

Rebecca Barnett
Deputy Director
Systems & Networks
10 South Colonnade
Canary Wharf
London
E14 4PU

20 December 2019

Dear Rebecca,

Statutory consultation on a proposal to modify standard condition C27 (the Network Options Assessment process and reporting requirements) of the electricity transmission licence

Scottish Hydro Electric Transmission plc (SHE Transmission) welcomes the opportunity to respond to Ofgem's statutory consultation on a proposal to modify standard licence condition C27 of the electricity transmission licence. We responded to Ofgem's previous statutory consultation on 14 March 2019¹. The issues raised within our previous correspondence remain relevant and are not repeated within this response.

Ofgem's instruction to the ESO to develop an Early Competition Plan² is inextricably linked to the proposed modification to standard licence condition C27 and any proposed amendments to this licence condition must remain cognisant of this work. We are concerned that the potential roles for the ESO, transmission licensees and other stakeholders could become conflated as a result of the proposed amendments to standard licence condition C27 and the Early Competition Plan.

We also remain concerned with the current status of Ofgem's Guidance on the Criteria for Competition³ and the lack of governance associated with this document. The potential impacts on transmission licensees and other stakeholders as a result of changing without proper and thorough assessment could reduce confidence in the regulatory framework for onshore transmission in Great Britain. We have elaborated on our views below.

¹ <https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-modify-standard-condition-c27-electricity-transmission-licence>

² https://www.ofgem.gov.uk/system/files/docs/2019/09/electricity_system_operators_early_competition_plan_letter_0.pdf

³ https://www.ofgem.gov.uk/system/files/docs/2019/02/criteria_guidance.pdf

Criteria for competition

We remain concerned that Ofgem's 'Guidance on the Criteria for Competition' is a standalone document not subject to any formal governance process or contained within statute or licence requirements. The guidance document itself notes that '*Ofgem may update this guidance from time to time*'. The lack of change control relating to a fundamental policy document, without proper assessment of the potential risks and/or benefits of potential amendments, could undermine confidence in the delivery of onshore transmission options (or the ESO's competitive processes as referenced below).

Whilst we acknowledge the proposed modification under paragraph 16(d) of standard condition C27 which notes that Ofgem will only update the guidance following consultation, this contains no further detail as to the process or appeal rights of licence holders. Part C: Development and modification of the RIGs of standard condition B15 of the transmission licence is a good example of a clear set of requirements in relation to amending a supporting document to the licence.

It is also worth noting that during recent RII0-2 licence drafting workshops with Ofgem it was highlighted that several licence conditions give rise to an 'Associated Document' which contain detailed information, guidance and data requirements in order to administer policy. Ofgem outlined a proposed change process which is subject to a pre-consultation setting out the reasons and effects of any proposed change with the Authority then required to consider responses and give reasons for any final decision as part of the direction to modify the Associated Document. Ofgem's 'Guidance on the Criteria for Competition' clearly meets the definition of an Associated Document and must be subject to similar governance arrangements. To do otherwise risks undermining confidence in the regulatory framework and the creation of uncertainty in application of competition to the delivery of onshore transmission investment.

We do, however, appreciate confirmation from Ofgem that identification of projects within the NOA potentially meeting the competition criteria will be subject to further consultation regarding the delivery model to be applied which includes consideration of the risks and benefits for consumers. We would welcome further dialogue with Ofgem as to the process that it intends to adopt for ascertaining which delivery model could be applicable throughout RII0-T2.

Early development of options

We agree with Ofgem that obligations relating to early development of options should be intentionally broad in order to allow the NOA to include the widest range of potential solutions. However, we wish to highlight two areas of concern in relation to Ofgem's proposed modification to standard condition C27 and the early development of options.

