



**Single Electricity Market
(SEM)**

Capacity Market Code Working Group 12

Modification Decision Paper

**CMC_05_20 Amendments Relating to the Clean Energy
Package**

SEM-20-026

24 April 2020

EXECUTIVE SUMMARY

The purpose of this decision paper is to set out the decisions relating specifically to the Proposed Modification CMC_05_20 to the Capacity Market Code (CMC) discussed at the Working Group held on 31 March 2020.

The decisions within this paper follow on from the associated consultation (SEM-20-023¹) which closed on 20 April 2020.

This paper considers the proposed modification presented at WG12. The proposed modification relates to:

- CMC_05_20 – Modification to Implement amendments as required by the Clean Energy Package Regulation EU 2019/943

The purpose of this modification is to update the Capacity Market Code with the requirements placed upon capacity markets, as set out in the Energy Regulation EU 2019/943 which forms part of the European Clean Energy Package arrangements. This Regulation came into force on 4 July 2019 and impacts on capacity auctions held in January 2020 onwards. The particular focus of this modification relates to compliance with the emissions limits as set out in Article 22 (4) of the Regulation.

18 responses were received to the Capacity Market Code Working Group 12 Urgent Modification Consultation Paper, none of which were marked as confidential.

Summary of Key Decisions

The purpose of the proposed modification was to further the Code Objectives within the CMC, specifically:

A.1.2.1 This Code is designed to facilitate achievement of the following objectives (the “Capacity Market Code Objectives”):

- (b) to facilitate the efficient, economic and coordinated operation, administration and development of the Capacity Market and the provision of adequate future capacity in a financially secure manner;*

This modification is to bring the Code up to date with the legal requirements for capacity mechanisms as set out in Regulation 2019/943. Having the Code aligned with these Regulations will allow for the application, qualification and overall auction process to be carried out in a coordinated way and ensure that adequate future capacity is secured which meets the emissions limits specified in the Regulation 2019/943.

¹ Capacity Market Code Working Group 12 CMC_05_20 Modification Consultation Paper:
https://www.semcommittee.com/sites/semc/files/media-files/SEM-20-023%20WG12%20CMC_05_20%20Urgent%20Consultation%20Paper.PDF

- (c) *to facilitate the participation of undertakings including electricity undertakings engaged or seeking to be engaged in the provision of electricity capacity in the Capacity Market;*

This modification seeks to ensure that those capacity providers already engaged or seeking to engage in the provision of electricity capacity in the Capacity Market do so in a manner which meets the requirements set out in Regulation 2019/943, predominantly relating to adherence of the emissions limits specified.

- (g) *through the development of the Capacity Market, to promote the short-term and long-term interests of consumers of electricity with respect to price, quality, reliability, and security of supply of electricity across the Island of Ireland.*

This modification seeks to develop the Capacity Market in line with the requirements set out in Regulation 2019/943 and will promote the interests of consumers of electricity with respect to the quality of the electricity supplied due to the environmental benefits of lower emissions.

The approach taken in this decision has been to make the CMC modifications which are necessary and appropriate for the forthcoming T-4 CY2023/24 capacity auction and also to include those modifications which can be reasonably made at this stage. This is viewed as the best approach available at this time to better align the Capacity Market Code with the Clean Energy Package CO₂ emission requirements.

The responses, while welcoming the intent of the RA Technical Guidance, did have a range of concerns with some principles in the guidance and therefore the decision has been taken to not include the RA Technical Guidance in this decision paper. Thereby allowing for the RAs to further develop that document and engage further with industry on its development, recognising the qualification window for the T-4 CY2024/25 auction is scheduled to open in early June 2020.

Following consideration of the proposal and the responses received to the consultation the SEM Committee have made a number of amendments, which are detailed further in section 2.3, in order to arrive at the final approved CMC_05_20. The final drafting of this modification is provided in Appendix A. This decision takes effect on 27 April 2020.

