Department of Energy & Climate Change

Electricity Market Reform: Capacity Market

Consultation on Capacity Market supplementary design proposals and changes to the Rules

15D/051 February 2015

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The consultation can be found on DECC's website:
https://www.gov.uk/government/collections/electricity-market-reform-capacity-market
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Purpose and General information

Introduction

The first Capacity Market 'T-4' auction began on the 19 December 2014, and cleared on the 21 December 2014, procuring 49.3GW of capacity at £19.40 per kW for delivery in 2018/19. Following completion of the first Capacity Market pre-qualification and auction, the Department of Energy and Climate Change (DECC) has undertaken a lessons learnt process, including requesting views from industry stakeholders.

The Department is committed to establishing a stable and predictable cycle for running the Capacity Market auctions, reviewing and making incremental improvements. We aim to work with industry and interested parties to improve the process continuously whilst providing the certainty and clarity they require in advance of each auction. Due to the parliamentary process required to make changes to regulations and the lead time to implement systems changes, we envisage this will be a bi-annual cycle, so that regulatory amendments proposed following the 2014 auction will generally be in force prior to the opening of prequalification for the 2016 auction.

However, there will be an opportunity for 'fine-tuning' improvements between auctions. The Capacity Market Rules ("the Rules") do not need to be approved by Parliament before they can be made and so can often be effected more quickly.

Purpose of this consultation:

This consultation follows a DECC-led review of lessons learnt following the first round of pre-qualification and the first 'T-4' auction. This consultation is seeking views on amendments to both the Electricity Capacity Regulations 2014 ("the Regulations") and the Rules. We intend for any amendments to the Rules which the Secretary of State decides to make following this consultation to be made and brought into force *before* Ofgem consult on rule changes about the operation and administration of the capacity market. Ofgem are expected to consult on any proposed amendments in April this year in order to make such amendments before pre-qualification opens for the 2015 auction[1].

The proposed changes outlined in this document are in *addition* to rule changes we consulted on late last year. The government published its response to that consultation in January 2015[2] and will make those resulting rule changes alongside any rule changes resulting from this consultation.

[1] Prequalification for the 2015 T-4 auction is expected to open in mid-July 2015.
[2] The Government Response is published here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/396505/Government_Response_to_CM_Supplemetary_Design_Consultation_v.pdf

The Department is seeking views on a range of supplementary design proposals for the Capacity Market. These cover proposals on:

- the definition of double subsidy in regulation 17 of the Regulations to remove the exclusion of organisations in receipt of certain research grants;
- the requirements to demonstrate eligibility for refurbishing status during pre-qualification;
- the appropriateness of the current tools for ensuring delivery;
- the participation of aggregated generation CMUs under 50MW;
- the timing of posting credit cover; and
- other technical amendments which seek to clarify the policy intent.

This consultation is particularly relevant to electricity generators, electricity suppliers, interconnector owners/ operators, electricity consumers and their representatives, network operators, Ofgem, the Delivery Body (National Grid), ESC, environmental and energy efficiency organisations, electricity service companies, the construction sector, financial institutions and other stakeholders with an interest in the energy sector. Government invites interested parties to submit comments and evidence.

In view of the limited and generally technical nature of the proposals, the Government considers it appropriate that the consultation period is three weeks; consultees are invited to note the deadline for responses.

Issued: 12 February 2015

Respond by: 5 March 2015

Enquiries to:
Security of Electricity Supply Team
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3 Whitehall Place,
London, SW1A 2AW
Email: secondarylegislationemr@decc.gsi.gov.uk

Consultation reference: URN 15D/051 – Consultation on Capacity Market supplementary design proposals and changes to the Rules

Territorial extent:

Great Britain

How to respond:

Your response will most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome. These questions are captured within orange boxes throughout the document.

Electronic responses should be enclosed to the email above.

If you disagree with any of the proposals within this document and have alternative suggestions, it would be helpful if you can provide supporting analysis to explain your position.

Stakeholder engagement

Government will continue to engage with stakeholders throughout the consultation period. Workshops will be held as appropriate and aimed at identifying key stakeholders issues as early as possible. Government will continue to communicate with stakeholders through the EMR stakeholder bulletin and existing EMR Groups, Delivery Body events, and other meetings set up by EMR policy teams.

Additional copies:

You may make copies of this document without seeking permission. An electronic version can be found at https://www.gov.uk/government/collections/electricity-market-reform-capacity-market

Other versions of the document in Braille, large print or audio-cassette are available on request. This includes a Welsh version. Please contact us under the above details to request alternative versions.

Confidentiality and data protection:

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on our website at https://www.gov.uk/government/collections/electricity-market-reform-capacity-market

This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

Quality assurance:

This consultation has been carried out in accordance with the Government's Code of Practice on consultation, which can be found here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255180/Consultation-Principles-Oct-2013.pdf

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

DECC Consultation Co-ordinator
3 Whitehall Place
London SW1A 2AW
Email: consultation.coordinator@decc.gsi.gov.uk

