

# Capacity Market Advisory Group Minutes

Meeting number **28**

Venue **Elexon Offices/MS Teams**

Date of meeting **21 January 2025**

Classification **Public**

## Attendance and apologies

Attendee	Initials	Type
Brian Lake	BL	Member
Eleanor Haynes	EH	Member
Raoul Thulin	RaT	Member
Paul Jones	PJ	Member
Kyran Hanks	KH	Member
Mark Duffield	MD	Member
Rob Selbie	RS	Member
Richard Thwaites	RT	Member
Shahena Begum	SB	Guest
Ann Beverley	AB	Guest
Sam Draper	SD	Guest (part meeting)
Basheer Muhamed	BM	Guest
Jamie Stephens	JS	Guest
Ellen McGrath	EM	Representative (CM Settlement Body)
Emily McGoohan	EmM	Representative (CM Settlement Body)
Bir Virk	BV	Representative (CM Settlement Body)
Matt Bowen	MB	Representative (DESNZ – part meeting)
Beth Hanna	BH	Representative (EMR Delivery Body)
Stuart Wells	SW	Representative (EMR Delivery Body)
Kat Gay	KG	Representative (EMRS)
Roan Chavez	RC	Representative (EMRS)
Will Tomblin Shaw	WTS	Representative (Ofgem)
Andrew MacDonnell	AM	Representative (Ofgem)
Jack Britton	JB	Representative (Ofgem)
Chris Arnold	CA	CMAG Secretariat (Elexon)
Phillip Paul	PP	CMAG Secretariat (Elexon)
Sean Dryden-Woods	SDW	CMAG Secretariat (Elexon)
Jenny McGowan	JM	CMAG Secretariat (Elexon)
Paul Farmer	PF	CMAG Secretariat (Elexon)
<b>Apologies</b>		

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## 1. Welcome and Introductions

- 1.1 Chris Arnold (CA) welcomed Members and Representatives and noted DESNZ would be presenting ahead of Ofgem as they are attending a DESNZ away day and would not be present after 10:30am.

## 2. CM Representative Updates

### LCCC/ESC

- 2.1 BV reported the CMSB team are busy with Applicant Credit Cover appeals ahead of the Auctions. CMSB ran the first SPD Pass report of 2025 last week and saw an increase of 150 CMUs to 550 due to those CMUs who need to record an SPD between Jan-Apr, which is quite positive.
- 2.2 There were no updates from EMRS.

### EMR Delivery Body

- 2.3 BH provided an update on behalf of EMR DB, noting that there were no significant updates to report at this time. However, BH highlighted that the team is currently in the lead-up to the auctions, with the auction team preparing for the upcoming process.

### Ofgem

- 2.4 Will Tomblin-Shaw (WTS), Jack Britton (JB) and Andrew MacDonnell (AM) from Ofgem presented the Secondary Trading Review consultation to CMAG.
- 2.5 WTS presented the Secondary Trading Review consultation to CMAG, noting that a report was commissioned in September 2024 to solidify policy positions on Secondary Trading and some Secondary Trading related Change Proposals. WTS emphasised that the report, which reflects a large number of proposals received since CM's launch, aims to clarify Ofgem's stance. While the report itself will not be published or made public, it will serve as an internal guide for future thinking on Secondary Trading. The scope of the report also included exploring whether adequate risk management for Capacity Providers could be achieved without the need for Capacity Provider to Capacity Provider (CP-CP) trading. WTS clarified that the report's outcome would not propose a prohibition on CP-CP trading. WTS noted that the report includes a few proposals of its own. However, it is important to clarify that the report functions as an informational document rather than a proposal document.
- 2.6 KH noted that he did not fully understand the distinction between contract-based and asset-based approaches. He also pointed out that they have been involved in workshops on this issue since 2017, advocating for Ofgem to take action. KH asked for clarification on whether the change proposals (CPs) that had been "parked" would move forward or not (CP362 and CP364). AM responded by explaining that the distinction between asset-based and contract-based fundamentally relates to how the Capacity Market is viewed. Under a contract-based approach, the market is primarily about contracts to provide capacity, while an asset-based approach views those contracts as a proxy for developing or sustaining assets delivering capacity. In discussions with DESNZ, they have indicated that the Capacity Market should focus on creating or maintaining assets that otherwise wouldn't exist.
- 2.7 AM noted that changes to Secondary Trading have faced challenges because they conflict with the core purpose of the Capacity Market, which is about asset creation or continuation. While Secondary Trading can reduce risk, AM expressed concern that making it easier could shift the market towards simply being about contracts for capacity, rather than fostering the development of assets. AM clarified that the proposals currently parked will remain on hold until a finalised position, agreed with DESNZ, is reached. Once that position is clear, Ofgem will either approve the proposals that align with the core objectives or reject those that don't.
- 2.8 KH queried whether CP362 would be 'released' and consulted on this year. AM responded that it is unrealistic to expect the development of CP362 this year, as there will be a period needed to clarify the position with DESNZ. However, AM indicated that it is more likely that a definitive answer will be available by next year. KH then asked if market participants had been consulted on the review or if it was just a public consultation. AM clarified that the primary purpose of the review is to determine the policy position of DESNZ and implementation/operation by the CM Administrative Parties. While the Change Proposals under consideration have originated from market participants, any proposed changes will be put out for consultation with market participants. However, given that the review is focused on determining the Capacity Market's future policy

direction from a government perspective, market consultation has not yet occurred. It was emphasized that the internal position needs to be clarified first before engaging with the market.