Contents

EXECUTIVE SUMMARY	2
1. Overview.....	5
1.1 Background.....	5
1.2 Responses to Consultation	7
2. CMC_05_20 – Modification to Implement Amendments as required by the Clean Energy Package Regulation EU 2019/943	9
2.1 Consultation Summary	9
2.2 Summary of Responses	10
2.3 SEM Committee Decisions.....	15
3. Next Steps.....	17

Appendix A – Approved Modification Text Drafting

Appendix B – CMC_05_20v2 Modification Proposal (as consulted upon)

Appendix C – Responses to *SEM-20-023 - Capacity Market Code Working Group 12 Urgent
Modification Consultation Paper*

1. OVERVIEW

1.1 BACKGROUND

1.1.1 Decisions made during the development of the I-SEM CRM Detailed Design were translated into auction market rules to form the Capacity Market Code (CMC) (SEM-17-033) which was published in June 2017. The most recent version was published on 10 October 2019. The CMC sets out the arrangements whereby market participants can qualify for, and participate in, auctions for the award of capacity. The settlement arrangements for the Capacity Remuneration Mechanism (CRM) form part of the revised Trading and Settlement Code. The most recent version of the Trading and Settlement Code was published on 12 April 2019. Section B.12 of the CMC outlines the process used to modify the code. In particular, it sets out the handling of proposing, consideration, consultation and implementation or rejection of Modifications to the CMC.

Process for modification of the CMC

1.1.2 Section B.12 of the CMC outlines the process used to modify the code. In particular, it sets out the processes for proposing, consideration, consultation and implementation or rejection of Modifications to the CMC.

1.1.3 The purpose of the Modifications process is to allow for modifications to the CMC to be proposed, considered and, if appropriate, implemented with a view to better facilitating code objectives as set out in Section A.1.2 of the CMC. (B.12.1.2).

1.1.4 Modifications to the CMC can be proposed and submitted by any person, (B.12.4.1), at any time. Unless the modification is urgent modifications are subsequently discussed at a Working Group held on a bi-monthly basis. Each Working Group represents an opportunity for a modification proposer to present their proposal(s) and for this to be discussed by the workshop attendees.

1.1.5 For discussion at a Working Group, Modification proposals must be submitted to the System Operators at least 10 working days before a Working Group meeting is due to take place. If a proposal is received less than 10 working days before a Working Group and is not marked as urgent it is deferred for discussion to the next Working Group.

1.1.6 Following each Working Group, and as per section B.12.5.6 of the CMC, the RAs are required to publish a timetable for the consideration, consultation and decision relating to the Modification(s) proposed during a Working Group.

1.1.7 If a proposal is received and deemed to be contrary to the Capacity Market Code Objectives or does not further any of those objectives, the Regulatory Authorities (RAs) will reject the proposal on the grounds of being spurious, as set out in section B.12.6 of the CMC.

1.1.8 If a proposed modification is deemed urgent by the RAs, CMC Section B.12.9.5 will become active and the RAs will determine the procedure and timetable to be followed in the assessment of the Modification Proposal. The CMC states that the procedure and timetable may vary from the normal processes set out in the code, allowing for the modification to be fast-tracked.

Urgent Modifications

- 1.1.9 This decision paper is concerned with an urgent modification proposal.
- 1.1.10 A proposer may choose to mark a Modification proposal as “Urgent”. (B.12.9.1). In this case, the RAs, as per section B.12.9.3 of the CMC, will assess whether or not the proposal should be treated as urgent. If the RAs deem a proposal to be urgent they have the power to fast-track the proposal.
- 1.1.11 In this regard B.12.9.5 provides:
- “If the Regulatory Authorities determine that a Modification Proposal is Urgent, then:*
- a) the Regulatory Authorities shall determine the procedure and timetable to be followed in assessing the Modification Proposal which may vary the normal processes provided for in this Code so as to fast-track the Modification Proposal; and*
- b) subject to sub-paragraph (a), the System Operators shall convene a Workshop.”*
- 1.1.12 The RAs may request the SOs to convene a Working Group to discuss the proposed Modification.

Process and Timeline for this Modification

- 1.1.13 On 16 March 2020 the RAs submitted a modification proposal (CMC_05_20) under the terms of B.12.4. The Modification Proposal was initially not deemed ‘urgent’, given the proximity of the scheduled Working Group, however following the Working Group and given the proximity to the upcoming T-4 CY2023/24 Capacity Auction, this modification was deemed Urgent.
- 1.1.14 The System Operators convened Working Group 12 where this Modification Proposal was considered on 31 March 2020. The Regulatory Authorities, following WG12, determined the Modification Proposal as Urgent. This was because the Modification Proposal was proposed to deal with a matter that could reasonably be anticipated would imminently and unduly interfere with, disrupt, or threaten the proper operation of the Capacity Market. The Modification Proposal was updated to reflect the discussion and concerns raised at the working group and a version 2 was provided with the consultation paper associated with the modification CMC_05_20².
- 1.1.15 On the 8 April 2020 the RAs determined the procedure to apply to the Modification Proposal. The procedure was designed to fast-track the Urgent Modification Proposal for which a timetable was published (SEM-20-022) indicating a consultation response time of seven Working Days (as defined in the CMC), from the publication date of the Consultation (SEM-20-023). The Consultation closed on Monday, 20 April 2020.
- 1.1.16 An overview of the timetable is as follows:

