

Tom Mackenzie
Ofgem
9 Millbank
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Date
29th April 2014

Dear Tom,

Statutory consultation on proposed modifications to the standard conditions of the electricity distribution licences/ special conditions of the electricity distribution licences held by Western Power Distribution plc (WPD)

We welcome the opportunity to comment on the above consultations.

Throughout this process, we would like to acknowledge that the licence conditions have developed significantly as a result of the hard work across all DNOs and Ofgem.

SPEN has the following comments in the context of the consultations.

1. Timing of Process

It is conceivable that licence conditions may need to change as a result of decisions taken as part of the slow-track process. We therefore consider that holding a statutory consultation on these conditions at this time is potentially counterproductive and in any event premature.

From our experience, such a process led to issues during the Transmission fast track licence timetable, and as a result, the development of the fast track and slow track licences ran in parallel which worked well. We had expected a similar process to be followed in Distribution.

Naturally, SPEN will keep the SLCs under review as the slow-track process progresses, and will consider if any changes are required as a result of the final outcome of the RIIO-ED1 process.

2. Notice Period

Licensees who have been party to the ENA response have proposed a default requirement to give at least 3 months' notice prior to the beginning of the regulatory year to which changes apply to the RIGs. This requirement would be caveated such that, with the

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agreement of all licensees, Ofgem can reduce the notice for changes that are not material or do not require a longer time period to implement. We are mindful that Ofgem do not wish to take 3 months to implement the change of minor alterations which is why there should be a caveat for such an instance.

We are pleased that Ofgem have been receptive to the DNOs suggestion that RIGs documents should have version control. This would include a list of the RIGs with the published date on the face of the licence. This would avoid problems associated with version control and the risk that the incorrect RIGs are utilised by DNOs.

There are other examples in which sufficient notice period may be required. For example, in instances when Ofgem wishes to make improvements to the Information Gathering Plan or the Environmental Guidance Document.

3. Data Assurance Guidance (DAG)

We are fully supportive of the principles and objective of the DAG. However, the SLC refers to the guidance document and following our recent working group with Ofgem we note that there are some points of significance yet to be resolved, including the full scope of the DAG. Our concern is that these will not be resolved within the Statutory Consultation period and therefore, there may be aspects that SPEN does not agree with despite supporting the SLC in general. We would welcome the opportunity to work directly with Ofgem to resolve these details and ensure a comprehensive risk based approach is established for all.

4. Information provision

Various provisions require licensees to provide information to Ofgem or third parties, who may in turn disclose such information to Ofgem. The drafting of the relevant conditions take different approaches to restrictions on disclosure. We are unaware of any policy reasons for such different approaches. It would be helpful if the drafting was consistent and reflected the fact that there is no obligation to disclose to Ofgem, (directly or indirectly) legally privileged documents or any other documents which a licensee could not be compelled to provide in civil proceedings; and that a licensee cannot be compelled to give directly or indirectly to Ofgem any information which it could not be compelled to give in civil proceedings.

5. Rail Electrification

We are currently aware that licence condition Charge Restriction Condition (CRC) 3K, Rail Electrification is not applicable to SPEN. At this stage we believe that there is insufficient certainty for any DNO to seek an ex ante allowance, for example, there is significant ongoing political uncertainty about the scale and scope of high speed rail links to be developed in the next decades. SPEN believes that the degree of uncertainty about the scope, scale and timing of any such costs mean that customers should not bear the risk that arises from provision of material ex ante allowances that may not be required. We believe that this would more appropriately be dealt with at the ED1 mid period review or through an in period reopener or logging up mechanism once there is sufficient certainty.

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6. “New” Transmission Connection Point Charges

We note that the CRC as drafted will incentivise new Transmission exit charges via the Efficiency Incentive Rate and Load Related Reopener mechanisms. Ofgem’s RIIO-ED1 Policy Decision stated that new transmission exit charges would remain incentivised, however, Ofgem’s decision on the items to be included in the Load Related Reopener Mechanisms did not include this category of cost. The effect of the current licence drafting is to significantly increase DNO risk relative to the current DPCR5 Transmission Exit Charge incentive, albeit for most DNOs this will be of relatively low materiality.

In our response to Ofgem’s ED1 Policy Consultation, we highlighted the different levels of uncertainty and cost that SPEN faces as a result of the lower transmission voltage levels in Scotland (resulting in many times more transmission exit points than an English and Welsh DNO) and also the higher penetration of distributed renewable generation on our networks (c30% GB renewable DG and only 14% demand customers) including major projects such as mid Wales.

