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Statutory consultation on changes to the Capacity Market Rules
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Dear Mark

Thank you for the opportunity to comment on your consultation paper of the 22 March. This response is made on behalf of Uniper.

Uniper is an experienced international energy company focused on power generation, energy trading, transportation, and storage, as well as a provider of specialist power engineering services. In the UK we own seven power stations comprising over 6GW of flexible installed capacity, as well as a fast churn gas storage site. As such, Uniper is the fifth largest generator in GB and is making a major contribution to ensuring security of supply and providing a bridge to the energy market of the future.

We do not propose to comment on all 112 proposals discussed in the consultation in this response. However, we will discuss themes which may be common to a number of proposals and address some key proposals in more detail.

In general, our comments cover three main themes:

1. The continued inclusion of interconnector CMUs is problematic as they are transmission assets which are not subject to the same costs, such as network charges, as other capacity providers. Therefore, treating them as pseudo generation assets in the capacity market is inconsistent and distorts competition. Interconnectors which receive cap and floor support are also unique in the Capacity Market as other assets receiving subsidies are ineligible to compete in the auction. Furthermore, as some of our responses to rule change proposals in this consultation illustrate, interconnector CMUs are subject to less stringent rules under the Capacity Market too, which further frustrates competition.
2. There are a number of situations where smaller, distribution connected participants have more favourable arrangements as provided by the rules. Some of the proposed changes in this consultation increases the differences with larger, transmission connected plant further. We believe that the Capacity Market rules should remain technology neutral and that differences in arrangements should be kept to an absolute minimum.



3. We believe that it is important that secondary trading is supported. This hasn't been a priority for the industry up to now as parties have been concentrating on ensuring the initial allocation of obligations under the auctions is carried out efficiently and effectively. However, now the industry is progressing work in order to facilitate more effective trading of obligations and volume reallocation, such as by developing standard contractual arrangements for such trades. Alongside this, changes need to be made to the Capacity Market Rules, to ensure that trading is as liquid and efficient as possible.

Our more detailed comments follow below. We have used the structure used in the consultation for consistency and ease of reading.

1. General Provisions

Proposed amendments: CP247 (Alkane) and CP343 (Welsh Power)

We agree with the decisions on these amendments. In relation to CPs 247 and 343 it is important that secondary trading of Capacity Market obligations and volume reallocations is supported. As we mention above, the industry has been working to put in place standard contract terms for secondary trading to support wider trading of obligations rather than it being limited to portfolios of plant within the same company. However, changes to the Capacity Market rules are also needed in order to promote greater liquidity. Implementing these amendments should be helpful in this regard.

Rejected amendments: CP257 (Client Earth) and CP286 (Energy UK)

We understand that CMP257 is not implementable without a change to the Regulations, although we support the principle of technology neutrality that the amendment seeks to promote.

CP286 we believe is a sensible proposal aiming to ensure that the rule change process is more manageable for participants. Whilst we understand that Ofgem may want greater flexibility on when to issue the open letter, recent experience has been that the window allowed to submit changes was fairly limited. Although, changes can be raised throughout the year to be subsequently considered during the formal process, a number of issues do arise during prequalification and it would be preferable for sufficient time to be given for these to be addressed in the next rule change window.

2. Prequalification Information

Proposed amendments: CP253 (Centrica), CP347 (Centrica) and CP348 (Restore)

We agree with Ofgem's conclusions on this. We support more flexibility in setting connection capacity compared with current arrangements and agree, for instance, that it should be possible to set a capacity at a level lower than the highest output. However, it is important that capacity is demonstrated at the CMU level, so we agree it would not be correct to specify output on separate days for individual generating units making up a single CMU.

Proposed amendment: CP293 (EP UK Investments)

This is a sensible proposal to allow capacity which opted out of the T-4 auction on the basis that they expected that they would be closed by the relevant delivery year, but which subsequently reversed that decision due to changing circumstances, to enter the



T-1 auction for the same delivery year. Therefore, we support Ofgem's decision to progress this change. This change should be implemented so that it is valid for all future T-1 auctions, that is those relating to both past and future opt out decisions. Greater liquidity in the T-1 auctions can only be of benefit to customers. We agree that there are no market manipulation concerns relating to the change. Therefore, we cannot see why the benefits of the change should not be provided to customers immediately. Indeed, if there were any residual market manipulation concerns we would expect them to be less pronounced in relation to previous opt out decisions, which were taken anticipating that the relevant CMU would be prevented from participating in the T-1 auction under the existing rule.

