Consultation

Making a positive difference for energy consumers

Consultation on Inflexible Offers Licence Condition

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We are consulting industry on our proposal to add a licence condition prohibiting electricity generators from gaining excessive benefit from inflexible offers in the Balancing Mechanism (BM). We welcome views from stakeholders across the industry.

This document outlines the scope, purpose and questions of the consultation and how you can get involved. Once the consultation is closed, we will consider all responses. We want to be transparent in our consultations. We will publish the non-confidential responses we receive alongside a decision on next steps on our website at ofgem.gov.uk/consultations. If you want your response – in whole or in part – to be considered confidential, please tell us in your response and explain why. Please clearly mark the parts of your response that you consider to be confidential, and if possible, put the confidential material in separate appendices to your response.

Any enquiries related to the text of this publication should be sent to Ofgem at:

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Contents

Executive Summary

In November 2022 we published a Call for Input on options to address high balancing costs.[1] Following careful consideration of the responses to our Call for Input, this document sets out our refined proposal to add a new licence condition to the Electricity Generation Licence ("licence").

One of the key drivers of the recent high balancing costs has been the behaviour of some generators participating in the Balancing Mechanism (BM). These behaviours have led to high balancing prices being stretched over relatively long durations, well outside of the corresponding periods of peak system demand. The combination of generator behaviours that led to these high costs included the submission of zero (0) MW physical notifications (PN), inflexible technical capabilities, and notably increased offer prices in the BM.

We are proposing to introduce a new licence condition called the Inflexible Offers Licence Condition ("IOLC"). The new licence condition will prohibit generators from obtaining excessive benefit from their BM offers when their units are operated inflexibly in a manner that limits their responsiveness to market and system conditions. In addition to protecting consumers from the high balancing costs witnessed in recent years we anticipate that the IOLC will further encourage investment in new flexible production and demand side response.

The IOLC will be engaged in respect of any settlement period[2] where a generator has submitted to the ESO a 0MW PN and has a Minimum Zero Time (MZT) of longer than 60 minutes. In such circumstances generators will be prohibited from gaining excessive benefit from revenues received in the BM. Therefore, generators' BM offer prices must reflect only their costs plus a reasonable profit that is not excessive. Where a generator submits either a non-zero MW PN or a MZT of 60 minutes or less for the settlement period in question they will not be subject to the excessive benefits prohibition under this licence condition. In these circumstances generators will continue to have the ability to efficiently price scarcity into their BM offers in accordance with the existing regulatory and legislative framework.[3]

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[1] https://www.ofgem.gov.uk/publications/call-input-options-address-high-balancing-costs

[2] Whilst electricity transmission is continuous, for the purpose of trading and settlement it is considered to be generated, transported, and consumed within 30-minute blocks throughout the day known as settlement periods. Each offer / bid by participants and corresponding action taken by NGESO in the BM corresponds to a specific settlement period.

[3] The Competition Act 1998 Competition Act 1998 (legislation.gov.uk) and Regulation (EU) No 1227/2011 (as adopted by the UK) regarding Wholesale energy market integrity and transparency ('REMIT') prevent trading parties from engaging in abusive practices.

The proposed licence text is set out in Appendix 1. We are also publishing alongside this consultation draft guidance on our approach to interpreting and enforcing the IOLC, including the factors we will consider when assessing excessive benefit.

We welcome views from all parts of industry on our updated approach to this issue and in particular a response to the following questions:

Questions

1) Do you agree with our proposal to remove the 'within the operational day' requirement for submission of 0 MW PNs? Please provide reasons for your answer.
2) Do you agree with our proposal to limit the scope of the condition to generators with an MZT greater than 60 mins? Please provide reasons for your answer.
3) Is the proposed licence condition drafting in Appendix 1 sufficiently clear? Are there any drafting edits or additions that you would encourage us to consider?
4) Do you agree with our approach to considering excessive benefits, as set out in the draft guidance? Are there any other factors we need to consider for inclusion in the supporting guidance?

Please send responses to this consultation to Robin.Dunne@ofgem.gov.uk by 13 March 2023.

1. Introduction

Background: electricity system balancing

1.1. National Grid Electricity System Operator's (NGESO or 'the ESO') role is to co-ordinate and direct the flow of electricity onto and over the National Electricity Transmission System (NETS) in an efficient, co-ordinated and economic manner. It does this by procuring balancing services that are subject to transparent, non-discriminatory and market-based procedures.

