



## Response by Northern Powergrid (Northeast) plc and Northern Powergrid (Yorkshire) plc to the statutory consultation on the temporary facilitative licence condition to support the implementation of the Independent System Operator and Planner (the “ISOP”)

### KEY POINTS

- The process whereby the Secretary of State or the Authority issues a direction under the proposed licence condition to enable the ISOP Implementation Objectives to be met should be transparent and align with the usual consultation principles, such that licensees and stakeholders have the opportunity to express their views on the subject matter of the draft direction and any unintended consequences can be avoided.
- We have a number of drafting comments, which we believe add clarity to the temporary licence condition, as set out in our response to question 2.

*Comments on the proposed inclusion of the temporary standard condition in the electricity distribution licence.*

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

The process whereby the Secretary of State or the Authority issues a direction under the proposed licence condition to enable the ISOP Implementation Objectives to be met should be transparent and align with the usual consultation principles, such that licensees and stakeholders have the opportunity to express their views on the subject matter of the draft direction including, but not limited to, any powers and activities that may be given to the ISOP under such a direction.

Although the temporary licence condition is intended to facilitate the transition to the ISOP, decisions taken at this stage may potentially embed or set a precedent for the roles and responsibilities it will carry out and, in turn, significantly impact the distributors' core obligation to develop and maintain their networks in an efficient, co-ordinated and economical manner.

For example, the role of the Regional Energy Strategic Planner (the "RESP") is of key importance in particular, given the role the RESP will play in planning regional energy requirements versus actual network planning. There is a critical balance to be struck in roles and responsibilities between the RESP's multi-vector top-down view and distributors' unique network planning skillsets to enable the most efficient network planning decisions to be made. Achieving this balance may, therefore, be compromised if the Secretary of State or the Authority does not consult on any proposed directions. We believe that such transparency will mitigate against unintended, adverse impacts on the economic and efficient operation of the distribution systems and/or the whole system.

Consequently, we propose that a new paragraph 1 is included in the temporary licence condition (as set out in the Appendix), which aligns with the process in paragraph 1.3.3 of Special Condition 1 of the electricity distribution licence.

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

In general, the text of the temporary licence condition captures the policy intent set out in the consultation document.

We have a number of drafting comments (using the original paragraph numbers, where appropriate), which we believe add clarity to the temporary licence condition, as follows:

Title:	The term "the ISOP" will become a defined term as a result of the modifications proposed in the statutory notice dated 28 March 2024 so "the ISOP" should be used.
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- Paragraph 1: The proposed paragraph 1 should be divided into two paragraphs so that it is clear that the obligations are distinct from each other. It should also be clear that it is for the licensee to determine the reasonable steps to take that are within its power rather than for the Secretary of State or the Authority to direct the steps to be taken.
- Paragraph 2: As with paragraph 1, it should be clear that it is for the licensee to determine the reasonable steps to take that are within its power rather than for the Secretary of State or the Authority to direct the steps to be taken.
- Paragraph 2a): Paragraph 1 relates to a direction by the Secretary of State or the Authority that has not, as yet, been given so the meaning of “comply with the conditions of their licences that are equivalent to paragraph 1 of this condition” is unclear. It would be more appropriate, therefore, to simply reference those licence conditions that relate to the ISOP Implementation Objectives or any ISOP Change Programme. Also, it is not appropriate to place an obligation on the licensee relating to a licence condition that is intended to become effective because that licence condition does not actually exist.
- Paragraph 3: The requirement not to frustrate should also be without prejudice to the licensee’s contractual and common law rights.
- Paragraph 6: The wording regarding when the temporary licence condition ceases to have effect should replicate the wording in section 169(6) of the Energy Act 2023 for consistency.
- Paragraph 7: The definitions of "ISOP Implementation Objectives" and "ISOP Change Programme" should reference “reasonable steps” for consistency with paragraph 1.

We also have some minor drafting comments and have set out our proposed drafting changes in full in the Appendix.

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

No.