- 2.9 RT sought clarification on WTS's earlier statement, asking if the majority of secondary trades involved Unproven DSR. WTS confirmed that in 2024, the majority of trades involved Unproven DSR, either trading into Proven DSR or existing generation, amounting to 661 MW by 147 trades out of 706 MW by 163 trades (see slide 32).
- 2.10 RT then asked if this meant that people were using the trades as a financial play rather than managing ownership of an asset. WTS agreed, noting that individuals could profit from speculative bidding on an Unproven DSR contract by trading it to another asset class. AM added that, in many cases, 80% of trades are internal, meaning that Unproven DSR is traded away within the same organisation. This scenario raises concerns when commitments to provide DSR are not met but are still traded to another technology.
- 2.11 RT inquired if the trading of Unproven DSR would still cause issues if an asset ultimately delivered on the contract. AM acknowledged that while performance assurance would alleviate some concerns, the issue remains when Unproven DSR is traded to an existing generating CMU that was either not ready for the auction or not submitted at all. This could provide an unfair advantage over other participants.
- 2.12 RT queried if the primary concern regarding Secondary Trading is the potential abuse of the Unproven DSR capacity class. AM agreed, noting that while this is a recent concern raised through statistics, it will be addressed in the review. However, AM highlighted that the main objective is to ensure a consistent policy position on Secondary Trading. By doing so, future Change Proposals can be evaluated more easily and aligned with the policy stance set by DESNZ.
- 2.13 EH raised concerns about the current Secondary Trading arrangements, noting that while they don't necessarily disagree with Ofgem and DESNZ's asset-based policy intent, industry feedback has consistently highlighted that Secondary Trading is not fit for purpose. EH reiterated that stakeholders, particularly those trying to use Secondary Trading, have been seeking change for several years and appreciated that Ofgem has acknowledged that change is still on the table. EH emphasised that the current arrangements aren't working and expressed hope that something could be done.
- 2.14 EH then addressed the re-evaluation (see slide 37) of CP364, a proposal made by EDF. They noted that they strongly disagreed with the statement that the change would have no positive impact for consumers, pointing out that EDF had conducted analysis showing that avoiding re-procurement in the T-1 auction would deliver consumer benefits. CMAG had also agreed that CP364 would support consumer benefits. EH expressed surprise at the statement and asked for further reasoning, offering to discuss it offline.
- 2.15 EH also commented on Secondary Trading being agreed well in advance of the trade-submission window opening. While this might apply to trades between CMUs within a Capacity Provider Group, EH explained that for large capacity CMUs, participants typically trade in the T-1 auction first, which removes capacity available for Secondary Trading. This timing issue means that trades between different parties, particularly for large amounts of capacity, cannot currently be agreed in advance. EH disagreed with the idea that extending the trade-submission window would not improve market liquidity. They argued that improving the Secondary Trading process would not contradict the policy intent of maintaining an asset-based approach and highlighted that CP364 was aimed at risk mitigation for participants facing unforeseen issues with their capacity, something the current system does not adequately address.
- 2.16 AM responded by clarifying that the review of CP364 was a reflection of discussions with CM delivery partners and the experience of how Secondary Trades are typically conducted. While the proposal wasn't being rejected outright, AM noted that it was complex to implement and not a top priority at the moment, given the demands for implementation of other initiatives. He reassured EH that expanding the window for Secondary Trades wouldn't necessarily shift the capacity market towards a contract-based approach, and that the proposal was not seen as fundamentally problematic, though its complexity was a consideration. EH acknowledged the complexity of CP364 and agreed with AM's comment, noting that CMAG had previously discussed the details of the rules that the proposal would impact.
- 2.17 KG raised a point regarding the potential impact of maintaining an asset-based policy intent, particularly in relation to Volume Reallocation after a System Stress Event, which is less asset-based. She highlighted concerns about the potential implications for the penalty regime. AM responded, suggesting a follow-up discussion after the meeting, acknowledging that Volume Reallocation had not been a significant focus so far. He explained that the challenge of maintaining an asset-based policy is the complexity of treating contracts as proxies for assets. While this approach introduces complications, AM clarified that this review would not directly

address Volume Reallocation or penalties. He noted that if future work on these issues arises, they would be happy to contribute.

- 2.18 KG agreed to follow up after the meeting, suggesting there might be a potential for better alignment between Volume Reallocation and penalties, ensuring consistency across both. AM added that their primary concern with Secondary Trading is understanding its effectiveness in achieving the Capacity Market's goal of supporting new or existing generation. He noted that the challenge lies in whether Secondary Trading truly supports assets that would otherwise close or if it simply fulfils a contract for assets that would remain open regardless. He concluded that while this review doesn't directly address these aspects, it might be revisited in the future depending on the flexibility of the system.
- 2.19 MD noted that the Secondary Trading market is not liquid because of the lack of buyers qualified as Transferees. PP noted that the current 'proof of concept' MyEMRS Secondary Trading Register has the potential to improve liquidity by making such qualified buyers more visible. BV confirmed that this was the intention of Phase 2 of that system.
- 2.20 EH noted that slide 38 pointed out that the inconsistency of Rule 2.3.3 and EMR DB's current approach when processing Secondary Trades, as raised at CMAG, was still not being addressed and awaiting a policy steer from DESNZ.

