

**Maloney, Craig**

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**From:** garth.graham@sse.com  
**Sent:** 11 October 2010 11:43  
**To:** Duffield, Mark  
**Cc:** .Box.Energy.Operations  
**Subject:** Re: FW: Short Term Operating Reserve (STOR) Service - Outline Change Proposals Document (OCP-02)

Dear Sirs,

**Short Term Operating Reserve (STOR) Service - Outline Change Proposals Document (OCP-02)**

This response is sent on behalf of Scottish and Southern Energy, Southern Electric, Airtricity Developments (Scotland) Limited, Airtricity Developments (UK) Limited, Clyde Wind Farm (Scotland) Limited, Dalswinton Wind Farm (Scotland) Limited, Greenock Wind Farm (Scotland) Limited, Griffin Wind Farm Limited, Keadby Developments Limited, Keadby Generation Limited, Medway Power Limited, Minsca Wind Farm (Scotland) Limited, Slough Energy Supplies Limited, SSE (Ireland) Limited, SSE Energy Limited and SSE Generation Limited.

In relation to the consultation associated with the "Short Term Operating Reserve (STOR) Service - Outline Change Proposals Document (OCP-02)", contained within your email of 27th September 2010, we provide our comments below. First, we have some general comments; second, we have answers to the nineteen questions posed in the consultation document itself.

**General Comments**

We note the statement in paragraph 61 that:-

"In the interim, prior to implementation of any revised terms, it is National Grid's intention not to despatch a BM Reserve Provider that fails to submit an Offer Price in line with Contract Bid-Offer Price."

We set out, in detail, below our arguments as to why this change should not take place.

However, notwithstanding those arguments we do not accept the unilateral action (set out in paragraph 61) that National Grid is taking to change the contractual terms without consultation. Such an approach can only serve to totally undermine the trust that contracting parties have in National Grid - which, in our view, would be a very regrettable state of affairs. What other terms in the contract will National Grid "in the interim, prior to implementation of any revised terms" change?

Furthermore, this interim action taken by National Grid prior to implementation of any revised terms makes a total mockery of this consultation itself - as it clearly demonstrates that National Grid has already decided that the proposed amendment, to sub-paragraph 2.3.1 of the SCTs, will be put into effect despite any comments / views etc., it receives from this (OCP-02) consultation.

National Grid, by taking this unilateral action, has forfeited its ability to impartially consider the consultation responses it receives as it has already determined that the change should be implemented (and has, in fact, implemented the change by virtue of the action it has already taken "not to despatch a BM Reserve Provider that fails to submit an Offer Price in line with Contract Bid-Offer Price"). The fettering of National Grid's discretion in this matter does leave National Grid open to potential legal challenge.

Notwithstanding our general comments we do have comments on the specific questions raised in the (OCP-02) consultation document.

**Answers to the specific questions**

Q1 Yes  
 Q2 Yes  
 Q3 Yes  
 Q4 Yes

Q5 /Q6 our answers to these questions are shown below.

Q7 Yes  
 Q8 No  
 Q9 - No comment  
 Q10 - No comment

Q11 / Q12 / Q13 our answers to these questions are shown below.

Q14 Yes  
 Q15 Yes  
 Q16 Yes  
 Q17 Yes  
 Q18 No  
 Q19 No

**Question 5** - Would you consider a Remedial Plan to be a welcome introduction to the Standard Contract Terms? / **Question 6** - Do you have any comments with regards to the proposed process presented in Figure 3, particularly on the timescales?

Yes. We welcome the introduction of a formal process to rectify any issues which may have led to Events of Default, failed Repeating Tests and Force Majeure. In our view, a Remedial Plan would be a welcome introduction to the Standard Contract Terms.

We are mindful that depending on the nature of the problem, a fix may not be instantaneous but require investigation and monitoring of the plant with the periods for submission of the Remedial Plan and acceptance/rejection of the same by National Grid potentially taking up to 7 weeks alone (as shown in figure 3). During this Suspension Period no availability payments are made by National Grid to the Reserve Provider. However, if this Suspension Period is also subject to a term reconciliation, this may seriously erode the availability income.

We therefore believe it is imperative to exclude the Suspension Period from the term reconciliation in all cases, not just in circumstances of Force Majeure.

