National Grid ESO
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# SSE Generation ODFM Terms and Conditions Consultation – Response Proforma

| No | Question | Response |
|---|---|---|
| 1 | Do you agree with the approach taken in the proposal?<br>Please provide rationale. | [See our answer below] |
| 2 | Do you have any comments on the proposal letter? | [See our answer below] |
| 3 | **Annex 1**: Do you have any comments on the highlighted mapping for ODFM service? | [See our answer below] |
| 4 | Do you have any other comments in relation to the proposal? | [See our answer below] |

**QUESTION 1**

**Do you agree with the approach taken in the proposal?**

**Please provide rationale.**

Before making our comments, we note that entities with affilition to SSE Generation Limited, via our ultimate parent company, may have entered into contracts for the provision of the said balancing service which is the subject of this consultation.

They, like other market participants, will, we believe, have done so in good faith and legitimate expectation that NGESO as the contracting counterparty; in encouraging market participants to enter into those contracts; had ensured that they (as the TSO for GB) had legally complied with the relevant obligations within EBGL (as well as SOGL) that are placed upon the TSO (and not the market participants) to discharge with respect to the terms and conditions related to balancing in GB.

NGESO response – thank you for the additional information

**No.**

**We do not agree with the approach taken in the proposal.**

This is because, in our view, the proposed approach fails to ensure that the Optional Downward Flexibility Management (ODFM) balancing service is in compliance with the requirements set out in the Electricity Balancing Guideline (EBGL)[1], the System Operation Guideline (SOGL)[2] the

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2195&from=EN
[2] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1485&from=EN

Emergency & Restoration Network Code (NCER)[3] and the Clean Energy Package[4] (CEP) in terms of the following:

1) EBGL Article 18 itself in terms of harmonisation etc.;
2) SOGL pre-qualification requirements (set out in Article 16 of EBGL);
3) The use of pre-determined prices in terms of Article 16 EBGL and Art 6(9) of the CEP;
4) Conflict with NCER terms and conditions for system defence providers; and
5) The possible breach of environmental law by those who emit to air[5].

Before we address these five points in turn we note that the 25 detailed questions of a legal nature that we sent to the TSO (NGESO) and the NRA (Ofgem) early last November (and subsequently shared with the Grid Code Review Panel in early December) concerning the legal status of the NRA's 8th October 2019 'decision' letter relating to the TSO's EBGL Article 18 proposal of 4th August 2019 remain unanswered. Our answer to this 19th May 2020 EBGL Article 18 proposal consultation by the TSO is without prejudice to the points we have already made in respect of the previous TSO EBGL Article 18 proposals, including the NRA's 8th October 2020 'decision' letter.

If it is the case that the NRA's 8th October 2019 letter was not in fact a decision to approve the TSO's 4th August 2019 (EBGL Article 18) proposal to amend the terms and conditions related to balancing for GB then it would not be possible for the TSO to submit this current (ODFM) EBGL Article 18 proposal to the NRA according to Article 6(3) of EBGL.

Notwithstanding the above, we do not believe that it is possible for the TSO to submit this current (ODFM) EBGL Article 18 proposal to the NRA according to Article 6(1) of EBGL as an amendment, to the terms and conditions related to balancing for GB (in respect of the ODFM balancing service) has not been requested by the NRA.

NG ESO response: We note your comments on the process of Article 18 T&C generally but as you note these comments have been made previously and we believe all of these points have already been dealt with in other forums. The intent of the regulation is that the T&C for balancing are established and that any changes to these follow the process in EBGL in terms of a one month consultation and NRA approval. This is the approach that has been followed with these changes being treated in the same manner as other "inflight" changes.

**1) EBGL Article 18 itself in terms of harmonisation etc.**

For the reasons we have detailed in our response to the initial TSO Article 18 proposal (of June 2018) and the subsequent three amended proposals for the Article 18 terms and conditions related to balancing in GB, this latest proposal from the TSO (concerning the ODFM balancing service in respect of amending the terms and conditions related to balancing in GB) does not in our view

[3] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2196&from=EN
[4] Consisting of Directive 2019/944 and Regulation 2019/943.
[5] Specifically, all combustion plant generating electricity below 50MW (thermal)

comply with the requirements as are, for example, set out in the Recitals (and various Articles) in EBGL including, but not limited to, the need to ensure harmonisation.