1.2. The BM is NGESO's primary tool to balance supply and demand in real time. In the BM, market participants signal to NGESO for each given settlement period the costs they are willing to pay or be paid to adjust their electricity output or consumption, as a deviation from the position they had notified to NGESO ahead of gate closure[4] for that settlement period. For electricity generators, a proposal to increase electricity output or decrease electricity consumption is known as an 'offer' and a proposal to decrease electricity output or increase electricity consumption is known as a 'bid'. NGESO typically takes actions using the most competitively priced bids and offers, however operational and locational factors can sometimes result in more expensive bids and offers being accepted in order to solve a specific network issue.

1.3. NGESO is informed in advance of the generators that are scheduled to run, and at what quantity of generation output, through the submission of PNs. These are notifications from generators of the amount of electricity that they intend to produce during a given settlement period (suppliers also submit PNs to notify expected consumption). PNs can be modified until gate closure, which is an hour before the start of a settlement period. At this point, the market closes for that settlement period and PNs become final physical notifications (FPNs). The period between gate closure and the end of the settlement period is when NGESO accepts bids and offers submitted by BM participants.

1.4. All of the costs incurred by NGESO to operate the NETS are recovered through Balancing Services Use of System (BSUoS) charges. At present, generators and suppliers are liable for these charges, which are calculated daily depending on the cost of the

[4] Gate Closure is a point one hour prior to the start of a Settlement Period by which time generators submit to NGESO their planned generation for that Settlement Period

ESO's balancing actions. From April 2023 generators will no longer be liable to pay BSUoS charges and instead, suppliers will be solely liable for all BSUoS charges.[5]

The need for action

1.5. Between 2017 and 2020 total NGESO balancing costs for the four months of winter (November to February) averaged just under £500m each winter. For winter 2021/22 this rose alarmingly to over £1.5bn, with record breaking daily costs being experienced during the period. Overall, in 2021/22 the ESO incurred balancing costs of £3.1bn.

1.6. The large increase in balancing costs in 2021/22 was primarily driven by increased offer prices, rather than increased volumes having to be purchased by NGESO. Following record breaking daily balancing costs of over £60million on 24 November 2021, NGESO initiated an independent review of the BM.[6] NGESO's review provided an analysis of the different drivers of the high balancing costs observed over the winter and described a number of potential market reforms.

1.7. In parallel with NGESO's review, we carried out our own investigative work. Our concerns were driven by a combination of behaviours by some generators. This combination included instances of generators reducing their PN to zero, to send a signal to the ESO that the generation unit intends to cease generating electricity. Once a generation unit ceases to generate electricity, it must remain at zero output for a set period of time in order to comply with the unit's MZT, which is a pre-determined technical capability of the generation unit.[7] Gas-fired generators typically have a MZT of six hours. In practice, this means once a gas-fired generator has ceased generating electricity, it won't be able to start generating electricity again for at least 6 hours. We observed instances of gas-fired generators informing the ESO, at times with little advance notice, that they would cease generating in the afternoon. Due to the generation unit's MZT, that meant the generator would then be unavailable to generate electricity later that day, for example, during the period of peak evening demand (i.e., when generation is most in need).

1.8. Although a generator may notify the ESO that it intends to cease generating electricity, it is possible for the ESO to take action to ensure the unit continues to

[5] This change to BSUoS charging has been introduced following the approval of CUSC Modification Proposal 308. Further details can be found here CMP308: Removal of BSUoS charges from Generation

[6] ESO Balancing Market Review

[7] Generators' technical capabilities are known as dynamic parameters. The full list of dynamic parameters is set out in the Grid Code at BC1.A.1.5

generate electricity. This is achieved through the ESO accepting the generator's offers in the BM. We saw instances of generators notifying the ESO that they intended to cease generating electricity for a particular period before significantly increasing the price of their offers to the ESO to continue generating during that period. In certain situations, for example where the margin between available capacity and peak demand becomes tight, we expect a scarcity premium to be included in offer prices. This price rise provides a signal that has an important role to play in orchestrating supply to meet demand and may also incentivise investment in additional generation or demand side response. However, when high offer prices were combined with a reduction of PNs to 0 MW, lengthy MZTs and limited spare generation capacity available to meet peak demand, the ESO often had limited options available and incurred much higher costs than anticipated to maintain system security.

1.9. Our principal objective is to protect consumers' interests. We do this in part by stamping out sharp practices and enabling competition to drive down prices for consumers. Moreover, our Forward Work Programme for 2022/23[8] outlined that one of our enduring priorities is to ensure domestic market arrangements are efficient while maintaining security of supply and facilitating the delivery of net zero objectives.

