

Dynamic Containment Tender Rules

Author: Market Operation
National Grid Electricity System Operator Limited
Faraday House
Warwick Technology Park
Gallows Hill
Warwick
CV34 6DA

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1. Introduction

- 1.1 These **DC Tender Rules** describe the tendering process by which **NGESO** will procure **Dynamic Containment** from prospective **Service Providers**. Only if a **DC Tender** submitted pursuant to this process is accepted by **NGESO** (or where the context otherwise requires) will the **DC Service Terms** apply with respect to the provision of and payment for **Dynamic Containment** in relation to the **Response Unit** in question.
- 1.2 These **DC Tender Rules** supplement, and should be read alongside, the **DC Participation Guidance Document**.

2. Changes to these DC Tender Rules

- 2.1 Subject always to paragraph 2.2, **NGESO** may update these **DC Tender Rules** from time to time by publication of an updated version on its website, and each such updated version shall be effective from the date shown on its front cover.
- 2.2 To the extent required by the **Electricity Balancing Guidelines** (and by reference to those provisions of the **DC Procurement Documents** constituting terms and conditions approved by the **Authority** as the terms and conditions related to balancing pursuant to Article 18 of the **Electricity Balancing Guidelines**), any variation to these **DC Tender Rules** will be proposed and implemented in accordance with the applicable requirements in the **Electricity Balancing Guidelines**.

3. DC General Terms and Conditions and Glossary of Terms

- 3.1 These **DC Tender Rules** are subject to the prevailing **DC General Terms and Conditions** published by **NGESO** alongside these **DC Tender Rules**.
- 3.2 Unless the context otherwise requires, any capitalised term used in these **DC Tender Rules** shall have the meaning given to it (if any) in the prevailing **DC Glossary of Terms and Rules of Interpretation**, and the rules of interpretation set out in that document shall also apply.

4. Registration

- 4.1 No entity may submit a **DC Tender** unless and until **NGESO** has confirmed pursuant to the provisions of the **Registration Documents** that it is a **Registered DC Participant**, and for such purpose (and unless otherwise specified by **NGESO** in the **DC Participation Guidance Document**) Forms A and B of the **Registration Documents** must be submitted to **NGESO** by the date specified in the **DC Participation Guidance Document**.
- 4.2 Where **NGESO** determines (acting reasonably) that any details provided, including confirmations and declarations given, in Forms A and/or B (including any accompanying Declaration, as defined in Form A) of the **Registration Documents** by or on behalf of a **Registered DC Participant** are no longer true and/or accurate, then **NGESO** may (but shall not be obliged to) de-register the relevant entity as **Registered DC Participant** and/or **Registered Service Provider** (as the case may be). Such de-registration shall be notified by **NGESO** to the **Registered DC Participation** by email, whereupon no further **DC Tenders** may be submitted by that entity unless and until it is re-registered pursuant to the provisions of the **Registration Documents**.
- 4.3 Subject always to paragraph 4.6, a **DC Tender** may only be submitted by a **Registered DC Participant** in respect of **Plant** and **Apparatus** where:-
- 4.3.1 such **Plant** and **Apparatus** has been validated by **NGESO** as an **Eligible Asset** pursuant to the **Testing Guidelines**; and
- 4.3.2 such **Eligible Asset** has been registered to a **Response Unit** with a **Registered Quantity**,
in each case, in accordance with the **DC Participation Guidance Document**.
- 4.4 For the purposes of paragraph 4.3:-

