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Dear Mike

Authority decision to direct that the modification report on CUSC modification proposal CMP261 'Ensuring the TNUoS paid by Generators in GB in Charging Year 2015/16 is in compliance with the €2.5/MWh annual average limit set in EU Regulation 838/2010 Part B (3)' be revised and resubmitted

On 8 March 2016, SSE (the 'Proposer') raised Connection and Use of System Code (CUSC) Modification Proposal (CMP) 261, requesting that it be treated as an Urgent CUSC Modification Proposal.

On 11 March 2016, the CUSC Modifications Panel (the 'Panel') wrote to inform us of its majority view that CMP261 should not be treated as urgent because the proposal would require careful consideration and industry consultation.

We considered both the Panel's and the Proposer's arguments, and on 17 March 2016 published a letter confirming CMP261 could not be progressed on an urgent basis. Our letter made clear that we did not consider that failure to deal with this urgently would have a significant commercial impact on parties, consumers or other stakeholders.

On 30 November 2016, the CUSC Panel submitted a Final Modification Report (FMR) for CMP261 to the Authority. We have decided that we cannot form an opinion on CMP261 based on the FMR submitted and we therefore direct that the FMR is revised and resubmitted. We recognise stakeholders concerns around the time taken to address this issue. However, we consider that there are clear deficiencies in the FMR which need to be addressed before we can make a decision in respect of CMP261.

Issues to address

We have identified the following issues with the FMR:

- the legal text included in the FMR is not consistent with the options discussed in the FMR.
- if there has been a breach, it is not clear that the options submitted to us remedy it, i.e. that they reimburse the right users the right amount of the alleged overcharge.

Legal text

The rebate specified in the legal text for the Original Proposal and WACM1 is £1.71/kW. However, applying the method for calculating the generator rebate discussed in the FMR results in a rebate of £1.66/kW. We consider that this is an error in the legal text, which does not apply the method discussed and voted on by the workgroup and the Panel. This should be corrected before resubmission.

For WACM2 and WACM3 the formula for determining the demand residual in the year that charges would be adjusted appears to be in error. The intention from the FMR, is that the total 'over charge' is subtracted from the generation residual pot (i.e. the total revenue recovered from/paid to generation via the generation residual) and added to the demand residual pot. However, the formula included in the legal text for calculating the demand residual subtracts, rather than adds, the revenue adjustment. This should be corrected before resubmission.

Additional analysis required

If a breach has occurred, our initial legal view is that any remedy must ensure that generators receive a rebate such that their charge for 2015/16 is, following reimbursement, equal to what it would have been had the forecasts used by National Grid to set the G proportion of revenue resulted in an average charge of €2.5/MWh. From the FMR it is not clear that the workgroup has adequately considered whether the proposals reimburse the right people the right amount of money. In particular, we ask that the workgroup considers the following:

- The Original and WACM1 include rebates in respect of wider cancellation charges. However, these charges are not affected by the G proportion of revenue. Therefore, we ask the workgroup to consider whether it is sufficiently clear why these charges are included calculating the size of the pot of revenue to be paid back and whether generators should receive a rebate respect of these charges.
- Which generators should be reimbursed and on what basis, e.g. whether only those that have potentially overpaid (compared to what they would have paid if the G proportion of revenue had been set to meet average charge of €2.5/MWh) should be reimbursed. If so, whether they should be reimbursed only on the basis of their proportion of the overcharge. Similarly, we ask the workgroup to further consider how generators which allegedly overpaid but have since closed or reduced TEC should be treated.

Other issues

While the above issues with the FMR submitted to us are clear, we have not yet reached a view regarding whether, and if so to what extent, a breach has occurred. To mitigate the risk of further delay, the workgroup may wish to consider developing other options in order to ensure that, if there has been a breach, we have an option available to us that remedies that breach in a manner that is consistent with our principle objective and statutory duties. We also note that the legal text forms part of the FMR. As such, we consider it is the responsibility of the workgroup as a whole to ensure that the legal text reflects the options that they develop. We encourage them to ensure the legal text resubmitted to us is clear and accurate.

After addressing the issues discussed above including considering whether other options should be developed, and revising the FMR accordingly, the CUSC Panel should re-submit it to us for decision as soon as practicable.

Yours sincerely

Andrew Self

Head of Electricity Network Charging, Energy Systems

Signed on behalf of the Authority and authorised for that purpose