[8] Ofgem Forward Work Programme 22/23

2. Stakeholder views on our Call for Input

2.1. On 4 November 2022 we published a Call for Input[9] seeking views on the options we were considering to reduce high balancing costs. We set out a preferred option as the introduction of a new licence condition to prohibit excessive benefits following the submission of 0 MW PNs and also proposed initial drafting of the potential licence condition.

2.2. To briefly recap, the options included in the Call for Input were:

- Option 1: Price cap on BM offer prices
- Option 2: Changes to bid/offer structures
- Option 3: A new NGESO balancing service to procure firm reserve
- Option 4: A new licence condition preventing excessive benefit after submitting a zero MW PN
- Option 5: Restrictions on amending PNs after day ahead
- Option 6: Clarifying 'good industry practice' in the Grid Code

Responses to the Call for Input

Summary

2.3. In total we received 22 responses to our Call for Input, 14 of which were supportive of our preferred option to add a new licence condition, making it the most favoured option of the shortlist. Some respondents required more information to form a view on our preferred option and much of the support was qualified based on the subsequent development of the licence condition and the supporting guidance. A small number of participants suggested that we should address other drivers of high balancing costs.

Stakeholder views on whether the licence condition will effectively target behaviour that led to high balancing costs

Interaction with other options

[9] Call for Input on options to address high balancing costs | Ofgem

2.4. While we proposed to take forward a change to the generation licence as the preferred option, we noted that our options were not all mutually exclusive. For example, the ESO is currently developing a reserve tool[10] similar to option 3, as proposed in the Call for Input. Some respondents to our Call for Input drew attention to this and queried the interaction between the ESO's proposal and our preferred option. We believe that the new licence condition and the ESO's balancing tool do not conflict with each other and may operate in parallel. We expect the ESO to consider the impact of our proposed licence condition on their assessment of the need for the new reserve tool.

2.5. Some respondents to our Call for Input favoured a cap on all offers in the BM. This option is more interventionist and likely to have a greater impact on price signals compared to the favoured option. We agree that this option is worthy of further consideration and if, following the implementation of our proposed licence condition, we continue to have concerns regarding high balancing costs we may consider further options for intervention regarding a price cap in the BM.

Other drivers of balancing costs

2.6. Many participants raised other drivers of high balancing costs not specifically related to the behaviours we are targeting in this consultation. These included:

- a general lack of competition in the balancing mechanism,
- efficiency and transparency of decisions taken in the control room by the ESO,
- accuracy of the ESO's forecasting of demand and margin at day ahead stage; and
- a lack of contingency available to the ESO when these behaviours occur.

2.7. We agree that these are important considerations related to balancing costs and, if addressed, would likely reduce balancing costs associated with the behaviours that are the subject of this consultation. We expect the ESO to ensure that its systems do not provide barriers to market participation and to provide accurate forecasts with (at least) continuous incremental improvements to forecasting accuracy. Moreover, by the end of

[10] https://www.nationalgrideso.com/industry-information/balancing-services/reserve-services/balancing-reserve

the RIIO2 period (ie, 2021-2026) we expect the ESO's Balancing Programme[11] to have replaced its legacy IT systems with new systems that are fit for purpose in the future energy system. We will continue to use the ESO's performance and incentives framework to ensure the ESO delivers against our expectations.

Drivers of high offer prices

2.8. Some respondents suggested that the behaviour observed on high cost days was a reasonable response to scarcity signals and that it would be difficult to prove that generators are deliberately utilising long MZTs and reducing PNs to 0 in order to obtain excessive benefit. Many of these respondents were of the view that any limit placed on offers will dampen price signals and investment. Comparisons were also drawn to high offers accepted from interconnector trades.

2.9. In certain situations, for example where the margin between available capacity and peak demand becomes tight, we expect a scarcity premium to be included in offer prices. This price rise provides a signal that has an important role to play in orchestrating supply to meet demand and may also incentivise investment in additional generation or demand side response. The focus of our intervention is to prohibit inflexible generators from undertaking specific behaviours that result in high priced offers being accepted outside of peak periods.

Role of existing legislation/other tools that could be utilised

2.10. Some participants felt we should be addressing this behaviour by using existing legislation and regulatory tools, for example provisions in REMIT[12], the Competition Act.

2.11. It was also suggested that we could issue guidance on best practices or an open letter that clarifies our expectation from licensees, similar to our previous open letter on dynamic parameters.[13]

2.12. The intention of IOLC is to protect consumers by placing an additional restriction on licensees in relation to how they set their offer prices. Ofgem does not intend to interpret the scope of the IOLC by reference to competition law or REMIT. The

[11] https://www.nationalgrideso.com/industry-information/balancing-services/balancing-programme
[12] Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency https://www.ofgem.gov.uk/gas/wholesale-market/european-market/remit
[13] Open letter on dynamic parameters and other information submitted by generators in the Balancing Mechanism | Ofgem

assessment of whether or not there has been a breach will be undertaken with reference to the framework of the IOLC and is different from the analytical framework for establishing unfair pricing under competition law, or artificial pricing under REMIT.

