



Response by Northern Powergrid (Northeast) plc and Northern Powergrid (Yorkshire) plc to the Consultation on the Supplemental Ofgem Guidance on the determination of disputes: Gate 2 to Whole Queue.

KEY POINTS

- We believe the Gate 2 to Whole Queue Guidance to be sufficiently clear and comprehensive but would encourage Ofgem to expressly take a robust approach to costs recovery for failed challenges.
- We have suggested a rewording of paragraph 2.4 and further documentation to be included with a determination request.

Responses to the consultation questions

1) Does the G2tWQ Determinations Guidance in Appendix 1 clearly set out the Authority's determination processes for disputes arising from the G2tWQ exercise and its expectations of disputing parties?

Yes, the Guidance is sufficiently clear. However, in our view if a customer brings a dispute under section 23 of the Act which is unsuccessful, the presumption should be that Ofgem will make a costs order against them, and this should be reflected in the Guidance at paragraph 3.11.

Whilst this represents a departure from Ofgem's usual approach such departure is appropriate because the complainant will already have taken their complaint through an internal complaints process and then, where appropriate, through ADR, and failed to achieve the redress that they seek, and is unlikely to achieve that redress in an Ofgem determination, given the practical constraints on Ofgem in these circumstances, as is made plain in the Guidance document. It does not seem right in circumstances in which a complainant has already been through a lengthy process and failed but persists to an Ofgem determination which carries little prospect of achieving the redress sought, or indeed any meaningful redress, that the costs of doing so should be borne by DNOs or Ofgem, and ultimately, therefore, customers.

In respect of paragraph 2.4 we suggest that bullet point three, which currently reads,

"Where the disputed decision is made by NESO, raise the dispute via the "Other disputes" framework set out in the CUSC, where available"

should be amended to say,

"Where the dispute arises in whole or in part from an error or failure on the part of NESO, and the complainant is a party to the CUSC, raise the dispute via the "Other disputes" framework set out in the CUSC"

to more clearly reflect the fact that not all embedded projects will be parties to the CUSC and have that dispute framework available to them, and that disputes can only be challenged if there has been an error by NESO.

2) Is there any additional clarity that you think is needed to the Determinations procedures in the G2TWQ Determinations Guidance?

Where there is challenge to a Gated offer, the original Distribution Agreement as well as the Gate 1 Notice or Gate 2 Variation offer should be included in the information submitted with the Determination request, and this should be made clear.

The customer should make explicit reference to the stages of the escalation that preceded the request to Ofgem for a determination. This would effectively set out that they have proceeded through the DNO's customer complaints procedures and any ADR.