

APPENDIX C – RESPONSE TEMPLATE

SUMMARY INFORMATION

Respondent's Name	ESB Generation and Trading
Type of Stakeholder	<i>Generator</i>
Contact name (for any queries)	<i>Therese Murphy</i>
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Confidential Response	No

CAPACITY MARKET CODE MODIFICATIONS CONSULTATION COMMENTS:

ID	Proposed Modification and its Consistency with the Code Objectives	Impacts Not Identified in the Modification Proposal Form	Detailed CMC Drafting Proposed to Deliver the Modification
<p>CMC_04_23:</p> <p>Introduction of Remedial Action for Unforeseeable Delays Due to Extraordinary Supply Chain Impacts</p> <p>This proposed modification would delay all milestone dates associated with the target date for substantial completion to reflect the impact of extraordinary supply chain delays.</p>	<p>ESB GT support the proposal to introduce Remedial Action for Unforeseeable Delays Due to Extraordinary Supply Chain Impacts.</p> <p>We consider this amendment to offer a pragmatic solution which could enable projects that are experiencing delays, beyond the control of the market participant, to deliver much needed new capacity in accordance with the rules. The absence of this amendment would mean that awarded new capacity projects</p>	<p>ESB GT support CMC_04_23, however, we also consider that it is necessary to expand the application of the modification to cover projects which have been issued connection offers under CRU Direction and are experiencing delays due to grid connection should also qualify for extensions under the proposed remedial action.</p>	<p>It is proposed that the modification introduces a new Remedial Action under Section J.5X of the Code.</p> <p>J.5.X Extension Due to extraordinary Supply Chain and grid connection delays.</p> <p>J.5.X Where the completion of the Substantial Completion Milestone is delayed <i>as a result of an extraordinary supply chain delay or grid connection delay</i>, a Participant or</p>

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	<p>experiencing such delays would be terminated for the first year of their capacity market contract, which could result in the termination of the full 10 year contract in the case where the project was no longer financially viable. In our view this would be a sub-optimal outcome that would also bring significant risk to security of supply in the near term – recognising the significant supply shortfall forecast in the winter periods running up to 2025/26 (ref. EirGrid Generation Capacity Statement 2022-2031).</p> <p>We support actions to encourage and facilitate the delivery of credible new capacity projects and acknowledge the benefits in adopting a pragmatic approach in efforts to avoid termination of much needed capacity, especially at this critical time for security of supply. We draw attention to the fact that this assertion was also highlighted in the EY report on the Performance of the SEM CRM (commissioned by the SEM Committee) - <i>A more permissive approach to extension applications could have secured capacity</i></p>	<p>Expansion of remedial action to include grid connection delays</p> <p>In our view delays due to grid connection should also be accommodated in the proposed remedial action based on the same principle – delays due to grid connection are outside of the control of the market participant and can also place new capacity projects in jeopardy of termination.</p> <p>These concerns were highlighted in the EY report on the Performance of the SEM CRM (commissioned by the SEM Committee), where the consultants recognise the major challenges to delivering new capacity in a timely fashion – most notably third-party delays due to planning and grid connection.</p> <p>The recent SEM Committee decision to approve modifications (SEM-23-001¹) to facilitate extensions to the Long Stop Date for projects experiencing delays due to planning, however, it does not include delays relating to gas and electrical connections. ESB GT are disappointed with this decision, especially since many of the delays relate to projects that have been</p>	<p>an Enforcing Party (on behalf of a Participant) may apply to the Regulatory Authorities for an extension to the Maximum Capacity Duration and Long Stop Date associated with the relevant Capacity Market Unit.</p> <p>J.5.X.X The application under paragraph J.5.X.X shall include:</p> <p>(a) reasons for the request and supporting evidence in sufficient detail to enable the Regulatory Authorities to consider the request regarding supply chain issues <i>and grid connection delays</i>; and</p> <p>(b) an updated estimated date for final completion of the Awarded New Capacity with detailed reasoning and action plan.</p> <p>J.5.X.X Applications made under paragraph J.5.X.X shall be granted by the Regulatory Authorities in the absence of due cause not to do so.</p> <p>J.5.X.X Where a request for extension under J.5.X.X is approved, the</p>

¹ Capacity Market Code Working Group WG28 Urgent Modifications Decision Paper (SEM-23-001) 9th January 2023

