CENTRAL ASSOCIATION OF AGRICULTURAL VALUERS

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Secretary and Adviser

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Dear Mr Taylor,

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

I write on behalf of the Central Association of Agricultural Valuers in response to the statutory consultation paper on proposals to modify Standard Licence Conditions 14 and 15 of the electricity generation licence.

Introduction
The Central Association of Agricultural Valuers (CAAV) represents, briefs and qualifies some 2700 professionals who advise and act on the very varied matters affecting rural and agricultural businesses and property throughout Great Britain. Instructed by a wide range of clients, including farmers, owners, lenders, public authorities, conservation bodies, utility providers, government agencies and others, this work requires an understanding of practical issues.

The CAAV does not exist to lobby on behalf of any particular interest but rather, knowing its members will be called on to act or advise both Government and private interests under developing policies, aims to ensure that they are designed in as practical a way as possible, taking account of circumstances.

Our particular interest in this consultation arises because many of our members advise landowners and occupiers in relation to access to land by third parties. We also have members who act for and advise those third parties, including developers of electricity generating stations.

In preparing this response we have consulted our membership generally and our technical Valuation, Compensation and Taxation Committee in particular. I set out below the CAAV response to the consultation, which repeats some of the points raised in our response to the initial consultation in January 2015.

Generally

While we support efforts to ensure that regulations are clear, consistent and easily understood, compulsory powers of access to land which is already in another economic use should be given only when those powers are absolutely essential and no other alternatives are available. If a utility provider is to have statutory powers to impose itself on land being used for a private individual's own business activities, such powers should only be exercised as a last resort and safeguards should be incorporated into the statute to ensure that this is the case.

Current arrangements

Schedules 3 and 4 of the Electricity Act 1989 give certain compulsory powers of access to land and acquisition of land by electricity licence holders. When those powers were to be granted to licence holders, Parliament and the Regulator saw fit not to do so by way of a single blanket grant, but by granting different rights to the different types of licence holder. It was presumably not considered appropriate to give compulsory powers in all cases; that is a reasonable approach to take when the state is imposing itself on private property.

The powers are currently held as follows:

- Transmission licensees: powers apply in their entirety by statute under s.10 of the Electricity Act 1989
- Distribution licensees: powers apply in their entirety by virtue of SLC 28 of the Electricity Distribution Licence
- Interconnector licensees: powers apply in restricted form by virtue of SLC 7 of the Electricity Interconnector Licence
- Generation licensees: powers apply in restricted form by virtue of SLC 14 and 15 of the Electricity Generation Licence
- Supply licensees: powers do not apply at all.

Is an extension of powers necessary?

In our view it is not necessary to extend the compulsory powers any further, because developers of generating stations already have options open to them when they wish to take access to land for survey purposes for electricity lines, such as:

- Negotiation with landowners – Any organisation or body seeking to take access over third party land should seek to do so by agreement in the first instance,

recognising the principles of private ownership and acknowledging that the land is almost always being put to another economic use, which will be disrupted by such access.

- Working with others – Those operators holding transmission and distribution licences already have the full range of compulsory powers available to them. It may be open to developers of generating stations to work with others to design and construct the necessary electric lines.

In our experience, those bodies which hold the strongest compulsory powers over third party land are generally less careful of their impact on third parties than similar bodies with lesser statutory powers. In practice we see evidence of this in relation to pipeline works in land, where gas companies with relatively limited compulsory powers under the Gas Act 1986 are generally more willing to negotiate with landowners and occupiers and more likely to try to mitigate their impact than will water companies, which have more extensive compulsory powers under the Water Industry Act 1991.

In our earlier consultation response, we pointed out that HS2 Ltd had been able to reach sufficient agreement with landowners and occupiers along the proposed route from London to Birmingham to enable them to prepare a very detailed Environmental Statement. All of that access was negotiated without any statutory powers in the background at all. This clearly demonstrates that compulsory powers are not always required.

The impact on landowners and occupiers

The consultation document refers to the impact on landowners and occupiers as being "limited" and "justified". There does not appear to have been a proper consideration of the impact on those whose livelihoods depend upon the land which developers wish to take access to. It should be remembered that many and various types of utility works and infrastructure cross rural land and property: not just electricity cables, but also water, gas and oil pipelines; telecommunications masts and cables; and transport networks ranging from main roads and railways to public footpaths. It is unusual to find a commercial farm in England without at least one of these networks crossing it and the majority are crossed by several. During a year that might mean that several different organisations need to take access to the land in order to inspect or carry out work on their infrastructure.

