





Stage 2. Workgroup Report	At what stage is this document in the process?										
<p><b>CM063: Modify the definition of Force Majeure (Section J: Interpretation and Definitions)</b></p>	<table border="1"> <tr> <td>01</td> <td>Initial Modification Report</td> </tr> <tr> <td>02</td> <td>Workgroup Report</td> </tr> <tr> <td>03</td> <td>Industry Consultation</td> </tr> <tr> <td>04</td> <td>Draft Modification Report</td> </tr> <tr> <td>05</td> <td>Final STC Modification Report</td> </tr> </table>	01	Initial Modification Report	02	Workgroup Report	03	Industry Consultation	04	Draft Modification Report	05	Final STC Modification Report
01	Initial Modification Report										
02	Workgroup Report										
03	Industry Consultation										
04	Draft Modification Report										
05	Final STC Modification Report										
<p><b>Purpose of Modification:</b> 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><b>This Modification will seek to insert wording after the words in parenthesis</b> <i>“(which could not have been prevented by Good Industry Practice)”</i> <b>So as to read:</b> <i>“(which could not have been prevented by Good Industry Practice within the reasonable control of the Party seeking to rely on this definition)”</i></p>											
	<p>This document contains the discussion of the Workgroup which formed in October 2018 to develop and assess the proposal.</p>										
	<p><b>High Impact:</b> This Modification has the potential to impact the TO's, OFTO's and National Grid Electricity System Operator.</p>										

Contents		 Any questions?
1	About this document	3
2	Original Proposal	4
3	Proposers Solution	4
4	Workgroup Discussions	4
5	Code Specific Matters	5
6	Impacts & Other Considerations	6
7	Workgroup Vote	7
8	Relevant Objectives	8
9	Implementation	9
10	Legal Text	9
11	Annex 1: Terms of Reference	11
12	Annex 2: Ofgem Decision Letter- Gwynt-Y-Mor OFTO	13
13	Annex 3: Proposers Presentation	15


 Any questions?

Contact:  
Code Administrator

 [Lurrentia.Walker@nationalgrideso.com](mailto:Lurrentia.Walker@nationalgrideso.com)

 07976 940 855

Proposer:  
John Sinclair

 [john.s.sinclair@balfourbeatty.com](mailto:john.s.sinclair@balfourbeatty.com)

 0207 121 3840

## Timetable

### The Code Administrator recommends the following timetable:

Modification Proposal issued to the STC Panel	20 March 2018
Panel Agree that CM063 should proceed to Workgroup	28 March 2018
Workgroup meetings	October- April 2019
STC Panel approve the Workgroup Report	April 2019
Initial Modification Report circulated to Party representatives	May 2019
Issue Industry Consultation	June 2019
STC Final Modification Report circulated to the STC Panel	June 2019
STC Final Modification Report submitted to the Authority	July 2019
Indicative Authority Decision Date	September 2019
Implementation	October 2019

## 1 About this document

This report contains the discussion of the Workgroup which formed in October 2018 to develop and assess the proposal.

Section 2 (Original Proposal) and Section 3 (Proposer's solution) are sourced directly from the Proposer and any statements or assertions have not been altered or substantiated/supported or refuted by the Workgroup. Section 4 of the Workgroup Report contains the discussion by the Workgroup on the Proposal and the potential solution.

The STC Panel detailed in the Terms of Reference the scope of work for the CM063 Workgroup and the specific areas that the Workgroup should consider.

The table below details these specific areas and where the Workgroup have covered them or will cover post Workgroup Consultation.

Table 1: CM063 ToR

Specific Area	Location in the report
a) Implementation	Section 4
b) Review and support the legal text drafting;	Section 4
c) Ensure the appropriate Industry experts or stakeholders are engaged in the Workgroup to ensure that all potentially affected stakeholders have the opportunity to be represented in the Workgroup	Section 4
d) The cross Code impacts this Modification has, in particular the CUSC	Section 4 and 6

The full Terms of Reference can be found in Annex 1.

## 2 Original Proposal

### Defect

The current wording of the Force Majeure definition lacks clarity and as a result it has been misinterpreted by at least one party 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. Force majeure definition as currently written has been shown to be open to misinterpretation. The Gwynt-Y-Mor IAE determination letter can be found within Annex 2.

### 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.

## 3 Proposers 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)”.

## 4 Workgroup Discussions

The Workgroup convened two times to discuss the issue, detail the scope of the proposed defect, devise potential solutions and assess the proposal in terms of the STC Applicable Objectives.

The Proposer presented the defect that they had identified in the CM063 proposal and through discussions at the Workgroup meetings have amended the original solution to either remove an aspect or tweak it. These changes are detailed below.

The Workgroup explored a number of aspects in its meetings to understand the implications of the proposed defect and solutions and what the attributes of the solution could be. The discussions and views of the Workgroup are outlined below.

The Proposer delivered a presentation to the Workgroup, this presentation can be found under Annex 3. This presentation outlined what the intent of the proposal is and the proposed solution.

