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Dear Colleagues

Withdrawal of previous consultation Notice dated 14 May 2009; conclusions in respect of the consultation to modify Standard Licence Condition C5 ("Use of system charging methodology") and C6 ("Connection charging methodology") of the electricity transmission licence; and issue of new consultation Notice under Section 11A of the Electricity Act 1989.

On 14 May 2009 we published a Notice pursuant to Section 11A(3) of the Electricity Act (1989) (the "Act") and commenced a consultation process on the same modifications explained below in this letter. Unfortunately, there was an inaccuracy on the file published on our website. Taking into account the need for transparency in our processes, we have decided to withdraw that statutory consultation and reissue the Section 11A(3) Notice.

This letter sets out our conclusions following our 30 March 2009 consultation¹ on our proposal to amend Standard Licence Condition (SLC) C5 "Use of system charging methodology" and SLC C6 "Connection charging methodology" of the electricity transmission licence. The proposed amendment would have the effect of extending the time we have to deal with modifications to the charging methodologies. The letter also sets out our statutory consultation on the proposed amendments and contains the Notice provided for in Section 11A of the Act.

Under the terms of SLC C4 (2)(a) and SLC C6 (4), the licensee is required to prepare a Statement of the Use of System Charging Methodology and a Statement of the Connection Charging Methodology and to have those statements approved by the Authority. In addition, SLC C4 (2)(b) establishes that the licensee must also prepare a Statement of Use of System Charges, calculated in accordance with the approved use of system charging methodology, and in a form approved by the Authority.

SLC C5 (1) and SLC C6 (2) establishes that licence holders must keep their use of system charging methodologies at all times under review, for the purpose of ensuring that the charging methodology achieves the relevant objectives. In turn, SLC C5 (2) and SLC C6 (3) establish that the licensee may make modifications to the charging methodologies, for the purpose of better achieving the relevant objectives.

Amongst other provisions, both SLC C5 and SLC C6 state that if a modification to a charging methodology is proposed, the licensee must submit to the Authority a report that

¹<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=92&refer=NETWORKS/TRANS/ELECTRANSPOLICY/CHARGING>

describes the terms originally proposed for the modification, the representations made to the licensee, any change to the terms of the modification intended as a consequence of such representations, and how the intended modification better meets the relevant objectives as set out in SLC C5 (5) and SLC C6 (11), respectively. The report must also set out a timetable for implementation and date with effect from which the modification (if made) is to take effect.

The Authority assesses any proposed modification to inform its decision on whether or not to issue a direction (pursuant to SLC C5 (4) or SLC C6 (10)(a)) that the modification shall not be made. Both conditions give the Authority a period of 28 days from the date of receiving the licensee's report, or a period of 3 months if the Authority intends to undertake an impact assessment, to issue a direction.

The start time for both the 28-day period and the extended 3-month period is the date of the licensee's report being furnished to the Authority.

Our March 2009 consultation and responses

On 30 March 2009 we issued a consultation which proposed modifying SLC C5 (4) and SLC C6 (10)(a). According to our proposal, in the event that we notify the licensee of our intention to undertake an impact assessment in respect of any proposed modifications, the 3-month time limit will start from the date we notify the licensee an impact assessment is required. At present, the time limit begins from the date the report is submitted.

We received three responses to the consultation, one of which was marked as confidential². All three respondents were in favour of the proposed change.

Two respondents made comments about the consultation process and draft licence text included in the consultation. These are summarised below.

Length of consultation period

One respondent commented on the length of the consultation process. This respondent stated that industry should be given a 12 week period to consider consultations released by Ofgem, in recognition of the recommendation contained in the Cabinet Office guidance document "Better Policy Making: A guide to regulatory Impact Assessments" and the House of Lords Select Committee on Regulators³.

Draft licence text

The other respondent noted the draft licence text included in the consultation was wrongly numbered.

Ofgem's views

Our views on the issues raised in the consultation are set out below.

