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Ofgem
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Submitted via email to: EMR_CMRules@ofgem.gov.uk

28th May 2019

Dear Sir, Madam,

Five Year Review of the Capacity Market Rules – First Policy Consultation

InterGen remains one of the only genuinely independent generators active in the GB market with a track record of developing, constructing and operating large scale thermal power generation projects. Furthermore, we have been active in the market since the 1990s.

InterGen is an active participant in the Capacity Market (CM) Auctions. In the T-4 CM Auctions to date we have been successful in securing one-year agreements for our existing CCGT plants – Coryton, Spalding and Rocksavage. Additionally, in December 2016, InterGen won a fifteen-year agreement for a new 300MW OCGT, an expansion of the existing Spalding site, which is due to commence commercial operations in summer 2019. The financing of this new asset would not have been possible without the award of the 15 year CM agreement.

Our full response is included as an appendix to this letter and in conclusion we would like to highlight;

Our support for the CM: The suspension of the CM has serious consequences including: loss of security of supply, investor flight and job losses. Consequently, the CM should be reinstated as soon as possible with existing agreements upheld and missed payments issued. We believe that the CM is fundamentally important to all flexible GB generation assets and remains the most appropriate mechanism for ensuring security of supply and value for money for the consumer.

Prequalification should be simplified: The administrative burden of prequalification cannot be underestimated. The Five Year Review is an ideal time to completely revisit the prequalification process to allow existing generators with existing contracts to resubmit only by exception, with standing data previously used automatically flowing through for future auctions. Introducing additional pre-qualification rounds also puts significant burden on the delivery body to not only re-run the process with new information but also to manage the appeal process, and parties who are not able to 're-use' still valid information risk falling into appeal due to minor errors. Failure to take this timely opportunity to simplify

this process may jeopardise chances of prequalification in future auctions for new and existing participants, jeopardising security of supply and ultimately costing the consumer.

The need for clear, concise Rules changes: InterGen appreciates the opportunity to engage in an annual Rules change process and we encourage Ofgem to explore how the process can be made more efficient. The process today is burdensome for the Regulator and industry alike, the review should therefore aim to improve the process from when a proposal is made all the way through to implementation. We urge Ofgem to be conscious of all the various CM participants when reviewing the Rules change process. Due to resource availability and market experience, larger players and market participants will receive an advantage over smaller players if the industry is given greater responsibility in assessing the value of proposed amendments. This may reduce competition and possibly reduce access the CM for the many and increase it for a few dominant incumbents.

Secondary trading arrangements: The GB Market is undergoing significant change, and assets are making extensive upgrades to provide additional MWs, making themselves more efficient and providing greater flexibility. InterGen believe that additional capacity at a CMU with an existing obligation should be able to participate in the T-1 Auction or in secondary trading to increase their existing capacity by the new incremental capacity.

NGESO's Incentives: We believe that Ofgem is right to review NGESO's incentives as part of the five-year review. NGESO is playing a key role in delivering the CM and the importance of efficient CM operation should be reflected in NGESO's incentives. We would argue that stronger incentives are required, for example, to encourage NGESO to run the prequalification process in a more efficient manner.

We have grouped our responses by Section to avoid repetition by answering each of the questions individually. Please do not hesitate to get in touch with me should you have any questions regarding any of the points raised in this response (lmackay@intergen.com; 0131 624 7500). In addition, should you wish a meeting to discuss our comments, I would welcome such an approach.

Yours Sincerely,

Lisa Mackay
Trading and Commercial Director

The objectives of the Rules

Question 1: Do you have any views on the interactions between the CM and other wholesale markets; such as forward markets, the balancing market, and markets for ancillary services?
Question 2: Do you have any evidence that design choices in the CM are driving inefficient outcomes in other markets?
Question 3: Do you have suggestions for how these markets can be better aligned and how any inefficiencies can be mitigated?

Since its inception in 2014, the CM has proven to be absolutely essential to keep existing generation open (to make up for at least some of the "missing money" as load factors and power prices fall) and to support investment in new build and existing generation which is not otherwise subsidised, and therefore must be retained. InterGen believes it still meets the objectives it set out to achieve; namely security of supply, cost effectiveness and support to the low carbon agenda.

InterGen would agree that 5 years ago, the CM was designed for a market that has now changed considerably. It is therefore wholly appropriate that industry can now reflect on the outcome for the CM to date, and make changes to ensure the continued working of the CM in delivering capacity at the lowest cost to consumers.

