

## APPENDIX A AES RESPONSE TEMPLATE

### SUMMARY INFORMATION

<b>Respondent's Name</b>	AES
<b>Type of Stakeholder</b>	Generator
<b>Contact name (for any queries)</b>	
<b>Contact Email Address</b>	
<b>Contact Telephone Number</b>	

AES welcomes the opportunity to provide comments on the Draft Capacity Market Code, but has concerns that due to its incomplete status, the timing of the consultation results in a response to a process that still has potential for further change. Significant and important details in sections of the Code are missing including important decisions which may have a material effect on the Code for example as regards the detail required on the auction timetables and CRM Parameters. Also the Regulatory Authorities appear to pre-empt the outcome of the consultation and decision-making process by presenting as decided, issues which have clearly yet to be decided in the parameters process. A clear example of this is the definition of Net Going Forward Costs.

#### **Auctions timetable and sequencing**

The CMC Consultation Papers states that the RAs have proposed the following auctions:

- December 2017: Transitional Auction for Capacity Year 2017/18 (i.e. May-18 to Sept-18) and 2018/19 (Oct-18 to Sept-19); (16 Month)
- August /September 2018: T-4 Auction for year 2022/23; and
- March 2019: Transitional Auction for year 2019/20 (Oct-19 to Sept-20).

It also states that the RAs then expect to hold transitional auctions for each of the remaining transitional years on an annual basis in advance of the relevant capacity year consistent with the T-1 auction timeframes for each capacity year allowing for lessons to be learnt from the first transitional auction.

AES agrees with the proposal that the first transitional auction should be for balance of capacity year 2017/18 and full capacity year 2018/19 (16 Months) and would prefer to have all subsequent transitional auctions (for Capacity years 2019/2020, 2020/21 and 2021/22) before the first T-4 Auction in order to provide greater certainty for participants intending to participate in the T-4 auction..

AES also agrees that the first T-4 Auction should now be in respect of delivery 2022/23 as this affords 8 – 9 months of lead time for lessons to be learnt from the first and subsequent transitional auctions and consideration of locational constraints for inclusion in the T-4 Auction.

### **Detailed timetable for each auction**

A detailed timetable (similar to that proposed by the EAI - see Appendix) for each auction is required to provide sufficient advance notice of activities processes, data requirements and to enable sufficient time for participants to carry out their assessments and process required to prepare for qualification and the auction. Certain key dates need to be identified as early as possible such as the Publication of the Auction Information Pack which AES views should be published at least four months before the auction in order to provide participants sufficient time to carry out their activities ahead of the qualification phase and the auction.

The proposed timetable should contain a definite point and as early as practicable, for the publication of the final auction parameters for the corresponding auction. This deadline for publishing any final parameters should be at least 15 Working Days before the auction especially if there is significant difference from the initial parameters published.

### **State Aid Approval.**

AES acknowledges the current position with respect to the State Approval process and supports the position of allowing Registration, Accession and Qualification to proceed in advance of the State Aid Approval decision resulting in the 2 proposed 2 stage implementation and the extension of CMC Chapter M – Interim Arrangements to facilitate.

### **Recovery of Sunk Costs**

The concept of Net Going Forward Costs is defined in the Glossary as “the avoidable costs that a Participant needs to recover in respect of a capacity market unit from the Capacity Market in order to justify the plant’s continuing operation, net of infra-marginal rent from the energy market and the ancillary services market. Net Going Forward Cost as defined does not include sunk costs, for example the costs of investments made in the past or the ability to recover investment costs for refurbishment which are above the existing capacity price cap but lower than the auction price cap. This presents a significant concern for the generators for their ability to recover total costs incurred in participation in the I-SEM.

This definition of Net Going Forward Costs is among the issues consulted upon in the CRM Parameters Consultation, has not been the subject of a decision by the RAs and can therefore still be amended to facilitate complete cost recovery. There is also an inconsistency with the requirement in the CMC and the requirements of the BMOP document with respect to the recovery of maintenance (refurbishment) costs and which also precludes the recovery of sunk costs. The CMC must allow for the recovery of sunk costs if the Net Going Forward cost is above the ECPC.

**I-SEM CMC COMMENTS by CHAPTER.**

ID	I-SEM CMC Reference	Short Title	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
1	Chapter C Section C3	Dual Rated Units	AES welcomes the treatment rated capacity as the maximum value of registered capacity for any of the fuels.	Dual rated units not defined in the glossary of the CMC	
2	Chapter B B9	Prohibition on Market Manipulation	This section effectively covers the requirements on Market Manipulation under the code and by accession to the code Participants undertake to abide by the requirements of this section.	As it will be a Director that signs the accession documentation AES does not see the need to insert a requirement for a Director's Certificate to state that which is already stated by accession to the code.	
3	Chapter B Section B.10 & 11	Role of Capacity Auction Monitor and Auditor	The potential exists for a conflict of interest if both roles are carried out by same entity. The Capacity Auction Monitor and the Capacity Market Auditor perform different roles in ensuring the integrity of the auction process. The opportunity for synergies from having the same firm acting as both Monitor and Auditor do not out way the impact of the appearance as surely the monitor role should also be part of the audit process.	The roles should be separate and independent and this should be reflected in the CMC and the ToR for the CM Monitor and Auditor. Amend CMC drafting and reflect in ToR for Auction Monitor and Auditor Revise drafting of B.10.1.3 to read "...The Capacity Auction Monitor will be independent of the System Operators and Participants and of the Capacity Auction Auditor".	

