

# Energy UK response to Ofgem statutory consultation on Capacity Market Rules changes

## 5 May 2015

Energy UK is the trade association for the energy industry. Energy UK has over 80 companies as members<sup>1</sup> that together cover the broad range of energy providers and suppliers and include companies of all sizes working in all forms of gas and electricity supply and energy networks. Energy UK members generate more than 90% of UK electricity, provide light and heat to some 26 million homes.

### Executive Summary

#### Process

- Energy UK members are disappointed that Ofgem has not provided a forum for open discussion of its decisions regarding proposed Rules changes. We do not believe that this is good practice in terms of industry change governance and we strongly encourage Ofgem to ensure that this is the approach for future years to ensure that there is confidence in the Rule change process.
- In order to ensure the final, consolidated rules are consistent Energy UK members would welcome a page turning session of the draft rules before completion.

#### Changes accepted and rejected

- We welcome that Ofgem has decided to implement a number of the changes proposed by Energy UK, in addition to a number of sensible changes proposed by other stakeholders.
- We support Ofgem's decision to make National Grid's proposed change CP57, as the definition of clearing capacity is not clear. However, we note that Ofgem approved this change based on it enhancing clarity, whereas other proposed changes have been rejected which appears to be inconsistent (see below).
- Energy UK does not support Ofgem's Proposal B as we do not agree with the assertion that there could be 'strategic withholding' as Ofgem suggests. We believe that the competitive pressure of the auction prevents the potential for 'strategic withholding'. Ofgem does not provide any evidence to indicate that this is a risk.

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<sup>1</sup> National Grid is a member of Energy UK but did not have input into this consultation response.

- Ofgem has rejected a number of change proposals by Energy UK and National Grid, which we believe would improve operation of the Capacity Market by streamlining the process, providing clarification and transparency. Rather than only taking forward the bare minimum of changes, Ofgem should be working towards improving and streamlining the Capacity Market for the 2016 auction.
- Energy UK is disappointed that change proposals CP10, CP15 and CP05 which all aimed at transparency were rejected. The high level outcome of each bidding round is market sensitive information and there is no reason why it should be restricted to participants in the auction, particularly when that includes those who have exited. We do not agree that publication of the information could lead to coordination by the bidders.
- CP23, which was also rejected, would have removed the costly and onerous legal opinion requirement. Ofgem points to Rule 3.4.2 (b) which allows Applicants to re-use a legal opinion. Unfortunately, that is not possible as a legal opinion is only valid at the moment it is signed and would therefore need to be reissued. A solicitor would be acting negligently if it allowed an opinion to simply be re-used without a fresh legal opinion and its requisite checks being provided. Therefore, it is our view that the significant costs for the preparation of legal opinions which were incurred for the 2014 pre-qualification will need to be incurred for each future pre-qualification. DECC, via CP88, called for a review of the information required to be submitted by applicants for pre-qualification, which has been rejected. We believe the review is required and that provision of a legal opinion should be part of it as it acts as a barrier to entry for new entrants.
- Energy UK is disappointed that a number of National Grid's change proposals, which would have provided clarification in the Rules (CP76 and CP55) were rejected. Ofgem imply the arguments in favour of the clarification modifications were not compelling enough. Energy UK members believe that clarity will make market entry easier, compliance less costly, and ultimately add to competition.
- CP09 & CP89 (CM Register) – Energy UK supports these change proposals on the basis that it would be helpful to the wider market to know which plants have committed to undertake refurbishing work, which should be reported to the market under REMIT, as it places relevant CM information in one easy to find location. The proposals simply place equivalent data in the CM register at no apparent cost, whilst adding to transparency.
- CP22 and CP35 - Energy UK believes it would be possible to alter the data submissions obligations without removing the responsibility on parties to submit correct data. The obligation to submit correct information could be extended to require the applicant to either “submit or confirm” that it has uploaded or checked data, so the prequalification data can roll forward between years. The Delivery Body's responsibility could be extended to ensure that once data has been provided, it will be rolled forward. However, the requirement to confirm the data is correct would remain with the applicant.
- C59 (system stress events) – Energy UK proposes that any changes to the trigger for a stress event is tested with industry so that they are robust and well understood.

## **Consultation questions**

### **Question 1 - CP06, CP25, CP34, CP41 and CP50: Qualifying Capital Expenditure for New Build CMU**

- 1.1 Energy UK agrees that the May 2012 date needs to be changed so that an enduring lead time is set and expressed in months. The May 2012 date was only selected to prevent an investment hiatus and therefore was used by exception for the first auction. Therefore we

believe that this change should be made by 2016 at the absolute latest.<sup>2</sup> There are different views amongst Energy UK members as to whether the lead time should be 77 months or a shorter period of time.

### **Question 2 - CP01, CP07, CP25, CP34, CP41 and CP50 Qualifying Capital Expenditure for Refurbishing CMU**

2.1 Energy UK agrees that these changes should be made but they should be made from the 2015 auction to coincide with DECC's changes to the Rules which require Directors' Certification of requirement for capacity agreement exceeding one year.

### **Question 3 - CP69**

3.1 There are different views within Energy UK membership as to whether there is a problem with the use of connection capacity as set out in the consultation document. This is not a straightforward issue and we support Ofgem's proposal to undertake further research into resolving this issue before deciding on any changes to the Rules. In the meantime it may be helpful if National Grid were asked to publish CEC along with TEC on the TEC register so parties can identify which plants may be in a position to exploit this rule. Transparency is an easy way to ensure compliance.

### **Question 4 – CP74**

4.1 Energy UK believes that it would be premature to make any changes on duration bid amendments until after DECC has decided if it will implement a Price Duration Curve methodology and how it will do so.

### **Question 5 – CP46**

5.1 Energy UK does not believe that the proposed changes to the Rules are necessarily required to enable wider participation of DSR. Secondary trading arrangements need to be fit for purpose so that smaller DSR CMUs can participate. As with all other CM participants, the DSR CMUs should be able to trade with any other prequalified sites.

5.2 We recognise that the 2MW threshold may create an issue for DSR participants. We would therefore suggest that consideration is given to allowing pre-qualification, but not auction participation, for smaller sites (or pieces of equipment) below 2MW that could then trade on the condition they form a CMU of not less than 2MW.

### **Question 6 – CP24**

6.1 Energy UK supports this change provided that it does not include Emergency Manual Disconnection used to manage a localised distribution issue (for example a fire) that is unrelated to a demand control event. This would run the risk of overstating the Load Following Capacity Obligation and may lead to capacity providers paying non-delivery penalties where there is no true system stress event.

### **Question 7 – CP49**

7.1 Energy UK does not 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.

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<sup>2</sup> We note that some Energy UK members believe that the change should be brought in from 2015, whereas some others believe that it should be from 2016.

**For further information please contact:**

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