



**Single Electricity Market
(SEM)**

**Capacity Market Code Working Group 19
Modification Consultation Paper**

SEM-21-055

9 July 2021

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1. OVERVIEW

1.1 ABSTRACT

1.1.1 The purpose of this consultation paper is to invite industry participants to provide feedback and comments in regards to the proposed modification to the Capacity Market Code (CMC) discussed at the Working Group held on 20 May 2021.

1.1.2 During this Working Group, seven modifications were presented. This consultation paper relates to:

➤ **CMC_05_21: Substitution of Candidate Units**

As things stand CMUs are fixed at the point of qualification and there is no process available to allow for reconfiguration, with the exception of Section J.5 (and subsection I.1.3 for aggregated units) of the CMC. However, the RAs are aware that there may be circumstances where a one-to-one substitution of one CMU for another is not possible and it is necessary to replace a single CMU with multiple units in order to deliver Awarded Capacity on time. This modification proposes to allow for the substitution Candidate Units to be permitted with the approval of the RAs and an application is made on the basis of complete replacement of the affected Awarded Capacity with a set of substitute Candidate Units.

➤ **CMC_06_21: NIRO and the CRM: Compliance with State aid approval**

There is a potential conflict between the CMC and the State aid approval for the CRM whereby a Demand Site in receipt of a NIRO is not explicitly prevented from forming part of a CMU. This modification closes off this potential conflict.

➤ **CMC_07_21: Reduced Applications for Qualification**

This Modification proposes to include within the CMC, the ability for a Participant to make a greatly simplified Application for Qualification if a unit has not changed since it was previously qualified.

➤ **CMC_08_21: Ex-post Verification of Compliance with the CO₂ Limits**

The ACER Opinion (22/2019) on the interaction of CO₂ Limits with Capacity Markets sets out limited situations in which ex-post validation of compliance is recommended. This Modification seeks to implement such validation in the situations which could occur in the SEM.

➤ **CMC_09_21: Addition of time for RAs consideration of SFC Extension Request**

The current drafting of the CMC in J.5.2.1 gives no time limit on application to extend Substantial Financial Completion, potentially leaving the RAs to make an instantaneous decision. The RAs deem this to be impractical, therefore this modification proposes to require any application to extend SFC to provide 20 WD notice to allow sufficient time to properly consider any application before making a decision.

- **CMC_10_21: Modification to the provisions for Market Registration of Demand Side Units**
There are two proposals being put forward here, both of which intend to improve the registration process for DSUs and subsequently improve the level of service delivery from these types of market participants. Both proposals look at how a DSU aggregators awarded Reliability Obligations are delivered.

- Proposal 1 seeks to move the Reliability Obligation to the portfolio level by allowing DSU Aggregators to create combined candidate units of their portfolio of DSUs.
- Proposal 2 seeks to move the physical backing of the Reliability Obligation to the portfolio level by allowing all IDSs within a DSU aggregator's portfolio to assist in the delivery of the Reliability Obligation regardless of the DSU they are assigned to through the Operational Certificate process.

➤ **CMC_11_21: Extension of ASTN Arrangements**

This modification seeks to extend existing Alternative Secondary Trade Notification arrangements as per M.11 of the Capacity Market Code, which was decided under the decision SEM-20-064 in relation to CMC_09_19. The proposal seeks to include the option that a seller, when entering a secondary trade, may have the option to trade above the unit's de-rated capacity volume.

1.2 BACKGROUND

- 1.2.1 The SEM CRM detailed design and auction process has been developed through a series of consultation and decision papers, these are all available on the SEM Committee's (SEMC) website. These decisions were translated into legal drafting of the market rules via an extensive consultative process leading to the publication of the Trading and Settlement Code (TSC) and the Capacity Market Code (CMC). An updated version of the CMC (5.0)¹ was published on 24 May 2021 and the most recent version of the TSC² was published on 3 November 2020.

Process for modification of the CMC

- 1.2.2 Section B.12 of the CMC outlines the process used to modify the CMC. In particular, it sets out processes for proposing modifications, as well as the consideration, consultation and implementation or rejection of modifications.
- 1.2.3 The purpose of the Modifications process is to allow for modifications to the CMC to be proposed, considered and, if appropriate, implemented with a view to better facilitating code objectives as set out in Section A.1.2 of the CMC. (B.12.1.2).

