



**Integrated Single Electricity Market
(I-SEM)**

**Capacity Remuneration Mechanism
Capacity Market Code**

Decision Paper

SEM-17-033

2 June 2017

EXECUTIVE SUMMARY

Starting in December 2015, the SEM Committee has published a series of papers setting out the detailed design of the Capacity Remuneration Mechanism (CRM) for the I-SEM. From the summer of 2016, the Regulatory Authorities (RAs), working in conjunction with the TSOs and SEMO as per the decision on Roles and Responsibilities (SEM-15-077), have translated these decisions into legal drafting of the market rules via a Market Rules Working Group (MRWG) process. The output of the MRWG process was a draft of the Capacity Market Code (CMC), comprising the main body of the Code and associated Glossary, Appendices and Agreed Procedures. A consultation on the CMC (SEM-17-004) was published on 12 January 2017, with a closing date for responses of 24 February 2017. In addition to seeking detailed comments on the drafting of the CMC, this consultation posed questions in a number of specific areas. Twenty-one responses on the CMC were received.

This paper sets out the SEM Committee's response to the issues which were raised in the consultation paper and in respondents' comments. The paper has three main elements. First, it summarises the rules development process which led to the CMC. Second, it sets out the main issues raised in the consultation paper and by participants in their responses, grouped thematically. Third, it sets out the SEM Committee decision forming the approval of the CMC and sets out the next steps.

The introduction of the I-SEM CRM represents a significant change to the current SEM market design. The settlement arrangements for the CRM form part of the Trading and Settlement Code (TSC) and these were published as part of the TSC Amendments Decision paper (SEM-17-024) in April 2017. The CMC sets out the arrangements whereby market participants can qualify for, and participate in, auctions for the award of capacity and participate in secondary trading of awarded capacity.

As part of this decision document, the SEM Committee is also publishing an accompanying spreadsheet containing the detailed pro forma comments from participants, which cover a wide range of issues across all Chapters and associated documents and the associated SEM Committee responses. The SEM Committee is also publishing the CMC, including its Glossary and the associated Appendices and Agreed Procedures both as clean versions and marked-up from the consultation draft.

Following the position set out in previous consultation and decision papers¹, the SEM Committee has decided to propose a new condition for generator and supplier licences obliging them to become a Party to and comply with the Capacity Market Code, insofar as it is applicable to them². For those licensees that do not have any obligations under the CMC, there would be no requirement to become a Party for as long as that position remains.

The SEM Committee recognised that the requirement for Variable Generator Units to Qualify for a Capacity Auction in which they had no intention of participating placed an unnecessary administrative and cost burden on such units. Given that the data needed to adjust the Demand Curve is available

¹ SEM-15-044, SEM-15-103 and SEM-16-039

² Utility Regulator: Statutory Consultation on Modifications to NI electricity generation and NI electricity supply Licences, necessitated to implement the I-SEM
Commission for Energy Regulation: Information Paper on proposed modifications to Generation and Supply licences, necessitated to implement the I-SEM (CER/17/111)

from other sources, there is no need to require Variable Generator Units to Qualify at zero MW. The SEM Committee has decided to amend CRM Decision 1 (paragraph 4.3.30) to **not** require Variable Generator Units that intend to Qualify at zero MW in a Capacity Auction to Qualify under the CMC. This would have the effect of not requiring these units to be registered and may remove the need for the participant to accede to the CMC (assuming it has no units which are required to register).

This decision on the CMC will be given effect under condition 23A of the SONI Licence to Participate in the Transmission of Electricity and condition 6A of Eirgrid's Transmission System Operator Licence. These decisions are expected to come into effect on 2 June 2017. This is in advance of the issue of the first Initial Auction Information Pack and the beginning of the Qualification Process for the first Capacity Auction.

Fundamental to the SEM Committee's consideration of the overall CRM design is the European Commission State Aid Guidelines. In this regard, we have engaged with the Departments (DCCA and DfE) and the European Commission as we have developed the capacity market design as ultimately EC approval is required for the CRM auctions to commence. In this regard, the CMC may require further modification depending upon the form and requirements of any State Aid approval. Should such modification be required the RAs have the Urgent Modification process, set out in the CMC, at their disposal in order to comply with specific requirements of the State Aid approval.

CONTENTS

Executive Summary.....	2
CONTENTS.....	4
1. Introduction.....	6
1.1 Background and Decision Papers	6
1.2 The I-SEM Rules Working Group	7
1.3 Consultation Process	8
1.4 Structure of the Decision Paper	8
2. CMC Development Process	10
2.1 Consultation Responses	10
2.2 SEM Committee Response	10
3. Legal and Governance	13
3.1 Licensing	13
3.2 System Operator Charges.....	13
3.3 Market Manipulation	14
3.4 Auditor and Monitor	15
3.5 The Modification Process	15
3.6 The Disputes Process.....	16
3.7 Force Majeure	21
4. The Auction Process	23
4.1 The Auction Timetable	23
4.2 Auction Information Packs	24
4.3 De-rating Methodology	25
4.4 Locational Capacity Constraints	26
4.5 Auction Rules.....	27
4.6 Variable Generator Units.....	27
4.7 Exception Applications	28
4.8 Long Commissioning Lead Time Units.....	28
4.9 Use of Director’s Certificates.....	30
4.10 RAs Auction Powers.....	30
5. Secondary Trading.....	32
5.1 Summary of Responses Received.....	32
5.2 SEM Committee Response	32

6. Other CMC Issues 35

6.1 Cross-Code Issues 35

6.2 Balance of Responsibility..... 35

6.3 State Aid Approval..... 36

7. SEM Committee Decision 38

8. Next Steps..... 39

APPENDIX A List of Respondents 40

1. INTRODUCTION

1.1 Background and Decision Papers

- 1.1.1 The SEM Committee (SEMC) is committed to implementing the Integrated Single Electricity Market (I-SEM) that will replace the current Single Electricity Market (SEM) arrangements. Following extensive consultation over 2014, (including an Impact Assessment) the SEM Committee published the Decision Paper on the High Level Design (HLD) for the I-SEM in keeping with its statutory objectives. Namely, the SEM Committee HLD Decision seeks to maximise benefits for consumers in the short-term and long-term, while ensuring security of supply and meeting environmental requirements.
- 1.1.2 Subsequently, the Detailed Design Phase of the I-SEM commenced and a number of workstreams were established including the Capacity Remuneration Mechanism (CRM) workstream. The detailed design of the I-SEM Capacity Remuneration Mechanism (CRM) policy has been set out in a series of decision papers:
- CRM Decision 1 (SEM-15-103),
 - CRM Decision 2 (SEM-16-022),
 - CRM Decision 3 (SEM-16-039)
 - CRM Locational Issues Decision (SEM-16-081)
 - CRM Capacity Requirement and De-rating Methodology Decision (SEM-16-082)
 - CRM Terms of Reference for Capacity Market Auditor and Monitor Decision (SEM-17-023)
 - CRM Parameters Decision (SEM-17-022)
- 1.1.3 These detailed design decisions then had to be developed into a set of detailed rules and formed the basis of the work undertaken in developing the Capacity Market Code. The I-SEM Rules Working Group (RWG) was established as a further route for industry input into the development of detailed legal market rules, including the CMC. This is in addition to the extensive consultations noted above and the January 2017 consultation on the drafting of the CMC.
- 1.1.4 The rules relating to the settlement of awarded capacity form part of the Trading and Settlement Code (TSC) and these were published as part of the TSC Amendments Decision paper (SEM-17-024) in April 2017.
- 1.1.5 In addition to the CRM Decisions, there was also a decision on the transition of Intermediaries from the SEM to I-SEM (SEM-17-025) which had some impact on the detailed drafting of the CMC.

