

First informal licence drafting consultation – supporting information (Appendix 2)

Comments in relation to the Electricity Transmission and Gas Transportation Licences

We attach with our response to the consultation, a mark-up of comments and suggested changes to the proposed licence drafting for both NGET and NGGT which are aimed at improving the way the drafting works (both in relation to individual conditions and across the suite of conditions generally). These comments are largely of a technical, rather than a policy, nature.

Aside from these specific comments, we generally support the desire of the Authority to promote plain English in the drafting of licence conditions. However, we are concerned that the drafting as it stands does not always achieve that aim. In particular, we consider that there are a number of occasions where some simple language used in a licence condition may be insufficiently precise for licence drafting. We have noted these occasions in the mark-up of the proposed drafting and, where the meaning is clear, suggested that additional plain English wording should be used to clarify the position.

We note the intention to use capital letters to define terms in the drafting. While we have no objection to this approach (which reflects how defined terms were treated in the past), we consider that the drafting should include an interpretative rule to deal with those conditions that are defined in lower case in standard conditions and then used in upper case in the price control conditions. A simple rule inserted in the general definitions condition (GDC/ETC/GTC 19) stating that terms used in upper case in price control conditions shall bear the same meaning as those the same terms are defined lower case in standard conditions should suffice.

We note and support the use of drafting based on “reasonable endeavours” etc. as this approach uses clear, judicially-defined language. However, we are concerned that, in a number of places, the intensity of obligations which are “reasonable endeavours” in existing licence conditions has been made stronger by amending them to “best endeavours” in the proposed licence drafting without any justification being offered. We do not consider that any change to the intensity of obligations equating to those set out in existing conditions should be adopted unless the Authority can demonstrate that the existing intensity of obligation is too weak to ensure effective compliance by licensees.

We also note that, for convenience of consultation, there are a number of special conditions which will apply in a very similar form to more than one licensee. Given that price control conditions are special conditions and therefore unique to individual licensees, we consider that for the final drafting these conditions should be individualised to make them specific to the licensees to whom they relate. This also has implications for change processes for subsidiary documents issued pursuant to some of those conditions, and we have marked changes to the relevant licence conditions in the attached mark up.



ET Draft licence post GT Draft licence post
IP National Grid mark-IP National Grid mark-