### **Department for Energy Security and Net Zero (DESNZ)**

- 2.21 Matt Bowen (MB) and Sam Draper (SD) from DESNZ presented on the recent 16<sup>th</sup> December Capacity Market Consultation and Call for Evidence.
- 2.22 The consultation is focused on 'Rules modernisation', and the Call for Evidence related to consumer-led flexibility (DSR).

### **Rules Modernisation**

- 2.23 MB highlighted the first point of the consultation regarding opt-in requirements. Mandatory CMUs must either enter the CM Auctions or submit an Opt-out notification. CMUs expecting to be permanently non-operational can opt out under CM Rule 3.11.2(f)(i). To prevent speculative behaviour, opting out as permanently non-operational results in a ban from the CM for two subsequent Delivery Years. MB further emphasized that the government recognises that new information may become available after the initial Opt-out notification. Therefore, they are consulting on proposals to allow more flexibility for units to change their operational status, provided they can present evidence to EMR DB justifying the change.
- 2.24 MB pointed out that Rule 7.5.1(ra) requires the Delivery Body to update the Capacity Market Register (CMR) to reflect any changes in the Primary Fuel Type (PFT) or Generating Technology Class (GTC) of a CMU. However, Rule 4.4.4 prohibits changes to a CMU's configuration, which may cause confusion when read alongside Rule 7.5.1(ra), as Rule 4.4.4 is in place to protect security of supply. MB further clarified that while the DB is required to update the CM Register for changes in PFT or GTC under Rule 7.5.1(ra), Capacity Providers are not allowed to alter the configuration of their CMUs under Rule 4.4.4. The government is proposing an amendment to clarify that a CMU's GTC cannot be changed once it has been prequalified, providing greater certainty regarding acceptable updates to the CMR.
- 2.25 MB mentioned that under Rule 4.4.3A, if EMR DB becomes aware that a CMU's application no longer complies with Rule 3.12.1 after the Prequalification Results Day (PQRD) but before the first bidding window, then DB should no longer prequalify the unit. MB also pointed out that the government recognises that there may be instances where a prequalified CMU's application becomes inaccurate due to changes in circumstances, putting it in breach of the rules. Currently, the DB cannot consider these changes after PQRD. The government proposes that if a prequalified CMU would be in breach of Rule 3.12.1 if its application were reconsidered before the first bidding round, it should no longer be prequalified. This aligns with Rules 4.4.3AB and 4.4.3AC, which already allow the DB to consider changes to an Applicant's CMU after PQRD.
- 2.26 MB pointed out that many CM Rules are time-bound to reflect changes in the scheme's landscape. The government is proposing to remove Chapters 11, 16, and 18 in their entirety, as well as associated terms in the definitions, as they are no longer relevant. MB further referenced the government's proposal to remove Rules 3.10A and 4.5.1(b)(iva), which reference "Supplementary Auctions" that are now outdated. Rules 6.10.1(ea), 6.10.1(fa), 7.4.1(d)(vii)(ee), 7.4.1(d)(vii)(ff), 7.4.5(ka), 8.3.1(c), 8.3.1(d), and 9.2.6(e)(vi) will either be removed or rewritten to reflect this. MB also mentioned the proposed removal of Rule 4.5ZA, which is out of date, and Rule 7.5(x), which references it. Rule 4.5ZA.1 is no longer relevant, as it only applies to the 2017/18 Auction Window. PP will undertake a review for any similar candidates for removal.

2.27 MB highlighted that the government has identified a drafting error in the Rules. Exhibit ZA, which outlines Fossil Fuel Emissions Declarations for some CMUs, incorrectly cross-references Rule 3.15.6(b), a non-existent rule. The correct reference should be Rule 3.17.1(b) to ensure the Rules are accurate. MB further elaborated that the government proposes amending Exhibit ZA to correct the reference from 3.15.6(b) to 3.17.1(b), ensuring all references in the Exhibit are correct and accurate. He acknowledged that the government is aware that Rule 3.6.1(a) may prevent Existing Generating CMUs that have been mothballed for more than 24 months prior to the end of the Prequalification Window from prequalifying for the auctions. Further, it was noted that the government proposes extending the temporary amendment, previously implemented, which allows Existing Generating CMUs to demonstrate performance using operational data from the most recent 24 months of operation, if no data is available from the 24 months prior to the closure of the Prequalification Window.

