The voice of the energy industry

Consultation on Capacity Market Rules change proposals

22 October 2020

About Energy UK

Energy UK is the trade association for the GB energy industry with a membership of over 100 suppliers, generators, and stakeholders with a business interest in the production and supply of electricity and gas for domestic and business consumers. Our membership encompasses the truly diverse nature of the UK's energy industry – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.

Our members turn renewable energy sources as well as nuclear, gas and coal into electricity for over 27 million homes and every business in Britain. Over 730,000 people in every corner of the country rely on the sector for their jobs, with many of our members providing lifelong employment as well as quality apprenticeships and training for those starting their careers. Annually, the energy industry invests over £11bn, delivers £88bn in economic activity through its supply chain and interaction with other sectors, and pays £6bn in tax to HMT.

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?

As a matter of principle, Energy UK believes that the capacity provider should be able to change a Generating CMUs configuration between prequalification and delivery.

We agree with Ofgem that at prequalification stage, there should be a commitment to a de-rated capacity to be delivered. Should an applicant's new capacity exceed the de-rating factor, they should not get paid for that additional revenue. Therefore, although technology should be declared along with its capacity at prequalification stage, we see no reason as to why the technology should not be able to change, so long as the de-rated capacity committed to is still met and the issues highlighted in Q3 are addressed. The new technology will need to be declared to ensure that there is sufficient de-rated capacity in the CMU's new configuration to allow the original capacity obligation to be achieved. A new declaration under 3.4.7 (Low Carbon Exclusion) will also need to be made. Further, we believe it should also be allowed in delivery year.

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?

It seems unnecessary to require further levels of assurance if components are changed apart from those listed in Q3. So long as the new technology is confirmed along with a sufficient de-rated capacity, and can deliver the obligation committed to at prequalification then we see no reason for any further assurances beyond what would normally be expected. We seek clarification on how Ofgem assure that the de-rated capacity is met. Energy UK believes this should align with secondary trading requirements as much as possible

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?

We believe that the Satisfactory Performance Day (SPD) requirements would need to be considered if a component is changed within the Delivery Year. We support Ofgem's suggestion that the SPDs would need to be completed afresh with the new configuration.

Ofgem will need to consider the Metering Test Certificate for component changes within Delivery Year. The Certificate is at CMU level, therefore a component change would invalidate the meter test certificate. We would suggest that the rules are amended such that meter test certificates are issued at a component level. This will aid the flexibility for this process to work effectively. Any new components would need to be tested before they could form part of the CMU

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?

We see no reason as to why there should be a limit on the number of times a CMU can undergo a change of component(s). This is a purely commercial decision, and so long as the agreed de-rated capacity can still be met and delivered, component change should be allowed to happen as many times as is deemed fit by the provider.

Furthermore, we would deem it inappropriate for Ofgem to restrict commercial decisions of this type. Making your unit commercially optimal would likely result in more cost-effective options (apparent from the prevailing market conditions) resulting in a better outcome for the consumer.

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?

So long as the de-rated capacity and obligations can be met in line with its delivery date, we see no reason as to why this cannot change up to delivery date and even within the delivery year.

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?

We have no comment on this at this time.

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

We are unaware of any information provided during prequalification that would prevent this change. However, the 24 months historic data needs to be considered if SPD data is not used. We would like to highlight that if evergreen applications are a real ambition of Ofgem's, then to fully enable this Ofgem and BEIS need to ensure that any changes to the Rules are clearly signposted, brought into force and appropriate guidance provided well-ahead of prequalification opening.

Although we can understand issues of bringing into force and providing consolidated Rules in 2019, in the context of the CM suspension, and in 2020, in the context of Clean Energy Package implementation and COVID-19, we would like to emphasise that for prequalification purposes this created unacceptable risk to our members. We would welcome a commitment from Ofgem to provide consolidated Rules and guidance on any changes at least three weeks prior to prequalification window opening.

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

Energy UK supports the proposed changes to submitting and signing exhibits.

As a matter of principle, Energy UK has long argued that delivery partners should provide confidence to capacity providers that electronic signatures would be accepted. This is consistent with advice provided by the Law Commission regarding their legality[1].

We would also like to highlight that we see no reason as to why requirements for an electronic signature should be overly prescriptive, so long as a suitable one is provided. We would not deem it suitable for needless requirements, such as specific format, or using certain software. A regulatory approach like this would continue to create convoluted and unnecessarily onerous Rules. Consideration should be given to how legal owners who are not the Applicant would be able to sign the declarations if these are generated and stored within the portal. It would be inefficient to expect the legal owners in this instance to have EMR user portal access

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

No. Energy UK strongly believe that providing annual exhibits (with new signatures) is a barrier for customer-owned assets participating in the CM. We do not see the need for this to be required annually. This issue is especially challenging for large companies with assets, as these still require Directors signatures of the PLC, which is over the top.

New exhibits with signatures should only be needed if there is a material change.

