

STC Initial Modification Report		At what stage is this document in the process?								
<h2>CM063: Modify the definition of Force Majeure (Section J: Interpretation and Definitions)</h2>		<table border="1"> <tr> <td>01</td> <td>Initial Modification Report</td> </tr> <tr> <td>02</td> <td>Industry Consultation</td> </tr> <tr> <td>03</td> <td>Draft Final Modification Report</td> </tr> <tr> <td>04</td> <td>Final Modification Report</td> </tr> </table>	01	Initial Modification Report	02	Industry Consultation	03	Draft Final Modification Report	04	Final Modification Report
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04	Final Modification Report									
<p>Purpose of Modification: This proposal seeks to clarify the intention of the existing definition of Force Majeure by adding some new words in order to ensure a common understanding of this definition:</p> <p>This Modification will seek to insert wording after the words in parenthesis “(which could not have been prevented by Good Industry Practice)” So as to read: “(which could not have been prevented by Good Industry Practice within the reasonable control of the Party seeking to rely on this definition)”</p>										
	<p>The Proposer recommends that this modification should be: <i>reviewed by the STC panel and implemented at the earliest opportunity.</i></p> <ul style="list-style-type: none"> • proceed to Consultation [subject to agreement of the STC panel] <p>This modification was raised 20 March 2018 and will be presented by the Proposer to the Panel on 28 March 2018. The Panel will consider the Proposer’s recommendation and determine the appropriate route.</p>									
	<p>High Impact: This Modification has the potential to impact the TO’s, OFTO’s and National Grid.</p>									

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Timetable		 07976 940 855 John Sinclair  john.s.sinclair@balfourbeatty.com  0207 121 3840

The Code Administrator recommends the following timetable:

Modification Proposal issued to the STC Panel	20 March 2018
Panel Agree that CM063 should procedure using the xxx route	28 March 2018
Workgroup meetings	May – July 2018
Workgroup Consultation	August 2018
Workgroup meetings post Workgroup Consultation	September – October 2018
Code Administration Consultation	November 2018
Issue Draft Final Modification Report to industry and the Authority for 5 Working Days	December 2018
Draft Final Modification Report issued to the STC Panel	December 2018
Panel determination vote	December 2018
Final Modification Report issued to the Authority	January 2019
Decision Implemented into the STC	March 2019

Proposer Details

<p style="text-align: center;">Details of Proposer: (Organisation Name)</p>	<p>Balfour Beatty Investments (in the capacity of shareholder of three OFTOs)</p>
<p>Capacity in which the STC Modification Proposal is being proposed: (i.e. STC Party, Party Representative or person or persons having a relevant interest as may be designated in writing for this purpose by the Authority)</p>	<p>Balfour Beatty Investments – signatory to the STC in its capacity of co-owner of three OFTOs</p>
<p style="text-align: center;">Details of Proposer’s Representative:</p> <p style="text-align: right;">Name:</p> <p style="text-align: right;">Organisation:</p> <p style="text-align: right;">Telephone Number:</p> <p style="text-align: right;">Email Address:</p>	<p>John Sinclair</p> <p>Balfour Beatty Investments</p> <p>0207 121 3840</p> <p>John.s.sinclair@balfourbeatty.com</p>
<p style="text-align: center;">Details of Representative’s Alternate:</p> <p style="text-align: right;">Name:</p> <p style="text-align: right;">Organisation:</p> <p style="text-align: right;">Telephone Number:</p> <p style="text-align: right;">Email Address:</p>	<p>Mike Lee</p> <p>Transmission Investments</p> <p>+44 20 3668 6688</p> <p>mike.lee@transmissioninvestment.com</p>
<p>Attachments (Yes/No): No</p> <p>If Yes, Title and No. of pages of each Attachment:</p>	

Impact on Core Industry Documentation.

Please mark the relevant boxes with an “x” and provide any supporting information

BSC	
Grid Code	
CUSC	X
Other	

As the wording of the Force Majeure definition is identical in the STC and the CUSC it would seem sensible to update the definition in the CUSC at the same time as updating the definition in the STC.

1 Summary

Defect

Force majeure definition as currently written has been shown to be open to misinterpretation. See the Gwynt-Y-Mor IAE determination, letter attached.

What

To insert wording after the words in parenthesis *“(which could not have been prevented by Good Industry Practice)”* **So as to read:** *“(which could not have been prevented by Good Industry Practice within the reasonable control of the Party seeking to rely on this definition)”*

Why

To clarify that the current owner can only be responsible for good industry practice that they can reasonably be said to be able to control. The current wording has been misinterpreted to suggest that the owner is responsible for good industry practice dating back to the manufacture of a component, where the current asset owner had no control over the activities of the manufacturer and could not reasonably have identified the results of the poor practice carried out by the manufacturer.

