

By email: flexibility@ofgem.gov.uk

Your ref

Our Ref

Date

3rd April 2020

Contact / Extension

Stephanie Anderson

0141 614 1581

Dear colleague

Statutory consultation on licence obligations to ensure coordination and cooperation in the efficient and economical operation of the electricity system ("Whole Electricity System Licence Condition Consultation")

We welcome the opportunity to respond to this consultation, however, do wish to raise our concerns in relation to the timing of any resulting licence modifications. In light of recent COVID-19 development, we note that Ofgem has published a notification on its website indicated that it will look closely at how it approaches regulation in the coming months to avoid placing unnecessary burdens on network companies. As this licence condition places new obligations on network operators which will include process and policy changes, we believe the publication of this licence condition should be postponed. This would align with Ofgem's decision to delay publication of the RIIO-T2 licence drafting consultation. In any case, we believe this delay should be viewed positively as it will allow this new condition to be considered alongside any new RIIO-2 obligations and policy.

Furthermore, we have set out below our key observations on the Whole Electricity System Licence Condition Consultation. We also provide more details of our position in the attached Appendix.

SPEN is well placed to provide comments on the Whole Electricity System Licence Condition Consultation since we already apply and deliver whole system solutions in accordance with our existing statutory obligations to develop and maintain an efficient, co-ordinated and economical network.

Examples of such whole system solutions across the energy sector include:

- in Dumfries and Galloway we have developed novel commercial arrangements which effectively coordinate activities, decisions and data across SP Distribution, SP Transmission and the ESO;
- the processes developed under our Network Access Policy to identify solutions to reduce system outage constraint costs through implementing alternative network design or infrastructure options; and
- our innovation project 'Charge' which takes a coordinated approach between distribution network planning and transport planning in order to yield benefits and accelerate the deployment of public charging infrastructure for electric vehicles.

SP House, 320 St Vincent Street, Glasgow. G2 5AD

Telephone: 0141 614 5213

www.spenergynetworks.co.uk

SP Transmission plc, Registered Office: 320 St. Vincent Street, Glasgow, Scotland, G2 5AD Registered in Scotland No. 189126 Vat No. GB 659 3720 08
SP Manweb plc, Registered Office: 3 Prenton Way, Prenton, CH43 3ET Registered in England and Wales No. 2366937 Vat No. GB659 3720 08
SP Distribution plc, Registered Office: 320 St. Vincent Street, Glasgow, Scotland, G2 5AD Registered in Scotland No. 189125 Vat No GB 659 3720 08.

Therefore, we understand and fully support the underlying aim of the Whole Electricity System Licence Condition Consultation.

However, we would not wish the stated aim of the Whole Electricity System Licence Condition Consultation (i.e. to ensure that the most beneficial planning, investment, and operational actions are identified, resulting in more efficient and economical operation of the GB electricity network as a whole) to be undermined by a lack of clarity. Whilst we note Ofgem's view that the principles based approach to the licence drafting provides a degree of flexibility, it is important that the drafting of the licence is sufficiently clear, definitive and specific to achieve the stated aim and not open to differing interpretation. We also consider that the effective development of whole system solutions is still being established, not least for the electricity sector through the ENA's Open Networks project.

Our key observations on the Whole Electricity System Licence Condition Consultation are as follows:

- **They are not necessary:**
Ultimately, we consider it is unnecessary for Ofgem to impose these new licence conditions. If the aim of the conditions is to provide clarity on licensees' existing section 9 obligations under the Electricity Act 1989, then the most proportionate and efficient way to achieve this aim is for Ofgem to publish guidance on whole electricity system outcomes. Ofgem does not consider this as an option in its Impact Assessment.
- **Not considered yet as part of RIIO-2:**
These licence conditions are intended to provide clarity for RIIO-1. Ofgem does not address how these obligations will operate when the wider whole system obligations come into force for RIIO-2, in particular for the TOs from April 2021.
- **Appropriateness of principles-based drafting:**
We have concerns with the principles-based drafting approach Ofgem have taken for two key reasons. Firstly, it creates real uncertainty as to what exactly licence holders must do to comply with their obligations. Secondly, it makes enforcement difficult since the licence holder cannot be held to specific standards. We therefore don't believe it is appropriate to use this approach in this context.
- **Need for funding:**
A 'pass through' whole system mechanism will be required to be implemented in RIIO-T2 and RIIO-ED2 to allow the transfer of funding between DNOs and TOs for when this licence condition and the register is imposed.

