

GT SECTOR	
REFERENCE NUMBER:	CATEGORY: Licence Condition
LICENCE CONDITION NUMBER: <i>(if relevant):</i>	SpC 3.11
TITLE:	Funded Incremental Obligated Capacity Re-opener and Price Control Deliverable
RELEVANT LICENCE CONSULTATION QUESTIONS <i>(if any):</i>	Q20/21 – PCD/Reopener conditions
RELEVANT ISSUES LOG:	3.11+9.13, 5F+5G, Incremental Capacity, Capacity Req-Cap-Sub Issues Log
POLICY ISSUES	
<ul style="list-style-type: none"> Purpose of condition Formula for FIOct Re-opener process Status of FIOC as a PCD 	<ul style="list-style-type: none"> Introduction 3.11.2 (b), Part C 3.11.7/8. Condition only refers to network reinforcement. Allowances for Funded Incremental Obligated Entry/Exit Capacity may be used to fund the construction of additional assets and/or contractual arrangements to facilitate the release of that capacity, depending on the most economic and efficient outcome determined by the methodologies in place. Part A. FIOct refers to the values included in the table represented in Appendix 1, the sum of allowances by year. There is no guidance to how prior spend incurred is dealt with, specifically if this should fall within a previous regulatory period or cross into another. PARCA phase 2 and 3 timescales can span a 7 year period and will therefore always now encounter this issue. The current licence (5F Part C) details that 20% of the Totex allowance for the entire project is released in y-2, with 80% y-1, where y is the Formula Year during which the Contractual Delivery Date for the capacity falls. The definitions for Entry/Exit lead Time do not appear in the updated licence (Entry/Exit Lead Time means the day which is 24 months from the first day of the next month following the date on which the allocation occurred). This obligation has fed through to various processes and methodology statements and we believe this should continue to remain within the licence and can work with Ofgem to determine the most suitable place. The main detail of the process is included in the FIOC guidance document. The elements included in this condition, such as the approvals linked to planning consents, are commented upon in the response to that associated document rather than here. FIOC Re-opener. We support the introduction of this re-opener. However, we note that it was not described as a PCD in Ofgem's draft determination or in our previous discussions with the Ofgem team, and yet the licence drafting has been put forward as a PCD. We note the comment at paragraph 9.13 of the consultation on this point. It is unclear why Ofgem has now taken this approach or how it would seek to define the associated output (which in

