

RIO Team
Ofgem
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By email only to: RIO2@ofgem.gov.uk

29 January 2021

Dear Sir/Madam

RIO-2 Re-opener Guidance and Application Requirements Document: Version 1 Draft

Thank you for the opportunity to respond to the above consultation. This response is on behalf of UK Power Networks' three distribution licence holding companies: Eastern Power Networks plc; London Power Networks plc; and South Eastern Power Networks plc. We are Great Britain's largest electricity Distribution Network Operator (DNO), dedicated to delivering a safe, secure and sustainable electricity supply to 8.3 million homes and businesses.

We have set out our feedback in the appendix to this letter. I hope that you will find this information helpful. If you have any queries, please do not hesitate to contact Paul Measday in the first instance.

Yours faithfully,



James Hope
Head of Regulation & Regulatory Finance
UK Power Networks

Copy: Paul Measday, Regulatory Returns & Compliance Manager, UK Power Networks

Appendix

General

1. Further to a concern raised by ENWL to Mark Hogan in the Ofgem ED team on 14 October 2020 we seek clarity on the status of guidance documents. In particular we seek clarity on:
 - a. Whether these documents are to be applied to DNOs at the start of ED2 in the form they are in at the end of the current consultation period; or
 - b. Whether DNOs will have the opportunity to respond to a consultation on these documents at the licence drafting stage of ED2 once their interaction with the ED2 licence and ED2 price control is known.

With these points in mind we believe it is key that these documents should not be locked down for the start of the ET2/GT2/GD2 price controls such that DNOs cannot get them amended in a meaningful way for the start of the ED2 price control.

2. There are a number of licence conditions surrounding cyber and physical resilience which contain requirements to create and submit plans and reports to Ofgem. We seek clarification and reassurance from Ofgem that these documents along with un-redacted directions from Ofgem will be treated as strictly confidential. Should these documents be subject to a Freedom of Information Request or similar, we are concerned that they could end up in the “wrong hands” and highlight areas of increased vulnerability for licensees and customers with consequential impacts on national security.

Detailed Points – Main document

3. We understand Ofgem’s position set out in paragraph 1.5 that failure to follow the relevant requirements may result in the rejection of the application. We seek clarity from Ofgem that such a position would only be taken for material issues with the application and not for minor issues which could be better resolved through the supplementary question process. Please also see our feedback regarding the pre-acceptance screening process under the Annex 1 section.
4. Para 2.1 – the requirement to be concise can be at odds with the need to be accurate, unambiguous and complete and should be caveated or removed. This term is also used in other locations in the document and should be updated wherever it is used.
5. Paras 2.1 to 2.3 set out Ofgem’s requirements for licensee assurance – what is not clear is whether the wording in the bullets of para 2.2 are precisely those required in the licensee letter, or whether the licensee is expected to cover these points using its own wording. We seek clarity from Ofgem on this.
6. Para 2.2 sets out the requirement for an application to be “good value for money for consumers” although there is no clarity on how this will be judged. We seek clarity on this point and its interaction with the use of the term efficient costs elsewhere in the document.
7. Para 2.2 sets out that the “board” (or “Board”) of the licensee is required to oversee and accept any submission. We do not believe that the reference to board is required mindful that the opening sentence to para 2.2 requires a “suitable senior person” to approve the submission. If Ofgem believe that an oversight requirement is required then we believe that “board” should be replaced with “relevant senior decision making body” to reflect the multitude of organisational structures across the industry.
8. Para 2.6 rightly covers off how cyber resilience and physical security applications do not need to be published – however the loose wording used in this para means it is unclear if Ofgem accepts that not publishing the application is appropriate for any other reopener (assuming that national security would be an issue if the document was published). Please also note the general point above on FOIs.
9. Para 3.2 refers to Ofgem potentially placing a page limit on applications – it is unclear how this will be managed and enforced if not through this guidance document. Clarity is sought on this, and if it is by this document, then this reference should be removed or amended to refer to where in this document the page limits are set out.

10. Furthermore on para 3.2, any page limit needs to reflect the number of licensees which may be applying as part of one group mindful of the requirements set out in para 3.6. Note also how any page limit would interact with para 3.12 where it would be in tension with the need to set out details on the (potentially many) options considered.
11. The closing sentence of para 3.5 (referring to a table mapping out how the application meets the relevant requirement from the licence) is a key requirement and should be drawn out in some way – this could be by moving it to a new numbered paragraph.
12. The second line of para 3.11 should refer to “proposed costs” to align with the language used in para 3.10.
13. Para 3.12 includes a requirement to include internal documents on the selection process for options – it should be made clear that these (and other documents required to be submitted as appendices to the application) are not to be included in any page size limit on the application.
14. The dates/key milestones to be provided according to para 3.16 should be “provisional dates and key milestones” as they are likely to be subject to change at the time of submission of the application.
15. Paras 3.20/3.21 should be amended such that any best practice and guidance refer to the most recent version of them. Note however that guidance should not be changed in the two months prior to a reopener window to ensure licensees have an appropriate amount of time to prepare and assure their application.

