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All interested parties,
stakeholders in GB and beyond,
and other regulatory bodies

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Dear colleagues,

Request for amendment to the Electricity System Operators' proposal for the terms and conditions to act as defence and restoration service providers, for the list of SGUs responsible for implementing on their installations measures from other EU Network codes, and for the list of high priority significant grid users

On 18 December 2018, we¹ received five proposals from the Electricity System Operator (ESO) in accordance with Article 4(2) of Commission Regulation (EU) 2017/2196² establishing a network code on emergency and restoration (NCER) for approval. This submission included proposals on:

- a) the Terms and Conditions (T&Cs) to act as defence and restoration service providers (the T&Cs);
- b) the list of SGUs responsible for implementing on their installations the measures that result from mandatory requirements on three EU Network Codes³ and/or from national legislation (the SGU list);
- c) a list of high priority significant grid users and the terms and conditions for their disconnection in the System Defence Plan and System Restoration Plan (the High Priority SGU list);
- d) the rules for suspension and restoration of market activities, and
- e) the specific rules for imbalance settlement and settlement of balancing energy in case of suspension of market activities.

The proposals were submitted to us by the Electricity System Operator (ESO). Subsequently, the ESO noted that changes were needed to the rules for suspension and restoration of market activities and the specific rules for imbalance settlement and settlement of balancing energy in case of suspension of market activities. As a result, they resubmitted those proposals, and we will decide on them in a separate decision.

This letter sets out our decision to request amendments to the T&Cs, the SGU list, and the High Priority SGU list and also outlines the necessary next steps that must be taken.

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 Commission Regulation (EU) 2017/2196 of 24 November 2017 establishing a network code on electricity emergency and restoration. The NCER Regulation came into force on 18 December 2017.

³ The EU Network Codes are: Regulations (EU) 2016/631 (RfG), (EU) 2016/1388 (DCC) and (EU) 2016/1447 (HVDC).

Background

The T&Cs to act as defence and restoration service providers

In accordance with Article 4(4) of the NCER, the TSOs of a Member State must develop a proposal for the T&Cs to act as defence and restoration service providers. Article 4(4) of the NCER specifies that:

The terms and conditions to act as defence service provider and as restoration service provider shall be established either in the national legal framework or on a contractual basis. If established on a contractual basis, each TSO shall develop by 18 December 2018 a proposal for the relevant terms and conditions, which shall define at least:

- a) the characteristics of the service to be provided;*
- b) the possibility of and conditions for aggregation; and*
- c) for restoration service providers, the target geographical distribution of power sources with black start and island operation capabilities.*

In Great Britain (GB), the ESO has stated that some sections of the Grid Code, Connections and Use of System Code (CUSC), the standard contract terms, and the black start service description document⁴ contain some of the provisions related to the T&Cs that must be developed in accordance with Art. 4(4) NCER. The provisions of the GB codes have been created by virtue of the Electricity Act 1989 and of National Grid's Transmission License.

The proposal for the T&Cs to act as defence and restoration service providers was submitted to the authority in order to meet the obligation of Articles 4(4) NCER. The proposal states that the provisions that cover the T&Cs already exist in the CUSC, Grid Code, Standard Contract Terms (SCTs), individual black start contract terms and the ESOs black start service description and that these serve as the official provisions constituting proposal for the T&Cs to act as defence and restoration service providers.

A table, mapping the requirements of the NCER Regulation against the provisions of the existing documents, was provided in the annex to the letter of compliance that was submitted to the authority.

The list of SGUs

In accordance with Article 4(2)(c) NCER, the TSOs of a Member State must design system defence and restoration plans, which include a proposal for:

(c) the list of SGUs responsible for implementing on their installations the measures that result from mandatory requirements set out in Regulations (EU) 2016/631, (EU) 2016/1388 and (EU) 2016/1447 and/or from national legislation and the list of the measures to be implemented by these SGUs, identified by the TSOs under Art. 11(4)(c) and 23(4)(c);

The proposal for the SGU list was submitted to the authority in order to meet the obligation of Article 4(2)(c) NCER. The proposal does not state the names of all the SGUs in Great Britain (GB). Instead, the proposal states criteria that the ESO believes will allow market participants to self-identify as an SGUs.

⁴ Available at:

<https://www.nationalgrideso.com/sites/eso/files/documents/Black%20Start%20Service%20Description.pdf>

The High Priority SGU list

In accordance with Article 4(2)(d) NCER, the TSOs of a Member State must design system defence and restoration plans, which include a proposal for:

(d) the list of high priority significant grid users referred to in Articles 11(4)(d) and 23(4)(d) or the principles applied to define those and the terms and conditions for disconnecting and re-energising the high priority grid users, unless defined by the national legislation of Member States.

The ESO is not proposing any high priority significant grid users in GB. The ESO believes that it is not in a position to fully understand the impact of all industries on the population, and any prioritisation on this basis should be made by government.

Decision

We have reviewed the proposal submitted to us in line with the requirements of the NCER, the wider objectives of the Regulation (EC) No 714/2009⁵ and our statutory duties and obligations. We furthermore engaged with the Electricity System Operator (ESO) to clarify our understanding of the proposed T&Cs to act as defence and restoration service providers.

