



Department for
Business, Energy
& Industrial Strategy

Capacity Market Proposed Easements in Response to COVID-19 Pandemic

Closing date: 30 April 2020



OGL

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Background

The CM is the Government's main tool for ensuring security of electricity supply. It provides capacity providers the right incentives to be on the system and to deliver electricity when needed.

The Government's strategic response to the COVID-19 pandemic is STAY AT HOME, PROTECT OUR NHS, SAVE LIVES. The pandemic and measures being taken to delay its spread is likely to impact holders of capacity agreements, including their ability to achieve compliance with the obligations to the set deadlines in some instances. This is in addition to the effects of the recent State aid standstill period being felt by some CM participants.

Therefore, the Government is considering ways to reduce burdens on agreement holders as they focus on dealing with the impact of COVID-19 on their businesses. The objective is to minimise, as far as possible, the risk of terminating and imposing termination fees on capacity providers that fail to meet an obligation as a result of the COVID-19 pandemic.

That said, security of electricity supply remains a key overarching objective for the Government and, therefore, any amendments must not undermine this objective. Any easements will be temporary and will only remain in place as long as necessary.

Approach

The Government is considering the introduction of new CM Rules and Regulations to modify, temporarily, the application of the Electricity Capacity Regulations 2014 ("the Principal Regulations") and CM Rules to remove or relax certain obligations and deadlines, reduce administrative and operational burdens, and minimise the likelihood of terminations arising from the COVID-19 pandemic or the restrictions imposed by the Government to tackle it. Additionally, the appeals process is proposed to be temporarily modified to give capacity providers more time to appeal, and to provide the Secretary of State greater discretion to extend the time for capacity providers to achieve compliance. We are also considering creating a new termination ground where non-compliance arises from the effects of the COVID-19 pandemic or related restrictions, which does not carry a termination fee.

Notwithstanding these measures, we strongly encourage capacity providers who might be experiencing delays or other difficulties in meeting their CM obligations due to the COVID-19 pandemic or related restrictions to communicate these as early as possible to the Delivery Body and to continue to provide the Delivery Body with regular updates.

Proposed changes

In summary, the areas the Government is considering to temporarily modify are:

General

- **Satisfactory Performance Days (SPDs)** – no suspension of capacity payments between 30 April 2020 and the termination deadline (in most cases 31 July 2020) in instances where a Capacity Market Unit (CMU) with an agreement awarded in an auction held after 21 December fails to demonstrate three separate SPDs by 30 April 2020 but does so by 31 July 2020.
- **Metering Tests** – extend the deadline from 17 September to 30 September 2020 for the following CMUs holding T-1 agreements for capacity obligations which begin to have effect in DY 2020/21: Existing CMUs (including any Pre-Refurbishing CMUs treated as Existing CMUs), Proven DSR CMUs and Unproven DSR CMUs.
- **Long-Stop Date** – extend the Long-Stop Date for both New Build CMUs awarded T-1 agreements for the Delivery Year (DY) 2020/21 and Refurbishing CMUs with multi-year agreements which start in DY 2020/21, by 12-months. Capacity payments will not be made until the relevant milestone is met (the Substantial Completion Milestone or the Minimum Completion Requirement).
- **Independent Technical Expert (ITE) Reports** – remove the requirement for an ITE report in relation to any Six Monthly Progress Reports falling due during the 2020/21 financial year for New Build CMUs and Refurbishing CMUs (i.e. from 1 April 2020).

Demand Side Response (DSR)

- **Metering Test and DSR Test** – give DSR providers with Unproven DSR CMUs holding capacity agreements for capacity obligations which begin to have effect in the 2020/21 Delivery Year an additional 12 months to comply with these requirements.
- **DSR Baseline Demand** – reduce the amount of data required to be provided by capacity providers to establish baseline demand for Unproven DSR CMUs with capacity agreements for capacity obligations which begin to have effect in the 2020/21 delivery year. Capacity providers will be required to provide data from two working days rather than six working days from the six-week period preceding the settlement period.

Appeals process

- Allow a longer period for a person to appeal to the Secretary of State, the Delivery Body and the Authority, if the person meets certain criteria.
- Increase the time the Secretary of State can grant as an extension before an agreement is terminated.

- Introduce a new termination event that carries no termination fee where non-compliance arises from the COVID-19 pandemic or related restrictions.
- Allow the Delivery Body longer to consider a request to reconsider a “delivery body reviewable decision” (including the issue of termination notices and prequalification decisions).

