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29 April 2014

Dear Tom

RIIO-ED1: Notices under Section 11A(2) of the Electricity Act 1989

This letter and the attachment to it constitute the response of Northern Powergrid to the notices published by the Gas and Electricity Markets Authority under section 11A(2) of the Electricity Act 1989 on 28 March 2014 relating to proposed modifications to the standard conditions of electricity distribution licences and to proposed modifications to the special (charge restriction) conditions of the electricity distribution licences held by licensees within the WPD group.

Northern Powergrid has taken an active part in the discussions at the Licence Drafting Working Group (LDWG) and fully supports the submission of even date made on behalf of the ten distribution services providers that were not fast-tracked in the RIIO-ED1 process. In particular, we commend to Ofgem the minor revisions to the drafting proposed by the licensees in that submission.

We wish also to emphasise the concern expressed by the slow-track licensees in that submission that formal making of the proposed modifications to the standard conditions of the licence ahead of completion of the final settlements for slow-track licensees would effectively deprive the slow-track licensees of meaningful appeal rights. In this context we would point out that some of the proposed new standard conditions in particular are clearly there to facilitate a 'price control decision' and, as such, will affect us regardless of what happens in respect of our own special conditions.

The attachment to this letter contains some comments of our own on the licence drafting that time did not permit us to raise with other DNOs. Some of these relate to minor errors in the redrafting for RIIO-ED1 that could readily be dealt with by Ofgem within the ambit of the statutory consultation, and some of them relate to longstanding errors in the drafting of the licence that could usefully be dealt with now (if Ofgem has time to consider them) or addressed between now and finalisation of the modification of slow-track special conditions.

Our purpose in commenting on the drafting of the licence conditions, both here and in the joint submission of the slow-track licensees, is to achieve a correct representation of what we

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understand to be Ofgem's policy intent. As currently drafted some of the provisions do not properly capture that intent and indeed some would be void for uncertainty. Therefore, if there is anything in our comments that is unclear, we would urge Ofgem to contact us and we shall be happy to explain.

In the meantime, we look forward to continuing to work with Ofgem to bring all the RIIO-ED1 licence modifications to a satisfactory conclusion.

Yours sincerely

A handwritten signature in black ink that reads "John France". The signature is written in a cursive style with a large initial 'J'.

John France
Regulation Director

cc Jane Jellis

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REFERENCE	COMMENT
SLC13C	We observe that the equipment standards referenced in the condition have yet to be agreed, and that such a list may in any event be more appropriately included in a document such as the Distribution Code than in a commercial agreement such as the DCUSA.
SLC13C.7	Does this open up the opportunity for someone to argue that they don’t have to pay until we have used up all the load-related reinforcement allowance in the settlement? That is not intended. The provision is not necessary anyway.
SLC13C.8	The word ‘only’ is misplaced and should follow ‘Costs’.
SLC14	We observe that SLC14 will need to be changed to reflect the DCP178 change (if made), as it would be absurd to have an obligation to provide three months’ notice of indicatives when actual notification has to be given 18 months in advance.
SLC14.20(c)	Is there perhaps a conflict with new SLC13C here?
SLC14.26	The definition of Connection Activities uses Customer when it should be an owner- or occupier-based test.
SLC14. A1(b)	Use of the defined term Distribution Losses puts things into adjustment factors other than real electrical losses. Is that intended?
SLC38	This condition is not part of the current consultation, but we observe that it will need to be modified to make it consistent with SLC14, as it currently obliges the licensee to amend its use of system charges during the regulatory year.
SLC44.7(a)	We believe that “an income statement and a statement of comprehensive income” should be “a statement of profit or loss and a statement of profit or loss and other comprehensive income”.
SLC44.17	Part (b) of the definition of Distribution Business Activities is defective because of circularity with (c).
SLC46	We remain of the view that this condition at best only implicitly establishes an obligation for the licensee to provide the Specified Information (by requiring the licensee in paragraph 46.3 to have and maintain systems, processes and procedures to enable it to provide such information), and that it is (quite properly) outside the scope of the RIGs (as set out in paragraph 46.5) to impose this obligation.
SLC49.3	It seems odd that when operating the system we have to have regard to how we operate it under normal operating conditions.
SLC50.7	The definition of “Business Plan Reporting Guidance” may have gone awry. We think the words “or modified” should be deleted and the reference to “Part B” should be changed to “Part A”. In the definition of “RIIO-ED1 Business Plan”, to complement the proposed change of “WPD Licensees” to “WPD Licensee” the word “the” immediately before those words should be changed to “a”.
SLC51.22	There is a logic problem in that the definition of Network Asset Secondary Deliverables is limited to those that are already in the Workbook, so it is impossible to have any that are better than or equivalent to these.
CRC1B.7	The term “Margin” is included in the list of items that are stated to be defined in SLC1 of the standard conditions: however, “Margin” is defined in SLC14, not in SLC1.

