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Dear FSO teams

ENWL response to statutory consultation on proposal to grant an ESO and GSP licence and to make modifications to the conditions of other licences

We welcome the opportunity to respond to the published consultation covering the changes to all licence conditions as a consequence of the creation of the new ISOP.

As a DNO we have limited our comments solely to the licence changes which are of direct reference to the Electricity Distribution sector and therefore our comments are on the Electricity Distribution Standard Licence Conditions, the ENWL Special Licence conditions and the ESO Licence Conditions.

Licence principles

We note that appendix H of the consultation shares the licence drafting principles for the FSO and states that these build on the principles used for RIIO-2 drafting. One notable change from RIIO-2 for the FSO principles is A1.16 where the start-point for level of effort on new obligations is intended to be 'best endeavours'. This differs from the RIIO-2 principles and is a material change. We agree with Ofgem that there will be a cost implication in increasing requirements from 'reasonable' to 'best'. This may not always be in customers interests. We do not agree with the premise that 'best endeavours' should be the start point as this should be considered on a case-by-case basis, without pre-judgement of what is most appropriate. In particular, licence drafting is often done after business plan submissions and Ofgem determinations on price control allowances. Adopting such a presumption of best endeavours principle infers that business plans and requests for funding should always be developed based on best endeavours. This is a significant change, which if adopted, should be clearly signalled to companies and stakeholders so that the overall cost or additional onboarding of company risk impacts can be clearly understood by stakeholders in the context of potentially increasing consumers energy bills.



We consider that the RIIO-2 principle is more appropriate and should be used going forwards. If Ofgem views particular circumstances pertain to the FSO that it should default to best endeavours then this should be clearly set out as a decision solely in respect of the FSO.

Electricity Distribution Standard Licence Conditions

Our comments on the changes proposed for the standard licence conditions as follows:

- An old version of this standard licence conditions has been used for the consultation. The most recent version of this document was published by Ofgem on 13th February 2024¹ and should have been the base document used for this statutory consultation. This risk of version control was highlighted in our response in January 2024 to the informal consultation, where we advised that there were impending licence modifications, and it was critical that any changes made as a result of those closed modification consultations were considered together so that there are no inadvertent version control issues. All of the changes proposed in this statutory consultation must be undertaken on the correct version of the licence to ensure that no errors are introduced. Given the number of differences between the two licence versions it may be necessary to consider whether to re-consult.
- SLC24 has references to the ISOP in 24.1b and 24.2, however as the wording also uses the defined term Authorised Electricity Operator, and the term already includes the ISOP, then these additional words are not required. The wording can be changed to '....with any Authorised Electricity Operator like to be'
- SLC37 (specifically SLC37.3c) has had the words 'or the ISOP' added in. It appears that this is based on the standardised approach in the drafting to include 'or the ISOP' in any places where 'a Transmission Licensee' appears in the licence. However, in this case, we are not aware of any data transfers that are expected to be between a DNO and the ISOP and request that this is checked and removed.
- SLC48A has had the defined term of 'RIIO-1 Network Innovation Allowance' changed. The change removes the reference to Special Condition 5.3 for Carry-Over Network Innovation Funding. This reference relates specifically to the ED2 licence and the change should not have been made.

ENWL Special Licence Conditions

Our comments on the changes proposed for the ENWL special licence conditions are as follows.

Whilst we have used the ENWL special licence conditions, we consider that the comments below will equally apply to all the other DNO special conditions.

- As described above in relation to the Standard Licence Conditions, an old version of the ENWL special licence conditions has been used for the consultation. The most recent version of this document was published by Ofgem on 13th February 2024² and should have been the base document used for this statutory consultation. All of the changes proposed in this statutory consultation must be undertaken on the correct version of the licence to ensure that no errors are introduced. Given the number of differences between the two licence versions it may be necessary to consider whether to re-consult.
- SpC1.2 defined term of 'Directly Attributable Costs' has a typo 'of the ISOP' should be 'or the ISOP'.
- SpC1.2 defined term 'Grid Code' has been incorrectly changed and the previous wording should be reinstated. The defined term in the SpC should refer back to the defined term in the SLCs. It should say 'has the meaning given to that term in Standard Condition 1 (Definitions for the standard conditions).'

¹ [Decision on the modifications to the Standard and Special Conditions of the Electricity Distribution Licence | Ofgem](#)

² [Decision on the modifications to the Standard and Special Conditions of the Electricity Distribution Licence | Ofgem](#)

- SpC3.2 Electricity System Restoration Re-opener. The revision proposed for 3.2.23 (d) replaces the GB System Operator with the ISOP. However, the sentence already requires engagement with the 'Relevant Network Licensees'. As the defined term of Relevant Network Licensees already includes the ISOP, then this is not required. We propose the wording changes to:
 - (d) sets out the engagement undertaken with Relevant Network Licensees on the proposed scope of works; and,
- SpC3.2 In paragraph 3.2.97 the GB System operator has not been replaced by the ISOP.

