



Electricity Generation Licence  
Holders and other interested  
parties

*Promoting choice and value for  
all gas and electricity customers*

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Date: 03 April 2012

**Dear colleague,**

**Update to Ofgem procedure for dealing with requests for Authority consent under Standard Licence Condition 15 of the Electricity Generation Licence.**

Standard Licence Condition 15 of the electricity generation licence [SLC15]<sup>1</sup> requires licence holders to apply for Authority approval before exercising exploratory rights granted to them under the Electricity Act 1989. Today's letter is to notify stakeholders that an updated version of the procedure for dealing with these requests has been drafted. This updated guidance is attached as an appendix to this letter.

**Background**

In May 2008 we published a decision document outlining how the Authority would deal with requests for consent under SLC15. This document committed Ofgem to making a decision to offer consent within 20 working days and notify the relevant parties<sup>2</sup>.

In November 2011 we received such an application for consent and the decision was taken to include a short consultation period to provide all relevant parties – not just the affected land occupiers – with a chance to respond to the application. During this process we kept our commitment to meet the 20 working day deadline.

However, in December 2011, as part of our 'ways of working' review, we released updated guidance on how we approach Ofgem consultations<sup>3</sup>. These changes came into force on the 01 February 2012. As a result, we are amending our procedure for considering these requests to take into account this new consultation guidance.

**Relevant Legislation and Regulation**

Schedule 4, paragraph 10(1) of the Electricity Act 1989 allows a generation licence holder to access and survey land, against the wishes of the land holder, in order to establish whether the land would be suitable for the building of a generation station. Schedule 4, paragraphs 10(2) to 10(5) of the Act set out the conditions which must be satisfied before the rights of entry on the land may be exercised.

<sup>1</sup> Standard Electricity Generation Licence Conditions:

[http://epr.ofgem.gov.uk/document\\_fetch.php?documentid=15544](http://epr.ofgem.gov.uk/document_fetch.php?documentid=15544)

<sup>2</sup> Decision Document - Procedure for dealing with requests for Authority consent under Standard Licence Condition 15 of the Electricity Generation Licence (May 2008). Link:

[http://www.ofgem.gov.uk/Licensing/Work/Documents1/SLC15%20decision%20lettermay08\\_Final.pdf](http://www.ofgem.gov.uk/Licensing/Work/Documents1/SLC15%20decision%20lettermay08_Final.pdf)

<sup>3</sup> Guidance on Ofgem's approach to consultation (December 2011). Link:

<http://www.ofgem.gov.uk/About%20us/BetterReg/Documents1/guidance%20on%20ofgems%20approach%20to%20consultation.pdf>

Standard Electricity Licence Condition 15 (4) provides:

*"Paragraph 10 of Schedule 4 to the Act shall apply to the licensee if:*

- (a) it wishes to exercise its rights of entry on land for the purpose of establishing whether or not the land is suitable for the construction or extension of a generating station; and*
- (b) it obtains the consent of the Authority before exercising those rights."*

Accordingly SLC 15 of the generation licence restricts the powers available under paragraph 10 of Schedule 4 in two ways:

- by limiting the purpose for which the licensee may enter land; and
- by requiring prior Authority consent.

### **Changes to Consultation Guidance**

In December 2010 the Department of Energy and Climate Change (DECC) published the Government's response to its earlier call for evidence on the Ofgem Review. This set out a number of operational issues under the theme of "ways of working" that had been raised by stakeholders through the call for evidence. The issues raised included views on how Ofgem conducts its consultations.

In July 2011 we published our response to these operational issues. In particular, we committed to publish a statement on our consultation policy in 2011, including a revised policy on the timescales for responding to our consultations short. This statement was released in December 2011 and has been applied to consultations since 01 February 2012.

The guidance outlined three different periods of public consultation, recognising that differing issues are likely to have differing levels of urgency, complexity and interest and that there may be occasions where we may need to depart from the guidance. The periods broadly are:

- **Twelve weeks** for consultations on issues that are expected to be of wide significance and interest. This is the maximum consultation period that we would normally expect to allow
- **Eight weeks** for consultations on issues that are less likely to have a very wide impact or be the subject of substantial interest. This will be the usual timescale for consultations on a subject matter where no earlier, related formal consultation or other reasonable stakeholder engagement has occurred
- **Four weeks** for consultations on issues that are urgent, or which represent minor changes to existing policies, or where we are working to a timescale which is constrained by a licence or other regulatory or statutory requirement, or set by a third party.

### **Outcome**

Disputes which lead to requests for Authority consent under SLC15 tend to involve a very small number of parties and would not normally be the subject of substantial interest. These requests are usually made after a period of discussion between the holder of a generation licence and the affected stakeholders. As such the affected parties are highly likely to be familiar with the issues being discussed.

On this basis, it would not seem appropriate (except where these conditions are not met) for the consultation process attached to this approval process to last for either eight or twelve weeks. We previously committed to deal with such requests in 20 working days. While this period will need to be extended, we do not wish to substantially increase the

time allowed for making a response to the applications, and accordingly we consider that a four week consultation period would be appropriate. Such a period will in our view give adequate time to those wishing to respond to consider the issues and provide a response.

As a result of providing for a four week consultation period we have modified our process for providing a response to the application and will in the future provide a response within 10 days of the close of the consultation (30 working days from the launch of the consultation). This revised procedure is attached as an appendix to this letter. If you have any further questions about this process please don't hesitate to contact my colleague Wil Barber on 020 7901 7436.

All applications for consent should be made to Andrew Wright, Senior Partner, Markets in the first instance.

Yours sincerely,

**Emma Kelso**  
**Associate Partner, Wholesale Markets**

## APPENDIX

### Ofgem procedure for considering requests for consent under SLC 15 Electricity Generation Licence

1. A licensee requesting Authority consent should provide –
  - a) evidence that the licensee is intending to exercise the right of entry only for the purpose of “establishing whether or not the land is suitable for the construction or extension of a generating station”. (This might be information about the land, where it is and whether the licensee is considering construction or extending.) If it is an extension, the name and location of the generating station to be extended;
  - b) details of contact with the occupier of land made to gain access. If a request has been made and refused, details of the refusal;
  - c) details of the information that would be included in the notice required under paragraph 10 of Schedule 4 to the Electricity Act 1989. (This should give more detail about what is proposed, whether there is any intention to bore to ascertain the nature of the subsoil, who the occupier is and when the exploration is due to take place); and
  - d) details of how long the exploration process will take.
2. Ofgem would expect a licensee to approach the landowner in the first instance. Where an approach for access to land has been refused, Ofgem may consider whether it would be appropriate to contact the occupier directly. The licensee may also provide information as to why it considers such contact may not be appropriate.
3. Before making a decision Ofgem will hold a four week consultation to provide all stakeholders with the opportunity to comment on the application for consent. These responses will be used to inform our final decision.
4. Once Ofgem is satisfied it has all the necessary information, it will make a decision whether or not to confer consent within 10 working days of the close of the consultation