### **Consumer-led Flexibility**

- 2.28 SD discussed the proposal to streamline business model submission requirements. Currently, Capacity Providers must submit separate business model applications for each DSR Component. The proposal is to allow providers with similar components, such as a portfolio with 1,000s of EV charges, to collate them into a single line entry. Additionally, a proposal is being made to separate the DSR test period from notifications of DSR components and metering test processes, providing EMR DB with extra time for processing.
- 2.29 SD noted the proposal to introduce a termination fee for failure to provide a DSR test certificate. This would be a £5,000 per MW termination fee for failure to provide a DSR test certificate. Currently, there is no termination fee for this issue in the CM Rules. The proposed fee is intended to align with other termination events, such as failure to provide a metering test certificate, and improve delivery assurance, particularly regarding T4 auction agreements where there have been instances of dropout in recent years.
- 2.30 SD emphasised that the consultation is seeking views on several key topics, particularly on categorising DSR based on underlying technologies such as behind-the-meter storage and meter generation, manual turn-down, EV charging, and V2X. Feedback has suggested that V2X may require its own category. The consultation also seeks opinions on whether DSR should be considered a duration-limited technology and what potential unintended consequences might arise from introducing duration limits for DSR. Currently, non-balancing mechanism storage data is used to calculate the derating factor for DSR, but there is concern that this may not accurately capture DSR's true reliability. The consultation is exploring the potential for introducing separate Derating Factors for different types of DSR if technology classes are adopted.
- 2.31 The consultation also addresses aggregator portfolios, seeking stakeholder views on like-for-like DSR Component reallocation for aggregator portfolios in the event that technology classes are adopted. SD emphasised the need for feedback on how the reallocation process would work and any potential unintended consequences of the proposed approach. SD acknowledged that large aggregated portfolios were not considered when the CM rules were first written. The consultation seeks suggestions for alternative approaches to administering these portfolios that could make it easier for capacity providers while ensuring delivery assurance.
- 2.32 SD further noted the consultation explores the possibility of introducing delivery milestones for Unproven DSR arising from a T-4 Auction. At present, there is no opportunity to replace capacity if a provider drops out of an agreement before delivery. The proposal is to introduce a delivery milestone, perhaps one year prior to the Delivery Year, so that capacity could be replaced in the T-1 auction. The consultation seeks views on whether such milestones could be applied to DSR and, if so, what milestones would be appropriate. PP noted that such a milestone for Unproven DSR could align with Prospective CMU's Financial Commitment Milestone (FCM) and hence allow for CP362 to not only allow Secondary Trading before a CMU achieves Operational status (by SCM/MCR) if it has met FCM but also for an Unproven DSR if it has met such a new milestone.
- 2.33 MB presented the timeline and next steps for the consultation. RS expressed interest in understanding how the timeline for the current consultation aligns with other ongoing government consultations, particularly in relation to consumer-led flexibility. He noted that initiatives like the Low Carbon Flexibility Roadmap (LCFR) and REMA (Review of Electricity Market Arrangements) will have a significant impact on policies for low carbon flexibility. RS mentioned that he was finding it challenging to connect the various consultations and developments coming out, and requested if a summary could be produced to help stakeholders better understand how these different pieces fit together. SD clarified that the current consultation package is primarily focused on process-driven changes specific to DSR within the CM rules. These changes are more detailed and operational, whereas other broader consultations, such as the Low Carbon Flexibility Roadmap and REMA, are addressing wider policy considerations. It was noted that while the consultations are targeting different aspects, they are aligned and working towards the same overarching objectives.

- 2.34 RS raised concerns that the changes proposed in the current consultation, such as adjustments to Baseline Methodologies and Derating Factors, could significantly impact the commercial attractiveness of DSR participation. He highlighted the potential for these changes to create short-term uncertainty for DSR providers, especially in the context of other ongoing initiatives aimed at encouraging more participation in smart, flexible, low-carbon markets. RS emphasised the importance of ensuring that these different government consultations are well coordinated to avoid conflicting changes that could undermine provider confidence.
- 2.35 In response, SD assured that the call for evidence is part of a longer-term process and is being coordinated with teams working on broader policy changes. He emphasised that the consultation's goal is not to create additional challenges for DSR providers, but rather to facilitate changes that could make participation easier. SD also clarified that the immediate consultation focuses on process-driven adjustments aimed at improving the operation of DSR within the existing framework, while the broader policy changes are being considered on a longer timeline.
- 2.36 KH inquired whether the consultation would be open to discussing new technologies if stakeholders propose them, to which SD confirmed that the consultation is indeed open to such discussions. He explained that a broader review of emerging technologies potentially ready to enter the CM is underway outside of this consultation. However, as part of the call for evidence, the team is particularly interested in views on the creation of new technology classes, with V2X (Vehicle-to-everything) being one technology already receiving significant attention. SD encouraged stakeholders to provide feedback on whether new technology classes could be introduced within DSR, or to share any broader opinions on the matter, assuring that all perspectives would be welcomed and considered.

### 3. CMAG Secretariat Update

- 3.1 CA noted that he would be assuming the role of CMAG Facilitator until a replacement for Oli Meggitt as Elexon's Head of Governance Services' is found.

### 4. Industry Feedback

- 4.1 KH asked EMR DB about the functionality of their new portal regarding the bidder role in auctions. BH clarified that the CM Rules require confirmation of a bidder for the auction; without selecting a bidder, entry to the auction is not possible. To address confusion, EMR DB will provide auction training next week. It was emphasised that a bidder must be selected 15 days prior to the first bidding window for New Build or DSR CMUs (not Existing Generation), or risk being excluded from the Auctions. Further clarity on the rules, particularly around the bidder role, is needed in DB Guidance to protect the auction process.
- 4.2 SB raised concerns with Ofgem's process for dealing with Price-Maker Memoranda, where after submission ofgem should issue a receipt within 2WD. SB saw the process as a 'black hole' with no response from contact points listed on Ofgem's pertinent website page. AM confirmed there was a team processing such information, but he would reach out to her following the meeting.
- 4.3 MD highlighted that the Metering Assessment questions have changed this year and noted that parties using Elexon-registered CMRS (Central Meter Registration Service) meters find the questions excessive for systems that are already established.

