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National Grid Viking Link Limited,
cap and floor interconnector
projects and other interested
parties

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Date: 21st April 2023

Dear colleague,

National Grid Viking Link Limited – Decision on a request for a later Regime Start Date for the Viking Link interconnector project

In June 2021, we implemented regulatory arrangements enabling us to approve delays to the Regime Start Date (**RSD**) for cap and floor interconnector projects caused by events or circumstances of pre-operational force majeure.¹ These arrangements allow cap and floor interconnector projects that encounter such delays to submit a request for a later RSD for the Authority's² consideration. The RSD is the date on which the interconnector project's 25-year cap and floor regime starts.³

National Grid Viking Link Limited (**NGVL**) submitted a request on 5 October 2021 for the RSD of the Viking Link interconnector project (**Viking Link**) to be adjusted by 36 months, from 1 January 2021⁴ to 1 January 2024.⁵ We also received supporting information on this request from NGVL at various points in 2022.⁶

After careful consideration, **we have partially approved NGVL's request to specify a later RSD and intend to adjust the RSD from 1 January 2021 to 1 January 2023 for**

¹ Cap and floor interconnectors: Decision on pre-operational force majeure arrangements: <https://www.ofgem.gov.uk/publications/cap-and-floor-interconnectors-decision-pre-operational-force-majeure-arrangements>

² The words "Authority" "Ofgem" "we" "our" and "us" are used interchangeably in this decision.

³ The start date of the floor is subject to the successful completion of a proving period test that demonstrates that the interconnector was available to flow at its rated capacity for a period of 60 continuous days.

⁴ 1 January 2021 is the current 'backstop' date for cap and floor Window 1 interconnector projects on which NGVL's cap and floor regime starts regardless of whether the project has started commercial operations.

⁵ Where the interconnector is commissioned earlier than this date, the RSD will be that earlier date.

⁶ 21 February 2022, 18 March 2022 and 26 October 2022.

Viking Link.⁷

This decision letter considers the events outlined in NGVL's request for an adjustment to the RSD, events which NGVL considers constituted pre-operational force majeure⁸, and provides the reasons for our decision.

Background

NGVL was granted a cap and floor regime in our first application window (**Window 1**) and is currently constructing a 1400 MW electricity interconnector between Great Britain and Denmark. In line with the eligibility criteria for Window 1 cap and floor projects, the start date of the 25-year cap and floor regime for Viking Link reflects an element of the minimum eligibility criteria for Window 1 projects.⁹ NGVL's current RSD is the earlier of:

- (a) the date it starts commercial operations;¹⁰ or
- (b) 1 January 2021, or such later date as may be specified by the Authority.

NGVL notes that it has faced several external events such as cable market constraints, issues with onshore planning and consenting processes in GB as well as problems with required offshore consents in Germany that have delayed progress for the Viking Link project.

NGVL has therefore requested a later RSD on the basis that, as a result of these delays, it has not met the RSD.

Assessment route

Our June 2021 decision on pre-operational force majeure arrangements for cap and floor interconnector projects provides two routes for assessing a request for a later RSD:

- (a) **a licence mechanism**, set out in standard condition 26A¹¹ - for interconnector projects that have had their specific cap and floor regime implemented in their respective interconnector licences; and

⁷ In accordance with paragraph 9 of our published Policy Decision document. We gave notice of our minded-to decision to NGVL, to which they raised no objections.

⁸ Cap and Floor Interconnectors: Decision on Pre-operational force majeure arrangements: <https://www.ofgem.gov.uk/publications/cap-and-floor-interconnectors-decision-pre-operational-force-majeure-arrangements>

⁹ Decision on project eligibility as part of our cap and floor regime for near-term electricity interconnectors: https://www.ofgem.gov.uk/sites/default/files/docs/2014/10/cf_eligibility_decision_final_0.pdf

¹⁰ Following the successful completion of such procedures and tests in relation to the interconnector that are in accordance with, at the time they are undertaken, Good Industry Practice for commissioning that type of interconnector to demonstrate that the interconnector is available for the use of conveyance of electricity at the rated capacity

¹¹ SLC 26A Delay to Regime Start Date caused by Pre-Operational Force Majeure as contained in the Policy Decision Document

- (b) **a complementary process set out in a policy decision document** (the **Policy Decision Document**¹²) that largely mirrors the above formal mechanism - for interconnector projects that have not yet had their cap and floor regime implemented in their respective interconnector licences.