ID	I-SEM CMC Reference	Short Title	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
4	Chapter B Section B.12	Modifications	<p>The proposed process for modification of the CMC is less well defined than that in the TSC and could lead to;</p> <ul style="list-style-type: none"> <li>• Inconsistency in respect of modifications under the TSC and CMC</li> <li>• Different approaches to mods under each code i.e. “Workshop approach” vs mods panel</li> <li>• The “Workshop approach” does not ensure the two jurisdictions of the market are appropriately represented</li> <li>• “urgent” modifications process and the modification to Agreed Procedures streamlined process seems appropriate.</li> </ul>	<p>Why not use the same process and forum Particularly if the proposed modification impacts on both codes. This would reduce the potential for inconsistencies between the codes.</p>	
5	Chapter B Section B.13.6.1	Termination	<p>The requirements that determine suspension/termination from the CMC should be defined specifically for the CMC and not just suspension/termination in the preceding timeframes. Proof that the any evidential breach of the NEMO or TSC rules themselves should be a requirement before suspension could be considered in the CM</p>	<p>Termination from the Capacity Market should only be triggered where a Party is evidently in breach of this Capacity Market Code, and not for circumstances where it has been terminated in the day ahead or intraday market. A transparent set of distinct set of criteria should apply before termination from the CMC or termination from the DAM/IDM transfers to the capacity market.</p>	

ID	I-SEM CMC Reference	Short Title	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
6	Chapter B Section B14	Dispute Resolution	AES accepts and supports the requirement for an expedited dispute process for qualification and auction disputes based on the requirements to comply with auction time frames and the potential knock on effects of a delay on all participants.	However it is important that the proposed expedited dispute process should <u>enable</u> participants to raise disputes on the qualification and auction processes and that these should be expedited with the required time frames. The proposed amendments to the process should be subject to consultation.	
7	Chapter B Section B.16.3.4	Force Majeure	The clause content “Force Majeure shall not relieve any Affected Party from any liability to pay any fees, payments or charges due under this Code or the Trading and Settlement Code in respect of the Capacity Market (including without limitation to pay Difference Charges, Difference Payments, Capacity Charges or Capacity Payments),” Means that parties to CMC will be exposed to RO difference payments exposure in circumstances which could be beyond their reasonable control.	In conditions of Force Majeure parties to the CMC should have their RO exposure suspended for the period of Force Majeure.	
8	Chapter C Section C2	Local Capacity Constraints.	AES welcomes the inclusion of the process to include and account for the consequences of local capacity constraints in the auction process.	The assessment process for the inclusion of any location capacity constraint should be applicable to any auction T-1 and T-4 as required	
9	Chapter C Section C3	Dual Rated Units	AES welcomes and supports the use of the maximum (higher) value of capacity provided by the unit as the value of registered capacity determined for the purposes of qualification and participation in the auction.	N/A	

ID	I-SEM CMC Reference	Short Title	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
10	Chapter D Section D.3	Timetable	There are a number of parameters (FASP, RSP, and TSC parameters) stated as “indicative” in D.3.1.2 and which are not confirmed as final in F.5.1.2. Where and when are they confirmed as final parameters	There seems to be an inconsistency between the deliverables in D.3.1.2 and F.5.1.2. . If F.5.1.2 is supposed to provide final figures to supersede what were originally “indicative” figures, then all the information from D.3.1.2 that are referenced as “indicative” should be updated with final figures. Include final figures for the FASP and the RSP Curve and the parameters listed in F.16.1.1. Reference F.5.1.1 Publication of Final Auction Parameters: use of “reasonable endeavours” is not appropriate. All relevant parameters should be published. Remove reference to “reasonable endeavours (See Timetable)	

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11	Chapter E Section E.3	Opt-Out Notifications	The Opt out Clause (E.3) accounts for plant that opts out of qualification prior to the qualification process only. This however, it is too limited. The process should also take into account the outcome of the qualification process.	An additional clause should allow a generator to opt out of the auction even where they are not sure they will close within the capacity year. For example, where a plant that has its application for a bid above the Existing Capacity Price Cap rejected by the RAs, they should be allowed to opt-out of the auction but retain the optionality of whether to close within the capacity year or not. Related to this, the exemptions process must come before the opt-out process. An additional clause should also be included covering 'other exceptional circumstances, as approved by the RAs'.	

