

Is CP364 Inconsistent with the Electricity Capacity Regulations?

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Objectives

- To set out a summary of CMAG Secretariat views on whether the proposed solution for CP364 could be inconsistent with the Regulations

Introduction

CP364 seeks to introduce the ability for CMUs to register Secondary Trades after the T-4 Auction for a DY, rather than the current limitation that such trades can only be registered by DB on the CM Register after the T-1 Auction.

A key part of the proposed legal text solution is the change in definition of “Bidding Capacity” (BC) in the CM Rules from simply being the CMU’s De-rated Capacity (DRC) for the Auction, to DRC less any Secondary Trades (PTCO-in) registered before the pertinent Auction (see table in Appendix).

However, the CMAG Secretariat has concerns that this may create an inconsistency with Regulation 30(2)(a), where the capacity obligation of a CMU’s agreement from an auction is its DRC.

Summary of CMAG Secretariat position

The use of different terms at different points, both within and between, Regulations and the CM Rules means it is not easy to determine whether or not there is an inconsistency between the Regulations and the CM Rules.

Three positions are detailed in this paper presenting different views as to whether there is an inconsistency. These are:

- An argument stating why there could be an inconsistency between the Regulations and the CM Rules if CP364 is implemented
- An argument stating why there may not be an inconsistency between the Regulations and the CM Rules if CP364 is implemented
- Elxon’s General Counsel’s view on the preceding two arguments.

The current CMAG Secretariat position is:

- Current Regulations and Rules are consistent over $AACO = DRC = BC$, even though the terminology used is different within each of the CM Rules and the Regulations.
- We believe there is a risk that the proposed changes to Rules proposed by CP364 may result in the CM Rules becoming inconsistent with Regulations, this would be if the following occurred:
 - Regulations state that: $AACO = DRC$
 - CM Rules state that: $AACO = BC = DRC$ less PTCO-in (registered between T-4 and T-1 auctions)

- To mitigate this risk might require not only additional changes to the CM Rules but also to Regulations, meaning that CP364 could only be progressed with the agreement of DESNZ for such Regulation changes in a future Consultation on secondary trading.

Seeking CMAG Member Views

We are now seeking Members' views on this issue. The specific questions that CMAG Members will be asked to consider at meeting 14 will be as follows:

- 1) Do Members agree or disagree that there is a risk that the CP364 proposed changes to Rules could lead to the Rules becoming inconsistent with existing policy as reflected in Regulations?
- 2) If there is such a risk, should CMAG development of CP364 still continue (ie anticipating that Ofgem/DESNZ will amend Rules and Regulations to avoid such inconsistency)?
- 3) Is there an alternative approach that could be taken that would not risk being inconsistent with the Regulations?

Views on potential inconsistency

Why the core CP364 proposal may be inconsistent with Regulations?

Capacity Market Rules

Core to the proposal is the change in Rules definition of BC so that it is no longer simply equal to DRC but DRC less a value for PTCO-in already held for the Delivery Year (DY).

BC is then used throughout Chapter 5 Capacity Auctions for how the Auctions actually work, resulting in Rule 5.10.6 where the Auction Results are published on Auction Results Day (ARD).

Note that it is not explicit that the Schedule 1 Template Capacity Agreement Notice's Auction Acquired Capacity Obligation (AACO) equals the BC or DRC, but 5.10.6 does refer to the "aggregate BC of the Capacity Agreements awarded". This lack of clarity doesn't create any uncertainty while the definition is BC=DRC, but once the CP364 proposed change is made so BC=DRC-PTCO-in then it implies (but is not specific) that AACO=BC but not DRC.

Even the Auction Results documents do not refer to BC or AACO but do refer to "capacity entering the Auction" (which might be implied as BC) and "capacity procured" or "capacity awarded".

By contrast De-rated Capacity (DRC) is used much more widely in the Rules, but note that its Rule 1.2 definition includes for:

Generating CMU – Connection Capacity × De – rating Factor¹

Interconnector CMU = as above, or lower Transmission Entry Capacity (TEC)

DSR CMU – The DSR Capacity or lower capacity it wished to bid under Rule 5.5.11 × De – rating Factor²

Where a DSR CMU wishes to bid into an auction at lower than its DSR Capacity*DF% then the lower 'capacity it wishes to bid' is still defined in Rules as DRC and therefore the proposed CP364 change would still work as BC=DRC-PTCO-in.