This is because the scope of EBGL[6] and SOGL[7] is relevant to the types of parties who provide ODFM balancing services. SOGL is relevant in the context of, for example, the requirements around balancing service providers and prequalifying according to the relevant SOGL 'technical minimum requirements'[8] – see below.

However, the proposed is for the ODFM balancing service to not be applied, in a harmonised way, with the same terms and conditions related to balancing as other GB market participants have to comply with. In addition to this being in contravention of the Recitals of EBGL (and SOGL) it could also affect cross border trade and as such could be in breach of the Third Package requirements.

NGESO Response: This service was introduced to deal with the extraordinary challenges to the operation of the national transmission system caused by the COVID 19 pandemic and is time limited to 1st August 2020 and there is no intention to use it now or in the future for the exchange of cross border services as such we do not see harmonisation, given the specifics of this service, as an issue.

**2) SOGL pre-qualification requirements (set out in Article 16 of EBGL)**

The proposed Article 18 letter, in the Annex 1, sets out in reference to Article 18(5)(a) '*the rules for the qualification process to become a balancing service provider*[9] *pursuant to Article 16*' that these are to be found in the "*ODFM Guidance Document – Service Parameters and Registration*".

Referring to that Guidance Document we find 'Service Parameters' listed on page 2 and 'Registration' set out on pages 3-4.

However, as is stated in Article 18(5)(a) the prequalification, for the purposes of becoming a balancing service provider must be (according to EBGL) "*pursuant to Article 16*" of EBGL.

The ODFM prequalification requirements (as detailed in "ODFM Guidance Document – Service Parameters and Registration") are <u>not</u> "*pursuant to Article 16*" of EBGL.

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[6] See Article 1(2).
[7] See Article 2(1) (a), (d) and (e).
[8] Detailed in Articles 158 and 161 of SOGL.
[9] We note that the ODFM documentation which is being consulted on here uses the term 'balancing service provider' which is not defined (in the accompanying Glossary) as the same as for the purposes of EBGL (Article 2) namely "'*balancing service provider' means a market participant with reserve-providing units or reserve-providing groups able to provide balancing services to TSOs*". For the avoidance of doubt, we where we refer to 'balancing service provider' in this consultation response we are only referring to as per the definition in Article 2 of EBGL
As this proposal from the TSO concerns the terms and conditions related to balancing in GB then the EBGL definition takes precedence in law over the definition of ODFM. Accordingly, in our view, the TSO <u>must</u> amend this May 2020 proposal in terms of its definition of 'balancing service provider' in the accompanying ODFM Glossary to be the same as the definition of 'balancing service provider' in Article 2 of EBGL.

The EBGL prequalification aspects, for the purposes of Article 18(5)(a), are set out in Article 16(1) in the following terms:

> "*A balancing service provider shall qualify for providing bids for balancing energy or balancing capacity which are activated or procured by the connecting TSO or, in a TSO-BSP model, by the contracting TSO. Successful completion of the prequalification, ensured by the connecting TSO and processed pursuant to Article 159 and Article 162 of Regulation (EU) 2017/1485 shall be considered as a prerequisite for the successful completion of the qualification process to become a balancing service provider pursuant to this Regulation*" [emphasis added]

As can be seen, it is the second sentence that is of particular relevance to this ODFM Article 18 proposal. There are two aspects to note here.

Firstly, it is the TSO who has to ensure the successful completion of the prequalification by the balancing service provider and secondly that this prequalification should be processed pursuant to the requirements of Article 159 and Article 162 of SOGL.

