



Making a positive difference
for energy consumers

To all generation licence holders
and other interested stakeholders

Direct Dial: 020 7901 7000
Email: TCLC@ofgem.gov.uk

Date: 17 May 2017

Dear Colleagues,

Decision to introduce the Transmission Constraint Licence Condition (TCLC) as a standard licence condition prohibiting potential abuse of transmission constraints

We have decided to proceed with introducing the Transmission Constraint Licence Condition (TCLC) as Standard Licence Condition 20A.

This will prohibit electricity generators from paying or seeking to pay the System Operator (SO) an excessively low amount, or being paid, or seeking to be paid an excessive amount by the SO, when reducing generation during a period of transmission constraint (export constraint).

We took into account the responses to our statutory consultation, published on 3 February¹. We have published notice of the licence modification on our website and sent it to all generation licence holders. Subject to any appeal of our decision, the new licence condition 20A will take effect from 16 July 2017, the day after SLC 20 expires.

This document and annexes explain the background and reasons for our decision.

Background

TCLC was introduced in 2012 through powers under Section 18 of the Energy Act 2010. It was intended to cover the period of high transmission constraints, which were expected to reduce around 2017, following improvements in the transmission infrastructure. As discussed in our consultations², transmission constraints are expected to remain a part of the transmission network for the foreseeable future, in particular in Scotland, but also in England and Wales, as a result of the way the system is currently designed. We believe it is important that there is a licence condition in place to deter excessive pricing behaviour in periods of transmission constraint, and thereby ensure that bills for consumers are not higher than necessary.

¹ <https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-transmission-constraint-licence-condition>

² Both in our February statutory consultation and our informal policy consultation published in May 2016
<https://www.ofgem.gov.uk/publications-and-updates/extension-transmission-constraint-licence-condition>

Consultation responses

We received ten responses to the consultation from generation companies and industry bodies. The responses are non-confidential and have been published on our website. We received five responses concerning the wording of the licence. The points raised, together with our responses and whether they impact on the licence drafting, are summarised in Annex 1.

We received a number of comments not strictly related to the drafting of the licence condition and hence the consultation. But to demonstrate that our decision-making is transparent, we decided to respond to those policy issues raised by multiple respondents and relating to the extension of TCLC. The summary of points raised and our responses are in Annex 2.

We also received a few additional comments and, although we do not discuss them as they are not relevant at this stage, we appreciate that industry shared its views with us.

Five respondents supported the new licence condition, while three others said they would support it on condition that a sunset clause be introduced into the licence condition. In line with the current practice in the generation licence, the TCLC will not have a review clause. But we will continuously review whether there is a need for regulation and, if so, whether it needs amending to ensure it meets its objectives. If in the future we consider that there was no longer a need for transmission constraints to be regulated in this way, including in response to stakeholder feedback, we would take steps to revoke the licence condition, in line with our licence modification process.

Minor changes to licence drafting since the consultation

We have received very helpful comments on the drafting of the new licence condition. Consequently, we have made a few minor changes to the licence drafting in the consultation:

- Modification of paragraph 3(b) by removing 'includes' after we reviewed the text. We decided that the word 'includes' at the beginning of paragraph 3 (b) is superfluous.
- Modification of the definition of 'Relevant Arrangements'.
- Modification of the definition of 'Transmission Constraint'.

The comments and our response to them are summarised in Annex 1, while the final draft of the licence condition is in Annex 3.

Guidance

We have also consulted on the guidance on Ofgem's intended approach to the interpretation and enforcement of TCLC. This is the guidance referred to in paragraphs 4-7 of Standard Licence Condition 20A. We appreciate industry's contribution by sending helpful suggestions. We have considered the responses we received to the consultation and made some changes to the proposed guidance. We published all non-confidential responses and the updated guidance is here:

<https://www.ofgem.gov.uk/publications-and-updates/consultation-guidance-transmission-constraint-licence-condition>

Next steps

Subject to any appeal of our decision, the new licence condition 20A will take effect from 16 July 2017.

