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Sent by email to: RIIO2@ofgem.gov.uk

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Dear Akshay

RIIO-2 Contingency Plans

Electricity North West welcomes the opportunity to respond to this open letter on Ofgem's contingency plans for RIIO-2 gas distribution, transmission and electricity system operator price controls, which are due to commence in April 2021. On the one hand we support contingency planning, though we don't have sight of alternative options Ofgem considered (e.g. redeploy resources from within Ofgem) and these alternative contingencies relative pros and cons and nor do we have transparency of the level of risk faced or which might be faced under credible scenarios to delivering this work through the established, fit for purpose mechanisms and processes.

We note that the open letter reiterates Ofgem's aim to the deliver the RIIO-2 programme to the existing timetable, publishing the statutory licence consultation in December 2020 with the new price control to take effect from 1st April 2021. We support achieving the planned timetable, under normal processes. However, the alternative timetable presents a significant risk to the process and should be carefully considered before progressed. Based on the level of risk being introduced, we recommend greater transparency on the progress Ofgem is making and associated risk status through Ofgem providing all stakeholders progress updates and commentary on how setting the price controls is going.

We have significant concerns over the alternative licence process proposed for gas, transmission and the ESO as these depart from the robust approach, which is in place to properly protect customers and stakeholders. The situation with Covid-19 has matured, and therefore its impact on Business as Usual has been understood for some time. As such, we would expect Ofgem's delivery plans to have adapted to reduce risk of RIIO-2 price control delays. We note that contingency mechanisms conceptually could have been developed or offered to stakeholders, for example in responding to a number of complex interacting consultations over summer 2020 and any additional time that may be created might be more beneficially spent on other elements of the process. For example, wider stakeholders, including network companies would be able to provide Ofgem with more insights with slightly more time, leading to a better price control for customers. This might be more important than spending more time on licence drafting. Though we agree licence drafting is vitally important, and from experience have concerns that full clarity on Ofgem policy intent sometimes emerges only at this drafting stage.



Whilst Ofgem has not expressly contemplated using such proposals for ED2, we are concerned at the precedent these changes to process may set by their existence, particularly as we believe they are unnecessary. We note that in the Sector Specific Methodology consultation Ofgem states it is “clear that RIIO-ED2 is a separate process, however in the design of our proposals for RIIO-ED2, we have taken into account the lessons learnt and the feedback we have received from the other sectors.”¹ We would welcome more clarity being provided to stakeholders that no decisions made as part of this process review will be binding for ED2. We also expect lessons learnt can be taken from the GD/T2 process, and indeed welcome what we’ve seen where these process insights are applied already, such as having one draft plan to the Ofgem challenge group.

When the extent of COVID-19 impacts became apparent in March 2020, this was three years before the ED2 price control is due to commence. With three years remaining, Ofgem should be able to operate the process for ED that continues to meet the timescales required. However, we support any opportunity to accelerate progress in the ED2 process sooner, as a way to provide a cushion for unforeseen impacts later.

One of our observations on the GD/T2 process is that increased clarity from Ofgem of what ‘good’ looks like in company proposals, transparency to stakeholders on the extent to which their views will be considered, and greater transparency from Ofgem on its approach to ensure RIIO-ED2, and other critical industry changes such as charging and access, will avoid unproductive effort by all stakeholders. Our initial view of the SSMC indicates some favourable moves by Ofgem in this direction for ED2.

We note the challenges the industry has faced from the outbreak of COVID-19 and the resilience across the sectors and stakeholders to quickly adapt to remote working and continue with Business-as-Usual under such circumstances. Given the outbreak occurred after draft Business plans were submitted, we expect there was an initial impact on the assessment and resulting draft determinations for the gas, transmission network companies and ESO. However, we have seen Ofgem’s resilience and adaptability throughout the period and therefore note that remote working practices are now well established. As a result, we don’t see clearly that there will be further impact on Ofgem’s progress and as such we do not believe there is a requirement for these contingency plans due to Covid-19. We believe it is vital and useful for a ‘lessons learned’ exercise for Ofgem to investigate reasons behind process delays, if any, as delays should not be automatically be assumed as COVID-19 related, and we’d hope any initial delay was recoverable in the year between the lock down happening and price control starting. However, if wider stakeholder feedback to this open letter is in support of the contingency plans, we raise the following points for your consideration.

1. *Do you have any views on the proposal to give effect to FDs in this way? In particular, do you agree that it is a reasonable and proportionate way to accommodate a potential Covid-related delay of 3 months in such a contingency scenario?*

Based on the ability network companies and Ofgem have demonstrated to adapt and continue with Business as Usual we do not agree with the principle of introducing these contingency plans. The industry has proven resilience and prioritised key services and activities to significantly reduce any impacts of COVID-19 on key milestones and services to customers. Stakeholder engagement and working (e.g. ED2 working groups) now happens productively through online meetings. **We urge Ofgem and other network companies to continue the work and progress to date, prioritising where necessary to meet key milestones using the established fit for purpose process and think this should not be prevented by Covid-19 based on our experience.**

This consultation may be a useful heads up flagging a potential need to bring forward and certainly maintain momentum on RIIO-ED2 activities to make progress and initiate this work over the coming months, where elements of the framework are less likely to change or where more work is known to be needed. We encourage Ofgem to share it’s thinking on ED2 decisions, so stakeholders can move forward and we hope to continue the collaborative work on developing the ED2 regime we’ve seen

¹ RIIO-ED2 Methodology Consultation: Overview, para 2.4, Ofgem
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to date. We are concerned that issues in delivering the gas, electricity transmission and ESO price controls could lead to delays to the ED2 process.