Context of this consultation

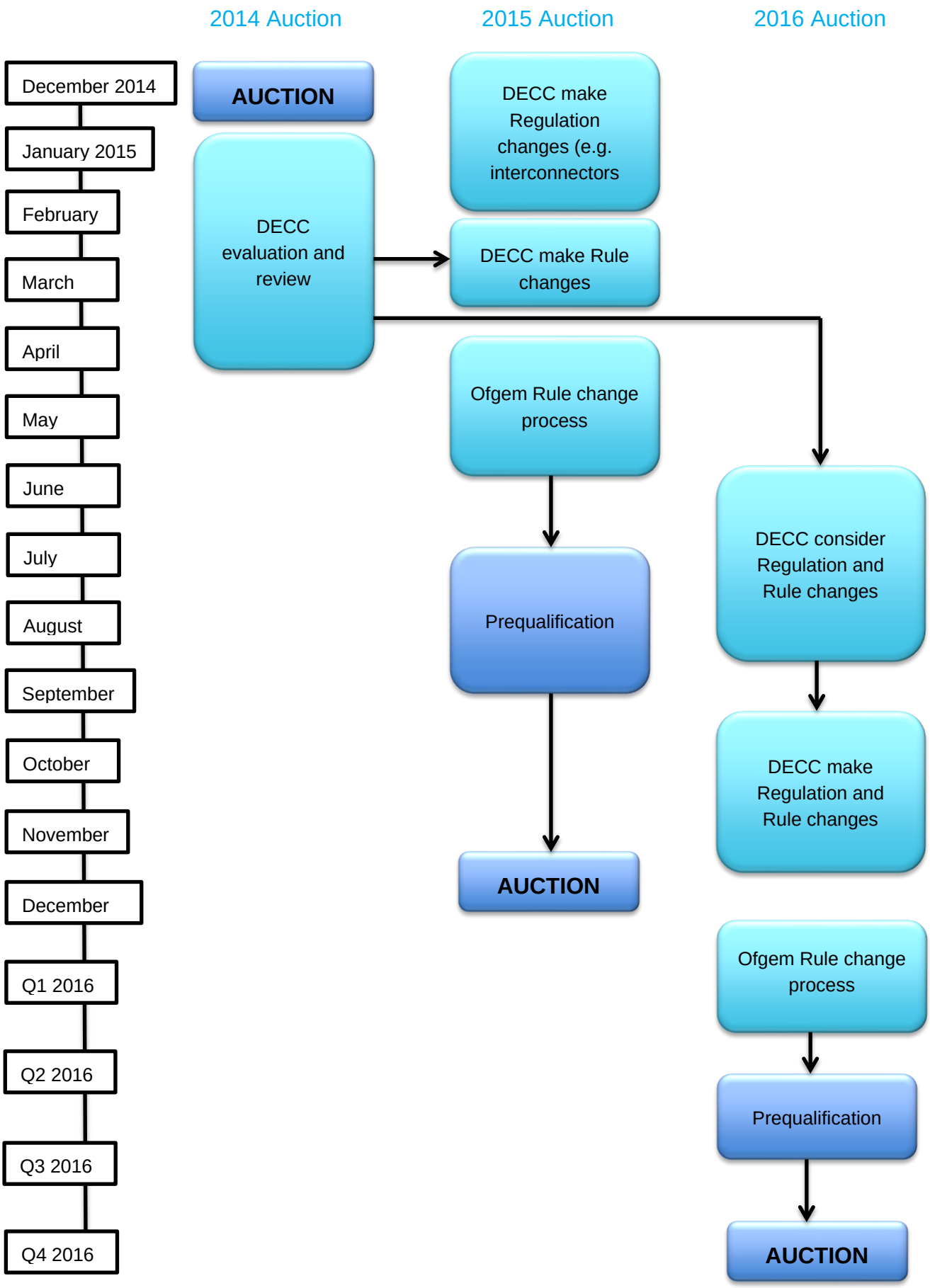
The Secretary of State is required by section 41 of the Energy Act 2013 to consult on the proposed changes to the Capacity Market Regulations and Rules with interested parties. It should be noted that there is no parliamentary approval required before any amending Rules are brought into force.

The scope of the consultation is covered in the section below.

Next steps

Following the close of the consultation, the Secretary of State will consider responses and make any appropriate changes to the proposals. Our final policy decision will be announced in a Government response to the consultation, which will also say more about the timetable for taking forward any resulting regulatory changes. Where it is necessary or desirable to make any changes to the Rules then it is intended that these will be made so that they come into force *before* the publication of Ofgem's consultation on rule changes.

Indicative timetable for 2015 and 2016 Auction



Chapter 1: Amending Regulation 17 of the Electricity Capacity Regulations 2014: excluded capacity – NER 300 and CCS grant scheme CMUs

Introduction

1. Regulation 17 of the Electricity Capacity Regulations 2014 states that the Delivery Body must not prequalify any Capacity Market Unit (CMU) that has received a "relevant grant" (i.e. financial assistance) under one of the following schemes:
   (a) NER 300;
   (b) Section 1(1) of the Energy Act 2010 in respect of a CCS demonstration project within the meaning of clause 27 of that Act; or
   (c) Section 5(1) of the Science and Technology Act 1965.[3]

2. Any potential CMU that has received such a grant, or is due to receive a grant within 10 years of the delivery year, is unable to participate in the Capacity Market for up to 10 years after the first payment has been received from one of these schemes.

3. Regulation 17 was drafted to ensure that potential CMUs were not, or had not been, in receipt of a subsidy in addition to potentially receiving a capacity payment, consistent with the policy on excluding CMUs in receipt of low carbon support.