² https://www.semcommittee.com/sites/semc/files/media-files/SEM-20-023%20%28b%29%20App%20B%20-%20CMC_05_20%20v2%20Implement%20Required%20CEP%20Amendments.pdf

- i. The System Operators organised a workshop on 31 March 2020 to discuss a range of Modification Proposals including this Modification CMC_05_20.
- ii. The System Operators were then required to prepare a report of the discussions which took place at the workshop, provide the report to the RAs and publish it on the Modifications website.
- iii. The RAs were required to publish an Urgent Modification Process Timetable for consideration, consultation and decision relating to the Modification Proposal.
- iv. The RAs were to proceed with the consultation process on the Proposed Modification, with a response time of seven Working Days (as defined in the CMC), from the date of publication of the Consultation.
- v. As contemplated by B.12 the RAs will make their decision following the public consultation and if they are satisfied that the Modification will or is likely to contribute to the achievement of the Capacity Market Code Objectives. Given this is an Urgent Modification the timetable proposed a decision paper being published by the RAs on 24 April 2020.

1.1.17 The purpose of this decision paper is to set out the decision relating to the Urgent Modification Proposal discussed during Working Group 12 to either:

- a) Implement a modification;
- b) Reject a modification; or
- c) Undertake further consideration in regards to matters raised in the modification proposal.

1.1.18 This decision paper sets out a summary of the consultation proposal and sets out the SEM Committee's decision.

1.2 RESPONSES TO CONSULTATION

1.2.1 This paper includes a summary of the responses made to the Capacity Market Code Modifications consultation paper (SEM-20-023) which was published on 8 April 2020.

1.2.2 A total of 18 responses were received by close of the consultation period. The respondents are listed below and copies of the responses received can be obtained from the SEM Committee website.

- Aughinish Alumina
- Bord Gáis Energy (BGE)
- Bord na Móna (BnM)
- CEWEP Ireland
- Clarke Energy Ireland Limited
- Demand Response Association Ireland (DRAI)
- Energia
- ESB GT
- Fingleton White
- Gas Networks Ireland (GNI)
- Grid Beyond
- iPower Solutions

- Eirgrid/SONI
- Electricity Association Ireland (EAI)
- Enel-X (EnerNoc)
- Powerhouse Generation Ltd
- Tynagh Energy Limited (TEL)
- SSE

2. CMC_05_20 – MODIFICATION TO IMPLEMENT AMENDMENTS AS REQUIRED BY THE CLEAN ENERGY PACKAGE REGULATION EU 2019/943

2.1 CONSULTATION SUMMARY

- 2.1.1 The modification proposed to update the Capacity Market Code with the requirements placed upon capacity markets, as set out in the Energy Regulation EU 2019/943 which forms part of the European Clean Energy Package arrangements. This Regulation came into force on 4 July 2019 and impacts on capacity auctions held in January 2020 onwards. The particular focus of this modification relates to compliance with the emissions limits as set out in Article 22 (4) of the Regulation and their impact on the CMC.
- 2.1.2 The Modification Proposal adds checks to various stages of the auction process to ensure that Capacity Market Units comply with the CO₂ emission limits set out in the Clean Energy Package Regulation. This impacts on a number of areas of the Code, particularly the application and qualification sections (E.2, E.7, Appendix D) as well as the obligations on awarded capacity (I.1) including obligations on new capacity in terms of both the Minimum Completion and Substantial Completion criteria (J.2, J.6).
- 2.1.3 The discussion on this Modification at the Working Group gave an opportunity for the TSOs and other industry representatives to raise any concerns or uncertainties they had on the proposed approach. The TSOs were concerned that without guidelines for assessing the emissions limits within the applications they may be faced with a wide range of varying calculations which would greatly add the burden of processing these applications for qualification. A summary of the areas of concern which were mentioned are listed below:
- Treatment of demand sites e.g. movement between DSUs and what is considered ‘new’ or ‘existing’ demand site;
 - Some technology types are more complex and what would the arrangements be for them e.g. CHP units;
 - Confusion as to how the 350 kg CO₂ on average per year is to be calculated, as it’s not clear from the ACER Opinion and appears to be a recommendation as opposed to definitive;
 - Uncertainty as to whether secondary trading can be used if an CMU has or is in risk of exceeding the emissions limit;
 - Uncertainty as to the purpose of the proposed introduction of section I.1.2.1(d) within the section ‘Obligations Associated with Awarded Capacity’.
- 2.1.4 Following the discussion at the Working Group on 31 March 2020 a number of changes were made to the modification and an updated Modification, named version 2, was provided in Appendix B of the RAs consultation (SEM-20-023).

