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By email only to TCLC@ofgem.gov.uk

1st February 2024

Dear Wholesale market oversight and international team

Subject: Responding to the Transmission Constraint Licence Condition (TCLC) Guidance consultation.

Shell welcomes the opportunity to provide input into OFGEM's TCLC Guidance consultation and are supportive of an updated guidance document to reflect learnings since the previous update in 2017.

Whilst the updated guidance is helpful in clarifying how OFGEM will review whether excessive profits were made, we still have a number of concerns. In particular, we believe it is difficult for generators to forecast and anticipate whether they are behind a Transmission Constraint (TC) and the extension to the definition in 2017 to include voltage and stability in addition to thermal constraints has made this even more difficult. In our view the definition of TC should be reviewed and limited to thermal constraints. Alternatively, generators should be told in advance of real time by National Grid if they are, or are likely to be, in a TC period.

In some areas we believe the guidance has extended the scope beyond the original intention. In particular the added factor which says that excessiveness could be caused if the efficiency of the costs that the licensee is seeking to recover are high because they are higher than a healthy organisation, seems to be more about a companies cost to serve rather than recovering its costs. If a party is bidding at a level that is reflective of its costs, then we do not agree that this should fall within the scope of excessiveness.

We note that the Guidance now explicitly says that bid prices should include any benefits from avoided subsidy repayments under the CfD scheme. We believe this should be given further consideration as it may have unintended consequences. A wind farm may set its Balancing Mechanism bid price at day ahead which may be higher than the within day prices resulting in higher prices being used for Bid/Offer Acceptances. The CfD paid back could be more than offset by the Offer BOAs NGESO undertook to balance the market.

We welcome the inclusion of a section in the guidance to explain the interactions between TCLC and other relevant provisions, including Competition Law, REMIT, and the Inflexible Offers Licence Condition. It would be useful to explain which requirement takes precedence if it is believed that a generator has breached rules under multiple rules such as both REMIT and TCLC.

We note that it would have made reviewing the changes to the TCLC Guidance easier if the consultation had included a tracked change copy. We would still find it useful if such a document could be provided.

If you have any questions regarding our responses, we would be happy to discuss in more detail.

Yours sincerely,

Melanie Ellis
Regulatory Affairs Manager

Question 1: Are there additional areas of background that respondents would find it useful to have covered in the guidance?

We found including the background to the TCLC very helpful for context.

Question 2: Are there areas where respondents consider that the guidance would benefit from additional detail on Ofgem's interpretation of or approach to the enforcement of the TCLC?

As mentioned above, we believe that the definition of a TC needs to be reviewed as it is difficult for generators to anticipate if they are in a voltage constraint. The guidance that generators should apply a probability to their assessment of whether they are in a TC period does not make it any clearer for generators. We would support a return to a TC being limited to the thermal constraints only. The rationale for this is that voltage constraints are an issue which National Grid can solve in other ways e.g., high Rock'savage prices resulted in a signal for National Grid to install a Compensator in Mersey. If we were asked to provide a voltage service then we would price the opportunity cost of providing the service, which is likely to be high, but it serves the purpose of providing a signal for investment.

Question 3: Are there any areas where respondents consider that the proposed changes to the guidance are unclear?

We find the guidance around system flagging in section 2.18 to be confusing. It states that 'a generator can reasonably expect that where it has bids accepted which are subsequently system flagged, those bids will have been accepted in relation to a transmission constraint as defined in the TCLC. Note that the converse may not always be true – i.e., it is possible that on occasion bids which are not system flagged may nevertheless relate to a transmission constraint as defined in the TCLC'.

If there are circumstances where an action is not system flagged but could be considered a transmission constraint for TCLC purposes, then this needs much more explanation as it not the general industry understanding.

Question 4: Are there any examples of material costs or benefits of curtailment that are missing from Table 1?

We find the inclusion of the table helpful and have no additional comments.

Question 5: Are there circumstances which could objectively justify bid prices that would otherwise be excessive, which are not captured in the updated guidance?

We agree that bid prices will need to be considered on a case-by-case basis as it is not possible to consider all cases where prices may be justifiably high.

Question 6: Do respondents have any other comments on the proposed changes to the TCLC guidance?

The guidance has usefully explained what benchmarks OFGEM would consider when looking at a generator's profit and explicitly that referencing a similar asset is insufficient to mitigate charging excessive profits.

We believe that while some of the principles that will be used to assess excessive profits are clearer, they may be complex in practice. The point in section 2.26 references a comparison to what the generator would bid with and without a transmission constraint which may not always be available. It would be useful to understand the detail of analysis that OFGEM would discuss with a generator in assessing any potential breach as it will require specific technical information about the site.