

Electricity generation licence
holders and other interested
parties

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Date: 24 March 2015

Dear colleague,

Statutory consultation on proposed licence modifications to Standard Licence Conditions 14 and 15 of the electricity generation licence

Following an initial consultation published on 29 November 2014¹, we have decided to proceed with a statutory consultation to modify provision for the exercise of compulsory powers in Standard Licence Condition ('SLC') 14 (Compulsory Acquisition of Land etc.) and SLC 15 (Other powers etc.) of the electricity generation licence. A statutory notice in relation to the licence modifications is published alongside this letter.

Representations to the proposed modification should be made in writing on or before 19 May 2015.

November 2014 consultation

Permissions need to be secured by electricity licence holders from landowners and others so that licence holders may legally carry out certain activities on any land, such as installing an electric line and keeping it installed. If a voluntary agreement cannot be reached through negotiation, licence holders have access to compulsory powers under the Electricity Act 1989 ('the Act'), subject to any restrictions set out in the licence. For generation licensees, the provisions in SLC 14 and SLC 15 of the generation licence qualify the application of the compulsory powers under Schedules 3 and 4 to the Act.

In the consultation document published on 29 November 2014, we identified issues with the current provisions in SLC 14 and SLC 15 for the exercise of compulsory powers applicable to generators carrying out work in relation to electric lines. These issues included:

- a lack of provision in SLC 15 for generators to exercise compulsory entry powers to survey suitability of land for electric line works, which is inconsistent with the provision in SLC 14 of compulsory purchase powers for such works;
- a lack of clarity in the provision in SLC 14 and SLC 15 of compulsory powers for generators in relation to preliminary work for electric lines; and
- inconsistency between SLC 14 and SLC 15 in the description of the types of electric line activity.

¹ <https://www.ofgem.gov.uk/ofgem-publications/91968/finalforpublicationam151214.pdf>

We noted that these issues in practice could cause delay and/or higher costs in developing or connecting generation and be a source of uncertainty and confusion for stakeholders in relation to the exercise of compulsory powers. We therefore proposed a number of draft amendments to address the above issues, with the aims of removing uncertainty for licence holders and other stakeholders, and of better facilitating the timely and efficient development of electricity generation, including the connection of offshore generation to the main system.

Responses to November 2014 consultation

We received 14 responses to the November consultation.² There was support from twelve respondents for our approach to modify the licence in relation to compulsory powers. Two opposed the proposed changes. We summarise below key points raised in the responses and our views on these points.

Issues raised by respondents opposing the amendments

The two respondents who were opposed to our proposals raised a number of issues in the following categories:

- i. Questions over the proportionality and necessity of our proposed approach;
- ii. Concerns over the perceived effect of removing the need for negotiation; and
- iii. Concerns about the potential impact on land.

These are discussed in turn below.

i. Questions over the proportionality and necessity of our proposed approach

One respondent suggested that our proposed amendments were disproportionate as it perceived them to be for the benefit of one specific project. It also believed the extension of compulsory entry powers to be unnecessary, as the licence holder could either negotiate with landowners or work with transmission and distribution licence holders, who already have the full range of compulsory entry powers under the Act available to them.

We believe that our proposals are a proportionate response to the issues identified with the current provisions in SLC 14 and SLC 15. The proposed changes are not for the benefit of one specific project but are aimed at removing an undue regulatory barrier applicable to all generation licence holders. Although our decision to undertake a review of SLC 14 and SLC 15 was triggered by our analysis in response to an application by a specific project, the issues identified have wider impact on generation licensees.

We do not believe that the risk of undue delay or higher cost of developing or connecting generation can be removed by relying on the practices currently available to generators, either to work with other licence holders who have full compulsory entry powers available to them, and/or to negotiate a commercial agreement with landowners for access to land. Implementing the proposed amendments is a more effective solution to mitigating these risks.

ii. Concerns over the perceived effect of removing the need for negotiation

Both respondents were concerned that the proposed extension of compulsory entry powers would remove the need for negotiation with a landowner. One specifically suggested that a requirement for the licence holder to reasonably consider other alternatives before undertaking such works be included if our proposed amendments are to proceed.

We note the concern about the potential impact of survey activity on land and understand

² Responses available at: <https://www.ofgem.gov.uk/publications-and-updates/consultation-proposals-modify-standard-licence-conditions-14-and-15-electricity-generation-licence>

the beneficial effect that an effective stakeholder management process can have on the process of negotiation. Although not mandatory, we expect all licensees to engage responsibly and identify the concerns of all relevant people regarding the potential impact and disruption of carrying out survey activity on any land.

Our proposed amendments to enable generators to enter land compulsorily to survey the suitability of land for extended purposes (i.e. electric line activity) does not negate the need for such good practice. We would always expect a licensee to approach the landowner in the first instance to discuss terms for voluntary entry. Such an approach is also consistent with the manner in which the currently available compulsory entry powers for carrying out survey are exercised by licence holders.

