

Ofgem
EMR_CMRules@ofgem.gov.uk

14th January 2022

Dear Sohail,

Consultation on Capacity Market Rule amendments (Evergreen, CMR and Applicant Notice)

EDF is the UK's largest producer of low carbon electricity. EDF operates low carbon nuclear power stations and is building the first of a new generation of nuclear plants. EDF also has a large and growing portfolio of renewables, including onshore, offshore wind and solar generation, and energy storage. With around six million electricity and gas customer accounts, including residential and business users, EDF aims to help Britain achieve net zero by building a smarter energy future that will support delivery of net zero carbon emissions, including through digital innovations and new customer offerings that encourage the transition to low carbon electric transport and heating.

We welcome the opportunity to respond to this consultation on amendments to the Capacity Market (CM) Rules and broadly support the proposed changes. Our detailed responses to the consultation questions are set out in the attachment to this letter. This includes general comments on the consultation process, requests for clarification from Ofgem, and our suggestions for how the proposals could be more effective. We would like to highlight the following key points:

- **We welcome most of the proposals relating to evergreen prequalification.** We **encourage the Delivery Body to engage with CM participants** to ensure that the changes are implemented effectively and benefit the end users of the EMR Portal. We believe that **the four-year limit on reusing prequalification information should be removed.** We also believe that the administrative burden on applicants could be further reduced; for example, by **introducing notifications in the EMR Portal for when the relevant Rules or Regulations have changed** in relation to an Exhibit or prequalification information. We are disappointed that two suggestions relating to evergreen prequalification (changing the Annual Exhibit to a tick box and allowing employees with delegated authority to sign Exhibits/Declarations) were not included as part of this consultation. **We request that Ofgem publishes the suggestions on its website for further consideration** by the Capacity Market Advisory Group and/or Ofgem.
- **We welcome the implementation of proposal CP270** and the changes being taken forward for proposal CP271. However, **we do not agree that CP271 should only partially apply.** We believe that CP271 could be fully implemented through additional Rules changes; namely to Rule 2.3.1 and the definition of a Generating Technology Class. **We would**

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welcome further consideration from Ofgem on these suggestions. For both CP270 and CP271, **we would also welcome confirmation from Ofgem that the proposed CM Rules changes would apply retrospectively** so that the relevant information would also be published on the CM registers for previous auctions.

- **We welcome the implementation of the proposals to publish Substantial Completion Milestone data on the CM register.** We believe **the proposal could be made more effective through additional Rules** changes; for example, by removing the Independent Technical Expert assessment on construction progress updates. This would reduce the administrative burden on participants and could improve the accuracy of the data presented in the CM register.
- **We welcome the implementation of the proposals relating to the Metering Test Certificate and Applicant Notice.**
- **We encourage Ofgem to implement the changes outlined in the consultation as soon as possible** and then consult on any subsequent Rules amendments (such as the ones we have suggested in this response) at a later stage so that the current proposals are not delayed beyond prequalification in 2022. As a general note, **we also encourage Ofgem to process future Rules changes at a faster pace to improve the efficiency of the CM.**

Should you wish to discuss any of the issues raised in our response or have any queries, please contact me or Eleanor Haynes at Eleanor.Haynes@edfenergy.com. We confirm that this letter and its attachment may be published on Ofgem's website.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'AM Cox'.

Mark Cox
Head of Nuclear & Wholesale Policy and Regulation

Attachment

Overview

We are broadly supportive of the changes being taken forward and the proposed amendments to the CM Rules. Whilst we have made suggestions throughout this response for additional measures which could make the Rules amendments more effective, we encourage Ofgem to implement the changes outlined in the consultation as soon as possible. Subsequent Rules amendments could then be consulted on at a later stage so that the current proposals are not delayed beyond prequalification in 2022.

We note that some of the proposals covered in this consultation were originally raised by stakeholders over four years ago, and Ofgem has consulted on and provided minded-to positions for each proposal at least once before. Whilst we appreciate that Ofgem and the Delivery Body may have experienced issues with resource constraints and this has contributed to the delays in progressing the proposals, we do not believe that this approach to consultation has been an efficient way to engage with stakeholders. We encourage Ofgem to process future Rules changes at a much faster pace to improve the efficiency of the CM and reduce the administrative burden on participants.

We note that Ofgem provided an update to stakeholders on its overall CM work plan in early July 2021¹. This stated that:

- Ofgem would provide an update on and, if required, consult on the formation of the CM Advisory Group (CMAG) by the end of Q3 2021;
- Ofgem would *“provide an update in due course”* regarding the secondary trading workstream; and
- the timeline for consulting on outstanding policy areas and Rules proposals (i.e. this current consultation) were under review and were *“being considered alongside the progression of both CMAG and the secondary trading workstreams”*.

