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By email only to: FSO@ofgem.gov.uk

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Dear Sayed

Statutory consultation on the temporary facilitative licence condition to support the implementation of the Independent System Operator and Planner

Thank you for the opportunity to comment on the above statutory consultation, dated 12 April 2024. This response should be regarded as a consolidated response on behalf of UK Power Networks' affected distribution licence holding companies: Eastern Power Networks plc; London Power Networks plc; and South Eastern Power Networks plc.

In principle, UK Power Networks is supportive of the introduction of the temporary facilitative licence condition. I have set out in the appendix to this letter our feedback on the drafting. The most important comments are those on Parts A and B of the licence condition (please see paragraphs 1-9 below) and the issue of recovery of costs (please see paragraph 14 below). In respect of the former we propose a small change to give clarity to licensees as to their obligations and therefore how they must act to remain compliant in respect of facilitating the ISOP.

I look forward to your response to this to ensure that there are clear licence conditions which licensees can comply with and help implement the National Electricity System Operator (NESO).

If you have any queries on our response, please contact Paul Measday on 07875 113241 or paul.measday@ukpowernetworks.co.uk in the first instance.

Yours sincerely



Basil Scarsella
Chief Executive Officer
UK Power Networks

Appendix

Part A and Part B

1. We understand the need for and are comfortable with:
 - a. Part A, paragraph 1(a) – the licensee must take any reasonable step to comply with a direction given by the Secretary of State or the Authority to enable the ISOP Implementation Objectives to be met; and
 - b. Part B, paragraph 2 – but only to the extent that the licensee must cooperate with other licence holders and the Secretary of State the Authority and such others as the Secretary of State or the Authority shall direct.
2. We are comfortable with the above approach as the licensees are required to comply with clearly laid out directions/requirements.
3. In contrast, at present Part A, paragraph 1(b) requires the licensee to take any reasonable step within its power which is necessary or expedient to give full and timely effect to the matters set out in the ISOP Change Programme. We do not consider that this is appropriate. We believe that, as currently drafted, it is too broad in its application. We are unclear as to how this could work in practice as there is too great a risk of duplication of efforts, inconsistent approaches between licensees and associated wasted resources – licensees are required to speculate as to how the ISOP Change Programme will be implemented and are required to do all that is necessary or expedient to give full and timely effect to the ISOP Change Programme (which is defined broadly). This creates a tension between this licence condition and other licence conditions and statutory requirements on the licensee to run an efficient and economical system of electricity distribution (please see paragraphs 12 and 13 below).
4. Paragraph 1(b) would make more sense if its application were limited to steps where only the relevant licensee can take a particular step. This could be achieved by deletion of paragraph 1(b). If Ofgem is not able to agree to this removal, then we believe that its scope should be refined so that there is a requirement for the ISOP Change Programme's documents to clearly set out what licensees must do by when to remain compliant. Such a requirement would need to be fulfilled by the Secretary of State or the Authority based on the interpretation section of the licence condition. Alternatively, Part A, paragraph (b) should be made subject to where such a step can only be taken by the relevant licensee.
5. Under Part A, paragraph 1(a) and Part B it is clear what the licensee must do to remain compliant – it will be clearly set out in a direction. However, Part A, paragraph 1(b) includes such broad open wording that a licensee can end up being non-compliant without it realising. For example, to be able to take any steps within its power that are “necessary or expedient in order to give full and timely effect to the matters set out in the ISOP Change Programme...” it would need to have full visibility of what actions have been taken by other parties as well as visibility of all other licensees' requirements. To put it another way, the licence condition is unclear about how a licensee should proceed where multiple parties could take a particular action/step which is necessary or expedient. This creates a risk that all (or none of them) take such steps that in reality only needed to be performed by one of them.



