

To all holders of an electricity
transmission licence and other
interested stakeholders

Email: NTIMailbox@ofgem.gov.uk

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Dear licensees and stakeholders

Decision to modify standard licence condition C27 (*the Network Options Assessment process and reporting requirements*) of the electricity transmission licence

We¹ held a statutory consultation on proposed modifications to standard condition C27 of the electricity transmission licence ("**C27**") from 16th December 2019 to 20th January 2020 (the "**December 2019 Consultation**").²

Following consideration of the responses to the December 2019 Consultation, alongside responses to the statutory consultation which ran from 12th February 2019 to 14th March 2019 (the "**February 2019 Consultation**")³, we have decided to implement the proposed licence modifications. This letter explains the reasons for our decision.

Notice of the licence modifications is published alongside this decision. The licence changes will take effect from 18 June 2020.

Background

C27 sets out requirements regarding the Network Options Assessment ("**NOA**") report, which is published each year by National Grid Electricity System Operator (NGESO).

We have been developing changes to C27 to implement policy decisions made through our Integrated Transmission Planning and Regulation (ITPR) project and our Extending Competition in Transmission (ECIT) project. These projects led to the decision to consider the use of competitive tendering to onshore transmission assets which are new, separable and high value.

Our previous consultations comprise:

1. From 25th November 2016 to 27th January 2017 we informally consulted on a set of proposed amendments to C27.⁴

¹ References to the "Authority", "Ofgem", "our" and "we" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

² <https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-modify-standard-condition-c27-electricity-transmission-licence-0>

³ <https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-modify-standard-condition-c27-electricity-transmission-licence>

⁴ <https://www.ofgem.gov.uk/publications-and-updates/consultation-licence-changes-support-electricity-transmission-competition-during-riio-t1>

2. Following consideration of the responses to that consultation, and further consideration of the structure of the proposed amendments we informally consulted on a further set of changes to C27 between 23rd January 2018 and 20th February 2018 (the "**January 2018 Consultation**").⁵
3. We held the February 2019 Consultation (based closely on the proposals in the January 2018 Consultation) but decided not to make the modifications proposed for the following reasons:

On 4th September 2018, Ofgem consented to transfer part of the licence of National Grid Electricity Transmission (NGET) to NGENO (the "**Consent**").⁶ Paragraph 11 of the Consent provided that "*Those parts of NGET's electricity transmission licence which are subject to this consent and which will be transferred to NGENO on 1st April 2019, will reflect any modifications made under s11A of the Act prior to the date of transfer as if they had been included in the Notice of Proposed Partial Transfer of 24 May 2018*".⁷

We did not make the proposed modifications to C27 prior to 1st April 2019. As a consequence of paragraph 11 of the Consent, and following NGENO becoming a holder of its own distinct electricity transmission licence on 1st April 2019⁸ we issued a new consultation, the December 2019 Consultation, on the proposed modifications to C27.

The proposed modifications on which we consulted

The December 2019 Consultation in summary proposed modifications that fall into four parts:

1. Restructuring parts of C27 to provide a non-exhaustive list of the types of options for Major National Electricity Transmission System Reinforcements ("MNESR") that the NGENO should set out in the NOA report;
2. A new requirement for the NGENO to assess certain projects set out in the NOA report against the criteria for competition, as described in the Guidance on the Criteria for Competition (the "GCC")⁹;
3. A new requirement for the NGENO to undertake early development of options it intends to set out in the NOA report where early development is not carried out by another transmission licensee; and
4. Structural and housekeeping changes.

These proposals are explained in greater detail in our February 2019 Consultation.

⁵ <https://www.ofgem.gov.uk/publications-and-updates/consultation-changes-standard-licence-condition-c27>

⁶ <https://www.ofgem.gov.uk/publications-and-updates/consent-partially-transfer-electricity-transmission-licence-held-national-grid-electricity-transmission-plc-national-grid-electricity-system-operator-limited>

⁷ <https://epr.ofgem.gov.uk/Content/Documents/Consent%20to%20partial%20transfer%20of%20National%20Grid's%20electricity%20transmission%20licence.pdf>

⁸ <https://www.ofgem.gov.uk/publications-and-updates/eso-separation-authority-s-decision-grant-or-transfer-relevant-consents-and-issue-direction-national-grid-electricity-system-operator>

