

ELEXON

CAPACITY MARKET RULES CHANGE PROPOSAL REPORT: CP362 – CM AGREEMENT TRANSFERS

This Change Proposal seeks to amend Rule 6.7.1 and Rule 9.2.5(a)(i) so that CM Agreement transfers are allowed before a site has met its Substantial Completion Milestone. Transferors will still need to meet their Financial Commitment Milestone (where applicable) and have not received a Termination Notice in order to secondary trade under these provisions.

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Executive Summary

A summary of CP362, including the Proposal Form, can be found on the [CMAG Website](#).

Issue

Rule 9.2.5(a)(i) only allows for a transfer of Capacity Obligations by secondary trading after the T-1 auction for the relevant Delivery Year has concluded and, for a Prospective Capacity Market Unit (CMU), where it has achieved its Substantial Completion Milestone (SCM).

Where a Capacity Market (CM) Participant experiences an issue that impacts its ability to deliver the capacity required for its Agreement, it can change the location of its CMU site, but cannot trade the Agreement to a Participant who can deliver it, if it has not met its SCM.

Solution

This Change Proposal (CP) seeks to amend Rule 6.7.1 and Rule 9.2.5(a)(i) to allow CM Agreement transfers before a Prospective CMU has met its SCM.

Transferors will still need to meet their Financial Commitment Milestone (where applicable) and have not received a Termination Notice in order to secondary trade under these provisions.

Impacts and Costs

Impacts and Costs	
Organisation	Comment
Capacity Market Settlement Body (CMSB)	None
EMR Delivery Body	Medium implementation cost (<£150k). No ongoing costs have been identified.
Industry	None identified. CP362 expands the scope of secondary trading, it is expected that providers seeking to use CP362 would use existing processes.

Recommendation

The CMAG recommends to Ofgem:

- a) That CP362 better facilitates Ofgem's Principal Objective;
- b) That CM Rules Change Proposal CP362:
 - Better facilitates the efficient operation and administration of the Capacity Market;
- c) The draft legal text; and
- d) That CP362 should be **implemented**

Issue

What is Secondary Trading?

Under the current Capacity Market Rules, the holder of a Capacity Agreement that has been secured at either a T-1 or a T-4 auction is able to transfer all or part of its Capacity Obligation for a Delivery Year to an Acceptable Transferee after the relevant T-1 Auction for that Delivery Year has completed.

Acceptable Transferees are the following:

- A CMU that Pre-Qualified and participated in a T-1 or T-4 Auction that does not have a Capacity Agreement for the given Delivery Year.
- Pre-qualified Prospective CMUs that have achieved their SCM¹ prior to the Delivery Year in which its Capacity Obligation commences
- A Capacity Provider of a CMU that Prequalified for that Delivery Year and that does not have a Capacity Agreement for that Delivery Year equal to the De-rated Capacity of that Prequalified CMU i.e. a CMU that has an agreement but has spare capacity.
- An Eligible Secondary Trading Entrant².

What is the Substantial Completion Milestone?

All CMUs with a Capacity Agreement are expected to meet the SCM requirements under the CM Rules. These requirements provide a level of assurance that the CMU can in principle provide all/most of its Capacity Obligation in a System Stress Event. The SCM requirements are detailed in Rule 6.7.2 as the following:

- The corresponding Generating Unit(s) is/are Operational with an aggregate physical generating capacity (in MW) which, after being multiplied by its De-rating Factor, equals or exceeds 90 per cent of its Capacity Obligation;
- The Capacity Provider has provided detailed line diagrams and completed a Metering Assessment as required by Rule 8.3.3(ba); and
- Where required under Rule 8.3.3(d), the Capacity Provider has provided a Metering Test Certificate.

Some consequences of a CMU not meeting SCM are given below:

- No capacity payments will be made until it has passed SCM (or the Minimum Completion Requirement (MCR))
- If the SCM is not achieved within 12 months of the start of the first Delivery Year, a Termination Notice will be issued for the Capacity Agreement
- If less than 100% (but greater than equal to 90%) of the obligation in the Capacity Agreement is demonstrated then the capacity agreement will take effect only for the demonstrated capability and payments will be reduced accordingly.

² Defined in Rule 1.2, means an Applicant for: a) an Existing Generating CMU comprising biomass plant which is exiting the Low Carbon Exclusion(s) in which it participates; i. An Existing Interconnector CMU; ii. A Proven DSR iii. An Existing CMU which is not an Excluded CMU, wishing to acquire a Capacity Obligation through Secondary Trading.

