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

Dear Patrick

BUUK Infrastructure owns and operates licensed distribution networks through its subsidiaries the Electricity Network Company Limited (ENC) and Independent Power Networks Limited (IPNL). We also provide connection services to new build developments through our Independent Connection Providers, GTC Infrastructure and PowerOn. Through these activities we are heavily involved in the provision of new connections and serve both domestic and commercial customers.

Please find enclosed in the appendix to this letter our response to Ofgem's Consultation on its updated minded to position on the Access Significant Code Review.

In addition to our responses in the annex, we would like to draw to your attention to two particular areas that are of concern to us. This is the treatment of connections deemed to be speculative; and, the setting and administration of curtailed access.

We believe that points which we are highlighting in this letter are important to ensuring the continued success of the new connections market amid increasing levels of change and flexibility.

#### *Speculative Developments*

We believe the treatment of connections deemed to be speculative needs careful consideration:

- We think it is essential to clearly define the basis under which a connection will be deemed to be speculative, and for such criteria to set out in the CCCM.
- Also, customers who make requests for connections that a DNO deems to be speculative should not be subject to penal charges.

We have seen an increase in the types of connection requests that are deemed by DNOs to be speculative. We also see inconsistent application of the criteria to determine whether a connection is speculative. We do not believe that this can be in the interests of connection customers or DUoS customers.

We understand that where a customer's connection requirements are not clear or substantiated there is a risk that the connection assets provided (including reinforcement) will be underutilised and become stranded if the capacity requested by the customer is not taken

up, and that this may result in lower DUoS revenues than would have been received had the connection capacity requested been fully utilised.

We agree that in some, limited, circumstances it may be reasonable to charge the full costs of providing the connection (and where appropriate the capitalised costs of operation and maintenance of such assets). This is where there is no clear foreseeable use of the capacity requested. However, there are circumstances where customers are charged for connections on a speculative basis, but who go on to utilise the connection, and pay DUoS charges. We think such treatment is neither fair nor proportionate. We think such treatment has the potential to be unduly discriminatory, and that such discrimination is exacerbated by the move to a shallow connection boundary since the difference between charges to non-speculative and speculative developments will be much greater.

Where connections are charged on a speculative basis, but the capacity requested is subsequently taken up, we think it is fair that the additional charges levied should be rebated (we note that where such assets are utilised by a third party, the paying for the connection may be eligible for payments under the ECCRs.)

Specifically, we think the definition should be reconsidered in relation to housing developments. New housing developments may comprise of many hundreds or thousands of homes, which may build out over a long period of time. We believe that by providing the total picture of the load required for the whole development, the developer is allowing the distributor the opportunity to design the most efficient scheme. We do not think that the developer should be penalised by being required to pay for reinforcement when, owing to some inevitable uncertainty around timing of phases the development could be deemed to be speculative. Housing developments, subject to macro-economic factors, invariably get built and so we do not believe that deeming them to be speculative can be seen to be in the interest of connecting customers. We note that the transition path to net zero is uncertain, and that load requirements of houses with electric heating and EV charge points may, over the initial years, be less certain than the existing stock. We believe that investment for such large developments is better managed through active ongoing engagement between the relevant stakeholders on the build out profile and capacity requirements so that investment and the provision of capacity is undertaken in a timely manner. This is even more so the case with shallow connection charging boundaries.

#### *Curtailed Access*

We also have concerns about the way that distributors may determine the time by which either;

- a) Customers who opt for a curtailable connection will be made firm; or
- b) Customers who do not opt for a curtailable connection or are not eligible for a curtailable connection will be connected to the network.

We believe that it is imperative for the connections market that connecting customers do not face undue delays in obtaining their connection where there is no demonstrable need to delay the work. We cannot see how it can be in customers' interests for DNOs to wait for further customers to seek a connection before they undertake reinforcement works. We think DNOs should already have sufficient information on the need for future investment. For example:

- through local area plans,
- knowledge of their own network; and,
- their own Long Term Development Statements

to determine whether there is likely to be a more strategic solution to allow future customers to connect more quickly. We think this is especially pertinent for customers who are not eligible for curtailable access, i.e. for large housing and mixed-use developments. Where a large housing development connects to a network and the DNO does not undertake the requisite reinforcement in a timely manner then it is possible that individual houses may not be able to be connected when they are built. The artificial creation of delays to housing completions caused by the electricity distribution network would appear to be inconsistent with wider government policy.

