EP UK Investments

Response to Ofgem Five Year Review of the Capacity Market Rules – First Policy Consultation

28 May 2019

About EPUKI

EP UK Investments (EPUKI) is a UK energy company, primarily focusing on power generation from conventional and renewable sources.

EPUKI represents the UK interests of Energetický a průmyslový holding (EPH), a leading Central European energy group that owns and operates assets in the Czech Republic, the Slovak Republic, Germany, Italy, the UK and Hungary. EPH is a vertically integrated energy utility covering the complete value chain ranging from highly efficient cogeneration, power generation, and natural gas transmission, gas storage, gas and electricity distribution and supply. The companies in the group employ nearly 25,000 people.

EPH is the largest supplier of heat in the Czech Republic, the biggest electricity producer and the second biggest electricity distributor and supplier in Slovakia and ranks as the second biggest lignite producer in Germany. It is also an operator of a robust transmission network in Europe, a key transporter of Russian natural gas to Europe and the biggest gas distributor in Slovakia. In total it has 24 GW of heat and power capacity including coal, lignite and renewables.

EPH entered the UK market in 2015 through the purchase of Eggborough Power Limited. In 2016, EPH purchased Lynemouth Power Limited, the owner and operator of a 420 MW former coal-fired power station in Northumberland which has been converted to biomass supported by a Contract for Difference. In September 2017 EPH acquired Langage and South Humber Bank combined cycle gas turbine (CCGT) power stations from Centrica plc, with a combined capacity of 2.3 GW. Both these stations hold one year capacity agreements for every capacity market Delivery Year from 2018/19 to 2021/22. The UK is a core market for EPH and EPUKI continues actively to pursue other acquisitions and new build opportunities in the UK electricity market, including the Eggborough and King's Lynn B CCGT projects.

General comments

EPUKI supports initiatives to simplify the Capacity Market Rules and reduce the administrative burden on applicants and capacity providers. We therefore welcome the opportunity to respond to Ofgem's consultation on the Five Year Review of the Capacity Market Rules. In general, we consider that Ofgem has identified the correct areas for review. It is important that changes to the Rules are made with sufficient notice and do not undermine investment decisions previously taken by market participants.

Specific comments

The objectives of the Rules

Question 1: Do you have any views on the interactions between the CM and other wholesale markets; such as forward markets, the balancing market, and markets for ancillary services?

The capacity market has been designed to be a market-wide mechanism that in principle should treat all capacity providers equally. However, the electricity market treats different types of project in different ways. Embedded generation does not participate in the same markets as transmission-connected generation (eg. the Balancing Mechanism) and does not pay the same charges (eg. BSUoS and TNUoS). Interconnectors also do not pay transmission charges (BSUoS and TNUoS), do not pay carbon tax, and receive guaranteed returns through the Cap and Floor mechanism but participate in the capacity market in the same way as generators. These distortions outside the capacity market allow some projects to bid a lower price in capacity market auctions. We therefore consider that wherever possible all generation should be subject to the same rules. We are pleased that Ofgem may tackle some of the remaining embedded benefits through its network charging review, but consider the government and Ofgem should identify any remaining distortions in the electricity market to ensure that the market rules are the same for all parties and are fit for the future generation mix.

Question 2: Do you have any evidence that design choices in the CM are driving inefficient outcomes in other markets?

EPUKI considers that it tends to be distortions outside the capacity market that are giving certain technologies an unfair advantage in capacity auctions, further exacerbating issues in other markets.

Question 3: Do you have suggestions for how these markets can be better aligned and how any inefficiencies can be mitigated?

No EPUKI comment.

Ofgem's Rules change process

Question 4: Do you have any views on whether the proposed membership of the CM Advisory Group is appropriate, the form of participation from industry, along with any further points regarding meeting frequency and function?

We welcome the proposal to establish a CM Advisory Group. We consider that membership should be drawn from across the spectrum of different types of capacity provider in proportion to the sorts of capacity which participate in the capacity market. The way in which these representatives are appointed will be important to ensure wide-spread confidence in the Advisory Group. We are concerned that appointment solely by Ofgem or the EMR Delivery Body could lead to the perception that the group only represents established or well-resourced interests. We therefore consider that some form of industry endorsement is required for these appointments.

By its nature, the CM Advisory Group will have a limited membership and therefore needs to find practical ways of engaging wider expertise and viewpoints from within the sector without adding to the resource burden which industry parties already face. The establishment of a wider capacity market forum which is open to the whole industry in which to test thinking by the Advisory Group may be appropriate, along similar lines to the Charging Futures Forum.

