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10 May 2024

Sent by email to: FSO@ofgem.gov.uk

Dear FSO team

ENWL response to statutory consultation on temporary facilitative licence condition to support ISOP implementation

We welcome the opportunity to respond to this consultation covering changes to licenses as a consequence of the creation of the new ISOP.

The ISOP will hold key responsibilities in the energy system, driving benefit for consumers, and therefore we agree it is important they are set up well in order to deliver on their obligations. Licensees like ourselves will rely on the ISOP working effectively (for example distribution network connections where the ISOP has a key role).

It is clear that industry participants should act in ways that support customers benefiting from the ISOP, to maximise the returns on the sunk costs of and investment in the ISOP itself. We note that the consultation document states the positive level of support from licensees and industry to date with no expectation this would change, and therefore the justification for the addition of this new licence condition is unclear at this point.

In response to your specific consultation questions, please see our comments below.

Q1. Are there any foreseeable impacts from the implementation of the temporary licence condition which we should consider?

Our initial views on this proposed licence condition is that it is not yet possible to clearly understand what compliance, or actions to comply, would look like in the absence of the ISOP Change Programme, a clearer articulation of the ISOP Implementation Objectives, or a clear outline of accountabilities. The drafting of the licence condition is broad and is also intended to last for three years, which is a significant time period of uncertainty (the remainder of the ED2 period for Electricity Distribution) to carry with an unknown set of requirements.

We are experiencing unprecedented change in the energy sector, with significant regulatory reform, and the electricity sector in particular is forecasting a significant step-change in terms of investment in infrastructure as the UK works towards its Net Zero targets. This change of both scale and pace is already bringing its own challenges to the electricity sector, particularly around supply chain, skills,



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and resources. Whilst of course, we are fully supportive of the creation of the new ISOP body, we are also cognisant of our own licence obligations and important deliverables for our customers and communities. We note that Part D of the licence condition requires licensees to highlight any conflict between compliance with this new condition and any other conditions or Relevant Requirements, however this will need to be assessed on a case-by-case basis as and when a request to facilitate the ISOP is received. We would suggest that the process of how this should be done be laid out as guidance.

Should this condition come into force, it is important that it is not used as a vehicle to fill gaps or solve issues that the ISOP itself is best placed to do in line with its own duties and obligations. The ISOP will have significant resource and capability established and we envisage that support from wider industry would be on a limited and exceptional basis.

Q2. Does the text of the temporary licence condition capture the policy intent as set out in this consultation document?

The policy itself is unclear in terms of the reasons for the new licence condition, nor how it is expected to better achieve the policy outcome compared to the status quo.

Q3. Do you have any other views or comments relating to the temporary licence condition?

Expanding on the comments made in our response to question 1, given that it is not possible for licensees to understand what compliance would look like, or any indication as to the nature of the requests that may be given to them, we consider that implementation of this licence condition should be deferred, and re-consulted on after the supporting document, ISOP Change Programme, has been developed, consulted on and brought into force. We also consider the ISOP Implementation Objectives need to be clearer and more detailed, including clear boundaries and expectations from industry. Once these two key supporting documents are in place, we recommend that Ofgem re-consult on this licence condition as understanding the ISOP Change Programme will better enable a more meaningful and effective consultation process. We recommend that this licence condition is not brought in until these foundational supporting documents are developed and in place.

Further specific comments on the licence conditions are as follows:

Part B, paragraph 2b) goes beyond the requirement to give effect to the ISOP Change Programme and instead refers to any Relevant Documents which is too broad a description and covers every associated document maintained in accordance with the conditions of a relevant licence. This unnecessarily expands the scale and breadth of requirements exponentially and cannot be a reasonable expectation.

Part E refers to cessation in line with section 169(6) of the Energy Act, which is three years from the date of designation. The consultation does not provide any rationale for using such a prolonged period of time for this facilitative licence condition to be in place, and we propose that this is re-considered to a more proportionate time horizon.

More generally, in line with Ofgem licence drafting principles, we suggest that any future licence condition should have an Introduction which sets out the purpose of the condition.

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