We also stress that interaction with other market design changes are having a huge impact on CM contracts. It is frustrating that proposals being led by Ofgem, National Grid and BEIS (all of whom are interested parties in the CM) appear to show a complete disregard for the timelines associated with CM bidding strategies and auctions. For example, the TCR SCR proposes using an implementation date of April 2021, therefore significantly impacting the economics of generators that have secured CM contracts in years 2021/22 and will be prequalifying for 2022/23 with no foresight on what the future of transmission charging will look like. In addition the Gas Charging Review – a fundamental change to gas charging that will be in no way reflected in the costs associated with gas fired generation in the current CM clearing prices. This continued uncertainty in the market, and the lack of cohesion between regulatory change and CM bidding cycles will result in pushing up the cost of new build assets (price makers) who will need to price in this continued risk. It is the remit of the aforementioned authorities to ensure that consumers are not bearing the costs of these increasing risk premia. A joined up approach between Significant Code Reviews, and other major market changes cannot be too hard to coordinate. The market has been clear across multiple consultations that there is a requirement to look at the whole system costs and strive to deliver the level playing field across all generation assets.

With regards to the CM interaction with other markets, InterGen believes that the introduction of the CM should help provide additional stability in balancing mechanism and ancillary markets, as assets who have secured CM awards are available to be dispatched to meet requirements of the system. The wholesale market should also not be exposed to 'shock' closures of assets, as these will be known four years in advance, allowing time for the market to respond.

Ofgem and BEIS also need to address the issue regarding unclear rules and guidelines in relation to the CM. For example, there is not one formal consolidated version of the Rules nor the Regulations that apply to all auctions and all types of capacity agreements. This can be incredibly complicated for participants to trawl through all previous versions and amendments to ascertain which set of Rules and subset of amendments apply to which upcoming capacity contract.

Ofgem's Rules change process

Question 4: Do you have any views on whether the proposed membership of the CM Advisory Group is appropriate, the form of participation from industry, along with any further points regarding meeting frequency and function?
Question 5: Do you believe the proposed framework and function of the CM Advisory Group is appropriate and would better facilitate the efficient operation of the CM Rules change process?
Question 6: Do you have any feedback on our proposal to move to an 18-month implementation timescale; consulting on rule amendments which would subsequently be implemented the following Delivery Year?

InterGen agrees that the current rules change process has limitations, but would caution against a whole code-governance based approach for the reasons set out in the consultation, namely, the ability for smaller participants (of which, in the CM, there are many) to be able to keep up to date and fully participate in all the proposed rules changes that may impact their assets.

The current governance arrangements whereby BEIS has overall policy-wide responsibility, Ofgem govern the Rules, and the Delivery Body implement and police the rules, is at times confusing and inefficient. Responsibility over certain matters is not always clear and changes to the Rules are often delayed because of this. At times, Rules change proposals are unable to progress due to restrictions in the Regulations, which rely on scarce parliamentary time to allow for changes. As a result, we believe that it would be more efficient to include more of the CM framework to the Rules, leaving the high-level requirements in the Regulations.

InterGen agrees that the timeline for rules changes should be delayed by a year – thereby giving CM participants full oversight of which rules are in place for the upcoming prequalification period and subsequent auction. Having the processes run so close together is extremely inefficient and unsettling for participants, particularly new build capacity who are trying to secure finance ahead of submitting a bid in the upcoming auction, and do not have a clear understanding of the Rules of the mechanism that will ultimately be the deciding factor in whether a project goes ahead.

The CM Advisory Group (CMAG) is a good concept, although care must be taken when choosing the participants to avoid the risk of bias, whereby only larger generators may have resource to spare for the periods of time needed to devote to the Group. It may be useful to consider whether smaller participants could nominate a representative who may not be a CM Agreement holder, to represent their sectors interest on the Advisory Panel. The CMAG should be made up of representatives that reflect all types of capacity providers and of varying contract lengths, and diverse technologies. Care needs to be taken to ensure that the CMAG is allowed to develop and represent opposing views on CM-related issues, to avoid dilution of messaging as is sometimes the case in large trade organisation trying to represent the entire industry. The CMAG will also need representation from renewable participants who will wish to access the CM in coming years and will be required to feed into relevant rules changes to support their participation.

Regulatory burden – Prequalification

Question 7: Do you have any views on the proposed process, the implications of the change to the Prequalification procedure and whether it would be a positive change in removing an administrative burden?

Question 8: Do you believe the current length of the Prequalification window is appropriate and if allowing Prequalification submissions to take place throughout the year would be beneficial?
Question 10: Do you have any feedback on the amendments to the Prequalification data items listed in Table 1?