- 2.1.5 Following the concerns about areas where the ACER opinion is unclear, the amended Modification, provided with the Consultation Paper, included a new (replacement) section D.4 which introduces the concept of a technical guidance to be provided by the RAs to create greater clarity as to the determination of CO₂ emissions to be made under the CMC. The intention was to ensure that all Applications for Qualification are made and validated on a consistent basis. A draft of the high level technical guidance being considered by the RAs was attached as Appendix C to the Consultation Paper and covered the issues listed above which were raised at the Workshop.
- 2.1.6 The Consultation Paper (SEM-20-023) together with the Appendices was published on 8 April 2020. Given this was an Urgent Modification Consultation the closing date was Monday 20 April 2020.

2.2 SUMMARY OF RESPONSES

- 2.2.1 A total of 18 responses were received to the consultation. In summary the majority appreciated the updates which had been made to the CMC modification proposal version 2 and the introduction and intention of the proposed RA technical guidance. The key concerns raised related to the timelines for the turnaround for this modification, particularly given the significance of the RAs proposed technical guidance, and some of the proposals within the RA technical guidance.
- 2.2.2 Because of these concerns, several respondents gave a preference for the decision paper to only cover off those amendments that are required to the CMC specifically in relation to the T-4 CY2023/24 capacity auction due to take place on 27 April 2020. Thereby allowing for further consideration of the technical guidance and the remaining proposed CMC amendments.
- 2.2.3 A more detailed summary of the responses is provided below together with the full responses being published alongside this decision paper.

Specific Comments on Consistency with the Code Objectives

- 2.2.4 ESB welcomed the amendments made in the revised modification proposal but continue to have concerns around the Code Objectives which focus on transparency and non-discrimination. Energia is of the view that the modification doesn't comply fully with Regulation Article 22(4)(b) and therefore it doesn't further the Code Objectives.
- 2.2.5 Aughinish Alumina welcomed the revised proposal (version 2) but emphasised the need for care in relation to the RAs technical guidance to ensure the various Code Objectives are met, to ensure low carbon intensity CHP units can participate in the Capacity Market. Emphasis was placed on a number of Code Objectives including the need to promote competition, provide transparency and avoid undue discrimination.
- 2.2.6 DRAI/Grid Beyond/iPower/Enel-X/Powerhouse Generation all raised a range of concerns relating to the proposed modification and its consistency with the Code Objectives. Particularly given the proposed RAs technical guidance which provided a new definition for 'started commercial production' specifically for DSUs/AGUs. In their view, inter alia, this introduces discrimination against particular unit types and lacks the transparency sought by the Code Objectives.

2.2.7 Bord na Mona consider that in order to properly facilitate the correct informed and considered decisions, due consideration should have been afforded to industry to ensure the Code Objectives relating to transparency and no undue discrimination are met. They also added that in order to meet the Code Objective relating to no undue discrimination the CO₂ limits need to be enforced in real time, and the CMC holds responsibility to ensure effective delivery of capacity.

Specific Comments on Proposed Wording for CMC

2.2.8 Specifically, in relation to the proposed wording for the CMC there were a number of respondents where were supportive of these amendments and provided no further comment on this specific wording. Such respondents included BGE, Gas Network Ireland, Enel-X and Aughinish Alumina. It is important to note that while they were supportive of the CMC wording most did seek further clarifications or raised concerns with the technical guidance which is noted later in this chapter.

2.2.9 The updates made to the proposed new CO₂ Limits glossary term were welcomed by Aughinish Alumina and Clarke Energy, specifically the reference to the Regulation. The TSOs proposed additional wording to the definition to refer to the RAs decision in recognition that the ACER Opinion applies unless otherwise stated in the RAs decision.

