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23 November 2012

Dear Lesley

**Consultation on illustrative licence modifications – code governance review phase 2 proposals**

Thank you for the opportunity to comment on the above matter: I am writing on behalf of each of Northern Powergrid Holdings Company and its two licensed electricity distribution businesses, Northern Powergrid (Northeast) Ltd and Northern Powergrid (Yorkshire) plc.

We agree with the changes proposed by Ofgem in its 'Code Governance Review (Phase 2) Proposals' document and with the associated proposed timescales. Our only substantive comments therefore relate to the drafting of the necessary modifications to standard licence conditions 21, 22 and 23 of the electricity distribution licence. These comments are set out in the attachment to this letter.

I hope that you will find this input helpful.

Yours sincerely,

A handwritten signature in cursive script that reads "Tony Sharp".

**TONY SHARP**  
Regulation Manager

**Northern Powergrid comments on the proposed modification of standard conditions 21, 22 and 23 of the electricity distribution licence, as set out in Ofgem's 28 September 2012 letter relating to the consultation published the same day on its code governance review (phase 2) proposals**

Standard Condition 21

1. The adopted style, both in the unmodified parts of this condition and in the licence as a whole, is to use 'must' rather than 'shall'. Hence the word 'shall' needs to be changed to 'must' in the following places:
  - a. the first line of paragraph 21.7A;
  - b. the first line of paragraph 21.7B;
  - c. the third line of subparagraph 21.9(a);
  - d. the first line of paragraph 21.11A;
  - e. the second line of subparagraph 21.11A(c);
  - f. subparagraph (a) of the paragraph currently erroneously numbered as 23.6;
  - g. the second line of subparagraph (b) of the paragraph currently erroneously numbered as 23.6;
  - h. the second line of paragraph 21.15; and
  - i. the third line of the definition of "directions".
2. A comma needs to be added after "(the "panel")" in the first line of subparagraph 21.7A(a).
3. As it has unfortunately been the adopted style in the licence, since the major review of its contents that concluded in 2008, to use the so-called 'Oxford' comma, consistency both with the unmodified parts of this condition and with the licence as a whole therefore requires that a comma be inserted after 'duties' in the third line of subparagraph 21.7A(b) and after 'review' in the first line of subparagraph 21.7A(b)(i);
4. In subparagraph 21.7A(b)(iii), a comma should be added after 'with' in the first line and the comma after 'in' in the second line should be deleted. In addition, consideration should be given as to whether 'Principles' in the second line should retain its initial capital letter, as it does not appear to be a defined term.
5. Throughout the condition, the terms 'small participant', 'significant code review', 'significant code review phase' and 'directions' appear with lower-case initial capital letters, but they are all defined at the end of the condition, and the convention in the licence is that defined terms are identified as such in the licence text by the use of initial capital letters.
6. The left-hand alignment of the text in the condition is inconsistent.
7. In the first line of subparagraph 21.11A(a), the word 'paragraph' should be inserted immediately before '21.9(a)'.
8. At the beginning of subparagraph 21.11A(c), 'that,' should be inserted before 'where' and, in that same line, a comma should be inserted after 'phase'.
9. In the first line of subparagraph 21.11A(c)(i)(1), the comma after 'of' should be deleted.

10. In the first line of paragraph 23.6, 'twenty' and 'eight' should be hyphenated.
11. The paragraph between paragraph 21.11A and paragraph 21.12 has been erroneously numbered as 23.6.
12. In the erroneously numbered paragraph 23.6, a comma should be inserted after the opening word 'If'. In this same paragraph, once in the first line of subparagraph 23.6(b) and twice in the first line of subparagraph 23.6(c), as also in the second line of the words at the end of paragraph 23.6, 'sub-paragraph' should be changed to 'subparagraph'.
13. In the bottom line of the definition of "Code of Practice", 're-published' should be changed to 'republished'.
14. In the first line of the definition of "directions":
  - a. the word 'of' needs to be added after 'context';
  - b. the word 'paragraph' needs to be changed to 'subparagraph'; and
  - c. the erroneous reference to '23.6(a)' needs to be corrected.
15. In the first line of the definition of "significant code review", 'which' should be changed to 'that' as it introduces a defining, rather than a non-defining, clause.
16. In bullet point (ii) in the definition of "significant code review", the word 'the' should be inserted between 'of' and 'significant'.
17. In the definition of "small participant", the word 'means' should be moved across to appear with the definition wording.