Length of consultation period

We agree that it is vital industry and other stakeholders have sufficient time to consider fully consultation proposals Ofgem make.

In the case of changes to standard licence conditions, we adopt a consultation process that is consistent with our statutory obligations as set out under Section 11A of the Act and

² The non-confidential responses are available on the Ofgem website:
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=92&refer=NETWORKS/TRANS/ELECTRANSPOLICY/CHARGING>

³ http://www.nao.org.uk/publications/0607/impact_assessments_review.aspx

consistent with our published guidance document on licence modifications.⁴ We have a statutory obligation to consult for a period of 28 days before making a change to a standard licence condition. In addition, as noted in our guidance document, except in exceptional circumstances we consider it is useful to undertake an initial consultation.

We have undertaken an initial consultation in this case, providing interested parties with an additional period of 28 days to present their responses. We consider both the initial and the statutory consultations provide enough time for parties to consider changes we have proposed and make representations.

In addition, in the case of changes in respect of the transmission licence charging obligations, we also work closely with industry and stakeholders through various working groups. In general, we aim to discuss potential policy and/or changes in these groups before we release any consultation proposal.

Draft licence text

We acknowledge the numbering was incorrect in the draft licence text provided in Appendix 1 of our initial consultation. This has now been amended.

Revised licence text is provided in Appendix B of this letter.

Further thoughts

Given the unanimous support for the proposals, our justifications for making these changes in the consultation paper of 30 March 2009 are still relevant. These justifications are restated and expanded below.

We also propose an amendment to licence drafting to reflect the intention to apply the new time framework retrospectively to all charging methodology modification reports. Our justification is set out below.

Scrutiny of licence change modifications

The Licensee must submit to the Authority a report that describes the terms and impact of any proposal they make to alter the electricity transmission licence. We must then give direction within the timescales outlined in SLC C5 (4) and SCL C6 (10)(a) that the modification proposal shall not be made.

The start time for both the 28-day period and the extended 3-month period is the date the licensee submits the report to the Authority, not the date when we notify the licensee of our intention to undertake an impact assessment consultation.

Ordinarily, meeting these licence assessment timescales poses no issue as only a small number of modification proposals are submitted at any one time. However, if we receive a large number of proposals within a short time of each other this could lead to the situation where we are unable to fully scrutinise each proposal. Such a scenario could potentially lead to inadequate assessment of the consequential impacts of a charging modification proposal and may possibly lead to incorrect policy decisions being made which have negative effects on the energy market. This scenario is particularly relevant given the current review of the current regulatory, commercial and technical framework for transmission access (TAR) in the long term and the short term and the transmission charging regime for electricity transmission networks in Great Britain.

⁴ <http://www.ofgem.gov.uk/Licensing/Archive/9203%20-%20Guidance%20on%20modifying%20the%20standard%20licence%20conditions%20of%20gas%20and%20electricity%20licences%2010%2009.pdf>

In terms of policy, we anticipate the 3 month limit within which our decision on whether or not to issue a direction that the modification shall not be made and which starts from the date the report is submitted will become a material constraint for the remainder of this financial year when a number of charging modifications are expected as part of the TAR. Traditionally, such charging modifications usually occur after changes to the industry code are made (industry code changes affect the commercial and regulatory arrangements governing connection and use of transmission system) but this can mean that many changes are being progressed in parallel.

The aim of modifying the licence conditions is to allow the Authority more time to consider charging modifications. This should lead to a better decision making process and remove the risk that when the relevant charging modification proposals are submitted to the Authority for decision, we are not "timed out" or forced, due to the 3 month time restriction on the assessment process, to issue a direction that the modification shall not be made. To leave the wording as is could lead to a situation to reject charging modification proposals without full consideration or issue a direction not to veto modification proposals before general policy decisions.

The ability to extend the assessment process with charging modification proposals may also be prudent given the imminent changes to the charging methodology governance process being proposed, a consequence of which may be more complicated modifications with multiple options.

We believe our proposal mitigates against this possibility by allowing us more time to consider licence changes when an impact assessment is necessary.