2.13. It should also be noted that our proposal to prohibit excessive benefits on offers carries similarities to the Transmission Constraint Licence Condition (TCLC), which prohibits licensees from obtaining excessive benefits being obtained from bids in relation to a transmission constraint period. However, TCLC is a separate obligation from our proposal with separate guidance. There should be no presumption that the measure of what is, or is not, excessive under the TCLC is relevant to IOLC or vice versa. In each case we will assess excessiveness on its merits, taking into account all of the circumstances of the case.

2.14. With regards to issuing an open letter, it is our view that a new licence condition, with supporting guidance, provides clearer obligations that are necessary to address market participants' behaviours, which we believe have led to higher balancing costs (which ultimately fall on consumer bills).

Views on the proposed drafting of the licence condition

Stakeholder Feedback	Clarification
One participant noted that this would not include behaviour where a PN is revised down, but not to 0 and then priced excessively to increase.	We have not seen evidence to suggest this behaviour is a material concern, particularly as there is limited consequence of a long MZT if the plant does not reach 0 MW.
Some participants sought clarification as to whether the licence condition should be restricted by when a 0MW PN has been revised (ie within or before the operational day), with some arguing that the focus should be on defining excessive benefit rather than the timing of PN notification. One respondent noted that the current drafting would capture balancing mechanism units (BMUs) that	Based on stakeholder feedback and observation of BM behaviours since the publication of the Call for Input, we consider there is merit in removing the requirement related to revising PNs within day. Further details of this change and justifications are set out in the next chapter.

Stakeholder Feedback	Clarification
were never scheduled to run prior to the settlement period. In addition, a respondent suggested the condition be clarified so that it only applies when a revised notification has been submitted.	
Some participants also noted that the condition would not capture unlicensed assets in the BM.	Unlicenced assets in the BM are beyond our regulatory vires and therefore not considered as part of this work.
A large proportion of respondents, particularly those that represent storage assets, noted that the wording of the condition will capture the normal running behaviour of storage or generators that reoptimize assets within day.	Our review suggests there is little evidence that within day re-optimisation of storage assets leads to unnecessarily high balancing costs. We therefore consider the licence condition would be more appropriate if the circumstances where the excessive benefit prohibition is active are limited to only when generators submit lengthy MZTs. We have set out further details of this in the next section.
Some respondents suggested the text should be clearer on whether the condition should only apply when there is an overall increase in electricity generation or whether there is a requirement for an increase in generation	On balance we consider the provision under 3b redundant as it does not do anything to target the behaviour in question. We have updated the drafting to reflect this.
One respondent suggested that we should only focus on PNs submitted in the time periods we consider to be of concern.	Further specifying the periods under the scope of the condition will open opportunities for gaming, make the obligations less clear and more difficult to enforce, and incentivise users to obtain excessive benefit at times beyond the scope of the condition.

Stakeholder Feedback	Clarification
Several respondents suggested that the condition include a definition of excessive benefit.	Our draft guidance published alongside this consultation sets out how we would propose to interpret and assess whether an "excessive benefit" has been sought or gained.

Views on how we should assess excessive benefit

2.15. In our Call for Input we set out some indicative criteria for how we would assess excessive benefit, which would be a central tenet of our guidance. We thank respondents for their comments against each of the criteria. As we set out in the next chapter, we have proposed changes to the licence condition that will change how we assess excessive benefit in the Guidance.

2.16. Many of the respondents to the consultation outlined the importance of the supporting guidance and, in particular, noted a desire to see the detail of how we will assess excessive benefit. We understand that licensees need as much certainty as possible and Appendix 2 contains a full draft of supporting guidance, which sets out the factors we will take into account when assessing whether an offer is objectively justified or excessive.

3. Changes to the licence condition since the Call for Input

Questions

1) Do you agree with our proposal to remove the 'within the operational day' requirement for submission of 0 MW PNs? Please provide reasons for your answer.
2) Do you agree with our proposal to limit the scope of the condition to generators with an MZT of greater than 60 mins? Please provide reasons for your answer.
3) Is the proposed licence condition drafting in Appendix 1 sufficiently clear? Are there any drafting edits or additions that you would encourage us to consider?
4) Do you agree with our approach to considering excessive benefits, as set out in the draft guidance? Are there any other factors we need to consider for inclusion in the supporting guidance?

