

To all interested stakeholders

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Date: 13 February 2017

## Decision on the assessment criteria for derogations from the Grid Connection Codes

On 13 December 2016 we consulted<sup>1</sup> on the criteria that we should use to assess derogation requests under the Requirement for Generators network code<sup>2</sup> (RfG), Demand Connection Code (DCC) network code<sup>3</sup> and High Voltage Direct Current (HVDC) network code.<sup>4</sup> We set out in this letter our decision on the criteria that we will use to assess derogations requests.

### Background

RfG, DCC and HVDC are part of a suite of European Network Codes (ENCs) that have been developed following implementation of the European Third Energy Package.<sup>5</sup> These ENCs specify the technical connection requirements that relevant parties must adhere to. Collectively we refer to these three ENCs as the 'Grid Connection Codes' (the GCCs). The ENCs intend to deliver a harmonised set of rules for the operation of the electricity sector in Europe.

The GCCs include provisions that allow parties to seek derogations from the requirements of the GCCs.<sup>6</sup> The GCCs give us the role of reviewing, and making decisions on, GCC derogation requests.

The GCCs state that we have nine months following entry into force to consult and decide upon **the criteria** that we will use to assess derogation applications. RfG entered into force on 17 May 2016.<sup>7</sup> We intend to decide on a set of common derogation assessment criteria that we will use to for RfG, DCC and HVDC derogation requests. The deadline for notifying the European Commission (EC) of the changes set out in Annex 1 is therefore 17 February 2017.<sup>8</sup>

### Consultation

Our consultation of 13 December 2016, was concerned specifically with the derogation assessment criteria. The consultation closed on 17 January 2017. In particular, we wanted to know:

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<sup>1</sup> Our consultation on the assessment criteria for derogations from the Grid Connection Codes, published on 13 December 2016; [link here](#)

<sup>2</sup> Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators

<sup>3</sup> Commission Regulation (EU) 2016/1388 of 17 August 2016 establishing a Network Code on Demand Connection

<sup>4</sup> Commission Regulation (EU) 2016/1447 of 26 August 2016 establishing a network code on requirements for grid connection of high voltage direct current systems and direct current-connected power park modules

<sup>5</sup> More information on the European Third Energy Package can be found on our website; [link here](#)

<sup>6</sup> Articles 60-65 of RfG, Articles 50-55 of DCC and Articles 75-81 of HVDC.

<sup>7</sup> The Demand Connection Code enters into force on the twentieth day following publication in the Official Journal of the European Union. The RfG was published on 27 April 2016; [link here](#)

<sup>8</sup> This is the date required by the RfG (the first GCC to enter into force).

- 1) Do you agree with our approach to use the existing GB derogations assessment criteria as the basis for our GCC derogation assessment criteria?
- 2) Do you agree that the proposed GCC derogation assessment criteria, described in Annex 1, properly reflect the requirements set out in the GCCs?
- 3) Do you identify any issues with our proposed GCC derogation assessment criteria?

## Consultation responses

We note, firstly, that we have made some grammatical corrections to the 4<sup>th</sup> bullet, and 5<sup>th</sup> sub-bullet of the 1<sup>st</sup> paragraph, in order to clarify some of the wording in the criteria.

We received six responses to the consultation. The respondents included several parties that will be eligible to request a GCC derogation (eg, the GB System Operator (SO)). All non-confidential consultation responses are attached to this decision document. A summary of the responses received and our comments on them can be found below.

*Question 1 - Do you agree with our approach to use the existing GB derogations assessment criteria as the basis for our GCC derogation assessment criteria?*

All six respondents were supportive of this approach.

*Question 2 - Do you agree that the proposed GCC derogation assessment criteria, described in Annex 1, properly reflect the requirements set out in the GCCs?*

All six respondents were broadly supportive of the changes outlined in Annex 1.

Two parties considered that it would be useful for us to provide guidance on the GCC cost-benefit analysis requirements. We agree that this could be beneficial and we will provide additional guidance on this when we revise the Derogations Guidance Document later this year.

Two parties questioned whether the assessment criteria should explicitly assess the risk of an event occurring or a change in the level of that risk. We consider that this is inherent in the proposed criteria. For example, the proposed derogation assessment criteria will consider that impact on parties affected by the derogation request. We consider that any change to the risk that parties are exposed to would be considered as an impact upon them.

One respondent was concerned that assessing the impact of a derogation on consumers may not be permissible under the terms of the RfG. The respondent considered that RfG Article 63(10) did not allow us to identify further requirements for derogation requests from power-generating facility owners. The text of Article 63(10) is set out below:

*Regulatory authorities may lay down further requirements concerning the preparation of requests for derogation by relevant system operators. In doing so, regulatory authorities shall take into account the delineation between the transmission system and the distribution system at the national level and shall consult with system operators, power generating facility owners and stakeholders, including manufacturers.*

We note that this Article relates specifically to derogation requests from SOs. It does not relate to derogation requests from other parties (eg, power generating facility owners). We consider that Article 61(1) of the RfG (and the equivalent Articles in the DCC and HVDC) allow us to design the derogation assessment criteria as we see fit, following consultation with stakeholders. We therefore consider that it is legally permissible for us to assess the impact on consumers as part of the assessment criteria that we use for derogations requests from power generating facility owners.

