

# The Change Process for the Capacity Market Rules

## Guidance

**Publication date:** 1 August 2014

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### Overview:

This guidance is for industry and interested parties on the change process for the Capacity Market Rules.

The Capacity Market is designed to provide investment in the overall level of reliable capacity (both supply and demand side response) needed to help ensure secure electricity supplies. It has been introduced as part of the government's Electricity Market Reform (EMR) programme. The Capacity Market Rules govern how the Capacity Market will be implemented, as set out in The Electricity Capacity Regulations 2014 (the Regulations).

Ofgem is responsible, from the day after publication of the results of the first auction, for amending, adding to, revoking or substituting any provision of the Capacity Market Rules in line with the Regulations.

## Context

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The Electricity Market Reform (EMR) programme is a government policy that seeks to incentivise investment in secure, low-carbon electricity, improve the security of Great Britain's electricity supply, and improve affordability for consumers.

The Energy Act 2013 introduced several initiatives to achieve this. The Capacity Market has been introduced to help ensure security of electricity supply at the least cost to the consumer. It will be administered by National Grid Electricity Transmission plc (NGET), alongside a number of delivery partners.

We have several important roles in EMR, including:

- being responsible for the Capacity Market Rules (the Rules) from the day after the results of the first auction are published
- having oversight of and enforcement powers over how NGET, suppliers and generators are complying with The Electricity Capacity Regulations 2014 (the Regulations) and the Rules
- determining certain disputes where participants disagree with a decision made by NGET
- monitoring the Capacity Market and the Contracts for Difference policies
- enforcing competition law and compliance with Rules and the Regulations.
- reporting on the effectiveness of the Capacity Market generally and on NGET's performance.

The Regulations came into force on 1 August 2014 and contain provisions allowing amendments to the Rules. The Rules provide the detail for implementing much of the operating framework set out in the Regulations.

## Associated documents

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The Electricity Capacity Regulations 2014

<http://www.legislation.gov.uk/ukdsi/2014/9780111116852/>

The Capacity Market Rules as published by DECC on 10 October 2013

<https://www.gov.uk/government/collections/electricity-market-reform-capacity-market>

Ofgem consultation on the Capacity Market Change Process Guidance as published on 17 April 2014

<https://www.ofgem.gov.uk/publications-and-updates/change-process-capacity-market-rules-guidance>

DECC Implementing Electricity Market Reform (EMR) as published on 23 June 2014

<https://www.gov.uk/government/publications/implementing-electricity-market-reform-emr>

DECC consultation on Electricity Market Reform Implementation as published on 10 October 2013.

<https://www.gov.uk/Government/consultations/proposals-for-implementation-of-electricity-market-reform>

DECC response to the consultation on Electricity Market Reform Implementation as published on 23 June 2014:

<https://www.gov.uk/government/consultations/proposals-for-implementation-of-electricity-market-reform>

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## Executive summary

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The Capacity Market is governed by secondary legislation through a combination of The Electricity Capacity Regulations 2014 (the Regulations) and the Capacity Market Rules (the Rules). The Rules provide the detail for implementing much of the Capacity Market operating framework set out in the Regulations. This includes many of the technical rules and procedures relating to how the Capacity Market will operate. A list of what the Rules cover can be found in the introduction and overview.

We are responsible for the Rules from the day after the results of the first auction are published. This guidance shows the process we will follow to amend, add to, revoke or substitute any part of the Rules. It includes the change process and the legal framework that underpins it.

This includes an explanation of how industry and other interested parties can submit a change request, an explanation of the Rules change process, the timeframes involved, and the implications of any changes on existing participants. The guidance also includes Ofgem's principal objective and general duties, and the three objectives we will have regard to when making decisions to change the Rules (see paragraph 1.12).

We will consult on any changes to the Rules on an annual basis. Before doing so, we will seek proposals for potential changes. We may also incorporate our own proposals for changes within the consultation. If there is an urgent change to the Rules required outside the annual process, we would address this through a separate consultation.