We have concluded that the proposals cannot be approved in their current form and that they need to be amended to provide more clarity and transparency for significant grid users as well as existing and potential restoration and defence service providers.

The T&Cs to act as defence and restoration service providers

We note that some of the provisions included in the mapping in the annex to the proposal do not actually place obligations on restoration and defence service providers, and that these need to be replaced with provisions that do place obligations on restoration and defence service providers. We hereby request the ESO to amend the proposed T&Cs, taking into consideration the following recommendations:

- a) The mapping in the ESO submission should be reviewed to remove references that do not place an obligation on restoration and defence service providers. In the submitted mapping, some of the provisions that were deemed to be the T&Cs do not place an obligation on restoration and defence service providers. For example, the reference to Grid Code OC 8.1 specifies Safety Precautions for working near the National Electricity Transmission System, and does not state the characteristics of the service to be provided.
- b) In order to describe the characteristics of the service to be provided, the proposal references the ESO's service description document from 2012.⁶ We believe that sections of the Grid Code OC 9.0 would be a more appropriate reference for this part of the T&Cs for restoration and defence service providers. Using a service description publication from 2012 does not allow stakeholders to easily identify their obligations.
- c) For compliance with Article 4(4)(b) NCER, the proposal references the whole Standard Contract Terms (SCTs). Whilst Article 4 NCER allows for the T&Cs to be established on a contractual basis, we believe that a specific reference to the section

⁵ Regulation (EC) No 714/2009 here: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0015:0035:EN:PDF>

⁶ Available at: <https://www.nationalgrideso.com/sites/eso/files/documents/Black%20Start%20Service%20Description.pdf>

of the contract that deals with the possibility of, and conditions for aggregation is required to improve the clarity of the T&Cs.

- d) For compliance with Article 4(4)(c) NCER, the proposal references the terms of bilateral black start contracts agreed with black start providers as well as the provisions of Grid code OC.9.4.7.2. We do not believe that those provisions cover the obligation in Article 4(4)(c) NCER. We also cannot approve these bilateral contracts as the provisions of the T&Cs since they are not publically available and accessible to market participants. Therefore, we ask the ESO to map the requirements to publically available provisions that contain the obligations that are strictly necessary to meet the requirements of Article 4(4)(c) NCER and to reassess whether the requirements are covered by existing provisions in the GB codes or SCTs.

In addition to amending the proposal to take account of our recommendations listed in paragraphs a), b), c) and d), we expect the relevant TSO to run a detailed exercise to ensure that all and only the necessary provisions are identified.

If the GB regulatory framework, SCTs, or individual black start contracts, do not sufficiently cover the requirements of Article 4(4), it is important that the ESO initiates changes to introduce the necessary provisions. It must also be ensured that any future amendment of these T&Cs will be compliant with the process set in the NCER.

The SGU list

We understand that it is impractical for the ESO to resubmit an amendment every time a new relevant SGU enters the market. Therefore, we believe that it is proportionate that the list of SGUs sets out the criteria that any SGU would have to meet in order to comply with those obligations. We also believe that the list needs to be accessible to all SGUs, so that all relevant parties have clarity on their obligations.

We believe that the current submission is not clear enough and that this could lead to market participants not being aware of their obligations in relation to the System Defence and System Restoration Plans. Therefore, we request the ESO to review its submission to ensure that it clearly associates the type of SGUs with the obligations of the system defence and restoration plans such that any SGU can easily identify its obligations.

We would also like the ESO to explore how to maximise transparency to SGUs, including publishing an informal list, which is not subject to regulatory approval, with the names of the actual SGUs.

The High Priority SGU list

We understand that the ESO is not proposing a list of high priority significant grid users in GB. However, OC6 Grid Code specifies that large power stations shall not, as far as possible, be disconnected in the event of demand control. We understand that these power stations would qualify as High Priority SGUs in the context of the NCER and we therefore ask the ESO to take those provisions into account in the resubmission.

We also note that the Electricity Supply Emergency Code (ESEC) provides a list of protected sites⁷ in the event that the Secretary of State enacts its provisions. Those could also qualify as High Priority SGUs. However, as those provisions are already part of national legislation,

⁷ Protected sites are defined in section 3.6 of ESEC available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698739/2018_03_29_Electricity_Supply_Emergency_Code_ESEC_2018_Revision_V1.0-.pdf

in accordance with Article 4(2)(d) NCER, they do not need to be referred further in the resubmission.

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. There will not be a significant impact on persons engaged in the generation, transmission, distribution or supply of electricity, or on GB consumers as a result of this decision to request changes to the ESOs proposals.

Furthermore, the changes that we have requested involve a reassessment of the mapping of GB codes, SCTs to the requirements of the NCER. We do not expect the resubmitted proposals to contain changes that will fundamentally alter market arrangements in GB.

Next Steps

The ESO must make the necessary amendments to the proposals for the T&Cs, the SGU list, and the High Priority SGU list to address the points set out in the text above and re-submit amended proposals to us within two months of this decision.

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

Yours faithfully,

Leonardo Costa
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