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27 May 2016

Statutory consultation on changes to the Capacity Market Rules (the "Rules") pursuant to Regulation 79 of the Capacity Market Regulations 2014 (the "Regulations")

EDF Energy is one of the UK's largest energy companies with activities throughout the energy chain. Our interests include nuclear, coal and gas-fired electricity generation, renewables, and energy supply to end users. We have over five million electricity and gas customer accounts in the UK, including residential and business users.

We welcome the opportunity to comment on Ofgem's Capacity Market rule change proposals. Our detailed responses are set out in the attachments to this letter. However, we strongly urge Ofgem to reconsider CP125 in order to ensure that Applicants in future auctions compete on a level playing field and that National Grid procures the capacity that it requires to meet the security of supply standards.

Whilst Ofgem's policy regarding auxiliary load is clear, there is a degree of uncertainty whether the rules have been applied consistently. We believe that the rules need to be improved to remove any ambiguity in order to ensure that the rules are interpreted consistently by all applicants.

It is not clear to applicants how to determine the appropriate figure to subtract from Connection Entry Capacity to achieve a figure "net of Auxiliary Load". We believe that the resulting confusion may have led to Connection Capacities being used that are not consistent with the calculations being used by National Grid to set de-rating factors and Auction Targets. We have provided evidence to DECC and National Grid that connection capacities in the 2015 auction may be 1-1.5GW higher in aggregate than generators may be able to deliver based on historical data. We are happy to share this evidence with Ofgem.

Furthermore, we would like to highlight our support for Ofgem's position to change the rules from next year to permit capacity providers to choose their connection capacity. Where this connection capacity has not been evidenced by past performance, we believe it would be right that capacity providers would be required to demonstrate the full connection capacity rather than only being tested up to the derated capacity.

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Should you wish to discuss any of the issues raised in our response or have any queries, please contact Guy Buckenham on 07875 112 585, or me.

I confirm that this letter and its attachment may be published on Ofgem's website.

Yours sincerely,

Angela Hepworth
Corporate Policy and Regulation Director

Attachment 1

Statutory consultation on changes to the Capacity Market Rules (the "Rules") pursuant to Regulation 79 of the Capacity Market Regulations 2014 (the "Regulations")

EDF Energy's response to your questions

Questions on proposals

Q1. CP136 (interconnector capacity): Do you agree that de-rating from CEC rather than TEC is a more appropriate way to measure the De-rated Capacity of Interconnector CMUs? Do you agree with the suggestion to cap Interconnector de-rated capacity at TEC, or should the requirement for interconnectors to hold sufficient TEC be removed altogether?

We understand that when National Grid calculate the de-rating factors for these CMUs (as these are done on a case-by-case basis), these de-rating factors should reflect the fact that CEC rather than TEC will be used. Ofgem states that it does not believe de-rating from CEC rather than TEC would create significant complications due the flexibility in the existing methodology; however, we are not convinced by this and believe Ofgem should demonstrate why it believes that this is the case.

If basing the connection capacity on CEC rather than TEC is introduced then we believe that rule 3.6A 2(a) should stay, and hence the capping to ensure that interconnectors can participate should be introduced. Despite interconnectors not paying for TEC, this figure is considered by the System Operator the likely import limit of the interconnector and therefore to be consistent with Generators the capping to TEC should apply.

As far as practical, interconnectors should be treated by the Capacity Market (CM) Rules in the same way as other capacity providers so, if the approach to connection capacity for other capacity providers is changed, then the approach for interconnectors should be reviewed to keep it consistent.

Q2. CP129 (adding DSR components): Do you agree there are overall benefits to creating a bespoke process for adding new DSR CMU components? (Please provide evidence to support your answer)

Yes, we agree there are overall benefits to creating a bespoke process for adding new DSR CMU components. We do not believe that there should be restrictions on allowing DSR aggregators to maintain a portfolio of sites in a DSR CMU given that they could be subject to having to remove components through customers being unable to meet their commitments. However, we would expect that these new components would be subject to the same checks as other DSR components.

