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Dear Alastair

Consultation on licence amendments to facilitate the introduction of an Electricity System Restoration Standard

We welcome the Ofgem consultation on the proposed amendments to the ESO's licence conditions that will facilitate the introduction of an Electricity System Restoration Standard and further align the regulatory framework for procurement of restoration services with that of balancing services.

As we note further in this response, time is of the essence and, following approval of these licence modifications, consequential changes to the Grid Code will need to be introduced as soon as possible in 2021. This should provide clarity and certainty on the technical, operational and commercial obligations of NGESO and stakeholders, and thus will give restoration service providers an opportunity to commence the necessary steps to carry out activities in preparation for the service provision well in time for the 31st December 2026, the absolute deadline set by the Secretary of State. The amount of time necessary to complete these critical activities by restoration service providers should not be underestimated.

Related to the timetable, we are mindful that Ofgem has still to give its approval to the terms and conditions for restoration service providers. Legal certainty in relation to what is required of them under the approved terms and conditions is naturally vital for restoration service providers. We note that for NGESO to submit an updated proposal (which will be needed for the extension of restoration in GB from just the current Black Start providers to other providers) for these terms and conditions for Ofgem's approval, procedurally it will be necessary for Ofgem to first reject the 18th November 2019 proposal and also set out that NGESO should submit an amended proposal. We urge Ofgem to do this at the earliest opportunity.

Furthermore, it is important that restoration service providers are not commercially disadvantaged as a consequence of the new requirements and the updated terms and conditions must be developed in line with BEIS's policy in this area. Specifically, placing any obligation concerning the provision of electricity system restoration services without any recourse to funding for the associated costs, would commercially disadvantage those parties and would not, in our view, be in conformance with the BEIS policy.

Yours sincerely,

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Question 1: Do you agree that we should modify the ESO's licences to allow the BEIS SoS to set an obligation on the ESO to comply with an ESRS?

As an active participant in the Electricity System Restoration Task Group (Task Group) over the past few years we have been broadly supportive of the changes identified by that group. This proposed modification to the ESO's licence is a natural development.

As we noted at the 7th May 2021 meeting of the Task Group, if this licence modification is approved, it will result in a subsequent proposal, to change the Grid Code, being raised by NGESO.

Our view is that a 'least regrets' approach must be adopted by BEIS, Ofgem and NGESO to progress the Grid Code change as soon as possible in 2021, after this consultation on the licence change is concluded. Our reasoning for this is explained in further detail below.

A restoration service provider cannot commence the necessary steps outlined below without knowing exactly what the approved Grid Code obligation is and what the technical, operational and commercial obligations expected by NGESO of each provider are.

It is vital that Ofgem and NGESO do not underestimate the time needed for restoration service providers, such as generators, to carry out the following activities:

- (i) design an on-site solution to that Grid Code approved obligation;
- (ii) identify costed solutions;
- (iii) seek and obtain the necessary planning permission(s) and associated other permits etc.;
- (iv) enter into a contract with NGESO to be a restoration service provider;
- (v) procure;
- (vi) construct;
- (vii) commission; and
- (viii) train the necessary staff (as well as possibly recruit more staff).

The longer it takes to confirm the framework, the greater the risk that steps (i)-(viii) outlined above are not completed by all restoration service providers in time for the 31st December 2026, the absolute deadline set by the Secretary of State.

Furthermore, the costs incurred by the restoration service providers associated with steps (i)-(iii), as well as those for steps (v)-(viii) and after that the ongoing operation and maintenance of that capability, will need to be recompensed via the contract entered into in step (iv). In this respect it may be necessary for NGESO to provide initial funding for steps (i)-(iii), in the form of a contract for a feasibility study, ahead of concluding the final contract under step (iv). We provide additional comments on this point further in this response.

Restoration Service Provider contract terms and conditions

Related to the timetable, we are mindful that Ofgem has still to give its approval to the terms and conditions for restoration service providers. Legal certainty in relation to what is required of them under the approved terms and conditions is naturally vital for restoration service providers.

A proposal for the terms and conditions has been submitted by NGESO in accordance with Article (4)(2)(b)¹ and hence Article (4)(4)² of the Emergency & Restoration Network Code for GB; as mandated by Article 3³. Of note is that NGESO's 'latest' proposal⁴ (dated 18th November 2019); along with its two previous versions⁵ rejected by Ofgem; are limited in scope to just the providers of the initial black start element of the complete, end-to-end, restoration service. It will be necessary for NGESO to submit an updated proposal for the terms and conditions for the holistic, end-to-end, restoration service providers. This updated proposal must cover not just the initial black start element⁶, but crucially, going forward, in the context of the new Electricity System Restoration Standard, all restoration service providers.

