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17 April 2025

Dear Eliska

Notice of proposed modifications to Re-opener Guidance and Application Requirements Document

Electricity North West Limited (ENWL) is the Distribution Network Operator (DNO) for the North West of England. Our service territory includes diverse landscapes and communities, from the Lake District to urban Manchester and all the cities, towns, and villages in-between. We are the most innovative and digital DNO, and we pride ourselves in being low cost for our customers while safely delivering great services as a trusted partner to customers and stakeholders in the North West.

During the development of RIIO-ED2 we were strong and active advocates of the development of uncertainty mechanisms including Re-openers that provide licence instruments that can respond agilely to changes in the regulatory period that were uncertain at the time of determinations for the period of RIIO-ED2.

To date we have had the need to utilise re-openers on 9 occasions in the period. The success of our applications is evidence to how seriously we take the submissions and the requirement for clear and complete evidence in a form that is easily digestible for Ofgem.

As such we are responding to this notice with input that should help with that aim, whilst ensuring that guidelines and templates do not create unnecessary additional work to a process which is already significant for licensees to undertake. A summary of our key feedback is:

- We welcome the opportunity to offer constructive feedback on the direction to support Ofgem and Companies in clarity regarding the requirements and improvements in the submission process for Re-openers.
- We support Ofgem in the aim to create more clarity and standardisation of the processes.
- We recognise the need for transparency in guidance as well as consistency to support Ofgem in timely decision making in the determination of re-opener applications from licensees.



- We see the value in the formalisation of the redaction process and clarity of expectations. This aligns with our own interpretations of the current guidance i.e. that there is a high bar for redactions and transparency of published information is important.
- We support the aim of a standardised template for the reasons Ofgem state, however when we have reviewed the excel template for how it could be completed for these types of re-openers, we consider that further development is required to ensure a standard template can be fit for purpose for ED. Our view therefore is that an ED specific version of a common submission template is a more proportionate way forward as this would support Ofgem in its decision making for ED by having a common framework but recognising the differences specific to ED. We suggest that the standard submission template should be based on a form familiar to licensees, built from the existing reporting frameworks i.e. RRP. We expand on this further in our response to question 13 in appendix 1 to this letter.

Our full response to the notice including the questions posed by Ofgem can be found in Appendix 1 enclosed in this covering letter. We also provide Appendix 2 by way of an excel based issues log with other minor suggested revisions.

We stand ready to continue our direct engagement with Ofgem to deliver improvements to the re-opener application process with the aim of ensuring comparability across applications within sector without creating additional work or requirements for companies in developing and submitting applications within the RIIO-2/ED2 period.

Should Ofgem have any questions regarding our response or details contained within it please do not hesitate to contact Paul Auckland (Head of Economic Regulation, Paul.Auckland@enwl.co.uk), Alison Scott (Regulation Manager, Alison.Scott@enwl.co.uk) or myself in the first instance.

Yours sincerely



David Darley
Regulation Manager

Enclosed:

Appendix 1 – ENWL response to consultation questions - Notice of proposed modifications to Re-opener Guidance and Application Requirements Document
Appendix 2 – Excel issues log

Appendix 1 – ENWL response to consultation questions - Notice of proposed modifications to Re-opener Guidance and Application Requirements Document

Re-opener Guidance and Application Requirements Document

Question 1: Do you have any views on the proposed revisions to the Re-opener Guidance and Application Requirements Document?

Our view is that the context, reasons and aims of this policy change should be included clearly in the guidance. This will allow for transparency and longevity of decision making supporting the policy aims of consistency to support timely decision making and determinations from Ofgem.

Specific comments on the tracked changes are provided below:

- Front cover – Publication date should be updated when it is formally published, tracked change is currently to the date of when the notice of proposed modification was published
- Page 2 – Text in the changes column for version 4 should be expanded to capture the policy intent of the updates more clearly.
- We suggest that paragraphs 2.5 and 2.6 should be removed, and instead the wording in paragraph 2.7 is used which signposts appendix 12. The reason for this suggestion is that the extended redaction policy in appendix 12 now addresses the points made in the existing paragraphs 2.5 and 2.6 in further detail and keeps all of the detail of expected approach to transparency in one place. Paragraph 2.4 would also need to be revised to say subject to the content within Appendix 12. We provide further comments below on paragraph 2.7.
- Paragraph 2.7 – We suggest it is made clearer that Appendix 12 sets not only the approach that will be taken by Ofgem to redaction of information from documents before it publishes them, but also the approach Licensees should take to redaction of information from their published documents.
- Paragraph 3.20 – It is crucial that this paragraph and the first bullet point recognises that there is an existing template for Cyber OT/IT submissions as part of Appendix 4 which should be used for the purposes of applications under these re-openers.

