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Andrew Bullimore
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Via email

24 January 2020

Dear Andrew,

Response to the statutory consultation on proposed changes to the electricity interconnector licence held by National Grid IFA2 Limited to implement the cap & floor regime

National Grid Interconnector Holdings Limited (NGIH) welcomes the opportunity to respond to the Ofgem consultation on the National Grid IFA2 Limited (NGIFA2) cap and floor licence and notes that NGIFA2 has responded separately.

NGIH is the legal entity within the National Grid group responsible for interconnector development and the management of existing operational interconnector businesses; comprising a 100% investment in NGIFA2, National Grid North Sea Link Limited (NGNSL) and National Grid Viking Link Limited (NGVL); together with a 50% interest in BritNed Development Limited and Nemo Link Limited.

There is significant overlap between the NGIH and NGIFA2 consultation responses. NGIH is submitting a separate consultation response on the basis that:

- NGIH represents not only NGIFA2 but also NGNSL and NGVL, which are also regulated under the cap and floor (C&F) regime.
- NGIH has experience in the development of the C&F regime and associated licence drafting through engagement with Ofgem on the NGNSL C&F licence conditions.

Ofgem has stated that the proposed NGIFA2 C&F licence conditions are based on the NGNSL C&F licence conditions, with a small number of adjustments to:

1. Take into account the differences between IFA2 and NSL;
2. Provide additional clarity; and
3. Enable flexibility where Ofgem is satisfied that it is in consumers' interests.

NGIH supports the position of NGIFA2 with regards to these changes, including the need to include 'GB Network Rates' in the definition of 'Non-Controllable Cost Items', which would implement Ofgem's stated C&F policy position.¹ In addition, NGIH has the following portfolio points:

- NGIH expects that the flexibility proposed in the NGIFA2 licence, covering the timing of the Post Construction Review and the definition of Trip Contract Costs, will be extended to other C&F interconnectors, including (where still relevant) those that already have a C&F licence.
- NGIH notes that this is the third set of C&F licence conditions and encourages Ofgem to undertake a near-future C&F licencing review where all common licence requirements are brought into a section of the interconnector standard licence conditions. This would ensure a consistent licencing treatment of C&F licensees, avoiding the need to manage multiple sets of special C&F licence conditions.

NGIH also supports the position of NGIFA2 with regards to the importance of the C&F principles developed by Ofgem to underpin the C&F regime². These principles include a level-playing field principle, which Ofgem stated as follows:

(For GB and new interconnector developments) Regulatory treatment should allow third party developers and should be impartial and unbiased between TSOs and non-TSO developers, existing and future developers

NGIH highlighted the importance of the level-playing field principle in its response to the NGNSL licence consultation in March 2018.³ More recently, NGIH responded to Ofgem's 'Consultation on proposed changes to our electricity interconnector cap and floor regime to enable project finance solutions'.⁴ Regarding that consultation, NGIH considers that Ofgem's level playing field principle implies that:

- **Core regime elements** are outside the reasonable scope of project finance variations and, if changes are made, they must be available to all interconnector licensees (including NGIFA2) on a non-discriminatory basis to avoid granting a commercial advantage to certain developers; and
- **Genuine project finance variations** should only be offered providing that consumers and other stakeholders are appropriately protected.

NGIH will follow with interest the result of that consultation, including any consequential amendments to the existing, proposed and future C&F licences.

¹ Ofgem's 'Decision on the cap and floor regime for the GB-Belgium interconnector project Nemo', published on 2 December 2014, listed the costs that would be included as non-controllable costs, including 'Grid Costs and Network Rates. See page 26 in the following Ofgem decision:

https://www.ofgem.gov.uk/sites/default/files/docs/2014/12/final_cap_and_floor_regime_design_for_nemo_master_for_publication_1.pdf

² These principles were first consulted upon in 2011 in relation to the regulatory regime for Nemo Link and future subsea interconnectors. They are presented in page 14 of the following Ofgem consultation:

<https://www.ofgem.gov.uk/publications-and-updates/cap-and-floor-regime-regulation-project-nemo-and-future-subsea-interconnectors>

³ Ofgem's 'Statutory consultation on proposed changes to the electricity interconnector licence held by National Grid North Sea Link Limited to implement the cap & floor regime':

https://www.ofgem.gov.uk/system/files/docs/2018/07/ngih_licence_drafting_response_to_ofgem_final.pdf


⁴ The consultation closed on 28 November 2019 and at the time of writing this response no further information has been published. The consultation is available on:

<https://www.ofgem.gov.uk/publications-and-updates/consultation-proposed-changes-our-electricity-interconnector-cap-and-floor-regime-enable-project-finance-solutions>

Detailed comments on the proposed NGIFA2 C&F licence conditions are provided in Annex 1.

If you would like to discuss the contents of this response do not hesitate to contact me.

