



Making a positive difference  
for energy consumers

Joe Parsons  
Department of Energy & Climate Change  
3 Whitehall Place  
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Date: 11 March 2016

Dear Joe,

**Response to the consultation on proposals for the monitoring and enforcement of Nominated Electricity Market Operators under Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management, hereafter "CACM Regulation".**

We welcome the opportunity to respond to your consultation on the above.

As described in the consultation document, CACM Regulation in accordance with Article 19 of the Regulation (EC) No. 714/2009 of the European Parliament and Council requires National Regulatory Authorities (NRAs) to monitor and ensure the on-going compliance with designation criteria and performance of each NEMO offering day-ahead and intra-day trading services within their Member State.

We agree that unreliable and inefficient access to cross-border trading for market participants may disrupt or distort the wider wholesale market with detrimental impacts on consumers. Therefore, we consider it is essential that we are able to monitor NEMOs effectively, given they will operate an exclusive route to short term cross-border trading, and ensure that they deliver reliable, robust, and cost-efficient market coupling compliant with CACM regulation.

We consider that changes to legislation are required to make sure that we have sufficient powers to monitor and ensure compliance as required by (EC) No. 714/2009 and CACM Regulation. More specifically, Ofgem must have appropriate powers to gather information necessary to satisfy itself of NEMOs on-going compliance with CACM Regulation, to investigate further where non-compliance is suspected, and to take necessary enforcement action to secure compliance.

We support DECC's preferred route to ensure appropriate oversight of NEMOs described in the consultation document. We agree the approach that best serves the objectives of effective and proportionate regulation is to amend the Electricity Act 1989 so that existing

enforcement powers (contained in Sections 25-28) can be applied to NEMOs. The proposals set out in the consultation document provide effective and proportionate regulation of NEMO functions and enable Ofgem to meet its obligations as NRA under CACM Regulation. This would be achieved by including NEMOs within the definition of Regulated Person and adding the NEMO requirements of CACM to a new category of relevant requirements within Schedule 6A. These amendments would be made by regulations under section 2(2) of the European Communities Act 1972.

In general, we would not expect to use formal powers to require information unless we were unable to access information considered necessary to monitor and enforce compliance. In addition, we would only undertake any investigation and necessary enforcement action in line with our standard processes as set out in our Enforcement Guidelines.<sup>1</sup>

If you have any queries regarding the information contained within this letter please contact [Marcelo.Torres@ofgem.gov.uk](mailto:Marcelo.Torres@ofgem.gov.uk)

Yours sincerely,

Ryan McLaughlin  
Head of European Wholesale Markets

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<sup>1</sup> [www.ofgem.gov.uk/sites/default/files/docs/2014/09/enforcement\\_guidelines\\_12\\_september\\_2014\\_published\\_version\\_1.pdf](http://www.ofgem.gov.uk/sites/default/files/docs/2014/09/enforcement_guidelines_12_september_2014_published_version_1.pdf)