4. However, DECC is concerned that the definition of "relevant grant" in regulation 17 is too broad and is proposing to amend the definition. This is because at present, the effect of regulation 17 is that financial assistance does not, in all instances, lead to the development, of a CCS plant. For example, the financial assistance received could be for a research project, which would not of itself lead to a material improvement to the plant.

Proposal

5. As a result, DECC's view is that the scope of regulation 17 should be narrowed to enable plant which has not received capital funding under any of the schemes listed in regulation 17 to remain eligible to participate in the Capacity Market from 2015 onwards.

6. At present, in regulation 17 "relevant grant" means:

[3] 1965 c.4. Section 5(1) has been amended by S.I. 1971/719, S.I. 1992/1296, S.I. 1995/2785 and S.I. 1995/2985.

A grant under a relevant scheme, the first payment of which is made, or to be made, within the period of 10 years immediately before the commencement of the delivery period

7. The intention is to make an amendment that will make clear that only capital grants received under (a) the NER 300; (b) section 1(1) of the Energy Act 2010 (in respect of CCS demonstration projects); or (c) section 5(1) of the Science and Technology Act 1965 (to support CCS) would have the effect of precluding a plant's eligibility to prequalify.

8. Subject to consultation views, this proposal will mean that the only occasion when plant receiving financial support under one of these schemes will be ineligible from participating in the Capacity Market is when capital support has been received, for example, leading to CCS being installed at the plant. This means that, for example, any current, and future, plant that receives or has received financial assistance under one of these schemes for the purpose of research and / or feasibility studies for the development and design of a potential CCS plant (i.e. non-capital support) will not be excluded from participating in the Capacity Market.

9. DECC's view is that this is an appropriate way forward. Supporting the development of CCS is an important policy objective and where that objective is met through research funding DECC does not consider it appropriate to exclude a plant receiving a research grant from being eligible to apply for prequalification. We do not feel that this risks over-rewarding participants as financial assistance for research and / or feasibility studies for the development and design for CCS is unlikely to result in any material improvements to the existing plant (i.e. it will not lead to a more efficient existing plant), and will not be supporting plant revenues so will not be providing a double stream of funding alongside income from the Capacity Market.

Consultation Questions	Amending Regulation 17 of the Electricity Capacity Regulations 2014: Excluded Capacity – NER 300 and CCS Grant Scheme CMUs
Question G1	• **DECC is seeking your views on the proposed amendment to limit the definition of "relevant grant" in Regulation 17. Do you agree with the proposal and the reason for it?**
Question G2	• **Do you agree that receipt of non-capital funding should not exclude a CMU from applying for prequalification? Apart from funding for research how might "non-capital" be defined?**

Chapter 2: Pre-qualification of Refurbishing CMU; Directors' Certification of requirement for capacity agreement exceeding one year

Introduction

10. DECC is considering introducing, ahead of the prequalification window for the 2015 T-4 capacity auction, an additional requirement for applicants to confirm, in relation to an application in respect of a Refurbishing CMU which is otherwise potentially eligible for a capacity agreement of up to three years, that an agreement exceeding one year in duration is required to undertake the proposed refurbishing work.

Background

11. Existing plants may be able to demonstrate significant capital expenditure above the three year minimum £/kW threshold and could, therefore, as a "Refurbishing CMU" (assuming all other prequalification requirements are met) be eligible for a three year capacity agreement. However, there is a concern that the Rules might be construed to enable a Refurbishing CMU to apply for a three year agreement even if the proposed improvement work (for example; safety or performance upgrades as part statutory maintenance requirements) must be carried out in any case and would otherwise be undertaken without a longer term agreement.

12. "Refurbishing CMU" is defined in the Rules to mean "…an existing Generating CMU which is the subject of an Application as a Prospective Generating CMU by virtue of an improvements programme that will be completed prior to the commencement of the first relevant Delivery Year." A prospective generating CMU is defined in regulation 4 of the Regulations. In regulation 4(8) a prospective generating unit is defined as "…a generating unit or proposed generating unit that- (a) has not been commissioned; or (b) is to be subject to an improvements programme and has not been re-commissioned following that improvements programme;…".

13. There is a concern that "improvements programme" within these definitions may be construed to include maintenance works or work which would need to be undertaken under, for example, statutory obligations. Whilst we can see the weak basis of such a construction, it is not one we agree with as it undermines the policy intention. A unit which is operational (and thus has been commissioned) and, for example, undertaking any maintenance work will not be able to satisfy the definition of prospective generating unit in paragraph 12. It is for this reason we do not regard as viable a construction which enables an already

commissioned unit undertaking maintenance works to apply for a three year capacity agreement.

14. The policy intent behind longer agreements for Refurbishing CMUs is to help facilitate refurbishment and plant improvement which would not otherwise be brought forward, rather than to reward plants in respect of work for which a three year agreement is not required[4].

15. Accepting that there may nevertheless be some doubt about when a three year capacity agreement can be applied for, we have considered clarifying the scope of the relevant definitions. Attempting to, for example, define the scope of "refurbishment" and what type of work is included or excluded would create practical difficulties. Even if it were possible there would always be the prospect of inadvertently excluding refurbishment work which was intended to be included and vice versa. Therefore, rather than attempt a definition of "refurbishment" – or those of refurbishing CMU or prospective CMU - and run this risk, we feel that we can negate the construction described in paragraph 13 by requiring directors to declare that a 3 year agreement is required to carry out refurbishment work in order to re-commission the unit.

