Scottish & Southern Electricity Networks

POWER CUT? CALL 105

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By email:

Graham.Craig@ofgem.gov.uk

Dear Graham

**Consultation on proposed draft Re-opener Guidance and Application Requirements Document**

I am pleased to enclose a response from SSEN Transmission[1] to Ofgem's consultation for RIIO-2 on the proposed draft Re-opener Guidance and Application Requirements Document. We have provided specific feedback on the Re-opener Guidance and Application Requirements document within the annex.

In line with our response to Ofgem's statutory consultation for RIIO-2, we note that Ofgem appear to propose including material details of the price control within the remaining outstanding Associated Documents ("ADs"). To the extent the ADs contain any material details of Ofgem's price control decision, it is critical that Ofgem provide this outstanding information urgently.

We invite continued engagement between now and Ofgem's decision on all of the RIIO-2 ADs to ensure a conclusion to this process is in the best interests of consumers, network companies, our stakeholders, and the Authority.

SSEN Transmission's statutory right to appeal any aspect of the proposed licence modification and/or Associated Documents is reserved in full.

Yours sincerely,

David Howie
**Senior Regulation Analyst**
**SSEN Transmission**

[1] References to SSEN Transmission encompass the licenced entity Scottish Hydro Electric Transmission plc Registered in Scotland No. SC213461.

**Annex – SSEN Transmission feedback on Re-opener Guidance and Application Requirements**

***Assurance requirements***

Ofgem should ensure that its application of the requirements (within the Re-opener Guidance) remains proportionate and not prescriptive, particularly with regards to the . level of assurance applied in respect of reopener applications. This should be, within reason, within the gift of companies to determine.

In paragraph 2.1 (and in other references to 'accuracy' throughout the document), we suggest that "accurate" be changed to "reasonably accurate". Depending on the stage and nature of a project, we cannot guarantee 100% accuracy as there are always uncertain aspects within projects. For example, many of our costs are forecasted (albeit these are benchmarked against past projects). We agree with the principle Ofgem is setting, however we propose that the references to accuracy are caveated to ensure companies do not fall foul of this overly prescriptive expectation.

In paragraph 2.2, we do not think it is necessary that applications are overseen by the Board of Directors. Given that SSEN Transmission has 11 different types of re-openers, the Board does not have capacity to review and meaningfully guarantee quality of each application, on top of its other responsibilities of maintaining the network. Companies will be best placed to determine the appropriate level of governance and approval required in respect of a given application. By way of illustration, all of our re-opener applications will be reviewed by our Transmission Executive Committee (TEC) (which comprises all Directors of Transmission including the Managing Director). However, contingent on their materiality, they will not necessarily be submitted for review by the SSE Power Distribution Board nor the SSE Plc Board. We suggest that provided these applications meet the content requirements of the submission, Ofgem should not be overly prescriptive on the governance process followed.

***Style & Structure of Application***

We note that paragraph 3.1 states that content should be based on 'quantifiable' evidence. There are many contexts where qualitative information must be considered. This is in line with the amendments to the Green Book (where e.g. social and environment aspects must also be considered). We suggest that "objective quantifiable evidence" is amended to "qualitative and quantitative evidence".

***Engagement with stakeholders***

There may be projects which may not include a component of stakeholder engagement, for example projects progress under our subsea cable faults re-opener. We suggest that paragraph 3.17 is caveated accordingly (e.g. "***Where applicable***, the application must include [...]").

In relation to paragraph 3.20, we submit that not all re-opener applications will require a formal/external CBA. We suggest that this requirement is caveated appropriately. (e.g. "***Where a CBA is applicable***, they must […]")

***Appendix 2 - Non-Op IT&T Capex Reopener Guidance***

The requirement (in paragraph 1.10 of Appendix 2) for Non-op IT&T Capex reopeners to include e.g. "project roles, responsibilities etc" is very stringent. This requirement is reminiscent of the overly burdensome expectations of the Environmental Discretionary Reward (EDR) which Ofgem agreed was overly onerous. We note that this was a factor in Ofgem deciding to remove EDR, and question whether Ofgem want to introduce overly burdensome information requirements elsewhere in the price control where the value of the proposal is unclear.

***Annex 1 - Application process***

We have concerns with the pre-acceptance screening stage set out in 1.11 of Annex 1. Infrastructure projects is complex and the re-opener process should recognise this. If Ofgem reject an application at the pre-screening stage, it should commit to setting out (i) its reasons for doing so and (ii) why this is in the interests of consumers. A significant amount of the funding available to aid delivery of Net Zero during RIIO-2 will be made available through reopeners. The process for Ofgem's review and rejection of any reopener applications should be as open and transparent as possible, particularly in light of the role of enhanced stakeholder engagement in the RIIO-2 framework and the role of stakeholders in developing re-opener applications.

We note the importance of ensuring that applications are processed in a timely fashion, avoiding any unnecessary delays. We have concerns around Ofgem's move to introduce latitude for its assessment of an application to extend beyond nine months. In paragraph 1.9 of Annex 1 Ofgem state "*an application may attract additional scrutiny, potentially lengthening the process timescales from the indicative nine months, if the decision is complex, proposed costs are large, or if the submission is of a poor quality."* Fundamentally, we do not think it is appropriate for significant changes to processes (such as this) to be introduced by way of Associated Documents.

The implementation risks engendered by Ofgem's approach to RIIO-2 are significant and have been repeatedly highlighted by network companies throughout the development of the price control. We would welcome Ofgem's confirmation that they are sufficiently resourced to ensure the timely review and approval of the many reopener applications network companies anticipate making during the period. We are concerned that Ofgem is introducing latitude to extend the review period in order to guard against insufficient resource availability to meet its timelines.

***Section 11A Statutory Protection***

In line with our responses to the other AD consultations, any Ofgem decision that modifies any part of the licence must be subject to the protection afforded under Section 11A of the Act whereby licensees have the right to appeal to the CMA. This is a key statutory protection provided by Parliament which Ofgem should not override through this licence.

In the large part, but not in all cases, Ofgem envisages issuing directions following a 28-day consultation period with licensees. This mechanism allows Ofgem to modify a document, or adjust outputs, delivery dates and allowances without licensees having a right of appeal to the CMA – all without an objective, measurable and transparent mechanism to explain how any modification or adjustment would be made. Should licensees have concerns around the Authority's approach to such modification or adjustment, our only remedy would be Judicial Review.

The right to appeal to the CMA was put in place under primary legislation, providing licensees (and others) with a statutory right to appeal to a specialised tribunal. The problem Ofgem seeks to address by providing such extensive rights to make directions, instead of licence modifications using the statutory process set out in Section 11A of the Act, is not clear. However, the new approach fetters the licensees' rights of appeal, and should be carefully reconsidered, given the potential impact of such directions on both licensees and investor confidence in the RIIO regime. We also note that Ofgem has failed to undertake any assessment of this change in the published Impact Assessment, accompanying the Final Determination and has provided no evidence or justification for removing the appeal rights of licensees.

We recommend that Ofgem reconsiders its approach, particularly where a direction will be used to adjust material outputs, delivery dates and allowances and reverts to the statutory process in all material cases. We do not believe this will require significant amendment to the licence as drafted and are willing to assist Ofgem in reviewing, reconsidering and amending the current drafting.