As the licence changes implementing NGVL's cap and floor regime are yet to be consulted on and introduced, we have considered NGVL's request for a later RSD in accordance with (b) above, the process of which is set out in the Policy Decision Document.

NGVL's request for a later RSD

In October 2021, NGVL submitted a request for the project's RSD of 1 January 2021 to be adjusted to 1 January 2024. In its request, NGVL set out three key events that it considers constitute pre-operational force majeure events that were beyond its control, together with the associated length of the resulting delay caused by each event and the mitigation deployed to minimise the impact of the delays. We consider each of these three events below.

1. Cable Market Congestion

NGVL states that it encountered unforeseeable cable market congestion following Ofgem's approval of Viking Link's initial project assessment (**IPA**) on 21 July 2015 and has requested a two-year RSD adjustment for delays caused by this event.

NGVL states that at the time of its IPA submission, in September 2014, the interconnector projects that would subsequently take up cable market capacity from 2015 onwards had not yet awarded cable contracts.

After NGVL's IPA submission in September 2014, other interconnector projects had started awarding High Voltage Direct Current (**HVDC**) contracts to cable manufacturers. The original timeline, as outlined in NGVL's IPA submission, envisaged cable manufacturing as scheduled to start in Q2 2018 and finishing in Q3 2020 (in parallel with installation between Q4 2018 and Q4 2020). The two longest Mass Integrated (**MI**) HVDC projects at the time (NSL and Nordlink) had a combined cable length of 2,726 km, which was the equivalent of more than two years of the maximum MI market capacity. By the time NGVL's IPA was approved in July 2015, both the NSL and Nordlink projects had already awarded cable contracts. In NGVL's view, this resulted in cable market congestion of up to two years accruing within 12 months of the Viking Link IPA submission.

¹² Policy Decision Document for pre-operational force majeure requests:
https://www.ofgem.gov.uk/sites/default/files/2021-06/annex_1_-_pre-op_fm_policy_doc%20%281%29.pdf

We note that NGVL set up a taskforce aimed at finding mitigations for the cable market congestion issue. This taskforce's recommendations included, amongst other things, that the project should:

- be re-baselined for an end-of-2022 commissioning date to allow cable market capacity to be available to ensure a competitive tender process;
- consider both MI and cross-linked polyethylene (**XLPE**) cable technology options in the procurement process to maximise technology options for the project; and
- initiate a campaign of supplier engagement to increase interest in the Viking Link interconnector and seek to engage with non-European suppliers.

NGVL state that they implemented these recommendations where possible and, in line with the taskforce's recommendation, also elected to revise the planned commissioning date for Viking Link from the end of 2020 to the end of 2022, to account for the impact of congestion in the cable market.

Our view

We note that in its IPA submission, NGVL identified the potential for the project to encounter constraints in the MI cable market. Despite this, the project plan submitted by NGVL in support of its IPA submission does not show any additional time having been factored in to accommodate potential delays resulting from the noted potential cable market constraints. We also note that factoring in such additional time for cable market constraint-related delays may have potentially put at risk NGVL's ability to meet the Window 1 eligibility criteria of connecting by 1 January 2021.

We also note that in its IPA submission NGVL identified several risk items, including cable market capacity constraints and scarcity of manufacturing slots that could impact timely project delivery. We further note that NGVL set out a number of 'levers' at its disposal for managing the impact of these risks, including pre-booking capacity, tailored lotting strategies and the ability to delay or move the proposed connection dates for other National Grid Ventures interconnectors to optimise available manufacturing slots. Despite having identified a number of possible remedial strategies in its IPA submission, NGVL do not appear to have utilised any of these levers to proactively alleviate the identified risks of congestion within the cable market.