Why is there an issue with Secondary Trading prior to the Substantial Completion Milestone?

Rule 9.2.5(a)(i) in conjunction with Rule 9.2.4(a) details the requirements of when a Capacity Provider with a Prospective Generating CMU can transfer Capacity Obligations i.e. secondary trade. The Proposer contends that Rule 9.2.5(a)(i) is at best unclear and is interpreted by the Delivery Body as only allowing for a transfer of a Capacity Agreement after the T-1 auction for the relevant Delivery Year has concluded and where a Prospective CMU has achieved its SCM. This means that where a developer has a delivery issue the provider cannot trade the agreement to a party who can deliver the obligation if they have not met their SCM.

Additionally, the proposer suggests that it may not be possible to account for potential non-delivery until after a Termination Notice is issued. This means that non-delivery information cannot be taken into account in wider decision making of key parties such as DESNZ/Ofgem or the Delivery Body. The proposer has highlighted that this is a particular issue in cases such as the setting of target capacity for future auctions. If expected non-delivery is not taken into account when setting target capacity at auction there is a risk of under procuring capacity which could ultimately lead to negative outcomes for customers in System Stress Events.

The proposer also notes that the Capacity Market Rules currently contain provisions relating to Long Stop Dates that allow late delivery for Refurbishing or New Build CMUs of up to 12 months within the 1st Delivery Year for multi-year agreements. The proposer argues that allowing providers the option to secondary trade obligations to sites that can deliver power in a System Stress Event would be in the interests of consumers.

Solution

This Change Proposal (CP) seeks to amend Rule 6.7.1 and Rule 9.2.5(a)(i) to allow CM Agreement transfers before a CMU has met its SCM.

Transferors will need to meet their Financial Commitment Milestone (where applicable) and have not received a Termination Notice in order to secondary trade under these provisions.

Legal Text for CP362

6.7.1 A Capacity Provider is not liable for, or entitled to, any payments in respect of a particular CMU if the relevant System Stress Event precedes the date on which the ~~Substantial Completion Milestone for such CMU is reached~~ Capacity Agreement for such CMU has taken effect pursuant to Rule 6.7.4(a) or 6.8.5.

9.2.5 Transfers of a Capacity Agreement:

(a) under Rule 9.2.4(a) can only be effected on the Capacity Market Register after the T-1 Auction for the relevant Delivery Year has concluded ~~(or, in the case of an SA Agreement, after 30th May 2017)~~ and provided that:

(i) in the case of a Prospective Generating CMU ~~and its second or third Delivery Year, it has achieved the Substantial Completion Milestone by the Prequalification Results Day for the T-1 Auction for that Delivery Year;~~ and

(aa) its Capacity Agreement has taken effect pursuant to Rule 6.7.4(a) or 6.8.5, or

(bb) it has met its Financial Commitment Milestone and has yet to receive a Termination Notice

(ii) in the case of a Prospective Interconnector CMU, its Capacity Agreement has taken effect pursuant to Rule 6.7.4(a) or 6.8.5, and in relation to which a Capacity Agreement has been awarded for a Delivery Year (“Y”) as well as for either or both of the two immediately following Delivery Years Y+1 and Y+2, and in respect of either of the latter two Capacity Agreements, it has achieved the Substantial Completion Milestone by the Prequalification Results Day for the T-1 Auction for Delivery Year Y+1 or Y+2 as the case may be; and

(iii) in the case of an Unproven DSR CMU that has been awarded a Capacity 175 Agreement of a duration exceeding one Delivery Year, the Delivery Body has issued a DSR Test Certificate to the Applicant or Capacity Provider (as applicable) under Rule 13.2.11 and the Capacity Provider has satisfied the requirements of Rule 8.3.6 (Evidence of Total Project Spend).

Prioritisation

All CM Rules Change Proposals are assessed based on the impact and frequency/likelihood of the benefits and risks realised from the change. This assessment determines the priority of CM Rules Change Proposals and their priority for consideration by CMAG.

CMAG Members first considered CP362 at its meeting on Tuesday 17 January 2023, where CMAG determined CP362 as a medium priority change. CMAG noted there are related changes ([CP364 ‘Allow Secondary Trading from T-4’](#) and [CP369 ‘Secondary Trading with CMU Metering Aggregation Rules’](#)) in the pipeline. Both CP364 and CP369 seek to amend Rule 9.2.5. It was agreed to proceed with the development of CP362, in line with CP364 and CP369.

