



Green Generation Energy Networks Cymru
Hodge House
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15th January 2025

By Email: RegFinance@ofgem.gov.uk.

Dear Regulatory Finance Team,

Energy Networks Ring-fence Review

Green Generation Energy Networks Cymru ('Green GEN') is a licensed Independent Distribution Network Operator ('IDNO') pioneering the UK's largest linear distribution network outside of traditional frameworks.

We welcome the opportunity to respond to the above consultation. While the focus of this response is to seek clarity on the intended application of the proposed changes to IDNOS, we would welcome further engagement with Ofgem to better understand the intention behind the proposed changes to the definition of Ultimate Controller.

Clarity

We would be grateful for confirmation from Ofgem that IDNOs are not captured in the intended Licence changes proposed in this Consultation. The "audience" for the electricity distribution licence consists of almost twice as many IDNOs as DNOs, it is therefore important that the licence is as clear for IDNOs as it is for incumbent DNOs. Set out below are areas where the proposed changes may inadvertently capture IDNO Licence holders:

- (30.2, 30.4, 30.6) The requirement to appoint a Sufficiently Independent Director (SID) does not apply to IDNO; it is contained in SLC43A, which sits in Section B of the licence and does not pertain to IDNOs. We would welcome confirmation from Ofgem that this continues to be that case and in the case of IDNOs, Board approval and signature by one director continues to be sufficient.
- Annex 1.2 (30.2(a)) proposes the introduction of a stress test in paragraph 30.2. Similarly, we believe that this should not be included in part of the licence pertaining to IDNOs without an express exclusion for these Licence holders.
- (30.3 (a) (ii)) The proposed wording around Availability of Resources refers to a cash flow forecast for the price control period which does not relate to IDNOs. Confirmation of the resulting requirement for IDNOs would be welcome.

Ultimate Controller (Consultation Q25)

Ofgem is proposing to include holding "entities" within limb (a) of the definition of "ultimate controller" as well as to include "entities" within limb (b) of that definition. We



have some concern that this adds confusion rather than clarity and may result in some unintended consequences from the drafting.

In our experience (and as recognised in other regimes, such as merger control), fund structures can confer differing levels of control on different entities in relation to the operation of investment companies in a fund structure. This can vary depending on the terms of the fund documents and the law of the country of formation. Even within the UK, Scottish Legal Personalities¹ are legal entities and English Legal Personalities are not. We have set out further detail and examples of this in Appendix 1 which should be treated as commercially sensitive and confidential.

As an alternative to the use of the word “entity” we suggest it would be better to align the definition to that of the Companies Act 2006 which states in the definition of “subsidiary” that the reference to company includes a “body corporate”. This would provide consistency by using existing statutory terms.

We also find it unusual that in limb (b) that there is a suggestion that an “entity” is not a “person”. We would have thought that a “person” included an individual and a “legal person”.

Overall, we would agree that there is room for clarity from Ofgem regarding its policy intent and how it interprets the definition of ultimate controller in practice. However, we do not consider that the drafting included in the consultation achieves clarity and seems to us to create some (additional) confusion. The consequence of unclear drafting is:

- a) unintended consequences: for example, entities could be asked to give an undertaking when they are unable to take any action that would prevent a licensee being in breach of its licence (as outlined within the example in Appendix 1 of Fund Entity -v- TopCo/HoldCo entity above, where control sits with the TopCo/HoldCo) i.e. it is not an entity that exercises ‘control’ or
- b) there is no meaningful change which could call into question the lawful basis for the modification.

It would be more beneficial if Ofgem would consider consulting on and publish guidance which addresses common structures it has encountered.

Given the complexities, particularly around the definition of Ultimate Controller, and the outcomes which ring-fencing seeks to achieve, we would welcome further discussion with Ofgem to work collaboratively to achieve a solution which is appropriate for all parties.

Kind regards

Fiona Morrison

Fiona Morrison
Head of Regulation

¹ A **legal personality** refers to the capacity of an entity—such as a person, company, or organization—to have legal rights and obligations under the law.