

Energy UK Response: Capacity Market Improvements 2021 Consultation

16 April 2021

About Energy UK

Energy UK is the trade association for the energy industry with over 100 members spanning every aspect of the energy sector – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership. We represent the diverse nature of the UK's energy industry with our members delivering almost all (90%) of both the UK's power generation and energy supply for over 27 million UK homes as well as businesses.

The energy industry invests over £13.1bn annually, delivers around £85.6bn in economic activity through its supply chain and interaction with other sectors, and supports over 764,000 jobs in every corner of the country

Summary

Energy UK welcomes the opportunity to engage with the Department of Business, Energy and Industrial Strategy's (BEIS) on this consultation on Capacity Market (CM) Improvements and thanks BEIS for their prior direct engagement with Energy UK and our members on this. Generally, we welcome many of the changes proposed by BEIS in this consultation. In summary, we welcome the proposals regarding the allowance of minor errors at prequalification, which we believe should bring more capacity to the market and reduce the burden on suppliers. We support the proposal to maintain the minimum capacity threshold at 1MW and we also welcome the inclusion of CM easements and request that these are extended to cover the period in which we are in a third national lockdown.

However, Energy UK members are in disagreement with regards to the proposal to place all Capacity Market Units (CMU's) in the Balancing Mechanism (BM). Energy UK members recognise the importance of allowing National Grid ESO (NG ESO) better visibility of embedded generation and while some believe that this proposal provides a viable and immediate solution to this problem, others hold concerns around the significant barriers to the BM and potential knock-on negative consequences. Therefore, our main request is that BEIS and NG ESO engage with industry further and undertake a substantial cost-benefit analysis to assess whether this proposal is the most appropriate solution before proceeding with a decision.

I can confirm that we are happy for this consultation to be published.

1. CMU Interactions with the Balancing and Settlement Code

Question 1: Do you agree with our proposal to require CMUs to register as BMUs? Do we need to require all CMUs to set their Final Physical Notification Flag to "True" (T)?

We welcome clarification from BEIS that there will be a full Impact Assessment (IA) and Cost Benefit Analysis on these proposals. We also would like to request further information detailing the exact problems NG ESO are experiencing with visibility at the moment. We suggest that BEIS work with NG ESO to define the extent of the problem and include this information within or alongside the IA and CBA to provide industry with a clearer picture.

As mentioned, Energy UK members remain divided in their views as to whether they support the proposal to require CMUs to register as BMUs. Below we have outlined both viewpoints for due consideration.

1. Support for the proposal

On the one hand, some Energy UK members strongly welcome this proposal to require CMUs to register as BMUs. These members believe this is a move in the right direction as it will give NG ESO better visibility and control of embedded generation on the system, particularly during times of system stress. Members who support this proposal also believe it will provide a relatively immediate solution to the ongoing issue of system visibility and enable greater transparency of information, as outlined by BEIS in the consultation document. These Energy UK members have highlighted the difficulties faced by market participants and NG ESO in terms of understanding what is going on in the market. Some members note that this will be an issue going forward in the context of more flexible and distributed embedded energy sources coming onto the system and consideration needs to be given to how visibility of non-CMU embedded plant can be improved. Energy UK members who hold this view believe that this move will also enable NG ESO to successfully dispatch plants in merit order, avoid taking high-cost actions in the control room ahead of time, increase competition in a wider market and ultimately help ensure security of supply at least cost to customers.

Members who support this proposal have stressed the importance of introducing a way of ensuring visibility and transparency on the system before the mid-2020s and consider this to be the most viable and efficient way of achieving this. Some members acknowledge the concerns held by other Energy UK members with regards to this proposal (as set out in section 2 below), however these members believe that many of the concerns can be addressed and rectified to mitigate the negative consequences on the affected parties. In this respect, some members would welcome more work to explore how to implement the proposal in a way that didn't impose an excessive burden on any providers as opposed to investigating whether or not to implement the proposal at all.

2. Disagreements with the proposal and concerns

On the other hand, other Energy UK members strongly disagree with the proposals. We note that BEIS has recognised within the Consultation document that there have been administrative reasons why embedded generators have not previously participated in the BM. We also note the NG ESO 'Wider Access' project has aimed at removing many of these barriers. However, some members feel that BEIS has overlooked concerns held by smaller scale generators and DSR providers, who do not currently participate in the BM.