The current consultation states that the proposals on outstanding policy areas were ‘brought forward’ so that the changes could be implemented before prequalification in 2022. We are disappointed that establishing the CMAG and reforming secondary trading have not been similarly prioritised in Q1 2022. In addition, whilst we welcomed the engagement from Ofgem at the Energy UK Working Group meeting held on 11th January 2022, we are disappointed with the further delays to establishing the CMAG (now expected in Q3 2022) and the absence of a timeframe to progress the secondary trading workstream. Considering the likely benefits to market participants and consumers, we believe that these two workstreams should be progressed alongside the current proposals, rather than being continuously delayed.

¹ Ofgem, Decision on Amendments to the Capacity Market Rules, published on 5th July 2021, available at: <https://www.ofgem.gov.uk/sites/default/files/2021-07/Decision%20on%20Amendments%20to%20the%20Capacity%20Market%20Rules.pdf>

Evergreen Prequalification

Question 1: Do you agree with our proposed Rule amendments to facilitate the implementation of reusing Exhibits and other information?

We agree with most of the CM Rules amendments which have been drafted and we welcome the implementation of measures to reduce the administrative burden on CM participants. However, we are disappointed that some proposals are not being taken forward at this stage as we believe that more could be done to assist applicants during prequalification. We have a number of comments on the consultation process, proposed Rules changes, and measures which could further reduce the administrative burden for participants. These comments are set out below.

Timing and method of implementation

We note that the proposal for evergreen prequalification was first raised by stakeholders in response to the Five-Year Review in 2018², but it will not have the intended benefit for participants until 2023 prequalification when the proposed information can first be reused. We appreciate that the proposal needed to be linked to the new EMR Portal design, which was originally scheduled to be completed by April 2021³. However, as the new Portal has been delayed (now expected by prequalification 2022), we are disappointed in the slow pace of change from proposal to implementation.

We also note that the effectiveness of the proposals described in the consultation will be heavily dependent on how the Delivery Body interprets and implements the Rules changes within the new EMR Portal. In our previous experience with changes to the Portal, the measures which are actually implemented in practice may not fully reflect the intentions of the proposals and may not significantly improve the user experience. Therefore, we encourage the Delivery Body to engage now with end users of the EMR Portal to implement a solution for evergreen prequalification that ensures users can achieve the intended efficiencies.

² Ofgem, Open letter on the Five Year Review of the Capacity Market Rules and NGET's Incentives, published on 11th September 2018, available at: https://www.ofgem.gov.uk/sites/default/files/docs/2018/09/capacity_market_rules_five_year_review_open_letter_2018_1.pdf

³ According to the Ofgem Decision on Adjustments to the Electricity Market Reform Delivery Body Allowances, published on 30th September 2019, available at: https://www.ofgem.gov.uk/sites/default/files/docs/2019/09/decision_on_adjustment_to_allowances_for_the_emr_delivery_body_0.pdf

Suggested amendments to proposals

We note that Ofgem's proposal is for applicants to be responsible for ensuring that reused Exhibits remain compliant with the CM Rules and Electricity Capacity Regulations each prequalification year. Whilst we agree that the Rules and Regulations can change at pace and could impact future applications, we believe that more could be done to assist applicants in detecting relevant changes. For example, we would encourage the Delivery Body to develop the EMR Portal so that it would prompt applicants to create a new Exhibit if there has been a relevant change to the Rules and/or Regulations since the reused Exhibit was last signed. This could be tracked since the Exhibits are dated when signed, so the date could be used as reference point for that version of the Rules or Regulations. This approach would also remove the need for a four-year limit on the Exhibits being reused, as there would be no need to set a limit if the relevant Rules and Regulations were unaffected. We believe that this solution would result in a lower administrative burden on applicants than the current proposals for evergreen prequalification.

We appreciate that the above proposal, or other changes to the application progress, may not be implemented in time for prequalification 2022 due to the resource constraints of the Delivery Body. However, we would still oppose the implementation of a four-year limit for reused information or Exhibits in the interim. This is because the proposed Rules amendments include a new statement (g) in Exhibit A declaring that the Exhibits and application data are still valid and have been prepared in accordance with the Rules. Exhibit A would need to be submitted each prequalification window and could not be reused (referred to as the 'Annual Exhibit' in the consultation). Therefore, the applicant would continue to be responsible for checking that the application complies with the relevant Rules and Regulations. As such, we believe that the four-year limit on reused information would not be required, as Exhibit A would already mitigate the risk of an applicant submitting an outdated application.