¹ <https://www.sem-o.com/rules-and-modifications/capacity-market-modifications/market-rules/>

² <https://www.sem-o.com/rules-and-modifications/balancing-market-modifications/market-rules/>

- 1.2.4 Modifications to the CMC can be proposed and submitted by any person, (B.12.4.1), at any time. Unless the modification is urgent modifications are subsequently discussed at a Working Group held on a bi-monthly basis. Each Working Group represents an opportunity for a modification proposer to present their proposal(s) and for this to be discussed by the workshop attendees.
- 1.2.5 For discussion at a Working Group, Modification proposals must be submitted to the System Operators at least 10 working days before a Working Group meeting is due to take place. If a proposal is received less than 10 working days before a Working Group and is not marked as urgent it is deferred for discussion to the next Working Group.
- 1.2.6 Following each Working Group, and as per section B.12.5.6 of the CMC, the RAs are required to publish a timetable for the consideration, consultation and decision relating to the Modification(s) proposed during a Working Group.
- 1.2.7 If a proposal is received and deemed to be contrary to the Capacity Market Code Objectives or does not further any of those objectives, the Regulatory Authorities (RAs) will reject the proposal on the grounds of being spurious, as set out in section B.12.6 of the CMC.

Urgent Modifications

- 1.2.8 A proposer may choose to mark a Modification proposal as “Urgent” (B.12.9.1). In this case, the RAs, as per section B.12.9.3 of the CMC, will assess whether or not the proposal should be treated as urgent. If the RAs deem a proposal to be urgent they have the power to fast-track the proposal.
- 1.2.9 In this regard B.12.9.5 provides:
- “If the Regulatory Authorities determine that a Modification Proposal is Urgent, then:*
- a) the Regulatory Authorities shall determine the procedure and timetable to be followed in assessing the Modification Proposal which may vary the normal processes provided for in this Code so as to fast-track the Modification Proposal; and*
- b) subject to sub-paragraph (a), the System Operators shall convene a Workshop.”*
- 1.2.10 The RAs may request the SOs to convene a Working Group to discuss the proposed Modification.

Process for these Modifications

- 1.2.11 On 11 May 2021 the SOs notified the RAs of the seven proposed modifications submitted for discussion at WG19 held on 20 May 2021.
- 1.2.12 CMC_05_21 to CMC_09_21 were submitted by the RAs, CMC_10_21 by the DRAI and CMC_11_21 by Energia.
- 1.2.13 All seven of the proposed modifications were marked as Standard and will therefore be processed through the normal Modification process.
- 1.2.14 Following a review of the proposals, the Regulatory Authorities determined that none of the proposals are spurious.

1.2.15 On the 3 June 2021 the RAs determined the procedure to apply to the Modification Proposals. The procedure is shown in detail in Appendix A. An overview of the timetable is as follows:

- i. The System Operators convened Working Group 19 where the Modification Proposals were considered on 20 May 2021.
- ii. The System Operators, as set out in B.12.7.1 (j) of the CMC, are to prepare a report of the discussions which took place at the workshop, provide the report to the RAs and publish it on the Modifications website promptly after the workshop.
- iii. The RAs will then consult on the Proposed Modification, with a response time of 20 Working Days (as defined in the CMC), from the date of publication of the Consultation.
- iv. As contemplated by B.12.11 the RAs will make their decision as soon as reasonably practicable following conclusion of the consultation and will publish a report in respect of their decision.

1.3 PURPOSE OF THIS CONSULTATION PAPER

1.3.1 The purpose of this paper is to consult on the following proposed modifications:

- CMC_05_21: Substitution of Candidate Units
- CMC_06_21: NIRO and the CRM: Compliance with State aid approval
- CMC_07_21: Reduced Applications for Qualification
- CMC_08_21: Ex-post Verification of Compliance with the CO₂ Limits
- CMC_09_21: Addition of time for RAs consideration of SFC Extension Request
- CMC_10_21: Modification to the provisions for Market Registration of Demand Side Units
- CMC_11_21: Extension of ASTN Arrangements

1.3.2 Further detail on each of the modifications is set out in the appended modification proposals (Appendix B 1 - 7).

1.3.3 The Regulatory Authorities hereby give notice to all Parties and the Market Operator of a consultation on the proposed Modifications.

