

Draft Capacity Market (Amendment) (No. 3) Rules 2016

**1. Citation, commencement and interpretation**

1.1 These Rules may be cited as the Capacity Market (Amendment) (No. 3) Rules 2016.

1.2 These Rules come into force on [21 November 2016].

1.3 In these Rules:

1.3.1 “the Rules” means the Capacity Market Rules 2014 as amended by:

- (a) the Capacity Market (Amendment) Rules 2014,
- (b) the Capacity Market (Amendment) (No. 2) Rules 2014;
- (c) the Capacity Market (Amendment) Rules 2015;
- (d) the Capacity Market (Amendment) (No. 2) Rules 2015;
- (e) the Capacity Market (Amendment) Rules 2016; and
- (f) the Capacity Market (Amendment) (No. 2) Rules 2016.

1.3.2 a reference to a Chapter, Rule or numbered Schedule by number alone is a reference to the Chapter, Rule or Schedule so numbered in the Rules; and

1.3.3 expressions which are defined in the Rules have the same meaning as in the Rules.

**2. Application**

2.1 These Rules do not apply in respect of any Capacity Agreement that has been awarded as a result of a Capacity Auction held before these Rules come into force.

**3. Amendments**

3.1 The Rules are amended as set out in the Schedule to these Rules.

[Secretary of State]

[2016]

Department for Business, Energy & Industrial Strategy

## SCHEDULE

### Draft amendments to Capacity Market Rules – proposal to ensure fair competition in future capacity auctions relating to certain risk finance schemes

#### Amendments to Chapter 1

1. In Rule 1.2:

1.1 for “Financial Commitment Milestone” substitute:

“**Financial Commitment Milestone** means, for a Prospective CMU, the provision to the Delivery Body of:

- (a) a report by an Independent Technical Expert meeting the Required Technical Standard confirming the Capital Expenditure and financial commitment requirements specified in Rule 6.6; and
- (b) a Funding Declaration.”

1.2 Insert the following definitions in alphabetical order at the appropriate places:

“**Funding Declaration** means a declaration in the form set out in Exhibit [J];

**Relevant Expenditure** means Capital Expenditure funded by Relevant Investment; and

**Relevant Investment** means any investment under the Enterprise Investment Scheme established by Part 5 of the Income Tax Act 2007, the Seed Enterprise Investment Scheme established by Part 5A of the Income Tax Act 2007 or the Venture Capital Trust established by Part 6 of the Income Tax Act 2007.”

#### Amendments to Chapter 6

2. For Rule 6.6.1 substitute:

“6.6.1 A Capacity Provider of a Prospective CMU will be considered to have met its Financial Commitment Milestone obligation if, by no later than 16 months after the Auction Results Day for the Capacity Auction in respect of which the Capacity Agreement was awarded (or, in the case of an SA Agreement, 3 months), the Delivery Body has acknowledged receipt of:

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- (a) a report prepared by an Independent Technical Expert at the Capacity Provider's cost confirming that the Independent Technical Expert (either directly or indirectly) is satisfied as to both of the matters set out in Rule 6.6.2; and
  - (b) where Rule 6.6.5 and, if relevant, Rule 6.6.6 apply, a Funding Declaration made by at least two directors of the Capacity Provider."
- 3. In Rule 6.6.2, for "6.6.1" substitute "6.6.1(a)".
- 4. After Rule 6.6.4 insert:

"6.6.5 This Rule 6.6.5 applies if the Capacity Agreement for the Prospective CMU was awarded in a Capacity Auction held in the Auction Window commencing on 1 September 2016 or any subsequent Auction Window.

6.6.6 If the Capacity Agreement for the Prospective CMU was awarded in a Supplementary Auction, this Rule 6.6.6 applies if the CMU had not been awarded a Capacity Agreement in any Capacity Auction held before the Supplementary Auction.

6.6.7 A person submitting a Funding Declaration under Rule 6.6.1(b), must ensure and confirm in the Funding Declaration that:

  - (a) in all material respects, the Funding Declaration; and
  - (b) in all respects, each of the specific declarations referred to in the Funding Declaration,

are true and correct and that the Funding Declaration has been authorised by the board of directors of the Capacity Provider or the person submitting the Funding Declaration (as applicable)."
- 5. In Rule 6.10.1 omit "or" after paragraph (n) and after paragraph (o) insert:

“;

  - (p) where the Capacity Provider is required to submit an updated Funding Declaration under Rule 8.3.8, a failure by the Capacity Provider to submit such update in accordance with Rule 8.3.8; or
  - (q) where a Funding Declaration made under Rule 6.6.1 or any update made under Rule 8.3.8 would not comply with the requirements in Rule 6.6.7.”
- 6. In Rule 6.10.2, delete "(n)" and insert "(q)".

