EP UK Investments Response to SEM-25-023 CMC Modifications Workshop 43A

EP UK Investments ('**EPUKI**') welcomes the opportunity to respond to this consultation paper.

CMC_04_25 Adjustment of CMC auction qualification criteria to facilitate complex projects within State Aid approval

EPUKI supports this modification on the basis that the proposed amendments are consistent with the design and State Aid approval for Capacity Remuneration Mechanism ('**CRM**'). As indicated within the modification proposal, the Long Stop Date ('**LSD**') was specifically designed in order to enable complex projects to be delivered where delivery was not possible within the standard lead-time. This design decision is not reflected in the current rules whereby applications for qualifications can be rejected with no consideration of the LSD and complex delivery.

This modification is also consistent with the System Operators' ('**SOs**') approach to grid connection delivery. Historically, the SOs have taken the position that grid connections need to be delivered by the LSD, rather than by the start of the Capacity Year. Inconsistent application of these rules between SOs and participants represents an inappropriate balance of risk between the parties.

EPUKI considers it critical to enable participation in the Capacity Market in order to ensure that capacity is procured competitively. The Commission for Regulation of Utilities has previously relied on Temporary Emergency Generation ('**TEG**') as an alternative to competitive capacity. This out-of-market generation has been procured at a price which is several times greater than that of competitive capacity. Supporting the participation of more capacity in future Capacity Auctions will result in more competitive pricing, and greater contribution to Security of Supply.

This modification will increase competition in the auction for the benefit of consumers by enabling participation of New Capacity that otherwise would have been rejected during qualification due to well recognised wider network development issues outside of the participants' control.

EPUKI believes that this modification supports investor certainty by establishing an objective standard with regards to the feasibility assessment. This aligns with the SOs' proposals seeking to introduce more objective criteria to the qualification process. This additional investment certainty, and objectivity also represent a more effective approach to achieving the outcomes sought by a separate modification CMC_10_25.

The value of Capacity Payments to a project's business case, particularly in the earlier years of a contract, means that a strong incentive for timely delivery will still exist. This should minimise any risk of projects delivering after the beginning of the Capacity Year. Where the SOs identify New Capacity as being a ‘Complex Project’ they can take steps to secure additional capacity, if necessary, in the T-1 auction. This mitigates the risks of capacity shortfall.

CMC_05_25 Early Termination of Intermediate Length Contract Capacity

EPUKI is disappointed by the SEM Committee’s (‘**SEMC**’) minded-to position with respect to this modification. This position is largely based on gaming concerns and does not acknowledge the risk that this modification was raised to address. Specifically, where an Intermediate Length Contract (‘**ILC**’) project is unable to achieve Substantial Completion and thus needs to terminate but has missed the opportunity to re-enter a T-1 auction for the second year of its contract. This represents an economic risk for generators and a significant Security of Supply risk for the SOs, due to the timing of when the ILC terminates.

The consultation paper states that “*projects can terminate at any time”* and that “*such projects would not be prevented from bidding into subsequent T-1 and T-4 auctions”*. However, this is largely dependent on a project’s delivery plan. The first round of ILC contracts awarded for the 2028/2029 T-4 Capacity auction are likely to commence refurbishment work in Q2 2028 for delivery in October 2028.

This means that if any issues arise during the course of delivery which affect the project's ability to achieve Substantial Completion it will already have missed the T-1 for 2028/2029.

There are several reasons why a project may be unable to achieve Substantial Completion, including:

- Macroeconomic events impacting costs and making delivery uneconomic;
- Changes in rules or standards associated with run-hour limits;
- Third-party delays in carrying out refurbishment works impacting the completion date;
- Design-related changes occurring during the refurbishment.

These risks can occur at any time throughout the delivery window, and a project which is unable to achieve Substantial Completion due to any of the above issues would not be able to re-enter the T-1 or T-4 Capacity Auctions.

