

OFGEM

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## Consultation on market coupling and Levy Exemption Certificates

Dear Sir or Madam,

Neas Energy A/S welcomes the possibility to participate in the consultation on market coupling and Levy Exemption Certificates, as this consultation is a first and necessary step to assess and evaluate any changes to the actual policies and guidelines concerning Levy Exemption Certificates.

We would like to answer Ofgem's questions as follows:

**Question 1: Where renewable electricity is traded implicitly across coupled markets, is it possible to evidence the electricity is consumed (or to be consumed) in the UK? Please explain your answer.**

Yes, it is possible to evidence that renewable electricity is consumed (or to be consumed) in the UK, please see our answer under Question 2.

However, this calls for a decisive change in the current assessment of explicit and implicit capacity booking on the interconnectors. It seems that the general approach in this matter is inconclusive: It is unclear whether the offset is in the physical delivery and transportation of renewable electricity or the contractual path of delivery and transportation of renewable electricity based on pure trading arrangements. This causes several inconsistencies at the time being, as the following example (representative for other examples) might clarify:

In regards of creating sufficient evidence, that renewable electricity has passed the border from e.g. France to the United Kingdom, one could argue that explicit capacity booking (and perhaps also nomination?) on the IFA-Interconnector would be sufficient, which is based on the premise that a physical flow should be evidenced.

This stands in contradiction with another requirement, namely that the renewable electricity in question must be "notionally capable of" reaching (and not "it must reach") the United Kingdom, which is the case if a contractual path for the electricity flow can be documented. This requirement is taking a pure contractual offset, as the contractual path is per definition independent of any physical flow.

Another contradiction is, that it already today seems to be acceptable evidence to argue, that the capacity interconnectors between countries which are part of the

market coupled CWE region are used implicitly only, due to the existing market coupling, which makes the renewable electricity in question notionally capable of reaching the IFA-Interconnector. However, the applicable evidence on IFA should be in the form of explicit capacity, even though the IFA Interconnector is at least partially open for implicit capacity booking already.

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Therefore, the future approach in this matter must take offset in the premise, that the basis for the transfer of renewable electricity is purely contractual and not physical.

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**Question 2: What evidence might generators use to demonstrate that an overseas LEC represents electricity that is consumed or is to be consumed in the UK when that electricity has been traded implicitly across coupled markets?**

Due to the market coupling, which comprises also the UK market, the evidence for the contractual trading path would consist of the following steps, if the electricity is traded on power exchanges within the marked coupled area:

1. Evidence, that the LEC producer sold the relevant amount of renewable electricity (which was fed into the grid of the originating and market-coupled country) directly or indirectly via a third party on a power exchange within a market coupled country; and
2. Evidence, that a corresponding amount of electricity was bought by an offtaker in the United Kingdom on a power exchange; and
3. Evidence, that the final offtaker has sufficient contracts with end-consumers based in the UK, which allow at least for the consumption of the relevant amount of renewable electricity; and
4. The matching Guarantees of Origin for the specific amount of renewable electricity must be cancelled for consumption in the United Kingdom, as this cancellation (in accordance with directive 2009/28/EC) "moves" the green benefit apportioned to each MWh of renewable electricity the specific power generator has generated from the country of origin to the UK.

If the electricity was to be traded OTC, the path of evidence would look like this:

1. Evidence, that the LEC producer sold the relevant amount of renewable electricity (which was fed into the grid of the originating and market-coupled country) directly or indirectly via third parties to an offtaker located in the United Kingdom.
2. Evidence, that the final offtaker has sufficient contracts with end-consumers based in the UK, which allow at least for the consumption of the relevant amount of renewable electricity.
3. The matching Guarantees of Origin ("GoO") for the specific amount of renewable electricity must be cancelled for consumption in the United Kingdom, as this cancellation "moves" the green benefit apportioned to each MWh of renewable electricity the specific power generator has generated from the country of origin to the UK.

In both cases, the market-coupling mechanism is guarantor for the fact, that all energy which has been fed into the market-coupled grid is potentially “consumable” anywhere within the market coupling area. The GoO as a tracking system is preventing abuse of the LEC system, as double usage is not possible. The cancellation of the GoOs creates the legal status that the specific renewable electricity which is represented by each GoO is actually consumed in the UK.

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**Question 3: Are stakeholders aware of any reasons for limiting the issue of overseas LECs to electricity that has been or is to be explicitly traded? Please explain your answer.**

No, quite the contrary. If Ofgems guidance from 2008 and Regulation 48(5) was to be interpreted in such a way that the issuance of LECs where proof that imported renewable energy has been consumed in the UK depends on participation in an explicit capacity auction as imposed to an implicit capacity auction, this would contravene European law.

In the first place the imposition of such an evidentiary burden would restrict free movement of goods and would be contrary to Article 34 TFEU. This restriction could not be justified on the basis of Article 36 TFEU as it is neither necessary nor proportionate. Alternative means to ensure that the renewable energy is indeed consumed in the UK are available (e.g. Renewables Directive 2009/28, GoOs, statistical transfer ex post). Secondly, if Ofgem was to restrict the import of non-domestic renewable energy this would result in a fiscal advantage for domestic renewable energy which would in turn be contrary to either Article 30 or Article 110 TFEU.

**Question 4: Are stakeholders aware of alternative ways of demonstrating proof of GB supply of overseas electricity that do not involve LECs, and, if so, what are they?**

As said above, Renewables Directive 2009/28, GoOs. If a GoO originates from and is cancelled for consumption in Denmark, then the electricity which is represented by this GoO is consumed in Denmark (and nowhere else). If the cancellation is made for consumption in the UK, then the electricity which is represented by this GoO is consumed in the UK.

However, in order to treat both UK-producers of LECs and non-UK-based producers of LECs equally, the cancellation of REGOs should be mandatory for UK-based producers to proof consumption of the renewable electricity in the UK.

**Question 5: Do stakeholders currently acquire LECs purely for non-CCL purposes?**

We are not aware of that.

## Question 6: What do stakeholders foresee as potential impacts if:

**6.1 Overseas renewable electricity can be demonstrated as consumed (or to be consumed) in the UK where it has been implicitly traded, and LECs are issued for this accordingly?**

The existing restrictions for importers of renewable electricity would be removed, oversea participants on the LEC market would be treated equally to UK participants.

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**6.2 Overseas renewable electricity was only accepted as consumed (or to be consumed) in the UK (and LECs issued accordingly) where there is explicit booking and nomination of interconnector capacity?**

Due to our argumentation under question 3, this is not considered to be an option.

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If any of the answers above should become subject to further questions or if any assistance is needed to develop and assess the new approach on the issues above, please do not hesitate to contact us.

Sincerely yours,

Neas Energy A/S

Johannes Leopold  
Rechtsanwalt & Advokat / Legal Counsel