



## **Energia Response to SEM-23-044**

### ***Capacity Market Code Modifications – Workshop 31 Consultation Paper***

**21<sup>st</sup> July 2023**

# 1 Introduction

Energia welcomes the opportunity to respond to SEM Committee Consultation Paper SEM-23-041 (the “Consultation Paper”) on proposed modifications to the Capacity Market Code (CMC) discussed at Workshop 31 on 18 May 2023. A summary of the modifications discussed, SEMC’s minded to positions, and Energia’s positions can be found in the table below.

<b>Modification Proposal</b>	<b>SEMC Minded to Position</b>	<b>Energia Position</b>
CMC_10_23: Mitigation of Impact on Participants Relating to 3 <sup>rd</sup> Party Gas Connection Delays.	No Minded to Position.	Opposed to Modification Proposal.
CMC_11_23: Amendment to Drafting Introduced Under Modification CMC_15_22.	No Minded to Position.	Opposed to Modification Proposal.
CMC_12_23: Facilitation of Unit Specific Price Caps for Existing Capacity in Excess of the Auction Price Cap.	Minded to Reject.	Supportive of Modification Proposal.
CMC_13_23: Min Completion Prior to Long Stop Date.	Minded to Approve.	Clarifying Questions Regarding Proposal
CMC_14_23: Locational Capacity Constraint Violation Criteria.	No Minded to Position.	Opposed to Modification Proposal.

This response will firstly address the modification proposals that SEMC has no “Minded to Position” on and that Energia opposes. This response will then cover the other two modification proposals.

## 2 Modification Proposals that Energia opposes

### 2.1 CMC\_14\_23: Location Capacity Constraint Violation Criteria

This response will first address the proposal from the System Operators (SOs) on Locational Capacity Constraint Violation Criteria. Energia is strongly opposed to this proposed modification and urges SEMC to reject the modification in the strongest possible terms. Energia fully endorses the response from the Electricity Association of Ireland that is focused on this modification.

#### Background to LCC Requirements

Locational Capacity Constraint (LCC) requirements in the CRM reflect transmission constraints in Ireland, and that to ensure supply adequacy a certain level of generation must be procured in each of the LCC areas. In particular, the Dublin LCC is required to ensure that there is sufficient local capacity in order to meet the requirements of Ireland’s largest demand centre. The SOs set the LCC requirement for each LCC area.

Maximum LCC requirements were introduced in September through SEMC’s approval of CMC\_08\_22 from the SOs. Energia, along with all industry participants, opposed the introduction of maximum LCCs on the basis that the need for maximum LCCs had not been explained and were not justified on the basis of the risks presented.

**Security of Supply Context**

The 2022 Generation Capacity Statement from the SOs was clear that the outlook for Ireland’s future capacity deficit was very serious. The failure to deliver sufficient capacity has led to a much deteriorated security of supply outlook in Ireland and a short-term reliance on temporary emergency generation. The graphic below from ENTSO-E’s 2023 Summer Outlook starkly outlines how Ireland is now viewed internationally as a security of supply risk.

