

**To:**

**The General Manager  
Blue Transmission Walney 2 Limited  
The American Barns  
Banbury Road  
Lighthorne  
Warwickshire  
CV35 0AE**

---

**DIRECTION UNDER PARAGRAPH 10 OF AMENDED STANDARD CONDITION E12-J4  
OF THE OFFSHORE TRANSMISSION LICENCE**

Whereas:-

1. Blue Transmission Walney 2 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 10 of Amended Standard Condition E12-J4:

a) the Licensee considers that the transmission service reduction on the Licensee's transmission system commencing on 4 December 2015 and ending on 19 March 2016 was caused by an exceptional event;

b) the Licensee notified the Gas and Electricity Markets Authority (the "Authority") of the event on 9 December 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. In accordance with Paragraph 11 of Amended Standard Condition E12-J4:

(e) The Authority is satisfied, for the reasons specified in the Annex to this direction that the Licensee took 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 had occurred).

4. The Authority gave notice in accordance with Paragraph 12 of Amended Standard Condition E12-J4 of the Licence to the Licensee on 30 October 2017 (the "Notice").

5. No representations were made by the Licensee in response to the Notice. However, the Licensee requested that certain confidential information be excluded.

Now therefore:

---

6. The Authority directs that the Licensee's reported system incentive performance be adjusted to offset the full duration of the outage: 110,771 MWh reported system incentive performance for incentive year 3 (beginning 1 January 2015) and 314,569 MWh in incentive year 4 (beginning 1 January 2016).

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

**Dated: 14 December 2017**

**Akshay Kaul**  
**Partner, Commercial Networks**

**Duly authorised by the Authority**

## ANNEX

### REASONS FOR ACCEPTANCE OF AN EXCEPTIONAL EVENT CLAIM SUBMITTED BY BLUE TRANSMISSION WALNEY 2 LIMITED UNDER PARAGRAPH 10 OF AMENDED STANDARD CONDITION E12-J4

#### 1 Notification

- 1.1 On 9 December 2015, Blue Transmission Walney 2 Limited (the **Licensee**) notified the Authority under paragraph 10 of Amended Standard Condition E12-J4 (the **Condition**), regarding a transmission service reduction on the Walney 2 transmission system that began on 4 December 2015, which it considers was caused by an Exceptional Event. The Licensee provided information on the cause of the event on 18 August 2016, and a finalised technical report produced by Edif ERA on 10 April 2017 (the **ERA Report**). Transmission services were restored on 19 March 2016.
- 1.2 The ERA Report states that the cause of the transmission service reduction [REDACTED] The ERA Report concluded that the failure was [REDACTED] (the **Failure Event**).

#### 2 Exceptional Event requirements

- 2.1. Paragraph 10 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:
- 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;
  - the licensee has notified the Authority that a possible Exceptional Event had occurred, within 14 days of its occurrence;
  - the licensee has provided such information as the Authority may require in relation to the event; and
  - 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 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 10(a) to (c) of the Condition. Pursuant to subparagraph 10(d) of the Condition, the Authority is 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 ERA Report, the Failure Event was the product of the assets failing due to a fault which most likely occurred prior to the Licensee taking control of the assets. The Authority sought advice from its technical advisers, who agreed with ERAs analysis of the trigger event that caused the failure.
- 4.3 The risk of fault or failure of the FOC is a risk that licensees assume at the point of asset transfer. The possibility of there being a fault or failure on the apparatus is a type of risk that is foreseeable, and in respect of which licensees are expected to plan and put in place contingency arrangements. Even if the specific fault is not foreseeable, the type of risk is foreseeable.
- 4.4 Fault or failure of plant or apparatus is not listed as an example of an event which is to be treated as "*beyond the reasonable control of the licensee*" and it is also not an event which is commensurate with the examples of such events listed in the definition. The definition of 'Exceptional Event' makes clear that, in general, events which are reasonably expected to occur will not be deemed to be beyond the reasonable control of the licensee. It follows that, in principle, mere fault or failure of plant or apparatus will not satisfy the definition of 'Exceptional Event'.
- 4.5 The Open Letter set out two questions, which outlined an approach that the Authority would take to ascertaining whether an event was commensurate with the examples listed in the definition of 'Exceptional Event'. However, for the reasons set out in the Blue Transmission London Array Limited exceptional event decision dated 30 October 2017 (the **London Array decision**)<sup>2</sup>, such reasoning is inapplicable to events that were reasonably expected to occur. Rather, the Open Letter questions consider the knowledge and ability to control relevant triggers and contributory factors of unforeseeable events.
- 4.6 However, notwithstanding the conclusion at paragraph 4.4 above, the Authority notes that licensees assume normal operational risk for the assets *only from the point of asset transfer*. Therefore, the Authority has previously recognised that, in respect of fault or failure of apparatus in circumstances where the causal trigger event leading to the transmission services reduction occurred *prior to* the licensee assuming normal operational risk for the assets, it is appropriate to deem the event as being beyond the reasonable control of the licensee for the purposes of the definition of 'Exceptional Event'.
- 4.7 The same reasoning is applicable on the present facts. As outlined above, the technical evidence provided to the Authority demonstrates that the most likely causal trigger

---

<sup>2</sup> This decision can be found on our website.

event for the Failure Event occurred prior to asset transfer, i.e. prior to the point at which the licensee assumed normal operational risk for the assets. It follows that the Authority is satisfied that the Failure Event is 'beyond the reasonable control of the licensee' for the purposes of the definition of 'Exceptional Event'.

4.8 For the above reasons, the Failure Event constitutes an Exceptional Event as defined in Amended Standard Condition E12-J1. Accordingly, the Authority is satisfied for the purposes of paragraph 10(d) of the Condition that the Failure Event was an Exceptional Event.

## **5 Authority's adjustment to the reported system incentive performance under Paragraph 11 of Amended Standard Condition E12-J4**

5.1 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). The Authority has considered whether the Licensee has taken steps in accordance with Good Industry Practice to manage the impact of the event and obtained technical advice to inform its assessment. The Authority is satisfied that the Licensee acted in accordance with Good Industry Practice for the following reasons:-

- 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. Specifically, the Licensee had in place adequate procedure to monitor cable conditions, for example, distributed temperature sensing (DTS) monitoring, and this did not alert the Licensee to a cable fault.
- After the occurrence of the cable failure, the Licensee managed the repair and restoration process well, by utilising contracts already in place, having the export cable repair licence in place with the Marine Management Organisation and by having spare cable and joints available. These steps were consistent with Good Industry Practice. Although there was a delay of several days to the repair, the delay was caused by severe weather and subsequent damage to the vessel of the subcontractor, for which it should not be held responsible. A new contract was put in place without delay.

5.2 Therefore, the Authority directs that the Licensee's reported system incentive performance be adjusted to offset the full duration of the outage: 110,771 MWh reported system incentive performance for incentive year 3 (beginning 1 January 2015) and 314,569 MWh in incentive year 4 (beginning 1 January 2016)

