

## Consultation on Proposed Amendments to National Grid's Electricity Transmission Licence Modifications to Special Condition 2N Electricity Market Reform

### Government Response

Since coming into force, Special Licence Condition 2N of National Grid's electricity transmission licence has been relied upon to deal with the protection and transfer of EMR-related information received by National Grid in its role as the EMR Delivery Body. We have since become aware of some potential ambiguities which may frustrate the proper working of the Special Licence Condition. To address this we have proposed some minor amendments to ensure the licence condition works as originally intended. In addition since EMR has come into operation, it has become apparent that, in order for National Grid to carry out certain EMR functions as required by regulation, some minor changes will be required to the licence condition to enable them to comply.

A consultation notice was circulated with the EMR Stakeholder Bulletin on Wednesday 10 December 2014 which set out our proposals for amending Special Licence Condition 2N. Although there were eight proposed changes in total, stakeholders' views were sought on only four of the proposed changes which represented a slight change to our original policy intent. The purpose of the remaining four proposed changes being to merely clarify our original policy intent, stakeholder views were not requested.

Consultation Questions
<ol style="list-style-type: none"> <li>1. <b>How effectively will the proposed amendments to the licence modifications shown at 4, 5, 6 and 7 above achieve the policy aims? Please explain your answer providing evidence where you can.</b></li> <li>2. <b>Are there any unintended consequences you can foresee from these amendments?</b></li> <li>3. <b>Do you have any other comments on these proposed changes?</b></li> </ol>

### Summary of Responses

In general the consultation was welcomed by respondents as evidence that National Grid's obligations are being properly managed. All the responses accepted the need for the majority of the proposed amendments but some caveated their responses to certain proposed changes and also referred to wider matters outside the scope of this consultation to reflect particular concerns:

Concerns were expressed about the need to keep the release of information to as small a pool of individuals as possible with all respondents referring to the importance of the annual compliance statement and its role in monitoring instances of sharing EMR information with agents, contractors and advisers working for National Grid and also National Grid shared services. One respondent wanted agents, contractors and advisers to National Grid working on EMR to be subject to the same non-disclosure agreement that applies to National Grid employees.

One respondent suggested that the licence should be changed to explicitly allow National Grid EMR administrative team members to participate in work on the possible inclusion of Northern Ireland in

the EMR regime rather than the inclusion of a power for Ofgem to provide consent as proposed. However, another was keen for a consenting mechanism to be operated on a case by case basis only.

Greater clarity was requested about the purposes for which the information to be shared between the EMR administrative team and the EMR data handling team was to be used.

Respondents also touched on wider issues expressing concerns that the current amendments were being made in isolation and the need to consider the impacts of, in particular, the inclusion of interconnectors in the capacity market. There was concern about the potential conflicts of interest that may arise should National Grid be required to determine de-rating factors for interconnectors in the capacity market within its role as delivery body. Also for the longer term, respondents raised potential interactions with reforms to the role of the System Operator as part of Ofgem's Integrated Transmission Planning and Regulation (ITPR) project.

### **Decisions Taken Since the Consultation**

Following the consultation we have considered the concerns expressed by stakeholders and how we may take them into account while still achieving our objective to ensure the licence fully reflects the requirements placed on National Grid by regulation. It has been decided the amendments to Special Licence Condition will clarify that:

- National Grid may disclose Confidential EMR Information (CEMRI) including Confidential EMR Administrative Information (CEMRAI) and Confidential EMR Delivery Plan Information (CEMRDPI), as defined in Special Condition 2N, in a non-anonymised or unaggregated form, to third parties such as the Secretary of State or the Low Carbon Contracts Company, if such parties need that information to carry out their own EMR functions.
- National Grid may disclose CEMRI, including CEMRAI and CEMRDPI, where the person to whom the relevant information relates has consented in writing in advance.
- National Grid may use CEMRI, including CEMRAI and CEMRDPI, to perform its EMR functions and as permitted by regulation 65 of the Electricity Capacity Regulations 2014. NGET may also use CEMRI (but only CEMRAI or CEMRDPI which has been aggregated and/or anonymised) to carry out Balancing Services Activities and for purposes previously authorised by Ofgem (either by written consent or through the Compliance Statement).

We will also amend the definition in Part H of "Relevant Other Competitive Business" to include all early development of interconnection and not only that which is covered by an interconnector licence.

In addition, the amendments will allow for the following:

- Agents, contractors and advisers, each of which are subject to confidentiality or non-disclosure obligations in a form specified in the compliance statement, may have access to CEMRI, including CEMRAI or CEMRDPI, where such access is necessary to enable National Grid to carry out its EMR functions.
- National Grid may disclose CEMRI, including CEMRAI and CEMRDPI to National Grid Shared Services (as specified in the Compliance Statement) where such disclosure is necessary to

enable Shared Services to carry out their functions (such as IT support during the application process or legal support during an appeals process).

- National Grid may share CEMRAI and CEMRDPI information between the EMR Administrative Team and the EMR Data Handling Team only for the purpose of fulfilling their obligations to provide, amend or update an electricity capacity report (as required under Part 3 of the Electricity Capacity Regulations 2014) and to advise Secretary of State on whether to adjust the demand curve for a capacity auction (as required under regulation 7 of those regulations). In addition Ofgem will have the power to grant its consent for the sharing of information between the two teams for other EMR functions where necessary.
- Ofgem will have the power to consent to National Grid EMR Administrative Team members participating in limited “de minimis” activity under Ofgem’s oversight on a case by case basis.

Together, these amendments will ensure that transparent measures are in place to allow the transfer of information as necessary for all those with EMR functions (including the Secretary of State, the Delivery Body and the LCCC) to carry out those functions as smoothly and efficiently as possible whilst being alive to, and managing, any potential conflicts of interest which may arise by maintaining effective safeguards to ensure the safekeeping of Confidential EMR Information.

With regard to the wider issues of interconnection and the ITPR project it should be noted it has been decided that Secretary of State will be responsible for taking decisions regarding de-rating factors to be applied for interconnectors bidding into the capacity market, which will avoid a significant potential conflict of interest. We will continue to monitor potential conflicts as the policy is finalised. Further information is available in the recently published Impact Assessment *Participation of Interconnection in the Capacity Market*. The ITPR project is on-going. Ofgem consulted on draft conclusions in September and are due to publish final conclusions in the spring, with a final decision on any changes to National Grid’s licence conditions expected in late summer. Further work will be necessary to consider the impacts on any proposed changes to the System Operator’s role by the review.