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Dear Chris,

**FIVE YEAR REVIEW OF THE CAPACITY MARKET RULES – FIRST POLICY CONSULTATION**

We welcome the opportunity to respond to this consultation.

We continue to believe that the market-wide Capacity Market (CM) is broadly the right mechanism for promoting investment and helping to maintain security of supply at lowest possible cost in Great Britain. Accordingly, we welcome the continuing work of BEIS and Ofgem in facilitating a timely decision by the EU Commission as regards the State Aid position (in light of the ECJ's Judgment in the Tempus case). In this context, we support Ofgem's continuing commitment to ensuring that the CM Rules are fit for purpose going forward.

We agree with Ofgem's decision to proceed with this statutory review despite the current CM 'standstill period'. This review is an important aspect of the overall CM statutory framework which allows for the continued evolution of the CM Rules to ensure that they remain appropriate to deliver upon the objective of delivering security of supply effectively at lowest possible cost to consumers. We do, however, understand Ofgem's stance in this review of taking a focussed approach towards possible Rule changes given the resource constraints imposed by responding to the consequences of the ECJ's Tempus Judgment. (We also support Ofgem's approach of not running a full annual Rule change process for 2018/19 in light of this review).

We outline below some high level observations, rather than responding to the detailed questions in the consultation document.

*Simplification of the CM Rules*

We welcome the proposed amendments to the CM Rules aimed at reducing the complexity of participation in the CM as outlined in Section 6 of the consultation document. More generally, we would support further steps to both clarify and simplify the overall Rules framework, whilst recognising that this will be a challenge for the longer-term.

Consistent with addressing this longer-term challenge, we are broadly supportive of moves to consider further a standard 18-month implementation timescale for CM Rule changes. This should provide greater opportunity for a more focussed improvement of the Rules framework over time, as well as allowing more time for the Delivery Body and the Electricity Settlements Company (ESC) to make the necessary operational adjustments to facilitate Rule changes. However, it will be important that Ofgem maintains an effective urgent rule change process in parallel to any such new process so that changes can be made more quickly as necessary in respect of lessons learned in light of CM auction results.

We would also note that there is a need for more clarity around the process for consolidating the CM Rules as they are updated (whilst recognising the importance of continuing access to the base Rules as well). We would therefore encourage Ofgem to work with BEIS to consider options around maintaining a consolidated set of the updated Rules on a single, easily accessible, website alongside visibility of the base Rules.

### *CM Register*

With respect to the proposed amendments to add additional data to the CM Register, we agree that the CM Register is important in terms of providing transparency. However, we support the arguments made in response to the Ofgem Open Letter consultation last year (as noted in this consultation document) that there needs to be a balance between providing greater transparency and respecting the commercial confidentiality of market participants. For example, significant commercial confidentiality issues can arise from component-level DSR data being made public.

We therefore welcome the proposal to exclude the address and metering point location from being published on the CM Register. We would, however, urge Ofgem and the Delivery Body to think through carefully exactly what information is to be published on the CM Register to ensure that commercial confidentiality is properly respected. Moreover, it will be vital to provide clarity and consistency around the information that is to be made public by participants.

### *Prequalification and Delivery Body incentives*

We would reiterate the need to provide for a very limited degree of flexibility by way of an administrative ‘slip rule’ so as to allow for the simple correction of minor administrative errors on prequalification forms. At present, Regulation 69 of the CM Regulations makes no allowance for minor inadvertent errors on prequalification forms, which appears to be inconsistent with the overall principles and underlying purpose of the CM framework. However, we recognise that this is ultimately a matter for BEIS since it relates to the governing secondary legislation.

As regards the Delivery Body’s incentives around maximising the DSR capacity that pre-qualifies for each annual T-1 auction, we recognise that it is right to consider this (and the other financial incentives on the Delivery Body) as part of this review in light of developments over recent years as the market has evolved. The key guiding principles in this assessment should be seeking to promote technology neutrality and a level playing field in the overall CM design so as to minimise market distortions and deliver cost-effectively for consumers.

### *Settlement data flows*

We support the new process that the Electricity Settlements Company (ESC) is developing (for implementation for Delivery Year 2020/21) to send the data that the ESC

has received to the capacity provider, enabling providers to self-validate their metered data and determine if there has been an issue in the dataflow. As is noted in the consultation document, this should allow capacity providers to verify and potentially solve any issues associated with their data flow before payments are suspended.

### *Secondary trading*

We welcome the proposal to allow for amounts greater than or equal to 0.5MW to be traded between parties (subject to the requirement for the Transferor and the Transferee to each hold a capacity obligation that is at least equal to 2MW before and after the trade – except where the Transferor has transferred its full capacity obligation). We agree that any additional administrative burden arising from managing such small-scale trades should be acceptable when balanced against the potential benefit of improved flexibility and liquidity in the secondary trading framework.

We support the proposal to extend the defined trading window to the results day of the T-4 Auction for the relevant Delivery Year. As is noted in the consultation document, BEIS recently introduced Rule 16.4.2 to enable this on a temporary basis during the current CM 'standstill period' and we agree that it would be appropriate to consider introducing this change permanently.

We would also urge Ofgem (working with BEIS) to consider taking further steps to better facilitate secondary trading. Currently, secondary trading is dependent on specific contractual agreements being reached between two parties (which can present significant administrative burdens, particularly for smaller players). Given this, further thought might be given to streamlining this process, for example, by the use of a standard contract with generic terms or, perhaps, a secondary trading platform. We would, therefore, encourage Ofgem to consider this further.

If you would like to discuss any aspect of our response, please do not hesitate to contact me.

Yours sincerely,



**Richard Sweet**  
Head of Regulatory Policy