So, to summarise, currently under the Capacity Market Rules:

¹ De-rating Factor is a percentage, that may vary by Generating Technology Class for each Generating Unit;

² There is an apparent inconsistency between the definition of DRC and 5.5.11, where 5.5.11 requires the bid capacity to be lower than "the original de-rated capacity" (DSR Capacity * DF%), yet the definition of DRC then says that bid capacity will still be subject to reduction by the DF%. This may require a separate CP if it cannot be addressed under a 'housekeeping' CP.

$$AAO = BC = DRC;$$

And CP364 proposes that:

$$AAO = BC = DRC - PTCO_{in}$$

Electricity Capacity Regulations

In Regulation 25 we see that:

Notification of Results

(1) *The Delivery Body must, after a capacity auction is completed—*

- (a) as soon as reasonably practicable notify the auction results to the Secretary of State;*
- (b) within one working day, give notice to each bidder of whether or not its bid was a successful bid; and*
- (c) within 8 working days, publish the auction results.*

(2) *In paragraph (1) “the auction results” means—*

- (a) the auction clearing price;*
- (b) the total amount of capacity in respect of which successful bids were made³;*
- (c) the CMUs in respect of which successful bids were made;*
- (d) in respect of each such CMU—*
 - (i) the de-rated capacity of the CMU, and, in the case of a demand side response CMU, its DSR bid capacity if different; and*
 - (ii) the duration of capacity obligation for which, and the price at which, the successful bid was made.*

(3) *In paragraphs (1) and (2), a “successful bid” means a bid that, subject to regulation 27, results in the award of a capacity obligation to the bidder⁴.*

In Regulation 30 we see that:

Capacity agreements

(1) *A “capacity agreement” comprises the rights and obligations accruing to a capacity provider under or by virtue of electricity capacity regulations and capacity market rules in relation to a particular capacity committed CMU and one or more delivery years.*

(2) *A distinct capacity agreement accrues to each successful bidder in a capacity auction (unless the capacity auction is annulled under regulation 27), in relation to each CMU for which a successful bid was made, for—*

- (a) a capacity obligation equal to the de-rated capacity of the CMU⁵;...*

So 30(2) is auction acquired capacity agreement where the obligation is equal to the de-rated capacity.

So in Rules terms this is:

$$AAO = DRC$$

³ This could be interpreted as the aggregate ‘bidding capacity’ but that term isn’t used in Regulations

⁴ This is not specified as the AAO, but may be implied as such, however it is also then not clear if this is related to 2(b) capacity as bid, or 2(d)(i) DRC.

⁵ This does appear to be specific that a capacity agreement is for the DRC

Conclusion

It would thus appear that the proposed changes to the Rules under CP364 would make the Rules inconsistent with the Regulations.

In shorthand notation this can be represented as:

Regulations	Current Rules	Rules after CP364
$AACO = DRC$	$AACO = BC = DRC$	$AACO = BC = (DRC - PTCO-in)$

Why the core CP364 proposal may not be inconsistent with Regulations?

The following definitions are found in the Capacity Market Rules and the Electricity Capacity Regulations:

Reference	Comment	CM Rules or Regulations?
30(2)(a)	States that a successful bidder in a capacity auction for a CMU has a capacity obligation = DRC	Regulations
8.5.3	Definition of AACO from 8.5.3 of the CM Rules is: "the value in MW of the Capacity Obligation taken on by that Capacity Committed CMU for the Delivery Year in which Settlement Period "j" falls..."	CM Rules
Definitions	Definition of Capacity Obligation in the CM Rules is: 'has the meaning given to that term in Regulation 2' on page 8 of the CM Rules	CM Rules
2	Definition of 'capacity obligation' in Regulation 2 is: 'means an obligation awarded pursuant to a capacity auction, applying for one or more delivery years, to provide a determined amount of capacity when required to do so in accordance with capacity market rules' (and, unless the context otherwise requires, includes a part of a capacity obligation) ⁶ ;	Regulations

