

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

24 June 2016

Dear Marta,

Consultation on the future of the Transmission Constraint Licence Condition

Thank you for the opportunity to provide views on behalf of ScottishPower on Ofgem's consultation on the future of the Transmission Constraint Licence Condition (TCLC).

We believe that consumers' interests are best served through competitive markets and that regulation generally represents a less effective solution to be used only when there is insufficient competition. In the specific case of Balancing Mechanism (BM) bid prices during periods of network congestion, we note that competition has developed significantly since the TCLC was introduced and is increasingly constraining the prices that individual generators can charge in pursuit of a successful commercial strategy.

Notwithstanding this positive development in competition, it is essential that Ofgem has the necessary tools to protect consumers from unnecessary constraint costs which could arise were there abuse of network congestion by generators. We believe that TCLC has provided such protection and that since its introduction in 2012 it has promoted submission of cost reflective bid prices into the Balancing Mechanism (BM) and appropriate production schedules by generators.


With this in mind, and given the current forecasts of temporary constraint volumes and consequential costs, we believe that there would be merit in extending TCLC for two years with a review as to its continuing effectiveness and relevance before the end of that period. We would also encourage Ofgem to consider requesting legislation which would widen its scope to include non-licensed generators. A review of TCLC towards the end of a further two years would allow an assessment of the effectiveness and need in the light of market developments. Any proposals for initial or subsequent extensions (both of duration and scope) would of course need to be based on robust evidence.

We acknowledge that an overlap exists between TCLC and REMIT. We believe that generators and stakeholders more widely would benefit from guidance being published on the factors which Ofgem would consider when deciding between taking enforcement action under REMIT rather than TCLC. Further guidance, similar to that published in its 8 September 2015 open letter, would also be welcome regarding examples of behaviours associated with potential abuse of network congestion which Ofgem would view as a breach of REMIT Article 5.

When considering the potential for an overlap with REMIT, it is worth recognising that TCLC is well defined, understood and widely considered as effective by generators. This environment has enabled ScottishPower to implement robust processes and procedures to ensure compliance, and any updated guidance would be reflected in our TCLC and REMIT compliance frameworks.

I hope you find these comments useful. Should you wish to discuss any of these points further then please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in blue ink that reads "Rupert Steele". The signature is written in a cursive style and is positioned above a thin horizontal line.

Rupert Steele
Director of Regulation

CONSULTATION ON THE FUTURE OF THE TRANSMISSION CONSTRAINT LICENCE CONDITION – SCOTTISHPOWER RESPONSE

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

We believe that consumers' interests are best served through competitive markets and that regulation represents a less effective solution to be used only when there is insufficient competition. In the specific case of Balancing Mechanism (BM) bid prices during periods of network congestion, we note that competition has developed significantly since the TCLC was introduced and that it is now providing a brake on the prices which any individual generator can charge in pursuit of a successful commercial strategy.

We fully support transparency and integrity within wholesale markets and have implemented robust processes and procedures to ensure that we are compliant with our obligations under the TCLC, as we have with REMIT.

Whilst we are not in a position to comment on how TCLC may have impacted the behaviours of other Market Participants, we note that since the introduction of TCLC:

- there have been no TCLC enforcement cases regarding circumstance one, implying that Ofgem has not observed inappropriate plant scheduling activities by market participants during periods of network congestion; and
- we have observed a general reduction in the cost to consumers of BM bid prices submitted by wind generators, suggesting an increased understanding and awareness of both how wind can respond to grid requirements, and the risk and maintenance implications of constraints with regard to plant integrity.

It appears therefore that TCLC has had a positive impact, albeit it is not entirely clear how much of this result can be attributed solely to the introduction of TCLC. We recognise that some of the improvement in BM bid prices for instance may be attributed to competition as market participants have sought to better understand the ways to provide flexibility services cost-effectively.

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

The compliance costs incurred to date by ScottishPower are mainly administrative in nature and of relatively low value relative to overall constraint costs.

We have employed extra resource to ensure that appropriate management controls are in place, that employees are appropriately trained and incentivised, and that their actions are monitored for adherence with the licence condition, providing strong management oversight. This resource has also been required to ensure compliance with other wholesale market obligations including REMIT, Secure & Promote, Offtaker of Last Resort, Renewable Obligation and FCA obligations, so its cost is not solely attributable to TCLC compliance activities. Given the overlapping of resource on the various compliance activities, and the need in any event to assess the economics of BM actions in order to compete in the market, it is difficult to pinpoint our total cost attributable solely to TCLC with any great accuracy. Our best estimate is that the figure would be less than £250k annually.

