



Distribution Network Operators
(and other network licensees)

*Promoting choice and value for
all gas and electricity customers*

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Dear Colleague

Open letter regarding Derogation Requests from Engineering Recommendation (ER) P2/6 (electricity distribution standard licence condition 24 ("SLC 24"))

The purpose of this letter is to remind electricity distribution network operators (DNOs) of our Guidance¹ on licence derogation requests, which we last updated in January 2009. Our Guidance sets out the process that Licensees should follow for requesting a derogation from an obligation to comply with certain technical codes and standards, including ER P2/6.

We also want to raise our concern that the approach being adopted by some DNOs to assess their compliance with ER P2/6, may be exposing customers to unacceptable levels of risk regarding security of supply.

Ensuring Licensees comply with codes and standards is integral to protecting the interests of consumers, as failure to comply can have an adverse impact on the security and quality of service supplied. In setting the current price control arrangements (DPCR5) we emphasised that, in return for receiving the allowed revenues, DNOs have to meet all their licence and statutory obligations. We were also clear that if a company breached any of its licence conditions we would look to set penalties to have a proportionate impact on shareholder returns.

We have stated in the Guidance that "where the Licensee has identified that it does not, or will not in the future be in a position to comply with relevant obligations in a technical code or standard" it should make a request for derogation from the licence requirement to comply with such obligations.

We expect Licensees to have processes in place in order to identify and, where possible, anticipate situations of potential non-compliance. We also expect Licensees to notify Ofgem of non-compliance and to apply for a derogation as soon as is reasonably practical. In accordance with our Guidance, this means the Licensee should be applying for a derogation as soon as they are in a position to present a comprehensive implementation plan to restore compliance. We understand that this planning stage can be complex and may take some time to conclude.

There have been a number of recent incidences where DNOs have submitted requests for derogation many months and, in one instance, years after the DNO first became aware of the non compliance. We are concerned by these incidences, particularly as in some cases it would appear that the non-compliance affects a significant number of customers. It is not

¹ [Guidance on Licence derogation requests](#)

acceptable to expose customers to significant levels of risk for a prolonged period of time and without having a plan agreed with Ofgem in place to rectify the matter. We expect companies to provide a credible explanation for any significant delay between the time taken to identify a situation of non-compliance and the submission of a derogation request.

Way forward

We will continue to assess all derogation requests involving ER P2/6 against the criteria set out in our Guidance. This means that, amongst other things, we will appraise the impact of non-compliance upon customers (and other relevant criteria set out in our Guidance) and the steps being taken to mitigate these impacts until compliance is restored.

Our primary concern is to protect customers being exposed to unnecessary risks to the security of their energy supply. These risks may arise from a DNO's failure to identify situations of non-compliance in reasonable timescales; failure to develop appropriate plans to mitigate the risk of non-compliance; or failure to take the necessary steps to restore compliance within a reasonable period of time.

Where we feel the DNO has failed in any of these areas, then we may refuse the derogation request. In this event the company would have to face up to being in breach of its licence. It will then be for the company to provide us with a plan to restore compliance within an acceptable timescale. If this plan is not to our satisfaction then we may take enforcement action, including serving the company an enforcement order.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rachel Fletcher', written over a light blue rectangular background.

Rachel Fletcher
Partner, Distribution