Single Electricity Market

(SEM)

Capacity Market Code Modifications

Workshop 43 (Part B)

Decision Paper

CMC_10_25:	Amendments to E.7
CMC_12_25:	RAs' role in relation to FQDs
CMC_13_25:	Amendments to the Capacity Auction Timetable
CMC_15_25:	Performance Securities for Extended Projects in T-4 2026/27

SEM-25-046

29 August 2025

EXECUTIVE SUMMARY

The purpose of this decision paper is to set out the decisions relating to four of the six proposed Modifications to the Capacity Market Code (CMC) discussed at Workshop 43 (Part B), held on 09 June 2025:

- **CMC_10_25**: Amendments to E.7
- **CMC_12_25**: RAs' role in relation to FQDs
- **CMC_13_25**: Amendments to the Capacity Auction Timetable
- **CMC_15_25**: Performance Securities for Extended Projects in T-4 2026/27

The decisions within this paper follow on from the associated consultation (SEM-25-027), which closed on 17 July 2025. This decision paper deals with CMC_10_25, CMC_12_25, CMC_13_25, and CMC_15_25 only. The RAs require further consideration on CMC_11_25 and CMC_14_25 and will issue a decision in the coming months. No changes regarding CMC_11_25 or CMC_14_25 will be implemented for the T-4 2029/30 auction

14 responses were received to the consultation, of which one was partially confidential.

Summary of Key Decisions

Following consideration of the proposals and the responses received to the consultation, the SEM Committee have decided:

Modification	Decision	Implementation Date
CMC_10_25: Amendments to E.7	Make a Modification	Effective on publication
CMC_12_25 (Option 1): RAs' role in relation to FQDs	Undertake further consideration in relation to the matters raised in the Modification Proposal	N/A
CMC_12_25 (Option 2): RAs' role in relation to FQDs	Make a Modification	Effective on publication
CMC_13_25: Amendments to the Capacity Auction Timetable	Make a Modification	Effective on publication
CMC_15_25: Performance Securities for Extended Projects in T-4 2026/27	Not make a Modification	N/A

Contents

1. OVERVIEW

1.1. BACKGROUND

1.1.1. The SEM CRM detailed design and auction process has been developed through a series of consultation and decision papers, all of which are available on the SEM Committee's (SEMC) website. These decisions were translated into legal drafting of the market rules via an extensive consultative process leading to the publication of the Trading and Settlement Code (TSC) and the Capacity Market Code (CMC). Current versions of the CMC and the TSC are published on the SEMO website.

Process and Timeline for the Modification Proposals discussed at Workshop 43 (Part B)

1.1.2. On 30 May 2025, the Regulatory Authorities (RAs) submitted five Modification Proposals (CMC_10_25; CMC_11_25; CMC_12_25; CMC_13_25; and CMC_14_25) under the terms of B.12.4 of the CMC. These Modification Proposals were marked as standard.

1.1.3. On 30 May 2025, Shannon LNG Limited submitted one Modification Proposal (CMC_15_25) under the terms of B.12.9 of the CMC. This proposal was marked as Urgent.

1.1.4. In line with B.12.9 of the CMC, the RAs reviewed the Modification Proposal submitted by Shannon LNG Limited (CMC_15_25) and categorised it as standard.

1.1.5. This decision paper deals with CMC_10_25, CMC_12_25, CMC_13_25, and CMC_15_25 only. The RAs require further consideration on CMC_11_25 and CMC_14_25 and will issue a decision in the coming months. No changes regarding CMC_11_25 or CMC_14_25 will be implemented for the T-4 2029/30 auction.

1.1.6. The RAs also reviewed each Modification Proposal submitted to this workshop and determined that they were not spurious as per B.12.6.1 of the CMC.

1.1.7. On 05 June 2025, the RAs determined the procedure to apply to the Modification Proposals. An overview of the timetable is as follows:

i. The System Operators convened Workshop 43 (Part B) where the Modification Proposals were considered on 09 June 2025.

ii. The System Operators, as set out in B.12.7.1 (j) of the CMC, prepared a report[1] of the discussions which took place at the workshop, provided the report to the RAs, and published it on the Modifications website promptly after the workshop.

iii. The RAs then consulted on the Modification Proposals from the date of publication of the consultation paper until the closing date of Thursday 17 July 2025.

iv. As set out in B.12.11.6, the RAs shall make their decision as soon as reasonably practicable following conclusion of the consultation and publish a report in respect of

[1] Capacity Modifications Workshop 43B Report_0.pdf.

their decision. The purpose of this decision paper is to set out the decisions relating to four of the six Modification Proposals discussed during Workshop 43 (Part B) to:

a) Make a Modification;

b) Not make a Modification; or

c) Undertake further consideration in relation to the matters raised in the Modification Proposal.

1.1.8. This decision paper provides a summary of the consultation proposals and sets out the SEM Committee's decisions.

1.2. RESPONSES RECEIVED TO CONSULTATION

1.2.1. This paper includes a summary of the responses made to Capacity Market Code Modifications Workshop 43 (Part B) Consultation Paper (SEM-25-027) in relation to CMC_10_25, CMC_12_25, CMC_13_25 and CMC_15_25 only, which was published on 17 June 2025 and closed on 17 July 2025.

1.2.2. A total of 14 responses were received to consultation SEM-25-027, with one marked as partially confidential. The non-confidential responses are from:

- Bord Gáis Energy Limited (BGE)
- Bord na Móna (BnM)
- Captured Carbon
- EirGrid plc and SONI Limited (TSOs)
- Electricity Association of Ireland (EAI)
- Energia
- EP UK Investments (EPUKI)
- ESB Generation and Trading (ESB GT)
- Federation of Energy Response Aggregators (FERA)
- iPower Flexible Energy (iPower)
- Kilshane Energy Limited (Kilshane)
- Lumcloon Energy Limited (Lumcloon)
- Shannon LNG Limited (Shannon LNG)
- SSE

2. CMC_10_25 – AMENDMENTS TO E.7

2.1. CONSULTATION SUMMARY AS PRESENTED BY THE RAS

2.1.1. This Modification Proposal intends to improve clarity and avoid potential inconsistencies between provisions dealing with qualification within the Code.