In addition, we believe it would be useful for both the Reserve Provider and National Grid not to suspend a contract (in this situation) but to agree different parameters for a period while a problem is fixed at a plant.

Currently, Reserve Providers only have the option of reducing the Contracted MW at the start of a season. Season 2, for example, can last more than three and a half months. If a problem arises at the beginning of Season 2, the Reserve Provider would have to either make the plant unavailable or risk numerous Events of Default throughout this Season 2. More flexibility (to agree different parameters for a period while a problem is fixed at a plant) would, in our view, be beneficial to both National Grid and the Reserve Provider.

**Question 11** - Do you consider that it would be appropriate for National Grid to amend the SCTs such that a BM Provider is required to submit an Offer Price identical to the Contract Bid-Offer Price, with an Event of Default to be incurred for failure?

We do not consider that it would be appropriate for National Grid to amend the SCTs such that a BM Provider is required to submit an Offer Price identical to the Contract Bid-Offer Price, with an Event of Default to be incurred for failure.

We agree with National Grid that accepting lower prices "would represent a more economic solution in the operation of the transmission system" (as stated in paragraph 55). In our view if National Grid were to proceed with this proposed change (to amend the SCTs) they would be in direct breach of their licence

obligation to operate the transmission system in an economic and efficient manner. This is because National Grid would be preventing lower (and thus more economic and efficient) prices being paid for the provision of STOR services. To not only remove such an ability (to lower prices) but to then compound this by declaring it an Event of Default is a gross injustice in our view.

The suggested justification, by National Grid, for this change (to amend the SCTs) is flawed. It appears to be based on two main arguments (a) systems and (b) discrimination.

#### a) Systems

On the matter of systems, we note the statement in paragraph 56 that:-

"whilst BM systems currently enable Reserve Providers to submit Offer Prices below Contracted Bid-Offer Price in this way, the systems for non-BM Reserve Providers do not have this functionality."

We accept this is the case.

However, we note that National Grid has made no attempt whatsoever to consider or develop (in this OCP-02 consultation) a manual work around for this functionality (until such time as NG can implement the necessary IT changes). Why, for example, can National Grid not allow non-BM Reserve Providers to submit faxed or emailed price changes (downward only) daily or a few times each day?

Furthermore, we are mindful that National Grid has been willing to consider and develop a manual work around solution for post 2005 interconnectors to be able to provide frequency response as per the BSC Modification Proposal P259 (which National Grid proposed).

Is National Grid satisfied that they are acting (with respect to this OCP-02 consultation) in a none discriminatory manner by not offering a manual work around solution whereby non-BM Reserve Providers could have the functionality to submit lower prices, particularly when National Grid is willing to undertake such a manual work around (in a similar situation where the IT system change is not yet in place) for an organisation in which its parent company has a substantial share holding, namely BrtiNed and the P259 solution?

#### b) Discrimination

On the matter of discrimination, we note the statement in paragraph 62 that:-

"In this way, National Grid can best ensure that the STOR market operates in a non-discriminatory manner as between BM and non-BM Reserve Providers."

Notwithstanding our comments under (a) above (about a manual work around) we do not accept that National Grid would be acting in a discriminatory manner if it were to continue to permit BM Reserve Providers to submit Offer Prices below Contracted Bid-Offer Price.

National Grid's case, with respect to discrimination, appears to be based on a flawed premiss. National Grid seems to ignore the fact that providers of STOR, such as generators, have a choice to be either (i) a non-BM Reserve Provider or (ii) a BM Reserve Provider.

There are benefits (such as receiving embedded benefits - as a non-BM Reserve Provider may obtain, but a BM Reserve Provider may not) and costs (such as paying TNUoS - which a non-BM Reserve Provider may avoid, but a BM Reserve Provider pays) either way for the Reserve Provider.

Providers, such as generators, weigh up, depending on their size, operating regime, etc., whether they wish to be BM registered or not. Included within this calculation / commercial assessment (of becoming a non-BM Reserve Provider or a BM Reserve Provider) is whether they can access other opportunities; such as the provision of ancillary or other services (including STOR); or not.

Thus it is not National Grid who would be acting in a discriminatory manner - rather its the Reserve Provider, in freely choosing not to be BM registered, who is self de-selecting itself from the STOR market. The non-BM

Reserve Provider can rectify this by becoming a BM registered unit (and give up the other benefits etc., they receive from being a non-BM registered unit).

