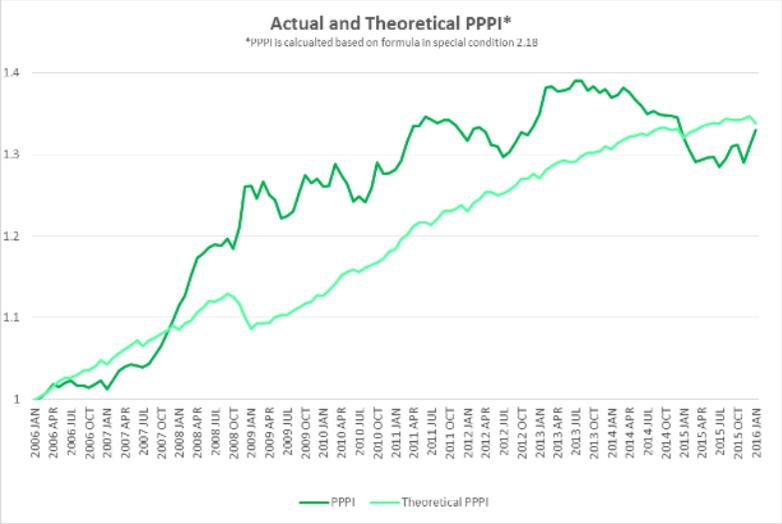


**Nemo Link Licence Consultation Response:** Detailed Comments and Suggested Alternative Drafting

Respondent details:			Bert Maes, Nemo Link Business Director, Bert.Maes@nemolink.co.uk		
Licence/D ocument name	Condition/ Section number	Condition/ Section name	Page/ Paragra ph Ref	Comments	Suggested alternative drafting (tracked changes represent suggested changes)
NEMO licence	Special Condition 1	Definition of "Force majeure"	Page 3	<p>As we have previously stated, we propose that the force majeure definition is expanded so as to include legislative and regulatory changes as an additional limb as per the suggested text alongside this comment. As currently drafted, Nemo's inability to rely on a legislative change (or similar event) that impacts on operation and availability as a force majeure event presents a significant and unacceptable risk to revenues.</p> <p>Our proposal furthermore is in line with the following extract from CREG (Commissie voor de Regulering van de Elektriciteit en het Gas, the Belgian regulator) decision of 31.10.2014 (Annex III page 4 paragraph xi) that shows that the force majeure definition of the Belgian regulatory decision on cap and floor for Nemo does include force majeure: <i>"aanpassing in geval van overmacht: aanpassingen als gevolg van overmacht of van een wijziging van de wetgeving of de regulering met een aanzienlijke impact op het business model van NEMOLINK"</i></p> <p>The informal translation of the extract is the following: <i>"adjustment in cases of force majeure: adaptations due to force majeure or a change in legislation or regulations with a significant impact on the business model of NEMO LINK"</i>.</p> <p>Attachment:</p> <div style="text-align: center;">             CREG Decision            Document Annex III 2C         </div> <p>It should also be recognised that the requirements of a Force Majeure event under Special Condition 4 (30) (a) include the requirement that the event must, in the Authority's opinion, constitute a Force Majeure event under the special conditions of the licence. Accordingly, for example if the licensee were to raise legislation and / or a court decision as a Force Majeure event it will be for the Authority to assess (along with the Belgian NRA) whether it is of the same opinion. The inclusion therefore provides a confirmation that such events can be considered as Force Majeure (they are outside of the licensee's control) and the</p>	<p>"Force majeure"</p> <p>means an event or circumstance which is beyond the reasonable control of the licensee and which results in or causes the failure of the licensee to perform any of its obligations under this licence including <u>(without limitation) an act of God, strike, lockout or other industrial disturbance, 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, <u>fire, flood, governmental restraint, Act of Parliament, other legislation, bye law or directive or decision of a court of competent authority or the European Commission or any other body having jurisdiction over the activities of the licensee,</u> provided that lack of funds of the licensee <del>or performance of non-performance by an electricity transmission licensee or equivalent entity</del> shall not be interpreted as a cause beyond the reasonable control of the licensee and provided that weather and ground conditions which are reasonably to be expected at the location of the event or circumstance are also excluded as not being beyond the reasonable control of the licensee</u></p>