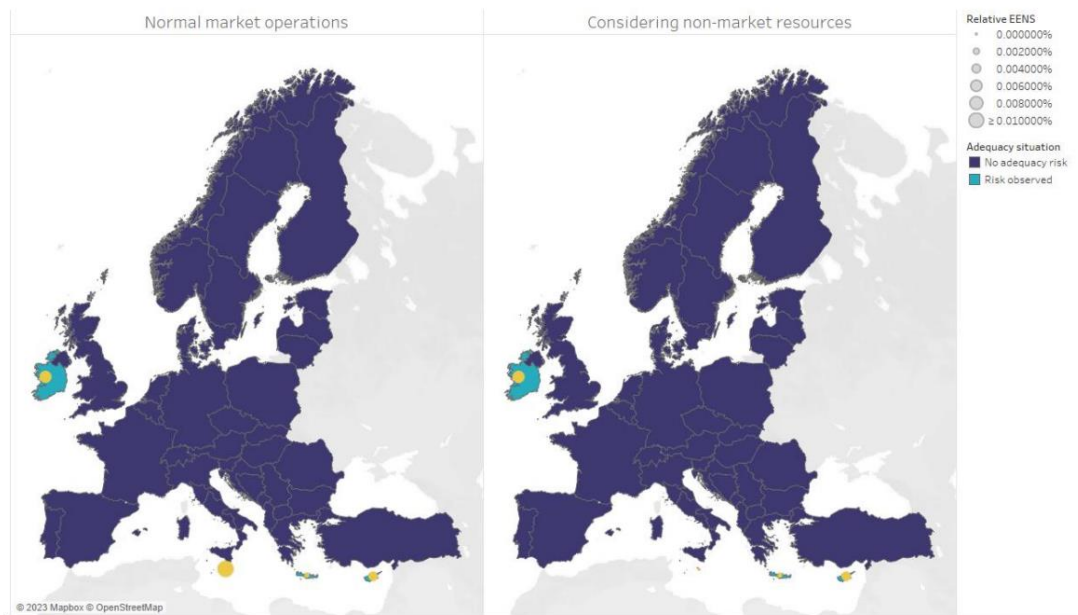


Figure 10: Adequacy overview

Source: ENTSO-E Summer Outlook Page 14 - [Summer Outlook 2023 \(entsoe.eu\)](https://www.entsoe.eu)

**Impact of the Proposed Modification on Security of Supply**

CMC\_14\_23 proposes criteria for determining whether the maximum of the minimum LCC requirement is violated in the event that the results of a capacity auction cannot satisfy both. The SOs would determine Price-Quantity (PQ) pairs for minimum and maximum LCC violations, and the decision of which to violate would be decided by which option was the least costly according to the calculation.

If implemented, the modification would open the possibility at every future capacity auction that the minimum LCC could be breached. **In the context of Ireland’s security of supply position outlined above, it would be reckless for the RAs to allow this to happen.**

If the outcome of a capacity auction was that the minimum requirement for an LCC area was not met, the result would be that security of supply in that LCC would be compromised. The RAs have ultimate responsibility for security of supply in Ireland, and the consequences of system adequacy being compromised would be very serious.

By contrast, the risks involved in breaching the maximum LCC are negligible. The risk to short-circuit limits is based on the implausible assumption that all generation in a given LCC would be running simultaneously. In the highly unlikely event that this situation were ever to arise, the TSO would be able to prevent it by taking action in dispatch. Given that these risks are primarily theoretical, whereas the risk of system inadequacy is tangible and serious, it should never be the case that a minimum LCC is violated instead of a maximum and the algebra in the algorithm should reflect this without allowing for any possibility that the minimum requirement be breached.

The proposal that a capacity outcome may result in violating the LCC minimum requirement is also totally contrary to the recommendation in the EY review that the RAs incorporate additional contingency into their total capacity requirements. All of the evidence from the operation of the CRM since inception shows that the major problem has been delivering sufficient capacity on time. It is therefore illogical to introduce a modification that would allow for the deliberate under-procurement of capacity.

Of further concern is that in their worked example included in the modification proposal, the SOs value under-procurement at €100 and over-procurement at €200, which biases the calculation in favour of violating the minimum criteria. The real cost of under-procurement is the Value of Lost Load, whereas as discussed above the cost of over-procurement is negligible.

It is clear that in the midst of Ireland's current and forecast security of supply position, introducing a modification that would effectively remove the minimum LCC would be a serious error on the part of SEMC that could have significant consequences on Ireland's supply adequacy outlook.

#### **Additional SO Discretion Afforded by the Modification**

The proposed modification would allow the SOs to determine the PQ pairs that would be key inputs into the LCC violation calculation. There would be no requirement on the SOs to consult with relevant stakeholders, to justify their proposed PQ pairs, or to comply with a prescribed and publicly available methodology.

Given that these inputs could have a significant impact on the outcome of a capacity auction and how much is procured, this proposal completely fails to meet the CMC's objective of promoting transparency in the operation of the CRM. The need to ensure that target volumes in capacity auctions are robust and transparent, and that Eirgrid are held accountable, were key findings of the EY Review into the operation of the CRM. Were the RAs to approve this modification, it would be a significant step in the wrong direction.

The RAs are ultimately responsible for the operation of the CRM, and for security of supply. Limitations in the transmission system should not be resolved through the CRM. If the SOs are given too much discretion in determining key parameters regarding minimum and maximum LCCs, the risk is that they will prioritise issues with the transmission system that should be addressed elsewhere over security of supply.

The RAs should be increasing their oversight of the SOs and their role in capacity auctions, yet this modification would award the SOs further discretion.

### **Concluding Remarks**

Given the importance of the LCC minimum requirement in capacity auctions, Energia opposes CMC\_14\_23 in the strongest possible terms and urges SEMC to reject the modification. If approved, this modification could cause further deterioration in Ireland's security of supply position, which is the ultimate responsibility of the RAs.

