North Sea Transition Authority

North Sea Transition Authority
Lower Ground Floor
Sanctuary Buildings
20 Great Smith Street
London
SW1P 3BT
www.nstauthority.co.uk

SANCTION NOTICE

To: **Repsol North Sea Limited**[1]
Company Number: 01061863

Addresses: **Suite 1**
7th Floor 50 Broadway
London
SW1H 0BL

Date: **13 November 2024**

1. SANCTION NOTICE

1.1. For the reasons set out in this Sanction Notice, the North Sea Transition Authority ("**NSTA**") gives a Sanction Notice to Repsol North Sea Limited "**RNS**") for its failure to comply with a petroleum-related requirement ("**PRR**") and a Financial Penalty Notice which imposes on RNS a penalty of **£350,000** (three-hundred and fifty thousand pounds).

2. SUMMARY OF THE FAILURE TO COMPLY WITH A PETROLEUM-RELATED REQUIREMENT

2.1. Where there has been a failure to comply with a petroleum-related requirement, the NSTA may issue a sanction under Chapter 5 of the Energy Act 2016. A petroleum-related requirement includes a duty imposed under section 9C of the Petroleum Act 1998 to act in accordance with the current strategy or strategies produced under section 9A(2) of that Act for enabling the principal objective to be met.

2.2. This investigation concerned the conduct during the negotiation of a series of interrelated agreements for the transportation of oil and gas produced by the Flyndre facility through the Fulmar facility operated by RNS. The Flyndre facility remained shut-in after a period of planned maintenance to the Fulmar hub had been completed. This additional period of shut-in was caused by the termination of a series of agreements ("**the Agreements**") which had allowed the owners of the Flyndre facility (the majority owners being Total Oil UK Limited and later NEO UK Limited) ("**Flyndre Owners**") to transport oil and gas through the Fulmar facility. The failure to reach further agreement, which would have allowed the Fulmar facility to continue taking the Flyndre Owners' gas and oil, meant that the Flyndre facility remained shut-in (and did not produce) for the

[1] Repsol Sinopec North Sea Limited changed its name to Repsol North Sea Limited in November 2023.

period from **8 August 2020** to **13 August 2020.** On **13 August 2020** an interim agreement was reached between the Flyndre Owners and the owners of the Fulmar facility and the transportation resumed.

2.3. RNS was the owner and operator of the Fulmar platform and associated facilities. At the relevant times, Repsol Resources UK Limited ("**RSR**")[2] was the parent company of RNS. During the relevant period, RSR acted as the representative and agent of RNS for the purposes of conducting the renegotiation of the Agreements that are the subject of this Sanction Notice. As such, for the factual outline set out below, the acts of RSR are attributable to RNS.

2.4. In order to secure the effective delivery of the Central Obligation, the MER UK Strategy sets out Supporting Obligations, which are as binding as the Central Obligation. The Supporting Obligations clarify how the Central Obligation applies in certain circumstances and the Required Actions and Behaviours are obligations which apply to relevant persons when carrying out the Central and Supporting Obligations.

2.5. In taking the steps necessary to secure that the maximum value of economically recoverable petroleum is recovered, the Supporting Obligation in paragraph 16 of the MER UK Strategy required that RNS operated the Fulmar facility in a way that facilitated the recovery of the maximum value of economically recoverable petroleum from the region in which the Flyndre facility was situated.

2.6. The NSTA considers that, RNS in its approach to the renegotiation of the Agreements with the Flyndre Owners:

2.6.1. failed to *take the steps necessary to secure the maximum value of economically recoverable petroleum is recovered from the strata beneath relevant UK waters*. In failing to do this, RNS failed to comply with the Central Obligation in paragraph 7 of the Maximising Economic Recovery Strategy for the UK ("MER UK Strategy") (the Strategy in force at the relevant time);[3] and

2.6.2. failed to operate the Fulmar facility *in a way that facilitated the recovery of the maximum value of economically recoverable petroleum in the region* that the Flyndre facility was situated. In failing to do this, RNS failed to comply with the Supporting Obligation in paragraph 16 of the MER UK Strategy.

Each of these obligations are to be read with the Required Actions and Behaviours, including collaboration, as set out at paragraph 28 of the MER UK Strategy. Paragraph 28 is not a standalone obligation in the MER UK Strategy but applies when considering compliance with the obligations under the MER UK Strategy.

2.7. In this regard, the NSTA considers that RNS:

2.7.1. unreasonably limited the timeframe for the renegotiations of the Agreements to three months in a deliberate attempt to pressure the Flyndre Owners to enter into new terms more favourable to RNS with respect to the level of the tariff;

2.7.2. delayed the provision of information to the Flyndre Owners by which the Flyndre Owners could assess the RNS proposal until after RNS had issued the Termination Notice; and,

[2] Repsol Sinopec Resources UK Limited changed its name to Repsol Resources UK Limited in November 2023.
[3] MER_UK_Strategy_FINAL.pdf (publishing.service.gov.uk)

2.7.3. refused to extend the three month notice period of the termination notice to allow for the completion of the negotiations despite repeated requests by the Flyndre Owners for an extension to be granted.

2.8. This conduct led to the prolonged shut-in at the Flyndre facility. The NSTA further considers that the correspondence between the relevant parties at the time of the negotiations demonstrates that RNS was aware that its approach to the renegotiation risked a shut-in at the Flyndre facility; a risk that ultimately crystallised. The way RNS conducted the negotiations leading to the shut-in runs contrary to the Central Obligation in the MER UK Strategy – for relevant persons to *take the steps necessary to secure that the maximum value of economically recoverable petroleum is recovered from the strata beneath relevant UK waters*.

2.9. Further, in considering how to comply with its obligations under the Central Obligation and the Supporting Obligation, RNS was required among other things to give "*due consideration*" to the possibility that collaboration or co-operation with the Flyndre Owners "*might improve recovery, reduce costs or otherwise affect their compliance with the obligations arising from or under*" the MER UK Strategy, paragraph 28, which the NSTA considers it did not do.

2.10. Left unchallenged, this conduct presents a risk that other relevant persons participating within the UK continental shelf ("**UKCS**") could adopt the same or a similar approach. Having regard to the matters set out in section 8 of the Energy Act 2016, left unchallenged such conduct would likely impact adversely on the need to maintain a stable and predictable system of regulation and thereby discourage investment in the UKCS.

3. BACKGROUND

3.1. The Flyndre field is covered by UK licences P79 and P255. From **2 October 2018** to **31 July 2020** the Flyndre field was operated by Total Oil UK Limited ("**Total**") who was also the majority shareholder with a minority share being owned by Repsol Sinopec Zeta Limited, a company owned by RSR. During **July 2019**, Total sought to sell a package of assets, including the Flyndre assets, to Petrogas NEO UK Limited, with the aim of completing this sale during the first half of 2020. NEO Energy Holdings Limited was the parent company of Petrogas NEO UK Limited. Petrogas NEO UK Limited ("**NEO**") purchased the Flyndre assets on **31 July 2020** and, from this date, Total was replaced by NEO as both operator and co-owner of the Flyndre field. Thus, Total was the Flyndre Operator from **2 October 2018** to **30 July 2020** and NEO was the Flyndre Operator as from **31 July 2020**.

3.2. At the relevant time, RNS (the "**Fulmar Owner**") was the owner and operator of the Fulmar facility. The Fulmar field permanently ceased production on **8 October 2018**, following which it remained used for the transportation of product from the Flyndre, Auk and Clyde fields. In the run up to Fulmar ceasing production, discussions had taken place between interested parties regarding the long-term alternative to the services provided to the various fields by the Fulmar facility. Following Fulmar's cessation of production, the Fulmar Owner negotiated with the Flyndre Owners for an amendment to be added into both the Fulmar Gas Transportation Agreement ("**TA**") and the Fulmar Oil TA. This was in order to preserve the existing right, following Fulmar's cessation of production, to allow the Fulmar Owner to terminate the agreement on six months' notice upon Fulmar facility ceasing to produce. This negotiation took eight months and concluded on **6 June 2019.**

3.3. The Agreements consist of five contracts that provided the framework by which the Flyndre Owners transported oil and gas through the Fulmar facility. Issuing the Termination Notice on one of these contracts in effect brought an end to all the agreements between the Flyndre Owners and the Fulmar Owner, preventing the Flyndre Owners from transporting hydrocarbon liquids and gas through the Fulmar facility.