If Ofgem proceeds with the proposal to implement a four-year limit on reused information, we agree that a measure should be in place to monitor how many years an Exhibit is valid for. However, we do not believe that it would be necessary to state the prequalification year at the top of every Exhibit as each document is dated when signed by Directors, and so that date could be used as the reference point for tracking if an Exhibit is still valid within four years. Therefore, we would support the previous proposal that the Exhibits should be non-year specific.

Requests for clarification

We welcome the confirmation in the consultation that applicants will be able to generate, manage, and electronically sign Exhibits directly within the new EMR Portal. We would welcome clarification from the Delivery Body as to how this would work in practice. For example, our preference would be that the Portal could be used to generate a draft Exhibit which could be reviewed in advance of requiring Director's signatures (for example by legal counsel) and then allow a choice of Directors to send the Exhibit to for signing.

Our interpretation of the proposed CM Rules amendments is that numerous parts of a prequalification application could be reused from 2023 onwards. We welcome this proposal as we believe it will help to reduce the administrative burden on participants. However, we note that it was not particularly clear from the consultation document or the Rules amendments exactly which information (other than the Exhibits) could be reused in an application. Whilst Rule 3.3.6A part (c) lists 24 exclusions for information which cannot be reused, these only refer to the specific clause in the Rules (e.g. 'information submitted to comply with Rule 3.4.11'). This required cross-referencing the exclusions with the overall prequalification requirements set out in other sections of the CM Rules, which made it difficult to determine the overall benefit of the changes being proposed. We would welcome confirmation from Ofgem and/or the Delivery Body of exactly which information in a prequalification application could be reused if the changes are implemented; for example, set out in the 2023 prequalification guidance.

Proposals not taken forward

We are disappointed that two suggestions relating to evergreen prequalification which were raised by stakeholders in response to the May 2021 consultation⁴ do not appear to have been considered further by Ofgem and have not been included for comment in this consultation. The suggestions to change the Annual Exhibit to a tick box within the EMR Portal and to allow employees with delegated authority to sign Exhibits/Declarations instead of directors would further reduce the administrative burden on participants during prequalification. Ofgem's stated view on the suggestions is that they require further consideration as they have not been previously consulted on with other stakeholders.

We recognise the challenges to implement changes in time for prequalification 2022. However, this does not mean that the consultation on the above suggestions needed to be delayed. Ofgem had the opportunity to raise the two suggestions as its own proposal, or draw out the merits of the changes and consult on them at this time. This would have provided the Delivery Body with advance notice of the proposed changes so that it could incorporate them into its future work programme.

Ofgem's stated view is that formal Rules change proposals should be raised if stakeholders would like the two outstanding suggestions to be consulted upon in future. We do not think it is efficient for Ofgem to ask stakeholders to effectively resubmit their suggestions in another format at this late stage as Ofgem did not request this approach in its July 2021 decision document⁵. Instead, we suggest that Ofgem publishes the stakeholder responses which contained the two additional suggestions on its website. These could then be considered as CM Rules change proposals by

⁴ Ofgem, Statutory Consultation on Capacity Market Rules change proposals, published on 14th May 2021, available at: https://www.ofgem.gov.uk/sites/default/files/docs/2021/05/statutory_consultation_on_capacity_market_rules_change_proposals.pdf

⁵ See footnote 1 for reference.

Ofgem and/or the CMAG, similar to the proposals published on 15th November 2021⁶. This would remove the need for stakeholders to reformat and submit documents to Ofgem. We note that not all suggestions must be in the formal Rules change format to be considered further⁷ and so we believe that this would be the most appropriate and efficient way forward.

Capacity Market Register

Question 2: Do you agree with the draft Rules to implement CP270 and the partial implementation of CP271?

CP270

We welcome the implementation of proposal CP270. We consider that it adequately addresses the issues raised in the Rules change proposal form which was originally submitted by EDF in October 2017. We agree with the draft Rules to implement CP270 as they appear to suitably cover the proposals outlined in the consultation.

We note that Ofgem's minded-to position in July 2020⁸ and May 2021⁹ was to amend the Rules to require the new categories of information to be recorded in CM registers for previous auction years, so long as the information was collected at the time of application and only for Capacity Agreements which had not expired or been terminated when the Rules changes come into force. As noted in our response to the July 2020 consultation, we support the proposal to apply the Rule change retrospectively as we believe it would improve market transparency. However, the current consultation document fails to reference whether this will be taken forward, other than a general statement of *"we are still minded-to proceed with full implementation of the aforementioned proposals"* regarding CP270. Our interpretation of the drafted amendments to Rules 7.4.1 and 7.5.1, including the lack of condition for the changes to apply only to future Capacity Agreements, is that the change will be applied to previous CM registers. However, we would welcome written confirmation from Ofgem that CP270 will be applied retrospectively.

