

Electricity generation licence
holders and other interested
parties

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Dear colleague

Modification decision – licence modifications to Standard Licence Conditions 14 and 15 of the electricity generation licence

Following our statutory consultation published on 24 March 2015¹, and an earlier initial consultation in November 2014, we have decided to proceed to modify the provisions in Standard Licence Condition ('SLC') 14 (Compulsory Acquisition of Land etc.) and SLC 15 (Other powers etc.) of the electricity generation licence (the 'licence') for the exercise of compulsory powers as provided for in the Electricity Act ('the Act'). A copy of the decision notice modifying the licence is published alongside this letter, together with amended versions of SLC 14 and 15 which come into effect on and from 23 October 2015.

March 2015 consultation

As set out in the March 2015 and November 2014 consultations, we identified issues with the current provisions in SLC 14 and 15 for the exercise of compulsory powers applicable to generators carrying out work in relation to electric lines. These 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 15 of compulsory powers for generators in relation to preliminary work for electric lines subsequently constructed by another licence holder, in particular under the offshore transmission owner (OFTO) build model for offshore transmission assets²; and

¹ <https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-changes-standard-licence-conditions-14-and-15-electricity-generation-licence>. On 24 June 2015, the Authority sent a copy of this statutory notice and letter published on 24 March 2015 to certain generation licensees that may not have been sent a copy in March. No responses were received from these particular licensees.

² Under the enduring regulatory regime, offshore transmission assets could be built either by the generation licence holder ('Generator Build model') or by the competitively appointed OFTO ('OFTO Build model'). Under the OFTO Build model, the generation licence holder will carry out preliminary works for its offshore transmission assets and an OFTO licence holder will construct, own and operate these assets.

- inconsistency between SLC 14 and SLC 15 in the description of the types of electric line activity.

We therefore proposed a number of amendments to SLC 14 and 15 to address these 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 March 2015 consultation

We received five responses to the consultation³. Three respondents supported our approach to modify the licence in relation to compulsory powers. Two respondents opposed the proposed changes, from different standpoints. We summarise below the key points raised in the responses and our views on these points. Further details on some of these points can be found in the statutory consultation letter published on 24 March 2015.

Issues raised by respondents opposing the amendments

The Central Association of Agricultural Valuers (CAAV) repeated their view (previously put forward in the initial consultation) that we have not properly taken into account the adverse impact of surveys and that our changes remove the need for proper negotiation with landowners. Firstly, as noted in our consultation, the potential adverse impact of surveys is expected to be managed through effective engagement between the generation licensee and landowners, in the same way as with both transmission and distribution licensees (who already hold powers to enter and survey land without any requirement for Authority consent). We also note that licensees are required under the Act to make good any damage caused by surveying the land. Secondly, compulsory survey powers are a last resort option. Developers must always approach landowners in the first instance and aim to agree terms voluntarily. Should such negotiations fail, if the licensee applies for Authority consent to survey, we will expect to see that the licensee has properly consulted the landowner to negotiate terms. This process is set out in our letter published in April 2012⁴.

The CAAV added two new points. They consider that adding to the activities covered by SLC 14(2)(c) represents a 'significant extension of statutory powers', which needs to be justified. This is not in our view a significant extension of the statutory powers available, because we consider that the added activities can generally be covered by the existing provisions of "install, maintain, remove or replace", and the additions help to make these express and also consistent with SLC 15.

The CAAV also proposed that the notice period for surveys should be extended from 14 to 28 days; that redress should be provided where surveys are not completed on time; and that the provisions for compensation should be extended to cover any losses arising as well as any damage caused. Such requirements and provisions are provided for in the Act by Parliament, and we are limited to clarifying the licence provisions in this consultation. We do note however that any disputed compensation can be referred to the relevant Lands Tribunal for determination⁵ and landowners may wish to seek independent advice as to whether, in a particular case, further redress for the issues raised could be dealt with in this forum.