In addition we note that currently, non-BM Reserve Providers have the option, when providing STOR services to National Grid, of choosing between (1) a committed and (2) a flexible contract (which contains an opt out at week ahead stage). However, BM Reserve Providers only have the ability to sign up to a committed contract - they are not offered, by National Grid, the ability to sign a flexible contract.

If National Grid is keen to address matters of discrimination then this clear case of discrimination should be addressed forthwith; by allowing BM Reserve Providers (as well as non-BM Reserve Providers) to sign either a flexible contract (which contains an opt out at week ahead stage) or a committed contract for STOR services.

Finally, we are perplexed that National Grid whilst seeking to address matters of purported discrimination plan, themselves, to discriminate against Scottish companies with the proposed tri-partite "Direct Agreement" (see page 27 of the consultation document) by excluding Scottish registered companies from signing up to the agreement.

**Question 12** - Do you consider it appropriate that National Grid should be giving consideration to developing the non-BM despatch systems to facilitate a STOR market whereby all Reserve Provider can reduce their utilisation prices within day?

Absolutely. We fully support the development of this functionality and believe, as noted above, that National Grid should introduce (with the utmost alacrity) a manual work around solution so that as many providers as possible can participate in the STOR market at the earliest opportunity, as this should lead to increased competition which is the most economic and efficient thing to do.

However, this does beg the question "why has it taken so long"? We note that it is National Grid's clear failure, to date, to develop the necessary IT system functionality (or any manual work around) that has given rise to the difference in treatment between non-BM and BM Reserve Providers of STOR services (rather than, for example, any action on the part of non-BM and BM Reserve Providers).

Its this lack of action, on the part of National Grid, in developing the necessary IT systems (or a manual work around) which is now being used as the justification for unilaterally (and detrimentally to us) altering the contractual terms under which we offer (STOR) services to National Grid.

**Question 13** Do you have any comments with regards to National Grid's proposals to introduce a tri-partite Direct Agreement in the interests of facilitating the necessary funding for new STOR plant and apparatus?

We do not support National Grid's proposals to introduce a tri-partite Direct Agreement.

First, we are not certain that National Grid has the vires to contract, for STOR services, with a party that is (i) not licensed or exempted under the Act or (ii) which is not bound by the industry codes; such as the BSC, Grid Code, Distribution Code, CUSC, DCUSA etc.

We note the statement in paragraph 64 that:-

"The rationale for this was to provide a funder with a right to step into a contract and protect its investment if necessary."

How, if they are not, for example, a party to the BSC, Grid Code, Distribution Code, CUSC, DCUSA etc., can a funder; i.e. a bank; "step into a contract" when the contract in question is solely to provide STOR services to National Grid?

Furthermore, is National Grid legally able to contract with a funder (who steps into a contract) for the provision of STOR services when they, as funder, have no assets able to provide STOR services (as the assets reside with the Reserve Provider or Administrator / Liquidator / Receiver etc.) ?

Second, we do not see why this tri-partite agreement is needed. The funder, by virtue of their position of

power (in being able to refuse funding) is able to require the Reserve Provider to meet (and exceed) all the requirements set out in the draft tri-partite Direct Agreement as regards securing their (funders') needs. Such a bi-party agreement (between the funder and Reserve Provider) does not require a third party; i.e. National Grid; to be effective.

Third, notwithstanding our first point, we question the legality of the agreement as it appears to conflict with the law as regards Liquidation / Receivership / Administration (which is the 'normal' way that a funder has the "right to step into a contract and protect its investment if necessary").

In this regard we note the statement in paragraph 2.5 that in the event of default:-

"National Grid shall pay any sum which it is obliged to pay to the Reserve Provider under the STOR Framework Agreement and any STOR Contract to a bank account specified by the Security Trustee"

Why should National Grid be a party to an agreement which, it appears, would allow the funder to potentially circumvent the law regards Liquidation / Receivership / Administration? Funds owed by National Grid to the Reserve Provider, in the event of default (such as being placed in Administration/ Receivership etc.,) should either continue be paid to the Reserve Provider or the Court appointed body; e.g the Administrator or Receiver; and not to a bank account specified by the funder (who may or may not be 'first-in-line' for payment should the Reserve Provider be in a position of default).

