



To : Mark Feather, Ofgem via industrycodes@ofgem.gov.uk

Dear Mark,

EDF Energy welcomes the opportunity to respond to your consultation on the “timing out” of authority decisions. We share the concerns raised by others at the November CUSC Panel, that it would be unfortunate if the regulatory decision timescales were so prolonged, involving considerable extra analysis of a proposal and possible its further development, that the basis of Ofgem’s decision on that modification proposal were to in fact differ from the basis of the relevant Panel’s decision. For this reason we welcome the repetition of your commitment to opine on at least 75% of modification proposals within 25 working days of the Panel handing it over to you; although you are correct to note that the times when you go very significantly over this timescale, sometimes taking over a year, involve precisely those modifications about which there is the greatest interest and significance; this does reduce the helpfulness of your target if you meet it by quick decisions on un-contentious and simple “apple pie” modifications, whilst the regulatory decision timescales for the “meaty” ones are unaffected and do not benefit from the target.

The consultation paper is incorrect in arguing that the CUSC Panel, BSC Panel and UNC Panel decisions are all equally affected by this possible issue that can arise with very slow regulatory decision timescales. The CUSC Panel’s custom and practice is to set implementation dates phrased effectively as “if Ofgem decides by XX, implementation date is YY, any delay to Ofgem’s decision beyond XX will lead to an identical implementation date delay beyond YY”. UNC Panel decisions on modifications are almost never of a form that even mentions an implementation date – the implementation date is given later by the transporters in a letter that follows on from the Ofgem decision about a week later, and common understanding is that Ofgem has already had private discussions with the transporters about the implementation date. In somewhat unusual and rare circumstances the legal text (not necessarily available for UNC mods at the time of the UNC Panel’s decision) will have an embedded date within it.

Therefore, the issue of hard-coded implementation dates is primarily a BSC modification issue.

EDF Energy does not agree with proposed licence amendments “Option A” (Authority empowered to vary implementation timescales) and “Option B” (Authority empowered to request new implementation timescales with new “decide-by” date).

EDF Energy favours, instead, the suggestion you refer to : that the risk of timing-out be dealt with by Ofgem forewarning the BSC panel and modification groups where its decision timeframe will be prolonged. The timetable could then be adjusted to take account of this.

The status of this possibility within the consultation is rather reduced by its not being given an “Option” letter. This is unfortunate, as consultations should be open and genuine, and not involve pre-judgement of the issue.

Incentives on Ofgem to make decisions within the pre-planned timescale are good, as otherwise regulatory uncertainty is increased along with the risk that Ofgem takes its decision on a different basis under different circumstances to the Panel’s recommendation to Ofgem, reducing the value of the Panel’s recommendation to Ofgem and introducing a considerable impropriety of process.

I trust that this response is clear,

Yours sincerely,

Dr Sebastian Eyre – EDF Energy – Energy Regulation Manager