Question 3: What have been the benefits of TCLC?

To the extent that TCLC has influenced generators' behaviour to prevent uneconomic plant scheduling or excessive BM pricing, TCLC will have reduced constraint costs for consumers.

In our experience, TCLC is well defined and provides a workable framework to promote consistent regulation in this area without impeding competition. However, it is difficult to quantify specific benefits than can be directly attributed to the condition beyond noting that BM bid pricing has become cheaper for consumers and that the TCLC obligation is likely to have contributed to this.

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

If there is evidence that market behaviour by licence exempt generators or other classes of market participant is resulting in unnecessary constraint costs for consumers through the abuse of localised market power, ScottishPower would support Ofgem having the appropriate tools to prevent it. We think that extension of TCLC to licence exempt generators would however require primary legislation.

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

TCLC was introduced on a time limited basis, recognising that market developments (EMR, Connect & Manage, Project TransmiT), network reinforcement (TIRG, West coast HVDC) and REMIT might reduce or eliminate the need for it. Whilst we believe that the market has developed significantly during the initial term of TCLC, we consider there is merit in retaining TCLC until 2019 at least. This would allow Ofgem and generators further time to understand how the different regimes are likely to interact with each other in the longer term.

Naturally, we would expect that any decision by Ofgem to request an extension to TCLC to be supported by a robust case. This could usefully cover the developments in the market and in additional infrastructure and an assessment of whether competition is yet sufficiently developed to be relied upon.

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

We believe that at this stage it is too early to tell whether an extension beyond 2019 is appropriate. Developments in competition and in reinforcement of the networks are underway and a decision would be more appropriate once their effects are better understood.

It is hoped that with significant investment in networks the degree of curtailment will reduce and that this would be irrespective of the obligation. It should also be recognised that constraints will happen for a variety of reasons and that this is part of running an economic and efficient network.

An extension beyond 2019 must address the same points as are being taken into consideration at this time. Any extension beyond 2019 would only be appropriate if, after the further two years, it was clear that TCLC was still relevant based on developments in the

markets and Ofgem's policy. We would therefore welcome the opportunity to comment on this closer to the end of a 2019 extension (if such an extension is taken forward).

In summary and in principle, ScottishPower would not be opposed to such an extension if it is clear, nearer the time, that TCLC is still required.

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

We believe there is a benefit to a two year extension to TCLC in that it is well defined and understood by generators and is widely considered as an effective enforcement tool available to Ofgem.

In terms of risk, we do have some concern as to the parallel enforcement regimes of TCLC and REMIT operating in this context, but believe these risks could be addressed through further guidance being published by Ofgem on the circumstances in which it would be more likely to take enforcement under TCLC than under REMIT, and on examples of specific behaviours which it would view as being in breach of REMIT Article 5.

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

No, we are satisfied that TCLC is being appropriately and consistently used and we will continue, as we have done in the past, to enter into constructive dialogue in relation to our own application of the TCLC obligation.

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

We acknowledge the overlap between TCLC and REMIT and, in the longer term, believe that this can be addressed by further engagement between industry and Ofgem to ensure clarity as to which regime will be applicable in which circumstances (see our response to Q7 regarding specific guidance).

As noted above, we believe there would be merit in extending TCLC for a further two years to allow greater opportunity to understand (in the context of reviewing the case for a further extension) the pros and cons of allowing the two regimes to co-exist.

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 believe there is benefit in keeping TCLC, certainly in the shorter term, as it is a well understood and effective mechanism for addressing the types of behaviours described in the Consultation.

We do however acknowledge that there is a risk for generators that two regulatory regimes running in parallel with each other could cause uncertainty as to which scheme is applicable in a particular set of circumstances. We feel this risk could be better addressed going forward, but for the moment we do not believe that the details of how Ofgem would enforce Article 5 of REMIT are sufficiently clear so as to justify the complete cessation of TCLC.

In the longer term, it would be useful to see further clarity as to the law that addresses this type of behaviour, as this would give generators greater certainty as to the nature of their obligations. We would welcome continued engagement from Ofgem to determine how this is achieved in practice. It may be that REMIT itself can perform this function in the longer term (if further certainty is achieved as to its applicability) or TLC can continue, with express guidance from Ofgem setting out which regime applies to which behaviour types.

ScottishPower
June 2016