1.2 THE I-SEM RULES WORKING GROUP

- 1.2.1 The I-SEM Rules Working Group was established to allow industry participants, the RAs, SEMO and the TSOs to consult on the drafting of both the Trading and Settlement Code and the Capacity Market rules required to implement the I-SEM market design. The Working Group did not have the power to change policy decisions already taken by the SEM Committee but part of its remit was to identify any areas of inconsistency or uncertainty within or across these policy decisions and, where required, to formulate possible solutions.
- 1.2.2 The first meeting of the I-SEM Rules Working Group was held in October 2015. Subsequent meetings were held every five weeks thereafter, with the location of the meetings alternating between Belfast and Dublin. The Working Group was engaged over a period of six months, and five meetings were held, in order to support the development of draft text for the Capacity Market Code required to implement the I-SEM arrangements.
- 1.2.3 The development of the Capacity Market Code went through a multi-stage process in which topics were developed, issues were identified, discussed and resolved, and legal drafting of the Capacity Market Code was completed. This work occurred over a number of months facilitated through the Rules Working Group. The key milestones are outlined below:
- July 2016 - the first plain English version of the Capacity Market Code was circulated and discussed at meeting 9 of the Rules Working Group;
 - September 2016 - the second plain English version of the Capacity Market Code was circulated and discussed at meeting 10 of the Rules Working Group;
 - October 2016 - the initial legal draft version of the Capacity Market Code was circulated and discussed at meeting 11 of the Rules Working Group;
 - November 2016 - the second legal draft version of the Capacity Market Code was further developed and discussed at meeting 12 of the Rules Working Group;
 - December 2016 - the detailed auction rules, incorporating the Locational Issues Decision (SEM-16-081), and the Agreed Procedures of the Capacity Market Code were circulated and discussed at meeting 13 of the Rules Working Group.
- 1.2.4 The initial design proposal/position papers were developed within the Project Team (which included SEMO, the TSOs and the RAs). These design proposal/position papers were circulated to Working Group members prior to the relevant Working Group meeting for their review and to aid their preparation for the meeting. After discussion and consideration at the relevant meeting, members had one week following the meeting to provide formal feedback. Feedback from participants at the meeting itself and subsequent formal feedback informed the subsequent drafting of the relevant section of the market rules by the Project Team.
- 1.2.5 Formal feedback from Working Group members was recorded in an Issues Log, capturing observations, comments and queries from Working Group Members, covering both the Capacity Market Code and the Trading and Settlement Code was maintained by the Project Team. The Issues Log was updated and circulated to the Market Rules Working Group periodically, with issues closed after resolution.

1.3 CONSULTATION PROCESS

- 1.3.1 Following its development through the Rules Working Group process, the SEM Committee published the draft Capacity Market Code (including its Appendices and Agreed Procedures) for consultation on 12 January 2017 (SEM-17-004).
- 1.3.2 Given that the I-SEM HLD and Detailed Design decisions were extensively consulted on in 2014, 2015 and primarily in 2016 and the Code had been developed to be in line with the market design decisions (see previous section of this paper on background, and the process to date) the SEM Committee anticipated that comments in response to this consultation would focus on the detail of the legal drafting for the Capacity Market Code. The Consultation Paper provided a response template for these responses.
- 1.3.3 There were some areas of the Code which had been modified following the Capacity Requirement and De-Rating Decision (SEM-16-082) and the Locational Issues Decision (SEM-16-081). 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 had less review through the RWG process than the rest of the Code. However, the drafting did form part of the CMC Consultation (SEM-17-004), so industry participants have been able to review it. In addition, there were a number of other areas where review had indicated that the Code may benefit from additional consideration. The consultation paper which accompanied the draft CMC included a number of specific questions on these areas and several respondents replied directly to the issues raised.
- 1.3.4 Following the Stock-take exercise, the RAs reviewed the timing of the first transitional T-1 and T-4 auctions and the treatment of the first, partial Capacity Year. The CMC Consultation Paper set out the “minded-to” position of the RAs. Given the importance to Participants of early visibility of the timetable for, and period covered by, the first transitional auction the responses from the CMC Consultation were considered as part of the CRM Parameters Decision (SEM-17-022). That paper set out the SEM Committee’s decisions in respect of the transitional auctions.

1.4 STRUCTURE OF THE DECISION PAPER

- 1.4.1 Following this introduction, Section 2 covers high-level comments from respondents about the CMC development process itself.
- 1.4.2 Detailed comments on the drafting of the CMC are covered in Appendix B, a spreadsheet which sets out all the responses included in the response template (note: duplicated comments have not been included).
- 1.4.3 There were some more high-level responses to the draft CMC, including responses to the specific questions asked in the consultation paper. Sections 3 to 7 cover these responses and the view of the SEM Committee. These sections also cover any more substantive changes to the draft CMC made following its review by the RAs in the light of the consultation responses.

- 1.4.4 Section 8 sets out the formal SEM Committee Decision to approve the Capacity Market Code in the form attached to this Decision Paper.
- 1.4.5 Section 9 sets out the next steps following publication of the Capacity Market Code.

2. CMC DEVELOPMENT PROCESS

2.1 CONSULTATION RESPONSES

- 2.1.1 A limited number of respondents commented on the CMC development process. The main areas for comment related to the process followed by the working groups, in particular but not solely the MRWG.
- 2.1.2 These respondents were concerned about limitations on the degree of engagement in the CMC development process and on the degree of discussion.
- 2.1.3 They were further concerned about potential conflicts of interest given that drafting was carried out by the TSOs and SEMO. They were concerned about bias (either conscious or unconscious) from the TSOs or RAs.
- 2.1.4 Finally, they were concerned about the workload on industry as a whole and felt this had contributed to a diminution in the quality of scrutiny applied to the CMC, referencing the Stocktake Report (SEM-16-078).

2.2 SEM COMMITTEE RESPONSE

- 2.2.1 The policies which underpin the design of the CRM and the development of the Capacity Market Code were set out in a series of SEM Committee Decision papers each of which was prepared following consultation with market participants.
- 2.2.2 The Market Rules Working Group Terms of Reference were presented to, and developed in response to industry feedback in late 2015. They set out the process to be followed in developing the I-SEM rules, including the sequential development of the CMC from Plain English Versions (PEVs) and finally proposed Legal Drafting papers. The Terms of Reference also set out timelines for the issuing of papers that were to be circulated two weeks in advance of the relevant MRWG, and timelines for the submission of comments after each MRWG. Participant comments were captured in the Issues Log for response. The Issues Log set out the Project Team's response on how these comments were taken forward, or reasons why proposed changes would not be adopted in the next stage of the rules development.
- 2.2.3 The SEM Committee considers that the MRWG Terms of Reference provided participants with an understanding of the process that the rules development would follow, notably the timelines for meetings, the publication of material in advance of meetings and the timescales for providing feedback on issues.
- 2.2.4 A modest volume of new and complex material was developed in challenging timescales, and the SEM Committee notes the considerable efforts made by the RAs, TSOs, SEMO and market participants in advancing the CMC's development during the MRWG process. The

SEM Committee considers, in light of the steps taken to develop the CMC, including the detailed consultations on policy, the regular MRWG meetings, the consultation on the CMC drafting as well as the extensive debate that has taken place at the MRWG, that market participants have had sufficient opportunity to understand the content of the CMC in order to understand the intent of the drafting and make appropriate comments on the proposed CMC during the consultation period.

- 2.2.5 The SEM Committee does not agree with the comment that there was too little meaningful discussion at the MRWG, and that debate was constrained, although it does acknowledge that the workload faced to meet the project deadlines posed challenges to all involved.
- 2.2.6 Participants previously raised these concerns during the discussions preceding the publication of the SEM Committee Stocktake Report. Commenting on these matters, ESP stated that *“the design was developed in consultation with industry, who have been part of the Rules Working Groups scrutinising the design – albeit recent workload of 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.”* The SEM Committee accepts the comment by participants that the workload faced by them was considerable. However, as ESP noted, *“no assurance effort will absolutely guarantee the detection with all issues of the design. Increasing the time and money spent on assurance will find more issues, but does suffer from the law of diminishing returns”*. The SEM Committee considers that the work schedule required a balance of progressing the MRWG work plan and providing sufficient participant input and scrutiny. As part of this process, the MRWG meetings had clear objectives to present the CMC, and provide explanation for the drafting, and respond to participant questions. The SEM Committee considers that over the course of the process this balance was struck. The MRWG process, while challenging, allowed reasonable time to review and prepare for meetings, for discussion to occur at the meetings themselves, and for feedback of comments afterwards, and that this conclusion is supported by the overall SEM Committee Stocktake Report.
- 2.2.7 The SEM Committee also notes that the CMC is a code that is subject to ongoing modifications, according to the CMC governance process. Under the modification procedures industry participants can continue to have extensive involvement in the development of the Code, by proposing modifications to the CMC.
- 2.2.8 The SEM Committee notes the comment that the TSOs’ leading role in drafting gave rise to possible conflicts of interest. The SEM Committee considers that it was appropriate and necessary that SEMO and the TSOs had a central role in developing the Code as the primary expertise and resources to deliver the project resided there and there were also synergies with the design and procurement of the systems to implement I-SEM. The RAs, in both their input to and oversight of the Code development and in formulating their decision on the CMCs, have been cognisant of potential conflicts of interest, and do not consider that any inappropriate commercial advantage has arisen to Eirgrid as TSO, or asset owner, or SEMO, as a consequence of the I-SEM rules. It is also relevant to note that the wider regulatory

framework which governs the TSOs and the SEMO, for example in relation to unbundling and licence conditions³, contains a range of robust measures to address conflicts of interest.