3.4. On **30 March 2020**, RNS, as the Fulmar Owner, informed Total via letter that the Fulmar Owner's continued provision of service to the Flyndre Owners was uneconomic in that the "*export services are currently provided at a significant loss to the Fulmar owner.* RNS goes on to state:

> *"It has become apparent that, in the short to medium term, the arrangements in place between the Fulmar Owner and the Flyndre Owners are required to change to render the operation of the facility commercially viable. Therefore, the Fulmar Owner would like to discuss amending the existing agreements to put in place a cost sharing mechanism by which the Flyndre Owners shall pay a proportion of uplifted operating and capital expenditure based on total throughput. Such mechanism would support the continuity of the Flyndre service. For the avoidance of doubt, it is not currently the Fulmar Owner's intention to serve notice of termination under the relevant agreement/s as it believes alignment can be reached between the parties through early and open engagement.*
>
> *The Fulmar Operator therefore requests a meeting with the Flyndre Operator within the next two weeks to agree a way forward."*

It was only at this stage that Total was formally informed that RNS wanted to change the terms of the cost of transportation in the Fulmar Gas TA and the Fulmar Oil TA.

3.5. The proposed change of tariff would increase transportation charges from **£[redacted] per barrel** to approximately **£[redacted] per barrel**. At the time there had been a large reduction in the price of oil to below USD $20 per barrel.

3.6. On **16 April 2020,** the Flyndre Owners met following receipt of the **30 March 2020** letter. On **16 April 2020**, RNS sent an email to Total stating:

> *"As per our letter dated 30 March 2020, the Fulmar Owner is seeking to put in place a cost sharing mechanism by which the Flyndre Owners shall pay a proportion of uplifted operating and capital expenditure based on total throughput associated with the Fulmar facility. It is our intention to conclude this process amicably, without the need to formally issue a termination notice under the Flyndre – Fulmar Gas TA, to ensure continued service to the Flyndre Owners. Notwithstanding this, we wish to work to the 90 day period as set out in the agreement so that new terms can be in place by 1 July 2020 (from 30 March 2020).*
>
> *To achieve this, we believe the following timeline is reasonable:*
>
> *30 April: Confirmation from Flyndre Operator that it accepts the principles set out above and the timeline on which new terms are put in place*
> *15 May: Fulmar Operator to issue draft agreement/s to the Flyndre Operator*
> *30 June: Fully termed agreements executed*
> *1 July: New agreements effective*

Should the Flyndre Operator wish to propose an alternative commercial structure or timeline then I would request that this is agreed between us by the 30 April. The Fulmar Operator is flexible in considering an extended timeline on the basis that the parties can agree upfront, in writing, that any new agreements will have an effective date of 1 July 2020."

3.7. Between **16 April 2020** and **30 April 2020**, Total facilitated the Flyndre Owners' response to RNS, which included a request for further information from RNS. On **27 April 2020**, Repsol Sinopec Zeta Limited (a subsidiary of RSR) in its capacity as a Flyndre Owner as part of the Flyndre Joint Venture ("**JV**"), acknowledged the reasonableness of Total's request for more information.

3.8. On **30 April 2020**, Total emailed RNS seeking the following information: relative throughput of contributing fields; cost projections for the Fulmar facilities; and a detailed breakdown of those cost items for which the Flyndre Owners would be liable should discussions progress. Total informed RNS that the Flyndre Owners could not agree to a cost-sharing mechanism without further information regarding the economic implications for the Flyndre Owners. Total, on behalf of the Flyndre Owners, provided no agreement or alternative proposal for process/timeline stating that it would review RNS's proposal and provide a more informed response once it had received the requested information.

3.9. On **1 May 2020**, RNS issued the formal Termination Notice of the Fulmar Gas TA, effective from 00:01 hours on **6 August 2020**. It stated the termination was issued as it was not commercially viable for the current terms between the Flyndre Owners and the Fulmar Owner to continue. RNS stated that the limited timeline for the negotiation was imposed to "*protect the Fulmar Owner's position and incentivise the parties to work to a firm timetable*".

3.10. The termination was issued under the clause of the Fulmar Gas TA which provides 90 days' notice for termination. RSNS did not issue the notice pursuant to the clause of the Fulmar Gas TA which provides six months' notice for termination (as amended on 6 June 2019). RSNS has stated to the NSTA that the fact that the Termination Notice followed shortly after Total's request for further information was coincidental.

3.11. On **7 May 2020**, Total emailed RNS stating that the Flyndre Owners were being asked to accept the principle of a cost sharing mechanism for the services of the Fulmar facilities without: demonstrating that the Gas Export Compressor and associated systems had ceased to be commercially viable; explaining how the uplift in costs was reasonable in the circumstances and consistent with MER; or providing the information requested on **30 April 2020**. Total went on to state that they had concerns that the termination jeopardised ongoing Flyndre production. Total stated that the allotted time of 90 days was below the guidance set out in the NSTA's "Commercial Alignment and Delivery Stewardship Expectation 7" ("**SE7**") (which suggests six months), did not take into account the potential for significant issues arising as part of those negotiations or corporate governance authorisation procedures. In all, Total stated that 90 days presented a "…*completely unrealistic timeframe*".

3.12. On **11 May 2020**, RNS responded to Total stating that:

"The Fulmar Operator has sought to engage with the Flyndre Operator since 30 March, setting out its position and a clear timeline for any process. Despite our request for alignment on a way forward, no clarity was provided by the Flyndre Operator on either the process or the timeline in your email of 1 May. ***As such, the Fulmar Operator felt it prudent to issue the termination notice to gain certainty on a timeline under which***

> ***commercially viable terms could potentially be put in place.*** *The notice was issued in accordance with the terms of the Fulmar – Flyndre Gas TA as agreed between the Fulmar Owners and the Participating Flyndre Owners. Repsol Sinopec has informed the OGA[4] of its decision to proceed on this basis during its regular engagement meetings which has of late focussed on the challenging economic environment we find ourselves in driven by the COVID-19 pandemic.* ***This apart, we aim to adhere to regulatory guidance where we can, so far as it does not conflict with the terms or obligations set out in any binding agreements in place between the parties.*** *The Fulmar operator will provide the information you request as part of our submission of draft terms in accordance with the timeline we proposed on 16 April".* (Emphasis added)

3.13. On **15 May 2020**, RNS provided Total with a Flyndre Economic Calculation Support Pack, a draft fully termed Fulmar – Flyndre Transportation Agreement, and a marked-up extract of the Clyde – Flyndre Transportation, Processing and Operating Services Agreement.

3.14. By email dated **21 May 2020**, RNS indicated to Total that Flyndre's capacity through the Clyde facilities might be limited in future years if the Affleck re-development went ahead through the Clyde platform. The implication was that reducing the amount that the Fulmar facilities would transport from the Flyndre platform would likely have reduced Flyndre's capacity and therefore its economic viability.

3.15. In a letter dated **2 June 2020**, Total asked RNS to rescind the Termination Notice to allow time for a collaborative effort. Total believed that, to reach a consensus, it was necessary to develop a hub strategy and to conduct a detailed open-book economic modelling exercise. On **5 June 2020**, RNS responded to the 2 June 2020 letter referencing the challenges associated with the economic climate at the time and the impact that had on the viability of their assets. RNS stated that it did not consider that developing a hub strategy was the most efficient means by which to agree terms in a timely manner, particularly as the Flyndre Operator, Total, had already asserted that a sharing of costs based on production would not be economic. RNS asked Total for its economic model so that it could understand Total's concerns. RNS also stated the following:

> *"We have not yet seen sufficient progress or engagement from the Flyndre Operator to suggest that withdrawal of the notice will support a timely agreement of new terms. However, should progress be made in accordance with the timeline below [in their 16 April 2020 email], we would be willing to discuss an interim agreement to allow production to continue beyond the termination date pending execution of fully termed agreements."*

3.16. On **18 June 2020**, RNS issued a revised temporary proposal that would commence on **1 July 2020** but would terminate on **6 November 2020**. The interim tariff would be £[redacted] per barrel, with a reconciliation of tariff payments backdated to **1 July 2020** based on the final agreed terms.

3.17. On **29 June 2020**, NEO, on behalf of the non-conflicted Flyndre owner (i.e. Total, and excluding Repsol Sinopec Zeta Limited) proposed to continue transporting oil and gas through the Fulmar facilities on the existing terms through to **30 November 2020**. RNS rejected this proposal. By this point, it appears that NEO had taken over as the lead

[4] *The North Sea Transition Authority (NSTA) is the business name of the Oil and Gas Authority (OGA).*

negotiator with RNS, reflecting NEO's pending purchase of Total's interest in the Flyndre facility.

3.18. On **30 June 2020**, Total emailed RNS, copying in NEO, stating that they were not in a position to agree a proposal that would *"…materially increase the Flyndre oil TA tariff to facilitate such an extension."* Total went on to state that the RNS cost sharing proposal failed to include key aspects, particularly related to deferred decommissioning costs. Total restated their request that an open book model exercise should be conducted.

