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for energy consumers

To all interested parties

Email: [RIIO2@ofgem.gov.uk](mailto:RIIO2@ofgem.gov.uk)

Date: 4 December 2020

Dear Stakeholder,

## **Decision not to modify licences held by Transmission Owners, Electricity System Operator, and Gas Distribution Networks in extraordinary circumstances due to COVID-19**

On 23 September 2020, we published our Statutory Consultation,<sup>1</sup> which set out our proposal to modify licences held by Transmission Owners, the Electricity System Operator, and Gas Distribution Networks in extraordinary circumstances due to COVID-19.

This letter sets out a summary of the responses to our Statutory Consultation and our rationale for our decision not to proceed with our proposal.

### **Background**

On 14 July 2020, we published our Open Letter<sup>2</sup> which consulted on our COVID-19 contingency plan for RIIO-2 as COVID-19 continued to present risks and uncertainty to the delivery of the RIIO-2 programme. Our proposal addressed the risk that, should there be delays in the RIIO-2 timetable, the price control would continue to take effect from 1<sup>st</sup> April 2021. After reviewing responses to our Open Letter, we updated our proposal and published our Statutory Consultation in September.

### **Stakeholder Responses**

We received seven responses to our Statutory Consultation.

Across the seven responses there was a lack of clarity over what type of scenario would trigger the proposed contingency plan. It was noted that a clear definition was needed of what Ofgem considered to be 'extraordinary circumstances due to COVID-19'.

Three of the seven responses raised concerns on the impact of the licence on network charges.

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<sup>1</sup> [https://www.ofgem.gov.uk/system/files/docs/2020/09/cover\\_letter\\_-\\_statutory\\_consultation.pdf](https://www.ofgem.gov.uk/system/files/docs/2020/09/cover_letter_-_statutory_consultation.pdf)

<sup>2</sup> [https://www.ofgem.gov.uk/system/files/docs/2020/07/riio-2\\_contingency\\_consultation\\_letter\\_2.pdf](https://www.ofgem.gov.uk/system/files/docs/2020/07/riio-2_contingency_consultation_letter_2.pdf)

Six out of the seven responses commented on the dates in our proposal noting:

- A lack of justification for the longstop dates. The responses suggest that in any extension, the period between publication of the Statutory Consultation and the longstop date is limited to 4 months.
- Changes could be made by Ofgem between Draft Determinations and Final Determinations that could affect the license drafting. Due to this, the consultation and notice of implementation periods in the proposal were considered unreasonably short.

Five of the seven responses commented on the interaction of the dates in our proposal with challenge routes noting:

- Companies would not be able to file an appeal, or request suspension of the licence modification, before the ultimate RIIO-2 consultation is concluded.
- The use of the proposed licence condition would not be subject to a right of appeal to the CMA.

Lastly, one respondent questioned Ofgem's legal rights to introduce the proposed contingency plan. They presented the argument that the proposed contingency plan would breach Ofgem's public law duties to ensure effective and fair consultation.

## **Decision**

After careful consideration of the responses received to the Statutory Consultation and further informal engagement with licensees, we have decided not to proceed with the proposed modifications. This is for the following reasons. We are satisfied that the risk of delay to the publication of Final Determinations is small and manageable, and we are confident that we will deliver Final Determinations on time. Given this, the proposal for a contingency plan to 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, is no longer required.

If you would like to discuss any aspects of this letter, please email [RIIO2@ofgem.gov.uk](mailto:RIIO2@ofgem.gov.uk).

Yours faithfully,

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