Question 5: Do you believe the proposed framework and function of the CM Advisory Group is appropriate and would better facilitate the efficient operation of the CM Rules change process?

We agree with the proposed framework. We consider that the CM Advisory Group should have a function to develop an evidence base to support proposed rule changes so that their impacts can be properly assessed and understood.

The Advisory Group can also help coordinate change proposals, assess conflicting opinions and facilitate discussion where there is concern about a broad area of the rules. The Advisory Group should have a role in grouping rule change submissions on related topics and establishing mechanisms for wider discussion on these, including the use of webinars. It may be appropriate for the rule change proposal window to consist of two stages, one in which initial proposals are gathered and assessed (even if a party has not had an opportunity fully to work up their proposal) and a second

stage to allow for new or developed ideas to be submitted by industry following review and consideration.

Question 6: Do you have any feedback on our proposal to move to an 18-month implementation timescale; consulting on rule amendments which would subsequently be implemented the following Delivery Year?

We support the proposal to move to an 18 month implementation timescale for non-urgent changes. The criteria for urgency will need to be clearly defined. There should also be an accelerated process for housekeeping changes, such as correcting obvious errors in the rules.

The extended rule change process will mean that rules may have been agreed that have not yet been implemented. Identifying which rules apply to agreements awarded for specific Delivery Years could become challenging for market participants. Version control for the published Rules will therefore be important. An interactive set of rules that can be filtered depending on the capacity auction and Delivery Year in question and through which changes can be identified would be helpful for applicants and capacity providers.

Regulatory burden – Prequalification

Question 7: Do you have any views on the proposed process, the implications of the change to the Prequalification procedure and whether it would be a positive change in removing an administrative burden?

The proposal to roll forward applications from previous years where there has been no material change is welcome. This would lead to a reduction in administrative burden for applicants and should reduce the risk of error in applications. However, we are unclear why Ofgem proposes that the EMR Delivery Body would still assess the application on the same basis as in previous years. There is no reason for the Delivery Body to reassess information that has not changed and if the Delivery Body only assessed new information this would dramatically reduce the resource requirement. If this proposal was adopted for the forthcoming 2019 Prequalification Window, this would lead to a substantial reduction in burden for applicants and the Delivery Body as many parties which prequalified last year will be applying for two auctions simultaneously this year.

We agree that under current rules new exhibits would need to be submitted as part of this simplified prequalification process. However, we consider that the exhibits should be changed so that the declarations they contain are evergreen in order further to simplify prequalification.

We note that for Existing Generating CMUs there would still be a requirement to identify the three highest outputs under Rule 3.6.1 as part of any prequalification application and this information cannot be rolled forward from year to year. EPUKI considers that the information supplied under Rule 3.6.1 is unnecessary at prequalification and could be removed (see response to Question 10 below).

Question 8: Do you believe the current length of the Prequalification window is appropriate and if allowing Prequalification submissions to take place throughout the year would be beneficial?

While an extended period for submitting and assessing prequalification applications may be helpful, we consider it unlikely that companies could decide whether to prequalify for a capacity auction until they know which rules will govern the prequalification and auction processes, but this cannot be determined until urgent rule changes have been approved in July preceding an auction. We therefore consider that allowing prequalification applications to be submitted throughout the year would have limited benefit to applicants. A longer prequalification period should not be necessary if the prequalification process is light touch and predictable and there are protections against the risk of unintended failure.

Question 9: Do you have any feedback on the options presented in relation to the submission of planning consents and if there are any alternative options that we have not yet considered?

EPUKI strongly disagrees with Ofgem proposal to halt implementation of CP190. In its Decision on further amendments to the Capacity Market Rules on 28 June 2017, Ofgem decided to postpone the implementation of CP190 for two years so that it would come into force in for the 2019 Prequalification Window[1]. The rationale for this was to 'allow providers who are currently seeking national planning consents to continue to apply for Prequalification without being prejudiced by this change'. Ofgem's decision explicitly recognised 'that the lead time on national planning consents for significant infrastructure projects can be up to 18 months'. The statement in this current consultation that when making the decision in 2017 'we did not consider the length of the process for larger projects seeking a Development Consent Order ("DCO")' cannot therefore be correct and is not a justification for now reintroducing the ability to defer the provision of planning consents at prequalification.

As recognised by Ofgem, the DCO process can take up to 18 months from submitting an application to receiving consent. Given that the decision that CP190 would come into force for the 2019 Prequalification Window was taken in June 2017, any project that had applied for a DCO at the time of that decision will already have received planning consent. EPUKI has consulted the register of applications for DCOs, which verifies that all DCO applications submitted up to 28 June 2017 have now been determined or withdrawn[2]. In fact, consents have already been granted for projects that applied up to the end of 2017.

