

EMR_CMRules@ofgem.gov.uk

11th February 2022

Dear Ofgem,

Call for Input on Establishing the Capacity Market Advisory Group

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 call for input on establishing the Capacity Market Advisory Group (CMAG). We broadly support the proposed changes and believe that the CMAG will benefit Capacity Market (CM) participants. Our detailed responses are set out in the attachment to this letter and we would like to highlight the following key points:

- We believe that **the overall objectives and role of the CMAG are appropriate**. However, **we suggest that CMAG members should be appointed every two years**, rather than on an annual basis.
- **We consider the draft Terms of Reference to be suitable, but we believe that the CMAG should have the option to meet more regularly than every two months** (as the Terms currently state).
- **We believe the CMAG should have the discretion to submit individual proposals to Ofgem** if they are agreed by members to be of sufficient priority and/or urgency. We also believe that **there should be a route for the CMAG to appeal Ofgem's decisions** regarding its recommendations on Rules change proposals.
- **We support the appointment of Elexon as the CMAG Secretariat**. We recommend that the necessary modification to the Balancing and Settlement Code (BSC) be expedited to achieve this and mitigate any further delays in establishing the CMAG.

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- **We provisionally support the proposed funding option for the CMAG Secretariat** (i.e. levying the administrative costs on BSC users). However, we believe that alternative funding options should be reviewed if the Department for Business, Energy and Industrial Strategy (BEIS) does not take forward the proposal to require all Capacity Market Units (CMUs) to be registered as Balancing Mechanism Units (BMUs).
- We have been disappointed with the previous delays in establishing the CMAG as it was originally raised in 2019. **We urge Ofgem to complete this workstream as soon as possible and ensure that its revised timescale is achieved** (Q3 2022).
- **A representative from EDF Energy would be interested in joining the inaugural CMAG.**

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 'Mark Cox'.

Mark Cox
Head of Nuclear & Wholesale Policy and Regulation

Attachment

Overview and general comments

We welcome this consultation and continue to support Ofgem's intention to establish the CMAG. We agree that the CMAG will allow the CM to become more dynamic and adaptive to changing market conditions and we hope that this will improve the speed of the CM Rules change process.

As noted in our response to the recent consultation on CM Rule amendments¹ (submitted on 14th January 2022), we are disappointed that the CMAG and secondary trading work programmes have been continuously delayed since they were first raised in 2019. We note that Ofgem provided several estimates for when the CMAG would be established throughout 2020 and 2021, but none were ultimately achieved. We appreciate that a revised estimate has now been provided (Q3 2022), but we urge Ofgem to finalise this work programme as soon as possible and ensure that the establishment of the CMAG is not delayed again.

On a related note, Ofgem previously stated² that the delays to the secondary trading work programme were due to the delays in establishing the CMAG. This was because the CMAG was originally expected to be involved in the review of secondary trading proposals, and so formation of the CMAG was prioritised first. Ofgem has since communicated via Energy UK that the secondary trading and CMAG work programmes will no longer need to be linked and so can run in parallel throughout 2022. However, to date, Ofgem has not provided any firm indication of timeframe or the terms of reference for the secondary trading work programme. We would welcome confirmation from Ofgem of the scope, delivery milestones, and how it will engage with stakeholders regarding secondary trading.

Regarding this consultation process, we would like to make a general comment on the 'Change Process for the Capacity Market Rules – Draft guidance update for consultation' document (referred to as the 'new guidance'). We found it very useful that this document was provided as Annex A showing 'tracked' changes from the original guidance. This made for an easier review of the proposals covered in this consultation and allowed stakeholders to see how the new guidance could work in practice.

¹ Ofgem, Consultation on Capacity Market Rule amendments (Evergreen, CMR and Applicant Notice), published on 26th November 2021, available at: <https://www.ofgem.gov.uk/publications/consultation-capacity-market-rule-amendments-evergreen-cmr-and-applicant-notice>

² 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>

Response to consultation questions

Question 1: In general, do you agree with our intention to establish CMAG? If not, please explain your concerns.

Yes, we continue to welcome Ofgem's intention to establish the CMAG.

Question 2: Do you agree with the objectives and role of CMAG as set out in Section 2 of the new Guidance?

Overall, we believe that the objectives and role of the CMAG are appropriate. We have the following comments on specific clauses in Section 2 of the new guidance.

