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22 October 2020

Dear Harry, Mark

Consultation on Capacity Market Rules change proposals

We welcome Ofgem's consultation on Capacity Market Rules change proposals and its focus on reducing the complexity of the Capacity Market (CM) Rules. We agree that delivering change proposals outlined in the consultation will contribute to simplification of Capacity Market processes and systems and a more efficient operation of the market.

More broadly, we believe the Capacity Market continues to be an important tool to ensure security of supply as renewables penetration increases. However, we are concerned that the mechanism is not procuring the type of capacity the system needs to manage supply and demand while achieving net zero emissions. These are areas we would encourage BEIS and Ofgem to explore as the Capacity Market enters maturity:

- Increased renewables penetration combined with increasing electrification will require flexible generation on the system, but this type of capacity is losing out to interconnectors. Moreover, as interconnectors are not subject to the same emissions limit as other technologies, there is a risk that GB emissions are being offshored. We would encourage swift introduction of direct foreign participation to help mitigate this risk and ensure all generating technologies are competing on a level playing field.
- Speculative bidding could ultimately cost consumers more where non-delivery results in uncontracted plant, those losing out to interconnectors and other forms of capacity, taking contracts at short notice. For example, this could lead to T-1 auctions becoming unnecessarily expensive. To mitigate this risk, termination fees should reflect the cost the consumer. This approach should be explored in a full review of termination fees.
- DSR is one such technology which enters into Capacity Market auctions on a speculative basis. For this reason, we do not believe that DSR is suited to multi-year agreements, as this speculative capacity will be procured well in advance of delivery, in some cases nearly twenty years before. We recognise the conditions of State aid

approval so would encourage equality of treatment across all technologies to help mitigate these risks, particularly where treatment of DSR is more lenient.

Separately, there seems to be a shortcoming in the CM framework with no mechanism available to procure additional capacity in a scenario where a company goes into administration post T-1 auction.

In relation to the current consultation, while we appreciate the work done by Ofgem as part of its 5-year review, there seems to be still some way to go in simplifying the Rules and reducing the regulatory burden of the Prequalification process on market participants.

We are broadly supportive of Ofgem's proposals, however would welcome further clarification on the elements of these proposals, as noted further in this response, and in relation to Rule 4.4.4 in particular. In addition, we note that a review of Secondary Trading rules has not been progressed as part of the 5-year review and this work is expected to be taken forward by the CM Advisory Group, which is yet to be consulted on before the end of 2020. We urge Ofgem to set out a timeline for completion of this work by the CM Advisory Group, especially given that secondary trading is likely to be seen as more important for the majority of participants next Delivery Year as it marks the start of £15,000 MW termination fees for failing to demonstrate satisfactory performance on contracts awarded within a t-4 auction.

Finally, in terms of the general process, despite this consultation being open for three months, a significant overlap with the Prequalification window meant that the time to consider Ofgem's proposals has been limited to little over one month only. We would encourage Ofgem to re-consider the timing of publishing the CM Rules consultation in the future.

Kind regards

Polina Ruthven

Regulation Manager

Amendments to Rule 4.4.4

We maintain our view expressed previously that physical configuration of a CMU should not matter as long as the unit is able to deliver its committed de-rated obligation level. This consequently poses a question whether Rule 4.4.4 provides any real benefit within the wider setting of the Rules.

While we welcome Ofgem's minded-to-decision to allow greater flexibility in changing a Generating CMUs configuration, our view is that a holistic review any relevant Rules is necessary to ensure that a change to Rule 4.4.4 is effective and any inconsistencies in the wider Rules are addressed.

In addition, we note that Ofgem's suggestion that there might be a need for a deadline, pre-Delivery Year, beyond which changes to configuration would not be possible, does not align with the suggestion that Rule 4.4.4 might be applied within Delivery Year. We can see no benefit in putting changes to CMU's configuration on hold for any period of time if both proposals go ahead. Furthermore, if Rule 4.4.4 is to be applied within Delivery Year, a clarification is needed on how this will interact with SPDs where performance have already been evidenced within the original configuration. For example, where a unit has demonstrated its performance for the relevant Delivery Year but changes its configuration with effect from September, it is not clear when any new SPDs would need to be demonstrated nor the impact of failing to demonstrate these.

We agree that metering arrangements and connection capacity should be allowed to be changed as long as these changes do not lead to a lower de-rated capacity obligation. In our view, the existing penalty regime should be able to provide sufficient assurance that the required capacity will come forward. Additionally, further consideration could be given to introducing termination fees which are proportionate to the value of the contract.

Evergreen Prequalification

We support Ofgem's proposal to amend the EMR Delivery Body Portal to have improved functionality for evergreen applications. However, it is disappointing that while Ofgem acknowledges general comments made by the industry asking for more flexibility to account for administrative errors in Prequalification, no proposals have been put forward to address these concerns. This means that any minor errors made during Prequalification will continue to have a disproportionate effect, which could result in a market participant failing to prequalify its entire portfolio. Such an outcome would be to a detriment not only of market participants but also consumers who would ultimately bear the higher CM cost given that prequalification failures as a result of minor administrative errors would reduce the range of legitimate assets competing in the market thus leading to higher CM clearing prices. As we have advocated in our response to Ofgem's first policy consultation, one of the ways to

mitigate this risk would be to extend the Prequalification window to allow applicants to submit applications at any time within this extended period.