The only projects that would benefit from the immediate reintroduction of the ability to defer the provision of planning consents would be projects that applied for a DCO after Ofgem's decision to implement CP190 was announced. The next projects that may wish to defer provision of planning consents did not submit their applications for DCOs until May 2018, nearly a year after Ofgem's decision on CP190. Given the well-understood 18 month lead time to obtain a DCO, there was never a realistic prospect of these projects obtaining planning consent in time for the 2019 Prequalification Window. According to publicly available project information, these projects did not even begin substantive pre-application consultation with affected communities on their proposals (a crucial initial stage in project scoping) until after Ofgem's decision on CP190 was taken.

It therefore appears that the large projects which would benefit from the proposal to halt the coming into force of CP190 would have been aware of its introduction from the earliest stage of project development but did not submit their DCO applications in sufficient time to obtain consent by prequalification in 2019. Although the DCO process provides greater certainty over the timescales for a planning decision, we note that it does not provide any certainty that planning consent will be granted. Continuing to allow projects in the DCO process to defer providing evidence of planning consents therefore carries a high risk that the EMR Delivery Body will waste resource prequalifying plant which later cannot participate in the auction. We therefore cannot see any reason to facilitate the participation of these projects in this round of auctions when other market participants, operating reasonably and prudently in accordance with known market rules, have accelerated their project plans and incurred cost in doing so in order to meet the published requirements of the capacity market.

It is important that industry parties developing new build projects can have confidence in the stability of the capacity market rules in order to develop their project plans. This was the primary consideration in the decision to defer implementation of CP190 in 2017 and parties have been working on the assumption that CP190 would take effect in 2019 for nearly two years. Ofgem itself said in relation to CP190 that 'Participants planning to enter Prequalification should be aware of the need to submit planning consent, especially as the Capacity Market becomes established, and should do this in sufficient time to allow them to prequalify.'

In general, we do not consider that there has been a change in rationale for requiring projects to hold planning consent at the point of prequalification. Ofgem's view in 2017, which it confirmed in the rule change consultation in 2018, was that the costs of allowing deferral outweigh any benefits and that evidence suggests that allowing participants to defer submitting planning consents until after

[1] https://www.ofgem.gov.uk/publications-and-updates/decision-statutory-consultation-amendments-capacity-market-rules-1
[2] https://infrastructure.planninginspectorate.gov.uk/projects/register-of-applications/

prequalification does not increase auction participation. The three options set out in this consultation do not change these conclusions.

Option 1

We do not support the proposal to allow provision of planning consents to be deferred until the Financial Commitment Milestone (FCM). This would represent a major reduction in the level of assurance about deliverability of new build CMUs in the capacity market and could mean that many applications for new build CMUs are speculative. The FCM can be met as late as 16 months after Auction Results Day. This timescale (nearly 20 months between the Prequalification Window and having to providing evidence of planning consent) could mean that even projects which are large enough to go through the DCO process could delay applying for planning consent until after they have submitted a capacity market prequalification application. For smaller projects which only require consent from a Local Planning Authority, this timescale is sufficient that work on project development would not need to begin until a capacity agreement has been awarded. We do not consider it sensible to allow projects to participate in capacity auctions without any certainty that they may obtain planning consent and are therefore capable of completion and meeting their capacity market obligations. Only new build projects which have in place all the practical arrangements necessary to proceed to construction and are therefore able to contribute to security of supply should be allowed to participate in the capacity market.

Option 2

As explained above, we consider that the timetable for prequalification has been clear for many years and potential applicants have been given ample notice of the requirement to provide evidence of planning consents at the point of prequalification and should have planned on this basis. The timescales for the DCO process are well-defined and parties can easily work to achieve a planning decision prior to the closure of a prequalification window. We cannot see a justification for providing the proposed flexibility to delay provision of planning consents only to parties in the DCO process. We consider that the rules relating to provision of planning consents should apply equally to parties seeking consent at all levels as the DCO process does not necessarily provide additional confidence that a planning decision will be reached prior to an auction compared to the Section 36 or Town and Country Planning Act consent processes. This proposal would therefore seem unfairly to benefit a very small number of projects and we do not support it. We do not consider that there is any new evidence which justifies delaying the provision of planning consents for any plant.

Option 3

As explained above, we do not consider there is any justification for delaying the implementation of CP190 until 2020 as any larger projects which were seeking a DCO at the time of Ofgem's original decision on CP190 have already received consent.

We therefore consider that Ofgem should retain the status quo following CP190, ie. that the ability to defer provision of Relevant Planning Consents until after Prequalification should no longer apply from the 2019 Prequalification Window.

