Response by Energia to SEM Committee Consultation Paper SEM-17-004

I-SEM CRM Capacity Market Code

24 February 2017

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1. Introduction

This document sets out Energia's comments in response to the Consultation Paper on the I-SEM Capacity Market Code dated 12 January 2017 ("the Consultation Paper")[1], including a completed response template ("the Response Template") and our feedback on specific aspects of the Code as requested by the Regulatory Authorities (RAs).

The Consultation Paper states that "[t]he Capacity Market Code has been subject to extensive consultative development…" (p.6), referring to the multi-stage process, beginning in July 2016, in which the Code was developed through the Rules Working Group (RWG).

The above implies that development of the Code was robust and subject to appropriate technical challenge, and indeed this is precisely the assumption made by the SEM Committee in defining the terms of reference for the Capacity Market Auditor and Monitor[2]. The validity of this assumption is highly questionable and certainly cannot be based on the rigour of scrutiny applied through the RWG process. This is because development of the Code through that process was accelerated and predominantly completed over a cycle of only four Rules Working Groups in conjunction with the TSC development and a very high number of substantive I-SEM consultations running in parallel, leading to consultation overload[3]. These shortcomings of the RWG process are recognised by ESP in their Stocktake Report:

"[T]he design has been developed in consultation with the industry, who have also been part of Rules Working Groups scrutinising that design - albeit recent workload at the Rules Working Groups has inevitably impacted the level of scrutiny of rules by participants, and hence the level of comfort that can be derived from this process …. ;"[4]

It is also important to stress that the fifth and final meeting of the RWG on 15 December 2016 provided little opportunity for feedback. Furthermore, as the RAs themselves acknowledge, drafting on complex and important areas of the Code to reflect SEM Committee Decisions made on 8 December 2016 covering Locational Issues did not receive the full scrutiny and input of the

[1] Consultation Paper "I-SEM Energy Trading Arrangements Trading and Settlement Code", SEM-16-075, 15 November 2016.
[2] Para 3.9.6 of SEM-17-007 states that "[i]t is assumed that development of the Code was robust and subject to appropriate technical challenge".
[3] This shortcoming is recognised in the ESP Stocktake Report and should be recognised by the SEM Committee.
[4] ESP Consulting, November 2016, 'I-SEM Programme: Stocktake Report', p.24

RWG.[5] How that Decision has been implemented in the Code is particularly difficult to follow and needs to be re-drafted clearly and unambiguously[6].

We note that all issues raised during the RWG process have been deemed 'resolved' and 'closed' by the Project Team under the formal Working Group process, but we would emphasise that not all of these issues have been fully resolved. Some of these unresolved issues require further (consideration of) I-SEM policy decisions because they were previously overlooked, misunderstood or unanticipated, but now clearly give rise to adverse consequences if implemented through the CMC as proposed. In other cases, it is a matter of the SEM Committee giving clearer direction with respect to broad I-SEM policy decisions already taken which have been interpreted in a particular manner by the Project Team which gives rise to significant cause for concern. Therefore, the comments raised via the Working Group, should be considered integral to this response, especially as we do not consider them fully resolved via the Working Group process. Viridian's response to the Working Group escalation on exposure to CRM difference payments, dated 25 November 2016[7], should also be considered integral to this response, along with all other evidence and representations made by Energia (or its representatives) more generally throughout the I-SEM design and implementation process[8].

While welcoming the opportunity to provide comments on the Draft Capacity Market Code, Energia has serious concerns as regards the timing of the Consultation, on two counts. First, it is clear from the consultation document, and the above discussion, that there are significant and important sections of the Code which have not benefitted from a careful review in light of the decisions made by the RAs. Energia believes that the benefit of the consultation is substantially diminished in these circumstances. Furthermore, such an approach creates serious risks that the Code does not adequately

[5] A first draft of the changes arising from the Locational Issues Decision was discussed at meeting 13 of the RWG, but in general these drafting changes have had less review through the RWG process than the rest of the Code" (p.6 of SEM-17-004).

[6] We discuss this and other concerns with the quality of the drafting later in this response.

[7] See Viridian escalation response, "Comments in response to Escalation 'Exposure to the CRM Difference Payment due to Operational Constraints" submitted to the rules Working Group on 25 November 2016. We note the SEM Committee response to this Escalation Notice was published 23 January 2017, just one day before the TSC consultation response deadline. It effectively deems the Viridian escalation response as outside the scope of the escalation. We therefore request that the SEM Committee give due consideration to the Viridian escalation response in the context of this Consultation which cannot be restricted by the Working Group / Escalation process terms of reference given the wider remit of the SEM Committee.

[8] This includes Energia's responses to all policy consultations directly or indirectly relevant to the design of the I-SEM capacity market, including any materials by independent experts submitted with those responses, or presented to the RAs (or their consultants) via bilateral meetings. It includes materials compiled by independent experts submitted by Energia (or by the EAI of which Energia is a member) to the rules Working Group, or directly to the RAs and EirGrid Project Team. It also includes any materials provided by Energia (or by the Viridian I-SEM project team) to ESP as part of the Stocktake Exercise.

reflect the decisions of the RAs and this is apparent already in certain sections of the draft Code.

Second, the fact that this consultation is premature is also clear from the fact that important decisions which may have a material effect on the Code have yet to be made. This is in particular the case as regards the CRM Parameters[9]. It is of great concern to Energia that the RAs appear to pre-empt the outcome of the consultation and decision-making process by presenting as decided issues which Energia firmly believes are yet to be decided. A clear example of this is the definition of Net Going Forward Costs. The use in the draft Code of the definitions suggested in the CRM Parameters consultation calls into question the integrity of the decision-making process and Energia is concerned that there is no intention on the part of the RAs to consider the views expressed in response to that Consultation. Energia has explained in its submission, with supporting evidence from NERA, why that definition was entirely inappropriate and misguided and we strongly object to its use in the CMC.

It is in these circumstances that Energia has sought, in the context of a tight deadline for responses[10], to carefully review the draft Code and provide as useful and constructive comments as possible. However in the light of the fact that the market design is ongoing, Energia strictly reserves its right to make further comments as and when appropriate. Indeed it would be helpful in the circumstances, recognising that the Code issued for consultation is incomplete and premature in important respects, that the SEM Committee issue a marked-up version of the Code for a further round of consultation in due course before finalisation of the Code.

The remainder of this response is structured as follows. Section 2 provides specific feedback on the Auction Timetable and suggests a detailed timetable for each auction consistent with that put forward by the Electricity Association of Ireland (EAI). Section 3 highlights areas of particular concern to Energia pertaining to the Code. Section 4 includes a completed response template representing comments collated by Viridian Group based on input from each of the individual business units and from Viridian's corporate team (including Legal, Treasury, Finance, IT, and from the Viridian I-SEM project team.

[9] Another example is the Intermediary Arrangements consultation (SEM-17-006) which closes on 3 March 2017.

[10] The CMC consultation, published 12th January 2017, overlapped with the Trading and Settlement Code (TSC) consultation (which closed 24th January) by a period of nearly two weeks and this has impeded our ability to give attention to the CMC consultation over the period in question, effectively reducing the CMC consultation period to c4 weeks.

2. Auction timetable

With reference to section 4.4 (p.18) of the CMC Consultation Paper, the RAs have proposed the following:

- December 2017: Transitional Auction for Capacity Year 2017/18 (i.e. May-18 to Sept-18) and CY2018/19 (Oct-18 to Sept-19);
- August /September 2018: T-4 Auction for CY2022/23; and
- March 2019: Transitional Auction for CY2019/20 (Oct-19 to Sept-20).

The RAs then expect to hold:

- Transitional auctions for each of the remaining transitional years on an annual basis in advance of the relevant CY. These may be consistent with T-1 auction timeframes for each CY, but in line with CRM Decision 3 (SEM-16-039), once lessons learnt from the first transitional auction have been appropriately reflected, the SEM Committee will consider further the possibility of holding subsequent transitional auctions in sequence at an earlier stage; and
- T-4 and T-1 auction for each subsequent year in line with the standard timeframes set out in the current CMC draft.

With reference to the above, Energia:

- Agrees that the first transitional auction should be for balance of CY 2017/18 and full CY2018/19
- Would strongly prefer to have all subsequent transitional auctions (for CY 2019/2020, CY 2020/21 and CY 2021/22) before the first T-4 Auction in order to provide greater certainty for participants.
- Agrees that the first T-4 Auction should now be in respect of delivery CY2022/23.

2.1 Detailed timetable for each auction

The timetable for each auction should be clearly specified, providing sufficient certainty and time for participants to carry out their assessments and activities. The current drafting of the Code fails to provide this necessary clarity and certainty. A timetable similar in format to Section 2.2 of the GB Capacity Market Code should therefore be applied to Appendix C and AP3 of the CMC, but tailored for I-SEM, to provide this clarity and certainty.

Within this, there are certain key dates that specifically need to be ensured. For example, the Auction Information Pack 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 auction. Also, there seems to be an inconsistency between the deliverables in D.3.1.2 and F.5.1.2. There are a number of items stated as “indicative” in D.3.1.2 and which are not confirmed as final in F.5.1.2 e.g. ASP and SP parameters. 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 ASP Curve and the parameters listed in F.16.1.1. Moreover, the 5 Working Day timeframe for publishing any final parameters is far too short and should be at least 15 Working Days before the auction. Again, this would provide adequate time to market participants for conducting their business ahead of the capacity auction.

DS3 is also critical in the overall timeline as the DS3 contract position will impact on a capacity market unit’s participation and price under the CMC and this should be reflected in the auction timetable and appropriately sequenced before the Auction and also before the Exception and Opt-Out Application dates open. With the above in mind, we propose the following timetable for each auction.

Table 1: Proposed timetable for each auction

KEY DATES	PROPOSED TIMETABLE	NOTES
RAs provide TSOs with Qualifying Information for CAIP		RAs to TSOs step
Capacity Auction Information Pack Date	T-24 weeks	
Apply for Exception (Opens)	T-24 weeks	Timely regulatory approval process required.
Apply for Opt-out (Opens)	T-24 weeks	5 WD to get result of opt-out application, then re-apply if required
TSOs 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	TSOs to RAs step
Provisional Qualification Review Date		
Informing of Reconsideration Outcome	T-6 weeks	
Final Qualification Approval Date		
Final Qualification Results Date	T-5 weeks	TSOs to RAs step
Qualification Results Publication Date	T-5 weeks	
Final Auction Parameter Date	T-4 weeks	**The earlier the better**
Capacity Auction Commencement Date	T	
Capacity Auction Completion Date	T	
Capacity Auction Provisional Results		
Capacity Auction Approval Date		RAs to TSOs step
Capacity Auction Results Date	T+2 weeks	

3. General comments

In this section, we discuss areas of particular concern pertaining to the Code that should be read in conjunction with the completed Response Template in section 4.

3.1 The structure and quality of the Code

The Code is imprecisely drafted and its structure, particularly how section F interacts with section M, is disjointed and unclear, which may provoke disputes or confusion on the part of market participants. Given that Option B shall apply to all transitional, T-4 and T-1 auctions until such time as the SEM Committee instructs the CRM Delivery Body to implement Option D, it would be better to restructure the Code such that section F implements Option B on a stand-alone basis and that Section M, re-drafted to implement Option D, is left out of the Code until such time as Option D is to be implemented. This would make the Code much easier to understand and follow.

We have not provided a complete redrafting of the Code. However, key problems with the drafting are set out below, with illustrative examples:

Undefined terms: Throughout the Code, the authors have referred to concepts that do not appear in the glossary. These terms are either unnecessary, in which case the SEM Committee should substitute existing defined terms in place of them, or merit definition in their own right. For instance the code does not define the "range" of the demand curve (F.3.1.4),"maximum quantity offered" (F.8.3.5), which may or may not be distinct from the "quantity offered" also used throughout the Code, and a key parameter in defining the Net Social Welfare calculation, "q", is not defined any more precisely than as "any value between zero and the maximum quantity offered".

Misleading statements of purpose: The Code contains several statements of purpose or objectives which are inexact. For instance, the Code states that "The purpose of the Capacity Auction is to:… (b) allow Participants in the Capacity Auction to specify the price they wish to be paid for Awarded Capacity". In fact market participants do not specify the price they wish to be paid but they specify the minimum price they are willing to accept because the auction is (mostly, but not exclusively, for instance for constrained on-plant) pay-as-clear. If the Code is drafted clearly and unambiguously, there is no need for statements of purpose or intent.

Redundancy: The Code contains redundant conditions and terminology. For example, F.3.1.5 sets out four sub-paragraphs (a)-(d) and states that paragraph (d) will only apply "except as contemplated by paragraph (c)". However paragraphs (c) and (d) as currently drafted do not conflict with one another. The code introduces a concept of the "unconstrained market schedule" in para F.8.3.7 and then does not use this concept at any other

point in the document. If this concept is important, the Code should clearly refer to the concept elsewhere, otherwise the definition is redundant.

Unclear definition of the objective function and constraints for the auction solution methodology: The description of the auction clearing process under the enduring and interim arrangements in sections F.8.4 and M.5 could be significantly clarified by explaining:

- that F.8.4.2 is the objective that the system operator will apply, subject to the constraints set out in F.8.4.4. The purpose of F.8.4.2 - that the System Operators will be conducting a constrained optimisation with F.8.4.2 as the objective function - is only clear upon reading F.4.8.8. Accordingly, F.4.8.8 should be moved above F.8.4.2;
- which of the rules of F.8.4.4 will continue to apply in conjunction with the "principles" of the interim arrangements set out in M.5.1.6. For instance, F.8.4.4(c) and F.8.4.5 appear to be redundant if the provisions of M.5.1.6 apply;
- whether the rules of F.8.4.4 and the principles of M.5.1.6 have equal status if the Alternative Auction Solution Methodology applies; and
- whether the "price" referred to in F.8.4.2(b) refers to the price of each price-quantity pair, or the auction clearing price.

Disjointed and ambiguous drafting: The drafting throughout section F is untidy, which makes the Code difficult to read and presents risks to market participants of alternative subsequent interpretations of the rules. Combined with a failure to set out the specific equations in question, the Code as it stands is ambiguous. For example:

F.8.4.3 contains the provision which implements the first bullet in paragraph 5.5.1 of the CRM LI Decision Paper, that new build plant will only be able to get a multi-year reliability option if they are in merit. The Code describes all new build plant aiming to get a multi-year reliability option with offers higher than the Auction Clearing Price as being "cleared to a level of 0MW" (which is presumably equivalent to not "being cleared").

However, it is unclear how the second part of that Decision is implemented in the Code – i.e. Paragraph 5.5.1 of the Decision states that:

"Exceptions [to the rule that multi-year contracts may not be awarded to resolve local capacity constraints] may be made on a case-by-case basis if the minimum requirement in a nested zone cannot be met in any other way. However, where a New Build capacity provider has bid above the clearing price, and the minimum requirement can be met by awarding 1 year contracts to existing capacity in a nested [zone] with a higher[-]priced bid, preference will be given to the existing capacity which only requires a 1 year contract." [text in square brackets added for clarity]

The following is our understanding of how the above is implemented in the Code but it is far from clear and needs to be clarified:

- F.8.4.3 seems to implements the exceptions foreseen in the second bullet of paragraph 5.5.1 CRM LI Decision Paper in conjunction with two further paragraphs: F.4.1.13 and F.8.4.4(g).
- F.4.1.13 of the Code implements this decision by providing an exemption from the requirement not to clear capacity requiring Multi-Year contracts if doing so will "reduce the risk" of not satisfying local capacity constraints:

  "The Regulatory Authorities may by written notice to the System Operators exempt one or more Capacity Market units from the application of paragraph F.8.4.3 if the Regulatory Authorities consider doing so will reduce the risk of not satisfying a Local Capacity Constraint in the Capacity Auction".

- F.8.4.4(g) further provides that plant receiving this exemption must only be cleared in the auction if the auction cannot clear with existing plant:

  "price-quantity pairs relating to a Capacity Market Unit to which paragraph F.8.4.3 applies and which has been exempted under paragraph F.4.1.13 are not to be cleared to satisfy a Local Capacity Constraint until all Capacity Market Units with an offered capacity duration of one year that contribute to satisfying the Local Capacity Constraint have been cleared."

- Therefore, provided that paragraph F.8.4.4 still applies even when the Alternative Auction Solution Methodology set out in section M.5 is used, shorter term contracts will always take precedence over longer term contracts for the purpose of resolving transmission constraints under the Code.

3.2 The modifications process

The proposed modifications process is dominated by the TSOs and RAs and is therefore not balanced or proportionate. The modifications process should mirror the TSC modifications processes, and it should not be different for Agreed Procedures. Our primary recommendation is to either subsume the governance of the CMC under the TSC modifications process or copy the drafting from the TSC into the CMC. The proposed modifications process has a number of shortcomings that need to be addressed in the CMC. For example, the process, as proposed, gives rise to:

- Inconsistency in respect of modifications under the TSC and CMC;
- Lack of clarity and certainty, particularly in respect of the vague "Workshop approach";
- The "Workshop approach" does not adequately ensure the two jurisdictions of the market are appropriately represented; and

- The procedures themselves do not seem to cater adequately for steps to be taken in relation to “urgent” modifications.

3.3 The role of the Capacity Auction Monitor and Auditor

There is clearly a potential for conflict of interest if both the monitor and auditor roles are carried out by same entity. They need to be separate and independent and this should be reflected in the CMC and the ToR for the Capacity Market Monitor and Auditor.