SP House, 320 St Vincent Street, Glasgow. G2 5AD

Telephone: 0141 614 5213

www.spenergynetworks.co.uk

SP Transmission plc, Registered Office: 320 St. Vincent Street, Glasgow, Scotland, G2 5AD Registered in Scotland No. 189126 Vat No. GB 659 3720 08
SP Manweb plc, Registered Office: 3 Prenton Way, Prenton, CH43 3ET Registered in England and Wales No. 2366937 Vat No. GB659 3720 08
SP Distribution plc, Registered Office: 320 St. Vincent Street, Glasgow, Scotland, G2 5AD Registered in Scotland No. 189125 Vat No GB 659 3720 08.

- **Application to the ESO:**

The proposed Whole Systems Licence Condition should extend to the Electricity System Operator (ESO). Ofgem have stated that because the ESO licence includes existing obligations and incentives to engage in efficiency actions and processes, and to take into account resulting impacts, in balancing the national electricity transmission system, using the term “total system” in Section C of their transmission licence. In addition, they have included the definition of “Total System” into this licence condition.

This is insufficient as significant areas of whole system co-ordination exist and can be developed across network companies and the ESO. The opportunity to establish a tangible regulatory link through this condition would add weight to the existing co-ordination activities. For example, the obligation for the ESO to also hold and publish a co-ordination register would increase focus and accountability of their whole system commitment.

- **Application to OFTOs, CATOs and SPVs**

Ofgem does not explain in this consultation why it considers it is not appropriate to insert similar new conditions in OFTOs’ licences, or how these obligations would apply to any CATOs or SPVs that may arise through Ofgem’s Extending Competition work.

- **Competition law issues:**

We would welcome further details in Ofgem’s Guidance as to how licensees can avoid breaching competition law when fulfilling these new obligations. More generally every licensee will have to be mindful of competition law obligations when implementing these obligations.

- **Need for licence to contain definitions of Coordination and Cooperation:**

It is essential that the definitions of Coordination and Cooperation are contained in the licence condition themselves since the key obligations Ofgem are proposing to impose on licensees flow from these definitions.

Yours sincerely



Policy & Economics Manager
SP Energy Networks

SP House, 320 St Vincent Street, Glasgow. G2 5AD

Telephone: 0141 614 5213

www.spenergynetworks.co.uk

SP Transmission plc, Registered Office: 320 St. Vincent Street, Glasgow, Scotland, G2 5AD Registered in Scotland No. 189126 Vat No. GB 659 3720 08
SP Manweb plc, Registered Office: 3 Prenton Way, Prenton, CH43 3ET Registered in England and Wales No. 2366937 Vat No. GB659 3720 08
SP Distribution plc, Registered Office: 320 St. Vincent Street, Glasgow, Scotland, G2 5AD Registered in Scotland No. 189125 Vat No GB 659 3720 08.

Appendix – Detailed comments in response to Whole Electricity System Licence Condition Consultation

We note that Ofgem does not ask any specific questions in its consultation, although Ofgem asks for comments on the proposed licence conditions and proposed Impact Assessment. We have set out our comments below under the following headings:

1. Rationale for a licence modification
2. Interaction with RII0-2 policies
3. Principles based licence drafting
4. Funding of new obligations
5. Engagement with network users
6. Application to other parties
7. Consideration of wider obligations
8. Impact Assessment
9. Drafting points

1. Rationale for a licence modification

Unnecessary to impose licence conditions

Although we support collaboration and Whole System thinking, it is not clear to us why a new licence condition is necessary.

