

DIRECTION PURSUANT TO SPECIAL CONDITION AA OF THE ELECTRICITY GENERATION LICENCE

To:

Gwynt y Môr Offshore Wind Farm Limited (Company number 03697015)

DIRECTION ISSUED BY THE GAS AND ELECTRICITY MARKETS AUTHORITY PURSUANT TO PARAGRAPH AA.1 OF SPECIAL CONDITION AA OF THE ELECTRICITY GENERATION LICENCE GRANTED OR TREATED AS GRANTED UNDER SECTION 6(1)(a) OF THE ELECTRICITY ACT 1989

Whereas:

1. The company to whom this Direction is addressed ("the licensee") holds a generation licence granted or treated as granted pursuant to section 6(1)(a) of the Electricity Act 1989 ("the Act") ("the licence"). The licence has special condition AA (Liquidity in the Wholesale Electricity Market) ("the condition") in effect.
2. The Gas and Electricity Markets Authority ("the Authority") has the power pursuant to paragraph AA.1 of the condition to direct that paragraphs AA.2 to AA.6 of the condition shall cease to have effect from such date as the Authority may specify.
3. On 21 March 2014 the Authority issued a direction pursuant to which the provisions of the condition had effect in the licensee's licence from 31 March 2014. At that time, the licensee was a joint venture between different legal entities and Innogy Renewables UK Limited had a 60% share in the licensee. RWE AG, the ultimate parent company of Innogy Renewables UK Limited, was an Affiliate¹ of the licensee as defined in Section A of the licence. The condition therefore had effect in the licensee's licence.²

¹ Standard Generation Licence Condition 1 – 'Definitions and Interpretation', Paragraph 1 – "affiliate" "in relation to any person means any holding company of such person, any subsidiary of such person or any subsidiary of a holding company of such person, in each case within the meaning of sections 1159 and 1160 of the Companies Act 2006". Section 1159 (1) of the Companies Act 2006 states that "A company is a "subsidiary" of another company, its "holding company", if that other company—

- (a) holds a majority of the voting rights in it, or
- (b) is a member of it and has the right to appoint or remove a majority of its board of directors, or
- (c) is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it

² The Authority published its reasons for this decision in the following documents:

<https://www.ofgem.gov.uk/publications-and-updates/wholesale-power-market-liquidity-decision-letter> ;
<https://www.ofgem.gov.uk/publications-and-updates/wholesale-power-market-liquidity-statutory-consultation-secure-and-promote-licence-condition>; and
https://www.ofgem.gov.uk/sites/default/files/docs/2013/06/liquidity-final-proposals-120613_0.pdf

4. In October 2015, Innogy Renewables UK Limited sold 10% of its shareholding in the licensee. In December 2018, Innogy Renewables UK Limited notified the Authority of the divestment. Due to the divestment, Innogy Renewables UK Limited now has a 50% shareholding in the licensee. Members of the licensee are, according to its articles of association, entitled to one vote for every share such members hold, and decisions of directors must be made by the affirmative vote at a meeting of eligible directors appointed by members holding, in aggregate, more than 50% of the shares. Each member of the licensee is, according to its articles of association, entitled to appoint one director of the board for each 10% of the shares held by such members. Therefore, the licensee is no longer an Affiliate of RWE AG. As such the licensee no longer meets the criteria for complying with the condition, as set out in Ofgem's Liquidity in the Wholesale Electricity Market (Special Condition AA of the electricity generation licence): Guidance³. Therefore, it is no longer appropriate for the condition to apply.

Now therefore:

5. The Authority hereby directs that the paragraphs AA.2 to AA.6 of the condition shall cease to have effect in the licence of the licensee.
6. This direction shall take effect from the date below and remain in effect until such time as the Authority may revoke, vary or replace it by a further direction.
7. In accordance with section 49A of the Act, this document constitutes the Authority's reasons for making this direction.

Dated: 14 March 2019

Chris Thackeray, Head of GB Wholesale Markets
Duly authorised on behalf of the Authority

³ <https://www.ofgem.gov.uk/ofgem-publications/86717/liquidityinthewholesaleelectricitymarketspecialconditionaaoftheelectricitygenerationlicence-guidance-pdf>