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Dear Rachel,

DPCR5 Initial Licence Drafting Consultation

Scottish and Southern Energy welcomes the opportunity to comment on the initial licence drafting for DPCR5. Our response to the consultation questions are attached at Appendix 1, with general comments on the consultation and legal text discussed further below.

All the DNOs have worked closely with Ofgem in the legal drafting working group (LDWG) to transpose Ofgem policy into legal text. As with other price control reviews, significant changes are required to the legal text, particular the new charge restriction conditions (CRCs). In addition a new statutory instrument for connections standards of performance is proposed, along with a number of new regulatory instructions and guidance (RIGs) documents. The timetable to implement the new legal drafting is extremely challenging and any slippage in the programme could have quite serious consequences. We will continue to work closely with Ofgem and the other DNOs as part of the LDWG to minimise the risk of slippage.

We note that the new CRCs 1 to 7 (a new 'overview' and updating of existing special licence conditions A1, B1, B2, B3, D1 and F1) have not been included in the current consultation. The formulae within many of these licence conditions will change to enable the new price control proposals. The LDWG will be reviewing price control formulae shortly; it will be essential that all the CRCs are reviewed at this time.

At the 6th meeting of the LDWG, we took an action to review the wording of clause 13.22 in CRC13 (Licensee's Connection Activities: Margins and the development of competition). We have suggested that 'there is established competition' be changed to 'the licensee has facilitated the development of competition' which we believe better reflects the policy intent.

Finally, during the distribution licence review drafting the ability to seek a derogation from the maximum timescale required to offer terms for connection was omitted from the legal text of standard licence condition 12 (old standard licence condition 4d) in error. We have suggested an amendment to clause 12.5 of SLC12 that rectifies this omission as follows:

‘Save where the Authority consents to a longer period, the licensee must offer terms for an agreement for Use of System ...’

We hope this is useful input. Should you wish to discuss any of the above in more detail, please do not hesitate to contact me.

Yours sincerely,

Malcolm J. Burns
Regulation Manager

Appendix 1: response to consultation questions

Chapter 1

1. Do you think our proposed timetable for the implementation of changes to the licence conditions and other legal instruments is appropriate?

We believe the proposed timetable for formalising and finalising the legal drafting is appropriate. However, it is extremely challenging. The price control will impose additional obligations on DNOs, particularly with regard to new reporting requirements. As an industry, we need time to ensure that suitable systems and processes are in place to capture and record the data as required and in the format stipulated by the legal text. Whilst work can commence on this now, this is both time and resource intensive and will have to reflect all changes up until such a time as the text is finalised. It is therefore paramount that the end date of February 2010 is met.

Chapter 2

1. Do you think any of our proposed changes to the standard licence conditions or new charge restriction conditions are inappropriate?

We are aware that the legal drafting working group (LDWG), a joint Ofgem / DNO group, is progressing work on the legal text. Further, Roger Barnard, as chair of the DNO members of the LDWG, has commented in some detail on the draft legal text in the consultation document. In general we are supportive of these comments but where we have a SSE specific viewpoint we highlight this below, along with our general comments on the standard and charge restriction licence conditions:

Standard licence conditions (SLCs)

- Under Appendix 4 of the consultation Ofgem discusses a possible 'audit' of network outputs data similar to that for IIS. The IIS standard licence condition allows for an examination of process and procedures, not an audit. SLC 44A includes for such an examination; therefore no additional 'audit' is required;
- Paragraph A14 (a) of SLC 44A should be modified in a similar manner to that proposed by Roger Barnard for paragraph A4 (a), i.e. delete both 'as at the current date (initially' and the closing bracket after '2010';
- In SLC44B, we do not believe that clause 44B.5 (g) is appropriate. Currently only reporting of price control revenue information has a requirement for the audit of information. Other reporting conditions require the appointment of an Examiner and this may be more appropriate for losses reporting;
- We strongly agree that the 1 April 2010 deadline for a statement of compliance (SLC44B, clause 44B.10) is not viable. We support a date of 1 October 2010;
- We are supportive of the revised SLC45A tabled at the 5th November LDWG.

Charge restriction conditions (CRCs)

In general the CRCs require significant work to ensure that the algebraic formulae correctly enables policy. We are supportive of Roger Barnard's comments on the CRCs and note that a special LDWG has been convened to review all formulae in the CRCs. We will take an active role in that working group meeting. In addition we have the following general observations on the CRCs as they stand:

- The price index adjuster and RPI terms across all CRCs need to be reviewed and updated. Unless this is addressed, DPCR4 prices will not be correctly inflated for the purposes of DPCR5. We note that not all CRCs will necessarily have the same price index adjuster;
- CRC9, Part D. Performance on the broad community satisfaction measure needs significant further work. As it stands, the proposed formula does not provide a monetary value to feed into the principal formulae;
- We are supportive of the revised CRC10 tabled at the 5th November LDWG;
- CRC13, Part C. We believe that the following text better reflects the policy intent with regard to the competition test and should supersede the text currently at clause 13.22 (b):
'the licensee has facilitated the development of competition, and is meeting appropriate standards as to price and service in relation to its Connections Activities, in the Relevant Market Segments (the Competition Tests).'

2. Do you think that there are any other changes to the standard licence conditions or new charge restriction conditions that we should be looking to make at the start of the DPCR5 period?

We have proposed some changes to the current drafting in response to Question 1 above.

In addition to these, the ability to seek a derogation from the maximum timescale required to offer terms for connection was omitted from the legal text of standard licence condition 12 (old standard licence condition 4d) during the distribution licence review project. To correct this we suggest the following amendment to Clause 12.5 of SLC12:

'**Save where the Authority consents to a longer period, the** licensee must offer terms for an agreement for Use of System ...'

3. Do you think we have chosen the appropriate implementation instrument (e.g. licence conditions, statutory instrument, RIG or direction) for each of the policy areas?

In general we believe that Ofgem has chosen the appropriate implementation instrument. However, the final proposals document (and its appendices) will also be used as an implementation instrument for DPCR5 policy decisions and it will be important to ensure clarity in that document. In particular Appendix 1 will provide an explanation of key financial calculations and incentive mechanism; as such it will be important to ensure that there is no ambiguity in the policy intent.