This was recognised, for example, by the NRA in its 9th May 2019 decision letter[10] on GC0114 where it was stated that:

> "*The prequalification processes aims to ensure that Balancing Service Providers 4[11] (BSPs) offering FCR, FRR or RR comply with the technical and the additional requirements set out in Articles 154, 158 and 161 of the SOGL Regulation. Compliance is demonstrated by successfully completing the prequalification process organised by the reserve connecting TSO*." [emphasis added]

The approval, by the NRA, of GC0114 resulted in a new section being introduced into the GB Grid Code, known as "BC5"[12]. Of particular relevance to the ODFM prequalification arrangements are the obligations place upon the TSO in BC5.2, BC5.3 and BC5.4. Taking the last of these as an example (but near identical wording also appears in BC5.2 and BC5.3) it states that the TSO:

> "*shall ensure that each relevant Balancing Service prequalification process shall, as a minimum, require the RR provider to submit a self-certification of the RR Minimum Technical Requirements as defined in BC5.4.1 and BC5.4.2.*".

We have seen no evidence, with respect to the prequalification of the ODFM balancing service, that the TSO has ensured that the balancing service providers have self-certified they meet the minimum technical requirements set out in either BC5.2.1 and BC5.2.2 or BC5.3.1 and BC5.3.2 or BC5.4.1 and BC5.4.2 – if this is the case then non-compliance, on the part of the TSO, with the Grid Code may inadvertently have occurred.

Turning, as per EBGL Article 16(1), to SOGL Article 159 and Article 162 (in their respective first paragraphs) they require the TSO to publish the FRR and RR prequalification processes respectively and that this will be by reference (in their respective second paragraphs) to meeting

[10] https://www.nationalgrideso.com/document/143231/download

[11] The footnote here is from the NRA, which notes that 'balancing service provider is as per the definition in EBGL.

[12] https://www.nationalgrideso.com/document/167731/download

certain "*technical minimum requirements*" as detailed in the preceding Article (158 and 161 respectively).

As we understand it the TSO has published its requisite FRR and RR prequalification processes and the associated "*technical minimum requirements*" for GB[13] in its eight-page September 2018 publication "EU Prequalification Processes"[14] (as well as by reference to BC5 in the Grid Code).

According to the TSO, the technical data that an ODFM balancing service provider has to provide is set out in the 'Provider Data Template'[15] (Version 3).

In our view this technical data is not compatible with "*technical minimum requirements*" (as detailed in SOGL Articles158 and 161 respectively) that must be complied with in order to meet the SOGL (and thus Article 16 and Article 18 of EBGL) prequalification requirements.

When considering SOGL it is also important to take into account the Scope, as set out in Article 2 and in particular (1) (a), (d) and (e):

> "*(a) existing and new power generating modules that are, or would be, classified as type B, C and D in accordance with the criteria set out in Article 5 of Commission Regulation* [RfG]"[16];
>
> "*(d) existing and new demand facilities, closed distribution systems and third parties if they provide demand response directly to the TSO in accordance with the criteria in Article 27 of Commission Regulation* [DCC]"; and
>
> "*(e) providers of redispatching of power generating modules or demand facilities by means of aggregation and providers of active power reserve in accordance with Title 8 of Part IV of this Regulation* [SOGL]".

This is relevant in respect of ODFM as the fourth bullet point in the 'Service Parameter' set out in the ODFM Guidance Document refers to:

> "*Be sized at 1MW or more (which may be through aggregation of separate assets behind the same Grid Supply Point (GSP))*."

Therefore, in our view, balancing service providers of the type that includes those associated with ODFM fall within the scope of SOGL by virtue of Article 2 (1) (a) or (d) or (e).

In our view (i) the TSO has <u>not</u>, in the case of ODFM (which was launched 1st May 2020 and 'went live' on 8th May 2020) ensured that as regards the terms and conditions related to balancing in GB that the ODFM prequalification, by balance service providers, has been successful completed in accordance with Article 16(1); and (ii) balancing service providers (in terms of ODFM contracted parties) have <u>not</u> been able to demonstrate that they have met the "*technical minimum requirements*" set out in Articles 158 and 161 of SOGL (as required by Articles 159 and 162 by virtue of Article 16(1) of EBGL).

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[13] The September 2018 document states that "*These EU prequalification processes set out some common timescales and minimum technical requirements*".

