

Electricity Distribution Licence review meeting 6 – 4/10/2007

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| Review of draft consultation document and discussion of Wragge paper on licence modifications. | From Date and time of Meeting Location | Mark Askew 4 October 2007, 10:30am Ofgem | 8 October 2007 |
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1. Present

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| Martin Crouch (MC) | Ofgem – Distribution |
| John Wilson (JW) | Ofgem – Networks Legal |
| Mark Askew (MA) | Ofgem – Distribution Policy |
| Roger Barnard (RB) | EDF Energy Corporate |
| Jeremy Blackford (JB) | ScottishPower EnergyNetworks |
| John France (JF) | CE Electric |
| Abid Sheikh (AS) | Energywatch |
| John Cooper (JC) | Wragge & Co (legal adviser to ENA) |
| Natasha Richardson (NR) | Western Power |

2. Apologies

Simon Polley – Ofgem

Nicholas Rubin - Ofgem

Catherine Wheeler – Ofgem

Paul Delamare – EDF Energy Networks

Mike Harding – ENC

3. Agenda Item 1 – Introduction and review of last DLR meeting

3.1. MC introduced the meeting

3.2. MA ran through the comments on the minutes from the last meeting. He stated that he was happy to accept all the changes and that the minutes would be published on Ofgem's website early next week.

4. Agenda Item 2 – Discussion of Ofgem's draft consultation paper

4.1. MC invited comments on Ofgem's draft consultation document.

4.2. On a high level, JF felt that the document should refer to the modified licence rather than the new licence. AS commented that the format of the questions was not consistent. MC stated that this would be reviewed for a final draft. RB also felt that references to the Supply Licence Review (SLR) should be downplayed.

4.3. *Summary and next steps section* - RB stated that he felt the membership of the working group should be published in the document so as to reassure stakeholders as to the involvement of an IDNO and energywatch in discussions on the licence drafting. NR considered that the draft consultation confused the origins of the working group and said it should be made clear that the working group came initially from the ENA.

4.4. RB made two further points on the summary section of the document. First, that it should be stated that most of the conditions have rested in their present form for 18 years and that this is the first substantial review of their format and style. Secondly, he felt that the name 'clarification seminar' should be changed, as it would imply that the proposed licence was not clear. MC agreed that the name could be changed.

4.5. *Background section* – RB stated that the paragraph on consolidation should make more of the consolidation of the determination functions of the Authority. He also stated that there is little mention of the changes made to the definitions. He felt that this was worth a paragraph in the consultation document.

4.6. *Specific changes and related issues* – RB stated that the section on the BA conditions made too much of DNOs blocking modifications to IDNO conditions and did not consider the other side of the coin, i.e. that IDNOs could veto modifications to DNO conditions.

4.7. RB felt that the section dealing with the codes of practice conditions should be expanded and detail some of the changes which had been made. He also felt that the phrase 'material changes' should be omitted as the proposed conditions are just as protective of consumer interests as the current licence.

4.8. RB felt that the paragraph on the Distribution Code should state explicitly that the drafting provides a legal underpinning for the arrangements which IDNOs and ENA are moving towards.

4.9. JF commented on the consequential changes needed for the special conditions as a result of the review of the standard conditions. He was concerned that by amending the definitions in the standard licence, the references in the special conditions could become disjointed and the special conditions may become ineffective. JW checked condition A1 of the special conditions, which stated that terms defined in the standard conditions have the same meaning when used in the special conditions. JF agreed to undertake some analysis on which special conditions, if any, might be affected by the changes to the licence.

4.10. NR commented that the paragraph dealing with regulatory years should mention that the change is a result of consolidating the current references to relevant, financial and reporting years into one new term.

4.11. JB felt that the reference to special condition G in paragraph 2.22 should be expanded so as to explain what this condition related to.

4.12. RB felt that Ofgem should be much clearer in the consultation over what they intended to treat as consequential changes in the statutory consultation. He also stated that he felt it would be wiser to stick to one modification package, rather than have separate modification proposals for each change made to the licence. He felt that the use of multiple modifications had only been necessary in the SLR as major policy changes were being made under that review. MC said that Ofgem had not yet decided on the format of the statutory consultation. RB stressed that a decision did not need to be taken for the purposes of the consultation, which needed only to raise the issue for discussion and to suggest options for dealing with it.

4.13. *Related Projects* - RB stated that the section on complaint handling needed to be clearer that the current obligations have been retained in PLC 10.

4.14. The group looked at the issue of IDNO charging and the requirement for IDNOs to provide 3 months' notice of changes to UoS charges, when the DNOs only provide 3 months' notice themselves. The group considered whether or not to make amendments to the drafting to take account of the issue. MC stated that it might be best to raise it in the

consultation, which would also allow for views on the need for IDNOs to have a methodology in place if they intend to replicate DNO charges.

4.15. *Potential future changes* – MC pointed out that this section is intended to seek general, high level views. RB expressed concern that this would be seen to be outside the remit of the licence review project. MC stated that the purpose is to flag areas which might be considered in the future, for example as part of DPCR5.

