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Dear Emma,

Consultation on the draft guidance for the Capacity Market Rules change process

Thank you for the opportunity to provide E.ON's comments on the above draft guidance. We generally believe that wherever possible industry rules should be subject to open governance. We therefore support aspects of Ofgem's guidance, but feel that there is scope to do more within the change process to involve stakeholders in the development and assessment of proposals.

We accept that the CM Rules are slightly different in nature to the rules which govern much of the electricity industry as they will not be contained in an industry code as such. Nevertheless, to ensure that the rules are as effective and efficient as possible it is important that they are able to be changed whenever defects or inefficiencies are identified. Often, the best parties to identify issues with the current arrangements are those who are most impacted by them and/or use them on a regular basis. Therefore, we welcome the intention to allow stakeholders to raise change proposals for further consideration.

Of course, the possibility of the rules changing can create a degree uncertainty for investors and potentially undermine confidence. Therefore, it is important that investors and other stakeholders feel that they can contribute to and influence any changes that are made. Although the current guidelines allow stakeholders to raise proposals for consideration, they also involve Ofgem determining at an early stage which will proceed for further development. This is a departure from the process for most codes which progress all valid change proposals, with Ofgem having the final decision on which should be implemented or not.

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The requirement for such a pre filtering of proposals appears to be a consequence of the process chosen for assessing them. The approach which has been proposed is to develop and assess all potential changes within the period between the end of one capacity auction and the beginning of prequalification for the next. This therefore concentrates all activity within a relatively short period of time.

This contrasts with the approach of other industry codes where potential modifications can be raised and assessed throughout the year. If this approach were to be adopted instead, the use of Ofgem and industry resources in assessing amendments could be smoothed out over the year, rather than be subject to significant peaks and troughs in activity. Additionally, substantial changes could be given due consideration rather than being rushed through artificially compressed timescales and straight forward changes could be assessed more quickly if necessary. This should improve the quality of the assessment process.

There would also be less or no need for Ofgem to pre filter the proposals as is currently envisaged, as the workload would not have to fit into such compressed timescales. We are concerned that there is a risk that proposals may be filtered out, which would have been demonstrated to be beneficial if they had been properly assessed and consulted upon.

We fully support Ofgem's aim of approving proposals in sufficient time to allow participants to take account of any changes when prequalifying for the relevant affected auction. We believe that this can be facilitated by adopting a window for implementation, rather than one for raising and assessing changes. Therefore, changes could be raised and assessed on a rolling basis, but only those which could be implemented within the relevant window would affect the rules for the following auction. This approach is similar to how Balancing and Settlement Code changes are scheduled into specific releases, especially when there are systems impacts.

We understand that Ofgem has reservations about such an approach, as it is felt that this might create an overly complex and burdensome process and increase the number of changes being proposed. There is no reason why the process needs to be overly complex or burdensome however. Current modification procedures in the industry codes have been significantly refined and provide accelerated processes for assessing less complicated and lower impact changes.

Nevertheless, raising a change requires a certain degree of commitment from the party concerned, in terms of supporting the assessment process, which ensures that parties carefully consider the changes that they raise before doing so. Indeed, it is likely that an annual window may incentivise parties to rush into raising proposals increasing the risk that some proposals will be ill thought through.

In summary, we believe that the processes proposed in Ofgem's guidance could be improved further simply by introducing some aspects of current code governance in order to improve stakeholder involvement. We believe that this will help improve the efficiency of the change process and allow affected stakeholders to input effectively into the assessment of proposals.

This in turn should ensure that the best quality analysis and decisions are taken, and promote investor confidence in the arrangements.

Yours sincerely,

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