*Question 3 – Do you identify any issues with our proposed GCC derogation assessment criteria?*

One respondent was concerned that our proposed criteria was not legally permissible because it restricted parties from making an application if they were unable to demonstrate specified criteria (eg, if there were any outstanding objections from other parties who are materially affected by the derogation request). We consider that the criteria place no such restrictions on application and we will amend the Derogations Guidance Document to ensure that this is clear. The criteria outlines the basis that we will use to assess any derogation request. One of the criteria for assessing whether to approve a derogation request would be whether there are any outstanding objections. We consider this to be an appropriate consideration.

One respondent considered that we should require applicants to cooperate or liaise with their European counter-parts and provide further guidance on how this might be facilitated. We agree that there may be some situations where this could be beneficial and will consider whether to provide guidance on this when we revise the Derogations Guidance Document this year.

One respondent considered it would be beneficial for us to clarify how time limits within derogation requests will be considered. Specifically, this respondent wanted to know how we would treat instances where it may be appropriate for derogations to not be time limited. We note that the proposed derogation assessment criteria assesses whether the applicant has a realistic and comprehensive implementation plan for restoring compliance. If an applicant does not provide a plan for restoring compliance, then we will consider this when reviewing the derogation request, however, we recognise that there may be some cases where this is not possible. In order to clarify this, we have included the phrase ‘... where applicable’ in the relevant criteria. We may provide further guidance on this when we revise the Derogations Guidance Document later this year.

Another respondent was concerned that the proposed criteria placed unduly onerous obligations on smaller applicants. We consider that it is appropriate to assess derogation requests from all parties using a common set of criteria. However, we do intend to take a proportionate approach to dealing with derogation requests. We will provide further guidance on this when we revise the Derogations Guidance Document later this year.

## **Decision**

After consideration of the consultation responses outlined above, our decision on the derogations assessment criteria is outlined in Annex 1.<sup>9</sup> We consider that the derogation assessment criteria proposed will allow us to appropriately assess any future GCC derogation requests, to ensure that we continue to protect the interests of GB consumers.

## **Next Steps**

In accordance with GCC requirements, we will publish our criteria on our website (through this document) and notify them to the EC before 17 February 2017. Once the GCC derogation assessment criteria have been notified to the EC, we will consult on our proposed changes to the Derogations Guidance Document to reflect the new processes for parties seeking a derogation from GCC requirements.

Yours sincerely,

**Min Zhu, Associate Partner, Networks**

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<sup>9</sup> This decision document is intended to constitute us specifying the criteria for granting derogations pursuant to Article 61 of the RfG, Article 51 of the DCC and Article 76 of the HVDC.

## Annex 1 - changes to the derogation assessment criteria (track changes)

### Criteria

~~A derogation would need to be justified along the following grounds: - We are Ofgem is likely to consider that a derogation request is justified if:-~~

An assessment has been provided by the applicant, and where relevant, the relevant transmission system operator or electricity distributor, that demonstrates that there are NO:-

- Significant risks associated with the non-compliance to the effected party seeking derogation<sup>10</sup>~~licensee~~, other relevant parties~~licensees~~<sup>11</sup> or connected customers (who may or may not be a licensed party).
  - Avoidable adverse impacts (immediately or in the longer term) on the ~~licensee~~ effected party seeking derogation, other relevant licensees~~parties~~ or connected customers.
  - Additional measures that could be taken to further mitigate the impact of the non-compliance on the ~~effected party seeking derogation~~~~licensee~~, other relevant licensees~~parties~~ or connected customers for its duration.
  - Outstanding objections from other parties who are materially affected by the non-compliance.
  - Competitive advantages to the ~~licensee~~ effected party seeking derogation arising from the derogation that cannot be addressed ~~that and~~ are not offset by a suitable mechanism.
  - Other reasonable options to address the non-compliance that have not been considered.
  - Adverse effects on cross-border trade (if the party is seeking derogation from the RfG, DCC or HVDC European Network Code).
- The applicant has presented a robust, economic case that supports the action that it considers necessary to address the non-compliance. The economic case should take the form of a cost-benefit analysis pursuant to the requirements of the relevant European Network Code.<sup>12</sup> (~~We Ofgem~~ notes that there may be cases where the impact of the non-compliance may not justify the expenditure required to restore compliance but would expect any applicant to make a strong economic case for any decision not to restore compliance.)
- The applicant has presented a realistic and comprehensive implementation plan that defines, at the very least:
- The works required to restore compliance, where applicable.
  - The timetable for those works that show a deadline that is reasonable and is achievable (subject to highlighting any factors that may be outside the applicant's control, for example, third party consents).
  - Any measures to mitigate the risks to other parties that will be (or have been) taken until the non-compliance is restored.
- The applicant has produced any other supporting information that is relevant to a specific request, including on the materiality of the issue.

