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Date: 15 April 2016

Dear colleague,

**Consultation on Ofgem's minded to position to assign TSO obligations under the Grid Connection Codes and the Forward Capacity Allocation Guideline within GB**

The general principles which we will apply in order to assist in the implementation of the EU "electricity network codes" (ENCs) in Great Britain (GB) were set out in our<sup>1</sup> open letter of 18 December 2014<sup>2</sup>. We take the view that ENC implementation in GB should be done on a proportionate basis, by making only the minimum changes to the existing GB framework which are necessary to ensure ENC compliance.

This letter sets out Ofgem's minded to position on assigning the new obligations under the Requirements for Generators (RfG), Demand Connection (DCC), High-Voltage Direct Current systems and direct current-connected power park modules (HVDC), and the Forward Capacity Allocation (FCA) Guidelines to the Transmission System Operators (TSOs) that currently operate in GB. These four ENCs have been adopted by the European Commission and, once they enter into force, will become binding European Regulations. This letter sets out:

- Ofgem's application of the multiple TSO clause in the respective Regulations;
- The five step process we have followed in order to assign TSO obligations in GB;
- The principles we have applied in coming to our minded to position;
- Our current view of how to address future changes to the assignment of obligations.

We welcome views on:

- (a) the RfG, DCC, HVDC, and FCA Articles that we think place obligations on TSOs;
- (b) our application of the multiple TSO clause to these articles; and
- (c) our proposed assignment of responsibility for the obligations under RfG, DCC, HVDC, and FCA as set out in Annex 1 of this letter.

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<sup>1</sup> The terms "the Authority", "Ofgem", "our" and "we" are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority (the Authority).

<sup>2</sup> Our open letter can be found [here](#).

We previously undertook this exercise with respect to Commission Regulation (EU) 2015/1222<sup>3</sup>, and have based our approach to assigning TSO responsibilities for RfG, DCC, HVDC, and FCA on the CACM process.

### **Ofgem’s application of the multiple TSO clause**

RfG, DCC, HVDC, and FCA place additional obligations on TSOs in all EU Member States. The default position is that all TSOs within a Member State are required to comply with all of the obligations placed on TSOs under those Regulations. However, where there is more than one TSO in a Member State, the multiple TSO clause (Art. 8 of RfG, Art. 7 of DCC, Art. 6 of HVDC, and Art. 1(3) of FCA) allows Member States to provide that the responsibility for complying with the obligations be assigned to one or more different, specific TSOs.

The multiple TSO clause in RfG, DCC, and HVDC states that:

*“Where more than one TSO exists in a Member State, this regulation shall apply to all those TSOs. Member States may, under the national regulatory regime, provide that the responsibility of a TSO to comply with one or some or all obligations under this Regulation is assigned to one or more specific TSOs.”*

The multiple TSO clause in FCA states that:

*“In member states where more than one TSO exists, this Regulation shall apply to all TSOs within that Member State. Where a TSO does not have a function relevant to one or more obligations under this Regulation, Member States may provide that the responsibility for complying with those obligations is assigned to one or more different, specific TSOs.”*

The provisions of these articles allow a Member State, to allocate one or more functions to one or more TSOs in that MS.

There are multiple TSOs currently operating in GB, all of whom will be required to comply with RfG, DCC, HVDC, and FCA upon entry into force. DECC considers that Ofgem, as the National Regulatory Authority, is best placed to assess which obligations under RfG, DCC, HVDC, and FCA should be assigned to which TSOs. DECC has requested Ofgem to determine, on its behalf, the most appropriate assignment of TSO obligations in GB.

It is our view that obligations should only be assigned to operational TSOs because these are the only TSOs who can currently comply with the requirements of the Regulation. We consider it appropriate to use the multiple TSO clause to assign the responsibility to comply with specific obligations to specific TSOs, as some of the obligations set out in RfG, DCC, HVDC, and FCA are not relevant for all TSOs in GB.

Once they enter in to force, RfG, DCC, HVDC, and FCA will require TSOs to develop terms, conditions and methodologies. We are running this process now so GB TSOs are ready to contribute to these within the timeframes set out in the Regulations. We intend to publish a final decision based on this consultation in June 2016. Our current intention is to formalise that decision via a subsequent modification to each TSO licence. We will communicate our proposals for any such modification and would welcome industry input in due course.

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<sup>3</sup> Our decision can be found [here](#).

## **Ofgem's approach to assigning TSO obligations**

We have set out and are completing a five step process in order to assign TSO responsibilities as follows:

STEP 1: National Grid for RfG, DCC, and HVDC, and Ofgem for the FCA Guideline, to undertake a 'first-cut' allocation of obligations exercise.

