

By e-mail

Paul Darby
Senior Financial Manager
OFGEM
9 Millbank
London
SW1P 3GE

Your ref

Our Ref

Date

30 November 2012

Contact / Extension

Jeremy Blackford
0151 609 2346

Dear Paul

Updated Proposals for Changes to Ring Fence Conditions and their Impacts

I am writing in response to the consultation paper issued on 11 October 2012.

We welcome a number of the updated proposals, including putting back by a year the first date at which the new certificates under the Availability of Resources condition will be required.

With regard to the proposals in relation to the new category of "Associate", we note that this will mean that there is potentially a narrower base to draw on for candidates for Sufficiently Independent Director with the requisite skills and knowledge to carry out that role. We are also not fully clear as to the reasons why the previous concept of "Affiliate or Related Undertaking" is no longer considered to be consistent with a reasonable and proportionate approach to ring fencing. We have some detailed points on the definition of Associate that are set out in the attachment.

I hope that this is helpful but please contact me if there are any queries.

Yours sincerely,



Jeremy Blackford
Regulation and Commercial
SP Energy Networks

Att.

New Alderston House, Dove Wynd, Strathclyde Business Park, Bellshill, ML4 3FF

Telephone: 01698 413000, Fax: 01698 413053

www.scottishpower.com

Attachment – detailed comments from SP Energy Networks

1, Provisions for certificates in relation to dividends (e.g. Electricity Distribution Licence Condition 30)

We welcome the provision in amended paragraph 30.11 whereby a fresh certificate prior to recommendation/declaration of a dividend is not required in certain cases where a “1C” certificate has been provided within the previous 3 months under the annual certification requirement. However, this appears to overwrite the existing paragraph 30.11 whereby a new certificate is not required if a dividend is paid within 6 months of a certificate being provided in relation to the recommendation or declaration of a dividend. We assume that this was not the intention, but would appreciate clarification.

2. Definition of ‘associate’ (e.g. Electricity Distribution Condition 43A, Sufficiently Independent Directors)

(a) Definition of Associate – Participating Owner

The definition given in chapter 4 of the consultation paper refers to two cases where there is a Participating Owner of the licensee

- (a) Where a person holds a participating interest in the licensee
- (b) [paraphrasing] where there is a participating interest in an entity that itself holds a participating interest in the licensee.

It is not clear from the second limb of the definition whether ‘Participating Owner’ in relation to the licensee applies at each successive level of holding company within a group where there is a chain ending with the licensee (i.e. that A is a Participating Owner of B if there is an unbroken chain of Participating Owners ending with the immediate holding company of B).

If that is the intention then we think that limb (b) of the definition of Participating Owner should read along the following lines

... there is an unbroken chain of Participating Interest between the person and that other person. For example, A is a Participating Owner of D if it has a Participating Interest in B which has an Participating Interest in C which in turn has a Participating Interest in D.

(b) Definition of Associate – Participating Interest

We think that the definition should be on the face of the licence in order to assist in interpretation of the licence, as far as possible without the need to consult separate legislation. Our suggested drafting is based on section 421A of the FSMA 2000 in marked up form.

⁺Meaning of “participating interest”

421A.—(1) In section 421 a “participating interest” means an interest held by an undertaking in the shares of another undertaking which it holds on a long-term basis for the purpose of securing a contribution to its activities by the exercise of control or influence arising from or related to that interest.

(2) A holding of 20% or more of the shares of an undertaking is presumed to be a participating interest unless the contrary is shown.

(3) The reference in subsection (1) to an interest in shares includes—

- (a) an interest which is convertible into an interest in shares, and
- (b) an option to acquire shares or any such interest;

and an interest or option falls within paragraph (a) or (b) notwithstanding that the shares to which it relates are, until the conversion or the exercise of the option, unissued.

(4) For the purposes of this section an interest held on behalf of an undertaking shall be treated as held by it.

(5) In ~~this section~~ **paragraph [x] above**, “undertaking” has the same meaning as in the Companies Acts (see section 1161(1) of the Companies Act 2006).”.

3. Other points

We welcome the changes referred to in paragraphs 2.7 in relation to the starting dates for annual certificates, and the removal of “at all times” in the context of the maintenance of the intervention plan. We also welcome the proposed change to the draft direction in relation to ultimate controller undertakings whereby the new form of undertaking is not needed except where a new requirement for an undertaking arises after 1 April 2013. However, we note that these are included in the updated licence drafting included with the paper.