2.1.2. The first part of the proposal seeks to add wording to E.7.1.1 of the CMC to remove any presumption of qualification and make clear that no candidate unit should be considered qualified unless the qualification tests are satisfied.

2.1.3. The second part proposes to delete E.7.2.1 (f) to avoid the overlapping of provisions between this provision and E.7.5.1. This, according to the RAs, is in line with their view that the concept of 'achievability' is clearer than that of 'feasibility' and that an assessment of deliverability sits better in the section dealing with 'Requirements for New Capacity' rather than 'Administrative Considerations'. The legal drafting also proposes to amalgamate E.7.5.1 (b) and (c) into one, given the RAs' understanding that E.7.5.1(c) is a subset of E.7.5.1(b).

2.2. RESPONSES TO MODIFICATION PROPOSAL

2.2.1. 11 out of 14 non-confidential responses commented on this proposal.

2.2.2. BGE stated that it broadly supported the proposal, subject to the RAs retaining full discretion on Final Qualification Decisions (FQDs) given they have wider statutory duties to consumers and Security of Supply considerations, for example. In its view, putting Qualification Decisions in the hands of the SOs is not appropriate given they are also Market Participants, and thus raises a conflict of interest.

2.2.3. In practice, BGE also considered there to be no big difference between the terms 'feasible' and 'achievable'. However, it raised a concern with the proposed inclusion of wording in E.7.5.1 requiring that the SOs "shall reject" a qualification application if the project is not considered 'achievable' by the time allowed. In its view, it is entirely possible for the SOs to be unsure as to feasibility/achievability of a project by the relevant deadline such that achievability could be argued one way or the other. Therefore, the need for RA discretion to be retained to make the final decision is necessary, according to BGE.

2.2.4. BnM stated that the proposal will make it more difficult for units to qualify by introducing unnecessarily stringent conditions, particularly the wording "but not limited to" in E.7.5.1.

2.2.5. Energia stated that the change proposed to E.7.2.1 of the Code should be rejected, and paragraph (f) be reinstated in its original form. Deletion of paragraph (f) would remove the test of feasibility from the Code with respect to the qualification of units and Energia considers that because the definition of 'feasibility' has been examined by the Courts with guidance and direction on its interpretation, it would be misguided to remove all reference to 'feasibility' in this regard.

2.2.6. Energia also stated that it would support a Modification Proposal that sought to raise the bar for qualification, but it considered it unclear how the current proposal would do this as intended. In its view, the qualification process should be robust and allow the SOs to exercise reasonable discretion and judgment on achievability, erring on the side of prudency.

2.2.7. Energia also proposed that the word 'achievable' be replaced with 'feasible' in E.7.5.1.

2.2.8. EPUKI stated that it is strongly opposed to the Modification Proposal and rejects the RAs' position that it is a clarificatory one. It considered the proposal to introduce a material change to the qualification assessment process and stated that framing the proposal as a clarification only is inaccurate and misleading. It stated that the RAs should provide further information on why this proposal is considered to be clarificatory.

2.2.9. EPUKI further stated that this Modification Proposal undermines transparency and objectivity in the Capacity Auction process by removing reference to specific criteria by which an Application for Qualification would be rejected and instead placing this assessment at the sole discretion of the SOs with no objective criteria provided.

2.2.10. Referring to the High Court judgment made associated with a legal challenge to the T-4 2028/29 Qualification Decisions in *Kilshane Energy Limited v EirGrid PLC [2025] IEHC 174*, paragraph 158, EPUKI stated this confirms that Participants are currently entitled to a presumption of qualification, and in trying to reverse this, this proposal is a material change to the Capacity Market, rather than a clarification. It further stated that the judgment provided detailed information as to how qualification applications should be assessed and the considerations involved in deciding to reject one. In EPUKI's view, the Modification Proposal undermines this guidance by reducing objectivity in the assessment of applications and giving the SOs discretion as to whether a project qualifies.

2.2.11. EPUKI were also of the opinion that the RAs' stated reasoning for the proposal to amend the assessment for deliverability to be based only on 'achievability' rather than 'feasibility' and this being clearer has been supported with no explanation or evidence. It stated that the definition for 'feasibility' has been legally tested, has a comprehensive definition and a precedent established of using it as a deliverability assessment. In its view, the proposal to adopt a new approach with new assessments and considerations would only serve to complicate and confuse an existing process, with no discernible benefits.

2.2.12. ESB GT stated it was not convinced that the amendments proposed to E.7 are consistent with what this section should allow for. In its view, the "uncertainty in regard to presumptions on qualification" allows for an important level of interpretation which is helpful in retaining flexibility in the CMC.

2.2.13. ESB GT also stated that it thinks that the adoption of the concept of 'achievability' rather than 'feasibility' has far greater implications on the Code than has been considered and thus stated it would be hesitant to support such a change without an explicit clarification that the interpretation of 'feasible' with respect to the Code should be as outlined in the Northern Ireland jurisprudence in the case of *Re Prime Power Generation Ltd and EP Kilroot Ltd [2024] NIKB 102*.

2.2.14. In ESB GT's opinion, if the word 'feasible' is to be used rather than 'achievable', then the Courts' interpretation of this word should also be codified and referenced within the CMC.

2.2.15. FERA agreed with the identified difference between the terms 'feasibility' and 'achievability' and stated that the use of 'achievability' is an acceptable substitute for 'feasibility' as, in its view, it provides a more definitive understanding of delivering capacity at the expected time.

2.2.16. However, FERA also noted that ambiguity could still remain around the wording of E.7.2.1 using "may" and questioned whether there is an identifiable reason or example that the SOs would not reject a qualification application under "Administrative Considerations".

2.2.17. FERA also questioned whether the changes being proposed are to address issues that undermined the RAs' position in a court case or whether they are truly to benefit Participants. It also noted it would have been useful to know within the consultation paper if the Modification Proposal was an outcome of lessons learned from court cases.

