EP UK Investments Response to Consultation on CMC_22_25 Termination and Re-Entry

EP UK Investments ('**EPUKI**') welcomes the opportunity to respond to this consultation paper. EPUKI is opposed to the proposed modification on the basis of potential unintended consequences. While EPUKI supports the objective of the modification, to mitigate against potential for market abuse, it is unclear how existing market rules do not address the risk of termination and re-entry. Accordingly, it is not clear that a modification to the Code is strictly required, nor what benefit, if any, a modification will provide. On the balance of no clear discernible upside and the potential for unintended consequences as a downside, EPUKI is opposed to the modification as currently drafted. EPUKI remains supportive of addressing this risk by relying on existing market rules to prevent gaming.

Existing Protections

Under the current market rules, Awarded New Capacity which has already achieved Substantial Financial Completion is liable for termination under J.6.1.2 (b) or under J.6.1.3 (a) to (n) of the Capacity Market Code ('**CMC**'). This means that in order for New Capacity to be terminated, at least one of the following criteria must be satisfied:

- Minimum Completion has not been achieved by the Long-Stop Date;
- Any Connection Agreement covering the Awarded Capacity is terminated;
- The relevant Participant's participation under the Trading and Settlement Code is suspended or terminated;
- The Participant transfers units providing the capacity without prior written approval;
- The Participant submits information in an Implementation Plan which is false or misleading in a material respect;
- The Participant fails to post a Performance Security as required by the Capacity Auction Timetable;
- The Participant acknowledges in an Implementation Plan Progress Report that it does not expect to achieve Minimum Completion by the Long Stop Date;
- An insolvency event effecting the Participant or the Participant's Performance Security provider occurs;
- It becomes unlawful for the Participant's Performance Security Provider to comply with its obligations, or the Performance Security Provider ceases to carry out business;
- The Participant has failed to comply with applicable Account Security requirements; or

- The Proof of Contract milestone, where applicable, has not been achieved by the date which is four months to the start of the relevant Capacity Year. o the start of the relevant Capacity Year.

It is unclear how Awarded New Capacity would be able to wilfully and purposefully fulfil any of the above criteria in order to terminate, while seeking to re-enter into a T-1 Capacity Auction.

It is also noted that in all of the above cases, the Transmission System Operators ('**TSOs**') must consult with the Regulatory Authorities ('**RAs**'), in accordance with section J.6.1.5 of the CMC, before deciding to take a termination action. This adds a further level of protection, as both the RAs and TSOs are required to essentially agree to a termination before it can be actioned. Thus, any termination arising due to the above conditions would need to be genuine and demonstratable.

Qualification to Capacity Auctions is governed under Section E of the Code. Last year, the RAs approved modification CMC_10_25 which amended drafting under Section E.7 of the Code to state that Applications for Qualification should be accepted by the TSO "*if (and only if) they have determined that the Application for Qualification should not be rejected"*. The qualification threshold provides further protection from the perceived risk which this modification seeks to address. EPUKI notes that qualification decisions are subject to RA approval.

Essentially in order for Awarded New Capacity to terminate and re-enter, it would need to firstly satisfy one of the termination conditions outlined above, the TSOs would need to consult with the RAs who would need to agree to the termination, then the same capacity would need to qualify for a T-1 Capacity Auction, satisfying the qualification criteria, and having its qualification ultimately approved by both the TSOs and the RAs.

This series of events is not feasible where the RAs and TSOs are acting prudently, and particularly in instances where a Participant is acting in a manner which is misleading or attempting to manipulate the market. Finally, this risk would only be relevant in cases where a T-1 Capacity Auction had an Auction Price Cap which was greater than the Capacity Payment Price associated with the Awarded New Capacity.

Based on these protections, EPUKI considers that the Code already contains sufficient mitigations to address the risk associated with this modification proposal.

Additional Incentives

In the addition to the above mitigations, EPUKI notes that the balance of incentives means that projects would be heavily discouraged from terminating and re-entering a T-1 Capacity Auction even if it was possible under the existing rules. There are a number of factors contributing to this.

Firstly, a project which terminates after Substantial Financial Completion will be subject to Termination Charges to the extent set out in the relevant Auction Information Pack. Assuming a 400MW (306MWd) Open Cycle Gas Turbine in the T-4 2027/2028 terminates after Substantial Financial Completion and within twelve months of the beginning of the relevant Capacity Year, it will incur Termination Charges of €40,000/MW or €12.3m. This already acts as a strong disincentive for terminating Awarded New Capacity.

Assuming the project in question is seeking to terminate purposefully to re-enter a T-1 Capacity Auction it will be willingly exposing itself to major uncertainty around securing a contract. Not only will the project incur €12.3m in Termination Charges, but in addition, there is no guarantee that the project will secure a contract. This would mean that the project has essentially lost €12.3m plus the total value of its original capacity contract.

Assuming the above OCGT secured a contract at the Average Price of Awarded Capacity from the T-4 2028/2029 Capacity Auction (€160,577/MW), it would be losing a total contract value of €492m, in addition to the Termination Charges which it incurs. It is unrealistic to assume that any prudent investor would willingly and purposefully incur losses of over €500m while simultaneously exposing itself to the risk of, firstly, not qualifying for, and secondly, not clearing in T-1 Capacity Auction.

Lack of Supporting Evidence

EPUKI notes that this modification proposal is not supported by examples of instances of market abuse and has not identified specific conditions under which a market participant could manipulate the existing rules. Given that the existing rules have been in place for almost ten years, and in the absence of supporting evidence to justify this change, EPUKI urges caution with respect to applying rule changes.

Potential Unintended Consequences

It cannot be ruled out that there may be instances where it is necessary for Awarded New Capacity to terminate and subsequently re-contract through a T-1. While EPUKI cannot envision the necessary circumstances which would require such action at this time, it is not possible to rule this out. Given that such a policy exists, EPUKI has concerns around the changes proposed by this modification.

Codifying a restriction on T-1 participation would remove existing flexibility which is beneficial to Participants, TSOs, and the RAs. If this modification is approved, terminated capacity which has achieved Substantial Financial Completion would be automatically locked out of participation in T-1 Capacity Auctions. EPUKI acknowledges that there is a low probability that Awarded New Capacity would ever need to terminate and re-enter but considers that there may exist circumstances where this is necessary and notes is no clear benefit or justification for making this change.

Based on the strong mitigations which already exist, the lack of supporting evidence to justify this change, and the potential for unintended consequences, EPUKI is opposed to making a modification at this time.