As we have alluded earlier in this letter we have endeavoured to provide specific feedback on Ofgem's question in the appendix to this letter.

We would welcome further engagement on the points that we have raised in this letter and will continued to work with both Ofgem and the ENA led implementation group to bring these matters to a satisfactory resolution.

Yours sincerely

Tom Cadge  
Regulatory Charges Manager

**Question 2a:**

- i. Do you believe that it is necessary to introduce a High Cost Cap (HCC) for demand, and to retain one for generation?**

Whilst we do not fully agree that it is *necessary* to introduce an HCC for demand connections, we do believe that it is likely to be in the interests of the wider customer base to introduce some protections for DUoS customers to limit the impacts on their bills where the impact of high connection costs may be disproportionate to the benefit of customers. The deficiency of an HCC is that we do not see how the benefit that reinforcement brings to customers is measured so we feel that it can be a blunt mechanism for limiting the impacts on DUoS customers.

We have always advocated the introduction of an economic test for electricity connections, which takes into account the future DUoS which might be received as a result of the connections, and therefore provides a much more accurate way of ensuring that DUoS customers do not face unnecessary additional costs. However, in the absence of an economic test being put in place, we do give qualified support for the introduction of an HCC.

- ii. Do you believe that our proposals to do so represent sufficient and proportionate protection for DUoS billpayers against excessively expensive connections driven reinforcement?**

We think that it is difficult to confirm that such an approach is sufficient to protect DUoS bill payers against '*excessively expensive*' connections driven reinforcement as we don't think that the HCC is a justifiable way of determining what is excessively expensive. It only considers the costs of the reinforcement work and not, as we have already suggested, the benefit that this reinforcement brings to the wider network.

We agree that proposals to introduce an HCC offers a mechanism to mitigate the exposure to DUoS bill payers from excessively expensive connections driven reinforcement. However, the level to which DUoS bill payers are protected depends on the thresholds that are applied to the HCC. We believe it is likely that the largest costs for reinforcement are not at the voltage of the connection or the voltage level immediately above, but on the deeper, larger assets. For LV connections which trigger EHV works or above the HCC will make little or no difference to DUoS bill payers' exposure to reinforcement.

We do, however, recognise the proportionality of the HCC as an instrument to mitigate potentially excessive DUoS costs since it is fairly straight forward to apply to each connection once the cap has been set and we note that the possible move towards a location signal under further DUoS reforms may negate the need for a HCC in, subject to Ofgem's proposed DUoS SCR, 2025.

- iii. What are your views on retaining the current 'voltage rule' to determine whether the HCC is breached (i.e. considering the cost of reinforcement at the voltage level at point of connection and the voltage level above)?**

We understand the rationale for the current voltage rule and that changing this would deepen the connection boundary, which is not in line with the broad policy direction that connecting customers should pay in accordance with a shallower connection boundary. However, this proposal appears to reinforce our view set out in our responses to previous questions: that there is a disconnect between the desire to protect DUoS customers and the move to a shallower boundary. By retaining the voltage rule we think that the level of protection afforded to DUoS customers is likely to be minimal. We think that this may also lead to perverse scenarios where the

reinforcement required to provide a connection to one customer has a lower capital cost than the reinforcement to provide a second customer's connection, but the second customer does not contribute to reinforcement as the reinforcement required to facilitate their connection is at more than one voltage tier above their connection.

**iv. What are your views on the principles we have proposed to determine an appropriate HCC level for demand, including the potential for this to be set at a different level to generation under these principles?**

Insofar as the principle which has been described is that the HCC should only impact a small minority of very high-cost projects then we believe that this is a suitable principle as it aligns with the policy direction. We have noted our concerns around the interaction between the voltage rule and the HCC.

**Question 2b: What are your views on our proposals to maintain the requirement for three-phase connection requests to pay the full costs of reinforcement, in excess of Minimum Scheme (i.e. lowest overall capital cost)?**

We agree that, where a customer requests a three-phase supply, and that three-phase supply is not required to deliver the capacity required for that customer, then that customer should pay any costs in additional to the minimum scheme for reinforcement. This provides a reasonable and justifiable mitigation for DUoS customers who should not fund assets which are above requirements for a single customer.

**Question 2c:**

**i. Do you agree with our proposals to maintain the current treatment of speculative connections and is there a need for further clarification on the definition of speculative connections?**

We understand that for some connections it is unclear when or if the load (or generation) characteristics will materialise, that such connections will be speculative, and charging the full cost of providing the connection may disincentivise the more frivolous connection requests. However, as a recipient of connection offers and point of connection offers, we see a wide range of interpretations around the point of speculative developments, and we think that much greater clarity and certainty is required around what constitutes a speculative development.

