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9th September 2009

Modification Proposal 262: Treatment of Capacity affected by Force Majeure

Dear John,

RWE npower offers qualified support for the above Proposal.

Providing Users with rebates against their capacity charges when capacity they hold is affected by National Grid NTS's force majeure is something we support in principle. We believe this fulfils the relevant objective of securing effective competition between relevant shippers and between relevant shippers and DN Operators. However our support is qualified as we are unsure exactly how the Force Majeure Option Agreement and the Force Majeure Forward Agreement referred to in the Proposal are expected to work.

Our understanding is that the Force Majeure Option Agreement will be used as a mechanism for effecting the capacity reduction that is required as a consequence of the force majeure and for varying the constraints that may prevail during its term, both in line with the FM Notification given under General Terms Section B.3.3. As such we would have expected the draft legal text to clearly spell out the five components of the Force Majeure Option Agreement that are listed in the Proposal and that Force Majeure Option Agreement will be effected on National Grid NTS's systems within 2 business days, however this is not the case.

As regards the Force Majeure Forward Agreement referred to in the Proposal, we assume this would take the same form as any other bi-lateral Capacity Management Agreement that National Grid NTS may choose commercially to enter into and so we are unsure why this has been referred to specifically in the Proposal.

The draft legal text (Sections B.2.8.10 and B.3.9.7) fails to add any clarity as it says that Users shall grant National Grid NTS a zero exercise price option under which, on an FM day, National Grid NTS may accept additional surrender of capacity where it is required to utilise a Capacity Management Agreement. However such an option would presumably be used in circumstances where National Grid NTS require additional surrender of capacity as a consequence of a deterioration in the circumstances causing the force majeure not in response to it utilising a Capacity Management Agreement, which is a commercial agreement negotiated bilaterally

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with a User who is prepared to surrender capacity voluntarily.

Finally we note that Sections B.3.14.2 and B.3.14.3 of the draft legal text incorrectly replicate the entry equivalent text (Sections B.2.15.2 and B.2.15.3). The price of any Exit Capacity rebate should be the actual price prevailing at the time (as noted in the Proposal) because Exit Capacity is not subject to price auction.

Yours sincerely,

Steve Rose*
Economic Regulation

* sent by e-mail therefore not signed