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6<sup>th</sup> August 2021

Dear Patrick,

**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**

Drax Group plc (Drax) owns two retail businesses, Haven Power and Opus Energy, which together supply renewable electricity and gas to over 350,000 business premises. Drax also owns and operates a portfolio of flexible, low carbon and renewable electricity generation assets – providing enough power for the equivalent of more than 8.3 million homes across the UK. This response is non-confidential.

We understand the uncertainty RIIO-ED2 creates for DNOs in setting DUoS tariffs but do not believe granting DNOs formal derogations is appropriate as it simply transfers the uncertainty onto Suppliers and consumers. We believe the 'Letter of Comfort' approach combined with maintaining the obligation on DNO's to provide their best estimates of charges, addresses DNO's concerns in the most proportionate and practicable way while avoiding manifest harm to other parties.

The current 15 month notice period for setting DUoS charges was introduced through DCP 178 (*Notification period for change to use of system charges*) in 2013. This change sought to address the issue of material variations in DUoS tariffs at short notice. That volatility in DUoS tariffs was causing Suppliers to include a high-risk premia into consumer contracts to limit their exposure. Ofgem approved DCP 178 in 2015 recognising that while the DNOs would have to base their charges on estimated allowed revenue, any challenge this presented to DNOs would be far outweighed by the benefits to consumers.

The same reasoning applies here and is arguably even more important at this time when consumers are wrestling with the economic downturn following the Covid pandemic. Rather than cause an increase in consumer prices or expose consumers to considerable price volatility, the 'Letter of Comfort' approach offers a pragmatic and effective means to mitigate the risk to DNOs.

Our responses to the specific consultation questions are appended. We'd be happy to discuss any part of our response with you further if it would be helpful.

Yours sincerely,

Matt Young

Group Head of Regulation, Drax Group PLC

## **Appendix – Responses to consultation questions**

- 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 believe that directions should be issued disapplying relevant DCUSA and licence conditions. As stated in our cover letter, we feel that DNOs are best able to manage the risk and that a Letter of Comfort should be sufficient. We note that a similar Letter of Comfort<sup>1</sup> was issued to National Grid Gas plc to cover volatile gas prices earlier in the year.

If a direction were issued, then we believe it should only apply to 2023/24 tariffs and not 2024/25 tariffs as well. This is because, as per Ofgem's admission, previous price controls have not seen significant changes between draft and final determinations and at this time there are no factors to suggest the early year allowances under RIIO-ED2 will be any different.

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

Shortening notice periods for changes to DUoS tariffs impacts both our existing and future customers.

Our customers on passthrough (or variable) contracts will be directly exposed to price volatility and resulting budgetary challenges at a time when many continue to struggle for recovery following the Covid-19 pandemic. We have engaged directly with some of the larger customers in this category and they have expressed concern with any shortened notice period; we expect some will respond directly to this consultation.

All other customers are on fixed price contracts because they generally favour price certainty. Affording DNOs a shorter notice period for tariff changes will result in us including a price risk premia into new fixed price contracts to limit our exposure to cost variances, and we may also be forced to reopen existing consumer contracts<sup>2</sup> if the short notice changes are materially different from the medium-term estimates used to determine consumer prices up to now. Neither of those outcomes are in consumers' best interest and both lead to a poor and disruptive consumer experience.

- 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?**

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<sup>1</sup> [https://www.ofgem.gov.uk/sites/default/files/2021-06/response\\_to\\_national\\_grid\\_gas\\_on\\_the\\_future\\_of\\_gas\\_transmission\\_charging\\_0.pdf](https://www.ofgem.gov.uk/sites/default/files/2021-06/response_to_national_grid_gas_on_the_future_of_gas_transmission_charging_0.pdf)

<sup>2</sup> Standard 'change in law / industry rules' provisions in contracts



Yes, we believe a letter of comfort is the most proportionate and practicable solution to mitigate the primary risk to DNOs. DNOs are best placed to manage the uncertainty in their revenue estimates rather than suppliers or consumers who have little if any ability to influence or mitigate for such a risk.

**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. Firstly, if DNOs are making best endeavours to accurately forecast allowed revenues and associated DUoS prices, then we would not expect there to be a significant under/over-recovery spanning multiple years. Secondly, as was supported by the majority of DNOs and suppliers, and by Ofgem, under the DCP 178 process, providing advanced notice of charges is beneficial to consumers.

Notwithstanding the above, relatively few fixed price contracts have a duration longer than 3 years, meaning any uncertainty/variance in recovery spanning multiple years should only impact a small proportion of consumers before prices can be re-set.

**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?**

Yes, we agree it is not proportionate or appropriate (in this instance) to use the code modification process to address the timing issues between price controls.

**6. Do you have any further evidence or information that you think is relevant and can help inform our decision?**

Not currently.