

Electricity generation licence holders
and other interested parties.

Ref: 202/06

Email: sonia.brown@ofgem.gov.uk

27 March 2007

Statutory consultation on the modification of Standard Licence Conditions 14 and 15 of the Electricity Generation Licence

Purpose of this letter

In November 2006, Ofgem carried out a consultation¹ to seek views of interested parties regarding the application of Standard Licence Conditions 14 and 15 (SLCs 14 and 15) of the electricity generation licence. This letter sets out our views following that consultation. This letter represents the statutory consultation prior to a collective licence modification, under section 11A(3) of the Electricity Act 1989, relating to the licence modifications required to implement this decision proposal.

Background

SLCs 14 and 15 of the electricity generation licence afford certain rights to licence holders if those conditions are 'switched on' in their licence.² At present, these conditions are not 'switched on' across all electricity generation licences; some generators have SLC 14 and / or 15 in effect, and others do not.

Ofgem has an 'enabling role' in respect of these licence conditions in that it can give effect to the powers but it does not have a role in respect of granting the rights to compulsory acquire land or grant wayleaves, for example.³

Following requests from certain generators to have these conditions switched on in their licences, we considered it appropriate to carry out a review and address any inconsistencies in the application of these conditions. The consultation document also considered requests received from five electricity generation licence holders for SLCs 14 and 15 to be given effect in their licences^{4,5,6}. We outlined our intention to make a

¹ "Review of Standard Licence Conditions 14 and 15 of the Electricity Generation Licence", Ofgem November 2006, available at:
http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/17776_202_06.pdf?wtfrom=/ofgem/work/index.jsp§ion=/areasofwork/wholesalemarketmonitoring

² These 'rights' relate to the compulsory acquisition of land for SLC 14 and to other powers in relation to land for SLC 15. For more details see the Background section in Ofgem's consultation as referenced in footnote 1.

³ The Secretary of State has the ability to make a decision in respect of whether the land in question can be compulsory purchased. For more details please see the Background section in Ofgem's consultation (see footnote 1 above).

⁴ These parties were CRE Energy Limited, Prenergy Ltd, Great Gabbard Offshore Winds Limited, London Array Limited and Part Talbot Power Limited.

decision in respect of these licence holders in accordance with, and at the same time as, the outcome of our consultation.

The proposals and preliminary view

The consultation document considered three possible ways forward, namely:

1. to improve consistency by giving effect to SLC 14 and SLC 15 in all electricity generation licences;
2. to improve consistency by removing SLC 14 and SLC 15 from effect in all electricity generation licences; or
3. to maintain the current approach of considering each application on a case by case basis.

Having evaluated the possible ways forward, our preliminary view was that we should give effect to SLCs 14 and 15 in all licences (option 1 as laid out above) on the basis that this approach would reduce existing undue inconsistencies in the application of the licence conditions. It was our view that there is no reason why some licensees should have rights conferred on them by SLCs 14 and 15 while others do not.

Respondents' views

Thirteen responses were received to the consultation; responses were received from 11 electricity generation licence holders, one domestic customer and one charity. Copies of the non-confidential responses can be found on the Ofgem website.⁷ The views of the respondents are summarised below.

Are there any options not identified and discussed here?

The nine respondents that addressed this question agreed that there was no other viable solution that should be considered.

Do you agree that SLCs 14 and 15 should be given effect in all electricity generation licences?

The majority of respondents considered that it was appropriate for Ofgem to give effect to SLCs 14 and 15 in all electricity generation licences.

Only one respondent was opposed to this approach and expressed a preference for Ofgem to maintain our current approach of considering each application on a case by case basis. This respondent considered that Ofgem was in a position to take a balanced view of the value of applications concerned with compulsory purchase.

⁵ All the parties that responded to the recent CRE Energy Limited consultation were invited to provide their views on this consultation document.

⁶ An additional application was received from Scira Offshore Energy Limited since the consultation document was published.

⁷ www.ofgem.gov.uk Areas of Work (Wholesale Markets)

General remarks

One respondent suggested amalgamating the conditions into a single new combined condition and provided a draft example. Similarly, another respondent suggested amending SLCs 14 and 15 by removing paragraphs 1-4 in each of the conditions.