1.3.4 Interested Parties and the Market Operator are invited to make written submissions concerning the proposed Modification **by no later than 17:00 on Tuesday 10 August 2021**.

1.3.5 Upon closure of the consultation process, the Regulatory Authorities intend to assess all valid submissions received and form a decision to either implement or reject a modification or undertake further consideration as regards to matters raised through the consultation process in regards to the proposed modification.

2. MODIFICATION PROPOSALS

2.1 CMC_05_21 – SUBSTITUTION OF CANDIDATE UNITS

Proposer: Regulatory Authorities

Proposal Overview

- 2.1.1 As things stand CMUs are fixed at the point of qualification and there is no process available to allow for reconfiguration, with the exception of Section J.5 (and subsection I.1.3 for aggregated units) of the CMC. J.5 allows for various forms of change to the delivery of Awarded Capacity to both ensure that consumers receive the New Capacity awarded at Auction and to reduce the risk to capacity providers of delivering New Capacity.
- 2.1.2 However, the RAs are aware that there may be circumstances where a one-to-one substitution of one CMU for another is not possible and it is necessary to replace a single CMU with multiple units in order to deliver Awarded Capacity on time.
- 2.1.3 An affected Participant can apply to the RAs to substitute multiple substitute Candidate Units to deliver Awarded Capacity (a Substitution Application). This application is made on similar grounds to change of EPC or Technology Class but where a 1-1 replacement of units is not possible. The application is made on the basis of complete replacement of the affected Awarded Capacity with a set of substitute Candidate Units.
- 2.1.4 The RAs, in conjunction with the SOs, consider the application. If they reject the application they inform the Participant giving reasons. If the RAs do not reject the Substitution Application, then the new Candidate Units need to go through a version of the Application Process to change into CMUs so that Awarded Capacity can be transferred to them. This follows the same process as set out in Chapter E but with an exceptional timetable.
- 2.1.5 If the Candidate Units Qualify, then Awarded Capacity is transferred from the original CMU to the new CMUs in line with the Substitution Application.
- 2.1.6 To mitigate this issue, the RAs propose inclusion of a new subsection within section J.5 of the CMC, *J.5.5 Substitution of Candidate Units*.
- 2.1.7 Further detail on the Modification Proposal is set out in the appended Modification Proposal (Appendix B (1)).

Working Group Feedback

- 2.1.8 The SOs stated it is their understanding that there is an opportunity whereby this issue could arise, in that a project is at risk of not delivering as expected and this provides an avenue for an alternative option.

- 2.1.9 They did however raise a concern that the modification could lead to an ‘ad hoc’ qualification process. The SOs stated that if it was something that would happen on a frequent basis, there would need to be an assessment performed by the SOs from a process and resourcing point of view.
- 2.1.10 They highlighted that the qualification process currently is an involved process and are currently operated with the utilisation of stringent timeframes and running an ad hoc process in parallel to the normal qualification process would pose issues.
- 2.1.11 The SOs stated that as things stand, this they believe this issue would be confined to situations whereby projects are potentially not capable of delivering and queried whether there would be merit in boarding the scope / situations where this could be an issue.
- 2.1.12 Grid Beyond queried whether there was the possibility of implementing a window whereby secondary trading, or ad hoc qualification applications to be submitted. They elaborated that this could aid the SOs, in that they wouldn’t hypothetically receive an unknown volume of applications at various random stages throughout the year.
- 2.1.13 Enel X advised that the four year period ahead of delivery is a long period and queried whether it would be possible to create another avenue where Industry could seek to qualify with a shorter period. They highlighted that an increased level of flexibility would be welcomed by DSUs.

Minded to Position

- 2.1.14 The SEM Committee note that the definition of Generator Unit, which feeds into the definitions of Candidate Unit and CMU, is taken from the TSC.
- 2.1.15 The TSC, under B.6.2.1, requires a Party to register *“every Generator which it owns or legally controls, which has Maximum Export Capacity greater than or equal to the De Minimis Threshold and which is covered by a single Connection Agreement, as a Generator Unit under the Code.”*
- 2.1.16 Based on this definition, the Committee has identified that the key driver of whether additional CMUs are required to substitute for the Qualified CMU(s) will be the detail of the Connection Agreement. If the substituting Generators to be built are covered by the same Connection Agreement(s) as the original Generators making up the Qualified CMU(s), then no new Candidate Units need to be created or qualified.
- 2.1.17 This definition of Generator Unit in the TSC explains why it does not need to set out special aggregation treatment for CCGTs to be treated as a single Generator unit, unlike the case for the Grid Codes.
- 2.1.18 The above would suggest that situations in which the text of this Modification would need to be used would be extremely rare.

