



CMC Modification – Removal of J.6.1.6  
Capacity Workshop 30

## Removal of Section J.6.1.6

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### Background

This modification proposes to remove section J.6.1.6 from the Capacity Market Code. This condition results in significant risk exposure for New Capacity projects, with no discernible upside.

Section J.6.1.6 of the Capacity Market Code reads:

*The System Operators shall terminate all or part of the Awarded New Capacity in respect of New Capacity only for the first Capacity Year for which that capacity was awarded if requested to do so by the Regulatory Authorities if it is determined by the Regulatory Authorities (based on an independently verified report) prior to the T-1 Capacity Auction for the Capacity Year that all or part of the Awarded Capacity is not likely to be delivered by the start of the Capacity Year.*

The purpose of this clause is that if Awarded New Capacity is delayed, it can be made up through the T-1 Capacity Auction. Termination of the delayed T-1 Capacity means that the same Capacity is not procured twice.

This clause is not practical for a number of reasons and therefore, represents a risk to investors with no value to Security of Supply.

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### Issues with Implementation of J.6.1.6.

There are a number of issues which prevent J.6.1.6 from being implemented as intended:

- T-1 Capacity Auctions have historically not delivered sufficient capacity in order to make up for a shortfall in a T-4 Capacity Auction.
- The lead-time associated with T-1 Capacity Auctions is not sufficient to facilitate the delivery of New Capacity units capable of making up the shortfall resulting from failure to deliver New Capacity through a T-4 Capacity Auction.

In addition, there are a number of negative consequences to J.6.1.6:

- Investor confidence is undermined by presence of a unduly punitive measure, whereby minor delays could result in termination of an entire year's worth of Capacity Payments.
- Increases clearing price as Participants need to bake risk of termination into their bids.
- Incentive to deliver quickly is removed once a project incurs a delay, as it will potentially lose the entire first year of its Capacity Payments regardless.
- Potentially discriminative between New and Existing Capacity. If Existing Capacity is unavailable for several months it would not be terminated, whereas New Capacity may only miss a week and face termination.

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### Rationale for Removal

As outlined, it is not practical for J.6.1.6 to be applied to New Capacity as intended during the design of the CRM.

Removing this condition increases investment confidence, furthering the Security of Supply objective.

New Capacity is already subject to termination in the event that it fails to deliver in time for its Long Stop Date, or it fails to achieve Substantial Financial Completion within the Substantial Financial Completion Period.

In addition, Section J.6.1.3 of the Capacity Market Code sets out fourteen additional conditions under which New Capacity may be terminated.

Given the above, the presence of J.6.1.6 offers no benefit to the CRM, and only serves as a potential risk to new investment.

### Appendix – Additional Conditions for Termination under the Capacity Market Code

J.6.1.6 The System Operators may, subject to paragraph J.6.1.5, terminate all Awarded New Capacity in respect of a new or refurbished Generator Unit or Interconnector if:

- a) any Connection Agreement covering the Awarded New Capacity expires, is terminated or lapses;
- b) the relevant Participant's participation under the Trading and Settlement Code is suspended or terminated;
- c) the Participant Transfers any of the Generator Units or Interconnectors providing the Awarded New Capacity without the prior written consent of the System Operators or otherwise in breach of this Code;
- d) the Participant submits information in the Qualification Process, in an Implementation Progress Report, in a notice under paragraph J.2.1.6 or J.2.1.7 or in an application under section J.5 that is false or misleading in any material respect;
- e) the Participant fails to post a Performance Security which satisfies the requirements of section J.3 by the Performance Security Date specified in the applicable Capacity Auction Timetable or to maintain the Performance Security at the Required Level, or put in place supplementary Performance Security, when required to do so under section J.3;
- f) the Participant acknowledges in an Implementation Progress Report that it does not expect to achieve Minimum Completion by the Long Stop Date;
- g) an Insolvency Event affecting the Participant occurs;
- h) an Insolvency Event occurs in relation to the Participant's Performance Security Provider and the Participant has not posted a Performance Security that meets the requirement of paragraph J.3.3 for an amount not less than the Required level by 17:00 on the second Working Day thereafter

### Appendix – Additional Conditions for Termination under the Capacity Market Code (2)

J.6.1.6 The System Operators may, subject to paragraph J.6.1.5, terminate all Awarded New Capacity in respect of a new or refurbished Generator Unit or Interconnector if:

- h) it becomes unlawful for the Participant's Performance Security Provider to comply with any of its obligations under the Performance Security and the Participant has not posted a replacement Performance Security that meets the requirements of paragraph J.3.3 for an amount not less than the Required Level by 17:00 on the second Working Day thereafter;
- i) the Participant's Performance Security Provider suspends or ceases to carry on its business, or any part of its business which is relevant to its activities under this Code, and the Participant has not posted a replacement Performance Security that meets the requirements of paragraph J.3.3 for an amount not less than the Required Level by 17:00 on the second Working Day thereafter;
- j) a Legal Requirement necessary to enable the Participant's Performance Security Provider to fulfil its obligations contemplated by this Code is amended or revoked in whole or in part so as to prevent the Performance Security Provider from fulfilling those obligations and the Participant has not posted a replacement Performance Security that meets the requirements of paragraph J.3.3 for an amount not less than the Required Level by 17:00 on the second Working Day thereafter;
- k) the Participant's Performance Security Provider ceases to be eligible for the purposes of this Code to be able to provide the Performance Security and the Participant and the Participant has not posted a replacement Performance Security that meets the requirements of paragraph J.3.3 for an amount not less than the Required Level by 17:00 on the second Working Day thereafter; or
- l) the Participant has failed to comply with any applicable Account Security Requirements (including, for the avoidance of the doubt, the Deed of Charge and Account Security) in relation to the provision of cash collateral as required under paragraph J.3.3.2 and any applicable Agreed Procedures.
- m) the Proof of Contract milestone, if applicable, has not been achieved by the date that is four months prior to the start of the relevant Capacity Year.