

Mr P Darby  
OFGEM  
9 Millbank  
London  
SW1P 3GE

31 August 2012

Dear Paul

## **CHANGES TO RING FENCE CONDITIONS IN NETWORK OPERATOR LICENCES**

I refer to your recent consultation on the above subject.

We are pleased to see that you have taken into account a number of the comments we made in response to your previous consultation.

We will not repeat our observations on all the points we have made previously. It is clear that Ofgem has properly considered these points before reaching its decision.

We remain concerned that the drafting in relation to the independent directors would appear to exclude directors who have recently served on the boards of other group entities that are not licensees. We are not sure if you mean this disqualification to be drawn quite so widely but we note that you are willing to continue to discuss the drafting of this condition with companies that have concerns. We also note that you have given yourself a wide power to consent to appropriate persons being independent directors even though they may not satisfy the strict criteria of the condition.

On smaller drafting matters, Tony Sharp sent a list of drafting points to you on 15 June 2012 and we note that you have taken them all on board except the following two points:

- In the fourth line of subparagraph 30.4(a) and in the fifth line of subparagraph 30.4(b), a comma needs to be added after 'consents' in order to maintain consistency with Ofgem's adoption of the use of the so-called 'Oxford' comma elsewhere in the licence. (We do not think you intend to revert back to the previous non-Oxford comma style of drafting as some similar observations have been acted upon.)
- In the second line of paragraph 1 and in the second and fourth lines of paragraph 2 of the undertakings, 'which' should be changed to 'that' as in each case the pronoun introduces a defining, rather than a non-defining, clause.

We are not sure if you have overlooked these two points made by Tony or if you have decided that they do not have merit.

### **NORTHERN POWERGRID HOLDINGS COMPANY**

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In addition, we have some doubts about the wording of the proposed new paragraph 26.5 of SLC26. In stipulating that, in any Notice given by the licensee under paragraph 26.4(b)(i), the Authority shall not unreasonably withhold its consent to the transaction in question, we wonder if this wording incorrectly ignores Notices given under paragraph 26.4(a)(i). An alternative concern is that if it does not, it may unintentionally imply that the Authority *may* withhold its consent unreasonably in the case of Notices under paragraph 26.4(a)(i). We are sure this is not intended but such things can happen when one particular item is singled out for special mention.

We look forward to our continuing dialogue with you on these modifications. Should you have any questions please let me or Tony Sharp know.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John France', with a stylized, cursive script.

John France  
Regulation Director