Indeed, we would go further and suggest that the opt out requirements should be removed entirely as they only apply to mandatory CMUs and are therefore arguably discriminatory.

Proposed amendment: CP334 (RWE)

We support this change.

Rejected amendments: CP242 (ADE), CP243 (ADE) and CP261 (E.ON)

These amendments seek to increase the participation of "behind the meter" generation capacity. We agree with Ofgem's conclusion on these proposals as they require changes to the Regulations too.

We note that Ofgem will be carrying out further work with BEIS to explore how more behind the meter generation can participate in the Capacity Market. Whilst we have no issue with participation being extended behind the meter, this should be considered carefully. For instance, if generation behind a meter at a site is to participate in the Capacity Market on a gross rather than net basis, then the demand at that site will need to be accounted for in the Delivery Body's target demand for the Capacity Market auction on a gross basis too. Therefore, the demand target would be higher than that based on the net demand of the site. Capacity Market participation should also be consistent with the access rights that the relevant sites have to use the networks to which they are connected. Therefore, any review will need to take into account the work being carried out under Ofgem's Targeted Charging Review, and the review of forward looking charging signals and access rights.

Rejected amendments: CP254 (Centrica), CP341 (Uniper) and CP342 (Uniper)

We do not agree with Ofgem's conclusions on these proposals. These would have allowed additional capacity enabled by existing capacity providers since the relevant T-4 auction, through station performance enhancements, to be entered into the relevant T-1 auction or used for secondary trading purposes. Ofgem appears to reject the proposals on three key issues:

- Not being able to ensure that the additional capacity was genuinely incremental;
- The treatment of that capacity to satisfy SPDs would need to be clarified; and
- Concerns that the capacity in each auction would be subject to different prices.



Our comments on each of these is as follows:

Ensuring additional capacity was genuine – This is a simple thing for capacity providers to prove. As part of follow up questions from Ofgem, we suggested that we would be able to provide contractual evidence of the upgrades undertaken to increase capacity, plus we would have the results of testing that we have to undertake with National Grid as System Operator. It's not clear why this has been deemed as insufficient.

The treatment of SPDs – A CMU with two obligations for the same delivery year should be able to meet its SPD obligations against the combined obligation level it has. This does not seem like a significant impediment to these proposals.

The CMU would have different prices for each obligation – We are not aware of this being a problem. Each obligation would be administered at its prevailing price for settlement purposes. In terms of administering penalty payments in accordance with Regulation 41, the price PE to be applied would be calculated from the two obligations, and we would suggest as an average weighted by the size of each obligation. This would be consistent with EMR Settlement's guidance note G17 – Capacity Provider Payments, which outlines in Appendix 3 how CMUs which have multiple obligations, primarily through trading obligations, would be treated. Regulation 41 is not very precise on this point and neither specifies nor precludes this.

Finally, we would like to comment on the conclusion that it would be more straight forward to allow the additional capacity to be used for secondary trading, as proposed under CP342, but that Ofgem has not seen evidence that significant amounts of capacity would be brought forwards by this proposal.

As proposer of this change, we have provided evidence of the additional capacity that we have released through upgrades to our assets. We assume that Centrica as proposer of CP254 would have been asked a similar question. We are not sure whether or not these numbers have been considered, but we note that other proposals to increase liquidity in secondary trading such as CP247 and CP343 have been approved. Whilst we fully support the decision to approve these proposals, we would question whether similar evidence requirements were put on the relevant proposers before they were approved for implementation. If not, this would suggest that modification CP342 has been assessed under a more onerous burden of proof than these other modifications.

Rejected proposal: CP255 (Client Earth)

This would have implemented an emissions performance standard in the Capacity Market rules which was more stringent than that which has been decided upon by the Government as a result of its consultation on closing coal power stations and would have come into effect sooner too. We agree with Ofgem that this is a policy matter for the Government, and not an issue for the Capacity Market Rules.