- 2.2.9 Whilst the TSOs and SEMO were involved in drafting the CMC, this process was subject to robust oversight and detailed review by the RAs. Further the SEM Committee is responsible for the final review and approval of the CMC, taking into account its statutory objectives. It follows that the process has been subject to robust regulatory oversight.

³ See for example, the licence modifications made to the TSO licences requiring the appointment of a Compliance and Assurance Officer (March 2017)

3. LEGAL AND GOVERNANCE

3.1 LICENSING

- 3.1.1 In setting out the proposed governance arrangements for the Capacity Remuneration Mechanism in the first CRM consultation paper (SEM-15-044), the SEM Committee stated that

*“should the capacity mechanism be mandatory for existing licence holders in Ireland and Northern Ireland, **we will amend generation and supplier licences** to require accession to the capacity market rules and prequalification for auction”.* (6.3.9)

- 3.1.2 The decision which followed from this consultation, (SEM-15-103) makes participation mandatory for capacity providers:

“...The SEM Committee has decided on the following principles: Existing dispatchable plant will need to bid within a tolerance band of the centrally determined de-rating factor for that plant...” and “considers the proposed governance arrangements, including associated licence and code changes, as suitable...”

- 3.1.3 Further references to the mandatory nature of the CRM and associated market power controls are included in CRM Decision 3 (SEM-16-039):

“the SEM Committee has decided that in addition to the market power mitigation measures set out in CRM Decision 1 (mandatory bidding, adjusting the capacity requirement- see SEM-15-103) the SEM Committee will apply the following market power mitigation measures with respect to the auctions...”. (3.4.1)

- 3.1.4 Following the position set out in these previous consultation and decision papers, the SEM Committee has decided to propose a new condition for generator and supplier licences obliging them to become a Party to and comply with the Capacity Market Code, insofar as it is applicable to them⁴. For those licensees that do not have any obligations under the CMC, there would be no requirement to become a Party for as long as that position remains (see also section 4.6 for a change to the obligation on Variable Generator Units to Qualify).

3.2 SYSTEM OPERATOR CHARGES

Summary of Responses Received

- 3.2.1 There were a number of responses received with respect to the Fees and System Operator Charges set out in section B.7. Respondents felt that the approach was inconsistent with

⁴ Utility Regulator: Statutory Consultation on Modifications to NI electricity generation and NI electricity supply Licences, necessitated to implement the I-SEM
Commission for Energy Regulation: Information Paper on proposed modifications to Generation and Supply licences, necessitated to implement the I-SEM (CER/17/111)

that used for similar charges in the TSC, were concerned about the SOs proposing the charges and the lack of clarity on how such charges would be settled.

- 3.2.2 Respondents were also concerned that the drafting seemed to be defining the route for the recovery of the SOs costs in setting up and/or operating the CMC, suggesting that this should be subject to the TSO Price Control process.

SEM Committee Response

- 3.2.3 The SEM Committee notes that as part of the TSC Decision, the TSC has been amended to enable invoicing and settlement of the Fixed and Variable System Operator Charges set out in the CMC.
- 3.2.4 We understand that elements of the CMC approach drafting differ from that for the determination of charges in the TSC. We note that both the Participation and Qualification Fees are directly related to the costs incurred by the TSOs in processing the relevant applications. As a result, the SEM Committee is of a view that the approach to the setting of Accession, Participation and Qualification Fees set out in the consulted draft of the CMC is reasonable.
- 3.2.5 The approach taken for the Fixed and Variable System Operator Charges, i.e. that the SOs make a proposal which is approved by the RAs, is consistent with the approach used for similar fees in the TSC. The SEM Committee does not agree with the view that this approach is inappropriate.
- 3.2.6 The SEM Committee notes that the approach to be taken for the recovery of the SOs costs incurred under the CMC has not yet been decided. The text in the CMC was drafted to enable any reasonable approach to be implemented, but if the decision requires it any, or all, of the Fees and Charges defined could be set to zero. For clarity, the text in the CMC has been amended to explicitly recognise that elements of the SOs costs could be recovered via other mechanisms.

3.3 MARKET MANIPULATION

Summary of Responses Received

- 3.3.1 A small number of respondents were concerned about the CMC provisions prohibiting Market Manipulation. They believed that REMIT, and other Applicable Laws, provided all the protection required and that duplication of obligations in the CMC could create issues.
- 3.3.2 One respondent was concerned that the ability of a Participant to opt-out a unit in the T-4 auction but then participate in the T-1 auction for the same Capacity Year could permit market manipulation.

SEM Committee Response

- 3.3.3 The SEM Committee notes the concerns raised with the prohibition of market manipulation provision of the CMC, but continue to believe it is important that the CMC clearly sets-out behaviour that would be considered to represent market manipulation and that market manipulation constitutes a material breach of the CMC. The absence of market manipulation is fundamental to the operation of the CMC.
- 3.3.4 The SEM Committee notes the concern with respect to opt-out from an auction. The facility exists as there are entirely valid reasons why a unit might opt-out in a T-4 auction but wish to participate in the T-1 auction, e.g. if the expected income from the energy market were to rise markedly in the meantime. This facility is open to abuse and the RAs will be looking closely at any unit which opts out in a T-4 auction but chooses to participate in a later auction for the same Capacity Year in the context of the prohibition on Market Manipulation.

3.4 AUDITOR AND MONITOR

- 3.4.1 Several respondents made comments on the Capacity Auction Monitor and Capacity Market Auditor that fell to be considered under the consultation on the Terms of Reference for those roles. The SEM Committee considered those responses in coming to the CRM Terms of Reference for Capacity Market Auditor and Monitor Decision (SEM-17-023).
- 3.4.2 These comments are not further considered in this paper, except for detailed drafting changes (independent of SEM-17-023) which are addressed in Appendix B.

3.5 THE MODIFICATION PROCESS

Consultation Summary

- 3.5.1 At meeting 13 of the RWG, the TSOs had discussed using an alternative process for Modifications to the Agreed Procedures to the CMC. This proposal has been incorporated into the CMC in section B12.12 (Modifications to Agreed Procedures) and was included in the consulted draft of the CMC.

Summary of Responses Received

- 3.5.2 A small number of respondents objected to the CMC using a different Modifications Process to that used under the Trading and Settlement Code.
- 3.5.3 A small number of respondents objected to the alternative process for Modifications to Agreed Procedures.

SEM Committee Response

- 3.5.4 The SEM Committee notes that the Modification Process set out in the CMC is consistent with the policy set out in CRM Decision 3 (SEM-16-039). The reasoning behind this decision remains entirely valid and we do not intend changing the policy at this time.
- 3.5.5 The SEM Committee notes that the majority of responses at the RWG13 were positive. However, they do recognise that in the absence of a Modifications Committee, the RAs' veto of a proposed Agreed Procedure Modification takes on greater importance in protecting market participants. As a result, the drafting in sub-section B.12.12.9 has been modified to extend the time available to the RAs to allow more thorough consideration of industry feedback on the proposed Modification before deciding whether it should exercise its veto.

3.6 THE DISPUTES PROCESS

Consultation Summary

- 3.6.1 The Consultation Paper (SEM-17-004) recognised that there was a need to streamline the disputes process for Qualification and Auction Disputes. As part of this change, the paper proposed dropping the requirement for the RAs to approve Provisional Qualification Results.

Summary of Responses Received

- 3.6.2 Respondents were generally positive about the proposal to streamline the dispute process for Qualification and Auction Disputes and wanted the CMC to contain a clear timetable for disputes.
- 3.6.3 One respondent questioned the need for, and value of, the Amicable Disputes process at the end.
- 3.6.4 One respondent was concerned about the loss of the approval by the RAs for the Provisional Qualification Results, citing concerns of conflict of interest on the part of the TSOs.

SEM Committee Response

- 3.6.5 A dispute under the CMC relates to any claim, dispute or difference between Parties (B.14.1.1). Explicitly excluded is anything linked to a determination or approval made by the RAs (B.14.1.2). The SEM Committee recognised a potential lack of clarity concerning deemed approvals by the RAs and the drafting in the CMC has been modified to make clear that these have the same status as other approvals by the RAs.

Qualification Disputes

- 3.6.6 With RA approval of the Provisional Qualification Decisions, there is virtually no scope for Participants to dispute these decisions. As proposed in the Consultation Paper, this approval has been dropped from the CMC, allowing scope for disputes and earlier notification of Provisional Qualification Results to Participants.

