

By Email:  
Kelvin.Hui@Ofgem.gov.uk

29 January 2021

Dear Kelvin,

**Price Control Deliverable Reporting Requirements and Methodology Document:  
Version 1 Draft**

I am pleased to enclose SSEN Transmission's<sup>1</sup> response to Ofgem's proposed draft of the Price Control Deliverable Reporting Requirements and Methodology Document ('PCD Guidance'). We have provided specific feedback on the PCD Guidance document within the contained annex.

We note Ofgem has decided not to publish the 'AD Issues Log' alongside the PCD Guidance. We are therefore unable to discern if Ofgem has previously considered the feedback we have provided (including Ofgem's reasoning for disregarding previous feedback).

**Evaluative PCDs**

Notwithstanding our feedback on the PCD Guidance, it remains our view that Ofgem's approach towards any adjustment to allowances must be objective, measurable and transparent. That objectivity, measurability and transparency should be provided for by the licence drafting and not by an Associated Document (the content therein which is capable of amendment with no rights of appeal for licensees to the CMA, which is a key concern where potential adjustments to allowances are concerned).

The RIIO-T2 licence should therefore include the terms, currently defined in the draft PCD Reporting Methodology Guidance Document, including Partially Delivered, Fully Delivered and Fully Delivered with Alternative Specification. The RIIO-2 electricity transmission special licence should also contain an objective, measurable and transparent mechanism for how the relevant allowances would be adjusted where such terms apply.

**Section 11A Statutory Protection**

Ofgem, by virtue of the proposed RIIO-2 licence drafting, has provided for rights for Ofgem to adjust outputs, delivery dates and allowances by direction in the majority of

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<sup>1</sup> References to SSEN Transmission encompass the licenced entity Scottish Hydro Electric Transmission plc Registered in Scotland No. SC213461.

the proposed special conditions proposed within electricity transmission licence. In respect of Evaluative PCDs, Ofgem has determined it will consider a reduction in allowances via Direction in accordance with the PCD Guidance where the licensee has not Fully Delivered.

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.

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

Yours sincerely,

Steven Findlay  
**Senior Regulation Manager**  
**SSEN Transmission**

## Annex – SSEN Transmission feedback on PCD Guidance

### Reference to ‘baseline allowances’

Throughout the document, Ofgem refers to PCDs applying in the context of ‘baseline allowances’. However, this is not our understanding of the PCD framework.

For example, a Transmission Owner (TO) could have additional PCDs inserted into the licence under, for example, Special Condition 3.14 Medium Sized Investment Projects Re-opener and Price Control Deliverable (MSIPt). As per the drafting of SSEN Transmission’s special licence conditions, these outputs will also be assessed with the PCD Guidance to determine whether an output is fully delivered.

Ofgem should update the guidance to make it clear the PCD Guidance will also apply in the context of funding granted through re-openers<sup>2</sup>.

### Delivery in part

Paragraph 5.8 states that ‘Ofgem may determine the value of adjustments to allowances associated with the relevant PCD output using a pro rata adjustment’. The PCD Guidance then sets out the following formula:

$$\text{Adjustment to allowances} = ((1 - \text{Proportion of output delivered}) * \text{ex ante allowance})$$

We do not agree with Ofgem’s overly simplistic assessment using pro rata to determine the reduction in allowances. Ofgem’s ex-post review of efficient costs during the Full PCD Review could determine appropriate allowances without the need for an overly simplistic formula.

The costs associated with delivery of network infrastructure are not linear (as the formula above appears to suggest). This approach fails to take account the fixed costs associated with network reinforcement and is in direct conflict with Ofgem’s approach in relation to the generation connection volume driver (also a PCD, albeit mechanistic) where Unit Costs are subject to a different cost driver such as £/MW, £/MVA and £/km rate for overhead line or underground cables. This approach reflects Ofgem’s policy that unit costs should better reflect the costs that companies will be exposed to in delivering transmission infrastructure. Whereas, the pro rata approach to determine allowances does not improve cost reflectivity and could result in unwarranted windfall losses on these projects through this overly simplistic formula, something that Ofgem is looking to minimise in RIIO-T2.

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<sup>2</sup> This is also true for SSEN Transmission in respect of Special Condition 3.10 Visual Impact Mitigation Re-opener and Price Control Deliverable and Enhancing Pre-existing Infrastructure Projects allowance (VIMEt and EPIt).

Ofgem has implicitly accepted that the unit costs associated with delivery of infrastructure are not linear and we are therefore unclear as to why Ofgem has taken a different approach in respect of Evaluative PCDs.

By extension we also disagree with, as stated within, paragraph 5.9 that Ofgem will consider the proportion of output delivered using a variety of ratio-based approaches.

### Full PCD Report

We consider that requesting TOs to provide a Full PCD Report within 28 days is challenging (particularly if a TO has several PCDs delivered during in the previous regulatory year). We note that Ofgem is under no specific timescale on which to assess the Basic PCD Report which could lead to difficulty in resource planning for TOs (i.e. ensuring colleagues are available to prepare to Full PCD Report to an appropriate standard).

We note table 7.2 indicates that *'If a Full PCD Review is required, Ofgem will initiate discussions with the network company to determine data requirements, and provide additional guidance where appropriate for the Full PCD Report, including deadlines for submission.'* Does reference to 'deadlines for submission' suggest Ofgem and the TO could negotiate an extension to Full PCD Report deadline? If so, we would welcome the starting point being that TOs and Ofgem negotiate deadlines rather than automatically reverting to a 28 day timescale.

We would therefore welcome, as early as possible (where it is not inherently obvious that a Full PCD Report will be required), an informal indication as to whether or not a PCD is likely to require a Full PCD Report.

### **Formatting/Grammatical Issues**

The formatting on page six appears incorrect. Numbers four, five and six should be indented so it is clear to the reader that points relate to PCD Principle number 4.

In several areas of the document 'license' is referred to. We believe this should be 'licence'.

For consistency purposes, Paragraph 6.11 should state *'In the case of Fully Delivered with Alternative Specification, unless otherwise notified by Ofgem, the licensee must provide.'*

We also note that in several instances throughout the document, terms defined within Appendix 1 are not capitalised (i.e. efficiency, innovation). We believe this should be updated so it is immediately obvious to the reader these are defined terms.