



Electricity Generation Licence
Holders and other interested
parties

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value for all customers*

Our Ref: SH/REB/SLC15CON
Direct Dial: 020 7901 7299
Email: sarah.harrison@ofgem.gov.uk

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Dear colleague,

Decision Document - Procedure for dealing with requests for Authority consent under Standard Licence Condition 15 of the Electricity Generation Licence

Standard Licence Condition 15 ("SLC 15") of the electricity generation licence provides that licensees may not exercise the rights of access to land set out in that condition without obtaining prior Authority consent.

On 23 April 2008, Ofgem published a consultation letter concerning a proposed procedure for how the Authority¹ should deal with requests for consent under SLC 15.

Having carefully considered the responses to the consultation, the Authority considers it appropriate to introduce a procedure for dealing with such requests. A final version of the procedure, which takes into account the responses received, is included as an Appendix to this letter.

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."*

¹ Ofgem is the office set up by the Gas and Electricity Markets Authority to assist it in discharging its functions. Everything done by Ofgem is done in the name of the Authority. The terms "Authority" and "Ofgem" are used interchangeably in this letter.

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.

As a result of 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 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.

The proposal

The consultation considered that it would be appropriate to establish a procedure for dealing with requests for consent under SLC 15, and included a proposed procedure.

Respondents' views

Five responses were received from British Energy, Bond Pearce LLP, EDF Energy, SSE and RWE all of which supported the establishment of such a procedure.² The respondents also raised a number of specific points, which we highlight below.

In terms of the procedure itself:

- a) One of the respondents suggested that a licensee should only seek to exercise the rights, provided for by paragraph 10 of Schedule 4, if they had already been unsuccessful in gaining the necessary consent for access to land from the owner or occupier.
- b) The need for the Authority to contact the landowner directly was questioned in two responses.
- c) A respondent also commented on the fact that paragraph 1c) of the procedure requested a copy of the notice required under paragraph 10(2) of Schedule 4. The respondent highlighted the fact that this notice can only be produced following confirmation by the Authority that the powers under the Schedule may be used.
- d) Two respondents also questioned the timescale given for the Authority to make a decision on the consents. They felt that it should be a shorter period.
- e) One respondent suggested two possible additions to the procedure that Ofgem should consider; these were that the licensee who was granted consent did not frustrate any activities being undertaken or to be undertaken by the landowner/occupier and the licensee should abide by all site rules.

In terms of the licence condition itself:

² The responses are available on the Ofgem website at www.ofgem.gov.uk.

- a) One respondent wanted to know under what scope the Authority could refuse consent and what the appeal procedure would be.
- b) One respondent commented that SLC 15 is too narrow and powers of entry should be extended to mirror all powers in Schedule 10 to the Electricity Act 1989. Namely that a licensee should be able to enter land for any purpose connected with the activities authorised by their generation licence (such as access rights for land over which power lines will be installed).
- c) Another respondent commented that the exercise of the right should not require Authority consent at all as there are no similar requirements for consent to be granted by the Authority, under the equivalent conditions in the electricity transmission and distribution licences. The suggestion was that SLC15 should be amended along the same lines as SLC28 of the distribution licence.
- d) One respondent suggested that a review and restructure of the generation standard licence conditions should be carried out.

Ofgem's views

We have carefully considered the points raised in the responses, in terms of the comments on the procedure our views on these comments are set out below:

- a) Although there is nothing in the legislation or the licence that requires the licensee to have contacted the landowner before seeking consent under SLC15, we agree that this would be the most practical approach and have reworded paragraph 1b) of the procedure to ask for details of the contact made with the landowner. We have also amended the procedure to state that we will expect licensees to have made contact with the landowner before coming to us for consent.
- b) In response to concerns raised about contacting landowners directly, as we cannot foresee all the different scenarios that may arise when considering requests for consent, we consider it appropriate to indicate that we may contact a landowner as we will need to consider each application on a case-by-case basis. However, we have amended the procedure to include provision for a licensee to explain why they would not want the landowner to be approached directly.
- c) We agree with the respondent's comment concerning paragraph 1c) of the procedure and have amended paragraph 1c) accordingly.
- d) Although we appreciate the concerns raised relating to the timescales for receiving a decision, the procedure does state that a decision shall be made 'within 20 working days' and we would if at all possible respond to requests earlier than that. However, if problems arose to hinder our decision it should be recognised that we may not be able to comply with this deadline.³ We do not propose to shorten the time period for Ofgem to make a decision.
- e) We agree with the respondent's concerns that the licensee should be considerate when exercising its right under SLC 15, and not frustrate any activities being undertaken or to be undertaken by the landowner/occupier and abide by all site rules. However, we have no power to attach conditions to the exercise of the right and we would also note that the primary legislation contains provision for compensation for any damage caused by the exercise of the right.

³ E.g. If Ofgem requires further information in relation to a consent application or decides to contact the landowner then the consent decision may take longer than the 20 working days proposed.

With regard to the comments raised about SLC15 in general, our views are set out below:

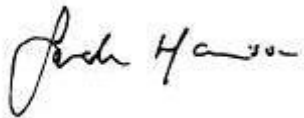
- a) We agree that the legislation does not specify how the power to confer consent under SLC15 should be exercised; however, we will consider all requests in line with our statutory obligations.
- b) , c) and d) Holders of transmission licences have all the Schedule 4 rights due to provisions in the Electricity Act 1989. In contrast generation and distribution licensees have the rights to the extent provided by their licences. The distribution standard licence conditions have recently been reviewed. The equivalent condition to SLC 15⁴ (of the generation licence) in the distribution licence was modified to remove the requirement for consent from the Authority. In order to do the same for the generation licence conditions, Ofgem would need to go through the modification process. Although we agree that a review of the generation licence conditions may be appropriate, considering time and resource constraints, we do not consider this to be a priority for Ofgem.

The Authority's decision

We remain of the view that it would be appropriate to introduce a procedure for dealing with requests for Authority consent under SLC 15.

The revised procedure is set out in the attached Appendix. You may also wish to note that any request for Authority consent under SLC 15 should in the first instance be addressed to Andrew Wright, Managing Director, Markets.

Yours sincerely,



Sarah Harrison
Managing Director, Corporate Affairs

⁴ Standard licence condition 28

APPENDIX

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 contact with the occupier of land made to gain access. If a request has been made and refused, details of the refusal;
 - c) details of the information that would be included in the notice required under paragraph 10 of Schedule 4 to the Electricity Act 1989. (This should 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. Ofgem would expect a licensee to approach the landowner in the first instance. Where an approach for access to land has been refused, Ofgem may consider whether it would be appropriate to contact the occupier directly. The licensee may also provide information as to why it considers such contact may not be appropriate.
3. Once Ofgem is satisfied it has all the necessary information, it will make a decision whether to confer consent within 20 working days and notify the relevant parties.