## Standard Condition 22

1. As in the case of standard condition 21, the word 'shall' needs to be changed to 'must' in the following places:
  - a. the first line of paragraph 22.9C;
  - b. the first line and in the second line of paragraph 22.9D;
  - c. the first line of the first bullet and the second line of the second bullet in subparagraph 22.9E;
  - d. the first line of paragraph 22.9F;
  - e. the first line of paragraph 22.9G;
  - f. the first line of paragraph 22.9H, and also in the second line of bullet point (a) and in the fourth line of bullet point (b) in that same paragraph;
  - g. the second line of the definition of "directions"; and
  - h. the third line of subparagraph A3(eA) in Appendix 1.
2. As in the case of standard condition 21, consistency both with the unmodified parts of this condition and with the licence as a whole requires that so-called 'Oxford' commas be inserted after 'maintenance' in the first line of subparagraph 22.2(a), after 'veto' in the first line of paragraph 22.17 and after 'review' in the first line of subparagraph A3(eA)(i) of Appendix 1;

3. 'which' should be changed to 'that' (as it introduces a defining, rather than a non-defining, clause) in the following places:
  - a. in the third line of subparagraph 22.5(a);
  - b. in the third line of subparagraph 22.5(f); and
  - c. in the first line of the definition of "significant code review".
4. The '(e)' designating subparagraph 22.5(e) looks to be in a different tpestyle from that of the letters identifying the subparagraphs immediately above it.
5. Throughout the condition, the terms 'self-governance criteria', 'self-governance statement', 'small participant', 'significant code review', 'significant code review phase' and 'directions' appear with lower-case initial capital letters, but they are all defined at the end of the condition, and the convention in the licence is that defined terms are identified as such in the licence text by the use of initial capital letters.
6. In paragraph 22.9B, the two instances of 'self governance' should be hyphenated. The same applies to the following instances of 'self governance':
  - a. in the first/second lines of paragraph 22.9F;
  - b. in the first/second and in the third lines of subparagraph 22.9F(a)(i);
  - c. in each of the first, second and third lines of subparagraph 22.9F(a)(ii); and
  - d. in the second line of bullet point (a) in the definition of 'self-governance statement' (which itself has the hyphen correctly in place).
7. Both the identification and left-hand alignment of subclauses within the conditions are inconsistent and in some cases have clearly gone awry. The adopted convention as revealed in Parts A and B appears to be to use lower-case letters in brackets for the first degree of subordination and Roman numerals in brackets for the next degree of subordination. However:
  - a. within paragraph 22.9C there is only one degree of subordination, but Roman numerals have been used (and incorrect Roman numerals at that – namely (iii) and (iv) for just two items);
  - b. within paragraph 22.9D Roman numerals have again been used for the first degree of subordination, and unbracketed Arabic numerals for the second degree; and
  - c. within paragraph 22.9E, lower-case letters have correctly been used for the first degree of subordination, but incorrect ones – namely (d), (e) and (f) for just three items.
8. In paragraph 22.9D commas should be inserted after 'that' in the first line and after 'phase' in the second line.
9. There are frequent references in the condition to 'the panel', but without any indication as to what 'the panel' is. These references appear in subparagraph 22.5(e)(i); in the first line of subparagraph 22.5(f); in the second line of paragraph 22.9D; in the first line of subparagraph 22.9D(iii)<sup>2</sup> (*note this incorrect numbering has been pointed out above*); in the first and second lines of subparagraph 22.9F(a)(i); in the first and second lines of subparagraph 22.9F(b); in the third line of paragraph 22.13B; in the definition of "self-governance statement" (twice); and in the third bullet in paragraph A3(eA)(iv). Late on in the condition, there are references to 'the DCUSA Panel' (in paragraph 22.13); 'the DCUSA panel' (in the definition of "self-governance

statement”); and ‘a panel (“the DCUSA Panel”)’ in paragraph A3(d) of Appendix 1 (with subsequent references to ‘the DCUSA Panel’ in paragraphs A3(e), A4(b) and A4(c)). If ‘the panel’ is the same as ‘a panel (“the DCUSA Panel”)', then the terminology should be consistent and the definition should appear at the first instance of ‘the panel’ in paragraph 22.5(e)(i) rather than in the Appendix to the condition.