Whilst these members note that there's a need for more visibility of the system, they argue that this route has not been sufficiently justified by BEIS within the Consultation document. These members believe that if BEIS would like to see more plants participating in the BM, it should not be linked to the CM, but instead consideration could be given to requiring all plant over 40MWs to be in the BM, irrelevant of technology for example. Members putting forward this suggestion go on to say that this threshold could then be lowered once the ESO has demonstrated that it is capable of managing smaller plant and treating them on a fair basis when despatching plants. It has been noted that in the most recent P412 ('Ensuring non-BM balancing services providers pay for non-delivery imbalances at a price that reflects the real-time value of energy') meeting, NG ESO said that they could not put all Non-BM ancillary service products into the BM before 2028. This seems to suggest that BEIS' proposal may not be achievable. It also illustrates that a wider review is needed to consider which plants would be in the BM, what data do they need to provide and how can reporting on embedded plant improve transparency and so on.

More detailed reasons and examples for which members cannot support this proposal are listed below:

- Requiring all capacity obligated plant into the BM is considered a significant change to the structure of the energy industry and one which many members believe should be fully explored on a standalone basis rather than as an adjunct to the capacity market.
- Some members have detailed their experience of the cost of entry and believe that the experience of small providers in the BM does not align with the view articulated in the consultation document

- Some Energy UK members highlight that the CM was designed to ensure adequate capacity in a stress event, and raise concerns that this proposal will instead give control of all CM obligated parties to the ESO.
- Many have expressed that this proposal is unsuitable for DSR and very small units where the cost of BM participation would significantly outweigh any benefits from the CM. Some members are concerned that this could then result in reduced participation in the CM and increase costs to consumers.
- Many Energy UK members feel that the principle of having to register as a BMU prior to prequalification when the award of a CM contract is uncertain and is likely to be four years ahead of the CMU having a capacity obligation is unduly penal. These members have expressed the view that, at most, a successful CM entrant should have an obligation to enter the BM prior to the start of the delivery year in which it is awarded a contract.
- Some members have highlighted that the Balancing Mechanism despatch model is not suitable for all forms of generation. In particular, DSR, smaller DER and renewables may struggle to operate in a similar manner to larger plants, particularly where FPNs are required to be submitted. This is particularly pronounced as gate closure remains at 1 hour before the Settlement Period start point; many smaller units will despatch much more rapidly, and there is a need signalled by the ESO itself that there is a need for Capacity to be despatchable in sub-15-minute timescales.
- Some members believe that NG ESO should be working towards ensuring that more flexible assets with shorter notice periods are despatched in merit – therefore not seemingly penalising some plants for their flexibility. This issue is not exclusively linked to the proposal for CMUs to be BMUs or the smaller sized participants – the BM does not value flexibility regardless of the size of the asset.
- Related to this, concerns have been raised about the poor IT capabilities of NG ESO and their ability to deal with a far greater number of smaller more flexible sites in the BM. Although other members consider that having all assets being instructed using the same platform would result in easier management of the system.
- Some feel that implementing this change ahead of the fundamental Balancing Mechanism reform expected in the 2020s will have the effect of effectively restricting some participants access to certain registered balancing services, such as Fast Reserve. This will disproportionately impact distributed energy sources, and threatens the base economics of many plants.
- Many members acknowledge that the VLP route is not necessarily suitable for all sources of generation to participate- there are still significant reforms and code modifications (see answer to question 3) that would need to be made to this route for it to be viable for smaller DER, to operate independently, otherwise implementation as it stands would de-facto require smaller Capacity Providers to contract with an aggregator.
- There is a concern that requiring FPN flags to be set to true will lock out smaller DG (and be very pronounced for DSR in particular).
- Some EUK members hold the view that still requiring BM metering is essentially requiring capacity providers to take on extra costs- costs which will set a de-facto price floor for a lot of units as they have to factor in metering and aggregation costs. These members are concerned that this could both jeopardise security of supply and also threaten some of the moves towards decarbonisation so far.
- Many members feel that the arrangements for CVA BMUs and VLP BMUs needs to be aligned, allowing aggregation of sites behind GSPs
- Some members also feel that the BEGA needs to be written clearly to appeal to parties and they should not be charged for signing it.

