Consultation

Consultation on Capacity Market Rules change proposals

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We are consulting on changes to the Capacity Market Rules 2014 (as amended). We would like views from people with an interest in the Capacity Market. We particularly welcome responses from Capacity Market participants. 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

Background to this consultation

We published a number of documents in 2018 and 2019, relating to our Five Year Review ("the Five Year Review") of the Capacity Market ("CM") Rules 2014 (as amended) ("Rules"), which we were required to carry out under Rule 15.2 and Regulation 82 of the Electricity Capacity Regulations 2014 (as amended) ("Regulations"). These documents are listed below:

- Open letter on the Five Year Review of the Capacity Market, 11 September 2018[1] ("the Open Letter")
- Five Year Review of the Capacity Market Rules – First Policy Consultation, 16 April 2019[2] ("the First Policy Consultation");
- Decision on the first consultation on amendments to the Capacity Market Rules, 18 July 2019[3] ("the Decision on the First Policy Consultation"); and
- Report on our Five Year Review of the Capacity Market Rules and Forward Work Plan, 31 July 2019[4] ("the Five Year Review Report")
- Consultation on Adjustments to the Electricity Market Reform Delivery Body Revenues, 13 August 2019
- Decision on Adjustments to the Electricity Market Reform Delivery Body Allowances, 30 September 2019

Scope of this consultation

The First Policy Consultation introduced a number of Rules change proposals, some of which were implemented following the Decision on the First Policy Consultation. In the Five Year Review Report, we committed to bringing forward a second consultation, following further consideration of the outstanding proposals discussed in the First Policy Consultation. This document is our second consultation on these changes. We have taken into consideration

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[1] https://www.ofgem.gov.uk/publications-and-updates/open-letter-five-year-review-capacity-market-rules-and-nget-s-incentives
[2] https://www.ofgem.gov.uk/publications-and-updates/five-year-review-capacity-market-rules-first-policy-consultation
[3] https://www.ofgem.gov.uk/publications-and-updates/decision-statutory-consultation-amendments-capacity-market-rules-2
[4] https://www.ofgem.gov.uk/publications-and-updates/report-our-five-year-review-capacity-market-rules-and-forward-work-plan

feedback received from the First Policy Consultation. Responses to the First Policy Consultation have been published alongside this consultation and can be found here.

IMPORTANT PLEASE NOTE: The changes proposed in this consultation, and any subsequent decision arising from our consultation, will be considered for implementation in the Rules ahead of Prequalification 2021, not the upcoming 2020 Prequalification as is usually the case. However, these changes will need to be prioritised for delivery amongst others being considered by the CM Delivery Partners[5]. It is our expectation that any changes not taken forward for implementation ahead of Prequalification 2021 will be considered for prioritisation and consideration in the future.

Update on our Forward Work Plan

As set out in the Five Year Review Report, the aim of our five year review was to assess the extent to which the objectives of the Rules were being achieved, whether the objectives remained appropriate, and whether those objectives could be met with less burden.

We found that the objectives of the Rules remained appropriate, in that they should encourage the delivery of security of electricity supply, and that they should facilitate the efficient operation of the CM.

Having said this, our conclusion at the time was that more could be done to meet the second objective of the Rules (that is, to facilitate the efficient operation of the CM). In the Five Year Review Report, we highlighted that reducing the complexity and regulatory burden currently present in the Rules, systems and processes of the CM would go some way to achieving this.

Delivering Rules changes across a variety of different policy areas is an important step in helping to better achieve the aim of the second objective of the Rules. We have prioritised bringing forward this consultation and the CM Advisory Group ("CMAG") from the Forward Work Plan advised in July 2019.

[5] The CM Delivery Partners consists of the Department for Business, Energy & Industrial Strategy ("BEIS"), National Grid Electricity System Operator (NGESO) who act as the Electricity Market Reform Delivery Body ("NGESO DB" or "Delivery Body"), the CM Settlement Body and Ofgem.

As well as these areas, and noting the importance of an improved EMR Delivery Portal ("Portal") to the second objective of the Rules, we have also prioritised our work on regulating the Delivery Body. This has led to decisions on both the revenues and incentives of the Delivery Body in the past year.

Table 1 provides an update on the Forward Work Plan, as set out in the Five Year Review Report.

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Area	Update
Rules change process: We propose to form a 'CM Advisory Group'.	This work was slowed as a result of resources being diverted to COVID-19 related tasks. We intend to resume this work in the near future, and will aim to consult on the formation of this group later in the year.
Secondary Trading: We aim to develop proposals with industry to reduce Rule complexity, remove barriers to entry and ensure the transfer of risk is appropriate.	We still intend to undertake a review of Secondary Trading Rules.
NGESO DB incentives: We will decide upon an improved suite of incentives for NGESO DB.	We released a consultation[6] on these 11 March 2020 which closed on 17 April. Our decision[7], published on 5 June 2020, is to remove the DSR incentive from NGESO's Licence Special Condition 4L for the 2020/21 financial year while we consider integrating the remaining three Delivery Body incentives with the wider NGESO incentive framework.
NGESO DB revenues: We will decide upon a package of revenues for the RIIO-T1 period appropriate for the role undertaken and enabling	Our decision on DB revenues was published on 30 September 2019.[8] There has since been a consultation on adding an uncertainty mechanism. This consultation was combined with the DSR incentive consultation referenced above. Our

[6] https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-adjusting-electricity-market-reform-delivery-body-incentives-and-mechanisms-recover-uncertain-costs
[7] https://www.ofgem.gov.uk/publications-and-updates/decision-adjusting-electricity-market-reform-delivery-body-incentives-and-mechanisms-recover-uncertain-costs
[8] https://www.ofgem.gov.uk/system/files/docs/2019/09/decision_on_adjustment_to_allowances_for_the_emr_delivery_body_0.pdf

implementation of an improved Portal.	decision on this consultation[9], published 5 June 2020, includes an additional uncertainty mechanism by providing for a relevant adjustment proposal window in March 2021.

Table 1: An update on Ofgem's Forward Work Plan, in relation to the Capacity Market and our role in regulating the Delivery Body.

As suggested by Table 1, we intend to bring forward a consultation on the CM Advisory Group before the end of 2020. We expect that this group will consider the Rules around Secondary Trading.

Further to the work we have completed on the Delivery Body's revenues and incentives, we have also considered how the Delivery Body should be regulated beyond the end of the current licence period (March 2021). Our view on this will be incorporated into the RIIO2 ESO Draft Determination (see Table 2 of Ofgem's RIIO-2 Business Plan Guidance[10]).

[9] https://www.ofgem.gov.uk/publications-and-updates/decision-adjusting-electricity-market-reform-delivery-body-incentives-and-mechanisms-recover-uncertain-costs
[10] https://www.ofgem.gov.uk/system/files/docs/2019/10/riio-2_business_plans_guidance_october_2019.pdf

1. Introduction

What are we consulting on?

1.1. We are consulting on changes to the Rules. This consultation outlines our current minded-to position on areas we initially consulted on in the First Policy Consultation, and some which we are bringing forward as a result of feedback received since the publication of that document. Please note that unless otherwise stated, the feedback referenced in the body of the document relates to that received as part of the First Policy Consultation.

Section 2: Amendments to Rule 4.4.4.

1.2. We are consulting on changes to Rule 4.4.4, which would provide Generating CMUs with greater flexibility to change their components, between Prequalification and Delivery Year. We are also considering whether it is appropriate to extend this to allow changes within Delivery Year.

Section 3: Evergreen Prequalification

1.3. We are setting out our expectation that the concept of 'evergreen' prequalification is implemented in the improved Portal. Our expectation is that this becomes possible for all CMU types. We are consulting on the suggestion to simplify the requirements on stakeholders to provide Exhibits during prequalification. We have decided not to take forward our proposals on having a 'rolling' Prequalification period, following responses received to the First Policy Consultation.

Section 4: Prequalification Data

1.4. In line with our priorities outlined in the Five Year Review, we aim to streamline the Prequalification process and remove requirements that do not provide essential assurance for the CM.

Section 5: Planning Consents

1.5. Following on from the First Policy Consultation, we are minded to remove the requirements to submit Relevant Planning Consents at Prequalification and instead replace with a declaration stating it has been gained. We are also proposing to maintain the deferral option of 22 days before the Auction for the submission of this declaration.

In addition we are proposing to clarify the relationship between Connection Capacity and the maximum output contained in Relevant Planning Consents.

Section 6: Capacity Market Register ("CMR")

1.6. We are minded to implement CP270 and CP271, as we outlined in our Decision on the First Policy Consultation in July 2019. This facilitates the further publication of component level data in the CMR. In addition, we are proposing several other changes to the CMR, which have arisen from both our own assessment and from stakeholder responses to the Five Year Review.

Section 7: Reporting Requirements

1.7. We are proposing amendments to reduce the administrative burden and cost of participating in the CM, where appropriate. As highlighted in the Five Year Review, we are still minded to remove the requirement to submit progress reports, and associated independent Technical Expert ("ITE") assessments, in all cases except ITE assessments for any remedial plan associated with the Substantial Completion Milestone and Financial Commitment Milestone, along with any report associated with Total Project Spend and the Long Stop. To maintain the relevant assurances we are proposing to introduce a new reporting milestone to capture the critical information relating to construction progress.

Section 8: Further amendments to the Rules

1.8. As part of our continual review of the Rules, to gauge whether there is sufficient clarity in the Prequalification process, we are proposing to amend the type of notification that the Delivery Body must provide to an Applicant when their associated Prequalification status changes.

Section 9: Outstanding areas of the First Policy Consultation

1.9. 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.

