



**Energia Response to SEM Committee  
Consultation Paper SEM-23-034**

***Capacity Market Code Workshop 30 Modification  
Consultation Paper***

**26 May 2023**

## 1 Introduction

Energia welcomes the opportunity to respond to SEM Committee Consultation Paper SEM-23-034 (the “Consultation Paper”) on proposed modifications to the Capacity Market Code (CMC) discussed at Workshop 30 on 29 March 2023. A summary of the modifications discussed, SEMC’s minded to positions, and Energia’s position can be found in the table below.

<b>Modification Proposal</b>	<b>SEMC Minded to Position</b>	<b>Energia Position</b>
CMC_04_23: Introduction of Remedial Action for Unforeseeable Delays Due to Extraordinary Supply Chain Impacts	Further Consideration	Opposed to Modification Proposal.
CMC_05_23: Resolving Inconsistency in Definition of Existing Capacity Arising from CMC_11_12	Approve	No Further Comment
CMC_06_23: Outstanding Aspects of the Implementation of ARHL De-Rating Factors	Approve	No Further Comment
CMC_07_23: Special Application of ISTA	Approve	Clarifying Questions regarding Proposal
CMC_09_23: Removal of Section J.6.1.6 of the Capacity Market Code	Reject	Agree with SEM Position.

We have set out our views on each of the modifications in the remainder of this response.

## 2 CMC\_04\_23 – Introduction of Remedial Action for Unforeseeable Delays Due to Extraordinary Supply Chain Impacts

Energia is opposed to proposed modification CMC\_04\_23. Since the conclusion of the T-3 2024/25 and T-4 2025/26 auctions in 2022, numerous modifications have been proposed to significantly change the terms under which those auctions took place. Energia has consistently voiced its opposition to these retrospective changes as they are unfair, uncompetitive and raise significant legal and regulatory questions. Energia’s arguments regarding retrospectivity equally apply to CMC\_04\_23. The RAs are aware of Energia’s position and concerns, and therefore this consultation response will not repeat those arguments at length.

In addition, regarding this modification proposal specifically Energia has a number of concerns as follows:

- I. Energia shares the RAs' concerns with this modification regarding the subjectivity involved in establishing the cause of any delay. The modification does not define "extraordinary supply chain delay" or clarify how it would be determined that any delay to Substantial Completion was the result solely of such an event. It is unclear how a participant would demonstrate that they had taken all available measures to avoid the delay (such as through seeking other suppliers).
- II. There are also significant concerns with regards to transparency, as it is not clear how the RAs would ensure that the impact of supply chain delays was accounted for equally between multiple participants.
- III. Finally, as raised at Workshop 30 and supported by other participants on the call, Energia notes that extraordinary supply chain impacts were present at the time of the T-3 2024/25 auction, specifically the delays caused by the effects on the economy of the COVID-19 lockdowns.

For these reasons, Energia is opposed to the modification proposal. Energia notes that the SEMC is minded to consider CMC\_04\_23 alongside CMC\_14\_22 in light of shared characteristics. Energia's view is that the two modifications are seeking to address substantially different risks to delivery, and in light of a revised CMC\_14\_22 having already been considered at CMC Workshop 31 in May, it would not be appropriate to formally consider these two modifications together.

### **3 CMC\_05\_23 – Resolving Inconsistency in Definition of Existing Capacity Arising from CMC\_11\_22 and CMC\_06\_23 – Outstanding Aspects of the Implementation of ARHL De-Rating Factors**

With regards to CMC\_05\_23, Energia is supportive of the RAs seeking to address inconsistencies within the CMC. Regarding the discussion that took place with Demand Side Units at Workshop 30 for transparency the RAs should ensure that any follow-up engagements or workshops regarding the issues raised in the discussion are open to all market participants. With regards to CMC\_06\_23, Energia is supportive of the RAs seeking to complete the process of implementing the ARHL De-Rating Factors. Energia has no further comment to make on either modification proposal.

### **4 CMC\_07\_23 – Special Application of ISTA**

CMC\_07\_23 proposes to allow capacity that would breach binding EU emissions limits to use ISTAs to participate in the CRM for less than a full year in Capacity Year 2023/24 and Capacity Year 2024/25. Energia notes that this measure is specifically targeted at these two capacity years and is intended to enhance security of supply. As the RAs have shown an interest in keeping higher-emitting units on the system for security of supply purposes, but that those same units will only be entitled to capacity payments for a short number of months, the market needs to understand whether these units will receive additional out-of-market support to ensure economic viability during the relevant capacity years.

While Energia has no specific objections to the modification as it stands, knowing what financial support mechanisms are in place is important as to whether the proposed ISTA mechanism is the most efficient solution to addressing the security of supply

concerns. We recommend that the RAs provide this clarity to industry and allow for further feedback to be provided in advance of making a final decision on whether to approve the proposal.

## **5 CMC\_09\_23 – Removal of Section J.6.1.6 of the Capacity Market Code.**

Energia agrees with the RAs' position that it is important for the RAs to retain a degree of flexibility in deciding whether to terminate awarded new capacity prior to a T-1 auction. While there is a need for a certain degree of flexibility in terms of determining when a new project is likely to deliver and what the appropriate response by the RAs is, Energia believes that J.6.1.6 provides that level of flexibility and therefore should be maintained. It is also important in terms of promoting competition that when new capacity contract holders are unable to deliver to their committed timeframes, that capacity is made available to other participants that are able to provide capacity from the start of the relevant capacity year. On that basis, Energia support's the RAs' minded to approve position.