When accounting for the number of concerns listed above, some members feel that a deep-dive cost benefit analysis and impact assessment should have been undertaken prior to putting forward this proposal to fully understand the consequences on all CMU types. In this context, some members would have welcomed clarity on the extent of the volume of capacity that NG ESO cannot see (i.e. capacity that is not also in another ancillary service or product). These members would therefore like to see further work and analysis on relevant balancing services within the cost-benefit analysis.

Some members feel that NG ESO should instead be providing incentives to encourage parties into the BM rather than making it mandatory. One such solution suggested by an Energy UK member is that NG ESO could pay these smaller generators or DSR parties to enter the BM, as opposed to requiring them to pay for BEGAs. Fundamentally, many Energy UK members remain concerned by the risk that introducing this requirement will mean that this will result in fewer CM participants, notably DSR, therefore reducing competition and potentially increasing costs.

3. Next Steps

Given these concerns set out by a proportion of Energy UK members, we would like to emphasise the importance of an in-depth cost benefit analysis to understand all the potential effects (including reviewing how data is already provided to ESO through other routes, such as the Balancing services desk) before a decision is taken on this proposal. Such a review should also focus on improving transparency of embedded plants, which many members believe could be done by requiring the DNOs to publish output by technology class, by GSP within their regions

Question 2: In your view, are there any types of CMU that should be exempt from these proposals and/or are there any aspects of these proposals that would be unsuitable for certain types of CMU? Please provide supporting evidence

Question 3: In your view, does our suggested implementation in time for the opening of the Prequalification Window in 2022 afford sufficient time for participants to meet the obligation to be registered as a BMU?

If BEIS were to go ahead with this proposal, members who have raised concerns regarding this proposal do not believe the suggested implementation timeline ahead of the Prequalification Window in 2022 provides sufficient time for participants to meet the obligation to be registered as a BMU. Further to the points made in Question 1, we will now lay out further challenges that have been highlighted by some members as to why this proposal is not deliverable by 2022-23:

- Energy UK members have highlighted that VLP Wider Access is a new route – we will need the BSC code modifications 375 and 376 to enable many assets that are in the CM to participate in the BM
- There are significant cost barriers that may mean that some CMUs will not be in a position to make these changes in such a short space of time.
- On average becoming a BMU takes 10-12 months

On the other hand, Energy UK members who support this proposal would welcome this change to be made prior the opening of the 2022 Prequalification window.

Question 4: In your view, what further CM obligations could be simplified or otherwise modified if the proposal for CMUs to register as BMUs is implemented?

Some members have highlighted that many parties will have concerns surrounding Ofgem's letter on Dynamic Parameters. For example, for smaller and/ or flexible plants if the ESO were to be calling on them to turn on and off every 10 minutes, the wear of the plants will both increase O&M costs and reduce the life of the plants. There will need to be a discussion around the dynamic parameters they would be required to submit.

Some members have suggested that BMUs behind GSPs should be able to aggregate as they could if they were VLPs, highlighting that this not only would see them treated in a similar manner to Trading Units under the BSC – it would also create larger BMUs that are more likely to be despatched by the ESO.

Members have highlighted that the contractual framework must be clarified so that the BEGA makes sense and the obligations under the Grid Code are clarified. Similarly, concerns have been raised over the mandatory requirement to facilitate fax. We view it as inconceivable that in an emergency event the ESO will be using fax as a method of communication to plants and suggest that this is reviewed.

It has also been emphasised that the speed of signing up as a BMU must also be increased. Some members believe that this needs to be addressed before BEIS can consider requiring all CMUs into the BMU – as it may not be achievable at the current rate of sign-up. These members would also support the ESO being required to provide a minimal despatch system for parties to use in signing up, which they would own and update as required. Furthermore, it has been noted that the ESO have mentioned a new BM by 2025, meaning there is a risk that many parties will incur large IT costs, only to have to spend more in the near-term future.