Electricity System Operator Licence Conditions

A1 - There are a number of defined terms in Section A which seem to cover Electricity Distribution licensees. We suggest that the meaning of each is made clearer in the defined terms and the use of each within the document is reviewed. For example there is Authorised Electricity Operator, Electricity Licensee, Authorised Distributor, Licensed Distributor and Network Operator. Not all of these feel necessary and add a layer of complexity and lack of clarity over which entity is being referred to for each obligation. Equally some are not specific enough, therefore it is unclear the difference, for example between the term Authorised Electricity Operator and Electricity Licensee. Further, the term Licensed Distributor is unclear.

A1 – The defined term Authorised Electricity Operator differs to the same term used in the Electricity Distribution Standard Licence Conditions. We would expect consistency in such a term across all licensed sectors.

A1 - The defined term Distribution System differs to the same term used in the Electricity Distribution Standard Licence Conditions. We would expect consistency in such a term across all licensed sectors.

A1 – Introduces a new defined term of 'Distribution System Operator'. This is not a formal role and does not exist within licenses or legislation and therefore should not be used in the ESO licence and should be removed. It is referred to in C1.2, C12.3 and the defined term 'Interconnected System Operator'. We propose alternatives below for each of the three times the term 'Distribution System Operator' is used.

A1 – The defined term 'Interconnected System Operator' says 'means any Authorised Electricity Operator, or any other Transmission System Operator or Distribution System Operator with whose system a Transmission Licensee's Transmission System is connected or with whom the licensee interfaces'. As the term Authorised Electricity Operator already covers Transmission and Distribution, these are not required to be included specifically. The defined term should change to 'means any Authorised Electricity Operator with whose system a Transmission Licensee's Transmission System is connected or with whom the licensee interfaces'.

C1 – C1.2c refers to 'Distribution System Operator', this should be replaced with one of the other defined terms that means electricity distributors.

C12 – C12d refers to 'Distribution System Operator'. As this sentence already includes Authorised Electricity Operators, there is no need for the words 'or any other Transmission System Operator or Distribution System Operator' and these should be removed.

B3 – B3.3 does not include Electricity Distribution in the list of areas where competition should not be distorted and this should be added.

C1 – C1.6g, requires co-ordination with Licensed Distributors with reference to network planning solutions. As the ISOP does not have a role in network planning for Distribution, this requirement should be limited to co-ordination with Transmission Owners only. If there is relevance for Electricity

Distribution, this would be captured under 'and interested parties'. The words Licensed Distributors should therefore be removed from C1.6g.

C8 – The name of the condition and the content of the condition do not match.

C15 – It is not clear from the licence condition what the date of publication of the Future Energy Pathways will be, can this be included in the condition?

C16 – Can Ofgem advise if the Commission by the Secretary of State will be a public facing document? There are a number of references in the condition that refers to 'as described in the Commission' and therefore it is unclear what these are without access to the document itself.

F2.13 – This clause only references 'to be recovered by the licensee on behalf of Transmission Licensees' however we would expect that the licensee will also recover revenue on behalf of other licensees who have the SIF active in their licences also.

F9 – This condition uses the defined terms Security Period and Allowed Security Costs, however neither are defined in A1 and will need to be added.

F9 – We note that Part F refers to Suspension of Relevant Licence Conditions during a Security Period. Should any action directed to the ISOP by the Secretary of State result in any other licensee being unable to discharge their licence obligations, then we consider that an equal clause in their relevant licence should also be added similar to that included for the ISOP.

Finally, we also raised the below point in our January response to the informal consultation which we do not consider has been addressed with these changes to the Electricity Distribution Standard and Special conditions:

There is a wider point of ensuring that the licence still operates as intended once these changes are put into place. There are many obligations within the special licence conditions that require co-operation, engagement, or transactional items with the GB System Operator and it is important to ensure that with the change to the ISOP it does not place an unreasonable obligation on the licensee, or equally inadvertently removes an obligation, and example is SpC3.2.23 where the current change would require the licensee to engage with the ISOP in relation to a re-opener which is dated June 2024 and therefore would not be possible to comply with because the timescales have passed and the obligation would be retrospective. One solution could be to either reference both the GB System Operator and the ISOP, or consider the defined term of the ISOP to reflect that it could be the GB System Operator (up to the point of FSO creation) and the ISOP thereafter. We suggest further thought is needed to ensure the licence remains operable in these circumstances. Re-opener applications are the most likely place where such risks lie, however, we consider the SIF licence conditions need similar considerations.

We trust our response is clear though should you have any queries or wish to discuss any of our points further then do not hesitate to contact either myself or Alison Scott (alison.scott@enwl.co.uk) in the first instance.

Yours sincerely

Paul Auckland
Head of Economic Regulation