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Dear Lesley

CAP170: current thinking and further consultation on competition issues

EDF Energy welcomes the opportunity to respond to this consultation. While we share Ofgem's concern that constraint costs should be minimised, we do not support the implementation of CAP 170, which was developed primarily to address the high level of Cheviot boundary constraint costs (and those of 2008-09 in particular). The reasons why we believe CAP170 is inappropriate and should be rejected are as follows:

- The governance process, particularly regarding urgency, did not allow sufficient industry consideration and debate on this proposal. Given the time that has elapsed, this can no longer be justified.
- Levels of constraints have changed significantly since CAP 170 was proposed, and as a result, the assumed cost benefit when measured against the original intent of the proposal will no longer be realised.
- The regulatory risks presented by CAP 170 have not been addressed.
- CAP170 is discriminatory as it seeks to target a subset of transmission connected generators only. It also discriminates between transmission and distribution connected generators behind the derogated boundary.
- CAP170 is not a proportionate response to concerns about market failure of locational balancing and other options should now be considered.

Our response will discuss each of these key points in turn.

Urgency

Ofgem remains of the view that the decision made in 2009 regarding Urgency is still appropriate. However, this urgency decision has prevented proper industry consideration and debate of CAP170, with the result that no alternative amendment proposals could be considered or presented to the Authority. This aspect of the governance process, particularly given the significant and ongoing wait for Ofgem's decision on this proposal, reinforces our view that the only reasonable approach which can now be taken is that the proposal is rejected.

Cost Benefit

CAP170 was originally proposed against a background of rising constraint costs culminating in total GB constraint costs of £261m in 2008-09. The expectation was that this proposal could result in significant cost savings (the 2008-09 Cheviot constraint cost figure forecast by National Grid (NG) in February 2009 was £153m). While the GB total for constraint costs in

2010-11 is currently estimated to be £322m, we note from this consultation that NG's latest forecast (provided by NG to Ofgem) is for Cheviot constraint costs of £86m, representing only around 25% of the total. This is a significantly smaller proportion of GB constraints for 2010-11 than in 2008-09. CAP170 will, it is estimated, reduce 2010-11 costs by up to £35m of the £322m total for GB constraints. While this is not an insignificant sum, it represents a little over 10% of the total. In our view CAP170 is not therefore a proportionate or reasonable response to addressing constraint costs in this piecemeal fashion. The proposal would have benefited from thorough industry consideration and debate, so that a more holistic consideration of alternative proposals could have been made.

Regulatory Risk

The ongoing consideration of CAP 170 further increases our concerns regarding the regulatory risk that this has introduced. DECC has recently stated its intention to proceed with a Connect and Manage Socialised model for transmission access. This proposal now appears to conflict with that intention. It is also clear to EDF Energy that developers will need clarity of the expected framework for the provision and payment for intertrip services from their new generation projects. The explicit expectation that CAP 170 would only be a short term solution confirms the need for a much wider and more comprehensive debate. A rejection of this current proposal is therefore the most reasonable way forward.

EDF Energy has previously discussed our belief that the 'one-size-fits-all' remuneration terms of the existing CAP170 are wholly inappropriate. This proposal will not only impact the investment signals for new generators but might also make existing generators more reluctant to agree contractual terms with the System Operator for the provision of commercial intertrip services now. The regulatory risk posed by CAP170 and its decision process could therefore already be having a detrimental impact on constraint costs by preventing optimum commercial arrangements being put in place.

Discrimination

CAP170 proposes the imposition of mandatory intertrips subject to a fixed administered price on a subset of transmission connected generators who happen to be behind a derogated boundary. We do not believe that a generator's location on the system (in this case behind a derogated boundary) is an objective ground for discrimination. This therefore represents unjustified and undue discriminatory treatment of these generators.

Furthermore, EDF Energy remains of the view that CAP170 would also introduce unjustified differences of treatment between transmission and distribution connected generators behind the derogated transmission boundary. All generation benefits from the existing arrangements allowing access to the GB wholesale market prior to reinforcement of the Cheviot boundary and this is the case regardless of whether the generator is connected to the transmission system or distribution. In our view this difference in treatment is discriminatory and cannot be justified.

Competition

EDF Energy recognises there is a relationship between commercial intertrips and locational balancing actions. We have some sympathy with Ofgem's view that addressing the price of relevant intertrips may help address its concerns about potential market failure in respect of locational balancing. However, it is clear to us that CAP170 is not a reasonable approach and a more proportionate, reasonable and targeted response to these concerns should now be developed. CAP170 contains a clear defect regarding the fixed remuneration and we believe that CAP170 should be rejected to allow proper and more thorough consideration of this issue.

As regards the wider concerns about the potential abuse of market power behind constrained boundaries, we support the Government's current intention to include a specific, targeted market power licence condition in the Energy Bill.

If you have any queries on this response or would like to arrange a meeting to discuss further, please do not hesitate to contact my colleague Rob Rome on 01452 653170, or myself.

Yours sincerely,

Denis Linford
Corporate Policy and Regulation Director