

Future System Operation
Office of Gas and Electricity Markets
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By email: FSO@ofgem.gov.uk

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Statutory consultation on the temporary facilitative licence condition to support the implementation of the Independent System Operator and Planner

Dear Future System Operation Team,

SP Energy Networks (SPEN) represents the distribution licensees of SP Distribution plc (SPD) and SP Manweb plc (SPM) and the transmission licensee, SP Transmission plc (SPT). This response is provided on behalf of each of SPD, SPM and SPT. We welcome the opportunity to respond to the statutory consultation on the temporary facilitative licence condition to support the implementation of the Independent System Operator and Planner (the Temporary Facilitative Licence Condition Consultation). SPEN is committed to supporting a seamless transition to the National Energy System Operator (NESO), and will cooperate in the transition as appropriate. Notwithstanding, we have set out comments on the proposed Licence Condition below, reflecting our concerns surrounding compliance with this high-level and somewhat unfairly open ended Licence Condition.

As a transmission and distribution network owner, we are regulated under the RII Price Control framework, and must comply with our Transmission and Distribution Licences, the Electricity Act 1989, and our wider statutory and non-statutory obligations. As currently drafted, the interaction between the proposed Temporary Facilitative Licence Condition and SPEN's wider obligations is poorly defined, and therefore unclear. To avoid situations of unintended non-compliance, we request that the condition is amended to clarify 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.

The two key definitions that surround these obligations are drafted very non-specifically, making it unclear what exactly network licensees are being asked to comply with. 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", but it is not yet clear what that programme will require of licensees. SPEN takes compliance with our licences very seriously, so we have significant concerns around such an open-ended yet strict obligation being added into our licences.

Regarding compliance, we consider that an absolute prohibition on licensees taking any step or exercising any right in Part C of the proposed Temporary Facilitative Licence Condition is

too strong and unreasonable to include in a Licence Condition of this nature. If Ofgem considers this is required, we suggest instead that licensees should be obliged to 'use reasonable endeavours' not to hinder or frustrate the transition to the ISOP. There is considerable precedent for using this type of obligation in relation to less well-defined requirements within existing licences.¹ For example, SPEN has obligations to use 'reasonable endeavours' to comply with its Whole System coordination requirements, which are similarly challenging to draft with precision, given the broad nature of the obligation. The 'reasonable endeavours' approach addresses some of the concerns around interactions with wider obligations, better reflects the high-level and broadly-defined nature of the obligations created by the Temporary Facilitative Licence Condition and is overall a more proportionate and reasonable obligation to place on licensees.

We look forward to continuing to work alongside Ofgem, Government and the ESO/NESO during the transition to the NESO in the coming months. Please do not hesitate to reach out should you wish to discuss any of the issues raised in this letter.

Yours sincerely,



Nia Lowe

Head of Regulation and Government Policy

¹ These include Distribution Standard Conditions 7A, 15A, 25B, 31E, 43A and 48A, and Transmission Standard Conditions B10, B12, B16, B22, and D17.