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Dear Sayed,

**Wales & West Utilities (WWU) response to Ofgem Statutory consultation on the temporary facilitative licence condition to support the implementation of the Independent System Operator and Planner (ISOP)**

Thank you for the opportunity to respond to this consultation. WWU is a gas transporter serving 2.5 million supply points in Wales and south-west England. This response is not confidential and may be published in full.

Q1—Are there any foreseeable impacts from the implementation of the temporary licence condition which we should consider?

As explained in our response to question 2 we have concerns about the interpretation of the condition in relation to our ability to raise legitimate concerns regarding the implementation of the ISOP.

Q2 – Does the text of the temporary licence condition capture the policy intent as set out in this consultation document?

The licence condition contains the expected “requirement to co-operate” obligation, and we are familiar with this from the obligation to co-operate with the faster switching programme. However, we were not expecting the additional “requirement not to frustrate” and do not recall any discussion of this additional obligation nor the justification for including it.

We propose the use of a “reasonable endeavours” obligation as the appropriate measure of the effort required by the licensee to meet the Authority’s direction in paragraph 2. The licence condition uses the term “any reasonable step” which is undefined and less clear legally. Ofgem’s drafting guidance<sup>1</sup> refers to ‘not using “all reasonable endeavours”’. Use of “step” in

<sup>1</sup> See [FSO - Draft amendments to other impacted licences consultation document \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/consultation-docs/2024/2024-001) Appendix 3 paragraph 15.



this proposed licence condition raises the question of the difference between a reasonable endeavour to do something and a reasonable step taken to do something. There seems to be no difference between the two, hence our proposal to use the well understood term “reasonable endeavours”.

With regard to the new additional “requirement not to frustrate”, it is important that licensees are able to make reasoned challenges to proposals or to ways of delivering an outcome if they think that an alternative would be better, or the suggested approach is not reasonable; for example, by being better value for money or achieving the outcome in a more appropriate way. There is a risk that the ISOP interprets the requirements “to co-operate” and “not to frustrate” as a requirement to agree with everything the ISOP demands or proposes. The ISOP could argue that anyone who raises a question about any ISOP Change Programme is frustrating that programme. This cannot be the intention of the drafting; however, restricting a licensee’s rights to exercising any rights under any public or administrative law, or statutory right means it has virtually no room to raise legitimate challenges if the ISOP took a strict interpretation of the obligation.

The key test in the drafting regards the intent of any action and that any enforcement action would have to be taken by Ofgem.

We note that the condition will cease to have effect three years after the designation of the ISOP under section 162 of the Energy Act 2023.

Q3 – Do you have any other views or comments relating to the temporary licence condition?

The scope of this licence condition is limited to achieving the ISOP Implementation Objectives and giving timely effect to any ISOP Change Programme and does not extend to any enduring obligations or duties of the ISOP or any other obligations or duties that the National Energy System Operator may be given.

Please contact me if you wish to discuss the points that we have raised.

Yours sincerely,



Richard Pomroy  
Regulation Manager  
Wales & West Utilities