Detailed Points – Appendix 2 (Non-operational IT and Telecoms (IT&T) Capex)

16. The fourth bullet of para 1.7 refers to the non-operational IT&T work improving the “operational capability of the network” and we seek clarity on whether this is correct.
17. The first two bullets of para 1.10 can be consolidated as they refer to the same thing.
18. Paras 1.10/1.11 have a number of instances of “e.g.”, “etc.” and “including” being used in the same sentence. Wording should be checked and where possible simplified so as to avoid such repetition as it makes the drafting unclear. It is also worth noting that the formatting/spelling of such terms also varies across the document – by way of an example “eg” or “e.g.”.
19. Para 1.11 fifth bullet – we are unclear as to what “and similar” means and seek clarity on this point.

Detailed Points – Appendix 3 (CAM)

20. In respect of para 1.2 it should be made clearer that the application should be submitted by the receiving licensee.
21. Para 1.2 must be aligned with the wording in the associated licence conditions and also avoid duplication and the consequent risk of double jeopardy. By way of example, the parallel statutory consultation for DNOs to introduce the CAM includes a requirement to submit “a copy of the agreement between the licensee and the Partner Licensee to transfer responsibility for and associated revenue of the CAM Activity”. However this guidance document requires the licensee to “contain a statement of agreement on the content of the re-opener application”.
22. Para 1.3 cross references the main section of this document (3.7 to 3.15) but we note that para 3.15 is mid section and we seek clarity from Ofgem that the correct cross references have been included. Such a check would also be sensible on any other such cross references in this document.
23. Para 1.4 seems to require resubmission of something that Ofgem already have – we are unclear what value this adds.
24. Para 1.6 introduces the concept of Network A and Network B – this is the only time it is used and in line with the point above is not consistent with the language used in the associated licence conditions.
25. Para 1.7 should more precisely cross reference where the net benefit requirements are set out rather than just using “below”.
26. In respect of the costs section starting para 1.9, in line with our response to the statutory consultation on the ED1 licence recently submitted, we believe that the drafting should be clear that costs incurred by licensees in exploring and setting up a CAM (e.g. technical and legal costs) can be recovered through this mechanism.

27. We note that para 1.22 requires benefits to be quantifiable in financial terms but this could be in contradiction with the acceptance in para 1.24 that benefits “may also include non-financial benefits”. We seek clarity on this to ensure such benefits are not excluded.
28. Para 1.23 introduces the concept of “energy consumers” but its meaning is unclear and is not defined anywhere. The same issue applies in para 1.22 in respect of the term “relevant consumers”. We seek the addition of definitions or use of already refined terms for both cases.

Detailed Points – Appendix 4 (Cyber Resilience IT and OT)

29. Please see the point made in the “General” section of this response regarding publishing the response/it being subject to an FOI. This is particularly important mindful of the content which would need to be included to meet para 1.8.
30. Para 1.16 refers to “running costs” but should refer to the IT costs not all costs.

Detailed Points – Annex 1 (Application Process)

31. We are concerned that this annex is only “indicative” of the process Ofgem will follow as it introduces a number of concepts (e.g. tiered approach) which may materially affect a licensee’s application. Ofgem should reconsider this annex and introduce it formally into the guidance document following rewriting and consultation with licensees.
32. In table 1 it is not clear who owns and updates the pipeline log although para 1.2 infers it is Ofgem and not each licensee.
33. Table 1 and para 1.11 introduce the concept of pre-application screening – such a key activity (mindful it means an application could be rejected) should be included on the face of the relevant licence condition and not in an Annex to a guidance document. We note it is not included on the face of the ED1 CAM condition which is undergoing a parallel statutory consultation.
34. Para 1.4 introduces double jeopardy on licensees as it repeats an obligation included in the RIGs. It should be reworded to avoid this.
35. Para 1.15 introduces an obligation on licensees to respond to SQs in five working days – we are unclear if this statement actually has effect on licensees mindful that Ofgem have explicitly excluded this annex from being part of the guidance document. Furthermore the turnaround time should be mindful of the materiality and scope of the SQ i.e. five working days may not be appropriate for more significant questions.
36. Para 1.7 should cross reference the process for Authority triggered reopeners set out in the relevant licence conditions.