Separately, whilst we understand the need for a participant to provide some form of confirmation that they will be relying upon previously submitted documentation, we would not support Ofgem's proposal in Para 3.16 requiring applicants to submit an annual Exhibit confirming that new exhibits are being provided. This would only serve to create another piece of documentation to be uploaded in the Portal in addition to existing paperwork and is at odds with an objective of simplifying the process.

We would also urge Ofgem to consider carefully the documentation required to confirm that previously submitted documents are still valid. In terms of administration, the difficulty we often have is around securing Director signatures. If the suggestion is that there is still a need to secure a Director's signature in connection with this confirmation, then any potential benefit around this change is going to be limited, from our perspective.

As it currently stands, we would also highlight that there is currently duplication of declarations within the documentation and the EMR Portal, which is not helpful. For example, Exhibit C asks the Directors to make a declaration that the company has not been breached the Bribery Act 2010 when a box also needs to be ticked making this same declaration within the Portal itself and this is not an isolated example. This should also be addressed when considering future documentation requirements and the redesign of the Portal.

As part of any changes implemented to introduce evergreen applications, we would also ask that consideration is given as to how rule changes are communicated so that a prospective applicant is fully aware of how the revisions to the rules might impact its application.

Prequalification Data

While we agree with Ofgem's proposal to allow the requirement of Previous Settlement Period Performance to be met with previous Satisfactory Performance Days data, further clarifications are required in this area. For example, it is not clear why this proposal would only apply to a CMU which proved its performance during the last two Delivery Years and not to the unit that had met its obligations during the current **or** last Delivery Year.

In addition, it would also be helpful to have clarity around what would happen in situations where, for example, there is an upward change in a derating factor of a CMU or volumes had been revised in subsequent settlement runs. In these cases, SPD periods would no longer demonstrate an output in excess of the anticipated derated capacity for the relevant prequalification.

Whilst we are supportive of the change, without further clarity, it might not relieve the participants of the administrative burden in the manner that Ofgem believes it would.

However, given the above, it would be necessary to also give the applicant the option of providing historical settlement period information in case it wishes to do so.

Separately, we note Ofgem's comments in Para 4.6 and 4.7 in relation to 'non-material levels of administrative burden' and 'relatively small administrative effort'. We would like to emphasise that for a market participant prequalifying a large number of units the level of administrative burden as a result of seemingly minor administrative additions remains significant. In any case, as noted earlier, the level of administrative burden involved does not reflect the risk of failing as even minor administrative errors could lead to a failure to prequalify.

Planning Consents

We see a limited benefit in replacing a Relevant Planning Consent at Prequalification with a declaration stating that it has been gained, as proposed by Ofgem in Para 5.12.1. If a consent is available there is no reason as to why it should not be submitted as part of the Prequalification process as is currently the case.

Separately, we note that Ofgem's comments in Para 5.16 seem to contradict Para 5.17 stating that the applicant's capacity should be set at the RPC maximum output, where the applicant 'sufficiently justifies' the difference between the two. In any case, we would encourage Ofgem to provide further clarification on what 'sufficient justification' would entail in this context as the current wording allows for open interpretation.

Capacity Market Register

We are looking forward to seeing a more user-friendly format of the Register and are supportive of the inclusion of more detailed component-level information on the CM Register, including Connection Capacity, De-rated Capacity, Generating Technology Class and Fuel Type. We also welcome the proposal to include information on the nature of the DSR provided.

Reporting requirements

While we agree that a removal of ITE reports would reduce administrative and regulatory burden on New Build CMUs, it should be noted that Existing Generating CMUs will be subject to upfront costs in relation to new emission limits verification by an Independent Emissions Verifier. However, the difference is that in the latter case this cost is incurred even before the applicant has prequalified for the auction, while New Build CMUs only incur costs once they have secured a contract.

We accept Ofgem's proposal to remove ITE assessments except updates for any remedial plan associated with the SCM and with the FCM, along with any report associated with Total Project Spend and the Long Stop Date. However, currently if a project expects to achieve relevant milestones earlier than expected, meaning the project progresses without delays, an ITE report should not be required in this instance. In this respect further consideration should be

given to a more pragmatic application of 'material change'. In any case, we agree that it is appropriate for construction updates to be provided prior to T-1 capacity target setting, however we think that the suggested timeline of 22 months prior to Delivery Year seems unnecessarily long.

Separately, while we agree with Ofgem that there is a framework for the Delivery Body and Ofgem to request the required updates on ad hoc basis, it is not clear what would trigger these additional assurance checks and further clarity on this point would be appreciated.