Summary of proposed changes

3.1. Based on stakeholder feedback and observation of BM behaviours since the publication of the Call for Input we have decided to adjust the condition in two ways. Firstly, by removing the 'within the operational day' limitation for when 0 MW PNs are submitted and, secondly, introducing a new limitation on the scope of the condition to generating units with a MZT greater than 60 minutes.

3.2. Taken together, these changes ensure generators have two options for participating in the BM:

- Generators may either follow the 'flexibility path', through which their units are operated flexibly in response to market and system conditions, and where generators have the ability to efficiently price scarcity into their BM offers. When the margin between available capacity and peak demand becomes tight, we anticipate that the scarcity premium in the price signal should encourage investment in new production or demand side response, which will be to the benefit of energy consumers.
- Or alternatively, generators may follow the 'inflexible path', through which their units are operated in a manner that limits their responsiveness to market and system conditions. In such circumstances we expect generators' BM offer prices to reflect their costs plus a reasonable profit that is not excessive. It is not in consumers' interests for generators to gain excessive benefits as a result of their inflexibility.

Limiting the licence condition to units with long MZTs

3.3. The biggest theme emerging from the responses to our Call for Input was the concern that the proposed licence condition text would capture business-as-usual optimisation practices of storage operators. It is considered normal behaviour for storage generation units to submit 0MW PNs throughout the day in order to respond to margin signals and seek arbitrage from other markets. It was not our policy intent to prohibit these practices.

3.4. Storage units have much lower MZTs meaning the structure of their offers are inherently more flexible and agile in response to system conditions. Moreover, they are also 'energy limited',[14] which means their offer volumes are restricted by how much energy they have stored.

3.5. We have not seen evidence of practices in the market by storage operators that would suggest they are accruing excessive benefits at the detriment of consumers' interests. Therefore, to avoid unintended consequences for storage assets we intend to restrict the scope of the licence condition to periods when generating units submit MZTs above 60 minutes.

Justification of the 60-minute MZT limitation

3.6. The IOLC is primarily targeted at the behaviour of generators who use their inflexibility to gain excessive benefit from their BM offers. Our analysis of recent MZTs submitted by all BMUs[15] suggests that 60-minute threshold would have the effect, in practice of precluding all flexible BMUs from the scope of the IOLC obligations.

3.7. Figure 1 on page 17 shows the MZTs of all BMUs, disaggregated by the types of BMU.

[14] Energy limited means these generators can only discharge electricity for a short period of time
[15] All units from analysis have been taken from BM Reports on 04/01/23 - Dynamic Data | BMRS (bmreports.com)

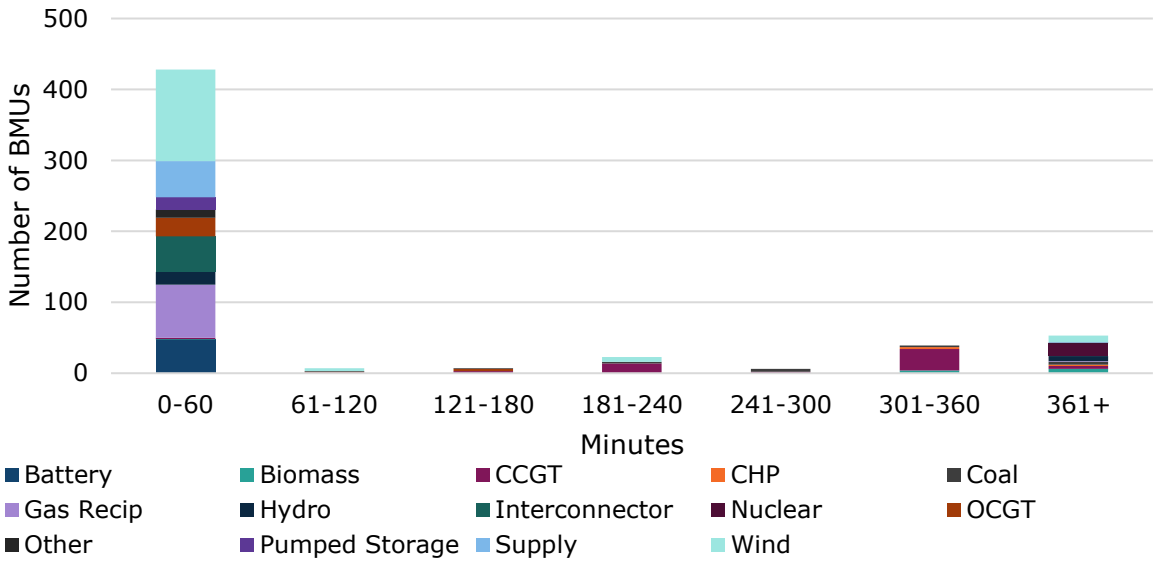


Figure 1 – MZT of BMUs

3.8. Restricting the scope of the licence condition to those BMUs with a MZT longer than 60 minutes results in all battery and pumped storage BMUs being expected to fall outside of the scope of this licence condition, alongside the majority of gas reciprocating engines, hydro, OCGT, Supply, Wind and other BMUs. There are also a number flexible biomass and CCGT BMUs that are expected to fall outside the scope as a result of this threshold.

