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By email only: economicregulation@caa.co.uk

Dear Rod,

Re NERL response to CAA consultation proposal to modify Condition 2 of NERL's licence in respect of resilience planning, policy statement on enforcement and consultation on draft guidance (CAP1639)

We welcome the opportunity to respond to your consultation on your proposed licence modification which would require us to develop and submit a resilience plan, and the related guidance.

Comments on proposed Licence condition and guidance

As noted in paragraph 1.8, we have provided consent – in principle – to the proposed Licence modification. Our consent is subject to the outcome of the current consultation on the condition, and provided no substantive changes are made to the guidance and enforcement policy.

We would welcome clarification from the CAA on how it, together with the Independent Reviewer, intends to assess the effectiveness of our principles, plans and processes to produce a resilient service.

NERL already has comprehensive resilience plans and processes in place to manage and mitigate the effects of any incident or disruptive event. However, we recognise the potential informational and administrative value to all stakeholders of consolidating policy and plans on resilience into an overarching "Resilience Plan". The CAA's proposed licence modification represents a substantive conclusion to the collaborative work on resilience, and a proportionate means of addressing recommendations arising from the Independent Enquiry.

In the draft guidance, you state that "The level of demand reasonably expected, and thus the capacity to be made available, shall be as in accordance with the Service and Investment Plan provided by NERL, pursuant to Condition 10". We would like to highlight that under normal operations we expect to be held to performance standards in line with the agreed performance targets for each reference period. This standard is necessarily different to the pre-agreed performance standards which we aim to operate at during disruptive events. The two sets of performance standards should not be conflated. To meet the guidance, we intend to use our SIP to make clear the different performance standards that apply for disruptive events.

Comments on Independent Reviewer

We would welcome further information on how we will be able to interact with the Independent Reviewer (IR), when appointed. We believe that the IR can add most value if there is regular engagement with us and other stakeholders, throughout the development and review of the Resilience Plan. In addition, we should have an opportunity to review the IR's draft findings before they are published to ensure they are factually accurate.

We would be happy to meet with you to discuss our comments in more detail.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D Phelps', written in a cursive style.

David Phelps
Deputy Head of Regulation