It cannot be underestimated how arduous and unwieldy the pre-qualification process is. Even when a participant has already successfully pre-qualified for multiple years the risk of failure is high. InterGen's plants have taken part in pre-qualification since the first CM auction in 2014, and during that time the pre-qualification has become no less onerous, time consuming and difficult. We understand that all of the information required to pass pre-qualification is necessary for the EMR delivery body to accurately assess the viability of an asset to participate in the auction and subsequently deliver capacity at times of stress. These checks are very important, especially for projects that have not yet come online. However, the EMR Delivery Body should be allowed to apply some discretion so that applicants do not fail due to minor errors/omissions such as full stops or infinitesimal differences in map coordinates.

Should there be no changes at all to the prequalification information from one year to the next, either for existing or new projects, then a letter of declaration from a company director should suffice to state that the asset wishes to pre-qualify on the same terms as the previous year. This would eliminate needless administration on all sides. If changes have taken place, these should be highlighted by exception; the applicant could go directly to the pages affected rather than revisit the entire application.

InterGen do not believe that this type of 'evergreen' application' would lead to any incorrect applications being made to participate; each admission to pre-qualify has to have either board and/or director-level approval (leaving them liable for any incorrect submissions) therefore the EMR Delivery Body should be able to take comfort that applications have been robustly verified before submission. Generators have to go through a number of lengthy and administratively burdensome processes to participate in the GB market; for example acquiring TEC, signing up to the BSC, creating an energy account necessary for spot and forward trading, to name but a few. These processes are necessary to ensure the integrity of the GB market and its participants. However, once the necessary 'accreditation' in the aforementioned processes have been achieved, it is a matter for the generators to ensure that the information provided in their relevant contract/application is kept up to date (for example, changing TEC or informing necessary authorises of any administrative changes such as a new registered address). Many of the codes that generators sign up to have a 'duty of care' included to make sure that parties are on top of housekeeping in this regards. Therefore it is hard to understand why the EMR Delivery Body require such an arduous and lengthy process for existing generators to pre-qualify for each auction, each year.

It seems appropriate that generators applying for 15 year CM Agreements still need to go through a more lengthy pre-qualification process, especially those generators whose assets are not yet under construction. Demonstrating financial commitment milestones at this stage is prudent and necessary to ensure the integrity of the auction results.

Another improvement would be to allow National Grid to process and fully approve prequalification submissions anytime during the submission window (on the basis that once approved the details cannot be amended). This would encourage participants to complete applications earlier and reduce the spikey nature of National Grid's prequalification workload. During this window, the Delivery Body should be allowed to ask further questions of the applicant (to iron out any minor administrative sticking points, for example),

and after this can apply a Y/N decision (followed by potential appeal). This should avoid needless time and anxiety over administrative or clerical oversights.

Regulatory burden – Planning Consents

Question 9: Do you have any feedback on the options presented in relation to the submission of planning consents and if there are any alternative options that we have not yet considered?

InterGen considers that the requirement for planning consents should be Option 2; in other words "22 Working Days prior to the commencement of the first Bidding Window in relation to such Auction". This ensures that a project receiving a CM award 'real' and that the developer has already backed the project with substantial investment (in addition to the CM participation collateral requirement). Option 1 enables developers to reduce their upfront investment materially (for example, be only part way through a DCO process) and then only progress a project fully if it wins a CM award. This in turn materially increases the risk of parties participating in the CM that do not have the capability to complete the project – with the risk only crystallising at the FCM – which could be some 16 months after a T-4 award. Additionally, it is counterintuitive to reward a project that is less advanced – a potential unintended consequence under Option 1.

We are also of the opinion that there should be no different treatment for projects that are consented via Section 36 (which still go through consent variation procedures), the Town and Country Planning Act (which can be secured in 6 months from scratch) and DCOs – to ensure that certain project types are not given preferential treatment (in line with state aid requirements). We are assuming that the options presented are on this basis.

Regulatory burden – Reporting requirements

Question 11: Do you believe that removing progress reports and the associated ITE assessments in all cases except those outlined, alleviates the regulatory and administrative burden, while still providing the necessary levels of assurance?

InterGen has no comments on this at this time.

Secondary trading arrangements

Question 12: Do you have a view on which of the sub paragraphs of Rule 9.2.6(d)(i) – (ix) should only apply to Eligible Secondary Trading Entrants and which to the other categories of Acceptable Transferees?
Question 13: Is it appropriate to allow all parties who have prequalified for the CM for that year to become prequalified for secondary trading? Are there any unintended consequences?
Question 14: What form should a register of Acceptable Transferees take? How should it be populated? And who should be responsible for maintaining it?
Question 15: Do you agree that it would be desirable to allow obligations to be traded between parties in amounts greater than or equal to 0.5MW?
Question 16: Do you believe the current time period of five Working Days before the date of the trade by which applicants must submit a request to trade is appropriate or should this period be reduced? Do you have any suggestions on a revised length of this period?