Considering the above:

- Due to the way the definitions interact it is not clear that AACO = DRC in the Regulations as stated in previous conclusion section. If the Regulations intended to state that AACO=DRC the language should be consistent across the Regulations and the Rules but the language is not; and
- Even if it were true that the AACO = DRC it's not clear that this would be inconsistent with the Regulations under the Rules after implementing CP364. This is because it would not state the following anywhere:

$$AACO = DRC - PTCO_{in}$$

The updated definition of Bidding Capacity in CP364, would make:

$$BC = DRC - PTCO_{in}$$

Assuming the current Regulations do state that:

$$AACO = DRC$$

There would still be no statement of the following:

$$AACO = BC = DRC - PTCO_{in}$$

⁶ It could be argued that as far as AACO in 8.5.3 is concerned the "unless the context otherwise requires" does apply, so 'capacity obligation' will therefore exclude any "part of a capacity obligation" (PTCO) and only relate to a CMU's auction acquired obligations. Even if this is the case it could be argued that Rule 8.5.3 can be changed in the CM Rules to clarify that the 'capacity obligation' contains PTCOs if they are picked up between T-4 and T-1 as per CP364 which would avoid an inconsistency and be within the remit of the CMAG to change.

Which would be required to create the previously highlighted inconsistency.

Elxon's General Counsel's comment on the preceding arguments

My initial conclusions on the above arguments are:

- Based on my analysis below CP364 would not create any legal text inconsistencies between the Rules and Regulations;
- But, it is not clear how this works in practice.

I appreciate this may need more discussion, so isn't the conclusive position you were looking for, but hopefully will help move us forward.

Relationship between AACO and DRC

One of the points raised previously was that the statement that AACO = DRC is incorrect. I disagree with this for the reasons set out below:

In the Rules:

AACO = Capacity Obligation; and

Capacity Obligation = 'capacity obligation' as defined in the Regulations

It therefore must follow that when Regulation 30(2) states that, in each Capacity Agreement, the capacity obligation is equal to the DRC, that this translates back into the Rules as AACO = DRC

On that basis, it is therefore also the position in the Regulations that AACO = DRC

From a purely legal text perspective, however, this doesn't necessarily create an inconsistency because there is no textual link between AACO and BC that I can see i.e. the position currently is:

AACO = DRC

BC = DRC

Not

AACO = BC = DRC

Practical Implications

Where I am less clear (and why I keep referring to textual inconsistencies) is what all of this means in practice.

Notwithstanding my analysis set out in this email, the position currently is:

AACO = DRC

BC = DRC

Therefore, it follows that in practice, if not in the text, it is the position currently that AACO, BC and DRC are all the same value. If, after CP364, BC is no longer the same as AACO or DRC then it follows that BC won't be the same value as the capacity obligation recorded in the capacity agreement.

Does this not then create a discrepancy between:

- the capacity values that participants are bidding into the auctions and
- the capacity obligation that they are awarded

which de facto results in an inconsistency between the Regulations and the Rules?

Appendices

Appendix A – Definition Comparison between the CM Rules and the Regulations

The following tables contain a series of definitions that may be relevant when considering whether or not CP364 would introduce inconsistencies between the Regulations and the CM Rules. The table presented consists of raw notes by the CMAG Secretariat and is for information purposes only

