

The material in this paper is work in progress and is not a statement of government policy or policy intent

DISPUTE RESOLUTION PROCEDURE PROPOSAL

Introduction

A bespoke dispute resolution process has been developed for around the Capacity Market pre-eligibility determination and de-rating factor applied; decisions being taken by National Grid. This process will enable more timely and cost effective dispute resolution than that provided by disputes going directly to Judicial Review and allow greater access to smaller players. A three tier process is being proposed with the principal aim being to ensure that as many disputes around eligibility can be resolved prior to the capacity auction. De-rating factor disputes can be resolved in slightly a longer timeframe.

Process

Tier 1

The first tier of the dispute resolution process will be interaction between the appellant and National Grid. We envisage this to be primarily a fact checking step to ensure that any potential errors or miscalculations have been highlighted to National Grid to give them the opportunity to make amendments. The appellant must notify National Grid and Ofgem of their intention to dispute the determination within 5 working days of notification of the decision and provide supporting documentation / arguments by the end of this period.

National Grid will then have 5 working days to respond to the appellant upholding their original decision or amending it where they consider appropriate. If this result is disputed further then the appellant must formally notify and provide Ofgem with supporting documentation / arguments within 5 working days of receiving the decision from National Grid.

Tier 2

Ofgem will have 15 working days to resolve pre-eligibility disputes and 40 working days to resolve de-rating factor disputes. We envisage that Ofgem would only be able to review the information provided to National Grid at tier 1 to ensure that National Grid took the decision correctly. Ofgem must make a determination in favour of one of the two parties and this decision will be substituted for the original.

Should an unsuccessful appellant wish to make a formal appeal against Ofgem's decision, they must submit their notification to appeal to the court within four weeks of receiving Ofgem's decision.

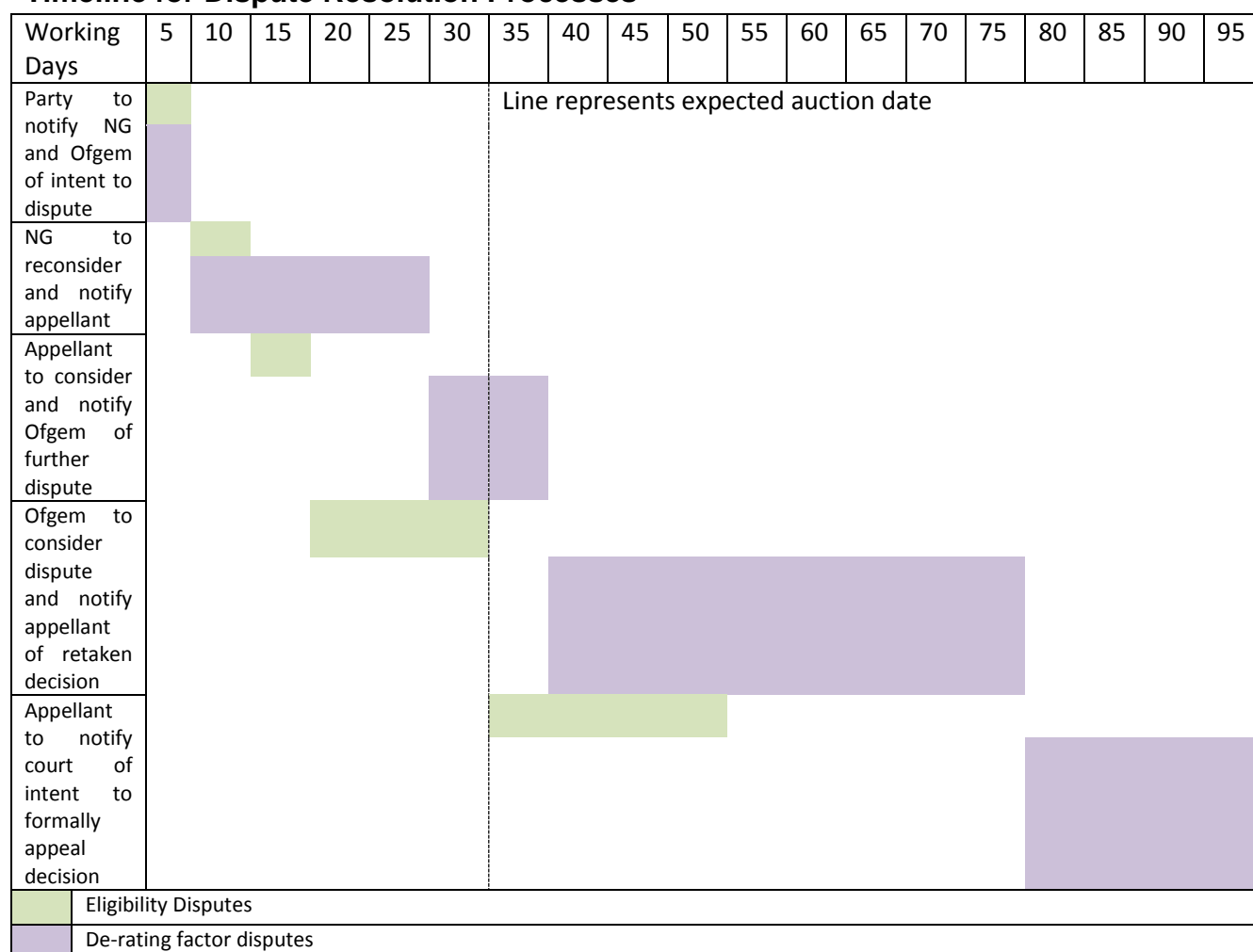
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Tier 3

The Court to which these appeals would be submitted is the High Court in England and Wales, and the Court of Session in Scotland. At tier 3 of the dispute resolution process Ofgem would be the defendant.

We propose to recommend to the court that, should an applicant be successful in appealing at this tier¹, that that person is offered a Capacity Agreement for the amount of capacity under dispute (in both the case of eligibility and de-rating disputes) valued at the clearing price² for the auction in which they were originally deemed ineligible to participate in. The auction result would not be re-run nor its results affected. It is also intended that the option of delaying capacity payments and obligations (by the duration of the dispute resolution process) would be offered to the successful appellant.

Timeline for Dispute Resolution Processes



¹ This is based on the assumption that the court procedure would not be completed prior to the auction. Should a determination be made prior to the auction it is expected that the successful appellant would only be awarded inclusion in the auction.

² Clearing Price – This is the price at which all participants are paid for each unit of capacity they guarantee to provide in the event of a system stress event.

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Appeals to Capacity Auction Outcome

It is proposed that there will be no dispute resolution or appeals processes put in place specifically for the Capacity Market auctions. The auctions will be entirely mechanistic and based solely on the price bid in. This does not however remove the right of a party to appeal the decision through existing statutory mechanisms (directly to a court).