### 5. CMAG Surgery

#### Connection Capacity Review

- 5.1 CA presented the Connection Capacity surgery item to CMAG recapping what was discussed at CMAG 27 which was the current interpretation and potential solution options to Rule 3.5.1A.
- 5.2 CA presented the suggested amended legal text of rule 3.5.1A. which proposed the removal of the word 'aggregate' and 'all Generating Units comprised in' and included language to reflect the EMR DB existing interpretation of Rule 3.5.1A. SW noted after reviewing the proposed redraft to the legal text there is still a lot of ambiguity in the text. They proposed the text should read as follows:

*"the aggregate Connection Capacity of a Generating CMU must not exceed, in a given Delivery Year, the sum of the TEC or MEC (as applicable) which apply to each of the Generating Units comprised in that CMU. If the generating unit shares a Connection Agreement with any generating unit or units that form another CMU the aggregate of all **such** generating units behind that Connection Agreement must not exceed the TEC or MEC stated."*

- 5.3 PJ stated that his initial view was that 'aggregate' should remain in the text. The intent is to assess the station TEC and ensure it covers the combined capacity of all CM Generating Units, each with its own Connection Capacity. Removing 'aggregate' would undermine this intention. PJ fully agreed that 'aggregate' should stay in the rule. RS supported the use of the word 'aggregate,' emphasizing its importance in conveying the idea of multiple units sharing a connection. He expressed alignment with the DB definition, which he found more appropriate. RS also raised concerns about the use of terms like 'generating units' and 'units,' noting that the definition seems mostly correct but could use some clarification. He concluded that, in his view, the aim is to ensure that the sum of the Connection Capacities for units sharing a connection is less than the TEC.
- 5.4 RaT noted that the phrase 'that form another CMU, the aggregate of all such generating units' was unclear and required further revision. PJ agreed, emphasizing that the focus should be on generating units with capacity agreements. He explained that a power station could have multiple generating units with total capacity exceeding their TEC, but only some of these units may have Capacity Agreements. As long as those with Capacity Agreements have sufficient TEC to cover them. PJ suggested rephrasing to specify 'all such Generating Units behind that Connection Agreement' to avoid including mothballed units. SW clarified this is what they were aiming to do 'in a given Delivery Year' to make sure that is in the Delivery Year that it is related to.
- 5.5 CA asked CMAG if the term 'power station' should be defined in the legal text. SB noted that the lack of definition was causing confusion in interpreting Rule 3.5.1A and suggested a definition could help reduce ambiguity. However, with EMR DB's proposed text, no further clarification may be needed.
- 5.6 CA presented background and context in relation to managing deferred Distribution Connection Agreements (DCAs) and highlighted that a possible risk of the current CM Rules was if the Connection Capacity in the DCA (when it is available) is materially different to the good faith estimate of the Connection Capacity then this may lead to under procurement of capacity.
- 5.7 RT asked if the DB do a check to see if there is capacity that should be reprocurd. SW clarified there isn't a check under the current rules.
- 5.8 CA asked CMAG does the connection offer always contain the MEC value or is that only finalised in the DCA. SW noted he had spoke to DB connection team that by in large all of the connection offers in the past couple of years have included the MEC value.
- 5.9 CA asked why the declaration in 3.7.3(c)(i) refers to the DCA being in place 18 months prior to the DY, while the evidence under 8.3.1(a) relates to the connection offer. MD explained this likely stemmed from inconsistency with the ways in which historic distribution connections were managed. He recalled that some parties historically (ie pre-CM) received an offer from a DNO, which they accepted, but never received a formal agreement, only the offer and acceptance.
- 5.10 CA noted that the Connection Capacity could vary between the good faith estimate at Application, the connection offer and the connection in place at the point the CMU becomes Operational (SCM/MCR). KH asked if this was an actual issue and whether there was any analysis to support it. PP asked DB if they had statistics on the difference between what was entered as good faith estimates at application and what was actually connected. SW clarified that their modelling team analyses auction outcomes versus what is delivered in the Delivery Year. However, he noted that he had never been involved in discussions where this was flagged as a problem, and they usually highlight issues when they arise.

**Action: EMR DB to take sample of good faith estimates provided by Applicants where DCA had been deferred and compare them to MEC values when DCAs are available and the final operational physical capacities for relevant CMUs**

#### **Exhibit Review**

- 5.11 JM gave an update on the proposed provisional timeline of the order in which the Exhibits were reviewed. The CMAG reviewed comments from RaT on the final drafts of Exhibit B and E, then JM presented Exhibits C and D to CMAG.

#### **Exhibit B**

- 5.12 RaT noted we should more clearing define 'Relevant CMU' as a defined term used in other parts of the certificate. CMAG agreed to keep the text as lower case 'relevant CMU' to reflect how it is used elsewhere.

#### **Exhibit E**

- 5.13 On declaration G, RaT flagged that it would be worth clarifying which Group this refers to – the Applicant or the Agent's. As the previous reference within the declaration is to the Agent's group, it would read as though this refers to the Agent's group. AM noted I think we made the same change as this in CP376 and it was 'of the same Applicant group'. CMAG agreed to add 'of the applicant' to the text.