16. While the minimum £/kW thresholds have yet to be set as auction parameters for the next auction (and without prejudice to the parameters which are to be determined by the Secretary of State under the Regulations), we do not consider that simply adjusting the minimum £/kW threshold in respect of Refurbishing CMUs for the 2015 auction would fully address the issue. Any adjustment to the thresholds seeking to limit the nature of the works or the ability of certain plants to be eligible for three year agreements may also impact other plant and act as a barrier to those plant improvements being brought forward.

17. Similarly we do not propose to define eligibility for three year agreements by plant types (e.g. removing eligibility for three year agreements for a specific category of plant), as this would run counter to our technology neutral approach or to further define the nature of improvement works eligible for three year agreements as this could deter plant improvements in those plants where a three year agreement is justified.

Proposals

18. We propose that applicants should state that a three year agreement is required for the proposed refurbishment works. It is therefore proposed that applications where the qualifying £/kW capital expenditure is equal to or greater than the three year minimum £/kW threshold, and where the applicant intends to bid for a capacity agreement exceeding one year, should include a statement in the Pre-Qualification Certificate to be signed by Directors that a capacity agreement exceeding one year is required in order to undertake the proposed refurbishment work.

19. We are also considering whether this statement should be extended to say that a capacity agreement exceeding one year is required in order to undertake the proposed refurbishment work and that such works could not otherwise be economically undertaken.

[4] In other words, "but for" the capacity agreement the refurbishment work would not be able to take place.

However, this may then appear be in conflict with any decision by the Applicant or Bidder to revert to a one year agreement which, as noted in paragraph 21, is not intended to be precluded.

20. If a statement as proposed in paragraph 18 above is not included in the Pre-Qualification Certificate, it is proposed that the maximum obligation period would be one year, notwithstanding that the proposed capital expenditure may be at or above the three year minimum £/kW threshold.

21. The current requirements under rule 5.5.14, to confirm participation in the auction and to specify the duration of capacity agreement required, would remain applicable. It is not intended, where a statement that a capacity agreement exceeding one year is reasonably required has been included in the Pre-Qualification Certificate, that this should limit the ability of the Applicant to specify the duration of capacity agreement in accordance with Rule 5.5.14. Similarly, it is not intended that the inclusion of such a statement should limit the ability of a Bidder to submit a Duration Bid Amendment in accordance with rule 5.6.

Alternative "Refurbishing Memorandum"

22. A possible alternative to a statement being included in the Pre-Qualification Certificate is to adopt a similar principle to that for the Price-Maker Memorandum and to require, in order to pre-qualify with a maximum obligation period of three years, that a "Refurbishing Memorandum" be submitted to Ofgem, setting out the reasons and supporting information for requiring a capacity agreement exceeding one year. This would require Ofgem to certify that such a memorandum had been lodged and submission of the certificate to be a condition of prequalification with a Maximum Obligation Period of three years. This would be a more onerous step for all parties, and DECC does not currently feel that regulatory intervention at this level is necessary, but consultees are welcome to submit views and evidence on the point.

Consultation Questions	Refurbishment CMU: Certification of requirement for capacity agreement exceeding one year
Question R1	• **Do you agree with the proposal in respect of applications for Refurbishing CMUs that applicants should state that a term greater than one year is required to undertake the proposed refurbishing work?**
Question R2	• **Do you agree that where such a statement is not provided, the Maximum Obligation period available to that CMU should not exceed one year?**
Question R3	• **Do you agree that the proposed statement should be extended such that, as well as stating that a capacity**

Consultation Questions	Refurbishment CMU: Certification of requirement for capacity agreement exceeding one year
	agreement exceeding one year is reasonably required to undertake the proposed refurbishing work, it also states such works could not otherwise be economically undertaken?
Question R4	• **Do you have any evidence to suggest that it would be necessary to go further, e.g. to require submission of a "Refurbishing Memorandum"?**

Chapter 3: Ensuring delivery

Introduction

23. Government recognises that a robust system of monitoring the progress of new build and refurbishing plant is vital to the efficacy of the Capacity Market, along with commensurately robust implications for plant failing the respective progress milestones. Equally, we want to ensure termination penalties are sufficient to ensure existing generators honour their commitments, both in the delivery year and in the four preceding years. Government's original proposals were consulted on in October 2013[5] with the final design confirmed in the Government Response[6] published in June 2014. Now we have the experience of the first capacity auction, we would like to review the evidence on whether the arrangements for both monitoring delivery and sanctioning non-delivery are appropriate for future auctions. Any resulting proposals which follow from this review will not impact on existing agreements or obligations which have already been accepted.

New and refurbishing capacity

24. Feedback on the original proposals generally supported the need to ensure providers with new or refurbishing units deliver as per their commitment. However, differing views were expressed as to whether this should be delivered via i) a system of withholding capacity payments until operational and termination fees for failing milestone checks, ii) releasing capacity payments but applying penalties for non-delivery in any stress events or iii) having a monitoring only regime and relying on existing commercial pressures to incentivise timely delivery.

