

## 4.7 Issue Form

<b>Issue Form - BSCP40/04</b>	<b>Issue Number</b> 76 <i>(mandatory by BSCCo)</i>
<p><b>Issue Title</b></p> <p><i>Using the BSC to support Suppliers and the Capacity Market Arrangements</i></p> <p>VPI Immingham LLP and Saltend Cogeneration Company Ltd request that this working group is convened as soon as possible (i.e. treated as urgent) given potential impacts on GB system security, end consumers and capacity market obligated providers. The working group outputs would act as a precursor to any subsequent BSC urgent modification.</p>	
<p><b>Issue Description</b></p> <p>On 15 November 2018 the General Court of the Court of Justice of the European Union found in favour of Tempus Energy, against the European Commission (EC), annulling the Commission’s State aid approval for the UK Capacity Market (CM). All CM cost recovery by Suppliers and payments to capacity providers have been suspended with all credit cover available to be returned.</p> <p>The Government has confirmed: <i>“The ruling does not change the UK Government’s commitment to delivering secure electricity supplies at least cost, or our belief that Capacity Market auctions are the most appropriate way to do this.”</i> It has also advised that it is working with the EC to reinstate the CM and will submit a new state aid approval to hold a standalone T-1 top up auction for Delivery Year 2019/20. Furthermore, BEIS has expressed that its preference is to secure agreement from the EC that the suspended CM payments will be paid to capacity providers retrospectively, meaning Suppliers will be asked to fund those repayments in the future. As it is unclear when such repayments will be made, the size of the bill passed onto end consumers, is unknown, but could be substantial. From a CM provider perspective, BEIS has recommended that obligated parties continue to discharge their obligations despite the mechanism being suspended.</p> <p>VPI Immingham LLP and Saltend Cogeneration Company Ltd therefore believe it is prudent that Suppliers continue to collect CM payments from customers. At present, the Electricity Settlements Company (ESC) is under instruction from the Secretary of State not to collect CM payments from Suppliers. It is also unclear whether Suppliers can lawfully continue to collect CM payments from consumers, despite potentially having to do so within the next 7-9 months (depending on outcome/ timing of state aid clearance).</p> <p>We believe that all CM providers and Suppliers are seeking clarity around these issues and wish to help BEIS to plan for the reinstatement of the CM as soon as possible, including the provision of back payments to CM capacity providers for 2018/19 agreements with the minimal impact for end consumers.</p>	

**Justification for Examining Issue**

VPI Immingham LLP and Saltend Cogeneration Company Ltd believe that BEIS recognise that a large back payment would create a price shock for Suppliers and therefore end customers, potentially putting both Supplier business models and customers at risk. Since the ECJ ruling, BEIS has suggested it is looking at a number of legal routes to allow Suppliers to prudently plan for repayment of 2018/19 CM agreements by allowing continued collection of CM payments from customers. However, until a different legal route can be proposed, it would be prudent for the electricity market to consider using the BSC as a means to levy payments from Suppliers to plan for CM back payments at a later date.

While the legislative framework around the CM stands alone from the BSC, the Suppliers charged with collecting CM payments from customers are all BSC signatories and it is BSC meters which are used to collect CM payments. The BSC therefore potentially offers a route not to replicate the CM arrangements, but to allow for pragmatic contingency planning.

In terms of the BSC objectives, we believe using the BSC would help with (b) as CM providers are more likely to go on operating as usual this winter if they believe CM payments will be back dated in the future. Repayment is more likely to be in a timely manner if the CM payments have been collected over the intervening period.

Objective (c) is applicable as competition in both generation and supply will be damaged if the CM is not reinstated in a timely and, importantly, orderly manner. Investors in CM assets have to reconsider their business in light of the substantial reduction in revenues that the CM suspension has caused. Likewise a prudent Supplier will want to protect their customers from a price shock and plan for future payments, which we believe the BSC can facilitate via a future modification.

While not related to the implementation of the BSC directly, objective (d) is relevant if the BSC has to pick up the work and costs associated with Supplier defaults in the event that the reinstatement of the CM, with associated bills, puts Suppliers out of business.

VPI Immingham LLP and Saltend Cogeneration Company Ltd request that this working group is convened as soon as possible (i.e. treated as urgent) given potential impacts on GB system security, end consumers and capacity market obligated providers.

**Potential Solution(s)**

VPI Immingham LLP and Saltend Cogeneration Company Ltd are not Suppliers so have not worked up any detailed solutions. However, we would suggest that a solution is kept simple, transparent and as flexible as we can make it at the current time. We therefore feel some issues to consider are:

On what basis is a new CM Planning Levy changed - £/MWh all periods or some periods only?

Should the level of the charge be varied to match the payments required by the ESC? (i.e. what is the gap between what has/ has not already been billed)

What would be the impact on Supplier credit cover? (i.e if a supplier defaulted on a CM payment, what approach is taken e.g. use BSC credit default?)

Do the funds raised need to be placed in Escrow?

Can we draft a "lift and shift" clause to release capacity market payments collected to the ESC when clearance is given?

If the EC do not sanction existing CM agreements, how are capacity market payments returned to Suppliers/ end consumers?

If a viable solution can be found for collecting funds via the BSC then we believe an urgent modification could be progressed. However, on this basis we believe the solution is best designed by the Suppliers in collaboration with BEIS, Ofgem and EMRS.

VPI Immingham LLP and Saltend Cogeneration Company Ltd appreciate that in the meantime BEIS may find an alternative solution. However, we believe the market can play a vital role in delivering a pragmatic solution and such work should start as quickly as a group can be convened. We note that even if an urgent modification is raised in the future, it can still be withdrawn if BEIS secures a different route to achieve the same outcome.

**Proposer's Details*****Names***

Iwan Hughes & Mick Farr

***Organisation***

VPI Immingham LLP & Saltend Cogeneration Company Ltd

***Email Address***

[ihughes@vpi-i.com](mailto:ihughes@vpi-i.com) & [mick.farr@tritonpower.co.uk](mailto:mick.farr@tritonpower.co.uk)

***Telephone Number***

VPI Immingham LLP - Tel. +44 20 7973 4200

Saltend Cogeneration Company Ltd - Tel. +44 1482 895515

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