At the time of report publication no interdependencies have been identified between these proposals.

CMAG Development/Discussions

CMAG discussed CP362 at:

- [Meeting 4](#) (Tuesday 17 January 2023),
- [Meeting 5](#) (Thursday 2 March 2023),
- [Meeting 6](#) (21 March 2023),
- [Meeting 7](#) (18 April 2023),
- [Meeting 9](#) (20 June 2023); and
- [Meeting 11](#) (15 August 2023).

Below is a summary of all discussion.

Speculative Bidding

A CMAG member raised a concern that removing the SCM requirement in 9.2.5(a)(i) could encourage speculative bidding in Auctions, with the goal of securing an agreement at a higher clearing price and trading it away at the earliest opportunity with no actual intention to deliver. The CMAG noted the importance of striking a balance between ensuring participants are delivering against their Agreements, whilst ensuring the CM is not overly burdensome and that legitimate CMUs are not discouraged from participating in the CM.

The Proposer noted there is little to no evidence of speculative bidding occurring. The current levels of assurance required during prequalification and the possibility of termination fees are a substantial incentive for participants to want to avoid termination of their agreements. The Proposer suggested that limiting secondary trading until a CMU has met its SCM could be seen as a barrier to entry/investment, as CMUs may encounter unforeseen issues before reaching SCM that impact delivery and have no option to trade before being terminated.

The Proposer highlighted that they have carefully considered the concerns expressed about speculative bidding, and believe that the pre-qualification process for new build requires substantial investment by a Participant before entering the Auction. Although speculative bidding is a risk within the CM, the Proposer has noted that it feels like a theoretical problem to them, whereas the inability to trade is an actual problem that is resulting in increased non-delivery.

Interaction with CP371 ‘Protection from Very Late Network Connections’

It was noted by CMAG Members during development of [CP371 ‘Protection from Very Late Network Connections’](#) that CP362 could be a means of managing very late network connections by allowing providers with delayed connections (only as a result of Transmission Operator (TO)/Distribution Network Operator (DNO) delays) to secondary trade to a provider who could provide the expected capacity.

For the avoidance of doubt no interdependencies have been identified between these proposals. If CP362 were implemented CP371 would benefit but the change proposal is not dependent on it.

Development of CP362 Legal Text

Two different sets of legal text were initially developed for CP362. These were:

1. The Proposer’s original legal text which simply deletes Rule 9.2.5 (a)(i)
 - The intent of this proposal is to allow developers that have delivery issues and have not met their SCM to trade the agreement to a capacity market participant who can deliver it.
2. An alternative set of legal text developed by the Proposer and a CMAG Member
 - This alternative legal text was developed following discussions at CMAG Meeting 7 to address concerns raised by EMR-DB that without amendments to Rule 6.7.1, a CMU would not be able to trade out of its obligation until it has completed its SCM which would undermine the initial intention of the proposal.
 - Additionally, the revised legal text sought to remove an inconsistency, whereby the SCM test for Secondary Trading in Delivery Years 2 & 3 was predicated on achieving SCM before the Prequalification Results Day for the relevant Delivery Year.

Following further analysis of both sets of legal text the CMAG Secretariat raised the following concerns related to each set of legal text:

Legal Text Option	Redlining	Comment
1. Proposer’s original legal text which simply	9.2.5 Transfers of a Capacity Agreement: (a) under Rule 9.2.4(a) can only be effected on the Capacity Market Register after the T-1 Auction for the relevant Delivery Year has concluded (or, in the case of an SA	At CMAG Meeting 5, The DESNZ representative noted this solution for CP362 could not be implemented as secondary trading could not start until a Capacity Agreement is in place for the prospective transferor.

