Energy for generations

ESB Generation and Trading Response to SEMC Consultation Paper on Capacity Market Code Modifications (Workshop 47)

SEM-26-009

31/03/2026

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1. SUMMARY INFORMATION

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Confidential Response	No

2. INTRODUCTION

ESB Generation and Trading (GT) welcomes the opportunity to respond to SEMC Workshop 47 Consultation Paper on the following Capacity Market Code (CMC) modification proposal:

- **CMC_22_25: Termination and Re-Entry**

3. ESB GT RESPONSE

3.1 CMC_22_25: Termination and Re-Entry

3.1.1 Proposed Modification and its Consistency with the Code Objectives

This modification proposal would prevent Awarded Capacity which has achieved Substantial Financial Completion (SFC) from terminating its Capacity Contract and re-entering the 'same capacity' into the next two subsequent T-1 auctions held in the 24 months post termination (including any auction where the Qualification Application Date falls after the effective date of the Termination).

For clarity, the terminated capacity would be permitted to participate in any T-4 auction held after the termination effective date and would not apply to Intermediate Length Contracts (ILCs) which terminate (and thus revert to being considered as Existing Capacity).

For the purposes of the modification proposal, 'same capacity' has been defined as capacity which has (i) the same, modified, or reissued planning permission and Connection Agreement or Offer; (ii) the same technology class; and (iii) a location on the same land area or on an adjacent land area.

ESB GT is not supportive of this modification proposal where we consider that existing provisions within the CMC continue to serve as a robust deterrent for the type of market manipulation or gaming targeted by the RAs.

We note that the following risks and features of the market limit the scope for gaming to a significant extent:

1) **Risk to developers associated with terminating a T-4 contract** and re-entering the same capacity in the T-1 auction, where clearing is not guaranteed and auction parameters are unlikely to have been published at the time an application for a termination is made. Termination post-SFC in the absence of a route to market via a T-1 auction could increase the risk of asset stranding for some projects.
2) **Implementation Progress reporting sets clear milestones for delivery** and is subject to monitoring by the System Operators (SOs). These avenues should provide sufficient oversight to ensure that Implementation Plans submitted by project developers are credible and that any termination is not manipulative. Notification and approval by the SO are necessary to trigger termination in advance of the contracted Long Stop Date (LSD).
3) **The existing Termination Fee regime** provides a significant financial deterrent to prevent the gaming identified by the RAs.

While the SFC demarcation (typically 18 months post contract award subject to extension under Section J.5 of the CMC) set out in the modification proposal serves as an appropriate indicator of project maturity, such a commitment of financial capital should also be viewed as a genuine commitment to project delivery.

We would therefore welcome further clarification from the RAs as to the choice of SFC as demarcation. Indeed, it is reasonable to believe that termination pre-SFC may serve as a stronger indicator of potential speculative bidding.

Further, the need for project termination post-SFC may arise for legitimate commercial reasons, including where a project faces unforeseen challenges which mean it cannot meet its LSD, including where an extension to LSD is not guaranteed under the CMC.

Given that a large number of terminations in recent years have been of Awarded Capacity for Demand Side Units (DSUs), we would welcome a view from the RAs and SOs as to whether existing rules around project delivery are suitable for all technology classes within the context of the current modification proposal.

ESB GT also questions whether the introduction of this modification could be considered retrospective if applicable to contracts already awarded in recent CRM auctions which are yet to deliver.

We would like to take this opportunity to reiterate the importance of ensuring transparency in the visibility of terminations and extensions granted by the RAs under section J.5 of the CMC to ensure that market participants have equal access to information in the lead up to an auction. ESB GT's modification proposal *CMC_19_25: Information on Remedial Actions – Extensions and Terminations* aims to address the information asymmetry which currently exists due to delays in the publication this information. The modification is currently under consideration by the RAs.

3.1.2 Impacts Not Identified in the Modification Proposal Form

None.

3.1.3 Detailed CMC Drafting Proposed to Deliver the Modification

No additional drafting proposed.

4. CAPACITY MARKET CODE OBJECTIVES

A.1.2.1 *This Code is designed to facilitate achievement of the following objectives (the "**Capacity Market Code Objectives**"):*

a) to facilitate the participation of undertakings including electricity undertakings engaged or seeking to be engaged in the provision of electricity capacity in the Capacity Market;
b) to promote competition in the provision of electricity capacity to the SEM;
c) to provide transparency in the operation of the SEM;
d) to ensure no undue discrimination between persons who are or may seek to become parties to the Capacity Market Code; and
e) through the development of the Capacity Market, to promote the short-term and long-term interests of consumers of electricity with respect to price, quality, reliability, and security of supply of electricity across the Island of Ireland.
f) become parties to the Capacity Market Code; and
g) through the development of the Capacity Market, to promote the short-term and long-term interests of consumers of electricity with respect to price, quality, reliability, and security of supply of electricity across the Island of Ireland.