



Making a positive difference
for energy consumers

To all interested parties

Email: RIIO2@ofgem.gov.uk

Date: 23 September 2020

Dear Stakeholder,

Statutory consultation on a proposal to modify licences held by Transmission Owners, Electricity System Operator, and Gas Distribution Networks in extraordinary circumstances due to COVID-19

This letter accompanies a notice under section 11A of the Electricity Act 1989 and section 23 of the Gas Act 1986 of proposed licence modifications to the electricity transmission licences held by Electricity Transmission Owners and the Electricity System Operator, and gas transporter licences held by the Gas Transmission Owner and the Gas Distribution Networks. This notice follows on from our open letter of July 2020 (the 'July open letter')¹.

In our July open letter, we said that we remain focused on delivering the RIIO-2 programme for gas distribution, transmission, and electricity system operator price controls to the existing timetable. We stated that we aim to publish our Final Determinations, followed by a statutory consultation on licence modifications in December 2020, and to direct necessary changes to licences in February 2021 ahead of the new price controls starting on 1st April 2021.

However, in our July open letter and our Draft Determinations, we recognised that COVID-19 continues to present risks to the delivery of RIIO-2 programme. Therefore, we consulted on our proposals for a contingency plan that would create a change control framework to accommodate a limited delay to publishing Final Determinations of up to 3 months, whilst preserving the new price controls start date.

¹ [Open letter on COVID-19 contingency plan for RIIO-2](#)

We received thirteen responses to our July open letter. After reviewing these responses, we propose the updated proposals as set out in our notice, which is published alongside this letter.

A summary of the main points raised in response to the July open letter is set out below.

Several respondents stated that they were not clear about the **purpose of the proposed contingency plan** as set out in our July open letter. As we explained in our letter to the ENA of 6th August 2020, we do not agree that there was any ambiguity in our July open letter, which clearly explained the purpose of the proposed contingency plan and provided a draft licence condition setting out how the proposal would operate in practice. For the avoidance of doubt, our proposed contingency plan is designed to accommodate potential issues that may arise as a result of COVID-19 and could risk impacting the planned RIIO-2 timeline. We, in our July open letter, set out our proposals to accommodate a limited delay to the publication of RIIO-2 Final Determinations by up to 3 months, whilst preserving the RIIO-2 1st April 2021 start date. Under our proposal, a new licence condition would be created that could be triggered to modify RIIO-1 Licence Conditions and give effect to RIIO-2 Final Determinations by way of direction. Annex 1 of our July open letter illustrated the contingency RIIO-2 timetable, and Annex 2 set out the draft licence condition that would create the change control framework in the event that COVID-19 impacts our existing RIIO-2 timetable.

Some respondents expressed dissatisfaction that only **one option for the proposed contingency plan** was presented. We recognise the importance of carefully considering a range of plausible options for any proposal. Whilst we considered other contingency plan options through the prism of potential COVID-19 impacts on our resources, we concluded that our proposal, as set out in our July open letter, was the most viable option. Some respondents set out alternative approaches, such as the roll-over of RIIO-1 price control for one year or the roll-over of a selection of RIIO-1 price control elements for a year. We considered these alternative approaches, but concluded that the proposal as set out herein remains the most viable option because it would allow us the flexibility to react to the extraordinary circumstances caused by COVID-19, if the circumstances arise. Furthermore, our proposal would allow us to extend publication of the Final Determinations by a short period of time (up to 3 months), whilst still allowing us to apply the output of the significant amount of work done on licence conditions to date, and to draw that work to a successful conclusion in the event that the contingency plan is triggered. Under the alternative approaches, this flexibility would not exist and the decision to trigger our contingency plan would need to happen in the immediate future irrespective of the COVID-19 circumstances. This would undermine the core policy intent behind our proposed contingency plan.

Several respondents highlighted that if the proposed change control framework is triggered, there is likely to be an impact on the **volatility in network charges**. We recognise the importance of reducing volatility in network charges, as this could reduce the network related risk premium and reduce energy bills to customers. We also recognise that improving the predictability of network charge changes or reducing the number of changes can help address network charges volatility concerns raised by several respondents. We will consider options for reducing network charges volatility, including an option for the industry to use adjusted RIIO-2 Draft Determinations figure for the first year of the new price controls, ahead of directing the licence modifications implementing our proposed contingency plan.

We note that some respondents stated that a greater level of **transparency in our decision making process** was needed, and asked for **further engagement on our proposals**. We welcome an open dialogue with stakeholders to constructively identify any clarifications sought and aid our understanding of where stakeholders disagree with our proposal and the reasons why. Following publication of our July open letter, the draft licence condition in Annex 2 was presented by us and then discussed at a Licence Drafting Working Group on 22nd July. The network licensee representatives that attended clearly understood what our contingency proposal is seeking to achieve and were able to engage with the substance of the draft licence condition. We have also engaged with licensees in other forums, including the post RIIO-2 Draft Determinations discussion with the network licensee representatives on 27th July, where we explained the proposal and responded to questions. We welcome further engagement with stakeholders during the consultation period set out in this letter.

Several respondents stated that under our proposals they will lose their **right to appeal to the CMA** in respect of Ofgem's decision on the RIIO-2 Final Determinations Modified Licence Conditions. Network licensees will still be able to exercise their right to appeal after we follow the statutory consultation process, no later than 2 July 2021 (as per the contingency RIIO-2 timeline set out in Annex 1 of our July open letter). We can also confirm that the Licence Conditions we would be looking to give effect to under the change control framework will be very familiar to the network licensees and wider stakeholders as they will have been discussed at the Licence Drafting Working Group meetings which meet monthly and have been ongoing since September 2019 and through information consultation on the RIIO-2 licence modifications (expected circa 30 September 2020). In these circumstances, we consider that a consultation period of 7 days for representations on the proposed modifications under the change control framework is appropriate in the event that the contingency plan is triggered.

Finally, some respondents referred to our ability to unilaterally change some of the dates specified in the change control framework without consultation. We considered this point and propose an updated proposal as set out in our notice, which is published alongside this letter.

Next steps

Any representations with respect to the proposed licence modification must be made on or before 20 October 2020 to RIIO2@ofgem.gov.uk. We normally publish all responses on our website. However, if you do not wish your response to be made public then please clearly mark it as not for publication.

Yours faithfully,

Michael Wagner
Deputy Director, RIIO Price Controls
10 South Colonnade
Canary Wharf
London
E14 4PU