Yours sincerely,



John Greasley
Regulation and Stakeholder Manager

Annex 1 – Detailed comments on the proposed NGIFA2 C&F licence

Respondent details			NGIH	Suggested alternative drafting (please use tracked changes wherever possible)
Licence/ Document name	Condition/ Section number	Condition/ Section name	Page/ Paragraph Ref	
Special conditions	1	Definitions and Interpretation	Page 6 in the pdf	<p>“Regime Start Date” means the earlier of:</p> <p>(a) the date that falls after the successful completion of such procedures and tests in relation to the licensee’s Interconnector that are in accordance with, at the time they are undertaken, Good Industry Practice for commissioning that type of interconnector in order to demonstrate that the licensee’s Interconnector is available for the use of conveyance of electricity at the Rated Capacity; and</p> <p>(b) 1st January 2021</p>
				<p>The Cap Start Date has been defined as the Regime Start Date or such earlier date as may be specified in writing by the Authority. The Regime Start Date has been defined as the earlier of the Full Commissioning Date and 1st January 2021. The definition of Full Commissioning Date involves criteria set out in special condition 2.7. Those criteria include the successful completion of 60 days of continuous operation (part (b)).</p> <p>The result of the proposed definitions is that NGIFA2 could start operations and if it failed the 60 days of continuous operations then find itself without a cap and floor regime until 1st January 2021. This would create uncertainty as to how that income pre-Regime Start Date is to be considered.</p> <p>The proposed way forward is to amend the definition of the Regime Start Date, so that as a result the Cap Start Date can take into account any income generated from the date that the interconnector is commissioned. This would not have an impact on the definition of the Full Commissioning Date, which would still be remain appropriate for the definition of the Floor Start Date.</p>

Special conditions	2	Cap Level and Floor Level	Page 12 in the pdf	<p>NGIH welcomes the updated RPI formula set out in special condition 2.19. NGIH considers that this addresses an error in the NGNSL C&F licence and encourages Ofgem to make the same amendment in that licence.</p>	<p>Replicate the proposed licence drafting in the NGNSL C&F licence</p>
Special conditions	5		Page 36 in the pdf	<p>NGIH welcomes the proposed definition of Trip Contract Costs in special condition 5.13. NGIH encourages Ofgem to make the same amendment to all the existing C&F licences.</p>	<p>Replicate the proposed licence drafting in all the existing C&F licences</p>
Special conditions	7.15	Non-Controllable Costs	Page 43 in the pdf	<p>In the proposed list of Non-Controllable Costs Items, part (b) includes 'GB Property Rates' whereas the equivalent provision in the NGNSL C&F licence includes 'GB Network and Property Rates'.</p> <p>NGIH does not agree with the removal of 'GB Network Rates' in the definition of 'GB Network and Property Rates', as it is contrary to Ofgem's stated policy.</p> <p>Ofgem's decision on the Nemo Link C&F regime, published on 2 December 2014, lists in point 4.15 'Grid costs or network rates' among the costs included as non-controllable costs.</p> <p>NGIH therefore considers that a full implementation of the C&F policy should include 'GB Network Rates' (e.g. TNUoS and BSUoS) in the list of Non-Controllable Cost Items. If this implementation were not done there is a significant risk that the cap and floor parameters do not adequately reflect the costs that a cap and floor licensee could incur during the operational phase.</p>	<p>The Non-Controllable Operational Cost Items are defined as the following:</p> <ul style="list-style-type: none"> (a) Crown Estate Lease Fees; (b) GB Network Rates; (c) GB Property Rates; and (d) GB Licence Fees.

<p>Special conditions</p>	<p>7.38</p>	<p>Non-Controllable Costs</p>	<p>Page 49 in the pdf</p>	<p>As per the previous point, NGIH considers that a definition of 'GB Network Rates' should be introduced</p>	<p>"GB Network Rates" means, to the extent that any of the following applies to the licensee's Interconnector, either:</p> <ul style="list-style-type: none"> (a) TNUoS and BSUoS as such terms are defined in the CUSC; and/or (b) any other costs including connection charges that constitute network rates payable by the licensee in respect of the licensee's Interconnector.
<p>Special conditions</p>	<p>8.5</p>	<p>Process for determining the value of the Post Construction Adjustment terms</p>	<p>Page 50 in the pdf</p>	<p>NGIH welcomes the flexibility in the timing of the NGIFA2's submission of the Post Construction Adjustment (PCA) terms introduced by Ofgem in special condition 8.4.</p> <p>NGIH notes the process introduced in special condition 8.5 and has a suggestion to improve the clarity of the drafting. The proposed drafting refers to 'the Authority make and earlier or later determination', whereas NGIH considers that the drafting should refer to 'the Authority agree to an earlier or later submission of the PCA terms'</p> <p>NGIH encourages Ofgem to make the same amendment in the NGNSL C&F licence.</p>	<p>The licensee may request in writing that the Authority agree to an earlier or later submission of the PCA terms than specified in paragraph 4(a) provided that:</p> <ul style="list-style-type: none"> (a) The licensee provides supporting evidence of the reasons for submitting a request to the Authority outside the dates specified in paragraph 4(a) of this condition; and (b) Any risks associated with contingency and unspent costs or future variations shall reside with the licensee. <p><i>Replicate the proposed licence drafting in the NGNSL C&F licence</i></p>