What	Regulations	Rules
Bidding Capacity	n/a [DN but see 30(2)(a) below where it is effectively DRC]	<p>1.2 Bidding Capacity means, for a Bidding CMU, its De-rated Capacity [DN so BC=DRC, subject to CP364 proposed change to DRC – PTCO-in] [DN for DSR CMU under 5.5.11 they may choose to bid a lower capacity as DRC, see the definition of DRC below]</p> <p>CP364 proposal means, for a Bidding CMU, the maximum of:</p> <p>(a) its De-rated Capacity less the aggregate of the Weighted PTCO held by each Generating Unit or DSR Component comprised in the Bidding CMU from their inclusion in a CMU that was either:</p> <ul style="list-style-type: none"> i) prequalified for the T-4 auction for the relevant Delivery Year; or ii) was subsequently prequalified as Secondary Trading Entrant for the relevant Delivery Year by the start of the T-1 Prequalification Window. or; <p>(b) zero.</p> <p>PJP simplified alternative means, for a Bidding CMU, the maximum of:</p> <p>(a) its De-rated Capacity for this Auction less the maximum aggregate of the Weighted PTCOs held in any day of the Auction’s Delivery Year by each Generating Unit or DSR Component comprised in the Bidding CMU from their inclusion in a CMU that was either:</p> <ul style="list-style-type: none"> i) prequalified for the T-4 auction for the relevant Delivery Year; or ii) was subsequently prequalified as Secondary Trading Entrant for the relevant Delivery Year by the start of the T-1 Prequalification Window. or; <p>(b) zero.</p>

What	Regulations	Rules
Capacity Agreement	<p>"capacity agreement" has the meaning given in regulation 30(1);</p> <p>30 Capacity agreements</p> <p>(1) A "capacity agreement" [comprises] the rights and obligations accruing to a capacity provider under or by virtue of electricity capacity regulations and capacity market rules in relation to a particular capacity committed CMU and one or more delivery years.</p>	<p>1.2 Capacity Agreement has the meaning given in Rule 6.2.1</p> <p>6.2.1 A capacity agreement comprises the rights and obligations accruing to a Capacity Provider under or by virtue of the Regulations and the Rules in relation to a particular Capacity Committed CMU and one or more Delivery Years ("Capacity Agreement").</p>
Capacity Agreement Notice	<p>"capacity agreement notice" means a notice issued by the Delivery Body to a capacity provider under capacity market rules, containing data about a capacity agreement;</p>	<p>1.2 Capacity Agreement Notice means a notice issued by the Delivery Body to a Capacity Provider setting out the terms of the Capacity Agreement of that Capacity Provider for a Capacity Committed CMU</p> <p>6.3.1 The Delivery Body must issue a Capacity Agreement Notice in the form set out in Schedule 1 for each CMU that is awarded a Capacity Agreement by no later than 20 Working Days after the Auction Results Day for that Capacity Auction. Information contained in a Capacity Agreement Notice must reflect the equivalent information recorded in the Capacity Market Register, and record the terms of the relevant Capacity Agreement.</p> <p>SCHEDULE 1: TEMPLATE CAPACITY AGREEMENT NOTICE Part B: Capacity Agreement Details (vi) the Auction Acquired Capacity Obligation [Hence it is dependent on the definition of AACO in 8.5.3]</p>
Capacity Committed CMU	<p>"capacity committed CMU", in relation to a delivery year, means a CMU that is identified in the capacity market register as being subject to a capacity obligation for that delivery year [DN "capacity obligation" includes AACO and, subject to context, PTCO]</p>	<p>1.2 Capacity Committed CMU has the meaning given to that term in Regulation 2</p>
Capacity Obligation	<p>"capacity obligation" means an obligation awarded pursuant to a capacity auction, applying for one or more delivery years, to provide a determined amount of capacity when required to do so in accordance with capacity market rules [(and, unless the context otherwise requires, includes a part of a capacity obligation)]</p>	<p>1.2 Capacity Obligation has the meaning given to that term in Regulation 2</p>