2.2.18. iPower stated that the proposed use of 'achievability' may lead to more early rejections where delivery plans are uncertain, potentially disadvantaging smaller or newer developers and increasing the risk of legal disputes, particularly without a clear objective definition. It further stated that ambiguity may also persist due to the wording in E.7.2.1, specifically the use of the word "may", which raises questions about when the SOs would choose not to reject applications under "Administrative Considerations".

2.2.19. In iPower's view, it was unclear whether these changes are genuinely intended to improve the process or are a response to issues that previously weakened a position in a court case.

2.2.20. iPower also stated that while 'achievability' is a more suitable and definitive substitute for 'feasibility', offering better clarity on timely delivery, Participants need clear guidance on how it will be applied to avoid potential unintended barriers for smaller developers.

2.2.21. Kilshane were of the opinion that the changes being considered to E.7.1.1 and E.7.2 in this proposal appear to be an attempt at reversing or addressing the implications of the decision of Scoffield J in *Re Prime Power Generation* at [189]-[191] and O'Higgins J in *Kilshane Energy Limited* at [220]. In its view, both judgments provide clear and singular direction for Participants as to how E.7.1 functions and the proposed amendments will plainly negate this guidance.

2.2.22. Kilshane further stated that maintaining a degree of discretion and flexibility as to the qualification of New Capacity, notwithstanding where an administrative consideration is considered to arise, provides the SOs with a useful tool to qualify New Capacity that may ultimately aid provision to the SEM.

2.2.23. In Kilshane's view, removing and replacing the concept of 'feasibility' creates significant ambiguity. It stated that by virtue of both proceedings in Ireland and Northern Ireland, the definition of 'feasibility' now has a judicial interpretation and its definition within the meaning of E.7.2.1 (f) is known and can be clearly relied upon. In contrast, the concept and definition of 'achievability' is completely undefined within the Glossary of the CMC or by judgment.

2.2.24. Kilshane also commented that in its view, it appears far preferable to retain the discretionary nature of E.7.2.1 (f) rather than the obligatory application of E.7.5.1, particularly when considered alongside the proposal to replace a known definition with an unknown one. At the very least, Kilshane urged the RAs to make appropriate amendments to E.7.5.1 or E.7.2.1 (f) to retain this discretion if the RAs were intent on replacing 'feasibility' with 'achievability'.

2.2.25. Lumcloon, noting the High Court Judicial Reviews concerning *Prime Power and Kilroot [NIKB 2024/99871/01 and 2024/100765/01*] and *Kilshane and Coolpowra* [*HC 2024/1407 JR and 2024/1429 JR*], stated that the Court provided significant guidance on the interpretation of 'feasible' within the context of the CMC. In its view, by removing a term which has now been subject to judicial interpretation and relying solely on 'achievable', the CMC may be trading a defined concept for a legally undefined one. Furthermore, Lumcloon stated that the term 'achievable' does not have the benefit of the 'reasonably practicable' standard established by the Court in the Kilshane and Coolpowra cases.

2.2.26. Lumcloon recommended that the rigour and standard associated with the term 'feasible', as established by the High Court, is explicitly carried into the assessment of 'achievability'. It suggested that any final drafting makes it clear that the assessment of whether an Implementation Plan's dates are 'achievable' must be conducted to at least the same standard as the 'reasonably practicable' test for feasibility defined by the Courts.

2.2.27. Lumcloon also recommended that the proposed Modification CMC_04_25 is incorporated into this proposal by amending E.7.5.1 (c), and the new proposed definition of "Applicable Time Frame" and "Complex Project" is adopted.

2.2.28. SSE, while noting that the terms 'achievable' and 'feasible' are interchangeable, stated that it is concerned that the change in approach when considered against a backdrop of both *de facto* condensed Capacity Auction timeframe for delivery and the uncertainty that third party factors can impact on delivery will set the bar unnecessarily high for Market Participants at the initial stages of the Capacity Auction.

2.2.29. SSE also stated that it is of the view that the 'achievability' of projects is already considered fully through the various milestones that are included in the Code, for example, Substantial Financial Completion (SFC), which it considers is a marker of whether a project is 'achievable'. It stated that it believes that given there is already discretion afforded to reject on the grounds of feasibility, which is sufficiently expansive, to amend this assessment approach, in particular at a time when the RAs have condensed the delivery timeframes from 4 years to 3 years 4 months is inequitable to Market Participants.

2.2.30. The TSOs stated that the definition of 'feasible' and the judgment expected of the TSOs as the "Prudent Industry Operator" set out in the judgment of Scoffield J. in paragraphs [135] and [136] in the cases of *Re Prime Power Generation's Application* and *Re EP Kilroot's Application* [2024] NIKB 102, provides clarity and certainty to both the TSOs and Market Participants in respect of future qualification applications. They noted there is no court-approved definition of 'achievable' such as has been handed down in respect of 'feasible' within the context of the CMC.

2.2.31. The TSOs also stated that it is not evident that the wording changes proposed to E.7.1 shifts the presumption of qualification as intended. In their view, the revised text still provides for a presumption in favour of qualification, unless the provisions of E.7.2 apply to reject an application.

2.2.32. The TSOs also noted that the amalgamated E.7.5.1(b) and (c) has omitted 'relevant' from 'relevant Capacity Year', which in their view, may lead to confusion as regards the Capacity Year in question.

2.3. SEM COMMITTEE DECISION

2.3.1. The SEM Committee welcomes the feedback provided by Participants both as part of the workshop and through the consultation process.

2.3.2. The RAs note the views regarding the potential value of retaining the SOs' discretion under E.7.2.1(f) to qualify otherwise infeasible projects, however they note that there is little (if any) evidence of the discretion ever having been used in that way. Moreover, the RAs are also mindful of the risk, highlighted by Judgment of the High Court of Justice in Northern Ireland of 27 November 2024 in *Prime Power Generation Ltd & Anor, Re Applications for Judicial Review* [2024] NIKB 102, para.237, of confusion between this provision alongside those presently contained in E.7.5.1(b) and (c). In addition, and as discussed further below, the RAs consider that the role played by the SOs under E.7.5.1 involves a substantial degree of regulatory judgment on their part. The RAs have therefore decided to proceed with the removal of E.7.2.1(f).

