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**Ref: Approach to disputes and determinations from the Gate 2 to Whole Queue exercise – Ofgem Consultation**

This response is from SP Energy Networks (SPEN). SPEN owns and operates the electricity distribution networks in the Central Belt and South of Scotland (SP Distribution plc) which serves approximately two million customers, and North Wales, Merseyside, Cheshire and North Shropshire (SP Manweb plc) which serves approximately one and a half million customers. We also own and maintain the electricity transmission network in Central and South Scotland (SP Transmission plc).

SPEN welcomes the opportunity to respond to this consultation (the Consultation) on Ofgem's approach to disputes and determinations from the Gate 2 to Whole Queue exercise (G2tWQ). Below, we have detailed our response to the two consultation questions presented to us.

Consultation Questions & Responses:

**1. Does the G2tWQ Determinations Guidance (in Appendix 1 to the Consultation) clearly set out the Authority's determination processes for disputes arising from the Gate 2 to Whole Queue exercise and its expectations of disputing parties?**

SPEN welcomes the emphasis within Appendix 1 on early and effective engagement between parties when a dispute has arisen, prior to the Authority becoming involved. The need for a customer with a complaint to lodge evidence that ADR routes have been exhausted e.g. a deadlock letter has been issued by NESO or the relevant DNO, is helpful and will hopefully act as a catalyst that focuses parties on resolving matters quickly, without the need for the Authority becoming involved.

We welcome clarity surrounding the scope of potential complaints the Authority will and will not consider for determination, as set out in section 2.9 of Appendix 1. As detailed in our response to question 2, additional points of clarification would be helpful in respect of this section.

The G2tWQ exercise is a critical enabler for Clean Power 2030 and potential delays caused by disputes could risk slowing down delivery of Transmission Owner/DNOs studies and offers. The requirement in Ofgem's Guidance that parties must first exhaust Alternative Dispute Resolution

(ADR) mechanisms, subject to the comments noted in response to question 2 on ADR, ensures disputes are resolved proportionately and efficiently. Furthermore, the guidance sets clear expectations on the limitations for outcomes due to the exceptional nature and timing of the G2tWQ exercise and subsequent application windows. SPEN fully support this stance and consider it to balance fairness to applicants with the need to maintain momentum in delivering to Clean Power 2030 targets.

## **2. Is there any additional clarity that you think is needed on the determinations procedures in the G2tWQ Determinations Guidance?**

### **Determinable Complaint Scope:**

With respect to section 2.9 of Appendix 1, SPEN welcomes the Authorities position that parties cannot request a determination simply because they disagree with NESO's decision about the status of their project and/or a DNO's implementation of that decision in a Connection Agreement. A determination will only be made by the Authority if "a party can produce objective evidence that the process has not been correctly followed, or some other error has been made."

SPEN will engage with customers whenever a complaint is received and will, where possible, work with them to resolve matters at the earliest opportunity. However, Appendix 1 would benefit from a statement that sets out the Authority's expectations when a customer has incorrectly complained to the DNO and then escalated this to the Authority for a matter where NESO is the responsible party. An example of such a scenario could arise where a customer disagrees with a strategic alignment decision and complains to the DNO. The DNO can share information and reasons with parties as to why NESO is responsible but would be unable to resolve a complaint of this type. A statement within the guidance confirming the Authority's expectations in such a circumstance would be helpful.

### **Alternative Dispute Resolution (ADR):**

Additional clarity would be helpful around ADR. Specifically, point 2.3, page 14 states: "before an approach to the Authority is made to resolve a dispute or for a determination, ADR routes must be exhausted." It would assist if the Authority defined how parties' evidence that ADR has been exhausted and whether this is a singular ADR route, or all potential avenues. Furthermore, this statement lacks clarity in respect of Connection Agreements that provide for court jurisdiction. Is the guidance suggesting parties should have exhausted both ADR and litigation before approaching the Authority? If so, this could take time and be costly which is potentially not in consumers' interests and contrary to developing an efficient, coordinated and economic network. A clearer statement that litigation need not have been exhausted would be helpful here. The following wording may provide additional clarity: "Following ADR, the Authority expects that any formal dispute resolution relating to connection agreements will proceed in a manner consistent with the statutory framework, including the availability of determinations under s.23 of the Electricity Act 1989."

Please do not hesitate to contact us if you require any further information on this consultation response.

Yours sincerely,



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