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87/08: Distributed Energy – Further Proposals for More Flexible Market and Licensing Arrangements

Dear Anna,

We are pleased that discussions at the Distributed Energy Working Group and subsequent consultations have resulted in a number of pragmatic proposals that will allow Distributed Energy make contribution to the Government's energy policy objectives within the UK's competitive framework. We support the conclusion that it is not necessary to raise the thresholds for exemption from licensing. We also support BERR's intention to update and clarify the Class Exemption Order 2001 including consideration of the judgement in the 'Citiworks' case. Our offer to assist remains open.

We note the proposal to designate a third party representative to raise modifications to the BSC. If a suitable candidate can not be identified, it is possible to designate a non-BSC signatory on an ad-hoc basis as an alternative.

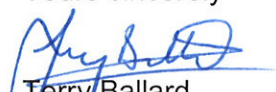
We are pleased to note that Ofgem have concluded that the market for small generator output is both competitive and diverse and therefore the introduction of a specialist trader or dedicated market for DE is unnecessary. We note that Information Provision is addressed in more detail in the Government's UK Renewable Energy Strategy consultation document.

We see no reason at this stage why we would not accept the proposed licence amendment to SLC 11.2 of the Supply Licence. We support the proposal that Ofgem establishes an industry working group to develop a good practice guide on supplier services and look forward to contributing to this group.

We note the uncertainties that could result from failure of the DE/Agent relationship. This is particularly a problem where the Agent is the defaulting party. This may be something that the proposed industry group should consider.

Our responses to the questions raised in the consultation are attached. If you wish to discuss any aspect of our response, please do not hesitate to contact me.

Yours sincerely


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Attachment 1: Responses to questions raised in consultation

Question 1: We welcome views on whether the Authority should exercise its power as provided for under the BSC to designate a third party representative to raise BSC code modifications.

We welcome the decision not to appoint a DE representative to the BSC Panel.

We agree that it is possible for the Authority to designate a third party representative to raise BSC code modifications and this would be appropriate should a suitable candidate emerge.

However Section F 2.1.1 of the BSC Code states that:

'A proposal to modify the Code may be made by any of the following:

Such other bodies representative of interested third parties as may be designated in writing for the purpose by the Authority from time to time'

This would equally allow Ofgem to designate anyone who wished to raise an amendment on an ad-hoc basis. This will act as a safeguard in the event that a suitable candidate is not forthcoming.

Question 2: We welcome expressions of interest from stakeholders interested in having the power to raise code modification proposals on behalf of DE schemes. For those interested parties, please highlight specific reasons why this power should be conferred upon you.

Not applicable

Question 3: In terms of the length of designation, we believe that a period in line with the Panel's term (e.g. 2 years) may be a suitable period with which to trial this proposal. We welcome stakeholders' views on the period for which designation might last.

If a third party representative were designated, a period of two years would seem a suitable length to trial this proposal. The end of the two year period would seem an opportune moment to review such an arrangement.

Question 4: We would welcome views on whether the designated party should be obliged to contribute fees to Elexon in order to participate in the process. If so, how should the level of contribution be determined?

No comment.

Question 5: Should any other codes be examined in relation to the lack of DE representation?

We do not believe there is a requirement to examine any other codes.

Question 6: We invite stakeholders to identify any good quality information currently available that would be suitable for including in the development of a user friendly information hub on the process of setting up and operating a DE scheme.

We note that a number of respondents expressed concern about the availability and relevance of information for DE developers. We are happy to provide a link to npower's website that gives contact details.

Question 7: Do you agree with the proposed licence amendment to SLC 11.2 (see Appendix 2)? Suppliers – please indicate whether you would accept the proposed licence amendment.

We agree with the proposed licence amendments and see no reason at this stage why we would not accept the suggested amendment.

Question 8: Should Ofgem issue guidance on eligibility criteria for switching off the code compliance licence condition? If so, what should the main criteria be?

It is important that both the DE developer and the potential agent are fully aware of the arrangements that would qualify for the switching off of the code compliance licence condition.

In the longer term, we support the second approach of amending SLC 11.2 to allow licensees to comply either by signing up and complying with the relevant Codes or having arrangements in place with a licensed party. However given the comments in paragraph 5.2 that 'it is difficult to derive a general view of DE economics because of the small evidence base and bespoke characteristics of individual developments', it may be equally difficult to establish guidance on eligibility criteria. We are prepared to work with Ofgem and DE developers to see if suitable criteria can be developed. In the short term, it may be more appropriate to adopt the first approach that considers individual requests from licensees to amend individual licences.

Question 9: Should Ofgem establish an industry working group to develop a good practice guide on supplier services agreements?

We support the proposal that Ofgem establishes an industry working group to develop a good practice guide on supplier services agreements and look forward to contributing.

Question 10: How should the risks of breakdown in the DE-Agent relationship be mitigated?

The potential breakdown of the DE/Agent relationship, when caused by the failure of the DE party, can be mitigated by ensuring that the Supplier Services Agreement is drafted to provide a remedy. Our assumption is that in the normal course of events the customers would be 'owned' by the owner of the DE project although it may be a

condition of the agreement that in the case of failure, the customers would revert to the licensed supplier.

In the event that there is a failure of the licensed third party, it may be possible to put in place similar arrangements to that of SOLR where another supplier agrees, in the first instance, to provide supplier services until the DE project can secure a replacement agreement. This may be something that the proposed industry group could consider at the same time as developing a good practice guide.