Legal Text Option	Redlining	Comment
<p>deletes Rule 9.2.5 (a)(i)</p>	<p>Agreement, after 30th May 2017) and provided that:</p> <p style="padding-left: 40px;">(i) in the case of a Prospective Generating CMU and its second or third Delivery Year, it has achieved the Substantial Completion Milestone by the Prequalification Results Day for the T-1 Auction for that Delivery Year;</p>	<p>A key benefit of this policy is the prevention of speculative applications winning Capacity Agreements, with no intention of delivering additional generating capacity, but instead to trade away their Capacity Obligation.</p> <p>This means this proposed legal text, removing Rule 9.2.5(a)(i), would not deliver policy intent and also not clearly deliver Secondary Trading before SCM for any Delivery Year.</p>
<p>2. An alternative set of legal text developed by CMAG Member and the Proposer</p>	<p><i>Amend paragraph 6.7.1 to read as follows:</i></p> <p>A Capacity Provider is not liable for, or entitled to, any payments in respect of a particular CMU if the relevant System Stress Event precedes the date on which the Substantial Completion Milestone for such CMU is reached. This Rule shall not apply to any Transferred Part of a Capacity Agreement relating to a Prospective CMU which has been transferred in accordance with Chapter 9.</p> <p><i>Amend paragraph 9.2.5 to read as follows:</i></p> <p>9.2.5 Transfers of a Capacity Agreement: (a) under Rule 9.2.4(a) can only be effected on the Capacity Market Register after the T-1 Auction for the relevant Delivery Year has concluded (or, in the case of an SA Agreement, after 30th May 2017) and provided that: (i) notwithstanding Rule 6.7.1, in the case of a Prospective Generating CMU's and its Capacity Obligations for its second or third Delivery Years only, it has achieved the Substantial Completion Milestone by the Prequalification Results Day for the T-1 Auction for that Delivery Year;</p>	<p>The alternative text does not address:</p> <ul style="list-style-type: none"> • how secondary trading is managed in Delivery Year 1; • what happens where the Long Stop Date (LSD) is extended by Rule 6.7.7 beyond Delivery Year 3; • the case where CMUs meet the MCR instead of SCM; and • the case where a CMU meets MCR in the 120WD period after LSD and issue of a Notice of Intention to Terminate.

Following the analysis above the CMAG developed three different solution options for CMAG Members to consider.

Legal Text Option A – CMAG does not recommend this solution option

Legal Text Option	Redlining	Intent or Objectives
<p>Option A – Secondary Trade only once a Prospective CMU “becomes effective” (i.e. SCM or MCR)</p>	<p>6.7.1 A Capacity Provider is not liable for, or entitled to, any payments in respect of a particular CMU if the relevant System Stress Event precedes the date on which the Substantial Completion Milestone for such CMU is reached Capacity Agreement for such CMU has taken effect pursuant to Rule 6.7.4(a) or 6.8.5.</p> <p>9.2.5 Transfers of a Capacity Agreement:</p> <p>(a) under Rule 9.2.4(a) can only be effected on the Capacity Market Register after the T-1 Auction for the relevant Delivery Year has concluded and provided that:</p> <p>(i) in the case of a Prospective Generating CMU and its second or third Delivery Year, it has achieved the Substantial Completion Milestone by the Prequalification Results Day for the T-1 Auction for that Delivery Year, its Capacity Agreement has become effective; and</p> <p>(ii) in the case of a Prospective Interconnector CMU in relation to which a Capacity Agreement has been awarded for a Delivery Year (“Y”) as well as for either or both of the two immediately following Delivery Years Y+1 and Y+2, and in respect of either of the latter two Capacity Agreements, it has achieved the Substantial Completion Milestone by the Prequalification Results Day for the T-1 Auction for Delivery Year Y+1 or Y+2 as the case may be, its Capacity Agreement has become effective; and...</p>	<p>This maintains the principal of the current policy intent.</p> <p>The proposed text relies on the effective date being from Auction, SCM under Rule 6.7.4(a)(ii) or MCR under Rule 6.8.5. Otherwise those details could be specified by additional text in Rule 6.7.1.</p> <p>Similar Rules are there for Prospective Interconnectors.</p>