Further, we believe that amending the licence drafting to apply the new time framework retrospectively to all the charging methodology modification reports submitted by the relevant licence holders and received from the date of this Notice will enhance the administrative capabilities of Ofgem and provide more time for the Authority to consider the interrelated and consequential charging modification reports that are being developed as part of the TAR process before issuing a direction.

Impacts on legal duties and obligations

The Act sets down the legislative structure under which the electricity industry operates including the roles and duties of the Authority. Sections 3A to 3C set out the Authority's principal objective and statutory duties.

The Authority's principal objective is to protect the interests of existing and future consumers. We do this by promoting competition, wherever appropriate, and regulating the monopoly companies which run the gas and electricity networks. In carrying out this duty, we must ensure, amongst other things, that licence holders are able to finance the obligations placed upon them and that regulatory activities are transparent, accountable, and proportionate and targeted only at cases that require action.

The electricity transmission licence outlines a number of obligations placed on licensees including requirements to comply with financial obligations. Some of the financial obligations placed on the licensee result in the recovering or levying of charges on other system users.

If, due to time constraints, an incorrect policy decision is made about a licence change modification this could lead to system users or consumers incurring financial costs they should not be subject to. Our proposal should protect against this scenario by allowing us more time, if necessary, to subject each modification to full and proper scrutiny.

It is also worth noting that consumers will bear no extra cost from the implementation of the proposal. It has a cost neutral effect for consumers and industry.

As well as having financial effects, an imprecise policy decision could also impinge on the promotion of effective competition in the energy market. Again, the proposal will, if necessary, allow us more time to consider the full effects of modifications and make a comprehensive judgement on market competition effects.

Ofgem conclusions

In light of the issues discussed above, we propose to modify SLC C5 (4) and SLC C6 (10)(a) so that, in the event that we notify the licensee of our intention to undertake an impact assessment consultation, the 3-month time limit will start from the date we notify the licensee an impact assessment is required – i.e., the impact assessment time limit will not be counted from the date the modification was submitted.

Appendix A to this letter sets out the Notice, required by section 11A of the Act, of the Authority's intention to make the proposed modifications.

Revised licence text is provided in Appendix B of this letter.

Yours sincerely,

Stuart Cook
Director of Transmission

Appendix A

NOTICE CONCERNING THE PROPOSED MODIFICATION OF THE STANDARD LICENCE CONDITIONS OF TRANSMISSION LICENCE UNDER SECTION 11A(3) OF THE ELECTRICITY ACT 1989

The Gas and Electricity Markets Authority (the "Authority") hereby gives notice pursuant to section 11A(3) of the Electricity Act 1989 (the "Act") as follows:

1. The Authority proposes to modify the electricity transmission licences treated as granted under section 6(1)(b) of the Act by amending Standard Licence Conditions C5 ("Use of system charging methodology") ("SLC C5") and C6 ("Connection charging methodology") ("SLC C6").
2. The reasons to implement the modification were set out in our initial consultation document entitled "Proposal to modify Standard Licence Conditions C5 ("Use of system charging methodology") and C6 ("Connection charging methodology") of the electricity transmission licence" (Ref 32/09), on 30 March 2009.
3. The proposed modification of SLC C5 specifically amends paragraph 4, modifying the time framework to issue a direction on licence modification reports the Authority receives. Currently, after receiving a report proposing a modification of the charging methodology the Authority has 28 days, or 3 months if it intends to undertake an impact assessment, to direct the licensee that the modification shall not be made. If our proposed modification to SLC C5 is approved, the Authority will have 28 days to notify the licensee of either the direction or that it intends to undertake an impact assessment. In the latter case, the Authority will then have a period of 3 months to issue the direction.
4. The proposed modification also amends paragraph 10(a) of SLC C6 in the same sense of SLC C5.
5. The effect of the proposed licence modification is that the time-framework set up in SLC C5 and SLC C6 to make decisions on charging methodology modifications is made consistent with that established in the equivalent electricity distribution standard licence conditions. In practice this means the period to issue a direction in case the Authority decides to undertake an impact assessment is extended by up to 28 days. It is worth noting that consumers will bear no extra cost from the implementation of the modification and that no burden is imposed to the relevant licence holders.
6. If the proposal is implemented, the Authority intends to apply the new provisions retrospectively from 10 of June 2009 to all the charging methodology modification reports submitted by the relevant licence holders. We expect that current processes will result in a broad suite of interrelated proposals being presented in a short space of time. The proposed modification will enhance our administrative capabilities and provide more time to consider interrelated and consequential charging modification reports.
7. On 14 May 2009 we published a Section 11A(3) Notice and commenced a consultation process on the same modifications indicated in paragraph 1. This consultation has now been withdrawn.
8. Relevant licence holders for the purpose of this Notice are all holders of the Electricity Transmission Licence (Standard Conditions) at the relevant time with Standard Conditions C5 and C6 in force. The Authority has consulted with the relevant licence holders on the licence modifications which need to be implemented both informally and through the document mentioned in paragraph 2 of this Notice.