As noted above, NGVL have requested a two-year RSD adjustment for delays caused by cable market congestion. The cable market congestion having been primarily caused, in NGVL's view, by two other interconnector projects (NSL and Nordlink) taking up the available cable manufacturing capacity ahead of NGVL.

Whilst we accept that NGVL may not have had full visibility of the development of interconnector projects outside of the UK, such as the Nordlink interconnector, we do consider it to have been reasonably foreseeable that other project developers would be likely to apply for an IPA as part of Window 1 (such as the NSL project). We also consider it to have been foreseeable that this would have been likely to affect cable market capacity, given that all projects granted an IPA in Window 1 would be seeking to connect within a similar timeframe. We would therefore have expected NGVL to be prepared for cable market congestion caused by other Window 1 projects.

We have therefore concluded that the constraints in the cable market were only partly outside of NGVL's control. Whilst we accept that NGVL took some steps to minimise the impact of congestion within the cable market and we note the impact of delays in securing planning consents (discussed below) on its procurement process, we do not agree that another Window 1 project taking up manufacturing capacity in the cable market could not have been reasonably foreseen by NGVL (and in particular we do not agree with NGVL's suggestion that this was unforeseeable until after the IPA decision).

As such, and noting that:

- (a) NGVL has requested a two-year RSD adjustment;
- (b) the two projects cited by NGVL as having taken up the maximum available cable manufacturing capacity (NSL and Nordlink) for up to 2 years were of comparable cable lengths¹³ - which broadly equates to 1 year's cable manufacturing capacity being taken up by each of these two projects;
- (c) we consider it to have been foreseeable that another Window 1 project (NSL) developed by National Grid would be seeking to secure cable capacity along similar timeframes to NGVL, and
- (d) we accept that NGVL may have had more limited visibility on the Nordlink project.

On balance, noting the above and having considered the evidence submitted, as well as the steps that could have been taken by NGVL to minimise impact of the congestion in the cable market, we have decided to partially accept NGVL's request and adjust the RSD by one year for this event, rather than the two years requested by NGVL.

¹³ 1246km for Nordlink and 1480km for NSL

2. Planning consent delays

NGVL attributes a 12-month delay caused by delays in securing the required planning consents for the onshore portion of the cable route within the UK and delay in obtaining required German offshore consents (as outlined below).

British onshore consents

NGVL submitted planning applications to four relevant Local Planning Authorities (**LPAs**) under the Town and Country Planning Act 1990 (**TCPA**). NGVL states that it chose TCPA over the Development Consent Order (**DCO**) route as obtaining a DCO would have required a higher level of design detail that was not compatible with the Engineering, Procurement and Construction (**EPC**) strategy for the project.

In its request, NGVL outlines two main obstacles faced with respect to securing the requisite onshore consents, which are summarised below:

- Prior to planning permission being granted by three out of the four relevant LPAs, the Secretary of State (**SoS**) for the Department for Levelling Up, Housing and Communities, formerly Ministry of Housing, Communities, and Local Government (**MHCLG**), notified these local authorities that SoS was minded to 'call in'¹⁴ the planning applications for assessment; and
- Planning consent was refused by one of the LPAs (East Lindsay District Council).

For the first obstacle, the relevant LPAs were: South Holland District Council (**SHDC**), Boston Borough Council (**BBC**), North Kesteven District Council (**NKDC**) and East Lindsay District Council (**ELDC**).

On 7 February 2018, SHDC indicated it was minded to approve the planning application. On 19 February 2018, a notice was issued to the remaining LPAs stating that the SoS was considering whether or not to 'call in' the applications. This prevented the LPA from being able to progress the planning applications and make a final decision on approval. Given the uncertainty this caused, NGVL considered possible outcomes of the SoS 'call in', as well as the length of any consequential delays. NGVL estimated the shortest possible delay, even without SoS 'call in' of the application, to be around 5 months.

