Consultation

Five Year Review of the Capacity Market Rules – First Policy Consultation			
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We are consulting on our Five Year Review of the Capacity Market Rules. We would like views from people with an interest in the functioning of the Capacity Market. We particularly welcome responses from market participants with experience of participating in the Capacity Market process. We would also welcome responses from other stakeholders and the public.

This document outlines the scope, purpose and questions of the consultation and how you can get involved. Once the consultation is closed, we will consider all responses. We want to be transparent in our consultations. We will publish the non-confidential responses we receive alongside a decision on next steps on our website at **Ofgem.gov.uk/consultations**. If you want your response – in whole or in part – to be considered confidential, please tell us in your response and explain why. Please clearly mark the parts of your response that you consider to be confidential, and if possible, put the confidential material in separate appendices to your response.

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Executive summary

Capacity Market Rules: Five Year Review

Regulation 82 of the Electricity Capacity Regulations ("Regulation") and Rule 15.2 of the Capacity Market Rules ("Rules") requires the Authority[1] to carry out a review of the Rules by 1 August 2019. This review is intended to assess whether the Rules continue to meet their objectives, whether the objectives remain appropriate, and whether those objectives could be met with less burden. Our review is in parallel with and complementary to the Department for Business, Energy and Industrial Strategy's ("BEIS") Five Year Review which will take into account the conclusions of our review.

We initiated our Five Year Review of the Rues in our open letter of 11 September 2018.[2] In the letter we identified four key priorities:

- Our annual Rules change process as set out in our guidance;[3]
- Whether the objectives of the Rules could be achieved with less burden on participants
- The appropriateness of the secondary trading arrangements to ensure that participants have the right incentives and opportunities to engage in the secondary trading market
- The appropriateness of National Grid Electricity System Operator's ("NGESO")[4] incentives for exercising its functions in delivering the Capacity Market ("CM") to ensure that they remain fit for purpose.

We said in our open letter that we believe that it would be confusing and counterproductive to run a full Rules change process for 2018/19 in light of our Five Year Review. As a result, we indicated that we would implement proposals taken forward in previous Rule change processes, consider proposals that we postponed until the Review, and any urgent change proposals. We also committed to reviewing our process for making changes to the Rules.

Respondents to the open letter expressed support for the CM as the right mechanism for promoting investment to guarantee security of supply, commenting that the CM is providing the process to guarantee long-term security of supply at the lowest possible cost to consumers.

Subsequent to our open letter, on 15 November 2018 the General Court of the Court of Justice of the European Union found in favour of Tempus Energy in *Tempus Energy Ltd and Tempus Energy Technology Ltd v European Commission.*[5] This judgment had the effect of annulling the European Commission's State aid approval for the GB CM scheme and introducing a standstill period, during which aid cannot be granted under the CM. The General Court's judgment was decided on procedural grounds; it was not a challenge to the nature of the CM mechanism itself. On 25 January 2019, the Commission lodged an appeal against this decision.

Following the judgment, the Secretary of State postponed the T-4 and T-1 Capacity Market Auctions ("Auctions") for Delivery Years 2022/23 and 2019/20 and suspended all payments. The Government is seeking reinstatement of State aid approval from the European Commission.

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[1] References to the "Authority", "Ofgem", "us", "we", "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work.

[2] https://www.ofgem.gov.uk/system/files/docs/2018/09/capacity_market_rules_five_year_review_open_letter_2018_1.pdf

[3] https://www.ofgem.gov.uk/publications-and-updates/final-guidance-capacity-market-cm-rules

[4] On 1 April 2019 the NGESO became legally separate from the National Grid Electricity Transmission ("NGET").

[5] (Case T-793/14)

On 5 March 2019, Tempus Energy also issued a claim for judicial review against BEIS for continuing to operate other aspects of the CM during the standstill period.

We have continued our review of the Rules with the aim of meeting our statutory deadline to issue a decision by August 2019. The *Tempus* ruling has resulted in resource implications for Ofgem. As a result of the *Tempus* judgement, we are consulting later than planned and have decided to delay decisions and implementations of some areas to later consultation processes. We are consulting later than planned on this First Policy Consultation and the pace at which we can implement changes has been reduced.

This consultation is the first phase in developing a longer-term programme of changes to the Rules and to the way Ofgem's Rules change process operates. In line with our proposed future Rules change process, many of our changes will not be implemented immediately in summer 2019, but will instead be delayed to later releases and be effective for the 2020 or subsequent Prequalification Windows. We understand that the amendments to the Rules proposed in this consultation are subject to the outcomes of the European's Commission's State aid investigation and the judicial review raised by Tempus. Furthermore, it should also be noted that the proposed changes outlined in this document remain subject to final implementation and prioritisation discussions with the CM Delivery Partners (NGESO and ESC), taking into consideration current and future workload related to the standstill period.

We believe that the objectives of the Rules remain appropriate. They should seek to deliver security of supply at the lowest possible cost to consumers to reflect the primary objective of the CM as a whole. Our opinion is that the Rules and any amendments to the Rules should have the objective of ensuring the efficient operation of the CM. The Rules should not unduly form a barrier to entry or cause excessive regulatory burden that is not justified by, for example, the delivery assurance that a requirement may provide. We further believe that the Rules should ensure compatibility between the CM and other legislation introduced as part of Electricity Market Reform ("EMR") in the Energy Act 2013.

We believe that the Rules are meeting their first objective to deliver security of supply, but that in part they hinder their own ability to meet their second objective to ensure the efficient operation of the CM. The complexity of the Rules and the regulatory burden they place on participants may be a barrier to participation and certainly makes participation complicated, which may in turn lead to inefficient bidding in the Auction.

We identified the regulatory burden and the complexity of the Rules as a priority area in our consultation. Stakeholder responses and our own assessment of the Rules suggest that amendments are required to enable the Rules to more effectively meet their second objective of facilitating the efficient operation of the CM. This consultation therefore proposes changes that we are aiming to implement to simplify the CM in the short term.
These include:

- Amendments to reduce the complexity and burden of Prequalification, including enabling providers to delay submission of certain data items to the agreement management process. We expect this to diminish the risk of rejection of Applications for Prequalification. These amendments are discussed in Section 3;
- Amendments to reduce the burden of a New Build Capacity Market Unit ("CMU") having to supply reports by an Independent Technical Expert ("ITE") ahead of the Delivery Year. These amendments are discussed in Section 4;
- Amendments to facilitate a more open and liquid secondary trading market, including by opening the secondary trading market from the T-4 Auction and by reducing barriers to participation in secondary trading. These amendments are discussed in Section 5;
- Amendments to reduce the complexity of participation, including changes to increase clarity of the Rules and enabling changes to aspects of CMU configuration between the Auction and the Delivery Year. These amendments are discussed in Section 6; and

- Amendments which we have consulted on and made decisions on to implement in previous years but were delayed to enable effective IT system delivery. These amendments are discussed in Section 8.

We are also using this consultation to look forward and assist in developing our policy for future consultations. In particular, we are seeking views on and proposing the following:

- Changing our Rules change process to move to an 18-month process for consultation and implementation with greater involvement by NGESO, Electricity Settlements Company ("ESC"), and industry. These amendments are discussed in Section 2. We propose for urgent and housekeeping changes to still be considered in line with previous timescales; and
- We are seeking evidence on NGESO's incentives in the CM, how these drive NGESO's performance and behaviour, and how these could be reformed. We continue to believe that ensuring that NGESO is appropriately funded, appropriately incentivised, and that its performance is appropriately managed are key to the delivery of a fit-for-purpose CM going forward. Responses to the questions presented in Section 7 will help to inform policy development ahead of a future consultation on changes to NGESO's incentives. We believe that it may be desirable to align NGESO's financial incentives for the CM more closely with the wider Electricity System Operator ("ESO") incentives. We also believe that the legal separation of NGESO from the Transmission Owner may enable the ring-fence around the EMR Delivery Body within NGESO to be reviewed, and thus it may be desirable for future incentives from April 2021 to be integrated into the wider ESO incentives.

We will issue our final review document along with a suite of amendments to the Rules ahead of the next Prequalification Window. We will subsequently issue consultations on some of the longer-term issues raised in this consultation. The first will be a consultation to amend our Rules change guidance[6] to reflect our decision on the proposals raised in Section 2. We are also aiming to issue a consultation on NGESO's incentives and role discussed in Section 7 with the goal of amending the Special Conditions of NGESO's Electricity Transmission Licence. This approach outlines the fact that we are intending to make both Rule and framework changes, which will result in Rule changes in the near, medium and long term, along with a forward plan of future consultations.

As part of our Five Year Review process, we will be holding a stakeholder event at our offices on 10 July 2019. This event will be focused on the issues we have consulted on in this consultation and on our future work programme. Please register on EventBrite by 3 July. In the short-term, we have approached major industry trade associations to hold workshops on the content of this consultation with a focus on changes to be implemented ahead of the 2019 Prequalification Window. Please contact us if you have not been approached but would like to hold a similar workshop. Please also contact us if you would like to organise a bilateral meeting to discuss any part of this consultation.

[6] https://www.ofgem.gov.uk/publications-and-updates/final-guidance-capacity-market-cm-rules

Introduction

What are we consulting on?

Background

Regulation 82[7] and Rule 15.2 require us to carry out a review of the Rules by 1 August 2019. Rule 15.2 also outlines that the review must set out the objectives intended to be achieved by the Rules and assess the extent to which those objectives are being achieved. It should also assess whether those objectives remain appropriate and, the extent to which they could be achieved in a less burdensome way. We initiated our review by publishing an open letter on 11 September 2018. We asked for views on whether the Rules are meeting their objectives, whether those objectives could be met with less burden, and whether those objectives remain fit for purpose. We also introduced our four priority areas for policy development:

- **Whether the objectives of the Rules could be achieved with less burden on participants.** This will include simplification of the Rules and reduction of regulatory burden from the requirements of the Rules;

- **Our annual Rules change process as set out in our guidance.** We believe there could be a more efficient way to assess and implement changes to the Rules while also giving industry greater responsibility in assessing the value of amendments;

- **The appropriateness of the secondary trading arrangements to ensure that participants have the right incentives and opportunities to engage in the secondary trading market.** We convened an industry working group to discuss and develop proposals for reducing barriers to secondary trading and to develop an open and liquid secondary trading market; and

- **The appropriateness of NGESO's incentives for exercising its functions in delivering the CM to ensure that they remain fit for purpose.** We believe it would be desirable to review NGESO's incentives on dispute resolution, Demand Side Response ("DSR") Prequalification, demand forecasting, and customer and stakeholder satisfaction for 2019/20.

On 15 November 2018 the General Court of the Court of Justice of the European Union found in favour of Tempus Energy in *Tempus Energy Ltd and Tempus Energy Technology Ltd v European Commission,*[8] thereby annulling the Commission's State aid approval for the CM. The Court held that the Commission should have consulted more fully before deciding whether to grant State aid approval for the CM in 2014. The Secretary of State subsequently postponed the T-4 and T-1 Auctions for Delivery Years 2022/23 and 2019/20 respectively, in accordance with Regulation 26(3)(a).

[7] The Electricity Capacity Regulations 2014.
[8] (Case T-793/14)

The Government is working with the European Commission to reinstate State aid clearance for the CM. The European Commission on 21 February 2019 announced it was opening an in-depth investigation focusing on particular elements of the CM[9].

The Government has also consulted on two sets of amendments to the Regulations and the Rules to make the necessary changes to operate the CM to the extent possible during the standstill period. However, on 5 March 2019 Tempus Energy issued a claim for judicial review against BEIS challenging BEIS' decision to continue to operate the CM during the standstill period.

Our review is in parallel with and complementary to BEIS' Five Year Review[10] which will take into account the conclusions of our review. Due to the delay to the Government's original Five Year Review timelines as a result of the suspension and, in line with the changes we are proposing for the structure of our annual rules change process (as discussed in Section 2), we intend to delay the implementation of some changes to future delivery years. As BEIS' Five Year Review of the CM may make significant changes to the CM framework and to policy, it is also not appropriate for us to make substantial changes to the Rules during this process. We are continuing to engage with BEIS on issues that we consider to be priorities for Ofgem in the Government's Five Year Review, including the eligibility of renewables to participate in the CM, Connection Capacity, the penalty regime, testing arrangements, and satisfactory performance. We are also continuing to work with BEIS, NGESO and ESC on governance issues, including the alignment between the Regulations and the Rules to ensure that the governance framework of the CM continues to be fit for purpose in the future.

This consultation will inform both our final review, which will be published before 1 August 2019, and a future set of consultations for further-reaching changes. This is aligned with our aim to use this consultation not only to just review the Rules but also to initiate a forward work plan to review the wider CM framework.

Alongside our final review we intend to implement a suite of technical amendments to the Rules, the final implementation timeline being subject to prioritisation discussions with NGESO and ESC. These changes align with the priorities set out in our open letter and we would like to highlight that we are conscious that the implementation of these proposed changes is subject to the outcome of the European Commission's investigation, as well as the judicial review.

We will consult further on some of the longer-term issues raised in this consultation. First among these will be a consultation to amend our Rules change guidance to reflect our decision on the proposals raised in Section 2. We are also aiming to issue a consultation on NGESO's incentives and role, as discussed in Section 7, to amend the Special Conditions of NGESO's Electricity Transmission Licence. The other questions in this consultation will be used to inform the next round of the Rules change process due to commence in Autumn 2019 for non-urgent implementation by the 2021 Prequalification Window.

Responses to our September Open Letter

We received 24 responses to our open letter. All respondents gave views on the objectives of the Rules and how the Rules could be improved to better reflect these objectives. Respondents broadly endorsed focusing on our four priority areas and gave views on each of these areas.

[9] http://europa.eu/rapid/press-release_IP-19-1348_en.htm
[10] BEIS' Call for Evidence for its Five Year Review was published on 8 August 2018: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/732546/CM_Review_call_for_evidence_final_4.pdf

Responses focused in particular on our agenda to simplify the Rules and reduce administrative burden on participants, as well as on governance issues including our Rules change process, interactions between the Rules and the Regulations, and NGESO's role and incentives.

Respondents expressed support for the CM as the right mechanism to guarantee long term security of supply, at the lowest possible cost to consumers. We agree with this view and have also asked stakeholders for views on how the CM interacts with other markets. However, many respondents commented that the Rules are partially hindering the CM from meeting its objectives and that the Rules are not fully meeting their own objectives. These responses raised the complexity of the Rules and the burden that they place on participants through Prequalification and the unnecessary complexity of processes such as secondary trading as particular evidence of how the Rules hinder participants from operating efficiently and therefore do not facilitate the efficient operation of the CM.

Each section of this consultation document will give an overview of the corresponding stakeholder feedback.

Consultation outline

This consultation consists of eight sections, each of which considers either a discrete area of the Rules or the CM framework that aligns with the priorities identified in our open letter or a group of proposals, such as those that have been delayed from previous years.

In addition to our priority areas we have considered Rules change proposals that we postponed at the conclusion of last year's Rule change process; additional submissions by respondents to our open letter; and changes which we have already made positive decisions on but delayed implementation of due to impact on systems.

As highlighted in our open letter on the Five Year Review, the proposed amendments to the Rules outlined in in Sections 2-8 and Annex A are either delayed changes, proposals that we postponed until the Five Year Review, or proposals which we have deemed as urgent. Please note that only the changes reflected in Annex A, an amended copy of the Rules, are intended to be implemented following this consultation subject to stakeholder feedback and aforementioned prioritisation discussions. Some changes will require wider changes to the CM framework that will require further consideration before a decision on change is made. We are initiating some of these future work streams with this consultation, including the review of the Rule change process in Section 2 and a review of NGESO's role and incentives in Section 7.

This consultation initiates our review of the process for making changes to the Rules which will form the basis of a future consultation. We are proposing to introduce greater involvement by NGESO, ESC, and industry parties in policy development to increase the transparency of the process. This will be through a CM Advisory Group. We are also proposing to rationalise Ofgem's annual Rules change process to give a longer lead time for the implementation of non-urgent amendments. We are proposing for these amendments to be implemented a year after having completed the additional consultation on them. Urgent and housekeeping amendments will still be on the same timescales as in the past. These amendments are discussed in detail in Section 2.

We are also proposing amendments to simplify the Prequalification process and reduce the amount of documentation that applicants must provide and to diminish the risk of rejection. This includes delaying the submission of certain data items currently submitted at Prequalification until the metering assessment. In addition to the changes proposed in this document, we intend to develop further changes to reduce the complexity of Prequalification

on the basis of the questions raised in this consultation. These amendments are discussed in detail in Section 3.

We are proposing amendments to simplify and reduce the cost of participating in the CM. To reduce the cost of participation for New Build CMUs we are proposing to remove the requirement to regularly contract an ITE to validate construction reports. This is a provision that is only required for New Build CMUs and removing it will help level the playing field between all CMUs, as well as to encourage new entrants. This amendment is discussed in detail in Section 4.

We recognise that the development of an open and liquid secondary trading market has been affected by inefficiencies in the framework. To address this, we convened an industry working group in which suggestions were put forward to help facilitate a more liquid secondary trading market to allow providers to more effectively manage their agreements. These proposed amendments are discussed in detail in Section 5.

We are proposing other areas of change to reduce the regulatory burden that the Rules create for participants, including suggesting to clarify the application of Rule 4.4.4 to potentially allow changes to configuration where such changes do not affect the generating technology class or De-rated capacity of the CMU. These amendments are discussed in detail in Section 6.