How

STC panel to implement this proposal to add wording to the definition of Force Majeure in the STC.

2 Governance

Justification for [Normal, Urgent, Self-Governance or Fast Track Self-Governance] Procedures

Insert text here This Proposal does not meet either the Self- Governance Route or Fast-Track self-governance route as the change proposed is a material change therefore the Authority will make the decision, not the Panel.

The Proposer recommends this modification follow a standard route.

Requested Next Steps

This modification should:

- proceed to Consultation [subject to agreement of the STC panel]

The current definition of Force Majeure has been incorrectly interpreted in a recent IAE claim mad by the Gwynt-Y-Mor OFTO.

3 Why change

The current wording of the Force Majeure definition lacks clarity and as a result it has been misinterpreted by at least one part who assumed that the Good Industry Practice that is mentioned in the clause applies to any action(s) carried out by any person(s) who has ever had any involvement with the asset in question irrespective of how long ago and irrespective of whether the current owner could have had any knowledge of the action(s) in question. It is clear to any reasonable reading of the definition that this is not what was intended when it was written, therefore the definition needs clarifying.

4 Code Specific Matters

Technical Skillsets

Personnel with an understanding of the STC and how it is used by Users, ie the STC Panel members

Reference Documents

gym_iae_decision 23 May 2017 – Letter from Ofgem to the Gwynt-Y-Mor OFTO that has been published on the Ofgem web site.

5 Solution

*Additional wording in the definition of the Force Majeure: **To insert wording after the words in parenthesis** “(which could not have been prevented by Good Industry Practice)” **So as to read:** “(which could not have been prevented by Good Industry Practice within the reasonable control of the Party seeking to rely on this definition)”*

6 Impacts & Other Considerations

Who (i.e. which industry code) is impacted; STC [and CUSC if the CUSC panel believe that the definitions should remain aligned]

- i. Which processes are impacted; and will improve any process which has to make reference to Force Majeure
- ii. Systems impacted will improve any system which has to make reference to Force Majeure

Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

The proposed additional wording will improve the situation for any party which has to make reference to Force Majeure, by clarifying that good industry practice relates to that which delivered or controlled by the party seeking to rely on the definition and does not relate to any historical failures of GIP that are outside of the control of the party seeking to rely on the definition.

Consumer Impacts

The proposed additional wording will improve the situation for any party which has to make reference to Force Majeure.

7 Relevant Objectives

Relevant Objective	Identified impact
(a) efficient discharge of the obligations imposed upon transmission licensees by transmission licences and the Act	The proposed additional wording will improve the situation for any party which has to make reference to Force Majeure.
(b) development, maintenance and operation of an efficient, economical and coordinated system of electricity transmission	N/A
(c) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the distribution of electricity	The proposed additional wording will improve the situation for any party which has to make reference to Force Majeure.
(d) protection of the security and quality of supply and safe operation of the national electricity transmission system insofar as it relates to interactions between transmission licensees	N/A
(e) promotion of good industry practice and efficiency in the implementation and administration of the arrangements described in the STC.	The proposed additional wording will improve the situation for any

	party which has to make reference to Force Majeure.
(f) facilitation of access to the national electricity transmission system for generation not yet connected to the national electricity transmission system or distribution system;	N/A
(g) compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency.	N/A

The proposed additional wording will improve the situation for any party which has to make reference to Force Majeure, by providing clarity over what is meant by the phrase “which could have been prevented by good industry practice”.

8 Implementation

As this is a relatively simple clarification, the proposer would expect implementation to be completed within six months.

9 Legal Text

To insert wording after the words in parenthesis *“(which could not have been prevented by Good Industry Practice)”* **So as to read:** *“(which could not have been prevented by Good Industry Practice within the reasonable control of the Party seeking to rely on this definition)”*

The revised definition will be as shown believe, with the additional text in red, there are no deletions.

The legal text can be found in in the STC under Section J: Interpretations and Definitions, Page14-15

"Force Majeure"

in relation to any Party, any event or circumstance which is beyond the reasonable control of such Party and which results in or causes the failure of that Party to perform any of its

*obligations under the Code including act of God, strike, lockout or other industrial disturbance, act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, explosion, fault or failure of Plant and Apparatus (which could not have been prevented by Good Industry Practice **within the reasonable control of the Party seeking to rely on this definition**), governmental restraint, Act of Parliament, other legislation, bye law and Directive (not being any order, regulation or direction under sections 32, 33, 34 and 35 of the Act) provided that lack of funds or*

performance or non-performance by an Other Code Party shall not be interpreted as a cause beyond the reasonable control of that Party and provided, for the avoidance of doubt, that weather conditions which are reasonably to be expected at the location of the event or circumstance are also excluded as not being beyond the reasonable control of that Party;

10 Recommendations

Proposer's Recommendation to Panel

Panel is asked to:

- Issue this modification directly to Consultation