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GB Wholesale Markets
Ofgem

BY EMAIL

Response to Consultation on Adjustments to the EMR Delivery Body Revenues

Dear Chris and Tom,

I write as an independent energy regulatory consultant whose work is currently primarily in support of client companies who participate in the Capacity Market. The views I express therefore result from direct experience with the Delivery Body (DB) and its systems, but I need to make clear they are my personal views and should not be taken as representing the views of the companies with whom I have worked or am currently working.

Thank you for the opportunity to contribute to Ofgem's consideration of the allowed revenues for the DB going forward.

I hope you appreciate the timing of this consultation is far from ideal, closing as it does within days of the end of the prequalification window for the Capacity Market auctions due to be held in early 2020. Given this prequalification round is for two Delivery Years, the implications of failure to prequalify in this round are double previous rounds, magnifying the risks on Applicants, for whom therefore getting their prequalification applications correct is a top priority. I understand the timing issue for Ofgem given its own deadline for publishing its decision by the end of September, but I would start by questioning the reasonableness of asking the same people to respond to this consultation in that same timeframe. This is being written after normal hours on your deadline day, largely because of issues I have had battling with the DB responses and systems as the prequalification deadline approaches and beyond that the start of the next Delivery Year on 1 October.

It gets ever harder for me to see how the Capacity Market is achieving its supposed policy aim of delivering security of supply to consumers at lowest cost. The Rules have more than doubled in size since first published, and Ofgem's publicised attempts to simplify them as part of the Five Year Review have barely scratched the surface of the fundamental issues. The costs of compliance and participation in the Capacity Market appear disproportionately and unnecessarily high, particularly for smaller players, and there has been little of substance that appears to address this from Ofgem and BEIS, indeed quite the reverse.

So this is the context of the review, as your consultation document acknowledges. The DB has had to cope with a lot of change and with increasing complexity as new rules are introduced by both BEIS and Ofgem. I have sympathy with those within the DB who may feel that Ofgem opining on its revenue allowance whilst being a key driver of its workload through the rule changes it allows or sponsors is a conflict of interest.

However I would strongly disagree with your opening statement in Operational Expenditure that the DB has achieved “effective” delivery. I face daily issues with outputs from the Delivery Body where communications have errors and guidance information is inconsistent. The consequences and sanctions on the DB appear close to zero, whereas for Capacity Providers they are often of material cost. I could provide numerous examples including some very recent but they are not included in this letter, both because of time and my need to get client agreement to disclosure before placing them in a letter which will be put into the public domain. I would be willing to provide those on request on a confidential basis subject to client approval.

The impression I have is the DB has a policy of actively looking for problems and ways to raise barriers or make life difficult. It is really hard to see who this benefits. The ultimate objective is for the ESO to be able to call on reliable capacity to fill an energy shortfall when the system needs it. It is hard to see how a missing date or signature on a document decades old undermines the ability of a power plant to deliver energy to the system, when it has evidenced it has done that elsewhere in an application, and historically over years.

Where the DB has a time period for response the response is invariably at or close to the end of that period. If there is a problem identified, the DB sees this as an opportunity to “reset the clock” and take a further period to undertake its task. For example, if three months are allowed to review a Secondary Trading Application, and an error is found, the DB may take close to three months to reject, and even with a within day turnaround by the Applicant to correct what may be a trivial typo it appears then to think it can take another three months to review what is substantially the same information. Thus it can take over six months to get a Secondary Trading Entrant application approved. It happens so consistently it appears to be a policy more than a workload balancing resourcing issue.

Whilst the Rules do not oblige the DB to undertake pre-deadline checks, they do not prohibit the DB from doing so. A more collaborative approach in assisting Applicants to achieve compliance would appear in the interests of consumers by maximising competition and minimising cost of delivery. Production of hundreds of pages of fancy Powerpoint /PDF documents is no substitute for direct advice on problems faced by Capacity Providers in compliance, particularly when compliance is determined by the DB’s own interpretation of rules for which there is no mechanism of independent review or challenge. It is a step backwards that the face to face surgeries offered previously were withdrawn. Those were a material help in addressing individual issues rather than trawling through generic guidance.