ID	I-SEM CMC Reference	Short Title	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
12	Chapter E Section E.5 and Glossary	Exception Applications & Net Going Forward Costs	<p>This is a matter for the Participant and the RAs under a process between them directly. All the CMC requires is any approval of a Unit Specific Price Cap.</p> <p>The concept of Net Going Forward Costs is defined in the Glossary as “the avoidable costs that a Participant needs to recover in respect of a proposed capacity market from the Capacity Market in order to justify the plant’s continuing operation, net of infra-marginal rent from the energy market and the ancillary services market. Net Going Forward Cost does not include sunk costs, for example the costs of investments made in the past.</p>	<p>Net Going Forward Costs does not include sunk costs, for example the costs of investments made in the past” or the ability to recover investment costs for refurbishment which are above the existing capacity price cap but lower than the auction price cap.</p> <p>This definition of Net Going Forward Costs is among the issues consulted upon in the CRM Parameters Consultation and has not been the subject of a decision by the RAs. There is also an inconsistency with this requirements and the requirements of the BMOP document with respect to the recovery of maintenance (refurbishment) costs and also precludes the recovery of sunk costs. The CMC must allow for the recovery of sunk costs if the Net Going Forward cost is above the ECPC.</p>	
13	Chapter E Section E7.5 & &.6	Requirements for New Capacity, Maximum Capacity Duration	<p>The definition of new capacity does not capture replacement capacity where a unit is refurbished or fully re-powered with replacement capacity which thereby excludes such capacity from securing a contract of greater than 1 year.</p>	<p>The CRM decisions provided for such investment (New and Enhanced) being able to secure a longer term contract and hence the drafting in the CMC does not align with the decisions. Correct drafting of New Capacity Investment Rate Threshold</p>	



ID	I-SEM CMC Reference	Short Title	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
14	Chapter F Section F4	Conduct of Auction - Local Capacity Constraints	AES welcome the inclusion of the process for consideration of local capacity constraints in all Auctions in the CMC. If there is insufficient capacity to satisfy a particular locational constraint the Locational Constraint level can be reduced by the TSO to a level such that there is sufficient capacity to meet the requirement.	Due to the potential impact on locational system security the minimum de-rated capacity for a local constraint should only be changed if approval has been given by the Regulatory Authorities.	
15	Chapter H Section H.2	Secondary Auctions - Design, review, variation and suspension of products	The RA consultation paper (SEM-14-004) Section 3.10.2 identifies a number of areas where the current balance of responsibilities assigned to the RAs and the TSOs may not be correct. One such area relates to the design, review, variation and suspension of products traded through secondary auctions and it is stated that this would reasonably require RA approval. In the CMC section H.3.1.6. the System Operator has a requirement to consult with the RAs and this is welcome but does not go far enough.	The section H3.1.6 should be amended such that the RAs should also have a role in designing and reviewing product types and auction timings but should also have to approve product types and any proposed changes to them.	

NB please add extra rows as needed.

### Concluding Comments

Due to the incomplete nature of the draft versions of the Capacity Market Code, AES views that a final market up version of the code should be issued for further comments on any late additions or amendments providing the opportunity for further comments on pending decisions as they become known.

## **APPENDIX – EAI Proposed Timetable**

<b>Key Dates</b>	<b>Proposed Timetable</b>	<b>Notes</b>
RA's provide SO's with Qualifying Info. for CAIP		RA's to SO's step
Capacity Auction Information Pack Date	T-24 weeks	
Apply for Exception (Opens)	T-24 weeks	There should be a requirement for RA's to have decision (or involved in negotiation with participant) within [x] days from submission
Apply for Opt-out (Opens)	T-24 weeks	5 WD to get result of opt-out, then reapply if required
SO's organise stakeholder meeting	T-22 weeks	
Participants told Key Qualification deadline Dates	T-20 weeks	
Exception Application Date (Closes)	T-15 weeks	
Opt-out Notification Date (Closes)	T-11 weeks	
Qualification Application Date	T-10 weeks	Final Opt-Out Results
Provisional Qualification Approval Date		
Provisional Qualification Results Date	T-8 weeks	SO's to RA's step
Provisional Qualification Review Date		
Informing of Reconsideration Outcome	T-6 weeks	
Final Qualification Approval Date		
Final Qualification Results Date	T-5 weeks	SO's to RA's step
Qualification Results Publication Date	T-5 weeks	
Final Auction Parameter Date	T-4 weeks	<b>The earlier the better</b>
Capacity Auction Commencement Date	T	
Capacity Auction Completion Date	T	
Capacity Auction Provisional Results		
Capacity Auction Approval Date		RA's to SO's step
Capacity Auction Results Date	T+2 weeks	