



Electricity Generation Licence
Holders and other interested
parties

*Promoting choice and
value for all customers*

Our Ref: SH/REB/SLC15CON
Direct Dial: 020 7901 7277
Email: Vivienne.pearson@ofgem.gov.uk

Date: 23 April 2008

Dear colleague

Consultation on proposals for dealing with requests for Authority consent under Standard Licence Condition 15 of the Electricity Generation Licence

Last year Ofgem made a collective licence modification under section 11A(3) Electricity Act 1989 to 'switch on' Standard Licence Conditions 14 and 15 of the electricity generation licence.

Standard Licence Condition 15 ("SLC 15") provides that licensees may not exercise the rights set out in that condition without obtaining prior Authority consent. This letter therefore seeks your views on the proposal for how the Authority will consider requests for its consent under SLC 15.

Background

SLC 15 (4) provides;

"Paragraph 10 of Schedule 4 to the Act shall apply 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 consent of the Authority before exercising those rights."*

Schedule 4 to the Electricity Act 1989 confers powers on licence holders and paragraph 10 of the Schedule gives licensees a right of entry onto land for the purpose of exploration. Paragraph 10 is set out in an Annex at the end of this letter.

However, due to the provisions of section 10 of the Electricity Act 1989, the holder of a generation licence only has the benefit of the powers in Schedule 4 to the extent so provided by their licence, which may contain restrictions and exceptions.

Accordingly, SLC 15 of the generation licence restricts the powers available under paragraph 10 of Schedule 4 in two ways –

- by limiting the purpose for which the licensee may enter land; and

- by requiring prior Authority consent.

Our Preliminary view

We consider it would be appropriate to establish a process for dealing with requests for consent under SLC 15.

Our Proposal

"Ofgem procedure for considering requests for consent under SLC 15 Electricity Generation Licence

1. A licensee requesting Authority consent should provide –
 - a) evidence that the licensee is intending to exercise the right of entry only for the purpose of "establishing whether or not the land is suitable for the construction or extension of a generating station". (This might be information about the land, where it is and whether the licensee is considering construction or extending.) If it is an extension, the name and location of the generating station to be extended;
 - b) details of whether the occupier of land has already been approached to gain access to the land. If a request has been made and refused, for details of the refusal.
 - c) a copy of the notice required under paragraph 10 of Schedule 4 to the Electricity Act 1989. (That will give more detail about what is proposed, whether there is any intention to bore to ascertain the nature of the subsoil, who the occupier is and when the exploration is due to take place);
 - d) details of how long the exploration process will take.
2. If an approach for access to land has been refused, Ofgem may consider whether it would be appropriate to contact the occupier directly;
3. Once Ofgem is satisfied it has all the necessary information, it will make a decision whether to confer consent within 20 working days."

The Way Forward

In order to allow us to take account of the views of licensees and other interested parties, we would welcome written comments on the proposal. I would be grateful for any written comments you may have on the proposed procedure by 8 May 2008.

Subject to those comments, a copy of the procedure will be made available on our website.

Yours sincerely



Sarah Harrison
Managing Director, Corporate Affairs

Annex

Paragraph 10 of Schedule 4 to the Electricity Act 1989

Entry on land for purposes of exploration

10 (1) Subject to the following provisions of this paragraph and without prejudice to any other right of entry, a person authorised in writing by a licence holder may, at any reasonable time, enter upon and survey any land for the purpose of ascertaining whether the land would be suitable for use for any purpose connected with the carrying on of the activities which the licence holder is authorised by his licence to carry on.

(2) A person authorised to enter upon any land under this section shall not demand to do so as of right unless—

- (a) 14 days notice of the intended entry has been given to the occupier; and
- (b) if required to do so, he has produced evidence of his authority.

(3) The powers conferred by this paragraph shall not be exercisable in relation to land which is covered by a building or will be so covered on the assumption that any planning permission which is in force is acted on.

(4) The power to survey land conferred by this paragraph includes power to search and bore for the purpose of ascertaining the nature of the subsoil; but works may not be carried out on the land for this purpose unless—

- (a) notice of the proposed works is included in the notice given under sub-paragraph (2) above; and
- (b) where land is held by statutory undertakers who object to the works on the ground that the carrying out of the works would be seriously detrimental to the carrying on of their undertaking, the Secretary of State gives his consent.

(5) Where any person exercises any powers conferred by this paragraph, the licence holder by whom he was authorised shall make good any damage done to the land.

(6) In this paragraph “building” includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with a building.