Section 8 concerns two sets of amendments we have consulted on and made decisions to implement in previous years. The implementation of OF12 and the technical amendments to ALFCO (formerly CP279, CP289, and CP290) were delayed to ensure effective IT systems delivery for NGESO and ESC. These solutions are now on course for implementation by the next Prequalification Window. We have made no substantive changes to the framework of these amendments, however we are proposing some minor amendments to bring them in line with other changes proposed in this review.

An amended set of Rules is published alongside this document, in Annex A, with the amendments marked with references [OF##]. The changes marked in Annex A are intended to be made following this consultation, subject to stakeholder feedback and aforementioned prioritisation discussions. A complete table of amendments we are consulting on can be found in Appendix 1, which encompasses the amendments present in Annex A, along with wider areas that we are seeking feedback on before presenting a final decision. In addition, a complete list of the consultation questions contained within this document can be found in Appendix 2.

Consultation stages

This consultation will close on 28 May 2019. We will publish our review of the Rules in the summer. At that time, we will implement some of the changes consulted herein which will be subject to implementation and delivery timescales of the Delivery Partners. We will subsequently consult on more detailed proposals to implement some of the other changes to the Rules discussed in this document. This will include a consultation on changes to our Rules change process guidance in summer and a consultation on NGESO's financial incentives and role in with a view to amending the Special Conditions of NGESO's Electricity Transmission Licence ahead of April 2020.

As part of our Five Year Review process, we will be holding a stakeholder event at our offices on 10 July 2019. This event will be focused on the issues we have consulted on in this consultation and on our future work programme. Please register on EventBrite by 3 July. In the short-term, we have approached major industry trade associations to hold workshops on the content of this consultation with a focus on changes to be implemented ahead of the 2019 Prequalification Window. Please contact us if you have not been approached but would like to

hold a similar workshop. Please also contact us if you would like to organise a bilateral meeting to discuss any part of this consultation.

How to respond

We want to hear from anyone interested in this consultation. Please send your response to the person or team named on this document's front page.

We've asked for your feedback in each of the questions throughout. Please respond to each one as fully as you can.

We will publish non-confidential responses on our website at www.ofgem.gov.uk/consultations.

Your response, data and confidentiality

You can ask us to keep your response, or parts of your response, confidential. We'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.

If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you do wish to be kept confidential and those that you do not wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we'll get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.

If the information you give in your response contains personal data under the General Data Protection Regulation 2016/379 (GDPR) and domestic legislation on data protection, the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 3.

If you wish to respond confidentially, we'll keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we receive. We won't link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.

General feedback

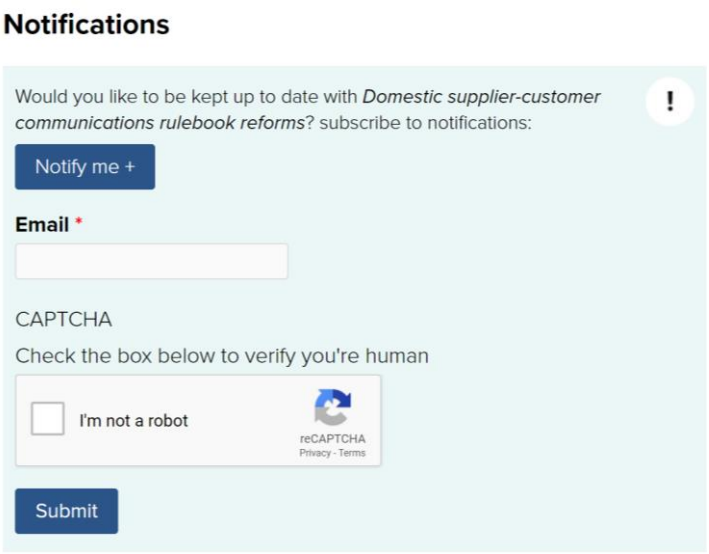
We believe that consultation is at the heart of good policy development. We welcome any comments about how we've run this consultation. We'd also like to get your answers to these questions:

1. Do you have any comments about the overall process of this consultation?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Were its conclusions balanced?
5. Did it make reasoned recommendations for improvement?
6. Any further comments?

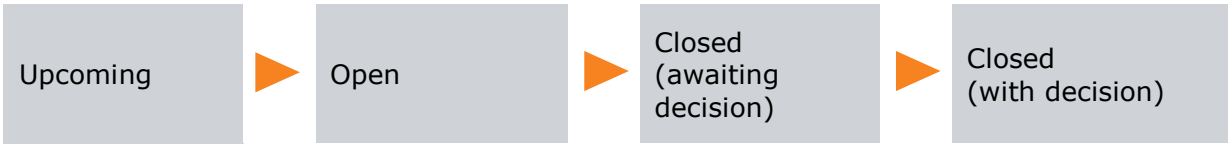
Please send any general feedback comments to stakeholders@ofgem.gov.uk

How to track the progress of the consultation

You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website. Ofgem.gov.uk/consultations.



Once subscribed to the notifications for a particular consultation, you will receive an email to notify you when it has changed status. Our consultation stages are:



1. Section 1: The objectives of the Rules and Capacity Market interactions

Section summary

Regulation 82 and Rule 15.2 requires the Authority to carry out a review of the Rules within five years of their entry into force. Under Rule 15.2.2, the review must set out the objectives intended to be achieved by the Rules, assess the extent to which those objectives are being achieved, whether the objectives remain appropriate, and whether those objectives could be met with less burden.

Regulation 78 sets out the objectives when amending the Rules as promoting investment in capacity to ensure security of electricity supply; facilitating the efficient operation and administration of the CM; and ensuring the compatibility of the Rules with other subordinate legislation under Part 2 of the Energy Act 2013. We also believe the three high level objectives set out in the Energy Act 2013 are still relevant.

We believe that the Rules are meeting their first objective to deliver security of electricity supply. However, we believe that the complexity of and the regulatory burden imposed by the Rules means the second objective to facilitate the efficient operation of the CM is not currently being met. The changes we are proposing to make in this consultation are intended to begin to reduce the complexity and regulatory burden of the Rules and in particular to implement a more streamlined and transparent Rules change process.

Questions

Question 1: Do you have any views on the interactions between the CM and other wholesale markets; such as forward markets, the balancing market, and markets for ancillary services?

Question 2: Do you have any evidence that design choices in the CM are driving inefficient outcomes in other markets?

Question 3: Do you have suggestions for how these markets can be better aligned and how any inefficiencies can be mitigated?

Background

1.1. Regulation 78 sets three objectives for Ofgem when making amendments to the Rules:

1.1.1. promoting investment in capacity to ensure security of electricity supply;

1.1.2. facilitating the efficient operation and administration of the CM; and

1.1.3. ensuring the compatibility of the Rules with other subordinate legislation under Part 2 of the Energy Act 2013.

1.2. These objectives are also taken as the fundamental underlying objectives of the operation of the Rules. The Regulations, which form part of the implementing legislation for the Government's EMR programme, outline general objectives of incentivising investment in secure and low-carbon electricity generation, while improving affordability for consumers. We believe these overarching objectives are still relevant five years on; for the CM framework and operation. This section will therefore consider whether the Rules are continuing to meet these objectives, whether the objectives remain appropriate, and whether these objectives could be met with less burden.

1.3. Views from stakeholders indicate that the objectives remain appropriate, but that the level of complexity and regulatory burden created by the Rules is hindering the Rules from fully meeting their first two objectives. However, stakeholders have expressed broad support for the objectives being appropriate despite the magnitude of change experienced in the CM and in the market more widely since the Rules were first implemented.

1.4. We agree with stakeholders that the complexity and regulatory burden that the Rules place on participants are partially hindering the ability of the Rules to promote investment in capacity to ensure security of electricity supply and in particular to fully facilitate the efficient operation and administration of the CM.

Stakeholder feedback

1.5. Of the 24 responses to our open letter, 15 directly addressed the objectives of the Rules.

1.6. Eight respondents gave positive views of the CM meeting its objectives, in particular for delivering security of supply. Several of these respondents indicated that they believe that the CM is delivering on its wider objectives of providing security of supply at the lowest cost to the consumer. They stated that the CM is a critical tool in achieving this and should be seen as a permanent feature of the market. One respondent noted that the Rules change processes following implementation has been successful to an extent in adapting to changing conditions in the market.

1.7. Several of these respondents directly supported that the objectives of the Rules remain fit for purpose going forward. No respondents suggested additional or alternative objectives, though many respondents commented on the need for the Rules to ensure a level playing field for all participants while recognising the specific requirements of all participants. Similar comments are discussed further in paragraph 1.9. We note that although ensuring a level playing field is not a formal objective of the CM under Regulation 78, the Government and the Authority have both committed to ensuring a technology neutral CM, to reducing barriers to entry as much as possible, and levelling the playing field between technologies to the extent possible while recognising particular technologies' contributions to security of supply.

1.8. Seven respondents gave explicitly negative assessments of the CM fully meeting some of its objectives:

1.8.1. One respondent suggested that the fact that a stress event has not occurred to date means the reliability of providers in a stress event is unconfirmed. The same respondent also commented that the CM has consistently procured in excess of the Reliability Standard of 3-hours' Loss of Load Expectation, which

suggests that the CM is not delivering security of supply at the lowest cost to consumers.

1.8.2. Another respondent expressed an alternative view and argued that the inclusion of non-dispatchable interconnectors and the current level of committed capacity may be insufficient to meet demand in a stress event.

1.8.3. Two respondents suggested that the CM has not adequately incentivised new investment in generation to guarantee long-term security of supply. One of these argued that the current Rules have resulted in low clearing prices, which may be beneficial to consumers, but have the effect of deterring new investment.

1.9. Several respondents commented that the CM does not currently provide a completely 'level playing field' for all technologies due to alleged barriers to entry and participation. Respondents noted that this does not necessarily align with previous stances by Ofgem and the Government to implement a technology-neutral CM as noted in paragraph 1.7. Respondents highlighted that in some cases this is due to the complexity of the Rules and the burdensome requirements they place on participants such as the complex applications and the agreement management processes. One respondent suggested that the CM should be better aligned with wider sector developments and concerns and, for example, take account of whole system impact.

1.10. A significant proportion of respondents expressed support for simplifying the Rules and the process for making changes to the Rules. Several requested a more streamlined and transparent Rules change process. One respondent also noted inconsistencies and a lack of coordination between the Rules and the Regulations. Several respondents commented that provisions in the Regulations have prevented changes to the Rules, such as those to enable the participation of non-exporting Combined Heat and Power generators. These respondents requested that BEIS and Ofgem collaborate to review whether provisions could be moved from the Regulations to the Rules to facilitate more responsive policy-making.

1.11. Although nine respondents did not directly address the objectives, as outlined in Regulation 78, we believe that the volume of comments on the complexity of various sections of the Rules, such as Prequalification, suggests wide consensus on the Rules requiring improvement to better meet their objectives.

Ofgem's view and proposals for addressing the gap

1.12. We agree with respondents that the Rules are meeting the first objective to deliver electricity security of supply, but that in part the complexity of some provisions of the Rules hinder their own ability to meet the second objective to ensure the efficient operation of the CM. The complexity of the Rules and the regulatory burden they place on participants may be a barrier to participation and certainly make participation unduly complicated, which may in turn lead to inefficient bidding in the auction.

1.13. The CM was designed for a market that looked rather different than what has emerged in the five years since its creation. The original design of the CM did not foresee the significant increase in small and distributed generation, the growth trajectory of Demand Side Response ("DSR"), or the emergence of subsidy-free renewables. The structure of the Rules reflects this, for example, in the complexity of the Prequalification process, which was designed to provide delivery assurance for large generation projects. Instead,

a large proportion of applications have come from small projects for which some of these delivery assurance requirements are less appropriate. Furthermore, this change in market structure has also resulted in inefficiencies in the operation of the CM: original operating assumptions were made on the basis of, for example, NGESO reviewing ~300 Applications for Prequalification from ~45 companies annually. Instead, NGESO received 1660 applications in the 2018 Prequalification Window.

1.14. We have previously used our Rules change processes and are now using the Five Year Review in order to respond to changing market conditions. We aim to promote the technology neutrality of the CM, to promote a level playing field for participants, and to reduce barriers to entry, as well as increase the efficiency of the CM. This consultation proposes solutions to reduce the complexity and regulatory burden of participating in the CM and to reduce the burden of the policy-making process.

1.15. We continue to believe that the objectives of the Rules remain appropriate and that the wider objective of the EMR programme of delivering security of supply at the lowest possible cost to consumers still remains appropriate. We continue to believe that the Rules and any amendments to the Rules should have the objective of ensuring the efficient operation of the CM. The Rules should not unduly form a barrier to entry or provide excessive regulatory burden that is not justified by, for example, the delivery assurance that a requirement may provide. We also believe that the Rules should ensure compatibility between the CM and other legislation introduced as part of EMR in the Energy Act 2013.

1.16. However, we believe that it may also be necessary to consider the interactions between the CM and other markets such as wider wholesale markets, the balancing market, and markets for ancillary services to ensure there are no significant conflicts or unintended consequences. We intend to complement work being done in areas such as BEIS' Five Year Review and future legislation. Two responses to our open letter noted concern at the apparent lack of coordination and integration between the CM and other markets and other policy-making processes. One response requested close integration between the CM and the balancing market, and suggested that there is a risk that the list of Relevant Balancing Services ("RBS") in Schedule 4 may be too restrictive in the long term. The other response mentioned that Ofgem's Targeted Charging Review is affecting investments that potential CM participants are willing to make.

1.17. The CM has become a fundamental part of wholesale electricity markets and we believe it is therefore necessary to seek to align it as much as possible with the other markets. The CM and the Rules operate independently of these other markets and there is a risk of changes to the Rules driving unintended, inefficient outcomes in other markets. We are therefore seeking stakeholder feedback on the alignment of the CM with other markets:

Question 1: Do you have any views on the interactions between the CM and other wholesale markets; such as forward markets, the balancing market, and markets for ancillary services?

Question 2: Do you have any evidence that design choices in the CM are driving inefficient outcomes in other markets?

Question 3: Do you have suggestions for how these markets can be better aligned and how any inefficiencies can be mitigated?

2. Section 2: Ofgem's Rules change process

Section summary

The annual Rules change process has continued to increase in duration, complexity and difficulty of implementation as a result of enduring industry interest in making changes to the Rules. The current timescales for assessing a change proposal thoroughly, providing a subsequent decision, and developing IT system changes to reflect the changes place significant burden and risk on market participants, Delivery Partners, and Ofgem. In addition, it has become increasingly difficult to implement system changes prior to the subsequent Prequalification Window, particularly where these changes are substantial.

It has become clear from our own internal review and comments received from industry that the change process would benefit from several improvements such as formalising internal roles and responsibilities in the process and incorporating greater industry involvement in evaluating change proposals.

In summary we are proposing to:

- Increase industry engagement with the formation a 'CM Advisory Group'' comprised of industry stakeholders to assist in developing, scrutinising, and scoping potential proposals before they are submitted to Ofgem for decision.
- Clarify the classification of urgent and non-urgent proposals, with amended associated timelines.
- Decouple the timeline of the Rules change process from the Auction cycle, ensuring amendments are more deliverable, and where appropriate delaying implementation of amendments.
- Increase the length of the window to submit proposals and to clarify key milestones in the change process
- Require justification of all Rules change proposals against the relevant original CM objectives.

The responses we receive to our minded-to positions and our consultation questions herein will inform a further consultation to amend our Rules change process guidance.

Questions

Question 4: Do you have any views on whether the proposed membership of the CM Advisory Group is appropriate, the form of participation from industry, along with any further points regarding meeting frequency and function?

Question 5: Do you believe the proposed framework and function of the CM Advisory Group is appropriate and would better facilitate the efficient operation of the CM Rules change process?

Question 6: Do you have any feedback on our proposal to move to an 18-month implementation timescale; consulting on rule amendments which would subsequently be implemented the following Delivery Year?

Background

2.1. The annual Rules change process has continued to increase in duration, complexity and difficulty of implementation as a result of enduring industry interest in making changes to the Rules. It has become clear from our own internal review and comments received from industry that the change process would benefit from several improvements such as formalising roles and responsibilities in the process, providing greater clarity over timelines, increasing transparency, and seeking further industry involvement when evaluating change proposals.

2.2. The responses we receive to this section will inform a further consultation to amend our Rules change process guidance in summer 2019.

2.3. The effective operation of the Rules is vital in ensuring that the CM functions efficiently. To enable effective operation of the Rules, the process to amend the Rules must also be efficient and must have market confidence.

2.4. We have considered a variety of options for reforming the Rules change process. We believe that in all instances we should still retain our decision-making power over amendments to the Rules. The Regulations set out that the Authority has the power to make capacity market rules and, as a result, we do not believe it is appropriate to delegate that power to any other body.

Stakeholder responses

2.5. 22 of the 24 responses we received to our open letter addressed the governance arrangements of the Rules. All of these suggested some reforms to our Rules change process, though most agreed that Ofgem should retain the decision-making power to ensure that the needs of all participants are adequately taken into account. Many of these respondents also suggested, however, that greater stakeholder involvement throughout the process could lead to better and more efficient decision-making.

