



STC Proposal Form		At what stage is this document in the process?												
<h2>CM074: Modify the definition of Force Majeure</h2>		<table border="1"> <tr> <td>01</td> <td>Proposal Form</td> </tr> <tr> <td>02</td> <td>Workgroup Consultation</td> </tr> <tr> <td>03</td> <td>Workgroup Report</td> </tr> <tr> <td>04</td> <td>Industry Consultation</td> </tr> <tr> <td>05</td> <td>Draft CUSC Modification Report</td> </tr> <tr> <td>06</td> <td>Final CUSC Modification Report</td> </tr> </table>	01	Proposal Form	02	Workgroup Consultation	03	Workgroup Report	04	Industry Consultation	05	Draft CUSC Modification Report	06	Final CUSC Modification Report
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<p><b>Purpose of Modification:</b> This proposal seeks to clarify the intention of the existing definition of Force Majeure by adding further wording to ensure a common understanding of the definition.</p>														
	<p>The Proposer recommends that this modification should:</p> <ul style="list-style-type: none"> <li>assessed by a Workgroup</li> </ul> <p>This modification was raised <b>11 May 2020</b> and will be presented by the Proposer to the Panel on <b>27 May 2020</b>. The Panel will consider the Proposer's recommendation and determine the appropriate route.</p>													
	<p><b>Medium Impact</b> Transmission Owners (TO's) and Offshore Transmission Owners (OFTO's)</p>													

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<b>Timetable</b>		 07976 940 855
		John Sinclair
		 <a href="mailto:john.s.sinclair@balfourbeatty.com">john.s.sinclair@balfourbeatty.com</a>
		 0207 121 3840

## Timetable

*Timetable to be updated following first Workgroup*

### The Code Administrator recommends the following timetable:

Modification Proposal issued to the STC Panel	18 May 2020
Panel Agree that CM074 should proceed to Workgroup	27 May 2020
Workgroup meetings	dd month year
STC Panel approve the Workgroup Report	dd month year
Issue Industry Consultation	dd month year
STC Final Modification Report circulated to the STC Panel	dd month year
STC Final Modification Report submitted to the Authority	dd month year
Indicative Authority Decision Date	dd month year
Implementation	dd month year

## Proposer Details

<p><b>Details of Proposer:</b> (Organisation Name)</p>	<p>John Sinclair Balfour Beatty Investments</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>Gwynt y Môr OFTO Limited</p>
<p><b>Details of Proposer's Representative:</b> Name: Organisation: Telephone Number: Email Address:</p>	<p>John Sinclair Balfour Beatty Investments 0207 121 3840 <a href="mailto:John.s.sinclair@balfourbeatty.com">John.s.sinclair@balfourbeatty.com</a></p>
<p><b>Details of Representative's Alternate:</b> Name: Organisation: Telephone Number: Email Address:</p>	
<p><b>Attachments (Yes/No): Yes</b> <b>If Yes, Title and No. of pages of each Attachment:</b> gym_iae_decision -23 May 2017</p>	

## Impact on Core Industry Documentation.

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

<b>BSC</b>	<input type="checkbox"/>
<b>Grid Code</b>	<input type="checkbox"/>
<b>CUSC</b>	<input checked="" type="checkbox"/>
<b>Other</b>	<input type="checkbox"/>

The wording of the Force Majeure definition is identical in the STC and the CUSC. In order to address a concern raised by Ofgem on the previous attempt to clarify the Force

Majeure definition, it is essential that any modification to the definition in the STC would need to be mirrored by an identical change in the CUSC.

## 1 Summary

### Defect

The current definition of Force Majeure, in the STC has been shown to be open to misinterpretation. See the Gwynt-Y-Môr IAE determination, letter attached.

### What

A modification (CM063) was originally proposed in 2018 but this was rejected by Ofgem as it failed to address the responsibility of sub-contractors and the need for a consequential change in the CUSC. This proposed modification aims to address the original need for clarification of the Force Majeure definition and address the concerns raised by Ofgem.

### Why

To clarify that the Party seeking to rely on the FM definition (the asset owner) can only be responsible for the 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 that dates back to the manufacture of a component, where the Party had no control over the activities of the manufacturer and could not reasonably have identified the results of any poor practice conducted by the manufacturer.

### How

To insert wording in Section J 'Interpretations and Definitions' 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, including the actions of any sub-contractor of that Party)*"

## 2 Governance

### Justification for Normal Governance

This modification should not be considered suitable for urgency, self-governance or fast-track self-governance. It does not meet the criteria for urgency, and should not be considered for self-governance, as it's likely to have a material impact on the STC's governance procedures.

### Requested Next Steps

This modification should:

- be assessed by a Workgroup

### 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 party (*a recent Income Adjusting Events (IAE) claim has been made by the Gwynt-Y-Môr OFTO*). Therefore, it needs to be modified to make it clear that a Party can only be responsible for actions / consequences that they can reasonably be expected to control.

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 is delivered or controlled by the Party seeking to rely on the definition and does not relate to any historical failures of Good Industry Practice that are outside of the control of the Party seeking to rely on the definition.

### 4 Code Specific Matters

#### Technical Skillsets

Personnel with an understanding of the STC and how it is used by Users.

#### Reference Documents

gym\_iae\_decision 23 May 2017 – Letter from Ofgem to the Gwynt-Y-Môr OFTO.

### 5 Solution

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, including the actions of any sub-contractor of that Party)*”.

### 6 Impacts & Other Considerations

This modification will have an impact on the STC and Connection and Use of System Code (CUSC). This will also improve any process 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?

This Modification does not have any impact on a Significant Code Review (SCR) or other significant industry change projects.

### Consumer Impacts

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”.

## 7 Relevant Objectives

Relevant Objective	Identified impact
(a) efficient discharge of the obligations imposed upon transmission licensees by transmission licences and the Act	Positive
(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	Positive
(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.	Positive
(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

This modification is expected to have a positive impact against Applicable STC Objectives A, C, E, as the proposed additional wording will improve the situation for any party which has to make reference to Force Majeure.

## 8 Implementation

This Modification should be implemented following a decision from the Authority.

## 9 Legal Text

To insert wording in Section J 'Interpretations and Definitions' 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, including the actions of any sub-contractor of that Party)*".

The revised definition will be as shown below, with the additional text in red.

### "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, including the actions of any sub-contractor of that Party**), 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:

- Refer this proposal to a Workgroup for assessment.