SPEN's Section 9 duties, as provided for in the Electricity Act 1989 are as follows:

“(1) It shall be the duty of an electricity distributor—

(a) to develop and maintain an efficient, co-ordinated and economical system of electricity distribution;

(b) to facilitate competition in the supply and generation of electricity.

(2) It shall be the duty of the holder of a licence authorising him to participate in the transmission of electricity—

(a) to develop and maintain an efficient, co-ordinated and economical system of electricity transmission; and

(b) to facilitate competition in the supply and generation of electricity.” (emphasis added)

Ofgem is clear throughout the Whole Electricity System Licence Condition Consultation that the new licence conditions are not meant to impose new obligations on licence holders but are intended to provide clarity on these existing obligations. On page 16 of the statutory consultation document, Ofgem observes that Section 9 “*lays the foundation for the requirement of the network companies to behave in an economic and efficient manner*” but Ofgem believes that “*Electricity Distributors and transmission owners will benefit from the further clarity that the proposed licence condition provides them to ensure they meet their responsibilities.*”

If the aim of the new licence conditions is to provide clarity on existing obligations, then it is disproportionate to provide this through new additional binding obligations rather than through publishing guidance.

Introducing licence conditions in these circumstances goes against Ofgem's approach to regulation. Ofgem state on their website that *"We regulate only where necessary to protect consumers' interests. We carefully consider whether any regulatory requirement we are proposing to introduce is proportionate and necessary to protect consumers."*¹ We submit that increasing our regulatory burden in these circumstances is neither proportionate nor necessary to protect consumers given the statutory obligations we are already subject to. Ofgem should not creating new conditions when we already have statutory obligations.

Ofgem notes at various points in its Whole Electricity System Licence Condition Consultation that, traditionally, network owners have focused on their own networks in isolation when considering how best to achieve this section 9 duty. However, SPEN has a long history of co-ordinating with other network operators, including to the north, with SHETL and SHEPD and to the south with National Grid and as set out in our covering letter. We therefore do not think Ofgem can rely on this as a reason to create new obligations, when there is a more proportionate option of issuing guidance (as commented on further below).

Impact Assessment

In the Impact Assessment, Ofgem considers three options: (1) status quo; (2) needs-based modifications; and (3) introduction of a whole electricity licence condition. There is no consideration of, what SPEN consider to be the most appropriate option, the introduction of guidance to aid the interpretation of the existing section 9 duties without requiring licence modifications. Such guidance would provide a middle ground between options (1) and (3) and would, overall, be more proportionate.

In assessing option 3 (at paragraph 3.15), Ofgem states that the new licence condition *"is a clarification of terms under which they already operate, and is not expected to create new or onerous expectations on licensees"*. The fact this clarification of terms is being implemented by way of licence conditions, rather than just guidance, inevitably creates new obligations on licensees since they carry a risk of enforcement. If Ofgem are not intending to create *"new or onerous expectations on licensees"* then Ofgem should proceed by way of guidance only instead.

¹ <https://www.ofgem.gov.uk/about-us/how-we-work/our-approach-regulation>

2. Interaction with RIIO-2 policies

It is also disproportionate to proceed by way of licence conditions in light of where we are in the RIIO-1 process.

One of the key overarching concerns SPEN has is in relation to the timing of Ofgem's proposals. The licence conditions are focused only on onshore electricity networks and are intended to provide clarity as to what is expected of DNOs/IDNOs/TOs within the context of their RIIO-1 price controls.

However, Ofgem acknowledges on page 6 of the statutory consultation document that for RIIO-2, Ofgem will include mechanisms to drive DNOs/TOs to consider actions and associated benefits that extend beyond the electricity system. In the Sector Specific Methodology Decision for RIIO-2 (**SSMD**), amongst Ofgem's key decisions was its decision to adopt a broad definition of "whole system" for RIIO-2. In addition to the gas and electricity sectors, the scope of the "whole system" will also apply to all other areas so long as coordination with those areas produces net benefits for the existing and future consumers of the relevant network sector (SSMD, para 8.13). This is therefore much wider than the focus in the Whole Electricity System Licence Condition Consultation.

