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Consultation on the future of the Transmission Constraint Licence Condition: RWE Response

Dear Marta,

RWE welcomes the opportunity to respond to the Ofgem consultation on the future of the Transmission Constraint Licence Condition (TCLC). We are responding on behalf of RWE companies operating in the UK. This is a non confidential response.

The TCLC was introduced in response to specific concerns associated with the pricing of bids from certain BMUs during periods when there were transmission constraints. These constraints arose through the transmission connect and manage arrangements and the timing of certain transmission investments required to resolve constraints. However, since the licence condition was introduced:

- Commission Regulation 1227/20011 on wholesale energy market integrity and transparency (the REMIT Regulation) and Commission Regulation 543/2013 on submission and publication of data in electricity markets (the Transparency Regulation) are now fully in force. Both regulations improve transparency of information, introduce significant new enforcement powers for the regulatory authorities and supersede the requirements for the Transmission Licence Constraint Condition;
- There has been significant investment in transmission infrastructure to alleviate constraints (including the commissioning of the Beauly Denny transmission lines and constriction of the west coast DC connection which is due to be completed in 2017); and
- Certain plant has closed releasing significant additional capacity on the transmission system in constrained areas.

The regulatory landscape and transmission system is materially different today from that at the time the TCLC was introduced. Keeping the costs of constraints as low as possible for consumers can now be best achieved through the normal competitive processes in the GB electricity market and the REMIT and Transparency Regulation. While we support the principles underlying TCLC, the specific licence condition is not required and the TCLC should be allowed to expire in 2017.

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In considering the effect of the TCLC on the GB electricity market we note that there have been no enforcement cases associated with generators engaging in behaviour prohibited by Circumstance 1 and that only 1 case (in 2014) has been enforced in relation to Circumstance 2. While Ofgem consider that TCLC may have resulted in lower bid prices for wind farms this may in fact be attributable to other factors. Consequently we do not believe that there is a compelling case for the continuation of the TCLC.

Ofgem are considering whether wider powers to apply the TCLC to non licenced generators are required. Given that the REMIT Regulation governs behaviour associated with both licenced and non licenced generation we do not believe that is an ongoing requirement to extend TCLC to unlicensed generators. Indeed, the REMIT powers are sufficiently broad to enable Ofgem to investigate the behaviour of unlicensed generators.

Our responses to the specific questions are included in Annex 1 to this document.

If you have any comments or wish to discuss the contents of this letter then please do not hesitate to contact me.

Yours faithfully

By email

Bill Reed
Market Development Manager

Annex 1: RWE Response to the Consultation Questions

Question 1: What are your views on the impact of TCLC on the behaviour of market participants?

The TCLC was introduced in response to concerns associated with the pricing of bids from certain BMUs during periods when there were transmission constraints. As noted in the consultation document, the TCLC may have influenced bid prices in certain constrained zones, though other factors may also have contributed to reducing the costs of constraints including greater competition and improved procurement processes by the system operator. It is our view that the specific circumstances identified by the TCLC in relation to constraints no longer exist as a result of transmission investment and plant closures. In addition, TCLC has been superseded as by the wider obligations under the REMIT Regulation and the Transparency Regulation. Therefore TCLC has a limited impact on the behaviour of market participants, mainly related to the increased regulatory burden associated with monitoring the potential for TCLC related activity.

Question 2: What have been the costs for generators to comply with TCLC?

Given that the behaviours associated with the TCLC are largely covered by normal competition law, we do not believe that there have been any significant additional costs associated with the compliance with the TCLC. Now that the REMIT Regulation and the Transparency Regulation are in force, the TCLC contributes to the regulatory burden associated with compliance.

Question 3: What have been the benefits of TCLC?

The TCLC may have influenced bid prices in constrained zones during the early period of its implementation. However, we believe that investment in transmission infrastructure, plant closures, increased competition and improved procurement processes from the system operator have reduced the costs of constraints rather than the TCLC alone. We expect that normal competition law, the REMIT Regulation and the Transparency Regulation will influence on participant behaviour rather than the TCLC.

Question 4: Should the scope of TCLC be widened to include licence exempt generators participating in the BM?

The scope of TCLC should not be widened to include licence exempt generators participating in the BM. Ofgem should rely on normal competition law, the REMIT Regulation and the Transparency Regulation to investigate the behaviour of licence exempt generators participating in the BM.

Question 5: What are your views on extending TCLC until 2019 in its current form as allowed by current legislation?

We do not support extending the TCLC until 2019 in its current form as allowed for by current legislation. We believe that the requirements for the continuation of the TCLC have been superseded by events. In addition, competition law, the REMIT Regulation and the Transparency Regulation provide sufficient powers for Ofgem to investigate participant behaviour in relation to constraints.

Question 6: What are your views on extending TCLC beyond 2019 with a further review after five years?

We do not support extending the TCLC beyond 2019 with a further review after 5 years. We believe that competition law, the REMIT Regulation and the Transparency Regulation provide sufficient powers for Ofgem to investigate participant behaviour in relation to constraints.

Question 7: What are the risks and benefits of introducing an extension of TCLC?

The extension of the TCLC will maintain the complexity of the regulatory landscape for no clear benefit. Market participants will still have to comply with requests to respond to specific queries associated with the TCLC. These queries are best investigated under competition law, the REMIT Regulation and the Transparency Regulation rather than the TCLC.

Question 8: Do you have any concerns around TCLC you want to raise?

We support greater transparency of the state of the transmission system in the context of constraints.

Question 9: What are your views on the interactions between TCLC and REMIT Article 5?

REMIT Article 5 is a binding regulation on all market participants which covers all circumstances including those envisaged under TCLC. Therefore we would consider that an investigation under TCLC would also be an investigation under REMIT Article 5.

Question 10: What are the risks and benefits of relying on REMIT to address the behaviours prohibited by TCLC, as compared to the risk and benefits of keeping the TCLC?

We do not believe that there are any risks and benefits associated with relying on the REMIT Regulation to address behaviours prohibited by TCLC. REMIT Article 5 is a binding regulation on all market participants which covers all circumstances including those envisaged under TCLC. In addition, Recital 13 of the REMIT Regulation makes it clear that the behaviours envisaged under TCLC are prohibited in relation to market manipulation. The Recital states that:

"(13) Manipulation on wholesale energy markets involves actions undertaken by persons that artificially cause prices to be at a level not justified by market forces of supply and demand, including actual availability of production, storage or transportation capacity, and demand. Forms of market manipulation include placing and withdrawal of false orders; spreading of false or misleading information or rumours through the media, including the internet, or by any other means; deliberately providing false information to undertakings which provide price assessments or market reports with the effect of misleading market participants acting on the basis of those price assessments or market reports; ***and deliberately making it appear that the availability of electricity generation capacity or natural gas availability, or the availability of transmission capacity is other than the capacity which is actually technically available where such information affects or is likely to affect the price of wholesale energy products****. Manipulation and its effects may occur across borders, between electricity and gas markets and across financial and commodity markets, including the emission allowances markets.[emphasis added in bold]*