The Proposer explained to the Workgroup that the proposed legal text that has been added to Section J (interpretations and Definitions) will help avoid any future misunderstanding of Force Majeure. A Workgroup member advised that the definition of Force Majeure is not used in any other code apart from the Connection Use of System (CUSC) therefore the definition is a standard set of words. The Workgroup identified the cross -code impacts with the CUSC and agreed that this modification needed to be highlighted to the CUSC Panel as the System Operator can only rely on the one definition, therefore they need to be aligned. Following Workgroup discussions regarding how this modification impacts the CUSC, the Workgroup sought legal advice from National Grid's legal team. Legal confirmed that the definition of Force Majeure in the CUSC and STC should align.

Some Workgroup members felt that changing the definition of 'Good Industry Practice' was more appropriate solution as this is only defined in the STC and doesn't place an obligation on the Party. The proposers view is changing the definition of GIP would not address the misinterpretation of the FM definition, as such the proposer would prefer to stick with the original proposal which is to introduce words to clarify the extent of GIP within the definition of FM.

At the second Workgroup meeting Ofgem advised the Workgroup of a consultation on the Income Adjusting Event Policy in Offshore Transmission Licenses they were publishing which looks at license amendments and Force Majeure is included in this consultation. The Proposer and Workgroup agreed that although the Ofgem consultation looks at Force Majeure, the modification proposal and consultation are not related, therefore does not impact the progression of CM063.

## 5 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 website and in Annex 2 of this report.

## 6 Impacts & Other Considerations

Who (i.e. which industry code) is impacted; STC and CUSC

- 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.

### **Impact on each Party Transmission System**

The Workgroup believes there is no impact foreseen, but this modification will avoid any misinterpretation of what is meant by FM event, this should therefore improve the situation for all stakeholders.

### **Any works required for implementation**

The Workgroup believe there is only an editorial change to the STC (and possibly the CUSC) which I would expect to follow a STC Panel procedure.

### **Estimate of development**

The Workgroup believe there is no impact envisaged

### **Capital and Operating costs**

The Workgroup believe there is no impact envisaged on capital costs; The only impact on Operating costs is the avoidance of legal costs if a party were to seek to clarify the current FM definition.

### **Impact on greenhouse gas emissions**

The Workgroup believe there is no impact envisaged.

## 7 Workgroup Vote

The Workgroup believe that the Terms of Reference have been fulfilled and CM063 has been fully considered.

The Workgroup met on 27 March 2019 and voted on whether the Original would better facilitate the Applicable STC Objectives than the baseline and what option was best overall.

The Workgroup voted against the Applicable STC Objectives for the Original Proposal. The Workgroup voted and three Workgroup members concluded that the Original Proposal is the best option. The Baseline was concluded to be the best option by the National Grid Representative.

The Workgroup agreed by majority that the Original was better than the baseline. The voting record is detailed below

### Vote 1: does the original facilitate the objectives better than the Baseline?

Workgroup Member	Better facilitates STCO (a)?	Better facilitates STCO (b)?	Better facilitates STCO (c)?	Better facilitates STCO (d)?	Better facilitates STCO (e)?	Better facilitates STCO (f)?	Better facilitates STCP (g)?	Overall (Y/N)
Rachel Woodbridge Stocks (NGET/NGESO)								
Original	-	-	-	-	N	-	-	N
<p><b>Voting Statement:</b> Whilst we understand the rationale behind this modification and sympathise with the proposer's defect, we are concerned that there is a risk of unforeseen interpretation issues if it is applied outside STC. Hence why we have advocated the baseline as our preference. We are wary the proposed legal text won't necessarily achieve the Proposer's desired objective but support the proposer's right to raise this modification through the governance process, and believe that Ofgem are ultimately best placed to make the decision to approve or reject, noting they are reviewing their IAE policy outside of this modification.</p>								
John Sinclair (Proposer)								
Original	Y	Y	Y	Y	Y	Y	Y	Y
<p><b>Voting Statement:</b> As the proposer, I am supportive of this proposed amendment to the definition of Force Majeure as it should remove the risk of mis-interpretation regarding the application of good industry practice.</p>								
Mike Lee (OFTO)								
Original	Y	Y	-	Y	Y	-	Y	Y
<p><b>Voting Statement:</b> On behalf of the OFTOs I believe this proposal helps to clarify the intent of the Force Majeure provisions in the code and will hopefully reduce the possibility of any future misinterpretation. In general the proposal better facilitates the achievement of the Applicable STC Objectives and for that reason I support the proposal progressing to the STC Panel.</p>								
Gareth Hislop (Scottish Power)								

Original	Y	Y	-	Y	Y	Y	-	Y
<b>Voting Statement:</b> The amendment clarifies the original intent of the clause and remedies an incorrect interpretation by Ofgem.								

**Vote 2: Which option is best?**

Workgroup Member	BEST Option?
Rachel Woodbridge Stocks – National Grid	Baseline
John Sinclair (Proposer)	Original
Mike Lee	Original
Gareth Hislop	Original

Therefore, the Workgroup by majority agreed the Original would better facilitate the STC applicable objectives.

## 8 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”.

## 9 Implementation

As this is a relatively simple clarification, the proposer would expect implementation to be completed within 10 Working days following an Authority decision.

## 10 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;*

## 11 Annex 1: Terms of Reference



## 12 Annex 2: Ofgem Decision Letter- Gwynt-Y-Mor OFTO



## 13 Annex 3: Proposers Presentation