The Capacity Auction Monitor and the Capacity Market Auditor play different roles in ensuring the integrity of the auction process. Energia does not believe that there are any synergies which would arise from having the same person or firm acting as both Monitor and Auditor. Instead we believe that the role of the Capacity Market Auditor will be significantly undermined if it is not independent of the Capacity Auction Monitor.

The CMC drafting should be amended to address this and other concerns relating to Sections B.10 and B.11 of the Code as suggested in the Response Template appended to this response and this should be reflected in the Terms of Reference for the Capacity Auction Monitor and Auditor.

3.4 Market Manipulation provisions in the Code

Section B.9 of the I-SEM CMC appears to have been substantially copied from the equivalent provision in the Great Britain capacity market code (“GB CMC”). However, no recognition has been given to the fundamental differences between the I-SEM and GB capacity regimes that make this provision necessary in GB but unnecessary and inappropriate in I-SEM.

The GB capacity market (“CM”) is framed as a capacity obligation. As such, the contract requires delivery of energy when called upon and failure to do so when required results in penalties. The UK Department of Energy and Climate Change (“DECC”) stated in its June 2013 capacity market strawman that the GB capacity instruments would “most likely not be a financial instrument” for the purposes of MiFID. It follows from this analysis that the GB capacity instruments could not be considered as derivatives for the purposes of REMIT and would also be outside the scope of MAR, which applies to MiFID financial instruments. Therefore, the GB CM includes a specific market manipulation clause i.e. because REMIT and MAD may not be applicable. In other words, the GB CMC provides for a market manipulation prohibition because none applies otherwise. We note that the market manipulation clauses in the GB CMC appears to have been designed to closely replicate the regulatory regime to which participants would have been subject had REMIT and MAD been applicable.

By contrast, the I-SEM RO is a derivative and is settled financially. ACER has confirmed that capacity markets are considered to be wholesale energy

markets according to REMIT in so far as wholesale energy products are traded in such markets. Under REMIT, “wholesale energy products" include derivatives relating to electricity or natural gas produced, traded or delivered in the Union, irrespective of where and how they are traded. It follows therefore that the ROs should be considered as wholesale energy products and within the scope of REMIT. This appears to be a position accepted by the SEM Committee in its Third Decision on the I-SEM CM.

Therefore, in our view the GB CMC is not an appropriate precedent for the CMC given that the markets operate differently and are regulated differently under existing law. In GB, market manipulation provisions were required to be included in the GB CMC in the interests of good regulation. However, as the I-SEM capacity market is already regulated by precisely regulatory regime that the GB CMC sought to replicate, it is both unnecessary and inappropriate for the I-SEM CMC to include these provisions, including for the following reasons:

- It imposes an unreasonable compliance burden for firms to comply with two regimes (one under contract and the other under statute) which are enforced and interpreted by different bodies covering the same issue;
- There is the risk of gaps and overlaps;
- There is the risk of different interpretations of, effectively, the same rules;
- There is the cost and administrative burden of creating a monitoring unit and developing or hiring expertise in the Regulatory Authorities where it already exists elsewhere and in circumstances in which the financial regulatory authorities are far more experienced and resourced in this area.

Unnecessary duplication of regulation represents poor regulatory practice and the inclusion of these provisions appears to simply be copying GB for the sake of it without understanding why the provisions were necessary in the GB CMC in the first place.

In conclusion therefore, for all the reasons explained above, the Market Manipulation clause in the I-SEM CMC should be deleted in its entirety. For the avoidance of doubt, this does not mean that the capacity market should be entirely free of regulatory control and scrutiny. On the one hand, the RAs are proposing overly restrictive bidding and price controls in the capacity market which deny legitimate cost recovery, to which we strongly object for reasons fully explained in our response to the CRM Parameters consultation (SEM-16-073). While on the other hand, the regulatory proposals do not address the potential for predatory pricing[11] or the potential for market power to be

[11] This is a major gap given the dominance of the State-owned incumbent in the I-SEM capacity market.

exercised in the secondary market for capacity[12]. REMIT and MAD do not address these concerns. We ask that the RAs specifically address the issue of predatory pricing and the exercise of market power in the secondary market for capacity in their response to this submission.

3.5 Requirements for director certification in the Code

There is a degree of uncertainty as to the capacity in which directors, officers and company secretaries would be deemed to have provided the certification contemplated by the CMC (and the Consultation Paper). If such persons were deemed to have provided such certification in their personal capacity, they could be exposed to potential liability issues in circumstances where the provisions of existing directors and officers liability insurance policies may not apply. This is neither necessary nor appropriate.

The requirement for Directors' certification under the Code will likely give rise to an undue administrative and/or financial burden to be borne by the relevant Participants in terms of the internal diligence that will require to be undertaken in advance of providing the certification contemplated.

The extent of the information required to be certified under the Code (and Consultation Paper) is unclear, e.g. whether the certification is similar / identical to that required to be provided pursuant to the Companies Acts (including in respect of MAR compliance) and Regulation on Wholesale Energy Market Integrity and Transparency ("REMIT"), the Markets in Financial Instruments Directive ("MIFID") and/or the European Market Infrastructure Regulation ("EMIR"), which overlaps significantly with proposed provision of the CMC which we recommend be deleted.

3.6 Provision for opt-outs

As a general comment, the opt-out criteria are too narrow and restrictive and this needs to be addressed as suggested in the Response Template.

3.7 Exceptions process, contract duration and unit specific price caps

Section E.5 deals entirely with Exception Applications submitted to the RAs in respect of New Capacity and Unit Specific Price Cap. There are significant concerns arising from this section:

[12] Throughout the I-SEM design process Energia has consistently raised concerns to the RAs about market power in the secondary market for capacity but yet we see no evidence of action being taken to address these concerns. To re-iterate the problem a large portfolio player would be able to offset its forced outage risk against its un-contracted capacity (i.e. de-rated volumes) within its portfolio without needing to trade in the secondary market. What safeguards will be put in place to ensure that a dominant entity cannot withhold capacity from its competitors' in the secondary market? What level of transparency is envisaged for the secondary capacity market - i.e. will bids and offers be published on an ex-post basis?

There is no place for such a section in the Capacity Market Code. This section is not concerned with the respective roles and obligations of the CRM Delivery Body and the Participants or the workings of the CRM. Rather it is concerned with the evidence which the RAs will require when approving bids for certain durations and unit specific price caps and therefore the manner in which RAs make their decision, based on the criteria and requirements which they determine from time to time. This section is therefore concerned with the manner in which the RAs exercise their discretion. It is not appropriate that the CMC fetters the RAs' discretion in this respect and therefore E.5 should be deleted in its entirely. Procedural aspects concerning duration and unit specific price caps should be incorporated in paragraph E.4. *Strictly without prejudice to this point:*

- Section E.5.1.1(a) does not appropriately reflect the CRM 2 Decision. In particular the CRM 2 Decision (SEM-16-022), read in conjunction with CRM 3 Decision (SEM-16-039), does not restrict bids for capacity with a duration of more than one and up to 10 years to "New Capacity". In particular, paragraph 5.2.26 (p75) of SEM-16-022 states the following:

  > "There will be no explicit distinction between new investment and refurbishment; however, to be classified as "plant requiring significant investment", there will be a need to demonstrate:
  >
  > - €/MW investment above a threshold;
  > - That this investment is directly linked to bringing into operation all or part of the equipment that is essential to the delivery of capacity by the plant; and
  > - That the capacity of the plant is enhanced compared to a counterfactual of no investment."

  The drafting of the Code is a very significant and unacceptable divergence from the CRM 2 and 3 Decisions and needs to be amended such that refurbishment meeting the 'investment threshold' is eligible to bid for a longer term contract in the capacity auction.

- Insofar as Unit Specific Price Caps are concerned, reference is made in section E.5.13(b) to *"Net Going Forward Costs"*, a concept which is defined in turn in the Glossary as "*the avoidable costs that a Participant needs to recover in respect of a proposed capacity market unit needs to recover (sic) from the Capacity Market in order to justify the plant's continuing operation and are net of infra-marginal rent from the energy market and from providing ancillary services. Net Going Forward Costs does not include sunk costs, for example the costs of investments made in the past".* However, this definition of Net Going Forward Costs has not been the subject of a decision by the RAs and instead is among the issues discussed and consulted upon in the CRM Parameters Consultation.

Energia has explained in its submission to that consultation why that definition was entirely inappropriate and misguided and we strongly object to its use either in the CMC or as a regulatory control. We are also concerned that this calls into question the integrity of the decision-making process in that it assumes the outcome of an ongoing consultation process. In the event that this or another definition of NGFC is adopted by the RAs, it is most appropriate that the CMC refers to the regulatory decision as opposed to including the definition within the CMC. This will allow for flexibility in the event of future changes to the definition of NGFC.

3.8 Scheduling and dispatch risk under ROs and Force Majeure provisions under the Code

The settlement for the capacity market has no provisions to exempt capacity market participants from RO difference payments in scenarios when their failure to comply with capacity market obligations is due to circumstances demonstrably beyond their control. Energia's concerns about this are well documented, most recently in response to the I-SEM TSC Consultation (SEM-16-075). Examples include exposure to:

- the consequences of the 'Outturn Availability" Decision (SEM-15-075) which needs to be reviewed by the SEMC in the light of I-SEM;
- changes to firm access policy set out in the Building Blocks Decision (SEM-15-064) which needs to be reviewed in light of its consequences under ROs;
- exposure to ROs when undergoing mandatory secondary fuel testing; and
- Exposure to gas or electricity transmission outages which must be addressed by revising the Force Majeure provisions of the Capacity Market Code.

More generally, Energia is concerned about scheduling and dispatch risk under ROs. We have provided a detailed account of this concern, with proposed solutions, in response to the I-SEM TSC consultation and we are open to further engagement with the RAs on this important matter.

Specifically in relation to the Force Majeure provisions of the Capacity Market Code, we have a concern that parties to CMC will not be afforded Force Majeure protection under CMC in circumstances where their counterparties (typically TSOs) will be afforded Force Majeure protection under other industry codes and agreements (such as the Gas Code of Operations and the Transmission Connection Agreement) in respect of the same event. Example includes any unavailability of relevant network infrastructure (gas or electricity) at any time. These provisions must be harmonised in the drafting of FM provisions of the CMC, as suggested in the response template appended to this response.

3.9 System Operator charges

CMC accession and participation fees should be incorporated into the TSC or TUoS fee structure to minimise participant costs and the administrative burden. All revenue requirements could be calculated separately but could be collected by SEMO MO invoices. (A separate process may be needed for qualification fees but this should be implementable.) A single charging regime will reduce the administrative burden on participants and will halve the number of invoices compared to the current proposals in the TSC and CMC.

Furthermore, Suppliers should not be required to pay the Variable System Operator Charge. This clause should be revised that the basis of this charge should be in respect of Participants only, not based on Suppliers.

3.10 Inclusion of constraints in T-4 Auction

Section M.4.1.1 of the Code states that: *"…the System Operators shall not determine Local Capacity Constraints in respect of any Capacity Auction other than a T-1 Auction until such times as the Regulatory Authorities require the System Operators by written notice to commence doing so."* This creates substantial and unnecessary uncertainty for participants and therefore the drafting should be revised. We suggest that the default position in the Code should be that *"all auctions should take into account Local Capacity Constraints unless notified otherwise by the Regulatory Authorities in writing".* This alternative drafting would be consistent with the Locational Issues Decision (SEM-16-081) and is far more appropriate given the improbability that at any potential alternatives (such as transmission investment and or new locational signals) will be implementable and effective before the first T-4 auction. It is especially noteworthy that SEM-16-081 dismisses the prospect of these alternatives delivering a material impact in timeframes required for the first transitional auction in December 2017. How then can it be realistically expected that these measures will be materially delivered (or expected to be delivered) less than 10 months later, with the first T-4 Auction scheduled for August / September 2018?

3.11 Governance / roles and responsibilities

Section 3.10.2 of the RA consultation paper (SEM-14-004) identifies a number of areas where the current balance of responsibilities assigned to the RAs and the TSOs may not be appropriate. One such area relates to the design, review, variation and suspension of products traded through secondary auctions, where it is stated would reasonably require RA approval in H.3.1.6. This is welcome but does not go far enough.

Interconnectors seem eligible to participate in secondary trading under the Code and seem able to participate on the same terms as other capacity market units. This presents a potential conflict of interest for the TSO given EirGrid's ownership of EWIC and future interconnector development. How will

this potential conflict of interest be managed? Requiring RA approval does not materially reduce the ability of the TSO to fundamentally influence the design, review, variation and suspension of products traded through secondary auctions or the timing and frequency of said auctions.

Market participants should have a greater say in the design and review of product types and auction timings led by an RA consultation process. In addition, the role of the Auction Monitor should extend to Secondary Auctions (i.e. Section H of CMC) given the central role of the TSO in these auctions (including timing, product design and review etc.) and the potential for conflict of interest given EirGrid's ownership / development of Interconnector capacity which can participate in the secondary market for capacity.

3.12 Re-powering, storage and new build capacity

One of the most likely scenarios for new generation capacity is the repowering of existing generation sites. This is due to the existing infrastructure (for example, grid and fuel supply chain) as well as the likelihood of achieving planning permission for power station developments. The Capacity Market Code does not provide sufficient flexibility for power stations to repower. For example if new capacity is bid into the auction and is not successful then the existing capacity should be considered for capacity payments, otherwise this is a significant risk for repowering generation assets. There should also be consideration for substitution of existing generation capacity, which is due to be retired, for new generation capacity if the new generation capacity does not meet Major Milestones. Otherwise the existing capacity will be mothballed and the new capacity will not be available, which is not the optimum outcome for customers, TSOs or developers.

The Code does not clearly address how storage should be treated. Given the uncertainty in the GB auctions in relation to the treatment of storage greater clarity should be provided in the rules for both hybrid (thermal and renewable) and standalone developments.

For New Capacity it is important that the rules do not unnecessarily overlap with other codes and industry documentation. For example, the Grid Code, Connection Agreements, Generation Licences and Authorisations to Construct, all contain technical requirements which may need amendments if an EPC or major component is changed. It is therefore inappropriate to have additional requirements in the CMC which require consent from the System Operators if the EPC or major component is changed. The CMC should only require System Operators approval if Major Milestones are likely to be missed or the level of capacity will be different.

4. Completed response template

SEM-17-004a CRM Capacity Market Code

A:- Introduction and Interpretation

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
1	A.1.1.4	Introduction	13	DS3 arrangements interact with code and should be referenced	Reference DS 3 arrangements as part of the market arrangement which interact with the CMC	N/A
2	A.1.1.4	Introduction	13	DS3 arrangements which interact with the CMC have not been referred to - these arrangements should be catered for	Amend Code accordingly.	Throughout CMC
3	A.3.2.1	Calculations	16	Are all these needed? Does (b) apply to CMC? (e) and (f) are TSC definitions and not used in CMC?	Assess use of these terms in CMC and if not used then remove	N/A
4	A.3.2.1 (c)	Calculations	16	Should limb A.3.2.1 (c) of CMC match limb A 4.2.1 (c) of the draft I-SEM Trading and Settlement Code- for consistency?- see variance highlighted below:- CMC:- A.3.2.1 (c):- "(c) all values for power (MW) or energy (MWh) that relate to imports into the SEM in relation to an Interconnector shall be treated for the purposes of the calculations set out in this Code as having positive or zero values;" Trading and Settlement Code:- A 4.2.1 (c):- "(c) all values for power (MW) or energy (MWh) that relate to imports into the SEM in relation to an Interconnector, Interconnector Residual Capacity Unit or Interconnector Error Unit shall be treated for the purposes of the calculations set out in this Code as having positive values;"	Amend Code accordingly.	Draft I-SEM Trading and Settlement Code
5	A.3.2.1 (g)	Calculations	16	There does not appear to be any definition of the term "Loss-Adjusted", the concept of "Loss-Adjusted" seems to appear in B.7.1.4 –"Loss-Adjusted Metered Quantity"- is the concept applicable? And if so the term should be defined, in Glossary	Amend Code accordingly.	Glossary
6	A.3.2.1 (g)	Calculations	16	There does not appear to be any definition of the term "Interconnector Data Submission Point". It does not appear to be used. Is the term relevant? If it is relevant it should be defined in Glossary	Amend Code accordingly.	Glossary and CMC Code generally

