Response to EMR Statutory Consultation on changes to the Capacity Market Rules pursuant to Regulation 79 of the Capacity Market Regulations 2014

ENGIE

GDF SUEZ Group changed its Corporate branding on 24 April and is now ENGIE. The name was changed to reflect the Group's ambition to accelerate its development in a global energy landscape that is undergoing profound changes. More information is available on www.engie.com.

ENGIE in the UK is the country's largest independent power producer by capacity with interests in 5,015 MW of plant in operation in the UK market made up of a mixed portfolio of assets – coal, gas, CHP, wind, OCGT distillate, and the UK's foremost pumped storage facility. Several of these assets are owned and operated in partnership with Mitsui & Co. The generation assets represent approximately 6% of the UK's installed capacity. The company also has a retail business supplying electricity and gas to the Industrial and Commercial sector.

In March 2014, ENGIE acquired West Coast Energy (WCE), an independent renewable energy developer based in North Wales. The company has a wind development pipeline of 500MW, with ENGIE operating 70MW of wind farms in the UK, 50MW of which were jointly developed with WCE since 2008. WCE also has an early stage portfolio of other renewable opportunities, including solar PV and small scale hydro projects.

ENGIE welcomes the opportunity to respond to this Ofgem consultation on changes to the Capacity Market Rules 2014

I) Key Points

- **Ofgem's Rule Change process has not been as inclusive as industry had hoped. Ofgem had indicated that it would hold workshops to discuss the change proposals that have been raised. Instead there has been a single Consultation where Ofgem has accepted a minority of the changes proposed and dismissed many that would have improved the functioning of pre-qualification. A more iterative engagement and Consultation process needs to be adopted in future with sufficient time allotted to understand and if necessary develop change proposals where they are not fully set out.**

- **We support changes to the time period over which qualifying expenditure is measured for Prospective CMUs. Ofgem has not justified why these changes should be delayed - if they are seen as sensible, they should apply from the 2015 auction.**

- **We note that Ofgem recognises the need to simplify and streamline pre-qualification. Ofgem has rejected some changes that would be beneficial in this regard. Ofgem should reconsider its decisions.**

- **For companies incorporated under English law, there is no need to provide a legal opinion. Ofgem should apply rather than reject this Rule change in such instances.**

- **CMUs need foresight of the performance they must achieve in order to pre-qualify. CP86 does not provide this.**

- **A consolidated set of Capacity Market Rules has been lacking; publishing a changed marked set of the Rules is extremely helpful. The final set published prior to pre-qualification for the 2015 auction must also include any amendments made by DECC to the original Capacity Mechanism Rules.**

II) Answers to Consultation questions

Question 1 - 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?

1. Ofgem has offered no justification for delaying this Rule change. It should apply from the 2015 auction and certainly no later than 2016. A delay provides projects that failed to secure a contract in the 2014 auction with the option to seek a higher price in a future auction. The longer the Rule remains unchanged, the more opportunity there is to chase a higher price. This is not good value for consumers. Given Ofgem's primary duty to protect the interests of consumers, it is not clear why Ofgem should support any delay to making the amendment.

Question 2- 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?

2. ENGIE agrees with Ofgem's proposal to limit the period of qualifying capital expenditure to the period over which the refurbishment spend is incurred. The spend should apply from auction results day as it is only beyond this point with the certainty of a 3 year contract that the refurbishment and the associated expenditure would take place (particularly given DECC's rule change decision to exclude any substantive routine or statutory maintenance from qualifying capital expenditure from the 2015 auction onwards).

3. It is a sensible proposal and ENGIE sees no reason why it should not come into force for the 2015 auction. Introduction at this point would remove any further opportunity for routine maintenance to be included in the threshold for qualifying capital expenditure and ensure that contracts are only awarded for genuine refurbishment.

Question 3 - 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?

4. ENGIE has no immediate proposal to solve this issue and supports Ofgem's intent to carry out further research in this area. We also agree that any changes should not create unintended consequences – they should add to the options for determining connection capacity rather than reduce them or make it more difficult for participants to pre-qualify.

Question 4 – Do you agree that Duration Bid Amendments (DBAs) should only be allowed to reduce during the auction?

5. It would be helpful to clarify this although in principle ENGIE does not agree with DBAs only being allowed to reduce during the auction. Logically, capacity providers would accept a lower price for a longer contract duration. DBAs should therefore be allowed to increase as the auction price falls with all capacity providers able to choose their contract length.

Question 5 – 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?

6. Rather than creating special rules for certain types of participant which may have unintended consequences, it would be better to focus on ensuring that the secondary trading arrangements are fit for purpose and provide opportunities to trade out of obligations over any timescale.

Question 6 – CP 24 Do you have any reason or evidence for why we should not also include OC6.7 as a form of load reduction in the definition of Involuntary Load Reduction?

