

The Capacity Market (Amendment) (No. 2) Rules 2017

Presented to Parliament pursuant to Section 41(9) of the
Energy Act 2013

The Capacity Market (Amendment) (No. 2) Rules 2017

1. Citation and commencement

1.1 These Rules may be cited as the Capacity Market (Amendment) (No. 2) Rules 2017.

1.2 These Rules come into force on the day after the day on which they are made.

1.3 In these Rules:

1.3.1 “the Rules” means the Capacity Market Rules 2014 as amended by:

- (a) the Capacity Market (Amendment) Rules 2014;
- (b) the Capacity Market (Amendment) (No. 2) Rules 2014;
- (c) the Capacity Market (Amendment) Rules 2015;
- (d) the Capacity Market (Amendment) (No. 2) Rules 2015;
- (e) the Capacity Market (Amendment) Rules 2016;
- (f) the Capacity Market (Amendment) (No. 2) Rules 2016;
- (g) the Capacity Market (Amendment) (No. 3) Rules 2016; and
- (h) the Capacity Market (Amendment) Rules 2017;

1.3.2 a reference to a Chapter, Rule or numbered Schedule by number alone is a reference to the Chapter, Rule or Schedule so numbered in the Rules; and

- 1.3.3 expressions which are defined in the Rules have the same meaning as in the Rules.

2. Application

- 2.1 The amendments made by the following provisions of Part 3 of the Schedule to these Rules do not apply in respect of a Supplementary Auction, or any Capacity Agreement that has been awarded as a result of a Supplementary Auction, held before these Rules come into force:

- 2.1.1 paragraph 9.1.2;

- 2.1.2 paragraph 9.2.3;

- 2.1.3 paragraph 9.3.2;

- 2.1.4 the amendment to Rule 3.10.2(b) made by paragraph 9.4; and

- 2.1.5 the insertion of Rules 13.3.2A(a) and (d) by paragraph 11.2.

- 2.2 Rule 13.3.2A(b), as inserted by paragraph 11.2 of Part 3 of the Schedule to these Rules, does not apply in respect of any Capacity Agreement that has been awarded as a result of a T-4 Auction held in the Auction Window commencing on 1 September 2014.

- 2.3 The amendments to Chapter 6 made by Part 4 (termination) of the Schedule to these Rules do not apply in respect of any Capacity Agreement that has been awarded as a result of a Capacity Auction held before these Rules come into force.

3. Amendments

- 3.1 The Rules are amended as set out in the Schedule to these Rules.

Minister of State

SCHEDULE

PART 1

Delivery Milestones for T-1 Auctions

1. Amendments to Chapter 1

1.1 In Rule 1.2:

1.1.1 In paragraph (c) of the definition of “Long-Stop Date”, after “SA Agreement” insert “or a T-1 Agreement”.

1.1.2 After the entry for “Termination Notice”, insert:

“T-1 Agreement means a Capacity Agreement awarded pursuant to a T-1 Auction”.

2. Amendments to Chapter 3

2.1 In the heading for Rule 3.10A, after “Supplementary Auction” insert “or the first T-1 Auction”.

2.2 For Rule 3.10A.1 substitute:

“3.10A.1 In the case of an Application to participate in:

(a) a Supplementary Auction, Rules 3.10A.2 and 3.10A.3 apply; and

(b) the T-1 Auction for the Delivery Year commencing on 1 October 2018 (if any), Rules 3.10A.2(a), 3.10A.3(a) and 3.10A.3(b) apply.”.

3. Amendments to Chapter 6

3.1 In Rule 6.6.1, after “SA Agreement” insert “or a T-1 Agreement”.

3.2 In Rule 6.6A.1, after “SA Agreement” insert “or a T-1 Agreement”.

3.3 In Rule 6.7.4:

3.3.1 In Rule 6.7.4(a)(i), after “an SA Agreement” insert “or a T-1 Agreement”.

3.3.2 In Rule 6.7.4(a)(ii), after “SA Agreement” insert “or a T-1 Agreement”.

3.4 In Rule 6.8:

3.4.1 In Rule 6.8.2E:

(a) in Rule 6.8.2E(a), after “SA Agreement” insert “or a T-1 Agreement”; and

(b) in Rule 6.8.2E(b), after “SA Agreement” insert “or T-1 Agreement”.

