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26 October 2018

Dear Chiara

**Notice of statutory consultation on a proposal to modify the standard conditions of all electricity distribution licences**

Thank you for the opportunity to comment on the above notice, dated 28 September 2018, and the associated guidance document (known as the POGG). This response should be regarded as a consolidated response on behalf of UK Power Networks' affected distribution licence holding companies: Eastern Power Networks plc; London Power Networks plc; and South Eastern Power Networks plc.

We have outlined in the appendix to this letter a number of issues which relate to either the drafting in the licence or the Prohibition on Generating Guidance (POGG) document. We believe that the resolution of these is key to the successful implementation of the changes you have articulated during your consultations (both the formal one in October 2017 and the informal one during June 2018 following the workshop). Our decision to not make formal representations to this statutory consultation is made based on the successful resolution of the points raised below.

In particular, we would like to draw your attention to the following points that are of particular concern:

- There is a disjoint between LC43B.1(b) and the POGG – specifically LC43B.1(b) refers to “security of supply, system resilience” but we are unclear how they are applied in the POGG which refers to uninterruptible power supply and emergency response. “Security of supply” and “system resilience” are terms which are used to cover requirements such as engineering standard P2/6 and not uninterruptible power supplies or mobile generation for fault response as per the POGG. Our understanding of your policy position is that the examples given in the POGG are correct. We therefore welcome clarity as to whether this is correct and any consequential amendments to the licence condition to reflect your policy in this area.

- The closing sentence to the second bullet of paragraph 1.11, which states that Ofgem are not supportive of licensees seeking ownership and/or operational control over generation assets in other licensees' areas. LC42 (being in section B) is applicable within a DNO's Distribution Services Area only. Should Ofgem therefore wish to restrict licensees as per their drafted paragraph 1.11, then we believe that the obligation should be in the licence condition and not in the POGG, and that the licence condition should be moved from Section B of the licence to Section A of the licence to give effect to it across Great Britain.
- The requirement of paragraph 2.13.3 restricting any export to the grid from licensee owned generation restricts the licensee's ability to meet its environmental targets (and social expectations in this area) as this would lead to unnecessary curtailment of renewable energy generation. In doing so, it limits a licensees' ability to reduce its own business carbon footprint.
- We are unclear how the requirements in paragraph 4.8 (specifically 4.8.3 and 4.8.4) could be met where licensees already own existing assets. In such circumstances we believe that it is appropriate for Ofgem to waive these requirements as it would place an impractical burden on licensees e.g. for the EPN owned battery (SNS) at Leighton Buzzard it is not possible to market test other solutions as the asset is already in place providing P2/6 compliance support. We are happy to engage further with Ofgem on this point.

In addition we seek clarity that all network licensees are subject to equivalent obligations, be they at transmission or distribution level and operating in the gas or electricity sector. We look forward to hearing from you on this point.

Finally, further to the teleconference you and Freya Kerle held with James Hope, Dan Saker and Paul Measday on 22 October, we can confirm that the proposed modifications to the licence are clear that providing a licensee has clear separation from the **operator** of storage, it is permitted to **own** both existing and new storage assets. In such cases we do not believe that the licensee would be required to seek any form of exemption or derogation from Ofgem to own but not operate storage.

If you have any questions on the above or the feedback in the appendix, please do not hesitate to contact Paul Measday in the first instance.

Yours sincerely



Basil Scarsella  
Chief Executive Officer  
UK Power Networks

Copy: Suleman Alli, Director of Safety, Strategy & Support Services  
James Hope, Head of Regulation & Regulatory Finance  
Paul Measday, Regulatory Returns & Compliance Manager  
Daniel Saker, Distribution Policy Manager



## Appendix

### General feedback

- We have undertaken the review of the licence conditions on the basis that Ofgem have implemented the same changes for DNOs as they have for IDNOs. Accordingly we have conducted our review of the basis of the DNO conditions only and seek clarity from Ofgem if there are any changes which do not apply equally to DNOs and IDNOs. If there are any differences we also seek clarity on why they exist.
- The Notice issued by Ofgem is to modify the licence conditions. We seek clarity that Ofgem are comfortable that the Notice is valid for licensees such as ours where LC42 and LC43 are not currently in effect i.e. the Notice issued shows changes to existing conditions and is silent on switching back on conditions where they are not in effect.

