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Wales & West Utilities (WWU) response to Notice of proposed modifications to Re-opener Guidance and Application Requirements Document

Thank you for the opportunity to respond to this consultation. WWU is a gas transporter and a regional gas distribution network ("GDN/s"), serving 2.6 million supply points in Wales and south-west England. This response is not confidential and may be published by Ofgem.

The proposed modification comprises three new appendices.

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 changes bring into effect the three proposed appendices and we comment on them below.

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 welcome the recognition that the redaction policy requires separation sections for redaction of licensees' publication and Ofgem publications.

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?

There must be a clear understanding that licensees may have different legal obligations from the Authority and that they apply the policy in line with those obligations.

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

Having a separate section on information covered by an NDA may work better as NDAs may be used for information that is confidential or commercially sensitive.

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

Annex 1 – confidential information

See our response to question 6.

Annex 2 – commercially sensitive information

No comments, the list is suitably wide covering pricing information, procurement information and price sensitive information but also see our response to question 6 on NDAs that may also be put in place in respect of commercially sensitive information.

Annex 3 - National Security

No comments.

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)?

No, we do not agree with this. We are clear that the existence of a Non-Disclosure Agreement (“NDA”) or similar confidentiality provisions is a sufficient reason for redaction. A licensee should not be compelled to put itself into a situation where it breaches a binding NDA. Breach of an NDA could leave the licensee exposed to being sued in the civil courts leaving it exposed to substantial damages for such breach.

NDAs may be signed for both confidentiality and commercially sensitivity not just confidentiality.

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?

Cyber security re-openers are already out of scope as the existence of applications is not published and this must continue. We think that Physical Security re-openers should also be explicitly out of scope in the same way as cyber security re-openers. Relying on the policy to redact physical security re-openers would still mean that their existence has to be acknowledged which is inconsistent with the way cyber security re-openers are treated. Other than this we think that it should apply to all re-openers and to all documents that the licensee is required to publish. It should also apply to all documents that a licensee sends to Ofgem, that the licensee is not required to publish but which Ofgem may be requested to publish as a result of a Freedom of Information requests or Environmental Information Request.

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?

Paragraph 4.1 a in Annex 12 states “

“When making a submission containing information that the licensee considers to require redaction in line with the policy, the licensee should highlight areas it considers should be redacted and explain the reasons it considers redaction is required. The licensee should provide both unredacted and provisionally redacted versions of the relevant documents/files to Ofgem.”

This requires the licensee to provide a provisionally redacted version to Ofgem on the day the document is submitted to Ofgem. This is unreasonable, we do not see what useful purpose this “should” requirement provides. Further, paragraph 2.4 of the Reopener Application and Guidance Document states

“Subject to paragraphs 2.5 and 2.6 [that deal with redaction], the licensee must, within five working days of submitting a Re-opener application to Ofgem, publish its complete application in a prominent place on its website, in such a manner that relevant stakeholders can easily locate the application. “

Our view is Paragraph 2.4 takes precedence over Annex 12 4.1a as 2.4 is in the main document. Paragraph 4.1 in Annex 12 needs revising to make it consistent with paragraph 2.4 in the main document.

As stated, licensees must publish a redacted document within five working days of submission of the document to Ofgem. The suggestion in the consultation that licensees could ask Ofgem for guidance where they are not sure about whether something should be redacted will not work because Ofgem does not commit to responding in a day or two. This means that licensees will need to make their own decisions on redactions in line with the policy, or, if they do require guidance from Ofgem, ask Ofgem with sufficient time for Ofgem to give their view.

This may result in a licensee asking for guidance on redaction and depending on the response licensees either include information or not. Ofgem should also indicate how quickly they will respond to requests for guidance.

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

No response.

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.

The term 'closely associated indirect costs' is open to interpretation. GDNs do not have this category in our RRP reporting so including it in these templates is inconsistent. We acknowledge that other sectors do report on this category and the RIGs state:

Closely associated indirect costs. Costs that support the operational activities.

Closely associated indirect costs includes network policy (including research and development), network design and engineering, engineering management and clerical, wayleaves administration, control centre, system mapping and health and safety functions.

GDNs need to understand in detail what should be included in closely associated indirect costs otherwise there will be inconsistency between companies that will lead to further questions which will defeat the purpose of introducing templates. WWU could class these as costs relating to the resources carrying out an activity, for example Direct Labour on mains replacement would be the Direct Costs (salary, overtime etc) and their associated overheads such as vans, PPE, tooling and so forth **could** be their closely associated indirect costs; however, another GDN could interpret it differently and the RIGs definition seems wider than this to include some, but not all, back office functions that support operational activities.

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

No response.

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 spreadsheet is clearly designed for infrastructure projects and using the format for the diversion and loss of development claims re-opener, particularly for the loss of development claims part will be challenging. It is not immediately clear how the spreadsheet should be filled in for such claims and therefore different licensees may put costs in different sections. It may be better to keep the spreadsheet as designed for projects involving expenditure on assets, either new build or refurbishments, accepting that it is not appropriate for other re-openers rather than trying to force all re-opener applications to fit into the format issued.

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

See our response to question 12.

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

See our response to question 12.

Yours sincerely,



Richard Pomroy
Regulation Manager
Wales & West Utilities