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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 – reasons and effect

Thank you for the opportunity to respond to this statutory consultation on a temporary facilitative licence condition to support the implementation of the Independent System Operator and Planner (ISOP).

While we offer no comment as to matters of policy regarding the establishment of the ISOP in this response, we nevertheless offer a number of comments / observations on the drafting of the proposed facilitative licence condition.

We note that section 169(1) of the Energy Act 2023 (the Act) grants Ofgem power to modify licence conditions “*in preparation for the designation of a person under section 162(1)*” (i.e. an ISOP) or “*in connection with or in consequence of the designation of a person of that provision*”. However, we consider that the proposed modification strays beyond the original intended scope of the provision, given that the proposed licence condition has been drafted both widely and in strong terms.

Specifically, we are of the view that:

1. The condition should be amended to make it clear that licensees are not obliged to comply with the condition if and to the extent that doing so would put that licensee in breach of law and/or another licence condition. This would avoid a perverse outcome whereby the implementation of the ISOP trumps licensees' existing legal/licence obligations.
2. An absolute prohibition on licensees taking any step or exercising any right may be too strong. Instead, we suggest that licensees could be obliged to use reasonable endeavours not to hinder or frustrate.

3. The two key definitions that these obligations hang off are also drafted so widely that the scope of licensees' obligations are not clear. For example, the definition of "*ISOP Implementation Objectives*" refers to "*such steps that are necessary or expedient*" and the definition of "*ISOP Change Programme*" refers to "*any document of that name*". However, as Ofgem/the Secretary of State have yet to consult on this document, it is not clear what that programme will require of licensees. As we naturally attach the utmost importance to complying with our licences it is unreasonable to expect licensees to agree to the addition of such a strict and open-ended obligation.

I trust that you will find our comments helpful; however, should you wish to discuss any aspect of this response then please do not hesitate to get in touch.

Yours sincerely,



Richard Sweet
Director of Regulatory Policy