On the other hand, some members would like to highlight their view that if CMUs are required to become BMUs, it should actually enable some cost reductions to be made in the operation of the CM, particularly in respect of metering. To elaborate further, there are already a clear set of rules and requirements set out for a BMU metering system, some members believe that if CMUs are made up of BMUs, there is the potential for the current CM rules addressing metering system requirements to be considerably simplified. Further to this, as BMU metering data is published by Elexon, if all CMUs were to become BMUs, it would put the Delivery Body in a position to be able to check the performance of any CMU directly using this data (as part of National Grid, they have access to Elexon data). Some members believe this will also greatly simplify the arrangements around Satisfactory Performance Days. These members also emphasise that given the current requirements, it should be possible for the Delivery Body to write systems that automatically check that the requirement has been met without the need for submissions by the Capacity providers responsible for CMUs. Similarly, data flows following a Stress event have the potential to be considerably simplified.

Question 5: Are there any alternative approaches that could provide the same visibility ahead of time of a CMU's market position, in place of being a BMU?

Fundamentally, as mentioned above, we would like to emphasise that first industry fully understands what the exact problem ESO are encountering is in terms of system visibility. In this respect, more information is needed from ESO alongside an IA to identify and communicate the core issues and define the actual problem. This will put industry in a better position to suggest alternative solutions. Some members have however put forward some initial alternative suggestions for BEIS' consideration as set out below:

As mentioned in our response to Question 1, one Energy UK member has suggested including incentives for BM access, including the idea that NG ESO could pay these smaller generators or DSR parties to enter the BM, as opposed to requiring them to pay for BEGAs.

Another suggestion some Energy UK members have highlighted for BEIS' consideration is that an alternative visibility platform, which is external to the BM could be developed and constructed. This may or may not involve cross-referencing with the Balancing Service desk, but would allow the issue to be addressed without imposing a direct despatch model on all participants.

A further suggestion from a member is that, as we move to a system of DSOs, we believe that the DNOs should be required to collect real time (or near real time) data on the output of generators on their systems, possibly by GSP. Some of this may be forecast, for example solar, but all larger plants have metering they are able to use. This data could be published on the BMRS website, creating transparency for all parties. Some members are disappointed that the ESO has not sought to raise a change proposal to require this sooner.

2. Emissions Limits

We welcome that BEIS has stated within the consultation document that they will continue to look at the emissions limits as new and emerging technologies come forward. We would like to ensure that this ties into the hydrogen agenda in the UK and that BEIS review the limits going forward to ensure there are no unintended consequences for bringing hydrogen into the CM in the future.

Overall, Energy UK is still concerned that parties simply send this data to the ESO who has no expertise to verify the data.

We have set out in our answers to Question 9, an oversight we have identified in the proposed CHP Fossil Fuel Emissions calculations which we would like to make BEIS aware of.

Question 6: Do you have any comments or concerns regarding our proposed method for discounting emissions captured through CCUS by introducing a 'Transferred CO₂ Factor' to the calculation of Fossil Fuel Emissions? Please explain your reasoning and provide supporting evidence where available.

Question 7: What are your views on our proposals for reporting requirements described in section 2.2.2.3 for CMUs equipped with CCUS? Please explain your reasoning and provide supporting evidence where available.

Question 8: Do you have any comments or concerns with regards to our proposed method for calculating the design efficiency of CHP installations? Please explain your reasoning and provide supporting evidence where available

Question 9: Do you have any comments or concerns on our proposed reporting arrangements set out in sections 2.2.3.3 and 2.2.3.4 for CHP CMUs? Please explain your reasoning and provide supporting evidence where available.

