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Nicholas Rubin
Distribution Policy
Ofgem
By email: distributionpolicy@ofgem.gov.uk

17 June 2011

Dear Nicholas,

Re: Electricity North West Response to Ofgem Consultation on Charges for Pre-2005 Distributed Generators.

We have reviewed the consultation on charges for pre-2005 distributed generators and have provided our response to the questions in the appendix alongside this letter.

I would be happy to discuss any of our responses in more detail if necessary.

Yours faithfully

A handwritten signature in blue ink that reads "Tony McEntee".

Tony McEntee
Head of Commercial Policy
Electricity North West

Appendix 1 – Responses to Pre-2005 Distributed Generation Consultation Questions

CHAPTER: One

There are no questions for this chapter

CHAPTER: Two

There are no questions for this chapter

CHAPTER: Three

Question 1: *Is our description and interpretation of historical charging arrangements (including connection and use of system agreements, charging statements, determinations, regulatory precedents) complete and accurate? If not, please provide supporting evidence setting out any issues that you identify.*

We generally agree with Ofgem's description and interpretation of historical charging arrangements.

Question 2: *Do you agree with our rationale for only allowing refunds for instances of double payment to be funded through the price control?*

We do not agree that the principle of only allowing refunds for instances of double payment to be funded through the price control should be applied to all customers. The bespoke nature of the existing connection agreements means that there is potentially a huge raft of actual and implied terms. To get all these customers on the same footing may involve considerable time and expense on behalf of DNOs and there may be customers where refunds could be justified for costs incurred other than those that may be considered as double charging. If after legal review and negotiation with the customer it is considered that compensation is due, the DNO should put forward a case to Ofgem to authorise the payment and enable the refund to be funded through the price control.

Question 3: *Are there any other instances (beyond that of double payment) where refunds should be funded through the price control? If yes, please explain why these instances are appropriate and compatible with the regulatory regime as it has evolved over time.*

At present we are not aware of any instances beyond double payment where refunds should be funded through the price control. However, given the complex nature and large number of contracts, it would be prudent to implement a process to allow a DNO and/or customer to put forward evidence to Ofgem to gain an exemption from these criteria. DNOs have a multitude of contracts which were agreed over different time periods and sometimes by different organisations. These contracts were entered into in good faith and should compensation be due, then the DNO should be entitled to fund these through the price control.

Question 4: *Are there any other circumstances beyond capitalised O&M payments that may give rise to instances of double payment that should be reimbursed and funded through the price control? If yes, please explain why these instances are appropriate and compatible with the regulatory regime as it has evolved over time.*

At present we are not aware of any instances beyond capitalised O&M that may give rise to instances of double payment that should be reimbursed and funded through the price control.

Question 5: *Do you agree with our proposed approach to calculating refunds for unexpired capitalised O&M payments? Please suggest any improvements to the approach outlined and reasons for these.*

We agree with the approach to calculating refunds for unexpired capitalised O&M payments. Within the Electricity North West area, there are some instances where more than one discount rate was used to determine the capitalised O&M. Where this occurs we recommend that the capitalised payment is split using the proportions originally applied and the appropriate discount rate applied to each proportion of the total charge. Where it is clear that a customer paid a capitalised O&M payment, but the full data is not available to calculate the refund, then the DNO should use default values based on customers where the data is available.

Question 6: *Where DNOs have entered into agreements that are/were inconsistent with regulatory practice (eg giving indefinite rights to use of system without further charge or entering into contracts that cannot be freely modified) do you agree that any compensation required by virtue of these contracts should not be funded through the price control?*

All agreements entered into by DNOs were agreed in good faith. Any compensation that is due needs to be assessed on a case by case basis to establish whether the compensation should be funded through the price control.

CHAPTER: Four

Question 1: *In general are our proposals for implementing the refund arrangements considered by this consultation appropriate? Is the level of detail we have provided sufficient to make our proposals clear and workable? Please outline any areas where you think more clarity/detail is required.*

In general we agree with the principles put forward in the consultation document. We would like more clarity on the following issues:

- A process for submitting to Ofgem any additional areas of compensation that may arise due to the bespoke nature of the contracts that is not considered within this document.
- That compensation for agreements that are/were inconsistent with regulatory practice should be considered on a case by case basis, rather than excluding all cases.

Question 2: *In the section on “Consistent application of principles”, have we appropriately identified who is eligible for a refund? Do we need to provide any further areas of clarification? Which of the two options outlined for mixed sites (demand and generation) are appropriate?*

We agree that the document appropriately identifies who is eligible for a refund and further clarification is not required. We prefer to use the predominance of a site when it was connected (ie the higher of the maximum import capacity and maximum export capacity). This is in line with the treatment of import/export sites in the EDCM where it is either the import or the export capacity that is driving reinforcement on the network.

Question 3: *Are the evidence requirements set out in the chapter as necessary to support a case for refunding appropriate? Are they sufficiently robust to prevent ineligible claims for compensation being recovered through the price control? Are there additional or alternative assumptions that could be used for supporting a case for a refund?*

The consultation document highlights four forms of evidence that are required to support a case for compensation. We do not believe that all four forms of evidence are required and any one would suffice to enable the DNO to fund the compensation through the price control, however this is not entirely clear in the document.

Question 4: *Is our approach to due process appropriate? Are there additional or alternative steps that should be incorporated?*

We agree with the process outlined in the consultation document. Electricity North West has already written to all our DG customers to inform them of the consultation and the need for evidence to enable refunds to be paid.

Question 5: *We welcome views on how refunds should be paid and the details of implementation. In particular, should it be a one-off payment, a phased payment or a hybrid of the two? If a refund is not a one off-payment, over what time period should it be paid? Do you agree with our proposals for refunds that are not agreed by 1 April 2012?*

We agree that all DNOs should adopt the same approach to payment. Electricity North West prefers the hybrid payment option. This would have the benefit of closing off the majority of customers, but minimising the cash flow impact of larger customers. A reasonable threshold which would capture the majority of customers into a one-off payment would be £15,000.

Question 6: *Do you agree with the mechanics for allowing DNOs to recover refunds through the price control?*

We agree with the mechanics for allowing DNOs to recover refunds through the price control set out in the consultation document. It will be important to ensure that these cost are treated as 100% logging up to the RAV, with no adjustment for this spend applied in the efficiency sharing factor calculation.

Question 7: *Do you agree with our proposals for dispute resolution where DNOs and DGs cannot reach a settlement by 1 April 2012? How can we encourage DNOs and DGs to reach a timely settlement? In particular, should use of system charges in respect of the DG be logged up and back-billed once a refund has been settled on? If these DGs do not have these charges back-billed, how should these charges be recovered by the DNO from other customers?*

The issues surrounding charging pre-2005 DG are complex and any legal determination could take a long time. We would support the option to change DNOs and DGs' licences to place an obligation on them to ensure UoS charges can be levied from 1st April 2012.

CHAPTER: Five

There are no questions for this chapter