2.6. Many respondents expressed concern at the ability of the process to adapt the CM to wider market trends, such as the emergence of unsubsidised renewables, and changes to other markets such as amendments to the Balancing and Settlement Code ("BSC"). Several respondents noted that there is an inherent conflict between a dynamic process able to deliver urgent changes and the need for certainty in developing large IT changes. In previous years we have consulted on changes to the Rules in March, some of which then come into effect in the July. We recognise that this timescale means that stakeholders have little information on our policy-making from July to the subsequent March. We also recognise that the current alignment of publishing the decision document in July means Delivery Partners have to either develop IT systems changes at risk to be able to implement them ahead of the Prequalification Window, or those changes have to be delayed for a year.

2.7. We have received feedback from stakeholders that the change process would benefit from moving towards a code governance approach, including by implementing an open and rolling governance approach with a delegated Panel making recommendations to Ofgem for approval. However, we do not believe it is appropriate to move entirely to a code governance due to the potential for bias against smaller participants who may not have the sustained resources to commit to such a process. We would instead like to draw key ideas from both our current process and from code governance.

2.8. Stakeholders noted that the current change process only allows change proposals to be made within a specific window to be eligible for that year's process and that industry does not get an initial insight into submitted proposals, which could allow them to play a 'critical friend' role. Some stakeholders called for a more transparent approach, allowing for change proposals to be published throughout the year without immediate resolution to encourage further development of proposals within industry or even encourage submission of counter proposals. We agree that further facilitating industry involvement into the current framework would serve to reduce the number of repetitive rule change proposals and result in them being further developed prior to submission to Ofgem for decision.

2.9. We believe it is in the interest of the process to incorporate greater industry participation like that employed in code governance. However, we believe it is in the interest of the efficient operation of the CM to keep the volume of change and speed of processing and implementing that change from our existing process. A revised approach on this basis would allow the Rules change process to remain dynamic and capable of adapting to changing market conditions, but would also increase transparency and engender a more consultative approach to policy-making.

2.10. Stakeholders also highlighted the difficulties that code governance is facing in regard to eligibility to propose changes, resourcing, and the principle of fair market-wide representation. These are difficult issues that are broader than reform of Rules governance arrangements but we aim to ensure that our proposed new approach takes these areas into consideration.

Proposed amendments

2.11. In view of these responses from stakeholders, we have identified five high level proposed amendments to the Rule change process. These are listed below and discussed in detail in this section.

2.12. Although we aim to seek initial views on the proposed revisions to the Rules change process in this document, a separate consultation will follow in summer to further develop the proposals. This will outline the more detailed aspects of the following proposed amendments below;

2.12.1. We propose to form a 'CM Advisory Group' comprised of industry stakeholders to assist in developing, scrutinising, and scoping potential proposals before they are submitted to Ofgem;

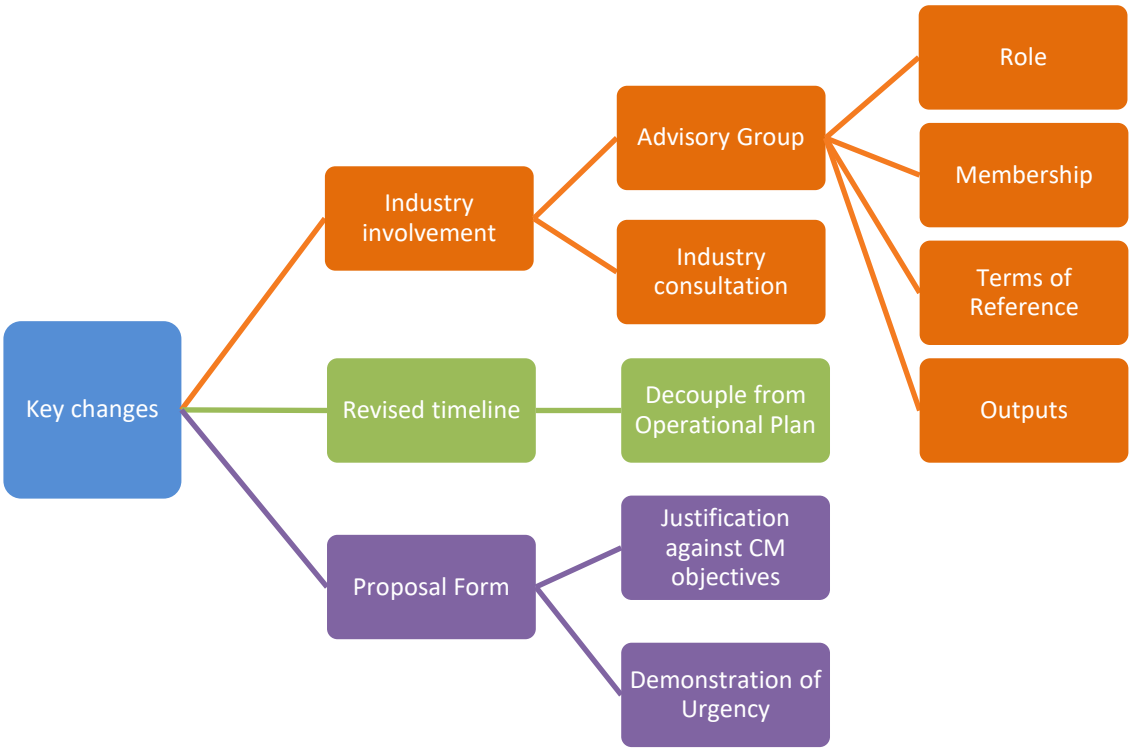
2.12.2. We propose to clarify the classification of urgent and non-urgent proposals with amended associated timelines. We will also increase the transparency of assigning urgency status to each proposal;

2.12.3. We propose to decouple the timeline of the Rules change process from the Auction cycle by delaying implementation on amendments by a year. This will give greater certainty over the applicability of the Rules for Prequalification. It will also give greater certainty to NGESO and ESC in developing IT solutions to implement amendments;

2.12.4. We propose to increase the length of the official window to submit proposals and to clarify key milestones in the change process; and

2.12.5. We propose to require justification of all Rules change proposals against a set of objectives covering those of the original wider EMR programme where appropriate and also the objectives of the Authority in making changes to the Rules as set out in Regulation 78.

2.13. The diagram below represents the key areas of the Rules change process that we aim to address, with this consultation setting out our initial minded-to position.



CM Advisory Group

2.14. Our intention is to incorporate the CM Advisory Group to act as a first stage of assessment prior to any proposal being formally included in Ofgem's consultative process. The group should be responsible for both evaluating proposals submitted by industry as well as proactively considering possible amendments.

2.15. As part of the evaluation process, we would expect the CM Advisory Group to consider risks in implementing the proposed changes, with NGESO and ESC also presenting assessments of the impact of implementation on their IT systems, along with any resource implications. This would increase transparency by allowing members of the CM Advisory Group and wider industry to provide peer review of the IT systems impact assessments and implementation timescales put forward by the Delivery Partners.

2.16. The CM Advisory Group should be responsible for assisting the Authority in ensuring that changes to the Rules are consistent with achieving the CM objectives in a transparent, economic, efficient, and non-discriminatory fashion. To facilitate this, we are also proposing to update the change proposal form to require justification by the proposer against the relevant CM objectives.

2.17. The CM Advisory Group should periodically review submitted proposals, assist proposers in drafting amendments, and make associated recommendations to the Authority. We are minded to convene the group on a monthly basis for this purpose. The CM Advisory Group should also impact assess proposed changes through means of publishing proposals for

industry comment to gain wide consensus for proposals ahead of submission to the Authority. This should again ensure that smaller entities who may not have the resources to commit to detailed consultation responses or regular meeting attendance have an equal opportunity for their viewpoint to be put forward.

2.18. We will also expect the CM Advisory Group to publish an 18-month forward plan for proposed Rules changes. The benefit of such a plan was raised by several stakeholders in response our open letter and we believe, combined with the ability of the CM Advisory Group to scrutinise implementation timescales proposed by the Delivery Partners, that this will enhance transparency and industry engagement in the Rules change process as a whole. This would allow industry to better understand the future change pipeline and where appropriate plan ahead of any forthcoming amendments.

2.19. In order to ensure that market participants' expertise can be utilised we propose the CM Advisory Group to be composed of industry experts to develop policy. We believe that membership of the group should reflect the composition of the market so as to ensure all views are fairly represented. Stakeholders noted that we should be conscious of the full spectrum of CM participants when reviewing the Rules change process, along with any unintended introduction of bias, which could reduce competition and possibly reduce access the CM for certain participants with less resource to commit. We understand that if greater responsibility in assessing the value of proposed amendments is given to industry, the revised process should not favour parties with increased resource availability and market experience.

2.20. We are proposing a core membership of the following, with Ofgem acting as chair:

2.20.1. Ofgem (chair)

2.20.2. NGESO as the EMR Delivery Body

2.20.3. BEIS

2.20.4. ESC

2.20.5. Industry-nominated parties (including trade associations)

2.21. Although we have proposed the composition of the CM Advisory Group, the above is still open for further consideration and we welcome further stakeholder views. It should be noted that we will consult on our Rules change process guidelines later this summer and we will further develop the key aspects of the advisory group including its terms of reference, membership and industry nomination process, along with the roles played by the NGESO and ESC.

Question 4: Do you have any views on whether the proposed membership of the CM Advisory Group is appropriate, the form of participation from industry, along with any further points regarding meeting frequency and function?

Question 5: Do you believe the proposed framework and function of the CM Advisory Group is appropriate and would better facilitate the efficient operation of the CM Rules change process?

Timeline

2.22. The current timescales for assessing a change proposal thoroughly, providing a subsequent decision, and developing IT system changes to implement the amendments place significant burden and risk on market participants, NGESO, and ESC. It has become increasingly difficult to implement system changes prior to the nearest Prequalification window, particularly where these changes are substantial.

2.23. The key benefit of our proposed new approach could be that changes can be developed at a different pace depending on their complexity – rather than being restricted to the very short timescales before the next delivery year as is currently the case.

2.24. Although we already accommodate the submission of urgent proposals, we propose to clarify the classification criteria of urgent and non-urgent proposals and the corresponding timelines. This will help to increase the transparency of the Rules change process, give more opportunity for consultation and involvement by industry, and give greater certainty about the application of the Rules for a Prequalification Window.

2.25. We propose to allow more time for NGESO and ESC to develop system solutions once Rule changes are finalised by consulting on changes at least twelve months prior to the Delivery Year for which they are intended. This should provide more certainty over the application of the Rules and therefore reduce risk in IT and systems development for Delivery Partners. This proposed timeline aligns with our overall goal of decoupling the Rules change process from the Prequalification process to facilitate more effective delivery of change.

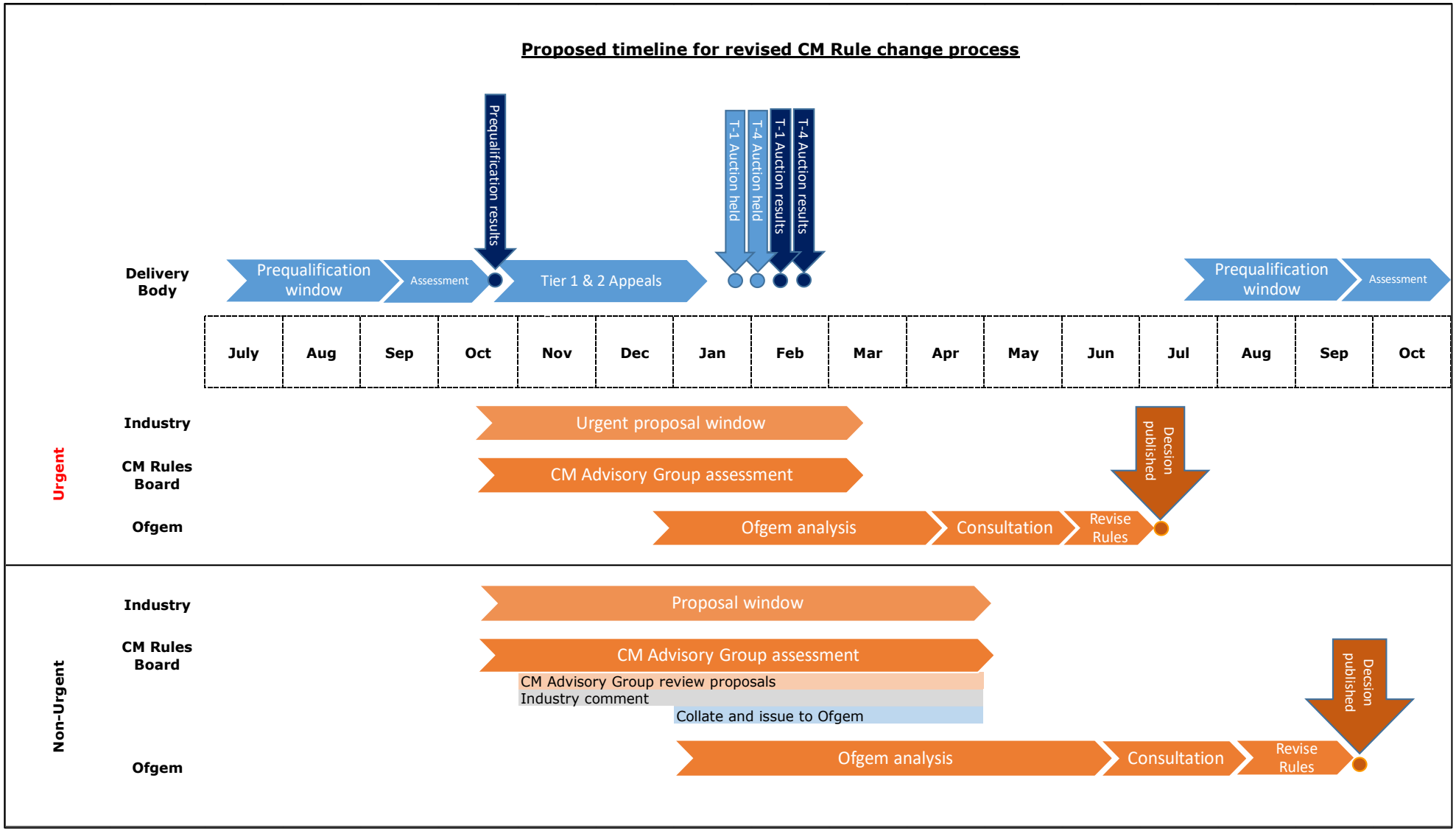
2.26. For urgent changes, we propose that the process will take an approach whereby the annual cut-off date for proposals to be submitted for that year's changes is a soft deadline in January, with further urgent changes raised being looked at on a case-by-case basis. For non-urgent changes the proposals window would run from October to March; Ofgem's decision to amend the Rules would be made in September, and the changes would be implemented ahead of the following year's Prequalification Window. In the aforementioned future consultation, we aim to further outline what criteria are examined against when a proposal is deemed urgent.

2.27. The process timeline has been drafted to encourage early submission of proposals in the relevant window and remove the pressure of a final deadline. We propose that the CM Advisory Group will meet monthly during this window and will assess and analyse proposals as they are submitted. This should remove past peak workloads that have occurred following the submission of a significant proportion of proposals at the deadline.

2.28. The flow diagram on the following page outlines the proposed timelines for the revised Rule change process. Rules change proposals can still be submitted all year round as currently allowed but are not guaranteed to make it into that year's batch if they miss the soft deadline outlined. The revised change process timeline is shown overlaid with last year's CM operational timeline for reference.

2.29. It should be noted that we aim to clarify through our following consultation on the Rules change guidelines, the exact role, autonomy and outputs that both the Advisory Group and Ofgem will hold against a clear set of parameters.

Question 6: Do you have any feedback on our proposal to move to an 18-month implementation timescale; consulting on rule amendments which would subsequently be implemented the following Delivery Year?


Proposed timeline for revised CM Rule change process
Prequalification results
T-1 Auction held
T-4 Auction held
T-1 Auction results
T-4 Auction results
Delivery Body
Prequalification window
Assessment
Tier 1 & 2 Appeals
Prequalification window
Assessment
July
Aug
Sep
Oct
Nov
Dec
Jan
Feb
Mar
Apr
May
Jun
Jul
Aug
Sep
Oct
Urgent
Industry
Urgent proposal window
CM Rules Board
CM Advisory Group assessment
Decsion published
Ofgem
Ofgem analysis
Consultation
Revise Rules
Non-Urgent
Industry
Proposal window
CM Rules Board
CM Advisory Group assessment
CM Advisory Group review proposals
Industry comment
Collate and issue to Ofgem
Decsion published
Ofgem
Ofgem analysis
Consultation
Revise Rules

3. Section 3: Regulatory burden - Prequalification

Section summary

The Prequalification process is complex and certain requirements therein place high levels of administrative burden on Applicants. Some requirements could therefore inadvertently form a barrier to participation and thus limit available capacity. Streamlining the Prequalification process could reduce the administrative complexity and costs associated with it, breaking down any barriers to entry and injecting further liquidity into the CM.

In addition to the amendments we are proposing to remove data submission requirements and planning consents at Prequalification, we are aiming to use this consultation to initiate further work to simplify the Prequalification process as a whole. Our goal is to reduce regulatory and administrative burden for applicants by removing requirements that do not provide essential assurance for the CM. This should result in an easier process for participants and, in particular, enable them to carry over Applications for Prequalification from previous successful Prequalification rounds into later Prequalification Windows.