3.9. Note that generators should still meet our expectations on the submission of dynamic parameters as set out in our 2020 Open letter on dynamic parameters.[16]

Removing the within the operational day limitation

3.10. When publishing our Call for Input in November we were concerned with a specific behaviour that involved generators revising their PNs to 0MW shortly before gate closure. This gave NGESO limited time and limited options and, as a result, led to NGESO accepting high priced offers in order to keep these generators running over the evening peak period.

3.11. Stakeholder engagement and market activity since publishing the Call for Input has shown that 0 MW PN submissions before the operational day (ie, at the day ahead stage) can also drive high balancing costs and create the need for NGESO to accept high priced offers for longer periods than necessary. The licence condition as proposed in the Call for Input would provide an incentive for generators to submit 0MW PNs at an earlier

[16] https://www.ofgem.gov.uk/publications/open-letter-dynamic-parameters-and-other-information-submitted-generators-balancing-mechanism

stage and still be afforded the opportunity to gain excessive benefits as a result of their inflexibility without breaching the licence condition.

3.12. Table 1 provides an aggregated view of the 10 highest balancing cost days between September 2021 and December 2021. It outlines the balancing costs incurred by the ESO through accepting offers in the BM to avoid generation units with long MZTs being unavailable for the period of the evening peak. The balancing costs are separated for units that submitted 0 MW PNs following a within day revision and units that submitted a 0 MW PN at day ahead.[17]

Table 1: Costs associated with the 10 highest cost days between Sept-21 and Dec-21

Data Type	Cost Incurred
Within Day Revision of PN	£127.8m
Day Ahead PN Submission	£97.0m
Total BM Acceptances	£337.7m

3.13. Table 1 shows that the timing of a 0 MW PN submission (within day or day ahead) isn't as significant as previously anticipated and that high BM costs were also incurred following submissions of 0 MW PNs at the day ahead stage. Therefore, we have decided to amend the scope of the licence condition to cover any period in which a generator submits 0 MW PN (and a MZT greater than 60 minutes).

3.14. We note that by removing the within day requirement this would also mean that generators that have not been scheduled to run for extended periods (and have a MZT greater than 60 minutes) will be subject to the IOLC provisions. To be clear we consider these generators do have potential to obtain excessive benefit from inflexible offers and we expect these generators to price their offers in line with the IOLC obligations.

3.15. The updated draft licence condition text is set out in Appendix 1.

Draft Guidance

3.16. In Appendix 2 of this consultation we have published the draft guidance on our approach to interpreting and enforcing the IOLC. This includes the criteria we will

[17] Data submitted to Ofgem by the ESO on the 16 January 2023

consider to assess whether excessive benefit has been obtained. Upon the introduction of the new condition, licensees are encouraged to establish an appropriate pricing strategy and be ready to provide evidence to objectively justify that they have not gained excessive benefit from their BM offers.

3.17. Figure 2 below is taken from the draft guidance and is intended to support licensees' understanding of the IOLC obligations.