Question 10: Do you have any feedback on the amendments to the Prequalification data items listed in Table 1?

The proposed amendments seem reasonable. In addition, EPUKI considers that the following changes could be made:

Change	Rule	Description	Proposed action
Previous Settlement Period performance	3.6.1	We are unclear what additional delivery assurance this rule provides given that Existing Generating CMUs are required to demonstrate their derated capacity in Satisfactory Performance Days during the Delivery Year and failure to do so is a termination event. Furthermore, if Of15 is progressed, an additional test of connection capacity will be	Remove

		required for transmission connected CMUs prior to the T-1 auction for a Delivery Year. Rule 3.6.1(a) therefore appears to be unnecessary going forward.	
Construction Milestones	3.7.2(b)	The Construction Milestones cannot be meaningfully assessed by the Delivery Body. They therefore appear relevant only for monitoring progress of construction of a new build CMU and could be provided once a CMU has obtained a capacity agreement. This would also ensure that the information is current rather than already several months old at the time of the auction. If necessary, a New Build CMU could declare during prequalification that it intends to have commissioned by the start of the Delivery Year to provide some assurance at this stage that it is deliverable.	Delay

We note that there also remains a requirement for parties to submit MPANs under Rule 3.11.2(d) for CMUs opting out and this could be removed.

Regulatory burden – Reporting requirements

Question 11: Do you believe that removing progress reports and the associated ITE assessments in all cases except those outlined, alleviates the regulatory and administrative burden, while still providing the necessary levels of assurance?

Yes, we agree that progress reports and associated ITE assessments do not provide sufficient delivery assurance compared to the burden they place on capacity providers to justify their continued use.

Secondary trading arrangements

Question 12: Do you have a view on which of the sub paragraphs of Rule 9.2.6(d)(i) – (ix) should only apply to Eligible Secondary Trading Entrants and which to the other categories of Acceptable Transferees?

No EPUKI comment.

Question 13: Is it appropriate to allow all parties who have prequalified for the CM for that year to become prequalified for secondary trading? Are there any unintended consequences?

Yes, we consider that this would be appropriate.

Question 14: What form should a register of Acceptable Transferees take? How should it be populated? And who should be responsible for maintaining it?

We consider that the EMR Delivery Body should maintain a separate register of acceptable transferees.

Question 15: Do you agree that it would be desirable to allow obligations to be traded between parties in amounts greater than or equal to 0.5MW?

We do not consider that parties would in general wish to make trades that are this small, but we can see no reason why it should not be an option.

Question 16: Do you believe the current time period of five Working Days before the date of the trade by which applicants must submit a request to trade is appropriate or should this period be reduced? Do you have any suggestions on a revised length of this period?

We consider that parties should be able to notify the EMR Delivery Body of an intended trade much later than five working days before the trade is meant to take effect. We are unclear why it should take the Delivery Body so long to decide whether to approve a trade. The Delivery Body should aim for the assessment process to consist of checks which could be automated via the EMR Portal, allowing a quick turnaround for requests. We therefore consider that the time period for submitting a trade should be two working days before the trade is scheduled to take effect, with an aim to reduce this to one working day.

Question 17: Do you believe that the current period of three months in which NGESO have to notify a Secondary Trading Entrant of the Prequalification decision is appropriate or do you feel this should be shortened? Do you have any suggestions on a revised length of this period?

Three months is too long a period and the timescales should be shortened to be aligned with those for the standard prequalification process, ie. six weeks.

Question 18: Do you agree with adding a provision for the time frame over which NGESO must respond to requests for a trade?

Yes.

Question 19: Do you think it is appropriate to extend the defined trading window to the results day of the T-4 Auction for the relevant Delivery Year?

Yes, we consider that this change would better reflect the commercial realities that capacity providers face.

Question 20: Does it continue to be appropriate for Transferors to be required to meet their SCM prior to engaging in trading?

No EPUKI comment.

Question 21: Does it continue to be appropriate for Transferees to be required to meet their SCM prior to engaging in trading?

No EPUKI comment.

Question 22: How should we address the risk of a trade being withdrawn where a Transferor is terminated after a trade has been registered?

No EPUKI comment.

Question 23: How should we address the transfer termination risk where a partial or full Capacity Agreement is traded for part of, or the entire duration of a Delivery Year?

No EPUKI comment.

Question 24: Are there any amendments that could be made to the SPD framework following a secondary trade, specifically relating to partial agreement trades?

No EPUKI comment.

Other changes to the Rules

Question 25: Do you believe the options presented related to SPD data submission are suitable and are there any options we may not have considered in order to help mitigate the impact on capacity providers?