2.3.3. As regards the proposed modification of E.7.5.1, the RAs note that there was no criticism of the merging of (b) and (c). There was, however, considerable criticism (in light of the proposal to remove E.7.2.1(f)) of the proposal to retain an 'achievability' as opposed to a 'feasibility' criterion in the merged provision.

2.3.4. The RAs are not persuaded that, as regards the ability of a developer to deliver a project in a given timescale, the term 'achievable' would be interpreted any more narrowly by the court than the term 'feasible'. These two expressions have already been found as meaning essentially the same thing in the context of recent litigation in *Prime Power Generation Ltd & Anor, Re Applications for Judicial Review* [2024] NIKB 102, para.195, and none of the respondents offered any contrary authority. It should also be borne in mind that, as the court has emphasised, the carrying out of the relevant assessment calls for the exercise of regulatory judgment as opposed to a more restrictive approach, such applying a balance of probabilities as set out in *Prime Power Generation Ltd & Anor, Re Applications for Judicial Review* [2024] NIKB 102, paras.135 and 139. The RAs are also not persuaded that it would be appropriate to include a definition of 'achievable' based on recent judicial interpretation into the CMC glossary, since that is best read in the proper context of the entire judgment.

2.3.5. Finally, the RAs disagree with the suggestion that the expression "the Capacity Year" in the merged provision is unclear without the addition of the word "relevant", since the opening paragraph of E.7.5.1 specifies which Capacity Year is to be the focus for the SOs' assessment.

2.3.6. On the basis of the reasons outlined above, the SEM Committee approves this Modification Proposal.

3. CMC_12_25 – RAS' ROLE IN RELATION TO FQDS

3.1. CONSULTATION SUMMARY AS PRESENTED BY THE RAS

3.1.1. Option 1 of this Modification Proposal (noted as Part 1 in the 'Legal Drafting Change' Section of the Modification Proposal Form) is to seek to alter the RAs' role in relation to approving/rejecting FQDs submitted by the SOs, to one which would:

i. Be confined to resolving challenges brought against decisions reached earlier in the qualification process (i.e. through the CMDRB (Capacity Market Dispute Resolution Board));

ii. Allow the RAs to rely (except where good cause could be shown) upon information which had been available at those earlier stages; and

iii. Be more closely integrated with the process for resolving qualification disputes, involving SO review and then dispute resolution by the CMDRB.

3.1.2. As an alternative, in option 2 of the Modification Proposal (noted as Part 2 in the 'Legal Drafting Change' Section of the Modification Proposal Form), the RAs have also presented a number of other changes to E.9.4 which, as contended by the proposers, might usefully be made to clarify the operation of this provision.

3.2. RESPONSES TO MODIFICATION PROPOSAL

3.2.1. 12 out of 14 non-confidential responses commented on this proposal.

3.2.2. BGE opposed Part 1 of the proposal and stated it did not believe that the language used stands up under constitutional law, common law or contract law and it would fall foul of the ground of illegality under Judicial Review also given that in its view, the RAs do not have the legal power to limit the right of access to Courts.

3.2.3. BGE further stated that it does not support the rationale for the RAs seeking to remove themselves from confirming decisions on qualification and that enabling the SOs to be the final decision makers risks raising a conflict of interest given the SOs' role as a fellow SEM Market Participant but also administrator of the CMC.

3.2.4. BGE did however state that it supports the majority of the clarification suggestions in Part 2 of the proposal, but was unclear as to the intended effect of the addition in E.9.4.5 of the text. BGE stated that a concern for it would be that the text may be read as restricting the scope of matters

that the RAs can consider in approving/rejecting decisions and proposed alternative wording for consideration.

3.2.5. BnM stated that the proposed Modification unnecessarily distances the RAs from inputting to Qualification Decisions. In its view, this would be a substantive change and would increase the use of the dispute resolution process.

3.2.6. BnM also stated that it did not believe the proposed change will further Code objective (g).

3.2.7. In consideration of the overlap with CMC_11_25, the EAI stated that they do not support the prospect of outcomes of CMC dispute resolution boards only being permitted to be challenged if 'malice' or 'dishonesty' in the decision-making process is effectively proven.

3.2.8. The EAI stated that the final decision for Qualification Decisions should rest with the RAs. In the view of their members, the EAI stated that they are not supportive of the more "substantive" change in Part 1 of the proposal.

3.2.9. According to the EAI, the endeavour by the RAs to limit Court access is both unlawful under Article 34 and inapplicable due to the nature of the rules of the High Court (Order 84) which govern Judicial Review proceedings (in Ireland). It is for the Courts to determine standing, not for the RAs to determine unliterally how to limit same in the EAI members' view. Furthermore, the EAI stated that the CRM is a State Aid and as such, the RAs do not have limiting powers to restrict Court access as the CRM is regulated by Regulation (EU) 2019/943. Member States are obligated to ensure effective review of decisions to ensure adherence with EU Law, including through using the preliminary reference procedure (Article 267 TFEU). This would limit this State Aid oversight aspect, according to the EAI.

3.2.10. Energia, similar to its position on CMC_11_25, stated it would not support this proposal were the intention to remove or reduce recourse to the Courts. This is in particular to the proposed addition to B.14.10.1 in Part 1 of the proposal.

3.2.11. EPUKI opposed the Modification Proposal given its materiality coupled with the lack of transparency around the jurisdiction for this change. It stated it had further concerns that the proposal would result in weakening Participants' legal rights and would not constitute good regulatory practice in general.