[14] https://www.nationalgrideso.com/document/125731/download

[15] https://data.nationalgrideso.com/ancillary-services/optional-downward-flexibility-management-odfm1/r/provider_data_template_(version_3)

[16] Generators of Types B, C and D within GB, are all greater than 1MW

NGESO Response: Aligning national services to those of other European markets is not always straightforward but the ODFM service is most closely aligned to a Replacement Reserve service. The prequalification is, as you note, one of self-certification. It is our view that the registration process and the data in the documents from our mapping provide the TSO with the self-certified pre-qualification in the context of the minimum technical requirements relevant to the ODFM service in accordance with the intent of SOGL Article 161.

### 3) The use of pre-determined prices in terms of Article 16 EBGL and Art 6(9) of the CEP

In Annex 1 of the proposal, at 18(7)(f), it states that:

> "*There is no requirement for this exemption as prices for balancing energy bids are <u>not</u> predetermined*." [emphasis added]

We find this statement to be erroneous and misleading.

Firstly, we note the text that is ahead of this which is shown as now being proposed to be deleted, namely:

> "*Such an exemption is required to be requested by 18th June 2019. NG ESO shall consider if there is a requirement for this exemption in accordance with these timescales*."

This reflects the legally correct situation and we note that this wording has appeared in previous versions of the Article 18 Annex 1 proposals that the TSO has submitted to the NRA (including that from 4th August 2019, which was the subject of the NRA's 8th October 2019 'decision'[17] letter).

We also note that the NRA has on at least three previous occasions required the TSO to amend the details in respect of some aspects of the mapping (of the terms and conditions related to balancing in GB) detailed in Annex 1.

However, in respect of this Article 18(7)(f) matter the NRA has not, as we recall, previously required any amendment by the TSO to what the TSO had proposed[18].

Secondly, the covering letter for this latest Article 18 proposal from the TSO makes clear that ODFM is a balancing service (hence the reason for this very consultation – for if ODFM is not a balancing service why are the terms and conditions related to balancing in GB to be amended?).

At the bottom of page 4 of the ODFM Guidance Document[19] (referred to in Annex 1 of this TSO proposal) in respect of "*Update availability & pricing*" it is stated that these are:

> "*To be submitted no later than Wednesday 15:00 for service availability for the following 7 trading days commencing Friday 23.00.*"

[17] Please see our 25 questions of a legal nature, referred to above, for further information pertaining to this.
[18] Namely "*Such an exemption is required to be requested by 18th June 2019. NG ESO shall consider if there is a requirement for this exemption in accordance with these timescales*"
[19] https://data.nationalgrideso.com/backend/dataset/812f2195-4e96-4bfd-8bf0-06c3d0126c57/resource/1b2d5573-8b91-4608-8082-d93815d970bc/download/odfm-guidance-doc-v.3-19.05.20.pdf

Given these stated timescales, contracting length and pricing obligation it therefore follows, with respect to ODFM, that '*prices for balancing energy bids <u>are</u> predetermined*' by Wednesday and apply for a seven-day period from Friday onwards.

Thirdly, as the TSO noted in its letter of 19th December 2019[20] to market participants:

> "*Article 6(9) of the recast Electricity Regulation within the CEP <u>requires NGESO to procure balancing capacity at no more than one day ahead, for a contract length of no more than one day</u>*". [emphasis added]

The relevant legislation is Regulation 943/2019[21] which came into legal effect on 1st January 2020.

The December letter goes on to note that:

> "*A derogation is possible, and where a derogation is granted by Ofgem it can instead be procured at no more than one month ahead, for a contract length of no more than one month, with further potential with Ofgem approval for this contracting period to be extended to a period of up to twelve months*".

However, as the TSO's letter of 18th June 2020[22] to market participants noted no Article 6(9) derogation has yet been granted (for STOR or Fast Reserve) by the NRA.

Fourthly, market participants have seen no evidence to date that an Article 6(9) derogation has (i) been applied for by the TSO for ODFM or (ii) that the NRA has granted a derogation for ODFM from the Article 6(9) requirement regarding day ahead pricing and for contract length of no more than one day's duration.