Legal Text Option B – CMAG does not recommend this solution option

Legal Text Option	Redlining	Intent or Objectives
<p>Option B - ST within the Prospective CMU's LSD, as long as they have met FCM</p>	<p>6.7.1 A Capacity Provider is not liable for, or entitled to, any payments in respect of a particular CMU if the relevant System Stress Event precedes the date on which the Substantial Completion Milestone for such CMU is reached Capacity Agreement becomes effective.</p> <p>9.2.5 Transfers of a Capacity Agreement:</p> <p>(a) under Rule 9.2.4(a) can only be effected on the Capacity Market Register after the T-1 Auction for the relevant Delivery Year has concluded (or, in the case of an SA Agreement, after 30th May 2017) and provided that:</p> <p>(i) in the case of a Prospective Generating CMU and its second or third Delivery Year, it has achieved the Substantial Completion Milestone by the Prequalification Results Day for the T-1 Auction for that Delivery Year; and</p> <p>(aa) its Capacity Agreement has become effective, or</p> <p>(bb) it has met its Financial Commitment Milestone and the trade will be registered before the Transferor CMU's Long Stop Date</p> <p>(ii) in the case of a Prospective Interconnector CMU, its Capacity Agreement has become effective, and in relation to which a Capacity Agreement has been awarded for a Delivery Year ("Y") as well as for either or both of the two immediately following Delivery Years Y+1 and Y+2, and in respect of either of the latter two Capacity Agreements, it has achieved the Substantial Completion Milestone by the Prequalification Results Day for the T-1 Auction for Delivery Year Y+1 or Y+2 as the case may be; and</p>	<p>This varies from the current policy intent and interpretation, but maintains an effective mitigation of the perceived risk that speculative CMUs could be created for use in 'gaming' auctions.</p> <p>Objectives:</p> <ul style="list-style-type: none"> • Implement CP362 proposal to allow Secondary Trading within the original LSD and before the Capacity Agreement has become effective (by SCM/MCR). • Recognise such Prospective CMUs will, for T-4 Capacity Agreements, have achieved their Financial Commitment Milestone (FCM) (under Rule 6.6 and what follows), well before the start of the ST window (T-1 Auction has concluded) so have demonstrated their commitment to the project. For T-1 Capacity Agreements, the FCM must be achieved within 3 months of the Auction conclusion before they can trade. • Allow Secondary Trading during the period of any extension in LSD as a result of Rule 6.7.7 connection delays. Please note this last objective would have to change again if CP371 is implemented and used to maintain the term of a Capacity Agreement after the agreement becomes effective, i.e. you can't both PTCO-out during the delay and still receive Capacity Payments for the full original term. <p>Please Note: This option means that if the CMU's Capacity Agreement has failed to become effective by the LSD (as possibly extended by Rule 6.7.7 connection delays) and is at risk of Termination, it will no longer be able to Secondary Trade future Delivery Year obligations. This could be seen by as an appropriate penalty on the CMU for failing to become effective by the LSD.</p>

Legal Text Option	Redlining	Intent or Objectives
		It ignores the potential for the CMU to become effective by meeting MCR during the 120WD window after the Notice of Intent to Terminate, under Rule 6.8.2.

Legal Text Option C – CMAG does recommend this solution option

For the avoidance of doubt the redlining contained in this table is the draft legal text that has been recommended for implementation by the CMAG

Legal Text Option	Redlining	Intent or Objectives
<p>Option C - ST before the Prospective CMU's Capacity Agreement is Terminated</p>	<p>6.7.1 A Capacity Provider is not liable for, or entitled to, any payments in respect of a particular CMU if the relevant System Stress Event precedes the date on which the Substantial Completion Milestone for such CMU is reached Capacity Agreement for such CMU has taken effect pursuant to Rule 6.7.4(a) or 6.8.5.</p> <p>9.2.5 Transfers of a Capacity Agreement:</p> <p>(a) under Rule 9.2.4(a) can only be effected on the Capacity Market Register after the T-1 Auction for the relevant Delivery Year has concluded (or, in the case of an SA Agreement, after 30th May 2017) and provided that:</p> <p style="padding-left: 40px;">(i) in the case of a Prospective Generating CMU and its second or third Delivery Year, it has achieved the Substantial Completion Milestone by the Proqualification Results Day for the T-1 Auction for that Delivery Year; and</p> <p style="padding-left: 80px;">(aa) its Capacity Agreement has taken effect pursuant to Rule 6.7.4(a) or 6.8.5, or</p> <p style="padding-left: 80px;">(bb) it has met its Financial Commitment Milestone and has yet to receive a Termination Notice</p> <p style="padding-left: 40px;">(ii) in the case of a Prospective Interconnector CMU, its Capacity Agreement has taken effect pursuant to Rule 6.7.4(a) or 6.8.5, and in relation to which a Capacity Agreement has been awarded for a Delivery Year ("Y") as well as for either or both of the two immediately</p>	<p>Objectives</p> <ul style="list-style-type: none"> Implement CP362 proposal, but allow Secondary Trades before Termination of the Capacity Agreement.