Question 17: Do you believe that the current period of three months in which NGESO have to notify a Secondary Trading Entrant of the Prequalification decision is appropriate or do you feel this should be shortened? Do you have any suggestions on a revised length of this period?
Question 18: Do you agree with adding a provision for the time frame over which NGESO must respond to requests for a trade?
Question 19: Do you think it is appropriate to extend the defined trading window to the results day of the T-4 Auction for the relevant Delivery Year?
Question 20: Does it continue to be appropriate for Transferors to be required to meet their SCM prior to engaging in trading?
Question 21: Does it continue to be appropriate for Transferees to be required to meet their SCM prior to engaging in trading?
Question 22: How should we address the risk of a trade being withdrawn where a Transferor is terminated after a trade has been registered?
Question 23: How should we address the transfer termination risk where a partial or full Capacity Agreement is traded for part of, or the entire duration of a Delivery Year?
Question 24: Are there any amendments that could be made to the SPD framework following a secondary trade, specifically relating to partial agreement trades?

The GB Market is undergoing significant change, and assets are making extensive upgrades to provide additional MWs and make themselves more efficient. InterGen believe that additional capacity at a CMU with an existing obligation should be able to participate in the T-1 Auction or in secondary trading to increase their existing capacity by the new incremental capacity.

To encourage secondary trading, the CM register could be updated to include secondary trading preferences for each prequalified CMU – for example details of the volume available for secondary trading. There would need to be an additional process implemented where by CMU's could provide the EMR DB with such information to be updated on the CM register.

Other changes to the Rules

Question 25: Do you believe the options presented related to SPD data submission are suitable and are there any options we may not have considered in order to help mitigate the impact on capacity providers?
Question 26: Which aspects of a CMU configuration do you think should not be able to be amended following Prequalification?
Question 27: Is there any other data that would be useful to add to the CMR and why?
Question 28: How should the ALFCO formula be adjusted for Interconnectors when their output is affected by actions by NGESO?
Question 29: Should system to generator intertrips be included as a RBS in Schedule 4 to relieve providers of their obligations when affected by such an intertrip?
Question 30: How should we differentiate between firm and non-firm connection agreements at the Distribution level?
Question 31: How should Distribution-connected generators with non-firm connection agreements be de-rated to accurately account for their contribution in a stress event?

InterGen has no comments on this at this time.

NGESO's incentives and role in the CM

Question 32: Do NGESO's current financial incentives on demand forecasting accuracy, dispute resolution, DSR Prequalification, and customer and stakeholder satisfaction drive the intended behaviours by NGESO?
Question 33: Do the financial incentives listed above remain fit for purpose?
Question 34: What behaviours and outcomes should NGESO's financial incentives drive? What form should these incentives take?
Question 35: Do you agree that a demand forecasting accuracy incentive remains appropriate?
Question 36: Do you agree that the dispute resolution incentive should be based on a proportion of Prequalification or Reconsidered Decisions overturned by the Authority rather than on the absolute number?
Question 37: Do you agree that the DSR Prequalification incentive should be replaced by an incentive intended to drive NGESO to aid smaller providers, new entrants, and innovators navigate the CM?
Question 38: Do you agree that an incentive on NGESO's customer service and stakeholder engagement remains appropriate? What form should this incentive take?
Question 39: Do you agree that the incentives on NGESO for delivering the CM should be aligned with NGESO's incentive framework? Should the CM incentives be incorporated into NGESO's incentive framework in the longer term?
Question 40: Does the separation of the EMR Delivery Body from NGESO continue to remain appropriate given the separation of NGESO from the rest of NGESO plc?

We believe that Ofgem is right to review NGESO's incentives as part of the five-year review. NGESO is playing a key role in delivering the CM and the importance of efficient CM operation should be reflected in NGESO's incentives. We would argue that stronger incentives are required, for example, to encourage NGESO to run the prequalification process in a more efficient manner. Over and above delivery should be rewarded, whilst anything below a stakeholder-determined baseline should be penalised. There should be a clear set of Key Performance Indicators (KPI's) to quantify performance in timeframe agreeable to industry stakeholders.

InterGen supports the inclusion of regular Customer and Stakeholder Satisfaction surveys, and we would also encourage the engagement of wider views on all aspects set out in Special Condition 4L. This could be provided in the form of a Call for Evidence. This would be reflecting the process already in place for the ESO Regulatory Performance Incentives Framework. This would take into account all stakeholders that have been impacted or have a view on the Delivery Body's performance.