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5 May 2015

**Electricity Market Reform (EMR): Statutory consultation on changes to the Capacity Market Rules pursuant to Regulation 79 of the Capacity Market Regulations 2014**

EDF Energy is one of the UK's largest energy companies with activities throughout the energy chain. Our interests include nuclear, coal and gas-fired electricity generation, renewables, and energy supply to end users. We have over five million electricity and gas customer accounts in the UK, including residential and business users.

EDF Energy welcomes the opportunity to comment on the proposed changes to the Capacity Market rules. We support Ofgem's decision to limit the changes to be made now to those which are essential. Nevertheless, we remain concerned that the large number of changes made by DECC and Ofgem creates a significant risk of inconsistencies. We recommend an industry-wide walkthrough of the draft consolidated Capacity Market Rules before the start of pre-qualification to ensure that DECC's and Ofgem's policy intent is reflected accurately.

We have noted some issues with the proposed legal drafting; these along with our detailed responses to Ofgem's questions are set out in the attachment to this letter. We are particularly concerned with the new requirement for Capacity Providers to obtain all permissions to allow a person nominated by the CM Settlement Body to access a site. Many of these sites are subject to stringent security and safety provisions. It will therefore be necessary for the CM Settlement Body to work with parties to make the necessary arrangements in advance to enable safe and secure access for inspections. We believe that any person who comes onto site must not put Capacity Provider in breach of any Statutory Requirements.

We therefore consider that the CM Rules should require the Capacity Provider to use reasonable endeavours to support the CM Settlement Body in getting the necessary permissions for safe and secure access to site.

Should you wish to discuss any of the issues raised in our response or have any queries, please contact Guy Buckenham on 07875 112585, or me. I confirm that this letter and its attachment may be published on Ofgem's website.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Angela Pearce'.

**Angela Pearce**  
Corporate Policy and Regulation Director

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## Attachment

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#### EDF Energy's response to your questions

- Q1. CP06, CP25, CP34, CP41 and CP50: Qualifying Capital Expenditure for New Build CMU: We invite stakeholders to provide us with information, and factors, backed up with evidence as far as possible, that we should take into account in considering: When should the Rules be amended to introduce the period for qualifying expenditure of 77 months prior to the start of the relevant delivery year?**

EDF Energy supports the proposal for a period of 77 months prior to the start of the relevant delivery year for Qualifying Capital Expenditure for a New Build CMU. This should be implemented for the 2015 auction unless there are good reasons for deferring the introduction to 2016.

EDF Energy is not aware of any good reason to defer the introduction to 2016 but we would not rule out the possibility that other parties may be able to provide good reasons for this.

- Q2. CP01, CP07, CP25, CP34, CP41 and CP50 Qualifying Capital Expenditure for Refurbishing CMU: We invite stakeholders to provide us with information, and factors, backed up with evidence as far as possible, that we should take into account in considering: (i) Should the starting point for qualifying refurbishing expenditure be prequalification results day or auction results day? (ii) Should this new starting point apply from 2016?**

As with New Build Capital Expenditure, we believe that, in principle, the qualifying period for refurbishment expenditure should be long enough to enable a participant to include the full cost of a refurbishment project, including the initial phases of project planning and design, within the Qualifying Capital Expenditure. It is necessary to carry out at least some of this project planning and design before entering pre-qualification as a Refurbishing CMU. Therefore, we believe that an appropriate period for Qualifying Capital Expenditure for a refurbishing CMU would start from the beginning of the calendar year in which pre-qualification takes place, which would be 57 months before the start of the relevant delivery year.

On this basis, we do not agree with either of the two options proposed by Ofgem but the one which most closely meets our proposal would be that the starting point should be pre-qualification results day.

Given that DECC has introduced significant changes to the requirements for the pre-qualification certificate to apply from the 2015 auction, we believe that it would be reasonable for the new starting point also to apply from 2015.

**Q3. CP69: Do you have any views on whether and how the Rules should be amended to prevent applicants being able to provide a calculation of connection capacity close to the value of entry capacity in the manner described in CP69?**

We believe that, it is important to ensure that the process to calculate the connection capacity minimises any risk that could lead to the provision of unrealistic capacity levels. This would counter the facilitation of the efficient operation and administration of the Capacity Market. However, given the range of different circumstances that may exist, this is a complex issue and we would welcome the opportunity to participate in the development of an agreed industry-wide solution over the next year to prevent the calculation of a connection capacity above the entry capacity which, once de-rated is equal to or very close to a CMU's entry capacity.