Consultation stages

1.10. This consultation is an update on our views, as proposed in the Decision on the First Policy Consultation. This consultation will be open until 22 October 2020. Our estimate is that the steps will then proceed as follows:

1.10.1. Review of consultation responses, Autumn 2020;

1.10.2. Policy decision on the Rules proposals consulted upon in this consultation, Winter 2020;

1.10.3. Statutory Consultation on legal drafting for Rules amendments related to policy decisions to be incorporated ahead of Prequalification 2021, Q1 2021;

1.10.4. Final Rules change decision on Statutory Consultation, Q2 2021;

1.10.5. Implementation of amended Rules, Summer 2021; and

1.10.6. Further consideration of proposals not yet implemented (likely for Prequalification 2022).

How to respond

1.11. 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.

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

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

Your response, data and confidentiality

1.14. 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.

1.15. 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.

1.16. 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 4.

1.17. 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

1.18. 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.](https://www.ofgem.gov.uk/consultations)

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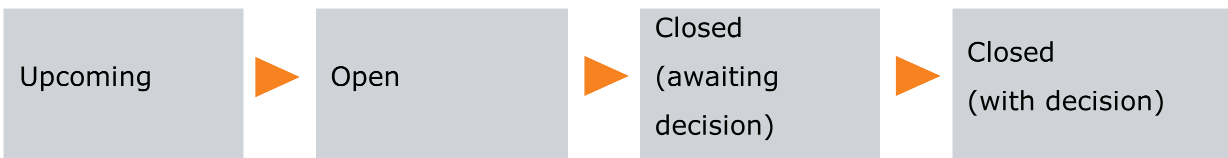

2. Amendments to Rule 4.4.4

Section summary

We are consulting on changes to Rule 4.4.4, which would provide Generating CMUs with greater flexibility to change their components, between Prequalification and Delivery. We are also considering whether it is appropriate to extend this to allow changes within Delivery Year.

Questions

Question 1: Do you agree with our suggestion to allow changes to a Generating CMUs configuration between Prequalification and delivery? Do you think that a similar amount of flexibility should be provided to Generating CMUs during Delivery Years?

Question 2: Do you have any views on the suggested level of assurance that should be necessary for CMUs who would undergo changes of components?

Question 3: Are you aware of any unintended consequences introduced by our proposals on Rule 4.4.4, including any other Rules which may need amendment to avoid conflict?

Question 4: Should there be a limit of the number of times a CMU undergoes a change of component(s), and the number of components that can be changed? If so, how many and why?

Question 5: Should there be a point in the lead up to delivery, after which changes in components should not be permitted? If so, when and why?

Background

2.1. Rule 4.4.4 currently states: "*The configuration of Generating Units that comprise a CMU must not be changed once that CMU has Prequalified.*" In the First Policy Consultation, we outlined our view that the Rule is intended to provide delivery assurance from an early stage and ensure that providers deliver the assets that they originally submit for Prequalification. We further stated that this shouldn't unduly reduce providers' flexibility

for adapting their assets to new commercial situations between the Auction and the Delivery Year.

2.2. We also highlighted the possibility of change to this Rule, and asked which aspects of CMU configuration stakeholders do not think should be changed. We gave examples of aspects of a CMU which should not be able to be amended following Prequalification, such as Generating Technology Class and De-rated Capacity (and any other factors which effect this). In the Five Year Review Report, we committed to addressing this area in a future consultation.

Feedback from stakeholders

2.3. In response to the First Policy Consultation, we received 20 views regarding our questions on Rule 4.4.4. The responses were varied in terms of the view on flexibility that should be afforded to Generating CMUs. We did not receive any feedback suggesting that this Rule should remain in its current guise.

2.4. The vast majority of feedback commented on the fact that the De-rated Capacity should not be able to be altered, or at least not be reduced as a result of any changes under Rule 4.4.4. Approximately half of the responses were of the view that Generating Technology Class and Fuel Type should also remain constant. One response suggested that only secondary arrangements should be allowed to change, such as the number of Balancing Mechanism Unit IDs.

2.5. A few respondents called for significantly increased freedom, with several comments along the lines that changes should be permitted up to the point that capacity is impacted. One respondent suggested that non-standard forms of configuration should be allowed, with the onus being on the Applicant to demonstrate to the Delivery Body that their application meets the principles of the CM.

2.6. It was also pointed out that there may be unintended consequences to allowing changes to Generating CMUs, and that a thorough consideration of any alterations would be required to prevent these risks from materialising.

Discussion

2.7. The CM intends to deliver security of electricity supply, at least cost to consumers. The Rules should support this principle. As such, we are of the view that the delivery

assurance sought by Rule 4.4.4 should, where possible, also account for Capacity Providers to have a suitable degree of freedom to meet their Auction Acquired Capacity Obligation (AACO).

2.8. In the First Policy Consultation, we proposed that changes to Rule 4.4.4 should be considered to provide Generators with flexibility between Prequalification and the relevant Delivery Year. We believe that there is also value in considering the case for Generating CMUs to change components within Delivery Year, to enable Capacity Providers meet their Capacity Obligation as efficiently as possible.

2.9. However, the objective of ensuring security of supply requires sufficient levels of assurance within the Rules, to ensure that capacity comes forward as planned. Therefore, whilst our view is that changes to a CMU's configuration under Rule 4.4.4 should be permitted, we are mindful of ensuring that any change does not increase the possibility of non-delivery on any Capacity Obligations.

2.10. Furthermore, previous change proposals, and consultations, have discussed the issue that the term 'configuration' is undefined in the Rules, and therefore leads to difficulties in the interpretation of Rule 4.4.4. We agree, and are therefore minded-to specify which aspects of a Generating CMU's components can be altered when amending this Rule.

2.11. Taking into consideration the numerous responses, our policy view on this Rule has developed from the position we shared in the First Policy Consultation. We currently agree with respondents to that consultation, who called for greater flexibility to change components (including changes of Fuel Type and Generating Technology Class, which we had original suggested as should not be changed). As per paragraph 2.7, the primary objective of the CM is to provide security of electricity supply, at least cost to consumers. Whilst there are concerns around the level of assurance that should be required, we consider that policy should support the objectives of the CM, and only be more restrictive where the risks outweigh the potential benefits to consumers. If it is more cost efficient for Capacity Providers to meet their obligations via a different technology, or fuel type (for whatever reason), then our minded-to view is that this should be permitted so long as there is no impact to the amount of capacity to be provided in the relevant delivery year which would lower the AACO.

Our proposal

2.12. Our current position is that Rule 4.4.4 should be modified such that the following aspects of a Generating CMU's components can be altered, to the extent that none of these changes leads to a lower AACO for that CMU. Those aspects that we are minded-to allow to change are:

2.12.1. Fuel Type;

2.12.2. Generating Technology Class;

2.12.3. Metering arrangement; and

2.12.4. Connection Capacity

2.13. It is necessary to allow metering arrangements to be changed in order for any change to Generating CMUs to be permissible. We are proposing to allow changes to Connection Capacity to match the policy intent set out in paragraph 2.11. If either Fuel Type or Generating Technology Class can be changed, then it will be required to adapt the Connection Capacity to ensure that the same (or higher) De-rated Capacity can be provided.

2.14. In the event that these changes lead to an increase in the AACO, capacity payments would remain at the same level as before a change was undertaken.

2.15. We are of the view that Generating CMUs which are yet to deliver capacity should be able to make changes as above. We are also considering whether this should be possible to those CMUs which wish to change configuration during Delivery Year.

2.16. Where changes occur pre-Delivery Year, our initial expectation is that the following assurance requirements would be necessary:

2.16.1. All outstanding Agreement Milestones;

2.16.2. Where any Agreement Milestones have been met, a Declaration (and evidence, where necessary) to confirm that the change of components has had no impact to the milestone;

2.16.3. Relevant Planning Consents as required by Rule 3.7.1;

2.16.4. Connection Arrangements as required by Rule 3.7.3;

2.16.5. Relevant assurance as to the metering arrangements for the component(s), including confirmation from the CM Settlement Body confirming the change to the Metering Configuration, as set out in Rule 8.3.3 (where necessary);

2.16.6. Low Carbon Exclusion and Low Carbon Grant status, for any new component(s) as set out in Rule 3.4.7;

2.16.7. Any updated Exhibit's, where required (see our proposals regarding evergreen Prequalification);

2.16.8. A Declaration to confirm that, in the event that the CMU has passed the Evidence of Total Project Spend, the component(s) being removed will not be used to ensure that a different CMU meets the CAPEX thresholds for longer agreements; and

2.16.9. A Declaration to confirm that, in the event that the CMU has yet to pass the Evidence of Total Project Spend, the component(s) being added have not been used to ensure that a different CMU has met the CAPEX threshold for longer agreements.

2.17. For changes to the components which occur pre-Delivery Year, we are considering whether or not there should be a deadline, ahead of the Delivery Year, beyond which changes to the CMU's configuration would not be possible. We are aware that some CM Agreement Milestones are in place to ensure that capacity is on target to deliver as per any agreed obligation. Therefore, it may be appropriate to mandate that any changes occur sufficiently far ahead of delivery, such that there remains confidence that capacity would come forward. This would likely align with a point at which the CMU must declare its components.

2.18. We have not settled on a view here, as we are also aware that any CMU with an agreement is subject to termination fees and relevant penalties, which may be enough of an incentive to prevent Capacity Providers to change components ahead of Delivery Year where they are not confident of bringing the capacity forward in time.

2.19. Should we decide to allow Rule 4.4.4 to apply for CMUs within Delivery Year, our initial view is that the following would be required:

2.19.1. All assurance steps as paragraph 2.16, with the exceptions of 2.16.1 and 2.16.8; and

2.19.2. Satisfactory Performance Day(s) (SPDs) (as per Rule 13.4), where these have already been met in the original configuration. This also includes where an Extended Performance Test (Rule 13.4A) may be necessary.