B:- Legal and Governance

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
7	B.4.1.1	Priority	17	In the list of precedence there appears to be no reference to the draft I-SEM Trading and Settlement Code- should that not be included? Is there a consistency issue? By contrast the draft I-SEM Trading Settlement Code calls out the Capacity Market Code at B.4.1.1 (f)	Amend Code accordingly.	Consistency issue with the I-SEM draft Trading and Settlement Code
8	B.4.1.1 (f)	Priority	17	Incorrect clause referencing?	The references be to Paras B.4.1.5 & B.4.1.6 respectively	N/A
9	B.4.2.1 (b)	Priority	17	Under the corresponding provision in the I-SEM draft Trading and Settlement Code compliance with the entire section dealing with Force Majeure (section B22) is required whereas under the CMC compliance with only a specific provision in relation to Force Majeure i.e. B 16.2.3, is required. Is there an inconsistency issue?	Amend Code accordingly.	Consistency issue with the I-SEM draft Trading and Settlement Code
10	B.4.1.6 (c)	Priority	18	Under the corresponding provision in the I-SEM draft Trading and Settlement Code Chapters (save in relation to H) and the Glossary have equal priority, this draft of the CRM gives the Glossary priority after the Chapters- is there and inconsistency issue?	Amend Code accordingly.	Consistency issue with the I-SEM draft Trading and Settlement Code
11	B. 4.1.7	Priority	18	CMC code references B.4.1.7 whereas the I-SEM draft Trading and Settlement Code references B.4.1.5 there is therefore a consistency issue	Amend Code accordingly.	Consistency issue with the I-SEM draft Trading and Settlement Code
12	B.5.1.1	Parties and Accession Process	18	There does not seem to be a pro forma Capacity Market Framework Agreement-	Supply pro forma Capacity Market Framework Agreement.	
13	B.5.2.2 & B.5.2.4	Participants	19	What is the difference between "taken to" and "deemed to"?	Standardise and be consistent with language	
14	B.5.2.11	Participants	20	Do not understand meaning or intent of this paragraph – please re-draft to make this clear. A Capacity Market Unit is a Qualified Candidate Unit. If the Candidate Unit is de-registered then this must affect the Capacity Market Unit?	Amend Code accordingly.	
15	B.5.3	Accession and Participation Fee	21	There does not seem to be a mechanism for Euro to Sterling conversion- which is catered for under the I-SEM draft Trading and Settlement Code under B.7.3.1	At the end of the sentence add "with those in pounds sterling being converted into euro using the [Annual Capacity Payment Exchange Rate]"	Consistency issue with the I-SEM draft Trading and Settlement Code
16	B.5.3.4	Accession and Participation Fees	21	It would be more logical for all monetary flows to be transacted and settled through the TSC or the Use of System charges. That would mean the Bank Account details etc. can be used without repetition in the CMC	Recover costs through TUoS tariffs or else cross-refer to the relevant sections of the TSC	

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
17	B.5.3.4	Accession and Participation Fees	21	If recovery remains through the CMC (i.e. not following approach set out in the previous comments) : Participation and Accession Fees can be paid to an account in the name of the MO at the SEM Bank- whilst in realty the SO and the MO are the same entities- strictly speaking EirGrid and SONI are acting with "two different hats", and the SO and the MO function could in theory be carried out by separate parties (subject to licensing considerations) - it would seem more appropriate therefore for the fees to be put into a SO account as opposed to a MO account- to avoid any co-mingling of funds between the SO and MO roles (which may have implications if the SO or the MO faced a solvency issue). In particular the currently drafted approach does not make sense given that the SO is obliged to establish a "System Operator Charge Account" under B.7.2	Amend Code accordingly.- Participation and Accession Fees to be paid to a SO account as opposed to an MO account.	
18	B.5.4.1	Participants and Units	21	Reference to "from time to time" seems to allow too much leeway in relation to timely publication- there is no such phrase in the corresponding provision in the Trading and Settlement Code	Delete phrase "from time to time" – needs to be timely publication.	
19	B.5.5.1	Intermediaries	21	"Note: requirements for Intermediaries being considered by the Regulatory Authorities" is noted.	Unable to comment pending decision on Intermediaries which is currently open for consultation	
20	B.5.5.2 & B.5.5.3	Intermediaries	21-22	The obligations on the SO to deregister are inconsistent with the corresponding obligations of the MO to deregister an Intermediary under the I-SEM draft Trading and Settlement code- (i.e. under B11.1.6 to B.11.1.8 of the I-SEM Daft Trading and Settlement Code)- for instance under the I-SEM draft Trading and Settlement Code- on expiry of the Form of Authority the MO must deregister. There should be consistency in the treatment of deregistration between the two codes.	Amend Code accordingly.	Consistency issue with the I-SEM draft Trading and Settlement Code
21	B.5.6.2	Deregistration of Capacity Market Units	22	As the participant is engaging directly with the TSO under the terms of the CMC, why do they also need to notify the RAs? The participant should only need to provide a single notice.	Delete the words "and the Regulatory Authorities"	
22	B.6.1.5	Joint Administration of the Code	24	The words "and the Capacity Market" are superfluous. The only obligations that the TSOs are obligated to perform are specified by the CMC.	Delete the words "and the Capacity Market"	
23	B.6.4	Reports	24	Such obligations to provide information to the RAs are more appropriately specified in the TSOs' Licence s	Remove from the Code and Insert the relevant obligations in the TSO Licences	

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
24	B.6.4	Reports	24	Publication of the reports is required to ensure transparency- all reports should be published- not just those determined by the RAs (as is the case under the I-SEM draft Trading and Settlement Code- see "Information Sharing"- draft I-SEM TSC B.16.2)	B.6.4.2 The System Operators shall publish reports under paragraph B.6.4.1, subject the provisions of paragraph B.6.4.4 ~~to the extent directed by the Regulatory Authorities.~~ B.6.4.3 Reports the under paragraph B.6.4.1 shall set out in reasonable detail information about: (a) the performance by the System Operators of their rights, powers, functions and obligations under this Code; and (b) factual information relating to the exercise of rights and the carrying out of functions by Parties under this Code. B.6.4.4 Subject to any confidentiality provisions under section B.23, where information is provided by any Party to the Capacity Market Auditor or the System Operators pursuant to this Code, the Capacity Market Auditor and the System Operators shall have the right, without charge, to use, make available, copy, adapt and deal with such data or other information for the purposes of exercising their rights and performing their powers, functions and obligations under the Code (and, in the case of the Capacity Market Auditor, its terms of reference) but for no other reason.	
25	B.7.1	System Operator Charges	25	The process of determining efficient allowances for the performance of the Capacity Market Operator should be subject to a price control in the same way as Market Operator Charges are governed. This could be conducted as simply an additional element of the TSOs existing price control and then simply recovered as part of the existing tariff structure under which the TSOs recover their regulated entitlement, and which already provides for the treatment of under and over recoveries. A further benefit is that it would remove the need for any financial provisions in the CMC. This approach will ensure there is appropriate governance and scope for public scrutiny of the costs via the normal price control consultation process.	Removal of this section would be the most appropriate action. If it deemed that some text is required, it would be preferable for all monetary flows to be settled under the terms of the TSC and again that would enable any paragraphs relating to payment flows, debt recovery, etc to adopt the existing processes that exist in the TSC.	B.7

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
26	B.7.1.4	System Operator Charges	25	Suppliers should not be required to pay the Variable System Operator Charge- this surely should fall to the Participants. This clause should be revised that the basis of this charge should be in respect of Participants only, not based on Suppliers . The basis of this charge and how it is calculated should be properly considered (and if based upon "Loss-Adjusted Metered Quantity" in some manner please see comments in relation to "Loss Adjusted Metered Quantity"	Delete clause as drafted and clarify basis of charge based on Participants, see comments	B.5.2.4 & B.7.1.1 (c)
27	B.7.1.4	System Operator Charges	25	Notwithstanding the desire to remove SO charges for suppliers the current drafting in the CMC provides no clarity on settlement timelines including resettlement of supplier volumes, application of exchange rates, monthly/weekly settlement, credit requirements etc.	Clarify the code. It would seem sensible to recover the costs associated with the CMC through existing price control and tariff arrangements. E.g. TUoS or the TSC.	
28	B.7.1.4	System Operator Charges	25	"Loss-Adjusted Metered Quantity" does not appear to be a defined term	Define "Loss-Adjusted Metered Quantity"	Glossary
29	B.7.1.6	System Operator Charges s	25	There should be clarity and definition of what the "appropriate period" is for the recovery of costs and expenses	Amend Code accordingly.	
30	B.7.1.8	System Operator Charges	25	There is no clarity on timelines pre capacity period when rates will be published. Specific dates should be agreed with minimum 2-3 months prior to capacity year, in particular to allow suppliers to recover costs.	Provide clarity and specific timings so that participants are clear before the capacity year on applicable rates/costs	
31	B.7.1.9	System Operator Charges	25-26	There should be no within year adjustments. As per previous comments Price Control methodology should apply with "k-correction" the following year	Remove	
32	B.7.1.9 (b)	System Operator Charges	25	Typo	Change "Charged" to "Charges"	N/A
33	B.7.1.9 (c)	System Operator Charges	26	Typo	Change "capacity Year" to "Capacity Year"	N/A
34	B.7.2	System Operator Bank Account	26	Based on the comments above in relation to B.7.1, this section is unnecessary and can be simply avoided by recovering the allowed TSO costs through an existing tariff arrangement	Delete section B.7 and address through the TSO price controls and cost recovery through an existing tariff arrangement.	B.7
35	B.7.2	System Operator Bank Account	26	If the decision is to keep charges in the CMC then the SO should be obliged to open and maintain corresponding accounts for the purposed of the Accession and Participation Fees- see comments above in relation to B.5.3.4.	Amend Code accordingly.	B.5.3.4

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
36	B.7.2.1	System Operator Bank Account	26	This conflicts with the position under the I-SEM Daft Trading and Settlement Code- MO had indicated it was not "possible" for the SEM Bank to maintain a Sterling account in NI- these provisions should therefore be brought into line with the position under the I-SEM Daft Trading and Settlement Code to avoid inconsistency and inadvertent SO non-compliance. See also following comment in relation to interest	Amend B.7.2.1:- "The System Operators shall establish and maintain with the SEM Bank within ~~the relevant Jurisdiction~~ Ireland a Euro bank account at a branch of the SEM Bank in Ireland and a Sterling bank account at a branch of the SEM Bank in the United Kingdom ~~Northern Ireland~~ in its name and each called "the System Operator Charge Account". Participants shall make all payments due in relation to System Operator Charges into the relevant System Operator Charge Account according to the Currency Zone of its registered Units. Each System Operator Charge Account shall be an interest-bearing account."	
37	B.7.2.1	System Operator Bank Account	26	In relation to the interest under the interest bearing account- how is this allocated- who is entitled to it and for what purpose?	Amend Code accordingly.	
38	B.7.2.2	System Operator Bank Account	26	Notwithstanding the other comments on cost recovery structure, a Payment Term of 5 working days is inappropriate	Delete section B.7 and address through the TSO price controls and cost recovery through an existing tariff arrangement.	B.7
39	B.7.2.3	System Operator Bank Account	26	Notwithstanding the other comments on cost recovery structure, the set-off proposals are wholly inappropriate.- providing for set-off against any other code or agreement	Delete section B.7 and address through the TSO price controls and cost recovery through an existing tariff arrangement.	B.7
40	B.7.2.3	System Operator Bank Account	26	This allows the SO to set off in relation to amounts due to the SO (in relation to agreements outside the CMC in any capacity, i.e. could be amounts due to MO,- including it would seem under TSC and could include transmission use of system agreements , negligence claims and other contractual claim etc) against any amount due to the Participant under CMC and does not permit the Participant to reciprocally set off-. Set off should be confined to the obligations under the CMC, it is noted the I-SEM draft Trading and Settlement Code does not contain such a provision.	B.7.2.3 The System Operators may set off any amount due for payment by a Participant to the System Operators under this Code against any amount due for payment by the System Operators or either of them ~~(and whether under any code or agreement and in any capacity)~~ to the Participant under this Code.	
41	B.8.1.2	Compliance with Code	26	Obstruction in relation to the I-SEM draft Trading and Settlement Code is dealt with in the I-SEM draft Trading and Settlement Code (B.14.1.2)- it is not appropriate to deal with it twice- and raises two venues for it to be pursued- which could lead to conflicts and confusion.	B.8.1.2 Without prejudice to the generality of paragraph B.8.1.1, no Party shall, either directly or indirectly, on its own or in conjunction with any other Party or person, obstruct the proper functioning of the Capacity Market in accordance with this Code ~~and the Trading and Settlement Code~~.	Consistency issue with the I-SEM draft Trading and Settlement Code

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
42	B.8.1.3	Obligations on Parties	26	The CMC is not drafted as a multilateral agreement in the same way as the TSC is and notwithstanding views expressed above in relation to deleting all System Operator charging from the CMC, the recovery of costs in the CMC relates to the TSOs costs and hence the TSO are not collecting funds on behalf of other parties. Hence this clause makes no sense.	Delete the Paragraph	
43	B.8.1.5	Obligations on Parties	27	Is paragraph (c) needed if all payment obligations separately reside in the TSC or other agreement?	Either delete or ensure it only covers the scope required.	B.7
44	B.8.1.5 (d)	Compliance with Code	27	This is a new free standing obligation, it is considered that this is already adequately captured in the relevant rules surrounding submission and licence obligations	Delete clause	
45	B.8.2	Regulatory requirements	27	These obligations are inappropriate in the CMC and are more appropriately licence obligations	Delete and include in licence conditions where appropriate	
46	B.8.2	Regulatory Requirements	27	Information provided under this must be subject to adequate confidentiality provisions – i.e. B.23	Amend Code accordingly.	
47	B.8.2.2	Regulatory requirements	28	Not required, too broad and inappropriate to include in CMC.	Delete B.8.2.2 Not required provisions to request information available to RAs under Licence	
48	B.9	Prohibition on Market Manipulation	28	Not sure how you could comply with B.9.1.2. Does it cover the TSOs where they determine various key inputs such as the Capacity Requirement?	Clause should be deleted in its entirety.	

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
49	B.9	Prohibition on Market Manipulation	28	Section B9 of the I-SEM CMC appears to have been substantially copied from the equivalent provision in the Great Britain capacity market code ("**GB CMC**"). However, no recognition has been given to the fundamental differences between the I-SEM and GB capacity regimes that make this provision necessary in GB but unnecessary and inappropriate in I-SEM. The GB CM is framed as a capacity obligation. As such, the contract requires delivery of energy when called upon and failure to do so when required results in penalties. The UK Department of Energy and Climate Change ("**DECC**") stated in its June 2013 capacity market strawman that the GB capacity instruments would "most likely not be a financial instrument" for the purposes of MiFID. It follows from this analysis that the GB capacity instruments could not be considered as derivatives for the purposes of REMIT and would also be outside the scope of MAR, which applies to MiFID financial instruments. Therefore, the GB CM includes a specific market manipulation clause i.e. because REMIT and MAD may not be applicable. In other words, the GB CMC provides for a market manipulation prohibition because none applies otherwise. We note that the market manipulation clauses in the GB CMC appears to have been designed to closely replicate the regulatory regime to which participants would have been subject had REMIT and MAD been applicable.	Clause should be deleted in its entirety.	

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
49 ctd				Contd/ By contrast, the I-SEM RO is a derivative and is settled financially. ACER has confirmed that capacity markets are considered to be wholesale energy markets according to REMIT in so far as wholesale energy products are traded in such markets. Under REMIT, “wholesale energy products" include derivatives relating to electricity or natural gas produced, traded or delivered in the Union, irrespective of where and how they are traded. It follows therefore that the ROs should be considered as wholesale energy products and within the scope of REMIT. This appears to be a position accepted by the SEM Committee in its Third Decision on the I-SEM CM. Therefore, in our view the GB CMC is not an appropriate precedent for the CMC given that the markets operate differently and are regulated differently under existing law. In GB, market manipulation provisions were required to be included in the GB CMC in the interests of good regulation. However, as the I-SEM capacity market is already regulated by precisely regulatory regime that the GB CMC sought to replicate, it is both unnecessary and inappropriate for the I-SEM CMC to include these provisions, including for the following reasons: - It imposes an unreasonable compliance burden for firms to comply with two regimes (one under contract and the other under statute) which are enforced and interpreted by different bodies covering the same issue; - There is the risk of gaps and overlaps; - There is the risk of different interpretations of, effectively, the same rules; - There is the cost and administrative burden of creating a monitoring unit and developing or hiring expertise in the Regulatory Authorities where it already exists elsewhere and in circumstances in which the financial regulatory authorities are far more experienced and resourced in this area. Unnecessary duplication of regulation represents poor regulatory practice and the inclusion of these provisions appears to simply be copying GB for the sake of it without understanding why the provisions were necessary in the GB CMC in the first place.		