The vast majority of such substitutions would not require any substitution of units and would be covered by the existing change of EPC Contract text of the CMC (J.5.1), e.g. a qualified gas turbine CMU could be replaced by a number of smaller gas engines that continue to be covered by the existing Connection Agreement (amended as necessary).

- 2.1.19 Given that the aim of the proposal is to reduce the risk associated with the delivery of Capacity for both capacity providers and consumers, the SEM Committee are minded to approve this modification. However, the Committee would be interested to hear from respondents as to whether the Modification is necessary given that all cases envisaged could be handled by the existing text of the CMC provided that replacement of the Qualified CMU with a number of smaller Generator Units does not change the capacity covered by the Connection Agreement.

2.2 CMC_06_21 – NIRO AND THE CRM: COMPLIANCE WITH STATE AID APPROVAL

Proposer: Regulatory Authorities

Proposal Overview

- 2.2.1 The CRM is required by the State aid approval not to allow participation by any CMU, or element of a CMU, in receipt of NIRO payments
- 2.2.2 The RAs have become aware of a potential inconsistency in the CMC; in that it does not currently prevent a Demand Site that is in receipt of NIRO payments from deployment within a CMU.
- 2.2.3 This modification proposes to modify section E.2.1.4, and add include additional text on the form of E.7.4.3A and I.1.2.1 (d).
- 2.2.4 The proposed changes require any such CMU not to seek to Qualify (E.2.1.4) and the SOs not to Qualify (E.7.4.3A) any such unit.
- 2.2.5 With these changes in place, the existing text of I.1.3.1 (a) and I.1.3.2 (a) do not allow any changes of composition that would incorporate any element which holds a NIRO into an existing DSU or AGU. In adding new drafting to E.2.1.4, the RAs have also tidied up the existing drafting so that it makes clearer sense.
- 2.2.6 The addition to I.1.2.1 (d) covers the situation of any unit which may have Qualified and been Awarded capacity before this Modification is put into effect.

While the RAs would normally avoid making Modifications that impact events that have already occurred, in this case the Modification is seeking to address compliance with a Competent Authority and ensure the CRM is consistent with its State aid approval.

- 2.2.7 Further detail on the Modification Proposal as well as the amendments to the text within the CMC is set out in the appended Modification Proposal (Appendix B (2)).

Working Group Feedback

- 2.2.8 The SOs advised that in principal they don't have any issues with proposal and agree it is important that this is addressed. They elaborated that the purpose of the proposal is to prevent any component of a unit, be it a generator or a demand site, from being in the possession of a NIRO at the qualification stage.

They have advised that, given qualification for an auction occurs at set times, there would be merit in stating, under chapter I of the CMC that that this proposal would apply on a continuous basis. They further stated that once the proposal would come into effect any units that are affected by this issue would be obliged to remove the component(s) in question.

- 2.2.9 The RAs advised that feedback with regards to the drafting is welcome and will consider all comments that aim to improve clarity in this case.

- 2.2.10 Powerhouse Generation requested clarification as to whether this would just be applicable to qualification. They queried if a site was awarded a NIRO are the SOs suggesting that the site is removed.

- 2.2.11 A further query was raised about Demand Sites which hold a NIRO but this is unrelated to the provision of capacity under the CRM, e.g. a generator on the site holds a NIRO but capacity is being provided by demand reduction.

- 2.2.12 The SOs have advised there is the potential for issues to occur here and advised that whilst a DSU can qualify through the normal channels there is also a degree of flexibility afforded that allows participants to change Demand Sites as long as conditions under Chapter I are met. They elaborated that given this, there is a potential risk that a Demand Site could be signed up, which is in receipt of a NIRO, after the qualification process has ended.

- 2.2.13 The SOs stated that as the proposal is currently drafted, it prohibits a unit seeking to qualify, whilst in receipt of a NIRO and suggest that the drafting should be updated to reflect that a unit with a NIRO should not be allowed at all times.

