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Nicholas Rubin
Distribution Policy – Local Grids
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Dear Nicholas,

Re: Fred.Olsen Renewables Ltd. Response to "ENA EHV Distribution Charging Methodology (EDCM) April 2011"

Fred.Olsen has been involved in wind power since the 1990's with presence in Norway, Sweden, UK, Ireland and Canada. Fred Olsen Renewables Limited (FORL) has 315MW of operational onshore wind projects, a further 165MW consented in the UK, a number of projects in development and a further 1100MW consented offshore in the Irish Sea. In addition, FORL are RenewableUK, SRF, IWEA and NOW Ireland members and are active on a number of the industry groups and FORL staff continues to be involved with numerous industry working groups. FORL staff have contributed to the RenewableUK response and so similarities in parts can be expected.

General Comment

In our last consultation response we said :- "FORL are fundamentally opposed to the introduction of DUoS charges for generators connected prior to April 2005. Developers, such as FORL, have paid deep connection charges for connection and use of the network. Developers are able to take account of industry "locational signals" prior to construction. It is completely inappropriate to apply this change retrospectively as the locational signal cannot be reacted to. In our view the existing charging methodology should be grandfathered for pre-2005 generators. FORL oppose the scaling of generator charges, be they forecast to positive or negative."

We continue to be of the view that anyone who connected prior to April 2005 under a regime where it was clearly the position that generators connecting to a distribution network paid deep connection charges but no Distribution Use of System Charges should be able to maintain that position.

If we are forced down the route of paying DUoS charges then our position is that we should receive full compensation for the change to this from the terms under which we connected and that future charges were of a similar proportion so not to actively disadvantage the already constructed and financed project. We have worked with the relevant DNOs since our previous response to better understand the scale of the potential rebate and future estimated charges. With this information now to hand, we can see that the rebate is only likely to cover the next 4 years worth of GDUoS. This will leave a future unbudgeted liability, not of our making, of over 15 years for the remaining life of windfarms affected. If the rebate somehow more closely matched the future liability we may be more

accepting of the change. In light of this information we are now more opposed to this proposal than ever.

Responses to Specific Questions
Please see the responses below to the questions that you have raised but please bear in mind that these have been answered based on our objection to this proposal

Question 1: Is our description and interpretation of historical charging arrangements (including connection and use of system agreements, charging statements, determinations, regulatory precedents) complete and accurate? If not, please provide supporting evidence setting out any issues that you identify.

We consider that your interpretation of the historical universal understanding of the charging arrangements is incomplete, misleading and in one instance inaccurate.
In government documentation of the time there is no mention of even a potential for DUoS charges to be levied.

We can also look at your own December 2000 Structure of Electricity Distribution Charges Initial Consultation Paper. Section 4.26 states:
"*Embedded generators presently pay the full capital cost of connection to the local distribution system, including the costs of reinforcement across the system. They do not pay use of system charges on their exports*."

Was it reasonable to expect change?
We believe it was commercially unclear that the arrangements might change i.e. generators would become liable for DUoS charges on their exports. If the possibility of introducing DUoS charges for export had been considered then the contract should have had clauses to deal with this possibility, in particular for example the issue of refunds for reinforcements that were paid for as part of connection charges.

In the absence in many cases of specific reference to a right to use the system was because it was a given that the right existed and would continue to exist for export without additional payment above the deep connection charge. Industry connected parties were therefore comfortable with no specific mention of the issue.

Misleading statement
In paragraph 3.17 of the consultation you state that "That characterisation reflected the fact that DGs did not generally impose a material UoS cost on the network to trigger such a charge, such that they were not typically being so charged at the time. That is, where there was no cost, DGs were not under an obligation to pay for it."