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## Condition [X]: Transition to ~~Independent System Operator and Planner~~ (the ISOP)

### Part A: General Requirement

1. Before issuing a direction under paragraph 2 of this condition, the Secretary of State or the Authority must publish on the Authority's Website:
  - a) the text of the proposed direction;
  - b) the date on which it is intended that the direction will come into effect; and
  - c) a period during which representations may be made on the content of the direction, which must not be less than 28 days.
2. On receipt of a direction by the Secretary of State or the Authority the purpose of which is to enable the ISOP Implementation Objectives to be met, the licensee must take any reasonable step within its power to comply with such direction. ~~that:~~
- ~~1.3.~~ The licensee must take any reasonable step within its power that is necessary or expedient in order to give full and timely effect to the matters set out in any ISOP Change Programme.
  - ~~a) — it is directed to take by the Secretary of State or the Authority in order to enable the ISOP Implementation Objectives to be met; or~~
  - ~~b) — is necessary or expedient in order to give full and timely effect to the matters set out in any ISOP Change Programme.~~

### Part B: Requirement to Co-operate

- ~~2.4.~~ Without prejudice to paragraph 1, the licensee must cooperate with holders of other licences pursuant to [the Electricity Act 1989] [and] [the Gas Act 1986] (and with the Secretary of State, the Authority and such other persons as the Secretary of State or the Authority may direct), and, on receipt of a direction by the Secretary of State or the Authority the purpose of which is to enable the ISOP Implementation Objectives to be met, must take any reasonable step within its power ~~that it is directed to take by the Secretary of State or the Authority,~~ in order to enable:
  - a) such other holders of licences to comply with conditions of their licences that relate to the ISOP Implementation Objectives or any ISOP Change Programme ~~are equivalent to paragraph 1 of this condition, so that they are able to comply with such conditions~~ from the time at which they are effective ~~(or intended to be effective);~~ and
  - b) any modifications to licences and Relevant Documents made pursuant to section 169 of the Energy Act 2023 to be given full and timely implementation on the date specified in the notice providing for such modifications.

## Part C: Requirement not to Frustrate

3.5. Without prejudice to any public, ~~or~~ administrative, contractual or common law right, or statutory right, that the licensee may have to bring any claim against any public body or any person, the licensee must not take any step, or exercise any right, which is intended to hinder or frustrate meeting the ISOP Implementation Objectives or the giving of full and timely effect to any ISOP Change Programme.

## Part D: Potential Conflict

4.6. If the licensee is aware of any conflict between its compliance with the provisions of this condition and its compliance with any other condition of ~~the its~~ licence or with a Relevant Requirement, the licensee must, as soon as reasonably practicable, inform the Authority of such conflict.

5.7. Provided the licensee complies with paragraph 45 of this condition, the other conditions of ~~the its~~ licence or the appropriate Relevant Requirement will prevail over this condition in the event of conflict.

## Part E: Cessation of the effectiveness of this Condition

6.8. This condition shall cease to have effect on the date ~~on which~~ is three years after the day on which the ~~first designation powers~~ under sections 169 (~~61~~) ~~and (2)~~ of the Energy Act 2023 ~~has effect~~ cease to be exercisable pursuant to section 169(6) of that Act, or on such earlier date as may be directed by the Secretary of State or the Authority, but without prejudice to the continuing enforceability of any right or obligation which may have accrued or otherwise fallen due for performance prior to that date.

## Part F: Interpretation

7.9. For the purposes of this condition, unless the context otherwise requires:

"ISOP Implementation Objectives" means (a) adequate preparation by the licensee and other persons for the designation of a person under section 162(1) of the Energy Act 2023, and (b) the timely and effective taking of such reasonable steps that are necessary or expedient in connection with or in consequence of the designation of a person under that provision;

"ISOP Change Programme" means any document of that name consulted on and published by the Secretary of State or the Authority from time to time for the purposes of specifying preparation that is to be made or such reasonable steps that are to be taken as are referred to in the definition of ISOP Implementation Objectives;

"Relevant Document" has the meaning given to that term in section 169 of the Energy Act 2023; and

"Relevant Requirement" has the meaning given to that term in [section 25(8) of the Electricity Act 1989] [and in] [section 28(8) of the Gas Act 1986].

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