Questions

Question 7: Do you have any views on the proposed process, the implications of the change to the Prequalification procedure and whether it would be a positive change in removing an administrative burden?

Question 8: Do you believe the current length of the Prequalification window is appropriate and if allowing Prequalification submissions to take place throughout the year would be beneficial?

Question 9: Do you have any feedback on the options presented in relation to the submission of planning consents and if there are any alternative options that we have not yet considered?

Question 10: Do you have any feedback on the amendments to the Prequalification data items listed in Table 1?

Background

3.1. The Prequalification process is complex and certain requirements therein place relatively high levels of administrative burden on Applicants and some requirements could inadvertently form a barrier to participation and thus limit the available capacity. We have received comprehensive feedback from stakeholders noting the burden of Prequalification and the complexity of the Prequalification requirements. Respondents noted that having only one opportunity to make sure all submitted data is correct creates a significant risk of failure. They did, however, note the crucial delivery assurance that the Prequalification process provides.

3.2. We note the risk of failure in Prequalification highlighted by stakeholders and we agree that the administrative burden and corresponding fail rate should be reduced where possible. We note that the number of applications has increased significantly over the last five years and NGESO now receives four times the number of applications than when the scheme was first implemented. This has caused challenges for systems.

3.3. This consultation outlines a forward plan of work to streamline Prequalification. This will be designed to promote liquid Auctions whilst still providing necessary delivery assurance.

Stakeholder responses

3.4. 14 respondents directly addressed the Prequalification process in their responses to our open letter. These responses broadly agreed that Prequalification should be simplified and streamlined where possible and that the current process creates an excessive risk to applicants. These respondents have identified issues in the Rules as responsible for some of this complexity. The issues identified surround submission of information, which appears to have no clear assurance purpose and yet under the current framework would result in an application failure such as information related to metering arrangements. Stakeholders argue that the Portal used for submission of Applications for Prequalification is not fit for purpose. They highlighted the portal should have an increased number of automated checkpoints embedded within the application process, along with further data validation to remove the likelihood of administrative errors.

3.5. Several respondents argued that we should reduce the unnecessary complexity of Prequalification to remove barriers to entry, diminish the risk of failure for applicants, promote greater participation, increase liquidity and competition in the Auctions, and thereby seek to drive a lower clearing price to the benefit of consumers.

3.6. Respondents highlighted that there are several current Prequalification requirements, including the ones listed in Table 1 located at the end of this section, which place an unreasonable administrative burden on applicants. They argued that these requirements could be fulfilled in the agreement management process or could be removed entirely as they appear to provide little delivery assurance. Stakeholders suggested that reducing the complexity of Prequalification requirements could lead to an increase in successful Applications for Prequalification and therefore to a potential increase in auction liquidity.

3.7. Several stakeholders raised the difficulty of having to complete the Prequalification process even where it has been completed for the same CMU in previous years. These stakeholders suggested that applicants should be able to "roll-over" an Application for Prequalification from one Delivery Year to the next where nothing has changed to this CMU since its last successful Prequalification. This would transfer all CMU application details and allow NGESO to focus on any information that has materially changed since the previous application year.

3.8. We aim to reduce the burden of Prequalification both through changes proposed in this consultation to reduce the risk of failure for applicants where it can be avoided. We also plan to initiate a longer-term work programme to reduce Prequalification to the minimum required for delivery assurance on the basis of the questions posed here.

Proposed amendments

Evergreen Applications for Prequalification and rolling Prequalification

3.9. Stakeholders highlighted the burden of having to undergo the full yearly Prequalification process even where the material details of their application have not changed from previous application years. We agree that re-submission of the application on an annual basis is an unnecessary administrative burden which incurs an annual risk of failure due to clerical or data entry errors.

3.10. We believe it would be beneficial for the EMR Delivery Body Portal to have the functionality to roll forward existing CMUs and allow re-submission of previous applications in situation where there have been no material changes to a CMU. We believe this should be accompanied by a portal checkbox and an associated directors' declaration form that there been no material change in the relevant information of the CMU. The copied application would also have to be accompanied by new exhibits because these are application year–specific.

3.11. A proposed outline of the revised Prequalification process for returning applicants would be as follows:

3.11.1. The applicant opens a new application for a CMU which has previously Prequalified and opts to have the portal copy the most recent previous application. The portal allows the applicant to replace the relevant data where necessary;

3.11.2. The applicant submits new application year–specific exhibits and a new directors' declaration certifying that the material circumstances of the CMU have not changed;

3.11.3. NGESO assesses the application on the same basis as in previous years and performs its usual checks on the associated documents and exhibits.

3.12. To ensure effective delivery this change will not be implemented for the coming Prequalification Window but this proposal and the questions below will be used to inform future amendments to address the current limitations of the Prequalification procedure.

3.13. Respondents to our open letter also suggested a rolling Prequalification period. The Portal would be open for a considerably longer period of time to allow applicants to submit Applications for Prequalification at any time before the end of the formal Prequalification Window.

3.14. We believe there may be merit to adapting to a longer period for submitting Applications for Prequalification in the longer term. Our move to an 18-month Rules change process should help to facilitate this by decoupling the implementation of Rules from the opening of the Prequalification Window.

Question 7: Do you have any views on the proposed process, the implications of the change to the Prequalification procedure and whether it would be a positive change in removing an administrative burden?

Question 8: Do you believe the current length of the Prequalification window is appropriate and if allowing Prequalification submissions to take place throughout the year would be beneficial?

Planning consents

3.15. We have been made aware of the potential long lead times associated with securing Relevant Planning Consents. Although the process to obtain planning usually begins well in advance of the Prequalification Window, there could be instances whereby an unexpected delay to the receipt of planning, which is potentially outside an Applicant's control, could lead to capacity being precluded from participating in the Auctions. Currently the provision exists in Rule 3.7.1(a) that allows an applicant to defer Relevant Planning Consents to 22 Working Days before the relevant Auction, however with the planned implementation of CP190 this deferral was set to be removed.

3.16. We chose to implement CP190 in our decision on the Rule changes in 2017 because we believed that as the CM becomes more established Applicants will be able to plan sufficiently ahead of time to have secured Relevant Planning Consents by the Prequalification Window. We argued that this is particularly the case as the timing of the Prequalification Window becomes standardised from year to year. We also believed that the ability to defer Relevant Planning Consents to 22 Working Days before the relevant Auction has resulted in a number of applications which have then been withdrawn when Planning Consents were not secured.

3.17. We delayed the implementation of CP190 by one year to give applicants time to adjust their planning application processes accordingly. However, at that time, we did not consider the length of the process for larger projects seeking a Development Consent Order ("DCO"). A DCO typically takes 18 months to two years to complete, which means that even with approximately two years of lead time, applicants may be at risk of being unable to secure planning in time for the next Prequalification Window. In order to remove barriers to entry and promote entry in the next Prequalification Window, we are minded to address this issue.

3.18. We received various opinions from stakeholders highlighting potential solutions regarding planning consents and the assurance it provides. In our opinion, as we aim to make more substantive changes to the planning submission framework in the near future, we are proposing to halt the coming into force of the end of the deferral option for planning consents (CP190). We intend to undertake a wider assessment of the submission of planning consents and present a range of options below, on which we would welcome stakeholder feedback.

3.19. We outline below our wider thoughts on the submission of planning consents and are considering the following three options, with our leading option as the first one presented below. The main difference between the options being that the first one simply addresses the issue providers have with DCOs, whilst the second addresses the requirement to provide planning consents at Prequalification as a whole. We believe that a balance needs to be struck between the necessary delivery assurance for projects and not creating undue barriers to entry. The options we are considering are as follows:

3.19.1. **Option 1:** Remove the requirement to provide planning consents at the Prequalification stage but rather submit a declaration that states that the project will have the relevant planning consents by the time of the Financial Commitment Milestone ("FCM"). Proof of planning consents would then subsequently be uploaded before the FCM. We believe the FCM would be the most prudent deadline for this requirement as it provides enough assurance for subsequent capacity to be procured in the T-1 Auction if the CMU fails to submit the relevant planning consents and faces termination. This option relies on the robust penalty and termination framework to provide the relevant assurances.

3.19.2. **Option 2:** Enable Applicants who have applied for a DCO in respect of a New Build CMU and completed the examination stage to defer the provision of its

Relevant Planning Consent until after the Prequalification window. This is provided that the decision of the Secretary of State will be received no later than 22 Working Days prior to the commencement of the first Bidding Window in relation to such Auction.

3.19.3. **Option 3:** Keep the status quo, following CP190, which amends Rule 3.7.1 to remove the option for Applicants to defer provision of Relevant Planning Consents until after Prequalification. This would take effect from 2020 onwards to account for any larger projects which were seeking a DCO at the time of our original decision on CP190.

Question 9: Do you have any feedback on the options presented in relation to the submission of planning consents and if there are any alternative options that we have not yet considered?

Submission of data items at Prequalification

3.20. NGESO collects data which validates eligibility for the Auctions and provides necessary assurances regarding the viability and feasibility of prospective New Build CMUs and Existing CMUs to participate. It has been noted that there should be a more staggered approach as not all information needs to be submitted immediately at Prequalification. We propose to allow a number of requirements to be provided at a later period in the lifetime of an agreement or remove the requirement in its entirety from Prequalification if it does not clearly enhance assurance.

3.21. Streamlining the Prequalification process will in theory reduce the administrative burden on both NGESO and the Applicant, breaking down any potential barriers to entry, with the potential to increase the number of successful Prequalification Applications. This should inject further liquidity into the CM and therefore reducing the cost to the end customer.

3.22. Table 1 below highlights the amendments we are proposing to the Prequalification process in terms of submission of data and information. We are proposing to either remove or delay data items submitted at Prequalification. We are proposing to entirely remove the requirement to submit those items labelled with [Remove]. We are proposing to delay the submission of data items marked with [Delay] until the agreement management process. This will include, for example, the opportunity to submit metering details as part of the metering assessment.

Question 10: Do you have any feedback on the amendments to the Prequalification data items listed in Table 1?

Metering information

3.23. The items we intend to urgently delay from Prequalification are largely related to metering details. These are used by ESC, the Settlement Body, to support Meter Testing and the Aggregation rule process and are required to be submitted during Prequalification, though applicants have an option to defer. This requirement potentially complicates Prequalification as applicants may change their metering arrangements in the time between Prequalification and the Delivery Year and thus it could be more efficient and appropriate to contain the requirement to submit metering information as part of the Metering Assessment and Metering test stage. This should simplify the Prequalification process and avoid amendments if an applicant changes metering arrangements between Prequalification and the Delivery Year.

3.24. In relation to the items marked with the proposed action of delay below, applicants will still be able to submit this information at Prequalification but they will also have the option to defer submission until the later stage. As a result, failure to submit one of these items would not result in the application failing at Prequalification. We believe that this aligns with our overarching goal of attempting to reduce the burden of Prequalification.

3.25. NGESO will publish guidance on Prequalification which will reflect the below amendments so that applicants are aware of the option to submit this information at a further stage in the overall process.

3.26. As outlined in Table 1 below we propose to postpone the requirements to submit metering data in Rule 3.6.4 for Existing Generating CMUs, Rule 3.6A3 for Existing Interconnector CMUs, Rule 3.9.4 for Proven DSR and Rule 3.10.2 for Unproven DSR, each to the Metering Assessment stage.

Table 1: List of Prequalification requirements that we are proposing to remove or delay to the agreement management process

Change	Rule	Description	Proposed action
Secondary Trading details	3.4.1(c)(ii)	We believe these details are not a necessary requirement of Prequalification. Failure to submit these details should not result in a Prequalification failure.	**[Delay]**
MPAN/MSID Meter ID	3.4.3(a)(ii)	As above, we believe this should be able to instead be submitted in a period prior to the commencement of the Delivery Year.	**[Delay]**
BMU/Component ID	3.4.3(a)(iii)	As above	**[Delay]**
Metering Arrangements	3.6.4 (Existing Generating CMU) 3.6A3 (Existing Interconnector CMU) 3.9.4 (Proven DSR) 3.10.2 (Unproven DSR)	Our position is to move this requirement to a period prior to the commencement of the Delivery Year (the metering assessment stage).	**[Delay]**
Interconnection Licence	3.4.1(ea)	We are minded to remove this requirement; a similar requirement has already been eliminated for Generators.	**[Remove]**
Technical Specifications	3.6B.1(a)	We are also minded to remove this requirement as this information is only provided by Interconnector CMUs and it not critical to delivery assurance .	**[Remove]**
Forecasted Technical Reliability	3.6B.1(c)	Our opinion is that this information provides no crucial assurance and it could	**[Remove]**

		be deemed that this is already defined by the De-rated capacity. We are therefore minded to remove this requirement.	

4. Section 4: Regulatory burden – Reporting requirements

Section summary

Rule 12.2.1 currently requires a progress report to be submitted no less frequently than every six months from 1 June following the awarding of the Capacity Agreement, until completion of the Substantial Completion Milestone ("SCM") or if a Non-completion Notice is ordered. If there is a material change present in the information submitted as part of the most recent progress report, an assessment from an Independent Technical Expert ("ITE") must also be presented. ITE assessments must also be submitted alongside several other reports, such as that related to the FCM, any remedial plan associated with the SCM, Extended Years Criteria and also the report associated with deviation in the Long Stop Date.

We understand that the cost of procuring an ITE assessment is substantial and in many cases is a fixed sum regardless of project size. The need to potentially contract this service multiple times throughout the course of a project timeline could be disproportionally affecting smaller projects bidding in to the CM, as the cost of contracting with an ITE appears to remain constant. There appears to be a need to reduce the regulatory burden on capacity providers by streamlining the framework for monitoring prospective capacity.

We are proposing amendments to simplify and reduce the cost of participating in the CM. To do this we are proposing to remove the requirement to submit regular progress reports and contract an ITE to validate construction reports and those related to certain delivery milestones.

Questions

Question 11: Do you believe that removing progress reports and the associated ITE assessments in all cases except those outlined, alleviates the regulatory and administrative burden, while still providing the necessary levels of assurance?

Background

4.1. New Build CMUs are required to provide a series of reports related to key project milestones and any changes to construction timelines. These reports must be validated by an ITE. We understand from responses to the open letter that these reports are resource intensive because they place an unnecessary administrative burden on participants. We have also understood that the cost of procuring an ITE can also be prohibitively expensive relative to overall project costs. It is speculated that these associated costs could also be driving inefficient bidding in the Auctions to the detriment of consumers.

4.2. We believe that some of these reporting requirements are over cumbersome and that it is not clear what level of assurance to the CM these elements provide. Below we consider the current requirements placed on providers and the possible inefficiencies they introduce. We request views on whether the requirements present a significant administrative burden and whether an alternative approach would be better.

Stakeholder responses

4.3. One response to our open letter commented directly on the excessive burden and cost of the requirement for ITE Assessments. This respondent particularly commented that they have found the cost of contracting an ITE to be a constant rate and that this therefore affects smaller projects disproportionately. Further stakeholders commented on this at our stakeholder event in November 2018 and suggested that the delivery assurance that the ITE assessments provide may not offer sufficient benefit to justify its cost.

4.4. Rule 12.2.1 requires a progress report to be submitted no less frequently than every six months from 1 June following the awarding of the Capacity Agreement until completion of the SCM or if a Non-completion Notice is ordered. If there is a material change from the most recent progress report, an assessment from an ITE must also be presented. Depending on project timelines, an additional report similar to the aforementioned progress reports is required to be submitted to the NGESO three months and nine months after the Auction. Stakeholders have also highlighted that they would welcome clarity on the definition on what corresponds to a material change of a subsequent progress report.

4.5. We propose to eliminate the requirement for all progress reports to be submitted and in conjunction with the changes we are proposing to the ITE reports set out below, we believe this will deliver the assurance required. This change will reduce regulatory burden, and help the Rules better meet their objective of incentivising further investment in capacity.

Proposed Amendments

4.6. To encourage further investment in capacity, we propose to reduce the regulatory burden on applicants who are mandated to procure the services of ITEs. We do not believe that the high cost of these ITE assessments is justified by the delivery assurance that they provide.

4.7. We considered introducing a threshold project size above which ITE assessments would continue to be required, but we believe that this could be inappropriate discrimination and compromise the technology neutrality of the CM. Instead, we are minded to remove the requirements for submission of progress reports and associated ITE assessments for all providers. We propose to replace this with a requirement on participants to submit a company directors' declaration to inform NGESO of any material changes to the project timeline or to Construction Milestones as submitted at Prequalification.

4.8. We also aim to also increase clarity on what constitutes a material change.

4.9. We propose to keep the requirement for an ITE assessment for any remedial plan associated with the SCM and with the FCM, along with any report associated with Total Project Spend and the Long Stop Date.

4.10. The full set of amendments to the Rules can be found in Annex A.

Question 11: Do you believe that removing progress reports and the associated ITE assessments in all cases except those outlined, alleviates the regulatory and administrative burden, while still providing the necessary levels of assurance?

5. Section 5: Secondary trading arrangements

Section summary

We convened an industry working group to consider the whether the Secondary Trading arrangements are fit for purpose. The goal of the working group was to develop a secondary trading mechanism that meets the CM objectives, maximises participation and competition, and ensures that simple, fair, and transparent Rules are in place.

