

Consultation on Capacity Market Rule Amendments – Energy UK

Response

14 January 2022

About Energy UK

Energy UK is the trade association for the energy industry with over 100 members spanning every aspect of the energy sector – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.

We represent the diverse nature of the UK's energy industry with our members delivering nearly 80% of the UK's power generation and over 95% of the energy supply for the 28 million UK homes as well as many businesses.

The energy industry invests £13bn annually, delivers nearly £30bn in gross value added on top of the nearly £100bn in economic activity through its supply chain and interaction with other sectors, and supports over 700,000 jobs in every corner of the country.

Summary

We would like to thank Ofgem for the opportunity to respond to this consultation and can confirm that we are happy for our response to be published.

Whilst we are broadly supportive of the proposals as set out in the Ofgem Consultation Document, we would like to express disappointment in the delayed publication of this consultation and the lack of ambition of some of the proposals being consulted on. We note that some of the proposals within this consultation have been raised around four years ago and Ofgem have consulted on and provided consistent minded-to positions numerous times for the same proposals without providing proposed redrafting of the CM Rules or reaching a 'final' decision until now. The delays to this process have been contrary to Ofgem's intention to reduce the regulatory burden on industry. Whilst in the past we have had sympathies with the resource constraints that Ofgem are under, we request that in the future Ofgem ensures that they are clearly communicating with industry and setting expectations for when we can expect consultations on Rule Changes to progress.

We would also like to take this opportunity to request further information and an update on Secondary Trading and Capacity Market Advisory Group (CMAG). Firstly, with regards to secondary trading, an explanation of the reasons as to why this work is taking a long time would be strongly welcomed by Energy UK members. We also note that a number of Secondary Trading workshops were held by Ofgem in October and November 2018 and Ofgem's Forward Work Plan¹ (July 2019) stated that the Secondary Trading workstream would be completed by prequalification 2021. In addition to this, Ofgem's July 2020 consultation on CM Rule Change Proposals² stated that the CMAG work would be resumed '*in the near future*' and Ofgem would '*aim to consult on the formation of this group later in the year*' (i.e., in 2020). We welcome the engagement from Ofgem on these two issues at a recent Energy UK Working Group in January 2022 and understand that the CMAG is due to be set up in Q3 2022, although there is no date planned for a consultation on Secondary Trading Energy UK remains concerned that the limited engagement with industry until recently and the slow pace of progress on these issues has ultimately made the CM less efficient. Additionally, we would welcome reassurance

¹ [capacity_market_five_year_review_report.pdf \(ofgem.gov.uk\)](#)

² [Capacity Market Rules change consultation July 2020 \(ofgem.gov.uk\)](#)

that Ofgem and BEIS are working collaboratively on the Secondary Trading and connection capacity workstreams; for example, by publishing a timeline of when stakeholders can expect key milestones to be achieved. We hold concerns that lack of communication could be leading to significant delays. In terms of the CMAG, we would welcome further information detailing when this will be set up and request increased transparency around the selection process.

This sentiment of disappointment with regards to delayed publication of consultation proposals and request for further information on Secondary Trading and CMAG are both issues we have previously raised with Ofgem both verbally and in our response to the May 2021 Statutory Consultation on Capacity Market Rule Changes.³ We ask that Ofgem ensures that these two workstreams are made the upmost priority and that there is a step up in industry engagement in this regard. As a starting point, it would be useful for Ofgem to list out the activities it would like members of the CMAG to cover to help assess skills of individuals who might potentially sit on the group.

Similarly, we are disappointed that Ofgem have only just published the outstanding Capacity Market Rules Change Proposals⁴ (Published 15 November 2021). Some of these changes proposed by parties date back to February 2019. We question why Ofgem has not dealt with or consulted on these Rule Changes given the almost three-year window.

Looking specifically at the Rule changes proposed in this consultation, we note that many of these changes are reliant on the new Delivery Body Portal. It is therefore of paramount importance Ofgem works closely with the Delivery Body to ensure these changes can be incorporated effectively in the new Delivery Body Portal.

