

To interested parties

Email: RIIOED2@ofgem.gov.uk

Date: 23rd March 2023

Informal consultation on the proposal to modify Standard Licence Condition 31F (Requirements Relating to Electric Vehicle Recharging Points) of the Electricity Distribution Licence.

This letter seeks views on our proposal to remove the Provider of Last Resort (PoLR) provisions in Standard Licence Condition 31F (Requirements relating to Electric Vehicle Recharging Points) (SLC 31F) of the Electricity Distribution Licence. SLC 31F is applicable to Distribution Network Operators (DNOs) who own and operate the electricity distribution networks.

In December 2022, we published our RIIO-ED2 Final Determinations¹ (FDs) in which we stated our intention to review and consult, in 2023, on whether the electric vehicle (EV) PoLR provisions in SLC 31F should be removed entirely.

We are now consulting on removing the EV PoLR provisions in SLC 31F. SLC 31F permits DNOs to operate EV charge points as a backstop where, following a tender process, no other providers have been awarded a right to own, develop, manage, or operate EV charging points, or could deliver charge point services at reasonable cost and/or in a timely manner.

Since the insertion of SLC 31F to the Electricity Distribution Licence, there have been some significant developments in government policy and the regulatory regime around charge points. These developments are further discussed in the ‘informal consultation position’ section below. We consider that DNOs may not be best placed to act as EV charge point operators, even as a PoLR. DNOs may not have adequate experience or operational services in place to act as PoLR and there may be other parties in the industry that would be better placed to take on this role. As such, we consider it important to consult on the removal of the PoLR provisions if there is the potential that appointing DNOs as an EV PoLR may negatively impact energy costs incurred by GB consumers.

This document outlines the background, purpose, and questions of the consultation and how you can get involved. Once the consultation is closed, we will consider all responses.

¹<https://www.ofgem.gov.uk/publications/riio-ed2-final-determinations>

Background

In 2021, Ofgem introduced a new licence condition “Standard Licence Condition 31F - Requirements relating to Electric Vehicle Recharging Points”² to enact relevant parts of the EU Clean Energy Package³ (CEP).

SLC 31F is intended to limit the circumstances in which DNOs can 'own, develop, manage or operate' an EV charge point. SLC 31F currently contains two exemptions from the general prohibition which in summary allow:

1. DNOs to own EV charge points to be used by their own fleets e.g., when DNO fleets become electrified (used only by the licensee in connection with distribution business, ie employee or visitor. Not accessible to the public); and
2. DNOs to operate EV charge points as a backstop where there is no other provider following a tendering process and no other parties could do so at a reasonable cost or in a timely manner.

The latter, which we are consulting on removing, permits DNOs to act as PoLR and operate EV charge points, “where the Authority is satisfied that no person other than the licensee is able to own, develop, manage or operate an [EV] charging point or could not do so at a reasonable cost and in a timely manner”.

If this condition was used, Ofgem would be responsible for carrying out a review of the DNO's proposed methodology for undertaking the tendering process to ensure that it is open, transparent, and non-discriminatory, deciding whether to grant approval of the proposed methodology and issuing an EV PoLR direction to the DNO. Ofgem would also be responsible for reviewing these arrangements every 5 years to determine whether any other parties are able to own, develop, operate, or manage such points. If other parties can do this, then the DNOs roles would be phased out, subject to successful completion of tendering.

RIIO ED2 Draft and Final Determinations

There is no specific funding mechanism available for DNOs to recover any costs associated with undertaking EV PoLR obligations within either RIIO-ED1 or RIIO-ED2. In our RIIO-ED2 Draft Determinations (DDs)⁴, we set out our proposal, with options, to manage EV PoLR funding for DNOs.

