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Consultation on the draft Electricity Market Reform dispute resolution guidance

EDF Energy is one of the UK's largest energy companies with activities throughout the energy chain. Our interests include nuclear, coal and gas-fired electricity generation, renewables, and energy supply to end users. We have over five million electricity and gas customer accounts in the UK, including residential and business users.

EDF Energy welcomes the opportunity to comment on the draft Electricity Market Reform (EMR) dispute resolution guidance. We do not have any specific views on the structure of the document and we believe that it does reflect the relevant statutory documents. However, we believe that there are aspects in the detail of the proposed dispute resolution process that require further consideration and clarification:

Indicative Appeals Timelines

Capacity Market

- The short timescales for an appellant to submit an appeal is set out in the Regulations; however there are none set out for Ofgem to determine a dispute. EDF Energy believes at specific times of the year a 45 working days window for Ofgem to determine all Capacity Market (CM) reviewable decisions (apart from a prequalification decision) is too long. The consequences of not determining a dispute in good time may affect the outcome of an auction which in turn may lead to increased costs to consumers.
- The key period for CMUs seeking to participate in the CM will be from pre qualification to the end of a CM auction. If there are any CM appeals during this period, it is in the best interests of all parties for these CM appeals to be resolved as soon as possible.
- Therefore the timeline for Ofgem to determine all CM reviewable decisions should reflect the constraints at certain times during the year. A 45 working day window may not be appropriate in this situation.
- Ofgem should make all practicable efforts to ensure that its CM decisions are always made in sufficiently far in advance of the capacity auction to allow a successful appellant to participate in the auction if prior to the appeal it was prevented from

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doing so. The regulations^[1] allow for successful appellants to participate in the capacity auction if NGET registers the CMU on the capacity market register as a prequalified CMU 11 working days in advance of the capacity auction. A timely Ofgem decision would ensure that if the appellant is successful it still has the opportunity to bid in the capacity auction rather than receive an offer of an agreement subsequent to the auction; such an offer being likely to lead to over procurement of capacity at a price higher than that justified by the Demand Curve.

Contracts for Difference

- Ofgem needs to provide further clarity on the guidance document on the indicative appeals timeline for a decision on whether an applicant qualifies for a contract under Contracts for Difference (CfD). Figure 2 of the guidance document suggests that Ofgem's decision will be made within 30 working days of receipt of an appeal notice. However, paragraph 3.18 of the guidance document states that Ofgem will seek to make a decision within whichever is later; 20 working days of receiving all required information to make a decision or 20 working days of the deadline for receipt of disputes. EDF Energy would welcome confirmation as to which timescale will apply; we believe it should be 20 working days from receipt of an appeal notice.

General

- We believe that Key Performance Indicators (KPIs) should be placed on Ofgem to measure its performance against the dispute resolution timelines. This would provide confidence and a level of transparency to the industry that decisions will be made in a timely manner.

Appeal Notice submissions

- The dispute resolution guidance document details that all appeal notices must be accompanied by a copy of NGET's decision notice as well as any information or evidence that an appellant has already submitted to NGET. The guidance document indicates that in order to manage the dispute process in a timely manner it is expected that the appeal notice and its accompanying documentation will be submitted electronically via Ofgem's dedicated online portal. EDF Energy believes that the dedicated online portal should be made available to all users as soon as possible. With the tight statutory time limits it is important that potential appellants are able to access the online portal to ensure that potential appellants have the opportunity to familiarise themselves with it. This will reduce the likelihood of errors and omissions in the appeal notice submission. Furthermore, it would be appropriate to detail in the guidance document what the contingency measures are if Ofgem's dedicated online portal is unavailable.

^[1] Part 10, Chapter 1, regulation 73:
<http://www.legislation.gov.uk/ukdsi/2014/9780111116852/data.pdf>

- If NGET are to process all 'Tier 1' appeals via a dedicated online portal then it would be more efficient if the same portal were to be used to submit an appeal to Ofgem. This would ensure that Ofgem would receive all the information/ evidence that have already been submitted to NGET, it would reduce the administrative burden on potential appellants and facilitate completion of an appeal notice within the tight statutory time limits.

Should you wish to discuss any of the issues raised in our response or have any queries, please contact Natasha Ranatunga on 020 3126 2312, or me.

I confirm that this letter may be published on Ofgem's website.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Mark Cox".

Mark Cox
Head of Transmission and Trading Arrangements