There are additional operational concerns for a unit relying on T-1 auctions in order to secure revenue in the case of an ILC termination. Specifically, planning and decisions related to investment, finances, and operation of a large gas turbine plant are typically taken over a four-to-five-year horizon. It would not be possible to undertake robust business planning if a unit is relying on single year contracts on a year-ahead basis. This risk is compounded by the fact that T-1 auctions typically procure lower volumes.

EPUKI further notes that this revenue uncertainty creates further risk through interaction with Grid Code requirements around closure notices. Termination of an ILC, and subsequent reliance on T-1 auctions, may result in businesses being forced to operate on a loss with no option for closure and no remedial actions available.

This issue creates a disincentive for units to undertake refurbishment and seek an ILC due to the increased risk associated with terminating. This represents a suboptimal implementation of the ICL mechanism which was introduced in order to improve the performance of existing generation and deliver better outcomes for consumers.

CMC_06_25 Amendment of ARHL De-Rating Factor to Exclude Intermediate Length Contracts

EPUKI is strongly supportive of this modification. As outlined in the modification proposal, the risk of ILCs being heavily de-rated due to Annual Run Hour Limit ('**ARHL**') de-rating appears to be an unintended consequence of the ILC implementation. This interaction between the drafting of the ILC modification (CMC_10_24) and the market rules around ARHL de-rating means that Existing Capacity is disincentivised from undergoing refurbishment due to the risk of incurring heavier de-rating.

ILCs were introduced in order to optimise Existing Capacity and to enable refurbishment of existing generation which delivers a benefit for electricity customers. This modification seeks to address the risk associated with ILCs being subject to ARHL de-rating so that potential customer benefit may be realised. This is consistent with the SEMC's position in the T-4 2028/2029 Capacity Auction Volumes Information Note where it is stated that "*refurbishing capacity is expected to be a lower risk alternative to building New Capacity, with a lower risk of planning and permitting delays and limited need for grid investment"*.

EPUKI notes that under the ILC rules, a project which is undergoing ILC refurbishment may not have an ARHL which is lower than the ARHL at the time of capacity award. This will ensure that the actual available hours for an ILC will be no less than they were prior to receiving an ILC. This further highlights the contradictory nature of the current rules, whereby a unit which is currently Existing Capacity may have a higher total de-rating factor than an identical unit which has undergone refurbishment resulting in improved performance. This creates an unjust discrepancy between the treatment of units, which is not reflective of performance, and has no plausible justification.

EPUKI notes that the SOs challenged this modification proposal at the Capacity Workshop and stated that there was a question around the investment case for Existing Capacity seeking an ILC, and whether "*there is a viable business case for refurbishment without reflecting on lower contribution to adequacy*". EPUKI considers it inappropriate for the SO to comment on the investment case for participants in the Capacity Market. This is beyond the remit of the SO and should not be grounds for implementing or rejecting a modification. EPUKI has similar concerns around the SOs' assertion that "*a balance of incentives is needed to promote unit reliability*".

The SEMC stated in SEM-24-035[1] that to "*promote investment in existing units to help improve efficiency and availability, and decreasing the volumes of New Capacity needed, which would be beneficial to consumers and may have positive environmental benefits*". EPUKI considers that despite run hour restrictions, consideration should also be given to the embodied carbon that is avoided when Existing Capacity is refurbished as opposed to construction of New Capacity, especially for peaking units with low annual run hours.

CMC_07_25 Maintaining Net Present Value in New Capacity Market Contracts for New Capacity Market Contracts for No-Fault Delays

EPUKI supports this modification and continues to support the principle of protecting participants from no-fault delay. This principle is consistent with the EY report on recommendations for the CRM which called for a more permissive approach to extensions where projects incur no-fault delays[2].

The SEMC recently rejected a similar modification raised by EPUKI (CMC_04_24) on the retention of Net Present Value for extended projects. This modification was rejected based on the fact that the SEMC would need to ensure fault attribution ahead of any compensation being awarded given potential costs to consumers. EPUKI disagrees with this statement and notes that there is no historical precedent for this. Conversely, to date the consumer has incurred significant costs as a result of emergency generation procurement due to the Capacity Market failing to attract investment and facilitate the delivery of projects.

