



Making a positive difference  
for energy consumers

Secretary of State, transmission licensees,  
generators, suppliers, and  
consumer groups

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Colleague,

**Decision to proceed with licence grant process for an Electricity Transmission Licence to Mersey Reactive Power Limited (MRPL) for the operation of a shunt reactor**

On 22 October 2021, the Gas and Electricity Markets Authority ("the Authority")<sup>1</sup> published on its website a consultation on its minded-to position to grant a Great Britain (GB) Electricity Transmission Licence ("ET Licence") to Mersey Reactive Power Limited (MRPL).<sup>2</sup>

The consultation set out the background and context to MRPL's licence application and our view on several considerations, including the potential impacts on consumers.

**Ofgem's decision**

We received seven responses to the consultation. These covered the consultation questions, as well as feedback on a range of issues relating to the application and its considerations. All the non-confidential consultation responses are available on the website.

Having carefully considered the responses, we now propose to continue with the process to grant an ET Licence for MRPL but with some changes to address the key issues highlighted in consultation responses. The changes we propose to make are to the licence conditions, the proposed licence Terms and the effective date of the licence. We are satisfied that the amended licensing arrangements will offer sufficient safeguards to protect consumers' interests.

Our response to the stakeholders' feedback on the consultation is covered in the issues log published alongside this letter on our website.<sup>3</sup> In the remainder of this letter, we explain our reasoning on the key issues raised by stakeholders in response to the consultation.

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<sup>1</sup> The terms "the Authority", "we" and "us" are used interchangeably in this document.

<sup>2</sup> <https://www.ofgem.gov.uk/publications/consultation-minded-decision-application-electricity-transmission-licence-mersey-reactive-power-limited-operation-shunt-reactor>

<sup>3</sup> <https://www.ofgem.gov.uk/sites/default/files/2022-01/MRPL%20Licence%20Issues%20Log.xlsx>

## Participation in Transmission Activity

Several stakeholders questioned whether MRPL's intended activity constitutes "participation in transmission" as defined in the Electricity Act 1989 (EA89). They requested further clarification of the grounds on which MRPL will be participating in transmission in respect of the definition of transmission as set out in section 4 of the EA89.

The definition states:

*"transmission system" means a system which—*

- (a) consists (wholly or mainly) of high voltage lines and electrical plant, and*
- (b) is used for conveying electricity from a generating station to a substation, from one generating station to another or from one substation to another.*

The term "electrical plant" is defined (section 64) as:

*"electrical plant" means any plant equipment, apparatus or appliance used for, or for purposes connected with the generation, transmission, distribution or supply of electricity, other than—*

- (a) an electric line;*
- (b) a meter used for ascertaining the quantity of electricity supplied to any premises; or*
- (c) an electrical appliance under the control of a consumer;*

Section 4(3A)(b) of the EA89 defines the licensable act of participation in the transmission of electricity as a person who *"makes available for use for the purposes of such a transmission system anything which forms part of it"*.

The sole purpose of MRPL's proposed activity is to absorb reactive power on the transmission system by operating a standalone 400kV shunt reactor in the Mersey area. We consider that MRPL's shunt reactor falls under the EA89 definition of electrical plant and whilst it is not itself a transmission system, it will form part of the transmission system. Accordingly, we consider that MRPL's proposed activity constitutes participation in the transmission of electricity as defined in the EA89. Therefore, MRPL would require a transmission licence to operate the shunt reactor lawfully and fulfil its service contract with the National Grid Electricity System Operator (NGESO).

## Ofgem powers to grant an ET Licence

Some stakeholders questioned whether the Authority has the legal powers to grant an ET licence for the circumstances of MRPL's proposed activity. Stakeholders' key concerns were about granting an ET Licence in an area that overlaps with the authorised area of an existing ET licensee, granting an ET Licence to winner of an on-shore transmission competition [organised by the NGESO], and granting a new category of ET Licence.