Energia does not agree with the SO that this modification is required prior to the next T-4 auction. Other options, such as setting a non-binding maximum limit as was done for the T-4 26/27 auction earlier this year, exist and it is not clear why these cannot be implemented for future auctions. If SEMC believes that the CRM algebra does need to be updated, it should be updated with text that states that whenever the minimum and maximum cannot be complied with simultaneously, the maximum should always be violated. This would safeguard the far more important minimum LCC as a hard limit.

## **2.2 CMC\_11\_23: Amendment to Drafting Introduced Under Modification CMC\_15\_22**

CMC\_11\_23 amends the text introduced by the approval of modification CMC\_15\_22. Energia strongly opposed CMC\_15\_22 when it was originally introduced. Energia's view remains that the changes introduced by CMC\_15\_22 are retrospective as they fundamentally changed the terms governing concluded auctions process, and on that basis are unfair and uncompetitive. This remains Energia's position with regards to the original modification and the subsequent proposals to expand the modification.

### **Differences between the RoI and NI Processes**

With regards to CMC\_11\_23, Energia is opposed to the proposed modification. The modification seeks to include the issuance of an Article 17/18 Direction by the Department for Infrastructure (DfI) as a reason for extension. In the event of an Article 17/18 Direction, a participant would receive an extension to the Substantial Financial Completion Date, the Long Stop Date, and the Capacity Quantity End Date and Time equal to the period from when the direction was issued until the application is determined.

The proposal seeks to equate the issuance of an Article 17/18 Direction in Northern Ireland (NI) with a Third Party Appeal in the Republic of Ireland (RoI). However, there are substantial differences between the two. Specifically:

- For a Third-Party Appeal, the local authority has gone through the entire planning process and has made a decision, only for that decision to be appealed and an additional assessment to be undertaken by An Bord Pleanála. In an Article 17/18 Direction, **at the time of the Direction no decision on the planning application has been made and all that may change is which body ultimately gets to decide on that application.** Therefore, in the RoI example, a third-party appeal necessitates an additional process that takes place after the decision, whereas in NI an Article 17/18 is part of the process and should not be treated as a delay or additional process that necessitates an extension to the capacity contract.

- In NI, the Department for Infrastructure does not need to wait for a third-party appeal in order to issue an Article 17/18 direction. The DfI has the power to issue such a direction at any time if it thinks that the application in question is regionally significant and should be decided at national level. **Therefore, the Article 17/18 process is a known process at the start of an application that is foreseeable by a participant and is not the direct result of a claim from an objecting third-party.**

### **Length of the period of extension**

In addition to the inappropriate equation being drawn between the RoI and the NI process, the period of extension proposed by the modification is unreasonably long. The modification proposes to set the end date for the extension as the date of determination of the planning application. It is unclear why this should be the end date for the extension rather than the date when the Department decides whether to call the application in or not.

The date from the issuance of the Direction to the date on which DfI decides to call-in would be more appropriate, as this is the period during which it is unclear which body has the authority to make the decision. Once the decision has been made to call the application in or not, the process can continue as any other planning application would, and it is not clear why an extension is required. To re-iterate, Energia is opposed to the modification as a whole, but if SEMC were to approve then the length of delay permitted should be reduced.

### **Competition and Transparency in the CRM**

Since it became clear to the RAs that the successful bidders from the T-3 2024/25 and T-4 2025/26 auctions would not be able to deliver in accordance with their original commitments, Energia has repeatedly advised SEMC against retrospectively changing the rules of the concluded auctions in order to favour contract holders. To do so is both unfair and uncompetitive, and against the requirements of the CMC.

It is particularly important that the SEMC does not approve modifications in order to benefit particular participants or contracts. The SEMC must decide on each modification in a manner that upholds fair competition in the CRM. It is clear that with this in mind, the proposed modification CMC\_11\_23 should be rejected.

## ***2.3 CMC\_10\_23: Mitigation of Impact on Participants Relating to 3<sup>rd</sup> Party Gas Connection Delays.***

Energia is opposed to modification CMC\_10\_23. The proposal builds upon Modification CMC\_14\_22, which Energia opposed at the time. As with CMC\_15\_22, Energia originally opposed this modification on the grounds that it retrospectively sought to fundamentally change the terms of concluded auctions, and was therefore unfair and uncompetitive. This remains Energia's position, and for that reason we oppose CMC\_10\_23.