This working group then presented proposals and ideas to help redefine these arrangements and amend the Rules. This section considers the discussions of the workgroup and any proposals that were subsequently submitted to Ofgem. We believe further work is needed in this area and have posed questions below to collect industry feedback on several aspects of the secondary trading arrangements.

Questions

Question 12: Do you have a view on which of the sub paragraphs of Rule 9.2.6(d)(i) – (ix) should only apply to Eligible Secondary Trading Entrants and which to the other categories of Acceptable Transferees?

Question 13: Is it appropriate to allow all parties who have prequalified for the CM for that year to become prequalified for secondary trading? Are there any unintended consequences?

Question 14: What form should a register of Acceptable Transferees take? How should it be populated? And who should be responsible for maintaining it?

Question 15: Do you agree that it would be desirable to allow obligations to be traded between parties in amounts greater than or equal to 0.5MW?

Question 16: Do you believe the current time period of five Working Days before the date of the trade by which applicants must submit a request to trade is appropriate or should this period be reduced? Do you have any suggestions on a revised length of this period?

Question 17: Do you believe that the current period of three months in which NGESO have to notify a Secondary Trading Entrant of the Prequalification decision is appropriate or do you feel this should be shortened? Do you have any suggestions on a revised length of this period?

Question 18: Do you agree with adding a provision for the time frame over which NGESO must respond to requests for a trade?

Question 19: Do you think it is appropriate to extend the defined trading window to the results day of the T-4 Auction for the relevant Delivery Year?

Question 20: Does it continue to be appropriate for Transferors to be required to meet their SCM prior to engaging in trading?

Question 21: Does it continue to be appropriate for Transferees to be required to meet their SCM prior to engaging in trading?

Question 22: How should we address the risk of a trade being withdrawn where a Transferor is terminated after a trade has been registered?

Question 23: How should we address the transfer termination risk where a partial or full Capacity Agreement is traded for part of, or the entire duration of a Delivery Year?

Question 24: Are there any amendments that could be made to the SPD framework following a secondary trade, specifically relating to partial agreement trades?

Background

5.1. Our open letter addressed the secondary trading framework as a priority area for this Five Year Review. This was the result of a number of Rules change proposals concerning secondary trading in previous years. We considered several proposals as part of our 2018 Rules change process and opted to defer them to be able to consider secondary trading more holistically.

5.2. 18 respondents to our September open letter mentioned secondary trading as a key area needing improvement. The responses focused on similar themes to the working group, namely the need for increased liquidity in the secondary trading market; eligibility for participation; Satisfactory Performance Day ("SPD") and termination arrangements; and timescales surround NGESOs processes.

5.3. To try to develop industry consensus on the necessary reforms, we convened a working group in October to consider existing barriers and what changes could be made to the framework over both the short and longer term. The goal of the working group was to develop a secondary trading mechanism that meets the CM objectives, maximises participation and competition, and is governed by Rules that are simple, transparent and fair

5.4. It should also be noted that attendees highlighted that further work may need to be done on the secondary trading framework and suggested areas which should be part of any future work stream including creation of a separate secondary trading platform and investigation into the penalty regime.

5.5. Stakeholder feedback suggests that the existing secondary trading framework does not adequately promote a liquid secondary trading market because it contains barriers to entry. These barriers include requiring a complex process for participation, because the processes required to complete trades take too long to allow effective obligation management, and because trades do not currently adequately transfer obligations and risks between Transferor and Transferee.

5.6. The working group considered proposals to redefine secondary trading arrangements and amend the Rules. On the basis of this we established four themes for discussion:

5.6.1. **Eligibility.** Changes to simplify and reduce the requirements for becoming eligible to receive a trade and for clarification of which Rules apply to which type of application. The working group also proposed to establish a register of eligible and willing secondary trading participants;

5.6.2. **Barriers to trading.** Changes to the minimum trading threshold and to timescales, including to reduce the time which NGESO has to assess whether an applicant is eligible to engage in secondary trading (a suggestion was to move from three months to six weeks) and reducing the time NGESO has to accept or refuse a trade (again a proposal was discussed to move from five Working Days to two);

5.6.3. **Framework.** Changes to ensure that risks and obligations are adequately transferred with the transfer of an agreement. In particular, the working group proposed changes to ensure that the requirement to demonstrate SPDs and any termination risk is accurately transferred from the Transferor to the Transferee; and

5.6.4. **Transfer of risk and Satisfactory Performance Days.** Changes to ensure that termination risk and obligation to demonstrate SPD are transferred appropriately between the Transferor and Transferee following a trade.

5.7. This section reflects Ofgem's synthesis of the working group's discussions, further written submissions by members of the working group, and responses to our September open letter and subsequent discussions with BEIS.

Eligibility

5.8. Rule 9.2.6 sets out the eligibility requirements for participating in secondary trading. The working group agreed that the structure of Rule 9.2.6 is not sufficiently clear. This structure has now been addressed in Section 5 of the BEIS public consultation 'Proposals for further amendments to the Capacity Market'. BEIS intends to amend the Rule to clarify the policy intent: namely, that there are four categories of potential Transferees set out in paras (a) to (d), to which the relevant subparagraphs (i) to (ix) are applied by NGESO to assess eligibility as an Acceptable Transferee.

5.9. Therefore, Rule 9.2.6 provides that, for an Eligible Secondary Trading Entrant (paragraph (d)) to be considered an Acceptable Transferee, it must comply with subparagraphs (i), (ii), (iii) and (ix), as subparagraphs (v), (vii) and (viii) do not apply to paragraph (d) and subparagraphs (iv) and (vi) are now obsolete.

5.10. The working group proposed that the providers covered by Rule 9.2.6 (a), (b), and (c) should become Acceptable Transferees through a revised authorisation process by NGESO.

5.11. We believe that Rule 9.2.6 on eligibility needs further investigation to potential streamline the process, whilst still ensuring the necessary assurances are still in place for the relevant classes of applicant.

Question 12: Do you have a view on which of the sub paragraphs of Rule 9.2.6(d)(i) – (ix) should only apply to Eligible Secondary Trading Entrants and which to the other categories of Acceptable Transferees?

Acceptable Transferee

5.12. The working group further suggested that the list of automatic Acceptable Transferees should be extended to include any CMU that has Prequalified in any Delivery Year, providing it submits any additional information required to bring its application into line with the Delivery Year in question. This additional information would be the result of changing Prequalification requirements over time. We agree in principle that this would encourage further participation in the secondary trading market and should be considered further. We propose that this should be an alternative process to the one set out in Rule 9.2.6(d) and instead have a separate requirement to submit any data items that NGESO does not currently hold. We welcome industry views on how this could be implemented in the Rules.

5.13. The working group also identified the lack of freely available information concerning interested Acceptable Transferees as a barrier to an efficient and liquid secondary trading market. A register of Acceptable Transferees was suggested as a potential solution, either as an additional field in the Capacity Market Register ("CMR") or as a wholly separate register. CMUs which have gone through the process of becoming an Eligible Secondary Trading Entrant would also be added to this register.

5.14. We are proposing changes to Rules 7.4.1 and 7.5.1 in Section 6 that will include the Secondary Trading contact details for every CMU on the CMR, to align with current processes. This will be an interim step to facilitate more efficient secondary trading. However, this does not have the same result. We would like to therefore seek industry views on how such a secondary trading register could be implemented, including what form it should take and who should have responsibility for its maintenance.

Question 13: Is it appropriate to allow all parties who have prequalified for the CM for that year to become prequalified for secondary trading? Could there be any unintended consequences?

Question 14: What form should a register of Acceptable Transferees take? How should it be populated? And who should be responsible for maintaining it?

Barriers to trading

Minimum Trading Threshold

5.15. Under the Rule 9.2.4(a), a traded obligation must be at least equal to the Minimum Capacity Threshold ("MCT") which is 2MW, as defined in Regulation 15(4). It should be noted that this definition of MCT, as outlined in Regulation 15 relates to the general eligibility criteria to enable a CMU to Prequalify. Through use of this defined term in Rule 9.2.4(a), the Rules inherently prescribe that the traded obligation has to also be at least equal to the 2MW level. We seek industry views on whether it would be desirable to allow obligations to be traded in smaller amounts – potentially as small as 0.5MW – to help enhance liquidity in obligation trading. Given the small number of trades to date, we believe the additional administrative burden from managing such small-scale trades would

be acceptable when balanced against the benefit of improved flexibility in the secondary trading framework.

5.16. To clarify, the MCT, as it applies in relation to the general eligibility criteria for participation in the CM and as defined in Regulation 15(4), would remain as 2MW. The scope of the proposal is limited to obligation trading and would allow for amounts greater than or equal to 0.5MW to be traded between parties. This is subject to the requirement for the Transferor and Transferee to each hold a capacity obligation that is at least equal to the 2MW MCT both before and after the trade, except where the Transferor has transferred its full capacity obligation.

Question 15: Do you agree that it would be desirable to allow obligations to be traded between parties in amounts greater than or equal to 0.5MW?

NGESO's Timescales

5.17. The working group identified a number of administrative barriers that restrict secondary trading where two willing and able participants have indicated interest in trading. These relate to the timescales of NGESO's responses to applications by Eligible Secondary Trading Entrants and to trade requests, as governed by the current Rules.

5.18. Rule 4.9 gives NGESO three months to notify a Secondary Trading Entrant of the Prequalification decision following an application under Rule 3.13.1. The working group considered that this period is too long and that it potentially should be shortened and a proposal to shorten it to six weeks was discussed. We propose to monitor the flow of applications over time and reduce if necessary the length of this process to encourage more liquid secondary trading.

5.19. The working group also agreed that the timescales for registering a proposed trade under Rule 9.3.1(a) are too long and inhibit effective short-term obligation management. When two parties want to make a trade, Rule 9.3.1(a) requires that the trade request be submitted to NGESO five Working Days before the first calendar day of the related traded capacity obligation. The working group highlighted that it would be beneficial if this length of time could be shortened. We received a proposal from a workgroup attendee suggesting that this timeframe should be reduced to two Working Days. In parallel, we propose to amend Rule 9.3.1(b) to establish clear deadlines on NGESO to decide whether to accept or reject a registered trade and believe this should be in line with Rule 9.3.1(a).

5.20. Following the registration of a trade, Rule 9.3.3 states that a Transferee is not the Registered Holder until the CMR has been updated, which, as per Rule 7.5.1(p), can take up to five Working Days. This means NGESO can have accepted a trade and notified both parties without the Transferee officially becoming the Registered Holder. We propose that the Transferee should become the Registered Holder once confirmation of the trade has been received by the two parties involved, effective on the date of the notification pursuant Rule 9.3.1(b).

Question 16: Do you believe the current time period of five Working Days before the date of the trade by which applicants must submit a request to trade is appropriate or should this period be reduced? Do you have any suggestions on a revised length of this period?

Question 17: Do you believe that the current period of three months in which NGESO have to notify a Secondary Trading Entrant of the Prequalification decision is

appropriate or do you feel this should be shortened? Do you have any suggestions on a revised length of this period?

Question 18: Do you agree with adding a provision for the time frame over which NGESO must respond to requests for a trade?

Framework

5.21. The working group identified structural issues in the framework which may discourage the formation of a liquid secondary trading market.

Timing of trading

5.22. Rule 9.2.5(a) states that the transfer of a Capacity Agreement can only be effected after the T-1 Auction for the relevant Delivery Year. This limits trading to a short and potentially unpredictable period immediately before the commencement of the Delivery Year.

5.23. Capacity providers may experience significant changes to their commercial positions between the T-4 and T-1 Auctions and we do not believe it is appropriate to require them to hold a Capacity Agreement for several years only to trade it away immediately following the Auction Results Day for the T-1 Auction. This would also require them to ensure enduring compliance with the Rules, such as by holding Transmission Entry Capacity when not economic to do so. Having the opportunity to trade the obligation to another party will enable capacity providers to make appropriate commercial decisions while maintaining the integrity of the CM and long-term security of supply, as well as value for money for consumers.

5.24. We propose instead that this defined trading window be extended to the results day of the T-4 Auction for the relevant Delivery Year. BEIS has recently introduced Rule 16.4.2 to enable this on a temporary basis during the standstill period.[11] We think it is appropriate to introduce this change permanently.

Question 19: Do you think it is appropriate to extend the defined trading window to the results day of the T-4 Auction for the relevant Delivery Year?

Requirement to have fulfilled the Substantial Completion Milestone

5.25. Rule 9.2.5(a)(i) requires that Prospective Generating CMUs wishing to participate in secondary trading to have achieved their SCM. The working group suggested that this is an unnecessary restriction which is causing distressed capacity providers to be terminated instead of being able to transfer their obligations onto parties who are more capable of delivering against the obligation. We would like to seek further views on whether the

[11] BEIS published the Capacity Market (Amendment) Rules 2019, which came into force on 6 March 2019:https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/783554/The_Capacity_Market__Amendment__Rules_2019.pdf

current arrangements are suitable or instead do not promote efficient behaviour by New Build Generating CMUs which may be unable to meet their SCM.

5.26. However, we believe that removing the SCM requirement in 9.2.5(a)(i) could encourage speculative applications and bids in the Auctions with the goal of securing an agreement at a high clearing price and trading it away at the earliest opportunity. We are therefore seeking industry views on whether it remains appropriate to require a Transferor to have met its SCM prior to participating in secondary trading, whilst ensuring sure that payments are only being made to providers on the basis that they are providing security of supply. We would also like to seek industry views on whether it is appropriate to always require a Transferee to have met its SCM prior to trading for an agreement and, if not, what restrictions would need to be put in place to provide delivery assurance for a Transferee that has not yet met its SCM.

Question 20: Does it continue to be appropriate for Transferors to be required to meet their SCM prior to engaging in trading?

Question 21: Does it continue to be appropriate for Transferees to be required to meet their SCM prior to engaging in trading?

Transfer of risk and Satisfactory Performance Days

5.27. The working group identified two key risks to executing a trade; the first being related to termination risk and the second being how the specific obligation to demonstrate SPDs is transferred with the agreement.

Termination risk

5.28. Rule 9.2.3(b) governs a restriction on a transfer request when a Termination Notice is issued. Currently, if a transfer request is submitted and the Transferor is subsequently terminated before the relevant period of the transfer occurs, the transfer will not take effect. We do not believe that this is efficient: finding another party to take on an agreement rather than accepting the termination of the Transferor may be in the long-term interest of the CM, as it helps contribute to security of supply.

5.29. However, we believe that removing this provision would create a risk that any provider facing termination would seek to trade away its obligation, thereby avoiding termination fees whilst potentially being remunerated by the Transferee in the transaction. As a result, we would like to seek views from industry on how we might balance the risk of the trade being withdrawn due to the termination of the Transferor's Capacity Agreement and the requirement for Transferors to be held accountable for their capacity obligations.

5.30. The working group also voiced concerns over the current framework for the application of terminations where part of an obligation has been traded. Where the Transferor is terminated, a Transferee holding a partial obligation will also have its component of the agreement terminated. This provision does not apply where the entire agreement has been traded for the entire Delivery Year.

5.31. We believe that major change to this provision is inappropriate, as the Transferee has only taken on the obligation for a set amount of days as a result of the trade and has not taken ownership of the whole of the Capacity Agreement. The Capacity Agreement is

currently defined as the entire year and the framework does not allow it to be functionally separated into several corresponding shorter agreements. However, we believe that it may be desirable to consider whether relief could be provided in those situations where part of a Capacity Agreement is traded for an entire year. We would therefore like to seek stakeholder views on whether this would be appropriate and what mitigations would need to be put in place to avoid the potential risk of gaming.

Obligation to demonstrate Satisfactory Performance Days

5.32. The working group also identified the transfer of the obligation to demonstrate SPD in a trade as a current barrier to a more liquid secondary trading market. We believe that the amendments made by BEIS in Rule 9.5 address all possible trade situations and establish what SPD burden any Transferee or Transferor must bear.

5.33. We agree that the situation could be clarified by establishing, for example, that where a Transferor trades away a partial agreement for part of a Delivery Year, it only needs to demonstrate output of up to the partial agreement capacity for the SPD falling within that part of Winter.

5.34. We invite stakeholder response in relation to this issue and if there could be any improvement to the SPD framework following a secondary trade e.g. SPD obligations applying to trading parties in aggregate following a trade.

5.35. It should be noted however, that we do not believe it is appropriate for providers to use secondary trading as a mechanism by which to ease the burden of SPDs. We therefore maintain that the requirements in Rule 9.5 should endure to ensure that any provider participating in secondary trading faces an appropriate burden of SPDs following the trade.

Question 22: How should we address the risk of a trade being withdrawn where a Transferor is terminated after a trade has been registered?

Question 23: How should we address the transfer termination risk where a partial or full Capacity Agreement is traded for part of, or the entire duration of a Delivery Year?

Question 24: Are there any amendments that could be made to the SPD framework following a secondary trade, specifically relating to partial agreement trades?

6. Section 6: Other changes to the Rules

Section summary

This section contains discussion, proposed amendments and where appropriate, wider questions on the following areas:

- Settlement data flows
- Amendments to Rule 4.4.4 to facilitate greater flexibility for participants
- Data in the CMR
- Clarification of provisions relating to opting out at Prequalification
- Amendments to the ALFCO Formula
- Differentiating between firm and non-firm connection agreements
- Continuous improvements to the Rules

Questions

Question 25: Do you believe the options presented related to SPD data submission are suitable and are there any options we may not have considered in order to help mitigate the impact on capacity providers?

