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for energy consumers

To all interested parties and  
stakeholders

Direct Dial: 020 7901 7159  
Email: Andrew.burgess@ofgem.gov.uk

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## **Assessment and Design Fees: modification of Standard Licence Condition 12 of all electricity distribution licences**

We<sup>1</sup> published a statutory consultation on the 28 February 2018 setting out proposals to amend Standard Licence Condition (SLC) 12 of the electricity distribution licences.<sup>2</sup> These changes proposed to exempt Distribution Network Operators (DNOs) from the obligation to offer terms for making a connection where a requester has not paid the relevant connection offer expenses.

After considering the responses submitted to this consultation,<sup>3</sup> we have decided to proceed with a licence modification which will implement the changes set out in the statutory consultation. These changes are described below and in the licence modification notice published alongside this letter.

A number of months have passed since the statutory consultation closed in March 2018 and our decision to publish the licence modification notice. We considered this delay was necessary so that work to understand the connection offer fees charged by the DNOs could be taken forward. This is discussed in more detail below.

### **Background**

The Government introduced legislation which allows DNOs to require payment for reasonable costs they have incurred in developing a connection offer as a precondition for issuing a connection offer. This legislation, The Electricity (Connection Offer Expenses) Regulations 2018, came into force on 6 April 2018.<sup>4</sup>

To support the implementation of these Regulations, we proposed to amend SLC 12 of the electricity distribution licences. Our changes proposed to exempt licensees from the obligation to offer terms for the making of a connection under section 16(1) of the Electricity Act 1989, where the requester has not paid the relevant connection offer expenses within reasonable timescales requested by the licensee.

The statutory consultation we published on 28 February 2018 set out the amendments we considered would be necessary to SLC 12.

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<sup>1</sup> The terms "the Authority", "Ofgem", "we", "us" and "our" are used interchangeably in this letter.

<sup>2</sup> A copy of this consultation can be found here: <https://www.ofgem.gov.uk/publications-and-updates/notice-statutory-consultation-proposal-modify-standard-condition-12-all-electricity-distribution-licences>

<sup>3</sup> The statutory consultation closed on 28 March 2018

<sup>4</sup> A copy of the regulations can be found here: <http://www.legislation.gov.uk/ukxi/2018/254/made>

## Consultation responses

We received six responses to the statutory consultation. Five of these responses were non-confidential and have been placed on our website.<sup>5</sup>

Four respondents supported the modification's implementation. The other two respondents did not state clearly whether they supported or did not support the modification's implementation but did make a number of comments about the proposed changes. We address relevant comments made by all respondents below.

### The payment of connection offer fees

Several respondents raised issues about how connection offer fees are being applied by the DNOs. One respondent considers that the DNO must first incur connection offer expenses before they can require them to be paid. They also consider that DNOs should be obliged to enter into an agreement for connection immediately following payment of the relevant connection offer fee.

Another respondent raised concerns about potential discriminatory treatment. They stated it was unclear if DNOs would apply the same terms and conditions for the payment of connection offer fees to Independent Connection Providers (ICPs) and in-house connection businesses. They were concerned different treatment could place the DNO connection businesses at a competitive advantage. They were also concerned that some DNOs apply a 30 day expiry time limit on connection offers to ICPs which they do not believe applies to in-house connection businesses. This could place the DNO's connection businesses at a competitive advantage.

### *Our views*

We understand the concerns raised by the respondent relating to timing of payment for the relevant connection offer activities. Such fees should be cost reflective, reasonable, and justified against the activities carried out by the DNOs. Transparent and clear information should also be provided to the applicant setting out the charges they are expected to pay.

We do not consider the legislation or licence changes are prescriptive about how connection offer fees should be recovered by the DNOs. This includes the timing of when payment for connection offer activities are required, or how DNOs determine a payment schedule. The legislation provides a list of activities for which the DNO can seek payment of fees, but it does not specify a mechanism which the DNOs should apply to recover these fees.

DNOs should apply these fees in a manner which does not prevent new connections coming forward. To that extent, we are engaged with the Energy Network Association (ENA) in the work they are undertaking to help clarify the differences between the various methodologies DNO are applying to recover connection offer fees. This work has identified each DNO has an individual approach in how the fees are requested and recovered from applicants, based on the options available. In our view, this work should continue and aim to identify the benefits of the approaches developed by the various DNOs and seek greater commonality where it would be beneficial to stakeholders.

