

ELEXON

CAPACITY MARKET RULES CHANGE PROPOSAL REPORT: CP365 - ITE REPORT REQUIREMENTS

This Change Proposal (CP) seeks to remove the requirement for a progress report to be assessed by an Independent Technical Expert (ITE) where a construction milestone has moved by more than two months.

Public

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Executive Summary

A summary of CP365, including the Proposal Form, can be found on the [CMAG Website](#).

Issue

Rule 12.2.1 requires a Capacity Provider to submit progress reports, signed by two Directors, to the Electricity Market Reform (EMR) Delivery Body every six months setting out when construction milestones are expected to be achieved. If the earliest and latest dates for these construction milestones move by more than two months in either direction, it is considered a material change and an assessment is required by an Independent Technical Expert (ITE). If the forecasted earliest and latest dates are close together, any changes to the project timeline are likely to cause a material change. Each ITE report can cost thousands of pounds per CMU, and this cost can be burdensome for Capacity Providers.

Solution

This Change Proposal seeks to remove the requirement for a progress report, signed by two Directors, to be assessed by an Independent Technical Expert (ITE) where a construction milestone has moved by more than two months, either earlier or later, resulting in a material change.

Only where a construction milestone has moved to be later than two months, will a progress report signed by two Directors and an explanation of the material change still be required under 12.2.1(a). CP365 proposes to remove the requirement for an explanation of the material change where a construction milestone has moved earlier than that stated in the progress report.

Impacts and Costs

Costs Estimates			
Organisation	Impacts	Implementation (£)	On-going (£/annum)
LCCC/ESC	No impacts on systems and processes have been identified.	None	None
EMR Delivery Body	No material cost implications or system changes required. Minor amendments to business processes and documentation will be required.	Minor (<£100k)	None
Industry	More efficient operation and administration of CM; and encourages competition in the CM by reducing initial costs for smaller Participants entering the CM.	None anticipated	None anticipated

There are minor implementation costs for the Delivery Body to amend business processes and documentation to align with CP365. No costs to CM Participants have been anticipated to implement CP365. It is expected that implementing CP365 will reduce initial costs to prospective CM Participants.

Implementation

The CMAG recommends an implementation date of June 2023, in time for prequalification 2023.

Recommendation

The CMAG recommends to Ofgem:

- a) That CP365:
 - i. Better facilitates Ofgem's Principal Objective
 - ii. Better facilitates promoting investment in capacity to ensure security of electricity supply
 - iii. Better facilitates the efficient operation and administration of the Capacity Market
- b) An Implementation Date of June 2023 in time for prequalification 2023;
- c) The legal text for CP365; and
- d) That CP365 should be **approved** subject to statutory consultation.

Issue

Rule 12.2.1 requires new build and refurbishing Capacity Market Units (CMUs) to submit progress reports, signed by two Directors, from after the Auction until completion of the Substantial Completion Milestone (up to eight reports in total). If milestone dates in these reports have moved forward or backward by more than two months compared to the last submitted progress report, this is then considered a material change. Rule 12.2.1(c) requires the progress report to be assessed by an Independent Technical Expert where a material change has taken place. If the forecast earliest and latest dates are too close together then any changes to the project timeline are likely to cause a material change, resulting in the requirement for multiple ITE assessments.

Each ITE assessment can cost thousands of pounds per CMU, with an estimated total cost of £1.6 million spent on ITE reports in a single delivery year. This additional cost of an ITE report is burdensome for Capacity Providers and can make entering the CM difficult.

Furthermore, there is no consequence for failure to submit an ITE report or submitting one that does not meet the criteria set out in the Rules.

Solution

CP365 seeks to address this by removing the requirement for an ITE assessment of the progress report if construction milestones have moved by more than two months, either earlier or later than that set out in the Construction Plan in the pre-qualification application.

To achieve this, it is proposed that Rule 12.2.1 be amended as per the legal text below, to remove the requirement for an ITE assessment. It is also proposed that an explanation of any material change only be required where a construction milestone has moved more than two months later than that set out in the previous progress report.

It is noted that changes enacted by CP365 should apply to agreements already awarded as well as new agreements. A list of grandfathered provisions can be found on the CMAG website, these are not impacted by CP365.

CP365 has also considered a mitigating factor to ensure delivery assurance, whereby the requirement to submit a remedial report where a Significant Completion Milestone (SCM) has moved beyond the start of the delivery year, remains unchanged in Rule 12.2.4.