### Feedback on licence conditions

- LC42.9 requires every (historic) Compliance Statement to be published on a licensee's website. It is unclear why such an obligation has been maintained – is it proportionate that a licensee which might have a considerable number of statements since LC42 (originally LC39) was introduced is required to publish them all? To be required to publish the last three or those applying to the last five (rolling) years is more proportionate. Furthermore, where LC42 has been switched off the relevance of historic Statements is diminished and the proportionality point is heightened.
- Within the definition of Relevant Exemption Holder in LC42.10, the term “benefit” (used twice) has connotations that the exemption is only being given to benefit the licensee. Replacing “benefit” with “in receipt of” and “holds a valid exemption” respectively avoids this issue.
- The reporting requirements in LC43.11 are not clear:
  - Firstly in respect of what “every” means in this context – it could be interpreted that “every” report is required each and every year under the RIGs.
  - Secondly, as the RIGs do not refer to LC43 reports in any way, we believe it would be simpler to place on the face of the licence the obligation to submit and publish the required report. We propose the following wording: “By the 31 July each year the licensee must (i) provide the Authority with a copy of its Compliance Report as outlined in paragraph 43.6 and (ii) publish each such report on its website.”
- There is a disjoin between LC43B.1(b) and the POGG – specifically LC43B.1(b) refers to “security of supply, system resilience” but we are unclear how they are applied in the POGG which refers to uninterruptible power supply and emergency response. “Security of supply” and “system resilience” are terms which are used to cover requirements such as engineering standard P2/6 and not uninterruptible power supplies or mobile generation for fault response as per the POGG. Our understanding of your policy position is that the examples given in the POGG are correct. We therefore welcome clarity as to whether this is correct and any consequential amendments to the licence condition to reflect your policy in this area.
- The reference in LC43B.2 to optionality for the Authority in issuing a direction leaves the licensee exposed to a scenario where it has met the criteria but if the Authority does not issue a direction it is placed in breach of its licence. Changing “may” to “shall” resolves this issue.



- LC43B.3 could be improved by adding “reasonable and proportionate” between “such” and “conditions” to give comfort to the licensee that the conditions it will be subject to are not unreasonable.

### **Feedback on the POGG**

- All references to “For avoidance of doubt” should be removed as they are superfluous.
- Paragraph 1.4 refers to “monopoly network operators” although it is unclear why the term “licensees” is not used.
- The language used in paragraph 1.5 could be seen to infer that Ofgem do not like licensees using their size to obtain a lower cost of capital – this should be reworded to avoid this erroneous interpretation.
- Paragraph 1.9 refers to “licence changes” which makes sense when reading the POGG today in parallel to a statutory consultation to change the licence, however for future readers of the POGG such a reference will be unclear and should be removed or clarified to refer to the date that the licence changes were implemented.
- Paragraph 1.10 refers to the licence aims – this reference to aims should be removed as it brings in doubt that the drafting of the licence condition has not achieved its goal. Furthermore it uses the terminology of “intend to give deeper effect [to Article 26]”. We believe that removing “intend” and adding wording to clarify how the “deeper effect” is given will improve clarity for the reader.
- We are concerned in respect of the closing sentence to the second bullet of paragraph 1.11, which states that Ofgem are not supportive of licensees seeking ownership and/or operational control over generation assets in other licensees’ areas (the apostrophe should indicate that all other licensees are referred to). We have two concerns in this respect:
  - The wording in 1.11 includes ownership and operation of generation assets – the reference to ownership is counter to the requirements of the licence condition and we seek clarity in this area e.g. by making it explicit when ownership is or is not permissible.
  - LC42 (being in section B) is applicable within a DNO’s Distribution Services Area only. Should Ofgem therefore wish to restrict licensees then we believe that the obligation should be in the licence condition and not in the POGG, and that the licence condition should be moved from Section B of the licence to Section A of the licence to give effect to it across Great Britain.
- The drafting of paragraph 2.2 states that licensees can only use the exceptions available in LC42 where conflicts of interest have been mitigated. We believe this is highly restrictive and would prevent us from fulfilling our primary role of ensuring network reliability. For example, this would potentially prevent licensees from being able to use existing mobile generators to provide backup supply immediately following a fault.
- There is a rogue closing bracket after “Authority” in paragraph 2.7.
- Paragraphs 2.9 and 2.10 need to be clearly linked back to paragraph 2.8 to make it clear they are referring to the applicability of the exception.
- Paragraph 2.11 should refer to Great Britain and not just Britain.
- The drafting of paragraph 2.11 is such that any island within Great Britain which is not electrically separate (e.g. Isle of Wight or Anglesey) qualifies for an island-based network exception of type Category A. We do not believe this is the intention as it would lead to distortions in the GB market, which Ofgem is trying to prevent.

- The requirement of paragraph 2.13.3 restricting any export to the grid from licensee owned generation restricts the licensee's ability to meet its environmental targets (and social expectations in this area) as this would lead to unnecessary curtailment of renewable energy generation. We believe that a more pragmatic approach would be to allow licensees to export up to their annual electricity consumption per site. This would avoid unnecessary export limitations and potential downsizing of generation assets on licensee's sites. However, we are happy the requirement that licensees do not provide grid support services is maintained. It is also worth noting the unusual use of the phrase "to the grid" – as this could be confused with National Grid we believe it is sensible to end the final sentence with "...to provide flexibility services".
- We are unclear how the requirements in paragraph 4.8 (specifically 4.8.3 and 4.8.4) could be met where licensees already own existing assets. In such circumstances we believe that it is appropriate for Ofgem to waive these requirements as it would place an impractical burden on licensees e.g. for the EPN owned battery (SNS) at Leighton Buzzard it is not possible to market test other solutions as the asset is already in place providing P2/6 compliance support. We are happy to engage further with Ofgem on this point.
- In respect of paragraph 5.4 we believe that issuing draft directions to licensees for their review prior to them being published (in line with the process undertaken by Ofgem under LC46 for Interruptions Incentive Scheme exceptional events) will help ensure a smooth running process and avoid potential updates to already published directions.
- Finally, in respect of paragraph 5.9, we believe that timescales for revoking a direction should be included in the POGG to avoid situations where Ofgem revoke a direction and immediately place a licensee in breach of licence.