For these reasons, we do not believe that it is proportionate to add explicit requirement in the generation licence to reasonably consider other alternatives before resorting to compulsory route to enter and survey land.

iii. Concerns about the potential impact on land

Both respondents expressed concern about the potential impact on land: one pointing out that access for surveying could be disruptive and cause damage, and the other being more specifically concerned about the potential negative impact of cabling in a specific area.

We note that our proposed amendments only extend provisions in relation to compulsory entry powers applicable to the survey of land. The potential impact of actually building the cables on the land would be subject to a subsequent and different decision process. We do recognise the concern about the potential impact of survey activity itself. We note that effective engagement with stakeholders as discussed in the previous point should facilitate appropriate management of such impact and that compulsory entry powers under Schedule 4 to the Act include the obligation for any licence holder to “*make good any damage done to the land*”³.

Issues raised by respondents supporting the amendments

Of the twelve respondents that were supportive of our proposed approach, a number commented that, in their view, the proposed amendments would achieve the aim of improving clarity and reducing uncertainty amongst stakeholders in relation to the exercise of compulsory powers. However they also raised several issues in relation to adjusting the proposed text applicable to generation licence holders. These can be grouped into the following categories:

- i. Proposal to widen the purposes to enter and survey land;
- ii. Proposal to substantially change the Authority’s role in granting consent; and
- iii. Suggestions of drafting changes to improve clarity.

These are considered in turn below.

i. Proposal to widen the purposes to enter and survey land

One respondent argued that the list of activities connected to electric line work should be extended to cover district heating and cooling systems associated with a generating station. We consider that this issue is outside the scope of our consultation, and decide not to proceed with this suggestion at this time. We will consider separately in due course whether to take this forward.

³ Schedule 4(10)(5) of the Act. In addition, Schedule 4(11) of the Act states that compensation will be paid for any damage caused to the land.

ii. Proposal to substantially change to the Authority's role in granting consent

One respondent interprets the current licence provisions to be such that the power to enter and survey land to ascertain its suitability for the purpose of electric line activity is already available to generation licence holders without the need for Authority's consent. Therefore, whilst it continues to support this power to be maintained, it was of the view that our proposals have the effect of unnecessarily widening the requirement for the Authority's consent to such entry purpose. Therefore, instead of our proposed changes with the effect thus interpreted, it commented that it would be desirable to remove the requirement for the Authority's consent altogether for compulsory entry to survey the suitability of land for both generating station and electric line activities. The respondent also noted that a further reason for removing the need for Authority consent is that, in their view, generator behaviour is adequately managed by other established processes, one of which is the network charging methodology.

We do not agree with the interpretation of the current licence provisions by this respondent. As we set out in the November 2014 consultation, the current licence conditions allow generators to enter and survey land for the purpose of ascertaining its suitability for the "*construction or extension of a generation station*" and no other purposes. Furthermore, the issue of removing the requirement of the Authority's consent altogether was outside the scope of our initial consultation. In any case, we do not consider the respondent's description of the interaction between the consent and charging framework to be relevant to this decision. In conclusion therefore, we decide not to proceed with the proposal by this respondent.

iii. Suggestions of drafting changes to improve clarity

A number of respondents put forward minor drafting amendments to improve clarity of the proposed text. We agree with some of these and they are included in the formal notice published alongside this letter.

Two respondents proposed that the list of activities connected to electric lines for which the compulsory powers are available to generators be further extended to include "use" of the assets. At present the activities to which the compulsory powers apply relate to the purposes of connecting a generating station with the main system. We do not consider that it is necessary for the "use" of electric lines or plant for connection of a generating station to the main system to additionally be permitted under Schedule 3 or 4 powers.

Other matters

No views were received on the impact of our proposed changes on nuclear generation licence holders. We continue to believe that our proposed amendments do not impact on the additional powers applicable to nuclear generation licensees contained in SLC D3 (Compulsory Acquisition of Land etc) and SLC D4 (Other Powers etc).

Finally, we have further considered our proposed changes to the text of paragraph 2 of SLC 15 which were intended to make it consistent with paragraph 2 of SLC 14. We recognise that the scope of activities differ between the two conditions in that SLC 15 has an extension to the meaning of "authorised activities" to include purposes connected with the supply of heat and steam in accordance with the provisions in section 10(3) of the Act. We therefore do not consider that full alignment of the text is appropriate for these particular parts.

A change marked version of the licence text is appended to this letter to illustrate the incremental drafting changes resulting from consultation as compared to the proposed drafting in November 2014.

Next steps

We have today issued a Notice under Section 11A of the Act to modify the electricity generation licence. The proposed drafting has been updated since our initial consultation in the light of the responses to consultation and can be found in the document published alongside this letter. Responses to our statutory licence modification consultation should be sent to us on or before 19 May 2015.

