RWE npower

Nicholas Rubin
Distribution Policy
Ofgem
9 Millbank
London
SW1P 3GE

Your ref
Our ref
Name Rachel Fowler
Phone 07825676079
Fax 0121 336 5250
E-Mail rachel.fowler@npower.com

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Dear Nicholas,

Consultation on pre-2005 connected Distributed Generation – Chapters 2 and 4

RWEnpower welcomes the opportunity to comment on these proposals. This response is provided on behalf of the RWE group of companies, including RWE Npower plc, RWE Supply and Trading GmbH, RWE Cogen and RWE Npower Renewables Limited, a fully owned subsidiary of RWE Innogy GmbH.

We feel that pre-2005 connected Distributed Generation should have their contractual rights recognised and that GDUoS charges should not be levied until the generator reaches the end of their connection agreement or, where the connection agreement does not specify an end date, until the end of the life of the relevant assets. Only then do we believe that it would be appropriate for such generators to move onto new contractual arrangements and hence onto the new charging methodology.

We do not believe that the existing arrangements are discriminatory. Pre-2005 connected Distributed Generators have paid essentially a deep connection charge and this is reflected in the charging regime by in effect setting the charge to zero (ie the costs are sunk and excluded from the regulatory asset base). Post -2005 connected Distributed Generation pay a cost reflective charge which reflects the inclusion of the connection assets in the regulatory asset bases. In both cases the charges recover the costs of the connections. We also note that we are not aware of any calls from the industry amongst post-2005 connected asset owners to change the existing arrangements.

We feel that it could be discriminatory to pre-2005 connected Distributed Generators to change the system retrospectively since this could affect the economic viability of some projects. Some projects may be put at a competitive disadvantage to post-2005 connected Distributed Generators who made their investment decisions based on the prevailing regulatory arrangements and associated distribution access rights. As a result of this pre-2005 connected projects were evaluated on a capex rather than an opex basis and consequently historic investment decisions could have been different had the new charging arrangements been in prospect or in force at the time.

We do not feel that the consequential impact on pre-2005 connected Distributed Generation has been fully recognised. Long-term contractual offtake obligations were based on existing

RWE npower

Trigonos
Windmill Hill
Business Park
Whitehill Way
Swindon
Wiltshire SN5
6PB

T
+44(0)1793/8
9 39 83
F
+44(0)1793/8
9 29 81
I
www.rwenpowe
r.com

Registered
office:
RWE Npower plc
Windmill Hill
Business Park
Whitehill Way
Swindon
Wiltshire SN5
6PB

regulatory framework through long term Power Purchase Agreements (PPAs). It is difficult and expensive to renegotiate certain key contracts including PPAs in line with the proposed regulatory changes to GDUoS charges. For example, some PPAs may last for at least 15 years and during this time the contractual arrangements do not allow the asset owners to pass on the effect of these additional costs. The scale of these changes substantially impacts the financial viability of existing projects, especially those that have leveraged bank debt. Projects which leveraged large amounts of bank debt to finance upfront expenditure will continue to pay significant annual repayments, in addition to new exposure to annual charges under the revised charging methodology.

Introducing such significant changes to the charging methodology not only impacts upon the operational and financial viability of existing projects, the regulatory uncertainty it causes may also effect developer's ability to attract future investment. For example, renewables investors expect low but stable levels of return on investments. Existing projects may no longer be able to offer this and as a result of the introduction of significant regulatory uncertainty, future projects are likely to face difficulties in attracting the required levels of investment or refinancing. At a time when the amount of capital required to build significant new infrastructure is increasing, this is particularly problematic and could threaten to deliverability of the government's renewables targets. This proposal therefore seems to be inconsistent with the government's overall objective of creating stability and regulatory certainty in the renewables market by encouraging long term investment. Other significant regulatory changes, such as changes to the value of Renewables Obligation Certificates have recognised this issue by creating regulatory precedent through protecting and grandfathering existing contractual rights.

For those large Distributed Generators that are not TNUoS exempt we are concerned that 'pancaking' of charges may be an issue. This may lead to such generators rethinking where it is best to be connected.

We are also concerned that the administrative and legal costs which would be associated with introducing this change may far outweigh any perceived benefit. Ultimately, if these changes were implemented, we are concerned about the consequential impact on the bills of the end user.

Finally, we have serious concerns regarding the regulatory consultation process for this proposal. As this consultation period will close before the EDCM is submitted to Ofgem, we feel that the industry does not yet have access to the cost of the actual proposals. Until the industry is in a position to assess the full impact of the proposals, it is difficult to determine the most suitable compensation arrangements. We also feel that the consultation period has not been long enough for the industry to comment fully on the issues involved. This is a particular concern for small parties who may not have been aware of the consultation until recently and may not have the expertise or resources to understand the implications fully in the time provided.

Despite our strong opposition to the retrospective introduction of GDUoS charges for pre-2005 connected Distributed Generation and without prejudice to our overall position, we have provided comments in response to each of the questions set out in the consultation document. We believe that it is important for us to provide these comments in order to mitigate the impact of these proposals, if Ofgem decide to proceed despite the serious concerns raised by the industry.

Chapter 2 – Existing pre-2005 DG contracts

We agree that the issues outlined in Section 2.2 could apply to some contractual arrangements but also have some additional comments.