**Q4. CP74: Do you agree that duration bid amendments should only be allowed to reduce during the auction?**

At this stage, we do believe that this proposal is supported neither by a robust justification nor a clear understanding of the potential impact. We believe that it would be appropriate to consider the rules for duration bid amendments when considering whether to introduce a price duration curve.

**Q5. CP46: Do you believe that DSR CMUs should be able to add, remove and reallocate CMUs? Please explain your answer. Do you think there are potential downside risks to this, as we describe above? If so, how would you suggest we mitigate these downside risks?**

In principle, EDF Energy supports measures to enable DSR to compete on equal terms within the capacity market.

If customers can be re-allocated across CMUs then it manages the risks for DSR providers, increasing their participation and the amount of DSR available, and this aligns with the existing procedures in the balancing services. However, we do agree with Ofgem that this may increase risks to the provision of the Capacity Market, and/or requires additional DSR and metering tests because re-allocating the components within a CMU will effectively make a Proven DSR CMU into an Unproven DSR CMU.

We would support the approach whereby re-allocation of CMUs results in Proven DSR CMUs becoming unproven and therefore results in a re-testing requirement. Assuming that this can be done, it mitigates the risks to the CM but allows greater amounts of DSR to participate. We are uncertain how often DSR providers may wish to do this. It may be necessary to impose a limit on the number of times this can be done in a year, or, alternatively, only to allow this to be done at specific times during the year.

**Q6. CP24: Do you have any reasons or evidence for why we should not also include OC.6.7 as a form of load reduction in the definition of Involuntary Load Reduction (in addition to our proposal to make the amendment suggested by CP24)?**

EDF Energy believes that it is appropriate to also include OC.6.7 as a form of load reduction in the definition of Involuntary Load Reduction. However, if any NGET action prevents a CMU from operating in the Capacity Market, that CMU should not be penalised.

**Q7. CP49: Do you have any evidence to show that CHP is failing to prequalify or that there would be benefits to allowing embedded generation to bid as a DSR component?**

A number of small generators including CHPs were able to prequalify; from inspection of the Capacity Market Register, we can identify 30 CHP CMUs, of which 29 secured capacity agreements. We are not aware of any impediments that affect CHP's ability to prequalify.

We believe that further consideration should be given to the treatment of embedded generation in the Capacity Market. "Behind the meter" generation is currently treated as DSR and we note the concern expressed on this point by the House of Commons Energy and Climate Change Committee in their report on "Implementation of Electricity Market Reform" published in February 2015. We believe that consideration should be given to requiring such generation to be explicitly treated as generation rather than as DSR. This would ensure that there is a much clearer visibility of how much "true" DSR is being provided; however, careful consideration should be given to the practical implications of this (for example, in metering arrangements).

We also would not support the idea that generation connected to a distribution network should be treated as DSR.

**EDF Energy**  
**May 2015**

## Capacity Market Rules legal text issues

No	Rule	Comments	Suggested alternative drafting (if appropriate)
1	1.2	The legal drafting change for ' <b>Potential Clearing Capacity</b> ' could be made clearer.	means, for any Capacity Auction, the capacity (in MW) at a particular price in that <u>Capacity Auction</u> as determined by the Demand Curve
2	1.2	The legal drafting change for ' <b>Qualifying £/kW Capital Expenditure</b> ' could be made clearer.	means, with respect to a Prospective Generating CMU, the Capital Expenditure (excluding contingency) incurred, or expected in the reasonable opinion of the Applicant to be incurred (either by the Applicant or another person), between <u>the date which is [43/48/57] months prior to the start of the Delivery Year</u> , and the commencement of, the first Delivery Year to which the Application relates, divided by the De-rated Capacity of the Generating CMU that is expected in the reasonable opinion of the Applicant to result from such Capital Expenditure [CP01, 06, 07, 25, 34, 41, 50]
3	3.4.5(c)	Typographical error.	the applicable De-rating Factor for the CMU and in the case of a Generating CMU that comprises more than one Generating Technology Class the applicable De-rating Factor for each Generating Unit; and
4	3.6.3(d) (ii)	The reference here to a ' <b>Distribution Connection Agreement</b> ' does not work as this is defined in the Rules as being an agreement between the DNO and the person responsible for that CMU, which obviously is not the case for a CMU on a private network.	... that the owner of that Private Network has <u>an agreement in place with the relevant Distribution Network Operator for the connection of the Private Network to, and use of, a Distribution Network.</u> <del>Distribution Connection Agreement in place with the relevant Distribution Network Operator.</del>
5	3.7.1	We would recommend clarifying 3.7.1 to refer to "documentary evidence" of the Relevant Planning Consents, otherwise it could be inferred that originals have to be provided which we believe	(a) that, in the case of an Application relating to the First Full Capacity Auction, it will obtain all Relevant Planning Consents and will have the <u>legal</u> right to use the land on which the CMU is <u>or will be</u> located [CP81] by no later than the date falling 17 Working Days prior to the commencement of the first Bidding Window in relation to