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	<p><i>sooner and at lower cost to consumers than allowing the plant to participate in a fresh auction.</i></p> <p>For the reasons outlined above ESB GT consider the proposed modification to align well with the following CMC objectives:</p> <p>(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;</p> <p>(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;</p> <p>(d) to promote competition in the provision of electricity capacity to the SEM;</p>	<p>awarded grid connection offers under CRU direction².</p> <p>Proposed amendments to legal drafting are provided in the right-hand column.</p> <p>Further consideration of CMC_14_22</p> <p>ESB GT note that the SEM Committee in line with sub-section B.12.11 and as stated in decision paper SEM-23-001³, requested the RAs to undertake further consideration of potential modifications in the area of electrical and gas connections. ESB GT request that the RAs issue an update on progress with regard to alternative measures to alleviate some of the pressures on developers which are threatening our security of supply.</p> <p>CRU Direction to EirGrid on grid connection offers</p> <p>We also draw attention to direction CRU202258 (24-Jun-22)⁴, where the CRU recognise <i>the vital importance of the physical delivery of grid infrastructure to both decarbonisation and Security of Supply,</i></p>	<p>relevant Maximum Capacity Duration and Long Stop Date must be extended on a day for day basis in accordance with the approved extension, subject to a maximum extension of 12 months.</p> <p><i>E.5 EXCEPTION APPLICATIONS</i></p> <p><i>E.5.1.1 A Participant may seek the approval of the Regulatory Authorities for:</i></p> <p>(a) proposed New Capacity to have a Maximum Capacity Duration of more than one and up to 10 Capacity Years with the addition of any extension period approved under Section J.5.X;</p> <p><i>E.5.1.8 If a Participant makes an Exception Application, then the Regulatory Authorities shall notify the Participant and the System Operators whether or not they approve the Exception Application and, if they do approve it:</i></p>

² [CRU202258a-CRU-direction-to-EirGrid-T-4-2026-27.pdf](#)

³ [SEM-23-001](#)

⁴ [CRU202258a-CRU-direction-to-EirGrid-T-4-2026-27.pdf \(divio-media.com\)](#)

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	<p>(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.</p>	<p><i>which is also a key tenet of the REPowerEU plan..... and the CRU consider it appropriate to expedite connection works associated with connection offers issued under this Direction, as on balance, the CRU accepts that the benefits to customers of this approach outweigh the potential risks.</i></p> <p>Whilst ESB GT look forward to continued engagement with the System Operators through the Connection Process we also express concern for how projects, in receipt of an EirGrid grid connection offer should reflect potential delays under the current process. It would appear that projects only have two options:</p> <p>(i) Reflect the delay in the implementation plan – in which case the start date will be post the start of the capacity year and the project will consequently fail E.7.5.1(c) of the CMC and not be allowed to qualify.</p> <p>(ii) Reflect in the bid price – in which case the APC will need to be increased to reflect a less than 10yr contract value.</p> <p>Since neither of the above options can be considered to offer a solution that is aligned with the objectives of the CMC, it is</p>	<p>(a) if the Exception Application is seeking a Maximum Capacity Duration for New Capacity of longer than one year, the Maximum Capacity Duration approved by the Regulatory Authorities for the New Capacity (which must be 10 Capacity Years with the addition of any extension period approved under Section J.5.X)</p> <p>POSSIBLE ALTERNATE APPROACH (AKIN TO THIRD PARTY DELAYS)</p> <p>J.5.6 Extension of Capacity Quantity End Date and Time</p> <p>J.5.6.2 A Participant seeking approval of the Regulatory Authorities under paragraph J.5.6.1 shall submit an application (called an “Extraordinary Supply Chain or Grid Connection Delay Application”) to the Regulatory Authorities within [20] Working Days of the determination of the Supply Extension Period.</p> <p>J.5.6.8 If a Participant makes an “Extraordinary Supply Chain or Grid Connection Delay Application”, then</p>

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		<p>necessary to modify the Code to allow for such circumstance.</p>	<p>the Regulatory Authorities shall notify the Participant and the System Operators whether or not they approve the “Extraordinary Supply Chain or Grid Connection Delay Application” and, if they do approve it the provisional value of the Capacity Quantity Extension Period to be applied to the Capacity Quantity End Date and Time. J.5.6.9 At the earlier of the Substantial Completion Date and the Long Stop Date, the final value of the Capacity Quantity Extension Period shall be determined as the minimum of:</p> <p>(a) the provisional Capacity Quantity Extension Period; and</p> <p>(b) the period from the Capacity Quantity Start Date and Time to the Capacity Quantity Commissioning Date where this period shall be zero if the Capacity Quantity Commissioned Date is prior to the Capacity Quantity Start Date and Time.</p> <p>J.5.6.10 The Capacity Quantity End Date and Time shall be extended by the Capacity Quantity Extension</p>