2.2.10 No specific comments were received relating to the addition of the new paragraph E.2.1.6.

2.2.11 Powerhouse Generation were of the view the addition of the new paragraph E.7.2.3 as drafted was inconsistent with the intention of paragraph E.7.4.4 and E.7.4.5 as it does not define that it does not apply to aggregated units i.e. meaning the whole Candidate Unit application shall be rejected, rather than that part which may be non-compliant. Powerhouse Generation are concerned with the lack of published emission limits calculations making it difficult for participants to gauge whether their Candidate Unit complies with the CO₂ emission limits. The TSOs proposed alternative wording for this new paragraph E.7.2.3 to reflect that the TSOs consider Applications for Qualification at a whole Candidate Unit Level as they do not issue partial decisions in respect of Existing or New Capacity. In the TSOs view to do so would have a significant impact on process.

2.2.12 There was a mixed response, from those who commented, on the revised proposed amendments to paragraphs E.7.4.4 and E.7.4.5., although the majority were in support of the wording as drafted. DRAI, Grid Beyond, iPower, Clarke Energy, Fingleton White all gave their support for the amendment to the treatment of aggregated units with some referring to it as being very reasonable and important. DRAI and some other respondents noted that the use of the word 'element' in the proposed drafting was not defined. Powerhouse Generation requested this be defined to aid the calculation for CO₂ compliance.

2.2.13 However, the TSOs were very concerned with these proposed changes to E.7.4.4. and E.7.4.5 as it introduced partial rejection of components of aggregated units such as DSUs/AGUs, representing a significant departure from the current approach in the CMC of approving/rejecting at a Candidate Unit Level. The TSOs consider that if this is the RAs intention, it needs to be considered more broadly together with the subsequent impact and the TSOs are happy to engage further with the RAs on this. However, in the meantime the TSOs recommended the proposed wording be reverted back to that provided in the original modification proposal (version 1

presented at the workshop). In the TSOs view it is therefore the responsibility of the participant to submit an Application for Qualification that complies with the requirements of the CMC in its entirety.

- 2.2.14 Both Bord na Mona and Powerhouse Generation commented on E.7.5.1 relating to new capacity. Bord na Mona considered there to be a need for new capacity to qualify and be verified at T-0 i.e as a defined milestone within the Project Implementation Plan, checked back to the CO₂ projected Specific Emissions at the time of qualification.
- 2.2.15 A number of respondents had concerns with the proposed wording in section I.1.2.1(d). ESB, Bord na Mona and the TSOs were concerned about the risk of unintended consequences of the current proposed wording. They were concerned that this gave rise to undue exposure and risk of a CMC suspension and the potential knock on effect of a Trading and Settlement Code suspension. Therefore, ESB's proposal was to remove this altogether from I.1.2.1(d) whereas the TSOs and Bord na Mona requested the provision of more explicit and transparent implications of non-compliance within this provision.
- 2.2.16 Furthermore, in relation to section I.1.2.1, the TSOs noted that the ACER Opinion recommends using the Design Efficiency for calculating 'Specific Emissions' with 'Annual Emissions' calculated using historical 3 calendar years. The TSOs therefore suggested that 'Specific Emissions' do not change unless the Generating Unit changed and that 'Annual Emissions' should only change on an annual basis. The TSOs recommended this detail should be included in the RAs technical guidance but based on this understanding the assessment and enforcement of the proposed wording in I.1.2.1 should be carried out annually.
- 2.2.17 Bord na Mona were of the view that there is a clear requirement for the CMC (suggesting section D.4, I and J) to ensure the effective application and enforcement of CO₂ emission limits and for this to be completely transparent to all and be fair and non-discriminatory. Energia also were of the view that the CMC needs to detail the ex-post verification, sanctions for emission breaches and the recovery of capacity payments.
- 2.2.18 In respect of the amendments to the Qualification Data outlined in Appendix D, ESB suggested that for some participants qualifying for an auction it may not be possible to have selected the specific technology prior to the qualification and therefore it may not be possible to have evidence of CO₂ emissions for that unit to be qualified. ESB therefore proposed an alternative, a statement of intention (signed by a Director) that the participant will comply with the emissions specification as part of the procurement, similar to what was requested for the T-4 CY2023/24 auction. The TSOs also responded specifically in relation to Appendix D 4(n) and suggested the wording should make explicit reference to 'Specific Emissions' and 'Annual Emissions' to ensure these particular values are submitted as part of the qualification process.