Ofgem's final views

After careful consideration of respondents' views and the issues raised, we continue to be of the view that it is appropriate to give effect to SLCs 14 and 15 to all electricity generation licensees and in so doing remove inconsistencies in the way these two conditions are applied across licence holders.⁸ We remain of the view that there is no objective justification for one electricity generation licence holder to be denied similar powers as compared with another licence holder in respect of these conditions.

We have given consideration to the different options for achieving consistency in the application of these licence conditions.

Switch on SLCs 14 and 15 in all licences

One option would be to issue directions to all electricity generation licence holders to give effect to SLCs 14 and 15 in their licences. Such directions would replace any former directions relating to the applicability of these conditions.

Although this option could ensure that SLCs 14 and 15 apply consistently across all licence holders without the need for a licence modification, we are concerned that it could leave scope for similar inconsistencies to arise in the future.

Modify licence conditions SLCs 14 and 15

A second option would be to introduce modifications to SLCs 14 and 15 to remove the switch mechanism which currently relates to these licences so that in effect these licence conditions apply in respect of each licence they form part of.

Although this option requires a licence modification, we consider that it is the preferable route to ensure consistency of application of SLCs 14 and 15 both now and in the future.

Ofgem is therefore currently minded to replace current SLCs 14 and 15 with new SLCs 14 and 15 in all electricity generation licences, in order to give effect to the powers and rights conferred by or under the provisions of Schedules 3 and 4 to the Electricity Act in relation to the holders of all electricity generation licences for the purposes of carrying out certain activities (and to remove the current 'switch' mechanism contained within the licence conditions).

We consider that this route would be preferable to issuing directions to give effect to these licence conditions as to do so would remove the potential for future inconsistencies in respect of these conditions.

⁸ This decision will also apply to the electricity generation licences of CRE Energy Limited, Prenergy Ltd, Great Gabbard Offshore Winds Limited, London Array Limited, Part Talbot Power Limited and Scira Offshore Energy Limited.

Although we intend to insert new standard conditions 14 and 15 into the electricity generation licences, it should be noted that these new conditions will comprise, without change, the substantive provisions currently contained in SLCs 14(5) to (7) and 15(5) to (8).⁹

Way Forward

This letter represents the statutory consultation prior to a collective licence modification, under section 11A(3) of the Electricity Act 1989.

A statutory notice, issued under section 11A(3) and (4) of the Electricity Act 1989, can be found in Appendix A to this letter. We invite representations from interested parties on the proposed modifications set out in that statutory notice. It should be noted that relevant licence holders¹⁰ who do not register their statutory objection to a collective licence modification are deemed to have accepted the proposal.

All representations and/or objections should be received by close of business on 24 April 2007 and addressed to:

Vanja Munerati
Ofgem
9 Millbank
London SW1P 3GE

or by e-mail to wholesale.markets@ofgem.gov.uk

All representations and objections will normally be published on Ofgem's website and held in the Research and Information Centre. However, if respondents do not wish their representations/objections to be made public then they should clearly mark their responses as confidential. Ofgem prefers to receive representations/objections in an electronic format so they can be placed easily on the Ofgem website.

It should also be noted that Ofgem will shortly be consulting on amendments to the Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) (No 2) Regulations 2004.¹¹ Consistent with the proposals set out in this letter, that consultation will propose to amend the Regulations by removing paragraph 2 of Part 1 of Schedule 2. That paragraph currently provides that an application for an electricity generation licence must include,

"A statement of the extent (if any) to which the applicant considers it necessary for powers under Schedule 3 (compulsory acquisition of land etc) and under Schedule 4 (other powers) to the Act to be given through the licence for which he is applying."

We note that this paragraph will be redundant if the electricity generation licence is modified as proposed in this letter.

⁹ Please see Appendix A for proposed licence drafting.

¹⁰ Relevant licence holders are the holders of the particular licence which is to be modified under the proposals by the inclusion of any new standard condition.

¹¹ SI 2004/2952

If you have any further queries in relation to this statutory consultation, please feel free to contact Vanja Munerati on 020 7901 7474.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sonia Brown'.

Sonia Brown

Director, Wholesale Markets

Signed on behalf of the Authority and authorised for the purpose by the Authority