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7. In Rule 6.10.3(c), delete “or (n)” and insert “(n) or (p)”.
8. In Rule 6.10.3(d)(ii), delete “or 6.10(e)” and insert “6.10.1(e) or 6.10.1(p)”.
9. In Rule 6.10.3A, after paragraph (ab) insert:
  - “(ac) Where a Capacity Agreement or Transferred Part is terminated on the grounds specified in Rule 6.10.1(p) or 6.10.1(q), the Capacity Provider is liable to repay Capacity Payments in accordance with Regulation 43B.”
10. In Rule 6.10.3(ca), delete “or (o)” and insert “(o), (p) or (q)”.

### **Amendments to Chapter 8**

11. After Rule 8.3.7 insert:

#### **“8.3.8 Declarations about other funding sources**

Where a Capacity Provider is required by Rule 6.6.1(b) to make a Funding Declaration and the total amount of Relevant Expenditure spent differs from the amount stated in the Funding Declaration, the relevant Capacity Provider must provide the Delivery Body, no later than three months after the start of the first Delivery Year for a Capacity Agreement or the Delivery Year of an SA Agreement, with an updated Funding Declaration made by at least two directors of the Capacity Provider confirming the final Relevant Expenditure incurred in respect of the relevant CMU.

8.3.9 Any Funding Declaration provided in accordance with Rule 8.3.8 must comply with Rule 6.6.7”.

12. After Exhibit I, insert a new Exhibit J (Funding Declaration) as set out in Annex [1].

**ANNEX 1**

**New Exhibit [J] – Funding Declaration**

The following declarations and confirmations are made by [*name of the Capacity Provider*] (the “**Relevant Party**”) with respect to the following CMU (the “**Relevant CMU**”):

[*Description of the CMU to be inserted*]

(a) The Relevant Party hereby declares that [*delete as applicable*]:

(i) [*no Relevant Expenditure has been, or will be, incurred*] or [*Relevant Expenditure has been incurred, or is expected to be incurred*] in respect of the Relevant CMU;

*Where Relevant Expenditure has been, or will be, incurred -*

(ii) the total amount of the Relevant Expenditure that has been, or will be, incurred in respect of the Relevant CMU is [*insert amount*];

(iii) the date [or dates] that the Relevant Investment was [or were] made was [*insert date*];

(iv) *either:*

[*where the Relevant Investment was under the Enterprise Investment Scheme or the Seed Enterprise Investment Scheme*] the name of the company that received the Relevant Investment as recorded in HM Revenue & Customs records in respect of that Relevant Investment is [*insert name*];

or:

[*where the the Relevant Investment was under the Venture Capital Trust*] the name of the company that made the Relevant Investment; and

(v) it agrees for the total Relevant Expenditure incurred with respect to the Relevant CMU to be set off against any Capacity Payments payable to the Capacity Provider in respect of the Relevant CMU, so that no payment shall be made to the Capacity Provider until such amount has been set off in its entirety.

(b) The Relevant Party hereby confirms that:

(i) where the total amount of Relevant Expenditure differs from the total amount stated in its first Funding Declaration, it will provide the Delivery Body, no later than three months after the start of the first

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Delivery Year for a Capacity Agreement or the Delivery Year of an SA Agreement, with an updated Funding Declaration made by at least two directors of the Capacity Provider confirming the final Relevant Expenditure spent in respect of the relevant CMU;

- (ii) for the sole purpose of the Authority exercising its functions under the Rules and Regulations in connection with the Relevant Expenditure it consents, and it has obtained the written consent of all other relevant persons<sup>1</sup>, to the Authority and HM Revenue & Customs exchanging relevant information in relation to the Relevant Expenditure and Relevant Investment; and
- (iii) in all respects, this Funding Declaration and each of the specific declarations referred to in paragraph (a) are true and correct and this Funding Declaration has been authorised by the board of directors of the Relevant Party.

Capitalised terms used herein have the meaning given to them in the Capacity Market Rules 2014.

DATED: [x]

Signed for an on behalf of

.....  
Director

.....  
Director

Print Name:

Print Name:

To be executed by the signature of two directors, unless Rule 1.3A (inserted by the Capacity Market (Amendment) Rules 2014) applies.

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<sup>1</sup> Including the legal owners of the Relevant CMU