Comments relating to the RAs Technical Guidance

- 2.2.19 The vast majority of the respondents, BGE, Clarke Energy, DRAI, EAI, Energia, ESB, Fingleton White, Grid Beyond, iPower and TSOs, supported the introduction and the intention of the Technical Guidance to provide clarity for specific areas relating to CO₂ emission limit compliance.

Many recognised that the draft technical guidance went some way to alleviate some of the concerns raised at the workshop, but that further clarification was needed in areas.

- 2.2.20 This RA Technical Guidance was considered an important document by most respondents and therefore had differing views on its governance. The TSOs welcomed it and considered it a key document to ensuring participants are required to apply a consistent approach when calculating their CO₂ emissions. Energia were of the view it should be a working document, subject to review, consultation and updating from time to time. CEWEP/DRAI/Grid Beyond/iPower were of the view that the principles in this draft technical guidance should be incorporated into the body of the CMC with CEWEP proposing wording for a new CMC Appendix J, based on the principles provided in the draft technical guidance. Their concern with it being outside of the CMC related to uncertainty as to the governance/modification/consultation processes.
- 2.2.21 ESB and the TSOs requested further clarity in relation to point 2 of the guidance. They requested a link back to the relevant section of the ACER Opinion and also to incorporate the ACER reference to the use of 3 years of production data.
- 2.2.22 Further clarify was requested generally for points 2, 3 and 4 in respect of the time horizons and more clarity as to whether it related to capacity which started commercial production before or after 4 July 2019. The TSOs noted that the choice of horizon may have material implications for certain units and care should be taken to ensure that the historical period considered doesn't introduce outcomes that are not representative of the unit's emissions under normal operating conditions.
- 2.2.23 Bord na Mona welcomed the clarification in point 4 that only the most recent calendar year of historic data should be used for calculating the CO₂ emissions for 350kg of CO₂ per installed kW.
- 2.2.24 Of those who commented on point 5, relating to secondary fuel, there was a mixed response. The TSOs strongly agreed with the principle and consider it critical for operational security. They noted that while the ACER Opinion includes a fuel share provision, the RAs technical guidance may offer an alternative which could be important for new units where there is no historical operation on which to base the calculation. Tynagh also supported the secondary fuel principle of averaging the emissions. ESB requested this point be removed given their concern with its inclusion. If it is not to be removed, ESB consider it necessary to clarify if it's the Design Efficiency or Annual Emissions which should be applied. SSE were unsure as to the intention of this point on secondary fuel.
- 2.2.25 Point 6 related to high efficiency CHP units, for which there was much support and recognition for the proposed principle. Those respondents who specifically mentioned their support were Aughinish Alumina, BGE, Clarke Energy, DRAI, EAI, Fingleton White, Gas Network Ireland, iPower and Tynagh. Aughinish Alumina, Clarke Energy and Fingleton White all agreed with the explicit reference to the well-established EU ETS methodology which includes the emissions calculation methodology 'Heat Bonus Approach' by the European Investment Bank.
- 2.2.26 DRAI/Grid Beyond/iPower/Clarke Energy all supported the clarification in point 7 that each element comprising the aggregated unit will be considered separately on the basis of its CO₂ emissions. Thereby confirming DRAI's view that the emissions limits apply to Individual Demand

Sites as opposed to the overarching DSU/AGU. Reference was again made to the use of ‘element’ in proposed drafting not having been defined.

- 2.2.27 Point 8 related to further clarity, based on an ACER document, as to when an aggregated unit has ‘started commercial production’. The DSU participants and representatives, DRAI, Enel-X, Fingleton White, Grid Beyond, iPower, and Powerhouse Generation were very concerned with this as in their view it threatens to introduce an impactful and discriminatory distinction between DSUs/AGUs and other unit types. They view it as going beyond the requirements of both the Regulation 2019/943 and the ACER Opinion. In their view the ACER document relied upon for this definition is a non-binding consultation response and noted it was not included in the final ACER Opinion. They consider this a highly impactful policy change which was unexpected and radically different to that understood by the industry. They therefore proposed the definition be removed or alternatively the wording be amended based upon the GB approach.
- 2.2.28 Both Energia and Bord na Mona noted that point 9 allows for the adoption of own approach despite the clarifications given in the above points within the technical guidance. SSE are of the view there is a risk of differing interpretations when using ‘reasonable endeavours’ and were not comfortable with this without further clarity.

