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22 July 2016

Dear Joe,

**Re: Extending competition in electricity transmission: criteria, pre-tender and conflict mitigation**

On behalf of Electricity North West Limited, we appreciate the opportunity to respond to this consultation on extending transmission competition. We understand that this latest document contains further information than has previously been available in the public domain. We have provided our feedback below which we trust will assist Ofgem to refine its thinking.

We are concerned that, given the timetable Ofgem is working to, that there remains much of the regime that has not been developed in sufficient detail yet. In particular, we note that there appears to be very little consideration given within the document to the potential impacts on and interactions with other, non-transmission, parties within the sector and therefore the knock on effects to their customers. We therefore urge Ofgem to develop a much more detailed set of proposals for consultation and proper industry evaluation as soon as practicable.

We have provided our response to the specific questions posed, where we are appropriately placed to address these, in Appendix 1. However, there are a number of more general points and observations that we believe Ofgem needs to consider further.

These concerns relate to both the generic issues that arise from Ofgem's proposals, as well as specific implications due to the progress of the Moorside project. Given Ofgem's stated intent to consult on whether or not to tender the transmission works associated with Moorside later in the year, we would appreciate further dialogue and clearer proposals so we can assess the implications for us and our customers.

**(i) Risks**

We believe that further work may be required on the risks associated with the regime. In particular, the risks of delays to the projects and of unforeseen costs should be considered.

We share the concern expressed by the Energy and Climate Change Committee that delays to these projects while the onshore tendering process takes place could have a material impact on customers. Delays and risk of delays, perceived or actual, have the potential to add to project costs. To assist in mitigating or avoiding any impacts, we recommend that the voices of those who would be most affected by delays are properly heard prior to a decision to compete being taken.

We believe that there may be some currently unforeseen and additional costs that Ofgem is not factoring into its thinking. There might, for example, be extra costs arising from competing a project which need to be factored into a CBA. For example a CATO may have a different credit rating to an incumbent TO and so those undertaking work for them (e.g. a DNO) may require different security, which would add cost to a project. Advice from stakeholders should be sought on this point and any additional costs need to be considered and weighed against the potential benefits.

## **(ii) Electricity Distribution**

We remain concerned that the impacts on and interactions with electricity distribution and customers connected to local distribution networks have not been taken into account in Ofgem's public position to date. It is not uncommon for Distribution Network Operators (DNOs) to be requested to undertake work on the electricity distribution networks to facilitate aspects of the delivery of transmission projects. Any such works are usually outside the scope of the price control but there is an interaction with core business activities.

DNOs are managing a number of key issues for their customers and wider stakeholders such as delivering their ED1 outputs and closing out DPCR5. There is a risk for consumers that DNOs potentially impacted by the onshore tendering proposals are unavoidably distracted from the focus they naturally have on the core tasks for their consumers to meet the needs of the System Operator, Transmission Owner, bidding parties or Ofgem. The extent of the potential impact will vary depending on the project in question and the degree of anticipated interaction with the distribution network but it is not clear how any associated costs are managed.

Related to this, we are concerned that DNOs impacted by these proposals may face material incremental costs not funded in their ED1 settlements for engaging with the development of onshore transmission tendering and once a CATO is appointed if additional interfaces (i.e. new interface with the CATO) are needed. Again it is not clear how costs associated with the tender process that we may incur are to be managed. We do not believe it is appropriate that any additional costs we incur as a direct consequence of the decision to tender a given project should be picked up by regional DUoS customers.

We recommend that further consideration of how the interests of other affected parties, including DNOs and their customers, be addressed as part of Ofgem's future consultations in this area.

## **(iii) Transferring agreements**

We note Ofgem's proposals regarding existing transmission owners reaching necessary agreements that can be transferred to successful parties. However, we are concerned about the assumptions underpinning this view. Whilst, in theory, it is possible to transfer agreements between parties, in practice it is legally and commercially problematic; as the nature of the parties contracting means different contract arrangements are appropriate. For example the scope of the work between the parties may differ as could elements such as risk management. We therefore do not believe it is correct to assume that all relevant agreements will be suitable for novation.

It may be possible to derive a generic agreement however in our view this could be potentially inappropriately restrictive and may indeed hamper efficiency. Our preference is that the DNO can negotiate the most appropriate agreements post award of the CATO. In the event that Ofgem prefers the use of a generic agreement, we believe it is vital that appropriate break clauses should be built into any agreement entered into prior to the CATO appointment to ensure all parties are able to review the risks and benefits associated with the agreement post award.

#### **(iv) Timescales**

The timescales noted in figures 1 & 2 and section 1.10 are dependent upon enabling legislation. We understand that this is set for late 2017. However, in relation to our works on the Moorside project, we may need to commence some of our works in 2017 and a good proportion of our work may be required pre-award of a CATO unless Nugen vary their current generation commencement date. It is unclear how such direct costs would be treated. We assume that the Transmission Owner will fund these out of their allowances prior to the award of tender. However, we would appreciate confirmation of this treatment.

As described at the start of this letter, we are concerned, given the timetable Ofgem is working to, that there remains much of the regime that has not been developed in sufficient detail yet. We therefore urge Ofgem to develop a much more detailed set of proposals for consultation and proper industry evaluation as soon as practicable. We also suggest that there may be merit in Ofgem hosting a workshop or bilateral meetings for those non-transmission parties likely to be affected by these proposals.

We hope that these points will assist in the further development of Ofgem's proposals. We welcome further discussion about the implication of these proposals, both in terms of our interaction with the Moorside project and more widely. In the first instance, please contact either myself or Jen Carter ([jen.carter@enwl.co.uk](mailto:jen.carter@enwl.co.uk)).

Yours sincerely

**Steve Cox**  
**Head of Engineering**

## Appendix 1: Response to Consultation Questions

Please find below our response to those consultation questions where we believe we are appropriately placed to respond.

**Q1. What are your views on our proposed arrangements for asset ownership and responsibilities? In particular can you provide examples of specific scenarios where it may be necessary for ownership transfer of existing physical assets to occur between network operators?**

The proposals as set out focus on arrangements for asset ownership and responsibilities between transmission party but do not give consideration to the boundary between transmission and other parties, such as distribution. We don't envisage this within the scope of the Moorside project. The scope of assets required for an efficient connection are determined by the joint design process led by the TO.

We do not see why ownership of the final assets need change from the standardised boundary and in any event would not be material to efficiency. However, greater clarity regarding such examples would assist the sector.

**Q8 What are your views on the proposed arrangements for the data room and bidder clarifications?**

The consultation notes that:

*We propose to fund a TO for the efficient costs of additional activities associated with the tender that have not already been funded as pre-construction works under RIIO-T1. We propose that the level of funding would be determined during the tender period, on an ex post basis, and would be paid for by the CATO.*

As discussed in our covering letter, we are concerned that the impacts on and implications for other affected parties are not covered by the consultation document at present. We would appreciate clarity that our costs associated with provision of information for the data room and responding to bidder clarifications will be funded and the mechanism for this funding, as we do not believe that our customers should incur the additional costs associated with supporting this activity.