CMC_08_25 Ensuring Robust, Transparent, and Objective Qualification Criteria

EPUKI welcomes the SOs raising this mod, however we caution that this is a very complex issue and needs to be addressed carefully. EPUKI support such a prescriptive binary approach to qualification as opposed to the current inconsistent process which is subject to the discretion of the Regulatory Authorities ('**RAs**') and SOs. Where for instance, the RAs

[1] Intermediate Length Contracts Decision Paper SEM-24-035
[2] See Page 7 of 57, Sub Question 3.4. Link: Performance of the SEM Capacity Remuneration Mechanism (SEM-22-054A)

and SOs have been known to allow qualification of units that have not yet applied for planning permission while rejecting units that have planning permission fully secured, and have rejected units that have Connection Offers in place while accepting others that have not applied for planning permission (as a pre-requisite for making a connection application or having a Connection Offer in place).

Planning Permission

We have no concerns regarding the requirement for planning permission in future auctions but would argue that it is far too late to introduce this as a criterion for the upcoming 2029/30 T-4. It would be impossible for developers to gain permission between now and qualification where they previously had planned to gain it later. Making such a change so close to the qualification window would completely undermine investor confidence in new generation for Ireland and Northern Ireland. Also, any requirement for planning must also explicitly exclude permission for related electrical or gas network connection infrastructure, as design and planning for this is often undertaken as part of the connection offer or connection agreement.

Electrical Connection

EPUKI is not opposed to having a connection offer or agreement as a requirement for qualification, however before making this change, work needs to be undertaken to align the timelines for the auction and the various connection processes.

Currently there are 245 days between the Qualification Application Date and the Capacity Auction Results Date, whereas a connection offer from Eirgrid or SONI is normally only valid for 60 or 90 days. Therefore, either the offer will lapse between the dates of qualification and of the results being issued (in which case it will need to be reapplied for with no certainty of success, undermining the feasibility or achievability determined by the SOs at qualification) or it will need to be accepted in advance of having any capacity awarded.

This is already a problem for developers in Northern Ireland as they have no formal Regulatory Authority Direction to rely upon that would ensure a connection would be granted to successful capacity. Instead, they must rely upon the CMC interpretation on the SEMO website that enables qualification of units that are confirmed as due to receive a Connection Offer. If, for instance, a unit is confirmed as due to receive a Connection Offer on the day of the Qualification Application Date, they should expect to receive an offer 90 days later and will then have a further 90 days to accept that offer. This gives a total of 180 days which still falls short of the 245 days between the Qualification Application Date and the Capacity Auction Results Date.

Requiring an electrical connection offer to be accepted in advance of the auction results is likely to lead to hoarding of capacity on the network. Projects will be forced to accept a connection offer to qualify but then may hold on to it when unsuccessful in the auction (especially where terminating the connection offer would lead to the loss of their Maximum Export Capacity ('**MEC**') bond), resulting in capacity being reserved on the network for generation that is not yet proceeding and may never proceed.

Also, there are no fixed dates for receiving a connection offer through the Enduring Connections Process ('**ECP**') or fixed dates for when the T-4 qualification window will be each year. Even with two ECP batches a year it is unclear which batch would need to be entered in order to receive an offer in time for qualification but not so early that it lapses before then. Similarly, in Northern Ireland although connection applications to SONI and NIE Networks are supposed to be processed within 90 days, it is more often the case that SONI and/or NIE Networks will seek significant extensions from UREGNI. Therefore, it is currently not possible for a developer to make plans to ensure they will have a connection offer in place at the correct time.

EPUKI also has concerns with potential discrimination arising as an unintended outcome of this modification as a result of different rules around electricity connections in the Republic of Ireland ('**ROI**') and Northern Ireland ('**NI**').

