

Martin Roberts
Ofgem e-Serve
9 Millbank
London
SW1P 3GE

25 July 2014

Dear Martin,

Electricity Market Reform Dispute Resolution Guidance: draft for Consultation

We welcome the opportunity to comment on the draft Electricity Market Reform dispute resolution guidance.

We appreciate the importance of clear, concise, and user-friendly guidance helping to facilitate an effective dispute resolution process which is, in turn, an important element of the Contract for Difference (CfD) and Capacity Mechanism (CM) design systems. An efficient Dispute Resolution process should help to reduce the risks and costs associated with participating in the EMR programmes.

Whilst we are broadly supportive of the proposed guidance, we would wish to highlight a few points for consideration as part of the process for finalising the Guidance. These are as follows:

- **Evidence available to Ofgem under the CM process:** The final bullet of paragraph 2.19 essentially copies out Regulation 70(4)(d) of the Electricity Capacity Regulations 2014, which states that (as well as specific required evidence) the evidence an appealing party can adduce is that which was provided to the Delivery Body before the reconsidered decision was made or is needed to show what evidence was before the Delivery Body when the reconsidered decision was made.

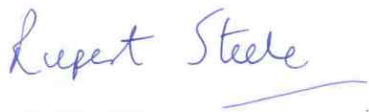
However, the intended meaning of the second limb of this description is not very clear. It is referring to information showing that information had been sent to NGET (eg a special delivery receipt); or to information such as weblinks sent to NGET that identified information but did not contain it; or information that NGET had in its possession and accessible to its delivery body function, but that was referred to (or even was commonly understood background) rather than sent? It would be useful if the guidance amplified on the Regulations here, perhaps with examples of what would and would not be permissible. We note that as well as this category, new evidence can be adduced to show compliance with the procedural requirements under Regulation 69(2) of The Electricity Capacity Regulations 2014.

- **Submitting an appeal to Ofgem under the CM process** – The necessary contents of an appeal notice are set out at paragraph 2.18 of the draft Guidance and supplementary documentation needed is listed at paragraph 2.19. Thus, the onus is on the appellant to collate the evidence that was provided to or otherwise before NGET. We consider that this could give rise to uncertainty about whether the appellant was correctly identifying which documents were before NGET at the time of its decision and which were not. We would therefore suggest that further consideration might be given to the role of NGET in formally providing to Ofgem its case file in terms of any Tier 1 review that is subject to challenge on appeal. (Clearly, this issue also applies to appeals in relation to the CfD.)
- **Confidentiality** – We note that under paragraph 4.11 of the draft Guidance Ofgem plans to publish its decision on any appeal (CfD or CM-related), subject to any party making representations to exclude any matter from publication on the grounds of confidentiality. We would wish to highlight that particular consideration should be given to the timing of any such publication in relation to an application under the CfD allocation process given that applications at the early stage of this process will not be in the public domain. It follows that publishing the outcome of an appeal could bring this confidential information into the public domain earlier than intended under the CfD allocation process. We would therefore suggest that confidentiality arrangements are considered separately for the CfD and the CM.

Finally, we would wish to highlight that it would be very helpful for parties to have early sight of the Ofgem Dispute Resolution Portal some time in advance of formal implementation. This would enable industry participants to become familiar with the Portal and the way it works in advance of any need to use it, thereby helping to ensure that any disputes can be managed as efficiently as possible and within the proposed timelines.

Should you wish to discuss any of these matters further, then please do not hesitate to contact me.

Yours sincerely,



Rupert Steele
Director of Regulation