4.16. The group agreed to send their individual comments on the consultation paper electronically to RB who would consolidate them and forward them to Ofgem in a single change marked version.

5. Agenda Item 3 – Discussion of Wragge paper on Collective Licence modifications

5.1. JC took the group through his paper and summarised its conclusions. He stated that the only way to maintain the status quo in regard to voting on collective licence modifications under the proposed licence was to introduce a special mechanism into the licence to allow for its modification outside the statutory section 11A regime. He pointed out, however, that Ofgem would not be compelled to use that mechanism.

5.2. He went through the draft condition which RB had drafted to give effect to such a mechanism and explained how it had two separate parts. He stated how the first part deals with proposed modifications which are only relevant to particular licence holders. He then explained that the second part of the condition deals with proposed licence modifications which apply to all licence holders but are likely to affect one group of licence holders more than another.

5.3. JC explained that in the second circumstance 80% of both categories of licence holders would have to approve any relevant licence modification (in terms of both market share and numerically). MC stated that he did not see how this solved the problem as one party would still be able to block the modification if consent was required from both categories of licence holder.

5.4. MC went on to state that he felt the scheme was rather complicated. He stated that Peter Bucks had provided some comments on the IDNO specific obligations and that in some cases they could probably be brought into alignment. RB stated that this did not deal with the wider problem and expressed concern that the issue could cause real problems to the implementation of the proposed licence. It was agreed that the consultation paper should refer to the first part only of the possible licence mechanism and that RB would redraft the option accordingly for inclusion in the consultation texts. MC stated that both the alignment option and the first part of the licence mechanism would be aired as possible solutions in the consultation document.

6. Agenda Item 4 - Arrangements for the consultation public workshop

6.1. MC restated that the group had agreed to describe the session as something other than one of 'clarification'. He explained that it would be a short session to explain how the group arrived at the proposed licence, for concerns to be raised and to answer questions in relation to the proposed changes. MC went on to say that it would be an open invitation to all stakeholders which would appear in the consultation document. He said that Ofgem would circulate around the working group options for when the session could take place.

6.2. JB suggested that it may be worth explaining in the consultation paper what the session was likely to cover. MC replied that it would. JB agreed to provide some thoughts on areas for discussion at the session. AS stated that he would pass on details for the session to consumer groups.

6.3. MC asked if RB would be willing to present at the seminar. RB said that he would.

7. Agenda Item 5 – Discussion of the log of changes to the licence

7.1. MC invited the group to discuss outstanding issues in relation to the detailed log of changes.

7.2. JB stated that he had two general comments on the log. First, he felt that the word “obligation” had been over-used and in some cases had been wrongly used. He suggested that the word “provision” be used in its place. Secondly, he stated that on occasions the log simply stated that the obligation had been removed when, in fact, it had been moved. MA commented that where an obligation has been removed, the log should provide reasons why. He said that the log will need to be updated to reflect recent licence drafts and that JB’s two points would be addressed as part of this update.

7.3. RB stated that in some cases the licence refers to UoS agreements. He explained that these have now been replaced by DCUSA and that certain references in the new licence might need to be updated accordingly. He suggested that this was flagged in the consultation document.

7.4. MC explained that any detailed comments on the log should be sent to MA electronically.

8. Agenda Item 6 – A.O.B.

8.1 JF commented that he had a few minor drafting issues with the proposed licence. He agreed to forward the majority of them on to RB electronically but felt that a couple were ripe for discussion.

8.2 JF stated that the definition of Distribution Business activities in PLC 45.12 appeared contradictory as part (a) states that it excluded Ancillary business, excluded services and metering services, yet parts (b), (c) and (d) list the very same services as being part of distribution business activities. JB suggested that it be reordered. RB agreed to do this.

8.3 JF suggested that the assumption in PLC 14.21 (Charges for UoS and Connection) had been altered as the wording had been reordered. RB disagreed, but stated he would have a closer look at it. JF then highlighted an inconsistency in PLC 29.2 (Restriction of activity and financial ring-fencing of the distribution business). He explained that PLC 29.2 did not appear to line up with PLC 29.5. The general view, however, was that PLC 29.5 is a useful declaratory provision.

8.4 JF then highlighted that some conditions included “and/or’s” when listing items, whilst others did not. RB replied that he would look at this.

8.5 AS commented on the drafting of PLC 8.3 (a). He explained that the requirement is to offer an enquiry service without charge by the licensee but that if someone called the service on a mobile phone then they would be charged. MC replied that the charge would not be from the licensee and so the drafting did not preclude this.

8.6 MC ran over the timetable for comments on the consultation document. The group agreed to get their comments into RB by Wednesday 10 October. MC went on to state that Ofgem still planned to publish the consultation on 19 October or early the following week.

Summary of Actions:

| Action | Person – By |
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| To look at the special conditions and analyse if any are affected by the new definitions in the proposed licence | JF |

Action

To provide thoughts on what the workshop session in November should discuss

Person – By

JB

Action

To produce a derogation letter from the Authority and circulate it around the group

Person – By

NR

Action

To have a further look at the licence draft taking JF's points into account along with others arising from the meeting.

Person – By

RB