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Andrew Bullimore  
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Ofgem  
10 South Colonnade  
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Via email

24 January 2020

Dear Andrew,

**Response to the statutory consultation on proposed changes to the electricity interconnector licence held by National Grid IFA2 Limited to implement the cap & floor regime**

National Grid IFA2 Limited (NGIFA2) welcomes the opportunity to respond to the Ofgem consultation on the NGIFA2 cap and floor licence and notes that National Grid Interconnector Holdings Limited (NGIH) has responded separately.

NGIFA2 believes that the cap and floor (C&F) regime represents a significant and positive regulatory innovation. The regime seeks to promote efficient investment in interconnectors, which will benefit consumers through lower electricity prices and enhanced security of supply. In addition, interconnectors provide a vital tool to decarbonise the energy system, by allowing renewable energy to move from where it is produced to where it is most needed. In this context, the successful implementation of the C&F regime is critical to allowing those benefits to GB consumers to be realised.

The licence drafting being consulted upon represents the implementation of the policy determined during the regime design phase. Ofgem has stated that the proposed NGIFA2 C&F licence conditions are based on the National Grid North Sea Link Limited's (NGNSL) C&F licence conditions, with a small number of adjustments to:

1. Take into account the differences between IFA2 and NSL;
2. Provide additional clarity; and
3. Enable flexibility where Ofgem is satisfied that it is in consumers' interests.

NGIFA2 has worked with Ofgem to develop these adjustments and broadly welcomes them. There is however an area where NGIFA2 considers that the adjustments have not provided additional clarity

on the implementation of the C&F policy, which is in the proposed absence of 'GB Network Rates' in the definition of Non-Controllable Cost Items. The inclusion of 'Grid costs or network rates' was stated in an Ofgem C&F policy development document,<sup>1</sup> hence NGIFA2 considers it should be reflected in the C&F licence. Whilst interconnectors are currently exempt from these costs, the implementation of the C&F policy would future proof the C&F licence.

More broadly, NGIFA2 has assessed the proposed licence conditions taking into account the C&F principles developed by Ofgem to underpin the C&F regime<sup>2</sup>. These principles include a level-playing field principle, which Ofgem stated as follows:

*(For GB and new interconnector developments) Regulatory treatment should allow third party developers and should be impartial and unbiased between TSOs and non-TSO developers, existing and future developers.*

NGIFA2 is mindful that Ofgem's 'Consultation on proposed changes to our electricity interconnector cap and floor regime to enable project finance solutions'<sup>3</sup> could result in future C&F licences that differ from the proposed NGIFA2 C&F licence. Regarding that consultation, NGIFA2 considers that Ofgem's level playing field principle implies that:

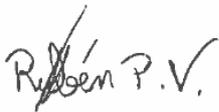
- **Core regime elements** are outside the reasonable scope of project finance variations and, if changes are made, they must be available to all interconnector licensees (including NGIFA2) on a non-discriminatory basis to avoid granting a commercial advantage to certain developers; and
- **Genuine project finance variations** should only be offered providing that consumers and other stakeholders are appropriately protected.

NGIFA2 will follow with interest the result of that consultation, including any consequential amendments to the proposed NGIFA2 C&F licence.

Detailed comments on the proposed NGIFA2 C&F licence conditions are provided in Annex 1.

If you would like to discuss the contents of this response do not hesitate to contact me.

Yours sincerely,



Ruben Pastor-Vicedo  
Regulatory Implementation Manager

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<sup>1</sup> Ofgem's 'Decision on the cap and floor regime for the GB-Belgium interconnector project Nemo', published on 2 December 2014, listed the costs that would be included as non-controllable costs, including 'Grid Costs and Network Rates'. See page 26 in the following Ofgem decision:

[https://www.ofgem.gov.uk/sites/default/files/docs/2014/12/final\\_cap\\_and\\_floor\\_regime\\_design\\_for\\_nemo\\_master\\_-\\_for\\_publication\\_1.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2014/12/final_cap_and_floor_regime_design_for_nemo_master_-_for_publication_1.pdf)

<sup>2</sup> These principles were first consulted upon in 2011 in relation to the regulatory regime for Nemo Link and future subsea interconnectors. They are presented in page 14 of the following Ofgem consultation:

<https://www.ofgem.gov.uk/publications-and-updates/cap-and-floor-regime-regulation-project-nemo-and-future-subsea-interconnectors>

<sup>3</sup> The consultation closed on 28 November 2019 and at the time of writing this response no further information has been published. The consultation is available on:

<https://www.ofgem.gov.uk/publications-and-updates/consultation-proposed-changes-our-electricity-interconnector-cap-and-floor-regime-enable-project-finance-solutions>