<ul style="list-style-type: none"> • FIOC Project Direction • Direction process • COAE • COAE 	<p>any event would be nil at the commencement of the RII0-2 period prior to the re-opener being triggered). In our view the associated output, when triggered, will be the release of the FIOC in respect of which we will have commercial obligations in keeping with our methodology statements. We feel it would be inappropriate to overlay these obligations with PCD machinery.</p> <ul style="list-style-type: none"> • The GT definitions annex includes definitions of “FIOC Output” and “FIOC delivery date” but these terms are not used in 3.11. The definition of FIOC Project Direction and COAE also refers to such terms. Similar terms are used in the context of the ET LOTI condition because LOTI is not a PCD. We would therefore suggest that it is more appropriate for FIOC to follow the LOTI approach and be framed as a re-opener which, if triggered would establish funding to deliver a FIOC Output by a FIOC Delivery Date. This is the approach that has been discussed to date in relation to this condition. • Clarification is required of the output and delivery date that will be included and assessed. The driver of the condition is to release the commercial capacity as required by the associated PARCA process, licence, code and methodologies. If some/all of this capacity is physically unavailable, constraint actions and subsequent costs/impacts to incentives may be incurred as defined in Special Condition 4.4. A reduction of allowances would be an additional penalty on top of the existing mechanisms designed to incentive timely delivery and could potentially drive sub-optimal decisions for delivery. • If the approach outlined above is adopted with this condition giving rise to a FIOC Output rather than a PCD then a FIOC Project Direction should be made by statutory licence modification in order to give appropriate rights of appeal to the licensee. Such an approach would be consistent with that which we are advocating in respect of LOTI. The approach to FIOC licence drafting has, thus far, been based on the LOTI drafting and we fail to understand the current proposal to move away from this and follow a PCD approach. • Part F. There are no details given regarding the time frames for the direction given. Equally, none are given in the guidance document supporting this licence condition. Current Licence provisions in Part B of Special Condition 5F (paragraphs 13 and 14) provide that the Authority should notify the licensee within 7 days of the Capacity Notice if implementation should be suspended for additional consideration, or 28 days if notifying on implementation/non-implementation of the proposal. Equally, set dates are provided within Part D and E relating to the direction of allowances for funding of FIOC. The associated PARCA process is designed around such timescales and clarity is needed for impacts of decision timeframes to project programmes, both for the licensee and the customer requesting the capacity. This is further discussed in the response to the associated FIOCR guidance document, but links to other concerns raised regarding this lack of transparency of the decision-making process for other PCDs. We would need to include required dates for decision within our submission in order to maintain the relevant program to deliver our obligations for
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	<p>customers.</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. 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 C only allows such changes if they result in increases/decreases in spend greater than the materiality threshold. It is possible that such requested changes to outputs or delivery date would be cost neutral or would cost less than the relevant threshold. Without such provision in the Special Condition. 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 3.11.10(c) and SpC 3.11.10(d) should apply only to requests for changes to allowances.
DRAFTING ISSUES	Completed by: Jon Munsey
<ul style="list-style-type: none"> Defined Terms 3.11.4 3.11.7 3.11.8 3.11.9 3.11.9(a) 3.11.9(b) 3.11.10(a) 3.11.11 3.11.15(a) 	<ul style="list-style-type: none"> The GT definitions annex includes definitions of “FIOC Output” and “FIOC delivery date” but these terms are not used in 3.11. The definition of FIOC Project Direction and COAE also refers to such terms. Similar terms are used in the context of the ET LOTI condition because LOTI is not a PCD. We would therefore suggest that it is more appropriate for FIOC to follow the LOTI approach and be framed as a re-opener which, if triggered would give rise to a FIOC Output that must be delivered by a FIOC Delivery Date. This is the approach that has been discussed to date in relation to this condition. We do not find it appropriate to refer to Funded Incremental Obligated Capacity Re-opener Guidance (suggesting it is advisory), when there is an absolute obligation to comply with it in SpC 3.11.23. The definition of FIOCA_t should refer to the sum of values for the Regulatory Year, since the Appendix covers a number of Regulatory Years. Change to “amending <u>any of</u> the outputs, delivery dates or associated allowances in Appendix 1”. Suggest “An application may only be made where...”. The provision is not a licence obligation to obtain approval, but a limitation on when an application may be submitted for consideration Suggest replacing “must not” with “may only”. The provision is not a licence obligation prohibiting submission of an application but a limitation on when one may be submitted for consideration Insert “to the Authority” after “relevant notice” in line 2. Line 2 should also cross refer to Special Condition 9.13 Insert “relevant” in front of “material”

<ul style="list-style-type: none"> • 3.11.15(e) • Part F Heading • 3.11.20 • 3.11.21 • 3.11.23 and 26 • 3.11.27 – 3.11.28 	<ul style="list-style-type: none"> • Insert “the event” after “foreseen” • Formatting. Should be just one paragraph. 3.11.15 will then become 3.11.12 etc. • Refer to “any evidence available” and move “has occurred” to the end of the sentence • We suggest that 3.11.15(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. • Should not be framed as a question. Change to “Authority process in making a direction”. • Suggest replacing “A direction” with “A FIOC Project Direction”. • If a direction under 3.11.17 amends Appendix 1, this is inconsistent with the formula in 3.11.4 which sets such a direction as being separate to the appendix. • Should these paragraphs refer to Part C and Part D? I.e. will the guidance cover a COAE application? • There is a lot of duplication between these two paragraphs and we suggest that they are condensed into a single provision.
FINANCE ISSUES	
SUPPORTING INFORMATION	
OFGEM ENGAGEMENT:	LDWG. Milford Haven PARCA project engagement