

## **Ofgem Responses to Stakeholder Feedback on the Electricity Market Reform Dispute Resolution Guidance**

Our draft guidance on the Electricity Market Reform Dispute Resolution process was published for consultation on 27 June 2014 and closed on 24 July 2014. We received eight responses. The individual responses can be found on the consultation website. We have considered our guidance in light of these responses and of comments we received at a stakeholder event held on 11 July 2014.

We have summarised the issues raised into six key areas:

### **1. Documents to be submitted with an application for dispute resolution**

#### *Stakeholder views:*

A number of stakeholders felt that there could be more clarity on which documents need to be submitted with an application. For example, applicants are told to include all “relevant” information but may not be in a position to judge correctly if a particular document is relevant or not.

#### *Our response:*

Whilst the guidance largely reflects the statutory requirements set out in the CM and CfD regulations, we have made some minor changes to the drafting to further clarify what information needs to be provided by an applicant. We also explain that the wording at paragraph 2.19 is meant to refer to situations where there is a dispute about whether a document had been properly submitted.

### **2. Disclosure of reasons for our decision and the information used to reach that decision**

#### *Stakeholder views:*

A number of stakeholders were concerned that Ofgem would not give full rationale for its decision, and may not disclose to the applicant all of the information it relied on to make that decision.

#### *Our response:*

Our decision letter to applicants will make clear how and why we have reached our decision. We will only take into account information available to NGET at the time it made its decision. We will also include a schedule of documents that we have taken into account when making that decision. Where we have, exceptionally, relied upon

information not supplied by the applicant to make our decision, we will make that clear in our decision letter.

### **3. IT systems and contingencies**

*Stakeholder views:*

Many stakeholders were concerned about how an application could be submitted if there were technology failures such as loss of broadband connection, or of our IT systems.

*Our response:*

We have amended the guidance to include contact details for applicants to use should they encounter any difficulties with submitting an appeal application.

### **4. Timelines for determining disputes and Ofgem performance**

*Stakeholder views:*

The timelines for raising a dispute with NGET, and if necessary with Ofgem, are too tight. As Ofgem's timeline for making a decision are not in legislation, there should be a method of measuring its performance in meeting the targets such as a Key Performance Indicator (KPI).

*Our response:*

The time periods for applicants to seek tier 1 or tier 2 review are set out in the CM and CfD Regulations and we do not have any powers to change these. The time periods for Ofgem to make a tier 2 decision are necessary so that we can assess the application and make a robust and informed decision. Most disputes, for example on energy code modifications, allow at least 45 working days for the decision body to consider the decision – and that is where it is not expected that appeals will tend to come in at the same time. Ideally we would be setting targets of at least 45 working days for all the disputes we consider. However, recognising that disputes are one part of a larger process we have more challenging targets, to ensure where possible that the applicant can still take part in the process (e.g. the CM auction) if their dispute is successful.

We do not agree that KPIs are appropriate, particularly as the volume and complexity of disputes is unknown and as appeals are likely to come in in batches.

### **5. Access to the online portal**

*Stakeholder views:*

Most stakeholders wanted to have access to the online portal prior to the arrangements going "live", so that they are aware of how information can be submitted.

*Our response:*

Our online systems are still being developed and tested so that we can offer a user-friendly, efficient and secure resource for submitting applications. We will ensure stakeholders are alerted once the online system is available

## 6. EMR policy design

### *Stakeholder views:*

Some stakeholders made a number of suggestions related to the policy design of the disputes process, such as: ability to correct simple errors; allow appeal against a decision that “an appeal is not permissible”; introduce a new category of appeal for resolving administrative errors; and extension of 5 days to submit an appeal to Ofgem in exceptional circumstances.

### *Our response:*

These changes would require amendments to the CM and CfD Regulations so we have not been able to consider them.

**Ofgem  
EMR dispute resolution team  
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