If you have any questions regarding this document, please contact Marta Csirinyi at TCLC@ofgem.gov.uk.

Yours faithfully

Cathryn Scott

Partner

Legal, Market Intelligence and Oversight, Energy Systems

Signed on behalf of the Authority and authorised for that purpose

Annex 1

Responses related to the wording of the licence condition

Comment	Ofgem's response	Change in wording
<p>One respondent suggested amending paragraphs 2 and 3 to include import constraints, which are becoming increasingly frequent when the SO is required to manage issues like high voltage, inertia or Black Start.</p>	<p>The inclusion of other balancing services would be a fundamental change expanding the scope of the licence condition which requires a new statutory consultation. A new consultation would lead to a significant delay, resulting in a gap between the expiry of licence condition 20 and licence condition 20A coming into force.</p> <p>In any event, price spikes may be a true reflection of scarcity generation, sending signals encouraging investments in areas where reinforcement of the system are most needed.</p> <p>We will not make these amendments at this time, but we will continue to monitor developments in the market to ensure that any concerns can be addressed through appropriate measures if necessary.</p>	<p>No change</p>
<p>One respondent raised that the meaning and intention of paragraph 3 (b) are unclear, with special reference to the relevance of "<i>Whether or not there is an overall reduction in electricity generation</i>".</p>	<p>The relevant section in paragraph 3 (b) refers to the reduction in transmission capacity and it is not related to the generation capacity of the individual generation units or the total generation in the given period. Therefore, this section remains relevant.</p>	<p>No change</p>
<p>One respondent suggested modifying the definition of 'Relevant Arrangements', which should relate to bids only (where generators are reducing output) and not to offers, as the new licence condition relates only to export constraints.</p>	<p>We agree that the reference to offers is not relevant because licence condition 20A only captures the behaviour in relation to export constraints, that is, when generators are bidding to reduce generation.</p>	<p>Yes – definition of 'Relevant Arrangements' has been amended – the words 'or offer' have been deleted</p>
<p>One respondent suggested amending the definition of 'Relevant Arrangements' to include</p>	<p>The inclusion of other balancing services would be a fundamental change expanding the scope of the licence</p>	<p>No change</p>

<p>the Grid Trade Master Agreement, the Constraint Management Services contract and other Balancing Services and the entering of such arrangements to include the submission of Dynamic Parameters.</p>	<p>condition. A fundamental change requires a new statutory consultation. A new consultation would lead to a significant delay, resulting in a gap between the expiry of licence condition 20 and licence condition 20A coming into force. This has the risk of a temporary increase in constraint costs, to the detriment of consumers.</p> <p>We will continue to monitor developments to ensure that any concerns can be addressed through appropriate measures if necessary. We encourage industry to continue to raise specific incidents with us to enable us to assess potentially harmful behaviour in the market.</p>	
<p>One respondent suggested amending the definition of 'Transmission Constraint' with the inclusion of a further two constraint types or include 'inter alia' before listing the specific circumstances in which transmission constraints can occur.</p>	<p>Specifying a list of constraint types in which transmission constraint can occur is restrictive and can lead to incomplete definition as it limits the interpretation of transmission constraint. As the system evolves, other circumstances might lead to new types of transmission constraints. Therefore, we support a definition that recognises that the factors identified are non-exhaustive. Adding another two specific constraint types would not adequately future proof the definition.</p>	<p>Yes – We have added alternative wording to the definition to address the suggestion</p>

