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Delivered via email

Email: Harriet.Harmon@ofgem.gov.uk

Date: 19 April 2024

Dear Deborah,

Authority decision to send back System Operator Transmission Owner Code (“STC”) Modification Proposal CM094: ‘Amendment to Bi-annual estimate provisions’

The purpose of this letter is to explain our reasons for sending back CM094 (“the Proposal”) Final Modification Report (“FMR”)¹ and to direct the STC Panel to revise and resubmit the FMR. We² have decided that we cannot properly form an opinion on the Proposal based on the submitted FMR and are therefore sending it back for further work.

Context

Scottish & Southern Electricity Networks (“the Proposer”) raised the Proposal on 16 January 2024. The Proposal intends to better enable connections by relieving those persons connecting to the electricity transmission network of the need to securitise for specific works that the Authority has recognised as strategic reinforcement of the transmission network. The FMR for CM094 came to us (“the Authority”) for a decision on 27 March 2024.

¹ [CM094 - Amendment to Bi-annual estimate provisions | ESO \(nationalgrideso.com\)](#)

² References to the “Authority”, “Ofgem”, “we”, and “our” are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day-to-day work. This decision is made by or on behalf of GEMA.

Reasons for send back.

Currently, the wording of the legal text provided with the FMR includes terminology that lacks accepted definition, limiting our ability to properly form an opinion on the Proposal and requiring us to send the FMR back to be revised and re-submitted.

Among other proposed amendments to the STC legal text, the FMR recommends the introduction of a definition for “Excludable Costs” to Section J and in Schedule 9. The proposed definition reads as follows [**emphasis** added]:

“**Excludable Costs**”: cumulative actual and forecast cost of Transmission Construction Works which have Construction Approval and which are:

- i) subject to approval by the Authority under the Accelerated Strategic Transmission Investment, **Major Project Regime**, Holistic Network Design or Large Onshore Transmission Investment funding mechanism(s) as such terms are/**will be** defined in the relevant Transmission Licensee’s Licence and
- ii) limited exclusively to Transmission Construction Works upon Transmission circuits and any substation works required for the connecting of such Transmission circuits.

We appreciate that the industry may wish to fully ‘future-proof’ legal text to the extent possible. However, there is no reference to “Major Project Regime” in current iterations of the Transmission Licenses. As it is, current drafting of the proposed legal text relies on future Authority decisions, including:

- i) the concept of “Major Project Regime” being approved by the Authority (using that nomenclature); and
- ii) the inclusion of a suitable definition of “Major Project Regime” within the relevant Transmission License (the codes should not necessitate specific terminology, or definitions be adopted in a License).

In the meantime, the proposed term carries no meaning and risks introducing legal ambiguity. We believe this ambiguity constitutes a deficiency sufficient to prevent the Authority’s assessment as to the relative merits of the Proposal.

Direction

Pursuant to Section B Paragraph 7.2.5.15 of the STC³, the Authority has determined that the FMR is such that it cannot properly form an opinion on the Proposal. The Authority directs that further work is undertaken to address the deficiencies (as identified in bold and italicised above) within the legal text. The Authority will not specify solutions, but we believe that the Panel could consider options including but not limited to:

- i) Removing any ambiguous legal text and resubmitting without consultation (on the basis that no meaningful consultation could have taken place on the definition of "Major Project Regime" specifically owing to its reliance on a change to the Transmission License which has not yet been approved, or even proposed); or
- ii) Consulting the Workgroup for suitable solutions to the ambiguity presented by the use of the term "Major Project Regime" within the definition for "Excludable Costs"; and/or
- iii) Removing references to terms that have not yet been defined in the relevant Transmission Licences.

After addressing issues within the proposed legal text and revising the FMR as required, the STC Panel should re-submit it to us for decision no later than 3 working days from the date of this letter, although if the STC Panel considers this to be unachievable it is directed to notify the Authority immediately.

The decision to send back the FMR does not supersede our decision on the urgency of the modification and, as such, we expect to maintain the timeline for decision previously communicated in our letter dated 6 February 2024⁴.

Yours sincerely,

Harriet Harmon

Head of Electricity Transmission Charging

Duly authorised on behalf of the Authority

³ [Section B - Governance version 22_CM090 25 April 2023 \(nationalgrideso.com\)](#)

⁴ [Urgency Granted for CM094: Amendment to Bi-annual estimate provisions | Ofgem](#)