Ofgem does not address how these two work streams will align. On a practical level, we have some key areas of uncertainty that we would welcome clarity from Ofgem on:

- Ofgem envisages that TOs will be subject to wider whole system licence obligations from the start of T2 in April 2021. Will TOs still be subject to the narrower RIIO-1 whole onshore electricity licence condition?

If they will not be, this would mean that DNOs/IDNOs would still have the narrower RIIO-1 obligations to coordinate and cooperate with each other, as well as the TOs, until the start of ED2 in April 2023. However, TOs would no longer have mirroring obligations in their T2 licences. This could make the overall arrangement difficult to operate because there will be a mismatch of obligations.

- It also raises a question about the usefulness of imposing new, potentially onerous licence obligations on TOs, and requiring them to implement new processes when the conditions may only be effective in their licence for less than 12 months. For example, Condition D17 Part B requires TOs to publish the coordination register by 12 months from the condition coming into force.
- If the intention is that, from the start of T2, TOs will still be subject to the narrower RIIO-1 whole onshore electricity system obligations then it would be helpful if Ofgem could set out how this would work in practice and how they have assessed whether this might place a disproportionate burden on TOs. It will require TOs to assess whole systems outcomes on an onshore electricity only basis and on a wider basis. This would appear to duplicate efforts to no advantage, and ultimately increase costs to consumers.

The RIIO-2 work on whole systems is still very much ongoing. For example, the ENA Open Network's project is currently completing various work streams including looking at whole energy system planning. It seems to us to be unnecessary to try to progress only part of the whole systems project in RIIO-1, in the absence of a defined and developed policy on the wider whole system approach.

3. Principles-based licence drafting

The proposed new licence conditions are principles-based. Ofgem describe this approach as allowing licensees *"to determine the most appropriate mechanisms to reach the outcomes, allows proportional steps to be taken to do so, and facilitates changes in these steps over time"*. (Guidance, page 5).

We have concerns with this approach for two key reasons:

1. it creates real uncertainty as to what exactly licence holders must do to comply with their obligations; and
2. it makes enforcement difficult since the licence holder cannot be held to specific standards.

The more proportionate way for Ofgem to achieve these outcomes would be, as described above, to simply provide guidance on how licensees should be fulfilling their section 9 duties in a whole system context. This would also allow licensees to determine the most appropriate mechanisms, allow proportional steps to be taken and facilitate changes over time.

Ofgem considers there are no *"legal barriers impeding the development of whole systems actions and processes; therefore, we want to provide clear regulatory certainty to stimulate a culture of whole systems thinking"* (Impact Assessment, para 2.7). Firstly, as discussed below there are some competition law restrictions which (quite appropriately) impede some of the whole system work. Secondly, the aim of providing *"clear regulatory certainty"* through the licence conditions is at odds with the way Ofgem have actually drafted them. The drafting sets out broad principles alongside some specific obligations (e.g. the publication of the coordination register). This approach is somewhat contradictory and confusing.

To place broad principles-based drafting into licence conditions creates real uncertainty as to exactly what licence holders must do to comply with those licence conditions. By way of an example, the licensee is *"obligated to proactively assess actions and processes"* and to *"participate in processes that facilitate appropriate communication of operational data and information sharing...to enable the achievement of whole electricity systems outcomes"* (Guidance, page 9). It is not clear exactly what this requires in practice. Indeed, Ofgem are currently consulting through the RIIO-2 process on what whole system solutions should look like for RIIO-2. Whilst we recognise and support the importance of delivering whole system outcomes, there is not a clear answer as to how this should be progressed within RIIO-2. Given this uncertainty, broad principles are not appropriate in the current licences within RIIO-1. Licensees require clear and definitive licence conditions to ensure the aims of Ofgem's policy are achieved.

