

Flo Silver
Ofgem
3rd Floor Commonwealth House
32 Albion Street
GLASGOW
G1 1LH

By email only to: flexibility@ofgem.gov.uk

3 April 2020

Dear Flo

Notice of statutory consultation on a proposal to modify the standard conditions of onshore electricity network operators licences

Thank you for the opportunity to comment on the above statutory consultation, dated 6 March 2020. This response should be regarded as a consolidated response on behalf of UK Power Networks' affected distribution licence holding companies: Eastern Power Networks plc; London Power Networks plc; and South Eastern Power Networks plc.

In respect of the proposed licence condition and its associated guidance document, we have reviewed and are in broad agreement with both documents. We have outlined a number of minor feedback items in the Appendix to this letter. Additionally, we would like to highlight two key issues which we believe should be addressed. They are summarised below and are explained in more detail in the appendix:

- i) a mismatch between the proposed licence condition and the guidance document; and
- ii) the lack of governance for the guidance document. As drafted, there is no protection for the licensee from any changes to the governance document, that is, the licensees do not have a right to comment regarding any changes to the document nor the impacts those changes will have on the licensee. A suitable governance structure already exists in the DNO licence for the RIGs and ICE guidance documents, and we strongly advocate replication of this for the whole electricity system guidance document.

If you have any queries on our response please contact Paul Measday in the first instance.

Yours sincerely



Basil Scarsella
Chief Executive Officer
UK Power Networks

Copy: Suleman Alli, Director of Customer Service, Strategy, Regulation & IS, UK Power Networks
James Hope, Head of Regulation & Regulatory Finance, UK Power Networks
Paul Measday, Regulatory Returns & Compliance Manager, UK Power Networks

Appendix

Key issues noted in covering letter:

- We believe the proposed licence condition is not in line with wording from the guidance document. Namely, on page seven of the guidance document, under “Whole electricity system outcomes”, one of the results is the “Minimisation of the sum expenditure on transmission and distribution electricity networks”. This is not in line with the proposed licence condition 7A.4 (b), as there are occasions when greater expenditure is required to achieve larger system wide savings, and therefore it may not always be economical to minimise expenditure on the transmission and distribution electricity networks. We propose that the guidance document is amended to bring it in line with the licence condition.
- Paragraph 7A.9 refers to the associated guidance document on which we have provided detailed comments below. However, we have a significant concern regarding the lack of governance for the guidance document. As drafted, there is no protection for the licensee from any changes to the governance document, that is, the licensees do not have a right to comment regarding any changes to the document nor the impacts those changes will have on the licensee. A suitable governance structure already exists in the DNO licence for the RIGs and ICE guidance documents, and we strongly advocate replication of this for the whole electricity system guidance document.

Other issues in the proposed licence condition:

- In paragraph 7A.2 the obligation is to “identify actions and processes that advance the efficient and economical operation...”. This is an obligation that could be unavoidably failed through the trial and error of various processes. We believe that to prevent this, it should be phrased as “seek to identify actions and processes ...”, or similar. We are happy to work with you to identify a suitable wording in this respect.
- In paragraph 7A.5, we believe that “the licensee must prepare and is required to publish” would be more clearly worded as “the licensee must prepare and publish”.
- Paragraphs 7A.5 and 7A.6 have a floating date for the licensee to conduct a task. This lack of a hard coded date increases the risk for the licensee, as it is not immediately clear when the requirement must be fulfilled by. Ofgem and licensees can already calculate an approximate date that these obligations would need to be fulfilled (based on the closing date of this statutory consultation, a short period of time for Ofgem to process responses (potentially extended more than normal to allow for prioritisation during the COVID-19 pandemic), the 56 day cooling off period and then for 7A.6, 12 months more). We therefore believe a hard coded on the face of the licence condition would provide clarity for all stakeholders.
- We believe that there should also be the ability to derogate from 7A.5 and 7A.6 should events such as COVID-19 severely impact a licensee, so that they are able to work with Ofgem to seek an appropriate derogation. Such derogation powers are common in parts of the regulatory framework and we believe it is good regulatory practice to build such powers in at the outset.
- In respect of paragraphs 7A.5 and 7A.6, the use of “must keep up to date” infers that the licensee must publish updates more frequently than the annual requirement, e.g. when a new action is commenced. It is clear from Part B of the guidance document that Ofgem are comfortable with more frequent updates than annually, however the wording in this licence condition goes beyond this to require it to be up to date at all times which we do not believe is appropriate in this case. We therefore seek clarity on Ofgem’s policy regarding update frequencies such that associated changes to the licence condition can be made for clarity. Our recommendation, in order not to place an undue regulatory burden, would be an

annual frequency unless a fundamental change has taken place which necessitates a more immediate update.

