

Capacity Market Advisory Group Final Minutes

Meeting number **21**

Venue **Elexon Offices/MS Teams**

Date of meeting **18 June 2024 10:00-16:00**

Classification **Public**

Attendance and apologies

Attendee	Initials	Type
Shahena Begum	SB	Alternate Member
Brian Lake	BL	Member
Claire Sedgwick	CS	Member
Eleanor Haynes	EHay	Member
Richard Thwaites	RiT	Member
Raoul Thulin	RaT	Member
Paul Jones	PJ	Member
Ceri Kenyon	CK	Representative (CM Settlement Body)
William Farquhar	WF	Representative (DESNZ)
Beth Hanna	BH	Representative (EMR Delivery Body)
Stuart Wells	SW	Representative (EMR Delivery Body)
Kat Gay	KG	Representative (EMRS)
Andrew Macdonell	AM	Representative (Ofgem)
Oli Meggitt	OM	CMAG Facilitator (Elexon)
Amy Stackhouse	AS	CMAG Secretariat (Elexon)
Paul Farmer	PF	CMAG Secretariat (Elexon)
Phillip Paul	PP	CMAG Secretariat (Elexon)
Apologies		
Sophie Lethier	SL	Member
Mark Duffield	MD	Member

1. Welcome and Apologies

1.0 The CMAG Facilitator welcomed Members and Representatives and noted apologies from Sophie Lethier (Eleanor Haynes acting as Alternate), and Mark Duffield (Paul Jones acting as Alternate).

2. Pre-Election Period impacts on CM Rules Changes – Ofgem/DESNZ

2.0 Ofgem noted as a Regulator, they are a non-Ministerial department and therefore have special considerations in relation to laying papers before Parliament. Ofgem noted they have published their decision on the Autumn

2023 Statutory Consultation, and in order for this decision to be implemented within the CM Rules it will need to be laid before Parliament. This will be done once the new Government is in place, and they expect these changes to be implemented in time for Prequalification 2024/2025.

- 2.1 DESNZ noted that their October 2023 Phase 2 Consultation's decision document requires ministerial sign-off and to be laid before Parliament and this can only take place once new Ministers are in position and depends on their priorities and policies. DESNZ further noted planning is underway for the different scenarios to be expected including the potential impact on Prequalification timelines.
- 2.2 A Member highlighted the Regulations stipulate the Secretary of State must make a decision to hold the CM Auctions by 15 June each year, with the decision published 'as soon as reasonably practicable' and queried if the decision had taken place. DESNZ confirmed the Secretary of State has agreed to hold auctions. New changes to Regulations are expected to clarify this process.
- 2.3 Another Member queried if Prequalification will be delayed until DESNZ is able to lay its Phase 2 Consultation decisions in Parliament. DESNZ and EMR DB confirmed they are continuing to work on this to understand the various scenarios that could occur and possible impacts to Prequalification.
- 2.4 A Member queried if both Ofgem and DESNZ' changes to the CM Rules will be consolidated together. Ofgem noted they will submit a separate amendment but will await DESNZ' confirmation on its Phase 2 Consultation decisions before creating the informal consolidated version of the CM Rules (which will include both).

3. CM Representative Updates

CM Settlement Body (CMSB)

- 3.1 CMSB noted a DSR bespoke metering applicant has now submitted a draft Metering Statement to see if it will pass a Metering Test, their intention is to submit an additional 3000 components if it is successful.
- 3.2 The CMAG Facilitator noted learnings from previous CMAG subgroups indicate that forming a working party as part of CMAG Meetings could be more beneficial to work through the issue and avoids problems with resource and securing dates/times for subgroup meetings where there have been limited engagement. CMAG agreed with this approach.

Ofgem

- 3.3 Ofgem highlighted they published their decision document for the Autumn 2023 Statutory Consultation on Friday 14 June 2024. Ofgem noted they are beginning drafting of their Spring 2024 Statutory Consultation and this will include CP362 'CM Agreement Transfers'; CP371 'Protection from Very Late Network Connections'; CP376 'Clarification of the role of Agent'; and CP377 'Increasing Flexibility for SPD Portfolios'.
- 3.4 Ofgem noted they will bring back Housekeeping Changes to CM Rules as an item for CMAG to consider as part of the next Statutory Consultation, part of this review will include reviewing the accessibility of the CM Rules.