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CRC1B.7	The definition of Gross Load Related Expenditure refers to something called ‘cost areas’ – does it mean ‘costs’?
CRC1B.7	The definition of High Value Project Costs should say to whom the outputs, needs case and statement of costs should be provided.
CRC1B.7	The definition of Load-Related Expenditure wrongly presumes that all DG is low carbon (implicit in the use of the word ‘other’). In addition, the word “onto” should be changed to “on”.
CRC1B.7	The definition of Price Control Period includes unnecessary words (‘of eight Regulatory Years’).
CRC1B.7	The definition of Returned Royalty Income does not appear in the list in Part C (and, in any case, Part C does not give meanings).
CRC1B.7	The definition of Specific Customer Funded Reinforcement wrongly assumes that connection charges are paid by Customers. They are paid by owners or occupiers.
CRC1B.7	The definition of Unregulated Margin may be misplaced as it appears in SLC14 as well.
CRC2A.24	The levels of PR_i in 2A.18 have doubled, as have the limits on over-recovery in 2A.22, yet the levels of under-recovery have remained unchanged at 90% - should this be changed to 80%?
CRC2B.34	The provision in (b) of the definition of Ring Fence Costs is unnecessary.
CRC2B.34	The definition of Smart Meter Information Technology Costs is such that the only costs that a licensee incurs that qualify are those incurred by the licensee to enable it to operate and develop its network more effectively. IT costs the licensee incurs to allow others to do anything or to meet an obligation of the licensee do not fall within this term even if they are necessary to facilitate smart metering. We don’t think this is intended.
CRC2B	There is inconsistent font usage for the figures in the tables at Appendices 4 and 5, compared with the font used in other tables.
CRC2C.2	Should this mirror 2D.2 and say whether upwards or downwards?
CRC2C.20	The parentheses in the second formula are unbalanced – we would suggest removing the second-left bracket.
CRC2C.29	In the definition of Complaint, surely the words ‘Distribution System’ are incorrect or in the wrong place. The wording has the effect of excluding from Complaint any complaint that is made to the licensee that is not a complaint ‘in respect of the Distribution System’. Surely we should be trying to capture here the complaints about the conduct of the Distribution Business whether or not they are system-related.
CRC2C.29	The definition of Customer Satisfaction Survey is tied to Customers (defined term), whereas connection aspects of satisfaction should encompass owners/occupiers rather than Customers.
CRC2C.29	The definition of Energy Ombudsman Findings Against the Licensee implies that the Ombudsman can require a licensee to change its processes. Is that correct?
CRC2C.29	There is inconsistent use of brackets around ‘or contractors’ and the word order in relation to ‘agents’ in (a) (b) and (c) of the Specified Lines definition and in the definition of Unsuccessful Calls.
CRC2D.15 (b)	This introduces the term QBt. We don’t understand why QAt (which is also part of Principal Formula 2) gets no introduction.
CRC2D.18	We have many times pointed out that <i>Customers</i> are not ‘interrupted’.