- 2.2.14 The RAs also stated that the inclusion of I.1.2.1 (d) is intended to add the requirement for a unit to be compliant with the CMC continuously, not just at the qualification stage in this case.

- 2.2.15 Powerhouse disagreed with the SOs comments, advising that an RO is financially hedged and is aligned with MW capacity. They further stated they interpreted the SOs comments as being if something comes along, with a NIRO, after qualification then they may be removed from Operational Certificate which would not be under the rules of the Capacity Market.

The SOs stated they are not suggesting making changes to Op Certs, however, the intention of the proposal is to ensure at all times no unit, nor any component of a unit, is in possession of a NIRO and in receipt of capacity payments at the same time.

- 2.2.16 The RAs advised if a Demand Site was to be in possession of an RO for awarded capacity and a NIRO then the Demand Site, or Demand Site component would be in breach of the CMC and it would be the responsibility of the participant to resolve the issue.

The RAs also reiterated that this is a requirement of the CRM State aid approval.

- 2.2.17 ESB queried if the obligation proposed in I.1.2.1 is to specifically try and catch this at the qualification stage. The RAs stated the proposal is intended to explicitly catch things that were not caught as part of a previous qualification process.

ESB asked whether B.8.1.1 would cover this issue given it states that a party must comply with all aspects of the code.

- 2.2.18 The RAs advised this could potentially cover it, however, its inclusion here was intended to make this clearer. Further to this if Industry are of a view that including this again is unnecessary this can be reiterated as part of the response to the consultation.

Minded to Position

- 2.2.19 The SEM Committee are cognisant that a failure to implement this proposal would risk non-compliance with the State aid approval for the CRM.
- 2.2.20 The Committee note the possibility of a Site validly holding both a NIRO and a Reliability Option under the CRM where provision of the two services is unrelated. Based on the responses to this consultation, the drafting of the “triggers” set out in E.2.1.4 and E.7.4.3A will be reviewed to ensure they do not wrongly prevent participation of Demand Sites where there is no issue of accumulation of State aid.
- 2.2.21 While noting the comments from ESB about B.8.1.1, the Committee remain concerned that while the NIRO is held by the Demand Site and the CMC applies to the Participant aggregating Demand Sites into a DSU, there remains uncertainty as to whether the Participant is failing to comply with the Code.
- 2.2.22 Given the necessity of the proposed modification and the requirements to comply with the State aid³ approval granted in November 2017, the SEM Committee are minded to approve this Modification proposal to ensure that compliance is facilitated.

2.3 CMC_07_21 – REDUCED APPLICATIONS FOR QUALIFICATION

Proposer: Regulatory Authorities

Proposal Overview

- 2.3.1 This modification proposes to allow a Participant to take part in an expedited Qualification process for a Capacity Auction whereby either nothing has changed since the last qualification process, or they are already in possession of an RO for the Capacity Year for which a Capacity Auction seeks to procure capacity.

³ https://ec.europa.eu/competition/state_aid/cases/267880/267880_1948214_166_2.pdf

- 2.3.2 In its current form, the process requires CMUs that have already received a Capacity Award, in respect of all of their capacity for a forthcoming auction, to go through the full Qualification Process.
- 2.3.3 The RAs intend to amend the code to include a new paragraph, E.4.1.3A, which would allow for a Participant to make a greatly simplified Application for Qualification if a unit has not changed since it was previously qualified.
- 2.3.4 The aim of this proposal is to reduce the administrative burden on both the System Operators and participants. As it stands:
- Participants who have won a multi-year RO in a given Capacity Auction will subsequently be required to submit qualification applications for each capacity auctions for the total duration of the period their multi-year RO covers; and
 - Participants who have won an RO for all their capacity in a T-4 Capacity Auction will then be required to qualify for any subsequent 'top up' auctions for the same capacity year. This could be a T-3, T-2 or a T-1 Capacity Auction depending on circumstances.
- 2.3.5 Further detail on the Modification Proposal as well as the amendments to the text within the CMC is set out in the appended Modification Proposal (Appendix B (3)).