EMR Delivery Body (EMR DB)

- 3.5 EMR DB noted they launched Portal v2.0 on Monday 17 June 2024. Some minor issues were raised but these are being resolved. EMR DB further noted they have already seen some CM Participants submit evidence of milestones being met through the new Portal v2.0 and will continue to seek feedback on how Participants are finding it.
- 3.6 EMR DB highlighted their new CM Guidance site, noting it should be easier to search for and access EMR DB Guidance.

Department for Energy Security and Net Zero (DESNZ)

- 3.7 The DESNZ representative noted there were no further updates this month.

4. CMAG Secretariat Update

- 4.1 The CMAG Secretariat presented the timetable for the Membership recruitment process and proposed changes to the process, noting for the first round of applications, CMAG Members will be appointed on either a 1-year or 2-year basis. This is to allow CMAG Membership to adjust to this new annual process. Any previous CMAG Members who have been re-appointed (or 50% of total Members appointed) will be appointed for 1 year

(expiring 30 September 2025). The remaining 50% of Members will be appointed for 2-years (expiring 30 September 2026). Following this initial round, all CMAG Members will be appointed on a 2-year basis.

4.2 CMAG unanimously agreed a recommendation to Ofgem to:

a) **Approve** the changes to the Terms of Reference;

b) **Approve** the changes to the Operating Procedure.

4.3 The CMAG Secretariat noted they are reviewing the material and layout of the CMAG Website, to implement improvements that will continue to build engagement with wider industry stakeholders, and requested feedback from CMAG on areas for improvement.

4.4 Ofgem noted records and materials from previous meetings could be made more transparent and accessible on the website.

5. Industry feedback

5.1 The CMAG Facilitator noted an industry stakeholder had queried if Ofgem still intends to hold an Autumn 2024 Statutory Consultation. Ofgem noted that the Statutory Consultation process has taken longer than expected but they still intend to hold an Autumn 2024 Statutory Consultation.

6. Financial Commitment Milestone Query

6.1 A Member raised the practical difficulties around meeting FCM by 6 months post T-4 Auction Results Day (ARD); noting that for some projects this results in them potentially having to pay significant amounts of money out to suppliers earlier than necessary for commercial reasons.

6.2 The CMAG Secretariat noted the current Rules for the T-1 Auction is that FCM must be met by 3 months after ARD, for T-4 it is 16 months after ARD. Any Capacity Providers who do not meet FCM will receive a Termination Notice from EMR DB. The current FCM deadline related to a T-4 means that after termination for failing to meet FCM, the terminated capacity can be re-procured in the subsequent T-1 Auction for the same Delivery Year. After reviewing the different options presented for how far such a T-4 FCM deadline could be extended, Members agreed that the full 14 month extension, to 30 months after ARD, should be allowed, subject to the appropriate evidence. It was also agreed that no extension should be allowed for a T-1 FCM deadline.

6.3 The CMAG Secretariat presented 5 Options (A-E) for CMAG to consider as possible mitigations to this issue.

6.4 Option A seeks to extend the FCM deadline in full. EMR DB queried if this would include adding a new date to the construction plan. The CMAG Secretariat noted it would require a monthly profile of Total Project Spend (TPS) to be submitted at the Application stage and aligned to Construction Milestones in the Construction Plan.

6.5 A Member noted any mitigation should help to simplify the Rules in implementation, Constructions Plans often change during the course of a project and may not be closely linked to spend profiles once any deferred Distribution Connection Agreement is received.

6.6 Option B seeks to only extend the deadline for demonstrating the 10% of TPS, leaving the other elements of FCM to still be demonstrated by the original T-4 deadline of 16 months after ARD.

6.7 EMR DB queried what impact this would have on Applicant Credit Cover (ACC). A Member noted a reasonable approach would be for ACC to remain in place until the 10% of TPS is met.

6.8 A Member noted that Option B is targeted and addresses issue raised, with ACC to be retained as is specified in the Regulations.

6.9 A Member queried if an extended FCM deadline is not needed or requested at the Application stage, could this be used as an option later on. The CMAG Secretariat noted that a Capacity Provider could submit a spend profile when submitting their application in order to apply for an extension to FCM, if they have not done this they may need to provide evidence of how their spend profile is progressing to date to request an extension at a later stage. EMR DB noted that any spend profile in support of a FCM deadline extension would still need to reflect the CMU meeting the Substantial Completion Milestone (SCM) by the start of the first Delivery Year.

