

## **Annex 1**

### **Minded-to decision on the framework applicable to the procedural steps, the assessment and decision-making processes in respect of a relevant licensee's request for an adjustment to the Regime Start Date due to delays caused by Pre-Operational Force Majeure**

#### Purpose

1. This minded-to decision<sup>1</sup> sets out the provisions that may apply in circumstances where the licensee considers that its interconnector project's expected Regime Start Date (the "RSD") has been delayed due to an event or circumstance of Pre-operational Force Majeure.
2. This document sets out the framework applicable to the procedural steps, the assessment and the decision-making processes in respect of a licensee's request for an adjustment to the RSD due to delays caused by Pre-Operational Force Majeure.

#### Scope

3. This minded-to decision applies to requests for an adjustment to the RSD due to delays caused by Pre-Operational Force Majeure, submitted by a relevant licensee to the Authority<sup>2</sup> during the period between:
  - (a) the date of the licensee's IPA decision; and
  - (b) the point in time when standard licence condition (SLC) 26A of the electricity interconnector licence takes effect in their licence<sup>3</sup>.

#### Process for submitting requests

4. If a licensee considers that an event or circumstance of Pre-operational Force Majeure has occurred and caused a delay to its interconnector projects RSD, the licensee may, within a reasonable timeframe<sup>4</sup> of that event or circumstance occurring, submit a written

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<sup>1</sup> The words "decision" and "document" are used interchangeably in this document.

<sup>2</sup> The words "Authority", "we", "our" and "us" are used interchangeably in this decision.

<sup>3</sup> Once SLC 26A is in effect in a licensee's electricity interconnector licence, the licensee may raise any Pre-Operational Force Majeure requests pursuant to SLC 26A.

<sup>4</sup> What constitutes a reasonable timeframe may differ from case to case, depending on the underlying circumstances. We would encourage relevant licensees to consider submitting their Pre-Operational Force Majeure request alongside their Final Project Assessment (FPA) or their Post-Construction Review (PCR) submissions – if possible. However, equally we expect the licensees to exercise good judgement in deciding whether it is appropriate to submit their Pre-Operational Force Majeure request alongside the FPA or the PCR submissions. In particular, licensees are required to ensure the robustness of the evidence supporting their Pre-Operational Force Majeure request.

request to us for the RSD to be adjusted to reflect the delay caused by that event or circumstance of Pre-operational Force Majeure.

5. Any request submitted to us by the licensee under paragraph 4 of this policy document must include:
  - (a) full details of the event or circumstance that the request relates to and the reason(s) why the licensee considers it to be an event or circumstance of Pre-Operational Force Majeure;
  - (b) the length of any resulting delay that the licensee considers to have been caused as a result of that event or circumstance and its proposed revised RSD;
  - (c) how the licensee has calculated the resulting delay; and
  - (d) any analysis or information, which the licensee considers sufficient to enable us to fully assess the event or circumstance to which the request relates.
6. Where any additional analysis or information is not available to the licensee at the time of the request, the licensee should:
  - (a) specify any such additional analysis or information items in its request together with an indication of when the licensee expects these items to become available; and
  - (b) provide these items as soon as reasonably practicable after they become available.
7. The licensee must provide us with any additional information that may be reasonably required to facilitate our consideration of the licensee's request. Such additional information should be submitted within a reasonable timeframe that is agreed between us and the licensee.

#### Decision making process

8. If, in our opinion, the RSD:
  - (a) **has been delayed** by an event or circumstance of Pre-operational Force Majeure, the RSD shall fall on such later date as we may specify in a decision under this policy document; or
  - (b) **has not been delayed** by an event or circumstance of Pre-operational Force Majeure, the Authority shall confirm by way of a policy decision under this document, that the licensee's RSD shall continue to fall on:
    - (i) 1 January 2021 for projects granted and IPA as part of Window 1; and
    - (ii) 1 January 2024 for projects granted an IPA as part of Window 2<sup>5</sup>

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<sup>5</sup> Window 1 - Cap and floor regime: Initial Project Assessment for the FAB Link, IFA2, Viking Link and Greenlink interconnectors: <https://www.ofgem.gov.uk/publications-and-updates/cap-and-floor-regime-initial-project-assessment-fab-link-ifa2-viking-link-and-greenlink-interconnectors>; and Decision on the Initial Project Assessment of the Greenlink interconnector: <https://www.ofgem.gov.uk/publications-and-updates/decision-initial-project-assessment-greenlink-interconnector>  
Window 2 - Cap and floor regime: Initial Project Assessment of the GridLink, NeuConnect and NorthConnect Interconnectors: <https://www.ofgem.gov.uk/publications-and-updates/cap-and-floor-regime-initial-project-assessment-gridlink-neuconnect-and-northconnect-interconnectors>

9. Before we issue a decision under paragraph 8 of this policy document, we will give notice to the licensee of our minded-to decision, specifying:
- (a) where we consider project delivery **has been delayed** by an event or circumstance of Pre-operational Force Majeure:
    - (i) the length of any delay that, in our opinion, was caused by an event or circumstance of Pre-Operational Force Majeure; and
    - (ii) a revised RSD that takes any such delay into account; or
  - (b) where we consider that project delivery **has not been delayed** by the Pre-operational Force Majeure, that the RSD shall continue to fall on:
    - (i) 1 January 2021 for projects granted and IPA decision as part of Window 1; and
    - (ii) 1 January 2024 for projects granted an IPA decision as part of Window 2<sup>6</sup>
  - (c) the reasons for our minded-to decision;
  - (d) the period (not being less than 14 days from the date of the notice, or such other period as may be agreed in writing between the licensee and the Authority) within which the licensee may make representations or objections.
10. Before issuing a decision pursuant to paragraph 8 (a) or (b), we shall consider any representations or objections raised by the licensee.
11. The decision we issue under paragraph 8 (a) or (b) of this policy document shall state the reasons for the decision.

### Definitions

12. For the purposes of this policy document:

Pre-operational Force Majeure	<p>means</p> <p>(a) an event or circumstance which is beyond the reasonable control of the licensee, including act of God, act of the public enemy, strike, lockout and other industrial disturbance, war declared or undeclared, threat of war, terrorist act (or threat of), blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, governmental restraint, provided that lack of funds of the licensee or performance or non-performance by an electricity transmission licensee or equivalent entity 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</p>
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<sup>6</sup> For both Window 1 and Window 2 cap and floor projects, the RSD may be an earlier date than 1 January 2021 and 1 January 2024 respectively, where the licensee's interconnector has successfully completed the procedures and tests outlined in paragraph (b)(ii) of the definition of Pre-Operational Force Majeure. In such circumstances the RSD will be the date such tests and procedures are completed.

	<p>of the event or circumstance are also excluded as not being beyond the reasonable control of the licensee; and</p> <p>(b) where such event or circumstance has occurred or commenced between:</p> <p>(i) the date of our Initial Project Assessment Decision with respect to the licensee’s Interconnector; and</p> <p>(ii) the successful completion of such procedures and tests in relation to the developers 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</p>
Initial Project Assessment (IPA) Decision	means our decision, published on the Ofgem website, on our initial assessment of the needs case for the licensee’s interconnector project
Good Industry Practice	means in relation to any undertaking and any circumstances, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances
Rated Capacity	means the maximum capacity of the relevant interconnector (in MW hours)