Regarding this consultation, we also note that only four questions were raised by Ofgem, despite other proposals being covered in the consultation document and proposed Rules change amendments. Specifically, there were no questions relating to the Substantial Completion Milestone (SCM) data or Metering Test data proposals. We have included responses to these proposals under Question 2, but note that some participants may miss the two proposals in their responses as they were not within the scope of any of the consultation questions.

Building on these concerns set above, we ask Ofgem to inform industry of ways in which we can help provide support to Ofgem in order to speed up the progress of some of these changes and workstreams.

Questions

1. Do you agree with our proposed Rule amendments to facilitate the implementation of reusing Exhibits and other Information?

Yes, we do agree, in principle.

Energy UK has previously supported the implementation of Evergreen Prequalification and have expressed disappointment that it was not implemented for the 2021 Prequalification window in our response to the Ofgem Statutory Consultation on Capacity Market Rule Changes. We therefore strongly support the implementation of Evergreen Prequalification as soon as practically possible – in time for the 2022 Prequalification Window. The Delivery Partners have now had sufficient lead time to prepare for these changes as Ofgem has reiterated its intention to implement them (i.e., ~8 months from this consultation to the prequalification window opening in July 2022) so Energy UK expects changes to the Portal to be made in time to facilitate this. Given the delays to implementing Evergreen Prequalification,

³ <https://www.energy-uk.org.uk/publication.html?task=file.download&id=7932>

⁴ <https://www.ofgem.gov.uk/publications/outstanding-capacity-market-rules-change-proposals>

we also request that Ofgem and the Delivery Body look into accepting information pre 2022 that remains unchanged.

We believe that automatic 'Evergreen' prequalification mitigates any potential 'tripwires' in terms of administrative errors, giving the option for participants to edit information if a material change has occurred since the last prequalification round. We also welcome the reduction in administrative burden for applicants during the prequalification process.

However, whilst we welcome the implementation of Ofgem's proposal, we are disappointed that the solution appears to have been watered down of what participants may have expected. For example, the consultation consistently refers to the option to '*reuse Exhibits and **other information** for Prequalification*' but is not immediately clear from the consultation or the proposed Rules amendments what this '*other information*' could be. Whilst the consultation lists the Exhibit numbers which could be reused, Rule 3.3.6A (c) is drafted to refer to other clauses in the Rules, so it is not clear which other parts of a prequalification application (if any) could be reused without cross-referencing the exclusions and overall prequalification requirements. This makes it difficult to determine the overall benefit of the proposal in terms of quantifying the actual reduction of the administrative burden for Applicants.

Further to the points made above, we note that under 'Option 2' Ofgem say that '*Applicants can reuse certain Exhibits where there is no change to those Exhibits from the previous Prequalification round... To clarify, changes to the Exhibit could be driven from either Rule amendments or changes in underlying information relating to that Exhibit. For example, a change in company director would require a new Exhibit signed by the new director*'. It will be important to have very clear guidance for participants on what is considered to be a 'change' and what is not. For example, is there any degree of what is considered a material change? Setting out clear expectations will mitigate confusion for applicants when working out if they can use old Exhibits or not.

The proposed Rules amendments includes 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. If this proposal is implemented, we believe that the four-year limit on reused information would be an excessive restriction, as Exhibit A would already mitigate the risk of submitting an outdated application. We would welcome further explanation from Ofgem around why a four-year time period for using Exhibits and Other information has been put forward. Further to this, we would urge Ofgem to reconsider enforcing any set timeframe, given the fact that there is already an annual obligation on parties to ensure the validity of their application, a set time limit may in fact be counter-productive.

Within the consultation Ofgem also highlight the stakeholder suggestion to turn the Annual Exhibit into a tick box within the EMR Portal as opposed to a separate declaration. For context, the administrative burden for many Applicants lies with obtaining a director's signature over the summer holiday period as opposed to producing the Exhibits themselves. For this reason, turning the Annual Exhibit into a tick box within the portal will significantly ease this administrative burden. We believe that this should be another priority area for Ofgem to look into and we do not consider this to be a material change that would require a formal rule change proposal and consultation in this instance.