25. In light of this feedback, Government worked with stakeholders to both simplify and strengthen the prequalification requirements – such as the requirements to obtain prior planning permission and commit to Transmission Entry Capacity (TEC) – to provide delivery confidence in advance of the auction. We also strengthened the post auction milestone checks and the sanctions for delivery failure. The current series of post-auction monitoring requirements and potential financial penalties for new build units, the key aspects of which are summarised in the table below, were finalised as a result of this stakeholder engagement. These attempt to balance a recognition of the sizeable

5 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255254/emr_consultation_implementation_proposals.pdf

6 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324170/Government_Response_to_EMR_implementation_consultation.pdf

development and consenting costs incurred by prospective plant to get to the stage where they can demonstrate such requirements, potential risk premia implications for auction bids, barrier to entry concerns and delivery incentives. Views are invited on whether the monitoring requirements and consequential sanctions remain appropriate to ensure delivery and continue to strike the right balance between these factors.

Post-auction requirements on new build units	Explanation
Financial Commitment Milestone (Rule 6.6)	18 months after the auction, new build units will need to demonstrate: (i) that they have spent at least 10 per cent of the total project costs (independently verified); or (ii) relevant project commitments - such as board commitment to undertake project and financial close, director's certificate of sufficient financial resources and contractual robustness – with supporting evidence, evidence of an Engineering, Procurement and Construction (EPC) contract or of an agreement to supply major components representing at least 20 per cent of total project costs, again independently verified. Please note the clarifying amendment to Rule 6.8.1(a) referenced in Chapter 6 ('Other Changes') of this document.
Minimum Completion Requirement and Substantial Completion Milestone ('longstop date') (Rules 6.7 and 6.8)	Any new build unit failing to have operational at least 50 per cent of the amount specified in its capacity agreement by 12 months after the start of the first relevant delivery year ('Long Stop Date') will have a six month cure period applied before its obligation is terminated, and be subject to a termination fee. New build units reaching their Minimum Completion Requirement but which are not fully operational at the Long Stop Date have until 18 months after the start of their first delivery year to demonstrate full operational capacity. After this time their agreements will be scaled to the proportion of their de-rated capacity which is operational.
Termination fee (Rule 6.10.3 and Regulations 32 and 43)	For failing Financial Commitment Milestone: termination of agreement and application of a termination fee of £5,000/MW per capacity obligation (e.g. £2.5m for a 500MW unit).

Post-auction requirements on new build units	Explanation
	For failing longstop date milestone: termination of agreement and application of a termination fee of £25,000/MW per capacity obligation (£12.5m for a 500MW unit).
Construction progress reports (Chapter 12 of the Rules)	Any new build unit must report their construction progress to the Delivery Body every six months until they have achieved their substantial completion milestone. This independently verified report should identify and explain any actual or expected delays in achieving their construction milestones or material changes to the construction plan.

Requirements for refurbishing units
• Plant undertaking significant refurbishment which are successful in securing a three year capacity agreement will also be subject to the Financial Commitment Milestone (as defined above) and to the longstop date milestone (starting from the beginning of the delivery year, i.e. the point onwards from which they receive capacity payments).
• The implications of failing either milestone are their capacity agreement term will be reduced to one year; they will have their de-rated capacity for the delivery year adjusted to their pre-refurbishment level, and they will be restricted to bidding for annual capacity agreements for the following two years.
• Refurbishing units will also have to submit construction progress reports as per the table above.

26. Government also listened to stakeholder representation with respect to the rectification of project delays and concerns over the cliff edge nature of termination provisions, providing clearer cure periods, clearer provisions and timescales relating to disputes and providing a discretion to the Secretary of State discretion to extend or withdraw a termination notice.

27. As noted elsewhere in this document, regulatory stability is an important element of Capacity Market design, but Government is also keen to learn from the experience of the first prequalification phase and capacity auction. Government is therefore interested in stakeholders' views of the current design for incentivising timely delivery of such prospective plant, and whether stakeholders have any new views or evidence in light of that experience.

Existing generators

28. Government is also interested in stakeholders' views as to the termination provisions applying to existing generating units which mothball or decommission after being awarded a capacity agreement (Rules 6.10.1(g) and 6.10.3 refer). The current provisions trigger a termination event and the application of a £25,000/MW termination fee for units which fail to maintain a sufficient volume of Transmission Entry Capacity (TEC) to cover their de-rated capacity.

29. This termination fee was sized to limit speculative applications in the auction, balance performance incentives and risk premia priced into auction bids, not present a barrier to entry, and to be cost reflective of the economic damage to society of additional capacity having to be procured to cover the shortfall, potentially at a higher price, and of a reduction in system reliability standard on consumers and other Capacity Market participants.

30. Government is interested in whether the consequences for plant coming off line are sufficiently robust, and whether the circumstances in which they are applied are appropriately wide ranging and encompassing.

Grandfathered rights from 2014 auction

31. Government is aware of potential stakeholder concerns as to the impact on grandfathered liability of any potential amendments resulting from this review, and will ensure that terms and conditions already grandfathered from the first capacity auction are not impacted by any amendments.

Consultation Questions	Ensuring delivery
Question D1	• **Do you think the current monitoring regime for new and refurbishing generating units, and associated milestone tests, are adequate? If you feel they should be strengthened, what should the key elements to focus on be?**
Question D2	• **Do you consider the current levels of both termination fees for new generating units to be sufficient to incentivise timely delivery without presenting barriers to entry?**
Question D3	• **Do you consider the current arrangements for terminating generating units which mothball or decommission are sufficiently wide ranging and the termination fees of a level to disincentivise**

Consultation Questions	Ensuring delivery
	speculative applications into the auction?

