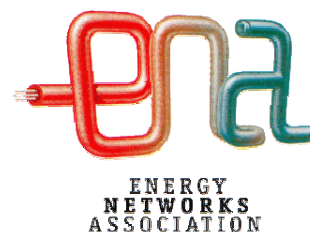


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Chris Watts
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Office of Gas and Electricity Markets
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17 November 2004



Dear Chris

Open letter on Ofgem's proposal to implement revised standards of performance arrangements for electricity distributors

The Energy Networks Association (ENA) is the trade body that represents the gas and electricity transmission and distribution companies in the UK. We are pleased to contribute to your proposals for standards of performance arrangements on behalf of all licensed distributors.

As you are aware, ENA members have been involved in discussions with Ofgem in the forum of the DNO/Ofgem legal working group. As part of these discussions, the DNOs submitted paper ILP/22, which set out their views on the introduction of a Category 4 severe weather event into the draft standards of performance regulations. That paper specifically addressed two main issues: the adequacy of the square law approach to escalation, and the upper threshold for Category 4 events. The ENA endorses the views set out in ILP/22 and you will therefore find the paper attached hereto as the ENA's formal submission to the above consultation.

At yesterday's meeting of the legal working group, as you know, DNOs again debated with Ofgem the question of how best to deal with the potential for complex and prolonged IDNO/DNO conflict over the making of compensation payments under the regulations as currently drafted where there is any dispute over responsibility for the causal event. After that discussion, Ofgem said that it would be helpful if it could receive a formal statement of DNO views on this matter.

The concerted position of the DNOs in this respect is as follows:

- Ofgem's principal statutory objective is to protect the interests of consumers. On the point under discussion, that objective will best be served by ensuring that under the regulations the legal liability to make payment to the customer rests with the licensed distributor to whose network that customer is directly connected.
- Achieving that outcome will require some consequential recasting of the consultation draft of the regulations, including clarification of the meaning of "directly connected".

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- Proposed standard licence condition 20 should focus on ensuring, through a mandatory contractual requirement under all connection and use of system agreements, that a licensee which has made payments pursuant to the regulations to directly connected customers is able to reclaim such payments, plus financing expenses where appropriate, if the event triggering the payments is shown to have arisen from the fault/failure of another licensee.
- Securing that approach under the licence will likewise require some recasting of the current proposed drafting.
- Distributors believe that they could be in a position by the end of next week to propose to Ofgem the drafting amendments necessary to both the SI and the licence to give effect to their position, assuming Ofgem's acceptance of it.

As you will know, there are also a number of outstanding but unrelated drafting issues as regards both the main text of the SI and Schedule 2 relating to disputes determination which DNOs think could most usefully be taken forward in the DNO/Ofgem legal working group.

We hope that these comments are useful, and we look forward to a continuing dialogue with Ofgem on these issues.

Yours sincerely

A handwritten signature in black ink that reads "Andy". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Andy Phelps
Head of Regulation