What	Regulations	Rules
	<p>[DN the [PTCO] addition is specifically subject to context, ie it can exclude PTCO when appropriate, eg Reg 30(2)(a) and Rule 8.5.3]</p> <p>[DQ does the “provide a determined amount of capacity when required to do so in accordance with capacity market rules” mean just the delivery during a stress event or also include SPDs and DSR Tests?]</p>	
De-rated Capacity	“de-rated capacity” has the meaning given in the Rules	<p>De-rated Capacity</p> <p>means, for any Generating CMU or DSR CMU and Capacity Auction, an amount (in MW to three decimal places) equal to the product of:</p> <ul style="list-style-type: none"> (a) for a Generating CMU, its Connection Capacity; or (b) for a DSR CMU: <ul style="list-style-type: none"> (i) unless sub-paragraph (ii) applies, its DSR Capacity, or, (ii) if an amount of capacity has been nominated under Rule 5.5.11[see Auction below], that capacity; <p>and the De-rating Factor, provided that the Derated Capacity of a Pre-Refurbishment CMU must not exceed the De-rated Capacity of the related Refurbishing CMU;</p> <p>means, for any Interconnector CMU and Capacity Auction, an amount (in MW to three decimal places) equal to the lower of:</p> <ul style="list-style-type: none"> (a) the product of its Connection Capacity and De- rating Factor; or (b) the total Transmission Entry Capacity secured by Grid Connection Agreements for the relevant Delivery Year and evidenced in accordance with Rule 3.6A.
Auction	<p>24 Holding the capacity auction</p> <p>(3) The auctioneer must conduct the capacity auction in accordance with—</p> <ul style="list-style-type: none"> (a) capacity market rules; (b) the auction guidelines; and (c) any instructions given by the Secretary of State on how price decrements are to be set. 	<p>5.5.2 The Auctioneer must conduct the Capacity Auction in accordance with:</p> <ul style="list-style-type: none"> (a) the Capacity Market Rules; (b) the Auction Guidelines for the Capacity Auction; and (c) the instructions given to the Auctioneer by the Secretary of State pursuant to Rule 5.5.8. <p>5.5.10 No later than 15 Working Days prior to the commencement of the first Bidding Round for a Capacity Auction, the Delivery Body must publish:</p> <ul style="list-style-type: none"> (a) the date and time on which the Capacity Auction will start; (b) the identity of the Prequalified CMUs for the Capacity Auction and their aggregate De-rated Capacity as at that date, reflecting the outcome of any determinations following dispute resolution or appeals which have concluded by the start of the Working Day which precedes the date of the announcement; <p>5.5.11 By no later than the date falling 10 Working Days prior to the commencement of the first Bidding Window, an Applicant for a Prequalified DSR CMU may issue a notification to the Delivery Body nominating</p>

What	Regulations	Rules
		<p>the capacity (in MW) that it wishes to bid into the Capacity Auction with respect to that DSR CMU provided that such capacity is no greater than the product (in MW to three decimal places) of the DSR Capacity of such DSR CMU and the De-rating Factor ("the original derated capacity").</p> <p>[As above the DRC is what is published for the Auction, no mention of BC]</p> <p>[DN subject to proposed amendment by CP364]</p>
Auction Results	<p>25 Notification of results</p> <p>(1) The Delivery Body must, after a capacity auction is completed--</p> <p>(a) as soon as reasonably practicable notify the auction results to the Secretary of State;</p> <p>(b) within one working day, give notice to each bidder of whether or not its bid was a successful bid; and</p> <p>(c) within 8 working days, publish the auction results.</p> <p>(2) In paragraph (1) "the auction results" means--</p> <p>(a) the auction clearing price;</p> <p>(b) the total amount of capacity in respect of which successful bids were made;</p> <p>(c) the CMUs in respect of which successful bids were made;</p> <p>(d) in respect of each such CMU--</p> <p>(i) the de-rated capacity of the CMU. . .; and</p> <p>(ii) the duration of capacity obligation for which, and the price at which, the successful bid was made.</p> <p>(3) In paragraphs (1) and (2), a "successful bid" means a bid that, subject to regulation 27,</p>	<p>5.10 Capacity Auction results</p> <p>:</p> <p>5.10.6 Unless instructed to the contrary pursuant to the Regulations, the Delivery Body must publish the following results of the Capacity Auction to Bidders, the Auction Monitor and the other Administrative Parties within 8 Working Days of the Capacity Auction concluding (the "Auction Results Day"):</p> <p>(a) the Clearing Price;</p> <p>(b) the aggregate Bidding Capacity of Capacity Agreements awarded;</p> <p>(c) the total forecast cost of the Capacity Obligations (being the product of the Clearing Price and the aggregate Bidding Capacity of Capacity Agreements awarded);</p> <p>(d) the CMUs to which a Capacity Agreement was awarded; and</p> <p>(e) the duration of the Capacity Agreement awarded to each CMU,</p> <p>and include such results on the Capacity Market Register. The results of the Capacity Auction must be notified by the Delivery Body to other Applicants and made publicly available at the same time.</p> <p>5.10.7 The result of a Capacity Auction is final when it is entered in the Capacity Market Register in accordance with Rule 7.4.3 and Capacity Agreements come into force from this time.</p> <p>[DN 5.10.6 does not mention CMU specific capacity, but is implied as BC, which is currently defined as DRC]</p>