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
50	B.10.1	Capacity Auction Monitor	29	We have concerns that the role of the Capacity Auction Monitor is not sufficiently circumscribed by current drafting and that the assurances regarding its suitability and independence are insufficient, having regard to the following: Suitability It is not sufficient that the Regulatory Authorities "endeavour to ensure that the Capacity Auction Monitor is of good repute and has the appropriate experience to enable it to carry out the role with the appropriate level of expertise etc". The current wording is at odds with the wording used in respect of the Capacity Market Auditor. Independence The Capacity Auction Monitor and the Capacity Market Auditor play different roles in ensuring the integrity of the auction process. We do not believe that there are any synergies which would arise from having the same person or firm acting as both Monitor and Auditor. Instead we believe that the role of the Capacity Market Auditor will be significantly undermined if it is not independent of the Capacity Auction Monitor. Any "*procurement synergies*" would not make up for the loss of having assurances being provided on the operation of the I-SEM Capacity Market by a person who is entirely separate and independent of any persons directly involved in the workings of the capacity market, including the Monitor, being involved as regards its monitoring of the processes associated with the auctions. We believe that there are significant additional assurances as regards the functioning of the market which arise from having a fully independent Auditor. This is an essential aspect in the context of an entirely new market and will significantly assist in ensuring trust in the processes and the market in general. For these benefits to be achieved, it is also necessary that the Auditor and Monitor are independent of the System Operators. While we recognise that there are a number of provisions to that effect in the Code, we believe that the entitlement of the System Operators to attend meetings between the Regulatory Authorities and the Capacity Auction Monitor call such independence into serious question. This is particularly the case where one of the System Operator is a Participant (through its ownership interest in an Interconnector). We believe that such an entitlement is excessive and unjustified. As stated earlier, the CMC Auditor and Monitor should not be funded by the TSOs. If the current proposals for funding are implemented, we believe that the CMC should be very clear that the obligation on the System Operators to pay the fees and costs of the Capacity Auction Monitor and the Capacity Auction Market Auditor do not give the System Operators any right including rights of oversight, approval, termination etc. over the contract and /or the Capacity Market Code.	B.10.1.3 When selecting a person or firm to act as The Capacity Auction Monitor selected by, the Regulatory Authorities shall endeavour to ensure that the Capacity Auction Monitor is be of good repute and have the appropriate experience to enable it to carry out the role with the appropriate level of expertise, care, skill and diligence. The Capacity Auction Monitor shall be and is to be independent of the System Operators and Participants and of the Capacity Auction Auditor. B.10.1.5 The Regulatory Authorities shall ensure that the terms of the engagement for the Capacity Auction Monitor require the Capacity Auction Monitor to: …. (g) meet with the Regulatory Authorities at the request of the Regulatory Authorities at any time during the Capacity Auction Monitor's engagement. Nominated representatives of the System Operators shall be entitled to may attend such meetings at the invitation of and where so required by the Regulatory Authorities. B.10.1.6 ~~The fees and costs of the Capacity Auction Monitor shall be paid by the System Operators~~. [if applicable] For the avoidance of doubt, the payment of the fees and costs of the Capacity Auction Monitor by the System Operators does not, and cannot be construed to, confer any right whatsoever to the System Operators in respect the Capacity Auction Monitor including in particular as regards its appointment and the terms and conditions of the appointment and its termination.	

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
51	B.10.2	Role of Capacity Auction Auditor	30	In order to ensure the success of the Capacity Market including regulatory oversight, it is essential that the regulatory role of the Capacity Auction Monitor and the Capacity Market Auditor are clearly defined and delimited. We have some concerns that the role of the Capacity Auction Monitor is not sufficiently or precisely circumscribed. We have concerns in particular that certain provisions of the draft CMC may be interpreted as requiring the Capacity Auction Monitor to exercise a regulatory compliance role which properly belongs to only the Regulatory Authorities as per CRM Policy Decisions. We suggest accordingly that the wording of paragraphs B.10.2.1 and B.10.2.4 is amended to make it clear that any obligation of notification of suspected non-compliance arises may only arise in the context of the discharge of the Capacity Auction Monitor's function and does not extend to a regulatory compliance obligation. We are particularly concerned in this regard that it is proposed that the notification obligation is not primarily concerned with issues arising with the conduct of a Capacity Auction but extends to all issues of "*suspected non-compliance with this Code*". This would include, in the current draft CMC, issues of market manipulation, adding yet another layer of oversight and further potential for diverging interpretation as regards a Participant's obligations under the various rules which apply. For this reason also, we believe that the Code should not include such rules which are redundant with pre-existing obligations of general application. Nor should the System Operators be able to request recommendations from the Capacity Auction Monitor on the most appropriate course of action in respect of suspected or potential non-compliance without the express involvement of the Regulatory Authorities.	B.10.2.1 The Capacity Auction Monitor shall monitor the processes and procedures followed by the System Operators in carrying out the Qualification Process, conducting Capacity Auctions and related activities under this Code, in accordance with the terms of reference determined by the Regulatory Authorities. For the avoidance of doubt, the Capacity Auction Monitor's role does not extend to the monitoring of compliance by Participants with their regulatory obligations under the Code or otherwise. B.10.2.4 Each of the System Operators and the Capacity Auction Monitor when discharging its function as defined in paragraph B.10.2.1, shall promptly notify the others if they become aware of a potential or suspected non-compliance with this Code or any other potential or suspected irregularity with respect to the conduct of a Capacity Auction. B.10.2.5 On notification to the Regulatory Authorities, the System Operators may request that the Capacity Auction Monitor give its opinion as to the most appropriate course of action regarding any potential or suspected non-compliance with this Code or other potential or suspected irregularity with respect to the conduct of a Capacity Auction.	
52	B.10.4.2	Report on Capacity Auction	31	The redacted report should be published by the RAs using a redacted version of the report produced by the Capacity Market Monitor. There is no need for the TSOs to be involved in the redaction.	Delete the paragraph since as the RAs are not parties to the code there is no point placing an obligation on them in the CMC. Could also amend B.10.4.1 to require the Capacity Market Monitor to also provide a redacted copy of the report for public publication.	
53	B.11.2.2	Role of Capacity Market Auditor	32	Audit period should be the same as capacity period	Please update drafting	
54	B.11.3.1	Information	33	"Demonstrate to the satisfaction of the RAs" – why RA's should this not be the auditor?	Please update	

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
55	B.11.3.2	Information	33	The text refers to "participation in the SEM". This is an inappropriate obligation for the CMC since for example the "SEM" definition includes the ex-ante markets.	Replace "SEM" with "CMC"	
56	B.11	Capacity Market Auditor	31	Please see comments in respect of B.10.1	B.11.1.3 The Capacity Market Auditor shall be of good repute with the appropriate experience to enable it to carry out the audit with the appropriate level of expertise, care, skill and diligence and shall be independent of the System Operators and Participants and of the Capacity Auction Monitor. B.11.1.5 The same person may be: (a) both the Capacity Auction Monitor and the Capacity Market Auditor; and (b) both the Capacity Market Auditor and the Market Auditor under the Trading and Settlement Code. B.11.1.7 The fees and costs of the Capacity Market Auditor shall be paid by the System Operators. For the avoidance of doubt, the payment of the fees and costs of the Capacity Auction Monitor by the System Operators does not, and cannot be construed to, confer any right whatsoever to the System Operators in respect of the Capacity Auction Monitor including in particular as regards its appointment and the terms and conditions of the appointment and its termination.	
57	B.12	Modifications	33	The proposed modifications process is dominated by the TSOs and RAs and is therefore not balanced or proportionate. The modifications process should mirror the TSC modifications processes.	Either subsume the governance of the CMC under the TSC modifications process or copy the drafting from the TSC into the CMC	
58	B.12	Modifications	33-41	The entire process is not aligned to the position in the Draft I-SEM TSC- as such there will a) inevitably be inconsistency in respect of modifications under draft I-SEM TSC and Code b) the "Workshop approach" is vague does not provide clarity and certainty c) the "Workshop approach" does not protect against nor take into account adequately potential jurisdictional concerns across the two jurisdictions and is therefore vulnerable to offending against the "code objective" of ensuring no undue discrimination. e) the procedures themselves do not seem to cater adequately for steps to be taken in relation to "urgent" modifications; detail how "consultation" is effected and participation in urgent modifications The draft I-SEM TSC approach in relation to Modifications should be adopted.	Amend Code accordingly.	

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
59	B.12.3.1	Deadline for Approval of Modifications	34	What the RAs can do is not particularly relevant. The key is that if the RAs do make any such decision then if the TSOs are tasked to publish that decision then the CMC should specify the process and timetable for doing so.	Delete B.12.3.1 and redraft to clarify the TSO action that is required following a notice from the RAs.	
60	B.12.3.1	Deadline for Approval of Modifications	34	To give certainty surely the RAs should give a determination- it should not be optional	Replace word "may" with "shall" and in definition in the Glossary remove the words "(if any")	Glossary
61	B.12.4.3	Proposals of Modifications to this Code	35	In operating the TSOs discretion to request further information the TSO should act "reasonably"	Insert the word "reasonably" before the word "consider"	
62	B.12.5.7 & B.12.5.8	Procedure for Developing Proposals	35	These provisions are inappropriate. If the RAs require input then they should issue a consultation paper setting out the issues and inviting comments.	Delete and re-draft	
63	B.12.5.11	Procedure for Developing Proposals	36	There should be explicit time frames in relation to public consultations organised by the RAs	Amend Code accordingly.	
64	B.12.5.13	Procedure for Developing Proposals	36	In the interests transparency, accountability and independence it is not appropriate for the TSO to fund regulatory costs	RAs should recover costs through their own budget or through Licence Fees in a transparent manner.	
65	B.12.7.1(j)	Workshops	37	Any notes of workshops should be published generally such that there is no scope for misunderstanding or misrepresentation of the Workshop	Change text to state that the TSO will publish the notes on the TSOs website.	
66	B.12.7.1 (i)	Workshops	36	Works shops should be chaired by the RAs- not SO, and the discretion of the chair should be tempered by reasonableness and as a Prudent Industry Operator	B.12.7.1(i) the Workshop shall be chaired by a representative of the Regulatory Authorities ~~(or if the Regulatory Authorities request, a representative of the System Operators)~~ who may adopt such procedures for conducting the Workshop as he or she reasonably thinks fit in accordance with the standard of a Prudent Industry Operator, and may terminate the Workshop whenever reasonable he or she thinks fit in accordance with the standard of a Prudent Industry Operator; and	
67	B.12.7.1 (j)	Workshops	37	There should be an obligation for the report to provide a summary of the views expressed at the Workshop, and this report should be published as background/ part of the consultation process under B12.8	B12.7.1 (j) (j) the System Operators shall prepare a report of the discussions - summarising the views of the participants ~~which took place~~ at the Workshop and provide it to the Regulatory Authorities, such report shall be included in the notice under paragraph B.12.8.1 (a).	B.12.8.1 (a)
68	B.12.8	Consultation	37	As noted a number of times above, setting out obligations on the RAs in the CMC is pointless given the RAs are not a party to the CMC.	Delete the paragraphs as the need for proper consideration including consultation is normal and best regulatory practice in the fulfilment of statutory duties.	

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
69	B.12.8.1 (a)	Consultations	37	See comment above in relation to B.12.7.1 (j)	(a) the Regulatory Authorities shall give a notice to all Parties and the Market Operator giving details of the matter under consultation, including a copy of the proposed Modification and the report under paragraph B.12.7.1 (j);	B.12.7.1 (j)
70	B.12.8.1 (a)	Consultations	37	See comment above in relation to B.12.7.1 (j)	(a) the Regulatory Authorities shall give a notice to all Parties and the Market Operator giving details of the matter under consultation, including a copy of the proposed Modification and the report under paragraph B.12.7.1 (j);	B.12.7.1 (j)
71	B.12.9	Procedure for Developing Proposals	37	Concern over process generally	Need for much greater clarity and detailed process.	
72	B.12.9.3	Urgent Modifications	37	In determining whether or not a modification is "urgent" RAs should act "reasonably"	Insert the word "reasonable" before the word "opinion"	
73	B.12.9.3(b)(i)(B)	Urgent Modifications	37	The reference to the SEM is inappropriate as that includes the ex-ante markets, etc.	Delete as sub-paragraph (C) covers the CMC.	
74	B.12.9.3(b)(i)(C)	Urgent Modifications	37	The drafting refers to "the Capacity Market or this Code" which is unnecessary and duplicates the reference.	Delete the words "of the Capacity Market"	
75	B.12.9.4 & B.12.9.6	Urgent Modifications	38	These two paragraphs propose two different processes that will occur if the RAs determine a modification to be urgent.	Delete B.12.9.4	
76	B.12.9.4	Urgent Modifications	37	There should be timeframes for the Workshop, notification requirement and detail as to the information which needs to be circulated , there is no detail as to how consultation occurs or indeed who makes a decision as result of the urgent proposal- as such the Urgent Modifications procedure appears to be fundamentally flawed and should be redrafted to cater for these points	Amend Code accordingly.	B.12.11
77	B.12.11	Decision of the Regulatory Authorities	38	As noted a number of times above, setting out obligations on the RAs in the CMC is pointless given the RAs are not a party to the CMC.	Delete B.12.11.1 through to B.12.11.7	
78	B.12.11	Decision of the Regulatory Authorities	38	See comments in relation to Urgent Modifications above. The position in relation coming to a decision in relation Urgent Modifications does not seem to be set out (decisions under 12.1.1. seem only to occur following a consultation- and it's not clear which a consultation occurs in relation to an Urgent Modification)	Amend Code accordingly.	B.12.9.4
79	B.12.11.4	Decision of the Regulatory Authorities	38	It would be inappropriate for the RAs to consult on a set of proposals and to then seek to make changes that are materially different to what was consulted upon. The RAs must ensure all options are consulted upon and no surprises occur.	Notwithstanding we consider the section should be deleted, any RA decision must be closely aligned to options that were consulted upon.	
80	B.12.11.7	Decision of the Regulatory Authorities	39	There should be an obligation to publish the RA's decision on the SO Modifications Web site- i.e. like the position in relation to AP modifications under paragraphs B.12.12.7 & B.12.12.8	Amend Code accordingly.	
81	B.12.12.1	Modifications to Agreed Procedures	39	There should not be a different Modifications process for Agreed Procedures	Amend Code accordingly.	

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
82	B.12.12.10	Modifications to Agreed Procedures	40	It should be a precondition before the Modification has effect that the Modification has actually been published- otherwise how can participants comply?	Amend Code accordingly.	
83	B.12.14.2	Intellectual Property	41	This states that "Each Proposer who is not a Party shall be required to grant to each Party ….". However in accordance with clause B.12.4.1, you must be a Party to Propose a Modification to the CMC	Clarify what is intended.	B.12.4.1
84	B.13.1.1	Default, Suspension and Termination Concepts	42	What is the remedy in a situation where the TSOs Default under the CMC?	Clarify the obligations on the TSOs in such circumstances since if the TSOs can default with impunity then it would destroy the capacity market.	
85	B.13.2.3	Default	42	Define "Defaulting Party", not the same as a "Defaulting Participant"	Amend Code accordingly.	Glossary
86	B.13.2.1 (c)	Suspension	43	Should "Awarded **New** Capacity" be a suspension event?- i.e. what happens where there is other pre-existing "Awarded Capacity"	Clarify in Code.	
87	B.13.2.1	Suspension	43	Should there be a "3 strikes and you are out" provision- like the draft I-SEM Trading and Settlement Code?- i.e. 18.3.1 (l)- "the Party has committed 3 Defaults within a period of 20 Working Days"?	Amend Code accordingly.	Consistency issue with the I-SEM draft Trading and Settlement Code
88	B.13.3.1	Suspension	42	There does not appear to be any requirement to actually serve the "Suspension Order" on the Party concerned, and AP 2 Default and Suspension appears to contemplate that the "Suspension Order" should be accompanied by the relevant "Default Notice)	Amend Code accordingly.	Agreed Procedure 2 Default and Suspension
89	B.13.4.1 AND B13.5.1	Timing of Suspension AND Effect of Suspension Order	43	B.13.4.1 and B13.5.1 seem to be contradictory- under B.13.4.1 the Suspension Order seems to have **immediate effect,** but under B.13.5.1 **it would seem that SO is able to say when it takes effect from and what the terms are**- it would seem that B.13.4.1 needs to be subject to the terms of B13.5 generally. **i.e. there is a conflict between the terms of B.13.4.1 and B.13.5.1**	Amend Code accordingly, resolve conflict between paragraphs	B.13.4.1 AND B13.5.1 AND Agreed Procedure 2 Default and Suspension
90	B.13.4.1	Timing of Suspension		These provisions seem to be contradictory (with B.13.5.1 Effect of Suspension Order)	Amend Code accordingly.	
91	B.13.5.1	Effect of Suspension Order		These provisions seem to be contradictory (with B.13.4.1)	Amend Code accordingly.	
92	B.13.10.1	Consequences of Deregistration	46	If a Unit does not want a Capacity contract (e.g. because it is closing before the end of the capacity year) then it has no reason to be registered under the CMC but it should still be able to participate in the Energy Markets.	Facilitate units that do not need to or want to be a Party to the CMC but who wish to trade in the Energy Markets.	
93	B.14.1.3	Dispute Resolution	47	"Qualification Dispute"; Capacity Auction Dispute"; "Secondary Trade Dispute"; "Implementation Dispute"; "Conflict Dispute" and "General Dispute"- are all defined terms which should be called out in the Glossary	Amend Code accordingly.	Glossary
94	B.14.1.3 (b)	Dispute Resolution	47	Define what is meant by "Capacity Auction process"	Amend Code accordingly.	Glossary

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
95	B.14.1.5	Dispute Resolution	47	"Dispute Process Timetable"- why is this being left to RAs to determine at some future time- why is this not being specifically called out now? This does not follow the approach adopted in the TSC in relation to actions surrounding disputes- the drafted approach leads to uncertainty- for instance how do parties comply with the "Good Faith Provisions" in B.14.2 without a clear understanding of what the timetable is for the various forms of dispute?	Amend Code accordingly.	Consistency issue with the I-SEM draft Trading and Settlement Code & B.14.2
96	B.14.2	Notice of Dispute and Good Faith Negotiations	48	See comments above in relation to B.14.1.5 "Dispute Process Timetable"	Amend Code accordingly.	B.14.1.5
97	B.14.4.9	Dispute Panel – SO Indemnity to RAs	49	See comment above with reference to funding of RA costs (B.12.5.13)	RAs should recover costs through their own budget or through Licence Fees in a transparent manner.	
98	B.14.4.11 (as for B14.5)	Panel		○ The process for dispute resolution should exactly align with the draft I-Sem Trading and Settlement process- comments below are subject to that point- if it does not match exactly then clearly there is room for conflict, and conflicting timescales. ○ The purpose of the "Panel" to help resolve the dispute in an alternative forum- **members of the Panel should not be members of the Capacity Market Dispute Resolution Board, under any circumstances**- as they will not be able to come to the Capacity Market Dispute Resolution Board with "clean hands".- and they will not be able to come to the CMDRB with degree of "impartiality" required under the Appendix B Template for Dispute Resolution Agreement (see warranty 3.1) ○ In relation to cross code members- either disputing party should be able to "veto" a panel member or a CMDRB member who has been engaged in a dispute under I-SEM Trading and Settlement code	Amend Code accordingly.	B.14.1 & B.14.5 Conflict with Template for Dispute Resolution Agreement (see warranty 3.1) Consistency issue with the I-SEM draft Trading and Settlement Code