10. In the second line of subparagraph 22.9D(iii)2 (as currently numbered), the comma after the first instance of ‘of’ should be deleted.
11. In the first line of paragraph 22.9E, a comma should be inserted after ‘If’, to commence the parenthesizing that is concluded with the comma after ‘conclusions’ in the next line.
12. ‘sub-paragraph’ should be changed to ‘subparagraph’ in the following places:
  - a. in the first line of subparagraph 22.9E(e) (as currently erroneously numbered);
  - b. twice in the first line of subparagraph 22.9E(f) (as currently erroneously numbered); and
  - c. in the second line of subparagraph A4(c) of Appendix 1.
13. In the third line of subparagraph 22.9F(a)(i), commas should be inserted after ‘proposal’ and after ‘withdrawn’.
14. At the very end of subparagraph 22.9F(c), a semicolon should be inserted after ‘22.12A(a)’.
15. ‘applicable DCUSA objectives’ should be changed to ‘Applicable DCUSA Objectives’ in the following places:
  - a. the final line of subparagraph 22.9F(d);
  - b. the second line of subparagraph 22.10(c);
  - c. the second line of subparagraph 22.9G(a)(ii)(1); and
  - d. the second/third lines of subparagraph 22.9G(a)(ii)(2).
16. In the third line of subparagraph 22.9F(e)(ii), an apostrophe should be added at the end of the word ‘parties’.
17. Also in the third line of subparagraph 22.9F(e)(ii), the word ‘paragraphs’ should be inserted immediately after the word ‘to’.
18. In the first line of subparagraph 22.9G(b), the words ‘and neither does it’ would read rather better than ‘nor does the appeal’.
19. In subparagraph 22.9H(b), the word ‘paragraphs’ should be inserted:
  - a. before ‘22.12A(a) and 22.13’ in the first line;
  - b. before ‘22.12A(a) and 22.13’ in the fourth line; and
  - c. before ‘22.12A(b) and 22.13’ in the fifth line
20. In the third line of subparagraph 22.12A(a), the word ‘paragraph’ should be inserted between ‘with’ and ‘22.9F’.
21. In the definition of “Code of Practice”:
  - a. the word ‘and’ should be deleted from the end of bullet (a); and

- b. 're-published' should be changed to 'republished' in bullet (c).
22. In the definition of "directions":
- a. the word 'of' should be inserted between 'context' and 'paragraph' in the first line;
  - b. the word 'paragraph' should be changed to 'subparagraph' in the first line;
  - c. 'direction(s)' should be changed to 'directions' in the first line – the cited context of paragraph 22.9E(a) is a plural one, so the singular option should be removed here; and
  - d. A comma should be inserted after 'conclusions' in the second line.
23. In the definition of "self-governance criteria", it is incorrect to define 'criteria' as 'a proposal' – the two terms have nothing at all in common so far as meaning is concerned. The definition should, to be correct, run along the lines of '... means circumstances that must be applicable in order for a modification proposal to follow the self-governance route. These circumstances are that the modification, if implemented: ....'
24. In the definition of "self-governance statement", something along the lines of 'setting out' needs to be inserted at the very beginning of bullet (b).
25. In the definition of "significant code review":
- a. in bullet (a) the desire to cater for both singular and plural options (as manifested in the term 'code(s)') needs to be reflected also in the wording earlier on, since the phrase 'in conjunction with other industry code' would not make sense. This could be achieved by inserting 'any' before 'other';
  - b. in bullet (b), the word 'Electricity' should be deleted in the second line, since 'the Act' is a defined term in standard condition 1 of the licence;
  - c. also in bullet (b), the word 'notice' should be changed to 'Notice' in the third line, as this is a defined term in standard condition 1 of the licence; and
  - d. in bullet (b)(ii), the word 'the' should be inserted between 'of' and 'significant'.
26. The insertion of the new paragraph 22.17 has rendered the wording of paragraph 22.16 no longer correct (ie the Appendix is no longer immediately below). This can be remedied by moving current paragraph 22.16 to appear after the new paragraph 22.17 and then swapping the paragraph numbers.
27. In the second line of subparagraph A3(eA)(iii) in Appendix 1, consideration should be given as to whether 'Principles' should retain its initial capital letter, as it does not appear to be a defined term.
28. In the second line of the third bullet in subparagraph A3(eA)(iv) in Appendix 1, 'workgroup' should be changed to 'working-group'.
29. It is unclear why the words 'Not used' should be inserted against subparagraph A3(f) in Appendix 1 – if redundant, the subparagraph can simply be removed, especially as its removal would not necessitate the relettering of any other subparagraphs
30. In the third line of paragraph A3A of Appendix 1, ) the desire to cater for both singular and plural options (as manifested in the term 'direction(s)') needs to be reflected also in the presentation of