Given that ODFM went live on 8th May 2020 and that, for example, (a) the (STOR and Fast Reserve) Article 6(9) derogation was discussed[23] at the (12th) May JESG meeting[24] and (b) this ODFM Article 18 consultation was issued on 11th May (and amended on 19th May) it would have been a grave omission on the part of the TSO to have not informed market participants in a timely manner; via at least both of those two opportunities; that an Article 6(9) derogation for ODFM had also been applied for prior to 8th May the 'go-live'[25].

The direct relevance of this to ODFM is by reference to the bottom of page 4 of the ODFM Guidance Document[26] (referred to in Annex 1 of this TSO proposal) in respect of "*Update availability & pricing*" where it is stated that these are:

> "*To be submitted no later than Wednesday 15:00 for service availability for the following 7 trading days commencing Friday 23.00.*"

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[20] https://www.nationalgrideso.com/document/159311/download
[21] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0943&from=EN
[22] https://www.nationalgrideso.com/document/171616/download
[23] See Action 128 on Slide 14 of the meeting slide pack.
[24] https://www.nationalgrideso.com/industry-information/codes/european-network-codes-old/meetings/jesg-meeting-12-may-2020
[25] And perhaps an omission on the part of the NRA not to have made that publicly available, had it been granted, prior to 8th May 2020, for ODFM?
[26] https://data.nationalgrideso.com/backend/dataset/812f2195-4e96-4bfd-8bf0-06c3d0126c57/resource/1b2d5573-8b91-4608-8082-d93815d970bc/download/odfm-guidance-doc-v.3-19.05.20.pdf

Given (a) these timescales for (i) the provision by balancing service providers of the ODFM balancing service price and (ii) the ODFM contract length (by Wednesday and to apply for a seven day period from Friday onwards); and (b) the absence of an Article 6(9) derogation approved by the NRA for the ODFM balancing service, we can only conclude that the ODFM balancing service is incompatible with the legal requirements placed upon the TSO[27]; as set out in the Clean Energy Package; as regards the predetermination of prices greater than day ahead and contract length of no more than one day's duration.

Fifthly, we note that this proposed change in Annex 1 to the mapping of Article 18(7)(f) would, if approved by the NRA, apply as the *enduring* solution (and not just be limited to just ODFM[28]) for the terms and conditions related to balancing in GB. This, in our view, could be both legally uncertain and could be legally questionable given, for example, the Article 6(9) requirements of the CEP that are placed upon the TSO.

For the avoidance of doubt, we do not believe that this change could, in any event, apply retrospectively so could not, for example, be applied in respect of the terms and conditions related to balancing as they concern STOR and Fast Reserve (which are already the subject of Article 6(9) derogation applications from the TSO to the NRA). Please could the TSO explicitly confirm that this proposed change of May 2020 to the Article 18(7)(f) wording would not be applied retrospectively to the terms and conditions related to balancing in GB.

NGESO response – In the context of ODFM, this is a service for balancing energy, paid when dispatched, and is not a contract for balancing capacity so Articles 6(2) and 6(9) of the recast electricity regulation are not relevant.

### 4) Conflict with NCER terms and conditions for system defence providers

We note that the Article 18 proposal letter (that forms this consultation) sets out the following:

> "*The new service, ODFM has been developed in order to mitigate operational risks of low electricity demand resulting from COVID-19 pandemic and so for a time limited need. Demand for Electricity has reduced by 20% compared to predicted values. This service is intended to mitigate the need for emergency instructions*."

Given the 'last resort' nature of the ODFM service we believe that this means that the service being provided according to the Article 18 proposal letter could, instead, be considered that of a 'defence service provider' as governed by NCER (and not necessarily just EBGL alone).

When considering NCER it is important to take into account the Scope, as set out in Article 2 and in particular (1)[29] and (2) (a), (b) & (e) as well as the System Defence Plan (SDP).

[27] As summarised by the TSO in the 19th December 2019 letter as "…*to procure balancing capacity at no more than one day ahead, for a contract length of no more than one day*".
[28] Which could not happen, not least because of the requirements in EBGL for harmonisation in respect of the terms and conditions related to balancing.
[29] Which, for example, references 'balancing service providers' that, as noted above, in turn relates to ODFM.