Chapter 4: Aggregated generation CMUs under 50MW

Introduction

32. In September 2014 the government consulted on a change to Regulation 4 (to allow the aggregation (up to 50MW) of generating units which are the same resource type, but that have multiple legal owners. The consultation responses welcomed the proposal to enable aggregation of these units and this chapter proposes consequential changes to the Capacity Market Rules to see through the implementation of this amendment.

Proposals

33. Rule 3.2 and Exhibit D currently enable the aggregation of existing generating units that have the same legal owner by setting out the roles and thereby the responsibility of the legal owner, Applicant, Bidder and Despatch Controller. Provided that a declaration in the form of Exhibit D is submitted with an application, the Despatch Controller (rather than the legal owner) may be the Applicant for an Existing Generating CMU.

34. In order to facilitate the aggregation of generating units with different legal owners (up to a total of 50MW) a similar mechanism is needed, which specifically addresses these roles in respect of an Existing Generating CMU comprising of a number of generating units with multiple legal owners. It is proposed to establish a similar Rule to 3.2.4, requiring the aggregator and legal owners to submit separately signed declarations as part of their application. The declaration will confirm the identity of the individual legal owners of each of the generating units comprised in the CMU and also that the aggregator is the Despatch Controller in respect of all such generating units.

35. This proposal is currently focussed on aggregated Existing Generating CMUs, however, we are considering how aggregation within a Prospective CMU with different owners may be implemented into the Capacity Market. There is a potential complexity of imposing the obligations and liabilities associated with a Prospective Generating CMU on an aggregator (rather than the legal owner of the generation unit(s) comprising that CMU). The liabilities and risks of a Prospective CMU may be higher than an Existing CMU. For example, in the case of a failure to achieve the Minimum Completion Requirement in respect of a CMU, this would trigger a termination event under Rule 6.10.1 (c) and the Capacity Provider will be liable for termination fees (TF2 set at £25,000/MW) as a result. In this scenario, the aggregator is unlikely to be responsible for decisions regarding the construction of the resource; however it would be liable for the payment of the termination fees.

36. Rule 9.2.10 sets out that an individual generating unit in a CMU can only be transferred, sold or otherwise disposed together with all of the generating units in that CMU (i.e. the transfer of a single generating unit is not permitted). This Rule would not allow generating units in an aggregated CMU with multiple legal owners to sell/transfer/dispose of individual generating units. It is proposed that a new Rule is established to permit this, however, there is a requirement that no capacity is 'lost' and that the existing CMU arrangements remain in place - in other words, transfer of legal ownership of a generating unit will only be permitted where Despatch Control for the CMU as a whole is unaffected and remains with the aggregator

Consultation Questions	Aggregated generation CMUs under 50MW
Question A1	• **Do you agree with the proposal to establish a similar mechanism to Rule 3.2 and Exhibit D to enable the aggregation of generating units with multiple legal owners to comprise an Existing Generating CMU?**
Question A2	• **Do you agree with the proposal to allow individual generating units within an aggregated CMU to transferred, sold or disposed of, whilst maintaining that no capacity is lost from an agreement and that the despatch control remains within the CMU?**
Question A3	• **Do you have a view as to how aggregated Prospective CMUs with multiple legal owners could participate in the Capacity Market?**

Chapter 5: Credit cover

Introduction

37. Following feedback from stakeholders and the Electricity Settlements Company, we are proposing to amend Regulation 59(3) (with a consequential amendment to Rule 4.6.1) to extend the deadline for applicants submitting credit cover after receiving a conditional prequalification notice from 5 working days (currently) to 15 working days. This is following feedback that 5 working days is challenging and unnecessarily short – particularly since applicants have 32 working days (under Rule 4.6.4) to notify the Delivery Body of approved credit cover.

38. Amendments to the Regulations have been laid in Parliament[7] to enable interconnectors to participate in the Capacity Market. In particular, Regulation 59 was amended to allow applicants for interconnectors that had lodged credit cover for a capacity auction not to be required to provide further applicant credit cover for any subsequent capacity auction in respect of that same component. An amendment was also seen as necessary for Unproven Demand Side Response CMUs to ensure parity between resources. We propose to amend the Rules to implement this policy.

Proposal

39. As mentioned above, we propose to amend Regulation 59(3) to extend the timeframe for submitting applicant credit cover from 5 working days to 15 working days. To avoid knock-on impacts to the broader prequalification timeline, the overall deadline for applicants providing the Delivery Body with a copy of the notice from the Settlement Body confirming that their credit cover is approved will remain unchanged at 32 working days (Rule 4.6.4). All other timelines associated with the provision and approval of credit cover will also remain as they are. These are as follows:
    - the 15 working day deadline for the Settlement Body to determine whether to approve credit cover once submitted and notify the applicant (Regulation 55(3)(b));
    - the 5 working day deadline for applicants to submit additional credit cover if it is not approved in full or in part (Regulation 56(2));
    - the 2 working day deadline for the Settlement Body to determine whether to approve additional credit cover and notify the applicant (Regulation 55(3)(a)).

[7] The draft Electricity Capacity (Amendment) Regulations 2015

40. It remains the applicant's responsibility to ensure that they have posted credit cover in sufficient time to ultimately obtain approval from the Settlement Body, and to provide a notification of this fact to the Delivery Body within the 32 day deadline specified in Rule 4.6.4. This means that applicants must post credit cover within the first 15 working day deadline - or they will fail prequalification as their credit cover will not be approved, leading to their removal from the register once the 32 day deadline has passed.