Energy UK supports simplifying the complexities around CHP efficiency. We believe there should continue to be a level playing field around how emissions are calculated for different CM technology types. We have set out below the following oversights that have resulted in an 'un-level' playing field for larger CHP plants:

- Firstly, we would like to highlight an oversight in Equation 4, which we have identified as unnecessarily penalising larger scale CHP plants. As proposed the equation includes several inputs from the CHP Quality Assurance (CHPQA) which do not produce accurate CO₂ emissions for all CHPs. We would like to point out that Qualifying Power Output (QPO) and Total Power Output (TPO) should not be treated as the same input value. The inclusion of QPO in Equation 4 unintentionally impacts some larger highly efficient CHPs. We suggested that in this Equation, QPO is replaced by TPO, which more accurately reflects the actual fuel inputs referable to electricity generation for both small scale and larger scale CHP. We believe that this amendment better reflects the CO₂ emissions of all CHP in the CM.
- Secondly, we would also like to highlight that a further adjustment is also required to account for CHPQA being calculated using Higher Heating Value (HHV) rather than Lower Heating Value (LLV) (as with other CM technologies). We are suggesting this amendment to ensure a level playing field as the use of HHV can make emissions from CHP plants look up to 10% higher than they are at HHV.
- Thirdly, we note that for other CM technologies the peak power output is taken into consideration under the CHPQA. However, for CHP an annual average has been used, which penalises this technology. We believe this to be an oversight from BEIS and would welcome clarification as to whether CHP design efficiency will in fact be measured at peak power output, as with other CM technologies.

Question 10: Do you have any comments or concerns regarding our proposal that only CHP schemes which are covered by the CHPQA Programme will be able to calculate their design efficiency according to Equation 4? Please explain your reasoning and provide supporting evidence where available.

Question 11: What are your views on our proposals to account for the carbon emissions of plant burning mixed fuels? Do you have any views on whether calculations ought to be based on primary fuel alone or whether our proposed approach is justified? Please evidence your response as much as possible.

Question 12: Do you have any comments or concerns on Equations 5 and 6? In particular, what kind of impact do you expect Equations 5 and 6 to have on the ability of generating units burning mixed fuels to demonstrate compliance with the Fossil Fuel Emissions Limit? Please explain your reasoning and provide supporting evidence where available.

Question 13: Do you have any comments or concerns on the proposed reporting arrangements described in section 2.2.4.3 for CMUs burning mixed fuels? Please evidence your response as much as possible.

Question 14: What are your views on our proposals described in sections 2.2.5.1, 2.2.5.2, and 2.2.5.3 respectively in respect of plant without 12 continuous months of operational data? Please evidence your response as much as possible.

Question 15: Do you have any comments or concerns on our proposal described in section 2.2.6.1 in respect of CHP CMUs equipped with CCUS?

Question 16: Do you have any comments or concerns on our proposal described in section 2.2.6.2 in respect of CMUs burning mixed fuels and equipped with CCUS?

Question 17: Do you have any comments or concerns on our proposal described in section 2.2.6.3 in respect of CHP CMUs burning mixed fuels?

Question 18: Do you have any comments or concerns on our proposal described in section 2.2.6.4 in respect of CHP CMUs equipped with CCUS and burning mixed fuels?

Question 19: Do you have any comments or concerns about any of the considerations described in this section 2.2.7? Please explain your reasoning and provide supporting evidence where available

Question 20: Do you have any comments or concerns on our proposal to extend the transitional phase which will not require independent verification of Fossil Fuel Emissions Declarations to the start of the Prequalification Window in 2022?

Question 21: Do you have any comments or concerns with regards to our proposed clarifications to the Rules which relate to carbon emissions described in section 2.2.9.1 to 2.2.9.7 respectively?

Question 22: Do you have any comments or concerns regarding our proposals in section 2.2.9.8 in respect of use, disclosure and publication of carbon emissions values disclosed on a Fossil Fuel Emissions Declaration? Please explain your reasoning and provide supporting evidence where available.

We note that in the consultation document, BEIS have made reference to the requirement to ‘collate, process, and, if determined necessary, publish carbon emissions information via the publicly available CM Register.’

We would like to request that BEIS ensure the publication of emissions information is done so on a comparable basis. As referenced in our answers to Question 9, with regards to CHP, we have highlighted the risk that the current formulae do not allow CHP to be measured on a comparable basis to other technologies. In particular, the requirement to use an annual average for CHPQA as opposed to peak power output and the use of HHV as opposed to LLV. The changes we have requested in our

answer to Questions 9 should ensure that CHP is not unfairly penalised due to the fact that their calculations are based on different inputs. We reiterate that these changes should be made before an emissions register is published.

