

Capacity Market Advisory Group Final Minutes

Meeting number **15**

Venue **Elexon Offices/MS Teams**

Date of meeting **13 December 2023 10:00-16:00**

Classification **Public**

Attendance and apologies

Attendee	Initials	Type
Kamilla Nugumanova	KM	Alternative Member
Brian Lake	BL	Member
Claire Addison	CA	Member
Eleanor Haynes	EHay	Member
Libby Glazebrook	LG	Member
Mark Duffield	MD	Member
Paul Jones	PJ	Member
Raoul Thulin	RaT	Member
Richard Thwaites	RiT	Member
Sarah Honan	SHon	Member
Ross Haigh	RH	Representative (CM Settlement Body)
Ceri Kenyon	CK	Representative (CM Settlement Body)
William Farquhar	WF	Representative (DESNZ) (part-meeting)
Beth Hanna	BH	Representative (EMR Delivery Body)
Stuart Wells	SW	Representative (EMR Delivery Body)
Andrew Macdonell	AM	Representative (Ofgem)
Maryam Khan	MK	Representative (Ofgem)
Olga Okulova	OO	Representative (Ofgem)
Steve Jones	SJ	Guest (Waters Wye Associates)
Attendee	Initials	Type
Lawrence Jones	LJ	CMAG Facilitator (Elexon)
Amy Stackhouse	AS	CMAG Secretariat (Elexon)
Chris Arnold	CAr	CMAG Secretariat (Elexon)
Phillip Paul	PP	CMAG Secretariat (Elexon)

1. Welcome and Apologies

- 1.1 The CMAG Facilitator welcomed Members and Representatives and noted apologies from Claire Sedgwick, with Kamilla Nugumanova attending as Alternate.

2. CM Representative Updates

CM Settlement Body (CMSB)

- 2.1 CMSB noted they have begun work on the CP373 solution development and process transfer from EMR DB to CMSB. CMSB queried what updates and reporting CMAG wish to see as part of this development. A Member noted it would be helpful to see the solution development plan on the website so that it is transparent to industry. Updates could be provided to CMAG as needed e.g. where changes to the plan occur, and no formal reporting is needed.

Ofgem

- 2.2 Ofgem noted they will be publishing their 10 year review of the CM Statutory Consultation in January 2024.

EMR Delivery Body (EMR DB)

- 2.3 EMR DB noted no updates this month

Department for Energy Security and Net Zero (DESNZ)

- 2.4 DESNZ noted the update on the Subsidy Control Framework will be presented to CMAG in January 2024. DESNZ has received 42 responses to its CM 2023 Phase 2 Consultation, and is preparing a response to these by Q1 2024, to allow Rule changes ahead of Prequalification 2024 for 2025 Auctions.

3. CMAG Secretariat Update

- 3.1 The CMAG Facilitator noted the CMAG agenda has been updated to include timeslots for each item, this will give guests and proposers a better understanding of when to join a meeting and hopefully allow for a more efficient running of the meeting.
- 3.2 The CMAG Secretariat noted they have created a Sharepoint site for CMAG, to allow for better collaboration on documents and change proposals outside of meetings. The CMAG Secretariat presented a demonstration of using the Sharepoint site, noting this would be trialled with the CP372 'Change to Rule 4.4.4' report. The CMAG Secretariat highlighted that Sharepoint will allow CMAG to view each other's comments and feedback on documents live, and be able to respond where appropriate.
- 3.3 The CMAG Facilitator noted Oli Meggitt will be joining CMAG as the Facilitator in February, Oli Meggitt brings experience from his current role as Head of Assurance at Elexon and as the BSC Performance Assurance Board Chair.

