127 Baggot Street Lower,
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3rd of June 2016

RE: DS3 contracts for interim arrangements

Dear sir/madam,

We are grateful for the opportunity to respond to the consultation on DS3 contracts for interim arrangements. Our response will outline concerns and make constructive proposals in relation to Governance, Scalar Design, Termination and Invoicing/Settlement.

Governance Arrangements

It is proposed that a Protocol document linked to the Framework Agreement will specify the compliance requirements which a service provider must satisfy; the performance-monitoring procedures to be applied; and the performance scalar details. The Protocol document will therefore have a significant commercial impact on service providers. As such, the Protocol document should be comprehensive, unambiguous and robustly governed. EAI have a number of concerns in this regard:

- The Protocol document itself sits outside the Framework Agreement and, as proposed, may be revised on a quarterly basis with regulatory approval but possibly without industry consultation. From a governance perspective this is not acceptable. The Protocol document should be integral to the Framework Agreement and its governance. Performance monitoring, reliability targets and the associated scalar calculations will all materially impact on revenues and should be fixed for the duration of the contract. Therefore, it is our view that the Performance Monitoring provisions and the associated Performance Scalar calculations should not be included in the Protocol documents. Rather, these should be included in the Framework Agreements. If they are included in the Protocol document, changes should only be permitted annually when contracts are renewed. Any changes should also be subject to industry consultation and RA approval.
- The draft Protocol document is incomplete in a number of respects. For example, it is proposed that minimum data provision requirements will only be set out once the Protocol document is finalised. These details are important and should be included for consultation.
- There is ambiguity in the draft Protocol document. Specifically, it is unclear if the Scalar Design Decision for the Enduring Arrangements will apply for the Interim Arrangements or if the Scalar Design for the Interim Arrangements is being consulted upon separately through this consultation. In any event, feedback received through the Scalar Design Consultation responses should be integrated into the design of the interim arrangements, not just the enduring arrangements. We comment further below on specific aspects of the proposed Scalar Design of particular concern to EAI.

Scalar Design

- The binary nature of the pass rate methodology does not distinguish between marginal failure and bad / outright failure
- Fail synch is a poor proxy for ramping performance and fails to capture ramping performance when synchronised
- The proposed data poor resolution for ramping and reserve services, whereby the industry average is applied in the event that the providing unit is deemed to be data poor, is arbitrary and unfairly penal. If a unit generally performs better than average but there are insufficient events to support this, based on the proposed Data Start date (1st June 2016) and Data Backstop Timeframe (12 month rolling timeframe), it is unfair to apply an industry average performance-scalar to this unit which may be worse than its actual performance. It is our view, therefore, that further consideration and engagement with industry is needed to ensure that the methodology employed is realistic and hence will provide a strong, balanced incentive to improve.

Termination

We believe that a 3-month notice period allowing the TSO to unilaterally terminate individual services or the whole agreement is inappropriate. It is not warranted because underperformance is intended to be addressed through the performance-scalar mechanism.

Invoicing and Settlement

The proposal to require confirmation of the accuracy of the Statement of Account in order to submit an invoice to the Statement amount is inappropriate in light of the fact that Issues and measurement errors may take longer than 10 days to emerge. We do not accept that failure to raise a Claim at this point should be deemed an acceptance of accuracy. It is our view that Service Providers should have the opportunity to raise a dispute for up to 2 years after the Statement is issued. We do not support the proposal for the TSO to make estimates of any missing information and apply this unilaterally. The generator has data at their end which could be used as a substitute and both parties must be in agreement irrespective of which method is used.

Furthermore, we advocate that invoicing and settlement should be aligned to the current NI approach rather than the ROI approach.

To conclude, we are grateful for the opportunity to express our concerns in relation to this consultation and are available to meet with you at a convenient time to elaborate further on our response.

Yours sincerely,

Stephen Douglas
Senior Advisor
Electricity Association of Ireland (EAI)