This is relevant in respect of the ODFM balancing service as the fourth bullet point in the 'Service Parameter' set out in the ODFM Guidance Document refers to:

> "*Be sized at 1MW or more (which may be through aggregation of separate assets behind the same Grid Supply Point (GSP))*."

Therefore, providers of ODFM fall within the scope of NCER by virtue of Article 2 (1) and or (2) (a) or (b) or (e) as well as possibly (3) or (4) or (5).

Given this we are not certain that the TSO's proposed terms and conditions related to balancing (in respect of ODFM) is also in compliance with the requirements set out in the Network Code for Emergency & Restoration in respect of the TSO needing to have terms and conditions for defence service providers according to Article 4(2)(a)[30].

That having been said, as currently drafted, the latest version of the System Defence Plan[31] dated 20th December 2019[32] sets out, within Appendix A[33] ("GB Parties within the scope of the System Defence Plan") which parties in GB fall within (and thus those parties out with) the scope of the SDP in the following terms[34]:

> "*In accordance with EU NCER, Art 2 defines the SGU's [Significant Grid User(s)] who fall within the scope of the European Emergency and Restoration Code. Table A1 <u>defines the EU Criteria and how this translates to GB Parties including which of those parties are included within the scope of the EU Emergency and Restoration Code and those which are not</u>*" [emphasis added]

As set out on in Appendix A, the SDP does <u>not</u> apply to any New[35]:

> "*….Generator who does not have a CUSC Contract (i.e. Embedded) and owns or operates a Power Station comprising one or more Type C or Type D Power Generating Modules*."

It goes on to set out that the SDP does <u>not</u> apply to any Existing[36]

> "*…Generator who does not have a CUSC Contract (i.e. Embedded) and owns or operates a Power Station comprising one or more Generating Units or Power Park Modules which i) have a maximum output of greater than 10MW but less than 50MW and connected below 110kV (equivalent to a Type C Power Generating Module) or ii) connected at 110kV or above or has a rated power output of 50MW or above (equivalent to a Type D Power Generating Module)"*

[30] We note in passing the requirement, in Article 7(1), for the TSO to undertake a public consultation on matters pertaining to Article 4(2)(a) which, to the best of our knowledge, has not yet occurred in respect of ODFM and "*the terms and conditions to act as defence service providers on a contractual basis*".
[31] https://www.nationalgrideso.com/document/160016/download
[32] https://www.nationalgrideso.com/document/160006/download
[33] Pages 22-40.
[34] On page 22.
[35] See page 23 of the SDP.
[36] See page 24 of SDP.

The SDP makes clear it does not apply to any New[37]:

> " *…Generator who does not have a CUSC Contract (i.e. Embedded) and owns or operates a Power Station comprising one or more Type B Power Generating Modules*"

The SDP also does not apply to any Existing[38]

> "*…Generator who does not have a CUSC Contract (i.e. Embedded) and owns or operates a Power Station comprising one or more Generating Units or Power Park Modules which have a maximum output of greater than 1MW but less than 10MW and connected below 110kV (equivalent to a Type B Power Generating Module).*"

Similarly, the SDP is clear that it does not apply[39] to New or Exiting Type A generators who do not have a CUSC contract.

The legal aspects of applying the GC0127[40] / SDP obligations to, for example, embedded generation was explored by the GC0127 Workgroup as set out in Appendix 5 and Appendix 6 of the Final Modification Report. Appendix 5 sets out the TSO's legal views and a number of those statements[41] seem, only a few months later, to be out of date. Appendix 6, which provides comments on Appendix 5, was prepared by the SSE Generation representative on the GC0127 Workgroup.

