

Ofgem EMR Dispute Resolution Draft Guidance consultation response

24 July 2014

Introduction

Energy UK is the trade association for the energy industry. Energy UK has over 80 companies as members that together cover the broad range of energy providers and suppliers and include companies of all sizes working in all forms of gas and electricity supply and energy networks. Energy UK members generate more than 90% of UK electricity, provide light and heat to some 26 million homes.

Energy UK welcomes the opportunity to respond to this consultation. There must be an efficient and transparent process in place for disputes relating to CfD application and Capacity Market pre-qualification. The guidance must also provide all of the necessary information for potential appellants and therefore this opportunity to input at draft stage is important.

Summary of views on the draft guidance

Overall Energy UK members believe that the draft guidance is fit for purpose in terms of setting out the decisions eligible for dispute; the process for requesting dispute resolution; and the process. However, our members have made some observations and recommendations which Ofgem should consider in developing final guidance:

➤ **Timeline for determining disputes**

Whilst recognising the tight timeline between pre-qualification and Capacity Market auction, 5 working days for appellants to ask National Grid to review its decision and 5 days to submit an appeal notice to Ofgem is a very short period of time. Ofgem should consider an option whereby an extension of a further 5 days can be requested in which an appeal can be made. However, this should be the exception, rather than the norm, to ensure that the overall allocation process isn't impacted.

➤ **Accompanying information for dispute resolution**

The draft guidelines set out that an appeal notice must be accompanied by copies of documents relating to the initial appeal to National Grid to review its decision. It would clearly be in the developer's interests to ensure that Ofgem are considering the correct information but we would also suggest that Ofgem considers National Grid's role and cross refer to the relevant information that has been lodged in the application process via the portal.

➤ **KPIs for Ofgem decision-making on appeal decisions**

We note that Ofgem will have 20 days to review any CM appeals and 30 days to review CfD appeals but that neither are hard deadlines. We propose that KPIs be put in place for Ofgem to meet these timelines, which we anticipate would ensure that adequate resources are put in place to deal with a potentially high concentration of appeals in specific windows.

➤ **Appeals portal**

Ofgem should provide early access to the dedicated online portal it plans to set up to ensure that potential appellants can familiarise themselves with it before needing to submit an appeal notice. There are also practical questions relating to the portal, such as:

- How to obtain system access;
- What the level of security be;
- Will there be a testing period for Users?
- Will users be able to upload, amend and revise before submission?
- Systems compatibility?

➤ **Confidentiality**

In 4.10 and 4.11 of the draft guidance Ofgem sets out the intention to publish decisions on the EMR section of its website and that those parties will be named unless confidentiality is requested. We agree that the starting principle should be that there is transparency of all decisions. However, there may be some decisions which relate to commercially confidential information, or the timing of the information being published could influence auction outcomes. We believe that confidentiality will need to be considered separately for the CM and CfD and as such Ofgem could set out in the final guidance the level of transparency depending on the type of appeal.

➤ **Disclosure**

There must be full disclosure of the information used to reach decisions in regard to appeals, whether at the National Grid or Ofgem stage, particularly where evidence other than the original application and dispute notice has been used.

➤ **Separate CfD and CM Guidance**

Some members have suggested separating guidance for CfD and the CM given that the respective decisions that can be disputed are different; and the dispute processes themselves are different.

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