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CRC2D.25-30	Throughout these paragraphs there is an incorrect statement that the Regulations <i>impose</i> supply restoration performance standards, whereas in truth they impose an obligation to make a payment when the performance standard is not met. Section 39A of the Electricity Act, which empowers the Authority to make the relevant regulations, itself only speaks in terms of empowering the Authority to <i>prescribe</i> such standards as in its opinion ought to be achieved in individual cases.
CRC2D.35	Should ‘relevant year’s’ here be ‘Regulatory Year’s’?
CRC2D.37	What is the point of the opening sentence? It is unnecessary as a mere declaration. Does it have any operative purpose?
CRC2D.41	In the definition of Customer used for this condition we are unclear about the purpose of the words ‘or is taken to be receiving’. What is this meant to cover?
CRC2D A2.1(b) (ii) and (iii)	This provision requires the licensee to be able to determine ‘the underlying cause of the severe weather’! That is not really what is required and is also rather difficult.
CRC2D A3.1(a)(i) and (ii)	The references to ‘internal’ and ‘external causes’ do not make clear to what these causes must be ‘internal’ or ‘external’.
CRC2E.6	This provision (taken together with the prescriptive way that Part B determines the calculation of the penalty) is designedly disproportionate in its effect. Stephen Perry has confirmed to us that it is Ofgem’s policy intent that a licensee that narrowly fails the assessment because it is judged to be found wanting in respect of one of the several assessment criteria in one relevant market segment (where that segment may be of very small value) will receive exactly the same penalty as a licensee that spectacularly fails all of the assessment criteria in a relevant market segment (that may be of very large value). That amounts to a policy that is deliberately disproportionate in its design and is therefore questionable on legal as well as policy grounds.
CRC2E.11	The reference to ‘recoverable’ is odd in relation to a penalty-only provision.
CRC2E.12	This algebra has no effect, given CRC2E.13.
CRC2E App 1	“NpgY” in the table here should be changed to “NPgY”.
CRC2F.13	The definitions of Time to Connect and Time to Quote assume that Customers receive connection ‘quotations’. They don’t. These are received by owners or occupiers. But in any case what is a ‘quotation’ in this context and how does it compare with an ‘offer’ under SLC12 or a ‘notice’ under section 16A of the Act. Using different terms for the same thing is not advisable. But if it is meant to be something different it should be made clear what it is that is being referenced. Otherwise it should perhaps be cross-referenced to the definition in regulation 2 of the Electricity (Connection Standards of Performance) Regulations 2010.
CRC2J.14	We don’t understand this provision.
CRC2K.11	The word “paragraph” should be inserted before “2K.10” in the second line.
CRC2K.19	The definition of Connection Activities here is misplaced as it is used in the definition of the Local Connections Market