No	Rule	Comments	Suggested alternative drafting (if appropriate)
		is not the intention.	<p>such Capacity Auction; or</p> <p>(b) otherwise, that it has obtained all Relevant Planning Consents required for the construction and commissioning of the Prospective Generating Plant (but excluding any ancillary infrastructure associated with, but not comprised in, the Prospective Generating Plant) and has the <u>legal</u> right to use the land on which the CMU is <u>or will be</u> located,. [CP81]</p> <p>and <u>in the case of if Rule 3.7.1(b), an Applicant</u> must provide <u>documentary evidence of</u> the Relevant Planning Consents [CP80] <u>and legal right to use the land</u>.</p>
6	3.7.1A	<p>Ofgem’s response to CP80 refers to a new Rule 3.7.1A being added by DECC to enable Interconnector CMUs to declare that Relevant Planning Consent will be in place. While DECC’s proposed change to Rule 3.7.1 refers to a new Rule 3.7.1A, that new Rule is not actually inserted or referenced anywhere in its draft.</p> <p>There seems to be a mismatch in Ofgem’s comments and what is actually in the DECC draft, so it would be good to clarify where the proposed new 3.7.1A can be found.</p>	
7	5.6.5	<p>The legal drafting change could be made clearer. This would require a new definition of Duration Bid Minimum Price by reference to Rule 5.6.5 to be added to Rule 1.2.</p>	<p>5.6.5 A Duration Bid Amendment must:</p> <p>(a) specify the minimum price at which the <del>b</del>Bidder would be willing to commit the Bidding Capacity for that <u>Bidding</u> CMU at the <u>current</u> duration <u>of Capacity Agreement in its current Duration Bid (the “Duration Bid Minimum Price”)</u>. [CP18]</p> <p>(b) subject to Rule 5.6.6, specify the</p>

No	Rule	Comments	Suggested alternative drafting (if appropriate)
			duration (in whole Delivery Years) of Capacity Agreement that the Bidder requires with respect to that Bidding CMU in the event that the Clearing Price is lower than <u>the Duration Bid Minimum Price that price</u> ; [CP18] ...
8	5.6.7 and 5.6.8	The legal drafting change could be made clearer. Please note that this would require the new definition of Duration Bid Minimum Price by reference to Rule 5.6.5 to be added to Rule 1.2.	<p>5.6.7 A Duration Bid Amendment which: ...</p> <p>may also specify that the CMU participating in the Capacity Auction in the event that the Clearing Price is lower than the <u>Duration Bid Minimum Price highest price</u> specified in the Duration Bid Amendment is the Pre-Refurbishment CMU and not the Refurbishing CMU.</p> <p>5.6.8 A Duration Bid Amendment has the effect of amending the Duration Bid for the relevant Bidding CMU for all prices equal to or [CP18]lower than <u>the Duration Bid Minimum Price highest price</u> specified ...</p>
9	8.3.6(a)	No suggested amendments have been made to reflect Ofgem's decision to revise the timescale for new build CMUs to submit their evidence of capital expenditure to three months after the start of the relevant delivery year, rather than "prior to the start of the delivery year".	
10	8.4.6	We are not clear what Ofgem's change actually achieves in Rule 8.4.6(a) as it is just splitting out the two events which make up a "System Operator Instigated Demand Control Event" into two separate limbs and therefore having exactly the same effect as before.	
11	13.5.8	Any person who comes onto site must not put Capacity Provider in breach	The Capacity Provider must <u>make reasonable endeavours to</u> obtain (or, if the Capacity Provider is not the owner of the

No	Rule	Comments	Suggested alternative drafting (if appropriate)
		of any Statutory Requirements.	relevant property or asset, shall procure that the owner <u>makes reasonable endeavours to obtain</u> ) each authorisation, licence, accreditation, permit, consent, certificate, resolution, clearance, exemption, order confirmation, permission or other approval for it to be able to grant the Entry Right to the CM Settlement Body and any suitably qualified <u>and experienced</u> persons nominated by the CM Settlement Body.