This guidance will be reviewed and updated as required.

# 1. Introduction and Overview

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## Chapter summary

This chapter explains the legal framework that underpins the change process for the Capacity Market Rules (the Rules). This includes a summary of the grandfathered provisions. It also states the objectives we shall have regard to when making decisions to change the Rules and an overview of the Rules change process.

## Legislative framework for the Rules change process

1.1. Under the Electricity Market Reform (EMR) programme, we are responsible for the Rules from the day after the results of the first auction are published. The Capacity Market is governed by a combination of The Electricity Capacity Regulations 2014 (the Regulations) and the Rules. The Regulations provide the overarching policy and design, including the powers that the Secretary of State will retain. The Rules underpin the Capacity Market and provide the detail for implementing much of the operating framework in the Regulations. The Rules include details on:

- auction guidelines and de-rating information
- prequalification information
- determination of eligibility
- capacity auctions
- capacity agreements
- capacity market register
- obligations of capacity providers and system stress events
- transfer of capacity obligations
- volume reallocation
- transitional arrangements
- monitoring
- testing regime
- data provisions

1.2. In accordance with the Regulations, we must consider all proposals from:



## Guidance for the Change Process for the Capacity Market Rules

- the Secretary of State
- the Delivery Body
- any person who is a holder of a licence to supply electricity
- any person who is a capacity provider
- an applicant, or a person wishing to apply to bid in a capacity auction; or
- a representative body representing persons (c) or (d) above or any other class of persons which we consider to have a sufficient interest in the capacity market.

1.3. Before making any changes to the Rules, we must consult with:

- the Secretary of State
- the Delivery Body
- any person who is a holder of a licence to supply electricity under section 6(1)(d) of EA 89
- any person who is a capacity provider
- such other persons as we consider it appropriate to consult.

1.4. This applies whether we have identified the potential change through our own analysis or through a proposal from an external party.

1.5. We will publically consult on our website<sup>1</sup> on proposed changes to the Rules to ensure industry and interested parties have an opportunity to comment.

1.6. If we do not think there is a good reason to take forward a proposal received from the parties set out in 1.2 above, we must consult and publish our reasons for this decision.

1.7. The Rules will apply to all capacity providers with capacity agreements. Certain terms in the capacity agreements have been grandfathered<sup>2</sup> by the Secretary of

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<sup>1</sup> [www.ofgem.gov.uk](http://www.ofgem.gov.uk)

<sup>2</sup> A provision in which certain terms set out in The Electricity Capacity Regulations 2014 continue to apply in respect of existing agreements, while the equivalent new Rule will apply to all future participants. Further information on the grandfathered terms can be found in Regulation 31 (2) a-i of The Electricity Capacity Regulations 2014.

State through the Regulations. The terms covered by this in Regulation 31 (2) a-i are:

- the description of the CMU in respect of which the capacity agreement is issued
- the duration of the capacity agreement, and the delivery year or years for which it is issued
- the capacity obligation for which the capacity agreement is issued
- the capacity cleared price
- in the case of a capacity agreement issued following a T-4 auction, the base period applicable for the purpose of calculating capacity payments
- the annual penalty cap and monthly penalty cap applicable in accordance with the electricity capacity regulations in force at the date of issue of the capacity agreement, expressed respectively as percentages of the annual capacity payment and the monthly capacity payments payable under the capacity agreement
- whether the capacity provider is subject to a financial commitment milestone and, if so, the date by which that milestone must be met
- whether the capacity provider is subject to a minimum completion requirement and, if so, the long stop date in respect of that requirement
- the rates at which termination fees TF1 and TF2 are payable, which must be determined by the Delivery Body in accordance with regulation 32.

1.8. These terms in existing capacity agreements will be unaffected by subsequent related changes to the Rules.

1.9. We intend to publish revised Rules ahead of the prequalification period for that delivery year. This is to avoid changes to Rules between a prequalification and an auction where possible. We recognise that in subsequent years the T-1 and T-4 prequalifications may not be run concurrently. We will keep our process under review to manage this but we expect to aim to publish revised Rules ahead of the earlier of the two where possible.