3.19. On **1 July 2020**, RNS responded by email to Total, copying in NEO, setting out that it was no longer prepared to discuss an extension of the termination notice, preferring to focus discussions on the terms for new agreements. RNS set out that "*The [Greater Fulmar Area – ("**GFA**")] Owners are currently engaging with two other field groups for access to the facilities and this may have a direct impact on our draft proposal.*" Further, "*[a]s a matter of prudence and good oil field practice, the Clyde Operator will seek engagement with the Flyndre Operator at the appropriate time to ensure a safe planned shutdown of the Flyndre facilities, should it be required, noting the coincidence of the planned annual shutdown.*"

3.20. Further, on **3 July 2020**, RNS stated by email to NEO (copying in Total) that:

> "*We appear to differ in our understanding and expectations for next steps. Having spent several months discussing timetables for negotiation, and whether or not open-book analysis is the most efficient approach.*
>
> *[…]*
>
> *For the avoidance of doubt, and as stated in our previous email, the offer of an extension to the termination period was rejected by the Flyndre Owners and will not be revisited to ensure focus is now placed on execution of fully termed agreements. Should these not be in place by 6 August, Repsol Sinopec will be unable to accept Flyndre production at the entry point.*"

3.21. On **9 July 2020**, Total sought to continue discussions. Total stated that "*We have agreed with Repsol (GFA) to use the time between now and 6th Aug to actively engage on principles before discussing an extension of the termination notice."* In its email, Total recognised the real possibility of a shut-in if an agreement could not be reached.

3.22. On **14 July 2020**, NEO set out its principles to RNS for Flyndre use of the Fulmar facilities. This included: "*Retain a fixed tariff structure over Fulmar […] tariff should be reflective of cost of services and usage of services i.e. exclude decommissioning activity – which should contribute to opex given decomm activity will benefit if ongoing in budget year or not […] Ensure Flyndre are in control of their own destiny: Flyndre can not be 'locked in' to participating in major capital and opex projects.*" Subsequently, on **17 July 2020**, RNS removed capital expenditure from the negotiations.

3.23. *Between* **15 July 2020** and **29 July 2020**, negotiations between RNS, Total and NEO continued: "*Following a meeting on 15 July, a follow up meeting to discuss information on decommissioning and an open book model provided by the GFA Owners was held on 20 July. A subsequent meeting was arranged for Thursday 23 July, this meeting was delayed until 27 July as the Flyndre Operator was meeting with management. The meeting on the 27 July was then subsequently delayed* 'as some of [NEO's] ELT were on holiday.'"

3.24. On **19 July 2020**, the Flyndre field was shut-in due to gas compression issues, two days ahead of the planned GFA shutdown for maintenance.

3.25. By **20 July 2020**, RNS had provided the Flyndre Owners with an open book model and held a meeting with the Flyndre Owners to discuss it. However, on **26 July 2020**, RNS persisted with a cost sharing proposal, but through a "*Cost Share Pool*", based on a percentage of total production throughput at each facility. This proposal was similar to that set out on **18 June 2020** and would be agreed through an extension letter prior to the termination date. This proposal was put forward on the basis that it would allow production to restart after the planned shut-in through to **30 September 2020**. This proposal was rejected by NEO.

3.26. On **27 July 2020**, RNS emailed NEO, copying in Total, stating that they had shared all the relevant information that had been requested, but declared that there was a fundamental difference in their respective positions and making clear their frustration at the negotiations being delayed for a week to allow NEO to obtain the necessary mandates to set out their position. RNS went on to state:

> *"It now appears that we find ourselves in a position where it is unlikely that we will be able to agree principles on the terms or the extension prior to expiry of the termination notice.* ***If this is the case, Flyndre will be unable to return to production following the shutdown as no mechanism will be in place to allow for it to do so.***" (emphasis added)

3.27. The Flyndre field did not re-start production when the GFA shutdown finished on **8 August 2020**.

3.28. An interim agreement proposal from RNS was tabled on **10 August 2020**. The "*in principle*" approval from all Flyndre JV partners was received on **11 August 2020**, with the pre-execution draft of the interim agreement received from RNS on **12 August 2020**, followed by the execution version of the same. Approvals from the Flyndre JV partners was obtained on **13 August 2020** with notification being given to RNS that afternoon allowing for the restart of the Flyndre facility.

3.29. This temporary agreement extended through to **30 June 2021** and there was a further extension to **31 October 2021**. It is of note that a long-term agreement was never reached. RNS and NEO instead reached a commercial resolution through the transfer of assets between the two companies, entailing that RNS eventually took over ownership of the Flyndre field in **November 2021**.

3.30. The forecast daily losses that RNS expected to arise from the interim agreement entered into on **13 August 2020** were as follows:

> 2020 - £[redacted] per day.
> 2021 - £[redacted] per day.

3.31. RNS has not provided any evidence to date to support this assertion or these figures.

4. FAILURE TO COMPLY

4.1. The principal objective as set out in section 9A(1) of the Petroleum Act 1998 is to maximise the economic recovery of UK petroleum, in particular through: (a) the use of equipment in the petroleum industry (including upstream petroleum infrastructure), and

(b) collaboration among holders of petroleum licences, operators under petroleum licences and owners of upstream petroleum infrastructure.

4.2. Section 9A(2) of the Petroleum Act 1998 states that the NSTA must produce one or more strategies for enabling the principle objective to be met. The strategy applicable to this matter is the MER UK Strategy, issued in 2016. RNS was at the relevant time the owner of a relevant offshore installation.

4.3. By section 9C(5) and (6) of the Petroleum Act 1998, RNS was required to act in accordance with the current strategy when planning and carrying out its activities as the owner of the installation or infrastructure (including the development, construction, deployment and use of the infrastructure or installation).

4.4. Pursuant to section 42(1) Energy Act 2016, where there has been a failure by a person to comply with a petroleum-related requirement the NSTA can issue a Sanction Notice. A petroleum-related requirement includes a duty placed on a person required to act in accordance with the MER UK Strategy for enabling the principal objective to be met.

4.5. The MER UK Strategy sets out, as a Central Obligation, that: *"[r]elevant persons must, in the exercise of their relevant functions, take the steps necessary to secure that the maximum value of economically recoverable petroleum is recovered from the strata beneath relevant UK waters.*"

4.6. The MER UK Strategy included several supporting obligations, which include, at paragraph 16, that: *"Owners and operators of infrastructure must ensure that it is operated in a way that facilitates the recovery of the maximum value of economically recoverable petroleum from (as applicable):(a) the region in which it is situated; and (b) where infrastructure is used by or for the benefit of others, the regions in which those others are situated.*" Further, paragraph 17 of the MER UK Strategy states that the obligation in paragraph 16 includes: allowing access to infrastructure on fair and reasonable terms and, where the infrastructure is not able to cope with demand for its use, prioritising access which maximises the value of the economically recoverable petroleum.

4.7. The MER UK Strategy included specific Required Actions and Behaviours at paragraph 28 regarding relevant persons cooperating and collaborating. Those Required Actions and Behaviours are obligations which apply to relevant persons when carrying out the Central and Supporting Obligations. In summary, paragraph 28 states that when considering how to comply with the obligations in the MER UK Strategy, relevant persons must consider whether collaboration or co-operation could reduce costs, increase recovery of economically recoverable petroleum or otherwise affect their compliance with the obligation in question - and give due consideration to such possibilities.

4.8. The NSTA has issued guidance to industry for the purposes of assisting industry with complying with its obligations under the MER UK Strategy. In **July 2019**, the NSTA issued SE7 which provides indicative timeline durations for negotiating, executing and carrying out and issuing approvals for different types of agreements. For a Third-party processing agreement, the indicative timeline is six months. SE7 states that "… *if proposed timelines for completion of an activity differ significantly from the [NSTA's] indicative durations, and/ or the activities take longer than expected, parties should be prepared to explain and account for this to the [NSTA's], and demonstrate that MER UK has not been compromised as a result.*"

4.9. In 2017, the industry body, Oil and Gas UK (now Offshore Energies UK), issued its Industry Code of Practice on Access to Upstream Oil and Gas Infrastructure on the UK Continental Shelf. This is a non-statutory Code of Practice developed in consultation with industry and with the NSTA (OGA as was). At paragraph 8 it provides that: *"(5) Equally, it is not acceptable that pursuing a rapid conclusion to negotiations should be used as a strategy to extract commercial advantage in circumstances where there are legitimate issues that require further research, investigation, resolution or negotiation".* Although this is a voluntary code of practice, the parties have signed up to it and it should inform the behaviours of the parties.

4.10. In deciding which type and level of sanction to apply to the failure to comply, the NSTA should have in mind various matters including: its obligations under the relevant Strategy in place at the time,[5] those matters listed at section 8 of the Energy Act 2016, in particular the need to maintain a stable and predictable system of regulation which encourages investment in relevant activities,[6] and relevant NSTA guidance.