- 3.6.7 Once Provisional Qualification Results are provided to Participants, the draft CMC allowed for a Review (Section E.10) of the Results. The Review process set out in section E.10 for Provisional Qualification Results has been retained and moved into section E.9. This allows Participants to raise any issues with the SOs to permit swift resolution.
- 3.6.8 The process and indicative timetable⁵ is as follows. Participants have 3 Working Days (WD) to request a review and the SOs have 5WD to respond with the result of their review. At this stage, the Participant may move to the Disputes Process. Any dispute following completion of this process should be raised within a further 3WD.
- 3.6.9 The SEM Committee notes that within 2WD of the Provisional Qualification Results being issued, the Capacity Auction Monitor will deliver its report on the Qualification Process. The SOs have an opportunity to address any issues identified by the Monitor in parallel with the Review process.
- 3.6.10 The SEM Committee notes that there are approximately eight weeks (see Auction Timetable in section 4.1) between the Provisional and Final Qualification Results. The final two weeks should be reserved for approval of the Results by the RAs and the first two weeks will be consumed by the Review process. This leaves roughly 4 weeks to accommodate any Disputes Process.
- 3.6.11 Given this limited timeframe, it seems sensible not to use a significant portion of the four weeks to set up a Capacity Market Disputes Resolution Board (CMDRB) for each dispute. All disputes should be between a Qualifying Participant and the SOs and there are limited grounds on which a dispute should be feasible. These would fall into two main categories:
- purely mechanical errors in the application of the CMC, i.e. where the SOs have no scope to exercise judgment; and
 - issues with the application of the CMC where the SOs are required to exercise judgment.
- 3.6.12 The first category should generally be manageable through the Capacity Auction Monitor's report or through the Review process. As a result, disputes should primarily relate to the second category where the SOs are exercising judgment. These primarily fall in the following areas:
- Completeness of Opt-out Notification (E.3.1.4(e));
 - Qualification Information incorrect or materially deficient (E.7.2.1(b));
 - Delivery of New Capacity infeasible (E.7.2.1(f));
 - Participation in the Balancing Market (E.7.3.1(a));
 - Feasibility of Implementation Plan et al (E.7.5.1);
 - Use of the Alternative Qualification Process (E.7.8.2); or
 - Changing the Technology Class for a Capacity Market Unit (E.8.1.3).

⁵ The final deadlines are determined in accordance with section D of the CMC and so these timelines are indicative.

- 3.6.13 Given the fixed nature of the parties to a Qualification Dispute and the limited grounds on which a Dispute can be raised, a fixed 3-member CMDRB can be appointed in advance of the deadline to raise Qualification Disputes. This CMDRB would be ready to consider all Qualification Disputes arising from a given auction as soon as the Review process has ended (i.e. 2 weeks following issue of the Provisional Auction results). This special CMDRB would be appointed by the Panel Chairperson.
- 3.6.14 The CMDRB would have 4 weeks to consider all the disputes arising from the Qualification Process and deliver its decision. There could be a resourcing issue if a very large number of Qualification Disputes were raised, but this risk is mitigated by the Review process and the involvement of the Capacity Auction Monitor. If necessary, the Panel Chairperson will be able to appoint additional CMDRBs to manage the workload.
- 3.6.15 The RAs will then take into account the CMDRB's decision(s) when approving the Final Qualification Decisions. The Review process following issue of the Final Qualification Decisions has been removed as Participants have already had an opportunity to request a reconsideration of the Provisional Qualification Decisions and raise a dispute if further issues remained after that review.
- 3.6.16 The timetable for Qualification Disputes will be set as part of the wider Auction Timetable (see section 4.1)
- 3.6.17 The SEM Committee agree that the amicable resolution section of the draft CMC serves little useful purpose. They further note that it may not be legally enforceable and this section has been removed.
- 3.6.18 The SEM Committee notes the concerns raised about the TSOs potential conflicts of interest with the Provisional Qualifications Disputes, but is of the view these are adequately addressed by the role of the Capacity Auction Monitor, the Review and subsequent Disputes processes and the RAs' approval of the Final Qualification Decisions.

Auction Disputes

- 3.6.19 The SEM Committee notes that with the exception of bids from Participants, all of the inputs to the Auction have been approved by the RAs, i.e. the data from the Final Auction Information Pack and the Final Qualification Decisions, or can be computed without further judgements being required (see also section 4.4 on adjustment to local capacity constraints).
- 3.6.20 In consequence, the primary grounds for a dispute should generally arise from the failure of the SOs to follow the auction process set out in the CMC. Any such failure should be identified by the Capacity Auction Monitor in its report and will be considered by the RAs when approving or rejecting the Provisional Auction Results.
- 3.6.21 However, potential disputes could also arise on two further grounds:
- There may be issues with the Auction software itself causing it not to determine correctly, which may be a particular issue for the first T-1 Auction; and
 - Where another Participant is manipulating the market, e.g. by predatory pricing.

In the first case, any such issue with the Auction should be flagged by the Capacity Auction Monitor, but proven issues in either of these cases would indicate a major problem with the auction results and would normally require the RAs to annul the auction and possibly the rerunning of it (see section 4.10).

- 3.6.22 The Auction Timetable does not provide sufficient time for even an accelerated Disputes Process to be completed, given they may raise complex issues, and so Auction Disputes will follow the timetable for General Disputes (see below) to allow proper consideration of the issues involved.
- 3.6.23 The SEM Committee does not believe it is generally desirable to re-run an auction if some part of the process is proven not to have operated in accordance with the CMC after the Final Auction Results Decision, e.g. as a result of a Dispute, Court process or through the work of the Capacity Market Auditor. The GB Capacity Market offers a Capacity Agreement at the Auction Clearing Price to any Capacity Market Unit (CMU) which was erroneously kept from participating or being awarded capacity in the affected auction. The CMU can either accept or reject the Capacity Agreement. The SEM Committee will normally adopt a similar approach in the I-SEM for the resolution of Disputes with the affected participant being offered an award of capacity at the Auction Clearing Price; the Participant could choose to accept or reject such awarded capacity. If the Dispute identifies that capacity was wrongly awarded to a Party, then in appropriate circumstances this capacity could be terminated, e.g. proven Market Manipulation would represent a breach of the CMC and appropriate termination rights already exist under the CMC. There may be a residual issue where the error was not the fault of the Participant, as significant investment cost may have been incurred. Such a capacity award would stand.

Secondary Trade Dispute

- 3.6.24 The SEM Committee notes that a Secondary Trade Auction is a broadly mechanical process with only very limited scope for judgment by the SOs. There is potential scope for the SOs to exclude a buying unit for not meeting one of the “Legitimate Reasons” for trade using judgment, e.g. H.7.4.1(d), (e) or (f). Unlike the primary Capacity Auction, the Capacity Auction Monitor will not oversee Secondary Trading, however Secondary Trading is within the scope of the Capacity Market Auditor’s role.
- 3.6.25 The SEM Committee recognises that it would be desirable for a dispute relating to a Secondary Trade to be completed before the next opportunity to trade the same (or a similar) product arises and that it is undesirable to attempt to unpick a secondary trade after the real-time obligation has arisen. However, Secondary Trading may occur close to real time, e.g. day- or week-ahead, which leaves little time for a review or disputes process to resolve any potential issues.
- 3.6.26 In general, an issue with a Secondary Trade auction will result in an unqualified unit (or part thereof) being included in the auction, or a qualified unit (or part thereof) being excluded from the auction.
- 3.6.27 The SEM Committee does not consider it feasible to re-run a Secondary Trade auction after the Disputes Process has been completed, as the position of Participants in the auction may

have changed through subsequent trading: indeed, units may no longer be able to trade on the basis of their original offers. Instead, they propose to re-settle a successfully disputed trade with either the invalid trade removed from the Capacity and Trade Register or with a new trade inserted for a trade which should have cleared. In each case, a Secondary Trade will be left without a counterparty and the SEM Committee recognises that this will have an impact on the balance of the Socialisation Fund. This type of dispute resolution will require re-settlement of capacity (for both Capacity and Difference Payments and Charges) under the TSC.

3.6.28 Such issues with secondary trading seem comparable to issues in the energy market covered by the TSC disputes process and consequentially will take the same approach to Secondary Trade disputes in the CMC as is used for disputes in the TSC. If the dispute resolution has an impact on settlement then this cannot be handled through the CMC and would need to trigger a dispute under the TSC.

3.6.29 The SEM Committee recognises that in the draft CMC consulted on, the SOs set the values of FPFCQSF and this process was only rather broadly defined (H.5.1.2). We take the view that the determination of methodology to determine FPFCQSF (now renamed the Product Load Following Factor to improve clarity) should be carried out by the RAs and so this would not be a disputable item.

Implementation Disputes

3.6.30 The SEM Committee notes that any disputes relating to Implementation Plans submitted as part of the Qualification Process should be handled as a Qualification Dispute.