Legal Text Option	Redlining	Intent or Objectives
	<p>following Delivery Years Y+1 and Y+2, and in respect of either of the latter two Capacity Agreements, it has achieved the Substantial Completion Milestone by the Prequalification Results Day for the T-1 Auction for Delivery Year Y+1 or Y+2 as the case may be; and</p>	

CMAG Members considered the legal text options above at CMAG Meeting 11. Key discussion points are given below:

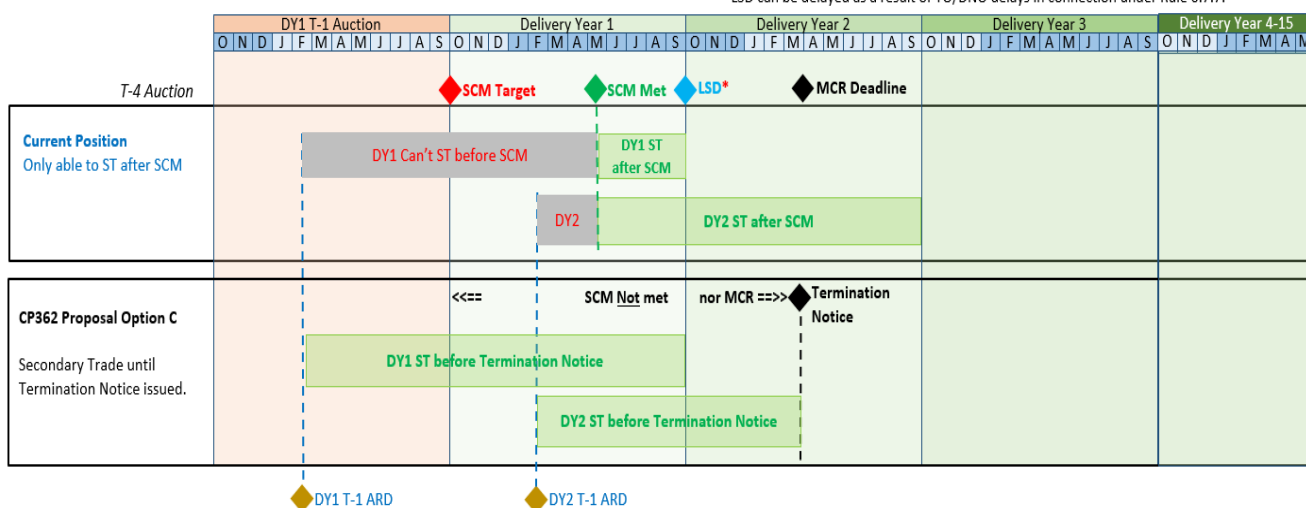
- A Member noted that it is important to recognise there will be Capacity Providers with a genuine need to transfer capacity obligations before SCM; but there should be a balance between allowing this and ensuring the policy intent to prevent speculative bidding remains. The Member noted that whichever solution is deemed most appropriate will largely depend on Ofgem's and DESNZ's view on how much of a problem/how likely speculative bidding is considered to be in the Capacity Market. The CMAG noted their view that they did not foresee an increased risk in speculative bidding as a result of CP362 as parties have to meet FCM before secondary trading under the solution and achieving this milestone is a significant commitment for providers.
- The Proposer queried whether there was data on the number of sites that have been terminated before reaching MCR or SCM. The CMAG Secretariat noted that it is a relatively low number of sites from previous work in this area. For Prospective CMUs in Delivery Year 22/23:

Auction			Awarded Capacity Agreement Notice (CAN)		Terminated	
Year	Type	First DY	MW	CMU Count	MW	CAN
2019/20	T-3	DY22/23	4431.745	45	7.359	3
2021/22	T-1	DY22/23	1356.995	63	38.761	6
Total DY1 22/23 Prospective CMUs			5788.740	108	46.120	9

- A Member noted that although Option C is their preferred Option, it must be highlighted there is not a very liquid secondary trading market currently so it is not guaranteed this will address the underlying issue.
- A majority of CMAG Members confirmed Option C as the preferred solution to CP362, noting that it addresses the issue of CP362 and is closest to the original solution without significantly impacting on government policy.

The figure below is a possible example case that intends to illustrate the differences between the current CM Rules interactions between secondary trading and the SCM and the option C legal text.

* LSD can be delayed as a result of TO/DNO delays in connection under Rule 6.7.7.