- 4.4.1 **Plant and Apparatus** must be notified by the **Registered DC Participant** to **NGESO** for validation as an **Eligible Asset**; and
- 4.4.2 an **Eligible Asset** must be registered by the **Registered DC Participant** to a **Response Unit**,
in each case by the respective date and time specified in the **DC Participation Guidance Document**.
- 4.5 Where **NGESO** determines (acting reasonably), having regard to declarations of unavailability notified by the **Registered DC Participant** pursuant to the **DC Service Terms** or otherwise, that any **Eligible Asset** is no longer capable of providing its **Registered Quantity**, then **NGESO** shall so notify the **Registered DC Participant** whereupon the **Eligible Asset** shall be ineligible for registration to any **Response Unit** until such time as it is re-validated by **NGESO** in accordance with the **Testing Guidelines**.
- 4.6 **NGESO** may determine (at its sole discretion) that a **Registered DC Participant** may not submit a **DC Tender** with respect to any **Response Unit** if that **Response Unit** is comprised of one or more **Eligible Assets** whose location would mean delivery of **Dynamic Containment** would comprise operational security.
- 4.7 It is a further pre-condition to participation in the **DC** procurement process that, in respect of each **Response Unit** and for the duration of each relevant **DC Service Day** the subject of a **DC Tender**, the **Service Provider** shall have procured that for the purposes of the **ABSVD Methodology Statement** and by exercise (or not) of any opt-out conferred on it (or on the **Lead Party** of all relevant **BM Units**), all and any energy volumes associated with the delivery of **Response** pursuant to any **DC Response Contract** will be included within the **Applicable Balancing Services Volume Data** if the **Response Unit** is **BM Participating**, otherwise will not be so included.
5. **DC Tender Submissions**
- 5.1 Unless otherwise specified by **NGESO** from time to time in the **DC Participation Guidance Document**, to be valid, a **DC Tender** for any **DC Service Day** in a **Service Week** must be submitted to **NGESO** during the **DC Market Window** which ends on the **Tuesday** in which that **Service Week** commences. Once submitted, a **DC Tender** may subsequently be revised or withdrawn in accordance with paragraph 5.6.
- 5.2 Each **DC Tender** shall be submitted to **NGESO** via email to the designated account specified for such purpose in the **DC Participation Guidance Document** or such other address as **NGESO** may from time to time designate for such purpose. **DC Tenders** shall not be submitted to **NGESO** by any other means or to any other email **NGESO** account except as provided in paragraph 12.
- 5.3 It shall be the responsibility of **Registered DC Participants** to ensure that **DC Tenders** are submitted on time in accordance with paragraph 5.1. **DC Tenders** submitted before or after the relevant **DC Market Window**, or otherwise than in accordance with paragraph 5.2 shall be considered null and void regardless of cause unless otherwise decided by **NGESO** at its sole discretion.
- 5.4 Each **DC Tender** shall relate to a single **Response Unit** and a single **DC Service Day**, and a **Registered DC Participant** may not submit multiple **DC Tenders** for the same **Response Unit** and **DC Service Day**.
- 5.5 To be compliant, and unless otherwise specified in the **DC Participation Guidance Document**, each **DC Tender** shall specify:-
- 5.5.1 the name of the **Registered DC Participant**;
- 5.5.2 the **Response Unit** (by reference to its "portfolio name" allocated to it by **NGESO**, as either **BMU ID** or **Non-BM Unit ID**);
- 5.5.3 whether for **DC-low** or **DC-high** (or, if permitted by the **DC Participation Guidance Document**, both);
- 5.5.4 the applicable **DC Service Day**;
- 5.5.5 a price (in £/MW/h, where the applicable pound and pence figures shall each be an integer); and

- 5.5.6 the offered **Contracted Quantity** (in MW), which shall be an integer not less than one (1) MW and shall not exceed any maximum limit which may be specified from time to time in the **DC Participation Guidance Document**, and which shall not in any event exceed the aggregate **Registered Quantity** of each component **Eligible Asset**.
- 5.6 Once a **DC Tender** for a **DC Service Day** has been submitted pursuant to the foregoing provisions of this paragraph 5, the price and/or the offered **Contracted Quantity** may subsequently be revised or the **DC Tender** withdrawn for that **DC Service Day** by the **Registered DC Participant** by way of a resubmission of the **DC Tender** during any subsequent **DC Market Window** (and in accordance with paragraph 5.2), but not otherwise.
- 5.7 All **DC Tenders** shall:-
- 5.7.1 be fully compliant (without any qualification) with the requirements of these **DC Tender Rules** and the **DC Participation Guidance Document**; and
- 5.7.2 not be accompanied by statements that could be construed by **NGESO** as rendering the **DC Tender** equivocal and/or prevent its evaluation on an equal basis with other **DC Tenders**.
- 5.8 **Registered DC Participants** must not divulge or release details of the **DC Tender** to any third party, other than on an "in confidence" basis to those **parties** having a legitimate need to know, or whom they need to consult for the purpose of preparing a tender.

6. Warranty and Undertaking

By submitting an **DC Tender**, each **Registered DC Participant** hereby warrants and undertakes to **NGESO** that it has neither fixed nor adjusted the tendered prices or volumes under or in accordance with any agreement or arrangement with any other person, and that it has neither communicated to a person (other than its professional advisers) the amount or approximate amount of the tendered prices or volumes (other than in confidence in order to obtain quotations necessary for insurance purposes) nor entered into any agreement or arrangement with any other person to restrain that other person from tendering or to fix or adjust the tendered prices or volumes to be submitted by that other person, and each **Registered DC Participant** indemnifies **NGESO** from and against any losses, liabilities, claims, expenses and demands which **NGESO** might suffer as a result of the **Registered DC Participant** being in breach of the warranty and undertaking set out in this paragraph 6.

