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4 May 2018

Dear Mark

Capacity Market Rule Changes

The Flexible Generation Group (FGG) represents the owners of and investors in small scale, flexible generation. These power stations are embedded in distribution networks and provide a variety of vital services to the system operator to help it deliver secure, economic supplies to electricity customers. We also participate in the Capacity Market (CM) and have made significant investment in new capacity on the back of CM agreements.

In this response, we have covered some wider concerns with the CM and set out our support for changes we think should be made. Where we have not commented, we agree with Ofgem's position and recognise that there are some changes which would ideally be made, but are subject to Regulation changes and thus are in the gift of BEIS and not Ofgem. We very much hope BEIS will review the Regulations as part of its five year review.

CM Issues

Our members, having participated in the CM since 2014, have considerable concerns over the way the CM is administered by NG as the EMR Delivery Body (DB). Last year, while the DB offered surgeries to try and help those prequalifying, which we welcome, the number of Tier 1 and Tier 2 appeals that ended up with Ofgem suggests that the prequalification process is still not working well, despite having four years of operation by the DB. We hope that Ofgem is ensuring the DB's approach this year is improved.

We very much hope Ofgem will urge BEIS to reinstate the ability of parties to submit new information at Tier 1 appeals when Parliamentary time allows. FGG has already urged BEIS to alter Regulation 69 to allow new data or clarifications to be provided in Tier 1 appeals. We do not believe that lots of parties are just doing a bad job of prequalification. In fact, very experienced parties failed which suggests either the process is wrong, or the systems are wrong, or the DB is doing a very bad job. FGG suspects all of these are a factor, but the regime could be instantly improved by altering Regulation 69.

We do not think we are alone in having serious doubts about DB's ability to administer the CM. We suggest BEIS and Ofgem consider if another party would be better able to do this and instruct DB to contract it out. It is a highly complex system, but our members are wasting weeks of their valuable time trying to deal with the CM, with systems that are proving not fit for purpose. At the very least, BEIS and/or Ofgem should conduct an urgent review of the DB's performance. It is a feature of monopolies (which the DB is) that they will provide a poor, unresponsive, service and we believe that the DB's performance illustrates this.

FGG has sympathy with the DB in needing a system that reflects rule changes done late in the day. Going forward, we would like to see a different rule change process, possibly with industry working groups reviewing processes end to end so that a full suite of drafting for each change can be worked up similar to a code modification process. This could allow for more considered changes and help Ofgem lawyers in providing fully worked up solutions.

Ofgem's consultation highlights that the DB's IT systems are not fit for purpose and cannot easily be changed, stopping parties making rule changes. Ofgem also notes some IT changes the DB is making, but FGG members have not been consulted on the changes.

1. General Provisions

CP247 (Alkane), and CP343 (Welsh Power) – FGG supports the ability to actually trade obligations under the rules. Looking to the 5 year review, the whole section on transfers and trades should be reviewed to make sure they give parties flexibility on how they meet their obligations. There is no evidence that parties have taken agreements with no intent to try and deliver. However, our members have sought to trade with other parties and have found it onerous and costly where it can be achieved, but often trading is simply not possible, despite it obviously being in the interest of customers.

CP286 (Energy UK) – We support the principle of trying to improve the governance regime with informal meetings to develop coordinated changes to key areas of the rules. Maybe a staged process could be trialled, with parties setting out areas of concern and then expert groups working up changes. Ideally this would have input from BEIS as the owner of the policy.

For the 5 year review, we would also like to see the rights of appeal to Ofgem extended so that parties can question DB's interpretation of the rules before the point of termination. Ofgem is aware that some parties have pushed DB to terminate agreements so that they can get on with an appeal!

3. Prequalification Information

CP253 (Centrica), CP347 (Centrica) and CP348 (Restore) – FGG broadly supports Ofgem's proposals, but it must be clear the whole CMU is tested together, otherwise a three unit CMU may not have enough TEC to export on the same period from the whole CMU.

CP288 (Energy UK), CP307 (WWA) and CP319 (NGET) – FGG supports any changes that make pre-qualification simpler and this rule change is to be welcomed.

