

ET SECTOR	
REFERENCE NUMBER:	CATEGORY: Amendment
LICENCE CONDITION NUMBER: <i>(if relevant):</i>	SpC 3.20
TITLE:	Large Onshore Transmission Investment Re-opener
RELEVANT LICENCE CONSULTATION QUESTIONS <i>(if any):</i>	N/A
RELEVANT ISSUES LOG:	LOTI_LC_issues log
POLICY ISSUES	
<ul style="list-style-type: none"> • Double jeopardy (General) • Process timings and flexibility (General) • SWW to LOTI transition (General) • Licence obligation for delivery (SpC 3.20.5) • Project Assessment Direction (SpC 3.20.16) 	<ul style="list-style-type: none"> • The potential for Ofgem not to approve the need case after the Secretary of State has provided consents is not workable and discussions are ongoing over how FNC could be phased to remove this 'double jeopardy' from the process. • Timescales associated with INC and FNC submission do not work for most projects, as presented in our DD response. We request that these are removed from the licence and welcome further discussion on this. We note that some timings in SpC 3.20 do not match those given in the draft LOTI Guidance circulated for comment. Our comments below are in particular subject to this point. • There does not appear to be any drafting to cover the arrangements for T1 SWW projects to transition into the new LOTI arrangements. This is covered in the draft LOTI guidance (see para. 3.3), but these projects would need full or partial relief from the new arrangements depending on their stage of development (e.g. HSB would not need to pass through any of the stages and other licence requirements, Eastern Links will need to go straight to FNC stage). In the case of HSB, the existing COAE arrangements will also need to be transposed. • The licence condition includes an (absolute) obligation that the outputs must be delivered by the delivery date specified, although this is not explained in the consultation document. We do not consider that it is proportionate to add such an absolute licence obligation and no justification for this has been provided. In addition, in our understanding this proposal was not included in the Draft Determination consultation. The drafting creates an automatic breach for late delivery, regardless of the circumstances. We suggest that general licence obligations on licensees make any further obligation here inappropriate. • We welcome Ofgem's consideration of licensees' request that a Project Assessment Decision should be implemented by licence modification. However, the drafting does not reflect this for all cases, but only where

<ul style="list-style-type: none"> • Cost and Output Adjusting Event thresholds (SpC 3.20.11(c)) • Cost and Output Adjusting Event (SpC 3.20.11) • Definitions • General 	<p>Ofgem considers that there is a significant difference between its direction and the application. We are concerned that whether there is a “significant difference” is subjective and may be a matter of contention between Ofgem and licensees. Balancing the different considerations, including the impact of these decisions, we consider that the proportionate position is for all project assessment directions to be by statutory licence modification (as proposed for CPM). In addition, we do not see a rationale for the Project Assessment Direction to make changes to Appendix 1 by licence modification while other changes to that appendix is by direction. We suggest that the Cost and Output Adjusting Event (COAE) direction should also be by licence modification. This reflects the importance of these investment projects to the overall price control.</p> <ul style="list-style-type: none"> • We support the intention of the COAE provisions to ensure unforeseeable risks are not carried without limit by the licensee. We welcome the ability to vary the threshold, but question why 20% should be applied as the default (see SpC 3.20.11(c)). The CPM proposals contain a bespoke approach. We understand that no T1 SWW project was subject to a threshold higher than 10% (HSB 10%, WHVDC 10%, Caithness-Moray 5%). We argued in relation to the HSB Project Assessment decision that there should be no threshold, or a threshold low enough to ensure exposure is not material (i.e. transactional costs). This is because these risks are beyond the control of TOs. • We understand the COAE is also intended to allow adjustment of changes to outputs other than their costs (e.g. scope changes, amendment to delivery dates). As drafted Part F only allows such changes if they result in increases/decreases in spend greater than the materiality threshold. It is possible that requested changes to outputs or delivery date would be cost neutral or would cost less than the relevant threshold. The COAE mechanism could not be used and a full statutory licence change would be required to allow this, which would be disproportionate given such changes would only be made where Ofgem agrees there is consumer benefit. Our understanding is that SpC 3.20.11(c) and SpC 3.20.11(d) should apply only to requests for changes to allowances. • Ofgem has requested views on the definition of Final Statutory Planning Consultation. We note that this is a complex issue and propose to consider this further if required following the outcome of the policy discussions referred to above. • Ofgem stated in its Draft Determination (DD ET Annex, p.28) that the projects it expects to assess through LOTI would have the large project delivery mechanism applied. The licence consultation provides no further clarity on this proposal.
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DRAFTING ISSUES	
<ul style="list-style-type: none"> • General • Parts A and G headings • Introduction • SpC 3.20(4), Part C heading, SpC 3.20.6 • SpC 3.20.6(a) • SpC 3.20.8 • SpC 3.20.9 • SpC 3.20.11 • SpC 3.20.12 • SpC 3.20.13 	<ul style="list-style-type: none"> • There are several references throughout the condition to SpC 3.19.XX which should read as SpC 3.20.XX (see SpC 3.20.13, 3.20.16). • It is not consistent with the licence generally to use questions as headings and we suggest changing the drafting here. • Other conditions include a paragraph noting that the condition sets out the process for directions. If retained it would be consistent to have a similar provision here. • We consider that “<i>approval of eligibility to apply</i>” is not very straightforward and suggest replacing it with “<i>approval that the investment is a LOTI</i>”. • In SpC 3.20.6(a), we suggest this should be “<i>why the investment is a LOTI</i>”. The other words are unnecessary. • In SpC 3.20.8, it should be clear that there is a derogation from this. We suggest “<i>Unless the Authority otherwise directs, the Initial Needs Case may only be submitted not less than twelve months prior to the licensee’s intended date for issuing its Final Statutory Planning Consultation</i>”. The opening wording would cover both any direction that an INC is not needed and a direction to change the date. We have also made clear that the provision is not a licence obligation to submit an INC, but a limitation on when one may be submitted for consideration. • In SpC 3.20.9, it is unclear to refer to Ofgem publishing a response. If this provision is retained, we suggest referring to “<i>comments</i>” being provided. • In SpC 3.20.11, we note that the term “<i>Event</i>” is not defined. • In SpC 3.20.12, our understanding is that the purpose of the direction is to allow a later date and we suggest that the drafting refers to this expressly. • In SpC 3.20.13(a), we suggest that this should refer to “<i>include any evidence available...</i>”. We suggest that SpC 3.20.13(e) should be removed on the basis that it is very unclear what is required. If the licensee does not provide appropriate supporting evidence, it risks Ofgem not approving the application.