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Q3. CP95 (reallocating DSR components): Do you agree that the combination of CP124, CP129 and CP130 would be a better solution to the issues that CP95 seeks to address?

Yes, we do agree that the combination of CP124, CP129 and CP130 would be a better solution to the issues that CP95 seeks to address. We agree with the risks Ofgem identified which include that CP95 would be very resource intensive and that there are security of supply risks.

Q4. CP108 (CM warnings): Do you think there is a need to align Capacity Market Warnings with other existing system warnings? If so, how would you suggest this is done? Are there any associated risks?

The Capacity Market Rules contain a clear definition of the circumstances under which Capacity Market Warnings (CMW) will be called and CMWs are an integral part of the design of the Capacity Market, playing an important role in determining the potential exposure to penalties and hence affecting capacity providers' decisions regarding their exit bids in capacity auctions. Therefore any change in definition of a CMW would have commercial consequences: making them more likely to occur could increase risk to capacity providers, leading to increased costs of the Capacity Market in the longer run; making them less likely to occur could adversely affect security of supply.

There are differences between CMW and existing system warnings; CMWs serve a different purpose to NISMs and other system warnings and that makes it difficult to understand how these could be aligned. At this stage, we do not believe that evidence or robust rationale has been provided to suggest that there is a need to align CMW with other existing system warnings. Nevertheless, it may be advisable to review after one or two years' operational experience (in 2018 or 2019).

One reason for a CMW to be called is that an Inadequate System Margin is expected to occur in at least four hours' time (CM Rule 8.4.6 (a) (ii)); the requirement for four hours' notice is important in determining the commercial risk for capacity providers. NISMs are a tool to manage operational risk and have no such time constraint; so, for example, a problem that occurs, and is resolved, within four hours may trigger a NISM but no CMW. We would appreciate additional clarity on how these different warnings may interplay and why changes may be required to align warnings.

We strongly believe that the definition of a CMW and the definition of a stress event should not be amended without very good reason as this could result in a Capacity Provider having different obligations as part of its Capacity Agreement that had not been factored in its Capacity Market bidding strategy.

However, changes to ensure that CMWs are effectively communicated to all participants, should be encouraged and be consulted upon. We understand that the Delivery Body will publish CMWs on a website. It might make it easier, particularly for small players, to put CMWs on the BMRS along with other data.

Q5. CP128 (LFCO formula): Do you agree that the LFCO formula will not scale delivery obligations appropriately during the first TA Delivery Year? Is this issue significant enough to require changes before first TA Delivery Year (starting in October 2016)? If so, how should the formula be amended?

We believe that the policy intent was that LFCO should scale obligations based on demand during a delivery period as a proportion of peak demand. Assuming that the Capacity Market is being relied on to provide all or almost all of the capacity required to avoid shortfalls in supply then the formula in Rule 8.5.3, which sets LFCO, meets the policy intent.

However, during the first Transitional Arrangements delivery year the Capacity Market is not being relied on to provide all the required capacity hence we agree that the LFCO formula will not scale delivery obligations appropriately during the first TA Delivery Year and the formula could be altered to for this first year.

Although the overall impact in 2016/17 may not be very material, it could make a significant difference to individual DSR providers and, in the interests of supporting the Transitional Arrangements to encourage the development of DSR, it is important to get it right.

The issue for the first Transitional Arrangements Delivery year is that the formula assumes that **all** the shortfall in supply, which is assumed to be represented by the Involuntary Load Reduction (ILR) together with the RfR reserve term, is considered to be part of the obligation placed on the Capacity Market. For a full delivery year this is not an unreasonable assumption.

However, for the first Transitional Arrangements delivery year it is unreasonable to expect the CMUs involved to meet this requirement. Hence the ILR_j and RfR terms should be scaled down to reflect the proportion of demand that it is reasonable to expect the Transitional Arrangements CMUs should be obligated to cover.

Q6. CP115 (volume reallocation): Do you agree there is an issue with Rule 10.4.1 (c)(ii)? If so, would our suggested addition to this Rule fix the problem? If not, how should it be amended?

