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1st May 2015

Dear Mr Cooper

Response to Statutory Consultation on Capacity Market Rule Changes

MPF Operations (MPF) is the owner of three modern gas-fired power stations in the United Kingdom: Severn Power (832MW), Baglan Bay (500MW) and Sutton Bridge (800MW). MPF acquired these plants between October 2012 and December 2013 in order to establish a competitive new entrant generation business in the UK electricity market. Our portfolio performs a vital role in helping to maintain secure, efficient and economic electricity supplies for GB energy customers. As our plant is obligated to participate in the capacity market (CM), changes to the rules and other developments are vital to our business.

In responding to Ofgem's consultation we have tried to group our views along similar lines to Ofgem's own document. We have not commented on the proposals where we largely agree with Ofgem, except where we feel it would add clarity around a specific issue.

General Provisions

MPF generally supports changes to the rules that seek to add clarity and believes that Ofgem should make the changes the market has requested which place definitions into the rules which may already sit in the regulations (CP12 and CP19). . For smaller parties and new entrants having a clear set of rules, with an updated and consolidated version issued after each set of changes, reduces the need to refer to the less readable regulations and would enhance competition.

Clarification Amendments

There are a number of other changes that seek to add clarity that we also support:
CP17 - De-rating Measurement - We fully support the proposal to make metered volume a measurement to 3 decimal places.

CP28 - Prospective CMUs - We agree that the use of FONs where IONs are not given is sensible.

CP57 - Clearing Capacity - National Grid (NG) is right that the definition of clearing capacity is not clear and we support their proposed change. Ofgem has given no compelling reason not to enhance clarity where possible.

CP90 - Non-CMRS CMUs - We agree that altering the wording to bring it in line with industry terminology would be sensible.

CP04 – Recognition of mixed technology CMUs – While MPF agrees with the clarification, we would feel more comfortable if all plant were using the same calculation to measure the aggregate de-rated capacity to ensure a level playing field. It may be possible for NG to add this to guidance notes, but firm rules would appear beneficial for all parties.

CP30 and CP60 – CMU description – We agree with the balance that Ofgem intends to strike in clarifying the information provided and making it more uniform without being overly burdensome.

CP62, CP66 and CP67 – Rationalisation of prequalification statements and information – MPF supports the rationalisation Ofgem proposes to make but would also like to see a further reconsideration of the need for legal opinion.

CP09 & CP89 – CM Register – 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 neatly place the equivalent data in the CM register at no apparent cost and would tell the wider market if the plant is investing and therefore likely to become more reliable or not.

Qualifying Capital Expenditure

MPF agrees with the proposals to move the starting date for qualifying capital expenditure forward and believes 77 months prior to the delivery date is appropriate. A longer time period would accommodate larger new plant being able to achieve all the necessary milestones for prequalification. Achieving the necessary planning and connections (which may need planning as well) is not a quick or cheap process for the developer. Ofgem should not want to discourage parties from bringing forward new plant where they may be concerned that an extended spend profile risks the project not qualifying for the CM.

MPF supports the change being made in 2015 so that those entering the market do not have to monitor changes potentially being made in future years. This adds clarity and avoids investment uncertainty. We also note that the 77 months is a more robust solution to accommodate investment during years where a CM auction may not take place. A party could commence investment and then face a year where the Secretary of State decides that no auction will take place. They would be less likely to be discouraged from continuing development if they believed their expenditure could still be incurred for the following auction. This commercial flexibility also accommodates unforeseen problems in a development, such as archaeological issues discovered on a site.

Refurbishing CMUs

It is difficult for parties to always accurately know how long some refurbishment work may take and they would probably wish to fit the refurbishment around their statutory outages. However, if a plant needs a three year agreement to justify the refurbishment they are unlikely to want to start work until after the auction results are known. MPF therefore supports the spending being allowed to start from the auction results day. This does not stop work occurring before, if the generator was undertaking some work as standard maintenance, and they extend work for a full refurbishment if successful.

De-rating Factors

MPF agrees with NG that calculating de-rating factors for the delivery year and not the calendar year makes more sense. However, we would like to register our general disagreement with the de-rating process as we believe it would be far better for plants to set their own de-rating factor. It is a commercial risk for parties who wish to go up to their full capacity (some plant can generate over the nameplate capacity) and some older plant may not be able to reliably reach the capacity obligation they are forced to hold.

Use of Agents

MPF agrees with Ofgem that allowing agents to act for multiple parties could create a conflict of interest or lead to a “collusive” approach using a portfolio. However for smaller parties there is merit in being able to seek expert help, notably through the prequalification process. MPF suggests that Ofgem considers whether it may be more appropriate to limit the volume of plant that may be represented by one agent. Such a change may facilitate additional plant coming to the market.

Prequalification data

MPF sees no reason that the obligation to submit information cannot be extended to require the applicant to either submit or confirm that it has checked data, to allow for the prequalification data to roll forward between years. Part of the Delivery Body’s responsibility could therefore be extended to ensure that once data is given, it is required to roll forward, though the requirement to confirm if the data is correct remains with the applicant. This would allow all parties to develop a more efficient and robust process going forward. MPF would therefore like Ofgem to reconsider CP22 and CP35.

Legal Opinion

MPF, along with most other parties, has always argued that the legal opinion is both meaningless and costly, adding bureaucracy to the prequalification process with no benefit. The outcome of Ofgem’s investigation into the UK Capacity Reserve case appears to have evidenced that the statement did not prohibit the company putting forward incorrect data nor did it help Ofgem in punishing the company. The opinions are only correct on the day they are signed and the whole company could alter dramatically the next day. It is also not clear to us that Ofgem is correct that the opinions can be rolled forward. The drafting in the rules seem to make the provision of the opinion an integral part of the prequalification process. Ofgem’s consultation does not explain why they believe that the process is relevant or useful and MPF believes they should reconsider CP23.

