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Dear Andrew,

**Update on our work to resolve issues in the market for new connections to electricity distribution networks and informal licence conditions**

We welcome Ofgem's latest update on its work to bring about changes to the market for new electricity distribution connections. There has been a considerable amount of effort invested on all parts to get to this stage, and the work undertaken has demonstrated the ability of the DNOs to work together and to engage with stakeholders to bring about changes that put stakeholders' interests at the core.

We support Ofgem's move to a more 'slim-line' licence condition. In particular, we support the removal of the specific governance and reporting requirements from the licence: we agree that these sit better within the Code of Practice and that this change is more in line with the treatment of governance arrangements elsewhere in the licence.

However, we remain concerned about the use and, in particular, the scope of 'best endeavours' in the current drafting. Whilst we recognise that 'best endeavours' applies elsewhere in our licence, these other references are more specific, for example, to use best endeavours to ensure that procedures are in place for a specific requirement or to manage a defined risk. The reference in 1.1(b) is to "*use best endeavours in a manner to manage and operate its Distribution Business that secures the achievement of the Relevant Objectives*". This is much wider in scope than its application elsewhere. Moreover, it is possible that by using this terminology, the Relevant Objectives in relation to the Code of Practice are somehow elevated / given more credence than obligations elsewhere and this could be seen to cut across our objectives to develop, maintain and operate an efficient, co-ordinated and

economical system for electricity distribution. We would question whether it is in customers' best interests to create a situation where these Relevant Objectives could be seen to conflict with the objectives referenced above and are mindful of Ofgem's position that it will *"regulate only where necessary to protect consumers' interests. We carefully consider whether any regulatory requirement we are proposing to introduce is proportionate and necessary to protect consumers"*<sup>1</sup>.

Given the above, and that the purpose of this licence condition is to have, maintain and act in accordance with a Code of Practice that is designed to facilitate the achievement of the Relevant Objectives set out in paragraph 1.2 of the licence condition, we believe the drafting would be as effective if 1.1(b) was removed from the current drafting. 1.1(a) and 1.3 together fulfil the purpose of this condition. However, we would suggest that if Ofgem is intent on retaining 1.1(b), reverting to the previous drafting of 'reasonable endeavours' would avoid the conflict set out above.

Finally, for the purposes of consistency, we have two further suggestions. The first relates to section 1.5 of the drafting. Whilst the detail behind the review process is set out in the Code of Practice, we believe section 1.5 would be better if it read: *"the licensee must review the Code of Practice at least once a year and, subject to the governance arrangements, make such modifications as are necessary for the purpose of better achieving the Relevant Objectives"*. This is consistent with the wording used in standard licence condition 13 around our obligations to review our Charging Methodology.

The second relates to the definition of 'input services' in the Code of Practice. We are mindful that this is not consistent with the definition set out in the licence, albeit the meanings are the same. This is simply a result of the iterative process. However, we believe the two should be consistent and are ambivalent as to which definition is used.

I hope this is useful input to the process. Should you wish to discuss any of the above, please do not hesitate to get in touch.

Yours sincerely,

Gillian Hilton  
**Regulation, Networks**

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<sup>1</sup> <https://www.ofgem.gov.uk/about-us/how-we-work/our-approach-regulation>