EDF Energy agrees with Ofgem that there are potential issues with Rule 10.4.1. We also agree that the complexity involved is such that further consideration of the issues is required before any changes are made.

In principle so long as the understanding of the rule outlined by Ofgem in the consultation document is followed then the suggested legal text does resolve the issue identified by Ofgem. However, the fact that the rule on its own without that understanding appears to be difficult to interpret highlights the need for an overall revision to clarify the text.

Q7. CP124 (portfolio testing): Do you agree with our assessment of the benefits and risks with CP124?

We believe that CP124 may provide an appropriate solution to the concerns over DSR providers over testing risks. It is important that it is not possible for DSR components to be "double counted" during testing and we believe that CP 124 would achieve this.

Nevertheless, as acknowledged in Ofgem consultation paper, this proposal does carry some risks, particularly if the volumes of DSR increase significantly. We therefore believe that, if accepted, it will be important to monitor the impact of this change to ensure that it does not have adverse impacts on the market. We would also encourage Ofgem to publish the analysis that it has undertaken where it has applied this rule change to other capacity mechanisms.

Q8. CP98 and CP148 (FFR): Do you agree with the solution put forward in these proposals to ensure the participation of dynamic FFR in the CM? If not, what changes to the DSR test and volume calculation are necessary to achieve this?

There is a need to understand how FFR participation and other dynamic DSR services are to be included in the Capacity Market. Therefore, we agree that the issues set out in CP98 and CP148 need to be considered further in order to agree a solution to ensure the participation of dynamic FFR in the Capacity Market.

Questions on connection capacity

Q9. Do you agree with our analysis and conclusions in relation to connection capacity?

We agree with Ofgem's analysis as we believe that this is comparable to the analysis that we have shared with National Grid, as well as with DECC in our previous consultation responses.

Q10. Would the satisfactory performance requirements remain appropriate if we test up to connection capacity? In particular, would it be appropriate to demonstrate satisfactory performance on three separate days, and for CMUs to lose all capacity payments if this is not met?

We support the position to permit capacity providers to choose the connection capacity up to a threshold provided they are required to and able to show that it has generated to this level or evidence as to why its connection capacity is likely to be higher than past performance.

We also agree with the policy intent as stated by Ofgem that connection capacity should represent the maximum output a generating unit can deliver during a stress event, taking

into account auxiliary load. De-rating then takes account of the likelihood that not all CMUs will deliver their full output during a stress event; this reflects the risk that plant will be unavailable during a stress event and also the risk that they will be available but may fail to deliver their full output.

Connection capacity adjusted by derating factors should represent a robust estimate of the capacity that can reliably be expected from all capacity providers in a stress event.

There are a number of reasons why plants may be unable to deliver their full output during a stress event. The output of some plants, particularly CCGTs, may be significantly affected by ambient weather conditions; plants may suffer from failures of specific components that may limit output; plants may need to reduce output to minimise the risk of failure of a component. All of these could result in lower MELs that would be reflected in National Grid's calculation of derating factors. Some problems that might result in reduced output may not be easily remedied; they may, for example, require significant engineering work requiring a major outage and, in some case, it may be impractical or uneconomic fully to restore a plant to its previous capacity.

We therefore believe that testing must strike the right balance. Capacity providers should be able to provide evidence that their connection capacity is not excessive but it is also important that they do not face an unacceptably high risk of losing all capacity revenue if they are unable to achieve it.

For new build plants, this is achieved through Capacity Market Rule 6.7 which, amongst other things, provides that a new build plant is deemed to meet the Substantial Completion Milestone if it delivers 90% of its connection capacity but that it will suffer a proportionate reduction of capacity payments if it delivers between 90% and 100% of its connection capacity.

For existing capacity, the best way to demonstrate the capability to deliver connection capacity is that connection capacity would be limited to no more than historical output in the two years preceding the auction. Where a capacity provider wishes to nominate a connection capacity greater than this level, then the onus should be on the capacity provider to demonstrate through performance testing that the higher level of output is actually achieved. This could be done, either between the auction and the Delivery Year or through the normal Performance Testing regime during the Delivery Year.

