

TRANSMISSION CAPITAL PARTNERS

By email to stephen.taylor@ofgem.gov.uk.

24th September 2020

To whom it may concern

Consultation on proposed modifications to Offshore Transmission Licences

I am writing to you on behalf of Transmission Capital Partners in response to your consultation letter dated 25th August 2020 proposing modifications to Offshore Transmission licenses pursuant to your Decision Document dated 28th November 2018.

Our responses to your proposed modifications are as follows:

A1. Deductibles for Uninsurable Claims

We are pleased that the Decision Document confirms that deductibles will not be set using a percentage of the claim. We have no further comment on this part of the proposal.

With reference to the definition of uninsurability attached in Appendix H, we have the following comments:

- We do not agree with the proposal to define uninsurability via guidance rather than within the license itself. Change to guidance is not subject to the same statutory requirements on consultation as changes to the license.

A key consideration for investors is protection from the risk of issues, such as latent defects, that could not be reasonably foreseen at technical DD. Their ability to take comfort from provisions within the license is weakened if the key definition on which they rely for comfort is not in the license itself but instead in a document with a weaker statutory framework.

We note that removing *“fault or failure of Plant and Apparatus (which could not have been prevented by Good Industry Practice)”* from the definition of Force Majeure means that any claims relating to latent defects are already less certain as they now must more fully rely on limb (c) of Paragraph 15 which is subject to wider Ofgem discretion.

We believe that the effect of these two changes together is to reduce OFTOs protection and increase their risk profile.

Whilst we agree that guidance is a useful tool that enables Ofgem to provide further detail on how the license provisions may be applied in practice (and indeed at several points in this letter we request guidance to clarify Ofgem’s thinking), we do not believe that terms which are fundamental to the risk profile of the license should be defined in this manner and believe they properly belong in the license itself.

Placing the definition of insurability outside the license is also inconsistent with Ofgem’s rationale for severing the link between the STC and the license in the definition of Force Majeure – that is where modifications to a subordinate document result in amendments to a previously existing license as outlined in paragraph 3.77 of the Decision Document.

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We believe that the definition of uninsurability should be within the license.

- In both limbs (a) and (b) of the proposed definition, reference is made to “*the Worldwide Offshore Transmission Asset Insurance Market*”. We agree that whilst this is the overall market within which a search would be carried out that search will be limited to those insurers prepared to offer cover within the United Kingdom (with its attendant sovereign and environmental risks) and the definition should be qualified to make this clear.
- Both limbs also note that potential insurers should be “*of good standing*” but this term is not defined. We would expect Ofgem to issue guidance as to how they would assess “good standing”.
- Limb (b) states “*the Insurance premium payable for insuring that Risk is at such a level that the Risk is deemed as not being insurable*”. We would expect that Ofgem would issue guidance so that OFTOs can understand how Ofgem would determine whether a premium was at such a level as to make a Risk uninsurable.
- The definition of “*the Worldwide Offshore Transmission Asset Insurance Market*” refers to the OFTO making “*an exhaustive search*”. It’s not clear what Ofgem means by “exhaustive” and ideally it would be easier for OFTOs if Ofgem referred to more familiar contractual terms such as “reasonable endeavours” etc, or if not to provide guidance on what is meant by exhaustive.

A2. Force Majeure: All OFTO Licenses

We agree that the definition of Force Majeure in the license should be independent of other documents.

We also note the policy to remove the reference to the fault of plant & apparatus in the definition, and as indicated above this removal and the intention to place the definition of uninsurable outside the license increases the risk profile for OFTOs.

A3. IAE Threshold

We have no comment on this proposed change.

B1. Information Requests

We agree that Ofgem should clarify that more than one information request can be made, and that the proposed modification to Paragraph 17 achieves this, and allows for Ofgem to extend the time for an OFTO to provide the information.

B2. Commercial Recourse

We agree that the drafting changes to Paragraph 21 makes it clear that an IAE is subject to determination and adjustment through commercial recourse. However, it isn’t clear how Ofgem will determine whether a particular recourse is available to an OFTO, under Paragraph 21 (i) (b) and how it would determine the value of a partial adjustment under Paragraph 21 (iii).

The concept of commercial recourse is fundamental to the process of determining any adjustments but is not defined. We believe that commercial recourse should be a defined term within the definition of Uninsurable, including examples (without limitation).

B3. Timing of Determinations

We do not agree with the proposed changes to Paragraph 22. The current time limit in Paragraph 22 is within the context of the existing drafting of Paragraph 21, which allows for consultation by Ofgem.

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We agree with Ofgem that the changes to Paragraph 21 amount to a clarification of the existing drafting and not a change to the process. Consequently, the time required for Ofgem to reach a determination should remain unchanged.

B4. Event or Circumstance

We have no comment on this proposed change.

B5. Publication of IAE Notice

We have no comment on this proposed change.

B6. Publication of IAE Notice

We have no comment on this proposed change.

C1. Amend Standard Condition E12-J9

We have no comment on this proposed change.

C2. Amended SC E12-D2, TC Lincs OFTO

We have no objection to the proposed modification, noting the modification exists in all our other OFTO licenses.

C3. Amended SC E13

We have no comment on this proposed change

C4. Amended SC E12-J11, Gwynt y Môr OFTO

We have no comment on this proposed change

If you have any questions or follow up to this letter please do contact me.

Yours sincerely,



Paul Bennett

Commercial Director, Transmission Investment,
On behalf of Transmission Capital Partners Limited Partnership