2. *Do you have any views on the draft licence condition as set out in Annex 2 to this letter?*

In Part A of Annex 2, the criteria proposed to initiate the contingency process notes “Modifications under Part B may only be initiated where: that delay arises from extraordinary circumstances [and] those extraordinary circumstances have had a significant impact on the Authority’s normal activities”. Any changes to the regulatory licence should have a clear legal basis. The scope upon which Ofgem might enact this change in approach is not currently clear. **We would welcome further clarity on Ofgem’s definition of ‘extraordinary circumstances’ and the impacts these are assumed to have on Ofgem’s normal activities and how stakeholders will know these impacts might and have taken place. How for example will delays already in the process prior to the extraordinary circumstances be separately identified? As drafted this provision appears to go wider than circumstances related to COVID-19.**

We note the significantly condensed timeline proposed in the both Part A and Part B of Annex 2 and do not agree that these timescales are reasonable or proportionate for licence modifications, which are usually provided 56-day periods.

Part A of Annex 2 states that a period of 14 working days is provided to network companies to respond following Ofgem’s notice of proposing modifications (on or before 8 March 2021) and implementation of modifications (no later than 24 March 2021). These timescales would risk network companies’ and other stakeholders’ ability to engage effectively in the process and potentially undermine the efficacy of the licence drafting. Additionally, Part B of Annex 2, states the time within which representations can be made on the proposed modifications is stated “will not be less than [7 days]”. **We would recommend that a minimum of 28 days’ notice is provided to network companies to provide a more reasonable and more proportionate way to accommodate contingency processes.** This would align more closely with the appropriate and standard 56-day period for major licence changes and would be more likely to strike a better balance in achieving a fit for purpose licence drafting process.

We note the contingency timescale in Annex 1 proposes that RIIO-2 licence conditions start (20 August 2021), following the 56-day standstill initiated no later than 2 July 2021. However, this timeline conflicts with that referred to in xx.11 in Annex 2 which states implementation of RIIO-2 licence changes on 31 December 2021. **We would welcome clarity on dates provided and confirmation that there will not be an open-ended date for implementation of the RIIO-2 process under this contingency process.**

We recognise that this contingency timeline is intended to mitigate against risk of delays in Business as Usual progress on licence drafting and we are supportive of Ofgem reviewing the RIIO-2 timeline and external impacts. Whilst we understand the intention, the contingency model proposed may not achieve the desired outcome and would definitely increase the risk companies face and present challenges for stakeholder engagement in the process. It could also increase resource required and risk of errors. Due to the additional steps introduced, the contingency process would likely increase the level of effort involved and resource required from Ofgem overall. The condensed programme would also limit opportunities for detailed review and introduce a greater risk of errors. Therefore, we recommend more thinking on a range of options that should be consulted on with different benefits and costs. Furthermore, Ofgem’s additional steps and novel process imposes additional resource burdens on all other stakeholders, including network companies. Therefore, we suggest that Ofgem should only be able to trigger this process up to November 2020, as by then progress on Final Determinations should be known.

There is also not enough detail or consideration set out in this consultation about any potential impact on price control appeal rights. We’d like to see more explanation of how appeals would work in the event of a contingency process being enacted by Ofgem.

We note that company business plans went in on time ahead of Covid-19 impacts. Therefore, should Ofgem trigger this alternative process, then we believe a report should be produced to provide transparency into the programme of work, highlighting lessons learned, and sources of delay. The report should be supported by data and evidence as to the cause of the exceptional delay. We also suggest Ofgem provides monthly progress updates, sharing a summary of it's overall project plan and view of tracking delivery of key milestones in developing the price controls.

Finally, we review this proposal in light of Ofgem's recent RIIO-2 Draft Determinations, which refer to common sector-wide measures without qualification that they do not apply to ED. Whilst the contingency proposal is intended for gas distribution, transmission and the ESO, we have significant concerns that this proposal could be interpreted as a common sector-wide measure and applied to RIIO-ED2 without a separate and considered process. **We urge Ofgem to develop a different contingency plan, essentially focussing on scope control, clarity and transparency to stakeholders along with appropriate programme and resource planning if and where needed for ED2.**

If you have any questions on any elements of the response, please don't hesitate to contact me (Paul.auckland@enwl.co.uk)

Yours sincerely

Paul Auckland

Head of Economic Regulation