Question 26: Which aspects of a CMU configuration do you think should not be able to be amended following Prequalification?

Question 27: Is there any other data that would be useful to add to the CMR and why?

Question 28: How should the ALFCO formula be adjusted for Interconnectors when their output is affected by actions by NGESO?

Question 29: Should system to generator intertrips be included as a RBS in Schedule 4 to relieve providers of their obligations when affected by such an intertrip?

Question 30: How should we differentiate between firm and non-firm connection agreements at the Distribution level?

Question 31: How should Distribution-connected generators with non-firm connection agreements be de-rated to accurately account for their contribution in a stress event?

Background

6.1. The areas discussed in this section include those which have been raised by stakeholders in response to our open letter as well as previous change proposals submitted which we stated we would consider further. We are proposing areas of change to further reduce the regulatory burden that the Rules, on occasion, create for participants, along with facilitating flexibility into the Rules and increasing transparency of data available on the CMR.

Settlement data flows

Background

6.2. It has been brought to our attention that on occasions participants have experienced uncontrollable technical dataflow errors which have resulted in data not being submitted to ESC. This has caused capacity payments to be suspended because NGESO has not been able to ascertain that capacity providers have successfully demonstrated their SPD requirements.

6.3. Affected capacity providers have informed both NGESO and us that that the affected CMUs had successfully generated and met their de-rated capacities, with data sent to ESC and the Settlement Body. However, the dataflow was interrupted due to an issue between the Data Aggregator or Data Collector with whom a capacity provider has contracted for data collection and transfer, and the Settlement Body.

6.4. As a result, according to Rule 14.4.7, NGESO must send a payment suspension notice to the Settlement Body to cease CM payments. In some cases, this data flow issue has only been identified following the final cut-off date for SPDs to be demonstrated, leaving the capacity provider unable to rectify the problem. According to Rule 13.4.1ZA, capacity providers in this position must then demonstrate three additional SPDs in the summer.

6.5. Regulation 50 describes the process in circumstances where a capacity provider fails to demonstrate the required SPDs. In this case, the capacity provider will not be reimbursed for the payments they missed.

Proposed amendments

6.6. After engaging with NGESO and capacity providers who were affected by this dataflow issue, it has become evident that the root cause appears to be that the contractual arrangements between capacity providers and Data Aggregators/Collectors may not be sufficiently robust to cover these circumstances. However, we propose alternative measures which may help mitigate this problem going forward.

6.7. BEIS has introduced amendments to Chapter 13 in the Rules that should provide a clearer path of escalation for future agreements (from the next Auctions onward), as this issue will result in termination, of which there is a direct route of appeal as per Regulation 69. However, for past agreements there are also some potential solutions that could mitigate the impact on capacity providers.

6.8. We believe the following may help to alleviate the issue in the short term, whilst not significantly increasing the burden on capacity providers or the Delivery Partners before more substantial changes (discussed below) are implemented:

6.8.1. The EMR Settlement ("EMRS") Guidance relating to data submission will be updated to advise participants to contact the EMRS helpdesk following an SPD test to ensure that there has not been an issue with the associated data flows.

6.8.2. In addition, participants can submit data to EMRS more frequently if they so wish.

6.9. ESC is facilitating the development of a process set for implementation for Delivery Year 2020/21. The aim is that the new process will send the data that ESC has received to the capacity provider, enabling providers to self-validate their metered data and determine if there has been an issue in the dataflow. This would allow capacity providers to easily verify and solve any issues associated with the data flow before their payments are suspended.

Question 25: Do you believe the options presented related to SPD data submission are suitable and are there any options we may not have considered in order to help mitigate the impact on capacity providers?

Amendments to Rule 4.4.4 to facilitate greater flexibility for participants

Background

6.10. We consulted on CP272, CP281, and CP306 as part of our 2018 Rules change process. These changes sought to amend Rule 4.4.4 to allow capacity providers to make changes to the configuration of Generating Units or DSR CMU components between Prequalification and the Delivery Year with a view to increasing flexibility.

6.11. In our July 2018 decision we concluded that further consideration was needed to ensure that Rule 4.4.4 would be fit for purpose. The Rule is intended to provide delivery assurance from an early stage and ensure that providers deliver the assets that the originally submit for Prequalification. However, this shouldn't unduly reduce providers' flexibility for adapting their assets to new commercial situations between the Auction and the Delivery Year.

6.12. The implementation of OF12 (as discussed in Section 8) is introducing flexibility for DSR CMUs in managing their portfolios of components. We want to introduce similar flexibility for Generating CMUs, to allow capacity providers to manage the physical configuration of their Generating Units.

Proposed amendments

6.13. Rule 4.4.4 currently states "The configuration of Generating Units or DSR CMU components (as applicable) that comprise a CMU must not be changed once that CMU has Prequalified." The Rule therefore prevents any change to the physical configuration of a CMU. As the term 'configuration' is not a defined term in the Rules, this has resulted in a

lack of clarity about the interpretation of this Rule. Providers have been unsure what changes to their asset may breach Rule 4.4.4 and result in the termination of their Capacity Agreement, which limits the flexibility they have in making commercial decisions for their assets.

6.14. Capacity providers submit information regarding the configuration of CMUs at Prequalification. This material information on the CMUs configuration, particularly for new-build CMUs, is intended to give a level of delivery assurance and certainty over the construction plan for the CMU. To avoid contravening Rule 4.4.4, providers have in some cases submitted limited information at Prequalification, however this frustrates and defeats the intended benefits of having the information. We would rather provide applicants with the incentive to provide full and detailed information, but give the flexibility to make changes to the physical configuration of the CMU if necessary. The need for this may arise, for example, if a provider is able to procure larger turbines at lower cost.

6.15. To overcome this issue without reducing reliability and transparency we are seeking stakeholder views in respect to Rule 4.4.4 and what amendments cannot be made to the configuration of CMUs after Prequalification. Potential examples of aspects of a configuration which should not be able to amended following Prequalification include Generating Technology Class and De-rated capacity (and any other factors which effect this).

Question 26: Which aspects of a CMU configuration do you think should not be able to be amended following Prequalification?

Data in the Capacity Market Register

Background

6.16. The CMR currently shows the aggregate capacities for each CMU and does not provide details of the underlying units that comprise each CMU. Where a CMU is made up of more than one component each with its own Connection Capacity, De-rated capacity and technology type, the reporting of the aggregates on the CMR does not provide the market with accurate and transparent information about the composition of that CMU. This aggregate information is published by the Delivery Body in the CMR, as specified in Rule 7.4, and is accessible to the public.

6.17. We previously considered CP270 and CP271 as part of our 2017 Rules change process. These proposals sought to include additional fields in the CMR to increase transparency without revealing commercially confidential information. They recommended the inclusion of more detailed component-level information for each individual CMU component or Generating Unit, including Connection Capacity and De-rated capacity, to be displayed on the CMR. In addition, CP270 proposed for applicants to state the Primary Fuel Type for each Generating Unit comprising the CMU. These changes can provide valuable information for market participants, benefit policymaking, and result in better value for money for consumers. The amendments propose to include in the CMR better information about the type of DSR participating in the CM, how aggregators structure CMUs, and what level of DSR is composed of behind-the-meter generation. This transparency will give greater insights into Auction behaviour and may help inform policy-making in the future.

6.18. CP270 proposed to publish the Connection Capacity, De-rated capacity and technology type for each component making up each CMU in the CMR whilst CP271 proposed a

distinction between whether the unit is "Turn down" or Generating for Proven DSR CMUs and to identify whether the DSR CMU is supported by on-site generation. This data is already submitted as part of Prequalification.

6.19. We opted to defer CP270 and CP271 because they are contingent on the implementation of OF12. Like OF12, CP270 and CP271 require NGESO's systems to be able to account for component-level data, component tracking, and component reallocation. The implementation of OF12 is now being finalised, as such we consider that CP270 and CP271 should also now be implemented following completion of OF12 to increase the transparency of the CMR. OF12 and its implementation is discussed in detail in Section 8.

6.20. Responses to our consultation last year made strong arguments for the need of an appropriate balance between market transparency and commercial confidentiality, as too much detail on the CMR would enable competitors to approach other aggregators' customers. We agree with the need for a level of commercial confidentiality between aggregators and their customers, and therefore propose to exclude the address and metering point location from being published on the CMR.

Proposed amendments

6.21. As noted in our decision on the statutory amendments to the Capacity Market Rules 2018[12], we proposed to take forward these changes with a delayed implementation; following the completion of OF12. We still believe this is the case and following OF12 implementation, CP270 and CP271 should also be implemented to increase the transparency of the CMR.

6.22. We are proposing in particular to amend Rules 3.4.5A, 7.4 (a) (ii) and 7.5 which relate to a Primary Fuel Type, the description of the CMU on the CMR, and amendments to the CMR by NGESO respectively. This will result in the CMR showing, for each CMU component or Generating Unit, the Connection Capacity, De-rated capacity, and Primary Fuel Type. The collection of this information to enable component tracking under OF12 means the data necessary for implementing this change will already be collected.

6.23. In addition to CP270 and CP271, we have received additional suggestions for amendments to the CMR in response to our open letter. NGESO recommended that the CMR have additional fields to capture the following information on CMUs: Credit Cover amount, Parent company details, Secondary Trading details, confirmation of meeting the FCM and SCM, Meter Point Administration Number details, Agreement Duration, and relevant Delivery Year. These additions to the Register will also require amendments to the Rules to ensure that NGESO accurately changes the register when notified. Including this information will further increase the transparency of the CMR and provide a centralised, public source for assurance over delivery in the CM. In particular, it will provide a proxy for a secondary trading register by listing relevant secondary trading contacts, which, as discussed in Section 5, could facilitate a more liquid secondary trading market. We are proposing to include these additional requirements into Rule 7.4.1(d) and 7.4.1(e), formalising changes that are already working in practice.

Question 27: Is there any other data that would be useful to add to the CMR and why?

[12] https://www.ofgem.gov.uk/publications-and-updates/decision-statutory-consultation-amendments-capacity-market-rules-2018

Clarification of provisions relating to opting out at Prequalification

Background

6.24. As part of our decision on the 2018 Rules change process in July 2018, we chose to implement CP293, which enabled capacity providers who opted out of the T-4 Auction to participate in the T-1 Auction for the same Delivery Year. We did this by amending the definition of Excluded CMU in Rule 1.2 to remove reference to opted-out CMUs and removing Rule 3.3.3(b) which prevented the submission of an Application for Prequalification for a T-1 Auction by CMUs which had opted out of the T-4 Auction.

6.25. Participants were already able to opt out as operational in the T-4 Auction and then participate in a T-1 Auction; this change simply extended that provision to participants who opt out as non-operational. As under the previous Rules, if a plant wished to maintain the option of participating in the T-1 Auction it was incentivised to opt out of the T-4 Auction as intending to remain operational even if it intended to close. This could distort market information on future plant availability. Participants will now be able to make the commercial decision that is appropriate for them and give the best possible information in their opt-out notification.

6.26. By enabling genuine existing capacity to enter the T-1 Auction we expect to give potential providers the opportunity to respond to changing market conditions. Facilitating participation in Auctions will enable NGESO to make more accurate assumptions about future plant behaviour and give a new revenue stream to opted-out plants. These changes and their consequences should contribute positively to security of supply, improve market transparency on future plant availability, inject liquidity in the Auction, and therefore increase the competitiveness of the process which will benefit consumers in value for money.

6.27. We are committed to monitoring the opt-out decisions of providers as part of our ongoing monitoring of Auction outcomes in line with our powers. Should we see any grounds for concern, we are able to take enforcement action in line with our Enforcement Guidelines.[13]

6.28. It has been brought to our attention that further amendments are required to avoid the termination of capacity providers who opt out of the T-4 Auction as non-operational pursuant to the changes made pursuant to CP293 and subsequently secure an agreement in the T-4 Auction. Rule 3.11.4 sets out that a provider who has opted out as temporarily non-operational but then has been identified by ESC under Rule 3.11.3 as providing electricity during that relevant Delivery Year must be terminated by NGESO under Rule 6.10.1(j).

Proposed amendments

13 https://www.ofgem.gov.uk/system/files/docs/2017/10/enforcement_guidelines_october_2017.pdf

6.29. To address these concerns we propose the following:

6.29.1. Amend Rule 3.3.3(c) so that it applies exclusively to Excluded CMUs and Retired CMUs. This removes the reference to opt-out notifications under Rule 3.11.

6.29.2. Increase clarity on the requirements for submitting an Opt-out Notification. Rules 3.11.2(f) currently requires "a summary of the reasons for" why a CMU has chosen to opt out as either non-operational, temporarily non-operational, or operational. We believe it is prudent to align this process with the Price Maker process and require the submission of a suite of documents showing a decision by the board of directors to submit an opt-out Notification and the underlying information, including financial analysis, which informed that decision. Introducing this requirement will provide the Authority with greater assurance over the changes made pursuant to CP293 and will enable the Authority to better use its monitoring and enforcement powers where required;

6.29.3. Keep Rule 3.11.3 because it provides the framework for transferring information between ESC and NGESO related to CMUs which opt out. It also provides the framework for the monitoring of these CMUs, which we committed to doing in our July 2018 decision document;

6.29.4. Delete Rule 3.11.4 to remove this risk of termination and delete the associated termination event in Rule 6.10.1(j); and

6.29.5. Keep 4.3.1(b) as the changes we have previously made ensure that CMUs which have previously opted out are not included in the definitions of Excluded CMU or Retired CMU. We believe it is appropriate for NGESO to continue to satisfy itself that applicants are not Excluded or Retired CMUs.

Amendments to the Adjusted Load Following Capacity Obligation Formula ("ALFCO")

Background

6.30. Proposal CP331 in the 2018 Rules change process proposed to remove Rule 8.5.1(ba), which relieves Interconnector CMUs of their capacity obligations when affected by ESO actions to reduce the interconnector's output below its Interconnector Scheduled Transfer ("IST"). The current provision means that any action from the ESO to reduce the import of an interconnector with a Capacity Agreement will relieve the interconnector of its capacity obligation even where the action does not reduce the output of the interconnector to zero.

6.31. We rejected CP331 because it could have the undesirable effect of leaving Interconnector CMUs more vulnerable to factors beyond their control: they would need to meet their full obligation even where an action by the ESO has decreased their output. This would expose these CMUs to under delivery penalties.

6.32. Some stakeholders expressed concerns that IST may not give an accurate reflection of an Interconnector CMU's performance if there is a change to its output after Gate Closure. We do not share these concerns. The BSC includes provisions in R7.1.3 that adjust the IST after Gate Closure to accurately reflect performance during a Settlement Period, including where an interconnector trips during a Settlement Period.

6.33. One respondent to this proposal suggested adjusting the CMU's obligation proportionally with the magnitude of the ESO action, rather than removing it entirely. We agreed in principle in our July 2018 decision document and acknowledged that further modifications to the ALFCO formula would be required to implement it. We received no proposed amendments to effect this change in response to our March 2018 consultation, our July 2018 decision, or our September 2018 open letter. We therefore propose to specifically seek views on how best to address this issue through Rule 8.5.1.

Question 28: How should the ALFCO formula be adjusted for Interconnectors when their output is affected by actions by NGESO?

6.34. Rule change proposal CP333 was submitted in parallel to CP331. It proposed to include intertrips within the definition of 'relevant interruption' under Rule 8.5.1(c); this would have the effect of reducing the ALFCO to zero for any CMU whose output has been curtailed as a result of an intertrip action by NGESO.

6.35. We rejected CP333 because it is not appropriate to remove a CMU's obligation in its entirety due to an intertrip. Intertrip services could only affect part of the CMU's ability to meet its Capacity Obligation, and in these cases it would be disproportionate to remove the full obligation.

6.36. System to generator operational intertripping schemes are commercial arrangements between the ESO and generators in order for the former to operate and manage the GB Transmission System following credible unplanned faults. Providers participating in such commercial agreements may be disconnected or have their export capability reduced and are compensated for the interruption.

6.37. We suggested that a more suitable approach may be to account for intertrip services within the ALFCO formula, as currently occurs for RBS. This approach would modify the Capacity Obligation proportionately to the level of service provided. However, this would require further consideration as well as consequential amendments to the Rules, including to Schedule 4.

6.38. We would like to seek views on whether it is appropriate to include intertrips as a RBS in Schedule 4. We would like stakeholders to provide views as to whether system to generator intertrips provide a similar parallel benefit to the system as other RBS do.

Question 29: Should system to generator intertrips be included as a RBS in Schedule 4 to relieve providers of their obligations when affected by such an intertrip?

Differentiating between firm and non-firm connection agreements

Background

6.39. We considered and rejected CP282 and CP311 as part of our 2018 Rules change process. These would have removed the Capacity Obligation of Distribution CMUs in periods when they are subject to an interruption by a DNO. Relevant Interruptions (as defined in the CUSC) currently only affect the Capacity Obligations of Transmission CMUs.

6.40. We agree that Distribution-connected generators with firm access rights should not be penalised in the event of a network interruption beyond their control. This would align the obligations of Distribution-connected generators with those of Transmission-connected generators. However, a greater range of connection types are available for Distribution-connected generators, meaning the same broad approach cannot be taken as for Transmission-connected generators. We continue to believe that it would not be appropriate for Distribution connected CMUs with non-firm access rights to be absolved of their Capacity Obligation and exempt from penalties if subject to an interruption by a DNO.