<ul style="list-style-type: none"> • SpC 3.20.17 • SpC 3.20.18 • SpC 3.20.24 and SpC 3.20.25 • Definitions 	<ul style="list-style-type: none"> • In SpC 3.20.17, we are not clear on the justification for the provision to apply to SpC 3.20.10 in particular and not to other direction provisions in the licence condition. • SpC 3.20.18 is not consistent with SpC 3.20.3 in terms of what the Project Assessment Direction will cover. What is directed should be consistent with what is applied for. • There is a lot of duplication between SpC 3.20.24 and SpC 3.20.25 and we suggest that they could be condensed into a single provision. • We note that the definition of Project Assessment Direction is not consistent with other parts of the condition and may not include all things set out. We suggest following the approach in the definition of CPM Project Assessment Direction for consistency. • There is no definition for LOTI Delivery Date. • We do not find it appropriate to refer to LOTI Guidance (suggesting it is advisory), when there is an absolute obligation to comply with it in SpC 3.20.20
FINANCE ISSUES	
<ul style="list-style-type: none"> • LOTIt formula • SpC 3.20.18 • SpC 3.20.19 • LOTIt and PCFM 	<ul style="list-style-type: none"> • There is no specified formula for the calculation of LOTIt. • Following the assumption that the formula will be the same as other special conditions, to calculate the variable term for the PCFM, we recommend a more transparent view of the algebra which we recommend would be to separate the 'sum of allowance of appendix 1' reference term, to highlight what allowance is affected by a re-opener and/or output change. • The licence states that any re-opener will result in an update to the appendix that feeds into the formula for input to PCFM. We require further explanation from Ofgem as to how this mechanism will work in practice without causing circularity of calculation. • Relevant opex uplift is a defined term however in 3.18 Generation and 3.19 Demand volume driver terms Opex uplift is separately defined as part of the algebra. Propose inclusion of algebra in this term also. • Without sight of the PCFM Guidance document, it is also unclear how formula terms work with regards to baseline allowances i.e. in the blue box inputs is it the incremental change we are required to enter or the full allowance amount. This additional information is required before we assess whether the inclusion of the separate elements as individual Variable Values and their treatment through the TIM mechanism within the PCFM will be compatible with the allowance calculations.
SUPPORTING INFORMATION	<ul style="list-style-type: none"> • LOTI Guidance (TO draft for consultation).pdf
OFGEM ENGAGEMENT:	<ul style="list-style-type: none"> • Process timings are under discussion with Ofgem.