				licence (Special Condition 4 (29) (a)) provides a safeguard as to what may or may not qualify as a Force Majeure event.	
NEMO Licence	Special Condition 2	Part F	18	<p>We propose the paragraph should include the proposed text (on the right) in order to provide potential mitigation of adverse effects of significant deviations from the theoretical Purchasing Power Parity (PPP) result. This deviation exposes both Belgian and British consumers and investors to an unacceptable risk. This risk is outside the control of Nemo.</p> <p>This risk is a symmetric risk for investors and consumers. Investors and consumers would lose/benefit depending on the direction of the exchange rate changes and the deviation from the PPP theory (theoretical values below). The macroeconomic theory suggests that in reality there will be a deviation from the PPP principle because 1) the inflation in the formula is Belgian while the currency, EUR is a Eurozone currency and 2) the PPP assumptions do not hold in practice including: demand and supply of currency is not entirely driven by international trade (but influenced by currency speculation, interest rates, government intervention and capital flows) and not all goods are internationally tradable (such as market and government services, buildings).</p> <p>As an illustration of the magnitude and evidence of above issue/ risk please see below analysis of the historical range of GBP/EUR exchange rate between January 2006 and January 2016. The analysis compares the <i>actual GBP/EUR exchange rate</i> and the <i>theoretical GBP/EUR exchange rate</i> calculated with the application of the PPP theory.</p>	<p>The value of the <math>PPPI_t</math> term is calculated in accordance with the following formula:</p> $PPPI_t = 0.5 \times \left( \frac{UK RPI index_t}{UK RPI index_{\frac{2013}{14}}} \right) + 0.5 \times \frac{\left( \frac{Belgium CPI index_t}{Belgium CPI index_{2013/14}} \right)}{\left( \frac{GBP_t/EUR_t}{GBP_{2013/14}/EUR_{2013/14}} \right)}$ <p><a href="#">The formula weighting can be adjusted by the Authority, following consultation with the Belgian NRA, in Relevant Years when the cap adjusted for actual PPPI is significantly different to the cap adjusted for theoretical PPPI following a request, together with supporting justification, provided by the licensee.</a></p>

<p>NEMO Licence</p>	<p>Special Condition 2</p>	<p>Part F</p>	<p>18 (Continued)</p>	<p>As second evidence please see below analysis of actual and theoretical PPPI index development in the same period where the theoretical PPPI value was calculated with the application of the PPP theory. This analysis implies that there is a significant deviation from the PPP theory over the 10 year period between January 2006 and January 2016. The cap and floor regime will be in place for 25 years where uncertainty is even higher than in the illustrated period.</p>  <p>Nemo will face the exposure above because of the fact that the 50-50% EUR-GBP weighting applied in the formula is not in line with Nemo cost structure of approximately 75% EUR and 25% GBP.</p>			
<p>NEMO Licence</p>	<p>Special Condition 4</p>	<p>Part B</p>	<p>18</p>	<p>Nemo requests that Actual Availability (AA) is adjusted for both Force Majeure and Allowed Outages but we have presented them separately to allow them to be individually considered.</p> <p>We propose the actual availability formula should include potential adjustment for force majeure related outages.</p> <p>The licence draft does not take account of adjustments for Force Majeure (FM) in the calculation of actual availability at the cap. FM is an exceptional event and Nemo's view is that FM should apply at the cap. This is because the cap availability incentive is not a functional incentive if the availability at cap is not in the control of the licensee due to exceptional events not being taken into account.</p>	<p>Subject to paragraph 27 of this condition, the value of the Actual Availability term is calculated in accordance with the following formula:</p> $AA_t = (RC \times 8766) - \sum IO_t + \sum FO_t$ <p>Where:</p> <table border="1" data-bbox="1570 1227 2078 1394"> <tr> <td data-bbox="1570 1227 1771 1394"> <p>AA<sub>t</sub></p> </td> <td data-bbox="1771 1227 2078 1394"> <p>means the Actual Availability of the licensee's Interconnector in Relevant Year <i>t</i> and is calculated in accordance with paragraph 19 of this</p> </td> </tr> </table>	<p>AA<sub>t</sub></p>	<p>means the Actual Availability of the licensee's Interconnector in Relevant Year <i>t</i> and is calculated in accordance with paragraph 19 of this</p>
<p>AA<sub>t</sub></p>	<p>means the Actual Availability of the licensee's Interconnector in Relevant Year <i>t</i> and is calculated in accordance with paragraph 19 of this</p>						

