

Anna Kulhavy
Office of Gas and Electricity Markets
9 Millbank
London
SW1P 3GE

8 June 2017

Dear Anna,

Notices to modify the network licences for the network innovation strategy

I write with Northern Powergrid's views on the proposed modification of the electricity distribution licence to insert a new Standard Condition 48A (The Electricity Network Innovation Strategy).

In summary, our view is that Ofgem's proposed drafting is unusual and deviates from established norms for licence conditions of this kind. As such we consider that some of the drafting of the new licence condition should be revised. We are restricting our comments to the drafting and make no observations on the policy decision itself to which we do not object.

In its drafting Ofgem has departed in this instance from the standard approach used in the electricity distribution licence when a licence condition introduces a power of direction for Ofgem. We do not know why Ofgem has done this and, in the absence of any rationale for such a departure, we consider that Ofgem should revert to the drafting approach that it has usually used when it is equipping itself with powers of direction.

The established drafting norm is for the relevant licence condition to make provision for the direction to be issued, to state what the subject of the direction may encompass and to stipulate the procedure that must be followed by Ofgem before the direction may take effect. In this Standard Condition 48A draft these aspects have been omitted and there is simply an obligation on the licensee to 'include' these directions in the Strategy.

In the drafting of the new Electricity Network Innovation Strategy condition Ofgem's power to give directions can only be inferred from the words in 48A.7(g). Also, from the proposed drafting it is not clear whether Ofgem wants to use the direction to instruct licensees what to *do* or to use it to state what additional content must go in the statement. The effect of current drafting is that there appears to be no limit (beyond the vires of the Electricity Act) to what Ofgem could put in the direction. This is a weakness in the drafting that should be rectified by reverting to the normal conventions of licence drafting. It is important to delineate what the direction can require the licensee to do.

More generally, and of less materiality, the licence condition reads in places more like a guidance document than a licence condition that gives effect to a new policy requirement that takes the form of a legal obligation. The language used is colloquial and imprecise which is not desirable in a licence condition. Examples of such terms include 'joined up approach', 'addressing challenges', 'gaps' and the

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strategies that will help to 'address those gaps'. This reads more like a conference presentation or an article in the trade media than a licence condition. We understand what Ofgem is trying to achieve but we think it is regrettable that the drafting of a legal instrument is so imprecise.

There are two points of detail that Ofgem should also consider in its final drafting:

- Does Ofgem really mean that the Strategy must 'include' (that is the word used in 48A.7) 'any directions... issued by Ofgem'? That would suggest that we should include the text of the direction in our Strategy. We doubt that is what is meant and we suggest that Ofgem really means that we should 'have regard to' any directions from Ofgem when we are preparing the Strategy.
- It appears that the word 'a' (or possibly 'any') has been missed out in the penultimate line of 48A.7(d).

If you would like clarification on any of the points raised in this letter please make contact.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jim Cardwell', with a long horizontal flourish extending to the right.

Jim Cardwell
Head of Trading and Innovation