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for energy consumers

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**DIRECTION UNDER PARAGRAPH 9 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**) in respect of the transmission system for the Walney 2 offshore wind farm (the **Project**);
2. The Licensee considers that the event causing the transmission service reduction that occurred from 9 May 2018 to 9 June 2018 (the **Event**) was wholly or partially caused by an Exceptional Event (as defined in Amended Standard Condition E12-J1 of the Licence);
3. The Licensee notified the Gas and Electricity Markets Authority (the **Authority**) of the Event on 15 May 2018, which was within 14 days of its occurrence;
4. The Licensee provided details of the reduction in system availability that it considered resulted from the Event and further information requested by the Authority;
5. The Authority gave notice in accordance with paragraph 11 of Amended Standard Condition E12-J4 of the Licence to the Licensee on 23 October 2019 of the proposed terms of this direction (the **Draft Direction**);
6. The Licensee submitted representations in response to the Draft Direction to the Authority on 19 November 2019 (the **Representations**);

7. We have considered the Representations carefully. However, for the reasons set out in the Annex to this direction, we do not consider that the Event constitutes an Exceptional Event; and
8. Accordingly, the Authority directs that there will be no adjustment in respect of the Event for the purposes of paragraph 9(d) of Amended Standard Condition E12-J4 of the Licence.

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



**Jourdan Edwards**  
**Head of the OFTO Regime, Systems & Networks**

**Duly authorised by the Authority**

## ANNEX

### REASONS FOR REJECTION OF AN EXCEPTIONAL EVENT CLAIM SUBMITTED BY BLUE TRANSMISSION WALNEY 2 LIMITED UNDER PARAGRAPH 9 OF AMENDED STANDARD CONDITION E12-J4

#### 1 Exceptional Event requirements

1.1 Paragraph 9 of Amended Standard Condition E12-J4 (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.

1.2 An Exceptional Event is defined in Amended Standard Condition E12-J1 of the 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."*

#### 2 Notification and background to claim

2.1 On 15 May 2018, the Licensee notified the Authority of a transmission service reduction on the Project which it considered was caused by an Exceptional Event. The Licensee submitted an Exceptional Event claim on 23 August 2018. The Licensee's claim is supported by additional documents including an investigation report (the **Investigation Report**) and cost benefit analysis report for the repair works dated 22 August 2018. Following a further information request from the Authority, the Licensee provided additional information regarding the cause of the transmission service reduction in a letter dated 22 January 2019.

2.2 The Event began on 9 May 2018 when during switching to release the transmission system from service for routine maintenance, the Licensee's subcontractor,

[REDACTED], (the **Sub-contractor**) opened a disconnecter which was part of the export cable circuit (disconnecter 103) in the incorrect sequence which caused it to trip the transmission system. The resulting failure caused damage to the disconnecter and associated switchgear equipment resulting in a transmission service reduction of 31 days to replace the damaged equipment.

2.3 The Licensee claims that the Event was "*beyond its reasonable control*" for the purpose of the definition of an Exceptional Event for the following reasons:

2.3.1 the Licensee considers the electrical interlocking scheme was "*defectively designed and commissioned*" since it was not designed in accordance with good industry practice and international standards;

2.3.2 the interlocking design was agreed by the developer of the Project [REDACTED] (the **Developer**) and the manufacturer prior to asset transfer;

2.3.3 the Licensee was not aware of the "*defective design*" of the assets at the time or after asset purchase and assumed the design was in accordance with good industry practice and international standards;

2.3.4 it was reasonable for the Licensee to assume that the assets had been designed in a certain way and/or that any such "error" would have been identified and corrected by the manufacturer/Developer prior to asset transfer;

2.3.5 the overall switching practice developed for the Project followed what the Licensee termed the "[REDACTED] practice"<sup>1</sup> of opening a circuit breaker followed by its associated disconnecter (the **Switching Practice**);

2.3.6 the Switching Practice is contrary to normal industry practice and is inherently more susceptible to operational switching errors, though the practice is used in other wind farms in the North-West region of England;

2.3.7 the Licensee could not be expected to review the detailed switching programme prepared by its sub-contractor;

2.3.8 whilst there was an error in the switching programme, human error is always a potential risk and the Licensee should not be expected to mitigate all operational risks; and

2.3.9 if the interlocking scheme had been designed as the Licensee assumed, this design would have prevented the opening of the relevant disconnecter in the incorrect sequence and any transmission service reduction would have been limited to 1-2 days rather than the 31 days that occurred.

2.4 The Licensee therefore concludes that the immediate cause of the transmission service reduction, the failure event, was the "defective design" in the interlocking of disconnecter 103. The Licensee considers the contributory factors, the trigger events, to be the defective design of the disconnecter and the adoption of the Switching Practice. The Licensee considers the defective design to be the "primary trigger" which materially contributed to the failure event.

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<sup>1</sup> [REDACTED]

### 3 Decision

- 3.1 The Licensee has complied with the notification and information requirements of sub-paragraphs 9(a) to (c) of the Condition. However, pursuant to sub-paragraph 9(d) of the Condition, the Authority is not satisfied that the 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 Event, including the Representations, in accordance with our statutory obligations, the Licence and our published guidance as set out in our open letter of 22 October 2014 (the **Open Letter**).<sup>2</sup> Our responses to the Licensee's claim as summarised at paragraphs 2.3 and 2.4 above are set out below.

