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By email only to: ReopenerConsultations@ofgem.gov.uk

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Ref: UK Power Networks' Response to Ofgem's Proposal to modify the Re-opener Guidance and Application Requirements Document

Dear Eliska,

Thank you for the opportunity to comment on Ofgem's Proposal to modify the Re-opener Guidance and Application Requirements Document. This letter should be treated as a consolidated response on behalf of UK Power Networks' three distribution licence holding companies: Eastern Power Networks plc (EPN), London Power Networks plc (LPN), and South Eastern Power Networks plc (SPN).

Please find in the annex to this cover letter, UK Power Networks' response to the consultation questions; but as a general point, the documents would benefit from a thorough proofread as there are a number of typos, grammatical errors and formatting issues that require addressing before final publication. Should Ofgem wish to discuss any of our responses in more detail, we are available for further dialogue at any time.

Yours sincerely,

James Hope
Head of Regulation & Regulatory Finance
UK Power Networks



Annex 1 - Consultation Questions

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?

The proposed revisions are appropriate.

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 agree with the rationale for developing the redaction guidance to help ensure a consistent approach is taken both within Ofgem and by licensees. However, paragraph 1.1 should make clear that this guidance is to be used only for the purposes of re-opener applications and not for other submission, i.e. for upcoming price reviews.

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?

We agree with the proposed approach.

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 proposed redactable information categories.

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

We have the following views on each of the three annexes. In addition, as a general point, the formatting needs correcting as the second line of each paragraph is incorrectly indented.

Annex 1 – Confidential Information

- Within the first paragraph, the opening text would benefit the following edits:

“Confidential information means any information which, by its nature, ~~that~~ ought to be considered as confidential (however it is conveyed, or on whatever media it is stored) including but not limited to, any information provided by any person.....”

- The last paragraph incorrectly refers to the list as being examples of information that may be confidential, but it is actually a list of information that could be deemed non-confidential.

Annex 2 – Commercially Sensitive Information

- In the opening sentence of the first paragraph, this should make clear that it is not just any person, but also organisations too that could be impacted negatively from the release of commercially sensitive information. Therefore, we suggest the following amendment:

“Commercially sensitive information means information that (a) constitutes a trade secret; or (b) if disclosed would, or would be likely to, prejudice the commercial interests of any person and/or organisation.”

In the last paragraph, the statement needs to clarify that commercially sensitive information can be “information that could breach competition law and/or confidentiality arrangements when disclosed” i.e. not just “and”, but “and/ or”.

Annex 3 – National Security

We consider that the last sentence (“When deciding whether the information should or should not be redacted due to possible risk to national security, actual consequences of disclosing the information must be considered.”) should be deleted. It is not possible for a licensee to know what the “actual” consequences of disclosing information will be. Licensees will only be able to consider possible consequences that might occur. Instead, the opening sentence of this paragraph is sufficient to cover the consideration.

The second paragraph refers to the document as “Policy”, yet it is referred to as “guidance” elsewhere. Ofgem should be consistent in how it refers to this document. In addition, further thought should be given to whether “guidance” is the correct term - would “policy” or “requirements”, be more suitable?

Lastly, this whole section seems light on guidance. For an area as important as national security, we would expect to see further granularity or examples to better illustrate the types of information that should be considered as a risk to national security. For example, would releasing information that could result in negative impacts to infrastructure, that if targeted would significantly impact the environment negatively, be considered as a matter of national security? Further guidance would be welcome on what is meant by “actions targeted at the UK, its system of government, or its people.”

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 final sentence of the first paragraph, should be amended to the following:

“NDAs are a matter for licensees themselves, and on their own, are not sufficient reason for redaction or non-compliance with this policy. Where information is covered by an NDA to which the licensee is a party, then the licensee must provide sufficient justification as to why non-disclosure would be in the consumer interest in relation to the conveyance of electricity and gas.”

This amendment is to ensure consistency with Section 48 of the Electricity Act and Section 35 of the Gas Act as referenced in paragraph 2.1 of the Redaction Policy document.

Lastly, in the final paragraph, we believe the following addition should be made:

“We expect licensees to work with us in an open and co-operative way, and not to use NDAs solely to prevent or limit disclosure of relevant information and details in their publications.”

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?

As above, under Section 3, it should be made clear that the benefit to consumers of publicising information should be in relation to the electricity and gas sectors, therefore paragraph 3.2 should be amended to the following:

“We take the view that where publication of information would promote the interests of consumers in relation to the conveyance of electricity and gas, it will generally be permissible for us to publish that information, subject to consideration of legal and other justified constraints.”

This is to ensure consistency with Section 48 of the Electricity Act and Section 35 of the Gas Act, as referenced in paragraph 2.1 of the Redaction Policy document.

In addition, we agree that as a default position, the proposed scope should cover all re-openers as, in theory, when applying the guidance, it will automatically discount re-openers (or information within) from publication on the grounds defined within the guidance. However, we note that Ofgem has already highlighted that the Cyber re-opener be excluded from the guidance, presumably on grounds of national security. It is worth Ofgem assessing each of the re-openers against the redaction policy to identify whether there are other re-openers that could be excluded upfront to help remove any ambiguity. For example, in electricity distribution, there would be a case to remove both the Electricity System Restoration Re-opener and the Physical Security Re-opener on the grounds of national security.

