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9 June 2015

Dear Andrew

Informal consultation on draft text for proposed new licence condition - competition in connections code of practice

Thank you for the opportunity to comment on the draft text attached to Ofgem's letter of 12 May 2015. I am writing on behalf of each of Northern Powergrid Holdings Company and its two licensed electricity distribution businesses, Northern Powergrid (Northeast) Limited and Northern Powergrid (Yorkshire) plc.

We are content in principle with the licence condition as proposed, but believe that, in a very small number of instances, the wording used may be inappropriate or inadequate.

Our detailed comments are as follows:

Paragraph 1.1(a) - the word "an" in the 1st line should be changed to "a".

Paragraph 1.1(b) - the formulation of the obligation in this paragraph is inconsistent with the formulation of similar obligations elsewhere in the licence. These other obligations (for example in SLC13, SLC13A and SLC13B) are typically couched in terms of (i) take all steps to ensure that the document in question continues to achieve the relevant objectives concerned; (ii) comply with the document in question; and (iii) review the document in question at least once a year.

The broadening of the obligation here to encompass the management and operation of the Distribution Business is not only inconsistent (for no apparent gain) but is also problematical for the following reasons:

- a licensee could be held in breach of its licence if there was anything at all that it could have done to contribute to the Relevant Objectives but hadn't done (e.g. publicly extolling the virtues of its competitors);
- the combination of paragraphs 1.1(b) and 1.2(c) as currently worded would, by reaching so far, make a number of other provisions in the licence completely redundant (paragraph 13.3(e) of SLC13; paragraph 13A.7A of SLC13A; paragraph 13B.7A of SLC13B; paragraph 21.4(c) of SLC21; paragraph 22.2(e) of SLC22; paragraph 22A.10 of SLC22A; and paragraph 23.4 of SLC23).

NORTHERN POWERGRID

is the trading name of Northern Powergrid (Northeast) Ltd (Registered No: 2906593) and Northern Powergrid (Yorkshire) plc (Registered No: 4112320)

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The proposed formulation is also problematical linguistically - for example, the meaning of an obligation to “use best endeavours” to “manage and operate the Distribution Business” to “secure the achievement” of “facilitating competition” through “not distorting, preventing or restricting competition” is somewhat obscure.

It would be better and more reasonable to avoid drafting that says a licensee would be in breach if it didn't do some undefined things where the list of such things could be infinite. In making this point we do not in any way aspire to lessening the duty that is being placed upon us. Indeed, we would willingly accept an unqualified obligation to comply with the code of practice. This could be done very easily by replacing paragraph 1.1(b) with “comply at all times with the Competition in Connections Code of Practice” and removing paragraph 1.3.

Paragraph 1.2(a) - the term “new electricity distribution connections” is used here and in paragraph 1.2(b): this is new terminology and differs from other terminology currently in use and, as such, ought itself to be defined if it is to be retained, so that the manner in which it is intended to differ from existing terminology can be fully understood. Alternatively, perhaps the most appropriate existing terminology to use instead would be that in the opening paragraph of SLC15, i.e. “facilitate competition *in relation to the connection of Premises to the licensee's Distribution System*” (in which case the definition of “Premises” would need to be moved from SLC15 to SLC1).

The wording of this paragraph fails to acknowledge that the requirements set out here may not always be consistent with each other. For example, a licensee that needs to ‘harmonise’ its Input Services upwards, and incur costs in so doing, cannot be said to be minimising the scope and cost of its Input Services. It would be helpful, therefore, if there were a provision here to the effect that these requirements need to be met “in the round”.

Paragraph 1.2(a)ii - we believe that the wording here falls short of what (we assume) Ofgem may have been intending. For example, we assume that Ofgem would wish the requirement here to include our dealings with our affiliate, Integrated Utility Services (IUS), but we are not convinced that IUS would fall within the description of either a “competitor” or a “part of its [*i.e. the licensee's*] own business”. Comparing this with the very close analogue in paragraph 19.3 of SLC19, it would appear that there is no equivalent to paragraph 19.3's item (b) in the proposed wording here.

In addition, the wording here makes it unclear as to the direction that ‘harmonisation’ should take in a situation where, say, some licensees’ “Input Services” offerings differ from those of other licensees.

Paragraph 1.2(c) - “Co-operation” in the 2nd line should be written as “Cooperation”, since that appears to be how ACER itself presents the word when writing out its name in full.

Paragraph 1.4 - the word “modified” in the 3rd line needs to be changed to something like “made”: otherwise we have a (presumably unintended) statement that modifications will have no effect unless they (themselves) are modified in accordance with specified procedures - i.e. two lots of modification.

Paragraph 1.5 - the comma after “review” at the end of the 1st line should be moved along one word to the right, so that it appears instead after the word “and” at the start of the 2nd line. In addition, changing “requirements under paragraph 1.2” in the 2nd line to “Relevant Objectives” would achieve greater succinctness and precision.

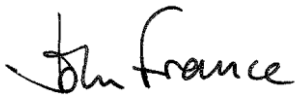
Paragraph 1.8 - in the light of Ofgem's statement on page 14 of its update letter that reporting requirements on DNOs should be set out in the code of practice rather than in the licence

condition, either words should be added to this paragraph to that effect or the words “and Reporting” should be removed from the heading of Part B.

Paragraph 1.10 - We are unsure as to whether or not Ofgem intends there to be a difference between the new term “Input Services” in this draft condition and the term “Non-Contestable Connection Services” that exists in the licence already. If there is intended to be a difference, it would be helpful if the new term (i.e. “Input Services”) could be defined in such a way as to make this difference clear - we do not think that the definition as presented here achieves that. Alternatively, if there is not intended to be a difference, it is important that the existing defined term should be used, as there will otherwise be a presumption that, if a different term is used, this is because it means something different.

I hope that you will find these comments helpful: please do not hesitate to contact me if you would like to discuss any of them further.

Yours sincerely

A handwritten signature in black ink that reads "John France". The signature is written in a cursive style, with the first name "John" and the last name "France" clearly legible.

John France
Regulation Director