### *Geographic licence co-existence*

In our October 2021 consultation, we proposed to introduce limitations on the geographical area of MRPL's ET Licence to the location of the installed shunt reactor at Frodsham. One stakeholder questioned whether Ofgem has legislative power to grant a new ET Licence in an area that overlaps with the authorised area of an existing ET licensee. In their view, this was not the intent of reforms made to the EA89 (enacted by the Energy Act 2004) and specifically section 6(1)(b) EA89.

We note that the historical background to the EA89 amendments were to accommodate the coexistence of the electricity system operator and incumbent transmission owners. However, in our view, the statutory provisions of the EA89 do not limit Ofgem's power to grant ET Licences on a geographically exclusive basis – the existing ET Licences are framed by reference to a Transmission Area, and limited to that area, but do not grant any

exclusivity over that area. We remain of the view that limiting MRPL's ET Licence to a small geographical location at the Frodsham site is the best solution for MRPL and consumers.

### *Competition*

Three responses argued that Ofgem did not have the legislative power to grant an ET Licence as a result of a competitive process without additional powers in primary legislation.

We recognise that the Authority currently has no explicit statutory powers to run competitions for onshore transmission licences. We do not consider that this is relevant to this application, as the tender was not run by the Authority, nor did the Authority direct the NGESO to award the relevant contract competitively.

The tender was run by the NGESO as part of its own arrangements to procure services it needs to fulfil its functions under its licence. We consider that there is no statutory barrier preventing Ofgem from granting a licence in the case of MRPL, who was the winning bidder in such a tender run by the NGESO.

The key question for the Authority under our normal statutory powers to grant licences therefore is principally whether a licence would be required to operate the proposed solution. Having concluded that a licence is required to operate the shunt reactor lawfully, we assessed whether there is any reason to refuse to grant the licence based on the nature of the proposed solution or the identity of the proposed licensee. We have found that neither appear to be the case. Ofgem is therefore able to grant a licence in this scenario, as per its requirement to process applications for ET Licences.

### *A new category of ET licence*

One stakeholder questioned whether the Authority has the remit to grant a new category of transmission licence, that differs from the other ET Licences. In their view this could increase the risk of adverse impacts to consumers. We disagree that the ET Licence for MRPL we consulted on is a new category of ET Licence. It is within Ofgem's remit to grant an ET Licence, to decide which of the conditions are to apply to the specific licensee, and to modify Standard Conditions where appropriate.

We proposed that MRPL's ET Licence would not include all the licence conditions in place for the incumbent onshore ET licensees because MRPL's participation in transmission is a small subset of the transmission activity that is undertaken by the existing onshore ET licensees. In addition, MRPL's business model is different to that of the incumbent onshore ET licensees. MRPL is a Special Purpose Vehicle legal entity, created to fulfil a narrow and specific purpose of delivering the reactive power service to the NGESO under a commercial agreement. MRPL will not participate in any other transmission activity. Many of the conditions in the ET Licence held by the incumbent transmission owners have been developed to protect customers where the licence holder has a right to receive a regulated revenue. The latter is not applicable to MRPL.

We note that Ofgem is currently considering the appropriate enduring arrangements for providers of transmission ancillary services such as MRPL. However, until such time that the review has concluded, and any recommendations have been fully implemented, we are required to consider the licence applications within the legislative arrangements that are currently in place. This letter relates to MRPL's application, and we will continue to assess any similar applications on a case-by-case basis. The content of MRPL's Licence Conditions may prove to be a short-term measure pending the outcome of the regulatory review and should not be taken as a precedent for a future licence type.

## Lack of transparency and regulatory oversight

Several stakeholders disagreed with our view that the commercial arrangements between MRPL and the NGESO should include appropriate service standards, access requirements and network requirements and therefore avoided the need for some standard licence conditions to be included in MRPL's ET Licence. Stakeholders had concerns that Ofgem will not have visibility of the commercial discussions, and that such an approach would place a significant burden and enforcement responsibility on the NGESO and raises issues of accountability and transparency. They said that any technical standards and network requirements, should be set out in MRPL's licence so that they are subject to the same regulatory scrutiny and held to similar standards and potential enforcement as any other ET licensee.

