



Wholesale Markets,
Ofgem,
10 South Colonnade,
London, E14 4PU

11th February 2022

Dear Robin,

LCCC/ESC Response to the Change Process for the Capacity Market Rules – Draft guidance update for consultation

The Low Carbon Contracts Company (LCCC) and The Electricity Settlements Company (ESC) are private companies wholly owned by the Secretary of State for Business, Energy and Industrial Strategy (BEIS). They perform central functions in the operation of the Contracts for Difference (CfD) and Capacity Market (CM) schemes. LCCC carries out the functions of its sister company ESC, via a cost-sharing arrangement. In October 2021, LCCC was named by BEIS as the scheme counterparty to the Dispatchable Power Agreement (DPA) for Carbon Capture, Use and Storage (CCUS). LCCC is also anticipated by BEIS to be named as the scheme counterparty for Industrial Carbon Capture (ICC) contracts and the nuclear Regulated Asset Base (RAB) funding model in the near future.

We welcome the opportunity to respond to Ofgem's Change Process for the Capacity Market Rules – Draft guidance update for consultation as part of the Ofgem Call for input for the establishment of the Capacity Market Advisory Group (CMAG) and updating the Capacity Market Rules change proposal. See below our key messages on the proposals:

- We believe that the role of Chair should be undertaken by an independent and impartial party;
- We support in principle the outsourcing of the secretariat role to support the administration of CMAG;
- LCCC and ESC believe all changes made to the Capacity Market should have the widest benefit to Capacity Providers and minimise costs to consumers;
- The prioritisation process implemented by CMAG should align with the objective of the Capacity Market scheme to minimise design risks and complement the decarbonisation agenda; and
- CMAG will be an important group for prioritisation of Capacity Market changes. The delivery of these changes will need to consider wider net zero policy and the conflicting prioritisation that could occur.

Yours sincerely,

Alexandra Houston

Policy & Regulation Analyst

Net Zero

A point for Ofgem to consider and address against this consultation would be how the prioritisation process adopted by CMAG be aligned to the Net Zero agenda. As this is likely to be a key driver of the CM, and the focus of BEIS policy currently, it would seem like a key item to discuss as well as its impact on the shaping of CMAG.

Q1. In general, do you agree with our intention to establish CMAG? If not, please explain your concerns.

As noted in the Call for Input, Ofgem first consulted on forming a Capacity Market Advisory Group (CMAG) in October 2019, the response to that workshop was positive, as industry participants support the underlying rationale for the formation of such a group. Considering this, we are pleased to see progress being made in establishing CMAG, although we would like clarity to be provided on whether, and how, existing change proposals will be progressed in the interim before CMAG is established.

The purpose of CMAG would be to increase industry and stakeholder engagement in Capacity Market (CM) Rule change process and provide transparency for all market participants. Additionally, Ofgem has stated that the purpose of CMAG is to improve effective functioning of the CM by enabling the IT change process to become more dynamic and adaptive.

Whilst the Electricity Settlements Company (ESC) are supportive of the intention driving the establishing of such a group, we would still want clarity on who Ofgem intends to appoint to the role of Chair ahead of the first CMAG meeting. Although the secretariat function can be theoretically done by another body, we believe it is vital that an independent party, who plays no commercial role in the CM holds the Chair function. This would drive the discussions in line with the market principles that Ofgem has been tasked with through its statutory duties, and as the Regulator has outlined in the CMAG Objectives detailed in the updated CM Guidance. As clarified within the Terms of Reference (ToR), the role of the Chair is to ensure inclusiveness, diversity of views and must be executed in an impartial manner. We believe this can only be adhered to if the Chair role is performed by an independent body rather than a Capacity Provider. In order to support the neutrality of the role, we would recommend that the role of Chair be performed by either Ofgem or an independent and impartial party.

The consultation does not address the role of BEIS in the Rule change process, nor any BEIS involvement within CMAG. Where BEIS have capability to drive changes to the CM Rules, as owners of the primary legislation and of the scheme, it would be beneficial to provide clarity on the separate responsibilities of BEIS and Ofgem in reviewing or proposing Rule changes, while taking this opportunity to build a more co-ordinated process between BEIS and Ofgem. We would have expected the ToR to address this question.

The creation of CMAG is an acknowledgement of the anticipated disruption to the electricity market over the forthcoming years, with industry landscape changes driven by the pursuit of Net Zero Strategy targets, and the CM adapting to potential higher proportion of flexibility and storage participation in auctions. In order to keep the CM fit for purpose as the wider GB electricity market evolves, it is important to enable greater agility in the Rule changes, and provide channels, such as CMAG, for greater industry participation in driving the Rule changes, driving a balance between security of supply and an optimum mix of Capacity Market Units (CMUs). It is therefore surprising that Ofgem have not taken the opportunity to address how the CMAG prioritisation process would work alongside the strategic goal of Net Zero, while delivering security of supply.

Q2. Do you agree with the objectives and role of CMAG as set out in Section 2 of the draft new Guidance?

The objective of CMAG is to ensure that CM Rule changes submitted to Ofgem support Ofgem's principal objective, as per 1.11, to present clear and reasoned recommendations, and to operate in an efficient and impartial manner. In line with the response provided under Question 1, we support the proposal to increase industry engagement, ensure the prioritisation of changes is done in a transparent manner, and that consumers' best interests are maintained through ensuring the CM serves its role in providing security of supply. In light of this, it could be beneficial for CMAG to hold a more proactive role in bringing change proposals to the discussion board, and engaging members on identified topics, rather than adopting a purely reactive role to changes brought to them.