7. OC6.7 relates to Emergency Manual Disconnection. It is not clear whether OC6.7 would only occur in response to System Operator Instigated Demand Control Event or whether Emergency Manual Disconnection could be used to manage a localised distribution issue (for example a fire) that is unrelated to a demand control event. If the latter is possible, then it should not be included within the current definition of Involuntary Load Reduction as it would overstate the Load Following Capacity Obligation and may lead to capacity providers paying non-delivery penalties where there is no true system stress event.

III) Other comments on the Consultation

CP02

8. Ofgem has rejected this stating that changes to the monitoring process should only be introduced if there is a risk that CMUs will not be submitting accurate and truthful progress reports. At this point it is not possible to provide evidence that progress reports are inaccurate (they haven't yet been submitted). This modification was therefore raised to allow public scrutiny of expenditure. Without this we do not see how the public can have the certainty as to where this money has been spent as the report is only between the ITE and the Delivery Body.

CP20

9. ENGIE is surprised that Ofgem does not see the benefit of providing the Exhibits in an editable format. Such a change would ease the process of pre-qualification as companies would not have to re-create these forms. If Applicants have to recreate the Exhibits, then the formatting will inevitably lose

consistency. Non-standard presentation of forms will only make the EMR Delivery Body's task more difficult.

CP21

10. It is disappointing that Ofgem does not see the benefit in providing a template certificate for a CMU that is opting out. Ofgem should be looking for ways to simplify pre-qualification through standardisation as much as possible and this offers a simple 'win'.

CP23

11. This submission proposed to remove the requirement to submit a legal opinion. With respect to Applicants incorporated under English law, s.40 of the Companies Act 2006 gives significant protections to persons dealing with a company in good faith and it is not clear what additional comfort is provided by the requested legal opinions.

12. The provision of such legal opinions comes at a cost for an Applicant. ENGIE estimates that approximately 20 man-hours were used to draft the 5 legal opinions issued for the ENGIE Applicants and do all of the searches necessary to be able to issue such a legal opinion for each Applicant. We estimate a cost of approximately £5-6k per opinion should we have had external solicitors prepare the opinions. If this figure is multiplied by the 513 Applicants that took part in pre-qualification for the 2014 auction, this amounts to a cost to industry and ultimately the consumer of over £3m. This is a very high cost for a very low benefit especially given the Directors' obligations under other laws.

13. 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. Therefore, a fresh legal opinion would need to be issued and the same searches and drafting would need to be undertaken as were undertaken with respect to the preparation of the original legal opinion. A solicitor would be acting negligently if it allowed an opinion to simply be re-used without such steps being followed. Therefore, it is our view the 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. That the Rules allow Applicants to re-use an opinion, does call into question the value that DECC and the EMR Delivery Body place on having one.

14. A number of arguments have been put forward above that question the need and usefulness of the legal opinion and also the cost that is ultimately borne by the consumer on obtaining the opinion. Ofgem should accept this rule change and remove the requirement to obtain a legal opinion for companies incorporated under English law.

CP26

15. We agree with Ofgem's decision to reject this proposal. It may create as many problems as it solves, particularly where a CMU has a TEC that would not allow generation at the Connection Capacity. A more holistic review is needed to expand the options that define Connection Capacity. We therefore support Ofgem's proposal under CP69 to carry out further research into this and reach a solution for the 2016 auction.

CP62, CP66 and CP67

16. We are pleased that Ofgem intends to adopt these Rule changes as they will help to streamline pre-qualification. As noted above in relation to CP20, 21 and 23, Ofgem should also re-consider other Rule changes to ease pre-qualification.

CP 86

17. Under CP 86, Ofgem proposes to accept DECC's CP which amends Rules 3.6.1 and 3.6.2 to allow applicants to confirm settlement period data and Grid Code compliance for the 24 months prior to one month in advance of the prequalification window (currently it is the start of the pre-qualification window).

18. The Secretary of State will publish de-rating factors on 30 June. Under CP86, with pre-qualification proposed to start on 20 July 2015, the existing CMU will not know its de-rating factor until after the window has closed for settlement period performance and may find that it cannot demonstrate sufficient metering to satisfy its de-rated Connection Capacity and cannot therefore pre-qualify because its performance falls short by a few kW or a MW.

19. It would be better to either:

    - Publish de-ratings prior to the closure of the settlement period performance window (for example 1 month in advance to give sufficient time to arrange a metering test should it be needed, two months would be better but this may not be possible for the 2015 auction). This will allow Existing CMUs to know what they have to achieve in their metering or;

    - Reject CP 86 and revert back to demonstrating performance up to the start of pre-qualification.

20. Either way, Existing CMUs should have foresight of the performance they must achieve in order to pre-qualify.

For further information, please contact

Libby Glazebrook
Policy Advisor – Electricity Markets
ENGIE
Senator House
85 Queen Victoria Street
London EC4V 4DP
Tel: 07970 767221
libby.glazebrook@engie.com