Identified Failure to comply with the MER UK Strategy

4.11. The Agreements between the Fulmar Owner and the Flyndre Owners were commercial in nature. It is entirely open to parties to a commercial agreement to seek to renegotiate the terms of that agreement. Further, from RNS' perspective, it appears to have had good reason to seek a renegotiation following the cessation of production of Fulmar facility and its satellite fields. The running costs of the Fulmar platform would otherwise have been predominantly funded by RSR as owner of the Clyde and Auk fields. However, in renegotiating the terms of access to the Fulmar facilities, RNS was under a statutory obligation to "*take the steps necessary to secure that the maximum value of economically recoverable petroleum is recovered from the strata beneath relevant UK waters*" (MER UK Strategy, Central Obligation). RNS was also under a statutory obligation to operate the Fulmar facility "*in a way that facilitates the recovery of the maximum value of economically recoverable petroleum*" in the region that the Flyndre facility was situated (MER UK Strategy, paragraph 16 Supporting Obligation, Asset Stewardship).

4.12. Further, in considering how to comply with its obligations under the Central Obligation and the Supporting Obligation, RNS was required to give "*due consideration*" to the possibility that collaboration or co-operation with the Flyndre Owners "*might improve recovery, reduce costs or otherwise affect their compliance with the obligations arising from or under*" the MER UK Strategy (paragraph 28).

4.13. Contrary to these obligations, it is considered by the NSTA that RNS approached the renegotiation of the access to the Fulmar facility in a manner that applied undue pressure on Total and NEO by risking an indefinite shut-in of the Flyndre facility. This approach led to a prolonging of the shut-in of the Flyndre facility.

RNS unilaterally setting an unrealistic timetable

4.14. RNS issued a termination notice to Total stating that it wished to *"put in place more equitable terms as soon as reasonably practicable"* and in order to *"incentivise the parties to work to a firm timetable"*. From this and the other correspondence at the time, it appears that RNS used termination as a means of unilaterally imposing a three-month timetable on the negotiations with a view to seeking a commercial advantage in those negotiations.

[5] These failures occurred in 2020 when the MER UK Strategy was in place. The OGA Strategy is currently in place.
[6] Energy Act 2016., s. 8.

4.15. RNS has asserted that the Flyndre Operator consistently refused to move to a cost share arrangement and that it appeared to RNS that there was no prospect of agreeing a commercial arrangement that would provide a long-term basis on which it would be possible to continue GFA Hub operations.

4.16. There does not appear to be any evidence before the NSTA to substantiate RNS' assertion that Total consistently refused to move to a cost share arrangement. Rather, from the correspondence at the time of the negotiations, in particular Total's email of **20 April 2020**, Total did not consider that it was in a position to accept "*the principles*" of a cost share arrangement without further information from RNS.

4.17. A timetable of three-months might have been feasible where the central premise, moving to a cost-sharing structure, was already agreed between the parties. However, this was not the case.

4.18. In providing such a limited period for the renegotiation of the Agreements, RNS failed to take into consideration the following factors which would have resulted in additional time being required to renegotiate:

4.18.1. The interlinked nature of Agreements had the effect that the issuing of the Termination Notice on a single agreement cancelled all the Agreements upon notice; requiring at the very least the renegotiation of the commercial terms of each of these agreements.

4.18.2. The need for Total (and later NEO) as the Flyndre Operator to work with the other Flyndre Owners to achieve a JV response. RNS was also aware that Total was in the process of transferring its interest in Flyndre to NEO, entailing that NEO would need to understand how the RNS proposal impacted upon the profitability of the Flyndre facility.

4.18.3. The UK wide restrictions as a result of the COVID crisis which commenced at the end of **March 2020**. Allowance should have been made for the challenges presented by this when seeking agreement as to the timetable for negotiation.

4.18.4. RNS's previous experience regarding the time taken to amend the agreements between the Flyndre Owners and the Fulmar Owner. For example, it had previously taken RNS and Total eight months to negotiate and agree an amendment to the Fulmar Gas TA and the Fulmar Oil TA to provide the Fulmar Owner's the right to terminate on six months' notice in circumstances where Fulmar permanently ceased production.

4.18.5. Adding complexity to the negotiation by introducing additional aspects. On **21 May 2020**, RNS raised with Total that, if the Affleck re-development went ahead and was tied-in to the Clyde platform, then Flyndre's capacity through the Clyde facilities might be limited in future years. Further, on **1 July 2020**, RNS raised further doubts about available capacity. Adding uncertainty and complexity to the negotiations increased the risk of delay as the parties needed time to consider the implications arising from these fresh issues.

4.19. RNS state that at the relevant time the Fulmar facilities had been running at a loss of over £[redacted] per day, a loss that continued from **2018** until production restarted at the Flyndre facility in **August 2020**. RNS could have raised this issue explicitly with the parties before **30 March 2020** (if it wanted to stick to the **5 August 2020** deadline) or, considered the realities of the commercial renegotiation and adjusted the deadline to a

date after **5 August 2020** to allow more time for the parties to renegotiate the Agreements. However, the NSTA considers that the first time this issue was raised in any meaningful way by RNS was on **30 March 2020**.

Provision of information

4.20. Having unilaterally set a three-month timetable for the negotiations, RNS then failed to provide relevant information to the Flyndre Operator within a reasonable time to enable the Flyndre Owners to meaningfully engage in RNS's proposals. For example:

4.20.1. In its email of **30 April 2020**, Total sought information to understand the reasoning behind the proposed change in pricing, specifically requesting information of RNS regarding relative throughput of contributing fields; cost projections for the Fulmar facilities; and a detailed breakdown of those cost items for which Flyndre would be liable should discussions be progressed further. Total informed RNS that the Flyndre Owners could not agree to a cost-sharing mechanism without further information. On **27 April 2020,** the reasonableness of this request was acknowledged by another RSR subsidiary, Repsol Sinopec Zeta Ltd, in its capacity as JV partner for Flyndre. RNS provided Total with a Flyndre Economic Calculation Support Pack on **15 May 2020**. RNS failed to factor in that the Flyndre Operator would require time to request information and analyse it within the three-month period provided.

4.20.2. A cost-share basis would mean that Total and its JV partners would have to pay considerably more to use the Fulmar facilities. The proposed change would increase transportation charges incurred by Flyndre JV **from £[redacted] per barrel** to approximately **£[redacted] per barrel** at a time when there had been a large reduction in the price of oil to below USD $20 per barrel. While such a substantial change to the pricing structure regarding the transportation of oil and gas from Flyndre might have been entirely justified, the nature of such a change would necessitate communication of that justification and evidence regarding the reasoning behind what was proposed. On **2 June 2020,** Total requested a detailed open book economic modelling exercise. The need for this information was not accepted by RNS until approximately **20 July 2020** and therefore was not provided until late in the negotiation process.

4.21. The inclusion of capital as well as operating costs within the cost share proposal meant that a greater level of detail was sought by the Flyndre Owners regarding these potential capital expenditure costs and the extent to which the Flyndre owners would have any say in such capital projects. RNS failed to provide this information to the Flyndre Owners, eventually removing these capital expenditure provisions from the negotiation (**17 July 2020**). This suggests that the capital sharing costs were being used as a negotiating position by RNS, an approach that seemingly added to the timescales for the negotiation.

4.22. The Flyndre Operator sought information on the benefits of deferring decommissioning on the basis that the Flyndre tie-in to the Fulmar facility deferred the need to decommission Fulmar. RNS did not engage with Total and NEO's requests regarding deferred decommissioning.

4.23. Due to the matters raised in paragraph 3.4 to 3.30 above, a timescale of six-months or more would have been more realistic, collaborative and cooperative for concluding the negotiations. A six-month timeline would have reflected what is expected for third party

host service agreements proposed in SE7 and been a more appropriate timeframe in this case.[7]

RNS pressurised the negotiations

4.24. While RNS was entitled to terminate a commercial contract in accordance with contractual terms agreed between the parties, it had a duty to ensure that it did so in a way that accorded with its obligations under MER UK Strategy.

4.25. Through issuing the Termination Notice and refusing to extend the effective period of the termination, RNS created a pressurised environment during negotiations. This was seemingly in order to gain a commercial advantage. While not directly enforceable by the NSTA, it is notable that paragraph 8(5) of the industry Code of Practice[8] expressly identifies, and deems unacceptable, the pursuit of a rapid conclusion to negotiations as a strategy to extract commercial advantage in circumstances where there are legitimate issues that require further research, investigation, resolution or negotiation.

4.26. The impending termination of the Agreements in conjunction with the transfer of the Flyndre assets to NEO created a confluence of challenges that appeared to provide a negotiating advantage to RNS. RNS could have avoided placing this undue pressure on the negotiations (thereby supporting the Central Obligation and Supporting Obligation in paragraph 16 of the MER UK Strategy) through bilaterally agreeing realistic timeframes for the negotiations to take place. Further, RNS could have supported those discussions with the provision of appropriate information to the Flyndre Owners to enable them to properly consider RNS's proposals.