2.20. At this time, we are still considering whether or not a CMU should have to redemonstrate its ability to meet its AACO in the same Delivery Year (in the event that changes occur during Delivery Year). Currently, for DSR reallocating components in the same Delivery Year, there is no requirement to redo the DSR test (unless an agreement exists in the next Delivery Year). However, there are differences between DSR and Generating CMUs which may make arranging a DSR test more of a burden than for a Generating CMU to re-demonstrate satisfactory performance. We are particularly interested in stakeholder views on this.

2.21. It is not our intent that a revised Rule 4.4.4 should lead to replacement of Rule 8.3.7 ('Notifying change of address'), the CMU transfer process, or Secondary Trading. We see increasing flexibility to Generating CMUs as a potential method by which changes to the CMU's configuration may be made, allowing an increase in efficiency for generators without increasing the risk of non-delivery of capacity. Currently, the location of Prospective CMUs can be changed through the change of location process. It may be that a holistic review of all these processes and relevant Rules is necessary in order to make the most effective change, in line with our policy intent.

2.22. We note that the recent BEIS decision (which introduces a number of changes to the Regulations and Rules)[11] includes changes to component reallocation for DSR CMUs. We are minded-to ensure that our proposals for changes to Rule 4.4.4 align as far as possible, to prevent needless complexity in the Rules, and to promote a level playing field. We will continue to work alongside the Delivery Partners and industry to ensure that there is a consistent approach taken to changes of configuration for both DSR and Generating CMUs.

[11] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886147/Future_improvements__emission_limits_and_coronavirus_easements_-_government_response_to_consultations.pdf

2.23. As per BEIS' decision, we anticipate that it may be necessary to create a register of generating components. This will reduce the risk of gaming opportunities, and prevent capacity providers from switching expensive components amongst their CMUs to exceed the CAPEX threshold and obtain access to longer agreements. We will align with BEIS' decision on DSR CMUs here.

2.24. In addition, to avoid unintended consequences of this amendment to Rule 4.4.4, Rule 6.10.1 (l) may need to be altered. This will be to ensure that a CMU which undergoes a change in configuration more than three times, and thereby potentially invalidates its Metering Test Certificate, does not have its agreement automatically terminated.

2.25. We note that our proposals to amend Rule 4.4.4 represent a significant change from the current process, and that time will be needed to develop both the specifics of how Rule 4.4.4 should work, as well as to deliver the necessary IT changes. As such, we do not envisage this change being implemented until Prequalification 2022.

Questions

2.26. Do you agree with our suggestion to allow changes to a Generating CMUs configuration between Prequalification and delivery? Do you think that a similar amount of flexibility should be provided to Generating CMUs during Delivery Years?

2.27. Do you have any views on the suggested level of assurance that should be necessary for CMUs who would undergo changes of components?

2.28. Are you aware of any unintended consequences introduced by our proposals on Rule 4.4.4, including any other Rules which may need amendment to avoid conflict?

2.29. Should there be a limit of the number of times a CMU undergoes a change of component(s), and the number of components that can be changed? If so, how many and why?

2.30. Should there be a point in the lead up to delivery, after which changes in components should not be permitted? If so, when and why?

3. Evergreen Prequalification

Section summary

We are setting out our expectation that the concept of 'evergreen' prequalification is implemented in the improved Portal. Our expectation is that this becomes possible for all CMU types. We are consulting on the suggestion to simplify the requirements on stakeholders to provide Exhibits during prequalification. We have decided not to take forward our proposals on having a 'rolling' Prequalification period, following responses received to the First Policy Consultation.

Questions

Question 6: Are you aware of any Rules which may need to be changed to ensure that the principle of 'evergreen' Prequalification can be implemented?

Question 7: Is there any information provided during Prequalification which would prevent this from being an effective change?

Question 8: Do you have any feedback on the proposal to look at reforming the method by which exhibits are submitted and signed?

Question 9: Do you know of a reason to maintain the requirement to provide Exhibits annually?

Background

3.1. In the First Policy Consultation (see paragraphs 3.9 to 3.14 of that document), we discussed the potential for two possible changes to the Prequalification process:

3.1.1. 'Evergreen' prequalification. By this we mean that the Portal should have functionality such that it is possible to store and utilise information about existing prequalified CMUs, to allow re-submission of previous applications in situations where there have been no material changes to a CMU; and

3.1.2. 'Rolling' Prequalification period, leading to a longer Prequalification window. 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.

3.2. Our minded-to view at the time was that there would be merit in adopting both of these suggestions. We asked stakeholders for views on both of these suggestions.

3.3. In the Five Year Review Report, we declared our intention to consider these proposals further.

Feedback from stakeholders

3.4. As a result of the First Policy Consultation, we received 26 direct responses to the questions we asked on these suggestions. Of these, approximately 70% of responses were in favour of the idea of 'evergreen' Prequalification, whilst less than half of stakeholders who responded agreed with the suggestion for introducing 'rolling' Prequalification.

3.5. Five stakeholders highlighted their view that the 'evergreen' proposal wasn't a material change from the current process, and that there was therefore limited benefit to this suggestion. However, it was also pointed out that the existing cloning functionality has not always worked as it should. Cloning is a functionality that exists in the Portal which allows Applicants to replicate certain contents of an existing CMU.

3.6. A large number of respondents were of the view that there was a limited benefit to the idea of rolling Prequalification, given that there are other processes within the Capacity Market year (see paragraph 3.10, below) which influence a market participant's decision to prequalify.

3.7. In addition, we also received general Prequalification comments requesting the introduction of more flexibility to account for administrative errors in Prequalification.

3.8. Further, several responses highlighted the burden of obtaining Director signatures, both where Applicants are the legal owner and where they are the Despatch Controller. Issues raised included that it is difficult to get Director's signatures during the Prequalification window (typically occurring over the summer), and that in some cases, they consider

that the required signatories are not the appropriate person (e.g. planning consents where Despatch Controller signs instead of legal owner).

Discussion

3.9. Our intention is that it should become more straightforward for participants to prequalify. We are of the view that a simplification of the Portal will go a long way to achieving this aim, via an improved user experience and an easier to navigate Portal (with embedded guidance).

3.10. We acknowledge the feedback from industry that there may be limited benefit in the idea of 'rolling' Prequalification. This is because there are other factors to take into account which influence whether or not a CMU will apply to take part in the CM Auctions, and when that decision might be made. These include, but are not limited to, ongoing Rules changes, decisions by the Secretary of State on whether to hold auctions, and notice of the amount of capacity to procure.

3.11. Whilst it has been highlighted by some stakeholders that 'evergreen' Prequalification is, to a large extent, already possible via the current Rules and system design, the number of respondents in favour of this change leads us to believe that there would be value in making clear our expectation that this capability should be significantly improved in the planned, improved Portal.

3.12. Our intention, therefore, is to clarify that we expect that 'evergreen' Prequalification is implemented as part of the improved Portal as soon as reasonably practicable It is our initial view, that there are no Rules which need to be changed to facilitate this.

3.13. Regarding the issues raised by several respondents to our consultation in relation to Directors' signatures. We remain of the view that signatures from relevant Directors provide an appropriate level of assurance to maintain the integrity of the CM scheme. However, in order to ensure that the 'evergreen' process is effective, we are minded-to make changes to the manner in which prequalification Exhibits are provided. Our current view is that Exhibits may not need to be provided annually, where they are no different from the same Exhibit provided the previous year.

Our proposal

3.14. We are minded-to alter the Exhibits required at prequalification to allow for most of the current suite of Exhibits to be provided by difference only.

3.15. By this we mean that Applicants would be required only to provide Exhibits during Prequalification where there is a difference from the previous application, in the event that either a Rules change requires it, or due to a change in the underlying information.

3.16. We envisage that an annual Exhibit will be required in order for Applicants to declare that their Exhibits either remain valid, or have been altered where appropriate.

3.17. To be clear, we are minded-to amend the wording of the Exhibits such that they are only needed to be provided by difference, and are no longer year specific. The annual Exhibit being suggested would provide the assurance that the relevant information remains valid for the current period, and this would likely be a variant of the current Exhibit A 'Form of Prequalification Certificate'.

3.18. Our view is that it will be incumbent on the Applicant to ensure that their application meets the requirements of the current set of Rules, each year, when they apply. The application will not simply 'roll over' to subsequent years. If the suggested annual Exhibit is not provided, then the Applicant will be considered to have not applied for the current round of Prequalification.

3.19. A further change we are considering is the possibility that Prequalification Exhibits could be created and managed within the Portal. This would replace the current system of uploading copies of documents. We understand that Exhibits can be an administrative a burden during the Prequalification process, and our intent is to reduce this as far as possible, whilst maintaining a sufficient level of reassurance and accountability. However, were we to implement the requirement to provide Exhibits only by difference (after the initial year), then the effect of this change would reduce the burden on Applicants.

3.20. This change could potentially also incorporate the ability for participants to provide electronic signatures. This is something that we are willing to consider, providing appropriate processes are in place to ensure the validity of any electronically signed Exhibits. Whether or not this change is implemented depends on the specific process used. For the moment, we would like the Delivery Body to develop the Portal such that this change could be implementable.

Questions

3.21. Are you aware of any Rules which may need to be changed to ensure that the principle of 'evergreen' Prequalification can be implemented?

3.22. Is there any information provided during Prequalification which would prevent this from being an effective change?

3.23. Do you have any feedback on the proposal to look at reforming the method by which Exhibits are submitted and signed?

3.24. Do you know of a reason to maintain the current requirement to provide all relevant Exhibits annually?

4. Prequalification Data

Section summary

We stated that one of the priorities of our Five Year Review was to streamline the Prequalification process. To achieve this, we intend to remove the requirements that do not provide essential assurance for the CM.