Comments relating to Timing and Process

- 2.2.29 Concern regarding the timings associated with this modification and the subsequent consultation were echoed across most of the responses. Those who made specific reference included BGE, Bord na Mona, DRAI, EAI, Energia, ESB, Grid Beyond, iPower, SSE and Tynagh. Similar concerns were shared, predominantly that this modification had been reclassified as urgent due to the proximity of the T-4 CY2023/24 capacity auction and the very limited timelines which also coincided with the Easter holidays. Furthermore, the modification was of significant importance, particularly given the introduction of the RA technical guidance which was first made known to the industry on 8 April as part of the consultation.
- 2.2.30 DSU participants and representatives, DRAI/Grid Beyond/iPower/Powerhouse Generation/Enel X all had particular concerns with the proposed definition of ‘starting commercial production’ for DSUs/AGUs. Particularly given the challenging nature of such a proposal within the very tight timelines and it being considered after the T-4 CY2023/24 qualification has been completed and so close to the auction in which it is intended for these changes to apply. There is now uncertainty as to the impact this change may have on participation in the T-4 CY2023/24 auction and one respondent, iPower, requested the auction be delayed to give participants sufficient time to re-assess all elements of their generation units.
- 2.2.31 Because of these concerns a number of respondents, Bord na Mona, EAI, Energia, SSE and Tynagh requested a two phased approach to the decisions. The first phase would consider only those specific modifications which are required for the T-4 CY2023/24 capacity auction due to take place on 27 April 2020. From a CEP perspective the focus of this auction is on those units which started commercial production on or after 4 July 2019. Thereby allowing for further consideration and engagement with industry on the qualification processes, technical guidance and other

considerations specific to capacity which had commenced commercial production by 4 July 2019, as decisions on these units are not required until June 2020³.

Other Comments Received

- 2.2.32 CEWEP were of the view that the RAs technical guidance should acknowledge the SEM Committee’s treatment of waste to energy landfill gas emissions (SEM-13-006) and this should be included to maintain a consistent methodology for the assessment of emissions.
- 2.2.33 Bord na Mona is of the view that participants to the CMC which are in breach of the provisions of Article 22 (4) a) and b) of Regulation 2019/943 should not be able to avail of secondary capacity trading and that the CMC (perhaps section H.6.) needs to be modified to this effect.

2.3 SEM COMMITTEE DECISIONS

- 2.3.1 The SEM Committee are grateful to those who took the time to respond to the consultation particularly given the current working arrangements with Covid-19 together with the Easter holidays.
- 2.3.2 The approach taken with this decision has been to make the CMC modifications which are necessary and appropriate for the forth coming T-4 CY2023/24 capacity auction and also to include those modifications which can be reasonably made at this stage. This is viewed as the best approach available at this time to better align the Capacity Market Code with the Clean Energy Package CO₂ emission requirements.
- 2.3.3 The responses, while welcoming the intent of the RA Technical Guidance, did have a range of concerns with some principles in the guidance and therefore the decision has been taken to not include the RA Technical Guidance in this decision paper. Thereby allowing for the RAs to further develop that document and engage further with industry on its development, recognising the qualification window for the T-4 CY2024/25 auction is scheduled to open in early June 2020. Therefore, the final modification (Appendix A) included in this decision has strengthened section D.4. in the absence of a RA Technical Guidance.
- 2.3.4 Reflecting on the feedback received from DSU participants and their representatives, specifically on the proposed interpretation of “started commercial production”, the RAs have taken on board their recommendation to use a similar approach to that in the GB Capacity Market. This has the effect of removing this principle (point 8) from the RA Technical Guidance and incorporating new glossary definitions into the CMC. The proposed glossary term for CO₂ Limits has been updated and extended to separately consider each of the two parts of Regulation Article 22 (4) to make it clear whether part (a) or part (b) are to be applied to each Capacity Market Unit.
- 2.3.5 Furthermore, a new definition “Date of Start of Commercial Production” has been included which is then used to identify whether CO₂ Limits will apply immediately (“new” capacity) or will not apply until 1 July 2025 (“existing” capacity). This new CMC definition borrows from the principles

³ T-4 CY2024/25 Capacity Auction Initial Auction Information Pack is due to be published June 2020

established in the existing GB Capacity Market Rules using the first date when the Capacity Market Unit or CMU Component has been commissioned and started providing metered electrical output. A Declaration of this date has been added to the Qualification Data outlined in Appendix D to be provided to the TSOs. As a result, this declaration falls within the scope covered by the Director's certificate which forms part of the Application for Qualification.