We have recently seen large domestic developments treated as speculative developments in some DNO areas and we would question the application of the speculative development tag to such developments as we believe that there are more appropriate mitigations against the risk of stranded assets for such developments. Where such developments have not progressed it is often down to macro-economic factors which affect the housing market more broadly and cannot easily be identified by developers or distributors. By determining that some housing developments are speculative distributors are limiting the ability of developers to build houses in areas where reinforcement is required to provide connections and we do not believe that this approach can be in the broad economic and social interests of GB.

We recognise that more work will be needed to ensure that reinforcement is timed more appropriately and that the build programmes of housing developments are available to allow for the DNO to plan their networks accordingly, but we think that the approach which has been taken by some DNOs to apply a housing number threshold, over which a development will be considered speculative is unfair, unnecessary and generally prohibitive to new housing developments.

We have, through GTC's Connection Charging Methodology (as approved by Ofgem), defined a different approach to determining the types of development which we consider to be speculative. We think it is more important than ever to ensure that housing developments are not stifled by being unduly deemed to be speculative connections because they are being built out over a number of years. This may drive perverse behaviour whereby customers only apply only for the initial phase(s) of the development. This would reduce the ability of the distributor to efficiently plan and coordinate the more strategic reinforcement in the area (which would result from a full plan and view of the requirements of the applicant) so it is in the interests of all parties to take a pragmatic and realistic view on the application of speculative developments. As the boundary between the costs paid by a speculative development and a non-speculative development is being broadened by this policy we think it is more important than ever to get this definition right and to ensure consistent and clear application across all DNOs.

**ii. Do you agree that our wider connection boundary proposals broaden the disparity between connections deemed to be speculative versus non-speculative? If so, do you believe this needs to be addressed and how?**

We recognise the merits of an approach where connections deemed to be speculative are charged the full cost of providing the connection. However, there will be some connections charged on such basis, where the load or generation materialises (in whole or large part) within a reasonable time (and the relevant assets are utilised and not stranded). To not offer a rebate of the additional connection charges and to charge DUoS to such users on the same basis as other 'non-speculative' users would result in double charging and would be unduly discriminatory.

For large developments assets may be provided on a phased basis in line with load growth. Therefore, not all assets will be required on the day that a first connection is made but could be constructed on a phased basis as load materialises. Therefore, any rebate should be considered in respect of load that materialises within 10 years of relevant connection assets being provided (i.e. not 10 years from when the first connection is made). The 10-year period is consistent with the period specific in the ECCR's.

We think the criteria to determine what is speculative may lead to perverse and unduly discriminatory outcomes. For example, a development for x000 houses will have a build profile in excess of 10 years. Another connection may be in respect of EV charging infrastructure – which may equally have a long load growth profile i.e. for the capacity provided to be utilised and for the load factor to reach a 'steady state' operation. Such sites could equally be treated as speculative – the materialisation of load growth for such sites is likely to be more speculative than a housing development. However, Ofgem has stated that one of the reasons for the SCR was to reduce the barriers to new low carbon technologies. We therefore suspect that Ofgem would not wish to see such sites treated as speculative. But any rules to determine what is or is not speculative need to be applied with equity and fairness across all classes of customer.

**Question 2d: Do you consider that our proposed DUoS mitigations (a demand HCC, and retaining reinforcement payments for three phase and speculative connection contributions) present a cohesive package of protections for DUoS billpayers? Do you consider these proposals to interact in any way that could counter their effectiveness, and if so, how?**

Whether the proposed DUoS mitigations are a cohesive package of protections depends very much on the view of what DUoS bill payers are to be protected from.

For generation, in the absence of DUoS reform, generators will continue to receive a DUoS credit. Where the network needs to be reinforced to accommodate generation connections, such reinforcement will be funded by demand customers. The need to reinforce a network to facilitate a generation connection runs counter to the principle that generation should get a credit because of its connection, mitigates the need for upstream reinforcement for demand customers. Therefore, we do not see the proposed mitigations for generation connections as being adequate protection for DUoS bill payers.

For speculative developments please see our response to Question 2e. We think future DUoS bill payers, who have fully paid for a connection previously deemed) to be speculative, will be double charged for reinforcement, first in the speculative connection charge and again through DUoS charges for wider reinforcement.