Questions

Question 10: Do you agree with our proposal to remove the Previous Settlement Period Performance requirement in cases where Applicants are prequalifying a CMUs, which has previously delivered upon its Capacity Market Agreement obligations in the previous two Delivery Years?

Question 11: Do you see any unintended consequences related to delivery assurance associated with our proposal?

Question 12: Should the Previous Settlement Period Performance requirement under Rule 3.6A.1 also be removed for Interconnector CMUs?

Background

4.1. As part of Prequalification, the Delivery Body collects data, which validates eligibility for the Auctions and provides necessary assurances regarding the viability and feasibility of prospective New Build and Existing CMUs to participate.

4.2. We noted that that there could be a more staggered approach to application submissions and certain requirements could be fulfilled in the agreement management process or could be removed entirely without undermining delivery assurance.

4.3. In the First Policy Consultation, we proposed the removal or delaying of certain requirements in the Prequalification process, which can be found in Table 2 in our Decision on the First Policy Consultation[12].

Discussion

4.4. In the Decision on the First Policy Consultation, we removed the requirements for Interconnection Licence, Technical Specifications and Forecasted Technical Reliability for the 2019 Prequalification applications. In regard to the other items listed in Table 2 of the decision, we stated that a more holistic approach needs to be taken in reviewing the information and data items submitted at Prequalification, to gauge what assurance they provide.

4.5. One area highlighted by several stakeholders relates to whether to retain the requirement to submit Previous Settlement Performance at Prequalification. Currently for Existing CMUs, Rules 3.6.1(a), (b) and (c) outline this requirement. Several stakeholders outlined that if a CMU is attempting to Prequalify based on Connection Capacity and has successfully demonstrated Satisfactory Performance Days ("SPD") for the previous delivery year, it should not need to provide Previous Settlement Period Performance. These respondents believed that the successful delivery of obligations relating to a Capacity Agreement and demonstration of SPDs should provide adequate assurance and thus negate the need for Previous Settlement Period Performance to be collected at Prequalification. We agree that this requires further consideration and is an area that would benefit from more wholesale change.

4.6. On further review of the requirements in Table 2 of the Decision on the First Policy Consultation which we decided not to amend, we still consider that these requirements introduce non-material levels of administrative burden, while providing useful assurances.

4.7. Deferring the collection of Secondary Trading Details provides little administrative relief for parties. There is also benefit from the early collection of the information, as it allows parties to establish contact with other Capacity Providers should they wish to Secondary

[12] https://www.ofgem.gov.uk/system/files/docs/2019/07/decision_on_amendments_to_the_capacity_market_rules.pdf

Trade. Some of the Prequalification items (for example the Metering Point Administration Number ("MPAN") or the Metering System Identifier ("MSID")appear to be requirements that involves relatively small administrative effort to provide especially for existing providers). This information also allow the Delivery Body to perform independent checks of historic performance.

4.8. A further data item listed in Table 2 of the Decision on the First Policy Consultation was Metering Arrangements. An option to defer already exists for this information, and respondents to the consultation highlighted that an option to provide at Prequalification is welcomed as some providers wish to avoid having conditionality placed on potential agreements withstanding the submission of further information.

4.9. Therefore for the reasoning stated above we are not proposing any Rules changes to the items listed in Table 2 of the Decision on the First Policy Consultation as we believe they place little administrative burden on Applicants, when weighed up against the assurance and benefits these requirements provide.

Previous Settlement Period Performance

4.10. Currently, each Applicant for an Existing Generating CMU must identify in their application three Settlement Periods on separate days in the 24 months prior to the end of the Prequalification Window, where the relevant CMU delivered a net output equal to or greater than its Anticipated De-rated Capacity (Rules 3.6.1(a), (b) and (c)). The Applicant must also specify the physically generated net outputs or Metered Volume where applicable, in MWh to three decimal places for each of those Settlement Periods.

4.11. Interconnector CMUs have a similar requirement (Rule 3.6A.1) whereby they must identify three Settlement Periods on separate days in the winter preceding the start of the Prequalification Window in which such CMU delivered a net output greater than zero as recorded for the purposes of the Balancing Settlement Code ("BSC") by file CDCA-I041 of the Central Data Collection Agent (CDCA).

Our proposal

4.12. We are proposing to allow the requirements of Previous Settlement Period Performance under Rules 3.6.1(a), (b), (c) and potentially Rule 3.6A.1 to be fulfilled by the use of an Applicant's previous Satisfactory Performance Day ("SPD") data. This would apply to Applicants prequalifying the same CMU in an identical form to when it gained and

delivered upon its obligations under a Capacity Market Agreement for the past two delivery years. We propose that where the relevant Applicant chooses the above option, the Delivery Body should use an Applicant's respective Satisfactory Performance Day data. This should provide sufficient delivery assurance. This change would affect both CMRS and non-CMRS Existing Generating CMUs.

4.13. We are content that this revised process would not have adverse effects on delivery assurance as all Applicants would still have to provide historic performance within 24 months prior to the end of the Prequalification Window but we would be adding an alternative route through which this could be provided.

4.14. We understand that BEIS are minded to consult on proposals relating to the demonstration of Connection Capacity at Prequalification. Their forthcoming work follows on from amendments we previously considered (OF15) in respect to the calculation of connection capacity in previous consultation rounds[13]. However, we established that implementation of our proposed changes required amendments to the Regulations including changes to establish partial terminations and penalties for not passing tests and thus we could not take fully forward our proposals.

4.15. Although there may be some overlap between BEIS' review on Connection Capacity highlighted above and our proposal to allow the requirement of Previous Settlement Performance to be met with past SPD data, we still believe there is merit to consult as this proposal aligns with our principle of reducing the burden of Prequalification. It also is not dependent on the progression of any BEIS work streams.

4.16. In relation to the items listed in Table 2 of the Decision on the First Policy Consultation, which we stated warranted a further review; following assessment, we believe that the removal or deferral of these requirements would provide little relief in administrative burden and when weighed up against the cost of the change we have decided not to take these amendments further. We will instead focus on areas raised as a higher priority, such as our proposed change to historic performance.

[13] https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-amendments-capacity-market-rules-2014-0

Questions

4.17. Do you agree with our proposal to remove the Previous Settlement Period Performance requirement in cases where Applicants are prequalifying a CMUs, which has previously delivered upon its Capacity Market Agreement obligations in the previous two Delivery Years?

4.18. Do you see any unintended consequences related to delivery assurance associated with the above proposal?

4.19. Should the Previous Settlement Period Performance requirement under Rule 3.6A.1 also be removed for Interconnector CMUs?

5. Planning Consents

Section summary

We are minded to remove the requirements to submit Relevant Planning Consents at Prequalification and instead replace with a declaration stating it has been gained. We are also proposing to maintain the deferral option of 22 days before the Auction for the submission of this declaration. In addition we are proposing to clarify the relationship between Connection Capacity and the maximum output contained in Relevant Planning Consents.

Questions

Question 13: Is the proposal outlined in paragraphs 5.12.1 to 5.12.4 appropriate – do you think any amendments should be made?

Question 14: Do you agree with our proposal to clarify who should make an associated planning declaration when the Despatch Controller and legal owner are separate companies?

Question 15: Do you have any views on our proposal to clarify the Rules when the RPC states the maximum output of the New Build CMU is smaller than the Connection Capacity?

Background

5.1. Through stakeholder feedback gained prior to, and following the Open Letter, we were made aware of potential problems associated with securing Relevant Planning Consents ("RPC"). For example, the possibility of long lead times to gain such RPC. 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. This is potentially outside an Applicant's control and could lead to capacity being precluded from participating in the Auctions. Currently the provision exists in Rule 3.7.1(a), which allows an Applicant to defer RPC to 22 Working Days before the relevant Auction. However, with the planned implementation of CP190 this deferral was set to be removed.

5.2. In our 2017 Rules change decision[14], we decided to take forward CP190 but 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"); this was subsequently raised in responses to the First Policy Consultation. A DCO typically takes 18 months to two years to complete, which means that even with approximately two years of lead-time, Applicants may still be at risk of being unable to secure planning consents in time for the next Prequalification Window.

5.3. In the First Policy Consultation we outlined our minded to position and proposed Rule drafting to halt the coming into force of the end of the deferral option for RPC (CP190). We also outlined a future plan to conduct a wider assessment on the submission of planning consents; on which we sought feedback on three options which are summarised below:

- **Option 1:** Remove the requirement to provide RPC at the Prequalification stage but rather submit a declaration that states that the project will have RPC by the time of the Financial Commitment Milestone ("FCM").

- **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 RPC until after the Prequalification window (22 working days before the Auction).

- **Option 3:** Keep the status quo, following CP190, which amends Rule 3.7.1 to remove the option for Applicants to defer provision of RPC until after Prequalification.

5.4. In the Decision on the First Policy Consultation, July 2019, we decided to halt the implementation of CP190, thus allowing the deferral of RPC until 22 working days prior to the Auction. We stated that we would be conducting a wider assessment of the planning requirement and would analyse stakeholder feedback submitted in relation to the three options proposed, looking to consult on a minded to proposal in a subsequent consultation document which was highlighted in the Five Year Review Report.

[14] https://www.ofgem.gov.uk/publications-and-updates/decision-statutory-consultation-amendments-capacity-market-rules-1

5.5. The feedback detailed below relates to stakeholder responses to the First Policy Consultation and the question we asked on the three options presented.

Feedback from stakeholders

5.6. Of the 23 stakeholders that responded to the question relating to planning consents support for the various options was split as follows: nine stakeholders supported Option 1, nine supported Option 2 and five supported Option 3.