⁶ Ofgem, Outstanding Capacity Market Rules Change Proposals, available at: <https://www.ofgem.gov.uk/publications/outstanding-capacity-market-rules-change-proposals>

⁷ For example, the Triton Power Rules change proposal published on Ofgem's [website](#) on 15th November 2021 (dated 4th April 2019, reference CP257) is in letter form and was written as a response to the Department for Business, Energy and Industrial Strategy (BEIS) consultation 'Proposals for Further Amendments to the Capacity Market'.

⁸ Ofgem, Consultation on Capacity Market Rules change proposals, published on 22nd July 2020, available at: https://www.ofgem.gov.uk/sites/default/files/docs/2020/07/capacity_market_rules_change_consultation.pdf

⁹ See footnote 4 for reference.

CP271

Whilst we welcome the implementation of the proposals which are being taken forward, we do not agree that CP271 should only be partially implemented. For two rounds of stakeholder consultation in July 2020 and May 2021, Ofgem's minded-to position was to fully implement CP271. Ofgem has not provided detailed justification for the recent change to its position. We believe that the Rules could be changed to address the issues raised in the original Rules change proposal form (submitted by EDF in October 2017). This could be consulted on at a later stage so that the current proposals are not delayed beyond prequalification in 2022.

For context, the intention of proposal CP271 was to make a distinction between the nature of demand-side response (DSR) provided i.e. which Capacity Market Units (CMUs) or components are 'turn down' and which use on-site generation. The need for this distinction was recognised by BEIS in their recent Call for Evidence¹⁰ which discussed the option of classifying turn-down DSR as low carbon capacity, whereas DSR provided by high carbon generating plant could be classified as high carbon capacity. The CM Rules amendments covered in the current Ofgem consultation would partially achieve this distinction as it would allow turn-down DSR CMUs to be identified by process of elimination. However, we believe that a further distinction could be made in the CM register to better achieve the intention of proposal CP271, as set out below.

The consultation states that an on-site generating unit is automatically classified as a DSR component in accordance with Regulation 2, and so applying Schedule 3 of the Rules would not be applicable for setting a Generating Technology Class for a DSR CMU. This interpretation is based on the current definition of Generating Technology Class and de-rating methodology set out in the CM Rules. However, we believe that generating technology classes could be also implemented within the CM register for DSR CMUs to achieve the intended effect of proposal CP271. This could be based on the current list of Generating Technology Classes in the Rules and result in more detailed classifications; for example, 'DSR – reciprocating engine', 'DSR – storage: minimum 1.0 hour duration', etc. This would add further transparency to the CM registers, beyond the current position to only display the Primary Fuel of a DSR CMU. To achieve this, the Rules would need to require applicants for DSR CMUs which contain on-site generating units to choose the most appropriate Generating Technology Class at prequalification. A general DSR de-rating factor would continue to apply to all DSR CMUs, regardless of the Generating Technology Class (except for those sites covered by CM Rule 2.3.4 (e)).

¹⁰ BEIS, Capacity Market 2021: call for evidence on early action to align with net zero, published on 26th July 2021, available at: <https://www.gov.uk/government/consultations/capacity-market-2021-call-for-evidence-on-early-action-to-align-with-net-zero>

To achieve the above, we suggest the following changes to the CM Rules:

2.3.1 The Delivery Body must, for each calendar year, calculate:

- (a) a De-rating Factor for each Generating Technology Class *that is not a DSR Class*; and
- (b) a De-rating Factor ~~for DSR CMUs~~ for *each Generating Technology Class that is a DSR Class*.

1.2 Definitions

Generating Technology Class means *either:*

- (a) a class of Generating Unit, defined by the technology used to generate electricity; *or*
- (b) *a class of DSR Component defined by the technology used to generate electricity or reduce demand*

for which the Secretary of State requires the Delivery Body to publish a De-Rating Factor, identified in the list attached as Schedule 3

In addition to the above suggestions, we note that the proposed Rules amendments covered in the consultation only appear to relate to Proven DSR CMUs. It is not clear whether the obligation to provide component-level information and have it published in the CM register would automatically extend to Unproven DSR CMUs once they pass the DSR test. We would support this proposal and welcome clarification from Ofgem on this point.

