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Dear Colin

**Electricity Distribution Price Control Review**  
**Draft Price Control Licence Modifications.**

You have invited comments on the draft price control licence modifications. We have been pleased to take an active part in Ofgem's Legal Issues Working Group, which has in our view made substantial progress in drafting the licence modifications. The DNOs are responding jointly to the consultation published in December and we support that response. Therefore, to avoid duplication we have restricted this response to drawing out and emphasising the key issues we have.

You have also asked for comments on the various RIGs. The DNOs have jointly responded on the draft Revenue RIGs and the draft DG RIGs, and we support those responses. Progress on both of these has not been as we would have wished, and we therefore believe there are significant issues still to be addressed in both these sets of RIGs, which would merit a meeting in early February between Ofgem and the DNOs to discuss and resolve.

The Quality of Service RIGs have been developed separately and we have very few comments on the latest draft. We have therefore included these as an Appendix to this letter.

We submitted comments on the draft Cost Reporting RIGs by 10 January, as requested.

We also note that many of the numbers still need to be inserted in the draft licence conditions. While we recognise that it is sensible to wait until the RPI for December is known, we would appreciate early sight of these together with an audit trail showing how they are derived from numbers published in the Final Proposals document. In particular, we need to confirm the corrections to tax allowances referred to in Martin Crouch's response dated 20 December 2004, to the ENA.

Licence Modifications

Special Condition A3 - The way in which the materiality threshold(s) apply is very unclear. It could be interpreted that the threshold has to be passed each year, and that only those costs above the threshold are recoverable. Ofgem have not consulted on this materiality threshold, which has been introduced late in the process, but we do not believe this possible interpretation is what was intended nor what we accepted as part of the Final Proposals. The DNO joint response proposes a revised wording, which we support.

The references to the Traffic Management Act 2004 are not sufficient to include Lane Rentals or the equivalent provisions in Scotland. To cover its intended purpose, the definition in the licence condition should include "New Roads and Street Works Act 1991, the Traffic Management Act 2004 and the Transport (Scotland) Bill as enacted".

Special Condition B2 – The term relating to settlement run-off costs, SRSt, has not yet been given a value, although we understand that a statement on this is due imminently from Ofgem. However, given that we have already set use of system charges for 2005/06, it may be appropriate to secure recovery of these costs in 2006/07, including interest.

Standard Condition 42 - The reference to the link between Director's pay and standards of performance has no place in the Regulatory or any other accounts. This is a statutory requirement and we currently put this statement on our website, which in our view is appropriate and sufficient.

We would wish to see the outcome of Ofgem's discussions with the audit profession on the audit requirements of this Condition, both as to whether they see this as an increase in the number of audits (and therefore fees) required and in particular with regard to Para. 6 and whether it is within their competence to comment on compliance with the European Directive.

Standard Condition 50 - We are particularly concerned about the proposed requirement to restate price control returns, should new information subsequently come to light. We recognise that Ofgem have introduced a materiality threshold and restricted the requirement to re-state to the three preceding years. However, in our view this will add significant workload for a marginal benefit. This will also lead to considerable confusion with the revenue shown in the Regulatory Accounts which, quite rightly in our view, will not be required to be re-stated. In addition, this could lead to significant costs if auditors need to re-audit previous years. This could happen in particular where a company changes its auditors.

We would therefore prefer no re-statement of returns. However, we would accept the ENA preferred option of allowing companies to choose whether to re-state or not, provided that the numbers input into the incentive schemes have been adjusted.

Standard Condition 52 - We have already commented on this Condition in our response on the Cost Reporting RIGs. However, in summary:

- following the current consultation and development process, there will be a significant amount of work required to put in place procedures to extract the data required to complete the Regulatory Reporting Pack. We are broadly content with the level of detail proposed and believe we can provide this information, albeit with some estimation and apportionment required. However, we are concerned that should an additional level of detail be required, after the expected review the following year, the procedures put in place would have to be completely re-visited. We would clearly wish to avoid this;
- linked to the previous comment, the RIGs cannot be retrospective. In order to be able to establish a reporting framework for a complete year, we believe it is reasonable that Ofgem should not be able to direct a change to the RIGs later than 28 days before the start of the financial year to which the change will first apply in the normal course of events;
- we do not believe it is necessary for the licence conditions to provide for the cost RIGs to specify the "form" in which information must be recorded or collected. This affects the drafting at paragraph 12 (c) and 16 (d) of this condition;
- finally, we still have some concerns about the governance of the process of achieving the first set of approved cost RIGs and of subsequent modifications to them. We are broadly content with the scope and level of detail set out in the current draft cost RIGs but would be concerned if there were significant changes to this. In particular, we believe that there should be some discipline on Ofgem's ability to change the RIGs, given the potential impact such a change could have on DNOs' systems. We recognise Ofgem's concerns that it needs some flexibility to make changes in the light of experience. However, we do not believe that this right should be unfettered and we therefore believe that changes should require the consent of a specified number of licensees affected by such a change. We could discuss this further at the meeting arranged with Ofgem's cost RIGs team later in the month.

DG licence conditions and RIGs – We support the points made in the collective DNO response on the “DG package” and consider that it is worth drawing out the following points:

- in our view, there would be merit in allowing a DNO to require a review of the operation of the DG incentive scheme in circumstances where the operation of the scheme is having a material adverse effect – a “DG re-opener”. We have commented on this in our earlier responses and, since the DG incentive scheme is a complex and untried mechanism, do not consider that this is an unreasonable request;
- the algebra and intention of the provisions for the transfer of cap-ex from the DG incentive mechanism to the main DPCR RAV is still not clear;
- in the DG RIGs, the network unavailability information specified should be more aligned with what it is strictly necessary to collect. In particular, we have advocated that eligible (i.e. EHV and HV) DG claim for rebate payments, and in these circumstances unavailability claimed and payments made would be the only data items that are relevant;
- linking with a point made above in relation to Standard Condition 52, we do not consider that the DG RIGs or, for that matter, the RIGs for revenue reporting (Condition 50) or quality of supply reporting (Condition 49) should specify the “form” in which specified information should be recorded.

I hope that our comments above are helpful. If you would like to discuss any of these points further then please give me a call.

Yours sincerely

Rob McDonald  
**Director of Regulation**

**Comments on Quality of Service RIGs**

**Section 5 – MTP**

Para 5.33 & 5.34; These paragraphs have been introduced in the latest draft, requiring circuit lengths of 'services'. This information was not recorded consistently (if at all) before 1988. For this reason previous versions of the RIGs have based service reliability upon the number of incidents per 1000 customers. Clause 5.7 states that this measure is to continue and so the new requirement to report service length is unnecessary. We suggest (in association with other DNOs) that the section called 'Reporting of asset quantities' as covered by clauses 5.33 and 5.34 is removed.

Due to the possibility of double counting, we suggest the wording of para 5.37 be changed: "Only initial unplanned incidents on the DNOs own network are to be included in the medium-term performance report. Pre-arranged incidents and incidents on other connected systems are to be excluded. Incidents which are raised simply to record supply interruptions which occur more than 3/18 hours after all customers are restored are also to be excluded."