



## **Ofgem Consultation on proposed changes to the standard conditions of the electricity interconnector licence, licences held by Nemo Link and NGIL and NGET's electricity transmission licence to implement the cap and floor regime and use of revenues compliance**

Dear Sirs,

### **About Us**

Volta is a financial advisor in the energy and infrastructure sectors, advising primarily on Project Finance and Mergers and Acquisitions and also on fundraisings.

### **Our response**

Our response to the consultation is given below and is divided into firstly high level issues regarding the consultation and the regulation of interconnectors and secondly some detailed issues on the documentation/licence modifications. Please note we have not proposed drafting changes as specified in the Ofgem document as we did not have any detailed legal drafting issues which would be germane to this approach.

### **High level issues**

**Change in Law (Tax)** – if tax law changes were introduced which were specific to interconnectors ie were targeted to increase the tax burden of interconnectors, then in our opinion consideration should be given to such targeted tax law changes and how they should be treated. Whilst we do not expect such tax measures to be introduced, there were “windfall tax” measures introduced in previous political administrations in the UK against utilities, and thus some consideration ought to be given to the issue and whether the burden of such tax changes should be fully or partially borne by interconnector.

**Foreign Exchange-** We note that the accounting, collation and measurement of currency fluctuations and foreign exchange fluctuations impose quite extensive amounts of work and responsibility upon interconnector licence holders and in our opinion it might be possible to streamline or simplify these requirements so that they impose less burden both on licence holders and Ofgem in the future.

**IPA and Foreign Exchange-** Due to the potential for BREXIT there are considerable foreign exchange fluctuations that second round interconnectors will be exposed to on Euro-priced equipment such as cable and converter stations, large differences may result between the price at which these capital items are quoted at the Ofgem IPA assessment process in 2016 and the actual outcome prices for equipment which will be realised when legally binding contracts will be procured in say 2017 or



2018. Ofgem has the right to re-open the IPA decision in the event there is a material costs increase between FPA and IPA, in our opinion this is potentially unfair when it is applied to foreign exchange fluctuations, caused by factors such as BREXIT as these foreign exchange movements are completely outside the control of the interconnector developer and also cannot be readily mitigated, as the interconnector developer cannot realistically purchase currency options or other financial hedging products before it has received its IPA decision. We acknowledge that the timing and nature of BREXIT is outside the control of Ofgem and appreciate that Ofgem may not be the appropriate organisation to address such high-level concerns to, however at the same time we believe the right to re-open the IPA for this specific reason should be given due consideration.

## Detailed Issues

We had two detailed issues which resulted from reviewing the ancillary documents attached with the consultation.

### Part 1- with reference to this document-

[https://www.ofgem.gov.uk/system/files/docs/2016/02/cap\\_and\\_floor\\_regulatory\\_instructions\\_and\\_guidance\\_rigs\\_0.pdf](https://www.ofgem.gov.uk/system/files/docs/2016/02/cap_and_floor_regulatory_instructions_and_guidance_rigs_0.pdf)

- In section 1.14 we note that five year forecasts are required, however from operational year 21 onwards, it may be extremely difficult to predict the revenues for 5 years ahead as the fifth year will be outside the cap and floor regime, in our opinion it would be better to modify this requirement so that it is a default five year requirement, however it reduces at the tail end of the cap and floor period.
- In section 2.4 we see that amounts are defined as “cash” however this appears to be modified to be on an “accruals” basis elsewhere, we believe the drafting could be improved on this aspect so that it was tidier and offer better clarity

### Part 2- with reference to this document -

[https://www.ofgem.gov.uk/system/files/docs/2016/02/proposed\\_new\\_special\\_conditions\\_for\\_the\\_electricity\\_interconnector\\_licence\\_held\\_by\\_nemo\\_link\\_limited.pdf](https://www.ofgem.gov.uk/system/files/docs/2016/02/proposed_new_special_conditions_for_the_electricity_interconnector_licence_held_by_nemo_link_limited.pdf)

- With reference to this document on Page 54- It would be beneficial for Ofgem to provide more details on the Cap and Floor Financial Model Protocol (the “CFFMP”), so that greater clarity is offered to other interconnector developers.

Yours faithfully



Jeremy Thomas, Partner

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