7. Disqualification of DC Tenders

- 7.1 If, in the sole judgment of **NGESO**, a **Registered DC Participant** has failed to submit a compliant **DC Tender**, **NGESO** reserves the right to:-
- 7.1.1 accept that **DC Tender**; or
- 7.1.2 disqualify that **DC Tender**; and/or
- 7.1.3 take any other action as it deems appropriate in the circumstances including requesting the **Registered DC Participant** to amend any information set out in the **DC Tender** (but not the prices) and resubmit a non-compliant **DC Tender** so that it is made compliant.
- 7.2 **NGESO's** decision as to whether or not a **DC Tender** is compliant shall be final, and the **Registered DC Participant** may be notified of its decision without prior consultation or explanation.

8. Tender Assessment

- 8.1 As soon as reasonably practicable following receipt of the **DC Tender**, **NGESO** may request that the **Registered DC Participant** provides clarification with regard to any one or more items of information contained in the **DC Tender** for the purpose of enabling **NGESO** to assess that **DC Tender**, and the **Registered DC Participant** shall provide such clarification in a timely manner.

8.2 When assessing **DC Tenders**, **NGESO** shall take account (in no particular order) of the **Tender Assessment Principles**.

8.3 **NGESO** may apply a maximum volume limit to the acceptance of **DC Tenders** from **Response Units** which are not **BM Participating** and do not have in place full **DC Operational Data and DC Performance Data**, and any such limit shall be notified to **Registered DC Participants** from time to time in accordance with the **DC Participation Guidance Document**.

9. Acceptance and Rejection

9.1 **NGESO** shall notify each **Registered DC Participant** whether its **DC Tender(s)** has been accepted or rejected by way of the **DC Market Results Report** published in accordance with paragraph 10. **NGESO's** decisions shall be final and binding.

9.2 Acceptance by **NGESO** of a **DC Tender** shall constitute formation of a **DC Response Contract** in relation to each applicable tendered **Response Unit**, whereupon for the duration of the applicable **DC Service Day** the **Registered DC Participant** shall provide **Dynamic Containment** pursuant to and in accordance with the **DC Service Terms** from the applicable **Response Unit**.

9.3 Each **DC Response Contract** shall be personal to the **Registered DC Participant** and may not be assigned otherwise than in accordance with paragraph 7 (Assignment and Transfer) of the **DC General Terms and Conditions** without the consent of **NGESO** (not to be unreasonably withheld or delayed).

10. Market Information

10.1 On or around the **DC Market Results Time**, **NGESO** shall publish the **DC Market Results Report**, which shall indicate, for any **DC Service Day**, which **DC Tenders** have been accepted and rejected, and may also (at **NGESO's** sole discretion) include some or all of the contents of each **DC Tender** including the identity of the **Registered DC Participant**, **Response Unit(s)** (and associated **Eligible Assets**) and the tendered price and volume.

10.2 For the avoidance of doubt, **NGESO** shall not be obliged to notify **Registered DC Participants** individually as to the acceptance or rejection of **DC Tenders**, and so it shall be the responsibility of **Registered DC Participants** to monitor each relevant **DC Market Results Report** and ensure readiness for delivery of any **DC Response Contract**.

11. Confidentiality

11.1 Subject always to paragraphs 11.2 and 11.3, the provisions of paragraph 8 (*Confidentiality and Announcements*) of the **DC General Terms and Conditions** shall apply to all and any information provided by **NGESO** or any **Registered DC Participant** to the other (whether orally or in writing) pursuant to or in connection with these **DC Tender Rules**.

11.2 Each **Registered DC Participant** agrees to the publication by **NGESO** of the information contained in the **DC Daily Market Reports**, including in an anonymised form, insofar as relating directly or indirectly to the **Registered DC Participant** and the relevant **Response Unit**.

11.3 Without limiting paragraph 11.2, each **Registered DC Participant** also agrees to the disclosure by **NGESO** to the relevant **Public Distribution System Operator** of information related to any **DC Tender** (whether or not accepted) insofar as relevant to the management and operation of its **Distribution System**, including without limitation location of each **Eligible Asset** allocated to the relevant **Response Unit** and its MPAN and technology type, and the **Contracted Quantity**.

12. Exceptional Circumstances

12.1 If an exceptional situation arises, in particular if a system or the information needed to operate the **Dynamic Containment** tender process is unavailable or if an incident prevents the tender process from being held in normal circumstances, then **NGESO** may take any or all of the following measures (at its sole discretion):

12.1.1. modify either or both of the **DC Market Windows** and the **DC Market Results Time**;

- 12.1.2 authorise **Registered DC Participants** to submit new **DC Tenders** or modify existing **DC Tenders**;
- 12.1.3 authorise **Registered DC Participants** to submit **DC Tenders** otherwise than in accordance with paragraph 5.2; and/or
- 12.1.4 cancel the tender process for any one or more **DC Service Days**.