Responses on how EV PoLR should be funded were mixed. All DNOs supported a funding mechanism, if SLC 31F remained in place. However, the majority of DNOs questioned the existence of EV PoLR provisions in SLC 31F. DNOs cited reasons such as ‘an alternative method [to PoLR] would be preferred’ and that [DNOs] are ‘likely to incur higher than necessary costs for this activity since it is not their primary business expertise’. In addition, two industry stakeholders strongly opposed EV PoLR provisions in SLC 31F stating that the EV PoLR

² Licence condition attached as Appendix 1

³ Clean energy for all Europeans package https://energy.ec.europa.eu/topics/energy-strategy/clean-energy-all-europeans-package_en

⁴ Overview Document, Chapter 6: <https://www.ofgem.gov.uk/publications/riio-ed2-draft-determinations>

provisions should be ‘removed and another mechanism (such as government funding directly to Local Authorities) [...] used to socialise the cost of uneconomic charge points.’

Based on a review of the DDs consultation responses received, in our FDs⁵ we set out that DNOs may not be best equipped to act as EV PoLR and that including a funding mechanism for EV PoLR in RIIO-ED2 could potentially leave GB consumers funding unnecessary costs. In addition, we noted that there are various workstreams being carried forward by the UK Government supporting the growth of EV charging infrastructure. These workstreams may be better placed to provide alternative provision for EV PoLR, removing the need for DNOs to act as an EV PoLR.

Following the consideration of responses received in DDs, in our FDs we decided that a further review of SLC 31F and a consultation on the proposal to remove EV PoLR provisions in SLC 31F, was reasonable.

Informal consultation position: Removal of EV PoLR from SLC 31F

This consultation is seeking views on our proposal to remove the EV PoLR provisions in SLC 31F.

We consider that DNOs may not be the most appropriate parties to own, develop, manage, or operate EV charge points at reasonable costs, even as an EV PoLR. At present DNOs are unlikely to have the business infrastructure required to successfully develop, manage, and operate commercial EV charge points. For example, in addition to the capital costs associated with developing EV charge points, DNOs would have to provide additional services that they may not currently be equipped to undertake, such as ongoing maintenance (including hardware and software), price setting, and EV charge point customer service. All these activities may see DNOs incur additional costs, which if DNOs were to be assigned as EV PoLR under SLC 31F may be funded by the GB energy consumer. An existing industry participant taking on an EV PoLR role would be unlikely to need to incur such a cost burden, as they are likely already skilled and resourced to undertake these activities.

Based on our previous consideration of DD responses, and in line with the various workstreams currently being carried forward by the UK Government, we consider that local authorities and/or the Office for Zero Emission Vehicles (OZEV) may be better positioned to put in place arrangements for the procurement of EV PoLR, if it is deemed to be required. The Government’s current EV Infrastructure Strategy⁶ aims to ensure adequate charging provision across the UK, including the introduction of an obligation on local authorities to produce local charging strategies and oversee the implementation of these. New regulations for public charge points have also been announced.⁷ These include simpler payment methods (ie one payment system across multiple charge point networks), ensuring reliability, and improving the availability of public EV charge point data to help drivers locate and access charge points and better understand the price of charging. These new regulations will help improve EV user confidence in the charging network.

In addition, of the £2.5 billion of Government funding committed to the EV transition since 2020, over £1.6 billion will be used to support charging infrastructure. Of that funding, £450m

⁵ Overview Document, Chapter: <https://www.ofgem.gov.uk/publications/riio-ed2-final-determinations>

⁶ [UK electric vehicle infrastructure strategy](https://www.gov.uk/government/publications/uk-electric-vehicle-infrastructure-strategy) - GOV.UK (www.gov.uk)

⁷ <https://www.gov.uk/government/consultations/the-consumer-experience-at-public-electric-vehicle-chargepoints>

will directly enable strategic local provision of public EV infrastructure, through the Local EV Infrastructure Fund⁸. It will also be flexible in its approach, to match the level of public subsidy to the specific need in different local areas. Given these strategic plans and funding provisions already in place we consider it may be more suitable for Government or local authorities to manage any EV PoLR provisions, if they are considered to be necessary.