Legal Text for CP365

12.2 Monitoring of construction progress of Prospective CMUs

12.2.1 The Capacity Provider of any Prospective CMU must, no less frequently than every six months from the first 1st of June after the Capacity Market Agreement was awarded until such time as the Substantial Completion Milestone is achieved, or the Capacity Agreement terminates or a Non-completion Notice is issued, deliver to the Delivery Body a progress report specifying, for each Generating Unit or Electricity Interconnector comprising such CMU:

- (a) a schedule identifying the earliest and latest dates on which each of the Construction Milestones are then expected to be achieved and in each case the most likely date within the specified range, with an explanation of any material change in such dates since the last report (where for

that purpose a change in date is “material” when the new date is at least two months ~~earlier or~~ later than the date stated under Rule 3.7.2(b), and an explanation which gives more than one reason for the change must include an estimate of how much of the change is attributable to each reason);

- (aa) an overarching non-technical summary of progress in relation to each such Generating Unit or Electricity Interconnector; and
- (b) any material changes to the works described in the Construction Plan, accompanied by:
- (c) if there has been any material change in the information submitted pursuant to Rules 12.2.1~~(a)~~ ~~or~~ (b) from the most recent progress report, an assessment from an Independent Technical Expert which includes the matters specified in Rule 12.2.1A; and
- (ca) Material change when described in 12.2.1(c) refers to:
 - (i) ~~any change covered by 12.2.1(a) not used;~~
 - (ii) any change to information stated in Rules: 3.1.2(a); 3.4.3(a), where permitted;
 - (iii) any change to metering arrangements or assessment; and
 - (iv) any change of location described in Rule 8.3.7.
- (d) a certificate from two directors of the Capacity Provider (or two officers, in the case of a Capacity Provider other than a company) stating that they believe the report to give a fair view of the matters described above.

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 CP365 at its meeting on Tuesday 15 November 2022, where CMAG determined CP365 as a high priority change.

The justification being that CP365 is a simple change to implement with low costs to Delivery Partners but high positive impacts on the CM and CM Participants. ITE reports can have a high frequency and likelihood for CM Participants and therefore this change will have a higher impact for Participants.

CMAG Development/Discussions

CMAG discussed CP365 at [Meeting 2](#) (Tuesday 15 November 2022), [Meeting 3](#) (Tuesday 13 December 2022) and [Meeting 4](#) (Tuesday 17 January 2023), below is a summary of all discussion.

Impacts

CP365 will allow for a more efficient operation and administration of CM plants, by removing the requirement for an ITE assessment of any progress reports submitted.

For smaller CMUs, the costs associated with ITE reports can prove to be a barrier to entering the CM, and the high cost of ITE reports (estimated at £1.6 million per delivery year) is not justified by the delivery assurance that they provide. CMAG has noted there is no consequence for failure to submit an ITE assessment or submitting one that does not meet the criteria set out in the Rules. Furthermore, Rule 12.2.4 provides delivery

assurance by requiring a remedial report to be submitted where a SCM is later than the first day of the relevant delivery year. CMAG noted the assurance provided from ITE reports is not always of consequence compared to other mechanisms within the CM, CP365 will have a positive impact on participants by creating a more efficient scheme.

There is a consequential positive impact on consumers whereby cost efficiency and savings from CP365 could be passed on to end consumers. Where CM Participants are no longer required to provide an ITE report, this cost saving will lower the associated costs of entering the CM for prospective CMUs, ultimately lowering the cost of the CM overall. CP365 is also determined to not have any enduring costs on CM Participants, it may reduce costs for some Participants.

CP365 would have a positive impact on CM Participants as it encourages competition in the CM by reducing initial costs for smaller Participants entering the CM. It was noted the cost of ITE reports are the same for all Participants regardless of plant size, CP365 will therefore allow smaller plants to compete more effectively within the CM.

Solution development

A Member highlighted CP365 would not make the scheme less robust as CMU applications currently require up to 95% self-certification which is deemed sufficient to enter the scheme. A progress report, signed by two Directors, would still be required under CP365.

A Member noted CM Participants were not required to submit ITE reports during the COVID pandemic as this had been suspended and there were no issues raised as a result of this. This highlights the minimal delivery assurance provided by ITE reports in the CM.

A Member noted CP365 may incentivise Participants to put a later date in at the start of its progress reports to avoid any impact from CP365.

BEIS CM 2023 Consultation

At CMAG Meeting 4, held on Tuesday 17 January 2023, BEIS presented an update on its CM 2023 Consultation. Within this Consultation was a proposal from BEIS to remove the requirement for ITE reports.

Following discussion at CMAG Meeting 4, CMAG agreed to expand the solution for CP365 from that noted in the original proposal form, to that noted in the BEIS CM 2023 Consultation. The original proposal for CP365 sought to remove the requirement for an ITE assessment of a progress report where construction milestones have moved by more than two months than that set out in the construction plan. The BEIS proposal goes further by also removing the requirement for an explanation of any material change to be submitted alongside the progress report, where a construction milestone has move two months earlier than that set out in the construction plan.

