



First Hydro Company is part of a joint venture between
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Mark Feather
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09 January 2009

Dear Mark,

“Timing-out” of Authority decisions on modification proposals

I am writing to you on behalf of International Power's UK generation assets (Deeside Power Development Co Ltd., First Hydro Company, Rugeley Power Generation Ltd., Saltend Cogeneration Ltd., and Indian Queens Power Ltd.) with regard to Ofgem's proposals which are intended to prevent Authority decisions on code modifications being “timed out”.

International Power has previously outlined views on the possibility of open ended decision dates in its response to the BSC industry consultation issued 16 September 08. We have received no evidence to move us from our original opinion in the interim and therefore continue to prefer that modifications have a ‘decision-by’ date, where set, as per the current arrangements.

In Appendix 1 Ofgem argues that unconstrained decision timescales would not cause regulatory uncertainty. It points out that many decisions are made within 25 days under the current arrangements despite the FMRs concerned containing unconstrained decision windows. Given that such proposals cover straightforward, often “housekeeping” type changes, we do not see that this is relevant. In fact, we would also note that in the case of major modifications it has been customary for the Authority to reach a decision at or just before the decision date. We see the prospect of open ended decision timescales for more complicated, contentious, potentially material changes as a significant business risk, particularly in the current credit environment, which would impact both business and financial planning. Under the current arrangements potentially significant changes can at least be considered within clearly defined timescales. We are not reassured by the argument that as the Authority currently makes prompt decisions in *many* cases, there is no necessity for “decision-by” dates in *any* cases.

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We also think it pertinent to remind Ofgem of the Authority's rationale in rejecting P93. This modification would have allowed the BSC Panel to recommend revised implementation dates for pending proposals. It was rejected on the grounds that it would introduce more uncertainty with no gains in efficiency; the whole point of decision-by/implementation dates is to provide some certainty to parties as to when a change to the code, if accepted, would take effect.

Ofgem also argues that having unconstrained decision timetables would enable it to request additional analysis at a late stage (namely after receipt of the FMR), and more generally that under the current arrangements it is potentially constrained by an "artificial" decide-by date. We believe that as the implementation and decision dates are consulted upon as part of the modification process, with opportunity for Ofgem involvement, it is not appropriate to dismiss them as 'artificial'. BSC sections F2.6.8 to F2.6.10 outline the flexibility existing in the current arrangements, and how Ofgem can be involved *throughout* the assessment process. For example, in the case of the transmission losses modifications our understanding is that concerns with the analysis had been voiced before the FMR was submitted, so there was clearly scope for Ofgem input and guidance at this stage. International Power believes that enhanced dialogue between Ofgem and those involved in the modification process would be a more appropriate avenue for improvement than the introduction of open ended decision, and by extension, implementation timetables.

We agree with Ofgem that where a modification proposal is timed out, one potential consequence is the wasted effort, particularly in the form of analysis; however, this needs to be set against the possibility, with an unconstrained decision timetable, of Ofgem potentially approving a modification based upon analysis that is no longer valid. Given that much analysis of costs and benefits is time sensitive, this is clearly an important concern, and one that we feel outweighs the potential for analysis to be lost where a modification lapses due to 'timing out'. Also, where a modification is raised for a second time having previously timed-out, much of the work undertaken in the initial modification assessment might not be wasted, as it would invariably be reviewed and would likely be used to inform the assessment of the re-raised modification.

With regard to the two options Ofgem has proposed, we struggle to identify any significant differences between the two, inasmuch as both empower the Authority to unilaterally vary implementation timetables whilst reaching a decision on a proposal.

I hope you have found these comments useful.

Yours sincerely

Emma Williams

Interim Manager, Market Development