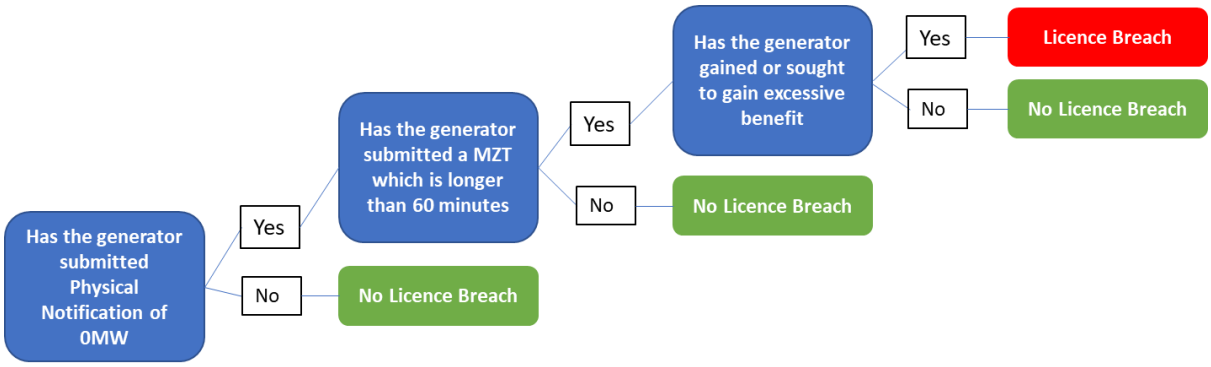


Figure 2: Pathway of compliance under the IOLC

4. Responses and next steps

4.1. Responses to this consultation are welcomed by the **13 March 2023** and should be sent to robin.dunne@ofgem.gov.uk.

4.2. The specific questions we would like your views are:

Questions

1) Do you agree with our proposal to remove the 'within the operational day' requirement for submission of 0 MW PNs? Please provide reasons for your answer.
2) Do you agree with our proposal to limit the scope of the condition to generators with an MZT greater than 60 mins? Please provide reasons for your answer.
3) Is the proposed licence condition drafting in Appendix 1 sufficiently clear? Are there any drafting edits or additions that you would encourage us to consider?
4) Do you agree with our approach to considering excessive benefits, as set out in the draft guidance? Are there any other factors we need to consider for inclusion in the supporting guidance?

4.3. Following the close of this consultation, and subject to the responses we receive, we plan to make a final decision on introducing the IOLC and begin a statutory consultation on the licence modifications required as soon as possible. Alongside this consultation we will publish an impact assessment on the IOLC.

Appendix 1: Draft IOLC licence condition text

Condition XX. Inflexible Offer Licence Condition

1. The licensee must not obtain an excessive benefit from electricity generation in respect of a Settlement Period in relation to which the generator has submitted a Physical Notification of zero MW and has a Minimum Zero Time which is longer than 60 minutes.

2. For the purposes of paragraph 1, the licensee shall be considered to have obtained an excessive benefit from electricity generation in relation to a Settlement Period if each of the following conditions apply in relation to that Settlement Period:

    a. the licensee and the system operator enter into, or have entered into, Relevant Arrangements in respect of a Balancing Mechanism Unit owned or operated by the licensee;

    b. the licensee has submitted in respect of the same Balancing Mechanism Unit, a Physical Notification of zero MW to the Electricity System Operator;

    c. The Balancing Mechanism Unit to which the Relevant Arrangements apply has a Minimum Zero Time which is longer than 60 minutes; and

    d. under the Relevant Arrangements and in connection with an increase in electricity generation the licensee is paid or seeks to be paid, an excessive amount by the system operator.

3. For the purposes of paragraph 2 the reference to an increase in electricity generation by the licensee in respect of a particular Settlement Period means an increase in comparison to the licensee's Physical Notification of zero MW.

4. This licence condition shall be interpreted and enforced in accordance with guidance published by the Authority.

5. Before this condition comes into force the Authority shall publish the guidance referred to in paragraph 4.

6. Before the Authority publishes the guidance referred to in paragraph 4 the Authority shall consult:
    a. the holder of any licence under section 6(1)(a) of the Act; and
    b. such other persons as the Authority thinks it appropriate to consult.

7. The Authority may from time to time revise the guidance referred to in paragraph 4 and before issuing any such revised guidance the Authority shall consult such person as specified in paragraph 6 setting out the text of, and the reasons for, the proposed revisions.

8. The licensee shall provide to the Authority, in such manner and at such times as the Authority may reasonably require, such information as the Authority may require or deem necessary or appropriate to enable the Authority to monitor the licensee's compliance with this condition.

9. In this condition:

"Balancing Mechanism"	means the mechanism for the making and acceptance of offers and bids to increase or decrease the quantities of electricity to be delivered to, or taken off, the total system at any time or during any period so as to assist the system operator in coordinating and directing the flow of electricity onto and over the national electricity transmission system and balancing the national electricity system pursuant to the arrangements contained in the BSC;
"Balancing Mechanism Unit"	means a trading unit in the Balancing Mechanism;
"Physical Notification"	means a notification of the intended level of generation made by the licensee to the system operator for a period pursuant to the notification arrangements established by BETTA and the BSC;

"Relevant Arrangements"	means arrangements entered into by the licensee and the system operator within the Balancing Mechanism, and the entering of such arrangements shall include the making of an offer by the licensee whether or not that offer is accepted by the system operator.
"Settlement Period"	has the meaning given in the Grid Code[18]
"Minimum Zero Time"	means either the minimum time that a Balancing Mechanism Unit which has been exporting must operate at zero or be importing, before returning to exporting or the minimum time that a BM Unit which has been importing must operate at zero or be exporting before returning to importing, as a result of a Bid-Offer Acceptance, such minimum time being as per the most recent notification by the licensee to the ESO pursuant to the Grid Code;

[18]Currently the Grid Code definition is "A period of 30 minutes ending on the hour and half-hour in each hour during a day."

