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Dear Rachel,

**Collective Licence Modification Proposal ref. 137/08: Delivering on the Electricity Distribution Structure of Charges Project**

In response to your proposal to modify the Electricity Distribution Licence in respect of the Electricity Distribution Structure of Charges Project I confirm that ENW do not intend to issue an objection to the proposals. We do make the following representations that summarise our recent discussions with the Ofgem team and include a proposed improvement to the Licence drafting, without changing the substance of the consultation.

We received the above Collective Licence Modification (CLM) and the associated decision document with disappointment. Throughout this process we have argued, and we continue to believe, that it is better for licensees to develop their own charging proposals which reflect their own particular circumstances. This approach supports the development of new ideas which can be improved through challenge and constructive criticism from engaged industry participants. Underpinning this approach is the fundamental belief that ENW should have the freedom to define and implement its own charging methodologies which is consistent with the current licence requirements where we have to be satisfied that our proposals better meet the relevant objectives. We maintain that customers are best served by a process that encourages companies like ENW to develop innovative charging structures specifically designed to minimise the costs in developing their existing, unique networks.

We embarked on our own development of a holistic approach to use of system charging and subsequently developed an approach which linked network expansion planning and the pricing of the distribution network. This included the development of our own cost model. ENW had developed and was in the implementation phase to deliver an overall solution to network pricing that would have delivered the longer term arrangements outlined by Ofgem in 2004. Other companies may have developed aspects of a charging methodology but ENW had proposed a complete credible approach to network pricing at all voltage levels and for all customer types. ENW has presented this approach to Ofgem, wider industry fora and at an international conference.

The Common Distribution Charging Methodology (CDCM) which Ofgem has specified does not meet, in our opinion, the relevant objectives set out in the distribution licence. Ofgem recognise that the Bath/ WPD LRIC cost model can produce excessive charges which can breach competition law. We acknowledge that Ofgem has explicitly recognised that the approach can lead to anomalous charges and that we should identify where this occurs and propose cost reflective alternatives.

The timetable that Ofgem has imposed is very challenging, and whilst we welcome that you promise to take a pragmatic approach to implementation, this promise needs to be translated into action. If the project timescales are to be delivered Ofgem will need to focus on the key issues. We are concerned by the lack of clarity in the Appendix 2 of the document which leaves much of the detail for the DNOs to collectively resolve or refer to Ofgem for decision. The Ofgem team will need to be able to turnaround decisions very quickly to support the implementation timetable.

We see the future governance of the charging methodologies as vital to ensure that there is robust challenge and constructive comment from engaged industry participants. Wherever possible we believe that Ofgem's role should be to determine the outcome where industry participants cannot agree or to hear appeals. We would not generally expect Ofgem to overturn industry decisions/ recommendations as has recently happened on BSC change proposal P224. We will seek to amend aspects of the CDCM through the governance process in the future, working with other stakeholders to produce a charging methodology which better meets the relevant objectives.

We have raised and sought clarification on three specific issues with regard to implementation, namely: the possibility of a short-term derogation against the requirement for AC power flow analysis; the potential reduction in Excluded Services income due to harmonisation of tariff structures and the provision for recovery of charging methodology development costs. We recognise that you cannot specifically address these issues in advance of the close of the consultation on the CLM, and we also note in your decision document that you anticipate addressing issues of this nature during the course of the project.

Our Board has carefully considered the proposed CLM in the context of:

1. the potential for the charging methodology to produce unlawful charges; and
2. our ability to comply with the Licence Condition taking account of the challenging timescales, the significant gaps in the CDCM and the requirement to reach agreement with the other Distribution Service Providers (DSPs).

With regard to point 1 we believe that we can sufficiently mitigate our exposure to this risk by clearly identifying where the charges produced by the method are, in our opinion, excessive and proposing alternatives in such circumstances.

Point 2 is of greater concern. Part C of the proposed Standard Licence Condition 50 sets out key requirements that each licensee must follow in the development of the CDCM. Our main issues are with paragraphs 50.12, 50.14 and 50.15 which set specific timescales but are dependent on the approach of the other DSPs and the robustness of the 1 October 2008 decision. Compliance with these requirements is therefore not fully in our hands. We acknowledge that paragraph 50.36 does allow for the Authority to issue derogations against these requirements. We also recognise that you are unlikely to accept our preferred option of a 'use reasonable endeavours' provision in respect of these timescales as this could provide greater uncertainty for delivery of the project. Our concerns would, however, be allayed if the words: "such derogation not to be unreasonably withheld" were added to the end of paragraph 50.36. We suggest that this change can be incorporated without a further statutory consultation on the basis that it does not change the substance of the current consultation text.

To summarise, we are opposed to your proposal in principle for the reasons outlined above. However, we recognise the significant pressure from Government, suppliers and generators to resolve many associated issues. Whilst we believe our own modification proposals would have delivered against the objectives, specifically encouraging the connection of renewable generation and promoting efficient network investment, we recognise that suppliers have strongly advocated a common approach to charging which they have intimated will deliver significant cost reductions to consumers. In light of this we believe the public interest may be best served by securing these benefits. We urge Ofgem to use all possible means to ensure that suppliers commit to the pledges they have made in this consultation process and do indeed lower prices to customers following the successful completion of this project.

ENW will actively participate in the project to deliver in the required timescales, as can be seen by the proactive approach we have taken to resolve the issue of IDNO charging. We have annotated Appendix 2 with comments in order to seek clarification for the application and implementation of the CDCM, included a critique of the CDCM and proposed ways to overcome the issues. These will be fed into the Common Methodology Implementation Working Group.

Yours sincerely,

**Paul Bircham**  
**Regulation Director**