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			Period and the System Operators shall update the Capacity and Trade Register as set out in Appendix F accordingly.
<p>CMC_05_23: Resolving Inconsistency in Definition of Existing Capacity Arising from CMC_11_22</p>	<p>ESB GT support the proposed amendment to the definition of New Capacity in section C.3.2.1 of the Capacity Market Code.</p> <p>We recognise the need to maintain consistency and clarity throughout the Code, and agree that the change supports the Code objective:</p> <p>(e) to provide transparency in the operation of the SEM;</p>	<p>ESB GT do not believe that this change will result in any adverse and/or unintended consequences.</p>	<p>No comment.</p>
<p>CMC_06_23: Outstanding Aspects of the Implementation of ARHL De-Rating Factors</p>	<p>ESB GT support the proposed amendments to the Capacity Market Code that are required to fully implement the use of ARHL De-rating Factors.</p> <p>We agree that the proposed changes support the following Code objectives:</p> <p>(a) to facilitate the efficient discharge by EirGrid and SONI of the obligations imposed by their respective Transmission System Operator</p>	<p>ESB GT do not believe that this change will result in any adverse and/or unintended consequences.</p>	<p>No comment.</p>

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	<p>Licences in relation to the Capacity Market;</p> <p>(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;</p> <p>(c) 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.</p>		
<p>CMC_07_23: Special Application of ISTA</p> <p>This proposed modification allows units affected by emissions limits (IED or CEP regulations) to participate in the CM for the shorter period of time (3 and 9 months) and therefore partially alleviate the security of supply concerns.</p>	<p>ESB GT supports the proposal to extend the application of Interim Secondary Trading Arrangements (ISTA) to units that will be affected by tightening emissions limits in CY2023/24 and CY2024/25, in recognition of the important contribution these units can make to security of supply, particularly during this critical period for the net zero transition.</p> <p>We consider this amendment to offer a pragmatic solution which to deliver much needed capacity in accordance with the</p>	<p>ESB GT support and acknowledge the need for this Modification as under the current Capacity Market Code rules there is no option for capacity units to participate operate a capacity market contract for less than a Capacity Year, unless the unit is undergoing a planned outage.</p> <p>Proposed further amendments to the CMC</p> <p>ESB GT therefore support the proposed modifications to the Code, however, we also propose that further amendments are also</p>	<p>E.2.1.6 A Participant with a Candidate Unit that does not, or will not, comply with the CO2 Limits shall not apply for the Candidate Unit to be Qualified in a Qualification Process, <i>except in the case where a determination is made under M.14.1.1.</i></p> <p>E.7.2.3 The System Operators shall reject an Application for Qualification for a Capacity Year in respect of each Candidate Unit which does not, or will not, comply with the CO2 Limits,</p>

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	<p>rules. The absence of this amendment would mean that units affected by IED and CEP emissions limits would be prohibited from participating in capacity market from 1st January 2024 and 1st July 2025 respectively.</p> <p>In our view it is prudent to explore options that will permit the retention of existing units as long as possible – recognising that excluding these units would bring significant risk to security of supply in the near term particularly in view of the significant supply shortfall forecast in the winter periods running up to 2024/25 (ref. EirGrid Generation Capacity Statement 2022-2031).</p> <p>We also recognise that utilisation of these older existing capacity units for partial a Capacity Year, supports the actions set-out in Electricity Security of Supply Programme (CRU21115), in particular ‘Extending the operation of older generation units, on a temporary basis, to be called upon only when necessary, until the arrival of new enduring capacity’ and through doing so offers a practical solution to assist the</p>	<p>required to enable a unit seeking to qualify, to comply with emissions limits. Details for the proposed amendments to Clause E.2.1.6 and E.7.2.3 in the right-hand column.</p> <p>T-1 for CY23/24</p> <p>ESB GT are mindful of the T-1 CY23/24 final qualification results date (30-Jun-23) and Auction date (18-Jul-23). We therefore request clarification as to when market participants can be expected to receive confirmation as to whether the ISTA extension will be applied to the 2023/24 capacity auction.</p> <p>Impact on the Demand Curve</p> <p>We also draw attention to the fact that the inclusion of units with a contract for less than a Capacity Year will have an impact on the auction outcome. To ensure sufficient capacity procurement in the auction, it will therefore be necessary to adjust the demand curve, on top of the usual calculation, to offset the inclusion of the partial year contracts. This adjustment is especially necessary, in view of the significant supply shortfall forecast in the winter periods running up to 2024/25, to cover the potential risks due to the late</p>	<p><i>except in the case where a determination is made under M.14.1.1.</i></p>

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	<p>TSOs in managing the current challenges facing the electricity market.</p> <p>For the reasons outlined above ESB GT consider the proposed modification to align well with the following CMC objectives:</p> <p>(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;</p> <p>(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.</p>	<p>delivery of awarded capacity projects. Indeed, given the number of modifications requesting accommodation of delays to awarded capacity projects raised recently, we consider there to be a very real risk of under delivery in the near term.</p>	
<p>CMC_08_23: Typographical Correction Capacity Aggregation Threshold</p>	<p>NOT BEING CONSULTED ON</p>	<p>NOT BEING CONSULTED ON</p>	<p>NOT BEING CONSULTED ON</p>