Question 23: Do you have any further comments or concerns about our proposed changes to the Capacity Market Emissions Limits described in this document?

2. Discretion to clarify errors and omissions in prequalification applications

Question 24: Do you agree with the proposal to amend Regulation 69 to allow the DB to consider information which corrects administrative or clerical errors in prequalification applications?

We strongly welcome this change and believe it will improve the overall prequalification process for applicants, by allowing for the correction of any errors that would lead to a failure to prequalify based on minor clerical errors and/or omissions.

We would like to ask BEIS to be more explicit in terms of the type of errors and omissions that will fall under this scope. We would therefore like to ask BEIS to release a list of examples in advance of the implementation of this proposal.

We do believe however, that BEIS could go further with improving the prequalification process for CM participants. These points are addressed in our answer to Question 26.

Question 25: In your view, should the timeframes for the Tier 1 disputes process be amended to provide applicants and the DB with additional time?

It is not clear that more time is needed. Instead, we would support an effort to move the whole process forward in the year, to allow auctions to actually take place 1 and 4 years ahead of a delivery year. Currently the auction timescales reduce the delivery time to around 8 months and 3.5 years, with the latter potentially not leaving enough time to build a new larger plant. We would therefore request that BEIS consider moving prequalification to the start of May and keep it open for at least one month. With a more flexible prequalification period and support from a more robust IT system from the DB, we believe the whole process, including the auctions, will be far more achievable – such that new build has four years to deliver.

Question 26: Do you have any views on how else the prequalification process could be improved and/or simplified?

We believe that there are several aspects in which the prequalification process can be improved for all parties. We defer to a paper Energy UK submitted to BEIS on 5 February titled ‘GB Capacity Market Prequalification Suggested Improvements’, outlining lessons learned from previous years’ prequalification process and have welcomed engagement from BEIS, Ofgem and the Delivery body on this. A summary table of our key asks for BEIS can be found in the annex to this consultation response.

3. Secondary trading and plant closures

Energy UK welcome these proposals from a security of supply standpoint and believe that BEIS is moving in the right direction in this context. We would like to highlight however, that the limitation on secondary trading not being allowed until after T-1 is unhelpful and should be reconsidered as it results in a loss of capacity from the market. We would like to highlight that there is always a risk that a plant delivering late is terminated rather than being in a position to find a third party to delivery the first year of their agreement (rather than rely on the long stop date). Energy UK notes that this is a particular risk for any larger plants given the timing of the auctions.

Question 27: Do you agree that we should clarify the legislation concerning the application of termination events to CMUs that no longer hold a Capacity Obligation?

Yes, Energy UK fully supports changes that will improve trading.

Question 28: In your view, will preventing partial secondary trades from being cancelled when the transferor's Capacity Agreement is terminated improve our ability to replace capacity which has closed at short notice during the Delivery Year? In your view, does the proposed change create any potential for gaming to avoid Termination Fees, or give rise to any other risks?

Yes. We believe that trading should allow parties to move obligations to those able to deliver them. It is in the interest of customers, if for example. A site with 30MW of obligated capacity can secondary trade even 1 MW to another party if unable to deliver it themselves.

Question 29: Do you agree that we should revise the effect of Rules 9.2.3(a) and (b) in order to allow secondary trades initiated by transferors before the receipt of a Termination Notice to be maintained for the remainder of the relevant Delivery Year? In your view, would this proposal create any potential for gaming, or give rise to any other risks?

Yes. As noted above, we believe customers are best served by parties being able to trade obligations to those who can deliver them.

Question 30: Do you agree that we should amend the effect of Rule 9.2.3(c) so that it no longer applies to Termination Notices that are issued to insolvent transferors (Rule 6.10.1(a))? In your view, would this proposed rule change create any potential for gaming, or any other risks?

4. Coronavirus easements

Question 31: Is there a need for further coronavirus easements, closely matching those that we implemented in July 2020? If so, please provide reasons and evidence, where possible, and describe the necessary easement/s and the Rules affected.