CP293 (EP UK Investments) – FGG feels that if parties say they are shutting then they should stay out of the CM for the remainder of the plant life. However, we recognise that economics change and, where the parties understand the rules, they can declare they do not know what they are doing in 4 years, which is probably a more reasonable position anyway, and remain eligible.

CP334 (RWE) – FGG supports parties using private wires should be able to prove their output and capacity in a similar manner to those connected to licenced businesses for all auctions.

CP254 (Centrica), CP341 (Uniper) and CP342 (Uniper) – FGG believes that parties should be able to add "incremental capacity" but agree with Ofgem there is a need to prove the capacity and have some rules about non-delivery in a CM event to allocate any penalties. We would therefore like to see this considered in the five year review.

CP269 (WWA) and CP283 (EnergyUK) – FGG supports these proposals because of the impact on asset sales and because the information is not useful. We have asked the DB what they use this for and they said nothing! We believe the holding company was included to monitor competition, so one holding company was not ultimately controlling GWs of plant. However, this is something Ofgem’s competition powers cover anyway and it is in the interest of competition that parties are free to sell assets. Ofgem needs to remember that, because the CM timelines in any given year are unknown to the parties until half way through the year, it is difficult to plan transactions around the CM rules.

CP258 (Drax) and CP315 (InterGen) – FGG supports applicants being able to defer provision of Relevant Planning Consents until 22 working days before the auction, even with an application fee payable if the consent is not provided. The alternative of requiring Relevant Planning Consents to be submitted by the end of the Prequalification Window, but allowing them to be varied until 22 working days before the auction, would also give additional flexibility. We do not believe there is evidence that delaying planning leads to “speculative applications”, as developers cannot control when they receive planning permission. We are aware of delays of up to a year, outside the control of any developer.

CP298 (ESC) and CP351 (NGET/ESC) – FGG is pleased that DB and ESC are undertaking a review of their legal rights and the legislative background. We support data sharing where it stops parties having to provide the same data twice and allows the two bodies to resolve data problems between themselves.

CP317 (Manx Utilities) - This proposal seems to be an attempt to put generators on the other side of interconnectors into the CM in a better way than the current rules allow for interconnector participation. FGG would support BEIS and Ofgem reviewing the role of the interconnectors in the CM as they are not generators and cannot deliver in the same way generators can.

CP318 (NGET) – While FGG supports revisiting de-rating factors, notably for interconnectors, it remains our view that an easier solution to allow parties to select their own capacity obligations, conditional on proving they can deliver their obligated volumes, rather than continue with the de-rating run by NG.

CP345 (WWA) – This proposal levels the playing field and therefore we support the principle of allowing parties to share connections.

CP291 (Engie) – FGG supports clarification and does not think Ofgem should expect parties to be relying on FAQs to understand the CM rules. New entrants may not even know there are FAQs.

CP349 (ENGIE) – FGG thinks that there has been a misunderstanding about the differences between a DNO and TO connection. We consider that TO plants have considerably better connection terms as they are “firm” and if they are constrained off they are paid either via TNUoS rebates or via the BM offer payments. DNO connected plant often do not have any rights that are defined as firm and many connections require the generator to install (at their expense) controls to allow the DNOs to alter a plant’s operations. Parties have no choice on these type of requirements. We hope that Ofgem will address these issues in their charging review.

CP350 (Saltend Cogeneration) – FGG believes this is another change that aims to level the playing field and we therefore support in principle.

CP353 (Scottish Power) – FGG agrees that the issue of Demand Side Response (DSR) Technology Classes should be considered to level the playing field between storage on DSR site. However, it may be a simpler solution that delivery on one of the satisfactory performance days (SPDs) is 4 hours long, to ensure all technologies can deliver for extended periods.

Of15 (Ofgem) – FGG welcomes this move towards giving parties greater say over their own capacity obligation.

4. Determination of Eligibility

CP272 (EDF), CP281 (Energy UK), CP306 (WWA) – FGG fully supports this change as the rule adds no value to the CM at all. Ofgem should want parties to deliver capacity in the most efficient way possible, which may mean using different equipment to that they expected to use at pre-qualification. The rules on SCM and SPDs will still ensure that the parties deliver their obligated capacity.