41. Whilst the Settlement Body would endeavour to consider credit cover as quickly as possible, there is no legal obligation on the Settlement Body to process credit cover and issue a notification of approval to a shorter timeline than the deadlines specified in regulations. This means that applicants opting to post credit cover towards the end of the 15 working day deadline take the risk that they will be unable to rectify un-approved credit cover in time to meet the 32 working day deadline for notifying the Delivery Body of approved credit cover.

42. As mentioned above, amendments to regulation 59 have been laid in Parliament to remove the need for an Unproven DSR CMU which has already posted collateral in an auction, to post collateral for a subsequent auction except in circumstances specified in the Rules. The change to the regulation was initially made for interconnectors; however, to ensure fairness between resources, it was also amended for Unproven DSR CMUs. We propose to amend the Rules to implement this policy. In particular, we propose to amend the Rules to specify that where an applicant for an Unproven DSR CMU has provided credit cover for a capacity auction it is not required to lodge credit cover for any subsequent capacity auction if it intends to consist of the same components. An applicant in this situation will be required to make a declaration as part of the prequalification process that their application is for the same resource as their previous CMU. In addition, we propose to amend Chapter 3 of the Rules to require applicants to inform the Delivery Body if they are not required to provide credit cover if their CMU will consist of the same components as in a previous auction.

Consultation Questions	Credit Cover
Question C1	• **Do you have any comments on the proposal to extend the deadline for posting credit cover from 5 working days to 15 working days?**
Question C2	• **Can you see any unintended consequences of extending this deadline?**
Question C3	• **Do you have any comments on the proposal to amend the Rules to require applicants of Unproven DSR CMUs to inform the Delivery Body if no credit cover is required as the DSR components of their CMU are the same as in a previous auction and the**

Consultation Questions	Credit Cover
	proposal to amend the Rules to reflect that applicants are not required to provide credit cover for these CMUs?

Chapter 6: Other changes

Introduction

43. This Chapter covers technical changes that we are proposing to make to the Capacity Market Rules, and a change to clarify the operation of the Rules in relation to Ofgem's enforcement power to exclude a participant from bidding in a capacity auction. The technical changes are mainly minor and drafting corrections that need to be made to ensure clarity on the issues below.

44. The table below sets out the proposed change and, where the proposed change is not self-explanatory, a brief explanation for the change. Subject to considering consultation responses the intention is to implement the proposals by making the necessary amendments to the Capacity Market Rules as appropriate.

Enforcement

45. It is important to ensure that the Rules are clear about the circumstances in which Ofgem can, as part of any enforcement action, take appropriate enforcement action.

46. By virtue of regulation 67 a requirement on a person (other than the Secretary of State, the Authority and the Settlement Body) subject to the Regulations is enforceable as if it was a "relevant requirement". By treating a requirement in the Regulations in this way Ofgem are able to use their existing enforcement powers under the Electricity Act 1989, i.e. those powers which they use to enforce, for example, licence conditions.

47. Subject to further legal consideration, we are exploring whether it would be appropriate to make provision in the Rules for Ofgem to instruct the Delivery Body to remove applicants from the auction where an applicant has, for example, engaged in Prohibited Activity. This would allow Ofgem to take action against an applicant that has engaged in Prohibited Activity where time is of the essence. For example, when the auction is imminent and the removal of the applicant is necessary to ensure that applicant does not win an agreement that has to be terminated with implications for other applicants and, possibly, security of supply.

Consultation Questions	Enforcement
Question E1	• **Bearing in mind Ofgem's existing enforcement powers described above, what are the advantages and disadvantages for making specific provision in the Rules for Ofgem to, for example, remove applicants from the auction where an applicant has**

Consultation Questions	Enforcement
	engaged in Prohibited Activity?

Table of proposed amendments to the Rules

Proposed change	Explanation
Rule 6.10.1(d) - Delete "ab initio" from the rule	Removal of potential ambiguity between Rule 6.10.1(d) and Regulation 35(1). Rule 6.10.1(d) provides for the termination of a capacity agreement where a capacity committed CMU no longer meets the General Eligibility Criteria, without prejudice to Regulations that render the agreement "null and void ab initio", whilst Regulation 35(1) provides that any agreement which, at the date on which the capacity agreement was issued, did not meet the General Eligibility Criteria is "null and void".
Replacement Capacity Agreement Notice - Amend Rule 7.8 to reflect Rule 6.3.3-6.3.7	To clarify that where a replacement Capacity Agreement Notice is issued, the provisions under Rules 6.3.3 to 6.3.7 only apply in respect of the amended information or data contained in the replacement notice.
BM unit metered volume data – Amend Rule 14.3.1(b) / Rule 14.3.3 and insert new rule 14.3.4 to align	Add provision for BM Unit Metered Volume data to be given for electricity suppliers. This data is required in order to calculate each supplier's share of capacity market charges.
Rule 6.10.1(f) / Rule 8.3.1(b)(i) - Amend so that these Rules are aligned	Alignment of wording to avoid any potential ambiguity between these cross-referenced rules. Rule 6.10.1(f) refers to the Capacity Provider providing a copy of its Grid Connection Agreement evidencing that it has secured Transmission Entry Capacity (TEC) at least equal to the de-rated