⁹ The criteria for competition are New, Separable, and High Value. More detail on the definitions of each of these criteria is available in the Guidance on the Criteria for Competition published on 12th February 2019, <https://www.ofgem.gov.uk/publications-and-updates/guidance-criteria-competition>

Responses to the February 2019 Consultation and December 2019 Consultation

We received four responses to the December 2019 Consultation from two incumbent onshore transmission owners (TOs), the Electricity System Operator (NGESO) and a consortium managing a portfolio of Offshore Transmission Owner (OFTO) assets, all of whom had previously responded to our February 2019 Consultation. Of the six responses to the February 2019 Consultation the remaining two respondents, NGET and a Distribution Network Operator (DNO), did not respond to our December 2019 Consultation. For clarity, we have considered all responses made in the February 2019 Consultation.

Some respondents reiterated views in their December 2019 Consultation response that had been raised in the January 2018 Consultation. Ofgem has previously considered these views and where appropriate offered a response in the both the January 2019 and December 2019 Consultation Cover Letters.

Typographical error

A respondent drew our attention to a typographical error in the proposed licence modifications – the deletion of the word ‘transmission’ from paragraph 18 (previously 16) of C27 instead of the preceding word, ‘electricity’, which should have been deleted for consistency with the definitions in the licence. We have corrected this error in the licence modifications that we have decided to make.

Responses related to competition

Two respondents said that in their views the proposed changes to C27 were unnecessary and inappropriate in the absence of competition models or associated legislation. We consider that the modifications to C27 are related to identifying potential projects for competition, rather than making decisions on application of competition to particular projects. We therefore continue to consider that these are necessary and proportionate changes that support, but do not prejudice future decisions on application of competition to projects. With respect to legislation, we expand on our views on this below.

Two respondents said that the GCC should be embedded into the licence itself. One respondent also said that the licence should set out a change control process for amendments to the GCC. The respondent referred to the example of the change control provisions in standard condition B15 of the electricity transmission licence as well as proposals for change control provisions being discussed as part of RIIO-2 licence drafting working groups.

We note that the licence modifications include a statement that the GCC will only be updated following consultation. In due course we will consider whether further alignment with the finalised provisions of RIIO-2 is appropriate, which could mean closer alignment with the provisions currently in place in the particular context of standard condition B15, which relates to the modification of the Regulatory Instructions and Guidance (RIGs).

One respondent said that the GCC should be in secondary legislation. As previously stated in the Update on competition in onshore electricity transmission document,¹⁰ “Legislation is not required to enable the SPV model or Competition Proxy model and it is not necessary to place the criteria in secondary legislation. If the necessary CATO legislation subsequently comes forward, we will work with Government to consider the most appropriate way to align the criteria with the CATO legislation.”

One respondent said they considered that the GCC should only be used for identifying projects for the CATO regime. We note that Ofgem has set out that the criteria for competition would also apply to identifying projects for competition under the Competition Proxy Model or the Special Purpose Vehicle Model.

¹⁰ https://www.ofgem.gov.uk/system/files/docs/2018/01/competition_update.pdf

Responses related to early development work

All respondents either welcomed or had no objections to the proposal to describe the ESO's role in early development as 'desktop works'.

A respondent said that there was a lack of clarity as to why Ofgem considered the current arrangements were no longer fit for purpose and the respondent said that it did not see the purpose behind the requirement for early development work.

We consider that the case for the NOA and for the ESO involvement in network planning, including through early development work where appropriate, was considered and established robustly and clearly through our ITPR project¹¹.

Two respondents suggested the wording "may be" in paragraph 24(a) be changed to "is" or "will be". Our intention in using the words "may be" is to make clear that the ESO is not required to go beyond 'desktop works' but neither is it prevented from doing so.

Two respondents said that the reference in paragraph 23 to paragraph 24(b) should be changed to paragraph 24. We consider that the reference to paragraph 24(b) is appropriate because paragraph 23 is concerned with what the licensee is required to do (undertake early development) and paragraph 24(b) places a related requirement on the licensee. In contrast, paragraph 24(a) provides the licensee with a discretion to limit its early development activities to "desktop works".