3.4.2 In Rule 6.8.2F, after “SA Agreement” insert “or T-1 Agreement”.

3.4.3 In Rule 6.8.5, after “SA Agreement” insert “or a T-1 Agreement”.

3.5 In Rule 6.10.2(b)(i), after “SA Agreement” insert “or a T-1 Agreement”.

PART 2

Total Spend Declaration

4. Amendments to Chapter 1

4.1. In Rule 1.2:

4.1.1. In the definition of “Maximum Obligation Period”, for paragraph (a) substitute:

- “(a) fifteen Delivery Years, including the first Delivery Year for which the Capacity Agreement is awarded, for a Prospective Generating CMU:
- (i) for which an Applicant has stated pursuant to Rule 3.7.2(a), that to the best of its knowledge and belief the CMU will meet the Extended Years Criteria when completed;
 - (ii) for which an Applicant has stated pursuant to Rule 3.7.2(d), that Qualifying £/kW Capital Expenditure is expected to equal or exceed the Fifteen Year Minimum £/kW Threshold; and
 - (iii) in respect of which none of the Generating Units comprising the Prospective Generating CMU are already the subject of a Capacity Agreement which has not been terminated;”.

4.1.2. For the definition of “Qualifying £/kW Capital Expenditure” substitute:

“Qualifying £/kW Capital Expenditure

means, with respect to a New Build CMU which is a Generating CMU or a Refurbishing CMU which is a Generating CMU, the Total Project Spend divided by the De-rated Capacity of the Generating CMU that is expected in the reasonable opinion of the Applicant to result from the Capital Expenditure comprising the

Total Project Spend”.

4.1.3. For the definition of “Total Project Spend” substitute:

“Total Project Spend means, with respect to a New Build CMU, the total amount of Capital Expenditure (excluding contingency) incurred, or expected in the reasonable opinion of the Applicant to be incurred (either by the Applicant or another person) with respect to the CMU (or, in the case of an Interconnector CMU, the CMU together with the Non-GB Part) between the date which is 77 months prior to the commencement of the first Delivery Year to which the Application relates and the commencement of the first Delivery Year to which the Application relates; or

means, with respect to a Refurbishing CMU, the total amount of Capital Expenditure (excluding contingency) incurred, or expected in the reasonable opinion of the Applicant to be incurred (either by the Applicant or another person) with respect to the CMU (or, in the case of an Interconnector CMU, the CMU together with the Non-GB Part) between the date which is the Auction Results Day prior to the commencement of the first Delivery Year to which the Application relates, and the commencement of the first Delivery Year to which the Application relates and which:

- (a) has not previously been declared under Rule 3.7.2(c) in respect of any application for prequalification by a CMU which subsequently gained a Capacity Agreement in respect of the Refurbishing CMU, and not the associated Pre-Refurbishment CMU, (of any

duration); or

- (b) has previously been so declared but:
 - (i) which a certificate required by Rule 8.3.6 demonstrates was not incurred; or
 - (ii) was declared in respect of a Capacity Agreement which has been terminated in accordance with Rule 6.10.2(e)".

5. Amendments to Chapter 3

5.1. For Rule 3.7.2(c) substitute:

“(c) the Total Project Spend;”.

5.2. In Rule 3.8.1, omit “And except that:” and paragraph (c).

6. Amendments to Chapter 5

6.1. In Rule 5.5.14(b), after “Interconnector CMU,” insert “with a Maximum Obligation Period of more than one year”.

7. Amendments to Chapter 8

7.1. In Rule 8.3.6:

7.1.1. In paragraph (a), after “Independent Technical Expert” insert “stating the Total Project Spend incurred, and”.

7.1.2. In paragraph (aa):

- (a) at the beginning, insert “if the CMU is a refurbishing CMU,”; and
- (b) for the words from “incurred” to the end substitute:

“incurred:

- (i) was not declared under Rule 3.7.2(c) in respect of any application for prequalification by a CMU which subsequently gained a Capacity Agreement in respect of a Refurbishing CMU, and not the associated Pre-Refurbishment CMU, (of any duration) prior to the current Capacity Agreement;
- (ii) was previously so declared but which a certificate required by this Rule 8.3.6 demonstrates was not incurred; or
- (iii) was previously so declared but in respect of a Capacity Agreement which has been terminated in accordance with Rule 6.10.2(e);”.

7.1.3. In paragraph (c), after “Rule 8.3.6(a)” insert “and if applicable Rule 8.3.6(aa)”.

PART 3

Metering requirements

8. Amendment to Chapter 1

8.1 In Rule 1.2, at the end of the definition of “Metering Test Certificate” insert “or Rule 13.3.6B(a)”.

9. Amendments to Chapter 3

9.1 In Rule 3.6.4(b):

9.1.1 In sub-paragraph (ii), for “eight months” substitute “six months”.

9.1.2 For sub-paragraph (iii), substitute:

“(iii) no later than the date falling four months prior to the start of the relevant Delivery Year where the time period between the Auction Results Day and the start of the Delivery Year is less than eight months.”.

9.2 In Rule 3.6A.3(aa):

9.2.1 Renumber sub-paragraphs (iii), (iv) and (v) as sub-paragraphs (i), (ii) and (iii) respectively.

9.2.2 In renumbered sub-paragraph (ii), for “eight months” substitute “six months”.

9.2.3 For renumbered sub-paragraph (iii), substitute:

“(iii) no later than the date falling four months prior to the start of the relevant Delivery Year where the time period between the Auction Results Day and the start of the Delivery Year is less than eight months.”.