<sup>10</sup> The codes set out who can seek derogations.

<sup>11</sup> This language change reflects the fact that it may not be licensees who are seeking derogations from the GCC

<sup>12</sup> Pursuant to the requirements of Article 39 of RfG, Article 49 of DCC and Article 66 of HVDC.

- Any application for a derogation that is made by a relevant party will be considered in accordance with the requirements of the specific codes and the requirement on the basis that they will not adversely impact the interests of the consumer. In the process of assessing whether a derogation process adversely impacts on the interest of the consumer, we will specifically consider, amongst other things, the impact upon: We consider that the derogation request will not have negative impact on the interests of consumers. To help determine whether a derogation request will have a negative impact on consumers, we will specifically consider, amongst other things, the impact upon:
  - **Consumers:** ~~W~~we will consider the extent to which the non-compliance impacts on consumers, for example through increased costs.
  - **Competition:** ~~F~~for example, any competitive advantage that may arise from granting the derogation.
  - **Sustainable development:** Where relevant and possible, we would expect to assess the costs associated with granting a derogation (for example increased operational costs), compared to potential environmental benefits such as a reduction in carbon emissions.
  - **Health and safety:** If health and safety implications have been identified by the applicant, ~~O~~~~f~~~~g~~~~e~~~~m~~~~w~~~~e~~ may seek expert advice from the relevant government bodies and other organisations, for example, the Health & Safety Executive (HSE)
  - **Other parties affected:** ~~w~~Where relevant, we will seek the views of affected parties before making a decision. We will also take into account the impact on the relevant system operator to operate its system if a derogation were granted.

## Annex 2 - GCC derogation assessment criteria (clean)

### Criteria

We are likely to consider that a derogation request is justified if:-

- An assessment has been provided by the applicant, and where relevant the relevant transmission system operator or distribution system operator, that demonstrates that there are NO:-
  - Significant risks associated with the non-compliance to the party seeking derogation, other relevant parties<sup>13</sup> or connected customers (who may or may not be a licensed party).
  - Avoidable adverse impacts (immediately or in the longer term) on the party seeking derogation, other relevant parties or connected customers.
  - Additional measures that could be taken to further mitigate the impact of the non-compliance on the party seeking derogation, other relevant parties or connected customers for its duration.
  - Outstanding objections from other parties who are materially affected by the non-compliance.
  - Competitive advantages to the party seeking derogation arising from the derogation that cannot be addressed and are not offset by a suitable mechanism.
  - Other reasonable options to address the non-compliance that have not been considered.
  - Adverse effects on cross-border trade (if the party is seeking derogation from the RfG, DCC or HVDC European Network Code).
- The applicant has presented a robust, economic case that supports the action that it considers necessary to address the non-compliance. The economic case should take the form of a cost-benefit analysis pursuant to the requirements of the relevant European Network Code.<sup>14</sup>(We note that there may be cases where the impact of the non-compliance may not justify the expenditure required to restore compliance but would expect any applicant to make a strong economic case for any decision not to restore compliance.)
- The applicant has presented a realistic and comprehensive implementation plan that defines, at the very least:
  - The works required to restore compliance, where applicable.
  - The timetable for those works that show a deadline that is reasonable and is achievable (subject to highlighting any factors that may be outside the applicant's control, for example, third party consents).
  - Any measures to mitigate the risks to other parties that will be (or have been) taken until the non-compliance is restored.
- The applicant has produced any other supporting information that is relevant to a specific request, including on the materiality of the issue.

Any application for a derogation that is made by a relevant party will be considered in accordance with the requirements of the specific codes and the requirement that they will not adversely impact the interests of the consumer. In the process of assessing whether a derogation process adversely impacts on the interest of the consumer, we will specifically consider, amongst other things, the impact upon:

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<sup>13</sup> This language change reflects the fact that it may not be licensees who are seeking derogations from the GCC

<sup>14</sup> Pursuant to the requirements of Article 39 of RfG, Article 49 of DCC and Article 66 of HVDC.

- **Consumers:** We will consider the extent to which the non-compliance impacts on consumers, for example through increased costs.
- **Competition:** For example, any competitive advantage that may arise from granting the derogation.
- **Sustainable development:** Where relevant and possible, we would expect to assess the costs associated with granting a derogation (for example increased operational costs), compared to potential environmental benefits such as a reduction in carbon emissions.
- **Health and safety:** If health and safety implications have been identified by the applicant, we may seek expert advice from the relevant government bodies and other organisations, for example, the Health & Safety Executive (HSE)
- **Other parties affected:** Where relevant, we will seek the views of affected parties before making a decision. We will also take into account the impact on the relevant system operator to operate its system if a derogation were granted.