We have considered the feedback received and our views on all the issues raised are summarised in the issues log published alongside this letter. We propose to make the following changes to the Standard Licence Conditions for MRPL's ET Licence for the reasons set out below.

### Changes to applicable Licence Conditions

- *Condition B8: Undertaking from Ultimate Controller*

One stakeholder argued the importance of this condition, to accompany Condition B4, and to give assurance that the ultimate controllers of MRPL would not place it in breach of its ET Licence. We agree that it is appropriate to turn this condition on, as it will help ensure that MRPL remains compliant with requirements and that its ultimate controllers do not take action which might breach its licence provisions.

- *Condition B12: System Operator - Transmission Owner Code*

Several stakeholders outlined the importance of MRPL being party to the System Operator - Transmission Owner Code (STC) to ensure MRPL's compliance with technical and security standards, as well as arrangements for managing interfaces with other industry parties. One stakeholder noted that payment and performance obligations are not a substitute for compliance with the STC. Another stakeholder noted the importance of the STC to ensure safety coordination and data sharing and that these are visible and transparent. In their response, the NGESO outlined the difficulties of ensuring that all technical and safety standards are replicated within the commercial arrangements between them and MRPL.

Having considered responses, we agree that turning on Condition B12 to require MRPL to adopt the STC is more appropriate than replicating industry requirements in the commercial contract it has with the NGESO. Whilst we propose to turn on Consider B12 (without amendment), we consider that parts of the STC will not be relevant to MRPL, because of its limited scope of participation in transmission and transmission area. We will therefore issue a direction under paragraph 15 of condition B12 setting out the parts of the STC that are not relevant for MRPL.

- *Condition D2: Obligation to Provide Transmission Services*

Two stakeholders argued that in the absence of Condition D2, there would not be any obligation on MRPL to provide transmission services to the NGESO. They noted that this condition was fundamental to MRPL as a TO and ensuring consumer protections through potential enforcement by Ofgem. Whilst MRPL faces strong commercial incentives under its contract to deliver the required transmission services to the NGESO, we consider

that turning on Condition D2, along with Condition B12 will provide backup safeguards for consumers in terms of regulatory oversight of MRPL's service provision.

- *Licence Terms*

We are proposing minor changes to MRPL's ET Licence Terms from those previously consulted on. These are displayed as tracked changes in the Notice published alongside this letter. The reasons for these changes are discussed in the Issues Log.

#### Effective date of the licence

In the October 2021 consultation, we proposed that the effective date of the MRPL's ET Licence is 1 April 2022 in line with the start date of MRPL's contracted service provision to the NGESO. However, we note that it may be necessary to amend the effective date of MRPL's ET Licence in order to facilitate MRPL's accession to the STC, and to fulfil various requirements as a party to the code. We will confirm the effective date of MRPL's ET Licence in our licence decision notice once we have received confirmation from the NGESO, National Grid Electricity Transmission and MRPL on the programme and timeline by which MRPL will transition from being a party under the Connection and Use of System Code (CUSC) to an ET licensee party under the STC.

#### Review of regulatory arrangements

We received broad support for a review of the regulatory framework of transmission ancillary services, with respondents noting this should allow for a suitable long-term solution, that would fit with the ongoing evolution in the electricity sector. As per our separate policy letter of 20th October 2021, which also clarified the short-term treatment of synchronous condensers as generation<sup>4</sup>, we will look to undertake a review of the enduring regulatory framework for the provision of ancillary service assets.

#### **Statutory consultation on MRPL's ET Licence**

We are consulting on the ET licence we are proposing to grant MRPL. A Notice under Sections 6B(3) and section 8A(3) of the EA89 will also be published on 11 January 2021. The proposed licence Terms are set out in Appendix 1 of the Notice.

#### **Next steps**

We will publish our licence decision notice on the MRPL's ET Licence on or before 17 February 2022.

Yours sincerely,

**Min Zhu**  
**Deputy Director, RIIO Electricity Transmission**

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<sup>4</sup> [Review of the regulatory framework for ancillary service assets and clarification on our short-term treatment of synchronous condensers | Ofgem](#)