Rejection of prequalification applications or satisfactory performance or milestone information pushes back often material costs onto Applicants or Capacity Providers who are affected, in the form of multiple pages of paperwork in the formal appeals process (where

allowed), or who may face termination. In whose interests is this? Why not work together to try and prevent those appeals/re-applications in the first place?

This is pertinent to the statement in 2.3 and analysis in para 2.7 that DB OPEX is, and has consistently been, below allowed revenues. It appears to me that the DB is permanently and structurally under-resourced to meet the demands on it. The people I contact at the DB are invariably polite and often seem to be struggling as much as me with the systems and the Rules and not able to give appropriate time quickly enough to resolve issues. If costs are less than allowances this falls through directly to National Grid's bottom line, and exposes a fundamental flaw in giving the DB role to a profit motivated monopoly. I support Ofgem's conclusion in 2.13 that this indicates a resource level below requirements. The DB should not be thinking it can "outperform allowances" para 4.4 – because in my view there has been a negative performance and applicant service overall. (I can recall just two instances where someone in the DB has been proactive in contacting me regarding compliance with rules that might well have otherwise been missed with materially negative consequences.)

Beyond that it is not clear why the DB cannot be more pragmatic and reasonable in its assessments and rule interpretations, and be motivated to help the market deliver security of supply at minimum cost rather than worry about whether dates in boxes are correct or whether postcodes match grid references for power plants that have evidenced MWh delivered to the system. In meetings this week I have wasted hours debating whether a handwritten zero that looks more like a six could be a reason for rejection. This is totally irrelevant to the existence or ability of a power plant to generate. So why is this an issue?

I am relieved to see Ofgem has taken on board the widespread industry criticism of the Portal. But one definition of insanity is to do the same thing again and again expecting a different result. To hand development of a replacement to NGESO is, in my view, insane. National Grid has consistently failed to deliver on major IT projects. I have zero confidence in any system for which NGESO is responsible being delivered on time and within budget to meet the requirements of those that use it.

Regardless, a large part of this issue lies with Ofgem and BEIS, as is tacitly acknowledged in the consultation document. The approach to this issue should adopt the ESSA principle: **Eliminate, Simplify, Standardise, Automate**. The IT solution is the Automate end of a process that starts with eliminating unnecessary rules, simplifying compliance, and then looking at how the remaining requirements can be standardised. It is hard to see how throwing IT development money at a problem that is subject to the Five Year Review outcomes of both BEIS and Ofgem can be a good idea. The Rules and Regulations should be subject to a thorough critical review with the question being on each one: "how is this delivering security of supply at lowest cost to the consumer?" This is not suggesting that IT should drive the Rules or Regulations, but it is saying that Rules and Regulations should be questioned very critically especially if they are not easy to implement. Secondary Trading is a case in point. What exactly is intended here? Should Capacity Obligations/Agreements be able to be subdivided in almost infinite ways? Should penalties on Transferees be ratcheted up rather than imposing onerous pre-trade QA requirements? The issue appears to be a lack of clarity in policy intent which translates into muddled complex outcomes scattered amongst the Rules and Regulations.

Before a new IT system is commissioned or any new money allocated, the legal uncertainty of the current standstill needs to be resolved, Ofgem and BEIS should come out with definitive positions from the Five Year Reviews, and there needs to be a thorough review of the existing Rules and Regulations looking to eliminate, simplify and standardise. The Portal is poor, but any replacement runs a huge risk of being little better unless the complexity of the CM Rules and Regulations is reviewed.

In summary I would not support any new money being allocated to NGESO on development of a new IT system. The specification of that new system is still undefined, but regardless NGESO has a track record of being unable to deliver IT solutions on time, to budget, or even at all. The DB should instead be spending its OPEX allowance on more staff who are set the overriding objective of helping the wider industry achieve security of supply at minimum cost, and seeking Rule changes that enable this, rather than demanding compliance with arcane Rules that achieve little other than engendering anger and frustration.

Yours sincerely,

John Harmer