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
99	B.14.5 (as for B.14.4.11)	Capacity Market Dispute Resolution Board		○ The process for dispute resolution should exactly align with the draft I-Sem Trading and Settlement process- comments below are subject to that point- if it does not match exactly then clearly there is room for conflict, and conflicting timescales. ○ The purpose of the "Panel" to help resolve the dispute in an alternative forum- **members of the Panel should not be members of the Capacity Market Dispute Resolution Board, under any circumstances**- as they will not be able to come to the Capacity Market Dispute Resolution Board with "clean hands".- and they will not be able to come to the CMDRB with degree of "impartiality" required under the Appendix B Template for Dispute Resolution Agreement (see warranty 3.1) ○ In relation to cross code members- either disputing party should be able to "veto" a panel member or a CMDRB member who has been engaged in a dispute under I-Sem Trading and Settlement code	Amend Code accordingly.	B.14.1 & B.14.5 Conflict with Template for Dispute Resolution Agreement (see warranty 3.1) Consistency issue with the I-SEM draft Trading and Settlement Code
100	B.14.9	CMDRB Decisions		This provision does not deal with the consequences of a Decision- ○ i.e. say for example the dispute, be it a Qualification Dispute, Capacity Auction Dispute, Secondary Trade Dispute; Implementation Dispute, Conflict Dispute, the CMDRB concluded that the auction or trading process was fundamentally flawed how would those auction or trading processes be rerun? What would the "look back period" be? By contrast the Draft I-SEM Trading and Settlement Code calls this out. ○ Paragraph E10.3.6 appears to contemplate that notwithstanding the result of a Dispute that never the less the relevant Capacity Auction is not affected which seems to be a fundamental flaw The approach in relation to CMDRB Decisions seems therefore to be fundamentally flawed.	Amend Code accordingly, this appears to be a fundamental flaw.	CMC; and E.10.3.6

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
101	B.16	Force Majeure	55	The definition of Force Majeure in the CMC contains a potential asymmetry between what constitutes Force Majeure within the CMC and what constitutes Force Majeure within the meaning of other code and agreements to which a generator is party (for example, the Gas Code of Operations and the Transmission Connection Agreement (which in turn extends to the Grid Code ("**Industry Codes and Agreements**"). The result is that parties to the CMC will not be afforded Force Majeure protection under the CMC in circumstances where their counterparties (typically TSO's) will be afforded Force Majeure protection under other Industry Codes and Agreements in respect of the same event. These provisions must be harmonised. Specifically, under these Industry Codes and Agreements, key matters that expressly constitute events of Force Majeure include any legal impediments of any kind (save where they arise as a result of the fault of the affected party); any unavailability of relevant network infrastructure (gas or electricity) at any time and, insofar as it grants relief to a generator, for any reason; and the inability of the supplier of fuel to the Facility to provide fuel due to circumstances which would entitle the supplier of fuel to claim relief under force majeure provisions of the relevant fuel supply agreement	B.16.1.1 For the purposes of this Code, "**Force Majeure**" means any event that satisfies all of the following criteria: (a) the event is beyond the reasonable control of a Party and could not have been reasonably prevented or the consequences of which could not have been prevented by such Party by the exercise of Prudent Electricity Utility Practice; (b) ~~the event is not due to the act, error, omission, breach, default or negligence of the Party, its employees, agents or contractors; and~~ *(Moved for consistency with other Industry Codes and Agreements)* ~~(c)~~ the event has the effect of preventing the Party from complying with its obligations under this Code or otherwise imposes any liability on a Party under this Code, including Difference Charges *(Note – this element of the definition of FM is not present in other Industry Codes and Agreements and so in this respect the definition for FM is not consistent with them, but with this amendment the risk of an inadvertent gap should be lessened.)* and includes, without limitation (~~d~~c) acts of terrorism; (~~e~~d) war (declared or undeclared), blockade, revolution, riot, insurrection, civil commotion, invasion or armed conflict; (~~f~~e) sabotage or acts of vandalism or criminal damage; (~~g~~f) natural disasters and phenomena, including extreme weather or environmental conditions, fire, meteorites, the occurrence of pressure waves caused by aircraft or other aerial devices travelling at supersonic speeds, impact by aircraft, volcanic eruption, explosion, including nuclear explosion, radioactive or chemical contamination or ionising radiation; (~~h~~g) compliance with relevant Legal Requirements as contemplated in paragraph B.4.1.2; or (~~i~~h) nationwide or industry wide strikes, lockouts or other industrial actions or labour disputes provided that such occurrence is not limited to the Party and/or its suppliers, contractors, agents or employees,	

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
101 ctd	B.16 Contd				Contd/ i) Any change of legislation, governmental order, restraint or directive shutting down or reducing the output of the Generator or interrupting the supply of fuel to the Generator or which prohibits (by rendering unlawful) the operation of the Generator and such operation cannot be made lawful by a modification to the Generator or a change in operating practice; *Event of FM under Transmission Connection Agreement (and Grid Code) and is essentially the same as an eventof FM under the Gas Code of Operations.* (j) the inability at any time or from time to time of the Transmission System or Distribution System to accept electricity generated or the inability of the Transmission System or Distribution System to supply electricity to the facility *(Event of FM under Transmission Connection Agreement (and Grid Code)* *(*k) the inability of the supplier of fuel to the Generator to provide fuel due to circumstances which would entitle the supplier of fuel to claim relief under force majeure provisions of the relevant fuel supply agreement. (Event of FM under Transmission Connection Agreement (and Grid Code) (l) shortage or unavailability of property, goods, labour or services (Event of FM under the Gas Code of Operations) (m) breakage of, or accidental damage to, machinery, equipment or pipes (Event of FM under the Gas Code of Operations) but shall not include: (~~j~~n) any inability (however caused) of a party to pay any amounts owing under this Code and/or lack of funds to Performance Security; (~~k~~o) mechanical or electrical breakdown or failure of machinery, plant or systems owned or operated by the Party; ~~or~~ (~~l~~p) ~~the~~ any failure or inability of the party's IT systems or manual processes to perform any function necessary for that Party to comply with this Code, or	

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
101 Ctd	B1.6 Contd				Contd/ (q) any event which is due to the act, error, omission, breach, default of negligence of the Party, its employees, agents or contractors; and *(Moved for consistency with other Industry Codes and Agreements)* *Other than where such events arise as a result of circumstances in sub-paragraphs (d) – (i) above.*	
102	B.16.3.4	Force Majeure	58	Reliability Options are purely financially settled instruments. It is not possible to physically settle an RO. Therefore an FM clause that gives relief from all obligations under the CMC other than financial obligations in fact gives no relief at all. This makes a complete nonsense of the FM clause and fails to understand why they are included. This clause must be deleted or it imposes unreasonable risk on parties who may have absolutely no control over that risk (and in many cases allocates precisely the same risk away from the parties who can control it). This is neither equitable or efficient in terms of allowing generators to reasonably price risk or logical in terms of allocations of appropriate incentives. In particular, it is entirely inappropriate that Parties should be liable for payments and charges during the currency of an event of Force Majeure, in particular where the Force Majeure occurs as a result of the fault of another party. If a generator is making capacity available but is not providing energy for reasons entirely beyond its control, acting in accordance with Prudent Electric Utility Practice, it should not be liable for difference payments.	Delete B.16.3.4	
103	B.16.3.4	Force Majeure	58	References to the Trading and Settlement Code should be deleted	Without prejudice to comments above, matters concerning the TSC should be dealt with in the TSC and not the CMC	
104	B.16.3.4	Force Majeure	58	Can this code define how TSC obligations apply? Surely the TSC must define what must and must not happen to such obligations in the event of FM under the TSC?	Remove reference to Trading and Settlement Code	
105	B.23.3.1(d)	Permitted Disclosures	62	There is no reason for any information to be disclosed to a NEMO.	Delete “or the NEMO Rules”	
106	B.26.2	Notices to Other Parties	63	All references to “e-fax” this should be amended to “fax”- not all parties will have “e-fax”- practically speaking if a parties “IT” systems are “down” “e-fax” is likely to be affected- whereas traditional “fax” may not be affected	Amend Code accordingly.	B.26.2 as a whole.

C:- De-Rating and Capacity Concepts

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
107	C.1.1.2 (d)		65	Section C2	Should refer to C3	
108	C.2.1.2	Concepts	66	If the requirement is to ensure a minimum capacity is cleared in a specific area under C.2.1.1 and the SO doesn't meet the obligation then why should they not be liable given that is what they are tasked to deliver?	Delete paragraph	
109	C.2.1.3	Concepts	66	The need for this clause is unclear.	Delete paragraph	
110	C.2.3.2	Timing of Determination	67	The review should be annual and the review should be submitted to the RAs for approval	Replace "may submit any updated" with "shall submit the".	
111	C.2.3.4 & C.2.3.5	Timing of Determination	67	The Governance arrangements are unclear. We would expect the RAs will publish and consult on the methodology employed by the TSOs and on the proposals that are made.	Amend Code accordingly.	
112	C.3.2.1(a))ii)	Initial Capacity	67	The drafting is unclear	Ensure drafting delivers on the intent.	
113	C.3.2	Initial Capacity	67	Should the paragraphs all be prefixed by "Except where paragraph C.3.3.5 applies" in the same manner as the drafting in Clause C.3.3?	Confirm and apply consistent drafting	C.3.3
114	C.3.5.1(d)	SO determining Substitute values	70	This seems to set the Initial Capacity (Total) to the value of Awarded New Capacity when New Capacity is Awarded. Should it not be the Initial Capacity (existing) plus the value of Awarded New Capacity?	Amend Code accordingly.	

D:- Pre Capacity Auction Processes

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
115	D.2	Capacity Auctions and Timetables	72	The timings around the information and processes set out in the Capacity Auction Timetable need careful consideration and need to be properly worked through to ensure sufficient time is always provided to facilitate the proper execution of any associated process in the case of each auction and participants are provided with sufficient time to use any relevant published information to complete required analysis and formulate their capacity market offers.	Set clear time frames for the timetable in the capacity auction timetable.	
116	D.2.1.1	Capacity Auctions and Timetables	72	There will not be a T-4 auction for the first number of capacity years	Add the words "from 2022/23 onwards" to provide clarity	M.3.2.1

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
117	D.2.1.2 & D.2.1.3	Capacity Auctions and Timetables	72	Obligations on the RAs are pointless and such governance matters must be set out elsewhere. The Code should instead specify what actions are required from Parties where the RAs provide notice or direction that requires action	Amend Code to specify the actions the TSOs must take following notice from the RAs of decisions that require action from the TSOs	
118	D.2.1.10	Capacity Auctions and Timetables	73	The TSOs should not be "amending" any timetable and this should be directed by the RAs	Amend drafting	Capacity Auction Timetable definition
119	D.3.1.1	Capacity Auctions and Timetables	73	The Capacity Auction Information Pack contains critical information for capacity auction participants and therefore the deadline for publication of the Capacity Auction Information Pack should be firm and as set out in the Capacity Auction Timetable.	Amend Code accordingly.	
120	D.3.1.3	Capacity Auction Information Pack	74	The drafting should be changed such that upon notice of the list of parameters from RAs, the TSOs will then publish them as specified in D.3.1.1. Remove all references to indicative as any parameters must be final.	Move the paragraph to be the opening paragraph in section D.3 and remove the obligation on the RAs.	D.3.1.1
121	D.3.1.4	Capacity Auction Information Pack	75	Participants must be able to rely on the parameters if they are to make rational commercial decisions and hence loosely "indicative" figures as proposed are useless. It will be impossible for participants to form views, for example of the scope for a change to the ASP or the Demand Curve and these must be fixed prior to the auction and the timetable for exception and opt-out applications with a defined methodology for what might drive changes between indicative and final values.	Revise the Code in accordance with the timetable and F.5.1.2.	F.5.1.2

E:- Qualification

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
122	E.2.1.3	Requirement to Apply	77	If a generating unit is closing and is not seeking a RO contract, there should be no requirement for the generator to Accede to the CMC (incurring the fees and costs of doing so) just so that it can provide an Opt-out notice	Remove the need for such units to Accede or be a Party/Participant under the CMC	

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
123	E.3	Opt-Out Notifications		Criteria are too narrow and restrictive. 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'.	Amend Code accordingly.	
124	E.3.1.4(e)	Opt-Out Notifications	78	Grid Code notification is not appropriate and not enforceable on a common basis	Remove any reference to Grid Code notification	E.3.1.5(b)(ii)
125	E.3.1.4(g)	Opt-Out Notification	78	There is a degree of uncertainty as to the capacity in which directors, officers and company secretaries would be deemed to have provided the certification contemplated by the CMC (and the Consultation Paper). If such persons were deemed to have provided such certification in their personal capacity, they could be exposed to potential liability issues in circumstances where the provisions of existing directors and officers' liability insurance policies may not apply. This is neither necessary nor appropriate. The requirement for Directors' certification under the Code will likely give rise to an undue administrative and/or financial burden to be borne by the relevant Participants in terms of the internal diligence that will require to be undertaken in advance of providing the certification contemplated. The extent of the information required to be certified under the Code (and Consultation Paper) is unclear, e.g. whether the certification is similar / identical to that required to be provided pursuant to the Companies Acts (including in respect of MAR compliance) and Regulation on Wholesale Energy Market Integrity and Transparency ("**REMIT**"), the Markets in Financial Instruments Directive ("**MIFID**") and/or the European Market Infrastructure Regulation ("**EMIR**")**,** which overlaps significantly with proposed provision of the CMC which we recommend be deleted.	The CMC should neither require Directors' certification contemplated above, nor extend the requirement for Directors' certification	
126	E.3.1.5(b)(ii)	Opt-Out Notifications	78	See comment on E.2.1.3	Delete the paragraph	E.2.1.3

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
127	E.4	Application for Qualification	79	An Application for Qualification should contain where relevant detail of the Participant's intention to bid for Capacity with a duration of more than one and up to 10 years or with a Unit Specific Price Cap. Accordingly this section should include some of the information requirement currently set out in E.5.	Insert new paragraphs E.4.1.3 and E.4.14: **E.4.1.3** Where an Application for Qualification concerns a Candidate Unit or Units in respect of which the Participant intends to bid for Capacity with a duration of more than one and up to 10 years, the following information must be provided to the System Operators in the format specified as the case may be by the System Operators: (a) identification of the capacity for which recovery is being sought (b) details of the proposed Capacity (c) evidence of the approval of the Regulatory Authorities that the Participant may bid for the proposed duration in respect of the Capacity concerned or where no decision has been made by the Regulatory Authorities, evidence that approval was sought prior to the Exception Application Date specified in the Capacity Auction Timetable, **E.4.14** Where an Application for Qualification concerns a Candidate Unit or Units in respect of which the Participant intends that a Unit Specific Price Cap will apply, the following information must be provided to the System Operators in the format specified as the case may be by the System Operators: (a) details of the Candidate Unit and the capacity for which the Unit Specific Price Cap will apply (b) the relevant Unit Specific Price Cap which shall be more than the existing Capacity Price Cap and less than or equal to the Auction Price Cap; and (c) evidence of the approval of the Specific Unit Price Cap by the Regulatory Authorities or where no decision has been made by the Regulatory Authorities, evidence that approval was sought prior to the Exception Application Date specified in the Capacity Auction Timetable.	E.4.1.2 E.4.1.3 E.4.1.4

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
128	E.4.1.3	Application for Qualification	79	There should be provision for a participant to request a copy of the Qualification Data the SOs hold such that they can check and where relevant update the data.	Add a clause providing rights for a participant to request the data held and for the provision of that data within 2 Working Days	
129	E.4.1.6	Application for Qualification	79	The need to retain data for 6 years where a participant is unsuccessful in an auction is unnecessary.	Remove the requirement where no capacity contract is awarded.	