4.27. As set out in paragraphs 4.14 to 4.19 above, RNS increased the pressure on the negotiation process by refusing requests to extend the notice period for the Termination Notice and referencing the imminent shutting in of the Flyndre facility. For example, on **5 June 2020**, as set out in paragraph 3.15 above, RNS rejected this approach but stated that they were "*…willing to discuss an interim agreement to allow production to continue beyond the termination date pending execution of fully termed agreements*" if there was substantial progress in meeting RNS's 16 April 2020 timeline.

4.28. Further, on **1 July 2020**, RNS stated that it was no longer prepared to discuss an extension of the Termination Notice, preferring to focus discussions on the terms for new agreements. RNS made clear its negotiation stance by stating, "*[a]s a matter of prudence and good oil field practice, the Clyde Operator will seek engagement with the Flyndre Operator at the appropriate time to ensure a safe planned shutdown of the Flyndre facilities, should it be required, noting the coincidence of the planned annual shutdown.*"

RNS's concessions during the negotiations

4.29. Notwithstanding the behaviours described above, RNS provided apparent concessions during the negotiations to Total/NEO. For example, on **7 May 2020**, Total, on behalf of the Flyndre Owners, emailed RNS stating that the "*…Fulmar Operator asked the Flyndre Owners to accept that principle without: […] (ii) explaining why an uplift on costs is reasonable in the circumstances and consistent with MER UK.*" RNS explained to the NSTA that "*[w]hilst a request for an uplift is consistent with [NSTA] Guidance given the maturity of the facilities, this was withdrawn as an early concession in order to facilitate productive and expedited negotiations.*"

[7] Commercial Alignment and Delivery Stewardship Expectation 7, July 2019, para. F1.
[8] Industry Code of Practice on Access to Upstream Oil and Gas Infrastructure on the UK Continental Shelf.

4.30. While RNS provided this perspective in relation to an uplift, it is not correct that the NSTA guidance supports requests for uplifts. NSTA guidance states that "*Owners' overheads and risks e.g. in relation to ongoing liabilities would be captured as identified element of cost rather than as an uplift on costs.*"[9] In any event, this was against a backdrop whereby RNS' proposed change of tariff would increase transportation charges from £[redacted] per barrel to approximately £[redacted] per barrel. Further, RNS agreed to an open book model, which was provided by the GFA Owners on **20 July 2020** (though as it was first requested by Total on **2 June 2020** it cannot be said to have been a timely concession).

4.31. Whilst RNS made some concessions during the negotiation, it stuck steadfastly and unreasonably to the date that the Termination Notice became effective, even when there remained clear areas of dispute between the parties. Whilst the making of concessions by RNS could be seen as a standard part of a negotiation, the ironing out of these areas of dispute adds to the timescales by which the negotiations could be completed and should have led to revisions in the timeframe for the Termination Notice. It is of note, in this respect, that full agreement was never reached, instead a series of interim agreements were put in place to extend Flyndre's ability to transport oil and gas through the Fulmar facility. Eventually the matter was resolved through an exchange of assets between RSR and NEO, transferring Flyndre to RSR's full ownership.

Conclusion

4.32. In taking the steps necessary to secure that the maximum value of economically recoverable petroleum is recovered, the Supporting Obligation in paragraph 16 of the MER UK Strategy required that RNS operated the Fulmar facility in a way that facilitated the recovery of the maximum value of economically recoverable petroleum from the region in which the Flyndre facility was situated.

4.33. In considering how to comply with the Central Obligation and the Supporting Obligation in paragraph 16, paragraph 28 of the Strategy required RNS to:

4.33.1. consider whether collaboration or co-operation with other relevant persons (Flyndre Owners) could reduce costs, increase recovery of economically recoverable petroleum or otherwise affect its compliance with the Central Obligation and Supporting Obligation in paragraph 16; and

4.33.2. where it was considered possible that such collaboration or co-operation might improve recovery, reduce costs or otherwise affect its compliance with obligations arising from or under the Strategy, RNS was required to give due consideration to such possibilities.

4.34. There is evidence that RNS appreciated that a failure to reach an agreement in the limited time available would lead to an indefinite period of shut-in at the Flyndre facility. RNS utilised this fact as a means of applying pressure on the Flyndre Owners (by refusing to extend or to countenance extending the Notice period for the Termination Notice) with an apparent view thereby to achieving more favourable commercial terms. By their conduct RNS risked prolonging the shut-in. Ultimately, this risk crystallised resulting in RNS, as the owner and operator of the GFA, failing to ensure that it recovered the maximum value of economically recoverable petroleum from where infrastructure is used by or for the benefit of others.

[9] NSTA Guidance on disputes over Third Party Access to Upstream Oil and Gas Infrastructure, 7 November 2022, para. 78.

4.35. In light of this, and the conduct set out in paragraphs 4.14 to 4.28, it is considered that RNS:

4.35.1. *Did not* take the steps necessary to secure that the maximum value of economically recoverable petroleum is recovered from the strata beneath relevant UK waters and therefore will have breached the Central Obligation.

4.35.2. *Did not* ensure that the Fulmar facilities were operated in a way that facilitated the maximum value of economically recoverable petroleum from the region in which it was situated and, in owning or operating that infrastructure, did not ensure that it was used by or for the benefit of others within the region which those others are situated.

4.35.3. In conducting itself in that way *it cannot be said* to have complied with the Required Actions and Behaviours in that it did not give due consideration to how collaboration and co-operation could improve recovery as required under paragraph 28 of the MER UK Strategy.

4.36. Through its conduct, it is considered that RNS failed to comply with the Central Obligation in paragraph 7 MER UK Strategy, the Supporting Obligation in paragraph 16 MER UK Strategy, and the Required Actions and Behaviours in paragraph 28 MER UK Strategy ("**the Breach**").

5. THE SANCTION WARNING NOTICE

5.1. Sanction Warning Notices were issued to RNS on **10 August 2023** and **5 June 2024**. The Sanction Warning Notice issued on **10 August 2023** outlined the factual allegations and reasons for the finding against RNS that there had been a failure to comply with a petroleum-related requirement and RNS were invited to provide representations in response, which RNS provided on **22 September 2023** and **2 February 2024.** The Sanction Warning Notice issued on **5 June 2024** took a fresh minded-to decision and contained limited revisions of the factual outline and reasons for finding that there had been a failure to comply with a petroleum-related requirement in addition to the setting out the sanction that the NSTA was minded to impose on RNS for this failure. RNS were further invited to make representations in response to this Sanction Warning Notice, which RNS did on **17 July 2024**.

A summary of the representations provided by RNS to both Sanction Warning Notices is set out at **ANNEX A** along with the NSTA's response to these representations.

6. THE SANCTION IMPOSED

6.1. The NSTA issues this Sanction Notice requiring RNS to pay a financial penalty of **£350,000** (three-hundred and fifty thousand pounds) (the "**Financial Penalty**") within 30-days of the date of this Sanction Notice, to the NSTA in respect of the Breach, which will be paid to HM Treasury.

6.2. In arriving at the level of the proposed Financial Penalty the NSTA has had regard to those matters listed at section 8 of the Energy Act 2016. The matter that is relevant here is the need to maintain a stable and predictable system of regulation which encourages investment in relevant activities. Taking action in respect of the Breach demonstrates to operators, licensees and the public the importance that the NSTA places on the fulfilment of the requirements in the MER Strategy and current Strategy, which in turn will encourage future compliance of those obligations. More broadly, the action taken by the NSTA here will maintain public and investor confidence in the UKCS by

demonstrating how the NSTA is acting to ensure that regulatory obligations are complied with.

6.3. The central objective of the Financial Penalty in this Sanction Notice is deterrence, with the penalty level being set at a sufficient level to reflect this and the seriousness of the Breach. Taking enforcement action in respect of poor behaviour between actors in the UKCS helps to maintain the obligations of the MER UK Strategy, the OGA Strategy and a stable and predictable system of regulation by demonstrating how the NSTA is acting to ensure that regulatory obligations are complied with.

6.4. The other available sanctions under the Energy Act 2016 (e.g. enforcement notice, licence revocation notice or an operator removal notice) are not appropriate here, in particular noting that the parties have already renegotiated access to the Fulmar facility.

Consideration of the NSTA's Sanction Guidance and Financial Penalty Guidance

6.5. As set out in paragraph 24 of the Sanctions Procedure Guidance[10] and paragraph 16 of the Financial Penalty Guidance, the NSTA considers that any penalty should among other things be:

6.5.1. Effective in addressing the underlying cause of the failure to comply;

6.5.2. Dissuasive of future failure to comply, either by the person or, further to publication of the Sanction Notice, other persons in similar circumstances; and

6.5.3. Proportionate to the significance of the failure in the context of the petroleum-related requirement and the impact on the relevant persons.