Appendix 12: Redaction Policy

Question 2: Do you agree that a more comprehensive Redaction Policy is required purposes explained in section 1 (Introduction) of the proposed Redaction Policy?

We have always sought to minimise the content which is redacted to allow as full as possible publication in a transparent manner. Given this aim we are supportive of a policy which provides clearer guidance and expectations on redactions to support consistency of application across companies and Ofgem.

It is important that such policy allows for redactions where required and does not create an issue where information is required to be unredacted but would create harm to the company or its consumers should it be published. This is critical especially in the context of security and network resilience (such as Cyber OT/ IT re-opener) as well as critical national infrastructure where the provision of information should be presumed to be unpublished by default. This presumed to be unpublished as default should also extend to the Physical Security re-opener.

Based on this our view is that the policy should be as succinct as possible. The original guidance in our view provided sufficient direction to companies and therefore a short clarification of policy and expectations should suffice.

Paragraph 1.6 require us to be very specific about what we have redacted and why – this could be very cumbersome, so needs to be proportionate and would benefit from more explanation as to expectations.

In addition to our comments to questions 2 through 14, we also attach Appendix 2 which is an excel issues log which covers other minor comments and suggested revisions for appendices 12, 13 and 14.

Question 3: Do you have any views on the proposed approach as set out in section 2 (Approach to Redacting Information) of the proposed Redaction Policy?

- Paragraph 2.1, this is a direct quote from Electricity Act 1989, Section 48, Paragraph 2 and the Gas Act 1986, Section 35, Paragraph 2. For ease of reference we suggest this is simplified to the interpretation of those requirements set out in primary legislation.
- Paragraph 2.6, we suggest that this is reworded for simplification and clarity of who it applies to and what exceptions are in place. Proposed revision wording is included in our Appendix 2
- Paragraph 3.2 appears to be largely a duplication of paragraph 1.3 in the context section. If the paragraph remains it should be clear that primacy is to legal constraints to publication, as such, we suggest rewording this to “*Subject to consideration of legal and other justified constraints, we take the view that where publication of information would promote the interests of consumers it will generally be permissible for us to publish that information.*”

Question 4: Do you agree with the three proposed redactable information categories? Are there any other categories that should be considered?

We agree with the three high-level proposed redactable information categories. We already apply the following currently where redactions are made due to the following reasons:

- To protect commercial agreements which may contain confidentiality provisions or those agreements that are in negotiation and may be prejudiced
- To protect customers from the potential for increased costs should published data be used to affect market costs
- To ensure the safety of our network and the continued resilience of the services we provide to our customers (e.g. cyber security details).

Our view is that our current approach aligns with the proposed policy contained in this modification notice.

Question 5: Do you have any views on the redactable information category explanations set out in Annexes 1, 2, and 3?

The three annexes prima facie provide guidance to how the policy should be applied whilst allowing enough flexibility for it to apply in a proportionate manner.

Question 6: Do you agree that the existence of a Non-Disclosure Agreement (NDA) should, in itself, not be sufficient reason for redaction or non-compliance with the policy (as explained in Annex 2)?

The policy must not open companies to costs/ implications of failure to comply with legal agreements or requirements.

We agree that NDAs should not be used as a vehicle to avoid legitimate publishable information being published. We are unclear of the evidence that this is a policy issue now or likely to be in

the future. We would question whether there is a need to be explicit in the policy to cover this issue as this may create issues of legal jeopardy for companies or Ofgem in the future.

Question 7: In your view, is the proposed scope of the redaction policy correct? Should it apply to all re-openers or should some mechanisms be excluded from scope?

We agree that enhanced guidance and transparency for redaction policy is beneficial. We welcome the work that Ofgem has done to formalise this. We already apply a high bar to redactions of our re-opener applications with the aim of publishing as much as possible transparently without redaction.