We are, however, in agreement that DNOs should not apply connection offer fees in a manner which discriminates between ICPs and in-house connection businesses (and by extension, for networks that will be operated by IDNOs). Competition between ICPs and DNO connection businesses can help ensure connections are delivered to customers in a cost effective and timely basis; this is true regardless of who is ultimately to operate any such network. Any reduction in competition would not be in consumers' best interests. We

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<sup>5</sup> The non-confidential responses can be found here: <https://www.ofgem.gov.uk/publications-and-updates/notice-statutory-consultation-proposal-modify-standard-condition-12-all-electricity-distribution-licences>

would expect any stakeholders who have evidence of undue discriminatory treatment to raise their concerns with us.

### Common charging methodology

One respondent considered that DNOs should adopt a common charging methodology for calculating connection offer fees. This would set out the basis on which connection offer expenses are calculated, how charges are differentiated between parties and types of work, and how costs are apportioned, amongst other things.

This stakeholder considered a common charging methodology would help ensure that competition in the connections market continues to develop and that arbitrary or excessive charging would be avoided.

### *Our views*

As stated above, we support work being undertaken through the ENA to understand how individual DNOs are applying connection offer fees. This has identified what customers are expected to pay and how charges are apportioned against the various stages of the connection offer process.

The work has identified that while the costs being recovered by individual DNOs are similar, there are wide variations in how those costs are apportioned to customers. We accept some differences between DNOs is likely given the lack of prescriptive rules on how charges should be apportioned. However, we also consider the work being led through the ENA should aim to better understand why DNOs have different arrangements and the impact this has on customers and stakeholders.

Charges or fees levied by the DNOs should, however, be transparent, non-discriminatory, cost reflective and promote competition. Costs should also be proportionate to what is received. Stakeholders should contact us if there is evidence that the charges being levied by the DNOs do not meet these criteria, where we can take appropriate action if required.

### Timing of payment

One respondent questioned what would happen if a DNO received payment for a connection offer after the 65 working day deadline set out in paragraph 6 of SLC 12. In particular, if the DNO accepts this offer would it be recorded in the Regulatory and Instruction Guidance (RIGs) data submitted in relation to SLC 12.

This respondent also stated the 65 working day deadline for offering terms for a connection agreement should be reconsidered. They believe customers have appropriate protection through the Connection Good Standards of Practice and SLC 15.

Another respondent stated we should reconsider ambiguity in the proposed licence changes, specifically that the licensee is not obliged to enter into an agreement if the relevant expenses have not been paid. They believe the wording may allow DNOs to accept connection agreements despite not receiving the appropriate connection fees.

### *Our views*

It is up to the DNOs to determine 'reasonable timescales' for requesting connection offer fees which would enable the applicant to make the payment in a fair and practicable manner. However, we consider the DNOs should aim to offer terms for a connection agreement within the 65-day period set out in SLC 12. This ensures that efficient connections are made and applicants have confidence in the process to secure a connection. The DNOs should record and explain the reasons for any breaches of this period in the RIGs and associated commentary documents. Where the timescales can be

determined as unreasonable, the licensee would not be exempt from the obligation to offer terms within 65-day period.

The DNOs have put in place different arrangements to collect connection offer fees from applicants. In our view, it is the responsibility of each DNO to understand the impact of their arrangements on the 65-day period set out in SLC 12. In particular, if the arrangements put in place by the DNOs make it more likely that this threshold will be breached, they will need to ensure they are justified in this approach.

For clarity, we do not consider the licence changes create ambiguity around the process for offering connection offer terms. Each DNO has put in place arrangements for applicants to pay connection offer fees before they will enter into an agreement. As stated above, we consider work should continue to examine if greater commonality should exist between the methodologies put in place by the DNOs.

### **Our decision**

We have decided to implement the licence changes consulted on in the statutory consultation and set out in the notice which accompanies this letter. These changes will amend the licences so that the DNOs are not obliged to offer terms unless the relevant connection offer expenses have been paid.

A number of months have passed since the closure of the statutory consultation on 28 March 2018 and our decision to publish the licence change notice. We considered this period of time was required so the ENA and industry could take forward the work discussed in this letter around understanding the connection offer fees being charged by DNOs. In particular, to make sure that no issues were identified in the work which would cause us to amend or change the licence text consulted on in the statutory consultation.

We are content that no further changes are required to the text and they can be implemented in the licences. However, we remain committed to working with industry and stakeholders to better understand the differences in how connection offer fees are being charged by DNOs and if action is necessary to make changes to these fees.

If you have any questions about this decision, please contact James Thomson on [james.thomson@ofgem.gov.uk](mailto:james.thomson@ofgem.gov.uk) or 0141 331 6012.

Yours sincerely

### **Andrew Burgess**

Deputy Director, Charging and Access