Annex 2

Main responses to the consultation

Comment	Ofgem's response
Two respondents requested further definition of 'excessively'	Indicators which Ofgem may consider when determining an excessive benefit are discussed in the accompanying Guidance. We do not think it is appropriate to give a more specific definition as this will vary with circumstance. It is for market participants to decide whether their pricing strategy complies with the requirements in TCLC.
Three respondents noted that information about system constraints is not communicated by National Grid in real-time to ensure transparency and level-playing field. They also asked for more information on the tagging system National Grid uses in constraint management.	We are aware that it is difficult to identify when transmission constraint periods are occurring. However, we do not think that the pricing strategy of licensees should be influenced by this information. We would like to emphasise that it is for market participants to satisfy themselves that they are compliant.
Two respondents disagreed with our assessment about the overlap between REMIT and TCLC. Their view is that REMIT provides a more appropriate protection and TCLC is potentially gold-plating EU requirements by going beyond EU regulations.	We are of the view that TCLC (previously known as Circumstance 2 of TCLC) has a more specific obligation not to set excessive prices in the event of a constraint than REMIT. As described in our statutory consultation, TCLC was designed specifically for the BM while REMIT is more general. Our view is that TCLC remains the most appropriate instrument to provide a specific mechanism to control bids being priced unjustifiably higher than market prices behind a constraint, while limiting the impact on industry.
Two respondents raised a concern about the licence condition being discriminatory because it only applies to licenced generators while ignoring actions taken by others parties who participate in constraint management. Balancing services are becoming more diverse and TCLC introduces a two-tier system with one group of service providers being treated more favourable than the other.	Our preferred approach remains to target this specific area of potential exploitative behaviour where concerns have been identified and are supported by evidence. For the above reasons, the licence condition will not encompass other activities related to constraint management. We will continue to monitor developments in this area. If required, we will address any concerns with appropriate measures.

Annex 3 – Final Decision Notice

To: All holders of an electricity generation licence

Electricity Act 1989 Section 11A(1)(b)

Modification of the standard conditions of all electricity generation licences

1. Each of the licensees to whom this document is addressed has a generation licence which has been granted or treated as granted under 6(1)(a) of the Electricity Act 1989 (the Act).
2. Under section 11A(2) of the Act the Gas and Electricity Markets Authority ('the Authority')³ gave notice on 3 February 2017 ('the Notice') that we propose to introduce a new standard condition 20A the Transmission Constraint Licence Condition. We stated that any representations to the modification proposal must be made on or before 6 March 2017.
3. A copy of the Notice was sent to the Secretary of State in accordance with section 11A(4)(b) of the Act, and we have not received a direction that the change should not be made.
4. We received 10 responses to the Notice, which we carefully considered. We have placed all non-confidential responses on our website. Our response to these comments is set out in the accompanying decision letter, which is published on our website.
5. It is necessary to make a number of minor alterations to the modifications set out in the Notice. These alterations are shown **in yellow** in the attached Schedule 1. The reasons for any differences between the modifications set out in the Notice and the modifications reflected in Schedule 1 are to address a minor error we have identified and minor amendments in response to suggestions raised in the consultation responses. These are explained in more detail in the accompanying decision letter. We made the following changes:
 - Modification of paragraph 3(b) by removing 'includes' following an internal review of the text. We decided that the word 'includes' at the beginning of paragraph 3 (b) is superfluous.
 - Modification of the definition of 'Relevant Arrangements' by removing reference to offers. Offers are not relevant because licence condition 20A only captures the behaviour in relation to export constraints.
 - Modification of the definition of 'Transmission Constraint' by replacing the words 'any one or more' with 'factors such as', to recognise that the specific circumstances in which transmission constraints can occur may develop.
6. We are introducing this new standard condition to maintain the prohibitions on exploiting periods of transmission constraint. The Standard Condition 20A will replace the current licence condition (Standard Licence Condition 20) which expires on 15 July 2017.

³ The terms "the Authority", "we" and "us" are used interchangeably in this document.

7. The effect of the modification is to prevent higher than necessary bills for consumers by maintaining the prohibition on generators from exploiting periods of transmission constraint.
8. Where an application for permission to appeal our decision is made to the Competition and Markets Authority (CMA) under section 11C of the Act, Rule 5.7 of the CMA's Energy Licence Modification Appeals Rules⁴ requires that the appellant must send to any relevant licence holders who are not parties to the appeal a non-confidential notice setting out the matters required in Rule 5.2. The attached Schedule 2 provides a list of the relevant licence holders in relation to this modification. Section 11A(10) of the Act sets out the meaning of 'relevant licence holder'.