5.7. Further comments received from these stakeholders, in relation to RPC, included:

5.7.1. A respondent highlighted that consideration should be given to planning requirements needed to deliver different types of assets, due the differing project lead times associated;

5.7.2. A stakeholder highlighted that currently the loss of planning permission or land rights does not result in termination. They inferred that if planning consents is indeed a requirement of Prequalification then the loss of this requirement should be seen as non-compliance and thus lead to a termination event;

5.7.3. Several stakeholders outlined that they believed that Option 2 should be amended to allow for deferral for all types of planning;

5.7.4. Concerning the possibility of introducing a requirement for a planning declaration, a respondent stated that with any planning declaration implemented there should be more clarity on who would sign said declaration whether it be the Despatch Controller or legal owner; and

5.7.5. It was highlighted by a respondent that Option 1 could be modified to require a declaration by the Applicant at Prequalification, with an expectation that the Applicant reconfirms they have acquired RPC following FCM.

Discussion

5.8. Considering Option 1, on reflection we believe that having an initial declaration at Prequalification and a further verification stage at FCM does not align with our principles of the Five Year Review of reducing regulatory and administrative burden. It could result in increased costs for capacity providers as a result of Independent Technical Expert

("ITE") verification at FCM. In addition, following discussions with the Delivery Body we believe there is potential for an increased non-delivery risk following gaining an agreement in the relevant Auction, which could unduly affect future procurement capacity levels. This would represent an increased risk profile relative to the current framework that we do not think is appropriate. Thus we have decided to not take Option 1 forward.

5.9. We note the feedback received in relation to Option 2, and are minded to take forward this proposal with several amendments including one to ensure it applies to all categories of New Build Applicants, not just those who have applied for a DCO. This will reinforce the principle of unbiased treatment across various projects types and sizes in the CM.

5.10. In regard to Option 3, both the lack of support from respondents and our own assessment has led us to decide to not take this option forward. We believe that a balance needs to be struck between the necessary delivery assurance for projects and not creating undue barriers to entry. This is in line with our key priorities of the Five Year Review of simplification of the Rules and reduction of regulatory burden where appropriate. In our opinion, Option 3 does not assist in the reduction of administrative burden and when weighed up against Option 1 or 2, does not significantly increase delivery assurance.

5.11. Taking into consideration stakeholder feedback, we do acknowledge that there is no direct termination event associated with the loss of planning consents. However, we believe this risk is mitigated through sufficient delivery incentives in addition to the fact that Capacity Providers are also required to meet Minimum Completion, which carries Termination Fees if this obligation is not fulfilled as per Rule 6.10.1(c).

Our proposal

5.12. We believe that Option 2 is the most appropriate and this is supported by industry respondents. However, we understand that this option may need refining to achieve the correct balance between delivery assurance and administrative burden on the Applicant. We are minded to take forward Option 2, with four amendments, as follows:

5.12.1. Remove the requirement to provide RPC at the Prequalification stage but instead replace with a declaration stating that planning permission has been gained at the point of Prequalification application;

5.12.2. The deferral provision relating to RPC which is currently in the Rules (22 working days before the Auction) would still exist, however an Applicant would be deferring the submission of the aforementioned declaration rather than the RPC documents themselves;

5.12.3. We aim to ensure that with the amendment of the RPC requirement at Prequalification, a sufficient framework still exists to allow the Delivery Body to request and review further information from the Applicant to verify any declarations made in regard to planning. This power is currently provided by Rule 12.3; and

5.12.4. In assessing the current requirements for RPC, we have also identified an area that would benefit from some clarification. We believe that alongside a declaration submitted at Prequalification stating that planning consents has been gained; an Applicant should also have to state the maximum output capacity allowable under the RPC.

5.13. Following stakeholder feedback we would also like to amend the proposal to make clear that the provisions outlined above will apply to all categories of New Build CMU Applicants, not just those who have applied for a DCO.

5.14. We also acknowledge the feedback outlining the case whereby the Applicant may be the Despatch Controller and the legal owner of the site may be a separate company. We are minded to clarify that the aforementioned proposed planning declaration to be made by the legal owner, in such scenarios.

5.15. In our assessment of the RPC requirements, we also have established that the Rules could benefit from increased clarity where there is an interaction with Connection Capacity.

5.16. CP157 was implemented in June 2016[15] and amended the Rules to explicitly recognise the potential for Connection Capacity to be higher than the capacity stated in the RPC. We note that ambient temperature can have an effect on the amount a generator can

[15]https://www.ofgem.gov.uk/system/files/docs/2016/07/decision_on_statutory_consultation_on_amendments_to_the_cm_rules_june_2016.pdf

produce and the RPC could be issued on the basis of output at an ambient temperature which is higher than the likely temperature during a stress event. Rule 3.7.1(b) (iii) provides for the scenario where the RPC submitted under Rule 3.7.1(a) states that the capacity of the New Build CMU is smaller than the Connection Capacity. The Rules then allow technical documentary evidence to be submitted alongside the RPC to justify the difference.

5.17. We believe the policy intent is clear; a capacity provider should be paid on the basis of the capacity that they can reliably and permissibly generate in a system stress event. Our view is that where an Applicant sufficiently justifies the difference between their RPC maximum output and their Connection Capacity, the Applicant's Connection Capacity should be set at the RPC maximum output.

5.18. This proposed change does not weigh in on the policy intent of the CM scheme mechanics but rather clarifies the relationship between Connection Capacity and RPC maximum output.

Questions

5.19. Is the proposal outlined in paragraphs 5.12.1 to 5.12.4 appropriate – do you think any amendments should be made?

5.20. Do you agree with our proposal to clarify who should make an associated planning declaration when the Despatch Controller and legal owner are separate companies?

5.21. Do you have any views on our proposal to clarify the Rules when the RPC states the maximum output of the New Build CMU is smaller than the Connection Capacity?

6. Capacity Market Register

Section summary

We are minded to implement CP270 and CP271, as we outlined in our Decision on the First Policy Consultation in July 2019. This facilitates the further publication of component level data in the CMR. In addition, we are proposing several other changes to the CMR, which have arisen from both our own assessment and from stakeholder responses to the Five Year Review.

Questions

Question 16: Do you have any comments on our proposals to add the information outlined in paragraphs 6.5.1 to 6.5.7, paragraph 6.6, 6.9.4, along with the CP2701 and 271 proposals to the CMR?

Question 17: Do you have a view on our proposal outlined in paragraph 6.18, to record the new CMR information items additions proposed for capacity providers who hold valid capacity agreements, where the information has already been collected at the time of application?

Background

CP270 and CP271

6.1. Where a CMU is made up of more than one component, the Capacity Market Register ("CMR") currently shows the aggregate capacities for each CMU. The CMR does not provide details of the underlying units (each with its own Connection Capacity, De-rated Capacity and Generating Technology Class).

6.2. We considered CP270[16] and CP271[17] as part of our 2017 Rules change process. These proposals sought to include additional fields in the CMR to increase transparency. They recommended the inclusion of more detailed component-level information to be

[16] https://www.ofgem.gov.uk/publications-and-updates/edf-energy-capacity-market-rules-cp270
[17] https://www.ofgem.gov.uk/publications-and-updates/edf-energy-capacity-market-rules-271

displayed on the CMR for each individual CMU component or Generating Unit, including Connection Capacity, De-rated Capacity, Generating Technology Class and Fuel Type. In addition, CP271 proposed to require the CMR to include information on the nature of the DSR provided, including a distinction between DSR capacity units that are and that are not supported by an on-site generating unit.

6.3. These changes can provide valuable information for market participants; give greater insights into Auction behaviour and may help inform policy-making in the future.

6.4. As noted in our Decision on the First Policy Consultation, we proposed to take forward CP270 and CP271 following the completion of OF12. This was due to the fact that both CP270 and CP271 required component level data to be collected and stored within the Portal, which OF12 would enable. OF12 was completed and went live in October 2019.

Feedback from stakeholders

6.5. In addition to CP270 and CP271, we received additional suggestions for amendments to the CMR. It was noted that the items below required corresponding Rule amendments under Rule 7.5 to ensure that the Delivery Body accurately changes the register when notified:

6.5.1. Credit Cover amount;

6.5.2. parent company details;

6.5.3. Secondary Trading details;

6.5.4. confirmation of meeting the FCM;

6.5.5. Meter Point Administration Number details;

6.5.6. agreement duration; and

6.5.7. relevant Delivery Year.

6.6. We also proposed to publish information on whether a CMU was subject to Substantial Completion Milestone ("SCM") and the expected date on which SCM would be achieved on the CMR. It was highlighted that this new data would provide useful inputs for various

modelling work streams led by NGESO and would allow a more accurate understanding of forthcoming capacity.

6.7. This would align the requirements for publication of SCM information with those already published for Financial Completion Milestone ("FCM") on the CMR.

6.8. Respondents to the First Policy Consultation were supportive of the proposed additions and these parties stated that this information should be provided on the CMR to support the efficient operation of the CM by improving market transparency and providing a better understanding of the capacity operating in the CM.

6.9. In direct response to what further data, if any, would be useful to include on the CMR, stakeholders also raised items including:

6.9.1. information on whether SPDs have been achieved;

6.9.2. the amount by which a CMU has traded all or part of its obligation, e.g. the amount of De-rated Capacity that a unit currently holds;

6.9.3. any Secondary Trading Entrants or CMUs that take capacity; and

6.9.4. the date on which a Metering Test Certificate awarded.

6.10. The format and consistency of registers across past Auctions was highlighted by several stakeholders as an area which needs improvement in order to aid agreement management.

6.11. In our Decision on the First Policy Consultation we decided to postpone implementing the requirements outlined in paragraphs 6.5 and 6.6 as we felt further assessment was required on whether or not these changes should apply retrospectively.

Our proposal

6.12. We are now minded to implement CP270 and CP271. This would amend Rules 3.4.5A, 7.4 (a) (ii) and 7.5, and would result in more detailed component level information as outlined in paragraph 6.2.

