

APPENDIX D – RESPONSE TEMPLATE

SUMMARY INFORMATION

Respondent's Name	ESB Generation and Trading
Type of Stakeholder	Generator
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CAPACITY MARKET CODE MODIFICATIONS CONSULTATION COMMENTS:

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ID	Proposed Modification and its Consistency with the Code Objectives	Impacts Not Identified in the Modification Proposal Form	Detailed CMC Drafting Proposed to Deliver the Modification
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<p>CMC_05_20</p> <ul style="list-style-type: none"> - Modification to Implement amendments as required by the Clean Energy Package Regulation EU 2019/943 	<p>ESB Generation and Trading (ESB GT) can appreciate the complexity and the time constraints involved in ensuring compliance of the CMC with the Electricity Regulation 2019/943. As mentioned at the workshop and documented in the consultation paper, there is still some uncertainty around the obligations and compliance with the ACER guidance. The second version of the modification has gone some way to addressing the uncertainty however it is still not sufficient.</p> <p>As a result, even though the modification is consistent with some of the Code Objectives it doesn't achieve objective (e) <i>to provide transparency in the operation of the SEM</i> which weakens the CMC in achieving objective (f) <i>to ensure no undue discrimination</i>.</p> <p>ESB GT believes a more detailed guidance document could improve the transparency in which the compliance is achieved. For example in point 4 of the guidance, it is still</p>	<p>ESB GT would like to highlight that the change of modification status to urgent and the subsequent reduced timetable is not sufficient to fully identify the potential impacts of this modification. As a result, ESB GT strongly suggest that the SEMC perform a secondary consultation on the technical guidance document and allow industry sufficient time to assess the impacts and compliance with 2019/943.</p> <p>ESB GT raised concerns in the workshop on the introduction of a compliance obligation in section I.1.2.1. The RAs have sought to address these concerns through a second version of the proposed modification that now includes <i>"use reasonable endeavour"</i> and the consultation paper highlights the SEMC's view that <i>"a unit commences delivery against its awarded capacity is or terminated under Chapter J</i></p>	<p>Paragraph 2.1.14 states <i>"Some attendees expressed concerns about how CO2 Limits would be applied or enforced in real time. Such application or enforcement lies outside of the scope of the CMC as its role ends when a unit commences delivery against its awarded capacity is or terminated under Chapter J for failure to achieve Substantial Financial Completion, or at least Minimum Completion by the Long Stop Date."</i> If it is the SEMC's intention that the CEP compliance is only for newly awarded capacity achieving the SFC and Minimum completion milestones than the additions to J.2.1.1 and J.6.1.1 achieve this requirement. It is unclear why this extra compliance requirement is place in section I which is primarily to do with the obligations for "existing" capacity. Considering the potential impact, as highlighted in the column to the left, and the above comments, ESB GT propose that the addition to section I.1.2.1(d) is removed.</p>
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unclear what type of justification is acceptable. It wouldn't need to be a prescriptive list but clarity is required on whether suitable criteria includes for example reasons outside of the control of the participant (TSO constrained dispatch instructions) or issues that a prudent operator couldn't mitigate (limitations due to the technical plant properties) or human error that can be solved at a later date (errors in collecting data).

Further to more guidance and to ensure there is a level playing field for all participants it would be appropriate for the information/decision allowing the qualification of a unit with a successful RA derogation be published.

The addition to Appendix D(4) of *"evidence that the candidate unit complies with the CO₂ limits, including details of any determination CO₂ emissions"* may impact on Code Objective (c). For some participants qualifying for an auction it may not be

for failure to achieve Substantial Financial Completion, or at least Minimum Completion by the Long Stop Date." Unfortunately, the revised version of the modification still hasn't addressed the concerns. For example, if in the future the SEMC change their position on continuous assessment throughout the year, this modification is leaving the participant exposed to risks that are outside of the CEP obligations. For example, if it is deemed that the party has not used reasonable endeavours to comply with the CO₂ obligation, the party will be deemed to be in default and unable to remedy the issue (as it will have generated above the threshold), which will lead to a suspension and termination. As per B.18.3(o) and B.18.6.1 of the T&SC, if a party is suspended or terminated in the CMC it may (subject to RA approval) be suspended from the Balancing

ESB GT proposes the addition of **Appendix D (4) (p) "in the case of new candidate units, a certificate signed on behalf of the Participant submitting the Application for Qualification by a Participant Director that, having made all due and careful enquiry and to the best of the knowledge, information and belief of the Participant Director the Participant will use all reasonable endeavours to ensure compliance with the CO₂ limits."**

If no consultation on the technical guidance is provided, ESB GT proposes **the clarification of the section in the AO in point 2, removal of point 5 and publication of any derogations granted by the RAs in point 4** to the guidance document. Following further assessment of the guidance document and if necessary ESB GT will provide further correspondence on the nine points.

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	<p>possible to have selected the OEM prior to qualification. Therefore, it may not be possible to have evidence of the CO₂ emission details for that unit to be qualified. As an alternative, a statement of intention (signed by a Director) that the participant will comply with the emissions specification as part of the procurement may be sufficient, similar to what was requested for the CY23/24 T-4 Auction. This will remove as many barriers as possible to entry but also ensuring compliance with the Electricity Regulation 2019/943</p>	<p>Market and Ex-Ante Markets. The Electricity Regulation 2019/943 is to prevent capacity payments to a unit that cannot comply. This modification has the potential to drift further than the Capacity Market. The addition of this compliance obligation is unnecessary and creates an undue exposure for participants. ESB GT still does not see the merit in including this obligation and proposes that it be removed.</p> <p>In the technical guidance document further detail is requested on: <u>Point 2</u> – Is this referencing Section 9 of the ACER Opinion? <u>Point 4</u> – It is the SEMC’s decision to use 12 months rather than the ACER guidance of 3 years? What is the rationale behind this? Why is point 4 assessed over 1 year, while point 2 is assessed over up to 3 years is the data is available to a unit? Can it be confirmed that</p>	
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		<p>the assessment year aligns with the Emissions Directive year of January to January?</p> <p><u>Point 5</u> – ESB GT does not believe that this secondary fuel clause is appropriate and have major concerns with its inclusion. It is imposing extra compliance and risk on SEM only generating units due to a Grid Code requirement. Furthermore, there are derogations in place in the Industrial Emissions Directive Article that should be applied for this compliance requirement. Article 14 (f) 15 and 32 of the IED identifies that in the event of a gas shortage or outside of normal operating conditions there should be a derogation for units that exceed their limits. ESB GT would propose this condition and any condition in relation to secondary fuels be removed. However, if the intention is to retain this, it is unclear if this is in relation to the Design</p>	
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		Efficiency or annual Emissions threshold. Further clarity is required.	

NB please add extra rows as needed.