The effectiveness of CMAG in achieving the objectives outlined, will be influenced by the structure of the group and transparency of the process. The prioritisation of proposals discussed at CMAG should follow a transparent process, and, although touched upon in the ToR, further detail on the process and whether prioritisation is determined by voting or by scoring against the criteria provided, could influence the appropriateness of the group structure. We would recommend that establishing the prioritisation process be undertaken as one of the first deliverables by CMAG.

There is a risk of over-representation of certain technology types (e.g., CCGT) where certain members of CMAG would have stronger presence or influence on the group, unless curbed or structured. We believe it would be beneficial to ensure representation at CMAG be reflective of the different technology types in the CM, and the prioritisation be reflective of the widest benefits.

A further risk to the process would be that the creation of CMAG could create additional bureaucracy which would not necessarily support the goal of a more dynamic change process. However, given limited changes to the Rules to date, CMAG could instead be building in additional capacity to process details of proposed changes.

Q3. Do you foresee any unintended consequences from following the indicative process as set out in Section 3 of the draft new Guidance?

We acknowledge the rationale stated for providing a route to bring change proposals directly to Ofgem, thus bypassing CMAG (price sensitive information or concerns around Competition Law), however note that this is counter-productive to the objective of increased transparency in the Rule change process. Any change driving a Rule change should be subject to public consultation, and therefore there is no required information which wouldn't be feasible to disclose to CMAG, even if through an intermediary or Ofgem, who could support in anonymising information ahead of bringing the proposal to CMAG. Lack of visibility around certain changes would undermine the CMAG process.

It is our opinion that all Rule change proposals should come through CMAG, as the primary meeting for change proposals when CMAG is implemented, the alternative creating additional work and reducing transparency on prioritisation of agendas. Rule changes impact the entire market and thus the entire advisory group should have insight into all changes.

An alternative proposal would be for all change proposals to go directly to CMAG, of which Ofgem is a member (if not the Chair), and then for the prioritised proposals to go directly to consultation via Ofgem as an intermediary for distribution. Where certain items receive unanimous votes at CMAG, these items could be flagged as potentially going through a more urgent route which would have a shortened consultation. This would improve the objective to deliver a more dynamic system.

The participation of Delivery Partners in CMAG could support the approach to prioritisation of Rule changes, where these members are also driving the timelines of implementation of changes going through the Regulatory Change Advisory Board (RCAB). It would be sensible to coordinate these processes to an extent, particularly in light of the 12-month change freeze. CMAG should take into account RCAB capacity for change processing. The Guidance should be explicit with respect to turnaround time on change implementations impacting systems, which typically require a 12-month turnaround period unless qualified as “urgent”.

Q4. Do you have any concerns about the suitability of Elexon to act as Secretariat? If so, do you have a view on a suitable alternative?

The role of the Secretariat is primarily administrative: designing the member appointment process, meeting organisation, etc. However, there is a certain amount of influence which can be exerted through the maintenance of a priority list of Rule change proposals, as well as advising proposers on technical and legal aspects. As such, the independence of the Secretariat is beneficial.

Q5. Do you agree that levying the administrative costs of CMAG on BSC users is an appropriate funding route? Please outline any concerns and/or alternative approaches, if appropriate.

It is not immediately apparent how Ofgem have identified a direct correlation between the members of the Balancing and Settlements Code (BSC) and the expected members of CMAG, nor how this would be charged. Additionally, where Delivery Partners are requested to provide impact assessments or technical advice to change proposers, would this cost be covered by the proposed levy?

Q6. Do you have any comments on the indicative template for the CMAG Terms of Reference we have included as part of this call for input?

The inclusion of the ToR is helpful in providing clarity of the roles and responsibilities, however we would re-affirm certain points mentioned under previous questions, such as constraints on the objectivity of the Chair and whether a Capacity Provider could be considered independent enough to perform this role. Additional clarity could be provided on the role of Delivery Partners with respect to how the CMAG process phases into the main CM implementation planning group – RCAB.

Further, we see the ToR as an opportunity to embellish expectations of CMAG processes and on the deliverables, which could distinguish between the early administrative tasks, such as defining the process for submission and prioritisation of change proposals, and routine deliverables, such as the submission of changes to Ofgem. The processes should also cover how CMAG would reach consensus on change recommendations themselves, and not only the prioritisation process. If an appeals process were to be included, we would also expect to see it defined under the ToR.

Overall, the ToR could include a higher level of detail on the roles and responsibilities of members, Chair, Secretariat and Delivery Partners. With respect to the role of members it should be clarified whether they attend as representatives of their organisations, or on an impartial basis, and how they would be expected to demonstrate suitability. Finally, timelines for CMAG review and turnaround of change proposals should have some guidelines, and the frequency of meetings could be aligned with expectations on Rule change implementation capacity or Ofgem capacity to publish consultations.

Q7. Please indicate if you or a suitable representative from your company or stakeholder group are provisionally interested in joining the inaugural CMAG. Please do not provide names at this stage. We will formally ask for expressions of interest when we publish the finalised Guidance.

LCCC (on behalf of ESC – the Settlement Body) would be interested in holding two permanent seats at CMAG, where depending on the level of work, one or two people would attend.