6.13. The Capacity Market (Amendment) (No.2) Rules 2020[18] set out a requirement for CMUs that include fossil fuels to declare, as part of the Fossil Fuel Emissions Declaration, the type of fossil fuel at component level. This requirement entered into force on 30 June 2020. Our proposed change supports the principle of further transparency and facilitates the publication of component level information.

6.14. In addition to the data fields listed in CP270 and CP271, we are also proposing to update the Rules to formalise additional requirements listed in paragraphs 6.5.1 to 6.5.7 above, some of which are already being captured on the CMR, into Rule 7.4.1(d) and under Rule 7.5.

6.15. We believe that, the stakeholder suggestions contained within paragraphs 6.9.1 to 6.9.3 require further assessment to ascertain the complexity of including these items on the CMR, the associated system costs, along with what benefits these additions would provide. Due to their connections with Secondary Trading we believe this further analysis would be better completed and discussed as part of our Secondary Trading work stream.

6.16. In addition to the above, we think that the suggestion contained within paragraph 6.9.4 would be a beneficial addition to the CMR and would further increase the transparency of the CMR. We are minded to implement this along with the proposal outlined in paragraph 6.6.

6.17. We highlighted in our decision letter that we would consider how the application of the Rules surrounding CMR requirements could further increase data transparency across all past Auctions.

6.18. We are also minded to amend the Rules to require that, where the information has already been collected at the time of application, the above new categories of information are recorded on the CMR for capacity providers who hold Capacity Agreements that have not expired or been terminated when these Rules changes come into force.

[18] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/897600/The_Capacity_Market__Amendment___No._2__Rules_2020.pdf

6.19. In light of the responses commenting on the format of the CMR, we believe that the online CMR being developed by the Delivery Body will result in a more user-friendly format going forward. We expect this to be delivered as part of the improved Portal.

6.20. We believe our proposals above support the key principles and findings of the Energy Data Taskforce[19]. The publication of more component level data improves data visibility across the CM scheme, together with enhancing infrastructure and asset visibility across the wider wholesale energy market.

Questions

6.21. Do you have any comments on our proposals to add the information outlined in paragraphs 6.5.1 to 6.5.7, paragraph 6.6, 6.9.4, along with the CP270 and 271 proposals to the CMR?

6.22. Do you have a view on our proposal outlined in paragraph 6.18, to record the new CMR information items additions proposed for capacity providers who hold valid capacity agreements, where the information has already been collected at the time of application?

[19] https://es.catapult.org.uk/reports/energy-data-taskforce-report/

7. Reporting requirements

Section summary

We are proposing amendments to reduce the administrative burden and cost of participating in the CM, where appropriate. As highlighted in the Decision on the First Policy Consultation, we are still minded to remove the requirement to submit progress reports, and associated ITE assessments, in all cases except ITE assessments for any remedial plan associated with the SCM and FCM, along with any report associated with Total Project Spend and the Long Stop. To maintain the relevant assurances we are proposing to introduce a new reporting milestone to capture the critical information relating to construction progress

Questions

Question 18: Do you agree with our proposal, outlined in paragraph 7.9, to remove progress reports and corresponding ITE assessments for the scenarios detailed, and replace with an alternative reporting milestone?

Question 19: Do you have any views on the timing of the proposed new reporting milestone?

Question 20: Do you have a view on whether the new reporting milestone should be implemented with a corresponding termination event? Should the proposed reporting milestone have to be validated by an ITE?

Question 21: Do you have a view on what information should be included as part of any update given to the Delivery Body in relation to the proposed reporting milestone?

Question 22: Is the current definition of "material change" clear enough – do you have any suggestions on how it could be amended/clarified?

Question 23: Should the proposed amendments to reporting requirements be applied to all capacity providers who hold Capacity Agreements that have not expired or been terminated when these Rules changes come into force?

Background

Progress reports and Independent Technical Expert (ITE) assessment

7.1. 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 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 those that relate to the Financial Commitment Milestone ("FCM"), any remedial plan associated with the SCM, Extended Years Criteria and the report associated with deviation in the Long Stop Date.

7.2. We have been made aware 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 irrelevant of project size. Therefore, we are of the view that there is a need to reduce the regulatory burden on Capacity Providers by streamlining the framework for monitoring prospective capacity.

7.3. In addition, we note there is no penalty or termination event associated with the failure to provide the progress reports.

7.4. In the First Policy Consultation, we proposed to remove the requirements for submission of progress reports and associated ITE assessments for all providers except ITE assessments 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.

7.5. We proposed to replace the submission of regular progress reports with a requirement on participants to submit a company directors' declaration to inform the DB of any material changes to the project timeline or to Construction Milestones as submitted at Prequalification.

7.6. In addition, we proposed to clarify what constitutes a material change if capacity providers did not feel it was adequately defined.

Feedback from stakeholders

7.7. Although the majority of responses were in support of the proposals outlined in paragraph 7.4 and 7.5, several stakeholders voiced concerns that the current reporting framework had merit in assisting in calculating the volume to procure for T-1 Auctions. Respondents also highlighted that the ITE assessment process gives the Delivery Body a third party independent verification of the progress of all new generators, and those undergoing refurbishment.

7.8. In our Decision on the First Policy Consultation we decided, having taken into account stakeholder feedback which is summarised in the above paragraph[20], surrounding relevant delivery assurances and the capacity target for T-1 Auctions, to consider these proposals further. We also outlined that we would consider if any amendments to the reporting requirements should be applied to agreements already gained.

Our proposal

7.9. A balance needs to be achieved between a reduction in administrative burden and giving sufficient assurance of project delivery. We are mindful of the responses received as part of the First Policy Consultation and our amended proposal is as follows:

7.9.1. We still are minded to remove the requirement to submit progress reports, and associated ITE assessments, in all cases except ITE assessments 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.

7.9.2. We think it is still prudent that an update on construction progress is provided including an estimated date for achieving the SCM, prior to the T-1 capacity setting. This is to assist in the Electricity Capacity Report work stream and the subsequent capacity to procure recommendations led by NGESO as the Delivery Body. Following consultation of NGESO, to understand when the modelling data inputs need to be finalised, we believe an appropriate time to provide such an update on construction and/or SCM is 22 months prior to the start of the relevant

[20] For a more detailed summary of the feedback received in response to our proposals please go to https://www.ofgem.gov.uk/system/files/docs/2019/07/decision_on_amendments_to_the_capacity_market_rules.pdf

Delivery Year. However, we would like to seek feedback on this timing. We would also like to ask capacity providers if they think the aforementioned new construction progress update should have to be validated by an ITE.

7.9.3. We believe that submitting reports every six months is overly burdensome. However, our view is it is prudent that if circumstances cause concern regarding non-delivery risk, a framework exists for the Delivery Body, Ofgem, and/or the Secretary of State to request and review updates on construction milestones from Applicants. For clarity, this would be outside the milestone proposed in paragraph 7.9.2.

7.9.4. Further, we are proposing to introduce an associated termination event if the update outlined in paragraph 7.9.2 is not provided. We believe a termination event would provide a deterrent, to ensure providers submit accurate construction updates. This change would create alignment with other delivery milestones, for example FCM, whereby failure to demonstrate completion of the milestone results in a subsequent termination event.

7.9.5. We would like to also seek stakeholder feedback of the contents of our proposed reporting milestone. In our view, any material change should be highlighted, in regard to the expected SCM date. Equally, it may be beneficial for an Applicant to detail what capacity they aim to be generating at their SCM, whether that be their full AACO, or at a reduced obligation.

7.10. We are also seeking stakeholder feedback on whether the proposed revisions outlined in paragraphs 7.9.1 to 7.9.5 should apply to all Capacity Providers who hold Capacity Agreements that have not expired or been terminated.

Questions

7.11. Do you agree with our proposal, outlined in paragraph 7.9, to remove progress reports and corresponding ITE assessments for the scenarios detailed, and replace with an alternative reporting milestone?

7.12. Do you have any views on the timing of the proposed new reporting milestone?

7.13. Do you have a view on whether the new reporting milestone should be implemented with a corresponding termination event? Should the proposed reporting milestone have to be validated by an ITE?

7.14. Do you have a view on what information should be included as part of any update given to the Delivery Body in relation to the proposed reporting milestone?

7.15. Is the current definition of "material change" clear enough – do you have any suggestions on how it could be amended/clarified?

7.16. Should the proposed amendments to reporting requirements be applied to all capacity providers who hold Capacity Agreements that have not expired or been terminated when these Rules changes come into force?

8. Applicant notice

Section summary

As part of our continual review of the Rules, to gauge whether there is sufficient clarity in the Prequalification process, we are proposing to amend the type of notification that the Delivery Body must provide to an Applicant when their associated Prequalification status changes.

Questions

Question 24: Do you believe it is appropriate to amend the Rules to mandate the Delivery Body to send a formal notice to an Applicant, as well as an update to the CMR, when their corresponding Prequalification Status changes from 'Conditionally Prequalified' to 'Not Prequalified'?

Question 25: Are there any other changes that should be proposed relating to the notice(s) issued by the Delivery Body to an Applicant?

Background

8.1. The Rules require the Delivery Body to send formal notice to Applicants under a range of scenarios including with regard to their original Prequalification decision and the result of any Reconsidered Decision and also if an Applicant is 'Conditionally Prequalified', withstanding remaining requirements under the Rules.

8.2. However, the Delivery Body are not required to always give notice, beyond the update of the CMR (as per Rules 7.4 and 7.5), when they become aware that an Applicant has failed to meet the conditions of their Prequalification, as per the Prequalification results decision letter. The Rules allow that, unless explicitly stated, the Delivery Body's update of the CMR is sufficient notice to an Applicant of its changed status (according to Rule 1.6 and the definition of 'EMR Delivery Portal').