3.2.12. In EPUKI's opinion, the proposal diminishes the RAs' decision-making role in a key regulatory process and could be viewed as incompatible with their independence as regulators established by the Electricity Regulation Act 1999 and the Energy (Northern Ireland) Order 2003 in Northern Ireland. In particular, EPUKI stated the limitation to the review of RAs in a Qualification Dispute proposed in B.14.10.1 is clearly wrong. In its view, this runs counter to well-established principles in law, including under Article 6 of the ECHR. Furthermore, EPUKI stated that as the law of Northern Ireland governs the CMC, the right to Judicial Review is enshrined in law by Order 53 of the Rules of the Court of Judicature (Northern Ireland) 1980. In this instance, it stated that a subordinate document is seeking to interfere with the rights of Parties to the Code to exercise their rights under this statute.

3.2.13. EPUKI also stated it was concerned that this proposal sits uneasily with the requirement for TSOs to act independently, and risks undermining the governance balance envisaged in the Capacity Market design. It further stated that the proposal appears to be codifying a flawed practice, where the RAs are heavily engaged informally in early processes but seek to avoid responsibility for the final decision-making stage.

3.2.14. EPUKI further stated that no explanation was provided to support the proposed removal of E.9.4.2 (d) and E.9.4.11. EPUKI stated it was unclear why the RAs would be content to rely on outdated information and that making decisions based on information which the RAs are aware is no longer correct does not represent good regulatory practice.

3.2.15. In EPUKI's view, the lack of consultation and robust stakeholder engagement creates a risk of unintended consequences associated with this Modification Proposal. In its view, the proposal appears rushed, being brought forward within the pre-auction window, and EPUKI is concerned that this circumvents proper policy development.

3.2.16. While ESB GT stated it was supportive of some elements of the proposed Modification, as it would codify the right of a Disputing Party to make direct appeal to the RAs if dissatisfied with a decision made by the CMDRB prior to initiating any court proceedings and would allow the RAs to intervene as an adjudicator in the qualification process further in advance of an auction. However, overall it was not supportive of the proposal. It considered that the additional recourse to the Courts to appeal may reduce the risk of auction delays and allow for a more thorough consideration by the RAs of the arguments submitted by the Disputing Parties, but the implication of the proposal would be that it would effectively take the contractual right of access to the Courts away from Parties to the Code.

3.2.17. In order to fully assess the proposed changes to the RAs role in relation to FQDs, ESB GT also urged transparency as to the nature of assessment of the SO submission currently carried out by the RAs, and the reasons for any rejection by the RAs of an FQD in the past. It stated it would further welcome clarification as to the grounds on which the RAs would make any decision, if different from those set out in B.14.9, applicable to the CMDRB.

3.2.18. In ESB GT's view, implementation of the proposed Modification could cause the SEM Committee to act *ultra vires* and fail to perform its function in the manner prescribed in the Electricity Regulation Act 1999, by not having regard to these functions. ESB GT argued that it is possible that the Capacity Market decisions could result in inaccurate though not malicious application of the Code and also possible that the decisions could impact Market Participants and customers in Ireland and Northern Ireland differently. This being the case, removing the right of final justice through the Courts has the potential to result in *ultra vires* actions by the RAs, according to ESB GT.

3.2.19. ESB GT also stated that narrowing the right to redress pursuant to the Modification Proposal would also undermine the requirements under the Electricity Regulation Act 1999 (as amended). It further stated that the evidence thresholds for 'malice' and 'dishonesty' are currently unknown and ultimately subjective and could realistically be perceived as an attempt to limit Market Participants' constitutional and European rights of access to justice and Courts. It stated this right

of access is enshrined in Article 34 of the Irish Constitution and Article 6 of the ECHR, both of which can be relied on by legal entity companies.

3.2.20. ESB GT stated that if the proposal is introduced, it would urge the RAs and SOs to make available to applicants as much information in relation to Qualification Decisions as possible, as early as possible, to allow for a thorough assessment of the decision, prior to initiating a Dispute. It further stated that if the proposal was to be progressed, it would be prudent that the Working Group obtain legal advice as to the vires of the Modification in line with SEM Committee functions set out in legislation. It also recommended that before a decision is taken, that an opportunity be given for separate submissions to be made to the SEM Committee.

3.2.21. In FERA's opinion, the proposed adjustments to B.14.10.1 may be open to challenge under legislative guidance as it deliberately attempts to exclude actions or error by individuals or Parties.

3.2.22. FERA also noted that the FQDs by the SOs may include outcomes that are not beneficial to the overall system and only the RAs would have the wider knowledge to identify that. It further stated that under the proposed adjustments, Participants would not be able to challenge decisions not directly related to themselves.

3.2.23. FERA stated Option 1 of the proposal would require legal review to ensure full governance is maintained by the RAs.

3.2.24. In iPower's opinion, the changes proposed raise concerns about unclear dispute boundaries, especially where procedural and technical issues overlap, making RA reassessment uncertain. It further stated that B.14.10.1 may face legal issues by excluding individual errors, and that SO-only decisions may overlook broader system impacts that only the RAs can assess. In iPower's view, Participants may lack the insight to raise such issues, highlighting the need for ongoing RA oversight.

3.2.25. While iPower considered the proposal to be clear, it stated that it would benefit from guidance on evidence, format and a plain English summary for Participants without legal support. It further stated that Option 1's significant wording changes will also require legal review to ensure proper RA governance.

3.2.26. In relation to the proposed changes, Kilshane welcomed the inclusion of a further opportunity to examine qualification before the RAs. However, it also stated that it remained concerned as to the lack of clarity provided by the proposed amendments as to the procedure to be followed as well as the standard of review that will be applied, particularly the level of discretion provided to the RAs in this regard also.

3.2.27. Kilshane considered the proposed amendments to be unclear in setting out to what extent the RAs will be at large to uphold, vary or reject a review, and to what extent the RAs will seek to apply the provisions of the Code whether merits-based or applying another standard.

3.2.28. Kilshane also stated that any power enjoyed by the RAs to permit new evidence should be as permissive as possible and enable Parties to demonstrate as best as they can their ability to qualify.

3.2.29. Notwithstanding its support for revisiting this part of the process, Kilshane stated that absent clarity to the operation and functioning of the proposed amendments, it retains considerable pause in supporting their inclusion. Kilshane suggested that it would be beneficial if the RAs would provide further explanation and detail in relation to how they envisage the new processes functioning, and stated this would be crucial to Parties having confidence in these provisions.