We would like to thank BEIS for its ongoing engagement with Energy UK, and also its proactive approach to the COVID-19 pandemic to ensure that any amendments to obligations and milestones are taken forward. Generally, we welcome the fact that BEIS has included a section to consider further Coronavirus easements in light of the third National Lockdown implemented on 4 January 2021. However, we would have welcomed engagement with industry at an earlier stage in this instance (i.e., in January 2021 when the third lockdown was introduced).

Energy UK members have expressed concerns that BEIS are only considering that the appeals process is extended. We would like to request that the original set of COVID easements, implemented in July 2020, are extended given that the context of a nationwide lockdown still stands. Some members have highlighted that alongside the difficulties presented by the national lockdown, the added complexities Brexit have placed the GB power sector under further pressure, therefore increasing the need for an extension to the easements.

Energy UK members have also highlighted that multiple parties are currently struggling to deal with many obligations. Given the ongoing uncertainty in light of the pandemic, it would therefore be sensible for BEIS to be flexible with coronavirus easements going forward if generators have provided robust evidence as to why they are unable to meet their obligations.

Question 32: What are your views on whether the modifications to the appeals process should be extended to agreements awarded in the upcoming early 2021 auctions? Please provide reasons and evidence, where possible.

We support modifications to the appeals process being extended, although as set out above, we believe that easements should go further than just the appeals process.

We would like to request that BEIS consider publishing the anonymised results of appeals, to allow CM participants an insight into the types of views that the Secretary of State takes regarding different situations. We understand that many appeals will be taken on a case-by-case basis and many Energy UK members would welcome visibility of the success rates.

Energy UK believe that there is a wider issue with appeals that needs consideration. At present, parties have to wait until they are terminated before they can appeal. Where a party knows it has delivery issues, it should be encouraged to come forward earlier and to address the problem. Not only would this allow investors to get increased certainty that delivery times can be extended, but it will also give earlier visibility to BEIS, Ofgem and the DB of late or non-delivery. Those who are aware that they will get terminated in the future can also manage when that termination fee is to be levied if they do not have to wait (sometimes years) to be terminated.

5. Extended Years Criteria and Evidence of Total Project Spend

We agree with the proposals

Question 33: Do you agree the deadlines for meeting Extended Years Criteria and providing Evidence of Total Project Spend should be aligned?

Yes. We believe that this will improve efficiency and avoid participants having to get two ITE reports and likely reduce costs. Energy UK members believe the current sanction of reducing agreement length is very harsh, entirely binary and has very large financial consequences. The ability to apply for Secretary of State discretion is welcomed. It is unclear from the consultation but Energy UK suggests that it applies to all vintages of agreement not just ones entered into from the next auction onwards.

Question 34: Do you agree the sanction for non-compliance with these obligations of a reduction in agreement length should be subject to the Secretary of State's discretion?

Yes. The ability to use discretion is vital in allowing pragmatic decisions to be reached that take account of individual circumstances.

Question 35: Do you think it is necessary to make a reduction in agreement length appealable to the Authority as well as subject to the Secretary of State's discretionary powers?

6. Refurbishing CMU Long-Stop Date

Question 36: Do you agree that Refurbishing CMUs should be provided with the same Long-Stop Date as New Build CMUs? Please provide reasons and evidence where possible.

Yes. As noted in the consultation, refurbishing can be as challenging to deliver in 4 years as new build. It can be more challenging as work has to be undertaken within the constraints and confines of an existing site whereas a new build is being constructed on a new site.

Some Energy UK members have proposed that this proposal should apply for all agreement lengths, not just 15-year agreements. If a refurbishing CMU with a 3-year agreement misses the operational start date, it reverts to a one-year agreement and has missed the next two T-4 auctions. This leaves it with the T-1 auctions which apart from the 2021 auction have cleared at very low prices. Having an agreement of at least 2 years is preferable to this alternative.

7. Net Welfare algorithm

Question 37: Do you have any comments or concerns regarding our proposal to disable the net welfare algorithm where a T-1 is held only to meet the 50% set-aside commitment?

Energy UK welcomes the intent of the proposal: lowering the cost to consumers. However, overall, Energy UK members feel that this is a fairly broad and blunt proposal. Energy UK members have highlighted the need for a more reasonable auction target and ask that if BEIS intend on making changes to the net welfare algorithm, it should be relevant to the specific CMU target.