As the original procurement timeline, and potentially the cable route, could be impacted by the outcome of the planning permission applications, NGVL decided to suspend the

¹⁴ 'Call in' is the power that the SoS has to direct the LPA to refer an application to the SoS for a decision.

procurement process in May 2018, to avoid potentially breaching European Union (**EU**) procurement rules.

On 6 June 2018, ELDC refused planning permission for Viking Link's cable route despite their planning officers' recommendation to approve. NGVL then submitted an appeal in July 2018 to the planning inspectorate regarding ELDC's refusal, which resulted in the matter being referred to a planning inquiry. On 11 September 2018, the MHCLG informed the LPAs that they did not plan to call in the project's planning applications. As a result, BBC and NKDC planning authorities granted planning approvals on 12 and 18 September 2018, respectively.

The procurement process was formally restarted in September 2018. The planning inquiry began in November 2018 and concluded in December 2018 and permission for the affected part of the cable route was granted at the end of January 2019. At this point, however, the procurement timeline would not allow cable laying to begin in Spring 2020 as there would be insufficient time for the chosen bidder to manufacture the HVDC cable. As a result of this event and the German offshore consents event, outlined below, cable laying had to be postponed by one year and began in Spring 2021 instead of Spring 2020 as planned.

Our view

We note that there were two potential options for obtaining the relevant planning approvals – via the TCPA, which was NGVL's chosen route, or via a DCO. NGVL note that as part of its decision for the most appropriate planning route to pursue, it considered the time taken by projects undertaken by National Grid Electricity Transmission (**NGET**) using the DCO route, and ultimately considered the TCPA route offered a faster route to securing the required planning consents. The projects undertaken by NGET via the DCO route took 18-20 months to obtain consent, which would not have been feasible for NGVL's procurement timetable. NGVL further notes that the DCO route would not have circumvented the requirement for LPAs to consent to the planning, as LPAs would have been consulted throughout the DCO process and there was the added risk that the request could have been subject to judicial review and resulted in further delays.

We note that NGVL undertook a campaign of stakeholder engagement, including consultations and public participation events in the year of, and year prior to, the submission of the planning application. Feedback from the public from these processes was used to inform part of the planning applications. NGVL also states that it worked closely with the planning officer for ELDC, who recommended the approval of their application, though this recommendation was not followed by the ELDC planning committee. NGVL therefore consider that it could not have mitigated for the two main obstacles any further than they did.

Based on the supporting information provided in NGVL’s request, we are satisfied that the DCO route could have taken as long as the TCPA route and was not appropriate at the time the consent process commenced.

We therefore accept that NGVL took appropriate steps to mitigate any risks threatening the approval of British onshore planning consents and agree with NGVL that the delay encountered in securing British onshore consents was beyond its reasonable control.

German offshore consents

The selected cable route for Viking Link passes through German waters on its way to Denmark. As a result, the following German planning permissions were required:

- Mining permission under the Federal Mining Act (Bundesberggesetz) issued by the State Authority for Mining, Energy & Geology or Landesamt für Bergbau, Energie und Geologie (**LBEG**).
- Spatial planning permission under the Federal Mining Act (Bundesberggesetz) issued by the Federal Maritime and Hydrographic Agency or Bundesamt für Seeschifffahrt und Hydrographie (**BSH**).

NGVL states in its submission that applications for both sets of permissions were submitted by NGVL to the relevant authorities in March 2017. The applications were confirmed by both relevant authorities as being checked for completeness on 2 July 2017. This began the 18-month statutory deadline¹⁵ for the EU’s statutory permitting process for Projects of Common Interest (**PCIs**).

LBEG granted planning permission on 15 December 2017, however the permit from BSH was still outstanding at this time. Draft planning conditions were agreed with BSH in May 2018 and BSH stated that planning permission was expected to be granted in early summer 2018.