SSE plc repeated their view (also previously put forward in the initial consultation) that the current licence provisions already allow generators to enter and survey land for purposes other than construction or extension of a generating station, such as for electric line activity, without the Authority's consent. Our view is that SLC 15(4) allows generators to access the powers of entry for survey set out in paragraph 10 of Schedule 4 to the Act *only*

³ Responses available at <https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-changes-standard-licence-conditions-14-and-15-electricity-generation-licence>

⁴ A copy can be found here: https://www.ofgem.gov.uk/sites/default/files/docs/2012/04/slc15-process-revision_0.pdf

⁵ Paragraph 11 of Schedule 4 to the Electricity Act 1989

for the purpose of ascertaining whether the land is suitable for the construction or extension of a generating station. This was clarified in April 2012⁶. SLC 15(2) is narrowed by the specific provision in SLC 15(4) and so does not allow generators powers of entry to survey for any purposes, other than those set out in SLC 15.

SSE also raised some further points:-

- They queried whether it is the intent that the other activities in SLC 15(2) - (b) the operation of a generating station, (d) installation of electrical plant and (e) pipes conveying heat - cannot make use of the power to survey in paragraph 10 of Schedule 4, as the current drafting implies this. This is correct regarding SLC 15(b) and (d) given the reasons above. However, note that the reference to electric lines in the power to survey in SLC 15(4)(b) has the extended meaning covering pipes conveying heat set out in SLC 15(2)(e) should SLC 15(3)(b) apply, i.e. where the electric lines connect a generating station with any premises. To help clarify this interaction, the words "and sub-paragraph (b) of paragraph 4 below" have been inserted into SLC 15(3).
- They note that SLC 15(2)(b) and (c) (proposed SLC 15(2)(d) and (e)) are not reflected in the SLC 14 proposed modifications. This is because proposed SLC 15(2)(d) and (e) do not apply to SLC 14. Under section 10 of the Act, SLC 15(2)(d) and (e) only have effect in relation to Schedule 4 of the Act, which is covered by SLC 15, but do not have effect in relation to Schedule 3 of the Act, which is covered by SLC 14.
- SSE believed that the reference in proposed modification SLC 15(4)(b) to "including, for the avoidance of doubt, works preliminary to those activities" is confusing and questioned whether the works under paragraph 10 Schedule 4 would be anything else. On reviewing SLC 15 further, we agree that the wording "works preliminary to those activities" causes a degree of circularity because the preliminary works that a licensee could undertake under paragraph 10 of Schedule 4 are only entering land to survey. Therefore, we have removed this wording to clarify the drafting.
- By the insertion of the words "including, for the avoidance of doubt, works preliminary to those activities" in proposed SLC 14(2)(c) and 15(2)(c), SSE are unclear as to how Schedules 3 and 4 are to apply to works preliminary to the rest of the items in the lists in SLC 14(2) and 15(2). On reviewing SLC 15 further, we note that the wording "works preliminary to those activities" causes this confusion because of its circularity. The preliminary works that a licensee could undertake for all of the items in SLC 14(2) and SLC 15(2) (subject to 15(3) and (4)) are set out in schedules 3 and 4 respectively. For example, the preliminary works under Schedule 3 would involve acquisition of land or rights over land pursuant to a compulsory purchase order and the preliminary works under Schedule 4 could cover obtaining wayleaves and other consents provided for under Schedule 4. Therefore, we have removed this wording to clarify the drafting. We have also included the words 'in sub-paragraph (c)' to clarify application of this provision.
- The drafting continues to make reference to 2007 as the date of effect but SSE would like clarity that the modifications are not intended to apply retrospectively. The date refers to when the powers first came into force in the generation licence. The modifications set out in the attached notice will only come into effect on and from 23 October 2015. The modifications do not apply retrospectively.

Thank you for the helpful responses to our consultation on these licence amendments. We continue to believe that the issues identified could in practice cause delay and/or higher costs in developing or connecting generation, and be a source of uncertainty for stakeholders. This could, in particular, restrict the development of offshore generation. Given this and following consideration of all responses as discussed above and in our

⁶ A copy of the letter communicating that view can be found here:
https://www.ofgem.gov.uk/sites/default/files/docs/2012/04/slc15-process-revision_0.pdf

previous consultations, we have decided to make the licence modifications. We consider that the licence amendments provide certainty for licence holders and other stakeholders and facilitate timely and efficient development of all electricity generation, including the connection of offshore generation to the onshore transmission system.

Next Steps

We have today issued a Modification Notice under section 11A(1)(b) of the Act to modify SLC 14 and 15 of the licence. These amendments will take effect from 23 October 2015.

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