MPF would further note that DECC’s CP88 calls for a review of information submitted to make sure that it is necessary for pre-qualification. We would argue that these opinions are absolutely not required. Company officers should not be submitting any information that they know to be incorrect under their wider duties as company directors.

Manifest errors

While MPF agrees with Ofgem that NG must take an objective approach to the prequalification data submitted, CP31 does highlight the potential lack of a manifest error provision. If NG saw that a party had uploaded the same connection agreement for two different plants, or a blank scan, etc. then allowing them to ask

the party if that is what they meant to upload would be likely to increase the amount of qualifying plant, add to available capacity and thus increase competition to the benefit of customers. This may be a slightly different proposal to CP31, but we believe it is an issue worth considering.

We believe that some form of checking for manifest errors would also help address the issue DECC raised in CP87 around a more iterative process.

Proving rights to use land

The proposal to declare a right to use the land for a new build power station under CP81 would not appear to be as robust as requiring the participant to produce some form of proof. That could be something no more complicated than a letter from the site owner. However, without some form of evidence, the reliance on the statement risks the parties simply claiming they had “misunderstood” that they needed actual rights, or that the land owner had changed their mind, etc. MPF believes that speculative bids by parties with little or no chance of completing the units they are bidding into the CM is a real risk. The loopholes that allow this need to be tightened up to ensure that the CM delivers the capacity that customers want to secure supplies.

Transparency

MPF fully supports CP05, CP10 and CP15 as we believe data transparency is vital to the efficient operation of the market. This is not just about the electricity market. Perceptions of the way the auction is running may also impact parties’ share prices, forward energy trades, etc. Publication of information between auction rounds also places all parties on a level playing field as, at the current time, the parties who have come out of the auction can still see the data as they have system access, which parties who are never in the auction cannot. Even if the information is of no value to the wider market, the perception of competitors having access to a different level of information can create a market distortion in its own right.

Ofgem has consistently argued that data transparency is vital to securing effective competition, as set out in its primary duty. MPF supports this view and was disappointed to see Ofgem proposing to reject changes that have been widely supported by market players. We do not have proof that the lack of transparency created any specific problem in the last CM auction, however economic theory suggests that perfect information results in more effective competition and therefore a more efficient outcome. Furthermore, we would note there is little Ofgem can do to police the passing of such information from a party in the auction to a party outside the auction, especially where related entities may be in the same offices, etc. Not allowing dissemination of market sensitive information, while also being unable to police compliance, seems like a lose-lose situation for the market and Ofgem. MPF very much hopes that Ofgem will reconsider its position on these proposed changes.

For the reasons outline above, MPF does not support Ofgem’s Proposal B as it implies parties may not reduce prices at the time when they think the market is about to clear. We believe in the power of competition and it is likely that parties could reduce their prices further if they want to guarantee success as the market closes. This would certainly be the incentive on larger plants as their volumes may be greater than the required capacity and they could only secure an agreement if they

were offering the best value for money for the customers. While Ofgem talks of “strategic withholding” this suggest that it does not believe the CM is competitive or that the marginal plant can hold market power; neither position is explained.

Duration Bid Amendment

MPF agrees with the proposal to only allow the duration bid to reduce during the auction. We agree this is best addressed if DECC resolves how/if the use price duration curves will be in future auctions. We support the introduction of price duration curves in principle but feel DECC is some way from finding a robust, workable solution. Our critical concern is that the difference in contract length discriminates in favour of new build over existing capacity despite the service being the same and no difference in technology. We believe that OFGEM should also be concerned with the distortive impact on competition.

Indexation of total project spend

MPF would like to see Ofgem make amendment CP76. While Ofgem expects the independent technical expert to use some form of indexation there is no clear requirement for them to do so. It would be more robust to have a clear requirement to allow for indexation and using the same index would keep the CM rules consistent in its treatment of financial values over time.

Definition of disconnections & Notices

The proposal to align demand disconnection definitions with the Grid Code is sensible and to make sure that the LFCO calculation is reflective of what actually occurred in a system stress event. To that end we would support the inclusion of manual disconnections into the calculation as well, even if they are rarely expected to be used.

MPF agrees with Ofgem’s decision not extend the events that result in CM Warnings. However, the drafting does not seem to do more than add some clarity between 8.4.2 and 8.4.6. If Ofgem altered the definition of the system stress event triggers, it could materially alter the number of CM events. In assessing the risks of system stress events before participating in the 2014 auction, parties had considered how many events may occur in any given year.

In terms of the definitions to be used, MPF does not believe an automatic low frequency demand disconnection is necessarily going to be associated with an energy shortfall. There are a number of reasons why the frequency may fluctuate and create this type of disconnection response. The warning being issued when such an event occurs may also risk the market responding in such a way as to make the job of the SO more difficult. MPF would therefore suggest that Ofgem, NG and the parties try to together find a more robust way to define when a warning is given. We recognise the issue NG was trying to address, but neither their proposal, nor Ofgem’s drafting seem to provide a robust solution.

Reviews

MPF notes that DECC proposed a review of the information for prequalification and NG proposed a review of the CM Register information. While MPF recognise that there has not been time to take a more holistic look at some aspects of the rules it would be good to see Ofgem commit to such a review process in the near future.

MPF would be happy to discuss any of the above points in more detail if that would be helpful to you or your colleagues. Should you wish to discuss anything further please do not hesitate to contact me.

Yours sincerely

Kevin McCullough

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