## **The objectives**

1.10. We must act consistently with our principal objective and general duties when exercising our power to change the Rules.

1.11. Our principal objective is “to protect the interests of existing and future consumers in relation to gas conveyed through pipes and electricity conveyed by distribution or transmission systems. The interests of such consumers are their interests taken as a whole, including their interests in the reduction of greenhouse gases in the security of the supply of gas and electricity to them and in the fulfilment by the Authority, when carrying out its functions as the designated regulatory authority for Great Britain, of the objectives set out in Article 40 (a) to (h) of the Gas Directive<sup>3</sup> and Article 36 (a) to (h) of the Electricity Directive<sup>4</sup>.”<sup>5</sup>

1.12. In addition, when we make any changes to the Rules, we must have regard to the following objectives (the “CM Rules Change Objectives”) which are set out in the Regulations:

- promoting investment in capacity to ensure security of electricity supply
- facilitating the efficient operation and administration of the Capacity Market
- ensuring the compatibility of the Capacity Market Rules with other subordinate legislation under Part 2 of the Energy Act 2013.<sup>6</sup>

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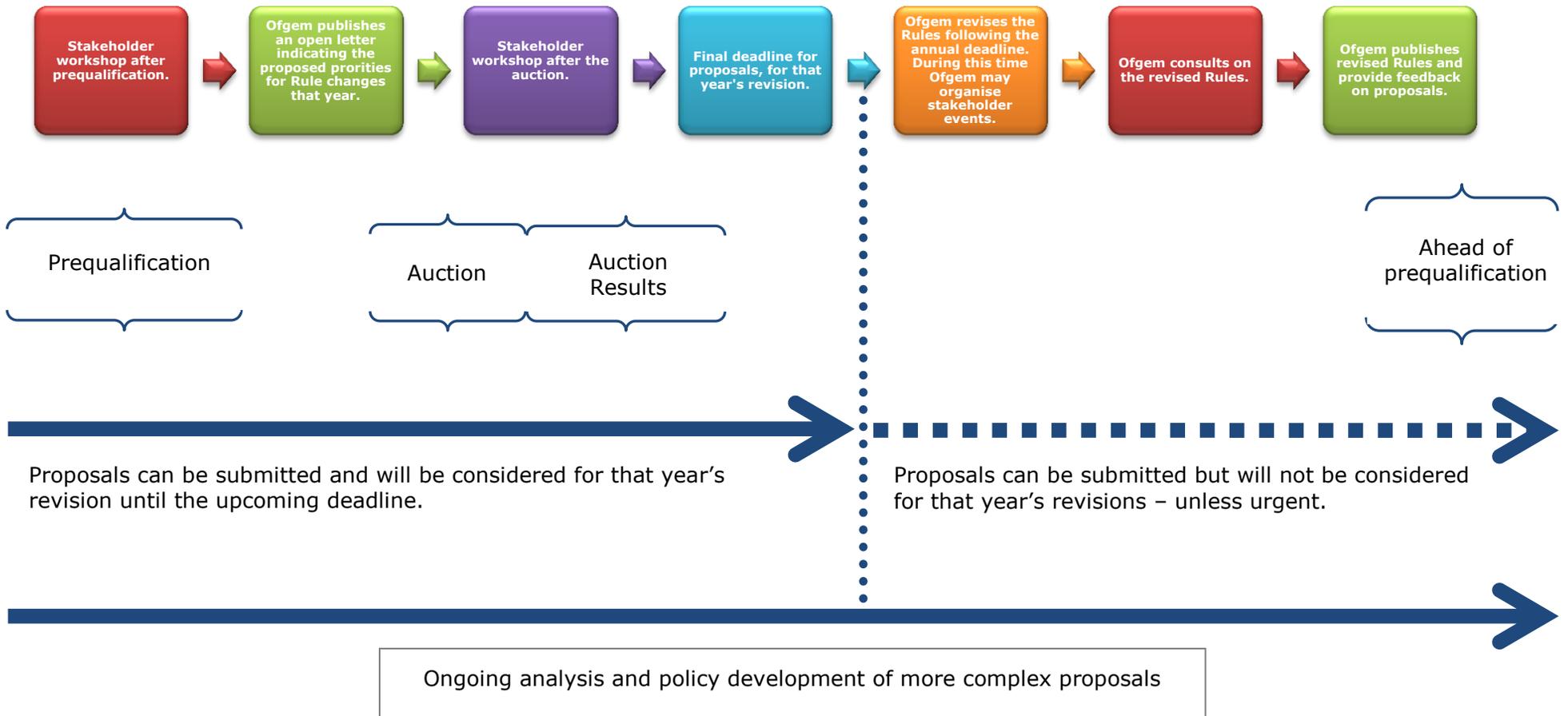
<sup>3</sup> Directive 2009/73/EC