6.6. Paragraph 17 of the NSTA's Financial Penalty Guidance sets out various matters that the NSTA may also take into account when determining the amount of a financial penalty, as follows:

The extent to which RNS may have sought to benefit from the failure to comply

6.7. RNS used the threat of a continued shut-in to seek to gain a negotiating advantage over the Flyndre Owners. In a bid to apply pressure on the negotiations with the Flyndre Owners, RNS unilaterally imposed a three-month timeline to reach an agreement, which it refused to extend to avoid the risk of a continued shut-in crystallising despite the presence of what appeared to be legitimate issues between the parties. RNS did not take active steps to collaborate given it set an unrealistic timetable, pressurised the negotiations, and failed to provide information when requested.

Whether RNS gained as a consequence of the failure to comply

6.8. RNS gained from its termination and renegotiation of the Agreements. Flyndre's tie-in with Fulmar facilities moved to an interim agreement on terms more beneficial to RNS. While it is of course legitimate for commercial organisations to seek to minimise their costs and seek profitability, they should not seek to secure a preferential bargaining position by threatening to shut-in other relevant persons.

[10] NSTA Sanction Procedure, version 2, May 2019.

Severity of failure to comply

6.9. The severity of the failure to comply is related to the negative impact on the attractiveness of the UKCS as a place to invest, as discussed above.

The degree of harm caused, or increased cost incurred, by the failure to comply

6.10. The harm in this case goes to the commercial behaviours of relevant persons within the UKCS. If such behaviours are left unchallenged, such conduct is highly likely to impact negatively on the attractiveness of the UKCS as a place to invest. Further, this conduct was not limited to the threat of an indefinite shut-in. RNS was prepared to and did carry out that threat, keeping Flyndre shut-in until RNS achieved terms that were acceptable to it. In particular, it is considered that such conduct directly harms confidence in the NSTA to oversee "*a stable and predictable system of regulation which encourages investment in relevant activities*", a matter which NSTA must have regard to under section 8 of the Energy Act 2016 when exercising its functions.

6.11. While approximately 12,000 barrels of oil were not produced from the Flyndre facility during this extended shut-in period, at the estimated cost due to loss of production during that period amounting to approx. £350,000 to £450,000, it is difficult to calculate the specific financial harm caused as the production of the barrels was deferred.

Whether there are any relevant Industry Codes of Practice

6.12. By setting an unrealistic timetable, RNS failed to act in accordance with paragraph 8 of the industry Code of Practice.[11] This Code (to which RNS was a signatory) states that: *(5) Equally, it is not acceptable that pursuing a rapid conclusion to negotiations should be used as a strategy to extract commercial advantage in circumstances where there are legitimate issues that require further research, investigation, resolution or negotiation.*

6.13. RNS sought to pursue a rapid conclusion to the negotiations to achieve a commercial advantage in circumstances where there were legitimate issues to be negotiated. These issues included: the basis for costs sharing over a tariff basis, whether an open book economic modelling exercise should be adopted, whether the proposed tie-in between Affleck and Flyndre would impact on the profitability of Flyndre, the inclusion of capital cost sharing in the RNS proposal (later removed), and the potential positive cost benefit of deferred decommissioning through the continued tie-in of the Flyndre field.

The duration of the contravention

6.14. Following the planned shut-in (**19 July 2020** and **8 August 2020**), the Flyndre facility remained shut-in whilst negotiations continued and did not produce during the period from **8 August 2020** to **13 August 2020**. Once the Flyndre facility was initially shut-in, the termination of the Agreements between Flyndre Owners and the Fulmar Owner took effect and there was no mechanism by which to get Flyndre back online again. At that time, the prospects were that the Flyndre facility would be indefinitely shut-in following the termination of the Agreements. This position appears to have been accepted by RNS who stated during the period from **1 July 2020** and **27 July 2020** that it would not receive Flyndre production at Clyde after **6 August 2020** due to the then pending termination of the Agreements. Until fresh agreement had been reached on acceptable terms there was no basis for Fulmar to continue receipt of Flyndre's production.

[11] Industry Code of Practice on Access to Upstream Oil and Gas Infrastructure on the UK Continental Shelf

Mitigating circumstances

6.15. The following are considered mitigating circumstances:

6.15.1. For the period from **31 March 2020** to **30 April 2020** RNS sought a negotiated resolution without terminating the Agreements (though they held out the threat of terminating).

6.15.2. There has been no prior conduct by RNS in failing to comply with the obligations in the MER UK Strategy or other Petroleum-related requirements.

6.15.3. RNS has co-operated with the NSTA's investigation.

6.16. As part of its representations to the NSTA's Sanction Warning Notice dated **5 June 2024**, RNS stated that it *"recognises the importance of good and proper standards of governance as set out in the MER UK Strategy"*. In mitigation, RNS provided the example of a review Repsol Resources UK Limited ("RRUK") undertook in respect of its subsidiary's governance arrangements. RNS also raised a review the NSTA undertook into RRUK's governance arrangements as well as RRUK's appointment of its Chief Commercial and Stakeholders Relations Officer as a position on its Executive Management Team. RNS contend that these should be taken into account as mitigating factors in respect of the alleged Breach.

6.17. While good governance is important, the actions described by RNS (and summarised in paragraph 6.16) appear to have no direct relationship to the Breach. The NSTA has therefore not placed weight on these as mitigating actions.

Aggravating circumstances

6.18. The following are considered aggravating circumstances:

6.18.1. A persistent failure by RNS to accede to a reasonable request to extend the period for the Termination Notice to allow for the conclusion of the negotiations.

6.18.2. Evidence of senior management involvement in support of the failure to comply.

Financial penalty

6.19. RNS's behaviour in the negotiations with the Flyndre Owners is a clear example of the concerns raised by Sir Ian Wood in his "*UKCS Maximising Recovery Review: Final Report*" regarding the negative impact of commercial behaviours and failure to collaborate which have a negative on further investment in the UKCS. For the reasons already set out, the failure to comply in this matter has potentially serious implications for future commercial relationships in the UKCS. In addition, it is of note that RNS's senior management were fully aware of the approach being taken in these negotiations.

6.20. Taking into account the mitigating and aggravating features set out, including in light of the fact that RNS has co-operated with the NSTA investigation, the NSTA issues RNS with a Financial Penalty of **£350,000** for the conduct set out in this Sanction Notice.

7. PUBLICATION OF THE SANCTION NOTICE

7.1. Pursuant to section 53 of the Energy Act 2016, the NSTA may publish details of any Sanction Notice given in accordance Chapter 5 of the Energy Act 2016.

ANNEX A – Summary of RNS representations and the NSTA's response

1. Below is a summary of RNS's representations set out in its letters of **22 September 2023, 2 February 2024 and 17 July 2024**, and the NSTA's response to the points raised.

Timeline for negotiations and Total's conduct

RNS's representations

2. RNS states that "*efforts to reach a basis on which services could continue to be provided on an economic basis commenced when the Fulmar field ceased production in 2018. It is not the case that this issue was first raised in March 2020 or that the proposed three month period for negotiation reflected discussions that would take place from a 'standing start'.*"

3. RNS asserts that the Flyndre Operator consistently refused a move to cost share and that it appeared to RNS that "*there was no prospect of agreeing a commercial arrangement that would provide a long-term basis on which it would be possible to continue GFA Hub's operations*". This, RNS states, "*was reinforced by the attempts in the course of April 2020 to open constructive negotiations, where both RNS's proposed commercial principles and timeline for negotiations were rejected without any counter proposal*".

4. RNS states that its email of **16 April 2020** to Total which suggested a three-month timeframe for "*new agreements to be agreed and effective was issued against a backdrop of attempts to resolve arrangements for the continued provision of services by Fulmar on fair and reasonable commercial terms*". RNS states that its suggestion of a three-month timeframe was not "*a deliberate attempt to pressure the Flyndre operator to enter into new terms more favourable to RNS than would have been the case on a longer timeline.*"

5. RNS argues that the three-month timeline was reasonable in view of the significant loss to it of £[redacted] per day, that "*other parties were content to allow the existing arrangements to continue indefinitely*", and noting that RNS was "*open to agreeing a different timetable if the other parties so wished*"; however, "*no such request was received*", rather those other parties "*continued to refuse to discuss the proposal to move to a cost share arrangement.*" RNS states that it "*is required to operate according to good governance practices, which does not permit continued loss-making operations to continue indefinitely*". RNS further contend that they were concerned that any delay in the renegotiation would increase the risk of commercial terms not being in place by **6 August 2020**, with the risk of an open-ended continuing loss-making arrangement continuing beyond the end of the maintenance shut-in period.