3.6.31 There are several areas within Chapter J (“Delivery of Awarded New Capacity”) of the consulted CMC where either the SOs exercise judgment or the consequences of a decision or determination by the SOs are sufficiently severe for the Participant that the Participant may legitimately wish to raise a dispute:

- Waiver of milestones (J.2.1.4);
- Request for additional evidence (J.4.3.6);
- Refusal to vary major contracts (J.2.1.6);
- Change of EPC Contractor (J.5.1.1);
- Change to Participant (J.5.3.1); and
- Termination (J.6.1).

3.6.32 The SEM Committee considers that resolution of disputes relating to J.2.1.4 or J.4.3.6 has no special urgency and should be handled as a “General Dispute” (see below).

3.6.33 For the other disputable items listed, the SEM Committee recognises that resolution of any disputed action is likely to be urgent as it will impact the continued viability of a new build project and its ability to achieve subsequent milestones.

3.6.34 The requirements for SO approval to vary major contracts, the EPC Contractor or the Participant were the subject of several responses to the CMC Consultation. These suggested that such oversight is excessive and may create barriers to entry by increasing project risk.

Given the difficulty in putting in place a sufficiently urgent disputes process for any of the oversight decisions identified above, the SEM Committee acknowledges that these concerns have some validity.

3.6.35 The oversight decisions in sections J.2 and J.5 relating to changes to contracts, contractors or the Participant in the consulted CMC have been replaced by an obligation on the Participant to notify the SOs of any such change and have due regard to any concerns the SOs may express. The notification should be accompanied by an updated Implementation Progress Report. The SOs will retain the right (under J.2.1.5) to request additional information or an inspection to assess progress, which provides protection to the market that the Awarded New Capacity will still be delivered.

3.6.36 Given the above amendments to the CMC, any dispute relating to Awarded New Capacity subject to an Implementation Plan will be considered as a General Dispute.

General Disputes

3.6.37 The SEM Committee has decided that General Disputes (i.e. all disputes other than Qualification Disputes) under the CMC will operate on the same basis and to the same timetable as a Dispute under the TSC.

Disputes Panel and Chairman

3.6.38 Given the limited time before the first Provisional Qualification Results are published, the SEM Committee recognises the importance of having a Disputes Panel and Chairperson for the CMC in place.

3.6.39 Given the commonality of process and skills shared by both the TSC and CMC Disputes Panel, the SEM Committee intends to use the same Disputes Panel and Chairperson as the TSC, if possible. If required, the CMC allows the Panel to be augmented with additional members if the SOs identify a skills gap.

3.7 FORCE MAJEURE

Consultation Summary

3.7.1 The Consultation Paper (SEM-17-004) noted that it was usual for Force Majeure events to have a time limit and requested respondents feedback on the inclusion of such a limit.

Summary of Responses Received

3.7.2 Very few respondents commented on the use of time limits for Force Majeure events. Of the few that did, support was very limited and noted that introduction would be non-trivial with no clear gains for market participants.

3.7.3 Several respondents commented on the detailed drafting relating to Force Majeure in the CMC. These sought relief from obligations under the CMC and from making Difference Payments under the TSC at times of Force Majeure.

SEM Committee Response

- 3.7.4 Given the very limited support from market participants, the SEM Committee has decided not to introduce time limits for Force Majeure events in the CMC. This does not prevent a Modification Proposal being raised under the CMC if any Party or the RAs feel such a limit would have value.
- 3.7.5 The SEM Committee does not agree with respondents that capacity providers should be relieved of their obligations during a Force Majeure event. The SEM Committee believes this would be fundamentally incompatible with the nature of a capacity award under the CRM and the hedge and security standard being provided to consumers. It would also increase the hole-in-the-hedge.
- 3.7.6 While the obligation to make difference payments is not suspended, a capacity provider will continue to receive Capacity Payments during a Force Majeure event and is able to manage its exposure through the use of Secondary Trading.
- 3.7.7 In line with the approach taken in the TSC, Participants will not be relieved of their obligations under the CMC and from making Difference Payments under the TSC during a Force Majeure event. The SEM Committee is of the view that the obligations in the Capacity Market offer an appropriate balance of risk and responsibilities between capacity providers and consumers.

4. THE AUCTION PROCESS

4.1 THE AUCTION TIMETABLE

Summary of Responses Received

- 4.1.1 A substantial number of respondents requested that the CMC include an indicative Auction Timetable which covers all Capacity Auctions. Several noted the provision of such a timetable in the Capacity Market Rules used in GB.

SEM Committee Response

- 4.1.2 The SEM Committee agrees that the CMC should contain an indicative Auction Timetable that can be applied to all Capacity Auctions.
- 4.1.3 The draft CMC set out a series of dates which would be expected to lie within an indicative Auction Timetable. Some of these were explicitly specified as being part of the Auction Timetable and listed in Appendix C, others were set out in AP3 “Qualification and Auction Process”.
- 4.1.4 The text of the CMC has been updated to create a more consistent set of dates with an explicit, indicative Auction Timetable set out in Appendix C. The broad outline of this timetable (given an Auction Date of A) is given below:
- Initial Auction Information Pack Date: A-24 weeks
 - Opt-out Notification Date: A-22 weeks
 - Qualification Application Date: A-20 weeks
 - Opt-out Notification Date: A-20 weeks
 - Exception Application Date: A-20 weeks
 - Provisional Qualification Results Date: A-10 weeks
 - Final Qualification Results Date: A-2 weeks
 - Final Auction Information Pack Date: A-2 weeks
 - Auction: A
 - Provisional Auction Results Date: A+3 WD
 - Final Auction Results Date: A+5 weeks
- 4.1.5 It is worth noting that several named dates occur at the same time. The SEM Committee believes there is value to retaining the flexibility and clarity of having separate names for these dates, even if the indicative timetable in the CMC shows them as coincident. This is because each date is linked to a separate deliverable or activity.
- 4.1.6 The text of the CMC has been made consistent between the main body of the CMC, Appendix C and AP3. In general, where the SOs are re-publishing an item this now uses the words “as soon as reasonably practicable but no later than 2WD” throughout the CMC.
- 4.1.7 As noted in section 3.6 above, the indicative Auction Timetable will also set out the timetable for Qualification Disputes.

4.2 AUCTION INFORMATION PACKS

Summary of Responses Received

- 4.2.1 Several respondents commented on the lack of clarity around the status of “indicative” items in the Initial Auction Information Pack.

SEM Committee Response

- 4.2.2 The SEM Committee agrees that the consulted CMC draft was potentially confusing as to the status of the various items in the Initial Auction Information Pack: which were Final at that stage, which would be final in the Final Auction Information Pack and which were only anticipated values. The text of the CMC has been clarified.
- 4.2.3 In reviewing the data in the Auction Information Packs, it became clear that there was a lack of clarity around the use of exchange rates (from Euros to Sterling). CRM Decision 1 (SEM-15-103) clearly states that “[t]he exchange rate for option fees should be fixed at the time providers submit their bids to the capacity auction”⁶ and this is reflected in the text of the CMC. However, it does not indicate the rate to be used for the Existing Capacity Price Cap (ECPC) and Auction Price Cap (APC).
- 4.2.4 If the exchange rate for the Price Caps is not fixed until the Final Auction Information Pack is issued, the situation arises that the caps applied to CMUs in Northern Ireland will have changed after the opportunity to apply for a Unit Specific Price Cap or to Opt-Out has passed. As an example, this could lead to a CMU in Northern Ireland with net going forward costs above ECPC (in Euros) but without the ability to apply for a USPC, or such a unit may have applied for and been granted a USPC but its net going forward costs are now below ECPC (in Euros). This is against the general principle of equality of treatment of Participants in the two jurisdictions.
- 4.2.5 The SEM Committee proposes to fix the values of ECPC and APC in local currency at the time the Initial Auction Information Pack is published. USPC will also be fixed in local currency. This naturally leads to the Offer Price Cap being fixed in local currency – and it is this Offer Price Cap which places an upper limit on offers into the Capacity Auction. In this way, CMUs in both jurisdictions can apply for a USPC knowing that the approved value will be the one used to cap their offers into the Capacity Auction.

⁶ See CRM Decision 1 (SEM-15-103) 5.4.11

4.3 DE-RATING METHODOLOGY

Consultation Summary

- 4.3.1 The Consultation Paper (SEM-17-004) noted that the full drafting needed to incorporate the CRM Capacity Requirement and De-rating Methodology Decision (SEM-16-082) in respect of autoproducers and Dual-Rated units was not included in the consulted draft of the CMC.

Summary of Responses Received

- 4.3.2 One respondent provided detailed comments on the inclusion of autoproducers into the CMC and was concerned that the obligation to participate in the Capacity Auction should not exceed that which could be delivered without jeopardising production at the Autoproducer Site.
- 4.3.3 One respondent was concerned that the CMC and De-rating Methodology Decision did not properly cover Compressed Air Energy Storage (CAES).