<sup>4</sup> Directive 2009/72/EC

<sup>5</sup> For full details on our principal objective and general duties please see: <https://www.ofgem.gov.uk/publications-and-updates/powers-and-duties-gema>

<sup>6</sup> This is set out in regulation 78 of The Electricity Capacity Regulations 2014

### Overview of the indicative change process for the Capacity Market Rules



1.13. Ofgem has to consider all proposals to change the Rules that are submitted. The key aspects of the standard process are:

- You can submit proposals at any time via our website. We will publish the deadline on our website for when proposals must be received in a delivery year in order to be considered for that year's revisions to the Rules. Once the deadline has passed any proposals submitted will not be considered for that year's revision – unless the proposal is urgent. In these cases, we will try to include it in that round of revisions (more details on what constitutes an urgent request can be found in paragraph 1.14).
- The deadline will be set annually based on the expected date of the next prequalification.
- Proposals should include as much detail as possible and be set out in the form on our website (an indicative example can be found in Appendix 2).
- We expect to host at least two stakeholder workshops before the annual deadline, one after prequalification and another after the auction. The workshops provide early engagement with industry and other interested parties, and the opportunity to discuss the main issues emerging and any conflicting concerns.
- Between prequalification and the auction, we expect to publish an open letter stating our expected priorities for that year's revisions. We will invite comments on this.
- After the annual deadline, we will revise the Rules for the upcoming prequalification. This does not preclude industry from developing a proposal for the following year during this time.
- We will consult on the draft changes - including giving stakeholders an opportunity to comment on our intention not to take particular proposals forward. We will then make a decision on the draft revised Rules (assuming potential changes have been identified).
- The revised Rules will be published before the prequalification period for the next auction.
- We will publish all proposals, including those not taken forward, and provide feedback on our decisions.
- If we need more time to consider a particular proposal, for instance to complete an impact assessment, we will keep the proposal under review and roll it on to the following year.

1.14. In exceptional circumstances, we may consider it necessary to propose an amendment to the Rules outside of this process, for example where we consider a change is urgent. We will judge whether proposals are urgent on a case-by-case

basis. An urgent proposal must be in accordance with our principal objectives and general duties and have regard to the CM Rule Change objectives. It should be linked to an imminent or current issue, and one which if not urgently addressed may:

- affect the efficient operation of the capacity market, and/or
- have a significant commercial impact on capacity market participants, possible capacity market participants, consumers or other stakeholders.

1.15. Any proposed change, including an urgent change, is subject to a statutory consultation.

1.16. The Secretary of State retains the power to change the Rules after we take responsibility for them, subject to consultation. For further details, please email the Department of Energy & Climate Change (DECC): [correspondence@decc.gsi.gov.uk](mailto:correspondence@decc.gsi.gov.uk).