6. RNS argues that the "*outcome of the discussions was not commercially more advantageous to RNS than would have been the case had RNS proposed longer than three month period for negotiations. In fact, the interim arrangements which were agreed meant that RNS continued to operate the GFA hub at a loss for the duration of those arrangements.*"

7. In respect of the six-month period recommended by SE7, RNS notes that this is neither mandatory nor a minimum period for such negotiations. RNS point to Section F1 of SE7 which sets an expectation that operators should be prepared to explain proposed timelines that differ significantly from the NSTA's expectations and/or take longer than

expected, which RNS say indicates that the NSTA will only be concerned where negotiations take longer than 6 months.

8. RNS refers to the NSTA's *"Guidance on Disputes over Third Party Access to Upstream Oil and Gas Infrastructure"* which states that:

> *"In the case of infrastructure associated with a field at or near the end of its economic life, the prospective tariff for third party access may need to be set above incremental costs to provide that the infrastructure is maintained and remains available for third party use.*
>
> *"The terms set by the NSTA are likely to need to include appropriate cost sharing or recovery arrangements in such circumstances, including a mechanism for determining the date from when or circumstances in which they should operate."*

NSTA's response

9. While there may have been commercial drivers for RNS to re-negotiate the Flyndre – Fulmar processing arrangements, the first time that this was raised in any meaningful way by RNS was on **30 March 2020**, not **2018** as RNS asserts. The NSTA considers that RNS used termination as a means of unilaterally imposing a three-month limit on the negotiations.

10. There is no compelling evidence before the NSTA that Total consistently refused a move to cost share arrangement, as RNS asserts. The NSTA considers that from the correspondence, in particular Total's email dated **30 April 2020**, Total did not consider that it was in a position to accept "*the principle*" of a cost share arrangement without further information from RNS. RNS did not engage with Total on this. Rather than engaging collaboratively with Total's request for information, RNS instead acted unilaterally, issuing a notice terminating the Fulmar Gas TA, stating that it wished to "*put in place more equitable terms as soon as reasonably practicable*" and in order to "*incentivise the parties to work to a firm timetable.*"

11. RNS argue that the resulting interim agreement did not achieve an outcome that was more commercially advantageous than would have been the case had RNS proposed longer than three-months for negotiations. The NSTA's concerns in this case relate to RNS's approach to the negotiations rather than whether RNS achieved a commercial advantage. There is no evidence before us that indicated that RNS' counterparties sought to delay negotiations such that RNS were expected to incur indefinite losses from the services provided to Flyndre. Negotiations should be conducted in accordance with the MER UK Strategy and allow sufficient time for parties to act collaboratively, giving due consideration to how collaboration and co-operation could improve recovery as required under paragraph 28 of the MER UK Strategy.

12. It is notable that a full agreement was not reached between the parties, instead a series of interim agreements were put in place to extend the ability of the Flyndre facility to transport oil and gas through the Fulmar facility. Eventually the matter was resolved through an exchange of assets between RSR and NEO, transferring the Flyndre facility to RNS's full ownership.

13. The NSTA's SE7 provides that: *"If proposed timelines for completion of an activity differ significantly from the [NSTA's] indicative durations, and/or the activities take longer than*

expected, parties should be prepared to explain and account for this to the [NSTA], and demonstrate that MER UK has not been compromised as a result."

14. RNS's proposed timelines for the completion of the new agreements differed significantly from the six months expected under SE7 for third-party processing agreements. In the first instance, the negotiations centred around the amendment of the Fulmar Oil TA; however, the termination of the Fulmar Gas TA had the effect of terminating all other agreements relating to Flyndre's access to the Fulmar facility. From this point on, negotiating access to the Flyndre facility would have involved agreeing several other related agreements to re-establish access. It therefore does not appear correct that the parties only needed to negotiate a commercial mechanism rather than fuller third-party host arrangements.

15. Further, RNS' approach to setting the timeline did not appear to take into consideration that it had previously taken RNS and Total eight months to negotiate and agree an amendment to the Fulmar Gas TA and the Fulmar Oil TA which provided the Fulmar Owner's the right to terminate on six months' notice in circumstances where Fulmar permanently ceased production.

16. RNS has referenced the NSTA's *"Guidance on Disputes over Third Party Access to Upstream Oil and Gas Infrastructure"* in justifying its initial cost sharing proposal in its negotiations with its counterparty. For the purposes of this Sanction Notice, the NSTA has not determined (nor sought to determine) whether a cost sharing proposal was reasonable in itself. As set out in this Sanction Notice, the NSTA requires relevant persons to conduct such negotiations in a way that accords with the requirements set out in the MER UK Strategy.

Exercise of express contractual rights and safeguards in the MER UK Strategy

RNS representations

17. RNS states that, in serving notice of termination, it was exercising its express contractual rights in order to protect its position in circumstances where it appeared unlikely that revised arrangements could be agreed. RNS noted that the period for termination set out the Fulmar Gas TA was contractually agreed with the Flyndre Owners and extending the notice period from three months to six months for termination was not raised by the Flyndre Owners when the amendment to the relevant clause of the Fulmar Gas TA was agreed.

18. RNS argues that any enforcement action taken in respect of RNS' exercise of its express contractual rights risks prejudicing those rights and would likely lead to considerable uncertainty and significantly discourage investment in the UKCS. RNS argue that this in turn could impact on the stability and predictability of the system of regulation, noting the prevalence of termination clauses in agreements of this nature.

19. RNS argues that by intervening to prevent RNS from exercising its right to terminate arrangements where it is making a significant daily loss risks contradicting the safeguarding provisions in the MER UK Strategy, which state that no obligation in the Strategy requires any person to fund an activity where they will not make a satisfactory expected commercial return.

NSTA response

20. The Central Obligation required RNS in this matter to take the steps necessary to secure that the maximum value of economically recoverable petroleum is recovered from the strata beneath relevant UK waters. The Central Obligation was imposed as part of the MER UK Strategy pursuant to section 9F of the Petroleum Act 1998. Section 9C of the Petroleum Act 1998 requires operators like RNS to act in accordance with the Strategy.

21. As a general legal principle, requirements imposed by or under statute take precedence over any rights afforded under contract, i.e. it is not possible to contract out of the requirements in the MER UK Strategy. While RNS was entitled to terminate any commercial agreements in reliance of express contractual rights, RNS was required to exercise those rights in a manner that was consistent with its regulatory obligations, in this case the MER UK Strategy.

22. The correspondence in the lead up to and immediately following RNS issuing the Termination Notice appears to show that RNS was using termination to unilaterally impose a three-month time limit on the negotiations between the parties.

23. As part of its representations, RNS refers to an extract from paragraph 31 of the consultation issued by the Department of Energy and Climate Change ("**DECC**") on the draft MER UK Strategy, which RNS consider reveals that there was no intention that the Strategy, nor any other legal instrument, allows the NSTA to intervene directly in private contracts.

24. While paragraph 31 of the DECC's consultation does state an intention that the Strategy will not confer powers on the NSTA to intervene directly in private contracts, it goes on to clarify that:

> *"**It may occasionally be the case that the [NSTA] will find that a relevant person's contractual provisions place that person, or could place that person, in breach of the Strategy.** In these cases, the [NSTA] will explore the matter further with the persons concerned in the manner described above. **It may be that, occasionally, the [NSTA] will need to assert its right as a regulator to use its sanctions where a relevant person fails to avoid a breach of its MER responsibilities through continued reliance on contractual provisions which conflict with the Strategy.** However, it will always be for the relevant person to decide for itself how to deal with that in terms of its contracts" (emphasis added).*

25. For the avoidance of doubt, the NSTA does not consider that RNS' contractual rights to terminate the Fulmar Gas TA were, of itself, a breach of the MER UK Strategy. The NSTA is concerned by RNS' behaviour in those negotiations, in the use of the termination provisions to pursue a rapid conclusion to negotiations as part of a strategy to obtain a commercial advantage over the Flyndre Owners during those negotiations.

26. In finding that RNS has failed to comply with its obligations under the MER UK Strategy, the NSTA has not created uncertainty. Relevant persons are aware of their rights under contract and their obligations to comply with the operative NSTA Strategy.

