

To:

**The General Manager
Blue Transmission London Array Limited
The American Barns
Banbury Rd
Lighthorne
Warwickshire
CV35 0AE**

**DIRECTION UNDER PARAGRAPH 9 OF AMENDED STANDARD CONDITION E12-J4
OF THE OFFSHORE TRANSMISSION LICENCE**

Whereas:-

1. Blue Transmission London Array Limited (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 9 of Amended Standard Condition E12-J4:
 - a) the Licensee considers that the transmission service reduction on the Licensee's transmission system commencing on 9 September 2016 and ending on 16 September 2016 was caused by an exceptional event;
 - b) the Licensee notified the Gas and Electricity Markets Authority (the "Authority") of the event on 22 September 2016, 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 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. Accordingly, the Authority is not satisfied for the purposes of paragraph 9(d) of the Condition that the Failure 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 30 October 2017 (the "Notice").
4. No representations were made by the Licensee in response to the Notice.

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

Dated: 17 November 2017

**Akshay Kaul
Partner, Commercial Networks**

Duly authorised by the Authority

ANNEX 1

REASONS FOR REJECTION OF AN EXCEPTIONAL EVENT CLAIM SUBMITTED BY BLUE TRANSMISSION LONDON ARRAY LIMITED UNDER PARAGRAPH 9 OF AMENDED STANDARD CONDITION E12-J4

1 Notification

- 1.1 On 22 September 2016, Blue Transmission London Array Limited (the **Licensee**) notified the Authority under paragraph 9 of Amended Standard Condition E12-J4 (the **Condition**), regarding a transmission service reduction on the London Array transmission system, which it considers was caused by an Exceptional Event. The Licensee provided further details regarding the cause of the transmission service reduction in a letter dated 27 February 2017, including a technical report produced by ABB (the **ABB Report**), as the relevant equipment manufacturer.
- 1.2 The letter provided by the Licensee and the ABB Report conclude that the cause of the transmission service reduction was a crack occurring between the main and tank bores within the circuit breaker drive mechanism, caused by stress corrosion as a result of material surface hardness and moisture. As a result, an alarm was activated, indicating the loss of hydraulic oil pressure, which is required to operate the circuit breaker. Following investigations, it was found that the circuit breaker had been rendered inoperable, unable to trip in the event of a power system fault, and accordingly was taken out of service (the **Failure Event**)¹.

2 Exceptional Event requirements

- 2.1. Paragraph 9 of the Condition provides that the Authority shall adjust the value of the monthly capacity weighted unavailability to offset the impact of an Exceptional Event where:
- a) the licensee considers that any 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 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 the European Commission or any other body having jurisdiction over the activities of the licensee provide that lack of funds shall not be interpreted as a cause beyond the reasonable control of the

¹ The Licensee's letter dated 27 February 2017 and the ABB Report explain these events in detail.

licensee. For the avoidance of doubt, weather conditions which are reasonably expected to occur at the location of the event or circumstances 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 Failure Event is an Exceptional Event, for the reasons set out below.

4 Reasons for decision

- 4.1 The Authority has considered the information provided by the Licensee regarding the Failure Event against both the licence and the open letter dated 22 October 2014 (the **Open Letter**).

- 4.2 As evidenced by the ABB Report, the Failure Event was the product of the assets failing during the course of their normal operation, namely by a crack occurring in the circuit breaker drive mechanism. 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. To the contrary, the definition of Exceptional Event identifies that events which are reasonably expected to occur are not in the nature of Exceptional Events. The definition expressly identifies, as one example and "*for the avoidance of doubt*", that weather conditions which are reasonably expected to occur and which lead to a transmission service reduction are not to be treated as events "*beyond the reasonable control of the licensee*".

- 4.3 When licensees take on responsibility for the offshore transmission assets, they thereby assume the normal operational risk for those assets. The assumption of normal operational risk means that the licensee is responsible for operating the asset from the point of asset transfer, for maintaining the system and managing the risks arising from owning, operating and maintaining the asset. 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. 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 and to put in place risk management measures accordingly.

- 4.4 It follows that the Failure Event is not to be treated as being beyond the reasonable control of the licensee for the purpose of the Exceptional Events definition. Rather, the condition of a licensee's assets under normal conditions is deemed to be within its reasonable control.

- 4.5 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:

(1) Whether it was reasonable for the licensee to know about all the relevant triggers or contributory factors; and

(2) Whether it was reasonable for the licensee to control or change some or all of these relevant triggers.

- 4.6 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; 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 Failure 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.

- 4.7 The Authority has previously allowed claims for Exceptional Events in respect of fault or failure of apparatus, but only in circumstances where the trigger event leading to the transmission services reduction occurred prior to the licensee assuming normal operational risk for the assets at the time asset transfer. In circumstances where the event occurs partly or wholly during the period when the licensee has not yet assumed normal operational risk for the assets, the Authority considers that it is not appropriate to deem the event as being within the licensee's reasonable control. The present facts are plainly distinguishable from such examples, however, as there is no evidence that the trigger for the Failure Event lay in the period prior to asset transfer. It is a principle consistent with each of the claims previously allowed, and the rejection of the current claim, that the condition of a licensee's assets, operating under normal conditions, is within that licensee's reasonable control from the point of asset transfer.
- 4.8 The Licensee has raised two main counter-arguments to support its contention that the Failure Event was "*beyond its reasonable control*" for the purpose of the definition of an Exceptional Event. First, the Licensee argued that the fact that the assets were installed and commissioned by the developer puts the Failure Event beyond its reasonable control. However, as explained above, 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, notwithstanding the fact that the transmission assets were developed and constructed by the developer. The mere fact of the developer's involvement is therefore insufficient to take the Failure Event outside the scope of the normal risk that the Licensee is required to bear.
- 4.9 Second, the Licensee refers to the fact that the potential for the fault which caused the Failure Event was revealed neither by due diligence undertaken prior to asset transfer, regular equipment inspection since asset transfer, nor notification by the manufacturer or other interested party. However, as explained above, 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 or not the specific fault was foreseen by the licensee (whether through due diligence, monitoring or notification by the manufacturer or other interested party), because the condition of a licensee's assets under normal conditions is considered to be within its reasonable control from the point of asset transfer.
- 4.10 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.