Working Group Feedback

- 2.3.6 Several participants commented on this advising this modification proposal has merit in that it will reduce the administrative burden on Participants and they are grateful that the RAs have taken steps to address this issue.
- 2.3.7 Viotas advised they would be in favour of implementing this proposal and requested clarification as to whether the proposal could be in place and active ahead of the qualification process associated with the T-3 CY2024/25 Capacity auction, which is due to take place in June / July 2021.
- 2.3.8 The SOs responded advising that they agreed with the intention of the proposal and that this portion of the process currently does pose an administrative burden on Industry.
- 2.3.9 However, in terms of the request to expedite the introduction of the proposal, the SOs advised the proposal must go through the correct due process which also requires changes to be implemented after any possible introduction. This being the case, the SOs were of the view that it is unlikely this is deliverable ahead of the T-3 CY2024/25 process beginning.
- 2.3.10 The SOs queried whether it would be of merit to link this to the Alternative Qualification Process and elaborated stating that there could be an element of a reduced form of qualification where a participant confirms they meet the requirements and wish to avail of this, which is then processed outside of the normal qualification process.

- 2.3.11 ESB highlighted that they believe the proposal is a pragmatic approach which is welcomed. Further to this they advised that within the current process, the requirement to provide Director's sign can be rather time consuming and so have requested this be considered in terms of any reduced application required to move through an alternative qualification process.

Minded to Position

- 2.3.12 The SEM Committee note the intention of the proposal is to negate the need for Participants to submit full qualification applications for Capacity auctions covering a CY period for which they already hold an RO, therefore reducing the current perceived burden on the SOs and Participants.
- 2.3.13 The Committee are particularly interested in responses from the SOs about the potential implementation of the Modification and use of the Alternative Qualification Process. Early implementation would benefit all parties and the Committee will bear this in mind in coming to their decision.
- 2.3.14 Given the comments provided during the Working Group and the support provided by Industry, the SEM Committee are minded to approve this proposal.

2.4 CMC_08_21 – EX-POST VERIFICATION OF COMPLIANCE WITH THE CO₂ LIMITS

Proposer: Regulatory Authorities

Proposal Overview

- 2.4.1 This modification proposes to align the CRM with the ex-post validation recommendations in ACER Opinion 22/2019 on the calculation of CO₂ limits.
- 2.4.2 The Opinion, in article 9, only recommends ex-post validation where the CO₂ emissions are expected to vary significantly from year-to-year, i.e. Mixed fuels, waste (which is a mixed fuel in itself) and CO₂ sequestration.

In line with the Opinion, the test is made on the basis of a report after the Capacity Year is over and we propose this report be submitted within three months of the end of the Capacity Year, i.e. by the end of December.

- 2.4.3 The proposal sets out that Validation is to be made on the basis of a report by the Participant evidencing compliance, such report to be produced within 3 months of the end of the Capacity Year.
- 2.4.4 A failure to implement this proposal would result in the situation whereby the CMC does not reflect the recommendations set out in the ACER Opinion which relate specifically to Capacity Mechanisms and subsequently risk being in conflict with EC Regulations.

- 2.4.5 Further detail on the Modification Proposal as well as the amendments to the text within the CMC is set out in the appended Modification Proposal (Appendix B (4)).

Working Group Feedback

- 2.4.6 Powerhouse Generation queried why the proposal text states that the required proof should be provided to the RAs, as opposed to the SOs, when as things stand, Powerhouse are receiving milestone certifications from an external engineer which are subsequently provided to the SOs. They have queried why it is proposed to now send these to the RAs.
- 2.4.7 The RAs responded advising that under the Clean Energy Package, the RAs would be deemed the competent authority. However, the RAs advised that this could be amended to state that submission should be to the SOs, if that is appropriate. Powerhouse stated that they wouldn't have a preference as to whom should receive the evidence, but consistency would be welcomed.
- 2.4.8 The SOs advised that there are potential options available in regards to this and if it is clear as to what the criteria are, it may be possible to include this as part of the verification process, which is covered by the SOs.
- 2.4.9 BGE queried whether there has been consideration given to any other level of emissions based evidence that can be obtained by the RAs, without Participants being required to provide, such as the submission of emissions certificates under other legislation.
- 2.4.10 The RAs advised that it could be possible to take data from the ETS Registry or similar validated centralised data sources. However, the RAs were unable to provide any certainty as to the feasibility of this, but agreed that there is merit in the query.
- 2.4.11 Dublin Waste to Energy requested clarity on the mechanics of this proposal. Elaborating they queried what they are being asked to provide, if at the Ex Post stage are they going to be asked to provide several years' worth of data or simply a snap shot, in line with the fuel mix disclosure requirements.