the article before this term – ie brackets should be placed around the word ‘a’ immediately before ‘direction(s)’ wording 21.11A(c), ‘that,’ should be inserted before ‘where’ and, in that same line, a comma should be inserted after ‘phase’.

31. In the first line of subparagraph A4(a) of Appendix 1, the missing initial capital letter ‘P’ needs to be added in front of ‘rovision’.

### Standard Condition 23

1. As in the case of standard conditions 21 and 22, the word ‘shall’ needs to be changed to ‘must’ in the following places:
  - a. the first line of paragraph 23.5;
  - b. the second line of subparagraph 23.5(h) (as currently erroneously numbered);
  - c. the second line of subparagraph 23.5(l) (as currently erroneously numbered);
  - d. the currently erroneously numbered subparagraph 23.6(g);
  - e. the second line of the currently erroneously numbered subparagraph 23.6(h);
  - f. the first line of paragraph 23.7;
  - g. the first line of paragraph 23.10;
  - h. the second line of paragraph 23.11; and
  - i. the second line of the definition of “directions”.
2. As in the case of standard conditions 21 and 22, consistency both with the unmodified parts of this condition and with the licence as a whole requires that so-called ‘Oxford’ commas be inserted after ‘maintenance’ and after ‘coordinated’ in the first line of subparagraph 23.3A(a); after ‘(b)’ in the first line of subparagraph 23.3A(d); and after ‘veto’ in the first line of paragraph 23.11.
3. ‘which’ should be changed to ‘that’ (as it introduces a defining, rather than a non-defining, clause) in the following places:
  - a. the second line of subparagraph 23.5(d) (as currently erroneously numbered);
  - b. the third line of subparagraph 23.5(f) (as currently erroneously numbered);
  - c. the first line of subparagraph 23.5(g) (as currently erroneously numbered); and
  - d. the first line of the definition of “significant code review”.
4. Throughout the condition, the terms ‘small participant’, ‘significant code review’, ‘significant code review phase’ and ‘directions’ appear with lower-case initial capital letters, but they are all defined at the end of the condition, and the convention in the licence is that defined terms are identified as such in the licence text by the use of initial capital letters.
5. In a number of instances the identification of subparagraphs has gone awry, as follows:
  - a. in paragraph 23.5 the lettering runs from (d) to (l), instead of from (a) to (i);
  - b. in the currently erroneously numbered subparagraph 23.5(j), the bullets are labelled (v) and (vi) instead of (i) and (ii);
  - c. in the currently erroneously numbered subparagraph 23.5(k), the bullets are labelled a and b instead of (i) and (ii);
  - d. in paragraph 23.6, the lettering runs from (g) to (i) instead of from (a) to (c);