On 5 July 2018, BSH issued an Assurance of Approval as they were not yet in a position to issue planning permission. In October 2018, the project partners requested an update, as the permit had not yet been granted. The project partners also engaged with the German regulatory authority, Bundesnetzagentur (**BNetzA**), to get clarity on the PCI process and timeline. Due to this engagement BNetzA sent a letter to BSH at the end of October highlighting the statutory PCI deadline of 2 January 2019 for permit approval. The planning permit was eventually granted on 29 March 2019, 20 months after its original submission.

¹⁵ Article 10(1) of Regulation (EU) 2022/869

It was possible that refusal of the German offshore permits could alter the cable route and therefore impact the requirements of any EPC contracts. Therefore, finalising of EPC contracts was delayed by this reason and by the delay in British onshore consents. Both of these events meant that the EPC contracts could not be finalised until Q2 2019, leaving insufficient time for cables to be manufactured in 2020. As a result, the date of the first cable campaign was moved from spring 2020 to spring 2021.

Our view

We note that all viable offshore cable routes would have a corridor through German waters. As such we understand NGVL's engagement with German authorities to be able to receive an offshore permit for German waters. In terms of mitigations to address the unexpected delays encountered, NGVL and Energinet state that they undertook the necessary engagement with the German planning authorities prior to submission of the permits. Energinet and NGVL have provided details of communication highlighting that the developer engaged with BSH at appropriate intervals and received numerous signals of approval from BSH prior to formal approval of the permits.

We note that BSH raised the issue with BNetzA at regular intervals when it became clear that the regulatory deadline may be breached. NGVL have also provided details of when offshore permits were approved and, despite the cable corridor being smallest in German waters, it took the most time to obtain permits for this area. We agree with NGVL's view that the delays in securing the requisite offshore consents were beyond its reasonable control.

NGVL requested a 1-year adjustment to the RSD due to delays in securing British onshore planning consents and the required offshore consents in Germany. Having reviewed the supporting information provided by NGVL, we have decided to agree to NGVL's request for a one-year adjustment to the RSD.

Our Decision

Cable market congestion

We do not consider NGVL's request to have provided sufficient explanation and justification with respect to delays caused by cable market constraints to justify the two-year adjustment¹⁶ to the RSD requested by NGVL. However, we do consider that on balance and for the reasons set out above, NGVL has provided sufficient explanation to justify a one-

¹⁶ NGVL requested a two-year adjustment to the RSD for cable market constraints from 1 Jan 2021 to 1 Jan 2023.

year adjustment¹⁷ for this event.

British onshore consents and German offshore consents

We also consider sufficient justification and explanation to have been provided by NGVL with respect to the requested one-year adjustment to the RSD due to the two planning consent delay events. We consider these planning delays to have constituted pre-operational force majeure events that were beyond the reasonable control of NGVL.

Therefore, after careful consideration of NGVL's request, the resulting delay periods specified by NGVL, any overlap or interactions between those time periods, and the mitigation strategies deployed by NGVL to minimise delays, **we have partially accepted NGVL's request for a later RSD as shown below:**

Event	Requested RSD adjustment	Ofgem Decision
Cable Market Constraints	2 years	1 year
British onshore consents	1 year (shared with German offshore consents)	1 year
German offshore consents	1 year (shared with British onshore consents)	

As such, we have specified 1 January 2023 as the RSD for the Viking Link interconnector.

Next steps

As noted above, this decision has been made in accordance with the assessment and decision-making framework set out in our published Policy Decision Document for pre-operational force majeure requests.¹⁸ We will reflect this decision in NGVL's interconnector licence once the projects specific cap and floor regime has been implemented in its licence.

If you have any questions in relation to this letter, please contact Vanessa Simpson by email (Vanessa.Simpson@ofgem.gov.uk).

Yours sincerely,



Okon Enyenihi
Head of Interconnector Delivery

¹⁷ Ofgem's position on the cable market constraints issue is to adjust the RSD by 1 year from 1 Jan 2021 to 1 Jan 2022.

¹⁸ Policy Decision Document for pre-operational force majeure requests: https://www.ofgem.gov.uk/sites/default/files/2021-06/annex_1_-_pre-op_fm_policy_doc%20%281%29.pdf