If the capacity provider has not been able to prove that their connection capacity is attainable, then it is reasonable that they should lose all capacity revenue.

However, once the connection capacity had been proven to be attainable, then a failure to achieve it in Performance Testing during the Delivery Year should result only in a

proportionate reduction in capacity payments provided that the CMU is still able to achieve the derated capacity obligation as required under current rules.

Q11. Would market rules around exceeding TEC result in genuine capacity being excluded under this approach? Does the ability to purchase short term TEC help address this? If not, is this a significant enough issue for concern?

We do not believe that this is a significant issue, as for most market operations generators must have adequate TEC. The only exceptions to this are Supplemental Balancing Reserve (which will be obsolete following Winter 2016/17) and Maxgen.

Therefore, a generator that is pre-qualifying into the Capacity Market should have the required amount of TEC to be able to allow it to generate to its connection capacity. It is the responsibility of a generator to sort this issue out with National Grid and to buy more TEC, either on a permanent basis or a short term basis, to cover their needs.

Q12. Do you consider that there is a significant risk of capacity withholding if generators are given a free choice of connection capacity? Would any additional measures be needed to help mitigate this risk (e.g. minimum capacity thresholds or supporting justifications for going below certain thresholds)?

We do not believe that there is a significant risk of capacity withholding if generators are given a free choice of connection capacity. Not only would competition law prevent capacity withholding, the reality is that the current structure provides every incentive to maximise capacity rather than to withhold it.

Attachment 2

Statutory consultation on changes to the Capacity Market Rules (the "Rules") pursuant to Regulation 79 of the Capacity Market Regulations 2014 (the "Regulations")

EDF Energy's comments on Ofgem's decision on Capacity Market proposals

1. General Provisions

Rule change	Comments
Of1	In principle this could be appropriate. However, under the termination process there is a right to appeal; there does not appear to be a right of appeal for a Capacity Provider that was unsuccessful in auction. It would be useful if Ofgem could set out what would happen if an unsuccessful Capacity Provider wanted to appeal
Of2	This affects changes to the definition of "Legal Right": it is not clear what the parentheses "(whether or not Scotland)" are meant to add at the end but it does not affect the intent. There are a few words missing (in bold): "...relating to the occupation, use **of** relevant CMU or acquisition of such land or property (whether or not **in** Scotland) in connection with the relevant CMU".
CP112	If this carve-out is included it should be expanded to include STOR contracts and should exclude those contracts for which non-support confirmation/withdrawals have been obtained. We think the easiest way of achieving this is to refer to the relevant Regulations Suggested drafting change to definition of "Mandatory CMU": "... or, by virtue of Regulations 16 to 18, the Delivery Body must not prequalify".
CP126	Ofgem's proposed legal text only partially reflects CP126. Ofgem's proposed decision does not set out why it has not adopted CP126 fully. We believe that the amendment to 6.7.5 would make the changes explicitly.
CP161	We support CP161 in principle; however, the suggestion of defining Director to cover officers just for the Exhibits is problematic as it is not consistent with the way officers have been referred to elsewhere (i.e. the rest of the Rules refer expressly to officers in addition to directors): it also means that "director" does not mean the same as "Director" throughout the Rules which could give rise to confusion. A better way may be to include a statement at the start of the exhibits akin to Rule 3.12.6 e.g. "References in the Exhibits to "directors" or the "board of directors" if the Applicant is not a company are to be read as

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	references to the officers of that person". If the Director definition is maintained as is then the following changes need to be considered: - In the definitions of "Prequalification Certificate" and "Price Maker Certificate" "director" should be changed to "Director"; -In Schedule 6 (r) there is a reference to "Director" should this be "director"? Notably the new definition of "Director" does not apply to Schedules -Exhibits A to C: since these are draft declarations should these not provide for the alternative of "officers" rather than "directors" -The notes at the bottom of the exhibits should clarify how the declarations should be signed if not by directors.