Under current generation DUoS arrangements, it is difficult to understand why reinforcement for generation should, subject to a HCC, be subsidised by demand customers. Such an approach does not appear to reflect Ofgem's aim to protect DUoS bill payers.

**Question 2e: Do our updated proposals to treat storage in line with generation for the purposes of connection charging simplify charging arrangements for these sites and better align with the broader regulatory and legislative framework?**

The logic in Ofgem's argument setting out their reasoning for the treatment of storage is clear. We don't think the assumption that storage has more locational flexibility, therefore able to better react to pricing signals is sufficient justification for discriminatory treatment of such class of customer.

Notwithstanding our comments on the locational flexibility of storage facilities we think that treatment, for the purpose of connection charging, should be on the basis that storage is treated as generation on the basis that storage facilities avoid paying a DUoS residual charge in line with other generators and to treat them differently for the purpose of connection charging may unduly distort competition in generation.

**Question 2f: Do you agree with our proposals regarding the treatment of in-flight projects (i.e. that they should not be permitted to reset their connection agreement and retain their position in the queue), noting they retain the right to terminate and reapply from 1 April 2023 should they wish to be treated under the proposed connection charging boundary?**

No. This approach will only work for those sites where a queue exists. To lose your place in a queue order to get a requote will not provide an incentive where no queue exists. Therefore, such an approach will lead to discriminatory treatment between customers seeking connection to different parts of the network.

We also believe that this would have negative impacts on:

- Competition in connections where a successful ICP who has won a quote under the previous regime, has its contract cancelled in favour of another ICP who charges under the new regime.
- Competition in generation: where one generator has a connection offer under the pre-April 2023 regime, which is too costly to proceed and is rejected and as a consequence another generation secures the connection at a lower cost (because the first generator has been kicked to the back of the queue).

Therefore, we think the proposed approach has the potential to distort the market and result in perverse outcomes.

Also, we think there will be some connection offers that require reinforcement works to be undertaken in the medium to longer term. It seems unfair that such connection should be penalised for planning in advance. One approach would be for the Ofgem proposals to only apply to connection works that will be undertaken in the immediate term following implementation – and for longer term works to be requoted under the new methodology.

**Question 2g: Do you agree with our proposals to retain the existing arrangements for managing interactive applications? Do you agree with our proposals on the treatment of unsuccessful applicants (that the connection charges at original application date will continue to apply if queue position is retained)?**

We agree with proposals to retain interactive arrangements. However, we have concerns that the treatment of in-flight connections could distort this process. See our response to Question 2(f).

**Question 2h: Do you agree with continuing with the definition of the Minimum Scheme as currently set out in the CCCM? Do you believe this definition requires any further clarification or amendment, and if so, why?**

We agree with continuing with the definition of the Minimum Scheme. It provides a useful benchmark and has been an important component of connection charging for several years. It acts as the baseline for ensuring that connecting customers and DUoS customers are treated fairly and this concept, in respect of the calculation of the cost of a connection charge is important to be retained.

**Question 2i: Are there any risks associated with our proposals to allow current non-firm connected customers to seek a firm connection following the changes proposed by our SCR? Do you agree that existing non-firm connected customers that do seek a firm connection should be processed through existing queue management processes as determined by DNOs?**

Yes, there are risks. However, we think that anything other than treating them through the existing processes would be unfair to new connecting customers and so we agree that the existing non-firm connected customers that do seek a firm connection should face existing queue management processes.

**Question 2j: How necessary do you consider Ofgem intervention in Electricity Distribution Standard Licence Conditions 12, 15 and 15A? What duration might such measures be needed, or acceptable, following 1 April 2023? What value do you place on certainty of connection timeframes compared with time to connect?**

We think the proposed treatment of in-flight connections is likely to exacerbate the scenario highlighted by Ofgem. Rather than relaxing obligations on distributors, we think it would be better to put arrangements in place to smooth the bump of work that may arise from such policy changes. We believe that any intervention in this area needs to be proportionate and that DNOs should be taking steps to ensure that connecting customers who apply on or immediately after 1<sup>st</sup> April are not delayed in receiving their offer for any longer than is absolutely necessary.

## **Access Rights**

**Question 3a: Do you agree with our proposal to exclude customer interruptions and transmission constraints from the definition of curtailment with respect to the distribution network access arrangements?**

Yes, we agree with this approach. Including these events would reduce the control that the DNO has over the customer's constraint and would result in DNOs inaccurately estimating the number of curtailment hours to which a customer may be subject. This is likely to have negative implications for customers and distributors so we do not believe that it is in the interest of anyone to include such events in the definition of curtailment.