SEM Committee Response

- 4.3.4 In order to address determination of the Unit Specific Price Cap (USPC) in the CRM Parameters Decision (SEM-17-022) it was necessary for the SEM Committee to address in greater detail the treatment of autoproducers in the Qualification and Auction processes.
- 4.3.5 That Decision made clear that the portion of Maximum Export Capacity (MEC) which could only be delivered by demand reduction should be treated as a DSU, i.e. that it should be able to Qualify to participate In Capacity Auctions but would not be obliged to do so and that the price offered into the auction would be capped at the Auction Price Cap (rather than the Existing Capacity Price Cap).
- 4.3.6 SEM-17-022 as it relates to the treatment of Autoproducer Units (6.3.105 and 6.3.96) has been implemented in the text of the CMC.
- 4.3.7 Incorporation of the treatment of Dual-Rated Units, as set out in the De-rating Methodology Decision, into the text of the CMC required only very minor changes to the consulted draft.
- 4.3.8 The SEM Committee notes the concerns about the treatment of CAES in the de-rating methodology but observe that the De-Rating Methodology Decision (SEM-16-082, 3.5.1) covered this concern. The Decision made clear in respect of storage technologies it applied only to the first Transitional T-1 Auction and that a further consultation on the de-rating methodology to be applied to storage capacity would be carried out before the first T-4 Auction. This consultation would be expected to consider, among other things, the treatment of CAES.

4.4 LOCATIONAL CAPACITY CONSTRAINTS

Consultation Summary

- 4.4.1 The Consultation Paper (SEM-17-004) noted that while the full drafting needed to incorporate the CRM Locational Issues Decision (SEM-16-081) had been included in the consulted draft of the CMC, there had been less opportunity for RWG input than for the rest of the CMC. The paper invited responses to the proposed drafting and so the industry has been able to review the drafting and respond to it.

Summary of Responses Received

- 4.4.2 Several respondents stated that the methodology used by the TSOs to determine Locational Capacity Constraints should be subject to consultation.
- 4.4.3 A number of respondents were concerned by the ability of the TSOs to reduce the MW limit of a Locational Capacity Constraint under paragraph F.4.1.5.
- 4.4.4 Some respondents wanted to see forecasts produced for future Locational Capacity Constraints.
- 4.4.5 A few respondents wanted Locational Capacity Constraints to be applied to both T-1 *and* T-4 Auctions.

SEM Committee Response

- 4.4.6 The SEM Committee agrees that the TSOs methodology to determine Locational Capacity Constraints should be consulted on, and this consultation was published on 13 April 2017 (SEM-17-027). The SEM Committee note that the results of this consultation should not impact the text of the CMC, but are required to produce the Initial Auction Information Pack for the first Transitional T-1 Auction.
- 4.4.7 The SEM Committee observes that the ability of the TSOs to reduce the MW limit of a Locational Capacity Constraint was only to deal with the situation where there was insufficient capacity (either existing or new) to make the limit achievable. Without such a reduction, the Capacity Auction would be unable to achieve a feasible solution. The text of the CMC has been modified to make the determination of any reduction in a Locational Capacity Constraint limit a mechanical process which implements this principle.
- 4.4.8 The SEM Committee notes that SEM-16-081 decided to use Locational Capacity Constraints in T-1 Auctions, but committed to consult again about whether and how they should be used for T-4 Auctions (4.5.1). Any change to the use of Locational Capacity Constraints for T-4 auctions has been facilitated in section M.4 of the CMC (covering Interim Arrangements in respect of Locational Capacity Constraints).
- 4.4.9 The SEM Committee understands the desire for a long-term view of Locational Capacity Constraints. However, producing such forecasts would place an additional workload on the TSOs and the benefits for capacity providers are likely to be limited given the uncertainties

that impact Locational Capacity Constraints, the fact that such forecasts would have no standing in terms of future Capacity Auctions and the fact that the key inputs are all in the public domain. As a result, the SEM Committee does not intend introducing an obligation on the TSOs to produce forecasts of Locational Capacity Constraints in the CMC, except as required for the Auction Information Packs which precede each Capacity Auction for which Locational Capacity Constraints are to apply.

4.5 AUCTION RULES

- 4.5.1 The Auction Rules contained in the consulted draft of the CMC were relatively less mature than the rest of the document, given their dependence on the Locational Issues Decision (SEM-16-081).
- 4.5.2 The SEM Committee has reviewed these rules in detail and their compliance with the policies set out in CRM Decision 3 (SEM-16-039) and the Locational Issues Decision. We also took account of the detailed responses received to the consultation.
- 4.5.3 The majority of changes made to the CMC have been to improve the clarity of the auction algorithms: both the interim and the enduring version. These changes are concentrated in the Capacity Auction Clearing section (F.8.4). There have also been some changes to ensure that the text correctly implements the policy decisions.
- 4.5.4 The largest single change was the moving of the tie-breaking relating to the price setting process (F.8.3) into Chapter M. This reflects the fact that this processing is only needed for the interim solution.

4.6 VARIABLE GENERATOR UNITS

Summary of Responses Received

- 4.6.1 One respondent was opposed to the need for wind units to be required to Qualify at zero for a Capacity Auction, citing the costs and administrative burden involved.

SEM Committee Response

- 4.6.2 The SEM Committee notes that the obligation for intermittent units (called Variable Generator Units in the CMC) above the de minimis threshold to Qualify for a Capacity Auction arose from CRM Decision 1 (SEM-15-103). This was to ensure that the RAs had sufficient data about uncontracted capacity to make suitable adjustments to the Demand Curve for the Capacity Auction.
- 4.6.3 We recognise that the need to Qualify units under Chapter E requires such units to have been registered under section B.5.2 and that this in turn requires a Party to accede to the Code (B.5.1). This places an administrative burden on participants and exposes them to Accession, Participation and Qualification Fees.

- 4.6.4 The SEM Committee believes that the data needed to adjust the Demand Curve is available from other sources and so there is no need to require Variable Generator Units to Qualify at zero MW. The SEM Committee has decided to amend CRM Decision 1 (paragraph 4.3.30) to **not** require Variable Generator Units that intend to Qualify at zero MW in a Capacity Auction to Qualify under the CMC. This would have the effect of not requiring these units to be registered and may remove the need for the participant to accede to the CMC (assuming it has no other units which are required to register).

4.7 EXCEPTION APPLICATIONS

Summary of Responses Received

- 4.7.1 Several respondents had concerns about the weakness of the definitions of “net going forward costs” and “sunk costs” in the consulted draft of the CMC and whether these concepts have a place in the CMC at all.
- 4.7.2 Respondents were also concerned about inconsistency in the treatment of such costs in the energy and capacity markets. These were focused on interaction with the bidding controls proposed for the Balancing Market.

SEM Committee Response

- 4.7.3 In order to address the level of the New Capacity Investment Rate Threshold and the level of USPC, the SEM Committee considered the issues around net going forward costs and sunk costs as part of the CRM Parameters Decision (SEM-17-022). This decision took account of the responses to both this Consultation and the Parameters Consultation.
- 4.7.4 Following the CRM Parameters Decision, the SEM Committee agrees with respondents that the concepts of “net going forward cost” and “sunk costs” do not belong in the CMC. These form part of the Exception Application process: the basic structure of this process is set out in the CMC but the detail of the approach to be taken by the RAs in reviewing applications for a multi-year award of capacity or USPC is set out in the CRM Parameters Decision (SEM-17-022).
- 4.7.5 The CRM Parameters Decision also considered concerns about inconsistency of treatment of capacity provider costs between the energy and capacity markets.

4.8 LONG COMMISSIONING LEAD TIME UNITS

Summary of Responses Received

- 4.8.1 One respondent was concerned that New Capacity which took longer than a typical four years to Commission was excluded from Qualifying for a T-4 Auction in the consulted draft of the CMC. This draft had a Qualification condition (E.7.5.1(c)) that any unit must be able to

commissioning by the start of the Capacity Year. They noted that this was contrary to the policy set out in CRM Decision 2 (SEM-16-022).

SEM Committee Response

4.8.2 The SEM Committee notes that CRM Decision 2 stated (5.5.14 to 5.5.15):

5.5.14 SEM Committee consider that a 4-year commissioning window is an appropriate time to allow most plant to be operational before capacity is required in I-SEM.

5.5.15 SEM Committee also considers the addition of an extra 18 month “long stop” window which leaves a total period of 5½ years between the auction results and the termination (with penalties) of the reliability options for any plant that has not become operational. We consider that this 5½ year period is sufficiently long to accommodate the more complex plant that the RAs are aware of being considered for participation in upcoming capacity auctions in the I-SEM.