Proposer Views on CP362

The proposer expressed a preference that the original legal text should be implemented by Ofgem on the basis that in their view:

- It allows the most opportunities to Secondary Trade prior to the SCM which is the intent of the proposal
- There are still provisions in the CM Rules that would prevent speculative bidding e.g. the pre-qualification process in the CM Rules for new build requires substantial investment by a party before entering the auction
- Just because providers could under the removal of Rule 9.2.5 (a) Secondary Trade before SCM does not mean that there is a guaranteed buyer of the capacity. This means that the Termination Fee still acts as a disincentive to speculative bids.

The solution drafted by the Proposer seeks to revoke Rule 9.2.5(a)(i) as it is unclear and is interpreted so to prevent a CM Agreement being transferred before the site has met its SCM.

The Proposer noted it is their view that CP362 will have a positive impact to consumers by allowing for a more efficient operation of the Capacity Market (CM) which will overall lower costs and improve security of supply.

Proposers Preferred Legal Text for CP362

9.2.5 Transfers of a Capacity Agreement:

(a) under Rule 9.2.4(a) can only be effected on the Capacity Market Register after the T-1 Auction for the relevant Delivery Year has concluded (or, in the case of an SA Agreement, after 30th May 2017) and provided that:

~~i) in the case of a Prospective Generating CMU and its second or third Delivery Year, it has achieved the Substantial Completion Milestone by the Prequalification Results Day for the T-1 Auction for that Delivery Year; and~~

Impacts & Costs

CP362 Impacts and Benefits

Impact Summary			
Stakeholder	Item	High/Medium/Low	Comment
CMSB	System and Processes	None identified	There is no known impact or benefits to LCCC to implement CP362.
EMR Delivery Body	System and Processes	Low	No ongoing costs have been identified. There is expected to be a small benefit in that further non-delivery information can be taken into account in wider decision making of key parties such as DESNZ/Ofgem or the Delivery Body.
Industry	Processes	Variable	CP362 would: <ul style="list-style-type: none">• Provide more options for providers to manage delivery risks which could lower costs for

			<p>delivery parties by avoiding unnecessary Termination Fees (between £5k-£35k/MW);</p> <ul style="list-style-type: none"> • Allow the providers to receive money (based on commercial negotiations) for the sale of the Physically Traded Capacity Obligation, offsetting some of the Capacity Payments lost from the start of Delivery Year 1 until the Agreement becomes effective • Increase the probability of all capacity secured in the auction being delivered as it could allow a transferor who is unable to deliver capacity to secondary trade with a transferee that can deliver the capacity. • Provide a means for Capacity Providers to manage very late network connections
Consumers	Cost of CM	Variable	CP362 will have a positive impact to consumers by allowing for a more efficient operation of the Capacity Market (CM) which will overall lower costs and improve security of supply.

Rules

- i. Amendment of Rule 6.7.1 Achieving the Substantial Completion Milestone
- ii. Amendment of Rule 9.2.5 Transfers of a Capacity Agreement

Costs

Costs	
Organisation	Comment
CMSB	None
EMR Delivery Body	Medium implementation cost (<£150k). Key activities to deliver include:

	<ul style="list-style-type: none"> • Solution workshopping • System change development <ul style="list-style-type: none"> ○ Development ○ Technical refinement ○ Defect rectification • User Acceptance Testing • Process and guidance updates. <p>EMR-DB have estimated that it would take two months to implement the change.</p> <p>The EMR Delivery Body (EMR DB) highlighted it had developed the functionality of the EMR Portal based on the interpretation of CM Rule 9.2.5(a)(i) received from DESNZ in 2017. EMR DB would need to make a modification to the EMR Portal if CP362 is approved and secondary trading is to be permitted for a Prospective Generating CMU in its first Delivery Year, before it has achieved its SCM.</p> <p>No ongoing costs have been identified</p>
Industry	None identified. CP362 expands the scope of secondary trading, it is expected that providers seeking to use CP362 would use existing processes.

Regulation and Other Code Impacts

The CMAG determined there are no impacts on the Regulations or other industry codes.

The DESNZ representative confirmed at CMAG Meeting 6 that the CP362 solution should not interact with the Government Subsidy Control Framework.