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9. A pro forma that relevant licence holders may wish to use in order to register a statutory objection is appended to this Notice (Appendix C).
10. Copies of the proposed modification and other documents referred to in this Notice are available (free of charge) from the Ofgem website (www.ofgem.gov.uk) or from Ofgem Research and Information Centre, 9 Millbank, London, SW1P 3GE (telephone number: 020 7901 7003).
11. Any representations or objections to the proposed licence modification may be made on or before 9 July 2009 and should be sent to James Thomson, Ofgem, 70 West Regent Street, Glasgow G2 2QZ or by e-mail to james.thomson@ofgem.gov.uk.
12. All responses will normally be published on Ofgem's website and held in the Research and information Centre. However, if respondent do not wish their response (or any part of it) to be made public then they should clearly mark their response (or a relevant part of it) as not for publication. Ofgem prefers to receive responses in an electronic form so they can be placed easily on the Ofgem website.
13. If you wish to discuss any aspect of this Notice, James Thomson would be pleased to help.

Stuart Cook

**Director of Transmission
Authorised on behalf of the Authority
10 June 2009**

Appendix B – Draft legal text

SLC C5 (4): The licensee will not make any modification to the use of system charging methodology ~~where the Authority has if~~, within 28 days ~~(or within 3 months if the Authority intends to undertake an impact assessment)~~ of the report being furnished to it under paragraph 3 ~~(for the avoidance of doubt, including any report furnished from 10 June 2009)~~, ~~given a direction that the modification shall not be made.~~ the Authority has either:

~~(a) directed the licensee that the modification shall not be made; or~~

~~(b) notified the licensee that it intends to undertake an impact assessment and then, within three months of giving that notification, has directed the licensee not to make the modification.~~

SLC C6 (10)(a): The licensee will not make any modification to the connection charging methodology ~~where the Authority has if~~, within 28 days ~~(or within 3 months if the Authority intends to undertake an impact assessment)~~ of the report being furnished to it under paragraph 9 ~~(for the avoidance of doubt, including any report furnished from 10 June 2009)~~, ~~given a direction that the modification shall not be made.~~ the Authority has either:

~~i) directed the licensee that the modification shall not be made; or~~

~~ii) notified the licensee that it intends to undertake an impact assessment and then, within three months of giving that notification, has directed the licensee not to make the modification.~~

Appendix C – Pro forma to register statutory objection to the Notice

Proposed Modification of Transmission Standard Licence Conditions C5 and C6

In response to the statutory notice dated 9 July 2009 in respect of the above proposed modification, this notice constitutes a statutory objection to that proposal on behalf of⁵ I confirm that I am duly authorised to give this notice on behalf of each of the above named companies.

Signed⁶:

Date:

⁵ Please state full name of each relevant licence holder making the objection.

⁶ Please include address for acknowledgement, preferably including email address.