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Future System Operation Team
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BY EMAIL ONLY

Friday, 10 May 2024

Dear Future System Operation Team,

RE: Temporary facilitative licence condition to support the implementation of the Independent System Operator and Planner

ElecLink welcomes the opportunity to respond to Ofgem's statutory consultation on the temporary facilitative licence condition to support the implementation of the Independent System Operator and Planner (the 'Consultation').

This response is provided on behalf of ElecLink Limited. ElecLink is a 1000MW HVDC electricity interconnector between Great Britain and France, which commenced full commercial operations in May 2022. As a regulated electricity interconnector, alongside our Electricity Interconnector Licence conditions, ElecLink are required to be party to and comply with a wide range of industry codes and agreements to ensure that the interconnector operates in accordance with industry standards and norms, this includes, but is not limited to, the Grid Code, the Balancing and Settlement Code (BSC), and the Connection and Use of System Code (CUSC).¹

Within Ofgem's statutory consultation, no evidence has been presented to demonstrate that there is a need for the introduction of a new licence condition to support the implementation and transition to National Energy System Operator (NESO) as the Independent System Operator and Planner (ISOP) in GB. Given the wide range of existing requirements and licence conditions placed on industry participants, ElecLink believe it is wholly unnecessary for this licence condition to be introduced and a disproportionate response for an unproven issue.

Following a review of the statutory consultation's documents, we are of the view that the proposed licence condition is non-prescriptive in nature, instead referring to secondary documentation (i.e., the ISOP Change Programme). ElecLink are concerned with the lack of transparency on what is defined under the ISOP Implementation Objectives and the ISOP Change Programme, and how the goals and requirements of these workstreams could be revised or expanded in the future as the role of NESO evolves. As set out in the Department for Energy Security and Net Zero (DESNZ)'s Strategy and Policy Statement for Energy

¹ [Codes | ESO \(nationalgrideso.com\)](https://nationalgrideso.com)

Policy in Great Britain,² NESO, as the ISOP for GB will initially assume a range of roles and responsibilities within the energy system, which includes, strategic and network planning; facilitating competition; and coordinating the system. However, DESNZ also states that new roles are still in development and that existing roles of NESO may change or evolve over time. As a consequence, market participants are at risk of being subject to a licence condition which is non-prescriptive and could evolve overtime with the NESO's roles. Furthermore, the minded-to licence condition has been labelled as a '*facilitative condition*' to support the implementation of NESO. That said, the condition is currently planned to remain in place for a minimum of three years,³ prima facie this appears disproportionate and unnecessary – given that Ofgem have not presented any evidence to support the need for such a condition – and also increases the risk of licence condition 'scope creep' due to the increased possibility of NESO's roles, responsibilities and objectives changing over the three-year period.

ElecLink believe that it is healthy for markets and ongoing market competition when industry participants can debate, critique and pursue alternative approaches. ElecLink believe this is important for innovation within the energy industry (i.e., the creation of new services), delivering better outcomes overall for consumers and delivering the necessary changes for the GB power grid's transition to a renewables dominated grid. ElecLink are concerned that the introduction of such a licence condition will create a scenario where the NESO is beyond critique, cannot be challenged by industry participants and can dismiss alternative views that do not align with theirs, due to the fear of that industry participant being characterised as '*hindering or frustrating*' the NESO. In these instances, market parties are a risk of being subject to an investigation by Ofgem for a suspected breach of its licence conditions, which is both damaging and unnecessary.

Summary

We welcome the opportunity to respond to this consultation on the temporary facilitative licence condition to support the implementation of the Independent System Operator and Planner. As set out above, we believe the introduction of this licence condition is unnecessary. If introduced, this could create a perverse scenario where ElecLink (and all other licensed market participants) are subject to a licence condition which is non-prescriptive in nature and creates risk for market participants because the secondary documentation which underpins the licence condition is: (i) not transparent; (ii) can be revised with little to no recourse from licensees (i.e., no statutory consultation would be required); (iii) could be subject to interpretation by different parties; and (iv) could be applied differently, creating regulatory uncertainty and discrimination between industry participants.

Given the wide-reaching implications of this licence condition, and the potential for undesirable outcomes, we are disappointed with the level of detail and evidence provided by Ofgem to support the necessity for such a condition. We believe that serious consideration and justification needs to be provided before proceeding further with this initiative.

If you have any questions regarding the response, please contact the ElecLink Regulation team – regulation@eleclink.co.uk.

Yours Sincerely,

² [Strategy and Policy Statement for Energy Policy in Great Britain \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/671112/Strategy_and_Policy_Statement_for_Energy_Policy_in_Great_Britain.pdf)

³ Subject to direction from Ofgem or the Secretary of State



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