

Attachment - detailed comments from SP Energy Networks on ring fence draft licence modifications, issued in July 2012

1. Availability of Resources (Electricity Transmission Standard Condition B7, Electricity Distribution Standard Condition 30)

Certificates of licence compliance (paragraphs 30.6, 30.8). As drafted, the licensee must provide a certificate both in July each year and also when a dividend is proposed, regardless of the elapsed time between the two events. We think that a minimum period of 3 months should apply between certificates, as this would help to reduce the resource requirements on directors in managing the range of certificates required to be submitted.

In this context we also note the existing provision in paragraph 30.11 for no fresh certificate to be required if a dividend is paid within 6 months of a certificate being given in relation to a declaration or recommendation of the dividend concerned. Also relevant in our view, is the ongoing requirement for the licensee to notify the Authority of any circumstances causing the licensee to no longer have the reasonable expectation expressed in the latest certificate(s) of availability of resources.

2. Undertaking from Ultimate Controller (Electricity Transmission Standard Condition B8, Electricity Distribution Standard Condition 31)

Timing for required undertaking (paragraph 1). There should be an amendment to this paragraph to take account of the new form of deed proposed for an Ultimate Controller to provide to the licensee. We suggest something along the following lines at the end of this paragraph. "Where the Authority has issued a direction as to the form of undertaking required, the licensee shall obtain the undertaking within [21] days of the direction being issued."

As regards the draft form of undertaking itself (Appendix 9), we think that it should exclude information that is not available to the Covenantor or a person under its control, or information that it is prohibited from disclosing.

To take account of this point, we think that paragraph 1 of the Undertaking should be amended along the following lines (suggested changes in italics):

'The Covenantor hereby undertakes in favour of the Licensee:

(a) To give the Licensee, and to procure that any person (including, without limitation, a corporate body) which is a subsidiary of, or controlled by, the Covenantor (other than the Licensee and any of its subsidiaries) will, *subject to sub-paragraph (b) below*, give to the Licensee, in such manner and at such times as the Licensee may require, all such information, as may be necessary to enable the Licensee to furnish to the

Authority such information and reports as the Authority may reasonably require or as may be necessary for the purpose of performing: ...

(b) The Covenantor and any person which is a subsidiary of, or controlled by, the Covenantor shall not be required by sub-paragraph (a) to provide any information which is either not in its possession, custody or control or, which, under the general law, it is prohibited from disclosing.'

This may require a corresponding change to the recital, paragraph C, on page 126 of the paper. We note that there is a misspelling of 'covenantor' in paragraph C(i) of the recital.

3. Indebtedness condition – (Electricity Transmission Standard Condition B9, Electricity Distribution Standard Condition 41)

Cash lock-up (Part C): In paragraph 41.10, we note that by virtue of the cross-reference to paragraph 30.7(a), cash lock-up appears to apply where a company issues a type 1 certificate of financial availability of resources and subsequently issues a type 2 certificate (i.e. the licensee no longer holds the reasonable expectations set out in a previous type 1 certificate). On this interpretation, this may encourage companies to veer towards issuing a type 2 certificate 'just in case'.

Cross-Default prohibition (paragraph 41.1). This paragraph reads as an absolute prohibition of cross-default obligations. We think that there should be a clause along the lines of "... subject to paragraph 41.14" in order to take account of possible arrangements that are compliant with part A (referred to in paragraph 41.14).

4. Sufficiently Independent Directors (new Electricity Transmission Standard Condition B22, new Electricity Distribution Standard Condition 43A)

Requirement for Sufficiently Independent Directors ('SIDs') to be in place at all times (Paragraph 43A.1): This provision conflicts with paragraph 43A.11 which requires the licensee to replace a departing SID where this is required to bring the numbers up to at least two *as soon as reasonably practicable*. We would prefer it if paragraph 43A.1 included the phrase "subject to paragraph 43A.11" in the interests of clarity.

Paragraph 7 of the condition requires SIDs to be appointed, or at least named to the Authority, within 14 days of the condition coming into force, which conflicts with the provision in paragraph 1 of SIDS being in place by 1 April 2014 (or 12 months after the condition comes into force if later). All network companies involved will need to ensure that SIDs have appropriate experience and knowledge to fulfill the role, and this is expected to take a significant amount of time. The provision ought to apply within 14 days of the appointment of the SID concerned.

We also note that a SID must not "represent the interests of any particular shareholder or group of shareholders of the licensee"

(paragraph 43A.5(b)). This may need some editing to take account of licensees wholly owned within a group (i.e. with only one shareholder).