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Dear Grendon

Notice under section 7A (9) of the Electricity Act 1989 (as amended) (“Act”) of the proposed partial transfer of the electricity transmission licence held by National Grid Electricity Transmission Plc to National Grid Electricity System Operator Limited (“Notice”)

We welcome and endorse Ofgem’s proposal to consent to the partial licence transfer of the electricity transmission licence treated as granted to NGET, to NGESO. This response to the Notice is provided on behalf of National Grid Electricity System Operator (NGESO).

In March NGET submitted to the Authority a request for consent under section 7A of the Act to the partial transfer of its transmission licence to NGESO. This request included proposed licence modifications on which the Authority had previously consulted. We have reviewed the schedule (Summary of modifications to Standard and Special of the electricity transmission licence held by NGET) and Annexes attached to the above Notice against the submission, and we support the proposed licence modifications subject to agreeing essential amendments to the licence (Appendix 1) and other drafting changes to Special Condition 20.14 to reflect the principles that we have outlined below.

We agree that a separate NGESO licence within which a structure is created that brings transparency of governance and decision making of the NGESO is an important policy step. This will demonstrate the integrity of our actions and will be instrumental in overcoming the perceptions of conflict of interest. There are a number of amendments that are needed in the final form of the proposed NGESO licence to uphold the policy direction.

We understand and agree with the requirement to ringfence the information that NGESO receives and creates. As we have continued to develop how this will practically be implemented, we must ensure that no unintended consequences are created because of the changes. It is essential that we continue to deliver effective operation and communication with Transmission Owners during the normal course of daily operations and in emergencies. It is essential that NGESO and its Group can respond appropriately to other emergency situations. It is also essential that NGESO and can uphold good corporate governance, including in relation to our governance interactions with its shareholder and ultimate controller and to meet the Group’s reporting requirements.

With this in mind, we feel that current draft of Special Condition 20.14 could be improved to provide greater clarity. We have set out below areas where we would want to agree additional or amendments:

1. SOFI disclosure when permitted by law
The current drafting of the licence creates an exemption from the SOFI restrictions where *required* by law or other relevant regulations. This may inappropriately restrict

legitimate sharing and disclosure of SOFI. For example, The Utilities Act section 105 *permits* sharing of information that would otherwise be caught by the non-disclosure requirements in that section between one licence holder and another where the other licence holder requires it in connection with activities that are authorised by its licence. This exception, however, is not a *requirement* of law and so cannot be relied on for the purposes of 2O.14(e). As the SOFI ring-fencing provisions are currently drafted, it does not allow SOFI disclosure in instances where it is legitimately permitted, but not required to disclose (e.g. in an emergency situation). We would propose that drafting is included based on the wording used in section 105 (3)(d) and 105(10) of the Utilities Act 2000, which we would suggest provides a statutory precedent. To ensure that the change does not create a blanket exemption, the use of the word “require” restricts the interpretation to limited and defined instances such as emergency situations which can be linked to a licence clause.

2. SOFI disclosure under STC

Similarly, to point 1 above, the current System Operator and Transmission Owner Code (STC) Schedule Three is written as permitting but not requiring the disclosure of information between System Operator (SO) and Transmission Owners (TOs). Current 2O.14 (b) exception may therefore be framed too narrowly and may not be a sufficient exception to allow SO and TOs to exchange information. We would therefore seek drafting changes to provide further clarity, ensuring that the current arrangements in the STC can be upheld.

3. SOFI disclosure to enable normal corporate governance and required reporting.

As a subsidiary of NG plc, NGESO may be required to refer certain matters to the shareholder for final approval, some of this content may constitute SOFI (e.g. business plan, budget, principal risks and performance etc.). SOFI disclosure is, therefore, required to enable NG plc to approve the matters referred to it. In addition, SOFI disclosure is required to enable NG plc's reporting to meet its legal obligations, including (but not limited to) in accordance with the UK Corporate Governance Code and the Listing Rules, as applicable and for NG plc's other regulatory reporting requirements, which may necessitate the inclusion of SOFI. Currently 2O.14 does not specifically allow SOFI disclosure to NG plc for the purposes of the normal corporate governance and reporting. We would therefore seek to agree additional drafting to permit such disclosure of SOFI and to ensure that NG plc will not put NGESO in breach of its licence and Special Condition 2O.

4. SOFI disclosure in national emergencies

We would also like to explore further with the Authority drafting which will accommodate national emergency scenarios and provide the ability for NGESO and its ultimate controller (and representatives of the same) to be able to make necessary disclosures of SOFI that relate to the emergency.

5. SOFI disclosure in other circumstances

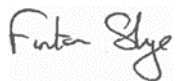
We believe that to ensure that the licence future proofed and reflects the emerging nature of the NGESO's new relationships and obligations, it is necessary to create a clause to enable the Authority to grant consent to SOFI disclosure in other circumstances which is not currently specifically listed in 2O.14. We suggest that additional drafting can be provided based on the precedent set out in 2N.13(b) dealing with the disclosure of Confidential EMR information. This would allow for disclosure where the Authority authorises such in writing in advance.

We welcome further discussion with the Authority on the above points to ensure that the information ring-fencing and disclosure rules will be drafted to effectively safeguard the SOFI

as well as maintaining appropriate corporate governance and reporting and not causing disruption to normal operation or management of emergency situations

Subject to the licence transfer proceeding under Section 7A, from April 2019, the NGENSO will be a new standalone business within National Grid, legally separate from the Electricity Transmission Owner. Over the coming months, we will continue in working with the Authority to ensure that we successfully deliver a legally separated, balanced and impartial ESO that can realise benefits for consumers.