Ofgem acknowledges that in the responses to the December 2018 consultation, *“The majority of respondents stated that the licence and guidance needed to provide more clarity on what actions are expected of Electricity Distributors and transmission owners, and on how compliance will be determined.”* (Statutory consultation, page 10). Ofgem have not done anything to address these concerns. In the Guidance, Ofgem provides some examples of coordination and cooperation (page 10). However these are at a high level so do not provide sufficient guidance.

One of the questions Ofgem asked in the December 2018 consultation was *“Do you believe further, specific guidance in any area, and in particular in relation to efficient connections and constraint management (e.g. in preparedness for electric vehicles or increasing distributed generation) would be beneficial?”* It seems that only one respondent did not think specific guidance would be useful. In light of the majority of respondents requesting specific guidance on at least one area, we would have expected Ofgem to have, as a minimum, supplemented the principles-based approach with specific guidance on certain key areas.

In relation to enforcement, principles-based drafting makes this more difficult. From Ofgem's point of view, it will make it more difficult for Ofgem to assess whether licence holders have met the required standards. From licensees' point of view, it may create higher risks of enforcement if this uncertainty gives Ofgem more scope to use their discretion in assessing whether or not a principle has been breached. At the very least, Ofgem should provide guidance as to when licensees might be considered to be in breach of these new conditions in light of its Enforcement Guidelines.

4. Funding of new obligations

The Impact Assessment notes that there is an existing Totex Incentive Mechanism (TIM) under R10-1 which provides sufficient financial incentive to reward licence holders for delivering cost reductions from cross boundary cooperation. In light of the TIM, Ofgem consider it would be uneconomic to increase the financial incentives, and instead the focus needs to be on overcoming historical and cultural barriers (paragraphs 2.4-2.5 of the Impact Assessment). The TIM mechanism is sufficient for encouraging cost reductions in many instances, however, there will inevitably be whole system solutions where the costs exceed any TIM savings. We therefore believe this is a generalisation as there will be instances where additional funding will be required in order to achieve whole system solutions.

The Guidance notes that in the instance that a proposed network solution results in increased financial expenditure for a particular network, but will yield a financial benefit for the electricity system as a whole, this could be facilitated through “remuneration transfers” between affected electricity network licensees (Guidance, page 12). Ofgem direct that licensees should determine the appropriate transfer mechanism for the circumstance.

Overall it is unclear just how significant a burden these new licence conditions will place on the licensees and therefore what, if any, additional funding the licensee will require in order to comply with them.

5. Engagement with network users

Condition D17.3 and 7A.3 require the licensee to “*consider actions proposed by [transmission system users] / [Distribution System Users] which seek to advance the efficient and economical operation of its network*”.

It is unclear to us how this would work in practice. From a practical point of view, how often and when could Users make proposals to licensees? If this can just be done on an ad-hoc basis, or with no clear structure as to how proposals should be presented, this could create a significant administrative burden on network licensees. We would welcome further clarity from Ofgem on these points.

6. Application to other parties

OFTOs and CATOs

The new licence conditions will only apply to DNOs, IDNOs and TOs. Ofgem do not explain in this consultation why they consider it is not appropriate to insert similar new conditions in OFTOs licences, or how the obligations might apply to any CATOs or SPVs that may arise through Ofgem’s Extending Competition work. Furthermore, as the licences are drafted, SPEN (as a TO and DNO) would be required to coordinate and cooperate with OFTOs, (and in future with any CATOs and SPVs), but without a mirrored obligation on OFTOs, (or future CATOs or SPVs) to coordinate and cooperate with SPEN (as TO and DNO). It is not clear how this would work in practice, if at all.

It would be helpful if Ofgem could explain why they have decided that the obligations should not apply to OFTOs, CATOs and SPVs. It appears unfair to us that other transmission operators will not be subject to the same obligations as TOs, DNOs and IDNOs. At the very least we would expect these obligations to be placed on OFTOs at this stage.

ESO

Ofgem consider that the ESO licence includes existing obligations and incentives on the ESO to engage in efficiency actions and processes in relation to “total system” outcomes. This is insufficient as significant areas of whole system co-ordination exist and can be developed across network companies and the ESO. The opportunity to establish a tangible regulatory link through this condition would add weight to the existing co-ordination activities. For example, the obligation for the ESO to also hold and publish a co-ordination register would increase focus and accountability of their whole system commitment.