- 4.1.1 Whilst we accept that it would generally be considered good industry practice for the electrical interlocking system to be designed as the Licensee assumed, this is not a legal requirement under the relevant industry standards<sup>3</sup> or relevant connection agreements<sup>4,5</sup>. As such, we do not consider the design in itself to be "defective";
- 4.1.2 We agree that the interlocking design would have been agreed by the Developer and the manufacturer prior to asset transfer;
- 4.1.3 We do not dispute that the Licensee was not at the time of purchase, or until the Event, aware of the specific design of the electrical interlocking scheme;
- 4.1.4 However, we do not agree that it was reasonable for the Licensee to assume that the assets had been designed in a particular way and for consumers to bear the risk of any such assumption proving to be incorrect. Each OFTO licensee should carry out an appropriate level of due diligence prior to asset purchase to fully understand the design of its transmission system and how to operate that equipment.
- 4.1.5 The Licensee was not aware of the specific interlocking design of the asset but still adopted a switching practice which it acknowledges is "*contrary to normal industry practice and is inherently more susceptible to operational switching errors*". We consider that the Licensee is responsible for the actions taken by its sub-contractor [REDACTED] throughout the switching process;
- 4.1.6 The OFTO regime requires the Licensee to be responsible for managing the risks associated with the operation and maintenance of its assets. The Licensee has stated that it accepted and continued an approach which it considers "*contrary to normal industry practice*" and "*inherently more susceptible to operational switching errors*" so we expect the Licensee to put appropriate measures in place to mitigate these risks and/or to be

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<sup>2</sup> [Link](#) to the Open Letter.

<sup>3</sup> The industry standard of National Grid Relevant Electrical Standard – TS 3.01.01 as quoted by the Licensee requires a full electrical interlocking scheme to be installed which only applies to equipment directly connected to the National Grid Network. For this reason, it does not apply to the onshore equipment for the project.

<sup>4</sup> The relevant connection agreement states that the connection must comply with all relevant standards, see footnote 2 above.

<sup>5</sup> An edit was made on 30 June 2020 for clarification purposes after the decision.

comfortable with bearing the risks associated with that approach.

- 4.1.7 We agree that human error can be considered an operational risk and that licensees should not be expected to mitigate all operational risk. However, we consider that the series of mistakes leading up to the Event constituted more than human error including:
- 4.1.7.1 the initial acceptance by the Licensee of the Switching Practice which it considered was "*contrary to normal industry practice*";
  - 4.1.7.2 the writing and following of an inadequately detailed switching programme, including failure of the sub-contractor's operatives to check and amend it prior to the day of its use, inadequate version control, use of electronic copies of the switching programme contrary to normal industry practice and a lack of appropriate guidance;
  - 4.1.7.3 the switching programme omitted a crucial step in the process for opening a circuit breaker before the associated disconnectors; and
  - 4.1.7.4 failure by the persons on site and the Senior Authorised Person to identify the error in the switching programme on, or before, the day of the Event and pause work until the error had been resolved.
- 4.2 Even if it were the case that we considered the design of the interlocking system to be "defective" (which we do not), we do not in any event accept that this event would constitute an Exceptional Event. It has always been a fundamental principle of the OFTO regime that each licensee should enter into the purchase of the OFTO assets with the awareness that it is assuming any risks arising from damage or defects that it does not discover or has not been able to discover through its due diligence. The OFTO regime was not designed to insulate licensees from all such risks and consumers should accordingly not bear these risks save in the limited and prescribed circumstances of an Exceptional Event <sup>6</sup>.
- 4.3 In accordance with the Licence and the guidance set out in the Open Letter, in determining whether or not an Exceptional Event has occurred, we consider the circumstances around the failure event and any contributory factors or triggers to the failure event leading to the transmission service reduction. We must consider whether the relevant event was beyond the reasonable control of the Licensee and for an event to be beyond an OFTO's reasonable control "*the OFTO must demonstrate that its actions or inactions (including those of its agents, employees, contractors etc. working on its behalf) in respect of the trigger event did not materially contribute to the failure event.*"
- 4.4 As set out in the Open Letter the failure event is the "event" which leads to the transmission service reduction. In the case of the Project, the event which directly led to the transmission service reduction is the series of actions undertaken by the Licensee's sub-contractor, [REDACTED] which resulted in the initiation of the switching command to open disconnector 103. We do not agree with the Licensee's contention that the absence of the assumed design of the interlocking system, in its words, the "defective design" of the assets, is the event which led to the transmission service reduction i.e. the failure event. If the sub-contractor had not

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<sup>6</sup> An edit was made on 30 June 2020 for clarification purposes following the decision.

made a series of errors in the development of the switching programme, there would not have been a transmission service reduction, regardless of the absence (or otherwise) of the assumed electrical interlocking system.

- 4.5 In considering whether a failure event leading to a transmission service reduction is outside of the reasonable control of the Licensee, we consider any trigger events or contributing factors. The trigger events that led to the failure event are those set out at paragraph 4.1.7 which, for the reasons set out above, we consider were within the reasonable control of the Licensee. In accordance with the guidance set out in the Open Letter, we consider that it was reasonable for the Licensee to have known about and controlled/changed these triggers in order to ultimately prevent the transmission service reduction from occurring.
- 4.6 We do not consider that the design of the interlocking system was “defective” for the reasons set out at paragraph 4.1.1 above rather that it was not as the Licensee had assumed. Whilst we agree that the absence of the assumed design in the interlocking system is likely to have prolonged the transmission service reduction, we do not consider that it triggered it.
- 4.7 On this basis, we are not satisfied that the Event was beyond the reasonable control of the Licensee and it cannot therefore constitute an Exceptional Event within the meaning set out in the Licence. Where there is no Exceptional Event, we have no discretion to make any adjustment pursuant to the Condition.