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Dear Mark,

Consultation on Ofgem's Minded to Decision to assign TSO obligations under the Capacity Allocation and Congestion Management Regulation (CACM Regulation) within GB.

Thank you for the opportunity to respond to the above consultation. This response is provided on behalf of SSE plc and reflects our broad interests across the Group. A more specific response on behalf of Scottish Hydro Electric Transmission plc (SHE Transmission) is provided under separate cover.

We note that this 'minded to' decision is based on the application, by Ofgem, of the CACM Article 1(3) Member State powers and, in particular, whether to utilise the Article 1(3) discretion to assigned responsibility for complying with certain obligations in the CACM Regulation. We wish to point out that our consultation response is provided to you on the basis that this discretion, to assigned responsibility by Ofgem to the TSO(s), is permissible. However, as you will be aware, we wrote separately¹ to DECC (copied to yourself) on this matter. We do not repeat here the points made in that communication. However, we are currently considering the DECC reply.² We have concerns over certain items raised in that response which we are seeking further clarification on and we will respond separately on these matters.

We have reviewed your letter and the associated Annex 1. We provide below our comments to the four specific questions you pose.

¹ Via email on 31st March 2015 @ 14:43

² Via email on 20th April 2015 @ 18:37

1. Do you agree that we have correctly identified the Articles of the CACM Regulation which place an obligation on TSOs?

We have reviewed the Articles of the CACM Regulation³ which place obligations on TSOs. We agree that you have correctly identified the Articles, although we understand that a more recent draft version the CACM Regulation (dated 1st April / 7th April 2015) has been issued by the Commission which we have been unable to compare with the previous draft. It may be the case that changes to that draft have changed the obligations on TSOs shown in your Annex 1.

2. Do you agree with Ofgem's application of Article 1(3) in assigning obligations to GB TSOs?

As per our comments in the introduction above (and our March email to DECC) we have concerns about the permissibility of Ofgem applying the Article 1(3) powers in respect of assigning obligations to GB TSOs. Given these concerns we cannot, at this time, answer this question in the affirmative.

3. Do you agree with Ofgem's minded to decision on the assignment of obligations under the CACM Regulation to GB TSOs as set out in Annex 1?

A separate response from SHE Transmission considers the specific detail of this question.

In addition to this we would note that if Ofgem were to determine that National Grid Electricity Transmission (NGET) alone amongst the GB Transmission Owners (TO) were, in accordance with Article 1(3), to be assigned responsibility for complying with certain obligations in the CACM Regulation, it will be vital that Ofgem specifically sets out in its decision (in respect of any Article 1(3) assignment) that NGET is assigned these responsibilities because of its System Operation (SO) functions in GB (and not because of any TO functions).

4. How do you think Ofgem should assess future changes to the assignment of TSO obligations under the CACM Regulation?

We note your comments concerning future changes to the assignment of obligations under the CACM Regulation set out at the bottom of page three of your letter, along with the four examples of circumstances that could give rise to this.

In terms of the first example ("**The development of the terms and conditions and methodologies under the CACM Regulation**") it would seem sensible that once the methodologies have been developed that the TSO(s) who developed them continue to be bound by the obligation(s). However, we recognise that these will be new industry documents and ascertaining which TSOs have

³ This is based on the pre 31st March 2015 draft version of the CACM Regulation provided via the JESG weekly email(s).



a 'function relevant' to these prior to their conclusion is challenging. As such, where it can be clearly shown that a participating TSO does not have an enduring function relevant then we believe it is appropriate for these obligations to be lifted.

In terms of the second example ("**A new GB TSO becomes operational**") your suggested approach appears pragmatic, reasonable, proportionate and appropriate if the circumstances arise.

In terms of the third example ("**Operational TSO change in activity**") your suggested approach appears pragmatic, reasonable, proportionate and appropriate if the circumstances arise; although (as we noted under Q3 above) we would add that if the TSO concerned is NGET that the issue of whether the function in question is being performed in their SO capacity or as a TO would need to be taken into consideration with respect to other GB TOs.

In terms of the fourth example ("**Amendments to the CACM Regulation**") your suggested approach appears pragmatic, reasonable, proportionate and appropriate if the circumstances arise.

We hope you find these comments of help to you in your deliberation on this matter. If you wish to discuss any aspect of this response please do not hesitate to contact me.

Yours sincerely

Robert Hackland