4.8.3 We also note that the High Level Design for the I-SEM (SEM-14-085a) stated (5.3.2):

- *Capacity providers will only be able to participate in the competitive process if they can demonstrate the existence of physical plant capable of providing the capacity (or firm availability date for any new investment).*

4.8.4 The SEM Committee is concerned that allowing capacity to participate in an auction for a Capacity Year when it is clearly unable to deliver capacity for that Capacity Year is inequitable. Firstly, it weakens the hedge and security standard offered to consumers, though in the case of a T-4 auction it may be possible to restore the hedge in a later T-1 auction (albeit at a cost). Secondly, awarding capacity to a unit which cannot deliver may displace a unit which could have delivered capacity for the Capacity Year from receiving an award. In the extreme, this could lead to closure of Existing Capacity or prevent a project for potential New Capacity from going forward.

4.8.5 The SEM Committee wishes to establish the principle that the balance of obligations between investors in new capacity and consumers should be that:

- investors take the risk of any failure to deliver capacity for the start of the Capacity Year for which capacity was awarded and undertake to make difference payments for the period of their capacity award; and
- consumers undertake to make capacity payments for the period covered by the capacity award.

4.8.6 The existing CMC drafting for Qualification has been retained. However, the SEM Committee will consider modification proposals which while preserving the principles set out in 4.8.5 above would better enable plant with a long commissioning lead-time to participate in the Capacity Market.

4.9 USE OF DIRECTOR'S CERTIFICATES

Consultation Summary

- 4.9.1 The Consultation Paper (SEM-17-004) requested responses on whether the obligations on Participants to provide Director's Certificates set out in the consulted draft of the CMC were appropriate.

Summary of Responses Received

- 4.9.2 There was some support for the use of Director's Certificates, but there were concerns about the administrative burden on Participants.
- 4.9.3 One respondent was concerned that personal liability on Directors in respect of such certification would lie outside the cover provided by directors and officers liability insurance.
- 4.9.4 One respondent was concerned about the form of certification that would be required.

SEM Committee Response

- 4.9.5 The SEM Committee has reviewed the requirements for Director's Certificates under the CMC and believe that there is no duplication and all existing requirements are necessary.
- 4.9.6 In addition, the SEM Committee believes that Director's Certification should be required for Exception Applications (Section E.5) as these are separate from the Qualification Information and not already covered.
- 4.9.7 A new paragraph (B.15.11.4) has been added to the CMC to limit personal liability in respect of Director's Certification.
- 4.9.8 To reduce the administrative burden on Participants and make clear the form of certification, the SEM Committee has decided that, where appropriate, the certificate will form part of the application or registration form to which the certification relates.

4.10 RAS AUCTION POWERS

Consultation Summary

- 4.10.1 The Consultation Paper (SEM-17-004) raised the question as to whether there were gaps in the ability of the RAs to delay or annul a Capacity Auction.

Summary of Responses Received

- 4.10.2 Responses to this question supported the need for the RAs to be able to delay or annul a Capacity Auction, but did question the circumstances under which these powers would be exercised.

- 4.10.3 One respondent questioned whether the RAs should be able to cancel an auction, though another recognised that circumstances could arise where this was appropriate.
- 4.10.4 A few respondents were concerned that the SOs would cancel a Capacity Auction if the RAs failed to provide a Demand Curve in time.

SEM Committee Response

- 4.10.5 The SEM Committee believes that section D.2 of the CMC generally provides sufficient powers to the RAs to cancel, postpone or bring forward an auction.
- 4.10.6 The SEM Committee notes that it may be appropriate to cancel an auction, for example in the situation where demand has fallen and sufficient capacity has already been awarded in earlier auctions for the Capacity Year. However, there may be other circumstances under which it would be appropriate to cancel an auction, e.g. if there was no possibility of the auction clearing.
- 4.10.7 Following an auction, sub-section F.9.3 of the CMC gives the RAs the right to reject the auction results on a unit-by-unit basis. The SEM Committee considers this will be insufficient in the situation where there is a major, structural issue which impacts a substantial portion of the auction results, e.g. as a result of an issue with the auction algorithm itself. In such a situation, the RAs would need to annul the auction. A re-run of the auction would be appropriate if the problems can be fixed using the same inputs, e.g. by correcting any issues identified in the Monitor's report. Re-starting of some, or all, of the auction and qualification process may be required if there are more serious, structural issues with the auction or its inputs. The text of the CMC has been extended to allow the RAs to annul an auction.⁷
- 4.10.8 The SEM Committee recognises concerns around cancellation of an auction if the Demand Curve is not notified to the SOs at the correct time, but they note that without this curve the auction cannot take place. The SEM Committee expect that under normal circumstances the auction would be delayed until the Demand Curve was determined. A process whereby the SOs propose postponing the auction to the RAs, rather than cancelling the auction, has been incorporated into the text of the CMC where a Demand Curve has not been provided to the SOs by the RAs.

⁷ See F.9.3.3

5. SECONDARY TRADING

5.1 SUMMARY OF RESPONSES RECEIVED

- 5.1.1 One respondent raised an issue with the treatment of capacity between de-rated and nameplate for interconnectors. This will be a significant volume of capacity, given that interconnector de-rating factors are likely to be around 45%, and could have a significant impact on Secondary Trading.
- 5.1.2 There was significant push-back from participants about the ability of the SOs to set the Products to be traded on the Secondary Platform, with most citing concerns about conflicts of interest. Respondents wanted the Products to be approved by the RAs.
- 5.1.3 One respondent proposed that New Capacity which commissions late should be able to cover its position through Secondary Trading, improving both the security of supply delivered and the hedge to consumers.
- 5.1.4 One respondent noted that the price which would apply to a secondary trade under the interim solution was not specified.
- 5.1.5 One respondent noted that the interim solution as drafted made participation mandatory, whereas the policy decision suggested that participants were able, but not required, to use secondary trading. This drafted interim solution was not consistent with the enduring solution where participants choose whether to trade or not.

5.2 SEM COMMITTEE RESPONSE

- 5.2.1 The SEM Committee observes that the capacity between de-rated and nameplate for an interconnector is made up of two elements:
 - **Outage-based**, for which the Interconnector is exposed to difference payments; and
 - **External Market-based**, for which the Interconnector has no exposure to difference payments.

Allowing the second (and much larger) tranche of capacity to be traded would reduce the financial hedge to consumers. This might be considered to weaken the security of supply provided from the capacity market.
- 5.2.2 In fact, there are three other types of Capacity Market Unit (CMU) with a relatively large volume of capacity between de-rated and nameplate. In each of these cases, allowing all the potential capacity between de-rated and nameplate to participate in secondary trade might be considered to weaken the security standard.

- *Storage capacity*: the De-rating Factor for this capacity comprises an element for outage and an element for the period over which the storage can deliver capacity, i.e. the volume of storage. This latter element does not reduce as delivery approaches.
- *Variable Generator Units*: whilst certainty may improve as we approach delivery, wind (for example) could potentially offer 85% of its nameplate for secondary trade. This issue has been raised at the RWG.
- *DSUs*: given a DECTOL of 100%, DSU could offer up to its DSU MW Capacity into secondary trade. It is known that this full capacity could never be delivered for a typical DSU.

5.2.3 In each of these three cases, the CMU offering capacity would be exposed to difference payments and this, in conjunction with the prohibitions on Market Manipulation, may provide sufficient incentive to offer realistically onto the Secondary Trade Platform. It is worth noting that the stop-loss limit (based on a small volume of de-rated capacity) could be reached very rapidly given such a large traded volume of capacity (based on nameplate) weakening the delivery incentive it offers.

5.2.4 The SEM Committee is of the view that the secondary trading of Interconnector capacity should be limited to the volume for which the Interconnector makes difference payments, i.e. that which is outage-related. It may be appropriate to limit the volumes between de-rated and nameplate more broadly, but in this case the RAs will monitor whether the flexibility is being abused, relying on the prohibition on market manipulation obligations and existing incentives in the CMC.

5.2.5 The SEM Committee notes that the enduring solution for Secondary Trading will not be ready at go-live and the issues described above do not arise under the interim solution. The existing drafting of the CMC has a unit-level variable named Secondary Trade De-Rated Capacity Tolerance which was explicitly introduced to cope with issues of the type described above. This drafting will be left in place, and prior to go-live of the enduring solution for Secondary Trading the SEM Committee will consult on the values to be used for this variable: for most capacity this will be zero, but for Interconnectors and some other Technology Classes a non-zero value may be appropriate.

