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28 May 2010

Dear Anna,

Re: Low Carbon Networks (LCN) Fund: Notice under Charge Restriction Condition (CRC13) of the Electricity Distribution Licence with respect to the LCN Fund Governance Document

Further to your letter of 28 April 2010 regarding the proposed amendments to version 1 of the LCN Governance Document and the addition of a new section which collectively form version 2 of the LCN Fund Governance document, ENW has considered the drafting and can confirm that we do not object to this Notice, but would like to make the following representation.

Our main issue with the approach proposed by Ofgem is the maximum number of projects allowed to go through to full submission. The current draft restricts the number of projects to two per DNO Group. We believe this unfairly disadvantages ENW as a singleton DNO as all the others DNO will be allowed to commit at least double the resources, funded from Tier 1, to finding, developing and submitting Tier 2 Projects. Tier 1 funding for developing Tier 2 Projects should be by DNO group. We will endeavour to overcome this disadvantage. There are several other areas that ENW felt merited some comment and I have provided explanation of these in Appendix 1.

If you wish to discuss any of the points raised please do not hesitate to contact me.

Yours sincerely,

Paul Bircham
Regulation Director

Appendix 1

These are ENW's detailed comments on the LCN Fund Governance document:

Project Submission

The choice by Ofgem to restrict the number of Projects to be submitted in the Full Submission Process by each DNO Group to two penalises ENW as a singleton DNO. All other DNOs can effectively utilise, as a minimum, double the funding from the First Tier and hence double the resources in order to design and develop Second Tier Project submissions. We believe this restriction has been put in place to limit the time and effort required by Ofgem, its consultants and the Expert Panel for the selection process.

Intellectual Property Rights (IPR)

We understand and support the principle of capturing IPR generated by a Second Tier Project and making sure this learning is freely available for use for the benefit of all GB customers. However, we do not wish to end up in a situation where, over the long term, the DNOs have to manage IPR and the expense and resource that accompanies this specialist activity. The baseline should be that the value from any IPR can be returned to those customers that help fund the generation of the learning. We hope Ofgem recognise that a significant proportion of the Second Tier Projects moving forward to Full Submission may have IPR terms that are different from the default position as the legal drafting of IPR clauses in specific agreements is refined and finalised.

Screening Submission Date

Ofgem has indicated in paragraph 2.26 it will give two months notice of the Screening Submission Date. We believe that it should be possible to provide more notice than this, and would suggest it is possible, as the Process forms into an annual cycle, to provide six months advanced notice. As Ofgem is looking to award funding for 'significant flagship projects' DNOs require time to develop Second Tier Projects of this scale and nature. We note that as a DNO singleton, we will have only half the First Tier resources for developing such Projects of other DNOs.

We are concerned at the shortness of timescale (ie two days) proposed by Ofgem to correct missing information in the Screening Pro-forma. Although we are not inclined to seek more time as we would not wish to lengthen the Screening approval period it's critical that Ofgem holds a comprehensive list of contacts that they will send the notice to in order to ensure that there is sufficient redundancy for holidays, being out of the office, etc.

Paragraphs 2.36 to 2.38 need amendment to reflect the discussions within the working group on Competition Issues affecting publishing Collaborator/Supplier details. Our recollection of the meeting was that Ofgem were to define Collaborators and Suppliers separately and also agreed not to publish information in the Pro-forma with these details and the IPR details.

There is a possibility that the IPR requirements may change between Screening and Full Submission, as the DNOs may not, at such an early stage, have tied down the intricacies of IPR into formal agreements or the DNOs may not have signed up all External Collaborators and therefore we hope Ofgem recognise there could be change.

Screening Pro-forma

The following points are derived from a review of the second version of the Governance Document and the latest circulated version of the Screening Pro-forma:

- The text in the 'Information required' heading in the Pro-forma shown in Table 2.1 is different to the text provided as guidance notes in the Low Carbon Network Fund: Screening Submission Pro-forma recently circulated by Ofgem. One important difference is the guidance note for the External Collaborators' details requires less information than the detail in the second version of the Governance Document. The text needs to align to eliminate ambiguity and the potential for failing to complete the pro-forma as required.
- The text on the publication of the information in the Screening Pro-forma is ambiguous. Paragraph 2.37 suggests "Ofgem will publish the first three sections of the Screening Submission Pro-forma" and yet the paragraph details the Pro-forma categories that will be published. This is different again to the guidance note on the Screening Pro-forma recently circulated by Ofgem. To rectify this discrepancy the word 'section' in the quoted phrase above needs to be replaced by 'category' for it to align the Table 2.1 and the published Screening Pro-forma.