Fourth, we have a number of additional comments on the draft of the tri-partite Direct Agreement itself which we set out below.

(a) the definitions of "Credit Agreement" and "Security Documents"

Both definitions refer to highly sensitive documents having to be provided (by the funder / Reserve Provider) to National Grid. Such documents (as they relate to the funding of the Reserve Provider's asset) are likely to be highly commercially confidential. Access to this level of information would place National Grid in an extremely advantageous position (of knowing, for example, the funding details, planned operating regime, planned levels of income (from STOR and other services) etc., as well as its profitability, for a new power station). We do not accept that National Grid should, by virtue of the tri-partite Direct Agreement, be able to compel or coerce Reserve Providers to provide this highly commercially confidential information to National Grid by way of this tri-partite Direct Agreement.

Notwithstanding this, if this element is to remain in the tri-partite Direct Agreement then we expect National Grid to be bound by Section 105 of the Utilities Act 2000 in terms of not disclosing that information to others or using it for other purposes than that for which it was provided to it for (namely the provision of STOR services only).

Furthermore, if National Grid were, despite our concerns, to access this confidential information they would need to satisfy themselves that they were complying fully with EU Procurement, Competition and Trade laws.

(b) the definition of "Representative"

Notwithstanding that the agreement is tri-partite, it appears from the definition of "Representative" (and paragraph 2.4) that the "Security Lender" is also a beneficiary of the tri-partite Direct Agreement (without needing to be a party, and thus be bound, by the agreement itself). Whys is this the case? Why cannot all parties who could benefit from the agreement not also be bound to sign the agreement?

(c) Wind-up

We note the statement in paragraph 8.2 that:-

"National Grid shall not take any action to wind up, appoint an administrator or sanction a voluntary arrangement (or similar) in relation to the Reserve Provider without giving to the Security Trustee not less than 20 days notice in writing."

This is discriminatory and in our view wrong.

In the event of two identical Reserve Providers one ("X") which is party to a tri-partite Direct Agreement whilst the other ("Y") is not then should they both fall into financial hardship etc., they will be treated differently by National Grid. We cannot accept that the funder(s) of X are given twenty days notice (by National Grid) during which they can take steps to protect their commercial position whilst the funder(s) of Y have no such 'grace period'.

Furthermore, by deliberately delaying taking action against X National Grid is placing all other BSUoS payers at a financial disadvantage as any payment / financial shortfall (arising from National Grid not taking action at the earliest opportunity - rather than waiting till the 20 days notice period has elapsed) will not be paid by National Grid but by the all other industry parties via their BSUoS bills.

(d) Prevailing rights

We note the statement in paragraph 8.6 that:-

"If there is any conflict or inconsistency between the provisions of this Agreement and the STOR Framework Agreement or any STOR Contract, the provisions of this Agreement shall prevail."

This is discriminatory and in our view wrong.

In our above example, this would allow X to avoid obligations place upon it (and Y) in the the STOR Framework Agreement or any STOR Contract (where it conflicted with the tri-partite Direct Agreement) which all other Reserve Providers (such as Y) would still be bound to comply with.

In our view this is placing the 'cart before the horse' (by placing, legally, the tri-partite Direct Agreement ahead of the STOR Framework Agreement or any STOR Contract).

National Grid's licence obligation is to procure STOR services, rather than to seek ways to allow a party (X), who freely contract to provide STOR services, to avoid their (STOR service) obligations.

Allowing a party (X) to avoid its STOR contractual obligations means National Grid is failing to meet its obligations as System Operator. If there is a conflict between the tri-partite Direct Agreement and the STOR Framework Agreement or any STOR Contract then, in our view, the STOR Framework Agreement or any STOR Contract should prevail over the tri-partite Direct Agreement.

Yours faithfully

Garth Graham  
Electricity Market Development Manager  
SSE

From: "Duffield, Mark" <mark.duffield@uk.ngrid.com>  
To: "Duffield, Mark" <mark.duffield@uk.ngrid.com>  
Date: 27/09/2010 17:05  
Subject: FW: Short Term Operating Reserve (STOR) Service - Outline Change Proposals Document (OCP-02)

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Dear Industry Colleague

National Grid has today published an Outline Change Proposals Document (OCP-02) relating to the

18/10/2010

