

Charlotte Buchanan
Ofgem
9 Millbank
London
SW1P 3GE

22 May 2014

Dear Charlotte,

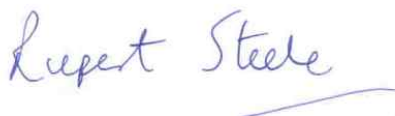
DRAFT GUIDANCE FOR THE CAPACITY MARKET RULES CHANGE PROCESS

Thank you for the opportunity to respond to the above consultation. We are broadly supportive of the approach Ofgem proposes, but would offer the following observations:

- (a) We think that Ofgem should seek to replicate, to the extent practicable, the benefits of the code governance system that has proved so effective in ensuring that modification proposals are both widely considered and technically sound. We think that Ofgem should consider appointing a technical panel, similar to a code panel, which could assess all rule modification proposals and make recommendations to Ofgem. This would, we think, lead to better formulated and considered modifications being put out for consultation;
- (b) Whilst we recognise the benefits of a standardised annual process for managing rule changes, we believe that Ofgem should make it clear that they will receive and consider proposals for change throughout the year, even if there is only a specific window for change. Proposed changes could then be prioritised, with urgent matters being dealt with outwith the standard process, as detailed in the consultation.
- (c) It will be important that Ofgem approaches the Capacity Market Rules in a way which is supportive of investor confidence. We do not think that the interests of consumers in a secure supply can be delivered unless investors are confident that Ofgem and DECC will stick by the capacity market in changing market circumstances.

Our responses to the questions in the Consultation are set out in the attached Annex. If you have any questions about our response, please do not hesitate to get in touch.

Yours sincerely,



Rupert Steele
Director of Regulation

**EMR: CONSULTATION ON DRAFT GUIDANCE FOR THE CAPACITY MARKET RULES
CHANGE PROCESS**

SCOTTISHPOWER RESPONSE

Question 1

Do you think that an annual process of managing changes to the CM Rules is appropriate? If not, please outline your reasons and your preferred alternative approach.

Whilst we recognise the benefits of a standardised annual process for managing rule changes, we believe that Ofgem should make it clear that they will receive and consider proposals for change throughout the year, even if there is only a specific window for change. Proposed changes could then be prioritised, with urgent matters being dealt with outwith the standard process, as detailed in the consultation.

We believe there is a need for Ofgem to stress test whether the 4-6 week decision period will be achievable in practice, in the event that there are a large number of change requests submitted.

In particular, if there are specific issues arising from the first auction, the October-December window might not be long enough for parties to develop proposals. We therefore feel that Ofgem should provide a derogation to the enduring rules that will give participants more time to propose changes following the first auction. A period of one month after the first auction takes place would appear to be a pragmatic approach.

It may be appropriate to consider if an electronic portal or a section of the Ofgem website could be used to support the rule-change process.

Question 2

Does the draft CM Guidance cover the necessary issues?

We believe that the consultation should have explored the merits of setting up an advisory panel, modelled upon those used for existing industry codes, in order to advise Ofgem on modifications before consultation. We have maintained throughout our EMR engagement, that the existing Modifications process in the Balancing and Settlement Code (BSC), and particularly the role of the BSC Panel, is a robust and effective process which provides the desired level of industry input and helps ensure that consultation proposals are well formulated and considered.

In the event that such a Panel approach is not adopted, we believe it is important for Ofgem to be clear and specific about how industry and other stakeholders will be engaged in the

process. We believe industry has a clear part to play in both complicated rule changes, and the screening of the rule change proposals that are to be taken forward to the consultation stage.

As Ofgem will not consult on all of the changes proposed, only those that it chooses to take forward, clarity is needed on how any decision whether to consult on a proposed change will be taken and the appropriate route for a party to challenge a decision not to consult on a proposal.

As currently configured, it appears to us that the Capacity Market Rules are not capable of being safeguarded by the right of appeal to the Competition and Markets Authority under section 173 of the Energy Act 2004. We believe that this process, or at least the possibility that it might be invoked, has led to a significant improvement in the quality of Ofgem code decisions. It would be useful for Ofgem and DECC to consider how this discipline could be extended to the Capacity Market Rules and what might need to change in order to make this possible.

Question 3

Do you have any other comments on the draft CM Guidance?

In order to be practical, the proposed format for rule change requests needs to be extendable – some of the boxes might run to several pages when completed and could need to include graphs, diagrams and other evidence.

It will be important that Ofgem approaches the Capacity Market Rules in a way which is supportive of investor confidence. We do not think that the interests of consumers in a secure supply can be delivered unless investors are confident that Ofgem and DECC will stick by the capacity market in changing market circumstances.

ScottishPower
May 2014