9.3 In Rule 3.9.4(b):

9.3.1 In sub-paragraph (ii), for “eight months” substitute “six months”.

9.3.2 For sub-paragraph (iii), substitute:

“(iii) no later than the date falling four months prior to the start of the relevant Delivery Year where the time period between the Auction Results Day and the start of the Delivery Year is less than eight months.”.

9.4 In Rule 3.10.2:

- (a) after “it will complete” insert “in relation to that CMU”;
- (b) in Rule 3.10.2(a), at the beginning insert “prior to the date falling one month before the commencement of the Delivery Year to which the Capacity Auction relates,”;
- (c) in Rule 3.10.2(b), at the beginning insert “prior to the date falling four months before the commencement of the Delivery Year to which the Capacity Auction relates,”;
- (d) in Rule 3.10.2(c), at the beginning insert “prior to the date falling two weeks before the commencement of the Delivery Year to which the Capacity Auction relates,”;
- (e) omit the words from “in relation to” to the end.

10. Amendments to Chapter 8

10.1 In Rule 8.3.3:

10.1.1 In sub-paragraph 8.3.3(a)(ii), for “eight months” substitute “six months”.

10.1.2 In sub-paragraph 8.3.3(a)(iii), for “one month” substitute “four months”.

10.1.3 In sub-paragraph 8.3.3(e)(i), for “1 month” substitute “two weeks”.

10.1.4 For sub-paragraph 8.3.3(e)(iii), substitute:

“(iii) in the case of an Existing CMU or a Proven DSR CMU that has been awarded a Capacity Agreement in a T-1 Auction or where the time period between the Delivery Year and the auction is less than eight months, the date falling two weeks prior to the start of the first Delivery Year.”.

11. Amendments to Chapter 13

11.1 In Rule 13.3.2(b), at the beginning insert “at the same time,”.

11.2 After Rule 13.3.2 insert:

“13.3.2A The notification and submission required by Rule 13.3.2 must be given no later than:

- (a) in the case of an Unproven DSR CMU, the date falling four months prior to the start of the relevant Delivery Year;
- (b) in the case of an Existing CMU or a Proven DSR CMU that has been awarded a Capacity Agreement in a T-4 Auction, the date falling twenty one months prior to the start of the first Delivery Year of the relevant Capacity Agreement;
- (c) in the case of an Existing CMU or a Proven DSR CMU that has been awarded a Capacity Agreement in a T-1 Auction, the date falling five months prior to the start of the relevant Delivery Year, unless Rule 13.3.2A(d) applies;
- (d) in the case of an Existing CMU or a Proven DSR CMU where the time period between the Auction Results Day and the start of the relevant Delivery Year is less than eight months, the date falling four months prior to the start of the relevant Delivery Year; or
- (e) in the case of a Prospective CMU, as soon as reasonably practicable after the date on which the Capacity Provider receives notification under Rule 8.3.3 (d)(i), and in any event not later than the Long Stop Date.”.

11.3 In Rule 13.3.6, omit “Following” and insert “Except where Rule 13.3.6B applies, following”.

11.4 After Rule 13.3.6 insert:

“13.3.6A Rule 13.3.6B applies where a Capacity Committed CMU is subject to a Metering Test and the CM Settlement Body conducts the Metering Test on a sample of the Generating Units or DSR CMU Components comprised in the CMU.

13.3.6B Where this Rule 13.3.6B applies, following the completion of the Metering Test the CM Settlement Body must either:

- (a) issue a Metering Test Certificate to the relevant Capacity Provider with respect to that CMU:
 - (i) confirming that the Metering Test has been conducted on a sample basis;
 - (ii) detailing the metering configuration for each Generating Unit or DSR CMU Component comprised in the sample;
 - (iii) confirming that the metering arrangements for each Generating Unit or DSR CMU Component comprised in the sample constitutes an Approved Metering Solution; and
 - (iv) listing the remaining Generating Units or DSR CMU Components comprised in the CMU and confirming that those Generating Units or DSR CMU Components have not been subject to a Metering Test; or
- (b) notify the Capacity Provider that one or more Generating Units or DSR CMU Components comprised in the sample has failed a Metering Test.

13.3.6C Where a notice is given pursuant to Rule 13.3.6B(b):

- (a) it is to be treated as if it were a notice given under Rule 13.3.6(b); and
- (b) when the CM Settlement Body conducts a further Metering Test pursuant to Rule 13.3.8, the test may cover additional Generating Units or DSR CMU Components.”.