Rejected proposals: CP258 (Drax) and CP315 (InterGen)

These proposals sought greater flexibility in the submission of planning consents. We believe on balance that Ofgem's decision is correct on these. The need for greater flexibility has to be balanced with that of avoiding speculative applications.



Rejected proposal: CP297 (ESC)

This proposal sought to obtain information about ineligible capacity located behind a metering point used by a CMU. Whilst we appreciate that this change may not be possible at this point due to wider rules and systems changes, we do not agree with the conclusion that the rule change is not needed due to it being covered by the current rule 3.4.3(b). Rule 3.4.3(b) only covers situations where the same MPAN is used for more than one CMU for the same delivery year, which is not the same situation envisaged under this proposal.

Rejected proposal: CP317 (Manx Utilities)

Whilst we appreciate this was rejected due to the proposal being inconsistent with the regulations, we believe that distribution interconnectors should be ineligible to participate in the Capacity Market in the same way as we believe that transmission interconnectors should be ineligible. Interconnectors are network assets as defined under European Law, but continue to be allowed to participate in the Capacity Market under a clear dual standard. This allows them to be exempt from paying network charges as if they were network infrastructure, but able to benefit from participating in the Capacity Market and provision of ancillary services as if they were pseudo generation or demand side participants. This issue needs to be addressed so that non GB capacity providers can participate directly in the Capacity Market instead.

Rejected proposal: CP345 (WWA)

We agree with the intent of this proposal, to allow transmission connected generation to share connections with another capacity provider through a private wire arrangement in a similar way to that which currently exists as an option for distribution connected plant. Whilst we are not certain what other changes preclude this from being implemented, we note that Ofgem believes that this issue is worthy of further consideration.

To be considered in future: CP349 (Engie)

We have some sympathy with this proposal. If a capacity provider has an interruptible connection, then this will potentially undermine its ability to deliver under its Capacity Market agreement. This is not an equivalent situation to an action taken in the balancing mechanism, the effects of a constraint or another balancing action being taken on the unit. A non-firm connection is a matter of choice for the connecting party, either to obtain a cheaper connection, an earlier connection or to connect to a part of the network which it would otherwise be unable to connect to. This decision is made knowing that this less firm connection will on occasion put restrictions on access to the network which may affect operations at that site. Having taken that decision, it would be inappropriate for that site to be held whole through the Capacity Market when access is indeed removed.

The issue of how interruptions should be dealt with is covered by a number of proposals, relating to gas Operating Margins, intertrips and CMUs connected to distribution networks. A consistent approach to these needs to be considered.

To be considered in future: CP350 (Saltend Cogeneration)

This proposal is similar in nature to CP345 and we have similar views. One to be explored further.



To be considered in future: CP353 (Scottish Power)

We agree with the intent of this proposal, although we note that Ofgem feels it cannot consider implementing it at present as it was received late in the process. We support the recent changes to derating factors for storage and it should not be possible to bypass these simply because the sites are classified as DSR. We would support further work in this area.

Of15 (Ofgem)

We are supportive of options to increase flexibility in how connection capacity is calculated and declared. We appreciate that this requires changes to the regulations and support interim measures provided for by CP253, CP347 and CP348.

3. Determination of Eligibility

Rejected amendments: CP272 (EDF), CP281 (Energy UK), P284 (Energy UK), CP287 (Energy UK), CP306 (WWA), CP308 (WWA), CP310 (Green Frog Power), CP322 (NGET) and CP340 (UK Power Reserve)

We do consider that the prohibition on changing the configuration of Generating Units that comprise a CMU under 4.4.4 is phrased in a general way which makes it difficult to know what changes are allowed. Therefore, greater clarity is required. In principle, it should be possible to make some changes to the configuration of a CMU as long as these don't impact on the CMU's ability to deliver its capacity obligation, its derating factor or the capability of the delivery and settlement bodies to carry out their roles. We note that Of12 has been proposed to increase the flexibility that DSR capacity providers have in defining their CMUs. Notwithstanding our comments on Of12 below, if it is progressed then similar flexibility should be allowed for other capacity providers to ensure the rules are consistent and technology neutral.