Our view is that the redaction policy should not apply to the following where these should be redacted in entirety for reasons of national security. These are:

- Cyber resilience re-openers both for OT and IT, and
- Physical Security re-opener applications

Question 8: Do you agree with the process as set out in Section 4 (Process for Publications) for (a) Ofgem's publications, and (b) licensee's publications?

With regard to the process for Ofgem publication, our comments on paragraph 4.1 bullet c are that it would be regulatory best practice for Ofgem to always share a copy of redacted publication where this differs to that proposed by the company. This would allow for company representations ahead of any publication if damaging material is proposed to be published unredacted by Ofgem.

In addition, paragraph 4.1 bullet d states that where appropriate and feasible, an unredacted version of the publication will be shared with the relevant licensee. As the information will have already been provided by the licensee as part of their submission, we are unclear why a full unredacted version would not be shared with the licensee and would expect that this always be the case given that the consultation/decision document relates to their specific application. We recognise that where a decision may be for multiple licensees or re-openers then only that part that relates to the company would be unredacted in full for the recipient. We ask that this is clarified in revised text.

With regard to the licensee publication process, paragraph 4.2 bullets c and d do not refer to the requirement within the main Re-opener Guidance and Applications Requirements document, paragraph 2.4 which requires the licensee to publish its application within 5 working days of submission (subject to the redaction policy). The requirement to raise and seek confirmation from Ofgem if there is any doubt on redactions to apply poses a risk to the licensee being able to comply with the 5 working day requirement. We propose that this is either extended to reflect the potential for the process outlined in paragraph 4.2, or additional words be added to paragraph 2.4 that makes reference that this timeline is subject to extension should the licensee need to seek confirmation from Ofgem under 4.2 bullet c.

For licensee's publications (process b) we agree with what is set out so long as it is subject to companies to determine its own interpretation of what falls in scope and out of scope of the policy, and where "doubt" is considered accordingly.

Question 9: Do you have any views on the General Consideration set out in section 5 (General Considerations)?

We agree that redactions will need to be considered on a case-by-case basis, but this should be done inline with the stated policy set out. Currently the general considerations make little reference to the policy set out prior in the document. Linking section 5 to the wider document contents would add useful transparency to the process and its expectations.

Appendix 13: Re-opener Submission Template, and Appendix 14: Instructions

Question 10: Please provide your views on the split between direct and indirect costs on each of the 2_Costs_Section worksheets.

All allocations between direct and indirect costs must be internally consistent with how these are reported annually under the Regulatory Reporting Packs (RRP) and in line with requirements set out in the Regulatory Instructions and Guidance (RIG). Ofgem must ensure that this is the case for the template proposed on a sector by sector basis.

Question 11: Please provide your views on the split between Company Costs and Contractor Costs on each of the 2_Costs_Section worksheets.

Depending on the nature of the re-opener including the activity or scope this is cover, and the level of advancement of delivery, will depend on how the licensee will be able to complete the split between company and contractor costs. In some cases, this is a degree of accuracy that may not be possible.

Question 12: In your view is specific instruction required for any of the individual worksheets? Please provide as much detail as possible on what is required. We also welcome suggested draft text.

The majority of the worksheets do not require extensive instructions; however we support each worksheet having its own specific instruction within appendix 14. We suggest looking at the RIGS guidance for the ED2 cost and volume (CVR) pack as good practice Ofgem has employed to provide guidance on filling in data templates. We agree that repetition of information is not beneficial and can be removed such as the tables that show sector specific requirements all as 'n/a'.

We suggest that instead of a table for each worksheet that shows purpose and use and general requirements that the instructions are instead shown in paragraph and numbering format. This makes it easier for the reader when complying and provides easier feedback or query to Ofgem should the need arise if they are able to quote the specific paragraph and numbering.

Question 13: Do you have any views on the overall structure and design of the Re-opener Submission Template?

