

Proposal for a Capacity Market Rule Change



Making a positive difference
for energy consumers

Reference number:
CP376

Title (*a short title which summarises your CM rule change request*)

Clarifying restrictions on the role of Agent

Name of organisation(s)/individual(s):

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Proposal abstract (*a short summary, suitable for published description on our website*)

This proposal seeks to extend the definition of Agent in the CM Rules to cover all entities belonging to the same Group (a holding company and its subsidiaries). This is intended to better realise the policy intent behind Rule 3.3.5 (c), which limits Agents to representing either a single CMU or multiple CMUs who all belong to a single Group.

We would also like to address a housekeeping error in Rule 3.3.5(e).

Description of the issue that the change proposal seeks to address:

Per the definition in the CM Rules, the Applicant is the person that has submitted or is entitled to submit an application with respect to a CMU. There must be only one Applicant with respect to any CMU, and the status required to be an Applicant is set out for each category of CMU in Rule 3.2.

Pursuant to Rule 3.3.5, an Applicant may nominate an Agent to perform its obligations with respect to a CMU by submitting an Agent Nomination Form. This permits the Agent to act as Bidder on behalf of that CMU, which is a role that is otherwise only permitted by the Applicant, in the instance where they have not nominated an Agent.

The clear policy intent behind Rule 3.3.5 is that each single CMU or multiple CMUs who all belong to the same Group (a holding company and its subsidiaries) is represented either by the Applicant themselves or by a nominated Agent who acts as Applicant, Bidder and/or Capacity Provider for only that CMU or the CMUs of that Group. This rule is in place to ensure that those with the ability to bid in the CM auctions are acting independently so that the market remains competitive.

It is currently possible and within the rules for one Group to act as an Agent for multiple CMUs from different Groups by forming subsidiaries, such as a special purpose vehicle (SPV). However, this clearly contradicts the policy intent behind Rule 3.3.5.

Proposed solution to the issue:

Amending Rule 3.3.5 to clarify that an Agent cannot also be a member of a Group (the direct or indirect Holding Company and any Subsidiary of that Holding Company) that includes a member acting as an Agent representing other Applicants.

List of alternative proposals already submitted which this proposal relates to (if any):

If you know the specific change to the Capacity Market (CM) Rules you wish to make, please select the type of change below and propose specific revised text, indicating the provision number from the CM Rules and highlighting the change (if left blank, the Capacity Market Advisory Group (CMAG)/Ofgem may suggest revised text to achieve the proposed solution above):

Amendment

Addition

Revocation

Substitution

3.3.5 An Applicant may nominate an Agent to submit an Application for a CMU on its behalf and to otherwise perform its obligations under the Regulations or the Rules (whether in its capacity as Applicant, Bidder or Capacity Provider) provided that:

- (a) an Agent Nomination Form with respect to such Agent is included in the Application;
- (b) only one Agent is appointed by an Applicant with respect to a CMU at any one time;
- (c) such Agent (**or any Subsidiary within the Agent's Group**) is not also the Agent for any other Applicant (unless the other Applicant is a member of the same **Applicant** Group);
- (d) if the Applicant wishes to revoke the appointment of an Agent or to appoint a different Agent, the Applicant must submit a new Agent Nomination Form to the Delivery Body; and
- (e) the Agent shall ~~have not~~ **have the** authority to sign any Prequalification Certificate, Price-Maker Certificate, Certificate of Conduct or any other directors' or officers' certificate or other formal representation required to be submitted by the Applicant pursuant to the Regulations or the Rules.

Analysis and evidence for the impact of the proposed change on industry and/or consumers, highlighting how the proposal meets the Ofgem/Capacity Market objectives set out in Regulation 78 of The Electricity Capacity Regulations 2014, any risks to consider and any implications for industry codes:

Rule 3.3.5 as written is not effectively limiting Agents to representing a single CMU or multiple CMUs belonging to a single Group, which is the clear policy intent behind the rule.

Our concern is that, by forming subsidiaries which each act as an Agent on behalf of a CMU, one Group could control the bidding behaviour of multiple CMUs from different Groups in the CM or could bid with the advance knowledge of how CMUs from different groups would be bidding. There is a risk associated with Agents obtaining more market power through this approach which could be used to secure an artificially higher clearing price in the CM Auctions.

Our principal objective is to protect the interests of existing and future consumers. We believe it is necessary to intervene to prohibit behaviours that could result in an artificially higher clearing price in the CM Auctions, which are costs ultimately payable by consumers.

This proposal would facilitate the efficient operation and administration of the CM by supporting competition in the CM and preventing the misuse of market power which may lead to inefficient auction outcomes, as set out in the CM objectives under Regulation 78 of The Electricity Capacity regulations 2014. It would also help to track the number of truly individual entities who are bidding in the CM auctions.

Urgency

Select this box if you would like this proposal to be treated as “urgent” (see 1.14 of “The Change Process for the Capacity Market Rules – Guidance” (2022) for details on the requirements of an urgent proposal)?

If selected, please include a justification, including any dates by which the CM Rule Change needs to be made and the consequences of not acting in time (Note that urgent proposals may be deprioritised or rejected if the Rule Change suggested cannot be implemented before the date(/s) set out in this section)

Confidentiality

We want to promote transparency in the Capacity Market Rule Change process. Submitting proposals directly to the Capacity Market Advisory Group (CMAG) supports transparency whilst ensuring that proposals benefit from the input of a panel of impartial capacity market experts whose role it is to support the development, scrutiny, and prioritisation of proposals to improve CM Rules.

Proposals submitted directly to Ofgem may be shared with CMAG or published on our website as part of a public consultation before any rule change is enacted, provided the information shared has not been marked as confidential.

To submit your proposal directly to CMAG, e-mail this document to cmag@elexon.co.uk

If you wish to submit confidential information to Ofgem as part of your proposal, there are two routes to do this:

1. Submit this document directly to CMAG (cmag@elexon.co.uk) excluding the confidential information, then submit a copy of this document plus an additional file containing the confidential information (marked as confidential) to emr_cmrules@ofgem.gov.uk
2. Submit this document plus an additional separate file containing the confidential information (marked as confidential) directly to Ofgem at emr_cmrules@ofgem.gov.uk

Nothing marked confidential will be shared outside of Ofgem without the express permission of the proposer.