Members agreed to move forward with CP365, on the basis that it includes the additional change from the BEIS Consultation which goes further in removing ITE reporting requirements where a milestone has moved two months earlier.

Ofgem and BEIS confirmed it would agree the best way forward for the proposal under CP365 and the corresponding work under BEIS' CM 2023 Consultation.

Impacts & Costs

CP365 Impacts and Benefits

Impact Summary			
Organisation	Item	High/Medium/Low	Comment
LCCC/ESC	None	N/A	No impacts identified.
EMR Delivery Body	None	N/A	No impacts identified.
Industry	Financial	High	Removal of requirement for ITE reports will result in a cost saving for CM Participants. This will lower the associated costs of entering the CM for prospective CMUs, ultimately lowering the cost of the CM overall.
	Assurance	Low	Minimal delivery assurance is provided by ITE reports. Removing this requirement will have low impact on assurance in the CM.
	Competition	Medium	CP365 encourages competition in the CM by reducing initial costs associated with ITE reports for smaller Participants entering the CM.

Rules

- i. Section 12.2 Monitoring of construction progress of Prospective CMUs: Rule 12.2.1

Costs

Cost Estimates		
Organisation	Implementation Cost (£k)	On-Going Costs (£k/annum)
LCCC/ESC	None	None
EMR Delivery Body	Low (<£100k)	None
Industry	None anticipated	None anticipated

Regulation and Other Code Impacts

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

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

Does CP365 better facilitate the CM Rules Change Objectives and Ofgem's Principal Objective		
Objective	Proposer's View	CMAG Views
Ofgem's Principal Objective	Positive	Positive

Promoting investment in capacity to ensure security of electricity supply	Positive Removing the requirement for an ITE report will allow smaller CMUs to enter the CM without the burden of cost associated with ITE reports.	Positive The cost-saving of removing the requirement for ITE reports can be passed on to the end consumer and the CM.
facilitating the efficient operation and administration of the capacity market;	Positive ITE reports do not provide effective delivery assurance.	Positive There is no consequence for failure to submit an ITE assessment, removing this requirement will allow efficient administration of CM for all.
Ensuring the compatibility of capacity market rules with other subordinate legislation under Part 2 of the Act.	Neutral	Neutral

Delivery Partners Comments

LCCC/ESC have confirmed there are no expected impacts or costs to LCCC to implement CP365. LCCC/ESC are in favour of this change being implemented.

EMR DB have confirmed there is no material cost implications or system changes required for CP365. Minor amendments to business processes and documentation will be required but there is no expected ongoing cost associated with this change.

Implementation Date

The CMAG recommends an Implementation Date for CP365 of **June 2023**, in line with prequalification 2023.

Recommendations

At its meeting on Tuesday 17 January 2023, the CMAG made the following recommendations to Ofgem:

- a) That CP365:
 - i. Better facilitates Ofgem's Principal Objective
 - ii. Better facilitates promoting investment in capacity to ensure security of electricity supply
 - iii. Better facilitates the efficient operation and administration of the Capacity Market
- b) An Implementation Date for CP365 of June 2023 or as soon as practicable afterwards if this date is not achievable
- c) The legal text for CP365; and
- d) That CP365 should be **approved** subject to statutory consultation.

Appendix 1 – Key Questions for CP365 Summary

Questions Considered by the CMAG	
Question	Conclusion
Does the CP further the CM Rules Change Objectives?	<p>Members unanimously agreed CP365 furthered Ofgem's Principal Objective.</p> <p>Members unanimously agreed CP365 is positive in promoting investment in capacity to ensure security of electricity supply.</p> <p>Members unanimously agreed CP365 is positive in facilitating the efficient operation and administration of the Capacity Market.</p> <p>Members unanimously agreed CP365 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?	There is a consequential positive impact on consumers whereby cost efficiency and savings could be passed on to end consumers
Does CMAG agree with the proposed solution? Are there any suitable alternative solutions to address the defect?	<p>CMAG unanimously agreed with the proposed solution.</p> <p>No alternative solutions have been proposed by CMAG.</p>
What are the expected impacts on: <ul style="list-style-type: none"> • CM Participants? • Delivery Partners? 	<p>CP365 would have a positive impact on CM Participants as it encourages competition in the CM and reduces initial costs for smaller Participants entering the CM.</p> <p>CP365 will have a positive impact on participants by creating a more efficient scheme and reducing the administrative burden of ITE reports.</p>
What are the expected implementation/enduring costs for: <ul style="list-style-type: none"> • CM Participants? • Delivery Partners? 	CP365 would not have any enduring costs on CM Participants, it may reduce costs for some Participants.
What are the expected timescales for implementation?	EMR Delivery Body has advised two weeks will be required for implementation.
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 CP365.