In order procedurally for this step (by NGESO⁷) to occur, it will be necessary for Ofgem to first reject the 18th November 2019 proposal (as it has already done on two previous occasions) and also set out that NGESO should submit an amended proposal. We urge Ofgem to do this at the earliest opportunity.

Implementation must not commercially disadvantage service providers and must be in keeping with BEIS's policy direction

It is important that restoration service providers are not commercially disadvantaged as a consequence of the new requirements.

We would ask Ofgem, when directing NGESO to submit an amended proposal for the terms and conditions for restoration service providers; to remind NGESO of the obligation set out in Article 7, namely:

"TSOs proposing an amendment shall take into account the legitimate expectations, where necessary, of power generating facility owners, demand facility owners and other stakeholders based on the initially specified or agreed requirements or methodologies."

For the avoidance of doubt, in our view the legitimate expectations of restoration service providers, such as power generating facility owners, when it comes to the provision of restoration services, was best summarised by BEIS's recent⁸ policy paper on *"Introducing a new 'Electricity System Restoration Standard'"*⁹ (the precursor for this proposed licence change) that stated that:

"The government, considering relevant views, evidence, and analysis, consulted on the findings and proposed policy with parties that would be affected by it, including generators and consumer groups such as Citizens Advice. All parties have been supportive of the establishment of a new

¹ "(b) the terms and conditions to act as restoration service providers on a contractual basis in accordance with paragraph 4"

² "4. The terms and conditions to act as defence service provider and as restoration service provider shall be established either in the national legal framework or on a contractual basis. If established on a contractual basis, each TSO shall develop by 18 December 2018 a proposal for the relevant terms and conditions, which shall define at least: (a) the characteristics of the service to be provided; (b) the possibility of and conditions for aggregation; and (c) for restoration service providers, the target geographical distribution of power sources with black start and island operation capabilities."

³ "3. Regulatory authorities and entities designated by the Member States pursuant to this paragraph shall decide on the proposals referred to in paragraph 2 within six months from the date of submission by the TSO."

⁴ <https://www.nationalgrideso.com/document/160021/download>

⁵ Dated 18th December 2018 and 19th August 2019 respectively.

⁶ Upon which the current 18th November 2019 version of the NGESO proposal is only based.

⁷ As set out in Article 7, NGESO can only submit a proposal to amend the approved terms and conditions. Absent that approval NGESO can only amend its original proposal as directed by GEMA (as has already occurred on two previous occasions).

⁸ 1st April 2021

⁹ <https://www.gov.uk/government/publications/introducing-a-new-electricity-system-restoration-standard/introducing-a-new-electricity-system-restoration-standard-policy-statement>

Electricity System Restoration Standard, so long as it is implemented in a way which does not commercially disadvantage individual parties.” [emphasis added]

Placing any obligation(s) concerning the provision of electricity system restoration services, that necessitate some or all of the steps (i)-(viii) we have noted above to be taken on restoration service providers, without any recourse to funding for the associated costs, would commercially disadvantage those parties and would not, in our view, be in conformance with the BEIS policy that:

“In the interim, Ofgem would put in place processes to monitor the implementation of the new Standard to ensure that the ESO remains on track with meeting this provision as part of its licence obligations and that any new services will not commercially disadvantage individual parties” [emphasis added]

It was in this context that we were concerned by the wording in paragraph 3.5 of Ofgem’s consultation which stated that:

“Generators that do not hold a contract to provide restoration services to the ESO will bear the costs of maintaining the level of resilience and restoration capability required by the GB codes and standards.”

Having raised our concerns at the 7th May 2021 Task Group meeting we were reassured by the statement from the Ofgem representative who noted that paragraph 3.5 relates to the current situation, where there are no substantive obligations concerning the provision of restoration services. This contrasts with the obligations now being envisaged by the new Electricity System Restoration Standard, where the proposed solution would not commercially disadvantage generators (or other parties) by expecting them to bear the cost of maintaining a level of resilience and restoration, in the future, which is substantially above that which is currently expected of them.

Question 2: Do you agree that SpC 2.2 should focus primarily on obligations to implement the ESRS and obligations to demonstrate the ESO’s compliance with it?

We agree, in principle, with the changes to SpC2.2 noting, in particular, the statement in paragraph 3.8(1)¹⁰ of the consultation document that:

“Introduce the concept of an ESRS, linking to a direction from the SoS who will set the ESRS and aligning the licence terminology with BEIS’ policy” [emphasis added]

In this regard, we are mindful that the wording in SpC2.2 omits the wording in the BEIS policy (as noted in our answer to Q1 above) that “...*any new services will not commercially disadvantage individual parties*”.