### **Exhibit C**

- 5.14 DB flagged that more guidance should be added to the 'Name of Applicant' item, as it refers to the organization, not an individual. The Rules are ambiguous between the definition of "Applicant" and the section on identifying the Applicant, which suggests the focus should be on the organization. CMAG agreed to add the entity name to the guidance.
- 5.15 EMR DB suggested updating the 'Application Year' section to read 'year of original application submission' to cover both Secondary Trading and Prequalification Applications. PP recommended further clarification by adding 'calendar year' to reduce confusion. RaT questioned whether stating the Application year was necessary, given the Exhibit must be dated at the time of signing. SW clarified this is a current rule requirement, but simplifying it could be beneficial if it causes errors. CA concluded that if the Application year is not a requirement, it could be removed, but if it is, it should remain with clear guidance. CMAG Secretariat agreed to review Application year after the full Exhibits review has been completed.
- 5.16 CA queried if a declaration should be added for section 5.13(f) regarding obtaining or attempting to obtain information about bids from other applicants. PP noted that bidding information is not relevant at the Application stage, but CA highlighted that the market manipulation declaration covers this, ensuring participants acknowledge the restriction. CMAG agreed to add this declaration.
- 5.17 RaT questioned the addition of 'or any member of the Applicant's group' and whether a Director could make the declaration on behalf of the entire group. CA clarified that this change aligns with the legal text proposed by CP379. EMR DB had no issues with the addition, but noted it could invalidate prior evergreen Certificates of Conduct (3.3.6A) as it goes beyond cosmetic changes. PP further clarified that the term 'Applicant-related Party' is defined, but adding 'or any member of the Applicant's group' would reflect the possibility of termination under 6.10.2(a)(ii). Concerns were raised about directors lacking full knowledge of other group members, so the CMAG Secretariat agreed to review this further.
- 5.18 CA highlighted that CMAG Meeting 21 noted revisiting CP379 as part of the Exhibit review, with two options for consideration. AM agreed that the preferred approach would be to remove CMCI (and its declaration), aligning with 5.13(e) and ensuring information sharing is covered by DESNZ and CMSB under Reg 65 as Protected Information. AM clarified he would check with DESNZ and their enforcement team before making this change. CA noted they would circulate the CP379 briefing with CMAG before the next meeting to revisit the declaration.
- 5.19 RaT suggested changing 'Company' to 'Applicant' throughout (a) to (e), for consistency between Exhibits. CMAG agreed to this update.
- 5.20 PP noted 'providers or finance' within (e) appears to be a wide ranging limitation against disclosure of CMCI while exception (viii) is limited to those specific to the CMU. After discussion it was agreed that (including advisors and providers of finance) be removed from (e) and (viii) be expanded from 'that CMU' to 'the Applicant's Group'.
- 5.21 PP suggested, within (e), (ia) [ofgem] and (ii) [DB] could be replaced by the Regs definition for 'Administrative Parties', covering DESNZ, ofgem, DB and CMSB. This would address one of the issues initially raised under CP379, that Exhibit C did not provide an exception under (e) for DESNZ and CMSB. CMAG agreed to this, replace Authority and EMR DB with Administrative Parties.
- 5.22 RaT proposed changing the text before the declarations back to the original wording of 'We the directors,' as only two directors are required to sign the certificate. CMAG agreed to this change.

### **Exhibit D**

- 5.23 EMR DB requested that additional rows for Despatch Controller and Legal Owner be added to the table at the start of the Exhibit as it would provide more clarity instead of relying on their identification at the signature level. CMAG agreed that this addition would be beneficial.
- 5.24 EMR DB requested that CMU Name be removed and just keep CMU ID. All CMUs will have a CMUID at Application, so there's no need for this to be kept ambiguous or vague. CMAG agreed that CMU ID would be sufficient on its own and agreed to this change.

5.25 On the discussion of role at the end of each Exhibit, EMR DB noted potential misinterpretation opening up who on who can sign the exhibit. Could we add the definition from the rules underneath perhaps as a resolution. Suggestion to add definition in was noted.