One respondent explained they considered it was unclear who would be responsible for undertaking further analysis of options not taken forward by transmission licensees. We do not consider that additional wording is necessary as we consider that the obligation on the ESO is clearly set out within C27 and do not wish to be overly prescriptive on how that obligation should be met.

Two respondents requested clarification on the interactions, if any, between C27 and the ESO's work on developing the Early Competition Plan. The ESO's work on the Early Competition Plan is at an early stage and has not yet made any recommendations that would impact on C27. We will keep C27 under review in line with any developments in relation to early model competition, to ensure that it continues to operate effectively in that context. As part of that process we would welcome any recommendations from stakeholders on any proposed changes to C27 to better facilitate or align with competition models.

One respondent raised concerns that the proposals to modify C27 would blur the obligations between the ESO and TOs. We do not agree with this. The respective obligations of the ESO and TOs are set clearly set out in licences, codes and guidance which operative effectively together in practice.

Responses related to list of options

One respondent suggested an amendment to 16(a) that would oblige the ESO to consider the reasons why a transmission licensee dismissed an option in the first place. The ESO is able to consider such reasons as part of the NOA methodology. We do not consider it is appropriate to place a requirement on the ESO to consider the reasons since this is a matter for the ESO to consider as it carries out its role.

One respondent questioned why 16(a)(vii) explicitly references boundaries that cross transmission areas. We consider that there is an enduring benefit in referring explicitly to this example of an option.

¹¹ <https://www.ofgem.gov.uk/electricity/transmission-networks/integrated-transmission-planning-and-regulation>

Responses related to demand/connection

One respondent said, with respect to paragraph 16(e), that Ofgem does not currently have a clear policy in place that determines how Ofgem's competition policy would interact with the established connection offer process. One respondent explained that they believe there was no indication the proposals to include generation and demand connection assets in the C27 licence wording would take place during RIIO-T1 and there has been an absence of further consultation. As set out previously, we consider that the modifications to C27 are related to identifying potential projects for competition, rather than making decisions on application of competition to particular projects. Ofgem consulted several times on including demand and connection assets in the NOA and within the scope of the criteria for competition¹² for RIIO2 onwards. Given that the NOA identifies potential RIIO2 projects, we therefore continue to consider that these are necessary and proportionate changes that support, but do not prejudice future decisions on application of competition to projects.

Responses related to the scope of the NOA

One respondent suggested paragraph 9 needed to be more explicit that the NOA process is extended beyond just boundary flows. The introduction in paragraph 9 ends with "(but need not be limited to)" so we see no barriers to going further beyond boundary flows.

Response to approach to the changes

One respondent considered that Ofgem had conducted insufficient consultation to progress to statutory consultation. This respondent asserted that Ofgem recognised there was a need for further discussion when it first consulted on these proposed modifications to C27 in a 2016 publication. The respondent stated Ofgem noted the need to incorporate within the NOA, more detail on the processes which would underpin the high-level high-level requirements outlined in the licence conditions. We disagree with this interpretation. We have undertaken extensive consultation and engagement through both documents and workshops. We do however recognise the need for more detail on processes beyond high-level requirements in the NOA condition.¹³ This has been carried out by the ESO as part of the NOA methodology, which we approve annually. This methodology is itself consulted on too.

Other responses

One respondent requested further clarity on the term "transparent" utilised by Ofgem. We consider that the term "transparent" is sufficiently clear to industry without the need for further definition in the licence.

One respondent suggested the reference in paragraph 16 to paragraph 8 be changed to make reference to paragraph 7 instead. The respondent explained this was to retain consistency with paragraph 12(b) which references paragraph 7. The reference in paragraph 16 specifies how the NOA report must be produced. We therefore consider that the reference to paragraph 8 is correct, as it explains what the NOA methodology must include. Paragraph 7 relates to the approval process for the NOA methodology, which is not as relevant in the context of paragraph 16.

¹² <https://www.ofgem.gov.uk/publications-and-updates/extending-competition-electricity-transmission-proposed-arrangements-introduce-onshore-tenders>

¹³ https://www.ofgem.gov.uk/system/files/docs/2016/11/ecit_nov_16_licence_consultation.pdf

Our decision

For the reasons set out in this letter, we have decided to modify standard licence condition C27 as set out in the formal licence modification notice that accompanies this letter. The licence changes will take effect 56 days after the date of this letter.

Yours faithfully,

Rebecca Barnett

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