



Marta Csirinyi
Wholesale Market Conduct
Ofgem
9 Millbank
London
SW1P 3GE

23 June 2016

Dear Marta

Consultation on the future of the Transmission Constraint Licence Condition

Drax Power Limited (“Drax”) is the operating subsidiary of Drax Group plc and the owner and operator of Drax Power Station in North Yorkshire. The 4000MW station consists of 6 separate generating units which together produce around 7-8% of UK generation. Drax is currently embarking on a project to convert at least half of its generation capacity to biomass. Drax also owns an electricity supply business, Haven Power Limited (“Haven”). Haven is an electricity retailer and supplies small and medium (SME) sized business customers and larger Industrial and Commercial (I&C) customers.

I am writing in regard to Ofgem’s consultation on the future of the Transmission Constraint Licence Condition published on 26 May 2016. Please find our responses to the questions below:

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

The vast majority of market participants were pricing based on market fundamentals at the time TCLC came into force, therefore will not have experienced any change (in general) over the life of the TCLC. There was, however, a level of uncertainty at the start in regard to how market participants were expected to behave. Ofgem has been helpful in providing further guidance in this area, which has ensured market distortion introduced by TCLC has now been removed.

It is noted that there has been a gradual decrease in the value paid to wind generators for bids in the balancing mechanism since the introduction of the TCLC. However this is not necessarily due to the introduction of the TCLC, but rather because wind generators have been more involved in industry working groups and fora, enabling greater understanding of the workings of the Balancing Mechanism, which has facilitated their engagement in the market.

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

In the early days, uncertainty surrounding Ofgem’s expectations on pricing behaviour may have led to over-cautious pricing decisions. However subsequent guidance from the regulator has reduced the distortive impact on bid pricing. This underlines the importance of providing guidance at the outset. Without clear guidance there is the possibility of affecting market participants behaviour, which may have unintended consequences on the efficiency of market pricing. Clearly there was (and is) a cost associated with putting in place the necessary compliance procedures.

Question 3: What have been the benefits of TCLC?

It is possible that the TCLC has been more of a signal to the market that abuse will not be tolerated. In addition, it has possibly acted as a useful stepping stone to more comprehensive regulation. However, it has likely been superseded by REMIT which is a much stronger framework of regulation on market abuse.

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

We do not believe the TCLC is required, given the subsequent introduction of REMIT provides a stronger framework of regulation on market abuse. Should the TCLC be extended, then it must include all market participants in order to create a level playing field.

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

It is not clear what the benefit of extending the TCLC would be, given the introduction of REMIT. We request that Ofgem makes available the analysis on extending the TCLC versus relying on REMIT, so that respondents can analyse and comment on the evidence.

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

As above – it is not clear what the benefits would be, given REMIT provides a more comprehensive alternative. However, if the TCLC is extended then periodic reviews should be included to determine if it is still the right measure to mitigate market abuse.

We believe that DECC would be required to revise primary and/or secondary legislation. It is requested that Ofgem makes available the costs benefit analysis of taking this approach.

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

The risks are likely to be small as there is now a good understanding of the regulation. However, there is no evidence of any additional benefits given REMIT is in place. The benefit of not extending the TCLC is that it would remove duplication of legislation and reduce the cost of maintaining it.

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

It is appreciated that guidance has been forthcoming on the application of the TCLC and the expected behaviour of generators, which has provided certainty and gradually reduced the risk of non-compliance. However, we see no real evidence of any benefits associated with the introduction of TCLC.

Concern has previously been raised with regards to the transparency of constraint information, which is still a problem today. This information should be made public, to provide greater understanding of constraint issues across the system and to allow market participants to have visibility of, and raise concerns over, potential market abuse.

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

REMIT covers market manipulation but it is currently largely untested. It is not yet clear how abuse of transmission congestion would be enforced under REMIT. It is likely that if TCLC is not extended then further guidance as to how this would be enforced under REMIT would be needed.

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?

There is currently a lack of guidance on REMIT and this would be an additional risk if REMIT was used to address the prohibited behaviours under TCLC.

There needs to be an appropriate framework to ensure there is no abuse of competition in the market and no abuse of the market itself. While we consider REMIT to be an appropriate framework, further guidance would be required. We consider that there is no undue barrier to providing this guidance and in the event that this is made available we expect a single consistent regulation prohibiting all forms of market manipulation will provide benefits. In particular by ensuring more consistent regulatory treatment.

Should you wish to discuss this letter, please feel free to contact me (email: Karen.monaghan@drax.com; telephone: 01757 612835).

Yours sincerely,

Submitted by email

Karen Monaghan
Regulatory Adviser
Regulation and Markets