3. Prequalification Information

Rule change	**Comments**
Of4	EDF Energy considers that the changes proposed by CP125 and that by Of4 seek to resolve two different issues. Ofgem's Of4 proposal appears sensible so long as there is a requirement that the connection capacities of CMUs across a station must sum to the TEC for a station of Rule 3.5.5 is used.
Of6	We believe that the drafting does not match the intention of the Rule change as the duration of the planning consent could technically be longer in duration but still expire before the end of the Capacity Agreement. Suggest 3.7.1 (b)(i) " where the Relevant Planning Consent is time limited, documentary evidence showing that the end date of the Relevant Planning Consent is not before the expiry date of the Capacity Agreement."
CP99	We support CP99 as it appears to provide responsible flexibility for non-CMRS CMUs to provide evidence of generated output and recognises that suppliers may not always be in a position to a letter.
CP109 & CP142	We support CP109 in principle. However, we believe there are typing errors in the amendments: -in Rule 3.6.4 (b) (i) and (ii) the references should be to "no later **than**". -Rule 3.6.4 (b) should only refer to "Existing **Generating** CMUs" and not to "Proven DSR CMUs" and vice versa for Rule 3.9.4 (b). -In Rule 3.9.4 (b)(ii) "Prove" on the second line should be "Proven".
CP157	We do not believe that planning consents are required to reference ISO conditions; we would welcome clarification from Ofgem as to where it states that planning consents must be issued with reference to ISO conditions.

	If Ofgem is minded to take this proposal forward then we believe that the definition of the 'documentary evidence' should be clearly defined.
CP105	We support Ofgem's approach to CP105 as we believe the proposed rule changes to 3.6.1 is sufficient and recognise that suppliers may not always be in a position to provide a letter.
CP125	We do not support Ofgem's proposed decision to reject CP125. We strongly urge Ofgem to reconsider CP125 in order to ensure that Applicants in future auctions compete on a level playing field and that National Grid procures the capacity that it requires to meet the security of supply standards. Whilst Ofgem's policy regarding auxiliary load is clear, there is a degree of uncertainty whether the rules have been applied consistently. We believe that the rules need to be improved to remove any ambiguity in order to ensure that the rules are interpreted consistently by all applicants. We are concerned that it is not clear to applicants how to determine the appropriate figure to subtract from Connection Entry Capacity to achieve a figure "net of Auxiliary Load". We believe that the resulting confusion may have led to Connection Capacities being used that are not consistent with the calculations being used by National Grid to set de-rating factors and Auction Targets. Furthermore, the changes proposed are simple to make and very low burden for parties. EDF Energy considers that the changes proposed by CP125 and that by Of4 seek to resolve two different issues.
CP153	We do not understand the rationale for rejecting CP153 as we believe that incorporating wind and solar would be aligned with supporting a technical neutral Capacity Market. However, it would need to be clear that once support mechanisms for wind and solar no longer apply; these potential Capacity Providers are able to participate in the Capacity Market. Furthermore, whilst wind/solar do not yet have de-ratings they are incorporated into the target capacity calculation.

4. Determination of Eligibility

Rule change	Comments
Of8	We support this proposal as an effective way of removing an unnecessary administrative step for applicants.

5. Capacity Auctions

Rule change	Comments
CP137	We support CP137 in principle. However, we do not believe that the Rule change works as drafted at the moment. The reference in the second line of Rule 5.10.1A should be to ".Capacity Auction" rather than ".Capacity Agreement". Also the reference to "8pm" should be to "2000 hours" to be consistent with the references in Rule 1.4.1.