How to respond

Issued: 24 April 2020

Respond by: 30 April 2020, 23.45

This is necessarily much shorter than the usual consultation period of at least four weeks. These are targeted proposals which need to take effect quickly, so they are in place to assist capacity providers as soon as possible. These are also temporary modifications rather than enduring amendments to the scheme.

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Email to: energy.security@beis.gov.uk

Please note that, due to the short consultation deadline and constraints posed by the Government’s official advice on remote working, we will be unable to accept hard copy responses through the postal system.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people’s personal names, addresses or other contact details.

Annex - Detailed Proposals

This section provides more detail of each Government proposal.

General

Satisfactory Performance Days

1. The Government is not minded to amend the Rules as they relate to Satisfactory Performance Days (SPDs) generally, as these are the main way of demonstrating capacity is available in the delivery year and the existing requirements already provide considerable flexibility in relation to the timing of the tests.
2. That said, we recognise that disruptions caused by the COVID-19 pandemic may have caused some delays in completing the three separate SPDs required to be completed by 30 April 2020 under Rule 13.4.1. We are, therefore, proposing to disapply Rule 13.4.1ZA(b) and relevant Regulation 50 provisions for the current 2019/20 delivery year only. This will avoid the suspension of capacity payments in the event that a Capacity Market Unit (CMU) with an agreement awarded in an auction held after 21 December 2017 fails to comply with Rule 13.4. Any such CMU will, however, still be required to deliver three additional SPDs by the deadline in Rule 13.4.1ZA(a) (in most cases, 31 July 2020) or face termination under Rule 6.10.1(r), with consequent termination fees and repayment of capacity payments.
3. Note that Rule 13.4.1ZA only applies to agreements awarded in an auction held after 21 December 2017 when the Capacity Market (Amendment) (No. 4) Rules 2017 introducing Rule 13.4.1ZA came into force. Agreements awarded before that date do not have their payments suspended if they fail to complete three SPDs by 30 April 2020.
4. These proposed changes would, however, come into force on the date the relevant rules and Regulations modifications come into force, and cannot have retrospective effect. As such, the changes would not reverse the suspension of any capacity payments suspended before the changes come into force.

Metering Tests

5. The deadline for providing a metering test certificate falls two weeks prior to the start of the Delivery Year (DY), i.e. on 17 September 2020 (Rule 8.3.3(e)(i)) for the following CMUs holding T-1 agreements for capacity obligations which begin to have effect in DY 2020/21: Existing CMUs (including any Pre-Refurbishing CMUs treated as Existing CMUs), Proven DSR CMUs and Unproven DSR CMUs. As metering tests can require access to sites, we propose to provide some easement by moving this milestone to the end of September 2020. We do not propose to extend the deadline into the 2020/21 Delivery Year as accurate metering is essential in demonstrating the delivery of capacity during stress events, and also in relation to SPDs.

Substantial Completion Milestone and Minimum Completion Requirement for agreements relating to the 2020/21 delivery year

6. We understand that a number of New Build and Refurbishing CMUs holding agreements for capacity obligations which begin to have effect in DY 2020/21 are facing delays as a result of the COVID-19 pandemic and so may be unable to meet their Minimum Completion Requirement (MCR) or Substantial Completion Milestone (SCM) before the start of the delivery year on 1 October 2020.
7. New Build CMUs awarded T-4 capacity agreements in the 2016 T-4 auction for capacity obligations which begin to have effect in DY 2020/21 have a Long-Stop Date which affords a 12-month grace period after the start of that delivery year within which they can meet the MCR and/or the SCM. However, New Build CMUs awarded T-1 agreements for capacity obligations which begin to have effect in DY 2020/21 (“Relevant New Build CMUs”) face termination if they do not achieve their SCM or MCR by the start of the delivery year (i.e. the Long-Stop Date for this type of agreement is 1 October 2020: see the Rule 1.2.1 definition of Long-Stop Date and Rule 6.8.2). Similarly, if Refurbishing CMUs awarded multi-year agreements in the 2016 T-4 auction for capacity obligations which begin to have effect in DY 2020/21 (“Relevant Refurbishing CMUs”) to which Rule 6.8.4 applies, miss their SCM by their Long-Stop Date of 1 October 2020, then their multi-year agreement reverts to a one-year agreement: see Rules 6.8.1(b) and 6.8.4.
8. To assist Relevant New Build CMUs and Relevant Refurbishing CMUs, we propose to extend the Long-Stop Date for these CMUs, by the same 12-month grace period afforded to New Build CMUs holding T-4 agreements. This will allow for the SCM and MCR to be met up to 12 months after the start of the 2020/21 delivery year, i.e. by 30 September 2021.
9. This extended Long-Stop Date would only be accessible to Relevant New Build CMUs and Relevant Refurbishing CMUs that provide to the Delivery Body, by 1 October 2020, an ITE report which confirms that the project would have demonstrated it was Operational to the necessary extent to have met its SCM as set out in rule 6.7.2 by 1 October 2020 had it not been for the impacts of the COVID-19 pandemic and an explanation of how the effects of the COVID-19 pandemic led to delays. We would expect this report to recap the construction history of the CMU with reference to the Construction Plan (Rule 3.7.2), and confirm that the CMU had been on track against this plan to deliver by 1 October 2020 until the outbreak of the COVID-19 pandemic, and an explanation of how the effects of the COVID-19 pandemic led to project delays.
10. As is currently the case under Rule 6.7.4, agreements would only take effect to allow capacity payments to commence once the CMU has met the SCM to ensure consumers are not made to pay for capacity that is not available and delivering security of supply. If neither the SCM nor MCR are met by the extended Long-Stop Date, then the CMU will be terminated in accordance with current arrangements.