As noted in our consultation response in April 2019¹¹, we did not support Ofgem's proposal to exclude the address and metering point location from being published on the CM register for DSR CMUs. We continue to believe that this information should be provided for DSR CMUs with on-site generating units in order to align information provision requirements with other technologies. For Unproven DSR CMUs, this could be published on the CM register once the DSR test certificate is issued. We would welcome further consideration from Ofgem on this proposal alongside the implementation of the other aspects of proposal CP271.

As with proposal CP270, we note that Ofgem's previous minded-to position in July 2020 and May 2021¹² regarding proposal CP271 was to amend the Rules to apply retrospectively, i.e. the new categories of information would be recorded in CM registers for previous auction years, so long as the information was collected at the time of application and only for Capacity Agreements which hadn't expired or been terminated. We support this proposal and would welcome confirmation from Ofgem that it will be applied as part of the Rules changes.

¹¹ Ofgem, Five Year Review of the Capacity Market Rules – First Policy Consultation, published 16th April 2019, available at: https://www.ofgem.gov.uk/sites/default/files/docs/2019/04/five_year_review_of_the_capacity_market_rules_-_first_policy_consultation_0.pdf

¹² See footnote 8 and 4 for respective references.

We note that the consultation did not include any questions relating to the proposals for Substantial Completion Milestone (SCM) data or Metering Test Certificate data. Our comments on these proposals are set out in the sections below.

Substantial Completion Milestone data

We welcome the implementation of the proposal to publish on the CM register whether a CMU is subject to meeting the SCM. Whilst the status of the Minimum Completion Requirement is already present in the CM registers, we believe that adding the SCM data would be a useful clarification for CM participants to identify secondary trading opportunities. We also agree that it could benefit various workstreams being led by NGESO and assist the Delivery Body in tracking forthcoming capacity for a Delivery Year.

Overall, we do not object to the proposal to publish on the CM register the earliest and latest dates that the SCM is expected to be achieved. However, we note that there is no consequence for Capacity Providers who do not submit six-monthly Construction Progress updates in accordance with Rule 12.2. Some Providers submit a wide range of construction dates to avoid triggering an assessment by the Independent Technical Expert (ITE) due to a material change¹³ in dates, and some may submit a 'latest' estimate for the SCM which is before the start of the first Delivery Year to avoid triggering the requirement for a remedial plan¹⁴. Therefore, under the current Rules, there is no guarantee that the earliest and latest SCM dates published in the CM registers would be accurate or up-to-date. To make the current proposal more effective, we would suggest also amending the Rules to remove the requirement for an ITE assessment when there has been a material change in the construction milestone dates. We believe that this would reduce the administrative burden and cost for Capacity Providers which experience a material change in dates and would better encourage Providers to submit accurate estimates of dates to the Delivery Body. We note that this would align with Ofgem's minded-to position in July 2020 to remove the ITE assessment requirement for progress reports. Alternatively, if the ITE assessment is not removed, we would suggest that the threshold for a material change in dates be changed from two months to 12 months. This would still capture projects which are experiencing severe delays but would allow other Providers to reduce their administrative burden and costs whilst promoting more accurate reporting of construction milestone dates.

We appreciate that the above proposals regarding the ITE assessment were not raised in this consultation and may take some time for Ofgem to take forward. As such, we encourage Ofgem to make the proposed Rules changes as soon as possible and then consider the Rules around construction progress reporting further in future consultations so that the current proposals could be made more effective.

¹³ Defined in Rule 12.2.1(a) as a change of at least two months earlier or later than the date submitted in the prequalification construction plan or the previous six-monthly construction progress update, whichever is later.

¹⁴ As set out in Rule 12.2.4.

Metering Test Certificate

We welcome the implementation of the proposal. The draft amendments to the Rules appear to suitably cover the proposals outlined in the consultation. We believe that the five working day turnaround for the Delivery Body to update the CM register is reasonable as it aligns with the timescales for other milestone updates in the CM Rules.

Question 3: Do you agree with our proposal where Applicants would provide the “Primary Fuel” for each Generating Unit or Component comprising a CMU?

Yes, we agree that this new definition is required as the definition of ‘Primary Fuel Type’ in the Rules cannot apply at the component level of a CMU.

Applicant Notice

Question 4: Do you agree with our proposed amendments to the Rules to facilitate our Applicant Notice proposal?

We welcome the implementation of the proposal and agree with the proposed amendments to the CM Rules. We note that the proposal doesn’t appear to result in any amendments to the CM Rules relating to the CM register. As the consultation document notes, this may be because the Delivery Body already updates the register with various changes to prequalification statuses. However, we would welcome confirmation that the Delivery Body will continue to update the CM register where a status change has occurred, in addition to notifying the applicant directly.