


<h1>Proposal for a Capacity Market Rules Change</h1>		 <p>Making a positive difference for energy consumers</p> <p>Reference number: CP362</p>
<b>Name of Organisation(s) / individual(s):</b> Waters Wye Associates	<b>Date Submitted</b> <i>(to be completed by Ofgem):</i> 29 March 2021	
<b>Type of Change:</b> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Amendment</li> <li><input type="checkbox"/> Addition</li> <li><input type="checkbox"/> Revoke</li> <li><input type="checkbox"/> Substitution</li> </ul>	<b>If applicable, whether you are aware of an alternative proposal already submitted which this proposal relates to:</b>  No	
<b>Proposal summary</b> <i>(short summary, suitable for published description on our website)</i>  The proposal is to delete Rule 9.2.5(a)(i) so that CM agreement transfers are allowed before a site has met SCM.		
<b>What the proposal relates to and if applicable, what current provision of Rules the proposal relates to</b> <i>(please state provision number):</i>  <p>Rule 9.2.5(a)(i) is at best unclear, but is interpreted by the Delivery Body as not allowing a CM agreement to be traded until a site has met its SCM. This means that where a developer has a delivery issue it can change the location of the site, but cannot simply trade the agreement to a party who can deliver it.</p> <p>As the Delivery Body (and therefore BEIS/Ofgem/NGESO) do not then see the non-delivery until after a termination notice is issued, this information cannot be taken into account in wider decision making, such as setting the target capacity for future auctions. It therefore makes the delivery of CM agreements often inefficient.</p> <p>In 2019 Ofgem consulted on changing this rule and other rules around secondary trading, with the aim of creating a more liquid market in CM agreements to ensure that the capacity is delivered, and delivery is as economic and efficient as possible. However, work on secondary trading has not progressed, though we note BEIS is consulting on changes around trading sites in administration, which is to be welcomed.</p> <p>This rule has always looked odd as any plant able to complete its SCM is unlikely to want to trade, it is the sites that cannot be built, but wish to see their agreements honoured that are left in the position of simply having to wait until a termination event occurs. Sites cannot even acknowledge they have an issue and seek early termination as the CM Rules do not allow for that. So not only is the capacity not delivered, but the lack of market transparency is an issue.</p> <p>WWA have seen sites in this position because of late equipment delivery, late delivery of connections and issues with financing, in each case we believe the directors when taking on agreements did intend to deliver. Some may want to trade a whole agreement, but we often see sites wanting to trade away the first year of a multi-year agreement as the development is running late, but they intend to deliver the rest of the agreement.</p>		

While the long-stop date allows for late delivery, for tight winters such as this last one it would be far better for customers that the first year obligation sits with a site that can deliver power rather than the developer just using the long-stop time.

WWA has carefully considered the concerns that BEIS and Ofgem have previously expressed about speculative bidding if this rule is altered. However, we believe that the pre-qualification process for new build requires substantial investment by a party before entering the auction. Sites have to show they have land and planning, and larger sites need connections. So while we agree that this is possible, it feels like a theoretical problem, whereas the inability to trade is an actual problem that is resulting in increased non-delivery.

WWA has further considered deleting the whole of 9.2.5. for the following reasons:

- On the notice of trades, we have agreed with the Delivery Body that a party can trade multi-year agreements and just notify them a year at a time. The buyer otherwise may find in 15 years that the seller no longer exists, so a series of 1 year trades is neither robust nor efficient;
- Further late notice of trades offers little reassurance to delivery partners. For example, if a large plant is on extended outage over more than one Delivery Year, all other parties (notably NGESO given its role in advising on target capacity) would benefit from knowing if the site has actually traded its obligation to another party;
- In the case of interconnectors there is far more transparency about late/non-delivery due to the size of the projects. We also suspect that the size of the projects may allow them to trade some of their obligations, but not all. However, there still seems to be no good reason for these agreement not to be traded on in part of in full if a project is running late. We assume the financial commitment to pre-qual an interconnector is similarly significant to most other CMUs; and
- There is no good reason to treat DSR differently, though on the face of it they are most likely to be the easiest CMUs to put in speculative pre-qualification applications. (WWA would note that we have checked with DSR providers and they too agree that this clause is a hinderance to efficient operation of the Capacity Market.)

WWA would therefore fully support deleting the whole section, but as a minimum want prospective generator CMUs to be able to trade as they appear to be most impacted by the rule.

Even if Ofgem do not approve this change as drafted please can they clarify the wording of rule 9.2.5(a) to make it clear exactly when trading is allowed. In WWA's view the wording does allow a trade in the first year, which would make sense in filling the capacity gap that may otherwise be created for sites running late but able to meet their Long Stop date, but that is not the Delivery Body's view.

Description of the issue that the change proposal seeks to address:

The proposal is to delete Rule 9.2.5(a)(i) so that CM agreement trades can be done irrelevant of a site achieving SCM or not.

If applicable, please state the proposed revised drafting (*please highlight the change*):

n/a

Analysis and evidence on the impact on industry and/or consumers including any risks to note when making the revision - including, any potential implications for industry codes:

WWA is aware of a CMU that is due for delivery in October. It knows it cannot meet this timetable for a variety of reasons, not least the equipment manufacture cannot deliver in the timetable originally envisaged. The owner therefore wishes to trade the agreement to a third party to deliver. Given the tight margin for the coming winter (as evidenced by the increased T-1 target capacity set by BEIS, Ofgem's recent RFI and the high prices seen over the winter), WWA believes that it will be in the interest of the customers to have capacity committed CMUs on the network.

WWA would note that where a company has a number of sites (or can find someone to work with them who has a spare site) it can location change as a way to effectively achieve a secondary trade.

**This route is highly complex and creates a lot of legal issues for the companies involved. The Delivery Body also requires like for like sites, and the Rules effectively stop a new build plant changing technology. This rule change would not only facilitate effective trading, but reduce the costs for the few developers who have manage to use the location change route to effect a trade.**

**While we are aware of one site in this position, there may be others not only from the most recent auctions, but others who are running late due to covid, for example, that are also due to deliver in October and instead may be late. Helping these parties to “do the right thing” and manage the agreements so they are delivered will have a financial benefit to them, but also to the customers.**

**Details of Proposer** *(please include name, telephone number, email and organisation):*

**Waters Wye Associates has many clients who have capacity market agreements. In this particular case, WWA has been retained by the Registered Holder on a T-1 agreement that it knows it will not deliver in time. We have sought urgency as clearly building a new CMU needs to commence as quickly as possible to meet the October delivery date. WWA can be contacted at Lisa@waterswe.co.uk and the phone number is 020 8239 9917.**