

Robin Dunne  
Domestic Market Management Team  
Ofgem  
10 South Colonnade  
Canary Wharf  
London  
E14 4PU

17 March 2023

Dear Robin,

**CONSULTATION ON INFLEXIBLE LICENCE OFFERS CONDITION**

ScottishPower welcomes the opportunity to respond to Ofgem's consultation on the proposed Inflexible Licence Offers Condition (IOLC). Our response to the consultation questions is in Annex 1 but our main points are as follows.

We support the IOLC insofar as it restricts generators from making excessive offers in the balancing mechanism. We believe the IOLC is an appropriate response to address the dramatic rise in balancing costs, which from April 2023 will be borne fully by suppliers and ultimately customers. To this end, we agree with Ofgem's proposals to remove the 'within operational day' requirement of the licence condition **and** the requirement to have a Minimum Zero Time (MZT) of more than 60 minutes. These proposals are reasonable additions to the draft guidance as together they exclude storage units that justifiably declare 0MW PNs to operate flexibly and capture potential excessive offer-making at the day-ahead stage.

As regards the proposed definition of excessive benefits, we generally agree with Ofgem's approach of giving a non-exhaustive list of factors that could be considered in the event of a licence breach, which reassures suppliers that potential cases will be reviewed sufficiently. We would support Ofgem's encouragement of licensees establishing appropriate pricing strategies, and we agree that such strategies should be encouraged so stakeholders are able to provide evidence for their actions if called upon.

Yours sincerely,



**Richard Sweet**  
Director of Regulatory Policy

**CONSULTATION ON INFLEXIBLE OFFERS LICENCE CONDITION  
– SCOTTISHPOWER RESPONSE**

**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.**

Ofgem’s proposal to remove the ‘within operational day’ requirement would expand the scope of the condition to cover day-ahead 0MW PN submissions. We support the proposal and believe the strengthened IOLC will be more effective at addressing excessive offers and therefore mitigating rising balancing costs.

Ofgem has explained that its proposal may be necessary due to the prevalence of day-ahead 0MW PNs incurring balancing costs. Over the ten most expensive days in the Winter 21 period, £97 million of costs were incurred at the day-ahead stage. We agree that, without removing the ‘within operational day’ requirement, these costs would not have been covered by the IOLC. Overall, we are supportive of the proposal, which will cover the potential IOLC workaround of generators publishing 0MW PNs at the day-ahead stage.

The expansion of the IOLC could bring the secondary benefit of encouraging investment in flexible generation; stakeholders who are able to avoid any submissions of 0MW PNs will not be affected by the condition. On Ofgem’s paragraph 3.2, we note that it may be difficult for existing inflexible generation to adjust their dynamic parameters – for many units, it will not be possible to switch between being flexible and inflexible. Looking ahead, the flexible pathway Ofgem wishes to encourage may become more attractive to new-build generation as the benefits of flexibility greater present themselves, especially as NGESO develops tools outside of the balancing mechanism. At present, Ofgem should be considerate of the additional administrative burden the condition will place on inflexible generation and the time lag for the flexible investment it wishes to encourage.

**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.**

Yes, we agree with Ofgem’s proposal to limit the IOLC’s coverage to generators with an MZT of greater than sixty minutes. In our response to the previous Call for Input, we were concerned that BESS generators would be unjustifiably subjected to the IOLC – we are pleased that Ofgem has responded to our feedback, and that of other stakeholders, with this proposal.

This proposal would focus the IOLC on inflexible generation units with long MZT times, rather than on flexible units, such as storage generation, which typically respond to tight conditions with shorter MZT times. We suggest Ofgem should consider the potential for the development of future flexible generation projects with MZT times longer than sixty minutes that similarly should not be regulated by the IOLC. If this were the case, then it would be appropriate for Ofgem to review the condition’s requirements.

**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?**

Our only comment at this stage is on the references to the Electricity System Operator in clause 2(b) and to the system operator in clauses 2(a) and 2(d) – it could be helpful to define these terms and, if interchangeable, to use one term throughout.

**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?**

The approach to considering excessive benefits, as set out in the draft guidance, remains subjective. Whilst we are aware that specific definitions of excessive benefits cannot be given, we would encourage Ofgem to expand on how the guidance will work in practice.

We would also encourage Ofgem to consider whether there are any benchmarking tools it could use as part of its market monitoring function, to flag examples of excessive offer-making and assess the overall success of the condition. Such tools could be especially helpful considering that all offers will be subject to the IOLC, even those ultimately not accepted by NGENSO. On the latter, it is a common practice to submit exaggerated offer prices into the balancing mechanism to signal an unwillingness to generate – we consider this a reasonable justification for submitting inflated offers and urge Ofgem to clarify that suppliers will not be penalised for this business-as-usual action.

Ofgem states in its consultation that 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. We believe it is good practice for generators to set pricing strategies in advance and for there to be a clear line of responsibility from a company's Board to the individuals who submit bids and offers.

We agree with Ofgem that the factors listed in the draft guidance are relevant when considering excessive benefits.

**ScottishPower**

March 2023