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Email: Eleanor.Warburton@ofgem.gov.uk

04 June 2019

Dear colleagues,

Request for amendment to the Transmission System Operators' proposal for the Terms and Conditions related to Balancing

On 04 April 2019, we¹ received an amended proposal from the relevant GB Transmission System Operator (TSO), the National Grid Electricity System Operator (NGESO)², in accordance with Article 18 of the guideline on Electricity Balancing (EBGL).³ The proposal presents the Terms and Conditions (T&C) related to balancing (balancing T&C).

This letter sets out our decision to request amendments to the balancing T&C. The letter furthermore outlines the necessary next steps that have to be taken.

Background

In accordance with Article 18 of the EBGL, the TSOs of a Member State must develop a proposal regarding the T&C for balancing service providers (BSPs) and balance responsible parties (BRPs).

The T&C must also establish rules for market suspension and restoration (Article 18(2) EBGL) and the requirements on BSPs and BRPs (Article 18(1) of EBGL). For Great Britain, the Balancing and Settlement Code (BSC), the Grid Code (especially the "Balancing Code" sections) and the relevant sections of the Connection and Use of System Code (CUSC) already contain provisions related to balancing that are applicable to BSPs and BRPs.

The ESO first submitted the Article 18 proposal to us on 18 June 2018. Following a review of this submission, we published a request for amendment on 04 February 2019⁴, as the proposal could not be approved in the form submitted. Within this request we asked for the mapping to be reviewed to remove references that do not place obligations on BSPs or BRPs and to include all provisions in the GB regulatory framework that set obligations on BSPs and BRPs, or set rules for market suspension and restoration that were missing from the submission. We also requested that the relevant provisions contained within the Standard Contract Terms (SCTs) and required for compliance with Article 18, be

¹ The Gas and Electricity Markets Authority. Ofgem is the Office of the Authority. The terms "Ofgem" and "the Authority," "we" and "us" are used interchangeably in this letter.

² This is in line with our assignment of obligations. See decision letter here:

<https://www.ofgem.gov.uk/publications-and-updates/decision-assignment-transmission-system-operator-obligations-under-guideline-electricity-balancing-regulation-within-gb>

³ Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (EBGL). EBGL came into force on 18 December 2018.

⁴ See request for amendment here: <https://www.ofgem.gov.uk/publications-and-updates/decision-request-F>

transposed into the relevant GB industry codes, so that we can have a clear and transparent role in approving and amending them in the future. In addition to the review of the mapping of the provisions of Article 18 with the provisions of the GB regulatory framework, we also emphasised the importance of the necessary code modifications being initiated and that the proposal had to ensure that any future amendment of the balancing T&C would be compliant with the process set in the EBGL.

The amended proposal was received by the Authority on 04 April 2019 following a consultation that the ESO undertook on the amended proposal⁵. EBGL requires us to decide on the amended terms and conditions within two months (04 June 2019) following their submission, pursuant to Article 6(1) of the EBGL Regulation. Our decision on the amended proposal is therefore required by 04 June 2019.

Decision

We have reviewed the amended proposal submitted to us in line with the requirements of the EBGL, the wider objectives of the Regulation (EC) No 714/2009⁶ and our statutory duties and obligations. We furthermore engaged with the NGENSO and Elexon to clarify our understanding of the proposed balancing T&C.

We are satisfied with the amendments made to address some of our previous requests. We believe that the amended proposal is more robust as the references that are contained are correct and help to deliver greater clarity and transparency for BSPs and BRPs. We set out below the instances where further changes are required, as certain aspects or processes have been incorrectly excluded.

Our previous RfA requested that the ESO include all provisions in the GB regulatory framework that set obligations on BSPs and BRPs or set rules for market suspension and restoration that were missing from the submission. Frequency Containment Reserve (FCR) has not been included within the mapping of the Article 18 proposal and as the FCR SCTs contain requirements, not all of the provisions in the GB regulatory framework that set obligations on BSPs and BRPs are apparent. We note that the FCR is explicitly defined within Regulation (EU) 2017/1485 as 'frequency containment reserves' or 'FCR' means the active power reserves available to contain system frequency after the occurrence of an imbalance. Furthermore, Article 2 of EBGL explicitly sets out that the definitions in Article 2 of Regulation (EU) 2017/1485 shall apply to EBGL. It is therefore not correct to assume that no obligations arise in relation to FCR and therefore we consider that the relevant mapping for FCR is still required in order for the balancing T&C for GB to comply with the requirements of EBGL.

In addition, the current T&C proposed under Article 18 do not make it clear how a party holding reserve is able to transfer its balancing capacity, pursuant to Article 34 of EBGL. Amendments need to be made to the proposal so that the requirements under Article 34 of EBGL are accurately captured in the proposal.

We have also concluded that the exemption proposal submitted by the ESO to the Authority did not adequately justify why an exemption under Article 16.6 of EBGL would lead to higher economic efficiency. Article 16.6 of EBGL requires that the price of balancing energy bids is not to be predetermined in a contract for balancing capacity, unless an exemption is sought under the national terms and conditions of Article 18 of EBGL and it must demonstrate that it would lead to higher economic efficiency. The ESO submitted an application for exemption for three balancing services: Fast Reserve, Short Term Operating Reserve, and Demand Turn-up service. As a result, we request that the ESO either removes the provisions that set fixed prices for utilisation of those services from the Article 18 of EBGL national terms and conditions, or submits a new Article 16.6 exemption request clearly outlining the higher economic efficiency for GB. Any submission should demonstrate how:

- The expected changes in utilisation prices per balancing service if those are not contracted in advance, with a description on why the proxy chosen to simulate the change is appropriate.
- The ESO's expectations on the changes to the availability prices in a market where utilisation prices are no longer fixed and the rationale for such a change.
- An analysis of alternatives available to the ESO in real time to those services and how this can affect the submitted prices and hence economic efficiency.
- A clear articulation of how all the factors considered lead to higher economic efficiency in GB.

⁵ Amended proposal consultation here: <https://www.nationalgrideso.com/codes/european-network-codes/meetings/consultation-amended-proposal-ebgl-article-18-terms-and>

⁶ Regulation (EC) No 714/2009 here: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0015:0035:EN:PDF>

In accordance with Article 6(3) of EBGL, we further request that the ESO proceed with the code modifications and implement the proposals that have been detailed within annexes 3 to 5 of the Article 18 submission proposal. The proposed updates to the code change processes and the proposed solution to capturing any changes to SCT as part of the CUSC, will allow the Authority to have a clear and transparent role in approving and amending any future changes that will have an impact on the Article 18 T&C and ensures compliance with Article 6 of the EBGL.

Decision not to undertake an Impact Assessment

We have not undertaken an Impact Assessment for this proposal. This is because we consider that the proposal would not constitute a significant change to existing GB requirements and arrangements. The adoption of Article 18 is furthermore a requirement of the EBGL, which has already been subject to an impact assessment⁷. Accordingly, we consider that an impact assessment is unnecessary in this situation.

Next Steps

In accordance with Article 6(1) of the EBGL, the relevant TSOs must make the necessary amendments to the Article 18 proposal to address the points set out in the text above and re-submit an amended proposal to us within two months of this decision.

If you have any queries regarding the information contained within this letter, please contact Jordan Clarke at Jordan.clarke@ofgem.gov.uk.

Yours faithfully

Eleanor Warburton
Deputy Director ESO and Gas Systems, Energy Systems Transition

⁷ Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016SC0410>