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Ofgem
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Dear Patrick,

Consultation on DNOs' request for directions to temporarily disapply the current DUoS charges notification periods


Thank you for the opportunity to comment on the various options that have been set out in this consultation which follows the request from the Energy Networks Association for directions to disapply the notice periods for the publication of DUoS charges.

To be clear, SSEN supports in these circumstances the proposed reduction in the notice periods for both 2023/24 and 2024/25. We believe that this benefits all participants by minimizing volatility and enabling the DNOs to produce tariffs that accurately reflect DNO's allowed revenue for RIIO-ED2.

As stated in the ENA letter the request was raised because of the uncertainty around the allowances for RIIO-ED2 which will start on 1st April 2023. In the normal course of events, the tariffs for 2023/24 would be published in December 2021, and would need to be based on the DNOs' final business plans. Furthermore, the tariffs for 2024/25 would normally be published in December 2022 and would most likely need to be based on Ofgem's draft determinations for the RIIO-ED2 price control.

Disapplication of the statutory notice periods would allow the DNOs to publish their tariffs later and avoid the potential for substantial volatility in charges that would have an effect on the prices customers pay. If the current notice periods are retained and pricing based on final business plans and draft determinations does not align with Ofgem's final determinations on allowances, it is quite possible that it would take 4 years to unwind the forecasts used at the price setting from the first two years of the price control.

Our intention is to reduce the uncertainty for the consumer and while there may be some short-term inconvenience by publishing tariffs later, this should create a longer term benefit.

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Our responses to the specific questions from the consultation can be found in the appendix to this letter.

Yours sincerely

Ross Bibby
Senior Analyst – Distribution Regulation

Appendix: Consultation questions and responses.

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

It is our opinion that directions should be issued relieving DNOs of the notice period requirements under both DCUSA Section 2A clause 19.1B and the distribution licence condition SLC 14.11 for both years in question. We do not believe it is appropriate for tariffs to be set on the basis of final business plans. We believe that Ofgem's final determinations provide the best basis for calculating charges for the start of the next price control, RIIO-ED2.

While we accept the point made by Ofgem in the consultation that there was minimal change from the RIIO-ED1 draft determinations to final ones, we would point to the substantial financial fluctuations in the RIIO-T1 process from final business plan to draft determination and then final determination as a recent and apposite example of the volatility that is possible in the process of determining a price control. As a result we feel that the most appropriate notice periods should be those set out in the ENA letter on this matter. These are that the 2023/24 tariffs will be set no later than 31st January 2023 and the 2024/25 tariffs are set no later than 31st December 2023.

If, following this consultation, the consensus from other industry participants is that they are willing to accept a certain level of price volatility in exchange for a longer notice period, we feel this would be best achieved by basing the tariffs on the RIIO-ED2 draft determinations and could publish both the 2023/24 and 2024/25 tariffs by 31st December 2022.

When making a determination on this issue we ask Ofgem to be mindful of the need for IDNOs and DNOs operating EDNs to have an appropriate timescale for publishing their charges which are reliant on understanding what the DNOs' charges will be.

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

While this is a question for suppliers to answer, we feel it is important that there is an understanding of the materiality of shorter notice periods on customers, in order to then balance that against the potential effects of DUoS price volatility.

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?

Under the current framework there is the facility for Ofgem to waive any potential penalty for substantial over or under recovery of revenue, if it is due to factors out with the DNO's control. In this case we would expect Ofgem to enact this facility and not levy any potential penalty.

Furthermore, the proposed letter of comfort would still result in 2023/24 tariffs being published on the basis of the allowances set out in the DNOs' final business plans. In this instance it would seem there was a lack of oversight if DNOs were to publish tariffs before Ofgem had the opportunity to scrutinise the business plans those charges were derived from.

It is important to be clear that the request for the disapplication of notice periods was not driven by a concern about the potential for penalties or income streams for DNOs, rather it was to protect consumers from unnecessarily volatile prices for the majority of RIIO-ED2.

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.

Again, we see this primarily as a question for suppliers and their customers. The DNO preference has always been to minimise volatility achieved by shorter notice periods.

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's view that code modifications are not the appropriate choice in this instance.