



First Hydro Company is part of a joint venture between
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Mark Feather
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Ofgem
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22 June 2009

Dear Mark,

The “timing-out” of code 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 regards to Ofgem's 13 May 2009 consultation on the above. International Power has previously outlined views on the possibility of Ofgem powers to vary decision dates in responses to the BSC industry consultation issued 16 September 2008 and the “November consultation” and we remain unconvinced of the need for change.

The main points of our response can be summarized as follows:

- Firm decision by dates are important as they provide regulatory certainty for industry
- Ofgem powers to vary decision by dates would represent a disproportionate regulatory solution, in reaction to just one instance of ‘timing out’
- International Power does not support Option C because, like Options A and B, it would effectively empower the Authority to unilaterally vary implementation timetables. Option C is however preferable to Options A and B
- The possibility of decisions being timed out in the future can be best avoided by Ofgem involvement throughout the modification process and, if unforeseen circumstances arise, managed via an Ofgem *request* to the relevant Panel for a revised timetable

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We believe that any variant of an unconstrained implementation timetable for modification proposals would increase regulatory uncertainty for market participants. Currently, proposals which would result in significant changes can be considered and planned for within defined timescales. This is particularly important where potential changes would have a significant commercial or operational impact on industry participants.

The consultation states that allowing the Authority to direct firm revised decide by dates would bring increased certainty for industry because it would prevent instances where modifications may or may not be raised a second time following failure by the Authority to make a decision within the initial timescales. The increased regulatory certainty in this example would be applicable only on very rare occasions and needs to be set against the fact that if the Authority were empowered in this way, industry participants would be operating in a regulatory environment where **any** modification proposal might be subject to change in its implementation dates, in other words a de facto 'open ended' timetable.

We do not think that one instance of a modification proposal falling away as a result of a decide by date passing justifies the licence changes being proposed; we view this as a disproportionate regulatory solution to the perceived problem which would lead to increased regulatory uncertainty as outlined above and also the loss of the incentive on the Authority for timely decision making. Given that industry has only 3 weeks following an Authority decision in which to lodge an appeal (under the Energy Code Modifications Rules), it does not seem unreasonable to expect the Authority to make decisions within the timescales set during the modification processes, especially given that there is ample opportunity for Ofgem to influence these timescales (eg BSC sections F2.6.8 to F2.6.10). In the event that Ofgem believe there are good reasons for a timetable extension after it has received a modification for decision, it is unlikely the Panel would turn down any such request, were it reasonable. We believe this would be a preferable route to any yet presented by Ofgem, all of which would empower the Authority to dictate extensions.

With regards to Option C, we do not support it on the grounds it would still grant Ofgem the power to compel Panels to extend deadlines and we remain unconvinced that such a power is either desirable or necessary. However, Option C is preferable to Options A & B which were outlined in the "November consultation" for the following reasons:

- It mandates the Authority to clearly set out the reasons for being unable to adhere to the existing deadline
- Option C also includes a mechanism by which supporting analysis can be updated and consulted upon as appropriate

Although it is not clear from the draft licence changes, we are assuming that where updated analysis has been undertaken, revised recommendations from industry and the relevant Panel would be required, along with wider industry consultation. It is important to clarify these aspects of the proposed changes given the relevance of the Panel recommendation to whether appeal can be made to the Competition Commission.

I hope you have found these comments useful.

Yours sincerely

Emma Williams
Market Development