In ROI, a party seeking to connect to the transmission network is not required to submit a MEC Bond until commissioning, toward the end of the connections process. In contrast connecting parties in NI are required to submit their MEC Bond when the offer is accepted, much earlier in the process. This modification would mean that parties in NI are required to submit their bond in order to qualify for the Capacity Auction but prior to the auction taking place and having the comfort of a commercial contract. Where a party is unsuccessful in a Capacity Auction, they are unlikely to execute their connection offer and thus will expect to lose their MEC Bond.

This means that the liabilities and risk for participants in NI will be much greater than for participants in ROI and NI participants seeking to build New Capacity will be at an unfair competitive disadvantage compared to ROI participants. Resulting in any future developments taking place in ROI at the expense of the NI economy. EPUKI considers that it is too late to stipulate that electrical connections offers be in place before qualification for the T-4 2029/30 Capacity Auction as there is not sufficient time for applications to be processed by SONI and no ECP batch is currently open for the Republic of Ireland. However, for participants who have already sought an offer or agreement in time for this auction this risk could be mitigated through direction from the RAs. Specifically, dictating that connection offer acceptance periods for the T-4 2029/30 Capacity Auction (and all auctions) are extended until after the auction results are published and that where a unit fails to qualify for the Capacity Auction, or is otherwise unsuccessful in a Capacity Auction, the SOs must return any bonds or fees paid which have not reasonably been incurred in processing the application.

EPUKI considers this approach to be reasonable given that unsuccessful projects are likely to be at early stages in the connection process and it is thus unlikely that the SOs would have committed significant time and resources at this point. It is fair that in such circumstances, the participant would have monies repaid.

Finally, if having a Connection Offer in place is made a binary requirement for qualification then the RAs and SOs must have very limited other rights to exclude that capacity from qualification, and specifically no right to reject qualification based on the timescales for completing their connection, this timeframe being within the SOs' control. The SOs will have had ample opportunity to adjust their transmission and distribution system development plans to account for these potential connections in the full knowledge that these applications have been made with an intent to qualify for the capacity auction and ultimately deliver the capacity by the start of the relevant capacity year.

Otherwise, investor confidence will be undermined and future investment deterred if developers are required to go through the very significant expenses of securing planning permission and applying for a connection only to find they are not allowed to participate in any capacity auctions through no fault of their own.

<u>Gas Connections</u>

EPUKI is strongly opposed to gas connection offer or letters as a requirement for qualification. This would not be technology agnostic as it places an unfair additional burden on gas fired generation, it creates an unnecessary burden on the already stretched gas network operators, and it is too close to the auction qualification window for the T-4 2029/30 Capacity Auction to be adding additional requirements for qualification, particularly when participants would be dependent on a third party.

As with an electrical connection offer difficulties are encountered with the timing for when an application should be made, how long an offer will remain valid and the potential for accepting an offer before any capacity award. Therefore, work needs to be done on aligning the connection process before this could even be considered.

CMC_09_25 Registration and Qualification Auction Timetable Milestones

EPUKI has no significant views on this modification however we consider it has been raised far too late for implementation with the T-4 2028/29 Capacity Auction.

It is noted that the timetable for this auction has already been published and thus there are process concerns around raising a modification to amend the timetable at this time. Also, given that a decision on this mod is only due on the 29 August 2025 and the IAIP is due to be published on 1 August 2025, EPUKI cannot see how this mod could possibly be implemented for the T-4 2028/29, as it would mean adding dates to the Timetable after those dates have already expired.

We note that this modification is related to the planned implementation of the Capacity Auction platform to facilitate qualification and thus has not arisen due to unforeseen circumstances. As such, the timing of this modification proposal in the context of the Capacity Auction timetable publication is unfortunate. Given that lateness of this modification and the lack of communication we suggest that no changes should be made to the current submission process for the T-4 2028/29 Capacity Auction.

Additionally, EPUKI requests that the four-week window for participants to submit qualification applications is included in the main body of the CMC. While the four-week window is included in the indicative timetable template, it is noted that this is indicative only and therefore there is a risk that this window could be shorter. It is critical that participants have adequate time to prepare and submit qualification applications and thus it is important that a minimum four-week window be confirmed in the CMC.