3.2.30. Lumcloon's primary concern with the proposal under option 1 is that by positioning the RAs as the final arbiters of disputes in a process it actively oversees and approves and where there is no recourse to the Courts, the Code may be inadvertently creating a structural bias and the perception of a conflict of interest. This inherent tension, according to Lumcloon, could impact both the decision-making process and its reception by the market.

3.2.31. Similar to its position on CMC_11_25, Lumcloon stated that it would have concerns that the proposed Modification would effectively 'oust' the judiciaries' constitutional role enshrined in the Irish Constitution which could bring the entire process into question. It further stated that it held reservations that the two working day deadline for submitting a Notice of Review may not be sufficient time for a Participant to prepare a comprehensive, evidence-based submission for a complex issue. In its view, there is a risk that this could favour the Party defending the decision.

3.2.32. In Lumcloon's opinion, it would be worth exploring whether the timelines introduced in the new Section [XX] could be adjusted to ensure Participants feel they have had a full and fair opportunity to present their case. This, in its view, would build in more procedural safeguards that explicitly acknowledge and address the principles of natural justice. Noting the procedural weaknesses pointed out in the High Court judgments, Lumcloon also stated that it believed it is important to resolve these weaknesses and work out suitable drafting to ensure a fair and effective CMDRB process.

3.2.33. Overall, in regard to option 1, Lumcloon stated that it did not support the removal of a Participant's access to the Courts.

3.2.34. In regard to option 2, Lumcloon stated it had concerns that the process could inadvertently cause some procedural weaknesses that may result in a non-discriminatory process. It was of the opinion that that the combination of potential 'regulatory defence' to the SOs' technical expertise and the 'deemed approved' clause creates a risk that a flawed rejection by the SOs can become 'final and binding' due to RA inaction or a cursory review. This approach appears to prioritise administrative timelines over correct and fair outcomes, in Lumcloon's view.

3.2.35. Lumcloon also stated it would support the amendments proposed under option 2 if CMC_11_25 is not approved. However, it recommended that the drafting is amended to take account of the impacts it had highlighted in its consultation response.

3.2.36. SSE stated it did not support the proposed addition to B.14.10.1 and considered this to not be legally compatible. It further stated that given the significant number of changes proposed in the legal drafting, the wording changes which relate to each of the two options needs to be clarified as, currently, this is unclear in SSE's view.

3.2.37. In principle, SSE stated it supports the proposal for the RAs to approve or reject FQDs submitted by the SOs. However, it stated this should not preclude the ability for an FQD to be challenged through the Courts and given the significant number of legal wording changes to existing Sections of the Code and the addition of a detailed new Section, SSE suggested that this needs to be reviewed to ensure that all changes are appropriate to the RAs role in relation to FQDs.

3.2.38. The TSOs stated they were concerned regarding the consistency of the proposed Modification with the statutory powers of both the RAs and TSOs in the island of Ireland and stated the proposal may necessitate changes to the powers and amendments to the Terms of Reference of the SEM Committee, and possible revisions to the licences of the TSOs. They stated that the transfer of authority for FQDs solely to the TSOs and removing the RAs from this role represents a significant and fundamental change to the governance of the CRM and this warrants further consultation.

3.2.39. The TSOs were also of the opinion that while some modification to the CMC to allow for rectification or amendment of a decision of the CMDRB (where they have made an error) would be helpful, they stated that inserting a fresh appeals process into an already constrained auction timetable is likely to impact auction processing and delivery timelines which could risk the procurement of required capacity.

3.2.40. An alternative to this proposed Modification, according to the TSOs, could be for them to conduct a review of any notice of dissatisfaction submitted by disappointed Participants and to flag any clear procedural or factual error in a CMDRB decision to the RAs when submitting FQD recommendations. The RAs could then account for any CMDRB error in making its FQD, in the TSOs' view. The TSOs further stated they would be open to discussion on revisions to the dispute resolution process to provide some mechanism to rectify clear errors in a decision of a DRB but are of the view that the establishment of an 'RA Appeal' stage is not the optimum solution.

3.3. SEM COMMITTEE DECISION

3.3.1. The SEM Committee welcomes the feedback provided by Participants both as part of the workshop and through the consultation process.

3.3.2. The SEM Committee notes the feedback from respondents in relation to Option 1 of this Modification Proposal and the various arguments raised in opposition to this option. The SEM Committee intends to undertake further consideration in relation to the matters raised in this option in light of feedback. In the meantime, and taking into account that limited feedback was received in relation to Option 2 of this Modification Proposal, in which only one Participant

specifically did not support Option 2 if it was implemented alongside CMC_11_25 , the SEM Committee has decided to make the Modification proposed in that option.

3.3.3. The SEM Committee considers Option 2 to be "housekeeping" changes which clarify the operation of the RAs' current role and place a requirement on them to provide reasons for their decision on whether to approve or reject FQDs submitted by the SOs. The SEM Committee also notes CMC_01_25 requires reasons from the SOs in cases of rejected qualification applications.

4. CMC_13_25 – AMENDMENTS TO THE CAPACITY AUCTION TIMETABLE

4.1. CONSULTATION SUMMARY AS PRESENTED BY THE RAS

4.1.1. This Modification Proposal aims to clarify how the Code provisions D.2.1.10 and D.2.1.12 interact. It also seeks to clarify that the powers of the SOs and RAs provided under D.2.1.10 are not limited, thus allowing amendments to the Capacity Auction Timetable at short notice.

4.2. RESPONSES TO MODIFICATION PROPOSAL

4.2.1. Seven out of 14 non-confidential responses commented on this proposal.

4.2.2. BGE stated that it believes that a) it is inequitable to postpone/cancel an auction after it has commenced and b) a certain level of notice, for e.g. 1 working day (1 WD) at least, should apply for a delay, postponement or cancellation. It stated that it would support the proposal subject to the suggestions being considered.

