

## Consumer Focus response to Fleetwood IAE consultation

### Q1.a) Do you consider that an IAE has occurred?

Yes, we do.

### Q1.b) What is the basis of your conclusion?

We think that Special Licence Condition C8C3(b)(i)(D) could – and, more importantly, should - be triggered. That clause appears to give the Authority the discretion to declare an IAE in relation to a circumstance not defined by preceding clauses (i.e. ‘*an event or circumstance other than listed above which is, in the opinion of the Authority[...]*’) provided that the event or circumstance exceeds a materiality threshold of £2m in the relevant formula year (i.e. year within the price control)

The modelling appended to your open letter suggests that NGG will realise a windfall gain with a materiality in excess of £2m for several formula years in the current price control. We think that it would be appropriate for the Authority to exercise its discretion to prevent consumers being exposed to these unwarranted costs.

### Q2. Do you consider that all of the costs saved by NGG are associated with the IAE?

Yes, we do.

### Q3. Has the IAE increased or decreased the relevant system operation costs by more than the £2 million threshold?

We see no reason to doubt the modelling appended to your consultation letter. This appears to show that the threshold is clearly exceeded in each remaining year of the current price control. This consultation provides the licensee with an appropriate vehicle to put forward evidence to justify an alternative materiality if it so chooses, but we are in no position to second guess the materiality or plausibility of any such figure that may come forward.

### Q4. If the Authority concludes that an IAE has occurred, how should we calculate an adjustment figure that ensures that the financial position and performance of NGG is, so far as reasonably practicable, the same as if the IAE had not occurred?

Networks should be held neutral to factors outside their control such that they are not subject to windfalls, whether gains or losses.

While we do not consider it justifiable that NGG should seek to recoup the full cost of delivering incremental entry capacity at Fleetwood – because it does not need to deliver this capacity - we consider it likely that NGG will have incurred some costs in response to the entry capacity signal. Insofar as these have been efficiently and reasonably incurred, we think that the network should be allowed to recoup these costs.

If it has not already taken place, we think it would be prudent to issue NGG with a statutory information request seeking details of any costs that have already crystallised in relation to delivering incremental entry capacity at Fleetwood along with associated justification for why it has incurred such costs. Where the justification is not persuasive then the network should not be

allowed to recoup these costs. In particular, we would suggest that any costs incurred after the second appeal on planning permission was refused in 2010 should be automatically excluded from allowable costs, because from that point forward we would expect a reasonable and prudent operator to have ceased incurring additional costs (i.e. because it could be reasonably regarded as self-evident that the Fleetwood project would not be going ahead from that point).

The IAE should seek to allow NGG to recoup those costs – and only those costs – reasonably incurred to date to prepare for delivery of the entry point. Any difference between this figure and the monies allowed to it through the price control in order for it to fully deliver the capacity must be clawed back for consumers.

*Q5. Are there any additional factors or evidence which you think Ofgem should take into account to inform the Authority's decision?*

We note that you appear to highlight potential aggravating factors (in the form of the capacity credit arrangements appearing deficient to reduce default risk) and mitigating factors (in the form of exposure to buyback risk) that are relevant to consideration of the IAE. We do not feel in a position to understand the likely materiality and risk of the latter (although we certainly do not preclude it being significant), but we would make the observation that the former does seem quite foreseeable – it does not seem to us to be a particularly far-fetched scenario that a User might only have capacity on a single entry point. We would expect a prudent operator to have acted to ensure that credit rules were robust to such a scenario, in order to cap risk.

On an administrative point; it is unclear to us whether the formulation of the licence condition means that a separate IAE would need to be raised for each formula year or whether an 'evergreen' IAE could be used to correct the Fleetwood windfall gain for the remainder of the price control. If the licence construction allows for the latter we would encourage you to adopt this approach because it would appear administratively inefficient to require the annual re-consideration of this matter.

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