

British Energy's public assurance on capacity withdrawal

Mr C McCarthy
Chairman, Gas and Electricity Markets Authority

8 November 2000

Dear Callum

Public Assurance on Capacity Availability

As you know we are now entering the final phase of the Competition Commission inquiry resulting from the proposal to insert the MALC into BE's two England and Wales generation licences and the AES licences. BE did not enter this process lightly. We did so primarily on principle and to ensure that your proposal, which will fundamentally change the way in which competition issues are regulated in our industry, was thoroughly reviewed by the Commission. We believe that this has been done, and we will of course be happy to accept whatever it decides.

However, the Competition Commission is now due to report to you by mid-December and as you are aware, we have been considering the process, and its implications, which may follow the publication of its report, particularly in light of the recent announcement of a further delay to the implementation of NETA.

When this inquiry started back in May, it was expected that NETA would be implemented around the same time as the Commission was due to report and so there was naturally more of a focus on post-NETA trading arrangements rather than the current Pool arrangements. However, the latest NETA delay and the extension to the Commission's timetable have both changed things somewhat.

In particular, if the Commission was to conclude that there is a public interest issue relating to the Pool, and that a licence condition is the appropriate solution, then there will inevitably be a delay, perhaps a considerable one, before such a condition could be formally inserted into BE's licence. This delay (coupled with the Commission's extension) will undoubtedly mean that a significant proportion of the likely remaining life of the Pool cannot be formally addressed via the licence.

When the licensing regime was initially set up, processes were put in place which were primarily appropriate for enduring arrangements rather than this kind of short-term issue. In these circumstances, I hope you will agree that what we should all be trying to do (and here I include AES, Ofgem and the Commission), is to minimise any potential threat to the public interest arising from this. In the present circumstances, recognising also that changes to the Pool rules are unlikely to be practical, we therefore believe a public assurance by BE on capacity availability is appropriate.

This was one of the main concerns with the current Pool rules which the Commission identified in its note of 21 September on proposed remedies. This issue was also highlighted in Ofgem's statement on summer Pool prices in October.

The concern the Commission identified relates to capacity withdrawal and its effects, via the Pool rules, on capacity payments—not specifically relating to BE, but more generally. So far as BE is concerned on this issue, for the entire 10 years that the Pool has been in existence, we have never once withdrawn capacity from the market in a way which has had any (intentional or otherwise) effect on capacity payments for anything other than legitimate technical or safety reasons and we are now giving the following assurance:

Public Assurance:

For the remaining life of the Pool, BE hereby gives a firm, unequivocal public assurance that it will never withdraw capacity from the market in a way which has any effect on capacity payments for anything other than legitimate technical or safety reasons.

Whilst BE recognises that such an assurance is technically unenforceable, there is no doubt, for the reasons we have already explained to the Commission, that BE as a company will comply with the assurance. Personally, I can say that BE will take the assurance every bit as seriously as a licence condition.

I should also stress that giving this assurance is not intended in any way to prejudge, or preempt, the outcome of the inquiry. It is simply a genuine attempt—and I hope you will recognise it as such—to be constructive and to ensure that any potential risks to the public interest are seen to be minimised in the unusual circumstances of this particular inquiry. If necessary, and in the same spirit, we would be happy to consider any other similar assurance(s) for the remaining life of the Pool which may be appropriate following receipt of the Commission's final report, either in lieu of, or pending specific licence conditions.

I shall of course be copying this letter to the Commission. In addition, and reflecting the seriousness with which we regard the assurance, I am copying it to the Secretary of State.

Yours sincerely

PETER HOLLINS
Chief Executive

Source: British Energy.