4. CP364 'Allow Secondary Trading before T-1' – EDF Energy

- 4.1 The CMAG Secretariat provided an overview of the issue and solution, and noted that two subgroup meetings had been held to review the weighted PTCO component of the solution. Following the subgroup meeting, the EMR DB sent the CMAG Secretariat some further scenarios to consider.
- 4.2 The CMAG Secretariat noted, following feedback at Meeting 14, Members did not determine if the solution is consistent with the Regulations but considered there was a risk that it might be inconsistent, so agreed to move forward with a solution that is certainly not inconsistent.
- 4.3 EMR DB noted their preference for timing of when the trade window closes before auction would be on the last day of Prequalification Application, but this needs to be confirmed as part of the impact assessment.
- 4.4 The Proposer noted the six-weeks deadline was initially included as this was considered to be the minimum amount of time required for EMR DB to account for trades before the Auction target capacity is set. The Proposer further noted that CP364 is not just a procedural change, but will bring about genuine commercial benefits by allowing Capacity Providers to secure trades.
- 4.5 The CMAG Secretariat presented a summary of the Subgroup outcomes to CMAG. A CMAG Member noted that many of the subgroup outcomes were not valid if an alternative solution, which did not allow reconfiguration of generating units within CMUs between relevant T-4 and T-1 auctions was progressed. There were no additional comments.

- 4.6 The CMAG Secretariat presented the Alternative draft legal text, noting this had been updated following CMAG feedback at Meeting 14.
- 4.7 The CMAG Secretariat noted there is no Generating Unit-level of control within the Capacity Market, and therefore scenarios where two acceptable transferees use a common component may need to be considered, to ensure the correct level of assurance is in place. EMR DB noted during the Delivery Year, a meter check is completed where this scenario would be flagged, and would eventually lead to a termination event as a result of not completing the aggregation rules satisfactorily.
- 4.8 The Proposer noted, for a Capacity Provider configuring the same Generating Unit as a different CMU entering Prequalification for T-4 but not taking a Capacity Agreement, then entering T-1 and not taking a Capacity Agreement would result in this Capacity Provider having a choice of what secondary trade gets allocated to what CMU; currently for the Substantial Completion Milestone it is for the Capacity Provider to select the CMU that is most accurate.
- 4.9 EMR DB noted that as the Prequalification is considerably manual in its manner, the new Portal will automate some of this but cannot resolve all issues with the process as due consideration and checks will always be required.
- 4.10 The EMR DB noted they would complete an impact assessment of the Alternative legal text, and seek to provide this in advance of the February 2024 Meeting.
- 4.11 **New Action 1223/01 – EMR DB to complete an impact assessment for CP364, to be presented to CMAG at Meeting 17 in February 2024.**

5. CP376 ‘Clarifying the restrictions on the role Agent’ - Ofgem

- 5.1 Ofgem noted this change has been raised to align Rule 3.3.5 with the policy intent as there are instances where this is not being applied in practice.
- 5.2 Ofgem presented a diagram of three scenarios, noting the first two are in accordance with the Rule and policy intent but Scenario 3 is allowed within the Rules but misaligned to the policy intent.
- 5.3 Ofgem noted they are proposing to amend Rule 3.3.5 to extend the definition of Agent to include any subsidiary within the Agents group. Ofgem further noted the possible impacts of not implementing this change would be that one Agent group could control the bidding behaviour of multiple Capacity Provider Groups’ CMUs and impact Auction outcomes.
- 5.4 A Member noted that the CMU notifies their Agent on what they wish to submit as a bid, so this CP does not address this information being shared. Ofgem noted there is no issue with multiple CMUs belonging to a single group in the CM as this is clear and transparent. The issue this proposal highlighted is where multiple Agents belong to the same group and have access to a significant amount of bidding information that is not transparent in the CM.
- 5.5 A Member queried how the solution would impact joint ventures, where a CMU is owned by two companies, therefore each company may have oversight of bidding strategy of another company. Ofgem noted they are considering a broader issue of how much information is shared between parties and how transparent this is, looking at data flows and bidding behaviours prior to Auction, which will feed in to future reviews with DESNZ.
- 5.6 A Member noted that consideration needs to be given to prohibition of market manipulation and how Rule 5.13.1(e) works in practice.
- 5.7 Another Member noted additional thought needs to be given to understand how this change would be enforced in practice and how companies can manage this where they enter into joint ventures or share Board Directors, to ensure they are not acting in contravention to the Rules.
- 5.8 A Member highlighted that most Agents acting in the CM are also a Capacity Provider as they require knowledge of the CM and Portal in order to effectively be an Agent.
- 5.9 Another Member noted there are current laws and regulations in practice such as competition market law which prevents anti-competitive behaviour and could address this issue. The CM should not duplicate these requirements.
- 5.10 A Member highlighted that some Agents do not get involved in the bidding for a Capacity Provider, but instead provide administrative assistance for other areas.