6.10 Option C seeks to vary the FCM deadline only at Application (via the Construction Plan) but for each element of the FCM (ie Final Investment Decision, Financial Close and Funding Declaration and 10% of TPS incurred &

paid). Members did not support such complexity, with 3 deadlines, or limitation to Application, as it did not allow for subsequent changes to project delivery.

- 6.11 Option D seeks to vary the Option C FCM deadlines after Application, based on Rule 12.2 Monitoring of construction progress. The CMAG Secretariat noted that Option D falls away if you are not setting the 3 milestones in line with Option C, but highlights that under Option B any spend profile that is submitted with the request for extending the 10% TPS deadline ought to reflect the latest construction progress report.
- 6.12 EMR DB noted that while CMAG should not propose technology specific changes, some mitigations can be scenario specific and they should not be written off as a result of this.
- 6.13 A Member noted that they would prefer applications for an extension to the FCM deadline, to be backed up by a declaration from the Director and evidenced, rather than the current situation where a Termination Notice arising from failure to meet FCM can lead to the Capacity Provider having to make a discretionary appeal to the Secretary of State.
- 6.14 EMR DB noted that they would not want a mitigation to result in Capacity Providers continuously pushing out the construction plan, and this would only be caught during SCM and this could possibly undermine assurance of SCM.
- 6.15 The CMAG Secretariat queried how CMAG would want to structure a Change Proposal that allowed a category of project where you might expect later spend to submit an application using Option B, but not for a project where its considered an increased risk of non-delivery.
- 6.16 EMR DB noted that there could be a director's declaration made at application. A Member noted a deterrent could be applied by increasing credit cover for those using the option so that it is only used where absolutely necessary.
- 6.17 Another Member noted CMAG could consider how DESNZ has drafted their change to Long Stop Date (LSD) in the Phase 2 consultation, so that any Capacity Provider using this option would not be able to meet FCM any earlier than the extended date they requested (which would result in no ability to trade earlier or retrieve credit cover).
- 6.18 Option E is also based on Option C and allows for a variable % of TPS to be demonstrated over time, with a certain % of TPS achieved by 16 months after ARD.
- 6.19 The CMAG Secretariat noted this Option E relies on the quality of data regarding milestones and construction plans submitted at application, Capacity Providers could minimise their FCM spend to demonstrate they are meeting the adjusted plan and therefore it could undermine assurance.
- 6.20 EMR DB noted it is easier where a Termination Event is linked to a fixed date, but this could be managed through the Portal. EMR DB further noted they would like to see a directors' declaration included as part of Option B.
- 6.21 CMAG unanimously agreed that Option B was the preferred mitigation solution, and to take this forward in drafting a Change Proposal.

7. 50MW Limit on SPD Portfolios

- 7.1 The CMAG Secretariat noted CMAG had discussed possible unintended consequences of removing the 50MW connection capacity limit on CMUs being part of a CMU Portfolio, and presented two potential controls that could be applied to mitigate these risks.
- 7.2 EMR DB presented a summary of 89 CMUs comprising CMU Portfolios and the performance of those individual CMUs in the settlement periods that the CMU Portfolios had passed their SPDs. EMR DB noted that whilst the data is useful to understand implications of any controls applied, there are many caveats to consider around the behaviours of CMUs and how they meet their SPDs. EMR DB further noted the data is based on the earliest date a CMU Portfolio would have met its Capacity Obligation, and therefore applying a control could result in different data for different settlement periods.
- 7.3 CMAG discussed the percentage limit that should be applied to individual CMUs demonstrating their own Capacity Obligation, for the CMU Portfolio meeting its overall Capacity Obligation to still be seen as demonstrating a Satisfactory Performance Day. It was agreed that the Minimum Completion Requirement's 'exceeds 50%' (from Rule 6.8.3(a)) was the appropriate limit.

- 7.4 A Member noted their preference would be for the limit on each CMU within a CMU Portfolio to deliver a minimum proportion of the CMUs individual Capacity Obligation should apply to all CMU Portfolios regardless of the 50MW limit being removed. CMAG agreed with this approach.
- 7.5 Another Member highlighted this would need to be clearly written within the Change Proposal and Statutory Consultation document as two independent questions, as some existing CMU Portfolios may reject the proposed change to remove the 50MW limit in order to avoid an additional control on the performance of the CMUs in their CMU Portfolio.
- 7.6 EMR DB noted the term 'load factor' is defined within the BSC and a different term should be used to ensure clarity in any future drafting.