It is helpful to understand that generation CMUs can change between CMRS and non-CMRS status under rule 8.3.3(f)(ii), however it is understandable that participants may have thought that this was a more involved change which was not allowable in this way.

We agree that changing connection between distribution and transmission is unlikely to occur except on extremely rare occasions, as the effort and cost involved is likely to be significant. We are uncertain why a rule change would be required to account for this. We also agree that arrangements should be in place to prevent parties from abusing the rules around changing location of a CMU. It would make sense to clarify the circumstances under which a CMU would be able to alter its location after being awarded a capacity obligation, bearing in mind that Of12 may allow this for DSR CMUs, and the need for consistent treatment of parties.

Rejected amendment: CP328 (NGI)

Whilst we understand the frustration caused by the inability to provide new information as part of a Request for Reconsideration in accordance with Regulation 69, we understand why this cannot be changed without an amendment to the Regulations. If such a change is to be progressed, then consideration should be given to ensuring that sufficient discipline continues to exist to ensure that initial applications are as full and complete as possible and that any appeal provisions are not abused.



4. Capacity Auctions

Proposed amendment: CP273 (EDF)

We do not believe that this amendment should be taken forward in the manner proposed, as we do not believe that it should be up to the auctioneer to decide what value the excess capacity parameter should take for each auction. This is an important parameter which should be hard coded into the rules. If the proposal is taken forward, at the very least it should be set as a parameter much earlier in the process than 20 Working Days before the auction as has been proposed.

Of16

We agree that the situation that would lead to Of16 being used is unlikely to occur, but we can understand how the change would benefit customers if it were to arise. Therefore, the solution as proposed seems sensible. We assume that this change doesn't result in significant systems changes for the delivery body. Clearly, as a low expected likelihood of a modification being needed linked with significant change cost is a rationale used to reject other proposed modifications, a consistent approach needs to be adopted for all proposals.

5. Capacity Agreements

Proposed amendment: CP329 (NGIH)

It is not clear that the full change as proposed is required. We understand that the failure of the SO to deliver an entire connection in time is already covered by the extension of the Long Stop Date under 6.7.7. Therefore, the present rule under 6.10.1(g) does seem to conflict with this. However, rule 6.10.1(ga) does not conflict with this as it relates to the capacity provider electing to reduce its TEC. If the SO only partially delivered TEC in relation to a new connection, the capacity provider would not reduce its TEC, the SO would simply fail to deliver the correct amount. The change to 6.10.1(ga) is therefore unnecessary and could result in a capacity provider opting to reduce its TEC, claiming it was related to a connection being delayed by the SO and benefiting from this changed clause.

Further potential impacts should be considered too. For instance, there is nothing in this proposal that changes the size of the capacity obligation, so if the reduced capacity resulting from the delay is below 90 percent of the original obligation the Substantial Completion Milestone will not be deemed to be met and the CMU would not be paid. If the proposal is taken forward, any continuing obligation and associated payments should be linked to actual delivered capability and the register should be updated accordingly.

6. Capacity Market Register

Proposed amendments: CP270 (EDF) and 271 (EDF)

We agree with the intent behind these proposals. It is important that there is sufficient transparency on the capacity which enters the auctions. We note that Ofgem proposes that this issue should be considered further, but that in the interim information will be provided in the 2018 Capacity Market Operational Report. This commitment to greater transparency is welcome.



Proposed amendment: CP321 (NGET)

It is not clear why this change is needed, although this might be down to our misunderstanding of the exact process of how the BETA value is triggered under the existing rules. There appears to be a process in place whereby EMR Settlements provides information to the Delivery Body on whether a CMU has provided balancing services, and that EMRS is dependent on the Capacity Provider concerned providing it with information to do this. As the Delivery Body is also the System Operator responsible for procuring and utilising these services, we are unsure why such a convoluted process exists. This information could surely be provided directly.

7. Obligations of Capacity Providers and System Stress Events

Proposed amendments: CP256 (Client Earth), CP346 (Anonymous), and CP352 (Anonymous)

We agree with the proposed approach to reject these modifications as proposed, but to introduce a clarification to the definition of BREF to refer to the latest version of the document. Given that compliance with emission standards is not a matter for the Capacity Market we would indeed question why the BREF is specified in the rules and suggest that perhaps references to it should be removed in their entirety.