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?

In general, we believe that to improve clarity on this section, it may be beneficial to add a flow-diagram to better articulate the order of the steps taken. In addition, on the two sections, we have the following comments:

Ofgem Publications:

- It is our view that this section is not clear. Under the “Ofgem publications” heading, and specifically under paragraph 4.1 (a), the text references, “containing information that the licensee considers requires redaction.” It is not clear how a licensee would be able to provide its view on redaction ahead of publication of an Ofgem document.

- Under paragraph 4.1 (b) we think this should be further clarified by the following amendment:

“Ahead of publication, Ofgem will review documents for publication and redact what we consider necessary to redact in line with this policy. If it is unclear whether the redaction is in line with the licensee’s view, ~~necessary~~, Ofgem may ask the licensee for further evidence or explanation.”

- Paragraph 4.1 (c) suggests Ofgem has a degree of discretion on whether to share draft versions of its proposed redactions – we believe this should be mandatory, please see revised text below:

~~“Where necessary, Ofgem may~~ will share draft versions of the documents with licensees for their comment and to elicit their views on proposed redactions.”

- Lastly, it should also be made clear that any unredacted versions of documents sent in draft form should be sent via secure communication methods – particularly those pertaining to information on national security; as result we believe paragraph 4.1 (d) should be amended as follows:

“Ofgem will publish redacted versions of the documents on its website and will, ~~where appropriate and feasible,~~ share un-redacted versions with the relevant licensee using appropriate, and if necessary, secure communication methods. Ofgem will also provide the rationale and an explanation as to why certain information has been redacted.”

Licensee’s publications:

We have the following suggested amendments:

- Under 4.2:

“When a licensee is publishing documents in accordance with licence requirements or guidance and is seeking to make redactions, the licensee shall follow the procedure set out below.”

- Under 4.2 (d):

“On receipt of a request for confirmation from a licensee, Ofgem will review the request and provide guidance to the licensee promptly, to enable the licensee to publish such documents in accordance with its requirements.”

- Under 4.2 (e):

“The licensee should publish the documents in line with ~~the~~ this guidance and subsequent guidance that Ofgem has provided under part (d) (above), as well as explanation on the nature of the redactions and reasons for them.”

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

We believe paragraph 5.1 would benefit from additional clarity by referencing requirements stated under paragraph 2.3, and therefore recommend the following amendments:

“Ofgem will consider all requests for redaction and will redact documents only where there is a good reason to do so. This will be decided on a case-by-case basis, provided there is sufficient rationale in accordance with paragraph 2.3 and justification from the licensee for the information to be redacted. In the interest of transparency, even when certain information is redacted, Ofgem will aim to publish high level details (e.g. the total re-opener value, figures, and values against each work package), provided it is consistent with the requirements under paragraph 2.3.”

We believe paragraph 5.3 would benefit from the following additional qualification:

“Examples of third-party information that may be redacted in accordance with the Utilities Act:

- independent analysis results (i.e. industry engagement);
- name of the third party; and/ or

- any other information that may lead to a customer or customer specific scheme becoming identifiable.”

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.

In general, we are not supportive of the requirement to report costs in a different way to how we report costs through our annual submissions. It is our view that alignment should be sort between our annual Regulatory Reporting Packs (RRPs) and the information we are required to submit as part of any re-opener submission. We believe departing from the well-developed and understood structures and cost capture of the RRP, is only likely to introduce errors and differences in reporting between companies – the very issue Ofgem is trying to solve by the introduction of this guidance and template.

Putting the above to one side, we have the following observations:

- On all cost tabs, the formulas in row 16 are incorrect. They should only sum the two rows directly below, i.e. rows 17 and 18 and not rows 40 to 50.
- 2.7_Commissioning – Operational Engineers working on commissioning of assets is a Direct Activity as per Annex A of the RIIO-ED2 Regulatory Instructions and Guidance (RIGs). Whilst this can be recorded as an input in cells M40:T49 and M56:T65, the totals in Column L and rows 16-18 and rows 24-33 are incorrectly greyed out.
- 2.8_Risk_and_Contingency – We don’t recognise this split of cost activity as this is not something we report under our current annual reporting.
- 2.9_Maintenance_and_operating – Maintenance is a direct cost as captured in table CV31 in the RIIO-ED2 Cost, Volume, and Revenue Regulatory Reporting Pack (CVR RRP) and thus should be able to be inputted, instead of all cells being grey out in the current template.
- 2.10_Business_Support_Costs – As per the RIIO-ED2 RIGs, Business Support costs are not Closely Associated Indirects and therefore cells U14, U22, U38, and U54 are incorrectly named. It would perhaps be prudent to refer to these sections as “Indirect Costs”; which can be applied to all cost tabs.
- 2.11_Other_Costs – if the purpose for this is any miscellaneous costs, then could these potentially be direct? If so, the direct costs section would need to be changed to an inputs format.
- In general we are not supportive of the requirement to report costs in a different way to how we report costs through our annual submissions. It is our view that alignment should be sort between our annual Regulatory Reporting Packs and the information we are required to submit as part of any re-opener submission.

