

5th August 2021

By Email to: [FutureChargingandAccess@ofgem.gov.uk](mailto:FutureChargingandAccess@ofgem.gov.uk)

Dear Patrick Cassels,

**RE: Consultation on DNOs' request for directions to disapply the notice periods set out in the electricity distribution licence SLC 14.11 and in clause 19.1A of DCUSA Section 2A in regulatory years 2023/24 and 2024/25**

Shell Energy welcomes the opportunity to respond to this consultation. You will see from our responses to the questions posed that we are against even a temporary relaxation of the 15-month notice period. Our preference is for the "Letter of Comfort" since it is a much more pragmatic way to resolve this problem. It provides DNOs with a mechanism to avoid over/ under-recovery financial penalties as a result of the uncertainty around RIIO-ED2 Allowed Revenues. It also maintains the benefits of the DCP178 decision to customers and suppliers by maintaining 15 months' notice of DUoS tariffs

Please see below the answers to the specific questions raised in the consultation letter.

**Consultation Question 1: Do you agree with our initial views on whether to issue directions that the relevant DCUSA and licence conditions do not apply? Please provide evidence to support your views, including on whether any or some directions should be issued and the benefits and risks with each option. If we do issue a direction (or directions):**

- (i) Should these apply for 2023/24 and 2024/25, or just 2023/24?,**
- (ii) Should it be a direction only disapplying DCUSA Section 2A clause 19.1B or also electricity distribution licence SLC 14.11?**
- (iii) If both, what should the notice period be and why?**

*We do not support this option for any of the above scenarios. While we recognise that DNOs will not have a view of final RIIO-ED2 Revenues 15 months before setting tariffs, suppliers have even less of a view of what the revenue numbers will look like since they are not close to DNO business plans. We consider the proposal to move this risk from DNOs to suppliers (or to customers who have pass through DUoS contracts) to be unacceptable from a consumer's perspective. This is because DNOs have the option to collect any under recovery in later periods, they are also provided with a regulated rate of return. Suppliers and consumers do not have this option.*

*We do, however, accept that the timescales in relation to agreeing the RIIO-ED2 business plans provides more risk to the DNOs due to the k-factor over / under recovery bands and penalty interest rates. We would therefore support the relaxation of these penalties as a pragmatic solution to this problem (See our response to Question 3).*

**Consultation Question 2: Can you provide any specific evidence about the impact of varying notice periods on contractual arrangements and budgeting?**

*The reasons Ofgem approved DCP178 (Notification period for change to use of system charges) on 24th February 2015 still apply. Ofgem recognised at that time that the benefits of DCP178 were:*

- 15 months' notice removes the need for suppliers to apply risk premia for customers on 'non pass through' contracts for the period where DUoS tariffs are known, meaning lower prices for customers.
- 15 months' notice provides customers on 'pass through' DUoS contracts (often, but not restricted to larger customers) with additional forecasting and budgetary cost certainty.
- DCP178 better facilitates the DCUSA Objectives

*Removing the 15 months' notice period would remove the above benefits recognised by Ofgem under DCP178.*

- Customers on 'non pass through' contracts would pay more since risk premia would need to be charged by suppliers to cover the uncertainty around these DUoS charges.
- Customers on pass through contracts, who now expect to receive 15 months' notice of DUoS charges, will have much less certainty around their future costs, potentially impacting planning, expenditure and financing decisions.

**Consultation Question 3: Do you agree with our initial views on the potential for a letter of comfort being sufficient to mitigate the main risk for DNOs? If no, please provide evidence of what the remaining risks are with this option?**

*We support the Letter of Comfort Option as being sufficient to mitigate the main risk for DNOs. This would allow DNOs to continue to provide 15 months' notice of 2023/24 and protect them from being penalised. It should be for the DNO to decide the Allowed Revenue that is used for tariffs – based on latest information in their final business plans.*

*We agree with Ofgem that the argument is less strong for a Letter of Comfort in 24/25 since charges would be based on the RIIO-ED2 draft determination. However, we would have no objections to this being in place – or the penalty bands being widened – in order to address DNOs concerns of financial penalties. The key driver here is that 15 months' notice of DUoS charges should be retained, providing suppliers with more certainty of charges, resulting in lower costs for customers on 'non pass through' contracts through reduced risk premia. Customers on pass through contracts also retain the transparency they have come to expect from 15 months' notice.*

*In the unlikely event of significant under-recovery by a DNO resulting in short term cash flow risk due to timing factors beyond their control, we would suggest this is dealt with separately by Ofgem should the situation occur.*

**Consultation Question 4: Do you think the benefit of advanced notice of charges outweighs the risk of significant under/over-recovery over multiple years? Please provide evidence to support your preference.**

*Yes, please see responses to Questions 1, 2 and 3.*

**Consultation Question 5: Do you agree with our views on the option to use the code modification process to address the timing issues between price controls? If not, can you provide any evidence regarding the benefit of applying a code change?**

*We agree with Ofgem that the Code Modification process should not be used to address this issue. This consultation provides an opportunity to provide views.*

Please do not hesitate to contact me if you have any questions in relation to our response.

Yours sincerely,



Daniel Parry  
Head of Regulation  
Shell Energy UK