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?

We agree with the proposal to allow Prequalification based on prior years SPDs. This requirement should be optional as there may be a need for a CMU to seek a lower obligation than in prior years if using historic performance.

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

We have no comment on this at this time.

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

We have no comment on this at this time.

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

We have no comment on this at this time.

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?

Energy UK has no specific views on this, but do deem the proposals sensible. We also welcome the option to defer the supplying of relevant planning consents until 22 days prior to the auction.

[1] https://www.lawcom.gov.uk/electronic-signatures-are-valid-say-governments-legal-experts/

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?

Energy UK deem it unnecessary to add further complexities to providing clarity of when the RPC is less than that of the connection capacity. Members have experienced issues in the past where the RPC has been smaller than that of the connection capacity on the agreement. In this circumstance, we would appreciate Ofgem offering guidance to the Delivery Body to accept an explanation by the capacity provider in these circumstances to satisfy their application review.

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?

As part of this the DB should move away from excel and create one database containing all results. Currently the registers are one per auction year, T1 & T4, with different layout etc. which makes it difficult to build a system to extract the data.

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?

We have no comment on this at this time.

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?

Energy UK supports this proposal. We would like clarification on the depth of review carried out by the Delivery Body. We have heard mixed experiences of ITE's depth of report, and therefore, we do not understand precisely what the Delivery Body reviews in ITE reports.

If this is merely a superficial review to check that an ITE report has been carried out, then Energy UK questions the necessity for an ITE report. Many members of Energy UK perceive ITE reports to be needless and overburdensome for what they are used for. The associated data provided in an ITE report is typically available elsewhere without the expense or effort associated with an ITE report. We encourage Ofgem to go further and assess whether this requirement is necessary, particularly in the context of BEIS's commitment in its Five-Year-Review to simplify the Rules and reduce unnecessary burden.

In the context of the above, we believe that it would be suitable to replace this ITE report with a simple endorsement and approval of accuracy by the directors. We welcome the removal or ITE reports that are costly (especially for smaller assets) and appear to drive no action/response from the Delivery Body hence supporting they are not value adding.

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

The suggested date seems appropriate to help inform procurement needs for the T-1 auction.

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?

Currently, failure to submit a report or submitting one in the wrong format carries no consequence, other than the failure is noted.

There should be an independent check as to whether progress on a multi-year agreement is on track and a consequence if not submitted. There should be a distinction between failure to submit a report (which should carry a consequence) and not submitting one in the correct format (for example the signature not being in the correct format - which should not).

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?

It should cover the items set out in 12.2.1 (ca) but see the response to Question 22. If a project is not going to meet the SCM, there should be the ability to state this and to also state when (by the Long Stop Date) the project is expected to be Operational.

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

From a capacity market point of view, notifying if a new date is two months earlier than that that set out in the construction report doesn't add anything other than knowing that the CMU will more likely be Operational by the start of the Delivery Year.

Requiring a notification if the CMU will be more than 2 months late currently may incentivise the start of the Delivery Year date to be entered into the Construction Plan to avoid having to provide an ITE report if delayed.

Under this new proposal, it would be more useful if the update under 12.2.1 (a) only required an explanation if the CMU is not expected to meet the SCM and if so, the expected date when the SCM will be met. This would need to be accompanied with an explanation as to the cause of the delay.

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?

Yes – there is no need to continue with this requirement on those that already hold capacity agreements when it is recognised by Ofgem that they are an administrative and costly burden.

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'?

We deem this suitable, however, we would like to raise our concerns regarding the widely used Egress system by the ESO. Although we acknowledge the necessity for a secure communication medium, Egress is difficult and incompatible with a number of capacity providers IT devices. We would like to see Ofgem instruct the Delivery Body to only communicate with the capacity provider via email or the portal, as required.

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

We have no comment on this at this time.

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

Energy UK agrees with this proposal.

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

This should not be included. This has been agreed with the customer and therefore the customer has factored this into decision to enter the CM already.

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?

Energy UK has no views on including TERRE at this time in consideration of the ESO's recent announcement that it is unlikely that it will be able to go-live with Project TERRE prior to the 31st December 2020. Further, it seems unlikely, following the European Commission's communique of July 2020 that GB will be able to use the LIBRE platform.

These developments, and those unexpected over the COVID-19 period, has highlighted that it may be more suitable to form a more enduring and solution than updating the Relevant Balancing Services (RBS) list. We would also encourage clarity on whether localized DNO services will be included in the RBS list. Therefore, we encourage Ofgem to adopt a simple definition that encompasses the exclusion of DNO/ESO instructions, but not those that are voluntary (such as an ancillary service that has been tendered for and a contract awarded).

This would form a solution that will be resilient to the expected changes forthcoming from the ESO. Dynamic Containment and ODFM need to be included as soon as possible.

Should you have any questions regarding the above response, please do not hesitate to get in touch.

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