Energia Response to SEM-25-027

Capacity Market Code Modifications Workshop 43 (Part B) Consultation Paper

17 July 2025

Energia welcomes the opportunity to respond to SEM-25-027. Energia actively participated at CMC Working Group 43 (Part B) where the proposed modifications were discussed.

CMC_10_25

Energia has consistently advocated for the robust vetting of qualification applications in the CRM to ensure that only projects capable of delivering by the start of the relevant capacity year are allowed to qualify.

Energia consider that the modification proposed to E.7.2.1 of the Code (Modification Proposal ID CMC_10_25) should be rejected, and paragraph (f) be reinstated in its original form.

At Workshop 43 (Part B), in response to a question from Energia the RAs indicated that the intention of CMC_10_25 was to both clarify and tighten the qualification criteria. However, the RAs were unable to explain at the workshop how requiring New Capacity projects to be "achievable" set a higher bar than "feasible". The RAs committed to seeking to clarifying the difference between the two terms in the consultation paper, however no clarification has been forthcoming.

While Energia would support a modification that sought to raise the bar for qualification, it is unclear how CMC_10_25 would do this as intended. The qualification process should be robust and allow the TSO to exercise reasonable discretion and judgement on achievability, erring on the side of prudency.

The deletion of paragraph (f) of E.7.2.1 would remove the test of feasibility from the Code with respect to the qualification of candidate units. Energia considers that, because the definition of feasibility has been examined so closely by the Courts with guidance and direction on the interpretation of the term within the past twelve months, it would be misguided to remove all reference to feasibility in this regard.

In the combined judgment in the cases of *Re Prime Power Generation's Application and Re EP Kilroot's Application [2024] NIKB 102*, Mr Justice Scoffield gives detailed consideration of the meaning of feasibility in the immediate context of qualification for a capacity market auction. In paragraphs [135] and [136] the Judge sets out that:

"In my view, the word 'feasible' carries a different shade of meaning in each of its uses in section E.7.2.1(f) of the Code. The reference to the delivery of new capacity being technically feasible is much closer to that end of the spectrum where the question is whether it is technically possible. Is there any technical reason why the capacity simply could not be delivered? Provided the delivery of the new capacity is technically possible, the more complex question is whether it is feasible within the applicable time frame. This issue is more predictive in nature and calls for more of an exercise of regulatory judgement. There are more variables to be taken into account and it is not a mere engineering query. In this case, I agree with the position adopted by the SEM-C (and the SOs) that the question is whether in-time delivery is 'reasonably practicable' (which is materially similar in meaning to reasonably possible or reasonably doable). The important point is that this is more than mere possibility. Some assessment of the reasonableness of achieving delivery is required. It is also less than being persuaded that delivery will be achieved on the balance of probabilities. Some level of doubt about delivery is permissible but the appropriate level of doubt in all of the circumstances is itself is a question of regulatory judgement.

That an element of judgement is required is, in my view, supported by the provision made in section E.7.1.1 of the CMC referring to the SOs acting reasonably and exercising "the judgement reasonably expected" of a prudent industry operator. The *term ‘Prudent Industry Operator’ is defined in the Glossary of the CMC as “an operator engaged in the electric utility industry which performs in accordance with Prudent Electric Utility Practice.” In turn, ‘Prudent Electric Utility Practice’ is defined as “those standards, practices, methods and procedures… which are attained by exercising that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator in Europe engaged in the same type of undertaking under the same or similar circumstances.” These provisions also helpfully indicate the importance of the SOs (and the SEM-C in turn) taking a prudent approach and engaging in a degree of foresight. In making their assessment, the SOs cannot be reckless, closing their eyes and merely hoping for the best. They will, however, be prepared to accept a reasonable degree of risk, based on experience.”*

On the basis of the above reasoning by the Judge wherein it is made clear what the Court’s interpretation of the term “feasible” is, Energia is of the view that it is crucial to the integrity of the Code that E.7.2.1(f) is retained as currently drafted so that no further ambiguity can be introduced by a move away from the feasibility test to one purely of achievability (a term which has not been litigated on nor been scrutinised by the Courts).

In continuation of this point and using the same rationale as that which is proposed in the modification as regards E.7.5.1, albeit in reverse, we would propose that the word “achievable” is replaced with “feasible” in E.7.5.1.

<u>CMC_11_25 and CMC_12_25</u>

Energia has consistently advocated that market participants must have recourse to challenge SEMC decisions, including via the courts. Energia would oppose CMC_11_25 were the intention or the effect of this modification to remove or reduce this recourse. While Energia supports robust vetting of qualification that can deliver by the start of the capacity year, as a matter of principle Energia would not support a modification with the intention of removing recourse to the courts.

This position similarly applies to the proposed addition to B.14.10.1 in part 1 of CMC_12_25.

<u>CMC_14_25</u>

On CMC_14_25, Energia notes that the Panel of Technical Experts (PTE) that will review the proposed capacity requirements for CRM auctions is still in the process of being established and will not be in place for the forthcoming T-4 29/30 auction. Energia’s view is that the implementation of a modification that would require the SOs to submit final LCCA requirements earlier than is currently required is inappropriate while the PTE is yet to be implemented.

Energia also notes the SOs contribution to Workshop 43 (B) that an impact assessment would be required for this modification. To allow this impact assessment to take place and be assessed in full, Energia would not support the implementation of CMC_14_25 ahead of the T-4 29/30 auction.

Energia noted at the workshop that the SOs have identified a need for additional resource in their response to the consultation on PTEs, and therefore placing further burden on the SOs to submit capacity requirements earlier may not be appropriate at this time.

<u>CMC_15_25</u>

Whilst Energia sees merit in extending performance securities for extended projects we do not support CMC_15_25 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 26/27 capacity auction.