We support Ofgem in the aim to create more clarity and standardisation of the processes. With regards to the submission template we have some concerns that proposed templates may work for the other sectors, but as currently laid out do not reflect the differences present in ED for example:

- The current RRP packs between sectors differ significantly, with ED packs including substantially more data than GD, ET or GT reflecting the nuances of our sector. For those sectors, there is 1 excel workbook and 1 guidance document. For ED there is 12 excel workbooks and 11 guidance documents. We suggest that the standard submission template should be based on a form familiar to licensees, built from the existing reporting frameworks i.e. RRP.
- The re-openers vary significantly between the sectors. For example, ET and GT are generally very specific asset output based re-openers, usually large and singular projects for example MSIP, SF6 intervention, Tyne Crossing project, St Fergus and Wormington Compressor. For ED there is a variety, few of which, other than high value projects, that are single, large, defined asset based projects, for example, environment, digitalisation, streetworks, wayleaves and load related expenditure. Our observation in the current proposal is heavily developed based on singular large project re-openers rather than programme such as those in ED.

We currently do not consider that the submission template is in a form appropriate for use for the ED sector and would not deliver the Ofgem aim of supporting a robust and efficient assessment process. Our view is that an ED specific version of a common submission template is a more proportionate way forward. This would support Ofgem in its decision making for ED by having a common framework but recognising the differences specific to ED. We stand ready and willing to work with Ofgem on what that could look like for ED leveraging off the existing reporting structures and formats which are well known and understood by the sector and Ofgem.

Notwithstanding our broader comments on the suitability of the template for the ED sector, we have provided further comments in the form of an issues log within our Appendix 2 to this response.

Question 14: Do you have any views on the scope and content of the Re-opener Submission Template?

We have interpreted this question to relate to Appendix 14 – the submission and guidance document for the excel template. We provide further comments within the issues log contained in Appendix 2 to this response.

Paragraphs 1.4 and 1.5 refer to the document applying to all sectors. As we state within our response to question 13 we consider that a sector by sector approach to a re-opener submission template would be more appropriate and therefore the wording should be revised accordingly.

Paragraph 1.7 refers to accompanying narrative alongside the template and references the main Re-opener Guidance and Application Requirements document, however the main document does not refer to such narrative. We note it cross-refers to section 9 and suspect that this paragraph is intended to require commentary to sit alongside the data tables in the same way as is used as part of regulatory reporting packs. If our interpretation of the Ofgem intent is correct, we suggest that paragraph 1.7 is simplified to state that the Template should be accompanied by commentary that explains the data provided within the Template and that no set proforma is required. This can then remove the requirement for section 9 in its entirety. We suggest that the word commentary is used rather than narrative so as to not cause confusion with the main re-opener submission narrative that will explain the licensee's application.

Paragraph 1.10 appears to reference that the Template may be superseded without revision to the guidance. We are of the view that the Template forms part of the overall document, in that it is Appendix 13, and therefore any changes made should be consulted on through the normal process, and this paragraph be updated accordingly at that time.

Para 1.12 bullet point 6 requires cells to be zero input rather than left blank. We would suggest that this is revised to bring inline with the RRP requirements to avoid confusion and ensure internal consistency where *"Where a reportable value is zero the cell input should be zero. Where it is not applicable to the licensee, the cell should be left blank."*¹

Paragraph 1.13 provides options where multiple projects are included in the submission. This is a good example of the fundamental difference between Electricity Transmission and Electricity Distribution, and how a more tailored sector specific workbook would be beneficial to be developed. In our experience of the re-opener submissions we have made to date, particularly the Arwen and Load Related Re-opener, both contained a number of individual projects. The options presented in paragraph 1.13 which is to submit multiple instances of the template, one for each project, or to submit one single template and supplementary data sheets to provide granular data at a project level would have been a huge undertaking, and we are not clear for what additional benefit it would provide to Ofgem, over and above what was provided in the

¹ Paragraph 3.8, RIIO-ED2 – Overview of the Regulatory Instructions and Guidance v2.0

form of using either BPDT or RIGs templates which were specifically designed for the activity in question.

Other re-openers within the RIIO-ED2 licence are for example the environment, streetworks, wayleaves and diversions re-openers. All of these, if utilised, would contain multiple different activities and may not readily lend themselves to the template created. Additional data tables in the form of RIGs tables would likely need to be used, and this would increase the regulatory burden of creating a re-opener submission and we do not consider that this would deliver the aim of supporting Ofgem in undertaking a robust assessment.