Access, even for surveying purposes, is disruptive and can cause damage, particularly if it is taken when ground conditions are unsuitable or when crops or livestock are particularly prone to damage or disturbance. "Survey works" carries a wide meaning and might involve such varied activities as assessing populations of protected species (which might require multiple visits at different times of the day and night), ground investigation works (requiring the use of machinery or the digging of trial pits and boreholes), or more straightforward walkover surveys. In each case, the land manager needs to know who will be on the land, how and where they will take access and what activities will be undertaken. It might prove necessary to move livestock or to change planned operations (such as delaying crop spraying) while the surveys are undertaken. For some businesses it will be

necessary for the land manager to give visitors a health and safety briefing. All of this, which will be permitted on only 14 days' notice under paragraph 10, Schedule 4 of the Electricity Act 1989, could have a disruptive effect on a business which should not be under-estimated.

Extending statutory powers

As well as specifically including powers to take access for surveys, the proposed changes to SLC 14 extend the powers available to generators from

> *"…the installation, maintenance, removal or replacement of electric lines and electrical plant associated with them..."*

to

> *"…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…"*

That change represents a significant extension of statutory powers for an electricity generator. Whilst we accept that it is helpful to expressly clarify that inspection should be permitted, the inclusion of a power to alter cables opens up a very much wider range of opportunities to do work on third party land. We ask Ofgem to consider carefully whether these powers are essential to electricity generators and only to make the change if they can demonstrate that to be the case.

Notice periods and compensation

Whilst we see no justification for the extension of powers, in the event that Ofgem reach a contrary conclusion we would draw particular attention to the inadequacies in what is proposed, drawn in particular from members' experience of major infrastructure projects including new nuclear facilities:

Notice – the notice period under the Electricity Act is designed to enable specific works to be undertaken and the same degree of urgency should not be required if, as Ofgem envisages, developers and operators – and in particular their supply chain – operate effective project management. We observe that there appears to be a culture of 'just in time commissioning' so that surveys are sometimes requested at extremely short notice and this can often work effectively where a voluntary licence agreement has been reached encompassing a succession of different types of survey. However, we fear that in a compulsory situation this will simply result in 14 days' notice becoming the norm, and it will vulnerable to abuse in some instances given the difficulty for affected parties in seeking a remedy after the event. Farming cultivations are particularly vulnerable to weather conditions and if developers are to have a compulsory right to take entry for survey which may postpone those operations, then notice should be at least 28 days to enable sufficient time for farm work to be programmed in the interim.

Postponement – Whilst the period prior to notice is a major concern, there are also difficulties where survey work is routinely postponed, often at short notice, by developers.

Hence any extension of the powers should provide some redress where surveys are not properly completed in the anticipated timescale and farming operations are repetitively disrupted as a result.

Compensation – The consultation refers to the obligation under Schedule 4 to the Electricity Act for the licence holder to make good for any damage to the land. In the case of surveys, damage to land may be limited, but there will be costs, sometimes very significant, in for example, changing operations or moving livestock or indeed where major intrusive survey work is undertaken at very short notice changing cropping plans. To that extent we would wish to see the provision for compensation made explicit so that it covers any loss arising from the operation of compulsory powers to undertake the survey.

Conclusions

In our experience, negotiated arrangements can work very well to the benefit of all parties. As an example, we were told of survey work in relation to the Hinckley Point project, where such a good relationship had been cultivated between landowners and the developer that when a night time survey had to be conducted at short notice, landowners were contacted at 5pm to arrange access for that evening without any undue difficulty. In our first consultation response we reported that HS2 Ltd had taken access for the entirety of its environmental survey work on Phase 1 by negotiation and it is now about to embark on ground investigation works for Phase 1, also entirely by negotiation. These examples show that in practice it is perfectly feasible for developers to secure the access they require for survey works without having statutory powers, where the developer is prepared to put in the necessary time and effort to cultivate good relationships with those whose land is affected.

Compulsory powers should not be extended beyond the remit originally agreed without a very strong case being made for why it is essential to do so. The land which is required to support utilities infrastructure is almost always already being put to another commercial use and the right of utilities providers to impose themselves onto that land, disrupting the business, should be limited to the minimum necessary for essential functions.

Ofgem should actively encourage regulated bodies to engage with those whose land and business will be disturbed and to seek to negotiate agreed terms for access before using compulsory powers.

We trust that the responses given above are helpful and would be pleased to discuss matters further if required.

Yours sincerely,

Jeremy Moody
Secretary and Adviser
Central Association of Agricultural Valuers