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Dear Sir

Response to statutory consultation on changes to the Capacity Market Rules (the "Rules") pursuant to regulation 79 of the Capacity Market Regulations 2014 (the "Regulations") dated 29 April 2016

Rule 3.3.3(b) [Of3] - Response in relation to proposed changes

We have given consideration to the changes to the Rules proposed in the consultation. We wish to respond in relation to proposed change to rule 3.3.3(b) [Of3].

We believe that the rule serves to exclude potential Refurbishing CMUs that may have served an Opt-Out Notice under rules 3.11.2(f)(i) or 3.11.2(f)(ii) in a previous Prequalification Window as Existing Generating CMUs.

For example, a CCGT that was not economically viable in its configuration as a CCGT in the 2014/2015 T-4 auction, may now be economically viable in light of the signals given to the market by DECC in its consultation papers and if reconfigured as an OCGT in order to bid into the 2017/18 T-1 auction.

The current drafting of rule 3.3.3(b) may exclude this possibility because it applies to all CMUs.

We do not believe that this is consistent with the first or second of the CM Rules objectives;

- "to promote investment in capacity to ensure security of electricity supply" - because it may prevent the auction from procuring capacity from a Refurbishing CMU; and
- "facilitating the efficient operation and administration of the Capacity Market" - because procuring a Refurbishing CMU should have a lower capital requirement than procuring the equivalent capacity via a New Build CMU and therefore be able to bid in at a lower clearing price.

We therefore propose that the wording of rule 3.3.3(b) is amended to read:

"(b) the Delivery Body has already received an Opt-Out Notification for the CMU pursuant to rule 3.11.2.(f)(i) or (ii) in a previous Prequalification Window in respect to a Capacity Auction for the same Delivery Year and the CMU is not a Refurbishing CMU."

Comment in relation to rule 3.3.3(c)

We have also given consideration to whether rule 3.3.3(c) may have the same effect.

Our interpretation of the rules is that the same CMU would not be excluded by rule 3.3.3(c) because the definition of Excluded CMU applies only to an Existing Generating CMU and, once decommissioned, a CMU no longer satisfies the condition in Regulation 4.2(a) that the "generating unit provides electricity". The CMU would not therefore be an Existing Generating CMU, and by extension, would not be an Excluded CMU and accordingly would be able to participate as a Refurbishing CMU.

A further clarification may be helpful (in order to achieve the same result) in the definition of Excluded CMU to add at the end of the definition:

"and

(c) is not a Refurbishing CMU".

Yours faithfully

A handwritten signature in purple ink, appearing to read "Bond Dickinson LLP", is written over the typed name.

Bond Dickinson LLP