FALCK
RENEWABLES WIND

FALCK RENEWABLES WIND LIMITED
7/10 Beaumont Mews
London W1G 6EB, UK
tel +44 (0)20 7486 5400
fax +44 (0)20 7467 3090/91
www.falckrenewables.eu

Registered address:
7/10 Beaumont Mews
London W1G 6EB, UK
Registration No. 4501104
VAT Reg. No. 844194417

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Mr Nicholas Rubin
Local Grids – Distribution Policy
Ofgem
9 Millbank
London
SW1P 3GE

Charges for pre-2005 distributed generators' use of DNOs' distribution systems – proposed guidance

This letter is in response to your consultation ref 58/11 published on 9 May 2011. We responded to an earlier consultation on this matter ref 88/10 through our subsidiary Cambrian Wind Energy Limited which is the project company for our Cefn Croes wind project. Falck Renewables Wind Limited owns Cefn Croes as well as 3 other operational "pre-2005 distributed generators" (Boyndie, Ben Aketil and Earlsburn windfarms) which together have a total capacity of 140MW. Falck Renewables is please to offer the following responses to the questions raised in your consultation:

Chapter 3

Q1: 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.

A1: The statements made in the consultation document that the connection charges paid by pre-2005 DGs was for connection to the system and gave "limited contractual rights" to export onto the system and was not "intended to buy rights to UoS without any further charge" is not correct from our experience. Firstly it would have been absolutely clear in our case, when we made connection applications for our DG projects that we wanted to export onto the system for the 25 year life of the projects. There was certainly no indication that we had limited rights to do so, other than subject to the normal contractual caveats, and there was a clear understanding that the charging regime at that time was to pay all charges for the connection for the life of the project as an upfront capitalised sum.

As your consultation notes "DNOs stated principle of generally not charging for exported energy may help to explain why connection agreements typically did not address exports of energy or seek to set UoS charges for exported energy at the outset". This reflects our experience with several pre 2005 DG connections and we believe that it's incorrect to suggest that there was an understanding at the time that UoS charges might be payable or that connection offers only gave limited rights to use the system.

Comments in 3.13-3.15 about payment of UoS charges through a separate agreement to the Connection Agreement, possibly through an AEO, are consistent with our experience but only for import supplies where the prevailing practice at the time was for imports to pay UoS charges the same way that any demand customer would.

Q2: Do you agree with our rationale for only allowing refunds for instances of double payment to be funded through the price control?

A2: Our preference would be for the charging arrangements for pre 2005 DGs to be grandfathered. The upfront capitalised charge was the prevailing charging mechanism at the time and the one on which we made long term capital investments. Long term capital investments are ideally made on the basis of certainty about long term network charges or investors will look for higher returns to reflect higher risks. Stability of charges and grandfathering principles are important to maintain investor confidence and limit risk premiums. If Ofgem are insistent on introducing UoS charges for pre 2005 connections then we believe that the new charge should be offset as much as possible by refunding as much of the original connection charge as possible, so as to limit any new charge. We believe that paying refunds for instances of double payments, as set out in the consultation, is the minimum that DGs should receive. As well as refunding capitalised O&M charges we would assert that there should be some refunding for deep reinforcement costs which would be covered by UoS charges in a post 2005 connection.

Q3: 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.

A3: No comment

Q4: Are there any 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.

A4: See response to A2 regarding deep reinforcement costs. We note that in clause 3.51 of the consultation the argument is made that calculating compensation for deep reinforcement costs would be too complex and time consuming. The solution to this would be to simply set the total compensation for capitalised O&M charges and deep reinforcement costs equal to UoS over the remaining years of capitalised O&M charges which would leave the DG in a neutral position.

We have previously made the point that NFFO contracts should be considered as a special case for reimbursement. The electricity sale prices agreed for NFFO contracts would have been set on the basis that UoS charges weren't payable for these projects. NFFO contract prices are typically significantly lower than DG projects which receive revenues from the Renewable Obligation and imposing additional costs (UoS charges) may cause financial problems.

Q5: 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.

A5: The proposed approach appears to be fair.

Q6: 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?

A6: From the perspective of a DG we would look for contractual rights applicable when the connection agreement was signed to be maintained/grandfathered. Whether compensation is paid through the price control or other mechanisms is a decision for others.

Chapter 4

Q1: In general are our proposals for implementing the refund arrangements considered by this consultation appropriate? Is this level of detail we had provided sufficient to make our proposals clear and workable? Please outline any areas where you think more clarity/detail is required.

A1: The proposals appear to be reasonable although until we get into detailed discussions with DNOs about refunds it is difficult to anticipate how well those discussions will go.

Q2: 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?

A2: We agree with the sentiment that DNOs should treat all DG customers equally. We would anticipate that there will be relatively few genuinely mixed sites and these will presumably need to be considered carefully on a case by case basis. Our DG projects are all generation projects designed for export of generation onto the network but with a small import supply. Will these be treated as mixed sites? We would argue that they should not be treated as mixed sites.

Q3: Are the evidence requirements set out in the chapter as necessary to support a case for refunding appropriate? Are they sufficiently robust to prevent illegible claims for compensation being recovered through the price control? Are there additional or alternative assumptions that could be used for supporting a case for refund?

A3: From a DGs perspective we would hope that the process for calculating and agreeing refunds can be done efficiently and without the need for lengthy discussions or arbitration.

Q4: Is our approach to due process appropriate? Are there additional or alternative steps that should be incorporated?

A4: As per A3.

Q5: 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?

A5: We would support the idea of offering the different payment options so DGs can decide which works best for them. If a single option has to be chosen then the one-off payment would be the logical choice for compensation of a previous one off capital payment. We strongly support the concept that UoS charges should not have to be paid by DGs in advance of refunds being agreed and paid.

Q6: Do you agree with the mechanics for allowing DNOs to recover refunds through the price control?

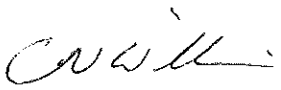
A6: No comment.

Q7: 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 DNOs from other customers?

A7: We have some concerns about the proposed dispute resolution. DNOs do not appear to have any incentive to agree refunds expeditiously as they have to wait until the next price control period to recover refunds and Ofgem have a particular perspective on refunds payable to DGs which is set out in the consultation document. Many pre 2005 DGs do not agree with Ofgem's decision to introduce UoS charges or the proposal that refunds are limited to O&M costs only and Ofgem might not therefore be a logical choice to determine disputes about refunds.

We welcome the opportunity to respond to this consultation and confirm that we are available for discussion if any clarification is required.

Yours faithfully



Charles Williams
Business Development Director
Falck Renewables Wind Limited