11.5 In Rule 13.3.8, for “to 13.3.6”, substitute “to 13.3.6B”.

11.6 In Rule 13.3.11, after “Rule 13.3.6”, insert “or Rule 13.3.6B”.

12. Amendments to Chapter 14

12.1 After Rule 14.2.6, insert:

“14.2.7 Submission of meter data

(a) In respect of an SA Agreement, a Capacity Provider using either:

(i) the Balancing Services Metering Configuration Solution; or

(ii) the Bespoke Metering Configuration Solution,

is permitted to either in a manual or automated process:

(aa) submit meter data directly to the CM Settlement Body; or

(bb) arrange for the data to be collected and submitted to the CM Settlement Body.

(b) Data submitted using either of the methods set out at paragraphs (aa) and (bb) must be submitted via secure file transfer protocol in a comma separated value format.”.

PART 4

Termination

13. Amendments to Chapter 6

13.1 After Rule 6.10.1(h) insert:

- “(ha) where the Capacity Agreement relates to an Existing CMU, a Proven DSR CMU or an Unproven DSR CMU and, in any such case, the Capacity Provider has made a declaration in its Application in accordance with Rule 3.6.4(b), 3.6A.3(aa), 3.9.4(b) or 3.10.2(b) that it will complete a Metering Assessment for that CMU, the Capacity Provider has failed to complete a Metering Assessment in accordance with Rule 8.3.3(a) or 8.3.3(b);”.

13.2 At the end of Rule 6.10.3 insert:

- “(g) Where a Capacity Agreement awarded as a result of a Capacity Auction held after the coming into force of the Capacity Market (Amendment) Rules 2017, or a Transferred Part in respect of such a Capacity Agreement, is terminated on one of the grounds specified in paragraph (d) or (ha) of Rule 6.10.1, the Capacity Provider is liable to pay a termination fee in accordance with Regulation 43.
- (h) The amount of a termination fee payable under Rule 6.10.3(g) is TF3, as determined in accordance with Regulation 43(3).”.

PART 5

Transparency publications

14. Amendments to Chapter 3

14.1 At end of Rule 3.4.1(f) insert:

“.

- (g) in the case of an Application relating to a Capacity Auction falling within an Auction Window starting on 1st September 2018, or any subsequent Auction Window, the value added tax identification number of the Applicant; and
- (h) in the case of an Application relating to a Capacity Auction falling within an Auction Window starting on 1st September 2018, or any subsequent Auction Window, confirmation that the Applicant is a “SME”, which has the meaning given in Annex I to Commission Regulation (EU) No 651/2014¹, or if it is not a SME, that it is a “Large Enterprise”.

3.4.1A Additional Information in the Prequalification Certificate

In relation to Applications relating to a Capacity Auction falling within the Auction Window starting on 1st September 2017, each Applicant must provide the following information in a Prequalification Certificate:

- (a) the value added tax identification number of the Applicant; and
- (b) confirmation that the Applicant is a “SME”, which has the meaning given in Annex I to Commission Regulation (EU) No 651/2014, or if it is not a SME, that it is a “Large Enterprise”.

15. Amendments to Exhibit A

15.1 After paragraph (f) insert:

“(In the case of an Application relating to a Capacity Auction falling within the Auction Window starting on 1st September 2017) We confirm that the value added tax identification

¹ OJ No L 187, 26.6.2014, p1

number of the Company is [], and that the Company is an SME/Large Enterprise (delete as applicable).”.

PART 6

Offsetting Relevant Expenditure- transfer and data provision

16. Amendments to Chapter 8

16.1 After Rule 8.3.9 insert:

“8.3.10 In the case of a transfer under Rule 9.2.4(a), the transferor must provide the updated Funding Declaration as required by Rule 8.3.8.”

17. Amendments to Chapter 14

17.1 At the beginning of Rule 14.2.4 insert" "Subject to Rule 14.6.4, "

17.2 After Rule 14.5, insert a new Rule 14.6:

“14.6 Other funding sources: Data provision

14.6.1 The Delivery Body must provide to the CM Settlement Body on a monthly basis:

- (a) the data described in Rule 14.6.2; and
- (b) any updates to the data described in Rule 14.6.2, as required under Rule 8.3.8.

14.6.2 The data referred to in Rule 14.6.1 means, in respect of any Capacity Provider that has made a Funding Declaration under Rule 6.6.1:

- (a) the identity of the Capacity Provider;
- (b) the total amount of Relevant Expenditure that has been, or will be, incurred; and
- (c) the amount to be deducted from the credit otherwise payable to the Capacity Provider under the Regulations.

14.6.3 The Delivery Body must provide the data to which Rule 14.6.1 applies as soon as reasonably practicable after the data is received by the Delivery Body and in any event no later than the beginning of the first Delivery Year that the Funding Declaration relates to.

14.6.4 Rule 14.2.4 does not apply in relation to data required to be provided under this Rule 14.6.”.