As described above, Energia's primary concern with this modification is its retrospective effect. Were this modification to apply only to auctions that had not already concluded, Energia may be able to support the principle of the modification.

Energia has concerns that the legal text of the modification is complex and it is difficult to understand how the modification would work in practice. At CMC Workshop 31, Energia sought multiple clarifications including with regards to the role of the 2<sup>nd</sup>



independent Certified Engineer. Energia understands that the proposal on gas connection delays has been considered alongside multiple other modifications that Energia has also opposed with regards to third-party delays. It may be beneficial that SEMC bring back a revised proposal that clearly sets out the terms of each aspect of the modification, and how they would interact together.

Since the RAs accepted the principle that CRM contracts and deadlines could be retrospectively extended, there have been multiple changes to the CMC to facilitate this, and as the SO noted at CMC Workshop 32, this has led to an increase in manual interventions in systems and increased workload. Energia maintains that this was not the right way for the RAs to attempt to resolve a serious security of supply position that was partly of their own creation, and it is now difficult for participants to follow how all of the changes and proposed changes interact with each other. In considering this modification, SEMC need to be sure that the CMC remains internally consistent, workable at a system level, and be wary of unintended consequences that will lead to issues in the future.

### **3 Modification Proposals that Energia supports**

#### ***3.1 CMC\_12\_23: Facilitation of Unit Specific Price Caps for Existing Capacity in Excess of the Auction Price Cap.***

Energia supports modification proposal CMC\_12\_23. Given the restriction on existing capacity to apply for single year contracts only, the USPC process must allow existing capacity to recover its full costs in a single year. Particularly in cases where existing capacity is undergoing necessary refurbishment, this may require allowing existing capacity to bid above the APC in its USPC.

As Energia has consistently maintained since the design of the CRM, the current arrangements for remunerating existing capacity in the CRM are inadequate to allow those units to recover their Net Going Forward Costs and their Unavoidable Future Investments.

The costs of continuing to operate existing power plants often significantly exceed the ECPC that is capped at 50% of Net CONE. This is particularly the case as the advance of renewables reduces energy market revenues for thermal generators and uncertainty surrounds the future of revenues from ancillary services.

An existing generator's Net Going Forward Costs will often include substantial capital and refurbishment works in the form of Unavoidable Future Investment. Given that existing capacity is only eligible for single year contracts and cannot rely on receiving CRM contracts in the future, it must bid in its total capital costs in a single USPC application. On that basis, it can very conceivably be the case that a USPC application will be in excess of the APC.

As Energia has highlighted to the RAs many times, the CRM must sufficiently facilitate existing capacity to invest in refurbishment. If the RAs are not minded to allow for USPC bids above APC, an alternative would be to allow existing capacity to apply for multi-year contracts. If existing capacity is not supported to refurbish, then there is a risk that availability and reliability of Ireland's fleet will decrease, leading to an increased likelihood of system alerts.

CMC\_12\_23 would better incentivise investment in existing capacity, which would ultimately lead to greater reliability in the SEM, would avoid inefficient exit signals, and would reduce the reliance on expensive temporary emergency generation or new capacity that comes with substantial delivery risk.

## **4 Other Modifications in the Consultation Paper**

### **4.1 CMC\_13\_23: Min Completion Prior to Long Stop Date.**

Modification CMC\_13\_23 proposes to allow participants to receive capacity payments from the start of the relevant capacity year in the event that they have reached minimum completion but will not achieve substantial completion. They will receive capacity payments for the capacity that they are able to provide, and their remaining awarded capacity will be terminated with the relevant termination fees. Under the status quo, the RAs must wait until the Long Stop Date before this occurs.

Energia understands that in the context that the RAs are seeking to bring as much capacity online as soon as possible, it is preferable that in a situation where both parties accept that minimum completion, but not substantial completion, will be achieved by the Long Stop Date, a generator can start providing capacity from the start of the relevant capacity year rather than having to wait eighteen months.

Energia would caution that the RAs must be vigilant as to whether this modification is likely to lead to more speculative bids in the CRM. A participant could overbid their capacity quantity, in the knowledge that if they cannot deliver the amount originally committed, then they will still get a residual amount of capacity for the full ten years of the contract. Termination fees alone may not be sufficient disincentive to prevent speculative bids, and the RAs must be more vigilant in their screening of applications and proposed timelines set out by participants in their applications.

It would be helpful if the RAs could give clarity as to whether the de-rating factor for awarded capacity would be adjusted to reflect their new total capacity once it has been agreed that the generator won't reach substantial completion.