**Annex 1 – Detailed comments on the proposed NGIFA2 C&F licence**

Respondent details			NGIFA2			
Licence/ Document name	Condition/ Section number	Condition/ Section name	Page/ Paragraph Ref	Comments	Suggested alternative drafting (please use tracked changes wherever possible)	
Special conditions	1	Definitions and Interpretation	Page 6 in the pdf	<p>The Cap Start Date has been defined as the Regime Start Date or such earlier date as may be specified in writing by the Authority. The Regime Start Date has been defined as the earlier of the Full Commissioning Date and 1<sup>st</sup> January 2021. The definition of Full Commissioning Date involves criteria set out in special condition 2.7. Those criteria include the successful completion of 60 days of continuous operation (part (b)).</p> <p>The result of the proposed definitions is that NGIFA2 could start operations and if it failed the 60 days of continuous operations then find itself without a cap and floor regime until 1<sup>st</sup> January 2021. This would create uncertainty as to how that income pre-Regime Start Date is to be considered.</p> <p>The proposed way forward is to amend the definition of the Regime Start Date, so that as a result the Cap Start Date can take into account any income generated from the date that the interconnector is commissioned. This would not have an impact on the definition of the Full Commissioning Date, which would still be remain appropriate for the definition of the Floor Start Date.</p>	<p>“Regime Start Date” means the earlier of:</p> <ul style="list-style-type: none"> <li>(a) the date that falls after the successful completion of such procedures and tests in relation to the licensee’s Interconnector that are in accordance with, at the time they are undertaken, Good Industry Practice for commissioning that type of interconnector in order to demonstrate that the licensee’s Interconnector is available for the use of conveyance of electricity at the Rated Capacity; and</li> <li>(b) 1<sup>st</sup> January 2021</li> </ul>	

Special conditions	7.15	Non-Controllable Costs	Page 43 in the pdf	<p>In the proposed list of Non-Controllable Costs Items, part (b) includes 'GB Property Rates' whereas the equivalent provision in the NGNSL C&amp;F licence includes 'GB Network and Property Rates'.</p> <p>NGIFA2 does not agree with the removal of 'GB Network Rates' in the definition of 'GB Network and Property Rates', as it is contrary to Ofgem's stated policy.</p> <p>Ofgem's decision on the Nemo Link C&amp;F regime, published on 2 December 2014, lists in point 4.15 'Grid costs or network rates' among the costs included as non-controllable costs.</p> <p>NGIFA2 therefore considers that a full implementation of the C&amp;F policy should include 'GB Network Rates' (e.g. TNUoS and BSUoS) in the list of Non-Controllable Cost Items. If this implementation were not done there is a significant risk that the cap and floor parameters do not adequately reflect the costs that NGIFA2 could incur during the operational phase.</p>	<p>The Non-Controllable Operational Cost Items are defined as the following:</p> <ul style="list-style-type: none"> <li>(a) Crown Estate Lease Fees;</li> <li>(b) GB Network Rates;</li> <li>(c) GB Property Rates; and</li> <li>(d) GB Licence Fees.</li> </ul>
Special conditions	7.38	Non-Controllable Costs	Page 49 in the pdf	<p>As per the previous point, NGIFA2 considers that a definition of 'GB Network Rates' should be introduced</p>	<p>"GB Network Rates" means, to the extent that any of the following applies to the licensee's Interconnector, either:</p> <ul style="list-style-type: none"> <li>(a) TNUoS and BSUoS as such terms are defined in the CUSC; and/or</li> <li>(b) any other costs including connection charges that constitute network rates payable by the licensee in respect of the licensee's Interconnector.</li> </ul>

Special conditions	8.5	Process for determining the value of the Post Construction Adjustment terms	Page 50 in the pdf	<p>NGIFA2 welcomes the flexibility in the timing of the licensee’s submission of the Post Construction Adjustment (PCA) terms introduced by Ofgem in special condition 8.4.</p> <p>NGIFA2 notes the process introduced in special condition 8.5 and has a suggestion to improve the clarity of the drafting. The proposed drafting refers to ‘the Authority make and earlier or later determination’, whereas NGIFA2 considers that the drafting should refer to ‘the Authority agree to an earlier or later submission of the PCA terms’</p>	<p>The licensee may request in writing that the Authority agree to an earlier or later submission of the PCA terms than specified in paragraph 4(a) provided that:</p> <ul style="list-style-type: none"> <li>(a) The licensee provides supporting evidence of the reasons for submitting a request to the Authority outside the dates specified in paragraph 4(a) of this condition; and</li> <li>(b) Any risks associated with contingency and unspent costs or future variations shall reside with the licensee.</li> </ul>
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