## 2. Developing the amended Rules

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### Chapter summary

The chapter explains how the process to change the Rules will work, how proposals for changes will be brought forward, the consultation process, and how we will publish our decisions.

### How to bring forward a change request

2.1. We will undertake an annual process to consider proposals for amendments to the Rules.

### Format of a proposal for a change to the Rules

2.2. Any proposals for changes to the Rules should be made via the change request form available on our website. There's an example in Appendix 2. The form is standardised which means we get the information we need to make an informed decision. The areas we ask for information on are:

- The aim of the proposed change and, if applicable, what part of the current Rules the proposal relates to. (Say what you want to see amended, added, substituted or revoked. If applicable please state the exact provision number it relates to.)
- If applicable, whether you are aware of an alternative proposal already submitted which this proposal relates to.
- A description of the issue that the change proposal seeks to address. (This should provide a justification for the proposal with reference to the CM Rule Change Objectives (see paragraphs 1.10 to 1.12)).
- The proposed revised drafting in so far as possible. (This should specifically highlight the changes to the current wording if applicable.)
- Your analysis and evidence on the impact on industry and/or consumers, of making the change, including any risks and any potential implications for industry codes. (Think about how you consider the changes to the Rules fit within the wider context of the Capacity Market, and identify potential impacts on other parties. This is particularly relevant for the codes<sup>7</sup> - it is useful to identify at an early stage any impact on the codes and say how you will take it forward where applicable.)

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<sup>7</sup> See glossary for the definition.

2.3. Legal drafting is not a requirement of the change request form, but we request that proposals include as much detail as possible. Clear proposals backed with analysis and legal drafting will ensure we - and industry - can assess the potential impacts of the proposal. As an approach to provide an efficient and strong proposal, you may wish to consider a joint proposal on key issues.

2.4. To provide clarity on the process and to reduce the risk of duplication, all proposals will be published on our website. Please note therefore that proposals will become public.

### **Withdrawing a proposal**

2.5. If you wish to withdraw a proposal once it has been submitted, please email [EMR\\_CMRules@ofgem.gov.uk](mailto:EMR_CMRules@ofgem.gov.uk) with your reasons.

2.6. Even if you seek to have the proposal withdrawn, if we think it is useful we would consider continuing it ourselves.

### **Bringing a proposal forward for consideration**

2.7. The cut-off date will be set annually based on the expected date of the prequalification period for the next auction.

2.8. There is an annual process for proposing changes to the CM Rules. This means we can evaluate them all together, rather than taking a piecemeal approach. If a proposal is submitted to us after the cut-off date for the given year, we will consider whether it needs urgent action (see paragraph 1.14). Otherwise we will consider it as part of next year's process. Similarly if we need more time to consider a proposal than available for that year's revisions, such as if we need to complete an impact assessment, we will keep the proposal under review and roll it on to the following year (see paragraph 1.13).

2.9. We will publish an open letter between prequalification and the auction with our initial thoughts on the direction the Rule changes are taking. Before doing so, and after prequalification, we intend to hold a stakeholder event to discuss emerging priorities. We also currently expect to hold a second event after the open letter consultation and the auction. At this event, we will consider key issues arising from the auction.<sup>8</sup>

2.10. We may invite industry and other interested stakeholders to a workshop to discuss certain proposals should we see merit in doing so.

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<sup>8</sup> The form that the stakeholder workshop is likely to take will vary depending on the proposals submitted.

## **Ofgem-identified changes**

2.11. In addition to changes proposed by external parties, we may also identify proposed changes to the Rules. For example, if the Secretary of State changes the Regulations in a way that directly affects the Rules we may consider a change is beneficial. We would expect to consult on any change we identify as part of the annual consultation process outlined above.

2.12. We are separately required to produce an annual report on the operation of the Capacity Market for the Secretary of State. We will consider our findings from that report process to inform our decisions on changes to the Rules.

2.13. If we identify an urgent issue to be addressed, we may take a change forward outside of the usual process (see paragraph 1.14). Any change would be subject to a statutory consultation.