If neither of these, are they going to have to provide a bespoke something on a bespoke level. They highlighted that this information isn't something that can be simply read from a screen, instead it can be time consuming to produce and therefore the three month timeline set out in the proposal could end up being tight.

- 2.4.12 The RAs advised that this should be raised in their response to the consultation, however did also advise that if a participant does have existing evidence used in other processes, which is also relevant and can be reused here, this could be sufficient for satisfying the requirements of the ACER Option and also minimize the workload burden on participants.

The RAs also advised that the point around the timeframe mechanics is helpful and they will seek to make the drafting in this area clearer.

- 2.4.13 Energia highlighted that within the ACER opinion it can be interpreted that ex post verification must come from a certified third party. However, they highlighted that I.1.2A.2 states once a submission is made the RAs will decide whether further information is required and then a third party verifier would be required. They asked for clarification as to whether this should be upfront in order to ensure compliance with the ACER opinion.
- 2.4.14 The RAs advised that the intention was to avoid any unnecessary costs for participants and minimise the burden placed on participants. Further to this, the RAs advised it would be more appropriate to request the information only when needed, which would avoid imposing additional obligations on participants, especially when these may have already been covered elsewhere.
- 2.4.15 Energia had a general question relating to CO₂ emissions compliance and the Clean Energy package (CEP). They had a query as to whether there are provisions in the code that checks / monitors how many hours a unit may have run and has not breached a run hour limit.
- 2.4.16 The RAs advised that this is a good point and would be worth checking to ensure that this has been covered correctly and that a gap in this area has not been left open.
- 2.4.17 Someone asked whether compliance should be measured over a single year or over three years in accordance with the ACER Opinion [In fact the answer is both, depending on the unit]

Minded to Position

- 2.4.18 The SEM Committee are cognisant of the risks associated with a failure to implement this proposal given the importance of the ACER Opinion. Further to this, the SEM Committee are of the view that adopting this proposal will mitigate this risk.
- 2.4.19 As highlighted in the modification submission, and discussed at the Working Group, it is anticipated that the proposal will add only manual processes for a limited number of CMUs and the intention is to minimise the burden. Where existing evidence has been provided to another body, e.g. under the ETS, this could be submitted to support the obligation.
- 2.4.20 The SEM Committee note the question as to whether compliance should be measured on a one or three year basis. The ACER Opinion appears to suggest that for Annual Emissions, i.e. where the 350kg CO₂ per installed kWe limit applies, an annual calculation should be performed. However, it is not clear how this would apply to units with emissions factors that could vary from year to year (under paragraph 9(a)). As paragraphs 9(b) and (d) do not apply in the SEM, there is a lack of clarity on the basis on which compliance should be measured.
- 2.4.21 The SEM Committee would welcome views from respondents as to whether compliance should be measured on the basis of the single Capacity Year in question or on the basis of the three Capacity Years ending with the Capacity Year to be validated. The latter is consistent with the wider ACER Opinion approach to measurements made on historic data but might be considered to be inconsistent to the approach set out in paragraph 9 for validation of Actual Emissions.

2.4.22 The SEM Committee propose to adopt a minded to position to approve this proposal.

2.5 CMC_09_21 – ADDITION OF TIME FOR RAS CONSIDERATION OF SFC EXTENSION REQUEST

Proposer: Regulatory Authorities

Proposal Overview

- 2.5.1 The current drafting of the CMC in J.5.2.1 gives no time limit on application to extend Substantial Financial Completion, potentially leaving the RAs to make an instantaneous decision.
- 2.5.2 This is deemed to be impractical, therefore this modification proposes to require any application to extend SFC to provide 20 WD notice to allow sufficient time to properly consider any application before making a decision.
- 2.5.3 The intention of the proposal is to include a new paragraph, J.5.2.5, which states:
- Any application made under J.5.2.1 should be made at least 20 Working Days prior to the scheduled date for achieving Substantial Financial Completion in the relevant Implementation Plan.*
- 2.5.4 Further detail on the Modification Proposal as well as the amendments to the text within the CMC is set out in the appended Modification Proposal (Appendix B (5)).