6.41. We continue believe that Distribution connected generators with interruptible or non-firm access rights are more likely to be curtailed when the network is constrained. They may have chosen to agree interruptible or non-firm access rights in return for lower connection costs and this commercial decision should not release them of their obligation under a Capacity Agreement. Instead, these providers factor the risk of being unable to meet their Capacity Obligation into the decision to agree a non-firm connection.

6.42. The existing Rules, do not differentiate between firm and non-firm connection agreements and Distribution connected generators with non-firm access rights are not precluded from participating in the CM. As set out in our response to CP349, we believe the most accurate way to account for non-firm distribution-connected capacity in the CM is by de-rating it for the likelihood of interruption.

6.43. We are aware that the 'firmness' of Distribution connection agreements is not harmonised between DNOs and licence areas. We are also aware that new distribution connections are increasingly non-firm and interactive. As a result, we believe it is difficult to establish what the average level of firmness is, which would help

6.44. We believe it would be inappropriate to completely exclude providers with non-firm connection agreements from the CM. First, we believe that these providers provide contribution to security of supply even if their contribution may be less likely in a situation where the network is constrained. Second and as established above, we understand that new distribution connections are increasingly likely to be non-firm and excluding any providers with a non-firm connection could therefore present a barrier to Distribution-connected generators.

6.45. We would like to seek views from industry on how best to differentiate between firm and non-firm connection agreements, and how best to de-rate generators with non-firm connections to accurately account for their contribution in a stress event.

Question 30: How should we differentiate between firm and non-firm connection agreements at the Distribution level?

Question 31: How should Distribution-connected generators with non-firm connection agreements be de-rated to accurately account for their contribution in a stress event?

Continuous improvements to the Rules

6.46. As part of our review of the Rules, to gauge whether there is sufficient clarity or how increased clarity may be achieved, we have made amendments to the exhibits in the Rules. We have now clarified that each signature by a relevant person or director must be dated. We have also prescribed the format of which a date should be entered. The

date for each signature is to be provided on the day in which the relevant director or person signs.

7. Section 7: NGESO's incentives and role in the CM

Section summary

NGESO currently has four financial incentives on delivering its CM functions: demand forecasting accuracy, dispute resolution, DSR Prequalification, and customer and stakeholder satisfaction. We continue to believe that ensuring that NGESO is appropriately funded, appropriately incentivised, and that its performance is appropriately managed are key to the delivery of a fit-for-purpose CM going forward.

We aim to use the questions posed in this document and the subsequent responses to help inform our development of proposals for a future consultation on, if necessary, amending NGESO's Electricity Transmission Licence to update its incentives.

Questions

Question 32: Do NGESO's current financial incentives on demand forecasting accuracy, dispute resolution, DSR Prequalification, and customer and stakeholder satisfaction drive the intended behaviours by NGESO?

Question 33: Do the financial incentives listed above remain fit for purpose?

Question 34: What behaviours and outcomes should NGESO's financial incentives drive? What form should these incentives take?

Question 35: Do you agree that a demand forecasting accuracy incentive remains appropriate?

Question 36: Do you agree that the dispute resolution incentive should be based on a proportion of Prequalification or Reconsidered Decisions overturned by the Authority rather than on the absolute number?

Question 37: Do you agree that the DSR Prequalification incentive should be replaced by an incentive intended to drive NGESO to aid smaller providers, new entrants, and innovators navigate the CM?

Question 38: Do you agree that an incentive on NGESO's customer service and stakeholder engagement remains appropriate? What form should this incentive take?

Question 39: Do you agree that the incentives on NGESO for delivering the CM should be aligned with NGESO's incentive framework? Should the CM incentives be incorporated into NGESO's incentive framework in the longer term?

Question 40: Does the separation of the EMR Delivery Body from NGESO continue to remain appropriate given the separation of NGESO from the rest of NGESO plc?

Background

7.1. NGESO currently has four financial incentives on delivering its CM functions:

7.1.1. Demand forecasting accuracy;

7.1.2. Dispute resolution;

7.1.3. DSR Prequalification; and

7.1.4. Customer and stakeholder satisfaction.

7.2. In our open letter, we identified reviewing these NGESO's incentives as a priority for our Five Year Review.

7.3. Fit for purpose incentives help to ensure the Rules are applied properly and in an efficient manner. We aim to use the questions posed in this document and the subsequent responses to help inform our development of proposals for a future consultation on amending NGESO's Electricity Transmission Licence to update its incentives. We believe it is appropriate to decouple this future consultation with any decision on the Rules made independently from the incentives framework.

7.4. We are delaying consulting on amendments to NGESO's incentives to better align this process with the conclusion of both BEIS' and our Five Year Reviews.

7.5. Ofgem also publishes an annual report on NGESO's performance. This takes into account incentive performance, NGESO's ability to have met its deadlines in delivering Prequalification and the Auctions, any IT- and data security- related issues, and any stakeholder feedback received. These annual reports for 2015, 2016, 2017, and 2018 can be found on our website at https://www.ofgem.gov.uk/electricity/wholesale-market/market-efficiency-review-and-reform/electricity-market-reform-emr.

Stakeholder feedback

7.6. 19 of the 24 responses we received to our open letter considered NGESO's financial incentives and its role in delivering the CM. Many of these responses raised concerns about NGESO's previous performance, particularly in delivering the Prequalification process.

7.7. 12 respondents supported a review of NGESO's incentives. Two suggested that the current set of incentives is broadly good, but that NGESO's performance is hindered by the complexity of Prequalification and this drives negative customer and stakeholder sentiment. Three respondents suggested that NGESO needs stronger incentives to administer Prequalification in a more efficient manner and to resource adequately. One respondent commented that the current set of incentives has no impact on improving performance. Another respondent commented that operating an efficient and effective market does not seem to be in NGESO's objectives.

7.8. Two respondents suggested that NGESO is not currently meeting an adequate service standard. A further two respondents argued that NGESO should be replaced as the EMR Delivery Body, with one arguing for a tender.

7.9. Several respondents commented on NGESO's IT systems and the systems change process that relates to Rules changes. One specified that NGESO should be adequately incentivised to ensure that it is able to deliver systems changes for continuous improvement.

7.10. ESC has suggested adding an incentive on NGESO to maintain the CMR, including data validation to drive better assurance of the CM.

7.11. In its response to our open letter, NGESO has suggested that EMR incentives should be included in the wider ESO package from 2021.

Call for evidence

7.12. We recognise the volume of criticism in relation to NGESO's incentives expressed in responses to our open letter. We are seeking responses to provide evidence of NGESO's performance as well as to provide views on the current set of incentives and NGESO's role in the CM. This will help inform the consultation on NGESO's incentives that we intend to issue. It should be noted that this call for evidence will be assessed separately from the Rules review.

7.13. We are particularly seeking assessments of whether the existing financial incentives are driving the correct behaviour by NGESO. We are further seeking views on what behaviours NGESO's financial incentives should drive and, therefore, proposals on the form that such incentives should take.

7.14. As stated above, the aim of this process is to ensure that NGESO is appropriately funded and incentivised and that its performance is appropriately managed. We do not believe that the current incentives are delivering optimal outcomes. The CM has evolved considerably since implementation and, as a result, the incentives are not driving the appropriate behaviours by NGESO.

7.15. We believe that any financial incentives on NGESO should lead NGESO to pursue two main goals: increased liquidity in the Auctions and lower burden on participants in both Prequalification and the delivery processes. We also continue to believe that it is appropriate to incentivise NGESO to facilitate the participation of new entrants, such as smaller participants, innovative technologies, and new business models. It is not clear to us that the current DSR participation incentive does this adequately. This below sets out the current state of each of the incentives and NGESO's role in the CM framework.

Question 32: Do NGESO's current financial incentives on demand forecasting accuracy, dispute resolution, DSR Prequalification, and customer and stakeholder satisfaction drive the intended behaviours by NGESO?

Question 33: Do the financial incentives listed above remain fit for purpose?

Question 34: What behaviours and outcomes should NGESO's financial incentives drive? What form should these incentives take?

Demand forecasting accuracy

7.16. Demand is a critical factor used in determining the capacity to be procured in the T-1 and T-4 Auctions. More accurate forecasts of demand result in lower costs to consumers due to increasing the likelihood of a more accurate procurement of capacity. On this basis, we introduced the demand forecasting accuracy incentive. We continue to believe that there should be a financial incentive for NGESO on demand forecasting accuracy. This forecast is used to set the procurement target for the Auctions and inaccuracies will therefore result in a direct cost to the consumer.

7.17. However, it may be more efficient in the long term to include this incentive within NGESO's wider package of demand forecasting incentives. This could ensure that there is no duplication of forecasting incentives and that the incentives in place are correctly aligned. Further, market participants use NGESO's forecasts for decision-making. All forecasts should be aligned where possible and should be freely available to the market.

Question 35: Do you agree that a demand forecasting accuracy incentive remains appropriate?

Dispute resolution

7.18. The dispute resolution incentive rewards NGESO where we overturn none of its Prequalification and Reconsidered decisions following an Appeal to the Authority and penalises NGESO where we overturn more than two decisions.[14] The incentive uses the raw number of decisions overturned to inform NGESO's financial performance; this was designed prior to the full implementation of the CM in the expectation that NGESO would process fewer Applications for Prequalification in any Prequalification Window than is currently the case.

7.19. However, the volume of applications, the number of applicants, and the complexity of the Prequalification process have all increased considerably since this incentive was developed. In the most recent Prequalification Window, NGESO received 1660 applications, clearly a greater number than was envisaged when the CM was implemented. The current state of affairs represents a higher degree of difficulty for NGESO. We believe it is appropriate to incentivise NGESO on its performance in making Prequalification and Reconsidered Decisions, but we would like to seek views on whether this should be on a relative basis to reflect an evolving CM, rather than on the raw number of overturned decisions.

Question 36: Do you agree that the dispute resolution incentive should be based on the proportion of Reconsidered Decisions overturned by the Authority rather than on their absolute number?

DSR Prequalification

7.20. The DSR Prequalification incentive rewards NGESO for maximising the DSR capacity that Prequalifies for each annual T-1 Auction. We introduced this incentive because DSR is

[14] NGESO is also incentivised on dispute resolution in the Contracts for Difference Qualification processes.

different to generation in that it can allow industrial and domestic customers to participate in the energy market. This may increase the overall efficiency of the energy system.

7.21. The volume of Prequalified DSR capacity has increased over time as the DSR market has matured and aggregators have become increasingly able to attract clients to provide DSR. NGESO's value-add in driving increased DSR participation is difficult to separate from other factors, including the Government's decision to hold the two DSR-specific Transitional Arrangements auctions.

7.22. We do not believe that the design of the DSR Prequalification incentive will remain fit for purpose as the DSR market further matures. We identify the underlying purpose of this incentive as driving NGESO to provide adequate assistance to smaller providers, new entrants, and innovators in navigating the complexity of the CM.

Question 37: Do you agree that the DSR Prequalification incentive should be replaced with an incentive intended to drive NGESO to aid smaller providers, new entrants, and innovators navigate the CM?

Stakeholder satisfaction

7.23. The Customer and Stakeholder Satisfaction Survey incentive rewards NGESO for improvements to its score on a survey to CM participants. This reflects our belief that good stakeholder engagement and customer service is key to the successful delivery of the CM.[15] We also believe that the requirement for NGESO to publish the result of this survey encourages transparency and creates an important reputational incentive.

7.24. We continue to believe it is important to incentivise NGESO on its customer service and stakeholder engagement. We are open to views on whether this incentive remains fit for purpose and whether it could be improved. It may be desirable in the longer term to align NGESO's customer service and stakeholder engagement in the CM with the wider ESO incentives.

Question 38: Do you agree that an incentive on NGESO's customer service and stakeholder engagement remains appropriate? What form should this incentive take?

Wider ESO incentives

7.25. In April 2018 we introduced a new regulatory and incentives framework for NGESO.[16] This applies a more 'principles-based' approach to ESO regulation and moves away from the use of targeted mechanistic incentives, towards a broader, evaluative incentives approach. It aims to create a much more proactive and outcome-focussed ESO, and encourages it to work flexibly with its stakeholders in order to maximise consumer benefits across the full spectrum of its activities.

[15] Like the dispute resolution incentive, the customer and stakeholder satisfaction survey also has a component for NGESO's activities in Contracts for Difference.
[16] https://www.ofgem.gov.uk/publications-and-updates/policy-decisionelectricity-system-operator-regulatory-and-incentives-framework-april-2018

7.26. The new approach is built around us being clear from the outset about the behaviours and outcomes we expect of NGESO, but it places the onus on NGESO to engage with stakeholders to identify how to best meet and exceed these expectations. It includes:

7.26.1. A set of 'Roles and Principles' designed to set clear expectations about the baseline behaviours we expect from NGESO;

7.26.2. A requirement on NGESO to engage with its stakeholders each year to produce a Forward Plan, which will include Performance Metrics to demonstrate how it will meet each of these Principles and add additional value for consumers;

7.26.3. Regular performance reports published by NGESO;

7.26.4. A new ESO Performance Panel, which will challenge NGESO on its plans, evaluate its performance and make recommendations to the Authority; and

7.26.5. A decision by the Authority at the end of each year to financially reward or penalise NGESO up to a maximum cap and floor of ±£30m, informed by the Performance Panel's recommendation, as well as other evidence collected throughout the year.

7.27. Our intention is that this framework will remain in place until March 2021. However, we are reviewing the effectiveness of this scheme and intend to make refinements where necessary before 2020/21. The lessons we learn from this new approach will also inform the development of a consolidated price control for NGESO under the RIIO-2 framework from April 2021 onwards.

7.28. We believe it is appropriate in the longer term to align NGESO's incentives on delivering the CM with the incentives on the wider ESO. The CM is only one of the markets NGESO facilitates. As outlined in Section 1, we believe that there may be merit in further consideration of the interaction of the CM with other markets including the wholesale market, the balancing market, and markets for ancillary services to ensure that market design choices in the CM do not cause inefficient outcomes in the other markets. Similarly, we believe that NGESO's incentives on its activities in the CM should not drive behaviours that do not align with its incentives on the rest of its activities.

7.29. The current financial framework for NGESO as the EMR Delivery Body ends in 2021 and we believe it will be appropriate at that time to integrate the financial incentives on the CM into NGESO's wider incentives at that time.

Question 39: Do you agree that the incentives on NGESO for delivering the CM should be aligned with NGESO's incentive framework? Should the CM incentives be incorporated into NGESO's incentive framework in the longer term?

Roles

7.30. NGESO was chosen to deliver the CM and Contracts for Difference ("CfD") due to the strong synergies between its existing ESO functions and the delivery of these new mechanisms. This was for a number of key reasons, which were set out in a joint

publication by Ofgem and the Department of Energy and Climate Change ("DECC") in 2015[17]:

7.30.1. NGESO is in a unique position at the heart of the electricity system. This makes it suited to undertake analysis to inform Government's decisions on EMR implementation, and to deliver the CM if implemented;

7.30.2. Its current work balancing the electricity transmission system gives it an understanding of the balancing requirements of different technologies, and the impacts these may have on transmission network reinforcements;

7.30.3. It has extensive experience of running tenders and auctions both on the electricity side and on the gas side of its businesses;

7.30.4. Delivery of these two mechanisms by a single organisation will ensure a joined up approach to CfD and the CM and, combined with the ESO's current roles, will provide value for money for consumers; and

7.30.5. NGESO already has much of the relevant technical expertise, commercial and financial skills necessary to deliver the CfD in the UK and CM in Great Britain.

7.31. In 2015 we stated that "[t]hese synergies will result in benefits from NGESO taking on the EMR role relative to any other body, new or existing, carrying out the role. These synergies derive from expertise, experience and information that National Grid already has as a result of its existing role in the energy market."

7.32. We continue to believe that it is appropriate for NGESO to carry out the EMR Delivery Body function and that these synergies remain relevant.

Business separation

7.33. In parallel with the assessment of the synergies arising from NGESO delivering EMR, we and BEIS[18] assessed the potential for conflicts of interest. The report noted in particular:

7.33.1. An ability for NGESO to use information that it has access to through its EMR delivery role to the advantage of its other businesses and other National Grid plc businesses;

7.33.2. An ability for NGESO to exert influence over decisions made by others (i.e. Ministers) to favour National Grid plc businesses; and

7.33.3. An ability for NGESO to exercise discretion in the operation of EMR in such a way as to favour or advantage NGESO and other National Grid businesses.

7.34. To mitigate these conflicts of interest, we introduced business separation between NGESO and the EMR Delivery Body. This included an administrative and physical separation of

[17] https://www.ofgem.gov.uk/ofgem-publications/39850/emr-coi-consultation-report.pdf
[18] Formerly DECC

staff; restrictions on the flow of information including a ring-fence around the EMR Delivery Body and the establishment of a data handling team to have access to confidential data; and a compliance code and non-disclosure agreements for staff.

7.35. On 4 September 2018, we published our consent to the proposed partial transfer of the transmission licence held by NGESO to the National Grid Electricity System Operator and the associated licence modifications required to separate NGESO functions.[19] NGESO was legally separated on 1 April 2019.

