

Schedule 4A - Proposed modifications to standard condition 25 of the electricity interconnector licence

[Note: Text shown in blue double underline are proposed additions and text shown in ~~red strikethrough~~ are proposed deletions]

Condition 25: Cap and Floor Regulatory Instructions and Guidance

Introduction

1. The purpose of this condition is to set out the scope, contents, and common governance arrangements for the Cap and Floor Regulatory Instructions and Guidance (“Cap and Floor RIGs”) issued by the Authority pursuant to this condition.
2. The Cap and Floor RIGs are the primary means by which the Authority directs the licensee to collect Specified Information to an appropriate degree of accuracy and provide this information to the Authority to enable it to effectively monitor the costs and revenue during the development, construction, operation, maintenance and decommissioning of the licensee’s interconnector.

Part A: Licensee’s obligations under this condition

3. Unless and so far as the Authority otherwise consents, the licensee must establish and maintain appropriate systems, processes, and procedures to enable it:
 - (a) to estimate, measure, and record the Specified Information detailed in the Cap and Floor RIGs for the time being in force pursuant to this condition; and
 - (b) to provide the Specified Information to the Authority in respect of such periods and within such timeframes as are specified in the Cap and Floor RIGs.
4. To facilitate compliance with paragraph 3 of this condition, the accounting records and other records kept by the licensee with respect to the Specified Information must be so arranged as to ensure that such information can be separately identified and reasonably attributed as between the licensee’s business and the business of any affiliate or related undertaking of the licensee.
5. The licensee shall:
 - (a) maintain all systems of control and other governance arrangements that ensure the information collected and reported to the Authority is in all material respects accurate and complete and is fairly presented and that all such systems of control and other governance arrangements are kept under

regular review by the directors of the licensee with a view to ensuring that they remain effective for this purpose; and

(b) provide all such assistance as may be reasonably required to permit the Authority to review such systems from time to time.

6. The licensee shall notify the Authority immediately if it discovers errors in the information or calculations used to derive the information submitted to the Authority under this licence condition.

Part B: Scope and content of the Cap and Floor RIGs

7. Subject to paragraphs 8 and 9 of this condition, the matters that may be included, or for which provision may be made, in the Cap and Floor RIGs are:

(a) instructions and guidance on the establishment and maintenance of systems, processes, procedures, and ways for recording and providing Specified Information;

(b) instructions and guidance on the standards of accuracy and reliability that are applicable to the recording of Specified Information (including different classes of such information);

(c) a timetable for the development of such systems, processes, and procedures as are required to achieve such standards;

(d) the methodology for calculating or deriving numbers comprising Specified Information;

(e) provision with respect to the meaning of words and phrases used in defining Specified Information;

(f) requirements as to the form and manner in which, or the frequency with which, Specified Information must be recorded;

(g) requirements as to the form and manner in which, or the frequency with which, Specified Information must be provided to the Authority;

(h) requirements as to which (if any) of the Specified Information is to be subject to audit, the terms on which an auditor is to be appointed by the licensee for that purpose, and the nature of the audit to be carried out by that person;

- (i) requirements as to the circumstances in which the Authority may appoint an Examiner to examine the recording of the Specified Information by the licensee;
 - (j) a statement on whether and to what extent each category of the Specified Information is required for the purposes of the Cap and Floor RIGs; and
 - (k) provision about how the Authority intends to monitor, assess, and enforce compliance with the Cap and Floor RIGs (as to which, see also Part E of this condition).
8. The provisions of the Cap and Floor RIGs will not exceed what is reasonably required to achieve the purposes of this condition, having regard to the materiality of the costs likely to be incurred by the licensee in complying with those provisions.
9. No Specified Information may exceed what could be requested from the licensee by the Authority under paragraph 1 of standard condition 4 (Provision of information to the Authority).

Part C: Development and modification of the Cap and Floor RIGs

10. The Authority may issue new Cap and Floor RIGs and may modify any existing Cap and Floor RIGs by issuing a direction for that purpose to all licensees in whose licence this condition has effect.
11. The Specified Information collected in relation to each Relevant Year must be reported, according to the relevant reporting requirements provided for in this condition and Cap and Floor RIGs, by no later than 3 months following the end of that Relevant Year, unless the Authority consents to alternative arrangements or unless the licensee is notified otherwise by the Authority.
12. Before issuing a direction under paragraph 10, the Authority will:
- (a) give notice to all licensees in whose licence this condition has effect that it proposes to issue new Cap and Floor RIGs or to modify the existing Cap and Floor RIGs specifying:
 - (i) the date on which it proposes that the provisions of the Cap and Floor RIGs to be issued or modified should take effect;

- (ii) the text of the Cap and Floor RIGs to be issued or modified and the Authority's reasons for proposing to issue or modify them; and
 - (iii) the time (which will not be less than a period of 28 days from the date of the notice) within which representations in response to the Authority's proposal may be made; and
 - (b) consider any representations in response to the notice that are duly made and not withdrawn.
13. The requirements for the issuing of new Cap and Floor RIGs or modification of existing Cap and Floor RIGs set out in paragraph 12 of this condition may be satisfied by actions taken by the Authority before as well as after the coming into effect of this condition.

Part D: Requirements for new or more detailed information

14. This Part D applies if any new Cap and Floor RIGs or modification of existing Cap and Floor RIGs have the effect of introducing a requirement to provide:
- (a) a new category of Specified Information; or
 - (b) an existing category of Specified Information to a greater level of detail, which has not previously been collected by the licensee, whether under the provisions of the Cap and Floor RIGs or otherwise.
15. Where this Part D applies, the licensee may provide estimates to the Authority in respect of the relevant category of Specified Information for any Relevant Year specified by the Authority.
16. The estimates that are mentioned in paragraph 15 of this condition may be derived from such other information available to the licensee as may be appropriate for that purpose.

Part E: Compliance with the provisions of the Cap and Floor RIGs

17. The licensee must at all times comply with the provisions of the Cap and Floor RIGs for the time being in force pursuant to this condition.
18. Nothing in this condition requires the licensee to provide any documents or give any information that it could not be compelled to produce or give in evidence in civil proceedings before a court.

Part F: Interconnector-specific variations to the Cap and Floor RIGs

19. Where the Authority and the licensee agree on the need to modify the Cap and Floor RIGs, established under Part D of this condition, in order to:
- (a) reflect the specific circumstances of the licensee’s interconnector; and
 - (b) facilitate the effective monitoring of costs and revenue during the development, construction, operation, maintenance and decommissioning of the licensee’s interconnector,
- such modifications may be made by the Authority, without following the process described in Part C of this condition, after bilateral consultation with the licensee.
20. Where the licensee and the Authority cannot reach agreement on the need for modifications under this Part F, such modifications may only be made by means of a direction, after the Authority has conducted a consultation with the licensee and such other interested parties as it considers appropriate (for a period of not less than 28 days) and considered any representations in response to that consultation that are duly made and not withdrawn.
21. Any modifications made pursuant to this Part F shall only apply to the Cap and Floor RIGs utilised by the relevant licensee.

Part ~~F~~G: Interpretation

22. For the purposes of this condition:

“Examiner”	means, in relation to the Cap and Floor RIGs, a person whose degree of knowledge and experience of the matters that are the subject of the Cap and Floor RIGs will enable him to properly carry out and complete the tasks required of him under the terms of his nomination by the Authority pursuant to the provisions of the Cap and Floor RIGs.
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“Specified Information” means information (or a category of information) that is so described or defined in the Cap and Floor RIGs.

