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Dear Katie,

Re: Consultation on licence changes to support electricity transmission competition during RIIO-T1

On behalf of Electricity North West Limited, we appreciate the opportunity to respond to this consultation. We have reviewed the proposed licence modifications and the questions posed in your consultation. Our response takes the form of a number of relatively high-level points that reflect our immediate thoughts and concerns in relation to the proposed drafting and approach being taken. We will respond to the specific points raised in the consultation on the North West Coast Connections (NWCC) project and how this relates to our activity separately.

(i) Tender Specification Data – implications for third parties

As a third party involved in NWCC, one of the proposed transmission projects that Ofgem is considering tendering, we are keen to understand what will be required from Transmission Owners (TOs) in order to comply with the proposed new requirements and, thereby, the likely implications for our own activities. Based on the current draft new condition 6M/6J as set out in Appendix 5 of the consultation, we are unclear what we are likely to be required to provide to inform both Ofgem's understanding of our works and to allow potential bidders to understand the works required on our network. As it stands, only two items of the list of documents in Schedule 2 directly relate to the works that we would expect to carry out, namely items 14 (Details of DNO crossings) and 18 (Information on 3rd party interfaces). We are unclear exactly what would be required under each of these and, as such, are concerned that these would not provide sufficient visibility to enable Ofgem or a potential bidder to fully understand the works required on our network in relation to NWCC.

We therefore believe that greater clarity is required in relation to the expectations in terms of Tender Specification Data in order for us to effectively engage with Ofgem, the TO and potential bidders. This clarity could be provided on the face of the licence or may be more appropriate to be provided on a case-by-case basis given the bespoke nature of large transmission projects. If the latter approach is taken, appropriate engagement needs to be undertaken with any third parties required to provide information in order to ensure that the third party is fully aware of the expectations and timescales for delivery of such information. Such an approach is essential to ensure third parties are able to respond to these requirements in a timely and effective manner, recognising that such information requests can place a significant burden if not handled sensitively.

It should be noted that it may not be appropriate for all information provided to Ofgem to be included within the data room, especially where a level of granularity is required to determine if costs, for example, are efficient. Sharing such information with potential bidders who may

be consortia including some existing or potential members of our supply chain could, for example, be deemed to result in anti-competitive behaviour. Consideration therefore needs to be given as to how TOs and, where appropriate, third parties are able to provide this information on a commercially sensitive basis to Ofgem.

(ii) Progressing licence modifications at this stage

We are surprised that Ofgem is intending to progress with licence modifications at this stage in the development of the Competitively Appointed Transmission Owner (CATO) regime. Whilst we are aware of the timetable that Ofgem is working to and its intent to implement the new arrangements, it is almost unprecedented to table modifications to licences when the corresponding amendments or introductions of both primary and secondary legislation are yet to be laid before Parliament. It creates an unusual and challenging situation where parties may not be able to fully assess whether or not they wish to exercise their licence modification appeal rights as they lack the visibility and certainty to be able to understand the implications for their organisations

We do recognise that the timescales are tight for introducing the CATO regime and understand the need and desire to work on legislative and licence changes in parallel. We can also see the justification for developing the proposed modifications so all parties can be aware of the likely obligations that will be introduced but suggest there may be merit in not modifying the licence at this point. We propose that it may be more appropriate, and avoid creating a concerning precedent, if the formal notice to modify the licences was held until parties can assess with the necessary legislation.

Overall, we remain supportive of the process, subject to the concern expressed above, and remain happy to assist with licence changes as they are likely to affect us.

(iii) Licence modifications as drafted

Based on the draft new or modified conditions within the relevant appendices, we are concerned that significant work is required to develop some of these more fully. The proposed drafting of 6M/6J in particular strikes us as one that would benefit from further work. Clarity around how the Authority can direct when the Final Tender Checkpoint commences, including how the Authority will engage with the licensee and other affected parties, for example, needs further consideration. Similarly, formalising how Tender Specification Data will be determined on a case-by-case would be beneficial.

We also believe it is essential that further consideration be given as to the standing of some, if not all, of the proposed Ofgem guidance documents shown within Appendix 2. Given how fundamental some of these are likely to be to the CATO regime, it seems appropriate that these are given effect through the licence, with relevant consideration given to the modification of these documents to give these the same effect as if they formed part of the licence or Tender Regulations. In a similar manner to the point raised at (ii) above, it does not seem appropriate to modify the licence without drafts of these documents being available for interested parties to understand the implications of the proposed licence modifications.

We are also unclear as to the reasoning for some conditions being drafted as Special Conditions. Given that the matters covered in the proposed 2P/2O could also apply in the future to CATOs, is it more appropriate for these conflict mitigation arrangements to be covered under a Standard Condition?

(iv) Future role of the System Operator

We recognise that there is significant uncertainty in the sector at present time and appreciate that, if nothing was done while strategic projects progressed then, this would result in a significant hiatus in activity. However, in light of the current consultation on the future role of the System Operator (SO), we are concerned that there is a risk that elements of transmission licence are modified prematurely. In particular, there may be merit in considering how C27 is evolved in conjunction with this wider piece of work.

As set out in our recent response to the call for evidence on moving towards a Smart and Flexible Energy System, we recognise that there may need to be greater interaction between the Transmission System Operator and other parties, including the TOs and increasingly the Distribution System Operators (DSOs). We therefore suggest that further modifications may be required to this condition in light of the current work on the future role of the SO and also the ongoing work regarding the interface between transmission and distribution.

We hope this response will assist you in this process. If you have any comments or questions, please do not hesitate to contact me.

Yours sincerely

Jen Carter
Client Manager