For the avoidance of doubt, and in order to ensure that its ‘*aligning the licence terminology with BEIS’ policy*’ we believe that the proposed licence wording in 2.2.4 and 2.2.15 should therefore be amended to include the following (red text):

“Once the licensee has received the direction from the Secretary of State, it must procure restoration services, **in a manner that does not commercially disadvantage individual parties**, and

¹⁰ [consultation on licence amendments to facilitate the introduction of an electricity system restoration standard.pdf](https://www.ofgem.gov.uk/consultation-on-licence-amendments-to-facilitate-the-introduction-of-an-electricity-system-restoration-standard.pdf) (ofgem.gov.uk)

propose any modifications to the Grid Code and other industry codes that are required as a consequence of the direction and this Special Condition 2.2 coming in

“2.2.15 Following receipt of a revision under paragraph 2.2.14(c) the Authority may direct the licensee to make the revision, where the Authority is satisfied that the revision is economic and efficient and will provide value for money for electricity consumers in Great Britain **whilst not commercially disadvantaging individual parties.**”

Question 3: Do you agree with integrating the approach to regulating restoration services procurement into the StC C16 obligations?

We agree, in principle, with the changes to StC C16 noting, in particular, the statement in paragraph 3.8(1) that:

“Introduce the concept of an ESRS, linking to a direction from the SoS who will set the ESRS and aligning the licence terminology with BEIS’ policy” [emphasis added]

In this regard, we are mindful that the wording in StC C16 omits the wording in the BEIS policy (as noted in our answer to Q1 above) that “...*any new services will not commercially disadvantage individual parties*”.

For the avoidance of doubt, and in order to ensure that its ‘*aligning the licence terminology with BEIS’s policy*’ we believe that the proposed licence wording in C1 and C16 should therefore be amended to include the following (red text):

[Condition C1: Interpretation of Section C]

““restoration services” Means services procured, **in a manner that does not commercially disadvantage individual parties**, by the electricity system operator and used to re-energise the National Electricity Transmission System following a Total Shutdown or Partial Shutdown (each as defined in the Grid Code).”

[Condition C16: Procurement and use of balancing services, Part H]

“total costs means the total costs associated with the provision of balancing services. In the case of restoration services, this includes, payments for feasibility study costs, **procuring the services from parties**, capital contributions, testing, warming and utilising.

The addition of ‘procuring the services from parties’ into Part H ensures the linkage with the definition of ‘restoration services’ in C1, namely ‘means services procured’. We also suggest that this list of items be placed in broadly chronological order by moving the ‘payment for feasibility study costs’ and ‘capital contributions’ to ensure a logical flow (as we have shown it above).

Question 4: Do you agree that the proposed assurance framework (including the independent assessment) is proportionate and will provide sufficient confidence that the ESO will be able to meet the ESRS?

We agree with the principle of an independent assessment of the ESO’s actions to provide the necessary assurance as set out in paragraph 3.17; namely “we are proposing to introduce a requirement for the Restoration Model and ESR Assurance Framework to be assessed by a suitably independent party with relevant expertise”.

However, given the need to provide a high level of assurance to the Secretary of State, we believe, in this case, that the appointment, by the ESO, of the 'suitably independent party with relevant expertise' should, at the very least, be subject to consultation with Ofgem. In an ideal world the appointment would be made by Ofgem, rather than the ESO, to ensure the highest level of certainty as to the suitable independence of that party.

Therefore, we would suggest that the proposed wording in SpC2.2 and StC C16 be amended in the following (red text) manner:

"2.2.8 The submission of the Electricity System Restoration Assurance Framework must be accompanied by a report from an independent auditor of internationally recognised standing appointed by the licensee **in consultation with the Authority.**"

[Condition C16: Procurement and use of balancing services, Part G (9) (e)]

"The report prepared pursuant to paragraph 9(a) must be accompanied by a statement from an independent auditor of internationally recognised standing appointed by the licensee **in consultation with the Authority.**"

Question 5: Does replacing the term "black start" with "Electricity System Restoration" in the licence conditions have any implications for industry codes or other GB governance documentation? Please explain.

Whilst we appreciate the desire to make the change from 'black start' to 'Electricity System Restoration' (and this is a change we support in principle) we are concerned to ensure that the two-stage process for restoring electricity supplies, in the event of a catastrophic loss, is recognised:

1. Initially there is a 'black start' phase where a small number of plant or apparatus both energizes (and stabilizes) the local system; and
2. Crucially that 'black start', then provides sufficient energy to enable other, non-black start capable plant in that locality, to commence their re-start processes and procedures (the 'restoration' phase) in order to, collectively, restore the electricity system in GB.

It is important that these two distinct phases are captured in the legal and regulatory framework to ensure that providers of these two distinct services are aware of what their code and contractual obligations are going forward.

Question 6: Do you have any comments or suggestions on the proposed licence text modifications?

We have no additional suggested licence text changes over and above those we have identified in Questions 2, 3 and 4 above.