Verifying a Capacity Market applicant's low carbon exclusion status

Scope

1. The purpose of this paper is to confirm the process for verifying an applicant's low carbon status for determining eligibility in a capacity auction. It does not propose amendments to the process for terminating capacity agreements for CFD/RO conversions.

Background

2. Under the consultation version of the CM rules and regulations Capacity Market Units (CMUs) that are subject to a Contract for Difference (CfD) or are accredited under the Feed in Tariff (FiT), Renewable Heat Incentive (RHI) or Renewables Obligation (RO) mechanisms (termed 'low carbon exclusions'), are ineligible for participation in a capacity auction. Similarly, CMUs benefitting from a 'low carbon grant' (i.e. NER 3000 or CCS demonstration projects) are also excluded.

3. Applicants are therefore required to declare in their Capacity Market applications whether their CMU benefits from a low carbon exclusion at the time of the application, and that it will not benefit from such an exclusion at any time during the relevant delivery year. [1]

4. Where eligible for a low carbon exclusion, the applicant must provide with their application a letter from the Authority or CfD Counterparty Body to confirm they will not be benefitting from such support at the start of the relevant delivery year[2]. Applicants must also declare that their CMU has not and will not benefit from a low carbon grant either during, or in the ten years prior to the commencement of, the relevant delivery year.[3]

5. The proposed verification process, which was caveated via square brackets for consultation purposes, is that the Delivery Body must notify the Secretary of State, Authority and CfD Counterparty of applicants' declarations with regard to low carbon exclusions and request confirmation that no such exclusion applies.[4] The Delivery Body may also request confirmation as to whether accompanying evidence is satisfactory. In both circumstances the relevant party has ten

[1] CM rule 3.5.7 refers
[2] CM rule 3.5.7(e) refers
[3] CM rule 3.5.7(b) refers
[4] CM rule 4.3.1(b) refers

business days from receipt of the request to provide such written confirmation to the Delivery Body.[5]

6. The consultation version of the Electricity Capacity Regulations[6] also makes provisions for the Delivery Body to request additional information from the bidder or Secretary of State in respect of any low carbon grants.

7. This two stage verification of every low carbon exclusion declaration was originally included as a disincentive against fraudulent disclosures and to mitigate the material risk of CMUs receiving double payments. However further discussions with stakeholders, including regulatory bodies, have suggested this tiered approach is overly burdensome for all parties concerned, introduces potential time delays (for example where a confirmatory letter from the relevant regulatory body is required to be submitted by the applicant as part of pre-qualification) and presents legal risks to the regulatory parties providing the confirmation.

8. It is not proposed, however, to completely rely on an applicant's self-declaration of low carbon status, despite the simplification benefits, given the material risk of fraudulent disclosures and resultant overpayment and impact on public finances. An alternative verification approach is therefore proposed for the Expert Group's consideration.

Alternative proposal

9. Under this new data sharing approach the current self-declaration pre-qualification requirements are retained but the second tier confirmation by the regulatory body is dropped. The regulatory bodies which administer the schemes covered by the low carbon exclusion (FITs - Ofgem, RHI – Ofgem e-serve, RO - Ofgem or CfD – National Grid/CFD counterparty) will continue to maintain their records of sites/units applying for their various schemes as present, but will be required to share details of applicants for their schemes on a regular basis (frequency tbd). The EMR Delivery Body will then cross check applicants for the Capacity Market against the shared records to ensure applicants have not applied under the alternative schemes.

10. The pre-qualification criteria will be expanded so that the CM applicant would be required to acknowledge that the regulatory bodies will liaise in such a way as to satisfy themselves that the low carbon exclusion declaration is accurate.

[5] CM rule 4.3.3 refers
[6] Article 34(2) refers

11. A system of random spot checks would be implemented and widely communicated as part of an agreed fraud prevention and audit strategy.

12. This self-declaration/data-sharing approach mirrors the proposal currently under consideration for verifying the RO/CfD interaction.

13. This process will not have a bearing on the process for terminating capacity agreements (detailed in articles 33 and 34 of the draft Electricity Capacity Regulations) when a CFD transfer notice or ROO conversion notice are received by the Delivery Body.

Recommendation

14. The alternative proposal is recommended, subject to consultation responses, on the basis of reducing the holistic administrative burden, whilst providing adequate assurance as to the accuracy of the self-declarations. This proposal primarily relies on the applicant's self-declaration, as per other pre-qualification declarations (for example the solvency declaration, the ethical conduct declaration and the directors' certificate ('prequalification certificate')) – but balanced with appropriate regulatory body oversight – required given the material risks associated with inaccurate disclosures.

Next steps

15. Further work is required to confirm the scope of data which can be shared between Ofgem, the Delivery Body and potentially the Counterparty Body, the frequency of updating shared lists and to identify any consequential amendments required to secondary legislation or rules to enable such data exchange.