

Paul Darby
Ofgem
9 Millbank
London
SW1P 3GE

30 June 2011

Dear Paul

Proposed Modifications to the 'Ring Fence' Conditions in Network Operator Licences

Thank you for the opportunity to respond to the above consultation. I am writing on behalf of Eastern Power Networks plc, London Power Networks plc, South Eastern Power Networks plc and UK Power Networks (IDNO) Ltd.

UK Power Networks continues to support the review of the ring fence obligations and we agree that the ring fencing mechanism is an important part of the regulatory approach to managing the risk that an energy network licensee could be affected by financial or operational distress. In general we are supportive of Ofgem's proposed modifications and we have no major objections. We are pleased to provide some additional comments to the proposed modifications in the appendix to this letter. We believe that these build on Ofgem's intent and make them easier to implement for the DNO community.

We would also like to take this opportunity to confirm that our licence drafting corrections have been fed into the DNO Licence Drafting Working Group led by Dr John France of CE Electric UK. We support the changes proposed by this group.

We hope that our comments above are of assistance. Please do not hesitate to contact me on 07875 112948 if you have any queries.

Yours sincerely

Keith Hutton
Head of Regulation, Risk and Compliance
UK Power Networks

Cc Paul Measday, Regulation Manager, UK Power Networks

Appendix – Detailed Feedback:

General Points:

UK Power Networks (IDNO) Ltd has a different set of licence conditions to that of other DNOs – it does not have conditions in the BA number series but has conditions 51 to 57 instead. Accordingly, clarity is required from Ofgem as to the proposed revised drafting of the licence conditions for UK Power Networks (IDNO) Ltd.

We believe that due to the time required to implement the licence conditions as drafted, a deferred effective/implementation date of the licence conditions is required.

Licence Condition Specific Points:

The following detailed points have been identified when reviewing the electricity distribution licence conditions, however many read across to the equivalent conditions of the other licensees.

Undertaking from the Ultimate Controller:

We continue to believe that the proportionate burden on licensees is for the undertaking from the ultimate controller to only be revisited when there is a change in the ultimate controller or another specified change to circumstances, rather than every 12 months.

Sufficiently Independent Directors (SIDs):

We have some concerns in this area:

- As drafted, paragraph 3(a)(ii) restricts the SIDs to not holding positions as non-executive directors in other parts of the group of companies to which the licensee belongs. This restriction is considered to be unnecessarily restrictive and could lead to a loss of expertise, consistency of approach and oversight that directors bring. We propose a change to the restriction in paragraph 3(a)(ii) such that this clause only applies to executive directors of affiliates but not non-executive directors of affiliates.
- The definition of a SID as presently drafted in paragraph 3(a)(i) excludes someone who had previously been a director of the licensee, even if that person would have otherwise met the independence criteria. In practical terms, this means an existing director who meets the criteria would be prevented from continuing in that role when the condition takes effect. This is covered off by a proposed change by the DNO Licence Drafting Working Group.
- Paragraph 5 includes the requirement for a statement in the terms of appointment to use best endeavours to remain sufficiently independent. We consider that it is unnecessary given a directors duties under the Companies Act etc, and the obligation on the DNO to maintain SIDs. We propose that this requirement is removed.
- In paragraph 1 Ofgem proposes that this condition has an effective date. When considering some of the feedback outlined above we feel it would be more appropriate to consider a post-dated implementation for this condition, i.e. to reword this section of the paragraph to “...at all times from X months after [the effective date]...”

Finally, in respect of SIDs, it is our interpretation that the intent of the closing unnumbered sub-paragraph to paragraph 3 (starting “However, the references to...” and ending “...or distribution licence.”) is such that a multi licensee such as UK Power Networks need not have two different SIDs for each licensee. For example, a four licensee company could have the same two SIDs for each licensee and not eight different SIDs. We would be grateful for positive confirmation of this as we do not support or see any justification for different SIDs for each licensee in the same group of companies.