ITE Reports

11. ITE Reports provide a further layer of reassurance about the data and milestones reported by CMUs. However, we propose to temporarily waive the requirement for ITE reports where these might be impossible or very difficult to obtain due to the need for ITEs to access the sites to prepare such reports, following the Government’s guidance on avoiding unnecessary travel and observe social distancing. This is also aimed at

reducing the administrative burden on capacity providers relative to certain milestones and requirements.

Six Monthly Progress Reports

12. Capacity providers for New Build CMUs and Refurbishing CMUs are required to submit six monthly progress reports (Rule 12.2.1). The Government is proposing to remove, for any progress reports falling due during the 2020/21 financial year (i.e. from 1 April 2020) from all New Build CMUs and Refurbishing CMUs, the requirement for those progress reports recording material changes to construction milestones or works (Rule 12.2.1(a)) to be supported by an ITE report.

Report on Operational Status for Distribution Connected sites and Refurbishing CMUs

13. For Distribution CMUs and Refurbishing CMUs, the capacity provider is currently required to produce an ITE certificate confirming that the CMU is Operational (as defined in the Rules) and is capable of exporting capacity that equals or exceeds 90% of its capacity obligation in order to achieve SCM (Rule 6.7.2).
14. We believe that the ITE report that is required by the definition of 'Operational' in paragraphs (b), (c) and (d) of Rule 1.2.1 can be issued through a desk-based exercise by obtaining written evidence from the Distribution Network Operator (DNO) confirming the relevant tests have been completed. With regards to paragraph (c) of the definition, evidence of the CMU and supporting infrastructure having been fully commissioned may be possible to obtain through photographs and any other relevant evidence. We are therefore not proposing to remove the requirement for an ITE report in these cases.
15. However, should the consultation provide sufficient evidence of the need for the ITE report to be waived in the cases listed in paragraphs 13 and 14, then we would propose to require instead a Director's declaration confirming that the CMU is 'Operational', but also still require an ITE report by 30 April 2021. A new termination event, applying to those CMUs which fail to produce an ITE report confirming that the CMU is 'Operational' by this new deadline, would be introduced, and it would mirror the fees that would apply to CMUs which miss the Minimum Completion Requirement (MCR), currently set at TF5.

Demand Side Response (DSR)

Metering Test and DSR Test

16. DSR aggregators with Unproven DSR CMUs holding agreements for capacity obligations which begin to have effect in the 2020/21 Delivery Year, may experience difficulties in acquiring or recruiting DSR capacity during the COVID-19 pandemic and therefore struggle to:
 - Provide a DSR Test Certificate by 31 August 2020 (Rule 8.3.2(a)); and
 - Complete a Metering Test (if required) by the deadline of 17 September 2020 (Rule 8.3.3(e)(i)).