8.3. It is an Applicant's responsibility to ensure that their Application for Prequalification is made in accordance with the Rules and Regulations, and that when information is submitted it should be done accurately and in accordance with both.

8.4. A conditional Prequalification Decision notice implies that if an Applicant does not meet the conditions, expressly stipulated based on Rule or Regulation requirements, the Applicant becomes non-compliant with the terms of their conditional Prequalification. Therefore, following the failure to meet these requirements or comply with the unequivocal conditions by the prescribed deadlines, an Applicant's conditional Prequalification status should be considered to be withdrawn and become "Not Prequalified".

Our proposal

8.5. A lesson learnt from the 2019 Prequalification disputes is that there could be scenarios where the process could benefit from clarification. In our view, it would be preferable for the Delivery Body to highlight to Applicants when a change to Prequalification status has occurred, above the requirement to update the CMR. An Applicant's Prequalification status can change where the Delivery Body determines that an Applicant has failed to meet a condition of its Prequalification thereby going from "Conditionally Prequalified" to "Not Prequalified".

8.6. We are minded to amend the Rules to stipulate that the Delivery Body must issue formal notice, as well as an update to the CMR, to an Applicant when the Prequalification status of an Applicant changes from 'Conditionally Prequalified' to 'Not Prequalified'.

8.7. We consider that this would provide increased clarity in ensuring the Applicant has clear sight of their change in Prequalification status. Further, we propose that any such notice should be sent to Applicants in line with the timings already stipulated in the Rules for updates to the CMR, and contain any reasoning for the change (where applicable).

8.8. We would like to clarify that the change proposed is not a change to the materiality of the conditions, or an Applicant's Prequalification status: if an Applicant has failed to meet the conditions of Prequalification, they will be "Not Prequalified". This change is requiring the Delivery Body to give notice to the Applicant of this result/outcome. Failure to provide notice, in this instance, does not negate the Applicant's duty to meet the Rules and Regulations required for Prequalification. Applicants should be sent notice, via the Portal, to highlight any changes to their Prequalification status.

Questions

8.9. Do you believe it is beneficial to amend the Rules to mandate the Delivery Body to issue a formal notice to an Applicant, as well as an update to the CMR, when their corresponding Prequalification status changes from 'Conditionally Prequalified' to 'Not Prequalified'?

8.10. Are there any other changes that should be proposed relating to the notice(s) issued by the Delivery Body to an Applicant?

9. Outstanding areas of the First Policy Consultation

Section summary

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.

Questions

Question 26: Do you agree with our proposal to include Category 2 and 4 intertrips as Relevant Balancing Services in Schedule 4?

Question 27: Do you believe Category 3 intertrips should be included as a Relevant Balancing Service in Schedule 4?

Question 28: Do you think that the Relevant Balancing Services list in Schedule 4 should be updated to include the Trans European Replacement Reserve Exchange?

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

Background

9.1. Proposal CP331[21], received during the 2018 Rules change process, proposed to remove Rule 8.5.1(ba), which relieves Interconnector CMUs of their capacity obligations when affected by NGESO actions to reduce the interconnector's output below its Interconnector Scheduled Transfer ("IST"). The current provision means that any action from NGESO 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

[21] https://www.ofgem.gov.uk/publications-and-updates/rwe-capacity-market-rules-cp331

output of the interconnector to zero. Removing 8.5.1 (ba) would have meant that Interconnector CMUs would have had to meet their capacity obligations irrelevant of the impact of NGESOs actions.

9.2. We rejected CP331 in our July 2018 Decision document[22] because it could have the undesirable effect of leaving Interconnector CMUs more vulnerable to factors beyond their control and would expose these CMUs to under delivery penalties.

9.3. One respondent suggested to amend the proposal to adjust the CMU's obligation proportionally with the magnitude of the NGESO 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 sought views on how to best to address this issue through Rule 8.5.1 in the First Policy Consultation.

Feedback from stakeholders

9.4. Of the 13 responses to Question 28 in the First Policy Consultation, the majority of stakeholders strongly stated that there should be a consistent approach taken between interconnectors and other categories of CMUs in regard to reducing a provider's obligation. These nine stakeholders believed that only the amount by which imports have been reduced as a result of an instruction from NGESO should be taken into account when calculating ALFCO.

9.5. One respondent suggested that the formula could be adjusted to set the interconnector obligation to the lesser of the IST and its metered output, where there is an NGESO action taken to reduce the output below the IST. Another suggested an alternative approach to treat NGESO actions in a similar manner to balancing actions taken in the Balancing Mechanism ("BM"), as per Rule 8.5.2. This suggestion would mean that NGESO actions would be treated as a form of a Negative Bid-Offer Acceptances ("QBOA").

9.6. In addition, the varied nature of interconnector connection agreements was raised, with the response highlighting the difficulty in developing a simple Rule change that encompasses all interconnectors. This respondent also noted the Clean Energy

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

Package[23], which, along with the European Commission's decision on the British Capacity Market under State Aid rules[24] ("the State Aid decision"), requires direct participation of cross-border capacity in the GB CM. This stakeholder suggested that this calls into question the need to amend a specific Rule relating to the current CM interconnector model.

9.7. A party also commented that this area is complex and will require further consideration before work can begin on developing a Rules based solution.

Discussion

9.8. We agree with the respondents that suggested a consistent approach should be taken across technology types with regard to reducing any obligation on a Capacity Provider following a system action by NGESO. One of the core pillars of the CM is technology neutrality, and where possible we endeavour to ensure there is fair, harmonised treatment of parties under the Rules. We note the various stakeholder suggestions of how the Rules may be amended, as outlined above, but we believe further analysis and consideration is needed before any proposal could be put forward.

9.9. As highlighted in the Section 1, notwithstanding the prioritisation exercise and outcomes of any subsequent statutory consultation, Rules changes proposed in this document would not be implemented until Prequalification 2021 at the earliest, and possibly not until Prequalification 2022. This is important in the context of this policy area because, as mentioned in the responses to the First Policy Consultation, the Clean Energy Package has clearly set the direction of travel to move to direct cross-border participation in capacity mechanisms. The result of this – and the State aid decision - is that the current framework for which interconnectors and interconnected capacity participate in the CM is set to be revised by BEIS.

Our proposal

9.10. We believe that the potential issue identified does not present a significant delivery risk to the CM scheme and it is not creating scenarios where parties are unduly penalised. In

[23] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.158.01.0054.01.ENG&toc=OJ:L:2019:158:TOC
[24] https://ec.europa.eu/commission/presscorner/detail/en/ip_19_6152

our view the issue rather surrounds the lack of harmonisation between different CMU classes and as the below outlines, the risk is mitigated by the changing policy direction for interconnected capacity which is set to be implemented in the near future.

9.11. Taking into consideration the expected implementation of direct cross-border participation in the CM, we believe that it is highly likely that the current interconnector model is revised before an amendment to 8.5.1 (ba) is developed and prioritised, in view of the low associated risk. We will therefore not be actively progressing any changes relating to this policy area. Following BEIS' forthcoming amendments to enact the Clean Energy Package and fulfil the undertakings outlined in the State Aid decision we would welcome stakeholder views to determine if this issue has been fully addressed. Depending on the feedback received we may subsequently reconsider proposing further amendments to the Rules.

Relevant Balancing Services (RBS): Possible inclusion of Intertrips and TERRE

Background

9.12. In parallel to CP331, CP333[25] was also submitted which 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.

9.13. Intertrips are a tool available to NGESO to manage constraints. They may be armed so that it automatically trips a breaker that reduces output or temporarily disconnects a generator from the transmission system when the intertrip receives a specific signal. The signal is delivered in the occurrence of a sudden event on the transmission system, such as a fault. An intertrip ensures that the relevant system will not be overloaded if an event such as a fault does occur.

9.14. If no intertrip is in place, NGESO would take alternative action such as Bid-Offer actions in the BM to constrain generation pre-fault, or would enter into contracts with relevant generators to reduce output.

[25] https://www.ofgem.gov.uk/publications-and-updates/rwe-capacity-market-rules-cp333

9.15. We rejected CP333 in our July 2018 decision because it is not appropriate to remove a CMU’s obligation in its entirety due to an intertrip. In some situations, 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.

9.16. System to generator operational intertripping schemes are commercial arrangements between NGESO 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.

9.17. We suggested that a more suitable approach may be to account for intertrip services within the ALFCO formula, as currently occurs for RBS[26], whereby the Capacity Obligation is reduced proportionately to the level of service provided. However, in the July 2018 Decision document we stated that this would require further consideration as well as consequential amendments to the Rules, including to Schedule 4. In the First Policy Consultation we sought views on whether it is appropriate to include intertrips as an RBS in Schedule 4.

Feedback from stakeholders

9.18. In answer to Question 29 posed in the First Policy Consultation surrounding intertrips, there was unanimous agreement from the 16 respondents who provided a direct response that intertrips should be included as an RBS. Respondents stated that a party should not be disproportionally penalised through the Rules for providing NGESO with a critical system management tool during a System Stress Event. A respondent also stated that intertrips provide an alternative to high cost network reinforcement, and therefore offers value to consumers.

9.19. However, also highlighted is the need to distinguish between commercial and operational intertrips. Those respondents who suggested the inclusion of intertrips stated that this should only extend to operational intertrips. These parties suggested that in regard to commercial intertrips, generators take these contractual arrangements into

[26] The Relevant Balancing Services are outlined in Schedule 4 of the Rules. It is a discrete list of balancing services for which a capacity provider would receive adjustment of penalties for if one of these services were being provided to NGESO during a System Stress Event.

consideration when entering the Capacity Market and therefore the commercial risk is ultimately their choice.