Proposed change	Explanation
	capacity of each CMU to which the Grid Connection Agreement applies. Rule 8.3.1(b)(i) refers to the Capacity Provider providing a copy of its Grid Connection Agreement evidencing that it has secured TEC for all relevant Delivery Years for the generating units comprised in the CMU at least equal, in aggregate, to the de-rated capacity of that CMU.
Disclosure of confidential information - sale of asset – Amendment to Rule 3.4.9(e)(x) to extend this to cover the professional advisers of the Applicant or the Applicants' Group, of any shareholder of the Applicant and its Group and of any potential purchaser of the CMU". Amend Exhibit C to align.	This is to allow wider disclosure of information, if required, to professional advisers of shareholders or those of a potential purchaser.
Rule 6.8.1(a) - Clarify that the reference within 6.8.1(a) to “and Rule 6.10.1 (b) shall apply” only applies to New Build CMUs	To ensure that under Rule 6.8.1(a) (which applies to all Prospective Generating CMU’s), the application of the termination provisions under Rule 6.10.1(b) only applies to New Build CMU’s.
Rule 7.5.1(r) - Add a reference to “Prospective” Generating Units	To clarify that the reference to a change of location for a Generating Unit is applicable to New Build CMUs (as the location is already fixed for existing plants).
Rule 11.3.2(b) – Delete ‘in any previous year’	This change clarifies existing eligibility policy for CMUs that wish to participate in the Transitional Arrangements. CMUs (including their components) that have a Capacity Agreement are not eligible to participate in the Transitional Arrangements regardless of the year in which the Capacity Agreement was awarded.
Rule 2.2.2 – Delete “and the associated update of affected Auction Parameters”	To avoid potential confusion as DECC does not have regulatory power to change the parameters at these later stages without re-opening pre-qualification.
Rules Schedule 3, 1.2 – Add definition of CHP “a turbine or engine which generates heat and power, including electricity, simultaneously in a	A definition is proposed to avoid potential confusion or ambiguity regarding the classification

Proposed change	Explanation
single process”	of Generating Technology Classes.
Rules 1.2.- Add definition of core winter period ““Core Winter Period” means the period from and including the 1st of December in any year to and including the last day of February in the following year.”	A definition is proposed to avoid potential ambiguity regarding the calculation methodology for de-rating factors
Rule 9.4.5(b) - Delete	To address an inconsistency with Regulation 52(3).
Rules 1.2 – Add definition for high demand settlement period	A definition of high demand settlement periods is proposed to avoid potential ambiguity regarding the calculation methodology for de-rating factors.

Chapter 7: For information

Credit Cover timing in relation to Appeals

48. Certain classes of applicant are required to post credit cover pre-auction in order to ensure a termination fee can be recovered if the CMU defaults on their obligations post auction. The Regulations and Rules do not currently, however, have a trigger for posting credit cover where an applicant of a class required to lodge credit cover raises a dispute against the Delivery Body's prequalification decision. In such circumstances the applicant, should their appeal be successful, would either be eligible to participate in the auction, or be awarded a capacity agreement subject to appeal resolution timescales, without lodging credit cover. This would present them with an advantage to their peers who have lodged such cover. In addition this would also mean that any exposure to termination fees would be unsecured.

49. The Regulations therefore currently permit a scenario which was never intended to be possible – all those required to submit credit cover must do so before bidding into an auction. We describe below how we intend to amend the Rules so that they prevent an applicant from securing a capacity agreement without having deposited credit cover. We are not consulting on how we amend the Rules to deal with this scenario but are including the information here to make stakeholders aware of the change needed to ensure the Regulations and Rules together reflect the original policy intention.

50. We intend to hard wire a requirement, via amendments to the Rules, to provide credit cover when the Delivery Body issues a notification, under Regulation 73(2)(b), to an applicant confirming that the Capacity Market Register has been updated following a successful appeal. The same credit cover process and timelines as for those posting credit cover upon receipt of a conditional prequalification notice at the prequalification results day would apply. In addition a new termination event provision will be included, to terminate those providers who have appealed and fail to lodge sufficient credit by 32 working days after notification of their prequalification status on the Capacity Market Register being updated post their appeal. This termination event will apply irrespective of whether the applicant was awarded a Capacity Agreement via a capacity auction or via Regulation 73(5). No termination fee will however be attached to this termination event, to ensure the ramifications of failing to post credit cover are the same, irrespective of whether this is pre or post auction.

Penalty Cap

51. In addition to the above rule changes, DECC is aware of another technical issue which we continue to consider, but which we do not propose for immediate amendment before the next auction. As stated in the Government Response, June 2014, page 9[8], our policy intent

[8] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324170/Government_Response_to_EMR_implementation_consultation.pdf

is that capacity providers which fail to demonstrate satisfactory testing performance in a delivery year, as required under Rule 13.4 of the Rules, should be required to repay that delivery year's capacity payments net of any capacity market penalties paid that year.

52. However, Regulation 50(4) and Rule 13.4.1 as currently drafted, would not net off penalties from the amount to be repaid, effectively exposing such capacity providers to a maximum 200 per cent annual payment liability. DECC has heard no suggestions that this Regulation / Rule interaction is likely to represent a material concern for participants, given which, and the potential complexity of the interactions between regulations and rules, DECC would look to consult on and (as necessary) resolve this issue before the 2016 auction.

15D/051

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