We consider that an 8 week consultation period is an appropriate deadline for submitting responses to our consultation, rather than the statutory minimum of 4 weeks, because:

- the rules governing business in the pre-election period (commonly known as “purdah”) will begin shortly and end when a new government is formed; and
- the additional response time would give stakeholders more time to consider the reasoning set out in this letter and the updated licence text.

If you have any queries regarding the information contained within this letter or the notice please contact Stephen.Taylor@ofgem.gov.uk.

Yours faithfully,

Min Zhu
Associate Partner, Electricity Transmission

Appendix 1:

This appendix sets out incremental changes to the text of SLC 14 and SLC 15, as compared to the draft proposed in the consultation in November 2014, that we have incorporated into the modifications covered by the statutory consultation issued alongside this letter.

Condition 14. Compulsory Acquisition of Land etc.

1. This condition shall have effect and come into operation for the purpose of this licence on and from 1 May 2007.

2. The powers and rights conferred by or under the provisions of Schedule 3 to the Act (Compulsory Acquisition of Land etc. by Licence Holders) shall have effect in relation to the licensee to enable the licensee to carry on the activities authorised by this licence and which relate to:

- (a) the construction or extension of a generating station;
- (b) the operation of a generating station; and or
- (c) the installation, inspection, maintenance, adjustment, repair, alteration, replacement or removal of electric lines and electrical plant associated with them, and any structures for housing or covering such lines or plant, connecting a generating station with:
 - (i) the national electricity transmission system; or
 - (ii) a distribution system,

including, for the avoidance of doubt, works preliminary to those activities, whether those activities are to be carried out by the licensee or another licence holder.

3. In paragraph 2 above:

- (a) the references to "generating station" are to an electricity generating station which:
 - (i) has, or will have when its construction or extension is completed, a capacity of not less than 50 megawatts or such other capacity as may be specified in relation thereto by order of the Secretary of State under section 36(3) of the Act; and
 - (ii) is, or will be when its extension or construction is completed, operated by or for the licensee; ~~and~~
- (b) "extension" in relation to a generating station includes the use by the person operating the station of any land (wherever situated) for a purpose directly related to the generation of electricity by that station.

Condition 15. Other powers etc.

1. This condition shall have effect and come into operation for the purpose of this licence on and from 1 May 2007.

2. The powers and rights conferred by or under the provisions of Schedule 4 to the Act (Other Powers etc. of Licence Holders) shall, subject to paragraph 3 and 4 below, have effect to enable the licensee to carry on ~~its the activities authorised~~ activities ~~by this licence~~ and which relate to:

- (a) the construction or extension of a generating station;
- (b) the operation of a generating station;
- (c) the installation, inspection, maintenance, adjustment, repair, alteration, replacement or removal of:
 - (i) electric lines specified in paragraph 3 below;
 - (ii) electrical plant associated with such lines; and
 - (iii) any structures for housing or covering such lines or plant;

including, for the avoidance of doubt, works preliminary to those activities, whether those activities are to be carried out by the licensee or another licence holder.

(d) ~~in relation to~~ the installation of electrical plant to be used in connection with a generating station or the operation thereof;

(e) ~~in relation to~~ electric lines or electrical plant as if the references to them in Schedule 4 to the Act included pipes for conveying directly to consumers' premises heat produced in association with electricity and steam produced from air and water heated by such heat and associated works in relation to such pipes and as if "associated works" had the meaning given in section 10(3) of the Act.

3. Electric lines are specified for the purposes of sub-paragraph (c) of paragraph 2 above:

- (a) if they connect, or will connect when installed, a generating station with:
 - (i) the national electricity transmission system; or
 - (ii) any distribution system;
- (b) where "electric lines" has the extended meaning given by paragraph 2(e) above, if they connect a generating station with any premises.

4. Paragraph 10 of Schedule 4 to the Act shall apply to the licensee if it obtains the consent of the Authority before exercising its rights of entry on land under that paragraph for the purpose of ascertaining whether the land would be suitable for:

- (a) the construction or extension of a generating station; or
- (b) the installation, inspection, maintenance, adjustment, repair, alteration, replacement or removal of electric lines specified in paragraph 3 above, electrical plant associated with them and any structures for housing or covering such plant, including, for the avoidance of doubt, works preliminary to those

activities, whether those activities are carried out by the licensee or another licence holder.

5. In this condition:

- “authorised activities” means the activities which the licensee is authorised by the licence to carry on, and shall include any purpose connected with the supply to any premises of heat produced in association with electricity and steam produced from air and water heated by such heat;
- “generating station” has the meaning given in paragraph 3 of standard condition 14 (Compulsory Acquisition of Land etc);
- “extension” in relation to a generating station, has the meaning given in paragraph 3 of standard condition 14 (Compulsory Acquisition of Land etc).