6. By way of a simplified theoretical example, if the ISOP Change Programme has two licensees and requires them to provide 20 widgets in total to the ISOP and licensee A has 11 widgets and provides 10 it may believe that it is compliant – it has provided half of the total widgets required. Meanwhile, licensee B only has nine widgets immediately available, which it provides. It also eventually procures and provides a 10th widget after some delay – it has provided half the requirement of widgets but has delayed the programme.
7. As currently drafted it is uncertain regarding whether licensee A should have provided its spare widget “to give full and timely effect to the matters set out in any ISOP Change Programme” and if it was therefore actually compliant. Also, should licensee B have made it clear it needed support and did the delay in procuring the 10th widget mean that it was not compliant? Furthermore, in a more realistic scenario where there are more than two licensees (here known as C & D), how does the licence condition apply where licensees C and D did not have any widgets to give but took no steps to try to procure and provide any? Are they compliant or non-compliant?
8. It is worth noting the precedent set by the existing wording in distribution standard licence condition 20.10 where, although there is a reference to “full effect”, it is clearly linked to that being achieved by complying with the request of the Authority or its nominee:

“20.10 The licensee will cooperate with the Authority and/or any person(s) appointed by the Authority or appointed pursuant to a direction of the Authority, to undertake any reasonable requests in relation to planning, project assurance and/or coordination/systems integration in order to give full effect to the conclusions of a Significant Code Review.”

9. In our view, Part A, paragraph 1(a) and Part B (amended in line with our comments above) provide sufficient clarity and obligation on the licensee to fulfil the objectives of this licence modification and Part A paragraph 1(b) should be deleted.

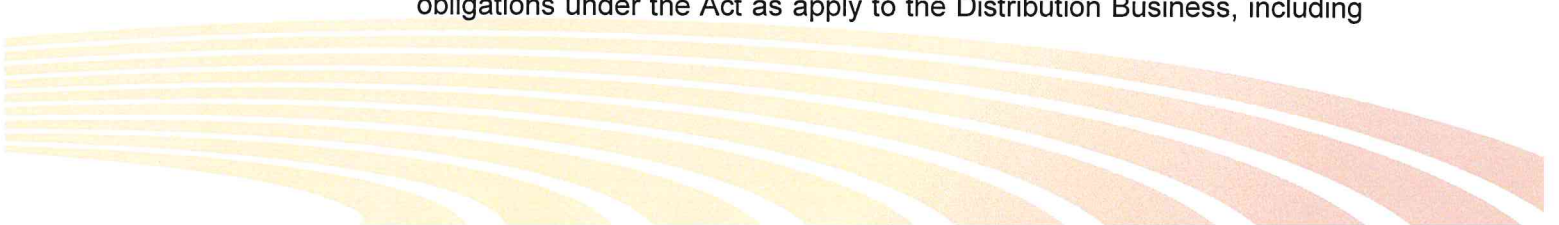
Part C

10. In Part C, it is not immediately obvious to us what the intended distinction is between the requirement that “the licensee must not take any step” and the licensee must not “exercise any right”. It would be helpful to provide example of rights that the licensee is not entitled to exercise. Furthermore, to clarify the readability of Part C it would be helpful if “(a)” was inserted before “the meeting the ISOP implementation Objectives; or” and “(b)” is inserted before “the giving of full and timely effect to any ISOP Change Programme.”

Part D

11. Part D provides helpful clarity on how conflicts between this condition and others are to be managed. At this early stage it is not possible to identify specific examples of such conflicts, but we wish to note that DNOs have specific obligations under SLC30 (Availability of Resources) and Section 9 of the Electricity Act 1989 in respect of ensuring it has resources to:

SLC30 “(a) properly and efficiently carry on its Distribution Business; and (b) comply in all respects with its obligations under this licence and such obligations under the Act as apply to the Distribution Business, including



its duty to develop and maintain an efficient, co-ordinated, and economical system of electricity distribution.”; and

Section 9(1)(a) Electricity Act 1989 (as amended) “to develop and maintain an efficient, co-ordinated and economical system of electricity distribution...”

12. Depending on the scale and scope of a direction from the Secretary of State or Authority, there is a potential for a conflict and it would be logical to proactively manage such potential in the drafting of any direction.

Part E

13. Part E refers to the cessation of the effectiveness of the temporary condition. We support reference to the inclusion on the face of the licence the process to set this date. However, we are unclear as to the need for a specific open ended (i.e. not time bounded) reference to future enforcement of the condition, even after it ceases to have effect. We believe that it would be helpful to include a limitation period by when any enforcement action for potential breach of this temporary condition must have been commenced.

Not in current drafting

14. We note that the consultation and associated licence condition modifications are silent on the matter of cost recovery for any costs incurred by the respective licensees. We seek clarity on the mechanism whereby licensees will recover the costs incurred in complying with these new obligations.

