REA response to Consultation on EMR Dispute Resolution Process

The Renewable Energy Association (REA) is pleased to submit this response to the above consultation. The REA represents a wide variety of organisations, including generators, project developers, fuel and power suppliers, investors, equipment producers and service providers. Members range in size from major multinationals to sole traders. There are over 1000 corporate members of the REA, making it the largest renewable energy trade association in the UK.

The REA have engaged closely with the development of EMR policy over the past year and are pleased that the policy is nearing implementation, which the development of processes for when the scheme is in operation serves to illustrate.

We understand there are no specific consultation questions on the proposals, and broadly agree with the process with the exception of the area of information provision. We would like to raise the following points below in relation to this consultation and the wider CfD application process.

Lack of opportunity to amend existing/provide new application information

We are concerned about the information provided at the different 'tiers' of dispute resolution/appeal (EMR Delivery Body (National Grid) – Ofgem – the Courts).

None of the stages allows for any new information to be provided. This means that the entire onus falls on the generator providing completely accurate information at the application process. For example if a '0' is in the wrong place on a generator's application due to a simple administrative error, this could lead to the project being rejected at the first stage automatically.

Under the current proposal, following 2015 in the case of Capacity Market disputes, and on opening of the application process in the case of CfDs, there will be no opportunity for the applicant to amend their application or provide new information to resolve a simple issue such as this. Instead, the applicant can pursue three stages of appeal, every stage of which prohibits the modification or provision of new information.

Therefore if every aspect of the original application is not completely correct, the applicant could be rejected for a simple typing or administrative error, and have absolutely no opportunity to correct this at the later appeals stages.

We understand the need to ensure applicants take it upon themselves to submit the correct information and to minimise the resource National Grid and Ofgem devote to applications as this is ultimately passed on to consumers.

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However it is unacceptable that an applicant could lose out on a CfD/CM Contract for the sake of a typing error, and that three levels of dispute resolution would offer no opportunity to rectify the situation.

Information provided in appeals process

We also note that there is no requirement for Ofgem to tell a generator if they made a simple error on their application (or appeal) form, and may not process the appeal if the information is incomplete. There is no obligation to notify this to the appellant but they may miss out on the opportunity to appeal at all if the application cannot be processed.

As all appeals must be made through the online forms on the Ofgem website, the submission form could be set up in such a way that submission of the form is not possible unless all fields have been completed and all necessary information provided. Many automated systems allow for this, and we understand National Grid are investigating using a similar system for CfD applications.

Possible Solutions

As a first step, adequate IT systems could cut out many of the cases outlined above (eg not allowing applicants to submit an application containing insufficient information, or to progress to the next stage using obviously wrong information). One such simple check would be for the size of the project applied for (ie applications foir a CfD project over 1.5GW will be ineligible - and this might be down to a simple typing error a simple check could solve).

We also believe there is scope for a new category of appeal to be included in the process – one for resolving administrative (for example typing) errors. It should also be possible to appeal against the decision that an appeal is not permissible.

This would allow simple administrative errors such as those outlined above to be corrected and provide reassurance to applicants. As a successful dispute resolution decision will result only in the applicant being deemed eligible to apply for a CfD or CM Agreement in two of the four dispute resolution scenarios, the impact on budget forecasting should not be significant.

We are also familiar with examples from other policies in which the scheme rules, or interpretation of these, has been changed after the scheme has opened and judgements have been made (in a 'case law' type of analogy). These situations should be considered and accommodated.

Current arrangements increase significantly the uncertainty for applicants and ensuring a dispute process which is as broad as possible will avoid use of the courts, which will not be in the interests of Ofgem or DECC, and lead to delays for the wider CfD/CM processes.

For this flagship Government policy, teams in the Delivery Body and Ofgem should be adequately resourced to deal with enquiries in the early stages of a complete shift for the industry, rather than relying on generators meeting every single requirement of a complex policy on day one of its operation.

Renewable Energy Association
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