Appendix 2: Draft supporting guidance

Please see the standalone Appendix 2 document for the draft guidance on the application and enforcement of the Inflexibility Offers licence Condition.

Appendix 3: Your response, data, confidentiality and privacy notice

How to respond

1.1 We want to hear from anyone interested in this consultation. Please send your response to the person or team named on this document's front page.

1.2 We've asked for your feedback in each of the questions throughout. Please respond to each one as fully as you can.

1.3 We will publish non-confidential responses on our website at www.ofgem.gov.uk/consultations.

Your response

1.4 You can ask us to keep your response, or parts of your response, confidential. We'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.

1.5 If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you *do* wish to be kept confidential and those that you *do not* wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we'll get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.

1.6 If the information you give in your response contains personal data under the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in domestic law following the UK's withdrawal from the European Union ("UK GDPR"), the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 4.

1.7 If you wish to respond confidentially, we'll keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we receive. We won't link responses to respondents if we publish a summary of

responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.

General feedback

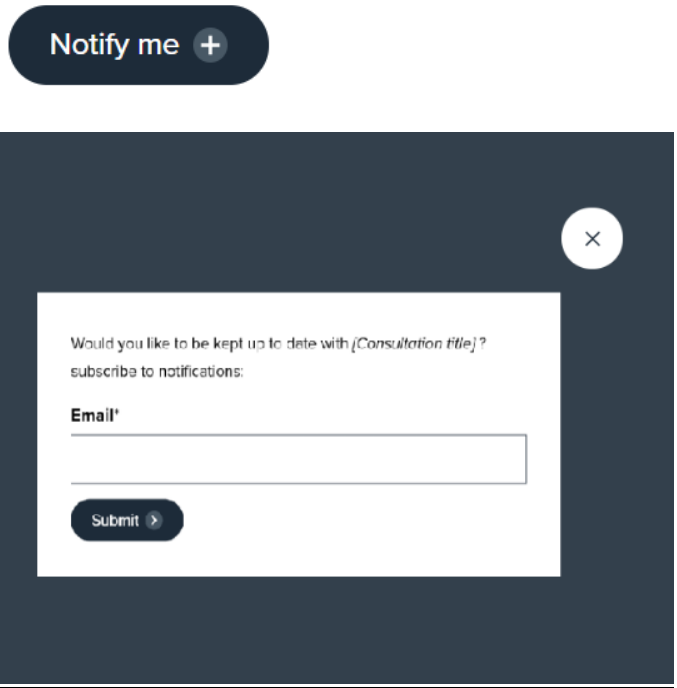
1.16. We believe that consultation is at the heart of good policy development. We welcome any comments about how we've run this consultation. We'd also like to get your answers to these questions:

1. Do you have any comments about the overall process of this consultation?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Were its conclusions balanced?
5. Did it make reasoned recommendations for improvement?
6. Any further comments?

Please send any general feedback comments to stakeholders@ofgem.gov.uk

How to track the progress of the consultation

You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website. Ofgem.gov.uk/consultations



Once subscribed to the notifications for a particular consultation, you will receive an email to notify you when it has changed status. Our consultation stages are:

Upcoming > **Open** > **Closed** (awaiting decision) > **Closed** (with decision)

Personal data

The following explains your rights and gives you the information you are entitled to under the UK GDPR.

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

1. The identity of the controller and contact details of our Data Protection Officer

The Gas and Electricity Markets Authority is the controller, (for ease of reference, "Ofgem"). The Data Protection Officer can be contacted at dpo@ofgem.gov.uk

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

3. Our legal basis for processing your personal data

As a public authority, the UK GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

4. We will not be sharing your personal data with any external organisations

5. Your personal data will be held for six months after our final decision

6. Your rights

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data
- get your data from us and re-use it across other services
- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3rd parties
- tell us your preferred frequency, content and format of our communications with you

- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at https://ico.org.uk/, or telephone 0303 123 1113.

7. Your personal data will not be sent overseas

8. Your personal data will not be used for any automated decision making.

9. Your personal data will be stored in a secure government IT system.

10. More information

For more information on how Ofgem processes your data, click on the link to our "ofgem privacy promise".