However, Ofgem also notes that as part of RIIO-2, Ofgem are considering further licence changes which may be necessary and so are not extending this licence condition to the ESO as part of the

current proposals. We would be grateful for clarity on why this approach is being taken for the ESO, but not the other TOs, DNOs and IDNOs.

We would have expected that for a whole system approach to be implemented effectively that these obligations should be incumbent on all transmission and distribution licensees, on similar terms, at the same time.

7. Consideration of wider obligations

Competition law

Ofgem acknowledge that in the responses to the December 2018 consultation, several respondents requested clarity on how the licence interacts with competition law (Consultation, page 10). This clarity still has not been provided by Ofgem.

Ofgem's proposal anticipates increased coordination and sharing of information between, what essentially are, market competitors. The definitions of Coordination and Cooperation in the Guidance confirm that the activities Ofgem envisages includes: (i) licensees scheduling and sequencing activities in coordination; (ii) licensees considering other licensees' activities when undertaking investment planning; and (iii) sharing of data and information.

We are concerned that this level of coordination could create risks of breaches of competition law.

In the Impact Assessment, Ofgem note as follows:

"The proposed licence modification creates a risk that by working together across network boundaries, licence holders may be able to use their market power in ways that are not in the best interests of consumers. The licence condition requires that licence holders cooperate in ways that benefit consumers. Should we determine that a licence holder has failed to comply with this requirement then we would take remedial action. The risk is further mitigated by existing licence conditions relating to doing business with affiliates and the provision of cross subsidies to non-licensed activities. We therefore consider that this risk is extremely low and that many tools exist to deal with it should it materialise." (emphasis added)

In light of how seriously SPEN take compliance with competition law and the significant remedial action we could face, we do not think this deals with these risks appropriately.

There is also a related risk in relation to the obligation to consider proposals from network users. If a licensee approved and implemented a proposal which involved network users breaching competition law, e.g. by sharing commercial data, this might also result in the relevant network licensee being in breach of competition law by facilitating that breach.

We would welcome clarification from Ofgem on these points. We would at the very least expect to see some further details in Ofgem's Guidance as to how licensees can avoid breaching competition law when fulfilling these new obligations.

SP House, 320 St Vincent Street, Glasgow. G2 5AD

Telephone: 0141 614 5213

www.spenergynetworks.co.uk

SP Transmission plc, Registered Office: 320 St. Vincent Street, Glasgow, Scotland, G2 5AD Registered in Scotland No. 189126 Vat No. GB 659 3720 08
SP Manweb plc, Registered Office: 3 Prenton Way, Prenton, CH43 3ET Registered in England and Wales No. 2366937 Vat No. GB659 3720 08
SP Distribution plc, Registered Office: 320 St. Vincent Street, Glasgow, Scotland, G2 5AD Registered in Scotland No. 189125 Vat No GB 659 3720 08.

Ofgem acknowledge in the Guidance that cooperation will need to be “*subject to existing conditions relating to competition and data law*” (page 10). However, the current “logic test” does not allow for these considerations. If it is considered by Ofgem that, notwithstanding the other points raised in this letter, the proposed licence conditions in the Whole Electricity System Licence Condition Consultation should be introduced into the current RIIO-1 licences, it is essential that Ofgem also introduces drafting into the licence which states that the licence holder does not need to coordinate, cooperate, engage or share data with other licensees, if it considers that such engagement would risk putting it in breach of any other of its legal, or indeed licence, obligations.

REMIT

In the Guidance under the explanation of clause 2, Ofgem notes as an example that network users may propose an action to “trade capacity and associated outage positions with other network users”. Have Ofgem considered any potential implications under REMIT of a proposal like this?