- Many connection agreements may not define clearly the extent of the DG's right to use the distribution system (UoS rights). In a large number of cases contracts are silent on this matter.

Connection agreements do give distributed generation an explicit or implicit right to use the distribution system and given the historical arrangements they have already paid for this right. Although it may be the case that some contracts are silent on this matter, we have found connection agreements in which there are specific statements on the matter. For example, one connection agreement contains the statement:

“The customer shall have the right for the Customer’s Installation to be and remain connected to the Distribution system on the attached conditions.”

At the time of connection, Use of System charges were not applicable. The Distributed Generator was responsible for costs associated with connection, with the knowledge there would be no UoS charges. We believe that such agreements create a legitimate expectation that this reflects the full cost of the agreement.

- Some customers may have accepted offers on the basis of non-firm capacity rather than paying the full costs of deep reinforcement.

We agree in part with this statement. We have some arrangements that are firm and some that are non-firm. Essentially the arrangements vary depending on local conditions and the cost of reinforcement at the time. However, in all cases the basis of the right to use the system is clear.

- In some cases it is not clear to what extent DG customers paid for anything other than connection to the DNO's network and the maintenance of that connection. For example, it is not transparent whether they paid for the future replacement of any of the network assets.

We agree that this is not clear for future assets. However, we do have some level of detail regarding the assets paid for at the time of connection. The implication being that no further charges, aside from maintenance costs, are due.

- Many connections to DNOs networks were made some time ago and the DNOs' records of details of the connection, e.g. details of contracts and payments are often incomplete or missing.

We cannot comment on what DNOs may or may not have. We certainly agree that in many cases our records of details of contracts and payments are often incomplete. In some cases we have some detail of contracts and payments made. However, even in these cases it can be difficult to separate these payments into constituent parts.

- The position of existing generators with regard to contributions towards replacement of joint-use assets is often unclear.

Some of our contracts stipulate that the likely life-spans of the assets are 40 years or 60/70 years for cables and that major refurbishment be required after 20 years. This would be sufficient to see

out the life of the connected DG. The contracts create a legitimate expectation that no ongoing charges will be payable during this period.

- The majority of contracts contain a clause that permits the terms of contracts to be varied by mutual consent or following determination by Ofgem.

In the contracts that we have located, this is not the case since there is no reference to the regulator in our contracts. We also feel that the issue of whether the contracts can be varied by mutual consent is surely distinct from the issue of whether they can be varied by the regulator. We would expect any contract changes to be conducted on a fair and cost reflective basis. We are unsure at this stage whether Ofgem's involvement in this will make the process of making contractual changes more or less difficult to manage.

- Whilst many contracts tend to follow a similar form, there do appear to be a very small number of "non-standard" contracts/arrangements that may require special consideration.

We disagree with this statement as the contracts that we have differing forms. There are differences in both structure and layout. More importantly, there is a variation on the contractual detail depending on the site and the requirement of the connection. This is the case even for two sites which are connected in the same DNO area.

In addition to the comments above, many generators and DNOs have undergone a change of ownership since the works were carried out which may make locating certain invoices and connection agreements more difficult to find. Even when these documents can be found it may be extremely difficult to unravel the wider and local works costs from a combined scope of works that the DNO may have undertaken to connect the generator.

Chapter 4 – Principles for assessing the efficiency of any compensation paid

We believe that it is not appropriate to levy GDUoS charges on pre-2005 connected Distributed Generation. However, if implemented, any compensation method must be transparent and provide consistent refunds to all developers. The consultation proposes a limit of 10MW under which Distributed Generation would not be entitled to compensation. This threshold appears to have been set arbitrarily and we believe that all sites should receive compensation, regardless of size especially since smaller sites are likely to be amongst the hardest hit by the introduction of these charges. Smaller generators are likely to have paid significant connection costs compared to the turnover of their business as a whole.

We believe that compensation arrangements should reflect upfront payments for both ongoing charges such as O&M and use of system charges as well as the residual asset value for any assets which were paid for upfront as part of the connection agreement. The consultation appears to be considering compensation in respect of capital costs incurred by the generator it does not recognise any additional operating costs which may be incurred by the generator as a result of its siting decision. The generator would have sited to minimise the distribution works costs at the time of construction but this may now be sub-optimal under the current charging arrangements.

Until the full impact of the proposed change is known it is not possible to consider a standard formula for compensation payments which takes all the issues into account. Although a standard formula may help to facilitate the calculation of the compensation costs, we are concerned that the introduction of standard terms and conditions should not diminish existing contractual rights of network operator obligations. However, we recognise that without a standard formula the detailed and complex negation of contract could add to the cost of implementation. Each

contract needs to be considered separately as we envisage that there will be different complications in each case. A consistent approach needs to be agreed and applied by DNOs, in terms of levels of compensation.

In summary, we do not agree with the introduction of GDUoS charges for pre-2005 connected Distributed Generation. We feel that there is not any discrimination for these generators due to the reasons detailed above. However, if these charges are introduced, existing contractual rights and obligations need to be fully considered both in terms of the introduction of the charges and the calculation of compensation payments. In light of the recent consultation regarding delaying the implementation of the EDCM we request that some information on timescales for the pre-2005 connected Distributed Generation issue is made available as soon as possible.

Please feel free to contact me if you wish to discuss this response in more detail.

Yours sincerely,

By email so unsigned

Rachel Fowler,
Forecasting Senior Analyst- Network Charges