

Jonathan Dixon

From: Paul McGuckin <paul.mcguckin@mutual-energy.com>
Sent: 31 July 2018 17:52
To: switchingprogramme
Subject: Switching Programme: Proposed modifications to

Please see below Moyle Interconnector Ltd's response to the above-named consultation. We have only answered the single consultation question that is directly applicable to our business as an electricity interconnector owner and licence holder.

Q2.1: Do you support our proposal to introduce a high-level duty upon licensees to cooperate, where appropriate, in delivering the outcome of a significant Ofgem-led programme, such as a SCR?

From an electricity interconnector licence holder's perspective, we have some concerns with this proposal, both at a conceptual level and with the specific wording.

Third party access to interconnectors is governed by arrangements that are administered by interconnector owners but subject to strict regulatory requirements and regulatory approval under licence. It is therefore difficult to imagine the circumstance where Ofgem would need to rely on the proposed 'duty to cooperate' licence addition in relation to any 'significant code project' relating directly to an interconnector.

We also struggle to imagine the circumstances where this would be needed to give effect to the conclusions of a 'significant code project' relating to a code that is administered by a third party. Interconnector owners are simply parties to other industry codes and comply with the requirements of those codes. We do not see a significant role for interconnector owners in projects to implement change to such codes – where we do see such a role we would seek to actively participate because it is likely to be in our business' interests (e.g. to ensure new IT systems are compatible with our systems) whereas a failure to adequately participate or cooperate is likely to have an adverse effect if change is implemented without our input. Such (non)participation would be expected to hinder the interconnector licence holder rather than the wider industry so we do not see that such compulsion is necessary via a licence amendment.

With regards to the specific wording, our concern is that it is rather vague and potentially onerous

- The definition of "significant code project" is such that it can refer to any project where Ofgem wants to oblige licence holders to participate. This would give Ofgem the power to oblige licence holders to 'cooperate' (as elaborated on by the drafting to include provision of information, data, data cleansing, creation of test scripts etc) in any project whatsoever at Ofgem's behest. While we don't believe this to be the intent, if such a clause is to be inserted it should be very clear about the circumstances leading to a duty to cooperate i.e. limited to Significant Code Reviews and other specific formal mechanisms. Otherwise, it is impossible to understand or predict how often this duty to cooperate may be invoked and to plan accordingly.
- Sharing of data with third parties may be subject to appropriate confidentiality agreements being in place between the parties. There is an undesirable risk of non-compliance with a licence where a third party appointed by Ofgem does not agree with a licence holder's confidentiality requirements.
- It is unclear why 'reasonable endeavours' applies to the text at 2.6(e) of the consultation document but not the rest of 2.6. A particular concern is that person(s) appointed by Ofgem could make very onerous requests on licence holders at great time and expense per the drafting in 2.6. Combined with a vague definition of 'significant code project' this drafting leaves the licence holder exposed to potentially having to undertake a significant volume of work related to projects that cannot currently be foreseen.

Our preference and view is therefore that this clause is not necessary in interconnector licences. We believe there are limited circumstances where interconnector licence holders would need to be obliged to cooperate in a Significant Code Review (or equivalent project of similar stature) and the proposed 'one size fits all' obligation may

lead to unintended negative consequences. It is unlikely that an interconnector licence holder would not voluntarily participate in any relevant projects and, failing that, a targeted direction relating to 'significant code project' may be more appropriate where they are a key party to such a project.

If you have any aspects of this response you would like to discuss please feel free to get in touch.

Kind regards
Paul

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