We anticipate working with Ofgem to fully explain and demonstrate how SPEN is disproportionately impacted by this current licence drafting in preparation for our own CRC drafting.

7. Under/Over recovery in DPCR5

a) General

As a result of CRC3 of the DPCR5 licence, our expectation in respect of paragraphs 3.8 and 3.9 is that a clawback of under/over recovery occurs in the following year and this applies equally to 2014/15 which should be clawed back in 2015/16. Whilst we appreciate the rationale for a 2 year delay in clawback during RIIO ED1, we cannot see a reasonable justification for applying this to the final year of DPCR5. Such proposed treatment is inconsistent with RIIO-ET1, as charge restriction condition clause 3A.15 allows clawback of 2012/13 under/over recovery in the first year of RIIO ET1 (2013/14).

b) £5 Rebates

As drafted in licence condition, CRC2A Restriction of Allowed Distribution Network Revenue, the correction factor revenue adjustment factor (kt factor) will have a value of zero in 2015/16. As the kt factor is the only means for DNOs to recover the £5 rebates, we are concerned that is contradictory to what we had previously been advised by Ofgem. We were advised Ofgem would take steps to preserve normal claw back of under-recovery in 2015-16 if necessary, however, there is no scope in the licence for doing so. This could potentially have a knock on effect to interest adjustments applied as a result of under/over recovery. Ofgem have previously advised that 2A.19 provides for the Authority to waive the interest adjustments for reasons out with the reasonable control of the licensee, however, this does not do so. The clause allows Ofgem to reduce the interest adjustment rate to 1.5%, not 0%.

We do not believe that this was the intent of Ofgem to potentially penalise companies as a result of the recently proposed rebates. We would propose a

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clause to be included which explicitly highlights that in the instance of over/under recovery as a result of such rebates, Ofgem will not utilise any interest rates to the extent of the rebates values towards under/over recovery.

We recognise that there are differences of treatment across DNOs and we will be happy to work with Ofgem to resolve specific issues.

8. Smart Meter Roll-out

Within the Calculation of Allowed Pass-Through Items, licence condition CRC2B, the ENA have previously addressed concerns that the smart metering roll out may be materially delayed and that DNOs can only recover costs until 2022/23. Should the roll out fall in years 2023/2024 or 2024/2025 we will not be funded. We agree with Ofgem to the extent that this is time limited, as this is policy, however, this should only be time limited to such circumstances in which the DNO has acted unreasonably. If a DNO has utilised reasonable endeavours to implement the smart meter roll out they should not be unfunded due to the actions of others or uncontrollable circumstances.

9. Price control update provisions for WPD (CRC 4C)

Ofgem will have to consider making adjustments to WPD's price control settlement as part of its "no worse off commitment." The relevant licence condition does not contain an explicit requirement on Ofgem to consult publicly on such adjustments. However, we are sure that Ofgem appreciates that such adjustments must be made under a transparent process which involves careful public consultation and meets the requirements of law and regulatory best practice.

10. Unsuccessful calls Definition

In calculating performance under the customer satisfaction survey, we agree with Ofgem's decision to factor in the number of "unsuccessful" calls from customers experiencing an interruption, for example, calls terminated by the DNO or calls abandoned by the customer in the queue. As a company, we take a great deal of pride in our customer service and believe that a DNO's overall performance score should not deteriorate as a result of circumstances outwith our control.

We look forward to working with Ofgem to ensure that this is defined appropriately in the RIGs and implemented consistently across all DNO's.

11. Unavailability of Associated Documents

Through the review of the licence conditions, it has become apparent that, to fully understand some of the conditions and to be able to check that they work, licensees need to be able to see them in combination with the documents they refer to. As an example, cross references are made to the RIGs for full definitions, but these are not finalised, and so we cannot provide definitive comments about all aspects of the conditions at this stage.

12. Definition of Severe Weather Event

Ofgem have provided drafting to reflect the earlier changes we had proposed in our response to the informal consultation with regards to the definition of a severe weather

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event. This was to ensure b(ii) of CRC2D Appendix 2 only applies when all customers at HV have been restored, however, we believe this leaves some ambiguity as to when the event is deemed to end if all customers on HV incidents have not been restored when the last customer on an LV incident is restored. In this situation, it would not be correct to apply b(iii) and thus extend the end of the event by a 48hrs beyond the last customer restored on an HV incident. We would be happy to work with the licence drafting team to propose wording which shall hopefully clarify the matter.

Please do not hesitate to contact me should you have any queries.

Yours sincerely



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