4.2.3. EPUKI opposed this proposal due to concerns it had around regulatory uncertainty and based on the potential undermining of D.2.1.12 of the CMC. It further stated that it did not agree the proposal was clarificatory as in its view, the changes fundamentally remove existing restrictions on the RAs' powers within the context of the Capacity Market.

4.2.4. EPUKI stated it did not agree there was a lack of clarity as to the interpretation of the two provisions in the Code. It stated that inclusion of D.2.1.12 explicitly prevents the short-notice postponement or cancellation of the Capacity Auction and that the current drafting of the Code is specifically designed to prevent this.

4.2.5. EPUKI also stated it had concerns around the potential consequences of the proposal, specifically if auctions are cancelled after submissions have commenced or the window for submissions has closed. It further stated the proposal creates concerns around uncertainty and fairness in the auction process.

4.2.6. ESB GT viewed this proposal as administrative and welcomed clarification in relation to the powers of the RAs and SOs to introduce changes to the timetable, including at short notice.

4.2.7. FERA stated that the proposed change could leave Participants and investors at a significant commercial risk and that more certainty on auction dates is required, not less.

4.2.8. FERA also suggested restricting the applicability of D.2.1.12 (b) to T-1, T-2 and T-3 auctions only and that D.2.1.1 should be strengthened regarding its timing in providing the T-4 auction.

4.2.9. iPower stated that the proposal boosts flexibility and efficiency, but short-notice changes may disadvantage smaller Participants and increase commercial risk. It stated that last minute timetable changes under D.2.1.10 can disrupt planning, raise costs for smaller Participants and increase reliance on clear communication from the SOs and RAs. Uncertainty around how D.2.1.10 and D.2.1.12 interact undermines confidence in auction timelines and adds pressure on delivery, in iPower's view.

4.2.10. While iPower considered the clarification that D.2.1.12 doesn't limit the powers of the SOs and RAs under D.2.1.10, it stated this could be improved by urging the SOs to explain major changes, restricting D.2.1.12 (b) to T-3 to T-1 auctions, and strengthening D.2.1.1 to ensure clearer timing for T-4 auctions.

4.2.11. SSE stated it did not support this proposed Modification. It contended that the proposal is not acceptable as proposed and asked that limits and reasonable conditions are included to ensure Market Participants can react in a timely manner to any timetable amendments which may arise, according to predetermined conditions, limits and a reasonable lens.

4.2.12. The TSOs stated that in order to avoid ambiguity and conflicting provisions, it may be more prudent to consider combining D.2.1.10 and D.2.1.12 into a single provision dealing with delays, postponements or cancellations to the Capacity Auction, to remove any possibility of a conflict.

4.3. SEM COMMITTEE DECISION

4.3.1. The SEM Committee welcomes the feedback provided by Participants both as part of the workshop and through the consultation process.

4.3.2. The SEM Committee notes the views expressed in response to this proposal and, in particular, the concerns expressed regarding the potential impact on market or investor certainty of late and/or unanticipated alterations being made to the Capacity Auction Timetable. In the SEM Committee's view, in exercising the powers whose scope is clarified by this proposed Modification, the Regulatory Authorities would naturally wish to take any such impacts into account. However, in order to promote confidence in that regard, the SEM Committee has decided to include in the modified clause an express duty on the part of the Regulatory Authorities to pay due regard to potential disruption when deciding on timetable changes. Subject to that adjustment, the SEM Committee has decided to make the Modification proposed.

5. CMC_15_25 – PERFORMANCE SECURITIES FOR EXTENDED PROJECTS IN T-4 2026/27

5.1. CONSULTATION SUMMARY AS PRESENTED BY SHANNON LNG LIMITED

5.1.1. This Modification Proposal seeks to amend the timelines for posting Performance Security and Termination Charges for projects successful in the T-4 2026/27 auction that have been granted an extension under J.5.5 and/or J.5.7 of the CMC, where J.5.7 extensions are in relation to planning delays only. It aims to do this by amending J.3.2.9 and J.7.1.3 of the CMC.

5.1.2. The Modification proposal would be an extension to the arrangements introduced as a result of the SEM Committee's decision on CMC_15_23 (in SEM-23-069), which applied only to the T-3 2024/25 and T-4 2025/26 auctions.

5.2. RESPONSES TO MODIFICATION PROPOSAL

5.2.1. 10 out of 14 non-confidential responses commented on this proposal.

5.2.2. BGE stated the proposal was reasonable given precedence from previous auctions and stated it would support it subject to a) the Modification applying to all auctions and b) that as well as Performance Security posting dates being extended, the relevant remaining Termination Charges and corresponding application of monthly windows would move in tandem.

5.2.3. BnM were of the opinion that there is not an explicit reason for this carve out and questioned why the proposal would relate only to the T-4 2026/27 auction. In its view, the proposal is flawed, and it results in discrimination against existing/future Participants and fails to further Code Objective (f).

5.2.4. BnM stated it would support an enduring solution for amendments to the timelines for posting Performance Security and Termination Charges (as presented in CMC_06_24 which was rejected) that would apply to auctions going forward only.

5.2.5. Captured Carbon, referring to the SEM Committee's decision on CMC_15_23, stated that where a project does not have definitive planning permission, the financial viability of it is threatened, which, in itself, challenges security of supply in Ireland.

5.2.6. Captured Carbon was also of the opinion that the directions that have been issued to EirGrid for recent auctions allowing Participants to enter without having prior planning permission, namely the T-4 auctions for delivery in the 2026/27, 2027/28 and 2028/29 Capacity Years, coupled with the lead-in times for these auctions being around 3.5 years, has resulted in significant planning delays for these projects. In its view, this is also due to the exceptional circumstances in the planning system that took place since 2022.

5.2.7. For the sake of simplicity, Captured Carbon recommended the Modification Proposal be amended to refer just to J.5.5 and considered it reasonable to include the T-4 2027/28 and T-4 2028/29 auctions as well.

5.2.8. Energia stated that while it does see merit in extending Performance Security for extended projects, it does not support this proposal on the basis that it arbitrarily restricts such provisions to extensions due to planning delays only and only to contracts awarded in the T-4 2026/27 auction.