Need to maintain a stable and predictable system of regulation

RNS representation

27. RNS asserts that the impact of the complained of conduct on the stability and system of regulation is not an appropriate factor for the NSTA to take into account in respect of

whether there has been a failure to comply. To reinforce this point, RNS notes that the matters at section 8 of the Energy Act 2016 are *"considerations to which the NSTA is required to have regard in the exercise of its functions; they are not obligations on Relevant Persons"*. RNS further notes that, *"Relevant Persons cannot be in breach of a petroleum-related requirement on the basis of speculation as to the possible future conduct of other Relevant Persons".*

28. RNS disagrees that any such risk exists, particularly given that all of the renegotiations were protected by confidentiality provisions within the underlying agreements *"which limit the scope for non-parties to gain detailed information in relation to the terms of the agreement or negotiations in relation to the same."*

29. RNS argues that it is *"not aware of any evidence that suggests other Relevant Persons (even if party to those details) would be influenced to adopt "the same or similar approach"* as a result of the conduct described in the previous sanction warning notice, whether or not *"left unchecked".*

30. In RNS's view, the circumstances in this case are *"unique"*, noting that they *"arise from a particular arrangement of infrastructure governed by contractual arrangements which are not all in standard form (in particular, the lack of express provision for a move to cost share arrangements in the usual way)."*

NSTA response

31. This line of argument in effect states that such behaviours can be manifested as no-one will know about them. If this approach and assumption is left unchallenged, there is a very likely risk that other relevant persons could adopt the same or similar conduct which the NSTA considers breached the MER UK Strategy, under the cover of confidentiality clauses.

32. The NSTA considers that it is perverse to suggest that any impact flowing from a failure to comply with regulatory requirements can in any way be abated by the operation of confidentiality arrangements preventing the parties discussing non-compliant behaviour.

33. The NSTA is required to have regard to the matters listed at section 8 of the Energy Act 2016 when undertaking its functions, which includes enforcement. One of the matters to have regard to is the need to maintain a stable and predictable system of regulation which encourages investment in relevant activities. By taking action in circumstances where it considers that a breach has occurred, the NSTA maintains public and investor confidence in the UKCS by demonstrating how it is acting to ensure that regulatory obligations are met.

34. It is also incorrect to describe what is in essence a negotiation for continued access to third party infrastructure as "*unique*". The need for access to third party infrastructure is a common occurrence on the UKCS, so much so that the NSTA has specific powers to determine third party access disputes where an application is made under section 82 of the Energy Act 2011. It is also notable that the MER UK Strategy (and the current Strategy in place) makes clear that owners and operators of infrastructure must ensure that it is operated in a way that facilitates the recovery of the maximum value of economically petroleum, including allowing access to that infrastructure on fair and reasonable terms.

Provision of information to negotiating parties as part of the negotiations

RNS representation

35. RNS notes the adverse inferences drawn in the previous sanction warning notice in respect of RNS only providing the information requested by Total once it had issued the notice of termination. This, RNS states, was "*coincidental*". RNS also submit that it is "*not clear that the NSTA has taken into account that the other parties already had sufficient information available to them in order to consider the proposal from RNS to move to a cost share arrangement*", or the reasonableness of those requests.

36. RNS asserted that its counterparties in the negotiation were established operators who understood the context in which the negotiations were taking place and were able to engage with the issues. RNS further state that account should be taken of the *"commercial realities of late life re-negotiations"* and that *"the counterparties already had sufficient information available to them in order to consider the proposal from RNS to move to a cost share arrangement"*.

37. RNS also contends that basis for issuing a sanction against RNS suggests that, but for matters outside of RNS' control, a different outcome might have been reached. For example, RNS states that if the Flyndre Owners had agreed to the three month timescale for completing the negotiations or that a technical reason for extending the shut-in had allowed the negotiations to conclude prior to any opportunity to restart then the basis for issuing a sanction against RNS would have fallen away.

NSTA response

38. In its email of **30 April 2020**, Total sought information to understand the reasoning behind the proposed change in pricing, specifically requesting information of RNS regarding relative throughput of contributing fields; cost projections for the Fulmar facilities; and a detailed breakdown of those cost items for which Flyndre Owners would be liable should discussions be progressed further. Total informed RNS that the Flyndre Owners could not agree to a cost-sharing mechanism without further information. The reasonableness of this request was acknowledged by another RSR subsidiary, Repsol Sinopec Zeta Ltd, on **27 April 2020** in its capacity as JV members for Flyndre. RNS provided Total with a Flyndre Economic Calculation Support Pack on **15 May 2020**.

39. As stated above, rather than engaging collaboratively with Total's request for information, RNS issued a notice terminating the Gas TA, stating that it wished to "*put in place more equitable terms as soon as reasonably practicable*" and in order to "*incentivise the parties to work to a firm timetable*". It is therefore not credible to state that the timing of RNS issuing the notice of termination was "*coincidental*", but rather it formed part of a strategy to force Total into accepting the principle of a cost share arrangement or risk a loss of production.

40. There is no evidence before the NSTA that the Flyndre Owners already had sufficient information available to them to consider the proposals from RNS. Much of the information requested by the Flyndre Owners related to the running of the Fulmar facility and therefore would not have been readily accessible to Flyndre Owners unless specifically provided by RNS. It is notable that, RNS did eventually provide the Flyndre Owners with the information they requested.

41. The timescales for setting the period for negotiations should take into account the obligations that relevant persons are subject to under the operative NSTA Strategy. In particular, the timescales that are set for the negotiation and the provision on information

provided as part of those negotiations should allow sufficient time and information for parties to act collaboratively giving due consideration to how collaboration and co-operation could improve recovery as required under paragraph 28 of the MER UK Strategy.

Missing dates and information from the NSTA's timeline

RNS representation

42. RNS states that "*the NSTA has extracted certain details from the information provided to it in order to provide a timeline of events pertaining to the GFA Hub. However, it does not appear to include all of the dates and information set out in RNS's responses to the NSTA's Information Requests*".

NSTA response

43. The previous sanction warning notices, and this Sanction Notice, include a timeline of the events that the NSTA considered relevant to the alleged breach. The NSTA has invited RNS to provide further details of any dates and information which RNS seeks to rely upon in response to the previous sanction warning notices. In response, RNS has provided a list of "*engagements*" along with further information which it considered "*demonstrates RNS's compliance with its obligations*". The NSTA does not consider that any of the additional information provided by RNS changes the provisional findings set out in the Sanction Warning Notices or the findings reached in this Sanction Notice.

Collaboration

RNS representations

44. RNS asserts that "*the Sanction Warning Notice does not make clear the specific evidence on which the NSTA appears to conclude that RNS failed to give the necessary consideration to the question of collaboration or co-operation*".

45. RNS further contended a willingness to agree a different timeframe to that originally set but that its counterparties in the negotiation failed to propose an alternative timeframe. RNS stated that they provided material to the counterparties to the negotiation within the timetable that RNS had indicated that it would meet. RNS further offered to extend the period for the negotiation of the revised terms on agreed interim arrangements that ensured a continued service despite the propose interim arrangement being at a loss to the GFA Owners.

NSTA response

46. The NSTA considers that RNS set an unrealistic timetable within which to conclude the negotiations. They further refused to engage meaningfully with the Flyndre Owners on the timetable they set. Where offers were made to extend the timetable they were contingent on significantly higher tariff amounts and with a backdating of any finally agreed terms.

47. The NSTA does not make any findings as to the reasonableness of proposed interim terms. However, RNS issued the Termination Notice and unilaterally set a three months' time period within which the negotiations would take place, by so doing failing to provide sufficient time for the negotiations to conclude. A previous term change, which took eight months, should have provided RNS with an indication that a three-month timetable would be insufficient to renegotiate revisions to five agreements. By unilaterally setting

a three month time period, RNS failed to give "*due consideration*" to the possibility that collaboration or co-operation with the Flyndre Owners "*might improve recovery, reduce costs or otherwise affect their compliance with the obligations arising under*" the Strategy, thereby breaching the Required Actions and Behaviours set out in paragraph 28 of the MER UK Strategy. This rationale is set out in paragraphs 4.1 to 4.36 of this Sanction Notice.

Risk of a shut-in

RNS representations

48. RNS disagrees with the NSTA's position that a shut-in, by its very nature, runs contrary to the Central Obligation. RNS argue that "*each case must be considered on its own facts and take into account the Safeguard that form part of the MER UK Strategy*". RNS argue that contrary to the suggestion that its actions were in breach of the Strategy, it "*was taking a proactive and collaborative approach to avoid any continued shut-in"* and that *"there was in any event no loss of production as a result*".

NSTA's response

49. RNS is correct to state that each case must be considered on its own facts and that is precisely what the NSTA has done with this detailed investigation. The NSTA considers that there is substantial evidence that RNS unreasonably used the threat of a continued shut-in to seek to gain a commercial advantage over the Flyndre Owners. In a bid to apply pressure on the negotiations with the Flyndre Owners, RNS unilaterally imposed a three month timeline to reach an agreement, which it refused to extend to avoid the risk of a continued shut-in crystallising despite the presence of what appeared to be legitimate issues between the parties. In this respect, RNS did not take the steps necessary to secure that the maximum value of economically recoverable petroleum was recovered from the strata beneath relevant UK waters, i.e. the Central Obligation.

50. While it may be the case that the Flyndre Owners would be able to make up for any lost production in the period that followed from the prolonging of the shut-in, it is RNS's conduct in the negotiations leading to (and causing) the prolonging of the shut-in which is of concern and consideration of the NSTA.

End of document