9.20. One respondent suggested that a potential solution would be to clearly define the fiscal risk of facing penalties under the Rules and put associated compensation measurements in place when the connection agreement is negotiated between the capacity provider and NGESO. The respondent did note that this would require individual providers to negotiate relevant terms and commercial arrangements and it would be more efficient to amend the Rules to avoid penalisation should an intertrip be activated.

9.21. One response to the consultation suggested that we should use the Grid Code[27] definitions of operational intertrips (of which there are 4 categories, outlined below) to form our position on which to include as an RBS. This party suggested that Category 2 and 4 relate to critical system management and system outages, and thus these should be considered as an RBS. They further detailed that Category 1 and 3 should not be included as an RBS as they are a customer choice, negotiable when the connection agreement is designed. These services may be offset by some benefit for the applicant e.g. avoiding the need for network reinforcement costs and attaining a physical connection in a shorter time.

9.22. In addition, a party highlighted that consideration should be taken as to how to implement the changes into the Rules to reflect the practicalities of how intertrips are armed and activated. The Rules may need to account for situations where NGESO has instructed the provider to remain de-synchronised from the grid following the intertrip for an increased period of time and how this may interact with the timings of a System Stress Event.

9.23. Even though respondents agreed, there was a call from one stakeholder to take a wider look at the provision of RBS in Schedule 4 of the Rules. They suggested to have a principle based approach instead of listing discrete balancing services, whereby a provider would demonstrate that NGESO asked them to provide a turn down service and would therefore not face penalties under the CM framework.

[27] https://www.nationalgrideso.com/industry-information/codes/grid-code/code-documents

9.24. Furthermore, it was highlighted that the RBS list should be kept under review as NGESO evolves the services that it procures to manage the system and in the context of compliance with EU legislation.

9.25. Although not in response to a specific question asked as part of the First Policy Consultation, two respondents suggested that the Schedule 4 and the RBS list should be updated to include actions taken as part of Trans European Replacement Reserve Exchange (“TERRE”).[28]

Discussion

9.26. There are four categories of operational intertrips, as defined in the Grid Code. These can be summarised as follows:

- **Category 1** – an intertrip scheme arising from a variation to a connection design (requested by, and agreed with, a customer) consistent with the criteria specified in the GB Security and Quality of Supply Standard (SQSS)[29];
- **Category 2** – an intertrip scheme required to alleviate the overload that would occur on a circuit that connects a group containing the generator to the rest of the system;
- **Category 3** – an intertrip scheme installed as an alternative to reinforcement of a distribution network, agreed between NGESO and the customer; where the scheme removes the risk of overloading the distribution system; and
- **Category 4** – an intertrip scheme installed at the request of NGESO under the circumstances where the use of such a scheme would be beneficial to facilitate the timely restoration of critical circuits.

9.27. NGESO is also able to enter into commercial arrangements with providers for the provision of intertrip services for intertrip schemes not covered by the intertrip categories referred to above (commercial intertrips).

9.28. We understand, after discussing with NGESO, that the use of intertrips and risk of activation is relatively low, but that it is still a critical system management tool if required. We agree with the view of respondents, in that intertrips should be included in

[28] TERRE is project to deliver a European platform for the exchange of balancing energy from replacement reserves. For more information please visit: https://www.entsoe.eu/network_codes/eb/terre/
[29] https://www.nationalgrideso.com/industry-information/codes/security-and-quality-supply-standards

Schedule 4 and classified as an RBS, as they are a crucial system management tool available to NGESO. We do, however, understand the concern that parties should not be exempt from penalty arrangements should they actively increase their delivery risk profile as part of their connection design.

9.29. We note the response to move towards a principle approach, however, we believe that in its current form, Schedule 4 provides clarity to applicants and providers as to which specific services are deemed an RBS and would thus be exempt from certain penalties. In relation to the implementation of any Schedule 4 amendments, we understand there are potential complexities including guaranteeing that a provider who has been instructed to remain disconnected from the grid for a period of time following activation of an intertrip is not unduly penalised should they be unable to deliver as per their CM agreement.

9.30. In respect to the suggestion to include TERRE in the RBS list, we note that there could be argument for its inclusion (due to its status as an exchange for a Replacement Reserve product). As such, we would like to seek direct industry views before we propose any amendments. We note that the implementation of GB's access to the TERRE market will be delayed until at least the end of October at the earliest, due to COVID-19 reprioritisation.[30]

Our proposal

9.31. The provision in Schedule 4 surrounding the RBS ensures that parties who are providing critical services to NGESO, and which affect their output during a System Stress Event, are not unduly penalised

9.32. Our initial view is that we believe that Categories 2 and 4 operational intertrips fall under the principle of the RBS framework outlined above and thus should be included in Schedule 4.

[30] https://www.nationalgrideso.com/document/168006/download

9.33. Category 1 is defined as inherently being more a direct customer choice. For that reason our initial view is that we do not believe it should be included as a RBS as the customer has chosen to increase their risk profile.

9.34. We would like to seek industry views on the possible inclusion of Category 3 as an RBS. Although it allows protection of the distribution network, it must be agreed between NGESO and the customer, allowing some form of customer choice in regard to their delivery risk. On this basis, our initial view would be to exclude Category 3 intertrips from Schedule 4.

9.35. In regard to the questions posed below please could stakeholders fully explain and substantiate their rationale where possible.

Questions

9.36. Do you agree with our proposal to include Category 2 and 4 intertrips as Relevant Balancing Services in Schedule 4?

9.37. Do you believe Category 3 intertrips should be included as a Relevant Balancing Service in Schedule 4?

9.38. Do you think that the Relevant Balancing Services list in Schedule 4 should be updated to include the Trans European Replacement Reserve Exchange?

Differentiating between firm and non-firm connection agreements

Background

9.39. The existing Rules do not differentiate between firm and non-firm connection agreements. Distribution connected generators with non-firm access rights are not precluded from participating in the CM.

9.40. In the First Policy Consultation, we sought 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.

9.41. This area of consideration arose initially from CP282[31] and CP311[32], which we considered and rejected 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 Distribution Network Operator ("DNO"). Relevant Interruptions (as defined in the Connection Use of System Code) currently only affect the Capacity Obligations of Transmission connected CMUs.

9.42. Our view was that although Distribution connected generators with firm access rights should not be penalised in the event of a network interruption beyond their control, 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 also detailed 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.

Feedback from stakeholders

9.43. Of the 18 responses to Questions 30 and 31, the majority of respondents highlighted the lack of standardisation across distribution level connection agreements and the significant challenge to apply a fixed de-rating position based on all types of non-firm connection agreements. Stakeholders outlined that if a de-rating approach was taken, it would require extensive investigation to ensure it was appropriate for the season and the region, to take into account any local constraints which could arise in a System Stress Event.

9.44. It was highlighted that before trying to attempting to define the firmness of a connection within the Rules, we should wait until the Significant Code Review ("SCR") on access rights[33] and the Energy Networks Association's ("ENA") Open Network Programme[34] have concluded.

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[31] https://www.ofgem.gov.uk/publications-and-updates/energy-uk-capacity-market-rules-cp282
[32] https://www.ofgem.gov.uk/publications-and-updates/green-frog-power-capacity-market-rules-cp311
[33] https://www.ofgem.gov.uk/electricity/transmission-networks/charging/reform-network-access-and-forward-looking-charges
[34] https://www.energynetworks.org/electricity/futures/open-networks-project/

9.45. The general consensus from respondents was that that Distribution connected CMUs with non-firm access rights should not be excluded from participating in the CM and four responses outlined that capacity providers should be left to manage their own risk.

9.46. Four participants held the view that the risks to delivery associated with non-firm connection agreements were low, and stated that Distribution connected assets would maintain their connection at times of a System Stress Event. These parties expressed concern about a potential proposal to de-rate non-firm connections relative to firm connections as they believe these sites provide an equivalent level of capacity as a firm connection.

9.47. One response to the consultation suggested that a solution may lie in using the Average Output as a method for determining Connection Capacity, instead of a further de-rating methodology. This would reduce the perceived risk of over-stated capabilities within non-firm agreements, as it would be based on actual performance of the asset.

9.48. A respondent suggested that if a de-rating approach was taken, it would be beneficial for NGESO to conduct modelling to show clearly where there is association between high periods of constraint and System Stress Events by each DNO and technology type.

Discussion

9.49. 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. We still are of the view that it would be inappropriate to completely exclude providers with non-firm connection agreements from the CM, as we believe that these providers provide a valid contribution to security of supply.

9.50. We also understand the difficulty in establishing an accurate and fair de-rating methodology as it would potentially need to account for multiple factors including location, technology type, and the issue that there is no harmonised treatment of non-firm connections across DNOs.

9.51. We note that a stronger penalty regime and amendments to the Rules surrounding Connection Capacity selection/testing would further mitigate any potential delivery risks. This would ensure that a capacity provider is left to manage its own risk profile and thus the penalties it may face in regard to non-delivery are down to commercial decisions

they have chosen to make. BEIS outlined in their Five Year Review of the Capacity Market, published July 2019[35] that these would be two areas that they would be assessing and proposing amendments where appropriate

Our proposal

9.52. Reflecting on the stakeholder feedback received, we are minded to not propose any Rules changes in this area. There are a wide variety of connection agreements at distribution level and thus it is not possible to implement a simple de-rating methodology that distinguishes between firm and non-firm capacity.

9.53. Flexibility can help manage network constraints and reduce the need for potentially expensive network infrastructure, reducing costs for consumers and enabling quicker/cheaper connections. We believe that the risk associated with non-delivery due to non-firm connection agreements is low and does not warrant further investigation at this time. This is something that we will monitor and potentially review following the completion of the SCR and the ENA's Open Network Programme.

35 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819760/cm-five-year-review-report.pdf

Appendices

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Appendix 1 – 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. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for six months after the decision on Rules changes is made)

5. 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.

6. Your personal data will not be sent overseas

7. 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".