Firstly, paragraph 16(a) is designed to provide a non-exhaustive list of the types of options for Major National Electricity Transmission System Reinforcements ('MNETSR') that the ESO should set out in the NOA report. Paragraph 23 then states ESO is responsible for undertaking early development of alternative or reduced build solutions to meet system needs, where early development is not carried out by another **transmission licensee**. The list of options contained within paragraph 16(a) extends beyond that normally carried out by a transmission licensee.

It is not clear who, in this situation, is responsible for undertaking further analysis where a potential option is not taken forward by a transmission licensee. Ofgem's open letter states '*it is not our intention that the SO set out all options suggested by interested persons*'. We agree with this approach however we understand this is referencing those options to be set out within the NOA (i.e. early development of options will occur prior to consideration of inclusion within the NOA).

If it is Ofgem's intention that early development works are undertaken by the ESO in all scenarios, we would suggest paragraph 23 be amended to confirm "*where early development is not carried out by another transmission licensee or in the case of paragraph 16(a)(iv) or 16(a)(viii), where early development work is not carried out by the interested party.*" This would allow for a consistent approach regarding early development across all potential MNETSR options set out within standard condition 16.

Secondly, Ofgem's C27 cover letter⁴ states that having considered previous responses it is "*satisfied that it is not in consumers' interests at this stage to require that early development activities go beyond desktop works, and our proposed licence modifications reflect this*". However, the proposed modification of C27 paragraph 24 states that the early development "*may be limited to desktop works*". This proposed modification does not reflect Ofgem's stated policy intention of limiting early development to desktop works and the modification does not preclude the ESO from going beyond desktop analysis. We would therefore suggest paragraph 24(a) is updated to state "*early development will be limited to desktop works*".

Ofgem also notes an intention, where there is consumer benefit, to bring forward proposals for the ESO to carry out early development beyond those of desktop works. We consider that any such change should be subject to appropriate scrutiny and consultation and, assuming the suggested amendment is adopted, would require a further licence amendment to C27. There are many complexities which will have to be identified and addressed as we move towards a framework in which parties from across the industry can participate in providing efficient solutions to meet system needs. It is critical that the NOA, and any future development of the NOA, should seek to retain proportionality. An expansion to the scale and depth of the analysis undertaken by the ESO will be time-consuming, require clear delineation from existing ESO:TO

⁴ https://www.ofgem.gov.uk/system/files/docs/2019/12/c27_cover_letter_0.pdf

responsibilities and will have an associated cost. This should be subject to further consultation to enable stakeholders to comment on further changes to the ESO's role (allowing stakeholders to consider the ESO's future role in promoting competition).

ESO's Early Competition Plan

The proposed amendments to standard condition C27 must also remain cognisant of the ESO's work to develop an Early Competition Plan⁵. Depending on the model selected to address a system need, there could be a multitude of different options submitted and not progressed. The proposed drafting of standard condition C27 could then oblige the ESO to conduct desktop analysis of all options submitted with the potential to address system requirements. Again, we are not clear as to whether this is the intent behind Ofgem's proposed amendments.

Ofgem's instruction to the ESO to develop an Early Competition Plan is inextricably linked to the proposed changes to standard licence condition C27. Ofgem's open letter requests that the ESO develop proposals for an early model of competition for onshore transmission. During 2019, the ESO held several workshops with wider industry to discuss several strawman models including Design, Build and Own (DBO) and Design Only (DO) models of early and very early competition⁶. These models will result in a variety of different roles for the ESO, transmission licensees and third parties across varying models of early and very early competition.

In addition to the above, we agree with the requirement to ensure the early development of options is transparent but would welcome further clarity from Ofgem as to the intent of this requirement (i.e. beyond publishing the NOA and associated methodologies for assessment of options, what else is expected of the ESO?).

Please do not hesitate to contact me should you wish to discuss the content of this response further.

Yours sincerely

Steven Findlay
Regulation Manager

⁵ https://www.ofgem.gov.uk/system/files/docs/2019/09/electricity_system_operators_early_competition_plan_letter_0.pdf

⁶ <https://www.nationalgrideso.com/document/156451/download>