Yours sincerely,



Fintan Slye

Director of UK System Operator

Appendix 1

Annex	Condition	Ref	Description	Comment
Annex F	1A	Definitions - Interconnector Owner	Definition has been erroneously removed and should be reinstated	Refer to NG s7A submission document
Annex F	1A	Definitions - Non-chargeable Outage Change	Suggest this reads in NGESO Licence: 'means any change to the outage plan notified to a Transmission Owner by the licensee which the Transmission Owner and the licensee agree...'	<u>New issue</u> . This definition was discussed initially and it was agreed that it is relevant for the ESO licence only (used within SC4J.35), but context was not amended.
Annex F	1A	Definitions - PCFM Variable Value	Definition has been erroneously removed and should be reinstated	Refer to NG s7A submission document
Annex F	1A	Definitions - Returned Royalty Income / Returned Project Revenues	Erroneously re-ordered. Existing Licence alphabetical order is correct.	Refer to NG s7A submission document
Annex F	1C	Para 2-9	Formatting error. Incorrect numbering, 2-9 should read 3-10.	Refer to NG s7A submission document
Annex F	2G		Formatting error. Incorrect numbering, 3 should read 2.	<u>New Issue</u> . This should have been identified in NG s7A submission document. (minor)
Annex F	2O	14	Detailed proposed modification is provided in Appendix 2.	<u>New issue</u> . Current 2O.14 is framed too narrowly to specifically permit SOFI disclosure under several scenarios.
Annex F	2O	22	Reference to 2O.26 should be struck out and 2O.27 inserted as a change.	Refer to NG s7A submission document
Annex F	2O	22	and the licensee's compliance with the specified duties should be struck through.	Refer to NG s7A submission document
Annex F	2O	29.d	business separation' should be shown as an underlined addition between 'specified'	Refer to NG s7A submission document

			and 'duties' in line 6, as this is a new change.	
Annex F	3A	4	On further review we would suggest definition of FINt is amendment to read "Means the amount set out in Appendix 1 of this condition and represents the costs to the licensee relating to the provision of financial facilities allocated from National Grid Electricity Transmission Limited."	<u>New Issue</u> . To provide greater clarity, no change of intent/policy.
Annex F	3A	C - heading	TRUt' should be underlined as is new	Refer to NG s7A submission document
Annex F	3A	6	<p>REvt-2, refers to 'Relevant TO Special Condition'. This term is being removed as a definition in Special Condition 1A of the NGENO licence. In order to address this, we suggest that the following modifications are required:</p> <ol style="list-style-type: none"> 1. Remove 'TO' from 'Relevant TO Special Condition' in 3A.6 REvt-2 definition 2. Further amend the definition of "Relevant SO Special Conditions" in Special Condition 1A to read: "means Special Condition 4A (Restriction of System Operator Internal Revenue), together with such of the Special Conditions of this licence as is ancillary to the operation of the provisions of Special 	<u>New Issue</u> . This issue should have been identified in NG s7A submission document.

			<p>Condition 4A to which a Disapplication Request under Special Condition 8A (Disapplication of Relevant Special Conditions) relates; and Special Condition 3A (Restriction of Transmission Network Revenue), together with such of the Special Conditions of this licence as is ancillary to the operation of the provisions of Special Condition 3A to a Disapplication Request under Special Condition 8A (Disapplication of Relevant Special Conditions) relates."</p> <p>This change is required to the definition of "Relevant Special Conditions" as both Special Conditions 4A and 3A (and ancillary provisions) have effect in the NGENO licence.</p>	
Annex F	3B	3	+TICFt' and '+TICPt' have been erroneously removed from the formula and should be reinstated as these are pre-existing terms that are not changing.	Refer to NG s7A submission document
Annex F	3B	4	The definitions of 'TICFt' and 'TICPt' have been erroneously removed from the formula and should be reinstated as these are pre-existing terms that are not changing.	Refer to NG s7A submission document
Annex F	3L	Heading	Not used' should be underlined as is a change.	Refer to NG s7A submission document (minor)

Annex F	Ch 4.	4G.3	sub para incorrect numbering - should start at a) rather than e)	Refer to NG s7A submission document (minor)
Annex F	Ch 4.	4G.4	sub para incorrect numbering - should start at a) rather than h)	Refer to NG s7A submission document (minor)
Annex F	Ch 4.	4G.14	sub para incorrect numbering - should start at a) rather than l)	Refer to NG s7A submission document (minor)
Annex F	Ch 4.	4G.15	sub para incorrect numbering - should start at a) rather than b)	Refer to NG s7A submission document (minor)
Annex F	5A	17 a)	Delete 'and' in line 4.	Refer to NG s7A submission document (minor)
Annex F	5B	Part B - heading	of' should not be struck out.	Refer to NG s7A submission document (minor)
Annex F	Ch 9		Title of Ch 9 should not be struck out as Schedules 1 and 2 remain relevant. The deletions of Schedule A and B are correct but Schedule 1 (Specified Area) and Schedule 2 (Revocation) (which are set out in Annex J to the consultation) should be retained / set out in Ch 9.	Refer to NG s7A submission document (minor)
G	A1 Definitions	Definitions - transmission business	"or" at the end of sub para (i) should be struck out, "or" at the end of sub para (ii) should be shown as new text and new sub para (iii) should be shown as new text	Correct in SC1C and comments in Standards, but not correct in this summary annex for Standard Condition changes
G	C2	Prohibited Activities	Changes to para 2 to add text "that is not subject to Condition D6"	Correct in SC1C and comments in Standards, but missing from this summary annex for Standard Condition changes

G	n/a	Introduction paragraph	Opening para states "All of the proposed modifications below, other than the proposed modification of Condition B22 (Requirement for sufficiently independent directors), are reflected in proposed modifications to Special Condition 1C." This is incorrect as changes are included in Special Condition 1C (Annex F)	n/a
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