What	Regulations	Rules
	<p>results in the award of a capacity obligation to the bidder.</p> <p>[DN This is not specific about AACO and only mentions</p> <ul style="list-style-type: none"> - (2)(b) total capacity of bids [which could be aggregate DRC] and - (2)(d)(i) de-rated capacity of the CMU, only implying that a CMU's AACO=DRC] 	
Capacity Agreement Obligation	<p>30 (2) A distinct capacity agreement accrues to each successful bidder in a capacity auction (unless the capacity auction is annulled under regulation 27), in relation to each CMU for which a successful bid was made, for—</p> <ul style="list-style-type: none"> (a) a capacity obligation equal to the de-rated capacity of the CMU (b) [DY(s)] (c) [CCP] <p>[DN “capacity obligation” includes AACO and, subject to context, PTCO, but the context here is direct from an auction so will exclude PTCO, so AACO = DRC]</p> <p>[Nick agrees this relates to each CMU's capacity agreement being for their DRC]</p>	<p>Auction Acquired Capacity Obligation has the meaning given in Rule 8.5.3</p> <p>8.5.3 Load Following Capacity Obligation (LFCO)</p> <p>:</p> <p>AACO_{ij} is the Auction Acquired Capacity Obligation of that Capacity Committed CMU for Settlement Period “j”, being the value in MW of the Capacity Obligation taken on by that Capacity Committed CMU for the Delivery Year in which Settlement Period “j” falls, accounting for any changes in that Capacity Obligation recorded pursuant to 7.5.1, but not including any changes in that Capacity Obligation effected by way of a transfer under Rule 9.2.4(a), as set out in the Capacity Market Register for that Capacity Committed CMU;</p> <p>[DN so:</p> <ul style="list-style-type: none"> • AACO is Capacity Obligation excluding transfers (PTCO) • Capacity Obligation is Reg2 “obligation awarded pursuant to a capacity auction”]
Capacity Market Register	<p>23 Notifying prequalification results to the Secretary of State</p> <p>25 Notification of results [as above]</p> <p>31 Capacity market register</p> <p>(1) The Delivery Body must, in accordance with this regulation and capacity market rules,</p>	<p>7.4.1 On the day on which the Secretary of State is given the notification required by Regulation 23(1): [prequalification results]</p> <p>(a) in relation to each Mandatory CMU and any CMU that is the subject of an Application:</p> <p>:</p> <p>(v) the Connection Capacity or DSR Capacity (as applicable) of the CMU;</p> <p>:</p> <p>(ix) the De-rated Capacity of the CMU and, in the case of a Generating CMU, the De-rated Capacity of each Generating Unit comprising such CMU;</p>

What	Regulations	Rules
	<p>establish and maintain a capacity market register containing details of--</p> <p>(a) in respect of each CMU that is the subject of an application to prequalify for a capacity auction--</p> <p>(i) the prequalification decision; and</p> <p>(ii) the de-rated capacity of the CMU; and</p> <p>(b) each capacity agreement.</p> <p>(2) The Delivery Body must include on the capacity market register in respect of each capacity agreement--</p> <p>:</p> <p>(c) the capacity obligation for which the capacity agreement is issued;</p> <p>[DN “capacity obligation” includes AACO and, subject to context, PTCO, but the context here is direct from an auction so will exclude PTCO and as per 30(2)(a) above “capacity obligation” = DRC, so AACO=DRC]</p> <p>[Nick agrees the context here excludes PTCOs from capacity obligation]</p>	<p>7.4.5 By no later than 5 Working Days after the date of issue of a Capacity Agreement Notice for a Capacity Committed CMU:</p> <p>:</p> <p>(f) the Auction Acquired Capacity Obligation;</p>