**Question 3b: do you agree that the curtailment limit should be offered by the network based on the maximum network benefit and agreed with the connecting customer.**

It is unclear what is meant by 'maximum network benefit'. We believe that the curtailment limit should be offered by the network based on the maximum likely availability of the network for a non-firm customer. Such a limit must take into account the current and future connections which are causing the constraint and the extent to which that constraint will materialise throughout a given year.

It is unclear what would happen if the customer does not agree the curtailment limit. Emphasis has, correctly, been placed on the network company to determine the possible curtailment but Ofgem have not indicated what the backstop arrangements are in the absence of agreement of a limit, and what the knock-on impacts of a customer opting against a non-firm connection might be. We do not believe that this process should be used to defer reinforcement without good reason and so we do not believe that a customer should be forced to either accept a non-firm connection, pay more for their connection or have to wait for longer to get a connection than they would do today. It is an important policy area that a customer who does not want to have or cannot have their connection curtailed (e.g. a hospital or a school) must not be forced to wait longer to get a connection to the electricity network.

**Question 3C: Do you have any views of the principles that should be applied to ensure curtailment limits are set in a consistent manner?**

Yes, we agree that the curtailment should, in principle, take into account the availability behind the constraint and use load curves to determine the probability of the customer's full load breaching the constraint.

**Question 3d: Do you agree with our proposal not to introduce a cap for flexibility payments made should any curtailment in excess of agreed limits be required?**

We agree, to some extent, that a cap is an artificial limit on the distributor being required to pay a connection customer but this is linked to the time for which a connection will be non-firm. If the customer has a non-firm connection for longer because the reinforcement has been deferred or more strategic works are taking place, then there should be no cap on the payments beyond the agreed limit. However, if the reinforcement is undertaken at the time of the application and the customer is already getting the benefit of a quicker connection without the disbenefit of waiting for the reinforcement, then it seems that limitless flexibility payments are providing additional benefits to the customer beyond the purpose of these changes.

**Question 3e: Do you agree with our proposal to introduce explicit end-dates for non-firm arrangements? Are there any mitigations for DUoS bill-payers we should consider?**

Yes, it is imperative to introduce explicit end dates for non-firm arrangements. There is still no clarity around what happens if a customer doesn't accept a non-firm connection through and how long this might take to get the reinforcement completed and connected. It is not

reasonable to ask for a connecting customer to be curtailed indefinitely due to a constraint on the network. We do not think that any mitigations are required in this area for DUoS bill payers over and above those which Ofgem have proposed to mitigate the impact of the connection boundary change.

**Question 3f: Do you have views on whether the end-dates should take into account only current know or likely works, or should it allow time for wider developments to take place?**

We believe that this end date should only take into account known or likely works. We cannot see the balance of benefit being with customers where they are being made to wait for works where it is unlikely that other customers will materialise in the area. We recognise that there will be instances where unforeseen customers materialise but we believe that these scenarios are infrequent and that, in general terms, the distributor will have, or be able to get, a clear picture of the likely development in an area and should be proactively taking steps to ensure that reinforcement is undertaken in a timely way for all those customers. This does not mean that they should wait for additional customers which are not reasonably foreseeable.

We think that this is a fundamental policy area which Ofgem needs to provide sufficient clarity on as we are concerned that, under the minded-to position, DNOs will be able to wait and give customers a curtailable connection until such time as the reinforcement is done to account for the firm connection and that the first connection customer will be disadvantaged by applying first for their connection. It is not in the interests of connection customers to have a predefined or set time period for wider works to be done where no such works are likely to be required and we think that it is important for the DNO, as part of their network planning processes and Long Term Development Statements, to be able to understand the likelihood of additional work in their area and only to delay the connection of one customer where it is demonstrably in the interests of the wider customer base (including DUoS and prospective connection customers).

**Question 3g: Do you have any comment on our proposals not to further define or standardise time-profiled access arrangements?**

We agree with this proposal at this stage. We believe that the definition of time-profiled access is better achieved through DUoS reforms and signalled through use of system charging so should not be further defined now when little or no benefit can be realised by a customer. In specific cases where customers are able to avoid a connection charge or reduce the need for reinforcement (i.e. where a customer breaches HCC but can move their load) then it will be catered for on a bespoke basis.