				<p>The current draft is not in line with Ofgem’s “Decision on the cap and floor for the GB-Belgium interconnector project Nemo” of 2 December 2014 (Ofgem Decision document) because the document does not state that “exceptional events” do not apply at the cap.</p> <p>If FM is considered for the cap availability calculation Ofgem will still have considerable control over what is directed to be FM under SPC 4 (23) and (29) which should provide the Authority with comfort that consumer interests are safeguarded.</p> <p>Additionally as business interruption insurance compensation is included in Assessed Revenue then for symmetry purposes it is appropriate that the link should be treated as being available during periods of FM.</p>	<table border="1"> <tr> <td></td> <td>condition</td> </tr> <tr> <td><math>\sum IO_t</math></td> <td>means the total Interconnector Outage (in MWh) in Relevant Year <math>t</math> reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <math>t</math></td> </tr> <tr> <td><math>\sum FO_t</math></td> <td>means the total Force Majeure related Outage (in MWh) in Relevant Year <math>t</math> reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <math>t</math> as directed under paragraphs 23 and 29 of this condition.</td> </tr> <tr> <td>RC</td> <td>means the Rated Capacity of the licensee’s Interconnector and has the value given to that term in paragraph 6 of this condition (1,000MW)</td> </tr> </table>		condition	$\sum IO_t$	means the total Interconnector Outage (in MWh) in Relevant Year $t$ reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year $t$	$\sum FO_t$	means the total Force Majeure related Outage (in MWh) in Relevant Year $t$ reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year $t$ as directed under paragraphs 23 and 29 of this condition.	RC	means the Rated Capacity of the licensee’s Interconnector and has the value given to that term in paragraph 6 of this condition (1,000MW)
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NEMO Licence	Special Condition 4	Part B	18	<p>Nemo requests that Actual Availability (AA) is adjusted for both Force Majeure and Allowed Outages but we have presented them separately to allow them to be individually considered.</p> <p>We propose the actual availability formula should include potential adjustment for allowed outages.</p> <p>The licence draft does not take account of adjustments for Allowed Outages (AO) in the calculation of actual availability at the cap. AO is exceptional event and Nemo’s view is that AO should apply at the cap. This is because the cap availability incentive is not a functional incentive if the availability at cap is not in the control of the licensee due to exceptional events not being taken into account.</p> <p>The current draft is not in line with Ofgem’s “Decision on the cap and floor for the GB-Belgium interconnector project Nemo” of 2 December 2014 (Ofgem Decision document) because the document does not state that “exceptional events” do not apply at the cap.</p>	<p>Subject to paragraph 27 of this condition, the value of the Actual Availability term is calculated in accordance with the following formula:</p> $AA_t = (RC \times 8766) - \sum IO_t + \sum AO_t$ <p>Where:</p> <table border="1"> <tr> <td>AA<sub>t</sub></td> <td>means the Actual Availability of the licensee’s Interconnector in Relevant Year <math>t</math> and is calculated in accordance with paragraph 19 of this condition</td> </tr> <tr> <td><math>\sum IO_t</math></td> <td>means the total Interconnector Outage (in</td> </tr> </table>	AA <sub>t</sub>	means the Actual Availability of the licensee’s Interconnector in Relevant Year $t$ and is calculated in accordance with paragraph 19 of this condition	$\sum IO_t$	means the total Interconnector Outage (in				
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				<p>If AO is considered for the cap availability calculation Ofgem will still have considerable control over what is directed to be AO under SPC 4 (23) and (30) which should provide the Authority with comfort that consumer interests are safeguarded.</p> <p>Additionally as curtailment and business interruption insurance compensation are included in Assessed Revenue then for symmetry purposes it is appropriate that the link should be treated as being available during periods of AO.</p>		<p>MWh) in Relevant Year <math>t</math> reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <math>t</math></p>	
					$\sum AO_t$	<p>means the total Allowed Outage (in MWh) in Relevant Year <math>t</math> reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <math>t</math> as directed under paragraphs 23 and 30 of this condition.</p>	
					RC	<p>means the Rated Capacity of the licensee's Interconnector and has the value given to that term in paragraph 6 of this condition (1,000MW)</p>	
NEMO Licence	Special Condition 5	Part C	3 or 8 and 10	<p>We propose a new term called Additional Costs (ADC). This could either be included in the Notional Assessed Revenue (NAR) formula (SPC 5.3) or added to the market related cost (MRC) formula (SPC5.8).</p> <p>Additional Revenues (ADR) are part of the Gross Congestion Revenues but no allowances are provided for additional cost and costs associated with these additional revenues.</p> <p>This misalignment will have an adverse effect as it will dis-incentivise licensees to engage in new services offerings or in identifying and developing new services and offerings that would otherwise be for the benefit of consumers. This is not in line with the principle of the guidance document entitled: DRAFT: Guidance on the cap and floor conditions in Nemo Link Limited's electricity interconnector licence, page 7, paragraph 1.3.</p>	<p>Propose update to either paragraph 3 or paragraph 8.</p> <p>3.</p> $NAR_t = GCR_t - MRC_t - ADC_t$ <p>8.</p> $MRC_t = EAC_t + FC_t + TCC_t + ADC_t$ <p>10.</p>	$ADC_t$	<p>means the additional revenue related costs for Relevant Year <math>t</math> and is :</p> <p>a) equal to costs incurred by the licence pursuant to provision of ADR products and</p>