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
130	E.5	Exception Applications	80	Section E.5 deals entirely with Exception Applications before the Regulatory Authorities in respect of New Capacity and Unit Specific Price Cap. There are significant concerns arising from this section: - There is no place for such a section in the Capacity Market Code. This section is not concerned with the respective roles and obligations of the CRM Delivery Body and the Participants or the workings of the CRM. Rather it is concerned with the evidence which the RAs will require when approving bids for certain durations and unit specific price caps and therefore the manner in which RAs make their decision, based on the criteria and requirements which they determine from time to time. This section is therefore concerned with the manner in which the RAs exercise their discretion. It is not appropriate that the CMC fetters the RAs' discretion in this respect. Strictly without prejudice to this point: - Section E.5.1.1(a) does not appropriately reflect the CRM 2 Decision (SEM-16-022). In particular the CRM 2 Decision, read in conjunction with CMR 3 Decision (SEM-16-039), does not restrict bids for capacity with a duration of more than one and up to 10 years to "New Capacity". In particular paragraph 5.2.26 (p75) of SEM-16-022 states: "There will be no explicit distinction between new investment and refurbishment; however, to be classified as "plant requiring significant investment", there will be a need to demonstrate: - €/MW investment above a threshold; - That this investment is directly linked to bringing into operation all or part of the equipment that is essential to the delivery of capacity by the plant; and - That the capacity of the plant is enhanced compared to a counterfactual of no investment." The drafting of the Code is a very significant and unacceptable divergence from the CRM 2 and 3 Decisions and needs to be amended such that refurbishment meeting the 'investment threshold' is eligible to bid for a longer term contract in the capacity auction. - Insofar as Unit Specific Price Caps are concerned, reference is made in section E.5.13(b) to the "*Net Going Forward Costs of the Existing Capacity Costs*" , a concept which is defined in turn in the Glossary as "*the avoidable costs that a Participant needs to recover in respect of a proposed capacity market unit needs to recover from the Capacity Market in order to justify the plant's continuing operation and are net of infra-marginal rent from the energy market and from providing ancillary services. Net Going Forward Costs does not include sunk costs, for example the costs of investments made in the past".* However, this definition of Net Going Forward Costs has not been the subject of a decision by the RAs and instead is among the issues discussed and consulted upon in the CRM Parameters Consultation. Energia has explained in its submissions to that Consultation why that definition was entirely inappropriate and misguided and we strongly object to its use in the CMC. We are also concerned that this calls into question the integrity of the decision-making process in that it considers as adopted proposals subject to consultation.	E.5 should be deleted in its entirely. Procedural aspects concerning duration and unit specific price caps should be incorporated in paragraph E.4 (please see above).	
131	E.5	Exception Applications	80	The process for applying to the RAs for longer term contracts or Unit Specific Price Caps is not relevant to the CMC. All the CMC requires is evidence of the approval from the RAs.	Delete section E.5.	AP3

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
132	E.7.6	Unit Specific Price Cap	83	The current text of the CMC only deals with the circumstances where the System Operators do not apply the Unit Specific Price Cap. There should be equally an obligation on the System Operators to use the Unit Specific Price Cap where regulatory approval has been obtained. Furthermore, provided that a generator has applied in good time for the application of a Unit Specific Price Cap, then the generator should not be penalised by the Regulatory Authorities' failure to make a decision.	E.7.6 **Unit Specific Price Cap** E.7.6.1 Where an Application for Qualification is made by a Participant in respect of a Candidate Unit to which a Unit Specific Price Cap is to apply, the System Operators shall apply the Unit Specific Price Cap subject to either of the following: (a) the Regulatory Authorities have approved the Unit Specific Price Cap and a copy, or evidence, of their approval has been provided as part of the Application for Qualification; or (b) where the Regulatory Authorities have not made a decision, an application for approval of the Unit Specific Price Cap concerned was made on or prior to the Exception Application Date specified in the Capacity Auction Timetable and a copy of the application is included in the Application for Qualification. E.7.6.2 If a Participant is seeking a Unit Specific Price Cap in respect of Existing Capacity for a Candidate Unit, but has not provided evidence that the Regulatory Authorities have approved the Unit Specific Price Cap in the Application for Qualification, or evidence that the Regulatory Authorities have not made a decision although approval was sought from the Regulatory Authorities on or before the Exception Application date specified in the Capacity Auction Timetable, the System Operators shall apply the Existing Capacity Price Cap for that Existing Capacity.	E.8.6
133	E.8.6	Offer Price Cap	90	Consequential amendments are required in light of the changes proposed for E.8.6	E.8.6.1 The Offer Price Cap in respect of: (a) New Capacity, shall be the Auction Price Cap; and (b) Existing Capacity, shall be either: (i)in the circumstances set out in paragraph E.7.6.1, the Unit Specific Price Cap; or (ii) otherwise, including in the circumstances set out in paragraph E.7.6.2, the Existing Capacity Price Cap.	E.7.6
134	E.9.1.1(d)	Qualification Decisions	92	The need for this at the qualification stage is not apparent.	Remove as this assessment can be concluded at a later stage.	F.4.1.3

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
135	E.9.2.2	Provisional Qualification Decisions	93	Why is this only a "reasonable endeavours" obligation? If the information is provided later than agreed in the timetable then what is the consequence? Does the full timetable slip?	Delete the words "use reasonable endeavours to"	E.9.2.7
136	E.9.2.3 & E.9.2.4	Provisional Qualification Decisions	93	The RA process is not relevant to the CMC as the RAs are not parties and hence have no obligations under the CMC. The RA process needs to be documented elsewhere to ensure transparent Governance is maintained.	Delete E.9.2.3 and E.9.2.4. Draft a new paragraph (or extend clause E.9.2.5) to set out the TSO actions that follow any RA response, notice or direction in reply to the submission provided under E.9.2.1. Separately the wider Governance arrangements must be considered, consulted upon and documented.	
137	E.9.2.7	Provisional Qualification Decisions	93	The "reasonable endeavours" obligation is inappropriate. If the timing under E.9.2.2. is a requirement and the RAs are deemed to have responded if nothing is received within 5 working days then full compliance with the timetable can be achieved and no "reasonable endeavours" waiver is needed.	Delete the words "use reasonable endeavours to". If the arrangements are set up such that timetabled dates are missed then there must also be a provision that any subsequent auction timetable dates are extended by the duration of any delay.	E.9.2.2
138	E.9.3	Final Qualification Decisions	94	It is unclear what changes can or will occur between the RA approval of the Provisional Qualification Decisions	Clarify what circumstances will drive a change that requires the actions contemplated under E.9.3.	
139	E.9.3.1	Final Qualification Decisions	94	There is no indication what process is to be followed where there is no material difference. If there is no notice then the provisions of E.9.3.6 are irrelevant? What are the triggers?	Clarify the process as the current drafting leaves uncertainty. It would leave a more concrete audit trail if the TSOs were required to submit the Final Qualification Decisions to the RAs in all circumstances.	
140	E.9.3.2	Final Qualification Decisions	94	Same comment as for E.9.2.2	Delete the words "use reasonable endeavours to"	E.9.3.8
141	E.9.3.4 & E.9.3.5	Final Qualification Decisions	94	The RA process is not relevant to the CMC as the RAs are not parties and hence have no obligations under the CMC. The RA process needs to be documented elsewhere to ensure transparent Governance is maintained.	Delete E.9.3.4 and E.9.3.5. Draft a new clause (or extend clause E.9.3.6) to set out the TSO actions that follow any RA response, notice or direction in reply to the submission provided under E.9.3.1. Separately the wider Governance arrangements must be considered, consulted upon and documented.	
142	E.9.3.8	Final Qualification Decisions	94	The "reasonable endeavours" obligation is inappropriate. If the timing under E.9.3.2. is a requirement and the RAs are deemed to have responded if nothing is received within 5 working days then full compliance with the timetable can be achieved and no "reasonable endeavours" waiver is needed.	Delete the words "use reasonable endeavours to". If the arrangements are set up such that timetabled dates are missed then there must also be a provision that any subsequent auction timetable dates are extended by the duration of any delay.	E.9.3.2

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
143	E.9.4.1	Publication of Qualification Results	95	Same comment as for E.9.2.2 and E.9.3.2	Delete the words "use reasonable endeavours to"	
144	E.10.3.3	Reconsideration of Reviewable Decision	96	If a change is made, should the information provided under Clause E.9.4.1 not also be re-published?	Amend clause to include obligation to re-publish the information as per Clause E.9.4.1	
145	E.10.3.6	Reconsideration of Reviewable Decision	96	Is it legally viable to hold with the results? If so what is the consequence if there is a loss (to either the party or others)?	This is a fundamental flaw and needs to be addressed.	

F:- Capacity Auctions

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
146	F.1.1.1	Purpose of Capacity Auction	99	*"…The purpose of the Capacity Auction is to:… (b) allow Participants in the Capacity Auction to specify the price they wish to be paid for Awarded Capacity and to establish the duration of Awarded Capacity"* This is incorrect: Market participants do not specify the price they wish to be paid, they specify the *minimum price they are willing to accept*.	Revise Code accordingly.	
147	F.3.1.1 to F.3.1.6	Demand Curve	100	The demand curve is an input into the CMC and therefore stating that the RAs will determine the Demand Curve and stating what it shall be is not appropriate for the CMC . For example, the governance over how the Demand Curve is determined is not covered by the CMC and hence there is a risk F.3.1.2 becomes out of step thereby requiring a modification to the CMC for an input that is determined outside the CMC	Remove these clauses and just include the actions that are required by the TSOs following notification of the Demand Curve by the RAs. Clause F.3.1.7 already provides for what happens in circumstances where nothing is received from the RAs, The wider Governance arrangements for the methodology and application thereof to define the Demand Curve need to be established outside the CMC.	
148	F.3.1.2	Demand Curve	100	*"The Demand curve shall… limit the frequency of outcomes at the Auction Price Cap"* It is not clear why this should be an objective of the shape of the demand curve. If the auction repeatedly cleared at the cap that could be an indication either that the demand curve were too far to the right, or that the price cap were too low.	Remove this clause as per above comment.	

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
149	F.3.1.5	Demand Curve	100	*"(c) there may be no more than two values of i with the same quantity (Qi), and where the are two values of i with the same quantity (Qi), the values of i must be adjacent and the value for price (Pi) for the lower value of i must exceed the value of price (Pi) for the higher value of i; (d) except as contemplated by paragraph (c), the price (Pi) associated with point i must strictly decrease as the quantity (and i) increases;"* There is no conflict between (d) and (c) and hence the qualification "except as contemplated by paragraph (c) only confuses". (c) says that there may be only two price-quantity pairs for which quantity is the same and price must be decreasing as the index number of the pair increases. (d) says that price must strictly decrease with quantity.	Amend Code accordingly.	
150	F.4	Determination of Local Capacity Constraints for a Capacity auction	101-102	Timings for communications are not specified for many of the communications contemplated by this section (e.g. F4.1.7 & F.4.1.8)	Timelines should be defined more precisely.	
151	F.4.1.3	Determination of Local Capacity Constraints for a Capacity auction	101	It is not clear why the determination under F.4.1.1 is related to the qualification process. The qualification process stands alone and the identification of qualified units that can solve locational constraints can be identified later.	Clarify what is necessary and the timings for when the identification of units that could solve locational constraints needs to be concluded (there is no obvious need until just prior to running the auction)	E.9.1.1
152	F.4.1.5	Determination of Local Capacity Constraints for a Capacity auction	102	*"Where as a result of an assessment under paragraph F.4.1.1, the System Operators determine that a Local Capacity Constraint is not expected to be satisfied by Existing Capacity or New Capacity from a Capacity Market Unit or a combination of Capacity Market Units, then the System Operators shall propose a reduction in the MW minimum de-rated capacity quantity for the area to which that Local Capacity Constraint applies to the level that they determine can be satisfied."* The System Operators should not be able to reduce the amount that they plan to procure from constrained areas because they do not "expect" sufficient capacity to be available (albeit this is subject to regulatory approval in F.4.1.7). To do so risks procuring insufficient capacity in constrained areas.	Amend Code accordingly.	
153	F.4.1.6 & F.4.1.7	Determination ofLocal Capacity Constraints for a Capacity auction	102	These paragraphs appear to be inconsistent. Under F.4.1.6 the RAs are to be notified but then under F.4.1.7 the RAs are asked to approve a lower local requirement?	Amend Code accordingly.	F.8.2.2
154	F.4.1.9	Determination of Local Capacity Constraints for a Capacity auction	102	"reasonable endeavours" is not appropriate	Remove the words and specify a timeframe for responding	
155	F.4.1.12	Determination of Local capacity Constraints for a Capacity auction	102	Should the SOs be able to reduce the minimum de-rated capacity for a local constraint if no approval has been given (not responding can't be an acceptance)?	Minimum de-rated capacity for a local constraint will only be changed if approval has been given.	
156	F.4.1.13	Determination of Local Capacity Constraints for a Capacity auction	102	As this F.4 process is occurring prior to the auction, it is not clear how this paragraph fits.	Amend Code accordingly.	F.8.2.2

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
157	F.5.1.1	Publication of Final Auction Parameters	103	Use of "reasonable endeavours" is not appropriate. It isn't clear if this is an update to the Auction Information Pack information. If so is this supposed to be an update to the "indicative" figures included in the Auction Information Pack (see comments on section D.3 above)	Remove reference to "reasonable endeavours"	F.5.1.2
158	F.5.1.2	Publication of Final Auction Parameters	103	If this 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 ASP Curve and the parameters listed in F.16.1.1.	
159	F.6.1.1	Communication Codes	103	First reference to authenticated communication codes.	Please clarify what this means.	
160	F.6	Capacity Auction Submissions	104-105	The System Operator must tell the Participant whether its offer complies (F.6.2.3), however the Code does not specify when or how quickly and specifies that the System Operators "have no obligation to follow up" (F.6.2.4). Non-compliant offers get overwritten with deemed bids which are at the offer price cap for the capacity in question, but defined as flexible (See rule F.7.1.3).	Revise drafting to provide greater clarity and certainty where indicated necessary.	
161	F.7.1.1)a)(ii)	Capacity Auction Offers	104	Not clear what the offer structure is. Incremental quantities could be interpreted as for example, for a 100MW units, 40MW at X, 35MW at Y and 25 MW at Z. Alternatively the P,Q pairs could be (40,X), (75,Y) and (100,Z).	Ensure the offer structure is clearly defined	
162	F.8.2.3	Inputs for the Capacity Auction	106	It isn't clear why the SOs should have any discretion to approximate the Demand Curve. If the Curve needs to be specified in a certain format then they should ensure that the RAs decision provides the Demand Curve to that specification	Delete the paragraph	
163	F.8.3.2	Determination of the Auction Clearing Price	107	The drafting references the same paragraph – "….paragraphs F.8.3.4 or F.8.3.4 ..."	Should it be "….paragraphs F.8.3.4 or **F.8.3.5** ..."?	
164	F.8.3.4(b)	Determination of the Auction Clearing Price	107	The reference to F.8.3.2 seems incorrect as nothing is determined by F.8.3.2.	Should the reference be to F.8.3.5?	
165	F.8.3.5	Determination of the Auction Clearing Price	108	F.8.3.5 introduces the net social welfare calculation. The description in the Code is inexact and may lead to confusion. The code does not define a concept it relies upon, referred to as the "maximum quantity offered", which we presume to mean simply the "quantity offered". For a flexible offer, one of the key parameters "q" is defined only as "any value between zero and the maximum quantity offered". In practice, as shown in the diagrams that follow, q has a very specific interpretation for flexible plant: ▪ the (maximum) quantity offered if CQS+q is less than the Demand Curve Quantity (Qx) at the offer price (P_i); or ▪ the Demand Curve Quantity (Q_x) at the offer price (Qi) less CQS, if CQS+q is greater than the Demand Curve Quantity (Qx) at the offer price (P_i).	Revise Code to provide necessary clarity and certainty	
166	F.8.3.6	Determination of the Auction Clearing Price	109	Typo in note below the graphs	In the last sentence replace "take" by "taken"	
167	F.8.3.7	Determination of the Auction Clearing Price	109	The code introduces a concept of the "unconstrained market schedule" in para F.8.3.7 and then does not use this concept at any other point in the document. If this concept is important, it should clearly refer to the concept elsewhere, otherwise the definition is redundant.	Revise Code accordingly.	

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
168	F.8.4.2	Determination of the Auction Clearing Price	109	"Cumulative price-quantity cleared" appears only once in the Code, which is in this paragraph. Having defined "price-quantity pairs", the Code now abandons them in favour of "price-quantities" for reasons that are not clear.	Abandonment of the Code's nomenclature at this crucial point in the Code obstructs a careful reading. Revise Code so that it is clear and unambiguous.	
169	F.8.4.2(b)	Determination of the Auction Clearing Price	109	It isn't clear what "price" is being used in this context. Is it the "price" from the P/Q pairs or the Clearing Price?	In principle it could either be the price of the offer in question or the Auction Clearing Price. Clarify what "price" is being used.	
170	F.8.4.2	Determination of the Auction Clearing Price	109	This paragraph inaccurately describes the "objective" of the System Operators. What is described is the *objective function* of any algorithm that the System Operators might employ, subject to the *constraints* set out in paragraph F.8.4.3 and F.8.4.4.	Revise Code to provide necessary clarity and accuracy.	