We would also like to suggest that BEIS consider a future review of the Net Welfare algorithm. We believe that the algorithm should work in all scenarios and suggest that a review will be needed to ensure it remains fit for purpose.

8. The Minimum Capacity Threshold

Question 38: Do you agree that the Minimum Capacity Threshold should be maintained at 1MW?

We are comfortable with the proposals as set out. In 2020, Energy UK supported the reduction of the CMU floor from 2MW to 1MW, highlighting that it should increase participation in the CM and ensure that the CM maintains security of supply at the lowest cost to consumers, a product of greater liquidity and competition in the market. It will also allow those larger units that currently require aggregation to participate directly in the market, if the commerciality of such a move makes sense. An additional reason for strong agreeing with this proposal is that it will keep secondary trading capacity more liquid.

Further to this, we welcome the Government's intention to consider whether exemptions in carbon pricing for smaller generators are causing significant distortion in the CM or flexibility markets.

We also support a commitment to maintain the review of the CMU Capacity Floor.

9. Other minor amendments to the legislation

Question 39: Do you agree with the correction to Rule 6.10.1? Are there any other specific and minor errors in the Rules which we should consider? Are there cross references to EU law in the CM legislation, other than the one we have identified in section 2.10.2, that may be causing issues?

Question 40: Do you agree with the considerations of impacts in section 2.11? Are there any additional impacts which we have not considered? Please provide supporting evidence where possible.

While we support these changes, Energy UK is of the view that the rules are in need of a comprehensive review with the aim of simplifying and reducing the rules. For example, Chapter 9 should be rewritten with a trading review. Energy UK Members have highlighted that the rules seem to have almost doubled in length making it difficult for the parties and the delivery partners to implement and comply with them. The existence of different rules applying to different vintages of agreement further adds to complexity. We would therefore like to see the agreements themselves refer to any grandfathered rights, such as capacity definition, agreement price, etc.

10. Next Steps

We would like to thank you in advance for considering our response and look forward to hearing further clarification of the next steps regarding future engagement with industry in due course. If you have any questions regarding our response in the meantime, please do not hesitate to contact me on the details below.

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Annex 1

A table of key asks of BEIS with regards to improvements of the first pre-qualification process as set out in our 'GB Capacity Market Prequalification Suggested Improvements: Summary of Key asks' Paper sent to BEIS on 13 April 2021.

CM Rules

	Issue Summary	Status
1.	We ask that BEIS and Ofgem ensure that any changes to the rules are clearly signposted, brought into force and appropriate guidance provided well-ahead of prequalification opening	Open
2.	We ask that any 'tripwires' that could result in an existing generator to fail prequalification are carefully considered and removed.	Open
3.	We suggest that automatic 'Evergreen' prequalification provides a solution to the above issue, with the option for participants to edit information if a material change has occurred since the last prequalification round. We ask that BEIS works closely with the DB to ensure that sufficient IT requirements are in place to facilitate this.	Open

Guidance

	Issue Summary	Status
4.	We ask that any guidance that may affect an applicant's prequalification submission is published 8 weeks prior to the prequalification window opening.	Open

Emissions Declarations

	Issue Summary	Status
5.	We request that BEIS look into assigning an ITE to accredit the emissions reporting form	Open
6.	We suggest amending the wording in the emissions declaration in section C (see original paper for explanation)	Open
7.	We suggest that the requirement for fossil-free assets to submit a Fossil Fuel Emission Declaration is removed.	Open
8.	Energy UK requests that BEIS looks into the calculations for emissions as they do not properly account for useful heat. We	Open

	request BEIS ensures that the calculations are aligned with government policy on CHP	
9.	We request that the EMR guidance provides more descriptive definitions within the Emissions calculations and supports more complex sites with examples of further calculations	Open
10.	We would welcome the immediate publication of a list of Independent Emissions Verifiers (IEV)	Open
11.	We request that the Government looks at the verification and reporting process to see how the ETS and CM requirements can be aligned to avoid verification multiple times. One suggestion could be an emissions report configured to cover both the ETS and CM requirements	Open