nemo Link / NGIHL	Special condition 4: Interconnector Availability Incentive (Part D)	The respondent's propose that the formula that calculates Actual Availability is amended to include adjustments for force majeure related outages. The respondents do not believe that the availability incentive will function as intended if the availability of the cap is not in the control of the licensee due to exceptional events not being taken into account.	<p>We reject the view that the availability incentive will not function as intended. The intention is to incentivise the licensee to maintain the availability of its interconnector. We have previously made clear that the mechanism allowing the licensee to be 'deemed' available for outages caused by an exceptional event will only be considered at the floor. This limits the exposure of consumers to risks related to the performance of the asset whilst also ensuring that, where the minimum availability target has been missed as a result of a force majeure related event, the licensee can still recover sufficient revenue to service its financial commitments.</p> <p>We consider a sufficient level of protection to be provided by part D of special condition 7 which allows for costs (approved by the Authority) incurred by the licensee as a result of an event or circumstance that constitutes force majeure to be netted off its revenue.</p> <p>We also note that this condition provides for 'Allowed Outage' which discounts outages that are caused as a result of curtailment by the System Operator.</p>	No change
Nemo Link / NGIHL	Special condition 5: Assessed Revenue (Part D)	Both respondents comment that they welcome proposed amendments to the definition of the Additional Revenue Term to allow for the deduction of 'relevant costs of sale'. The respondents ask for more clarity as to what can be included in the 'cost of sale', and whether for instance, such cost can include any capex and opex associated with the development of new services	Relevant costs of sale only cover the 'transaction costs' of the sale from any Additional Revenue streams. This is intrinsically linked to value of the sale and does not include development costs. We do not consider it appropriate to issue any further guidance given that any Additional Revenue streams are not known.	No change
NGIHL	Other matters - Calculation of Actual Availability	NGIHL comments that "It is unclear exactly what Interconnector Capacity means in this context. The term is taken from the interconnector licence Standard Conditions, where it is used principally in relation to the requirements on the licensee in respect of the allocation of capacity. However, it seems to be a test of actual capacity available over the interconnector. It is therefore unclear how there can be a reduction in such actual capacity to result in an Interconnector Outage".	We accept that use of the existing defined term 'Interconnector Capacity' as part of the proposed definition for 'Interconnector Outage' is not appropriate in the context of describing a reduction in capability of the interconnector to convey electricity at the Rated Capacity. We have therefore amended the definition of 'Interconnector Outage' to better reflect its meaning.	Yes - Definition of 'Interconnector Outage' amended to read as follows "means any reduction in MWh of Maximum Possible Availability of the licensee's Interconnector"

Part 2: Other minor changes made to licence drafting since the Consultation

We have made the following minor changes to the licence drafting for clarification and to correct minor typographical and formatting errors.

Nemo Link – Special conditions

Condition	Ref	Change made
Special Condition 4: Interconnector Availability Incentive	Paragraph 3	Reference to 'New Interconnector Capacity' amended to 'Interconnector Capacity' as new capacity is already included in the definition of 'Interconnector Capacity'.
Special Condition 4: Interconnector Availability Incentive	Paragraph 18	Reference to 'Allowed Outages' amended to "Allowed Outage" for consistently with the title of that defined term.
Special Condition 5: Assessed Revenue	Definition of 'Firmness'	Words in the title of Commission Regulation (EU) 2015/1222 amended from upper case to lower case letters and full title of Commission Regulation (EU) 2016/1719 inserted in place of square brackets.
Special Condition 7: Non-Controllable Costs	Paragraph 11	Inserted the word 'than' in between the words 'greater' and 'the' in first line of this paragraph.
Special Condition 7: Non-Controllable Costs	Paragraph 5(d)	Reference to Part E amended to align with the title of Part E of this condition.

Standard conditions of the electricity interconnector licence

Condition	Ref	Change made
Condition 25. Cap and Floor Regulatory Instructions and Guidance	Paragraph 7	Sub-paragraph references corrected so as to start from sub-paragraph (a).