We agree with Ofgem that the onus is on Applicants to ensure that any previously submitted Exhibits remain compliant with the rules. However, we strongly suggest that the new Delivery Body Portal should have an automatic alert system for all prequalification documents (not only, but including Exhibits) that have been subject to formal or legislative change from the Rule amendments from one year to another. We also suggest that this should provide the latest version of the exhibits, given the intention that '*the new EMR Portal will allow Applicants to generate and manage Exhibits within the Portal directly*'.

In our response to the May 2021 Statutory Consultation, we previously asked Ofgem to accept signatures from company employees who have delegated authority, rather than requiring it to be

Directors' signature. We are disappointed that this has not yet been implemented and welcome Ofgem raising this for further consideration as a formal change proposal. Furthermore, we consider the wording in the consultation to be unclear: *"It is our view a formal change proposal should be raised for further consideration if this is deemed to be a priority for stakeholders"*. One possible interpretation is that Ofgem expects stakeholders to raise this themselves by submitting a Rules change proposal form. However, we would like to request clarification from Ofgem on whether they will be taking this further or if the expectation is on participants. Our preference would be the former, as otherwise Ofgem may receive multiple Rules change proposals from different parties requesting effectively the same change.

We request that Ofgem works closely with the Delivery Body to ensure these changes can be incorporated effectively in the new Delivery Body Portal.

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

Yes, we agree with the implementation of CP270 and CP271. Energy UK believes that all changes in CMR that make it more transparent and informative are welcome. We are disappointed however that only a partial implementation for CP271 is being proposed. We would welcome an explanation from Ofgem as to the reason behind the decision to only partially implement the proposal. As Ofgem's previous minded-to position (in July 2020 and May 2021) was to fully implement CP271.

Further to this, Ofgem's reasoning for not adding the Generating Technology Class for an on-site generating unit to the CM register is that using Schedule 3 would not be applicable. The issues with Schedule 3 could be dealt with by the addition of a number of DSR- Generating Technology classes that would cover all generating units that would be found on DSR sites but still indicate the CMU is a DSR unit as opposed to a Generating CMU.

We would also welcome clarification from Ofgem on whether the Rules changes for CP270 and CP271 would apply retrospectively i.e., whether the CM registers from previous auctions will also be updated with the proposed information at component level. We would support this approach.

We ask why Ofgem have decided that existing rules will still apply for fossil fuel declarations.

We request that Ofgem works closely with the Delivery Body to ensure these changes can be incorporated effectively in the new Delivery Body Portal. We also suggest that Ofgem should require the Delivery Body to create a standard format covering all the CM registers, improve the consistency of data entries to improve machine readability, and provide one or more modern forms of interaction with their underlying database (e.g. an API - "application programming interface" suitable for use by languages such as JavaScript, Python, C, etc. in line with the service already provided by Elexon for the data they publish), as opposed to publishing only an Excel document.

We would like to highlight at this stage, that some of our members hold concerns around the publication of the SCM dates on the CM register. Although we agree that the SCM status should be published, some members believe that there is no reason why indicative SCM dates should also be public on the register, particularly given that payments are not made until the start of the delivery year. It is also important to note that although six-monthly construction progress updates can be provided to the Delivery Body, individual milestone dates often change significantly between prequalification and when project timescales are firmed up post auction once construction contracts are signed and so the earliest and latest SCM dates may be of limited use in the first stages of a project.

Lastly, to note, we also agree with the implementation of the proposals relating to Metering Test Certificate data.

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 and believe this is required as the definition of 'Primary Fuel Type' in the Rules cannot apply at the component level of a CMU.

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

Yes, we agree with this and welcome its implementation for the 2022 Prequalification Window. We ask that this notification is in addition to the Delivery Body's obligation to revise the CMR where a status change has occurred. We ask that steps are taken to ensure that communications include CMU reference IDs.

As with our response throughout, we request that Ofgem works closely with the Delivery Body to ensure these changes can be incorporated effectively in the new Delivery Body Portal.

Next Steps

We would like to thank you in advance for considering our response. We look forward to continued engagement with Ofgem on Secondary Trading and the CMAG as mentioned in our introduction and Energy UK are available to support Ofgem with its industry engagement on these issues where possible. If you have any questions regarding our response in the meantime, please do not hesitate to contact me on the details below.

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