

Email to: connections@ofgem.gov.uk

14 November 2025

EDF response to ‘Supplemental Ofgem Guidance on the determination of disputes: Gate 2 to Whole Queue’

EDF is the UK’s largest producer of low carbon electricity. EDF operates low carbon nuclear power stations and is building the first of a new generation of nuclear plants. With over five and a half million electricity and gas customer accounts, including residential and business users, EDF aims to help Britain achieve net zero by building a smarter energy future that will support delivery of net zero carbon emissions, including through digital innovations and new customer offerings that encourage the transition to low carbon electric transport and heating.

As a key part of EDF, EDF Power Solutions (previously EDF Renewables) is one of the most technology diverse renewable energy companies across England, Ireland, Scotland and Wales. We are specialists in developing and operating wind, solar and battery storage technology as well as supporting businesses in achieving their sustainability aims with private wire and commercial and industrial solar.

Our goal is to have 10 GW of operational projects by 2035 to support the UK and Ireland in moving to clean power, five times what we already have in operation.

We welcome the opportunity to provide feedback on Ofgem’s approach to disputes and determinations from the Gate 2 to Whole Queue (G2tWQ) exercise. It is useful to have been given early sight of the process should Alternative Dispute Resolution (ADR) routes be exhausted and a determination from the Authority is needed. We broadly agree with the process outlined in the bespoke determinations guidance. Below we have outlined some specific amendments we suggest are made to ensure the process is efficient and fair in practice.

Timeframes & resourcing

NESO should commit to resolving complaints arising from outcomes relating to the G2tWQ exercise within a limited timeframe. We suggest that it would be reasonable for NESO to provide a resolution (or issue a ‘deadlock’ letter) within 28 days of notification from the impacted party. Without a clear time commitment from NESO, applicants risk being held up in a drawn out back and forth prior to obtaining a ‘deadlock letter’ and being able to proceed to Ofgem for determination. Given the resourcing challenges and delays experienced throughout the G2tWQ exercise thus far, it will be crucial that NESO ringfences resource for complaints to ensure they are handled in a timely manner.

Given the significant issues encountered by applicants during the recent Gate 2 evidence submission window, it is possible that there will be a number of disputes as the G2tWQ process progresses. In light of this, Ofgem should ensure that it has also ringfenced an appropriate amount of resource to resolve disputes comprehensively and quickly.

Advancement requests

We note that the list in paragraph 2.10 states that applicants will not be able to appeal Ofgem regarding the outcome of an advancement request. The rationale for this decision is unclear. The outcome of an advancement request can have a significant adverse impact on an applicant. If the dispute is due to an error by NESO, applicants should have access to the same route for resolution to ensure NESO's decisions are subject to proper regulatory accountability.

Referral to Ofgem

The draft guidance suggests that an applicant must first exhaust all forms of ADR with NESO before seeking a determination from Ofgem. LCIA arbitrations can take years to conclude and this should not be required before a dispute can be referred to Ofgem. The mention of a 'deadlock letter' from NESO being required suggests that an arbitral award is not needed. However, this needs to be made explicitly clear by Ofgem in the final guidance.

We strongly encourage Ofgem to resolve the uncertainty in the current drafting by providing a clear flow chart setting out the available sequencing of events, and any dependencies/requirements for each stage.

Determination outcomes

In paragraph 2.22 Ofgem states that in a successful determination decision, the outcome will depend on the particular facts of the case but will not include any financial compensation. It is our view that Ofgem should reconsider the option of directing that financial compensation be made in instances where NESO has made an error that leads to direct financial detriment (e.g. where the queue is reformed, excluding a project). It is not fair or reasonable for developers to be exposed to significant financial losses as a result of NESO error during the G2tWQ exercise, with no route for financial compensation. Whilst full compensation for losses suffered will likely not be practicable, Ofgem should have the ability to direct that a degree of financial redress be offered in a limited set of circumstances at the fault of NESO. Including this in the determination process will mitigate the significant risk that applicants are already being exposed to throughout the G2tWQ exercise, and should also serve to incentivise NESO to minimise errors.

Cost recovery

As opposed to Ofgem being able to recover costs from the disputing parties regardless of the outcome, the general position on litigation costs (i.e., losing party pays) should apply.

In summary, Ofgem should consider the following:

- Work with NESO in the lead up to the conclusion of the G2tWQ exercise to ensure they are properly resourced and prepared to handle complaints in an efficient and timely manner, and to ensure reasonable timeframe commitments are made in advance.
- Ringfence resource to ensure that disputes referred to Ofgem are resolved comprehensively and quickly.
- Amend the determinations guidance to include disputes related to the outcome of advancement requests.
- Amend the determinations guidance to make it explicitly clear that it is not necessary to commence arbitration proceedings prior to a referral to Ofgem.
- Amend the determinations guidance to allow Ofgem to direct that financial redress be offered in select circumstances where error has led to direct financial detriment.

Should you wish to discuss any of the issues raised in our response or have any queries, please contact myself and Kimbrah on david.acres@edfenergy.com and kimbrah.hiorns@edf-re.uk.

Yours sincerely,

A handwritten signature in black ink that reads "David Acres". The signature is written in a cursive, slightly slanted style.

David Acres
Head of Renewable Policy & Regulations