Proposed amendments: CP279 (Energy UK), CP289 (Engie), and CP290 (Engie)

We agree with the aims of these proposals, but understand that due to significant systems changes their implementation might need to be deferred. We would question though whether there is not a need for more urgency if the current situation is leading to circumstances where the Delivery Body is unable to calculate obligations for CMUs.

Proposed amendment: Of13 (Ofgem)

This seems a sensible proposal to correct a defect which could over reward storage CMUs.

Rejected amendment: CP278 (National Grid Gas)

This proposal would relieve a capacity provider of its load following obligation if it was affected by an Operating Margins instruction from the gas System Operator. We try to support both the gas and electricity System Operators by providing balancing services on their networks in order to ensure security of supply. The risk of not meeting our Capacity Market obligations is a significant factor which limits our ability to do so for the gas network. We note that Ofgem considers this risk should be factored into any tenders to provide OM, which we have some sympathy with. Of course, there is likely to be a limit on participants' ability to do so. As we mention in our comments on CP349, there needs to be a consistent approach to how different types of interruptions are dealt with. This doesn't necessarily mean similar treatment in cases.

Rejected amendments: CP282 (Energy UK), CP311 (Green Frog Power)

We agree with the reasons for rejecting these proposals as there would be a risk that CMUs subject to interruptible or non-firm connections would be inappropriately relieved of their Capacity Market obligations should an interruption occur. Nevertheless, it may be appropriate for distributed CMUs to be protected should they have firm access rights. These rights would need to provide them with access to the distribution and



transmission systems as the Capacity Market operates at a national level. This is presumably an issue to be considered further particularly given that Ofgem's charging review is considering the issue of firmness of access rights.

Rejected amendment: CP294 (ESC)

We agree with the intent of this proposal. As we mention in our response to CP317, we do not believe that it is equitable for interconnectors to participate directly in the Capacity Market instead of non-GB capacity providers. The rules in themselves add in an additional degree of inequitable treatment, by subjecting interconnectors to less onerous standards when meeting their capacity obligations. This proposal from the EMR Settlements Company would have helped addressed one area where this was the case.

It is not clear why an interconnector should not have the same degree of obligation when proving it has met a system stress event compared to other capacity providers. The fact that the present arrangements were deliberately chosen when the rules were originally drafted is not of course a sufficient reason in itself to reject proposed improvements. If the proposal as originally drafted does not provide the data necessary to account for both the output of the interconnector and subsequent SO actions, we would suggest that it could be improved upon to do so.

Rejected amendment: CP331 (RWE)

This is another proposal which seeks to bring the arrangements for interconnectors closer to those for other capacity providers. It seems reasonable to us that if an interconnector's output is reduced as a result of an action by the System Operator, that its obligation is not removed entirely, but only to the extent that the SO action impacts on it. The reasons for rejecting this change includes a statement that says "*Interconnectors require different arrangements to other forms of CMUs, to account for their specific technical and commercial characteristics*". It is not clear why interconnector arrangements are relevantly different so as to merit different treatment in this manner. If an interconnector fails to deliver its obligated capacity, the effect on customers is the same. The reasons for why it is appropriate should be more clearly articulated so that concerns about discriminatory treatment can be addressed.

Rejected amendment: CP333 (RWE)

This seeks to remove a CMU's obligation if an intertrip is triggered. This is a complicated issue to address and this change proposal is possibly not the best way to do so. Intertrips are installed for a number of reasons. Some commercial intertrips can be considered in the same context as providing balancing services. Other intertrips can be considered the same as interruptible access rights. Therefore, more work needs to be carried out on how to treat these within the rules, with the possibility of different arrangements for different classes of intertrips.

Of12 (Ofgem)

We do not support these changes as they seek to introduce much less onerous requirements for DSR capacity providers in meeting their capacity obligations than exist for other capacity providers. It is not clear why DSR providers should be able to make changes to the composition of their CMUs within a delivery year when this option is not available to other parties. The only difference that DSR capacity providers may have compared with others is that they often contract with third parties in order to deliver



their capacity obligations. If this results in an increased level of risk of non delivery, then we consider that DSR parties would be able to manage this ahead of time. For instance, they could ensure their contractual arrangements are robust in the event of non delivery and/or they could seek to contract additional capacity ahead of time to ensure that the risk of under delivery is minimised. If the rules are to be relaxed in this way, then to avoid discrimination they should be relaxed for all. If this is deemed inappropriate, then it calls into question the appropriateness of this proposal.