- e. in subparagraph 23.7(b), the bullets are labelled from (v) to (viii) instead of from (i) to (iv); and
  - f. in subparagraph 23.8(a)(ii), the further subordinate numbering below that of bracketed Roman numerals ought to be provided in something other than unbracketed Roman numerals. Bracketed Arabic numerals have been used elsewhere for this degree of subordination.
6. Given that the term 'the Master Registration Agreement' is officially shortened to 'the MRA' in paragraph 23.1, all subsequent references to 'the Master Registration Agreement' in this condition should be changed to 'the MRA'.
  7. In order to achieve consistency both within this condition and with the phraseology used in standard condition 22, the references to 'the applicable objectives' (in the fourth line of paragraph 23.1); 'the applicable objectives of the Master Registration Agreement' (in the fourth line of subparagraph 23.3(f) and in the first line of paragraph 23.3A); 'the applicable Master Registration Agreement objectives' (in the fourth line of the currently erroneously numbered subparagraph 23.5(h)); and 'the relevant MRA objectives' (in the second line of each of the two bullets in subparagraph 23.8(a)(ii)) should all be changed to 'the Applicable MRA Objectives'.
  8. 'sub-paragraph' should be changed to 'subparagraph' in the following places:
    - a. the first line of subparagraph 23.3A(d);
    - b. the first line of subparagraph 23.6(h) (as currently erroneously numbered);
    - c. twice in the first line of subparagraph 23.6(i) (as currently erroneously numbered);
    - d. the final line of paragraph 23.6; and
    - e. the first line of paragraph 23.8
  9. In the second line of subparagraph 23.3A(a), 'change of supplier process' should be changed to 'change-of-supplier process'.
  10. In the first line of subparagraph 23.3A(b), the two instances of 'between' should be changed to 'amongst', since use of the word 'between' is only applicable where just two parties are involved.
  11. In the first line of subparagraph 23.3A(e), the word 'Electricity' should be deleted – 'Regulation' is a defined term in standard condition 1 of the licence (compare with the first line in paragraph 23.4).
  12. Consideration should be given to whether paragraphs 23.3A(e) and 23.4 deliver unnecessary duplication.
  13. In the first line of the second bullet within the currently erroneously numbered subparagraph 23.5(k)a, the comma after the first instance of 'of' should be deleted.
  14. In the first line of the currently erroneously numbered subparagraph 23.5(l), a comma should be inserted after 'that', to commence the parenthesizing that is concluded with the comma after '(d)' in the next line.



15. In the first line of paragraph 23.6, a comma should be inserted after 'If', to commence the parenthesizing that is concluded with the comma after 'conclusions' in the next line.
16. Also in the first line of paragraph 23.6, 'twenty' and 'eight' should be hyphenated.
17. In the second line of the currently erroneously numbered subparagraph 23.7(b)(vii) and in the second line of paragraph 23.10, consideration should be given as to whether 'Principles' should retain its initial capital letter, as it does not appear to be a defined term.
18. In the first line of subparagraph 23.8(b), the words 'and neither does it' would read rather better than 'nor does the appeal'.
19. In the definition of "Code of Practice":
  - a. the word 'and' should be deleted from the end of bullet (a); and
  - b. 're-published' should be changed to 'republished' in bullet (c).
20. In the definition of "directions":
  - a. the word 'of' should be inserted between 'context' and 'paragraph' in the first line;
  - b. the word 'paragraph' in the first line should be changed to 'subparagraph';
  - c. 'direction(s)' should be changed to 'directions' in the first line – the cited context of paragraph 23.6(a) is a plural one, so the singular option should be removed here; and
  - d. a comma should be inserted after 'conclusions' in the second line.
21. In the definition of "significant code review":
  - a. in bullet (a) the desire to cater for both singular and plural options (as manifested in the term 'code(s)') needs to be reflected also in the wording earlier on, since the phrase 'in conjunction with other industry code' would not make sense. This could be achieved by inserting 'any' before 'other';
  - b. in bullet (b), the word 'Electricity' should be deleted in the second line, since 'the Act' is a defined term in standard condition 1 of the licence;
  - c. also in bullet (b), the word 'notice' should be changed to 'Notice' in the third line, as this is a defined term in standard condition 1 of the licence; and
  - d. in bullet (b)(ii), the word 'the' should be inserted between 'of' and 'significant'.