7.36. We believe that the legal separation of NGESO from the Transmission Owner mitigates some of the original conflicts of interest of the EMR Delivery Body role. As such, we believe that it may be appropriate to reduce the severity of the conflict of interest mitigations specified above once the success of the legal separation of NGESO has been established. This would allow NGESO to take advantage of the synergies listed in the previous section to a greater extent than currently.

Question 40: Does the separation of the EMR Delivery Body from NGESO continue to remain appropriate given the separation of NGESO from the rest of NGESO plc?

[19] https://www.ofgem.gov.uk/publications-and-updates/consent-partially-transfer-electricity-transmission-licenceheld-national-grid-electricity-transmission-plc-national-grid-electricity-system-operator-limited-0

8. Section 8: Postponed changes

Section summary

This section concerns two sets of amendments we have consulted on and made decisions to implement in previous years. The implementation of OF12 and the technical amendments to ALFCO OF34 (formerly CP279, CP289, and CP290) which were delayed due to constraints in developing IT systems solutions for NGESO and ESC. These solutions are now on course for implementation by the next Prequalification Window. We have not made substantive changes to these sets of amendments and intend to introduce them to the Rules this summer. However, we are proposing to increase the limits to DSR component reallocation from our initial consultation.

OF12: DSR CMU Component Reallocation

Background

8.1. In 2017 we initially consulted on the set of changes nominated as 'OF12' which are intended to allow DSR CMU Components to be altered during a Delivery Year. We did this in order to provide capacity providers with greater flexibility and so that DSR CMUs and portfolios of CMUs have the capability to maintain reliability of their portfolios throughout the Delivery Year.

8.2. The Rules change process should help enable the access of different technologies, without providing an unfair advantage to one of them. In this context, we continue to believe that a DSR component reallocation mechanism is beneficial to consumers, as it will ensure that DSR CMUs or portfolios have the capability in the Rules to maintain reliability throughout the Delivery Year.

8.3. Hence, since it is in the nature of DSR services that they are comprised of a portfolio of individual customers, the flexibility to switch DSR components to respond to these changes is needed to maintain reliability.

Implementation

8.4. We consulted on a finalised set of amendments in March 2018 and decided to approve these in our July 2018 decision. However, the changes that these amendments require to NGESO's and ESC's IT systems are significant and we therefore postponed the implementation of the amendments to 2019. NGESO and ESC have subsequently continued to progress the development of the relevant IT solutions, which remain on course to be implemented before the next Prequalification Window.

8.5. We continue to believe that the set of amendments we consulted on last year remains appropriate and that the framework of OF12 should not be substantially altered, however some minor amendments have been made to bring them in line with other changes proposed in this review. The IT solution developed by NGESO and ESC is on the basis of the framework we confirmed as our final position in our July 2018 decision document.

Amendments

8.6. We have subsequently engaged with DSR providers and NGESO to ensure that the parameters for reallocations are fit for purpose. The limits on transfers were built into NGESO's systems in an agile and dynamic way, which will enable limits to be altered according to future demand. We have concluded that the limits we decided to implement last year are too low. We have agreed with DSR providers and NGESO to propose lifting the caps for transferred DSR CMU components from 20 to 40 and for notifications from 5 to 10.

8.7. We believe this more accurately reflects the level of interest providers currently have in using DSR component reallocation and thereby facilitates effective portfolio management, while ensuring that NGESO does not face an excessive level of administration in the first year of implementation. We reiterate that these caps are built in a dynamic fashion and can, therefore, be altered at a later date if there is sufficient evidence to justify doing so.

OF34: Technical amendments to ALFCO (formerly CP279, CP289, CP290)

Background

8.8. These proposals all concern incorrect definitions or formulae relating to a Capacity Obligation where a CMU includes more than one Balancing Mechanism Units ("BMU")/component:

8.8.1. CP279 suggests amendments to the Adjusted Load Following Capacity Obligation ("ALFCO") in Rules 8.5.2 and 8.5.4. It argues that the current definition of the term QMEij is too narrow, and it should not refer just to CMUs providing RBS;

8.8.2. CP289 identifies some issues when a CMU includes more than one BMU/component. These issues are exacerbated when some, but not all, of the BMUs comprising a CMU are providing RBS. Adjustments to the ALFCO are required to address the ambiguity as to whether the subscript 'i' refers to a CMU or a BMU. In addition, it is suggested that the System Operator should notify ESC of the units (BM or non-BM) that provide RBS; and

8.8.3. CP290 argues that Rule 8.6.1, which is used to determine the actual output (Eij) of a Generating CMU in a System Stress Event, should be changed in order to distinguish the CMU from its constituent BMUs.

8.9. The ALFCO formula does not currently contain component level granularity, it requires aggregated data to be used. This can skew the final ALFCO value for CMUs containing BMUs where some, but not all units are providing RBS.

8.10. We consulted on this set of technical amendments to the ALFCO formula in our March 2018 consultation document and decided to approve them in our July 2018 decision document. However, we postponed the implementation of the amendments to 2019 to enable the implementation of framework of OF12 in the BSC and because the changes that these amendments require to NGESO's and ESC's IT systems are significant.

Implementation

8.11. We intend to implement these changes so that the ALFCO formula for CMUs composed of BMUs is amended

from: $ALFCO_{ij} = LFCO_{ij} + (1-\beta)QBOA_{ij} + (1-\beta)min(QAS_{ij}, 0) - \beta(QBSCCC_{ij})$

To: $ALFCO_{ij} = LFCO_{ij} + \Sigma_{k \in i}\{(1-\beta_{kj})QBOA_{kj} + (1-\beta_{kj})min(QAS_{kj}, 0) - \beta_{kj}(QBSCCC_{kj})\}$

8.12. The substitution of *k* for *i* in each of the terms in the ALFCO formula clarifies that the QBOA, QAS, β, and QBSCCC are calculated for each Generating Unit in a Generating CMU or Interconnector CMU comprised of BMUs.

8.13. The amendments originally proposed by CP279, CP289, and CP290 introduce component-level granularity to the ALFCO formula. The addition of the $\Sigma_{k \in i}$ term specifies that the ALFCO is the summation of the component-level calculations for the terms QBOA, β, QAS, and QBSCCC.

8.14. In the current formula β is clearly defined in relation to the CMU, and will be set to 1 if any of the BMUs are providing a RBS. This is problematic where a CMU comprises of multiple BMUs, not all of which are providing RBS. For the BMUs not providing a RBS, there cannot be any allowance for bids and negative QAS as these terms would be set to 0. However, they may still be captured by the QBSCCC term. The modified formula to include kj addresses this problem by allowing β and the other relevant terms to be defined on a component level basis.

8.15. Component-level data is needed to make component-level ALCFO calculations: the BSC Modifications P354 and ABSVD C16 will make this data available from the ESO but are only due to be implemented in April 2020. We will therefore also introduce a new requirement to submit the necessary component-level data to NGESO via an alternative route for the 2019/20 Delivery Year. NGESO will be able to request relevant ALFCO values directly from Generating or Interconnector CMUs. The stipulation will only be in place for the 2019/2020 Delivery Year as from the 2020/2021 Delivery Year the ESO will be able to provide the information directly.

8.16. We continue to believe that the set of amendments we consulted on last year remains appropriate and that these amendments are necessary to ensure that the ALFCO formula is fit for purpose. They clarify definitions and formulae relating to a Capacity Obligation where a CMU includes more than one BMU or component and ensure that accurate calculations of CMUs' obligations and penalties can be carried out.

Appendices

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Appendix 1

Scope of the Five Year Review

The table below summarises the key areas that we are consulting on and in some cases, have proposed amendments for. The themes have corresponding [OFXX] which are included for ease of establishing the corresponding amendment located in the Rule drafting, found in an Annex A.

Table 3: List of themes and where applicable, amendments, that we are consulting on

Theme	OF#	Change	Description	Present in Annex A
Prequalification	OF17	Metering Arrangements Rules 3.6.4 (Existing Generating CMU), 3.6A3 (Existing Interconnector CMU), 3.9.4 (Proven DSR), and 3.10.2 (Unproven DSR)	Move requirement to provide in a period prior to the commencement of the Delivery Year (as already outlined in the deferral process)	**No**
		Secondary Trading details Rule 3.4.1 (c)	As above, failure to submit these details will not result in a Prequalification failure.	**Yes**
		BMU/Component ID Rule 3.4.3(a)(iii)	As above, with the option to submit information at a period prior to the commencement of the Delivery Year	**Yes**
		MPAN/MSID Meter ID Rule 3.4.3(a)(ii)	As above	**Yes**
	OF18	Interconnection Licence Rule 3.4.1(ea)	Remove requirement which has already been eliminated for Generators	**Yes**
		Forecasted Technical Reliability Rule 3.6B.1(c)	Remove this requirement for applicants; defined by de-rated capacity	**Yes**

		Technical Specifications Rule 3.6B.1(a)	Remove, as above. Information provided by Interconnector CMUs only. Not used for any purpose and is unnecessary	**Yes**
	OF19	Relevant Planning Consents	Undo CP190 and allow deferral of planning consents	**Yes**
	OF20	Evergreen Applications for Prequalification and rolling Prequalification	Cloning portal applications across application years. The consultation will lead a future programme of work of move towards a more skeletal approach to Prequalification. We understand this will not be in for the coming Delivery Year	**No**
	OF21	Capacity Market component level data	CP270 and CP271	**No**
		Capacity Market Register data	Additional fields to capture further information	**Yes**
Milestones and reporting	OF22	ITE assessment	Removal of ITE assessment linked with reports apart those linked with FCM, SCM remedial plan, Long Stop Date and Total Project Spend	**Yes**
		Progress reports	Remove progress reports and in conjunction with the change proposed above, enough delivery assurance should be provided.	**Yes**
Secondary Trading	OF23	Eligibility	Eligibility to participate in a trade (Transferee/Entrant)	**No**
	OF24	Processing	DB processing timescales	**No**
	OF25	Administrative barriers	Administrative barriers	**Yes**
	OF26	SPD obligations	SPD obligation transfer following a partial capacity/agreement trade	**No**

Other changes	OF27	SPD dataflow issue	Dataflow issue between the Data Aggregator/Collector and the Settlement Body has led to suspension of payments.	**No**
	OF28	ALFCO	Changes to Interconnector obligations	**No**
			Intertrips as a Relevant Balancing Service	**No**
	OF29	Establishment of firm and non-firm distribution connection agreement		**No**
	OF30	Protection from interruptions for distribution CMUs with firm connection agreement		**No**
	OF31	Rule 4.4.4	Allow flexibility apart from some fundamental parameters	**No**
	OF32	A change related to CP293	To ensure that CMUs which opted out and came back in at T-1 are not terminated in the Delivery Year	**Yes**
	OF33	Clarification of provisions relating to opting out at Prequalification		**Yes**
Postponed changes	OF12	DSR component reallocation		**Yes**
	OF34	CP279, CP289, CP290 (ALFCO)		**Yes**
Rules change process	OF35	Amending Rules change process. Moving to 18-month timeframe (decouple amendments and implementation) Advisory group of industry nominated parties and NGESO/ESC		**No**
Continuous improvements	OF36	General amendments to the Rules to increase clarity.		**Yes**

Appendix 2

Consultation Questions

The consultation questions contained within this document are presented below, separated by the corresponding section which they relate to:

The objectives of the Rules

Question 1: Do you have any views on the interactions between the CM and other wholesale markets; such as forward markets, the balancing market, and markets for ancillary services?

Question 2: Do you have any evidence that design choices in the CM are driving inefficient outcomes in other markets?

Question 3: Do you have suggestions for how these markets can be better aligned and how any inefficiencies can be mitigated?

Ofgem's Rules change process

Question 4: Do you have any views on whether the proposed membership of the CM Advisory Group is appropriate, the form of participation from industry, along with any further points regarding meeting frequency and function?

Question 5: Do you believe the proposed framework and function of the CM Advisory Group is appropriate and would better facilitate the efficient operation of the CM Rules change process?

Question 6: Do you have any feedback on our proposal to move to an 18-month implementation timescale; consulting on rule amendments which would subsequently be implemented the following Delivery Year?

Regulatory burden – Prequalification

Question 7: Do you have any views on the proposed process, the implications of the change to the Prequalification procedure and whether it would be a positive change in removing an administrative burden?

Question 8: Do you believe the current length of the Prequalification window is appropriate and if allowing Prequalification submissions to take place throughout the year would be beneficial?

Question 9: Do you have any feedback on the options presented in relation to the submission of planning consents and if there are any alternative options that we have not yet considered?

Question 10: Do you have any feedback on the amendments to the Prequalification data items listed in Table 1?

Regulatory burden – Reporting requirements

Question 11: Do you believe that removing progress reports and the associated ITE assessments in all cases except those outlined, alleviates the regulatory and administrative burden, while still providing the necessary levels of assurance?

Secondary trading arrangements

Question 12: Do you have a view on which of the sub paragraphs of Rule 9.2.6(d)(i) – (ix) should only apply to Eligible Secondary Trading Entrants and which to the other categories of Acceptable Transferees?

Question 13: Is it appropriate to allow all parties who have prequalified for the CM for that year to become prequalified for secondary trading? Are there any unintended consequences?

Question 14: What form should a register of Acceptable Transferees take? How should it be populated? And who should be responsible for maintaining it?

Question 15: Do you agree that it would be desirable to allow obligations to be traded between parties in amounts greater than or equal to 0.5MW?

Question 16: Do you believe the current time period of five Working Days before the date of the trade by which applicants must submit a request to trade is appropriate or should this period be reduced? Do you have any suggestions on a revised length of this period?

Question 17: Do you believe that the current period of three months in which NGESO have to notify a Secondary Trading Entrant of the Prequalification decision is appropriate or do you feel this should be shortened? Do you have any suggestions on a revised length of this period?

Question 18: Do you agree with adding a provision for the time frame over which NGESO must respond to requests for a trade?

Question 19: Do you think it is appropriate to extend the defined trading window to the results day of the T-4 Auction for the relevant Delivery Year?

Question 20: Does it continue to be appropriate for Transferors to be required to meet their SCM prior to engaging in trading?

Question 21: Does it continue to be appropriate for Transferees to be required to meet their SCM prior to engaging in trading?

Question 22: How should we address the risk of a trade being withdrawn where a Transferor is terminated after a trade has been registered?

Question 23: How should we address the transfer termination risk where a partial or full Capacity Agreement is traded for part of, or the entire duration of a Delivery Year?

Question 24: Are there any amendments that could be made to the SPD framework following a secondary trade, specifically relating to partial agreement trades?

Other changes to the Rules

Question 25: Do you believe the options presented related to SPD data submission are suitable and are there any options we may not have considered in order to help mitigate the impact on capacity providers?

Question 26: Which aspects of a CMU configuration do you think should not be able to be amended following Prequalification?

Question 27: Is there any other data that would be useful to add to the CMR and why?

Question 28: How should the ALFCO formula be adjusted for Interconnectors when their output is affected by actions by NGESO?

Question 29: Should system to generator intertrips be included as a RBS in Schedule 4 to relieve providers of their obligations when affected by such an intertrip?

Question 30: How should we differentiate between firm and non-firm connection agreements at the Distribution level?

Question 31: How should Distribution-connected generators with non-firm connection agreements be de-rated to accurately account for their contribution in a stress event?

NGESO's incentives and role in the CM

Question 32: Do NGESO's current financial incentives on demand forecasting accuracy, dispute resolution, DSR Prequalification, and customer and stakeholder satisfaction drive the intended behaviours by NGESO?

Question 33: Do the financial incentives listed above remain fit for purpose?

Question 34: What behaviours and outcomes should NGESO's financial incentives drive? What form should these incentives take?

Question 35: Do you agree that a demand forecasting accuracy incentive remains appropriate?

Question 36: Do you agree that the dispute resolution incentive should be based on a proportion of Prequalification or Reconsidered Decisions overturned by the Authority rather than on the absolute number?

Question 37: Do you agree that the DSR Prequalification incentive should be replaced by an incentive intended to drive NGESO to aid smaller providers, new entrants, and innovators navigate the CM?

Question 38: Do you agree that an incentive on NGESO's customer service and stakeholder engagement remains appropriate? What form should this incentive take?

Question 39: Do you agree that the incentives on NGESO for delivering the CM should be aligned with NGESO's incentive framework? Should the CM incentives be incorporated into NGESO's incentive framework in the longer term?

Question 40: Does the separation of the EMR Delivery Body from NGESO continue to remain appropriate given the separation of NGESO from the rest of NGESO plc?

Appendix 3

Privacy notice on consultations

Personal data
The following explains your rights and gives you the information you are entitled to under the General Data Protection Regulation (GDPR).

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

1. The identity of the controller and contact details of our Data Protection Officer
The Gas and Electricity Markets Authority is the controller, (for ease of reference, "Ofgem"). The Data Protection Officer can be contacted at dpo@ofgem.gov.uk

2. Why we are collecting your personal data
Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

3. Our legal basis for processing your personal data
As a public authority, the GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

4. Your rights
The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data
- get your data from us and re-use it across other services
- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3rd parties
- tell us your preferred frequency, content and format of our communications with you
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at https://ico.org.uk/, or telephone 0303 123 1113.

5. Your personal data will not be sent overseas

6. Your personal data will not be used for any automated decision making.

8. Your personal data will be stored in a secure government IT system.

9. More information For more information on how Ofgem processes your data, click on the link to our "Ofgem privacy promise".