7. Capacity Market Register

Rule change	Comments
CP116, CP123 & CP135	We are sympathetic to what the proposer wants to achieve. EDF Energy believes that the Capacity Market Register should only be revised when the termination is actioned. There is a potential for notices to be issued incorrectly by NGET or for notices to be successfully challenged; this could lead to adverse publicity for the Capacity Provider. Furthermore, there do not appear to be provisions in the CM Rules to re-enter data for Capacity Providers that have successfully challenged a termination notice.
CP144	We disagree with National Grid's rationale for making these changes; it has not robustly demonstrated that there is too much information in the Capacity Market Register that it makes it 'prohibitive to successful use'. Furthermore, it should be clarified that in CM Rules 7.2 the Delivery Body must establish and maintain a Capacity Market Register in accordance with the Regulations and the Rules and that it may be in electronic form. The CM Rules do not states that any participant needs to request access to the CM Register as National Grid suggests in CP144. We support Ofgem's position; there is a minor legal text drafting error that needs to be corrected: Remove "and" from the end of 7.4.1 (a) (vii) the responses submitted in the Metering Assessment (if completed); **~~and~~**
CP106	In Autumn 2015 DECC consultation: "The Government will be introducing three new requirements for information to be included on the CM Register: fuel type, contact details (telephone number and email) and parent company." We believe that the information needs to be published for each generating unit that makes up a CMU.
CP107	We support CP107 in principle; our understanding is that plant with extended years cannot reuse equipment and subsequently claim New Build status.

8. Obligations of Capacity Providers and System Stress Events

Rule change	Comments
Of9	We believe that a Control Event should only be triggered by an Emergency Manual Disconnection or a Demand Reduction Instruction if the reason for the instruction is a capacity shortfall (apparently there are other reasons why this instruction may be given). We believe that this can best be achieved by adding another subcategory to 8.4.2 (b)(iii) as follows "the reason for the event is not connected with a capacity shortfall."
CP139	We support CP139 in principle; however, we believe that the lead-in wording in Rule 8.3.7 does not make sense as it suggests that the Delivery Body changing the register is the trigger for this obligation to provide information whereas it is, in fact, the opposite. We believe that the lead-in needs to be: "If, in relation to a New Build CMU or DSR CMU, the location of the Generating Unit.is or will be different…., the Applicant must provide the Delivery Body with the following, as applicable." Then the obligation to update the register in Rule 7.5.1 will be triggered. We also believe that for agreements greater than three years a reconfirmation that the Extended Year's criteria (Rule 3.7.2 (a)) will be met should also be required.
CP145	We support Ofgem's position to reject CP145. We do not believe that National Grid provided robust justification as to how this change would benefit Capacity Market participants. We agree that if National Grid wishes to develop this proposal further, it should engage with industry to evaluate the merits of the proposal before the start of the first main Delivery Year in October 2017.

9. Transfer of Capacity Obligations

Rule change	Comments
CP100	We support CP100 in principle; however, the drafting does not match the intent. We suggest the following amendments to Rule 9.2.4 (a)(iii) "following the transfer, the aggregate Capacity Obligation of each of the CMU Transferor and the CMU Transferee is at least equal to the Minimum Capacity Threshold unless the CMU Transferor has transferred all of its Capacity Obligation."

12. Monitoring

Rule change	Comments
CP140	We support Ofgem's position; National Grid has not provided any evidence or justification to industry parties that it has had issues with ITE reports. Furthermore, Capacity Providers who already have multiyear agreements may have entered into commercial arrangements with ITEs for the whole of the project period. Changes to ITE provisions could cause financial/legal issues both for the providers and their ITEs where one or the other or both have entered into legitimate commercial arrangements aimed at meeting the requirements as they currently stand. National Grid's concerns on the current process and self-reporting could be allayed if it produced ITE guidance such as a template for the ITE reports. Alternatively if National Grid believes that it cannot do this then they could propose Rule changes that inserted such guidance in the Rules.

15. Schedules & Exhibits

Rule change	Comments
CP118	In National Grid's recent Enhanced Frequency Response (EFR) FAQ (29 March 2016), it highlighted that whilst EFR is not in the Rules as a "Relevant Balancing Service" at present; it will be propose an amendment to the CM Rules to get EFR classified as a "Relevant Balancing Service" in due course. We believe that Ofgem should consider this further.

EDF Energy
May 2016