- The term 'transmission owner' in the definition of 'Coordination Register' should be capitalised as it should be defined.
- In the definition of "Coordination Register" we are unclear why in the DNO licence condition there is reference to a transmission register.
- In the definition of "Total System" there is reference to the "GB System Operator area" – should the "a" on "Area" be capitalised if it is a defined term?

Other issues in the guidance document:

- We propose adding a version number and publication date to the cover page to aid the future reader such that they know which version they are reading.
- In the closing sentence of page five, there is a summary of the expectations on the ESO. It is our understanding that the ESO licence condition does not require compliance with this document and we are therefore unclear how the ESO will be made aware of its obligations outlined in it.
- On page seven, there is a reference to "customers of the electricity network". We seek Ofgem clarity on whether this is all customers served by the licensee, or whether it goes beyond this to customers of private networks. The use of a defined term here would avoid potential confusion.
- In the opening paragraphs to Part A on page 8:
 - The second paragraph appears to be a general comment on enforcement and would sit better in the introduction to this document and not where it currently resides; and
 - In the third paragraph the sub-clauses 3a and 3b are referred to in two forms: "3a and 3b" and just "a and b". We suggest the fuller version is utilised for clarity and consistency here and throughout the document.
- On page 8 in the second paragraph, 'Electricity Distributors' should be a singular term.
- In respect of the first paragraph under clause 1 on page 9, we are unclear why "Electricity Distributors" is capitalised and "transmission owners" is not and whether there is an implication of this. This is replicated across the guidance document.
- In respect of clause 2, we believe that there is a risk that if the user does not refer to this licence condition or its guidance document when making a proposal, it may result in it erroneously being missed from inclusion in the register. We believe that this could be mitigated against by requiring licensees to use reasonable endeavours to refer to these obligations when engaging with relevant stakeholders.
- In page 12, Ofgem expects electricity network licensees to determine the appropriate transfer mechanism for these circumstances. At the present time, we are of the view that Directly Remunerated Services (DRS) 8 and 9 would be the suitable mechanisms to employ. This would be in line with Ofgem's concurrent consultation on the regulatory treatment of CLASS in RIIO-ED2. We believe there is merit in Ofgem and licensees agreeing together the suitable mechanisms for facilitating this type of activity, to ensure regulatory consistency and treatment of revenues and any associated sharing with customers.
- In respect of Part B:
 - There are two superfluous instances of "For the avoidance of doubt" which can be removed.
 - The second line of the second paragraph needs to be made clear such that 'each' has undertaken a process, rather than 'it', (i.e. refer to parties either individually or together throughout).

- The third bullet explains the time period for the register through the use of the term “relevant period”. As we are mindful of licensees’ obligations to assure the accuracy of any such documents prior to publication, we seek clarity that Ofgem understands that a document published on, for example, 1 October is unlikely to have data on any activities which have only commenced in the period immediately before. In reality, the cut off may be one or two months prior to the publication date.
- The reference to a “discoverable place” on the licensee’s website should be removed as it is unclear what is meant by this. It should be for the licensee to select the location on its website for the file, balancing other competing needs such as providing easily accessible methods for customers to report power cuts or dangerous situations.
- In the same section there is a reference to “modern expectations” which we believe should also be removed as this will be organic as time progresses and open to interpretation.
- In the penultimate paragraph there is a time limit for licensees retaining proposals and associated data. We believe that this should not be included in this document as it is for licensees to manage compliance with data protection legislation, contracts etc. and to set its own data retention policy.
- In the final paragraph on page 14 there is a reference to GDPR. We believe that referring to “any data protection legislation in force in GB from time to time” will future proof this reference.
- We support the reference in the final paragraph to network users being responsible for requesting removal of identifiable information, although we are unclear if network users will review this guidance document to identify their obligation.