

Electricity Market Reform – stakeholder bulletin on National Grid’s Call for Evidence

21st November 2012

Introduction:

1. National Grid published a call for evidence¹ on 9th October 2012 to gather data and evidence that will be used in the analysis it will undertake to inform strike prices for Contracts for Difference (CfD) for renewable technologies as part of the Government’s Electricity Market Reform (EMR) delivery plan. The approach being taken to produce the EMR delivery plan will be in line with that followed for the recent Renewables Obligation Banding Review, using existing data where possible and seeking new data through a similar approach as that applied in the earlier process.
2. The purpose of this bulletin is to explain the ways in which the Department of Energy and Climate Change (DECC) will use the data and information gathered by National Grid through the Call for Evidence, how the Department will treat the information, in line with the protections in place. National Grid has also published² an information bulletin on the closing dates of the call for evidence and to give further clarity on their usage of the data and protections in place.

National Grid’s use of the information:

3. National Grid’s sole purpose for the data being collected is for the determination of assumptions to inform its analysis of CfD strike prices for renewables. The analysis will inform Government’s decisions to be contained within the first EMR delivery plan, to be published in 2013, subject to Royal Assent. Government will formally commission this analysis and publish that commission alongside the introduction of the 2012 Energy Bill.
4. DECC and National Grid have entered into a Confidentiality Agreement³ which requires National Grid to keep information related to the EMR project confidential and to put in place certain safeguards to protect this information. This covers all non-public or proprietary information or material (including in relation to participants in the energy industry) about or in relation to the EMR project obtained or learned by National Grid or any of its affiliates. The information and data provided by respondents to the call for evidence will fall within the scope of, and be subject to, this Confidentiality Agreement. In addition, National Grid is under an obligation to ensure that any consultants appointed by National Grid to assist with this call for evidence (for example, in verifying the data) enter into these confidentiality agreements.

DECC’s use of the information:

5. The data and information gathered through the call for evidence will be made available to DECC solely for the following purposes:
 - Determining assumptions on generation costs for different technologies. These will be used as inputs to the modelling of CfD strike prices for renewables to inform the EMR delivery plan, in estimating levelised costs for different technologies (used to allow the comparison of costs across technologies), and, to ensure consistency, for other electricity modelling the Department requires e.g. modelling pathways to 2050, and;
 - Determining assumptions on other areas as they are relevant to the EMR delivery plan, for example hurdle rates for different technologies which, to ensure consistency, would also be used in other electricity modelling the Department requires.

¹ <http://www.nationalgrid.com/uk/Electricity/Electricity+Market+Reform/index.htm>

² <http://www.nationalgrid.com/uk/Electricity/Electricity+Market+Reform/CfE+Clarification/>

³ http://www.decc.gov.uk/en/content/cms/news/nat_grid_mou/nat_grid_mou.aspx

6. For the purpose of the EMR delivery plan, the main reasons we need to receive the data are to support our ability to:
 - provide analytical support to National Grid in processing the data gathered,
 - understand the detailed data which has informed the modelling inputs in particular areas, for example to understand the cost assumptions applied or the correlation of different factors with costs that may be specific to plants (such as location or operational factors such as water depth), and;
 - ensure the Panel of Technical Experts can scrutinise the analysis in the appropriate way.
7. Any respondents who do not want it to be used for any other purposes are asked to state this clearly in their return.
8. There may be some cases where the Department uses consultants to support the above areas of work, who may therefore require access to the data. This includes the Panel of Technical Experts as and when they are appointed, and any consultants we might appoint in future to support the Department in determining assumptions on generation costs for different technologies and related modelling. In appointing any such consultants, the Department would ensure that appropriate confidentiality arrangements are put in place, for example through contract terms and conditions.
9. In addition to the data received through National Grid from this call for evidence, it may be that future elements of the EMR delivery plan process result in DECC receiving data directly. For example, during the recent public consultation on the Renewables Obligation Banding Review, DECC received data in disaggregated form directly from developers, so it is right we have the appropriate processes in place now to ensure we can deal with such information appropriately.

Form of data:

10. DECC would normally receive the data from National Grid in anonymised and aggregated form. However, there are certain circumstances in which DECC may require access to the data in disaggregated form, as set out in paragraph 6 above. If we asked to see specific data in disaggregated form it would be anonymised to the extent possible.

Protection of data

11. We are aware that some developers have expressed concerns about sending commercially confidential data to National Grid that could be at risk of release under the Freedom of Information Act 2000 (FOI) or the Environmental Information Regulations 2004 (EIR). National Grid do not consider that they are currently subject to requests made under either the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIR). However, we recognise the importance of these concerns for any data that is passed onto DECC and, while we are unable to provide an absolute guarantee of exemption, we hope the further information in the paragraphs below, about how commercially confidential data is likely to be treated by DECC, is helpful.
12. Firstly, any responses to National Grid to the call for evidence should be marked as commercially confidential, if that is the case.
13. Should the Department receive any FOI or EIR requests which we believe encompass that data, our first step would likely be to contact the affected party/ies, either directly or through National Grid, and enquire whether the data was still commercially confidential. If the affected party/ies confirmed that this was still the case, we would consider whether the data was exempt from disclosure. Although any request for information would have to be considered on a case by case basis at the

relevant time, this type of data would seem most likely to be “environmental information” falling within the scope of the EIRs, rather than the Freedom of Information Act 2000, with exemption being most likely to apply under Regulation 12(5)(e) of the EIRs.

14. Regulation 12(5)(e) exempts information where the disclosure of the information would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest. This exemption is subject to the public interest test, and we are required to apply a presumption in favour of disclosure, under regulation 12(2) i.e. there is a general public interest in the disclosure of information. Disclosure can help lead to greater transparency and accountability in Government. Depending on the circumstances, there may be other factors that weigh in favour of disclosure which we would need to consider.
15. However, we would also consider the public interest in ensuring that commercial and economic interests of external businesses are not damaged or undermined by disclosure of information which is not common knowledge, and which could adversely impact on the business in question. In addition, we would also consider whether the release of such information would make it less likely for commercially sensitive information to be provided to the Department in the future, and whether that would undermine the ability of the Department to fulfil its role.
16. To provide an example of this in practice, in the case of an EIR request around responses to Government’s fast-track review of Feed-In-Tariffs, some company data submitted as part of a response was judged to fall within the scope of the EIR request. However, that company confirmed that the data remained commercially confidential, and the data was withheld on the grounds that the company (though anonymous in their submission) could be identified by other parts of their response, and that this could result in public disclosure of the commercial undertaking of the company, and thereby expose them to target competition. In this case, the public interest in withholding was held to outweigh the public interest in disclosure.