

Mind the Gap

Regular Insurance Insights Designed for the Renewables Industry provided by Lockton's Risk Consultants and Energy Insurance specialists.

Don't fall into any holes in cover created during your project's transition from construction to operation. Our Energy Specialist, David Way explains how below:

An insurance policy is nothing other than "a promise" – a promise to pay a sum of money if a set of circumstances happen, usually an event of damage. Unfortunately, all insurance policies have "small print" that has to be read carefully, although with proper advice it is possible to avoid (or at least understand) most of the challenges that may arise from this.

One "gap" often seen in insurance cover occurs if there is not a seamless transition between a new project's construction period and the start of operations. This arises because there are often different terms under various contracts to describe that "completion" transition.

A power offtake contract may use the term "Commercial Operations Date" or COD (or a similar term) to specify the date (and time) from which power is formally supplied and paid for. (That will often follow a period of testing and commissioning during which power is supplied informally and irregularly, and may or may not be paid for.)

The COD will require a number of tests to have been fully completed and signed-off, all as defined in that offtake agreement, and accepted by the power purchaser. That COD would seemingly be the start date of the operational insurances of a power plant. However, there are other contracts that impact this, and the "small print" of a policy often means things are not as clear as they should be.

On the other hand, under a construction contract (EPC, TSA or whatever) there will be provision for a "Taking Over Certificate" or TOC (or a similar term). That is the date at which the contractor says the plant is complete and asks the owner to "take it over". Just like the COD provisions, this will require a number of tests to have been fully completed and signed-off, which in this case will all be as defined in that EPC/TSA contract, and will have to meet the requirements of the owner (and his engineer, and often the lenders and their engineer). These tests are usually significantly different from those in the power offtake contract. And in addition, there will commonly remain some relatively small "punch list items" which need to be remedied soon after that TOC date.

Before further analysis of that "gap" (or timing difference) it's worth mentioning an additional complicating factor when there is more than one contractor on site, such as when there are separate TSA and BOP contractors on a windfarm. (TSA = Turbine Supply Agreement"; BOP = Balance of Plant for civil work of roads, hard-standing, foundations and even the electrical connections). The Taking Over Certificate for each contractor (sometimes even more than two) would invariably be at different dates, as each completed its work to the required standards. (And sometimes sequential completion is a project timeline requirement.)

Now back to the insurance issues arising from this. Most insurance policies run to "completion of construction" (or words to that effect). The challenge here, as shown above, is that there is often no single term to define that "completion". On many contracts, there will be conflict and difference between the contractual terms and dates as explained above. (The observant will have noted that there is not even any use of the word "completion" in those contractual terms of COD and TOC.)

The plant is unquestionably operational from COD (it says so on the label), and it is not unusual to see construction insurance stop at that point and the owner's operational insurance to start. However, from the contractor's perspective, construction is not complete until he receives his TOC. This can easily be one week or even one month later on an EPC or TSA, and the contractor has the

right (and often a contractual obligation) to expect construction insurance to be in place until that final TOC date. It might not be.

In the case of a BOP, this TOC can even be 6 months earlier than the TSA ! In those circumstances, the “gap” is the other way round - that BOP construction work is complete but the owner’s operational insurance is almost certainly not yet in place, and those completed BOP works may be left without any insurance cover.

There are solutions to this conundrum, but the biggest issue is to understand the problem and then address it. Unfortunately, where insurance is provided without skilled advice, the potential for confusion and conflict exists, and any claim can be a minefield for the various parties. So, “mind the gap”.

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