- 5.11 A Member noted this change seeks to address a concern that an Agent can put in place a Special Purpose Vehicle (SPV) that would effectively breach Competition Law, but this should be addressed through the Competition Markets Authority.
- 5.12 Ofgem noted they are in the process of establishing current boundaries that exist e.g. competition law, but this change seeks to make sure the rule is in line with the policy intent.
- 5.13 A Member noted there is a 'professional advisor' role within the Rules that allows someone to act essentially as an Agent but without conducting any bidding on behalf of a Capacity Provider. The Member further noted that you do not need to be nominated as an Agent to receive access to the bidding platform, so a holistic review is needed to understand what roles have access to what information and platforms.
- 5.14 The CMAG Secretariat presented the questions on issue and government policy, and requested CMAG feedback on them.

Does this CP address a valid issue? Is the CM the right place to address this issue?

- 5.15 A Member noted this is a valid issue and Rule 3.3.5 could be interpreted differently by Capacity Providers so providing clarity is a useful change.

5.16 Is the solution counter to policy intent?

- 5.17 The CMAG Secretariat noted a possible unintended consequence is if the change is not applied retrospectively, Agents could still be acting counter to policy intent. Ofgem noted they would need to consider the implementation of this change to ensure this is addressed effectively.
- 5.18 A Member noted from looking at a Capacity Market Register, they can identify four Agents all acting in their individual group so they do not see a big impact on historically registered Agents.
- 5.19 A Member highlighted a possible unintended consequence could be people no longer registering Agents, and instead act in the role of professional advisor, resulting in the CM losing transparency. Ofgem noted this can already happen within the Rules so this is not being introduced by this change.

Does this affect any functions granted to the Secretary of State?

- 5.20 CMAG did not identify any impacts on functions granted to the Secretary of State.

Does this CP have an impact on the Subsidy Control Framework?

- 5.21 CMAG did not identify any impacts on the Subsidy Control Framework.

Does this CP align with the current policy intent and Regulations?

- 5.22 CMAG agreed this CP makes clear the current policy intent of Rule 3.3.5 and does not have any known impact on the Regulations.
- 5.23 The CMAG Secretariat presented the Standard Change Proposal Questions and asked Members to provide any specific change proposal questions they wish to consider in advance of the January 2024 Meeting.

- 5.24 **New Action 1223/02 – CMAG Members to provide a response to the Standard Change Proposal Questions for CP376 and confirm any specific change proposal questions to the CMAG Secretariat by Friday 5 January 2024.**

6. CP374 'Splitting CMUs' and CP375 'Merging CMUs' – Waters Wye Associates

- 6.1 The CMAG Secretariat noted CP374 and CP375 had initially been raised as surgery items at Meeting 12. Following CMAG feedback, the Proposer submitted both proposals and presented an initial overview at Meeting 14. Member feedback at Meeting 14 indicated possible gaming concerns with the proposed solution. DESNZ provided feedback that the proposals are misaligned to current policy intent as they seek to move the CM from a physical-asset based mechanism to a financial one.
- 6.2 The CMAG Secretariat presented the questions on issue and government policy, requesting CMAG to provide their views to determine how to proceed with these proposals.

Is this a valid issue? Is the CM the right place to address the issue?

- 6.3 The Proposer noted it is a valid issue, many Capacity Participants find themselves in the situation where they have Prequalified and then their commercial arrangements change due to circumstances outside of their control.

- 6.4 A Member noted it is an issue, but CMAG need to consider the benefits of progressing this change against the potential resource and cost required for development to continue,.
- 6.5 Another Member noted that although it is a valid issue, it is possibly not a priority due to a minimal amount of incidences or impact of this change, it should be considered as part of the wider review of Secondary Trading arrangements and Rule 4.4.4.

Do these CPs align with the CM policy objectives?

- 6.6 A Member noted as there is no legal text, it is unclear whether they would align with policy objectives but they can see a number of unintended consequences.
- 6.7 EMR DB noted these CPs could venture in to policy as Capacity Providers may make different choices at Prequalification to have better results at Auction.