## **Consultation on the draft amended Rules**

2.14. The draft revised Rules will be subject to consultation. We intend that the final revised Rules would be published before National Grid Electricity Transmission plc (NGET) launches the prequalification for the next auction. We will aim to publish the revised Rules sufficiently in advance of the prequalification period to provide as much clarity on arrangements for the process as possible to interested parties.

2.15. Throughout the process we may organise ad hoc stakeholder events in addition to the two stakeholder workshops before the final deadline to discuss issues if we feel there is a particular benefit in doing so.

2.16. If there are no proposed changes and no proposals submitted which merit revising the Rules, then we will consult on our view that no changes are necessary, outlining our reasons.

## **Interaction with the Codes**

2.17. The Rules are in secondary legislation, and therefore sit above the existing industry codes which set out the day-to-day rules that govern the gas and electricity arrangements in Great Britain. It is important that the industry codes are consistent with legislation, including the Rules. The industry codes place requirements on code parties in relation to change coordination, including for EMR<sup>9</sup>. We expect industry to consider if an industry code change is likely to be needed when bringing forward any proposal to change the Rules. There is space in the change request to allow for this. It is industry's responsibility to identify consequential changes and ensure that, amongst other things, industry codes remain consistent with legislation.

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<sup>9</sup> See BSC section F clause 1.6, CUSC clause 8.15, Grid Code General Conditions clause 4.6 and STC section B clause 7.2.9

2.18. When a code modification proposal is raised we would expect changes to the Rules to be identified. This would be part of existing duties on industry in relation to change coordination. This should include assessment of whether any change is consistent with legislation – which includes the CM Rules. We will take into account whether any proposed code modification is compatible with legislation, including the CM Rules, when we make a decision on it.

### **Publishing the final decision**

2.19. The amended Rules will be published in so far as possible before the Delivery Body launches prequalification for the next auction. We will publish feedback on the proposals received and the areas addressed by the revised Rules, including why we did not take certain proposals forward.

2.20. We will have the ultimate responsibility for the legal drafting of the final published Rules.

2.21. The amended Rules will apply to participants who already have a Capacity Agreement. Terms which have been grandfathered through the Regulations will remain unaffected.

2.22. All proposals will be published on our website. This ensures transparency and makes the process more efficient for interested parties.

# Appendices

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## Appendix 1 – Glossary

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### C

#### Capacity Agreement

A Capacity Agreement is the term used to describe the rights and obligations accruing to a Capacity Provider in relation to a particular Capacity Committed CMU in respect of one or more Delivery Years under or by virtue of the Regulations and these Rules, including the right to receive Capacity Payments in relation to the Capacity Committed CMU and the Capacity Obligation in relation to the Capacity Committed CMU.

#### Capacity Market (capacity mechanism)

The Capacity Market is the mechanism designed to provide investment in the overall level of reliable capacity (both supply and demand side response) needed to ensure secure electricity supplies.

#### Capacity Market Register

The register maintained by the Delivery Body in accordance with Capacity Market Rules.

#### Capacity Market Rules (Rules)

A set of explicit principles that govern the conduct and procedure within the Capacity Market. The Rules provide the detail for implementing much of the operating framework set out in The Electricity Capacity Regulations 2014 (the Regulations).

#### Capacity Market Unit (CMU)

A Capacity Market Unit (CMU) is a unit of electricity generation capacity or electricity demand reduction that can then be put forward in a future Capacity Market auction.

#### Capacity Provider

For any Capacity Committed CMU and Delivery Year, the person who was the Applicant for that CMU at Prequalification.

#### Change request

A request made to change a provision of the Capacity Market Rules, usually submitted in a pro forma.

#### Code

A multilateral code or agreement created and maintained pursuant to a licence granted by the Authority under section 6 of the Act or under sections 7, 7ZA or 7A of the Gas Act 1986.

#### Contracts for Difference

A government incentive to support new investment in all forms of low-carbon generation – carbon capture and storage, renewables and nuclear.