So, taking into account the above statements within the proposed[42] SDP and the terms and conditions for defence service providers for GB, we can only conclude that the SDP and the terms and conditions for defence service providers for GB does not currently (as drafted by the TSO, but not yet approved by the NRA) appear to apply to ODFM parties and therefore a amendment proposal, to the SDP and the terms and conditions for defence service providers for GB, will be required, in due course, to be submitted (after due public consultation) by the TSO to the NRA although in light of Article 4(7) this cannot be done until such time as the NRA has either (i) approved the said SDP and terms and conditions for defence service providers for GB (as submitted on 20th December 2019 to the NRA) or (ii) require the TSO to amend, prior to approval,

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[37] See page 25 of the SDP.
[38] See page 26 of the SDP.
[39] See pages 35-36 of the SDP.
[40] https://www.nationalgrideso.com/codes/grid-code/modifications/gc0127-eu-code-emergency-restoration-requirements-resulting-system
[41] Such as "*Given the costs and timescales we believe would be incurred for smaller parties, it would appear disproportionate to ask them to i) modify their plants or ii) comply with the GB Grid Code process (and the additional requirements this entails) in order to comply with the NCER when it is not clear that this size of plant is essential to preventing a widespread disturbance* "
And "*Focusing the application of NCER to only CUSC parties, i.e. those with contracts with National Grid Electricity System Operator Limited (NGESO), ensures there is a direct contractual link to these parties and the means by which to enact the Plans – via contractual instruction. Extending the application of NCER beyond this would require currently non-contracted parties to enter into contracts with NGESO, which would be a substantial administrative and time consuming process for all involved*."
[42] As submitted by the TSO to the NRA on 20th December 2019.

the SDP and/or the terms and conditions for defence service providers for GB to take account of the ODFM changes.

In respect of the terms and conditions for defence service providers for GB proposal that was submitted by the TSO to the NRA on 20th December 2019 it may be relevant to note that according to Article 4(3) the NRA "…*shall decide on the proposals referred to in paragraph 2 within six months from the date of submission by the TSO*"; namely tomorrow (20th June 2020).

NGESO response – we do not believe that the situation which ODFM is addressing falls within NCER/is a service provided as a defence service provider

5) **The possible breach of environmental law by those who emit to air**

It is our understanding that as contracts to provide the ODFM service (either directly or via an aggregator) is for the purpose of a balancing service therefore a Specified Generator environmental permit to operate would be needed before entering into any such ODFM contract by all combustion plant generating electricity below 50MW (thermal).

It is our understanding that NGESO and Ofgem are required by general law obligations to have due regard to the environment when performing their duties and that this may not have occurred with respect to the prequalification of and contracting with certain generators who are providing ODFM balancing services in breach of UK environmental legislation.

NGESO – in the context of this legislation it is for the parties providing the service to make sure they have all the permits and consents necessary for them to operate their plant and apparatus.

**QUESTION 2**

**Do you have any comments on the proposal letter?**

The letter fails to address the concerns we have detailed in Question 1 above and Question 3 below.

**QUESTION 3**

**Annex 1: Do you have any comments on the highlighted mapping for ODFM service?**

Notwithstanding our detailed comments under Question 1 above, we make the following comments concerning the mapping of the ODFM balancing service contained within Annex 1.

In our view the discharging of **18(4)(a)** to "*define reasonable and justified requirements for the provisions of balancing services*" has **not** been achieved in Annex 1 as it fails; with its limited reference to just "*Section 5, 6, 7 & 15*" of the "*ODFM Service terms*" alone; to ensure all the requirements for the provision of balancing services are included in the terms and conditions related to balancing in GB.

In our view the discharging of **18(5)(a)** for *"the rules for the qualification process to become a balancing service provider pursuant to Article 16*" has **not** been achieved in Annex 1 as it fails to

ensure all the requirements concerning prequalification (as we detail at length in our answer to Question 1 above) for the provision of balancing services are included in the terms and conditions related to balancing in GB.

In our view the discharging of **18(5)(d)** concerning "*the requirements on data and information to be delivered to the connecting TSO and, where relevant, to the reserve connecting DSO during the prequalification process and operation of the balancing market*;" has **not** been achieved in Annex 1 as it fails to ensure all the requirements concerning data and information for the provision of balancing services are included in the terms and conditions related to balancing in GB in a harmonised way.

