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Dear Ms Martin

Response to Consultation on the review of Standard Licence Conditions 14 and 15 of the Electricity Generation Licence (Ref: 202/06) dated 27 November 2006

INTRODUCTION

The following is our response to the current consultation reviewing Standard Licence Conditions 14 and 15 in electricity generation licences. These conditions enable generation licence holders to seek the Secretary of State's approval to purchase land compulsorily and to exercise other powers in relation to land (such as the granting of compulsory wayleaves).

THE OPTIONS

We understand that there are three options being considered as potential outcomes of the consultation. These are:

1. Give effect to the relevant paragraphs of SLC 14 and 15 in all electricity generation licences;
2. Remove from effect the relevant paragraphs of SLC 14 and 15 in all electricity generation licences; and
3. Maintain the current approach of considering each application on a case by case basis.

OUR VIEW

We believe that Option 1 is the only correct outcome of the current consultation. The relevant paragraphs of SLC 14 and 15 should be given effect to or "switched on" in all electricity generation licences for the following reasons:-

The compulsory powers are a necessary last resort mechanism for land purchase and it would not be appropriate to remove these powers from electricity generation licences. For example, if consent has been granted for a scheme it is not appropriate for private interests to thwart that – either by individuals making extortionate demands or (in the case of someone who

doesn't need the money) simply refusing to deal. The powers are only ever sought as a method of last resort once it is clear a voluntary agreement will not be reached with the landowner. Their availability is helpful in bringing landowners to the table and the landowners interests are protected through the market valuation mechanism.

However, given their usefulness and potential importance, we are concerned at the length of time taken by Ofgem to deal with applications to "switch on" the relevant paragraphs of SLC 14 and 15. This initial process is time-consuming and can cause delays – in our experience the time between the initial application to Ofgem and the final decision being made can take between 5 months to a year. Further, because the powers are typically only used as a matter of last resort, the application to switch on the powers may be being made when a particular difficulty has arisen, delays have already been incurred in trying to reach a voluntary agreement and time is already at a premium. Removing the need for this initial application to Ofgem would streamline the process and reduce both the administrative burden and potential delays associated with this step.

We would like to take this opportunity to stress, as Ofgem also stresses in the consultation paper, that the application to Ofgem is only the first part of the process. Even if the relevant powers were to be automatically switched on this would by no means guarantee a grant of compulsory powers/compulsory wayleave. That decision is – and would still be – taken by the Secretary of State (or the Scottish Executive in Scotland). It is in the context of such particular applications that the merits are considered and third party objections taken into account.

In the interests of equity and fairness, we are of the view that the relevant paragraphs of SLC 14 and SLC 15 should be applied across all electricity generation licences in order to ensure consistency and also to ensure that no competitive advantage is gained by some but not others. Currently, the fact that an application to Ofgem is required to allow these powers to be "switched on" could produce arbitrary results and we can see no justification for treating holders of generation licences differently.

Furthermore, the current requirement to apply to Ofgem in order for the powers to be "switched on" creates an unnecessary administrative burden for Ofgem which cannot be sustained particularly given the recent increase in applications being made. By removing the need to consider applications on a case-by-case basis and instead applying the powers to every generation licence, this would significantly reduce the administrative burden currently being faced by Ofgem, thereby freeing up resources and improving efficiency.

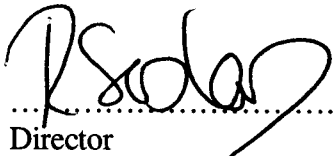
CONCLUSION

We are of the view that Option 1 is the only correct outcome. The compulsory powers are a necessary method of last resort and it would not be appropriate to remove these powers from generation licences thereby allowing private individuals to effectively have a veto on schemes. Given the usefulness of the compulsory powers we are concerned at the length of time taken by Ofgem in dealing with applications to "switch on" the powers, particularly when delays have in all likelihood already been incurred in trying to reach a voluntary agreement with a landowner. Removing the application to Ofgem would streamline the process and reduce the administrative burden currently being faced by Ofgem. Furthermore, in the interests of equity and fairness, we are of the opinion that the relevant paragraphs of SLC14 and SLC15 should be applied across the board to all electricity generation licences in order to ensure that no competitive advantage is gained and/or arbitrary results produced.

Finally, we would reiterate that what is being reviewed in the consultation is the current requirement to apply to Ofgem to have the compulsory powers switched on. What is not being reviewed is the subsequent application to the Secretary of State (or the Scottish Executive). It is this subsequent application that is the appropriate place to deal with third party objections and concerns of individuals and not during the application to Ofgem. For this reason and the other reasons given above, we believe that the relevant paragraphs of SLC14 and SLC15 should be applied to all generation licences.

We trust that you will give proper and due consideration to our comments and concerns in coming to your decision.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. Sedar', is written over a horizontal dotted line.

Director

Signed for and on behalf of CRE Energy
Limited