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

We do not see the need to split costs out in this way and feel it is an unnecessary level of detail. It should be for licensees to determine how it wishes to deliver proposed works and are unsure why Ofgem is requesting such a split of costs.

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.

We have the following observations:

- There is a reference error on Page 11 on the Template Guidance document in the 0.2_Contents section, where the text “Please see Chapter 8 Error! Reference source not found. below.” appears.
- Paragraph 6.4 states “Licensees are free to use any CBA template to populate the CBA tabs within the submission template.”, but then in the next sentence it says, “The latest CBA template for the relevant sector should be used.” These statements are contradictory and therefore need to be clarified.

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

As per above, in general, we are not supportive of the requirement to report costs in a different way to how we report costs through our annual submissions. It is our view that alignment should be sort between our annual Regulatory Reporting Packs (RRPs) and the information we are required to submit as part of any re-opener submission. We believe departing from the well-developed and understood structures and cost capture of the RRP, is only likely to introduce errors and differences in reporting between companies – the very issue Ofgem is trying to solve by the introduction of this guidance and template.

Putting that to one side, we have the following observations:

- Cell formats could have been adopted from the CVR RRP, which would have ensured consistency in DNOs’ reporting. This would also prevent many cells being grey, which historically has been done to designate a non-input cell.
- It is not clear why there are two separate look-up tabs, i.e. 0.4_LkUp and 0.4.1_LkUp_Assets. It feels like this could have been consolidated into one look up table.
- Under ‘3.1_Asset_Volumes’ we have the following observations:
 - Cells A24:A33 do not need to be in italics.
 - We are unsure of the approach taken to the recording of replacement volumes, i.e. by averaging the additions and disposals (the 0.5 multiplier as referenced on page 21 of the template guidance). As stated, this would result in 0.5 of replacement volumes recorded where the assets are not replaced like for like. Furthermore, with linear asset classes such as cables and conductors, disposals and additions are rarely 1 to 1, therefore this would always generate an average of the two. We are unsure why Ofgem would want to record such a value, and it would seem prudent to tag the replacement volume to the number of additions.

- The calculation in cells A24:L33 is incorrect. For example, if you have 10 transformer additions under replacement, and 10 disposals, the total volume calculated is 30.
- Under 'tab 6_Support_Data' it incorrectly refers to '5.1_Risk Register', and all other tabs are incorrectly referenced as starting with a 5, when they should start with a 6.

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

Under the '0.1_Submission_Info' Worksheet, the following issues have been identified:

- Cell B12, when entering the Template version (Number), this is incorrectly referenced as 1.4 and not 0.4;
- Cell B13, when entering the Network Name, for electricity distribution, the drop-down options only refer to the DNO groups, and not their individual licence areas. For example, UK Power Networks, and not Eastern Power Networks, London Power Networks, or South Eastern Power Networks. This is not consistent with how the drop-down operates for GDNs, where for example, Cadent have both their East and London regions selectable; and
- Cell B17 is erroneously pulling through the following text 'RIIO1_NOMs_Closeout_'. We are unsure what this formula is trying to achieve.

Under the '0.4_LkUp_Assets' Worksheet, the following issues have been identified:

- The units in Cell G14 and G16 are incorrect for 'Overhead Pole Line:LV Main (OHL) Conductor LV' and 'Overhead Pole Line:LV Poles LV'. They should be "km" and "each" respectively.

Under the '1.1 Costs' Worksheet, the following issues have been identified:

- The tab misses out tables 2.10 and 2.11.

Under the '1.2_outputs' Worksheet, the following issues have been identified:

- The drop-down list under 'Output type' in column A looks overly prescriptive and may not capture all possible outputs. Given this template will only be submitted under a reopener situation, it should be possible for Ofgem to define upfront what the output would be. As a result, this column could be made free text, with direction by Ofgem on what to contain. Failing that, an 'other' option should be added to the drop-down list to ensure there is always an appropriate option.

Under the '5.1 Risk Register' section, the following issues have been identified:

- The guidance states that licensees are to assign a RAG rating to each identified risk, however, there is no guidance on what defines a red, amber, or green risk;
- It is not clear if the information captured should just highlight unmitigated risk or risks and their mitigation. Linked to the above, is the RAG status to identify unmitigated or mitigated risk levels?;

- The template points to capture the probability of the risk materialising. There is no guidance if this is to be populated as a percentage or as high/ medium/ low etc? Furthermore, it then looks as if this is to be populated on a yearly basis out to 2023/ 2033. Again, no guidance is provided;
- Columns T and U ask for information relating to 'Factored P50' and 'Factored P75'. We are unsure what this is asking for; and
- In our view, section 5.1 is asking for detail that is not required for Ofgem reporting. Ultimately the regulatory control (i.e. PCD) should be enough for regulatory scrutiny and protection for delivery of any associated outputs. It is up to licensees to manage the risk of delivery and thus capturing this in a standardised way is not required.