Do these CPs affect any functions granted to the Secretary of State?

- 6.8 Ofgem noted Termination Notices are processed through the Secretary of State, and this could affect the complexity of that process if it seeks to introduce partial terminations.

Do these CPs have an impact on the Subsidy Control Framework?

- 6.9 Members noted it is not clear if there is an impact on the Subsidy Control Framework.

Do these CPs align with the current policy intent and Regulations?

- 6.10 The CMAG Secretariat noted the principle behind splitting and merging CMUs is contrary to the policy intent of Rule 4.4.4 and therefore appears incompatible with Regulation 31(3), which does not allow the description or capacity of a CMU to change for a Capacity Agreement.

Do CMAG wish to proceed with developing these CPs?

- 6.11 Members agreed to not continue development of these CPs, on the basis that there was a significant risk they would be contradictory to Regulations and policy intent, and were deemed a low priority issue and likely impacts of these issues would apply to a low number of sites. CMAG agreed addressing these issues would be considered as part of the wider Secondary Trading arrangements and Rule 4.4.4 review.
- 6.12 Ofgem noted that this is not a formal rejection, but clarity that CMAG will not continue any further development of these CPs; the Proposer can submit these CPs to Ofgem for consideration.
- 6.13 The CMAG Secretariat noted they would draft a CM Rules Change Proposal Report for CP374 and CP375 together, to collate all CMAG discussion so far.
- 6.14 **New Action 1223/03 – The CMAG Secretariat to draft a CM Rules Change Proposal report for CP374/CP375, for CMAG to review.**

7. CMAG Surgery – 6.8.5 Minimum Completion Requirement

- 7.1 The CMAG Secretariat, when reviewing CP371, highlighted a scenario where a Capacity Provider can meet Minimum Completion Requirement (MCR) if unable to meet 90% of its AACO to achieve SCM. Rule 6.8.5 notes in this scenario, the Capacity Agreement will not take effect until the Long Stop Date which can be up to one year after the start of a Delivery Year.
- 7.2 A Member noted it would be useful to understand the original policy intent of this Rule. The Member suggested that the Capacity Agreement becomes effective at LSD as a penalty for not meeting SCM, to encourage CPs to submit accurate Connection Capacity data to ensure they do not miss that first year of payments.
- 7.3 EMR DB noted Rule 6.8.5 seeks to encourage Capacity Providers to meet SCM sooner, if in their original Delivery Year and have met MCR, the Capacity Provider is incentivised to meet 90% of SCM in order for payments to begin sooner.
- 7.4 A Member noted a change to Rule 6.8.5 could possibly dilute this incentive as Capacity Providers may receive payments sooner and therefore not try to meet SCM as soon as possible.
- 7.5 A Member highlighted a possible unintended consequence of this change proposal would be to change the SCM cap from 90% to 50%, which would result in no difference between MCR and SCM.

- 7.6 EMR DB noted as there is no practical difference between SCM and MCR as both have the same submission and process, so an unintended consequence of changing Rule 6.8.5 would be reducing SCM down to MCR – thus creating two milestones that would be the same with no established difference, which creates disparity.
- 7.7 A Member noted SCM and MCR are two set milestones and different for a reason, to combine these could be misaligned to the policy intent behind these milestones and possibly raise gaming concerns where a Capacity Provider could set an optimistic view of AACO and hit 50% and begin to receive payments; the current cap of 90% is close enough to leave some margin for error but reduces the gaming opportunity.
- 7.8 CMAG agreed to not take forward this Surgery item as a CM Rules Change Proposal.

8. Industry Feedback

- 8.1 No items were raised for Industry Feedback this month.

9. CMAG Forward Work Plan

- 9.1 The CMAG Secretariat presented the CMAG Forward Work Plan, and noted CP364 would be updated to reflect an impact assessment in February 2024.
- 9.2 There were no further comments on the Forward Work Plan.

10. Action Log

- 10.1 The CMAG reviewed the Action Log. All 'Complete' actions will be marked as closed. Discussion on actions 'In Progress' can be found in the CMAG Action Log v15.1 – 20.12.23, published on the [website](#).

11. AOB

- 11.1 There was no further business and the meeting was closed. The next CMAG meeting date is Tuesday 16 January 2024.