							<p>b) services; and reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year t</p>
NEMO Licence	Special Condition 5	Part C	7 and 8 and 10	<p>We propose adding Capacity Provider Penalty Charges (CPP) to the market related cost (MRC) formula.</p> <p>Capacity market revenues (CMR) are part of the Gross Congestion Revenues but no allowances are provided for the capacity provider penalty charges incurred.</p> <p>The exclusion of the highly uncertain capacity provider penalty charges from the MRC poses an unacceptable level of risk for Nemo. This risk is outside the control of Nemo.</p>	8.	$MRC_t = EAC_t + FC_t + TCC_t + CPP_t$	
					10.	<p><b>CPP<sub>t</sub></b></p>	<p>means the Capacity Provider Penalty Charges for Relevant Year t and is:</p> <p>a) equal to capacity provider penalty charge incurred by the licensee ; and</p> <p>b) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year t</p>
NEMO Licence	Special Condition 5		15	<p>We propose that Firmness definition includes the Network Code on Forward Capacity Allocation.</p> <p>We propose Trip Contract limb (b) text be amended for formatting where text should read as shown below where blue text has moved up to join the end of limb (b).</p>		<p>“Firmness”</p>	<p>has the meaning given to that term in Commission Regulation (EU) No 2015/1222 on establishing a Guideline on Capacity Allocation and Congestion Management and Network Code on Forward Capacity Allocation (FCA).</p>
						<p>“Trip Contract”</p>	<p>means:</p> <p>(a) contracts; and/or</p> <p>(b) other forms of</p>

					<p>agreement specified in writing by the Authority following consultation with the Belgian National Regulatory Authority, providing for energy sales and/or purchases on the intraday markets or other contracts with a third party to deliver/off-take power in the market for the purposes of managing trip events</p>
NEMO Licence	Special Condition 7		17	<p>Additional text is proposed allowing the Authority in their “opinion” to classify an event as IAT even though not specified as an event of Force Majeure.</p> <p>The proposal is needed because without this addition the IAE relies on an event of FM only and so does not cater for significant unforeseen cost shocks. These will be costs that were not foreseen at the time of agreeing / setting the cap and floor. They will be unavoidable costs but, unlike limb (a), do not result from the licensee being unable to perform its obligations. Rather they are increased costs resulting from performing obligations. This limb is subject to the opinion of the Authority and so affords the Authority the comfort as to whether or not to accept the event as an IAE.</p> <p>This proposed adjustment is in line with the paragraph 4.55 in the Ofgem Decision document that allowed the Authority in their “opinion” to classify an event as IAE even though not specified as Force Majeure.</p> <p>This formulation is also consistent with IAE provisions used in other electricity licences.</p>	<p>An Income Adjusting Event for Relevant Year <math>t</math> may arise from:</p> <ul style="list-style-type: none"> <li>(a) an event or circumstance which in the Authority’s opinion constitutes Force Majeure under the licence; and</li> <li>(b) <a href="#">an event or circumstance other than referred to in paragraph 17(a) which in the opinion of the Authority is an Income Adjusting Event and is approved by it as such in accordance with paragraph 23 of the condition</a> <a href="#">where</a> the costs and/or expenses incurred as a result of that event exceeds 5 per cent of the Floor Level for Relevant Year <math>t</math> calculated in accordance with paragraph 4(b) of special condition 2 of this licence with the additional requirement that the Availability Incentive at Floor (AIF<sub><math>t</math></sub>) term be treated as if the Minimum Availability Target has been met.</li> </ul>

NEMO Licence	Special Condition 8		7	<p>We propose that Ofgem issue the PCA (Post Construction Adjustment) guidance specifying the relevant information to be provided by the licensee for Post Construction Assessment as soon as possible but not later than 12 months after the special conditions of this licence come in to force.</p> <p>The rationale for this proposal is that the licensee needs to implement appropriate processes and systems to collect and record information in accordance with the licence and for submission into the Post Construction Review.</p>	<p>For the purpose of paragraph 6(c), the Authority <del>may will</del> issue guidance <u>not later than 12 months after the special conditions of this licence come in to force</u> specifying the relevant information to be provided by the licensee. Such guidance may contain appropriate provisions and / or requirements in respect of the format and content of submission to be made by the licensee to the Authority under this condition, including the areas to be covered and the type of information and evidence to be provided.</p>
NEMO Licence	Special Condition 11		1	<p>We propose adjustment to the paragraph 1 because we acknowledge that Nemo will be able to submit the CFFMP (Cap and Floor Financial Model Protocol) within three months after the special conditions come into force however Nemo is not in a position to ensure that the Authority has approved it within a given timescale.</p>	<p>The licensee shall as soon as practicable and, in any case, not later than three months after the special conditions of this licence come in to force, <del>establish and submit for approval by the Authority maintain</del> the Cap and Floor Financial Model Protocol (the “CFFMP”) <u>in a form approved by the Authority.</u></p>