Under the powers set out in section 11A(1)(b) of the Act, we hereby modify the standard licence conditions for all electricity generation licences in the manner specified in attached Schedule 1. This decision will take effect from 16 July 2017.

This document is notice of the reasons for the decision to modify the electricity generation licences as required by section 49A(2) of the Act.

**The Official Seal of the Gas and Electricity Markets Authority
here affixed is authenticated by the signature of**

.....
**Cathryn Scott, Partner, Energy Systems
Duly authorised on behalf of the**

Gas and Electricity Markets Authority

17 May 2017

⁴ The rules were published by the Competition Commission in September 2012. On 1 April 2014, the Competition Commission was abolished and its functions transferred to the CMA.

Schedule 1

Condition 20A. Transmission Constraint Licence Condition

1. The licensee must not obtain an excessive benefit from electricity generation in relation to a Transmission Constraint Period.
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 Transmission Constraint Period if:
 - (a) the licensee and the system operator enter into, or have entered into, Relevant Arrangements which related to a Transmission Constraint Period; and
 - (b) under the Relevant Arrangements and in connection with a reduction in electricity generation in the Transmission Constraint Period, either:
 - (i) the licensee pays, or seeks to pay, the system operator an excessively low amount; or
 - (ii) 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 a reduction in generation by the licensee in a Transmission Constraint Period means:
 - (a) a reduction in comparison to the licensee's Notified Electricity Generation for that Transmission Constraint Period; and
 - (b) **includes** a reduction in generation of electricity by a particular generating plant, whether or not there is an overall reduction in electricity generation in that Transmission Constraint Period.
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 system and balancing the national electricity system pursuant to the arrangements contained in the BSC;
"Notified Electricity Generation"	means the intended level of generation notified 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 a bid or offer by the licensee whether or not that bid or offer is accepted by the system operator;
"Transmission Constraint"	<p>means any limit on the ability of the National Electricity Transmission System, or any part of it, to transmit the power supplied onto the National Electricity Transmission System to the location where the demand for that power is situated, such limit arising as a result of <u>factors such as:</u></p> <ul style="list-style-type: none"> (a) the need not to exceed the thermal rating of any asset forming part of the National Electricity Transmission System; (b) the need to maintain voltage on the National Electricity Transmission System; and (c) the need to maintain the transient and dynamic stability of electricity plant, equipment and systems directly or indirectly connected to the National Electricity Transmission System; <p>and such limit being used by the system operator to operate the National Electricity Transmission System in accordance with the National Electricity Transmission System Security and Quality of Supply Standard referred to in standard condition C17 (Transmission systems security standard and quality of service) of the standard conditions for electricity transmission licences or any other provision of the transmission licence, the Act or any other requirement of law;</p>
"Transmission Constraint Period"	means any period of time, regardless of the duration, when a Transmission Constraint occurs.

Schedule 2: Relevant Licence Holders⁵

Abbey Power Generation Limited
AES Barry Limited
Aikengall II Community Wind Company Limited
Aikengall IIA Community Wind Company Limited
Baglan Operations Limited
Barking Power Limited
Battery Energy Storage Services 4 Limited
Beatrice Offshore Windfarm Limited
Beinneun Wind Farm Limited
Breesea Limited
Bryn Blaen Wind Farm Limited
Burbo Extension Ltd
Carnedd Wen Wind Farm Limited
Carrington Power Limited
Celtpower Limited
Centrica Barry Limited
Centrica KL Limited
Centrica KPS Limited
Centrica Langage Limited
Centrica PB Limited
Centrica SHB Limited
C.Gen Killingholme Limited
Citigen (London) Limited
Clyde Windfarm (Scotland) Limited
Cogle Moss Renewables LLP
Corby Power Limited
Corriegarth Wind Energy Limited
Coryton Energy Company Limited
Cour Wind Farm (Scotland) Limited
Crystal Rig II Limited
Danske Commodities A/S
Deeside Power (UK) Limited
Derwent Cogeneration Limited
DONG Energy Hornsea Project Three (UK) Limited
DONG Energy Walney Extension (UK) Limited
Drax Corporate Developments Limited
Drax Power Limited
Dudgeon Offshore Wind Limited
Dulater Hill Wind Park Limited
E.ON Climate & Renewables UK Humber Wind Limited
E.ON UK Plc
East Anglia One Limited
East Anglia Three Limited
EDF Development Company Limited