For the reasons outlined above, we consider that DNOs may not be the most appropriate parties for EV PoLR and that EV PoLR provision should be removed from SLC 31F.

Consultation questions:

1. Do you agree with our proposal to remove the EV PoLR provision from SLC 31F?
2. Do you agree that other market participants would be better placed, than DNOs, to act as PoLR for EV charge points?

Next steps and your response, data and confidentiality

We welcome views from stakeholders on the proposed change outlined above. Responses should be received by 27th April 2023 and should be sent to RIIOED2@Ofgem.gov.uk

Unless marked confidential, all responses will be published in our library and on our website, www.ofgem.gov.uk. You can ask us to keep your response, or parts of your response, confidential. We'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.

If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you *do* wish to be kept confidential and those that you *do not* wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we'll get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.

If the information you give in your response contains personal data under the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in domestic law following the UK's withdrawal from the European Union ("UK GDPR"), the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 2.

If you wish to respond confidentially, we'll keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we receive. We won't link responses to respondents if we publish a summary of responses, and we will evaluate each

⁸ <https://www.gov.uk/guidance/electric-vehicle-charging-infrastructure-help-for-local-authorities>

response on its own merits without undermining your right to confidentiality.

If we decide to proceed with a formal modification proposal, we will issue a Statutory Consultation Notice that will be open to responses for a minimum of 28 days. After considering responses, we may make changes to the licence, which will take effect not less than 56 days after the publication of our decision.

If you have any queries on the matters referred to in this letter, please feel free to contact Atalla Buretta (<mailto:Atalla.Buretta@ofgem.gov.uk>).

Yours faithfully,

Steven McMahon
Deputy Director, Onshore Networks

Appendix 1 –Proposed changes to Standard Licence Condition 31F

Condition 31F. Requirements relating to Electric Vehicle

Recharging Points

31F.1 The licensee must not own, develop, manage or operate an Electric Vehicle Recharging Point, except where:

- (a) the conditions in 31F.2 below apply; or
- (b) the Authority has issued a Provider of Last Resort direction pursuant to 31F.5 and the licensee complies with it.

Electric Vehicle Recharging Points: exception for Licensee's own use

31F.2 This paragraph applies where the following conditions are satisfied in respect of an Electric Vehicle Recharging Point:

- (a) it is not generally accessible to the public;
- (b) it is used by the licensee only for the purposes of charging vehicles in connection with its Distribution Business; and
- (c) it is not used in the provision of:
 - (i) any Balancing Services to the GB System Operator; or
 - (ii) any equivalent service in relation to the licensee's Distribution System.

31F.3 For the purpose of 31F.2 references to:

- (a) the licensee include references to an Affiliate of the licensee; and
- (b) the public do not include employees or contractors of the licensee or any visitors to any premises under the control of any of them in the ordinary course of business.

Electric Vehicle Recharging Points: provider of last resort (process)

31F.4 Paragraph 31F.4 applies where the Authority is satisfied that no person other than the licensee is able to own, develop, manage or operate an Electric Vehicle Recharging Point or could not do so at a reasonable cost and in a timely manner.

31F.5 Where the Authority is satisfied that:

- (a) the circumstances described in 31F.4 are satisfied; and
- (b) the process described in 31F.6 to 31F.11 has been followed,

the licensee must comply with any direction (a "Provider of Last Resort Direction") issued by the Authority in relation to the ownership, development, management or operation of an Electric Vehicle Recharging Point of a description specified in the direction.

31F.6 Where the licensee considers that 31F.4 may apply to any Electric Vehicle Recharging Point, it must carry out a tender process, in an open, transparent and non-discriminatory manner, to determine whether any person is able to own, develop, manage and operate an Electric Vehicle Recharging Point at reasonable cost and in a timely manner.