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<p>CMC_09_23: Removal of Section J.6.1.6 of the Capacity Market Code</p> <p>Modification proposes to remove Section J.6.1.6 of the Capacity Market Code in order to avoid termination of delayed New Capacity which may be detrimental to Security of Supply in the SEM. Under the current drafting, if the Regulatory Authorities consider a project will likely be delayed, and not deliver by the beginning of the Relevant Capacity Year, they may instruct the TSO to terminate the first year of the Awarded Capacity Contract.</p>	<p>ESB GT support, in principle, the proposal to remove J.6.1.6 from the CM Code:</p> <p><i>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.</i></p> <p>We support actions to encourage and facilitate the delivery of credible new capacity projects and acknowledge the benefits in adopting a pragmatic approach in efforts to avoid termination of much needed capacity, especially at this critical time for security of supply. We draw attention to the fact that this assertion was also highlighted in the EY report on the Performance of the SEM CRM (commissioned by the SEM Committee) - <i>A more permissive approach to extension applications could have secured capacity</i></p>	<p>ESB GT support CMC_09_23 in principle, however, we propose that it may be more appropriate to amend the clause to include specific conditions rather than remove it entirely.</p> <p>We acknowledge that the current rules, which allow the Regulatory Authorities (in the case where they consider a project will likely be delayed, and not deliver by the beginning of the Relevant Capacity Year) to instruct the TSO to terminate the first year of the Awarded Capacity Contract introduces uncertainty for the project developers and could also undermine the business case for a capacity project.</p> <p>We also understand that in the case where a project is unlikely to deliver a substantial proportion of the capacity in the first capacity year, that the TSOs need to be aware of the situation and plan accordingly for the T-1 auction for the relevant capacity year. We fully recognise that it is crucially important for the TSOs have an accurate estimate of the awarded capacity that is expected to deliver in a capacity year to be able to be accurately forecast T-1 auction requirements.</p>	<p>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 published specific criteria to be included in an independently verified report) prior to the T-1 Capacity Auction for the Capacity Year that of the Awarded Capacity is not likely to be delivered by the start of the Capacity Year.</p>

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	<p><i>sooner and at lower cost to consumers than allowing the plant to participate in a fresh auction.</i></p> <p>For the reasons outlined above ESB GT consider the principles of the proposed modification to align well with the following CMC objectives:</p> <ul style="list-style-type: none"> (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; (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; (d) to promote competition in the provision of electricity capacity to the SEM; (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 	<p>ESB GT proposal to publish specific criteria to be included in the independently verified report</p> <p>ESB GT propose that the publication of specific criteria to be included in the independently verified report would improve transparency and provide clarity to market participants. Such clarity would allow developers to focus their efforts on adhering to the requirements and would also provide assurance to RAs and TSOs that the project is capable of satisfying key criteria.</p> <p>Reducing the risk of termination in the first year of a capacity market contract</p> <p>In our view this improved transparency would support projects in delivering the capacity they have secured. This is expected to reduce the risk of termination in the first year and in doing so improve investor confidence in the CRM, which could ultimately see the delivery of new capacity to the market sooner and at lower cost to consumers than the existing rules.</p> <p>Termination via Clause J.6.1.2</p> <p>ESB GT draw attention to the fact that Clause J.6.1.2(b) already includes a provision to terminate new capacity in the case where</p>	

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	<p>security of supply of electricity across the Island of Ireland.</p>	<p>Minimum Completion (50%) has not been achieved by the applicable Long Stop Date.</p> <p>This provision acknowledges that credible capacity projects can experience delay, and in effect offers a support mechanism to secured capacity projects that could ultimately result in delivery of the full awarded capacity. It also offers capacity projects the flexibility to achieve Substantial Completion, and thereby begin receiving capacity payments, at any time from the beginning of the capacity year to the Long Stop Date.</p> <p>In our view Clause J.6.1.2(b) provides a clear signal to developers by stipulating that awarded capacity projects need to achieve Minimum Completion (50%) by the applicable Long Stop Date. We therefore propose that Clause J.6.1.6 should be reserved for exceptional circumstance, in the case where awarded capacity projects fail to satisfy the published key criteria via the independently verified report.</p> <p>Conversely the continued inclusion of the open-ended proviso in J.6.1.6, which permits the System Operators to terminate awarded new capacity for the first capacity year, does</p>	

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		not serve to support the objectives of the CMC, and in particular, <i>the short-term and/or long-term interests of consumers of electricity with respect to price, quality, reliability, and security of supply of electricity across the Island of Ireland.</i>	

NB please add extra rows as needed.