That is true i.e. were there were no reinforcement costs there were no deep connection charges. However what is also true but you have not stated is that where there was a "material UoS cost" the DG was charged for it via paying for a deep reinforcement. In other words it was absolutely clear that deep reinforcement costs were a substitute for paying ongoing DUoS charges and if there was a deep reinforcement i.e. the DUoS charges would have been positive, the DG paid for it via a deep connection charge whereas if there were no deep reinforcement costs (corresponding broadly to zero or negative DUoS charges) no deep reinforcement was paid for.

With the exception that pre April 2005 connected generators were not given a credit if their connection deferred DNO reinforcement, it is quite clear that deep connection charging was a substitute for paying DUoS charges i.e. were paid instead of DUoS charges. It is equally clear from what is and also what is not in particular connection contracts, as well as the government sponsored guide to connection of DG, that it was taken as read that deep connection charging was a substitute to liability for DUoS charges for export and that there was no expectation that this could be changed in the future.

Question 2: Do you agree with our rationale for only allowing refunds for instances of double payment to be funded through the price control?

There are two aspects to this question. The first relates to what compensation should be paid to any generator that having connected under a deep connection charging regime is then forced to pay DUoS charges. The other relates to what should be recoverable by a DNO through the price control.

Answering the second question first we think that a DNO should be able to recover through the price control arrangements any compensation paid to a generator that is legitimate compensation for changing the way that the generator is charged.

As regards to what is legitimate compensation (and therefore should be recoverable under the price control) we do not agree that this amounts merely to instances of double payment. As we have said earlier we think that pre April 2005 connected generators are entitled to compensation for the loss of their rights. As a pragmatic measure we have proposed that this is simplified by granting them exemption from DUoS charges for a set period.

We do not agree that no case has been made that pre April 2005 connected generators do not have a right to use the system without paying DUoS charges. Irrespective of what the agreements do and do not say the fact that in return for the payment of a deep connection charge such generators have been allowed to use the system without further charge, in some cases for several decades indicates that de facto they do have that right.

Question 3: Are there any other instances (beyond that of double payment) where refunds should be funded through the price control? If yes, please explain why these instances are appropriate and compatible with the regulatory regime as it has evolved over time.

See our response to question 2 above

Question 4: Are there any other circumstances beyond capitalised O&M payments that may give rise to instances of double payment that should be reimbursed and funded through the price control? If yes, please explain why these instances are appropriate and compatible with the regulatory regime as it has evolved over time.

Leaving aside that we do not agree that refunding double payments (as opposed to compensation for the loss of rights) is sufficient, we feel that any payment for deep reinforcement should be part of a refund of double payments. The only substantive argument that paying DUoS having paid for a deep reinforcement is not a double payment is the conjecture (which we have no means of knowing is correct without access to asset registers) that items that were paid for via deep connection charges are not included in the asset base upon which DUoS is levied.

For the purposes of price control it was absolutely correct that whilst the deep reinforcement assets were paid for through connection charges they should remain outside the DUoS charging base so that the assets are not paid for twice. However as a charging issue it is clear that if it is decided that assets that were paid for via connection charges are now as a general rule to be paid for via DUoS charges then these assets should be moved within the scope of the DUoS charging base and the parties that paid deep connection charges for them should have the amount refunded. It would be totally iniquitous to have the position where assets of a certain type are generally in the DUoS charging base and paid for by all DUoS payers whereas a subset of those assets that were paid for by some generators via deep connection charges are not in that charging base even though all generators pay DUoS charges.

To use the analogy with the move to plugs for transmission connections it would be like suggesting that instead of what actually happened, parties that had paid up front for connection assets that were of a type that would generally become TNUoS funded assets should get no refund for those payments even though those who paid them would pay TNUoS charges on the same basis as those parties that had not paid for any connection assets (that changed to TNUoS funder assets) up front. One suspects that if this had been suggested there would have been a lot of disquiet and possibly some legal action. NGC and Ofgem at the time recognised that this would be an unfair situation and sensibly chose to offer refunds for those connection assets (that were of a class that would in general become TNUoS funded assets) that had been paid for up front and move their funding into the TNUoS charging base.