- 2.3.6 Furthermore, in recognition of the feedback from DSU participants and their representatives who were concerned about a lack of clarity arising from the use of the word 'element' when referring to DSU and AGU aggregated units, this decision introduces a new definition 'CMU Component' to make this clear for all aggregated units.
- 2.3.7 A number of changes have been made to Section E of the Code, which relates to Qualification, to reflect feedback in the responses and to avoid the risk of unintended consequences. No changes have been made to the new paragraph E.2.1.6. New paragraphs E.7.2.3, E.7.4.4 and E.7.4.5 have had to be updated to avoid unintended consequences with the Trading and Settlement Code. Partial Qualification of a CMU would create a disconnect between the unit Awarded Capacity in the CMC and the unit against which capacity market settlement would occur under the TSC. Any attempt to resolve this issue would require modification to both the TSC and the SEMO systems and lies outside the scope of this Modification. As a result, it is not possible to allow partial qualification of DSUs and AGUs in this Modification.
- 2.3.8 Having considered the responses to the proposed amendment to section I.1.2.1, the RAs agree that non-compliance with the CO₂ Limits in the Capacity Market may, due to the suspension and termination rules in section B.13. of the CMC, lead to unintended consequences including suspension/termination under the Trading and Settlement Code. As a result, this decision does not make any amendment to Section I.1.2.1 at this time. However, it is the SEM Committee's intention to propose a change to Section I.1.2.1 in the future once the RAs have considered this issue further (together with Section B.13).
- 2.3.9 This decision makes no changes to the amendments to sections J.2.1.1(c) and J.6.1.1(a) proposed in the consultation paper.
- 2.3.10 Appendix D of the CMC outlines the Qualification Data which is required to be provided to the TSOs as part of the Application process. This decision updates Appendix D with a more detailed requirement for evidence of compliance with the CO₂ Limits. This now refers specifically to 'Specific Emissions' and 'Annual Emissions' as referred to in the ACER Opinion. In the case of New Capacity, where the state of project development may mean that emissions evidence cannot be provided, a declaration of intention to comply with the CO₂ Limits should be provided as part of a new Capacity application as an alternative.
- 2.3.11 Consideration has been given to the request from a small number of respondents for the CMC to include detail on the ex-post verification and associated enforcement measures. Having looked at the ACER Opinion, ex-post verification is mentioned in relation a limited subset of unit types, many of which are not relevant to the SEM. At present, the affected units are all capacity which started commercial production prior to 4 July 2019 and so will not have any ex-post operation to validate until 2025. In addition, the issue of ex-post validation is bound up with the same issues as the proposed change to I.1.2.1. In consequence, the SEM Committee do not intend to address

this issue as part of this Modification but will review the situation once the process to be followed in the wider case of breaches of the obligation to abide by the CO₂ Limits has been addressed.

- 2.3.12 Following consideration of the proposal and the responses received to the consultation the SEM Committee have made the above amendments in order to arrive at the final approved CMC_05_20. The final draft of this modification is provided in Appendix A. This decision takes effect on 27 April 2020.

3. NEXT STEPS

- 3.1.1 Given that the proposed urgent modification approved within this decision paper relates to Capacity Auctions which take place from January 2020 and their need to comply with the emissions limits set out in the Energy Regulation EU 2019/943 the SEM Committee require that the TSOs incorporate the approved Modification contained within this paper into the CMC via an appropriate version control process and the Modification is to become effective by no later than 27 April 2020.
- 3.1.2 The RAs will continue to progress work on the technical guidelines referred to in the new section D.4 of the CMC. In this context, we will continue to accept feedback on these guidelines until 11 May 2020 with the intention of issuing an initial set of technical guidelines prior to the publication of the Initial Auction Information Pack for the CY2024/25 Capacity Auction.
- 3.1.3 The RAs plan to bring forward a consultation on the issues raised by the proposed change to I.1.2.1 and potential changes to section B.13 of the CMC, which deals with default, suspension and termination, to give a clear process to follow when a CMU is in breach of its CO₂ Limit. The RAs would note that this issue is related to those already raised by the TSOs as part of their proposed Modification CMC_08_20 which arise from the existing obligation set out in I.1.2.1(b).
- 3.1.4 All SEM Committee decisions are published on the SEM Committee website: www.semcommittee.com