5.2.9. EPUKI stated it does not support the proposal due to it being limited to the T-4 2026/27 auction only. It did however state that it considers that the second Performance Security Posting Date/Event applicable to Awarded New Capacity should be aligned with the SFC date for the capacity in question, including applicable extensions, but this should relate to all future auctions.

5.2.10. ESB GT agreed that the proposed Modification is consistent with CMC Objectives (b), (c), (d) and (f). It further stated that it would urge the RAs to consider extending the arrangements under SEM-23-069 to capacity awarded in all auctions to create a level-playing field, mitigate undue risk exposure for developers, and ultimately avoid the risk of termination.

5.2.11. FERA stated that the fact that local state bodies can continue to impact deliverability timelines must be understood and accommodated. As an alternative approach, it suggested key/strategic developments should be given priority within the planning and permitting sectors.

5.2.12. FERA also stated that serious consideration needs to be given to T-5 timeframes.

5.2.13. iPower was of the opinion that the proposal raises concerns about how the SOs will assess planning delays consistently across councils, adding admin burden and risk of inconsistent or subjective application. It also stated that custom delays may complicate tracking, especially for multi-site projects and strain SO resources.

5.2.14. iPower also noted that T-4 auction experiences shows that four years is often not enough and suggested a need for T-5 timelines or else prioritising key projects in the planning process.

5.2.15. Shannon LNG considered its proposal to enable CMC Objectives (a) – (g). It stated that the primary reason for raising the proposal was due to what it described as unforeseeable delays, caused as a result of planning, affecting most Participants from the T-3 2024/25 to T-4 2028/29 auctions, noting also that these auctions facilitated projects in Ireland which did not yet have planning permission to enter the auction under a Direction from the CRU to EirGrid.

5.2.16. Shannon LNG also stated that as there is a lack of clarity regarding the reasons for a J.5.7 extension request, it requested that the Modification Proposal be adjusted so that it only seeks to introduce J.5.5 extensions. Furthermore, it suggested that the RAs amend the proposal to limit the scope of this change to the T-4 2026/27, T-4 2027/28 and T-4 2028/29 auctions only and proposed new legal drafting to make this change. These amendments, in Shannon LNG's view, seek to address the concerns raised at Workshop 43 (Part B).

5.2.17. The TSOs reiterated their position expressed in their response to the CMC_15_23 consultation, namely that the purpose of Performance Security and Termination Charges are to protect consumers from the impacts associated with non-delivery of capacity. They further stated that when a project is delayed, the risk to delivery increases rather than decreases and therefore relaxing the risk mitigation for the developer appears to be inappropriate and contrary to the outcome of the consultation exercises undertaken when the CMC was established.

5.2.18. Noting the comments expressed by the SEM Committee in SEM-23-069 and SEM-25-027, around limiting the applicability of CMC_15_23 to the T-3 2025/25 and T-4 2025/26 auctions only, the TSOs were of the opinion that it is not clear why the CMC_15_23 approach should be extended to the T-4 2026/27 auction (or to other auctions).

5.2.19. The TSOs also stated tracking the path of capacity delivery with multiple remedial actions and different stages of delivery is becoming more complex with increased risk and uncertainty associated with accounting/modelling for future delivery and that the proposed Modification potentially exacerbates this situation. In their view, a full impact assessment would be required should the SEM Committee be minded to proceed.

5.3. SEM COMMITTEE DECISION

5.3.1. The SEM Committee welcomes the feedback provided by Participants both as part of the workshop and through the consultation process.

5.3.2. The SEM Committee acknowledges the request of the proposer to have its proposal amended and apply to J.5.5 extensions only, and to apply to projects awarded in the T-4 2027/28 and T-4 2028/29 auctions in addition to projects from the T-4 2026/27 auction as originally proposed. The SEM Committee notes this amended proposal is very similar to CMC_06_24, albeit targeted at specific auctions only. This proposed modification was ultimately rejected on the basis that delaying the posting of Performance Securities may blunt the key purpose of Performance Security to protect consumers against the non-delivery of contracted capacity and signal an intent from the developer to deliver that capacity, which could lead to instances where participants submit speculative bids in future auctions, increase the risk of non-delivery of capacity and be inconsistent with CMC Objective (g). The SEM Committee notes, in this regard, another recommendation of the EY review of the CRM, which included requiring Performance Security to be lodged prior to an auction and increasing Performance Security following an auction. The SEM Committee believe this proposal would not reflect this recommendation.

5.3.3. In regard to comments for an enduring solution that is not limited to any auction, and comments for the proposal to be extended and apply to future auctions only, the SEM Committee would reiterate its view that projects awarded via the T-3 2024/25 and T-4 2025/26 auctions were impacted by unforeseen global events, notably the invasion of Ukraine, and the decision to limit the applicability of CMC_15_23 was made in recognition of this. Whilst the RAs recognise that other delays affect developers, and have engaged as appropriate with the relevant stakeholders,

the SEM Committee considers that many of these delays are long-running and thus foreseeable to at least some degree.

5.3.4. Finally, the SEM Committee notes comments stating that the CRU Directions to EirGrid facilitated projects without planning permission to enter into an auction and that lead-in times for the last three T-4 auctions have been less than four years, which has resulted in planning delays for these projects. In relation to these points, the SEM Committee notes that these factors were known by Participants prior to entering an auction. It does not accept planning delays as a result of factors known to Participants, such as the content of the CRU Directions and lead-in times for the auctions, are unforeseen and continues to consider that such unexpected events have not arisen since the publication of its decision on CMC_15_23 in September 2023.

5.3.5. On the basis of the reasons outlined above, the SEM Committee will not make a Modification.

6. NEXT STEPS

6.1.1. The SEM Committee will make proposed Modifications CMC_10_25, CMC_12_25 (Option 2) and CMC_13_25 using the approved legal text accompanying this Decision Paper. The SEM Committee will consider CMC_11_25 and CMC_14_25 further and will publish a decision in the coming months.

6.1.2. All SEM Committee decisions are published on the SEM Committee website, available here: www.semcommittee.com.