Confidentiality

The Guidance describes the information that needs to be included in the Coordination Register (pages 13-15). It notes that the information should be handled in accordance with GDPR and that network users can ask for “identifiable information” to be removed before publication of the register. We assume that TOs/DNOs/IDNOs will also be able to remove any of their own commercially sensitive information about actions or processes before publishing the Coordination Register. If so, it would be helpful if the Guidance could clarify this. The key issue here is unlikely to be GDPR, it is more likely to be commercial confidentiality.

8. Timing of Impact Assessment

The Impact Assessment is not dated. It would be helpful to understand at what point Ofgem undertook this assessment. We note that the draft documents licensees were sent ahead of the workshop with Ofgem on 12 February 2020 did not include an Impact Assessment. The December 2018 Whole Systems consultation also did not include an Impact Assessment. Whilst we agree it is appropriate for Ofgem to have undertaken an Impact Assessment we would normally expect to see this at an earlier stage of the consultation process, when Ofgem is still forming its policy and consulting on the proposed options, as opposed to alongside the formal statutory consultation on the licence modifications. Ofgem’s Impact Assessment Guidance (available at https://www.ofgem.gov.uk/system/files/docs/2016/10/impact_assessment_guidance_0.pdf) notes their approach as follows “*So that our analysis is based on defensible evidence and reflects a responsive approach to proposal development, we will typically initiate an IA at an early stage of a proposal*” (para 3.1). It is not clear to us why Ofgem did not undertake an Impact Assessment at an earlier stage of this policy proposal.

8. Drafting points

Definition of coordination and cooperation

The Guidance sets out the definitions of “Coordination” and “Cooperation”. These are obviously key definitions in the new licence conditions. In light of the principles based drafting Ofgem has adopted,

SP House, 320 St Vincent Street, Glasgow. G2 5AD

Telephone: 0141 614 5213

www.spenergynetworks.co.uk

SP Transmission plc, Registered Office: 320 St. Vincent Street, Glasgow, Scotland, G2 5AD Registered in Scotland No. 189126 Vat No. GB 659 3720 08
SP Manweb plc, Registered Office: 3 Prenton Way, Prenton, CH43 3ET Registered in England and Wales No. 2366937 Vat No. GB659 3720 08
SP Distribution plc, Registered Office: 320 St. Vincent Street, Glasgow, Scotland, G2 5AD Registered in Scotland No. 189125 Vat No GB 659 3720 08.

they provide the most clarity as to what actions are expected of licence holders. We therefore consider it is inappropriate for these key definitions to not be included in the licence conditions themselves.

This is a point which SPEN raised with Ofgem at the workshop held on 12 February 2020 as Annex 2 to the Consultation narrates. We do not understand Ofgem's reasoning for not including them as definitions in the licence. Ofgem state that they are commonly understood terms, and licensees should give them their ordinary meaning when interpreting the licence conditions. However, the Guidance provides specific definitions of these words for the context in which they are used.

We expect to see all of the key definitions contained in the licence itself. By instead placing them in the Guidance, Ofgem will have the ability to change these definitions, and so potentially widen the scope of obligations on licence holders, without making any licence modifications. This removes an essential right for licence holders to challenge any unfair or unjustified future obligations placed on them though the licence modification consultation process, and eventually a right, which Parliament saw fit to enshrine in primary legislation, that licensees should be able to appeal to the CMA.

“do not negatively affect”

Condition D17.4 and 7A.4 requires the licensee to “*use all reasonable endeavours to implement actions or processes identified or proposed through its coordination...that: (a) **will not negatively impact its network**; and (b) are in the interest of the efficient and economical operation of the total system.*” (emphasis added)

At the workshop on 12 February 2020, Ofgem considered that this clause gives licensees wide discretion, since we would not need to do anything which would *not* be positive to our network.

However, the drafting places too wide an obligation on us. Rather than limb (a) saying “*do not negatively affect*” we propose it should instead require that the actions and processes “*will positively affect the operation of the licensee’s network*” instead. This would avoid SPEN having to progress anything that would have a neutral effect on our network, as we understand Ofgem’s intention is that we should only have to do anything that is positive to our network.