8. CMAG Surgery – ITE Report Requirements Subgroup update

- 8.1 The CMAG Secretariat noted they had initially tried to use a matrix of different ITE report types against different Connection methods, Generating Technology Classes or Primary Fuel Types, to identify appropriate qualifications and experience to require from ITEs, but this proved too difficult with the amount of variability in scenarios. The CMAG Secretariat further noted it was agreed that imposing specific requirements could pose a barrier to entry, as many ITEs are part of sizeable professional organisations that have a range of resources to use on particular ITE reports.

The Subgroup's current proposal is to instead require evidence of an approach to undertaking ITE Reports and a copy of any Statement of Work (SoW) agreed with the Capacity Provider as part of their contractual arrangements. These SoW will be annexed to any ITE Report, which will include a declaration by the ITE that they have completed this work for that report and provide assurance to EMR DB. EMR DB noted they would be wary of having to assess and provide assurance on ITE Reports, as they are not experts in this area and that is why ITEs are in place

- 8.4 A Member noted the subgroup is suggesting that each report will have a more specific template that the ITE must complete and declare they have undertaken the SoW, to ensure the minimum ITE Report is to a suitable standard across the board.
- 8.5 The CMAG Secretariat queried if IAS 21 (The Effects of Changes in Foreign Exchange Rates) should be referenced within the Rules. A Member noted it is not clear to what degree an ITE must be 'competent' in International Accounting Standards, and how often this would occur so therefore it may add little value by adding to CM Rules.
- 8.6 A Member further noted that IAS16 may refer to other IAS and cover this query. The CMAG Secretariat agreed to establish if this is the case.
- 8.7 Another Member noted the ITE Subgroup has raised a query regarding the effectiveness and usefulness of remedial plans (under Rules 12.2.4-5); in practice a CP will submit a progress report and if their latest date for SCM to be achieved is after the first Delivery Year, EMR DB will request a remedial plan that outlines how the CP will bring this date forward to the start of the first Delivery Year. The Member noted this is a circular process and does not seem to provide any benefit.
- 8.8 EMR DB highlighted that MCR is not considered within remedial plans and this could be an improvement.
- 8.9 CMAG agreed to consider remedial plans as a future Surgery item.

9. CMAG Surgery – Exhibit C Clarification

- 9.1 The CMAG Secretariat noted a Member had highlighted that 'Exhibit C – Form of Certificate of Conduct' includes a confidentiality restriction and list of parties that CM Participants can reveal CM Confidential Information to. The list includes the EMR Delivery Body but not the CM Settlement Body.
- 9.2 EMR DB highlighted that DESNZ is also not listed as a party that CM Participants can share such information with.
- 9.3 Ofgem noted their intent to conduct a wider review of all CM Exhibits, as a change to a single Exhibit can require CM Participants to resubmit that Exhibit when prequalifying again which could have a considerable impact.
- 9.4 The CMAG Secretariat noted the 'wider review of CM Exhibits' has been included on the Forward Workplan for CMAG to consider at a future meeting.

- 9.5 A Member queried if the issue could be addressed by changing the definition of Capacity Market Confidential Information, which is currently very wide ranging, to refer specifically to price and bidding related information, so that it is clear other information may be shared where required to do by the CM Rules. EMR DB noted CM Rules 5.13 refers to prohibited activities in relation to Auctions and could be used to make the definition of what constitutes confidential information in the CM.
- 9.6 EMR DB noted that the Portal v2.0 generates Exhibits required for CM Participants, and any changes to Exhibits would require a lead time for implementation in the Portal v2.0.

10. CMAG Forward Work Plan

- 10.1 The CMAG Secretariat presented the CMAG Forward Work Plan. There were no further comments.

11. Action Log

- 11.1 Discussion on actions 'In Progress' can be found in the CMAG Action Log v21.1 – 25.06.24, published on the website.

12. AOB

- 12.1 The CMAG Secretariat highlighted that CMAG Meeting 22 has been rescheduled to Monday 15 July due to a clash with the EMR DB CM Launch Event.
- 12.2 A Member queried if the CM Launch Event will still be going ahead as planned. EMR DB noted they are still planning to hold the event, however a useful part of the session considers changes to CM Rules for the year and, as this is still under discussion with DESNZ, the CM Launch Event may be moved to ensure it is as useful as possible for attendees.
- 12.3 There was no further business and the meeting was closed. The next CMAG meeting date is Monday 15 July 2024.