We also support allowing parties to change their Primary Fuel Type. Again, a party may have planned one fuel and then discover a fuel type which could be more efficient or have less environmental impact. The focus should be on delivering the obligated MWhs in a CM event.

P284 (Energy UK), CP308 (WWA), CP310 (Green Frog Power) and CP340 (UK Power Reserve) – The fact that so many parties raise this suggests that they have not been allowed to change registration. We welcome Ofgem saying they can but it would help if this was made explicit in the rules.

CP287 (Energy UK) – FGG believes that altering connections should be considered in the five year review.

CP322 (NGET) – FGG believes that there are very good reasons to allow parties to move a site location and cannot see why anyone would want to do so after the SCM/MCR. We would welcome some clarity around site moves as we believe it is another area where flexibility in delivery could improve the economics of the CM.

CP328 (NGIH) – FGG agrees that a change to the Regulations is needed. However, the idea of posting credit until errors and omissions are correct is worthy of further consideration.

5. Capacity Auctions

CP273 (EDF) – FGG supports the rounding being to a lower not higher number, but agrees there is sense in having the same excess capacity rules in both auctions. We do not believe this should be a discretionary decision for DB as this will make things more onerous.

Of16 (Ofgem) – FGG does not believe this change is necessary as the situation is unlikely. We believe there are more material issues to address in the rules.

CP249, CP250 and CP251 (all anonymous) – FGG supports these changes as there should be transparency over the Price Maker/Price Taker status on the CM Register. We also support Price Maker CMUs having to leave the auction at the Price Taker Threshold. We believe these changes are important for transparency.

CP264 and CP266 (both E.ON) – FGG supports these changes as giving parties flexibility to withdraw or amend their capacity nearer to the auction. We note the IT issues Ofgem raise, but at the very least allowing all parties to confirm if they are in the auction seems reasonable.

CP316 (InterGen) – FGG agrees that it would be sensible to try and have a year for delivery after the T-1 auction and 4 years after the T-4 auctions. This was the original policy intent as it allows parties reasonable time to deliver their capacity. We would ideally like a number of CM processes to be hardwired so that all parties know and plan their businesses around them. Ideally we would like pre-qualification to be out the way before summer holidays, as it makes planning staff leave, getting directors' signatures, etc. all very difficult. This is true for all parties, but especially small companies such as FGG members.

6. Capacity Agreements

CP329 (NGIH) – While we support this change, it must also cover the DNO connected sites.

7. Capacity Market Register

CP270 and CP271 (both EDF) – FGG supports these changes and it is unfortunate the DB's systems do not allow these types of changes.

CP321 (NGET) – FGG does not support this as it would be better to have a set number of days not the end of the month. Linking to the end of the month may mean parties do not see the data for a very long time if there is an event at the start of the month.

8. Obligations of Capacity Providers and System Stress Events

CP256 (Client Earth), CP346 (Anonymous), and CP352 (Anonymous) – FGG understands the concerns around environmental performance, but suspects that environmental legislation is being dealt with under the wider legislative framework in which generators operate. In fact, the extended years criteria (8.3.6B) could be shortened to not refer to environmental rules at all.

CP279 (Energy UK), CP289 (Engie), and CP290 (Engie) – FGG supports these changes as they improve clarity, but we are again disappointed that NG's systems cannot deliver the changes in a timely manner.

CP323 (NGET) – FGG support this as it keeps CM events limited to energy shortages.

CP282 (Energy UK), CP311 (Green Frog Power) – FGG supports this change as it levels the playing field between DNO and TO connected plants. We are not clear why this protection is given only to large plants, but it is unduly discriminatory and should be addressed.

CP294 (ESC) – FGG supports putting the interconnectors obligations in line with other parties. Their contribution in a stress event is what they delivered not what the Interconnector Scheduled Transfer (IST) said they would deliver. This is another example of undue discrimination which should be corrected.

CP327 (NGIH) – FGG welcomes Ofgem's call for the SO to improve its margin information and alerts. We very much hope that NG will push forward with greater transparency as well as providing all system alerts in one place.

CP331 (RWE) – FGG supports this proposal as any specific commercial arrangement should not result in the technology neutrality principle being set to one side. As with other rules around the treatment of interconnectors, this rule seems to be unduly discriminatory.

