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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

On behalf of the SSE Group, I welcome the opportunity to respond to Ofgem's statutory consultation on the proposed introduction in all Ofgem-regulated licences of a temporary facilitative licence condition to support the implementation of the Independent System Operator and Planner (ISOP).

The SSE Group is a FTSE-100 company headquartered in Perth, Scotland, with interests across the UK and Ireland, Europe, Asia Pacific, and North America. We are one of the largest electricity network companies and a leading generator of renewable electricity in GB. We develop, build, own, and operate the low carbon infrastructure supporting the transition to net zero. This includes electricity transmission and distribution networks; offshore and onshore wind; hydro and pumped storage; solar and batteries; flexible and efficient thermal generation (including, going forward, hydrogen and carbon capture and storage). We also provide energy products and services to business customers.

A successful implementation of the ISOP is fundamental to the achievement of net zero. Therefore, we agree with Ofgem on the importance of ensuring that the transition to the ISOP can progress smoothly and there are no attempts to frustrate its implementation. However, we have concerns with Ofgem's proposal to introduce a new licence condition and would require Ofgem to publish additional detail and explanation to allow us to provide more informed responses to the three questions asked as part of the statutory consultation.

In this response, we have highlighted our key concerns with Ofgem's overall proposal in its current form and the areas where we think that further information is required to allow industry stakeholders to provide more informed feedback.

- **Lack of problem statement:** Within the statutory consultation there is no clear explanation of why the introduction of a new licence condition is necessary to support the implementation of the ISOP. Ofgem should set out clearly the practical problems it is trying to resolve (beyond the generic aim of supporting the transition to the ISOP) and explain why the introduction of a new licence condition is the most appropriate course of action to address those problems.

- **Lack of detail:** According to the proposed licence condition, the licensee must take any reasonable step within its power to enable the ISOP Implementation Objectives to be met or to give full and timely effect to the matters set out in any ISOP Change Programme (Part A: General Requirement). In addition, it 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 C: Requirement not to Frustrate). Both ISOP Implementation Objectives¹ and ISOP Change Programme² are only defined in very generic terms in Part F: Interpretation and in the Reasons and Effects document. Moreover, no explanation or examples are provided in relation to the practical steps that the licensee might be required to take or refrain from taking (or rights it might be required to refrain from exercising) to comply with the proposed licence condition. Without any further detail or explanation, it would be difficult to provide an informed response to either Question 1 (seeking views on any foreseeable impacts from the implementation of the condition) or Q2 (asking whether the text of the condition captures the policy intent).
- **Requirement to cooperate:** According to Part B (Requirement to Co-operate) of the proposed licence condition, the licensee must cooperate with other licence holders and take any reasonable step within its power “to enable such other licence holders to comply with the conditions of their licences”. This provision effectively places an obligation upon each licensee to take steps required to enable licence compliance by other licensees. We have concerns about the introduction of an obligation that makes a licensee responsible not only for complying with its own licence but also, to an extent, for other licensees’ compliance with theirs. This is exacerbated by the fact, outlined in the previous point, that the ISOP Implementation Objectives and ISOP Change Programme are only defined in very generic terms and, therefore, it is unclear what practical steps might need to be taken to enable licence compliance, be it by the licensee itself or by other licence holders.
- **Lack of industry engagement and consultation:** On 28 March, Ofgem and DESNZ published a joint statutory consultation³ on proposed licence conditions for the ISOP and amendments to other impacted industry licences. That statutory consultation followed the publication of previous consultations on draft licence conditions for the ISOP in September 2023⁴ and draft amendments to other impacted licences in December 2023⁵, as well as reflecting the outcome of other relevant consultations from DESNZ in August 2023⁶ and Ofgem in December 2023⁷. On the contrary, this statutory consultation on the introduction of a temporary facilitative licence condition in all Ofgem-regulated licences was not informed by any previous consultation or other industry engagement, depriving stakeholders of the opportunity to provide their views during the development of this proposal and ahead of the statutory consultation stage.

¹ “The achievement of ‘ISOP Implementation Objectives’, meaning adequate preparation for the designation of NESO as the ISOP, and timely, effective taking of necessary steps in connection with or in consequence of designation”.

² “The timely effect of any document termed ‘ISOP Change Programme’, being any such named document consulted on and published by Ofgem or the SoS for the purposes of specifying preparation or steps to be made in relation to the above objectives”.

³ [Statutory consultation on National Energy System Operator licences and other impacted licences](#)

⁴ [Future System Operator \(FSO\) draft licences consultation](#)

⁵ [Future System Operator – Draft amendments to other impacted licences](#)

⁶ [Future System Operator: second policy consultation and project update](#)

⁷ [Consultation on the policy direction for the Future System Operator’s regulatory framework](#)

Due to the lack of detail in the statutory consultation and lack of previous stakeholder engagement and consultation during the development of this proposal, we would encourage Ofgem to reconsider the need for introducing the proposed condition as well as its content and wording, including by engaging with the industry to provide further detail and explanation to stakeholders and discuss with them the potential implications of introducing the new condition.

As part of the constructive engagement that we consider essential to inform the design of a new licence condition, in Appendix 1 we have outlined some wording changes that would partly alleviate some of our concerns. However, given the limited information shared as part of the statutory consultation, these are provided only as examples of some of the changes that we consider necessary before this licence condition is introduced and should not be considered exhaustive.

We would welcome the opportunity to discuss further with Ofgem the content of our response in a follow-up meeting.

Yours sincerely,

Martin Namor
Senior Regulation Manager

Appendix 1 – Examples of proposed wording changes

| Licence reference | Current wording | Proposed alternative wording |
|--|--|---|
| Part B Requirement to Co-operate | <i>Without prejudice to paragraph 1, the licence <u>must cooperate</u> with other holders of licences (...)</i> | <i>Without prejudice to paragraph 1, the licence <u>must use reasonable endeavours to cooperate</u> with other holders of licences (...)</i> |
| Part C Requirement not to Frustrate | <i>Without prejudice to any <u>public or administrative law right, or statutory right</u>, that the licensee might have to bring any claim against any public body or person, (...)</i> | <i>Without prejudice to any <u>public or administrative law right, or statutory right, or contractual right</u>, that the licensee might have to bring any claim against any public body or person, (...)</i> |
| Part C Requirement not to Frustrate | <i>(...) the licence must not take any step, or exercise any right, <u>which is intended to hinder or frustrate</u> meeting the ISOP Implementation Objectives or the giving of full and timely effect to any ISOP Change Programme.</i> | <i>(...) the licence must not take any step, or exercise any right, <u>which is intended solely to hinder or frustrate</u> meeting the ISOP Implementation Objectives or the giving of full and timely effect to any ISOP Change Programme.</i> |
| Part D Potential Conflict | <i>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 licence or Relevant Requirement, the licensee must, as soon as reasonably practicable, <u>inform the Authority of such conflict</u>.</i> | <i>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 licence or Relevant Requirement, the licensee must, as soon as reasonably practicable, <u>give written notice of such conflict to the Authority and shall comply with any direction of the Authority in relation to the same (which direction may only be made following such consultation with the licensee in such a manner as the Authority deems appropriate)</u>.</i> [Proposed additional wording in line with wording used in BETTA implementation condition] |