STEP 2: Liaise with key parties that will be affected by RfG, DCC, HVDC, and FCA, and for those key parties to provide comment on the initial allocation and any additional information that will help to inform our minded to position.

STEP 3: Ofgem consultation on our minded to position (the current stage in the process).

STEP 4: Ofgem's final decision on the assignment of obligations under RfG, DCC, HVDC, and FCA to GB TSOs.

STEP 5: Formalising our final decision on the assignment of obligations under RfG, DCC, HVDC, and FCA to GB TSOs. Our current intention is to do this through licence modifications.

### **The principles Ofgem has applied in coming to a minded to position**

We have taken the following considerations into account when reaching the minded to positions in Annex 1:

1. Does an article of RfG, DCC, HVDC, or FCA confer an obligation on TSOs?
2. What is the interaction between particular provisions of the ENCs and the existing licence obligations for each type of TSO? We have aimed to ensure that our assignment of obligations matches TSO licence obligations to the extent possible.
3. Where relevant, what was our decision on TSO responsibilities under CACM? We have aimed to maximise consistency between the minded to position set out in this consultation and the decision made for CACM. This is particularly important for FCA as many FCA provisions are closely linked to equivalent CACM requirements.
4. We have taken informal industry feedback into account based on previous engagement through the relevant industry forums and with individual TSOs.

### **Future changes to the assignment of obligations under RfG, DCC, HVDC, and FCA**

We recognise that the assignment of obligations under RfG, DCC, HVDC, and FCA for GB TSOs may change over time. We foresee that such a change could be driven by four different sets of circumstances:

**1. The development of the terms and conditions and methodologies.** RfG, DCC, HVDC, and FCA require TSOs to develop a number of terms and conditions and methodologies. Once these methodologies are developed and approved, we may have to review TSO obligations to reconsider whether the allocation of responsibilities remains appropriate.

**2. A new GB TSO becomes operational.** We expect new TSOs to begin operating in GB in the future. We will consider the appropriate assignment of ENC-related obligations on a case-by-case basis, and we would expect any new TSO to comply with all relevant ENC obligations by the appropriate deadlines. We would expect to see consistency between the ENC obligations of existing and new TSOs where appropriate (e.g. depending what type of licence the new TSO holds).

**3. Operational TSO change in activity.** We would expect the TSO in question to notify us of the material changes to its operational activity that could warrant a review of its regulatory obligations, including but not limited to assigned obligations under the RfG, DCC, HVDC, and or FCA regulations.

**4. Amendments to the regulations.** As any changes to the ENCs would be made at European level, we would need to monitor whether our assignment of GB TSO responsibilities required updating. This would be undertaken on a case-by-case basis depending on the nature and magnitude of any changes to the ENCs or their application in GB.

### **Consultation on our Minded to Position**

We invite all stakeholders to provide their comments on our minded to position. Specifically, we are seeking views on the following four questions:

1. What are your views on the RfG, DCC, HVDC, and FCA articles which we have identified as placing an obligation on TSOs?
2. What are your views on Ofgem's interpretation of the multiple TSO clause in assigning obligations to GB TSOs?
3. What are your views on the assignment of obligations under RfG, DCC, HVDC, and FCA to GB TSOs as set out in Annex 1?
4. What are your views on the assessment of future changes to the assignment of TSO obligations under the RfG, DCC, HVDC, and FCA regulations?

Respondents are asked to provide evidence and justification to support your views where possible.

In particular, we encourage TSOs to consider the rights and responsibilities that are assigned to them, and to the other TSOs. We also encourage connection customers to review the allocation of rights and responsibilities between different TSOs in RfG, DCC, and HVDC to ensure that it reflects their views on the roles of the different TSOs.

Responses should be received by close of Friday 13<sup>th</sup> May 2016, and should be sent to [jonathan.whiting@ofgem.gov.uk](mailto:jonathan.whiting@ofgem.gov.uk) and [lewis.heather@ofgem.gov.uk](mailto:lewis.heather@ofgem.gov.uk).

Unless marked confidential, all responses will be published on our library and on our website, [www.ofgem.gov.uk](http://www.ofgem.gov.uk). You may request that your response be kept confidential. We will respect this request, unless the law requires us to disclose anything, for example under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. If you'd like your response to remain confidential, clearly mark the document to that effect and include the reasons for confidentiality. Put any confidential material in the appendices to your response.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mark Copley', enclosed within a light grey rectangular box.

Mark Copley

Associate Partner, Wholesale Markets