CP333 (RWE) – Ofgem's position on this and the treatment of interconnectors seems to be inconsistent. Maybe Ofgem needs to consider what are actual energy actions and how is the response required dealt with under the CM rules?

Of12 (Ofgem) – FGG remains concerned that DSR components can all alter, but for a CMU no change is permitted at all. We would urge Ofgem again to remove rule 4.4.4. As with changes, we believe there should be flexibility, but parties must have to prove they can deliver their obligations. We remain concerned that the CM offers more flexibility to DSR than it does to generators.

9. Transfer of Capacity Obligations

CP245 (ADE) – FGG supports changes that improve Secondary Trading. Though this may have limited benefit, it is nevertheless an area of the rules that we believe requires redrafting.

CP248 (Alkane) – FGG fully supports this change. There is no logic in being able to only transfer obligations after the T-1 Auction. This rule effectively tries to force parties to only agree to an annual transfer. For say 10 years of a 15 year agreement, the counterparty could have gone out of business before you have had time to notify all the relevant years. For all agreements, there should be far greater flexibility on transfers and trades. We would like to reiterate our members have tried to use the transfer and trade rules and they are extremely difficult, and often impossible, to use.

12. Monitoring

CP312 (Green Frog) and CP325 (NGET) – FGG supports simplifying and clarifying the timeframes for submitting the construction reports. We prefer the idea of a fixed data, but would also like to see DB's handling of reports improve. We support the ITE reports only being needed when something has altered. However, we would go further and propose that the ITE report is only provided for the milestone dates (SCM/MCR) and the party just provides updates, signed by a Director, the rest of the time. In terms of DB's activities, if a party submits data weeks ahead of a deadline and asks DB to check it is OK, they should not get a note on the day of the deadline saying the data is not acceptable and we are considering termination.

13. Testing Regime

CP276 (Endeco) – FGG can only support this proposal if it is applied to DSR and generating CMUs. We can see no argument for treating different technologies in a different manner. However, as settlement data is by half hour, it seems logical that running/load shedding for a settlement period is sensible to ensure the obligations are properly checked.

CP300 (ESC) – FGG supports allowing more time to rectify issues identified in a failed Metering Test, but agrees that core plans may simply create more paperwork and more deadlines.

CP320 (NGET) - FGG supports equitable treatment and transparency, but note that the DB is extremely poor at keeping the registers up to date. A number of members have spent weeks or even months chasing for updates. Ofgem should check NG's performance on this.

CP338 (UK Power Reserve) – This levels the playing field between non-CMRS Distribution CMUs and CMRS Distribution CMUs so FGG fully supports the proposal.

CP260 (E.ON) and CP332 (RWE) – FGG agrees that Interconnector CMUs should demonstrate Satisfactory Performance Days equal to or greater than their Capacity Obligation, rather than demonstrating an output greater than zero. We can see no reason why these assets are being given so much “special treatment” given the “technology neutral” nature of the CM policy. As noted previously, we want to see the position of interconnectors in the CM reconsidered; as Ofgem notes the interconnectors cannot control their flows.

15. Schedules & Exhibits

CP252 (Centrica) and CP285 (Energy UK) – FGG supports all changes that would make pre-qualification less onerous. However, these changes do not go far enough and we would like to see all declarations revisited in the five year review.

CP301 (ESC) – As above, we welcome simplification and clarification.

CP246 (ADE) – FGG supports this change to add clarity and align definitions. We suggest Ofgem discuss with their colleagues a way to achieve the changes in line with the implementation of P354 and ABSVD C16 changes.

16. Other

CP268 (E.ON) – FGG notes that the DB has created a diary of deadlines and we welcome this improvement. However, formal requirements around DB's system delivery may improve their overall performance. There seems to be a host of system problems which FGG would like to see addressed, for example the DB cannot track CMUs between years, the uploads do not always work, etc. This is an area where we hope Ofgem will push the DB to make material improvements in the systems.

FGG would be very happy to meet with you, or your colleagues, to discuss any of the issues that we have raised in this letter if that would be of help. The group usually meets monthly if you would like to attend, or we could come to your offices on a different date if more convenient.

Yours sincerely



Mark Draper
Chairman

cc: Charles Phillips - BEIS