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
171	F.8.4.3 (and F.4.1.13 and F.8.4.4(g))	Capacity Auction Clearing	109	F.8.4.3 contains the provision which implements the first bullet in paragraph 5.5.1 of the CRM LI Decision Paper, that new build plant will only be able to get a multi-year reliability option if they are in merit. The Code describes all new build plant aiming to get a multi-year reliability option with offers higher than the Auction Clearing Price as being "cleared to a level of 0MW" (which is presumably equivalent to not "being cleared"). However, it is unclear how the second part of that Decision is implemented in the Code – i.e. Paragraph 5.5.1 of the Decision states that: "Exceptions [to the rule that multi-year contracts may not be awarded to resolve local capacity constraints] may be made on a case-by-case basis if the minimum requirement in a nested zone cannot be met in any other way. However, where a New Build capacity provider has bid above the clearing price, and the minimum requirement can be met by awarding 1 year contracts to existing capacity in a nested [zone] with a higher[-]priced bid, preference will be given to the existing capacity which only requires a 1 year contract." [text in square brackets added for clarity] The following is our understanding of how the above is implemented in the Code but it is far from clear and needs to be clarified clearly and unambiguously in the Code drafting: F.8.4.3 seems to implements the exceptions foreseen in the second bullet of paragraph 5.5.1 CRM LI Decision Paper in conjunction with two further paragraphs: F.4.1.13 and F.8.4.4(g). F.4.1.13 of the Code implements this decision by providing an exemption from the requirement not to clear capacity requiring Multi-Year contracts if doing so will "reduce the risk" of not satisfying local capacity constraints: *"The Regulatory Authorities may by written notice to the System Operators exempt one or more Capacity Market units from the application of paragraph F.8.4.3 if the Regulatory Authorities consider doing so will reduce the risk of not satisfying a Local Capacity Constraint in the Capacity Auction".* F.8.4.4(g) further provides that plant receiving this exemption must only be cleared in the auction if the auction cannot clear with existing plant: *"price-quantity pairs relating to a Capacity Market Unit to which paragraph F.8.4.3 applies and which has been exempted under paragraph F.4.1.13 are not to be cleared to satisfy a Local Capacity Constraint until all Capacity Market Units with an offered capacity duration of one year that contribute to satisfying the Local Capacity Constraint have been cleared."* **Therefore, provided that paragraph F.8.4.4 still applies even when the Alternative Auction Solution Methodology set out in section M.5 is used, shorter term contracts will always take precedence over longer term contracts for the purpose of resolving transmission constraints under the Code.**	Clarify and amend Code accordingly to make it clear and unambiguous how the LI Decision is being implemented in the Code.	

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
172	F.8.4.4(c) & F.8.4.5	Determination of the Auction Clearing Price	110	F.8.4.4 (c) and F.8.4.5 impose the restriction that price quantity pairs lower than a given fraction of the Auction Clearing Price must also clear as they would in the unconstrained schedule. The "Offer Price Clearance Ratio" (OPCR) is *"0% or such higher percentage (but less than 100%) as is determined from time to time by the Regulatory Authorities*". It is not clear why it is necessary for the OPCR to be less than 100%. Adopting a value of 100% would mean that all capacity not procured in the unconstrained schedule would be *additional* to the unconstrained schedule (similar to the provisions in M.5.1.6 (b).) Neither is it clear what the purpose of the square brackets around this paragraph or F.8.4.5 is.	Clarify and amend Code drafting accordingly.	
173	F.8.4.4(d)	Determination of the Auction Clearing Price	110	F.8.4.4 (d) imposes the restriction that "*price quantity pairs relative to the same Capacity Market Unit shall be cleared in order of increasing price*". This rule may be fine for plant which win ROs in the unconstrained schedule because, even if the plant had falling costs of capacity, it could bid a combined price-quantity pair for the entire capacity of the plant that would also likely be socially optimal. However, this rule may not work well for plant which are required for system security in constrained areas. For instance, a CCGT might be able to retire its steam turbine and function instead as an OCGT at lower (total) cost, but at a higher cost per MW of capacity, either now or at some point in the future. It may be cheaper for society to accept the reduced capacity and bear the lower total cost if the steam turbine was not also must run. However, the CCGT would not be able to submit a lower bid for the steam turbine than for the OCGTs. This is a similar concern to one we have that the current arrangements do not facilitate a normal approach to re-powering a site that would see existing capacity remain and its closure to dovetail with the commissioning of the replacement capacity.	One way to address these issues and provide flexibility that would benefit the market is to provide the facility to make mutually exclusive bids into the market such that if the primary bid would not clear that the secondary bid could be considered. Such an approach would enable the CCGT bid in the example in the commentary to be assessed and if that would not clear, then for the OCGT option to be assessed. Amend Code drafting accordingly.	
174	F.8.4.7(b)(ii)	Determination of the Auction Clearing Price	111	Typo – reference to F.8.4.6(a)(ii) should be to F.8.4.6(b)(ii)	Change to refer to "F.8.4.6(a)(ii)"	
175	F.8.4.8	Determination of the Auction Clearing Price	112	F.8.4.8 describes the methods that the TSO will use to optimise the choice of price-quantity pairs. To make the Code more readable, this paragraph should sit before paragraph F.8.4.2 and explain that it is conducting a *constrained* optimisation exercise. The role of the "objective function" and the "constraints" in the description would then be apparent and could clearly be explained as such. In addition to readability, this hierarchy would clarify that the "objective" set out in F.8.4.2 does not sit above any other requirements of the Code (such as the additional set of constraints set out in section M.5 in the case of interim arrangements). In particular, a cold reading of F.8.4.8 could suggest that any solution which provides the highest value of social welfare as defined by F.8.4.2, may be adopted, when in fact the intent behind this rule is that this optimisation is constrained the intervening paragraphs.	Revise Code accordingly.	
176	F.8.4.8	Determination of the Auction Clearing Price	112	The need for a time restriction is unclear	Such a short time restriction (i.e. 24 hours) is not necessary in the context of a capacity auction. Suggest this restriction be relaxed.	
177	F.9	Capacity Auction Results	112-115	There are a number of instances where it is stated "The System Operators shall use reasonable endeavours …". There is no need for the provision of any "reasonable endeavours" leeway.	Remove all instances of "use reasonable endeavours to"	F.9.2.1, F.9.3.4, F.9.5.1,

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
178	F.9.4.2(d)	Capacity Auction Results	114	This is an entirely inappropriate clause.	Delete clause	

G:- Registries and Settlement Data

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
179	G.1 & G.2	Qualification and Trade Register and Capacity & Trade Register	116	Please clarify that these are two separate registers and that the MO only has access to Awarded Capacity within the Capacity & Trade Register	Confirm separation of registers and access controls	
180	G.2.1.2	Capacity & Trade Register	116	The MO doesn't need access to all the information and under general Data Protection requirements the MO should only have access to information they need to settle the market which is limited to information relating to awarded capacity only	Note the restricted access for the MO	G.2.1.5
181	G.2.1.5	Capacity & Trade Register	116	As for G.2.1.2	Under sub-para (b) add the words "but only in respect of Contract Register Entries for Awarded Capacity"	G.2.1.2
182	G.3.1.5(b)	Commissioned Capacity	117	What does "decreasing increasing" mean?	Correct the drafting	
183	General			How robust and what testing/assurance in place on these systems?	Amend Code accordingly.	

H:- Secondary Trading

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
184	H.3.1.4	Design of Products	120	This only contemplates a review after the commencement of the CMC but there is no reference to defining products that can be traded immediately following completion of the first capacity auction	Insert an obligation to consult on products 6 months in advance of the first capacity auction.	

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
185	H.3.2	Price caps	121	Any Price Caps will need to be sufficiently large to reflect the fact that the value of the traded RO could be extremely high if for example there is a very high risk of an extended period of FASP over the period covered by a Product. It is not clear how the RAs plan to access this in their determination	Clarify how the RAs will ensure the price cap will not distort the market	H.7
186	H.3.2.1	Price Caps	120	The price caps of secondary product should defined dated when they are set by the RAs.	Change 'From time to time' with a more defined timeframe.	
187	H.3.2.2	Price caps	121	This contemplates SO seeking RA approval whereas H.3.2.1 states the RAs will determine and H.3.2.3 is similarly RA led.	Delete the paragraph	
188	H.4.1.1	Secondary Trade Auction Calendar	121	20 days notice is insufficient. The calendar should be published on a fixed date e.g. linked to the T-1 Auction date for year T such that there is more clarity on the timetable.	Set an Obligation to publish the calendar on a defined date.	
189	H.4.1.1	Secondary Trade Auction Calendar	121	How frequent are the secondary trade auctions. What determines when the SO's decide to conduct an auction?	Clearer indications as to the regularities of auctions.	
190	H.4.1.2	Secondary Trade Auction Calendar	121	Potential conflict of interest – how can TSO update calendar to suit?	Amend Code accordingly.	
191	H.5.1.3	Secondary Trade Info Pack	122	How will the Product Forecast Capacity Quantity Scaling Factor be determined by the system operator? Given this has such a prominent role in secondary trading the principles behind setting these forecasts and the detailed methodology used by the system operator should therefore be clearly set out. A similar approach as taken to the de-rating methodology could possibly be adopted.	Amend Code accordingly.	
192	H.7.1.2(c)	Secondary Auction Bids	123	The bid price is the maximum price the bidder is willing to pay and the reference should be to a lesser price and not a greater price	Replace "greater" with "lesser"	
193	H.8.1.1(d)(ii)	Secondary Auction Clearing price	126	The clearing price should be the mid-point between the highest Bids and Offers cleared.	Amend Code drafting accordingly.	

I:- Obligations Associated with Awarded Capacity

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
194	I.1.1.1	Obligated Capacity Quantity	128	In accordance with H.1.1.1, a sale of an obligation in the Secondary Market means the seller is taking on an increased Capacity Obligation. Hence the total Obligation should be the Capacity Awarded in a Capacity Auction for the Year PLUS any Capacity Sold in a Secondary Auction LESS and Capacity bought in a Secondary Auction – i.e (a) plus (c) minus (b)	Swop clauses (b) and (c) round to ensure the correct Obligated Capacity Quantity.	
195	I.2.1.1	Obligations associated with Awarded Capacity	128	There should be a waiver/derogation from the obligation to pay Difference Charges where the Awarded Capacity is unable to access any of the energy markets for reasons beyond their control, including for example because of electricity or gas network outages, failure of the TSOs to dispatch the capacity despite the capacity being available and having offers in place (for any reason including the need to hold back the capacity for reserve or TSO forecasting errors, etc), or other Force Majeure events.	Amend Code accordingly.	Force Majeure and Obligations associated with Awarded Capacity
196	I.2.1.1(c)(ii)	Obligations associated with Awarded Capacity	128	Why is this necessary to include in CMC?	Clarify and amend Code accordingly.	
197	I.2.1.2(b)	Obligations associated with Awarded Capacity	129	If there are breakdowns across the Aggregated generator Fleet then there may be circumstances where the capacity is less than the Obligation. The only obligation where capacity is less should be to make difference payments.	Delete the paragraph	

J:- Delivery of Awarded New Capacity

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
198	J	Delivery of Awarded New Capacity	130-144	There is no reference to Storage Units or Hybrid Units (Generation and Storage)	Amend Code accordingly.	

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
199	J.2.1.1 b (ii)	Implementation Plans	130	"Commencement of Construction Works" The exclusion of site preparation is too ambiguous in the description of work specific to the on-site construction in the requirements to satisfy the Commencement of Construction Works	In order ensure the safeguard which is being sought, yet protect against disputes on interpretation, a number of options could be included, such if works relating to a certain percentage of Total Project Spend has commenced, this requirement should be satisfied.	
200	J.2.1.4 (a)	Milestones	132	If a later Milestone is achieved there should be no requirement to report on earlier Milestone.	Remove "if it is satisfied" and replace with "if the"	
201	J.2.1.5	Information Requests	132	The request for information needs to be reasonable	The system operators acting reasonably, may request additional information or an inspection which to assess progress	
202	J.2.1.6 a (ii)	Substantial Completion	132	If a Major Milestone is delayed but the overall programme can be achieved the prior written approval of the System Operators should not be required. This requirement substantially increases risk.	Insert "if Substantial Completion" will also be delayed"	
203	J.2.1.7	Substantial Completion	132	There needs to be an adjustment to the Milestones if there is a delay by the Transmission Licensee or Distribution Licensee which results in a delay to the connection. Developers cannot take this grid risk.	Amend drafting accordingly.	
204	J.4.2.3	Implementation Progress Reports	136	The reporting schedule should be included in the Capacity Auction Information Pack	Amend drafting accordingly.	
205	J.4.3.2(b)	Verification	138	See comment on Director's certification at E.3.1.4(g)	The CMC should neither require Directors' certification contemplated above, nor extend the requirement for Directors' certification	
206	J5	Remedial Actions	138	The requirement for System Operator, under this Code, approving a change to EPC contractor or supplier of major piece of equipment should be removed. Technical changes will need to be agreed through the Connection Agreement.	Amend drafting accordingly.	
207	J.6.1.3 (a)	Termination of Awarded New Capacity	141	If a Connection Agreement lapses there should be remedy provisions. Amendments to the Connection Agreement should not trigger termination.	Amend drafting accordingly.	
208	J6.1.3(d)	Termination of Awarded New Capacity	141	This right should be restricted so it does not capture errors which do not impact on Awarded New Capacity or Major Milestones	Amend drafting accordingly.	

K:- Exchange Rates

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
209	K.2.1.2 to K.2.1.4	Methodology	145	The TSO obligations to provide information to the RAs on possible methodologies should sit as part of the TSO's CMC Licence Obligation rather than being part of the CMC. The CMC only needs reference the TSOs obligations to apply the approved methodology and the timeframe by which that must be completed.	Delete Paragraphs H.2.1.2 to k.2.1.4.	
210	K.2.1.8	Methodology	145	Once the Exchange Rate is set and is used by participants when either bidding in an Annual Auction or trading in the Secondary Market, any later change as proposed by this clause would undermine the commercial position of the participant. Once set, there should be not further change and any exchange rate used in that Annual or Secondary Auction must be fixed for that trade. It may be that new exchange rates could be published prior to a different auction but that exchange rate must only be applicable to trades transacted in that auction. That new exchange rate cannot be applied to the trades conducted in previous auctions since that would undermine the transaction.	Confirm that the exchange rate that applied at the time of any auction will apply to all settlement in respect of that Awarded Capacity for the duration of its term. All data publications should be included in Appendix G	
211	K.2.1.8	Methodology	145	Typo in last word of line 1 – "then" should be "the"	Replace "then by "the"	

L:- Data and Information Systems

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
212	L.2.2.1 & L3.1.1	Submission of data	147,149	These two clauses seem to state the same thing?	Clarify and remove duplication.	

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
213	L.3.1.3	Submission of data	149	The participant can confirm the date of delivery in accordance with B.26.2.6 but it will not know if or how long it takes the TSO to "successfully complete initial validation checks". The time should just be the delivery time. If there is a separate issue over the validation then the TSO should be obligated to inform the participant such that revised data can be submitted since otherwise the participant will be assuming it has met its obligations in full. Also a typo on second last line – Should be "data as"	Remove the condition that the data is not received until it has been valiadated and where there is a data validation error, then add an obligation for the TSO to inform the participant (separate to L.3.1.4 and l.3.1.5). Insert a space in "dataas" to read "data as".	L.3.1.6(b)

M:- Interim Arrangements

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
214	M.2.1.1	First Capacity Year	155	Square Bracket detail still to be provided	Amend Code accordingly.	CMC
215	M.3.1.1	Transitional Period	155	Square Bracket detail still to be provided	Amend Code accordingly.	CMC
216	M.4.1.1	Local Capacity constraints	156	This seems back to Front? You would think they should determine local capacity constraints until they are told to stop.	Until further notice, all auctions should take into account locational constraints	
217	M.4.1.1	Local Capacity constraints	156	Does 5.1.6b contradict this 4.1.1 in that the alternative solution methodology seeks to satisfy local constraints regardless of if it is a T-1 auction or T-4	Until further notice, all auctions should take into account locational constraints	
218	M.5.1.2	Alternative Auction Solution	156	Where the TSOS have an obligation to interact with the RAs, that should be defined in the TSO licence and should not form part of the CMC. Further, we would expect any alternative solution must be consulted upon with the market participants by the RAs.	Ensure that any obligations that relate to TSO/RA engagement is established in the TSO licence obligations. The CMC only needs to reflect how decisions that change the operation of the CMC are to be enacted.	
219	M.5.1.2 to M.5.1.4	Alternative Auction Solution	156	Any revised auction solution must be clearly defined and documented with strict change control conditions applied to ensure that the purpose and intent of the solution in clear and cannot be adjusted without proper governance.	Ensure that the detailed objectives, functionality and operational procedures are fully documented (e.g. in the same way as the MSP software is currently documented in Appendix N of the TSC.	M.5.1.6

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
220	M.5.1.5	Alternative Auction Solution	156	M.5.1.5 suffers from the same problem faced by F.8.4.8, i.e. that it does not clarify the "solution that produced the highest value calculated in accordance with paragraph F.8.4.2" is constrained by the rules set out in F.8.4.3-F.8.4.7. Indeed, in this case, a further set of constraints also apply.	Clarify and amend Code accordingly.	
221	M.5.1.6	Alternative Auction Solution	157	M.5.1.6 sets out the "principles" underpinning the interim arrangements. In practice, these "principles" are *constraints* that should be applied to the algorithm and its design. In practice, these constraints are that all inframarginal capacity in the unconstrained capacity schedule will also feature in the capacity schedule, except for the price setting offer, if it is inflexible. M.5.1.6 should also clarify whether it augments or replaces, the constraints set out in F.8.4.4-F.8.4.7. (the Code does not say which).	Clarify and amend Code accordingly.	
222	M.5.1.6(c)(ii)	Alternative Auction Solution	157	The reference to F.8.3.2 seems incorrect as nothing is determined by F.8.3.2.	Should the reference be to F.8.3.5?	
223	M.6.1.1	Secondary Trading	157	The purpose of this paragraph isn't clear. Is the intent to suspend Secondary Trading until the RAs give notice that Secondary Trading will commence? If so it would be simpler to state this.	Clarify the intent and re-draft to capture the intent.	
224	M.6.2.1(d)	Impact on capacity and Trade Register	158	There is no indication of the price that is to be associated with the notional Secondary Trade. We are not aware of any discussion on this but is it intended that the price will be the capacity price that applied to the unit in the registry?	Clarify the price to ensure settlement under the TSC works properly	
225	M.7	Modifications	158	We disagree with the proposals to enable unilateral change to the CMC without any appropriate governance or engagement with participants. As noted above in response to Section B.12, we believe the Modifications arrangements in the CMC should be the same as have operated in the TSC over the last 10 year.	Adopt the existing TSC Modifications arrangements and use the Urgent Modifications arrangements to address any shortcomings identified	

