

The Office of Gas & Electricity Markets (OFGEM)
9 Millbank
London
SW1P 3GE

Janet Bidwell
Institutions Manager & Legal Counsel
Electricity Market Reform

janet.bidwell@nationalgrid.com

Mobile: 07500 228 616

www.nationalgrid.com

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Dear Sir

Consultation on the draft Electricity Market Reform dispute resolution guidance

Thank you for the opportunity to comment on DR guidance. As Delivery Body for EMR National Grid has a direct interest in the process for dealing with appeals.

We have three comments on the draft which are relevant to our Delivery Body role:

1. Paragraph 2.3 notes that for each CMU for which an application is received, NGET must determine whether it prequalifies for the Capacity Auction. Strictly under Rule 4.3.1 of the Capacity Market Rules NGET must only determine applications that have been submitted in accordance with the Capacity Market Rules.
2. Paragraph 2.26 notes that for applications for the capacity market NGET must provide the Authority with information that it requests within 5 working days. Unfortunately this statutory obligation is at odds with the new EMR special condition that will be included in NGET's licence which prohibits NGET from passing to anyone outside a very narrow internal team any information that it has received through carrying out its EMR administrative functions (which includes activities relating to the award of capacity agreements). The only exceptions are where anything that would identify the source or owner of the information has been removed from the document or where the owner of the information has consented. Whilst we are discussing whether an amendment can be made to the licence condition so that such information can be passed to third parties who need it to carry out their EMR functions we suggest that the draft appeal notice includes a box in which the applicant can confirm their consent to NGET disclosing their information insofar as it is relevant to the appeal.
3. Paragraph 3.12 notes that for contracts for difference NGET may reply to an appeal notice. Again, to enable NGET to include relevant information in that reply we suggest that the draft appeal notice includes a box in which the applicant can confirm their consent to NGET disclosing their information insofar as it is relevant to the appeal.

In addition we have a few more general comments:

Paragraph 3.18 refers to 20 working days within which a decision will be made whilst Regulation 46(1) of the Contracts for Difference (Allocation) Regs states that a qualification appeal must be determined as soon as practicable. In practice such a determination may take 20 days, but in some cases it may be practicable to make the determination more quickly. Should this be acknowledged in the guidance?

In Figure 2 on page 19 the top "Ofgem" box refers to 30 days rather than 20 days as set out in paragraph 3.18.

Paragraph 4.8 refers to Regulations 51 and 52 as describing how a decision in favour of the appellant will affect its participation in the CfD allocation process. Regulations 51 and 52 are relevant only where the determination is made after the allocation process for the allocation round concerned. It may be helpful to clarify this.

Finally, paragraph 4.5 notes that a finding in favour of the appellant in respect of a Capacity Market prequalifying decision will result in a direction to NGET to register the relevant CMU on the CM Register as a prequalified CMU. Regulation 71(4)(B) gives Ofgem the power to direct the Delivery Body to so register the CMU, but if the applicant could only have conditionally prequalified there is no option to direct a conditional prequalification. Again it may be helpful to clarify this.

We have no objection to this response being published.

Yours sincerely



Janet Bidwell
Institutions Manager & Legal Counsel
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