- **Section 2.5** states that all interested parties "must demonstrate suitability to join CMAG". We would welcome guidance from Ofgem on the criteria which will be used to select CMAG members.
- **Section 2.5** states that the appointment of CMAG members will be made on an annual basis. We believe this would be too frequent, especially for inaugural members, as it is expected that the first few CMAG meetings will be used for administration of the Group. Given the pace of change of previous consultations and eventual amendments to the CM Rules, and the annual auction cycle, we believe that members should be part of the CMAG for at least two years to have the opportunity to capture wider changes to the mechanism.
- **Section 2.8** states that new proposers who are not CMAG members will be able to attend meetings. We assume this means that stakeholders could attend meetings if invited to discuss their Rules change proposal(s), but not attend those which are unrelated to their submissions. We would support this approach as it could increase transparency and provide stakeholders with initial feedback on their proposals, but would maintain the efficiency of the overall Rules change process if non-members were only present if specifically invited. We would welcome a clarification in the wording of the new guidance if the above assumption is correct.
- **Section 2.10** states that the CMAG Secretariat would support proposers in the early development of their Rules change proposals; for example, by providing expert administrative or technical advice if required. We believe this could be a useful option for stakeholders who are submitting complex proposals or are unfamiliar with the new Rules change process. However, we note that the availability of this service could affect the administrative costs of the CMAG (as discussed in Question 5) and so should be kept under review by CMAG members to ensure that the associated costs are kept to a reasonable level.
- **Section 2.12** states that the Delivery Partners will be part of the CMAG and provide guidance in discussions when appropriate. Specifically, the CMAG can request the Delivery Partners to provide an initial impact assessment to help form a view on the complexity of a Rules change under consideration and implementation costs and timelines. We believe that this could be a useful feature of the Group structure and support its inclusion in the new guidance.

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

The call for input states that the CMAG should batch Rules change proposals together to optimise the number of consultations Ofgem will run. We agree that grouping proposals for submission to Ofgem would be the most efficient process for stakeholders and the Delivery Partners in most circumstances. However, to avoid any unintended consequences from delaying certain proposals this way, we believe that the CMAG should also be allowed to submit individual proposals to Ofgem under certain circumstances; for example, if they are agreed by CMAG members to be sufficiently urgent or have a significant impact on the wider electricity system. We note that the drafting of the new guidance allows the CMAG to prioritise proposals, but we would welcome confirmation from Ofgem or specific wording in the guidance to confirm that the CMAG has the discretion to submit individual proposals to Ofgem.

We also note that Section 3.6 of the new guidance document states “if Ofgem decides to reject a proposal without consultation, it must publish the reasons for this decision”. To improve the efficiency of the CM Rules change process, we believe that the new guidance should include a timeframe for Ofgem to make such a decision; for example, eight weeks from the date of receiving the proposal directly or from the recommendation from the CMAG (whichever is the later). In addition to this, we believe that if Ofgem rejects a proposal which was recommended for approval by the CMAG, then a route for the CMAG to appeal the decision should be designed within the Rules change process.

Question 4: 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?

We do not have any concerns about Elexon’s suitability, and we would support its appointment as the CMAG Secretariat.

Following Ofgem’s presentation at the Energy UK CM Working Group meeting held on 11th January 2022, we understand that the primary delay in establishing the CMAG (now expected by Q3 2022) is due to the BSC modification which will be required to appoint Elexon as the Secretariat. Therefore, we suggest that the modification be expedited to mitigate any further delays in establishing the CMAG.

Question 5: 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.

Our level of support for the funding option will depend on the outcome of the proposal to require all CMUs to be registered as BMUs, which BEIS is currently considering further³. If the proposal is not taken forward, we do not think it would be appropriate for CM participants which are registered in the Balancing Mechanism to bear all of the administrative costs for the CMAG, especially when the existence of the Group theoretically benefits all participants in the mechanism. In this case, we believe an alternative funding option should be used which recovers the CMAG costs in a more proportionate way.

Notwithstanding the above, we agree with Ofgem's assumption that the administrative costs of the CMAG are likely to be relatively small, and our primary concern would be about any further delays to establishing the Group. Therefore, to ensure the timely setup of the inaugural CMAG, we believe that the proposed funding option to levy costs on BSC users should be taken forward at this time, on the condition that Ofgem commits to undertake a review of the funding options in future if the proposal to register all CMUs as BMUs is not progressed.

Question 6: 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?

Generally, we believe that the draft Terms of Reference are suitable.

We note that the draft Terms of Reference propose that the CMAG will meet every two months. Considering the sizeable list of deliverables for the CMAG set out in the Terms of Reference, we believe it would be beneficial to meet more often than this. We would suggest that the CMAG meet on a monthly basis, at least until the seven outstanding Rules change proposals⁴ have been reviewed by the Group as several have been pending for over two years. We welcome Ofgem's clarification via Energy UK that the frequency of the CMAG meetings can be flexible, subject to agreement from members. Therefore, we suggest that the wording in the draft Terms of Reference be amended to reflect the option for the CMAG to meet more frequently.

³ BEIS, Capacity Market: 2021 consultation on improvements Government response, published on 21st June 2021, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994995/capacity-market-2021-consultation-improvements-government-response.pdf

⁴ Ofgem, Outstanding Capacity Market Rules Change Proposals, published on 15th November 2021, available at: <https://www.ofgem.gov.uk/publications/outstanding-capacity-market-rules-change-proposals>

The Terms of Reference state that the chair of the CMAG will be decided once the Group is established, and that it could be the Secretariat or a member (or members on rotation). We support this approach but note that only the Secretariat is referenced as the CMAG chair in the new guidance (section 2.10). We suggest that the wording in the new guidance be amended to reflect the option for CMAG members to chair the meetings.

Question 7: 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 new Guidance.

A representative from EDF Energy would be interested in joining the inaugural CMAG. We would be happy to provide a formal expression of interest and name of the employee when the new guidance is published.