## **D**

### [DECC](#)

Department of Energy & Climate Change.

### [Delivery Body](#)

National Grid Electricity Transmission plc (NGET)

## **E**

### [Electricity Capacity Regulations](#)

The Electricity Capacity Regulations 2014 provide the overarching framework for the Capacity Market, including such matters as determining whether a capacity auction should be held and the determination of auction parameters by the Secretary of State.

### [EMR](#)

Electricity Market Reform.

## **G**

### [Grandfathering](#)

A provision in which certain terms set out in The Electricity Capacity Regulations 2014 continue to apply in respect of existing agreements, while the equivalent new Rule will apply to all future participants.

## **N**

### [National Grid Electricity Transmission plc \(NGET\)](#)

The transmission system operator for Great Britain. NGET is responsible for procuring balancing services to balance demand and supply and to ensure the security and quality of electricity supply across the Great Britain transmission system. NGET has also been appointed by DECC to be the delivery body for EMR.

## **O**

### [Ofgem/The Authority](#)

Ofgem is the Office of Gas and Electricity Markets, which supports the Gas and Electricity Markets Authority (the Authority), the regulator of the gas and electricity industries in Great Britain.

## **P**

### [Prequalification](#)

The written confirmation by the Delivery Body that a CMU has prequalified for a Capacity Auction.

### [Prequalification Period](#)

For any Capacity Auction, the period specified in the Auction Guidelines within which applications for prequalification are to be made.

[Proposal for Change](#)

A request made to change a provision of the Capacity Market Rules, usually submitted in a pro forma.

**S**

[Secretary of State](#)

Secretary of State for Energy and Climate Change

**T**

[T-1](#)

T-1 refers to the Auction Window commencing not less than 12 months and not more than 24 months prior to the commencement of that Delivery Year.

[T-4](#)

T-4 refers to the Auction Window commencing not less than four years and not more than five years prior to the commencement of that Delivery Year.

[TF1](#)

A termination fee payable under regulation 43(3)

[TF2](#)

A termination fee payable under regulation 43(4)

## Appendix 2 – Example of the change request proposal form

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<b>Proposal for a Capacity Market Rules Change</b>		<b>Reference number</b> <i>(to be completed by Ofgem):</i>
<b>Name of Organisation(s) / individual(s):</b>		<b>Date Submitted:</b>
<b>Type of Change:</b> <input type="checkbox"/> <b>Amendment</b> <input type="checkbox"/> <b>Addition</b> <input type="checkbox"/> <b>Revoke</b> <input type="checkbox"/> <b>Substitution</b>	<b>If applicable, whether you are aware of an alternative proposal already submitted which this proposal relates to:</b>	
<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>		
<b>Description of the issue that the change proposal seeks to address:</b>		
<b>If applicable, please state the proposed revised drafting</b> <i>(please highlight the change):</i>		
<b>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:</b>		
<b>Details of Proposer</b> <i>(please include name, telephone number, email and organisation):</i>		

## Appendix 3 – Complaints about Ofgem

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7.1. If a customer is unhappy with the way in which we have dealt with their complaint or is unhappy with the way in which we have reached a decision or how we operate, then they may write to:

Ofgem Complaints  
Ofgem E-Serve  
Ofgem  
9 Milbank  
London  
SW1P 3GE

7.2. A complaint will be acknowledged within two working days of receiving it. We will write to the complainant within 20 working days to inform them of the outcome of their complaint. If it is not possible to respond to the complainant in that time, we will write to update the complainant on the progress within 20 working days.

7.3. If, after this process, a complainant is still unhappy, they may write to Ofgem at the address above, and we will investigate the complaint further. The complainant will receive a response within 10 working days.

7.4. If the complainant is still not satisfied, they may take their complaint to the Parliamentary Ombudsman who carries out independent investigations into complaints about public bodies. If the complaint is found to be justified, the Ombudsman can recommend that we provide a remedy.