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
226	M.7.	Start of New Trading Arrangements: Modification)		Notwithstanding comments as to whether such a system is appropriate, as drafted this section appears ot provide the SO almost unfettered discretion and in particular provides for no oversight or participation by parties to the CMC. This is inconsistent with the approach in relation to the draft I-SEM TSC, in particular: • SO should be required to seek the views of the participants as to whether the criteria under M.7.1.1 have been engaged. • Participants should be consulted – ie, their views sought within discrete timeframes SO should be required to reflect those participants views when seeking approval of the RAs.	See comments this provides the SO unfettered discretion, provides for no oversight at all in relation to the participants, and is inconsistent with the approach taken in the draft I- SEM TSC- in particular leaves out the steps contemplated in the draft I-SEM TSC under its paragraphs (H2.2.2; H.2.1.3 & H2.1.4	Inconsistency with draft I-SEM TSC.
227	M.7.1.1(a)(ii)	Modifications	158	The need to reference the NEMO rules is unclear as it is not apparent why there could be any inconsistency.	Delete the text "the NEMO Rules,"	
228	M.7.1.1(b)	Modifications	158	The text refers to "operation of the SEM". This is an inappropriate obligation for the CMC since for example the "SEM" definition includes the ex-ante markets.	Replace "SEM" with "CMC"	
229	M.7.1.3	Start of New Trading Arrangements: Modifications	158	There should be an obligation in addition to emailing Participants for the SO to publish and highlight on the SO website any such modification in a manner that highlights its extraordinary nature as one made under the Interim Arrangements	Amend Code accordingly.	
230	M.8	Parameters and Prior Decisions	158-159	There are references to "System Operators" in M.1.1.1 and M.1.1.2 that are inappropriate. The TSOs should not be approving "parameters" or making decisions that affect the CMC given issues over the potential for conflict of interest as Eirgrid will be a participant in the capacity market. It must be fully clarified that the TSOS are fulfilling a Capacity Market Delivery role only and are not taking decisions that could affect the fair and efficient operation of the market.	Remove all references to System Operators.	
231	M.8.1.1	Parameters and Prior Decisions	159	The parameters will not be "varied, amended, re-determined or re-decided in accordance with this Code". The decisions on those parameters will be made by the RAs outside the Code and those decisions will be an input that drives the functioning of the CMC.	Delete the words "in accordance with this Code"	

Glossary

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
232	Accession Fee		160	As noted in our comments on paragraph B.7.1, these costs should be part of the TSO price control and recovered through an existing tariff arrangement – e.g. TUoS via the TSC	Amend to align with final structure	B.7.1
233	Account Security Requirement		160	Limb (b) should refer to "Clause 2.4" as opposed to "Clause 2.3"	Amend Code accordingly.	Appendix I, Clause 2.4, page 220.
234	Auction Clearing Price		162	Definition should reference entire section (F.8.3) as opposed to just paragraph F.8.3.8	means the price at which the Capacity Auction clears, and is determined in accordance with paragraph F.8.3.~~8~~.	
235	Auction Results		162	"Auction Results" are not actually defined in F.9.1.1	Amend F.9.1.1- so that the information listed is defined as the Auction Results- or amend the definition so that its clear the info provided und F.9.1.1 are the "Auction Results"	F.9.1.1
236	Balancing Market		163	Is the reference to System Operator correct? Should it be referring to the Market Operator? See also Market Operator definition	Amend Code accordingly.	Market Operator definition, page 179
237	Capacity Charges		164	Is the reference to F.20 correct? (this deals with "Difference Payments" under the draft I-SEM trading and settlement code	Amend Code accordingly.	draft I-SEM trading and settlement code
238	Capacity Market Framework Agreement		165	Where is this agreement actually set out- i.e. where is the pro forma?	Supply pro forma agreement.	CMC generally
239	Capacity Payments		166	Is the reference to F.18 (which deals with "Difference Charges" correct?	Amend Code accordingly.	
240	Capacity Payment Price		166	Reference to F.9.1 only refers to primary Market prices whereas the drafting in Appendix F, paragraph 15 specifies the relevant prices for Primary and Secondary Trades	Correct definition to reference both F.9.1 and secondary trading results in H.9	
241	Capacity Zone		166	What exactly does "region of the SEM for which Capacity Auction is held" intended to mean? The draft I-SEM TSC doesn't "think" in terms of "regions"- "thinks" in terms of "jurisdictions"	Amend Code accordingly.	draft I-SEM Trading and Settlement Code
242	Clean		166	How are "renewable energy sources" defined?	Amend Code accordingly.	
243	CMC		166	CMC is not currently defined	Define CMC to be the Capacity Market Code" or include under the definition of Capacity Market Code	
244	Commencement of Construction Works		167	This is not actually called out as a defined term in J.2.1.1 (b)	Amend Code accordingly.	J.2.1.1 (b)
245	Communication Channel		167	Are there THREE channels? Seems like there are only TWO channels- perhaps better to delete "three" so that it is generic?	Delete "three"	L.2

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
246	CMC		166	CMC is not currently defined	Define CMC to be the Capacity Market Code" or include under the definition of Capacity Market Code	
247	Completion of Network Connection		167	This is not actually called out as a defined term in J.2.1.2 (b)	Amend Code accordingly.	J.2.1.2 (b)
248	Connected		168	What is the status of the square brackets around "Interconnector"- would have thought they should be removed	Amend Code accordingly.	
249	Default		169	The text refers to "the SEM". This is an inappropriate obligation for the CMC since for example the "SEM" definition includes the ex-ante markets.	Replace "SEM" with "CMC"	
250	Difference Charge		170	The drafting of this definition seems vague- should for instance "market reference price" and "strike price" not be defined terms? This definition must be reviewed properly to ensure it ties in properly with the draft I-SEM trading and settlement code	Amend Code accordingly.	Draft I-SEM Trading and Settlement Code
251	Difference Payment		170	The drafting of this definition seems vague- should for instance "suppliers" "market reference price" and "strike price" not be defined terms? This definition must be reviewed properly to ensure it ties in properly with the draft I-SEM trading and settlement code	Amend Code accordingly.	Draft I-SEM Trading and Settlement Code
252	Dispute Process Timetable		170	This should be published or detailed now- which is the approach taken in the draft I-SEM trading and settlement code	Amend Code accordingly.	
253	e-fax		170	Not all participants will have "e-fax" – and its vulnerable to IT failure- would have thought that all references to "e-fax" should also be a reference to traditional "fax"	Amend Code accordingly.	Where "e-fax" is used
254	Exception Application Date		172	The term "New Capacity Investment Threshold" does not appear to be defined anywhere	Amend Code accordingly.	
255	FDERATE		172	Not defined in Appendix F	Amend Code accordingly.	
256	FDERATEΩ		172	This does not seem to be referenced in Appendix F- there appears to be a reference to this in Appendix E, page 207, 3 (b)- but it does not seem to define the term and its unclear what the term is doing	Amend Code accordingly.	Appendix E, 3(b), page 207
257	Final Compliance Certificate		172	Is it correct to limit this to wind farms only?	Amend Code accordingly.	
258	First Energy to Network		173	This is not actually called out as a definition under J.2.1.2 (c)	Amend Code accordingly.	J.2.1.2 (c)

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
259	Initial Capacity		175	Initial Capacity is referenced in Section C.3 and not C.2	Change to refer to "section C.3"	
260	Initial Capacity		175	Reference to "C.2" seems incorrect- should it be "C.3"?	Amend Code accordingly.	
261	Licence		178	Typo	Change reference to "Section 10 of the Electricity (Northern Ireland) Order 1992 " to "Article 10 of the Electricity (Northern Ireland) Order 1992"	
262	Long Stop Date		178	This is not actually called out as a defined term in J.6.1.1 (b)	Amend Code accordingly.	J.6.1.1 (b)
263	Mechanical Import Capacity		179	This is not actually called out as a defined term in J.2.1.2. (a)	Amend Code accordingly.	J.2.1.2. (a)
264	Minimum Completion		180	This is not actually called out as a defined term in J.6.1.1 (a)	Amend Code accordingly.	J.6.1.1 (a)
265	Modification Finalisation Date		180	Reference to "(if any)"- surely if there is to be any certainty the RAs should be required to specify a date	See comments- remove words "(if any)"	B.12.3.1
266	NEMO Rules		181	These have not been published- therefore it is not possible to comment in relation to any reference to NEMO Rules throughout the CMC	Amend Code accordingly.	CMC
267	Net Going Forward Cost		181	Definition does not seem clear- an example of "sunk costs" is given but what are "sunk costs" Does the second reference to "needs to recover" need to be removed to make the first sentence read correctly?	Amend Code accordingly.	
268	Net Going Forward Cost		181	This is not relevant to the CMC as 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. Furthermore, the definition of Net Going Forward Costs is matter yet to be decided by the RAs.	Delete Definition	
269	New Capacity		181	The definition doesn't capture replacement capacity where a unit is re-furbished or fully re-powered with replacement capacity which thereby excludes such capacity from securing a contract of greater than 1 year. This CRM decisions provided for such investment being able to secure a longer term contract and hence the drafting in the CMC does not align with the decisions	Correct drafting	New Capacity Investment Rate Threshold Appendix D: paragraph 4(m)

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
270	New Capacity Investment Rate Threshold		181	This cross-refers to the cost of constructing New Capacity which must exceed the threshold to enable the capacity to secure Awarded capacity with a duration of more than one and up to 10 years. This does not cater for replacement or refurbished capacity.	Correct drafting	New appendi
271	New Definition		n/a	Define what is meant by "Capacity Auction process"- used in B.14.1.3 (b)	Amend Code accordingly.	See B.14.1.3. (b)
272	New Definition		n/A	"Qualification Dispute"; Capacity Auction Dispute"; "Secondary Trade Dispute"; "Implementation Dispute"; "Conflict Dispute" and "General Dispute"- are all defined terms which should be called out in the Glossary- used in B.14.1.3	Define by reference to B.14.1.3	See B.14.1.3
273	New Definition		169	Define "Defaulting Party" used at B.13.2.3	Amend Code accordingly.	B13.2.3
274	New definition		170	A "Deregistration Applicant" is defined in para B.5.6.1- so term should be called out in the Glossary	Insert definition of a "Deregistration Applicant"	
275	New definition		170	Define a "Defaulting Party" used in B.13.2.3	Amend Code accordingly.	B.13.2
276	New definition			The term "Loss-Adjusted Metered Quantity" is used in B.7.1.4- not withstanding comments as to whether Suppliers should be subject to a Variable System Operator Charge- if the term is to be used it should be defined	Amend Code accordingly.- define the term if it is to be used	B.7.1.4
277	Offer Price Cap		182	"Offer Price Cap" is not actually called out as a defined term in E.8.6.1	Amend Code accordingly.	E.8.6.1
278	Offer Price Clearance Ratio		182	F.8.4.5 is in square brackets and does not appear to be settled	Amend Code accordingly.	F.8.4.5
279	Product		184	What is meant by a "standard contract"? will the SO/ RAs publish a "standard contract"?	Amend Code accordingly.	
280	Product Forecast Capacity Quantity Scaling Factor		184	This is not called out as a defined term in H.5.1.3	Amend Code accordingly.	H.5.1.3
281	Provisional Qualification Decisions		184	This is not called out as a defined term in E.9.2.1	Amend Code accordingly.	E.9.2.1
282	Secondary Trade Information Pack		188	This is not called out as a defined term in section H.5	Amend Code accordingly.	Section H.5
283	Seller Limit		188	This is not called out as a defined term in H.7.3.3	Amend Code accordingly.	H.7.3.3
284	Start of Performance / Acceptance Testing		188	This is not called out as a defined term in J.2.1.2 (d)	Amend Code accordingly.	J.2.1.2 (d)
285	Substantial Completion		189	This is not called out as a defined term in J.2.1.1 (c)	Amend Code accordingly.	J.2.1.1 (c)

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
286	Substantial Financial Completion		189	This is not called out as a defined term in J.2.1.1 (a)	Amend Code accordingly.	J.2.1.1 (a)
287	Technology Class		190	When is this to be determined? Clearly a key concept to understand in relation to CMC?	Clarify and amend Code accordingly.	
288	Temporary Compliance Certificate		190	Is it correct to limit this to wind farms only?	Clarify and amend Code accordingly.	
289	Transitional Capacity Auction		192	This seems to be defined in M.3.2.1 as opposed to M.3.3.1	Amend Code accordingly.	
290	Transitional Period		191	M.3.1.1 still remains to be inserted- when will this be determined/ inserted ?	Amend Code accordingly.	
291	Workshop		192	Reference also needs to be made to a Workshop under B.12.9.4	Amend Code accordingly.	

Appendices and Agreed Procedures

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
292	Appendix D - paragraph 8	Qualification Data	204	See comment on Director's certification at E.3.1.4(g)	Delete paragraph	E.3.1.4(g)
293	Appendix G	Data Publication	210	Clarifications on charging and timelines should be included here	Provide necessary clarity and certainty in Code.	
294	AP2 : 2.1.2 limbs (a) and (b)	Suspension	AP 2-5	In relation to limb (a) there is no provision for an "Estimated" date to be given. There is a requirement under B13.5.1 to :- a) specify the particular Capacity Market Units; b) specify the date and time (i.e. not an "estimate" c) specify terms of suspension There is a conflict between B.13.4.1- which says a suspension should have "immediate effect"- whilst B.13.5.1 contemplates that it will be at a specified point in the future. There does not appear to be a requirement to serve a copy of Suspension Order on the Party concerned along with a copy of the Default Notice which should be remedied	See comments, apparent conflict between B.13.5.1 & B.13.4.1 needs to be resolved, and a copy of the Default Notice to be a requirement in connection with a Suspension Order made a requirement under B 13.3 (or B 13.1)	B13.3.1 & B13.3.2; B.13.4.1 & B.13.5.1

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
295	AP2 : 3.1.1 Suspension pursuant to a Suspension Order Issued in accordance with paragraph B.13.3.1 of the Code	Step 2	AP 2-6	Code requires party to comply within time frames specified in Default Notice- i.e. not "immediate"	Step 2, timing , should read:- "Within the timelines set out in the Default Noice"	
296	AP2 : "Swim Lanes"	Step 1	AP 2-8	Immediately under the first box "DEFAULT" surely there should not be a "No" process leading to RA approval? Because there has been no default	Amend Code accordingly.	
297	AP2 : 3.1.1 Suspension pursuant to a Suspension Order Issued in accordance with paragraph B.13.3.1 of the Code	Step 10	AP 2-7	There is no process to "confirm a suspension"- suspension order has effect in accordance with the terms of the suspension order, until either its lifted, or Deregistration has occurred	Amend Code accordingly.	Adjust swim lanes
298	AP2 : 3.1.2 Suspension pursuant to a Suspension Order Issued in accordance with paragraph B.13.3.2 of the Code	Steps 1 to 3	AP2-9	These seem contrary to the terms of paragraph 13.3.2 which contemplates an immediate Suspension Order in respect of failure to provide Performance Security in respect of all of the relevant Party's Capacity Market Units	Amend Code accordingly.	Adjust swim lanes
299	AP2 : Issued in accordance with paragraph B.13.3.2 of the Code	Step 8	A-P 2-10	There is no process to "confirm a suspension"- suspension order has effect in accordance with the terms of the suspension order, until either its lifted, or Deregistration has occurred	Amend Code accordingly.	Adjust swim lanes
300	AP2 : "Swim Lanes"	Step 1	AP2-11	It's not a condition under B.13.3.2 for a Default Notice to have issued	Amend Code accordingly.	Adjust swim lanes
301	AP3	Timetable	AP3-9	Choreography of key events must be locked down as these will have implications for if and how participants participate and on the commercial bids participants make. DS3 is also critical in the overall timeline as the DS3 contract position will impact on a Unit's participation and price under the CMC	Timetable must be robust and practical to enable participants to make informed commercial decisions.	
302	AP3		9	First step should be Capacity Auction Info pack in timeline as on page 17.	Amend Code drafting accordingly.	

ID	I-SEM CMC Reference	Short Title	Page	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
303	AP5	Release management etc	AP5-6	The importance of Scheduled releases is surely much less where the primary communication is "Type 2" – ie login to the TSOs' systems. In such instances the primary issue is likely to be compatibility of software or something equivalent and the functionality and user manual. Is this a lesser concern than under TSC?	Amend Code drafting accordingly.	
304	AP6	Comms Failure		If electronic systems are down, could this also include e-fax? Hence normal fax must also be a fall-back.	Amend Code drafting accordingly.	