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Date: 04 January 2019

Dear Colleague,

Request for amendment to the proposal for the Congestion Income Distribution Methodology under the Forward Capacity Allocation Regulation.

On 14 June 2018, we¹ received a proposal from GB Transmission System Operators (TSOs) for the congestion income distribution methodology in accordance with Article 57 of the guideline on Forward Capacity Allocation (the FCA Regulation).² The proposal was submitted to us by the relevant TSO in line with our assignment of obligations.³

This letter sets out our decision, in line with the all Regulatory Authority agreement, to request an amendment to the congestion income distribution methodology (CID M) proposal, pursuant to Article 4(6) and 4(11) of the FCA Regulation, and outlines the necessary next steps that must be taken.

Background

The CID M is developed by all TSOs. The FCA Regulation requires the competent Regulatory Authorities to consult and closely cooperate and coordinate with each other in order to reach an agreement and take decisions within six months following receipt of a proposal by the last regulatory authority.⁴ The last Regulatory Authority received the proposal on 4 July 2018. National decisions for this proposal are therefore required by 4 January 2019.

CID M Proposal

In the CACM Regulation, Congestion Income is defined as “the revenues received as a result of capacity allocation”.⁵ In the context of FCA Regulation, congestion income is accrued from each auction of long-term transmission rights on a bidding zone border. After the collection by the Single Allocation Platform, based on the rules described in the FCA CID

¹ The Gas and Electricity Markets Authority. Ofgem is the Office of the Authority. The terms “Ofgem” and “the Authority,” “we” and “us” are used interchangeably in this letter.

² [Commission Regulation \(EU\) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation](#) The FCA Regulation came into force on 26 September 2016. It builds on the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (CACM Regulation) to maximise efficiency in cross-border electricity trading. Specifically, the FCA Regulation provides a harmonised framework for forward capacity markets to allow market participants to hedge positions before the day-ahead timeframe.

³ See mTSO decision letter here:

https://www.ofgem.gov.uk/system/files/docs/2016/10/qcc_fca_final_decision_on_mtso.pdf

⁴ Article 4(9) of the FCA Regulation.

⁵ Article 2(16) of the Regulation (EU) 2015/1222 (CACM Regulation) made applicable in accordance with Article 2 of the FCA Regulation.

M, the Congestion Income is assigned to each Bidding Zone border and then, it is distributed on a monthly base to the TSOs on each side of a Bidding Zone border or, via the relevant TSOs, to third party asset owners.

Until the implementation of the FCA CID M, the sharing of the Congestion Income between the TSOs is based on joint agreements among the TSOs and with the relevant entities collecting the Congestion Income or national regulation.

Our Decision

We have reviewed the proposal submitted to us in line with the requirements of the FCA Regulation, the wider objectives of the Regulation (EC) 714/2009,⁶ and our statutory duties and obligations. As required by Article 4(9) of the FCA Regulation, we have consulted, and closely cooperated and coordinated with other Regulatory Authorities in order to reach an agreement on these proposals. The all Regulatory Authority agreement, reached on 29 November 2018, is attached as an annex to this decision letter and constitutes the reasons for our decision.

Having reviewed the amended CID M, we concluded that the methodology could not be approved as it is currently written. The proposed CID M would result in an unnecessary administrative burden for TSOs and NRAs as any change to Annex I, which contains an exhaustive list of cases whereby TSOs use a sharing key different from the default position of a 50:50 split of income congestion, would require the CID M to be amended.

In line with the all Regulatory Authority agreement, we hereby request the relevant TSOs to amend the CID M in line with the request set out in the all Regulatory Authority agreement.

Decision not to undertake an Impact Assessment

We have not undertaken an Impact Assessment for this proposal. This is because the proposal, and the changes requested in the all Regulatory Authority agreement, would not constitute a significant change to existing GB requirements and arrangements. The adoption of the CID M is a requirement of the FCA Regulation, which has already been subject to an impact assessment. Accordingly, we consider that an impact assessment is unnecessary.

Further, Article 57(3) of the FCA Regulation states that “when developing the methodology for sharing congestion income from forward capacity allocation, the requirements set in Article 73 of Regulation (EU) 2015/1222 (the CACM Regulation) shall apply.” In other words, the FCA CID M must be developed on the same requirements on which the CACM CID M was developed. On 14 December 2017, ACER published a decision to approve the CACM CID M⁷; the methodology has since been implemented.

With this in mind, we have considered the impact of the FCA CID M will have and whether it is necessary to carry out an Impact Assessment in terms of our statutory duties as contained in Section 5A of the Utilities Act 2000.⁸ We concluded that an Impact Assessment was unnecessary.

⁶ See Regulation (EC) 714/2009:

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0015:0035:EN:PDF>

⁷ Decision of the Agency on the Congestion Income Distribution Methodology:

https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Individual%20decisions/ACER%20Decision%202007-2017%20on%20CIDM.pdf

⁸ Section 5A of the Utilities Act 2000: <http://www.legislation.gov.uk/ukpga/2000/27/section/5A>

Next steps

In accordance with Article 4(11) of the FCA Regulation, the relevant GB TSOs must make the amendments to the CID M necessary to address the points set out in the Regulatory Authority agreement and re-submit an amended proposal to us and to the Agency within two months of this decision i.e. by 4 March 2019.

If you have any queries regarding the information contained within this letter, or the Regulatory Authority agreement in the annex, please contact Kevin Hughes at kevin.hughes@ofgem.gov.uk.

Yours sincerely,

Michael Wagner
Deputy Director, Wholesale Markets, Systems & Networks