5.2.6 The SEM Committee recognises respondents' concerns about potential conflicts of interest that may arise if the SOs determine the Products to be traded. They note that under subsection H.3.1 of the consulted draft CMC, the SOs are committed to consultation with industry and with the RAs when designing and reviewing Product Types. Nevertheless, the SEM Committee considers that approval of the Secondary Trading Product Types by the RAs is required.

5.2.7 The SEM Committee recognises that there are potential benefits to permitting late commissioning New Capacity to cover its obligation through Secondary Trading. However, making such a change would not be straightforward. Difference payments do not start until New Capacity has commissioned, leaving no incentive for this capacity to participate in Secondary Trading. Starting the obligation to make different payments from the beginning of the Capacity Year, prior to commissioning, would potentially permit taking on additional

obligations above-de-rated capacity for this uncommissioned capacity. Given the complexity of the change and the potential interaction with settlement under the TSC, this change has not been incorporated into the CMC. Such a change could be raised as a Modification Proposal after go-live.

- 5.2.8 The SEM Committee acknowledges that the interim solution set out in section M.6 lacked details as to how it would work. We further agree that it was not the intention to make trading through the interim solution mandatory. This section of the CMC (now in section M.7) has been re-drafted to provide a much clearer process for participation in the interim solution for secondary trading. It now clearly sets out the price to be paid for such trades (M.7.2.2) and how a participant can opt to have the outages on its CMUs managed by secondary trades or can choose to manage this risk itself (M.7.2.6).

6. OTHER CMC ISSUES

6.1 CROSS-CODE ISSUES

Consultation Summary

- 6.1.1 The Consultation Paper (SEM-17-004) noted that there was a potential for cross-code issues between the CMC and TSC. It specifically asked whether there were any issues relating to the suspension and termination provisions in the two Codes.

Summary of Responses Received

- 6.1.2 Several respondents did not believe that suspension or termination under the TSC, or more generally in an energy market, should lead to suspension or termination under the CMC.
- 6.1.3 One respondent also noted the links to the Grid Codes and questioned whether some of the references in relation to the milestones and/or commissioning for New Capacity were consistent.

SEM Committee Response

- 6.1.4 The SEM Committee acknowledges but does not agree with respondents' views around suspension in the TSC or under any NEMO Rules. They note that the ability to suspend in the CMC, following suspension under the TSC, is not automatic and requires approval from the RAs.
- 6.1.5 The SEM Committee further notes that when suspended under the TSC or any NEMO Rules, a Participant is prevented, or severely limited, in its ability to meet its obligations under the CMC. In this situation, it seems wholly appropriate that the SOs should be able to seek approval from the RAs to suspend some or all of a Party's units from the CMC, for example to ensure that the market operates in an orderly manner. This ensures that there is flexibility to manage a range of potential scenarios, for example insolvency or material breach of the I-SEM arrangements.
- 6.1.6 The SEM Committee notes the concerns about links with the Grid Codes and has reviewed all of the references in the CMC. Where appropriate, the text of the CMC has been updated to provide a robust definition of terms.

6.2 BALANCE OF RESPONSIBILITY

Consultation Summary

- 6.2.1 The Consultation Paper (SEM-17-004) asked whether the balance of responsibilities between the RAs and the SOs in the consulted draft of the CMC was appropriate. The consultation suggested a number of specific paragraphs which might require consideration.

Summary of Responses Received

- 6.2.2 There were very few direct responses to this question. One respondent noted the risk of delays to the Auction Process if the RAs failed to approve or determine values on time.
- 6.2.3 One respondent felt it was inappropriate to have any obligations or deadlines placed on the RAs in the CMC as they are not parties to it.
- 6.2.4 One respondent noted that where the SOs are following an approved methodology, e.g. in determining exchange rates (K.1.2.8), there should be no need for further approval.
- 6.2.5 Responses linked to this question were received in respect of RA approval of Provisional Qualification Results (see section 3.6), RA approval of Secondary Trading Products (see section 5) and late delivery of the Demand Curve (see section 4.10).

SEM Committee Response

- 6.2.6 The SEM Committee agrees that where the SOs are following an RA approved methodology there is no general need for further RA approval of the values so determined.
- 6.2.7 While the RAs are not contractually bound by the CMC, this is not to say that certain roles cannot be attributed to the RAs in the Code. The purpose of doing this is to indicate how the RAs will exercise their powers under the Code. The specification of such matters in the Code brings transparency to the process which it is clear from responses to the consultation is important to the vast majority of participants.
- 6.2.8 While not contractually bound by the provisions of the CMC, the SEM Committee is, however, conscious that the CMC contemplates the RAs having an important decision making role in a number of key areas, and it is committed to fulfilling this role so that the market objectives are met.
- 6.2.9 The SEM Committee has reviewed the other specific questions raised in the Consultation Paper and, where appropriate, has amended the text in the CMC but left responsibility as in the consulted draft. This review included the definition of “Mothballed” used when Opting Out of a Capacity Auction (under section E.3.1).

6.3 STATE AID APPROVAL

Consultation Summary

- 6.3.1 The Consultation Paper (SEM-17-004) noted that the CMC may be designated before State Aid approval is obtained. It suggested that the Auction Process be allowed to proceed as far as issuing the Final Auction Information Pack, but not to start the Auction itself prior to receiving State Aid approval for the Capacity Market. It suggested that this two stage implementation of the CMC be set out in the Interim Arrangements in the CMC (Chapter M).

Summary of Responses Received

- 6.3.2 The small number of respondents who commented on this question supported the two stage implementation approach as a practical solution.
- 6.3.3 One respondent did note issues with the Auction Timetable if a delay were to occur between the Final Auction Information Pack and the Auction taking place. They suggested that rather than a formal two stage process, the RAs could rely on their powers to delay or cancel an Auction if State Aid approval was delayed or withheld.

SEM Committee Response

- 6.3.4 The SEM Committee notes that the RAs have sufficient powers under the CMC, and in particular the power to adjust the Auction Timetable and to delay Capacity Auctions, to effectively enable the two-stage implementation process described in the consultation paper. As a result, no additional changes have been made to the CMC.
- 6.3.5 Fundamental to the SEM Committee's consideration of the overall CRM design is the European Commission State Aid Guidelines. In this regard, we have engaged with the Departments (DCCA and DfE) and the European Commission as we have developed the capacity market design as ultimately EC approval is required for the CRM auctions to commence. In this regard, the CMC may require further modification depending upon the form and requirements of any State Aid approval. Should such modification be required the RAs have the Urgent Modification (B.12.9) process at their disposal in order to comply with specific requirements of the State Aid approval.

7. SEM COMMITTEE DECISION

7.1.1 Having evaluated all the responses to this consultation, and in the context of applicable statutory obligations and duties, the SEM Committee considers that the Capacity Market Code in the form attached:

- (a) reflects the SEM Committee's previous decisions in relation to the I-SEM to the extent appropriate and practicable; and
- (b) takes full and proper account of the responses received during the extensive consultation processes in relation to the capacity market; and
- (c) facilitates the achievement of the capacity market objectives set out in condition 23A of the SONI Licence to Participate in the Transmission of Electricity and condition 6A of Eirgrid's Transmission System Operator Licence.

7.1.2 The SEM Committee therefore:

- (a) decides that a licence condition requiring compliance with the CMC (insofar as applicable to them) should be proposed for inclusion in generator and supply licences; and
- (b) approves the Capacity Market Code (as amended following the consultation) in the form attached: and i) the Utility Regulator and to the Commission for Energy Regulation should take the necessary steps to designate the Capacity Market Code (as amended following the consultation) in the form attached for the purposes of condition 23A of the SONI Licence to Participate in the Transmission of Electricity and condition 6A of Eirgrid's Transmission System Operator Licence respectively; and ii) such designation should take effect on 2 June 2017.

8. NEXT STEPS

- 8.1.1 This process has led to the SEM Committee approval of the Capacity Market Code.
- 8.1.2 The Capacity Market Code will be brought into effect on 02 June 2017 under condition 23A of the SONI Licence to Participate in the Transmission of Electricity and condition 6A of Eirgrid's Transmission System Operator Licence.
- 8.1.3 Once the CMC has been brought into effect, Parties will need to take the necessary steps with the TSOs to become a Party to the CMC.
- 8.1.4 Engagement with the Departments (DCCA and DfE) and the European Commission will continue as ultimately EC approval is required for the CRM auctions to commence.

APPENDIX A LIST OF RESPONDENTS

21 non-confidential responses to the consultation were received to the consultation. Responses were received from:

- AES
- BGE
- Bord na Mona
- Brookfield
- CEWEP
- EAI
- Eirgrid/SONI
- Electric Ireland
- Energia
- ESB GWM
- Gaelectric
- IWEA
- Lumcloon Energy
- Moyle
- PPB
- PrePay Power
- RUSAL
- SIGA
- SSE
- Tynagh
- Vayu