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Dear Sonia

GENERATION STANDARD LICENCE CONDITIONS 14 AND 15

We were pleased to receive Ofgem's consultation paper about standard conditions 14 and 15 of the electricity generation licence. The time for a review of the application of these conditions was long overdue.

There is much misunderstanding about the role and purpose of these conditions. As your paper rightly notes, what they do is to specify the extent to which the statutory powers established by virtue of Schedules 3 and 4 of the Electricity Act are to be available to the licensee. While it is true that these schedules confer substantial powers which impact on the rights of third parties, it is equally true that the licensees to whom the schedules apply cannot purchase land compulsorily except with the Secretary of State's authority, nor can they break up streets, or acquire wayleaves, or enter upon land except with the necessary consents and subject to all the prescribed constraints and safeguards.

Section 10(1)(b) of the Act states that a generation licence holder is to have the powers available under Schedules 3 and 4 "to the extent that his licence so provides". Ofgem, therefore, effectively controls the scope of the powers to be made available to generation licensees. It has always been difficult to justify the presence of standard conditions 14 and 15 in some generation licences but not in others, particularly after the Utilities Act amendment of section 10 six years ago to allow the Schedule 4 powers to be available to licence holders wishing to develop cooling systems based on CHP generation. Indeed, in the absence of an objective justification for differential treatment, Ofgem is probably dutybound to give effect to the provisions of SLC 14 and 15 in all generation licences.

Our own recommendation is not only that Ofgem should confirm its preliminary view that SLC 14 and 15 should be given effect across all generation licences, but also that Ofgem should do so by amalgamating SLC 14 and 15 into a single new combined condition 14 (Application of statutory powers). This would be incorporated into all generation licences via the collective licence modification process, replacing current SLC 14/15.

The sample draft attached would be a small but welcome contribution to the principles of better regulation. We urge you to accept it on that basis.

We hope that this response is helpful.

Yours sincerely

Roger Barnard

Head of Regulatory Law

Condition 14. Application of statutory powers

1. In accordance with section 10 of the Act, the powers and rights available under the provisions of:
 - (a) Schedule 3 to the Act (compulsory acquisition of land etc by licence holders); and
 - (b) Schedule 4 to the Act (other powers etc of licence holders),have effect in relation to the licensee to the extent set out in this condition.

Schedule 3 to the Act

2. The Schedule 3 powers and rights have effect for the purpose of enabling the licensee to carry on its authorised activities:
 - (a) in relation to the construction or extension of a generating station;
 - (b) in relation to activities connected with the construction, operation, or extension of a generating station; and
 - (c) in relation to the installation, maintenance, removal, or replacement of electric lines, and of electrical plant associated with them, that connect a generating station with:
 - (i) the GB transmission system, or
 - (ii) any distribution system.

Schedule 4 to the Act

3. The Schedule 4 powers and rights have effect (subject to paragraphs 4 and 5) for the purpose of enabling the licensee to carry on its authorised activities:
 - (a) in relation to the installation, inspection, maintenance, adjustment, repair, alteration, replacement, and removal of:
 - (i) electric lines specified in paragraph 4,
 - (ii) electrical plant associated with such lines, and
 - (iii) any structures for housing or covering such lines or plant;
 - (b) in relation to the installation of electrical plant to be used in connection with a generating station or the operation of that station; and
 - (c) in relation to electric lines or electrical plant as if the references to them in Schedule 4 to the Act included:
 - (i) pipes for conveying directly to consumers' premises heat produced in association with electricity and steam produced from air and water heated by such heat, and
 - (ii) associated works in relation to such pipes.

4. Electric lines are specified for the purposes of paragraph 3(a) if:
 - (a) they connect, or will connect when installed, a generating station with the GB transmission system or any distribution system; or
 - (b) where “electric lines” has the extended meaning given by paragraph 3(c), they connect a generating station with any premises.
5. Paragraph 10 of Schedule 4 to the Act applies to the licensee if:
 - (a) it wishes to exercise its rights of entry on land for the purpose of establishing whether or not the land is suitable for the construction or extension of a generating station; and
 - (b) it obtains the Authority’s consent before exercising those rights.

Interpretation

6. In this condition:

“associated works”	has the meaning given in section 10(3) of the Act
“authorised activities”	means the activities which the licensee is authorised by this licence to carry on, and includes any purpose connected with the supply to any premises of heat produced in association with electricity and steam produced from air and water heated by such heat.
“extension”	in relation to a generating station includes the use by the person operating the station of any land (wherever situated) for a purpose directly related to the generation of electricity by that station.
“generating station”	means an electricity generating station which: <ol style="list-style-type: none">(a) has, or will have when its construction or extension is completed, a capacity of not less than 50 megawatts or such other capacity as the Secretary of State may by order specify under section 36(3) of the Act; and(b) is, or will be when its extension or construction is completed, operated by or for the licensee.