### **ITE Item - Remedial Plan Review**

- 5.26 SDW introduced the surgery item regarding Remedial Plans (RPs) as outlined in Capacity Market Rule 12.2.4. It states that the Delivery Body (DB) must request an RP when a Capacity Provider (CP) with a Prospective Capacity Market Unit (CMU) holds a Capacity Agreement and their six-monthly progress report (as per Capacity Market Rule 12.2.1) that indicates the latest date for meeting the Substantial Completion Milestone (SCM) is after the first day of the first Delivery Year (DY1) of their agreement.
- 5.27 Further, CMAG Secretariat that the purpose of a RP is to demonstrate to DB how a CP will address a Prospective CMU becoming Operational before the start of its first DY (DY1). However, the issue is that RPs are currently too similar to six-monthly reports which would otherwise detail the remedial steps a CP is taking to mitigate against the risk of delays to the construction of their CMU. In turn, an RP's purpose is diminished, administratively burdensome, and costly for CPs.
- 5.28 Additionally, a RP will not give visibility to:
- When the CMU may become Operational after the start of the first DY;
  - At what Operational Capacity the CMU's Agreement will initially become effective; and
  - If the initial Operational Capacity is <100% of AACO, will this be increased within 18 months of the start of the first DY (as allowed under Rule 6.7.6).
- 5.29 In turn, the CMAG Secretariat asked members and delivery partners:
- Does the purpose and function of a remedial plan need to change?
  - And If so, what should the change(s) be (e.g., enhanced monitoring, agreement amendments, etc.)?
- 5.30 SW noted that they have previously received numerous RP. The value of these reports is that they include commentary from an Independent Technical Expert (ITE), which assesses whether a plan is achievable. This provides the DB with additional assurance regarding the actions that a CP will take to meet construction milestones. Furthermore, EMR DB pointed out that six-monthly reports can vary in detail; they may be high-level or in-depth, while an RP report is typically more specific.
- 5.31 However, KH explained that an RP can be unrealistic because they require a CP to meet a specific date. The reality of commercial projects is that their project timeline can change as there are variables which can impact progress. Thus, an RP purpose is exclusively weighted to a date that could be impossible to meet (circumstance dependent).
- 5.32 SW suggested that the CMAG Secretariat reach out to DESNZ to discuss whether the RP reporting requirements are meeting DESNZ policy intent. This is especially relevant given the work that DESNZ has done in recent years on Capacity Market Rules, specifically Chapter 12. However, from DB's perspective, they view an RP as a means to bring in an ITE to comment on how a CP is meeting its construction milestones for a prospective CMU.
- 5.33 PP noted the RP is inconsistent with other rules. DB said that due to changes at DESNZ and Ofgem some changes may have been made in isolation. The follow-on effect of this is that considerations may not have been given to the application of the Rules as a whole, which could have created misalignment between individual Rules.
- 5.34 EH also noted that the requirement for a CP to create a RP can sometimes impose unrealistic deadlines. This is because commercial realities, such as supply chain issues, can affect the progress a CP makes toward meeting construction milestones. Furthermore, EH pointed out that there are currently no consequences for a CP that fails to submit their RP or their six-monthly report. KH agreed that some Capacity Providers will simply not submit progress reports or RP. Building on this point, RT mentioned that the wording of the rules establishes a low standard; what is deemed 'reasonable endeavours' is subjective to the Capacity Provider. This limitation reduces the situations in which an RP can be provided.
- 5.35 KH said the crux of the issue is that the DB want to see a range of dates that represent the reality of the project and a CP should not be signing documents that are untrue for the sake of it. RT highlighted that the Capacity Provider is motivated to start income from an Operational plant as soon as possible. PP agreed and said that

visibility of a realistic anticipated operational date would be more useful for CM capacity modelling and forecasting by the NESO modelling team.

- 5.36 The CMAG agreed that RP function and purpose is an issue for the CMAG Secretariat to continue to look into, issuing a Briefing into SharePoint for review and comment before bring the matter back to a future CMAG meeting.

#### **ITE Item - Foreign Currency Methodology for Capex**

- 5.37 JM and PP introduced the surgery item regarding Foreign Currency Methodology for Capex. They outlined the background of the surgery item, which arose from ITE subgroup 3, the potential consequences of the issue and example scenarios that could arise.
- 5.38 PP asked CMAG if they recognise the presented scenarios as potential possibilities. CMAG agreed these were valid scenarios. RT confirmed that for many projects foreign currency transactions will be involved for the majority of purchased components. RaT noted that large foreign currency expenditures are likely to be hedged at the point of committing to the project, minimizing exchange rate exposure. He suggested assessing if marginal ITE determinations of Total Project Spend close to the pertinent multi-year threshold £/kW have been impacted by exchange rate fluctuations. PP believed that accounting standards separated accounting for operations from any hedging or trading in foreign currency.
- 5.39 CA asked ITEs present at CMAG how frequently they experience cases close to the threshold. EH recalled instances in 15-year Refurbishing CMUs where the spend was close to the threshold, but foreign currency wasn't a significant factor. Meanwhile New Build CMUs would typically comfortably exceed the relevant multi-year threshold £/kW. EH acknowledged that, in the future, more 15-year Refurbishing CMUs may bring more projects closer to the threshold, making currency fluctuations more impactful.
- 5.40 EH clarified that it is currently at the ITE's discretion to use a methodology for converting currency, but there is no rule requirement to explain the origin of the final GB pound amount. She suggested reviewing whether additional guidance is needed in the ITE report templates to address this issue.
- 5.41 SW clarified that they check the ITE report for the final output but rarely receive questions from Capacity Providers or ITEs about foreign currencies. To their knowledge, these concerns have not yet been raised.
- 5.42 PP highlighted that without reference to IAS21, Capacity Providers could use various methods for exchange rate conversion, potentially impacting whether they meet the relevant Capex thresholds. PP asked if Ofgem and DESNZ are comfortable with this level of assurance, and if so, whether IAS21 should be included in the definitions or if more guidance is needed for ITEs on reporting standards. AM noted that while the issue seems complex, there isn't a strong push for immediate change. AM also wondered how this issue was addressed under the CFD scheme and PP agreed to review this and confirm with LCCC.
- 5.43 CMAG agreed to park the issue for now but acknowledged that it should be reviewed in the future.