In other words for consistency with the introduction of the plugs methodology if parties are to be forced to pay DUoS charges and they are to be compensated merely for what they have already paid (neither of which to we believe is satisfactory) then any reinforcement assets that were paid for via deep connection charges should be moved into the DUoS charging base and parties that paid for them up front should receive a refund.

Question 5: Do you agree with our proposed approach to calculating refunds for unexpired capitalised O&M payments? Please suggest any improvements to the approach outlined and reasons for these.

We agree with the proposed methodology for calculating the unexpired portion of capitalised O&M charges.

Question 6: Where DNOs have entered into agreements that are/were inconsistent with regulatory practice (e.g. giving indefinite rights to use of system without further charge or entering into contracts that cannot be freely modified) do you agree that any compensation required by virtue of these contracts should not be funded through the price control?

Our view remains firmly that rights to use the system without paying DUoS charges were entirely consistent with regulatory practice and therefore where compensation is given by a DNO in exchange for giving up these rights it should be recoverable through the DNOs' price control arrangements. The rights may have been implicit or explicit (for example the right to export up to the MEC) but it is clear from everything written at the time that all parties had a common understanding of the arrangements they had entered into. We do not therefore think that there should be any question of DNOs not being able to recover compensation for giving up the right to use the system for export without paying DUoS charges.

CHAPTER: Four

Question 1: In general are our proposals for implementing the refund arrangements considered by this consultation appropriate? Is the level of detail we have provided sufficient to make our proposals clear and workable? Please outline any areas where you think more clarity/detail is required.

As with many other generators and NGO/trade associations we think that what you are proposing is unjust, economically damaging, disproportionate and open to legal challenge.

Question 2: In the section on "Consistent application of principles", have we appropriately identified who is eligible for a refund? Do we need to provide any further areas of clarification? Which of the two options outlined for mixed sites (demand and generation) are appropriate?

We agree with the idea that all parties should be treated consistently, an objective that will be difficult to fulfil given the possible emergence of different treatment due to variations in contract wording that were thought by all parties at the time to have no practical significance given the common understanding of how DG was to be charged for the connection to and use of the Distribution networks.

Question 3: Are the evidence requirements set out in the chapter as necessary to support a case for refunding appropriate? Are they sufficiently robust to prevent ineligible claims for compensation being recovered through the price control? Are there additional or alternative assumptions that could be used for supporting a case for a refund?

We think that it should additionally be incumbent on a DNO who wish to levy DUoS charges to provide evidence that this was contemplated as a possibility when the initial connection was made.

Question 4: Is our approach to due process appropriate? Are there additional or alternative steps that should be incorporated?

We cannot suggest any improvement to the mechanical process for implementing this.

Question 5: We welcome views on how refunds should be paid and the details of implementation. In particular, should it be a one-off payment, a phased payment or a hybrid of the two? If a refund is not a one off-payment, over what time period should it be paid? Do you agree with our proposals for refunds that are not agreed by 1 April 2012?

We think that one off payments are cleaner and should be adopted if possible.

Question 6: Do you agree with the mechanics for allowing DNOs to recover refunds through the price control?

Yes.

Question 7: Do you agree with our proposals for dispute resolution where DNOs and DGs cannot reach a settlement by 1 April 2012? How can we encourage DNOs and DGs to reach a timely settlement? In particular, should use of system charges in respect of the DG be logged up and back-billed once a refund has been

settled on? If these DGs do not have these charges back-billed, how should these charges be recovered by the DNO from other customers?

Given that in some cases the dispute resolution process may be out of the control of either Ofgem or the DNOs it is impractical to put a license obligation on the DNOs to resolve all disputes by a specific time. We suggest that if it is assumed that costs can be recovered from some parties but in the event this proves not to be possible, it is dealt with in the same way as any other over or under recovery of DUoS charges.

If you have any comments or require further clarification on any of the points raised in this response, please do not hesitate to contact me.

Yours sincerely,

Graeme Cooper
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Fred.Olsen Renewables Ltd.