8. Transfer of Capacity Obligations

Rejected amendment: CP245 (ADE)

We agree that there seems little justification for setting the Minimum Capacity Threshold to a lower level as proposed.

Rejected amendment: CP248 (Alkane)

We agree with the intention of this proposal and do not feel it should be rejected. We do not believe that it would undermine liquidity in the T-1 auction. Evidence from previous T-1 auctions show that these have been very well subscribed to. There seems to be an assumption in the consultation that as there hasn't been a significant volume of secondary trading up to now, then there is little point in making rule changes to support it. However, the rules need to change in order to promote secondary trading. The prohibition on trading until after the T-1 auction seems largely arbitrary and should be reconsidered.

9. Monitoring

Proposed amendments: CP312 (Green Frog) and CP325 (NGET)

We support the implementation of CP312 to simplify and clarify the timing for submitting construction reports. However, we are concerned that relaxing the requirements for an Independent Technical Expert (ITE) would undermine the integrity of the progress reporting arrangements. The ITE requirements should be retained on an annual basis and coordinated with the process for calculating the T-1 volume target irrespective of the level of reported change since the last report.

10. Testing Regime

Proposed amendment: CP280 (Energy UK)

We agree with the implementation of this proposal. However, we believe that it should be extended to cover the situation when a CMU has met its obligation through a reallocation of volume. At present, the drafting allows for a zero ALFCO which would take account of any physically traded obligation. However, this would not account for volume reallocation. Therefore, a provider could meet its obligation through a volume reallocation, perhaps by only running some of its units for efficiency reasons, but would then be forced to run the other units on three extra occasions to meet its extended SPD requirements. This doesn't seem to meet the intent of the modification and is inconsistent with proposal CP338 for small plant.



Proposed amendment: CP338 (UK Power Reserve)

This proposal seeks to provide equitable treatment between Distribution CMUs by allowing the aggregation of CMRS Distribution CMUs to perform Satisfactory Performance Days in the same manner that non-CMRS CMUs currently can. Whilst it seems reasonable from this perspective, it extends the differential treatment between Distribution CMUs and other CMUs, who cannot benefit from greater flexibility in performing SPDs in this manner. It is not clear why this inconsistency in treatment is justified although we note that the maximum capacity which can be aggregated in this manner is 50MW.

Rejected amendments: CP260 (E.ON) and CP332 (RWE)

These amendments seek to ensure that interconnector CMUs are treated in an equitable manner to other CMUs for the purposes of carrying out Satisfactory Performance Days. As present an interconnector only has to prove that it can provide and output of greater than zero, whereas these amendments seek to require interconnector CMUs to prove output equal to their Capacity Obligation, as is required for other CMUs.

We do not agree with the proposed rejection of these proposals, particularly as it is based on the principle that interconnector owners do not have control over the direction of flow of their assets. This is not a reason for excusing interconnectors of their obligations to prove their capacity, but it is more an indication of why interconnectors may be less reliable than other types of CMU which are able to control when they deliver. If interconnector CMUs are unable to demonstrate three half hours when they imported to their Capacity Obligation, it is questionable whether they will be able to deliver their obligation when needed.

11. Schedules & Exhibits

Rejected amendments: CP263 (E.ON), CP313 (Innogy), and CP314 (Innogy)

We agree that further work needs to take place before renewable technologies can be included in the Capacity Market, although as long as they are not receiving subsidies through a renewables support scheme we do not see a problem in principle for their inclusion. We do accept that this will increase the level of the demand target for the Capacity Market and this could have implications for the cost of the Capacity Market arrangements however.

I hope that you found the above comments helpful. Should you need to discuss any of the issues raised further, please contact me on the above number or email address in the first instance.

Yours sincerely,

Paul Jones
Senior Regulation Manager
Uniper UK Limited