#### **ITE Item – Total Project Spend**

- 5.44 PF requested CMAG's opinion on whether TPS can change between Application and FCM, as the CM Rules are unclear on this. This was raised by EMR DB as part of the ITE subgroup, noting that such a change had occurred. PF also highlighted that the TPS ITE report could be deferred into the Delivery Year when meeting the Operational milestone and invited CMAG to respond to the four initial questions raised by the CMAG Secretariat on TPS treatment within the CM Rules.
- 5.45 RT noted that TPS can change between Prequalification and FCM, as TPS is only a best estimate at Prequalification. KH agreed, stating that the project directors and ITE sign off on the up-to-date costings when submitting their report for FCM. EH added that TPS could change, citing that the TPS definition calls for a value based on the "reasonable opinion" of the Applicant, which could change multiple times. EMR DB had previously confirmed that TPS could change between Application and FCM, provided the ITE certified the change as reasonable, offering an example of lowering TPS due to reduced battery costs over time. EH emphasized that TPS should not be fixed when assessing final TPS spend against 3- or 15-year thresholds, as the purpose of that assessment is to place the project into the appropriate agreement category. Once the project exceeds the threshold set at application, the actual capex value becomes irrelevant.
- 5.46 SW confirmed that TPS can change, as it is a best estimate at that time. This can change reasonably and be confirmed by the ITE. However, there were concerns at the ITE Subgroup about the potential for applicants to manipulate their declarations to meet 15-year thresholds at Prequalification and EYC report submission, then reduce TPS to fall below the 10% threshold for FCM. EMR DB had not observed any such abuse but noted that

they do not currently receive the 10% TPS figures. The ITE subgroup recommended that EMR DB receive those figures going forward. SW suggested that EMR DB could review new ITE reports and report to Ofgem or CMAG if rule changes were necessary. He noted that any abuse would likely be limited and require multiple bad actors, which is why this was not included in the first set of ITE Subgroup recommendations, as the perceived risk was minimal.

- 5.47 EH agreed that the risk was limited but suggested it was worth addressing, as there is nothing in the Rules to prevent a CP from reducing their TPS at FCM. EH proposed a clarification in EMR DB guidance, particularly if TPS at FCM is significantly reduced. A comparison against the 3- or 15-year thresholds would highlight potential gaming or the risk of the agreement being shortened. EH supported a change and was open to discussing possible approaches.
- 5.48 RaT emphasized that the ITE should have a clear role at FCM and that CPs should submit their best estimate, which could increase or decrease. If TPS falls below the threshold, it suggests something has gone wrong, and this should not be incentivized.
- 5.49 SW noted that changes made by the ITE subgroup addressed these concerns, and EMR DB had discussed internal processes to manage the 10% TPS figures once received as part of the new template for ITE TPS reports.
- 5.50 RS agreed that costs will fluctuate and should be allowed, as long as CPs are incentivized to provide the best available information. Assessments should always be made against the capex thresholds in the Rules. Project costs will always change for various reasons, and CMAG should focus on whether the CP remains eligible for a multi-year contract rather than the reasons for those changes.
- 5.51 PP asked whether EMR DB could monitor TPS against the thresholds for multi-year agreements. SW confirmed that EMR DB is not currently seeking rule changes but would engage with CPs if a drop in TPS resulted in failure to meet a threshold. They would assess CP responses, review trends, and raise any concerns with Ofgem if necessary.
- 5.52 EH pointed out that the introduction of a 9-year agreement could address any issues where a CP is reduced from a 15-year agreement. While there doesn't appear to be a realistic issue now, it could be a policy question in the future.
- 5.53 CA asked standard surgery questions. EH expressed concern that CPs do not have a level playing field of information, as some are unaware that TPS can change. EH suggested addressing this issue. RS agreed but did not believe it was a significant issue.
- 5.54 CA confirmed that the focus would remain on clarifying existing processes rather than conducting a broader TPS review. SW also confirmed that EMR DB would review FCM guidance and update it accordingly.
- 5.55 KH noted that the meeting had so far only considered Q1 on slide 82. It was agreed to consider Q2-4 on slides 83-85 at a future CMAG.

## **6. Developing CM Rules Change Proposals**

### **CP384 Rule - 6.10.1 Termination Reasons (g) & (ga)**

- 6.1 PF presented CP384 to CMAG and addressed the standard questions. CMAG had no questions on any of the standard questions therefore the CMAG recommends to Ofgem:
- a) That the solution better facilitates Ofgem's Principal Objective;
  - b) That the solution better facilitates the CM Rules Change Objectives of:
    - Promoting Investment in capacity to ensure security of electricity supply;
    - Facilitating the efficient operation and administration of the Capacity Market.
  - c) The draft legal text; and
  - d) That CP384 **should be implemented**.

## **7. CMAG Forward Work Plan**

- 7.1 The CMAG Secretariat presented the CMAG Forward Work Plan.

7.2 PF noted that a Survey had been loaded on SharePoint for CMAG to prioritise consideration of the 12 items arising from the CP373 'audit' and reiterated his request that CMAG complete this survey by the deadline. The results of this survey would be reflected in the FWP for CMAG29.

## **8. Action Log**

8.1 CMAG reviewed the Action Log, all 'Complete' actions will be marked as closed. Discussion on actions 'In Progress' can be found in the CMAG Action Log, published on the website.

## **9. Any Other Business (AOB)**

9.1 Ofgem flagged the [Capacity Market Rule change proposals: statutory consultation](#) is out at the moment and will close on 18<sup>th</sup> February 2025.

## **10. Next meeting**

10.1 The next CMAG meeting will take place on 18 February 2025