13. Use of NGESO Website and Systems

- 13.1 Insofar as made available as part of the tender process, each **Registered DC Participant** agrees to use the **NGESO** website (including all and any associated hardware and software IT and telecommunications equipment and transmission media):-
 - 13.1.1 in compliance with all applicable **Law**;
 - 13.1.2 in compliance with all and any technical specifications provided from time to time by or on behalf of **NGESO**; and
 - 13.1.3 solely for the purpose of formation of **DC Response Contracts**, and any other use is strictly prohibited.

14. Accuracy of Information

- 14.1 All and any information provided by **NGESO** to **Registered DC Participants** for the purposes of these **DC Tender Rules** including in each **DC Daily Results Report** is provided in good faith, but no representation or warranty is given by **NGESO** (or any of its employees, officers agents or advisers) as to the accuracy or completeness of such information.

15. Intellectual Property

- 15.1 **NGESO** and each **Registered DC Participant** retain ownership of the documents, data and information of any kind (including all intellectual property rights in them) that are provided to the other pursuant to these **DC Tender Rules**.
- 15.2 Each **Registered DC Participant** undertakes to **NGESO** that it will at all times when participating in a **Dynamic Containment** tender process, hold all and any authorisations and/or property rights and/or licences for all of the configurations, interfaces, firmware and software needed by it for it to participate in the applicable tender process.
- 15.3 Each **Registered DC Participant** shall comply (and use reasonable endeavours to ensure that its staff and other representatives comply) with all applicable user licences and terms of use of which the **Registered DC Participant** is aware governing use by the **Registered DC Participant** of the systems or software applications comprised in the **NGESO** website.
- 15.4 Each **Registered DC Participant** indemnifies and keeps indemnified **NGESO** from and against any claims from a third party relating to an infringement of that third party's intellectual property rights or other property rights arising out of use by the **Registered DC Participant** of the **NGESO** website in breach of any user licence or terms of use referred to in paragraph 15.3 of which it is aware.
- 15.5 **NGESO** shall procure such third party intellectual property authorisations as may be necessary to enable the **Registered DC Participant** to use the **NGESO** website for the purposes of the **DC** tender process.
- 15.6 **NGESO** shall indemnify and keep indemnified the **Registered DC Participant** from and against any claims from a third party if and to the extent that the use of the **NGESO** website by such **Registered DC Participant** for the purposes of a **DC Tender** infringes a third party's intellectual property rights or other property rights.
- 15.7 In respect of the indemnities given in paragraphs 15.4 and 15.6 the indemnified party shall:

- 15.7.1 notify the indemnifying party as soon as possible of any claim the subject of the indemnity (in this paragraph 15, “**IPR Claim**”);
- 15.7.2 give the indemnifying party control of the **IPR Claim**;
- 15.7.3 make no admissions in respect of an **IPR Claim** without prior written consent of the indemnifying party; and
- 15.7.4 provide such support in respect of the **IPR Claim** as the indemnifying party may reasonably require at the cost of the indemnifying party.

16. Viruses

- 16.1 Each **Registered DC Participant** shall, prior to uploading any information to the **NGESO** website or otherwise interfacing with it, use up to date versions of anti-virus software available from an industry accepted anti-virus software vendor to check for and delete from its systems viruses, trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programmes or similar computer code designed adversely to affect the operation of any computer software or hardware (in this paragraph 16, “**Malicious Software**”).
- 16.2 If, notwithstanding the provisions of paragraph 16.1, **Malicious Software** is found on the **NGESO website**, the **Registered DC Participant** shall co-operate with **NGESO** to reduce the effect of the **Malicious Software** and, particularly if **Malicious Software** causes loss of operational efficiency to the **NGESO** website, assist **NGESO** to mitigate any losses and restore the **NGESO** website to its original operating efficiency.

17. Costs

- 17.1 For the avoidance of doubt, each **Registered DC Participant** shall remain responsible for all costs and expenses incurred by it in connection with these **DC Tender Rules** and participation in **DC tender** including all costs of preparing and submitting **DC Tenders**.

18. Site Export and Import Limits

- 18.1 Each **Registered DC Participant** shall, prior to submitting a **DC Tender**, ensure sufficient export and/or import capacity at the premises at which each relevant **Eligible Asset** is situated (including where applicable **Transmission Entry Capacity** (and, if relevant, the **STTEC**)) so as to enable it to provide **Dynamic Containment** during each and every **DC Service Day** in accordance with its obligations under the **DC Response Contract** which may be formed in relation thereto and in conformance with its obligations owed to the owner of the relevant part of the **National Electricity Transmission System** or the relevant **Distribution System** or such other network (as applicable).