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CRC2K A1.5	This paragraph assumes that licensees can still give Competition Notices. However, the term “Competition Notice” is related to CRC12 in the current licence, where the timescale within which such Notices can be given is said to end at 31 December 2013.
CRC2L	We observe that the proposed approach is at odds with the treatment of maximum exposure terms elsewhere in the licence (e.g. the complaints metric under CRC2C).
CRC2M.4	Surely the most recent decision should be referenced here.
CRC3B.15	The reference to paragraph 3C.14 should be to paragraph 3B.14.
CRC3B.17	The reference to 4B.12 should be to 4B.13. The same applies in CRC3C.25, CRC3D.23, CRC3E.18, CRC3G.30, CRC3H.16, CRC3J.15 and CRC3K.10.
CRC3D.10	These words could be taken to imply that a licensee can only make one application to use one Proven Innovation. We don’t think that is intended.
CRC3D.24	The definition of Innovation refers to New Network Equipment, which we cannot find defined. The superfluous space before 2and” in the second line of the definition of Network Equipment should be deleted.
CRC3E.5	In table 1 “NpgY” should be changed to “NPgY”.
CRC3E.8	The use of the obelus (÷) to denote a division is not consistent with other drafting.
CRC3E.10	Consideration should be given to factorising and using sigma notation for the TTFA formula. In Table 2 - The formulae for SMV_i under volume bands 2 and 3 are incorrect due to ill-placement of parentheses. $\frac{\min(\max(SMV - (0.1 \times TSMV)), 0), 0.05 \times TSMV}{\min(\max(SMV - (0.15 \times TSMV)), 0), 0.05 \times TSMV}$ <p>Should be ... $\text{Min}(\text{Max}(SMV - (0.1 \times TSMV), 0), 0.05 \times TSMV)$ and $\text{Min}(\text{Max}(SMV - (0.15 \times TSMV), 0), 0.05 \times TSMV)$</p>
CRC3E.21	The mixture of singular and plural in the definition of ‘Smart Meter Installations’ doesn’t work. The ‘s’ needs to be deleted from ‘Installations’.
CRC3E. Appendix 1	“NpgY” should be changed to “NPgY”.
CRC3E. Appendix 2	The definition of Service Inspection should specify what is being inspected. The definition of Service Alterations should be limited to ‘in respect of Smart Meter Installations’. The defined term “Asbestos Meterboards” should be changed to “Asbestos Meter Boards” to match the wording in the definition (or <i>vice versa</i>).
CRC3G. Appendix 1	“NpgY” should be changed to “NPgY”.
CRC3H.19	The definition of Worst Served Customer is wrong because it is defined without reference to the premises. If an individual moves house and experiences one interruption at several different properties, according to this definition, he is still a Worst Served Customer. That is not intended
CRC3J. Appendix 1	“NpgY” should be changed to “NPgY”.

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CRC4A.1	The words ‘to enable the Authority....’ that appear at the end of (b) are misplaced as they should apply to both (a) and (b).
CRC4B.14	The reference in the second line to paragraph 4B.11 should perhaps be changed to, or expanded to include, paragraph 4B.13, since in theory there cannot be an intervening period between 30 November in year t-1 and the making of a direction under paragraph 4B.11 (which states that it will be done by 30 November in year t-1).
CRC4C. Appendix 1	“NpgY” should be changed to “NPgY”.
CRC5A.24	We think a definition of Returned Royalty Income is needed to make this condition work.
CRC5B.17	We assume that a smart meter would be included in the specification here – otherwise we think a change will be necessary.
CRC5C.3	Adding “set out below” at the end of the sentence would provide greater clarity.
CRC5C.7	The erroneous space between “DRS” and “7” in the opening sentence should be deleted.
CRC5D.1(b)	This provision raises a question of vires. If it is intended to fetter the discretion of the Authority at ED2 it seems to be unlawful. If it is not intended to do that we are not sure what it is for. Could Ofgem set out its reasoning for why this provision is lawful?
CRC5D.9	At the end of the introductory passage should this provision not make use of the specially defined term and say ‘...that is not a Justified Under-Delivery.’
CRC5D.23	Should this not specify in what respect the direction might have a ‘significant impact’ (e.g. financial)?
CRC5G.1(c)	What is the reason for the words ‘any of’ that appear in this provision?
CRC5G.2	“provided for” should be changed to “delivered” in the heading of Table 1.
CRC5G.8	We observe that information as to whether or not a licensee’s Relevant Expenditure has fallen outside a Specific Customer Funded Reinforcement Percentage Band should be available to Ofgem through the RRP.
CRC5G.9	In the first line, “a” should be changed to “its”, and in the second line “Band t” should be changed to “Band”.
ED1 Price Control Financial Handbook	Chapter 3 (Pension Scheme Established Deficit) requires further work. The formulae and wording are currently ambiguous and contain errors, not all of which are identified in the marked-up copy provided jointly by the slow-track licensees. We note that the terminology relating to the pensions review has changed from that in the DPCR5 commitment: it is important that the commitment should continue to be honoured in every respect.