



Mark Feather
Director, Industry Codes and Licensing
Ofgem
9 Millbank
LONDON
SW1P 3GE

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Dear Mark,

Response to the “timing-out” of Authority decisions on modification proposals

Thank you for the opportunity to respond to your consultation document setting out Ofgem’s position and proposed way forward on the “timing-out” of Authority decisions on modification proposals in Ofgem’s November 2008 consultation. This response is submitted on behalf of ScottishPower Energy Management Ltd, ScottishPower Generation Ltd and ScottishPower Renewable Energy Ltd.

We do not support the new option proposed in the consultation document for removing the potential that modification proposals relating to the Balancing and Settlement Code (BSC), Connection and Use of System Code (CUSC) and the Uniform Network Code (UNC) may “time-out” before the Authority can conduct, procure or consider information that is necessary for it to make a decision.

We do not see the need for the Authority to be granted a licence power to require a revised implementation timetable and updated analysis from the relevant code Panel and we believe the Authority taking this power would distort the balance between the Panel and the Authority.

The document makes no reference to the reasoning in this regard set out by the Judge in the High Court order issued on 2 July 2008 (the “Judgement”) finding in favour of the four generators who challenged whether the Authority had any power to reach a decision on the BSC zonal transmission losses modification proposals after the latest date for a decision set out in the relevant Final Modification Reports.

The Judge concluded in the Judgement that:

‘... a power to remit the matter to the Panel for complete re-consideration, rather than a power in the Authority to change the timetable for implementation of what had in substance become by lapse of time a different modification, might better preserve the institutional balance between the Panel and the Authority and better serve the objectives of the BSC.’

Ofgem’s proposal for the Authority to be granted the power to require a revised ‘Decide by Date’ and updated analysis from the Panel is different to the power above in the Judgement. If the matter is remitted back to the Panel for re-consideration it may result in the Panel recommending a new timetable and updating the analysis but these decisions would be within the Panel’s powers and the Panel would be free to come up with alternative recommendations.

Cathcart Business Park, Spean Street, Glasgow G44 4BE
Tel: 0141 568 3113 Fax: 0141 568 4939
www.scottishpower.com

ScottishPower Energy Management Limited
Registered Office: 1 Atlantic Quay, Glasgow G2 8SP. Registered in Scotland No. 215843

If the Authority feels it is unable to make a decision within the recommended timescale and on the basis of the analysis submitted to it by the Panel then we agree there is merit in there being a new stage in the process which would allow the modification to remain “live” while the Panel undertook further work. However we believe it is important that while the Authority could recommend further analysis and a new Decide by Date the Panel remains responsible for these decisions, as it was in the initial modification, and should not be required to work to a new timetable specified by the Authority.

We recognise the Authority’s timely performance in reaching determinations on modification proposals particularly for the majority of proposals with unconstrained Authority decision windows. There have however recently been a number of key modifications where the Authority has taken significantly longer and has been unable to meet its own timetable. In these key situations a better balance can be set by involving the Panel and using its expertise in setting a new timetable and carrying out further analysis.

I hope these comments are helpful. If you wish to discuss or clarify any of the points we have raised then please do not hesitate to get in touch.

Yours sincerely,

Alex MacKinnon
Regulation and Trading Arrangements Manager