No EPUKI comment.

Question 26: Which aspects of a CMU configuration do you think should not be able to be amended following Prequalification?

We consider that Rule 4.4.4 should be amended to allow elements of the physical configuration of the CMU, such as the relative sizes of the generating units on a site, to be amended following prequalification. The current rules require applicants to specify at prequalification the size of units which they will build and therefore effectively lock the applicant into a choice of technology or equipment supplier at that point. However, given the long gap between prequalification and the auction (over 18 weeks in 2017) and ongoing developments in technology, an applicant may not finalise their selection of equipment and configuration of units until closer to (or even after) the auction. It would, for example, be perverse if a capacity provider was penalised for constructing a unit which is larger than the connection capacity against which it has secured a capacity agreement or for constructing one rather than two units when the same capacity has been delivered.

We consider that allowing amendments to the configuration of units while maintaining the same overall minimum capacity of a CMU would make no difference to the outcome of the capacity market in terms of security of supply, but could benefit consumers by allowing developers to select a solution that best meets the requirements of the market and which can be delivered at lowest cost. We therefore consider that an amendment to Rule 4.4.4 which facilitates this flexibility should be progressed as soon as possible.

Question 27: Is there any other data that would be useful to add to the CMR and why?

No EPUKI comment.

Question 28: How should the ALFCO formula be adjusted for Interconnectors when their output is affected by actions by NGESO?

No EPUKI comment.

Question 29: Should system to generator intertrips be included as a RBS in Schedule 4 to relieve providers of their obligations when affected by such an intertrip?

No EPUKI comment.

Question 30: How should we differentiate between firm and non-firm connection agreements at the Distribution level?

No EPUKI comment.

Question 31: How should Distribution-connected generators with non-firm connection agreements be de-rated to accurately account for their contribution in a stress event?

No EPUKI comment.

NGESO's incentives and role in the CM

Question 32: Do NGESO's current financial incentives on demand forecasting accuracy, dispute resolution, DSR Prequalification, and customer and stakeholder satisfaction drive the intended behaviours by NGESO?

See comments below.

Question 33: Do the financial incentives listed above remain fit for purpose?

See comments below.

Question 34: What behaviours and outcomes should NGESO's financial incentives drive? What form should these incentives take?

The aim of the incentive regime should be to ensure that the EMR Delivery Body is providing a sufficiently high standard of service to capacity market participants and is reducing the challenges faced by participants in completing the capacity market processes which it administers.

Question 35: Do you agree that a demand forecasting accuracy incentive remains appropriate?

We agree that some form of demand forecasting accuracy incentive remains appropriate and that this may be best applied within NGESO's wider demand forecasting incentives.

Question 36: Do you agree that the dispute resolution incentive should be based on a proportion of Prequalification or Reconsidered Decisions overturned by the Authority rather than on the absolute number?

This incentive should encourage NGESO to take decisions at the prequalification and Tier 1 appeals stage which are robust and defensible. The current incentive based on the raw number of decisions overturned is likely to encourage the EMR Delivery Body to ensure that every decision is justifiable.

Question 37: Do you agree that the DSR Prequalification incentive should be replaced by an incentive intended to drive NGESO to aid smaller providers, new entrants, and innovators navigate the CM?

Yes, we are unclear why there remains a specific incentive related to DSR prequalification when DSR is an increasingly established technology in the capacity market. It would be more appropriate for this incentive to relate to NGESO helping both new and existing applicants navigate the capacity market rules and reducing the complexity of the capacity market processes for capacity market participants.

Question 38: Do you agree that an incentive on NGESO's customer service and stakeholder engagement remains appropriate? What form should this incentive take?

We consider that it is appropriate to incentivise the EMR Delivery Body in relation to its standards of customer service and stakeholder engagement. However, a single annual survey may not accurately capture the overall impression of the Delivery Body's service in different areas. We consider that seeking ongoing feedback (including online), particularly after major milestones such as prequalification and the auction, may give a more accurate representation of stakeholders' opinions as they arise. This could be supplemented by the introduction of a stakeholder panel to challenge and comment on Delivery Body performance. EPUKI also wishes to see the EMR Delivery Body introduce targets for responses to queries and for consistency of information provision.

Question 39: Do you agree that the incentives on NGESO for delivering the CM should be aligned with NGESO's incentive framework? Should the CM incentives be incorporated into NGESO's incentive framework in the longer term?

No EPUKI comment.

Question 40: Does the separation of the EMR Delivery Body from NGESO continue to remain appropriate given the separation of NGESO from the rest of NGESO plc?

No EPUKI comment.