Views against CM Rules Change Objectives and Ofgem’s Principal Objective

Does CP362 better facilitate the CM Rules Change Objectives and Ofgem’s Principal Objective		
Objective	Proposer’s View	CMAG Views
Ofgem’s Principal Objective	Positive – This proposal will provide additional options for Participants to deliver their capacity obligations before termination, ensuring security of supply and reducing costs to consumers. Effective competition requires that the barriers to market entry and exit are reduced, that trading is possible and that risk management can be efficiently undertaken. CP362 would make the market more competitive and efficient and therefore is in line with Ofgem’s duties.	Positive – As per proposers view

<p>Promoting investment in capacity to ensure security of electricity supply</p>	<p>Positive – CP362 seeks to allow Participants to deliver their obligations in the most efficient manner. There is no evidence that parties have participated in the auctions on a speculative basis, but there are parties who have been unable to deliver on their new CMUs. This non-delivery creates a risk to security of supply. CP362 will mitigate this risk of non-delivery by allowing Participants to trade away obligations they cannot deliver.</p>	<p>Neutral – Whilst the CP362 provisions are expected to reduce the risks associated with providers not reaching SCM it is not expected that these risks are material enough impact this CM Rules Objective.</p>
<p>Facilitating the efficient operation and administration of the capacity market;</p>	<p>Positive – CP362 will provide Participants with more options to manage their delivery risks and make the operation of the CM more efficient.</p>	<p>Positive – As per proposers view</p>
<p>Ensuring the compatibility of capacity market rules with other subordinate legislation under Part 2 of the Act.</p>	<p>Positive – CP362 will introduce a level of flexibility for Participants and their CM delivery, which will allow them to invest in novel technologies or plants with longer build times. This would support wider DESNZ policy goals of low carbon technologies entering the CM.</p>	<p>Neutral</p>

Delivery Partner Comments

The EMR DB impact assessment can be found in Attachment A.

The CMSB representative noted there is no known impact to CMSB to implement CP362.

Recommendations

The CMAG made the following recommendations (ex-committee) to Ofgem:

- a) That CP362 better facilitates Ofgem’s Principal Objective;
- b) That CM Rules Change Proposal CP362:
 - Better facilitates the efficient operation and administration of the Capacity Market;
- c) The draft legal text; and
- d) That CP362 should be **implemented**.

Questions Considered by the CMAG	
Question	Conclusion
Does the CP further the CM Rules Change Objectives?	<p>Members unanimously agreed CP362 furthered Ofgem’s Principal Objective.</p> <p>Members unanimously agreed CP362 is neutral in promoting investment in capacity to ensure security of electricity supply.</p> <p>Members unanimously agreed CP362 is positive in facilitating the efficient operation and administration of the Capacity Market.</p> <p>Members unanimously agreed CP362 is neutral in ensuring the compatibility of the Capacity Market Rules with other subordinate legislation under Part 2 of the Energy Act 2013.</p>
Does the CP impact on the Regulations?	CMAG determined no impacts on the Regulations.
Are there any impacts on any other central industry frameworks or obligations?	CMAG determined no impacts on other central industry frameworks or obligations.
Are there any impacts on consumers, and if so, what are the impacts?	CP362 should make the operation of the market more efficient, lowering costs to customers and improving security of supply
Does CMAG agree with the proposed solution? Are there any suitable alternative solutions to address the defect?	<p>CMAG unanimously agreed with the Option C drafting (as detailed previously in the report on page 12).</p> <p>The Proposer prefers the initial legal text drafting as detailed earlier in the report.</p>
What are the expected impacts on: <ul style="list-style-type: none"> • CM Participants? • Delivery Partners? 	<p><i>CM Participants</i></p> <p>If accepted this rule change will allow parties more options to manage their delivery risks.</p> <p><i>Delivery Partners</i></p> <p>For all parties this should increase the probability of all capacity secured in the auction being delivered. This would be a significant improvement over the current arrangements. It should also result in better data on non-delivery and late delivery being available to NGESO when advising the Secretary of State on future capacity targets for each auction.</p>
What are the expected implementation/enduring costs for: <ul style="list-style-type: none"> • CM Participants? • Delivery Partners? 	<p>There are no known costs to CM Participants.</p> <p>The CMSB representative has confirmed there are no costs to CMSB to implement.</p> <p>EMR-DB have stated that there will be a medium implementation cost (<£150k) to this proposal.</p>

What are the expected timescales for implementation?	EMR-DB have estimated that it would take two months to implement the change.
Does the draft legal text deliver the intention of the solution?	Yes.
Does the CMAG recommend to Ofgem that the change be made?	CMAG recommends Ofgem approve CP362.