In our view the discharging of **18(5)(f)** concerning "*the requirements on data and information to be delivered to the connecting TSO and, where relevant, to the reserve connecting DSO to evaluate the provisions of balancing services pursuant to Article 154(1), Article 154(8), Article 158(1)(e), Article 158(4)(b), Article 161(1)(f) and Article 161(4)(b) of [SOGL]*;" has **not** been achieved in Annex 1 as it fails; with its limited reference to just "*ODFM Service Terms – Section 15*" alone; to ensure all the data requirements for balancing service providers as referenced to SOGL are complied with.

These SOGL data exchange requirements (pertaining to SOGL Articles 158 and 161, for the reasons detailed in our answer to Question 1 above) are, for example, set out in Title 2 of SOGL (such as Article 6(2)(a) as well as Articles 40, 48, 49, 50, 51, 52, and 53, as required) are applicable to the ODFM balancing service providers in terms of the provision of balancing services included in the terms and conditions related to balancing in GB.

In our view the discharging of **18(5)(i)** concerning "*the rules for the settlement of balancing service providers defined pursuant to Chapters 2 and 5 of Title V"* has **not** been achieved in Annex 1 as it fails to ensure a harmonised approach to Settlement for the provision of balancing services within the terms and conditions related to balancing in GB.

In our view the discharging of **18(5)(j)** concerning "*a maximum period for the finalisation of the settlement of balancing energy with a balancing service provider in accordance with Article 45, for any given imbalance settlement period"* has **not** been achieved in Annex 1 as it fails to ensure a harmonised approach to Settlement for the provision of balancing services within the terms and conditions related to balancing in GB.

In our view the discharging of **18(5)(k)** concerning "*the consequences in case of non-compliance with the terms and conditions applicable to balancing service providers*" has **not** been achieved in Annex 1 as it fails to ensure all the requirements concerning the consequences of non-compliance for the provision of balancing services are included in the terms and conditions related to balancing in GB.

In this regard, we note that Annex 1 refers to "*ODFM General Terms and Conditions – Section 4.2*".

However, examining Section 4.2[43] of the ODFM General Terms we do not see where the consequences of non-compliance for the provision of balancing services by balancing service providers are clearly set out.

In our view the discharging of **18(7)(f)** concerning "*an exemption for specific products defined in Article 26(3)(b) to predetermine the price of the balancing energy bids from a balancing capacity contract pursuant to Article 16(6)*" has **not** been achieved in Annex 1 as it fails entirely to accept that an exemption is even required for the ODFM balancing service which, for the reasons we detail in our answer to Question 1 above is both erroneous and misleading.

NGESO response – we believe from our detailed mapping and from our response to your questions that we have achieved compliance as per EBGL Article 18

**QUESTION 4**

**Do you have any other comments in relation to the proposal?**

It is disappointing that this has been the only public consultation with stakeholders about the introduction of the ODFM balancing service and that it occurred sometime after the balancing service was actually put into effect.

In our view the TSO has not shown it has ensured transparency (as required by Article 3(2)(b) of EBGL) in respect of the new ODFM balancing service.

NGESO response –the COVID19 pandemic and its consequences have been something that we have all had to come to terms with and with little warning of what might happen. As a TSO, we have had to react in very short timescales to the unprecedented low demands and develop a serve to address the operational issues. EBGL requires and we have conducted this one month consultation despite all of the operational issues we are dealing with.

This latter statement is unfortunate given our continued commitment to transparency via webinars and formal processes despite these very difficult circumstances.

[end]

[43] "4.2 On the eighth (8th) Business Day of each calendar month NGESO shall send to the Balancing Service Provider a statement (the "Monthly Statement") setting out details of the following (to the extent applicable) in respect of the preceding calendar month, together with such other information as may be required to be provided under the Related Balancing Services Document:- 4.2.1 in relation to each applicable Balancing Services Contract: - 4.2.1.1 the aggregate number of hours of service provision, with respect to both availability and utilisation; 4.2.1.2 details of events of default or service failures, and any consequential amounts withheld by or payable to NGESO with respect thereof; 4.2.1.3 the amounts payable by or to NGESO as a result; and 4.2.2 in relation to all applicable Balancing Services Contracts, the total net amount falling due to or from the Balancing Service Provider."