31F.7 Prior to carrying out the tender process referred to in 31F.6 the licensee must prepare a statement of its proposed methodology for undertaking the tender process.

31F.8 The licensee must:

- (a) consult publicly on such methodology for a minimum of 28 days or such other period as the Authority may direct;
- (b) take account of the representations it receives in response to the consultation and revise the methodology as appropriate; and
- (c) within 28 days following the conclusion of the consultation, provide the Authority with the methodology together with any representations it has received during the consultation.

31F.9 The Authority may by direction, approve that methodology, with or without amendments.

31F.10 The licensee must carry out the tender process in accordance with the approved methodology.

31F.11 No later than 28 days following the conclusion of the tender process, the licensee must provide a report to the Authority setting out whether any person has been awarded the right to own, develop, manage or operate an Electric Vehicle Recharging Point.

31F.12 Any of the steps described in 31F.6 to 31F.11 may be carried out by a person other than the licensee where the Authority considers this appropriate.

Electric Vehicle Recharging Points: provider of last resort (review)

31F.13 Paragraph 31F.14 applies where the Authority has issued a Provider of Last Resort Direction, in respect of an Electric Vehicle Recharging Point.

31F.14 The licensee must within five years of the coming into force of the direction and every subsequent period of five years, or such other date as the Authority may direct, provide a report to the Authority on whether the circumstances described in 31F.4 continue to be satisfied in relation to the Electric Vehicle Recharging Point.

31F.15 The report referred to in 31F.14 is to be informed by a public consultation undertaken by the licensee of at least 28 days, or such other period as the Authority may direct, and must include any representations made in response to such consultation.

31F.16 If having considered the report referred to in 31F.14 the Authority considers 31F.4 is no longer satisfied it may direct that the steps outlined in 31F.6 to 31F.11 are undertaken by the licensee on such terms as may be specified in the direction.

31F.17 Where the Authority, following consideration of the report provided by the licensee pursuant to 31F.14 gives notice of revocation of the Provider of Last Resort Direction, the licensee must ensure that its activities are phased out within 18 months of the notice, including by way of a transfer to another person of the ownership, development, management or operation of the Electric Vehicle Recharging Point, and as part of the conditions of that procedure the Authority may allow the licensee to recover the residual value of its investment.

Electric Vehicle Recharging Points: provider of last resort (general)

31F.18 Any Provider of Last Resort Direction may relate to specific premises or premises of a general description, for such period of time and subject to such conditions as may be specified in the direction. Interpretation 31F.19 For the purpose of this condition

Interpretation

31F.19 For the purpose of this condition:

- (a) "Balancing Services" has the meaning given in Condition C1 (interpretation) of the Transmission Licence;

(b) "Electric Vehicle Recharging Point" means an interface which is capable of charging one electric vehicle at a time, or exchanging a battery of one electric vehicle at a time; and

(c) "Provider of Last Resort Direction" has the meaning given in paragraph 4 of this condition.

Appendix 2 – Privacy notice on consultations

Personal data

The following explains your rights and gives you the information you are entitled to under the General Data Protection Regulation (GDPR).

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

1. The identity of the controller and contact details of our Data Protection Officer

The Gas and Electricity Markets Authority is the controller, (for ease of reference, “Ofgem”). The Data Protection Officer can be contacted at dpo@ofgem.gov.uk

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

3. Our legal basis for processing your personal data

As a public authority, the GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

4. With whom we will be sharing your personal data

N/A

5. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for twelve months after the consultation has closed.

6. Your rights

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data
- get your data from us and re-use it across other services

- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3rd parties
- tell us your preferred frequency, content and format of our communications with you
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

7. Your personal data will not be sent overseas

8. Your personal data will not be used for any automated decision making.

9. Your personal data will be stored in a secure government IT system.

10. More information

For more information on how Ofgem processes your data, click on the link to our "[ofgem privacy promise](#)".