17. While Unproven DSR CMUs already have some flexibility in the amount of capacity they are required to deliver by the start of the delivery year, this can be associated with a financial cost. The Government, therefore, proposes to extend each of these deadlines by 12 months so that Unproven DSR can benefit from arrangements similar to the extension of the Long-Stop Date that applies to Prospective CMUs (as amended per the above proposals).
18. As with the proposal described in paragraphs 8 and 9, these extended deadlines would only be available to those Unproven DSR CMUs holding agreements for capacity obligations which begin to have effect in the 2020/21 Delivery Year that provide, by 31 August 2020, an ITE report which confirms that the CMU would have been ready to deliver capacity by the start of the delivery year had it not been for the impacts of the COVID-19 pandemic. We expect this report to recap the capacity provider's progress in recruiting DSR components, and confirm the CMU had been on track against the original Business Plan for the CMU (Rule 3.10.1) to deliver by 1 October 2020 until the outbreak of the COVID-19 pandemic, and an explanation of how the effects of the COVID-19 pandemic led to delays.
19. Unproven DSR CMUs which take advantage of the extended deadlines would not have their capacity agreements take effect (and would not receive capacity payments) until they can meet the relevant requirement. All of these obligations would need to be met by the extended deadlines; otherwise, the termination event corresponding to the failure to meet the relevant obligation would apply, the agreement would be terminated (subject to the usual reviews and appeals), and the termination fees normally associated with the relevant termination event will be payable.

DSR Baseline Demand

20. We understand that a lack of demand, particularly for commercial or industrial sites, may make the demonstration of a temporary reduction in demand difficult in some circumstances. The Government therefore proposes in relation to Unproven DSR CMUs with capacity agreements for capacity obligations which begin to have effect in the 2020/21 delivery year to:
 - Modify the Baseline Methodology (the methodology set out in Schedule 2 to the Rules) to reduce the amount of data that capacity providers must provide to establish baseline demand used in the DSR Test. Capacity providers will be required to provide data from two working days rather than six working days from the six week period preceding the day on which the DSR Test occurred.
 - In relation to DSR CMUs with capacity agreements for the current delivery year (2019/20), permit the use of historic baseline data (i.e. that used in relation to the CMU's DSR Test) in relation to its SPD tests.

Appeals Process

21. In relation to appeals to the Secretary of State, the Government proposes to revoke the modifications made by the Electricity Capacity (No. 1) Regulations 2019 (Regulation 26 and 35) in relation to the Secretary of State's discretion and make the following modifications:

a - Modifications to apply to agreements in existence on 1 April 2020. They will not apply to any agreements awarded after the entry into force of these measures.

- if the termination notice has been issued before 01 May 2021, a modification to Regulation 33(5)(a) to increase the time a capacity provider has to lodge an appeal with the Secretary of State from 20 to 30 working days after receiving a termination notice, and accordingly extend the period specified in Rule 6.10.2(b) and (c);
- a modification to increase the maximum extension period a capacity provider may request from the Secretary of State, as set out in Rule 6.10.2(b)(i), from 6 months to 12 months if the request is made before the end of the delivery year (for a single year agreement) or during the first delivery year of an agreement (for a multi-year agreement);
- a modification to Regulation 33(3) to increase the duration of the extension that may be granted by the Secretary of State to capacity providers to enable them to meet any requirements specified in Termination Notices from 6 months to 12 months if the request is made before the end of the delivery year (for a single year agreement) or during the first delivery year of an agreement (for a multi-year agreement); and
- a modification to Regulation 33 and the CM Rules to provide the Secretary of State with discretion to direct the Delivery Body to terminate an agreement on a new termination ground which does not carry with it a termination fee if the request is made before the end of the delivery year (for a single year agreement) or during the first delivery year of an agreement (for a multi-year agreement). The new termination ground will only arise in exceptional circumstances where a capacity provider can demonstrate that the failure to meet the relevant obligation/requirement was the direct and unavoidable result of the COVID-19 pandemic. If an agreement is terminated on this new ground, the capacity provider must repay any capacity payment it has received under the relevant capacity agreement.

b - Modifications applying to reconsideration by the Delivery Body of “delivery body reviewable decisions” notified by the Delivery Body to affected persons before 01 May 2021 (“delivery body reviewable decision” is defined in Regulation 68(1), and includes prequalification decisions and the issue of termination notices) and appeals to the Authority):

- Modify Regulation 69(2)(a) to increase the time an affected person has to submit a request to the Delivery Body for reconsideration from 5 working days to 10 working days.
- Modify Regulation 69(3) to increase the time the Delivery Body has to reconsider a delivery body reviewable decision and give notice to the affected person of the outcome of the reconsidered decision and the reasons for the reconsidered decision from 15 working days to 20 working days of giving notice of the decision.
- Modify Regulation 70(2) to increase the time an affected person has to submit to the Authority a request for an appeal of a reconsidered decision by the Delivery Body or a decision by the Delivery Body to reject the request for reconsideration on the ground that it did not comply with regulation 69(2) from 5 working days to 10 working days.

This publication is available from: www.gov.uk/government/consultations/capacity-market-proposal-to-relax-the-rules-temporarily-in-response-to-covid-19

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