⁵ Electricity licence holders are listed at: <https://www.ofgem.gov.uk/publications-and-updates/all-electricity-licensees-registered-addresses>

EDF Energy Renewables Limited
EDF Energy (West Burton Power) Limited
EDF Energy Nuclear Generation Limited
Eggborough Power Limited
ENGIE Power Limited
Esso Petroleum Company Limited
Fallago Rig Windfarm Limited
Fibre Power (Slough) Limited
First Hydro Company
Freasdail Energy Limited
Gallopier Wind Farm Limited
Gateway Energy Centre Limited
GB Developers Limited
Glenmuckloch Pumped Storage Hydro Limited
Grangemouth CHP Limited
Green Hill Energy Limited
Griffin Wind Farm Limited
Gwynt Y Mor Offshore Wind Farm Limited
Heartlands Power Limited
Helius Energy Gamma Limited
Heron Wind Limited
Hirwaun Power Limited
Horizon Nuclear Power Wylfa Limited
Inch Cape Offshore Limited
Indian Queens Power Limited
International Power Ltd.
Intervate Limited
IPM Energy Trading Limited
Keadby Developments Limited
Keadby Generation Limited
Keltneyburn Hydro Limited
Knottingley Power Limited
Lincs Wind Farm Limited
London Array Limited
Lynemouth Power Limited
MacColl Offshore Windfarm Limited
Marchwood Power Limited
Medway Power Limited
MeyGen Limited
MGT Power Limited
MGT Teesside Limited
Minnygap Energy Limited
Moray Offshore Windfarm (East) Limited
Morecambe Wind Limited
Morgan Credit Limited
Nant Bach Wind Farm Limited
Nathro Hill Wind Farm Limited
Navitus Bay Development Limited

Neart na Gaoithe Offshore Wind Limited
Njord Limited
NNB Generation Company (HPC) Limited
Npower Direct Limited
NuGeneration Limited
Optimus Wind Limited
Ormonde Energy Limited
Pencloe Wind Energy Limited
Pen Y Cymoedd Wind Farm Limited
Race Bank Wind Farm Limited
Rampion Offshore Wind Limited
Richborough A Limited
Rocksavage Power Company Limited
Rugeley Power Generation Limited
RWE Generation UK Plc
Saltend Cogeneration Company Limited
Sanquhar Community Wind Company Limited
Sargas Power Yorkshire Limited
Scira Offshore Energy Limited
Scottish Power Generation Limited
ScottishPower Renewables (UK) Limited
Seabank Power Limited
Seagreen Alpha Wind Energy Limited
Seagreen Bravo Wind Energy Limited
Sellafeld Limited
Severn Power Limited
Simec Uskmouth Power Limited
Spalding Energy Company Limited
Spalding Energy Expansion Limited
SPEP Limited
SSE Generation Limited
SSEPG (Operations) Limited
Stevenson Offshore Windfarm Limited
Sutton Bridge Power Generation
Symbio Energy Limited
Telford Offshore Windfarm Limited
Tetragen Holdings Limited
Thanet Offshore Wind Limited
The Nuclear Decommissioning Authority
Thorpe Marsh Power Limited
Triton Knoll Offshore Windfarm Limited
Turncole Wind Farm Limited
UK Energy Storage Services Ltd
UK Power Reserve (Trumfleet) Limited
UK Power Reserve Limited
Ulzieside Wind Energy Limited
Uniper UK Limited
Vattenfall Wind Power Ltd

Vi Aura Limited
VPI Immingham LLP
Wainstones Energy Limited
Walney (UK) Offshore Windfarms Limited
West Burton Limited
West Garty Renewables LLP
Westermost Rough Limited
Willowind Linfairn Limited