Working Group Feedback

- 2.5.5 The RAs advised that the intention is to avoid having to make an instantaneous decision, but did state that in general, if there has been a request to extend this, the RAs have been given enough notice. However, this proposal seeks to formalise the process and the amount of time the RAs would have to consider a request. This will subsequently allow the process to flow smoothly.
- 2.5.6 The SOs queried the timings behind any possible application submission. They provided the example whereby the date for SFC within an implementation plan is 1 May but the deadline for SFC is 18 months after an auction and set at 1 June; would an application be required 20 working days in advance of the 1 May or 1 June.

Minded to Position

- 2.5.7 The SEM Committee agree with the intention of the modification and are of the view that it is not appropriate to expect the RAs to make instantaneous decisions in this area.

- 2.5.8 Further to this the SEM Committee are of the view that implementation of this proposal will remove the lack of clarity for Participants as to when to submit an application and/or ensure that there is sufficient time for the RAs to properly consider such applications.
- 2.5.9 The SOs raise an interesting point about timing and it may be more appropriate for the deadline set out in J.5.2.5 to apply 20 Working Days prior to the date the Substantial Financial Completion Period after the relevant Capacity Auction Results Date. However, there is nothing to prevent a Participant from changing the date of Substantial Financial Close in the Implementation Plan by providing an updated milestone date (up to and including the which is the Substantial Financial Completion Date after the relevant Capacity Auction Date). In addition, there have been situations where participants have asked for a second SFC Extension following the granting of an initial extension and after the end of the Substantial Financial Completion Period and the proposed drafting is more robust to this situation.
- 2.5.10 Therefore, the SEM Committee are minded to approve this proposal for implementation.

2.6 CMC_10_21 – MODIFICATION TO THE PROVISIONS FOR MARKET REGISTRATION OF DEMAND SIDE UNITS

Proposer: DRAI

Proposal Overview

- 2.6.1 This modification was submitted by the DRAI and the proposal is intended to allow the full flexibility capability of the Individual Demand Sites (IDS) that make up a DSU aggregators portfolio to be realised.
- 2.6.2 The proposal states that the current rules mean there are administrative barriers to delivering flexibility to the grid and the power system of the future requires flexible assets, especially assets that can respond to the changing needs of the system. The DRAI are of the view that IDSs can do this once they can be set up appropriately within DSUs.
- 2.6.3 The proposal highlights the DRAI view that as the demand response market evolves to include residential, industrial and commercial customers, the simpler the registration process the better for both the system, market, and end consumer.
- The DRAI elaborate that current administratively burdensome process will not lend itself to residential demand response participation when larger individual demand sites are already struggling to participate to their full potential.
- 2.6.4 The DRAI advise it is their belief that if the process for market registration is simplified there will be more flexibility available to market and system operators. They stated this could result in less volumes being procured in the Capacity Market and System Services market as existing providers are maximising their delivery and type of delivery.

- 2.6.5 The DRAI put forward a single modification which contained two proposals, both of which they believe are viable options for improving the registration process for DSUs and ultimately improving the level of service delivery from these types of market participants.

Proposal 1 –

- Seeks to modify section E.7.6 – Combining Candidate Units;
- Proposes that DSUs be treated similarly to variable generation when it comes to combining candidate units and that they be allowed to combine candidate units above the de-minimus threshold;
- The DRAI state this proposal aligns with the intent being presented at European level where variable generation and flexibility providers can be treated similarly to incentivise participation in markets;
- The intent is to allow an Reliability Obligation (RO) to be awarded at portfolio level, thus ensuring that a DSU aggregator can move existing capacity around its portfolio of DSUs;
- The DRAI referred to CMC_06_20, which was rejected in SEM-20-039⁴, following reservations about market power and the lumpiness that might occur in the auction if this proposal was to be approved. They state that these concerns have been addressed and can be resolved by limiting inflexible bidding to the size of the largest candidate unit within the combined candidate unit.

Proposal 2 –

- Seeks to modify section I.1.3.1 – Variation in mix;
- Provision I.1.3.1 in the code allows for DSU aggregators to vary the mix of IDs within their DSU providing the physical backing that is delivering on their Reliability Obligation;
- This modification proposes that DSU aggregators be allowed to vary the mix of IDs within their portfolio providing the physical backing that is delivering on their Reliability Obligation;
- The DRAI believe the proposal may require changes to the process for determining substantial completion in section G.3.1 to allow DSU providers to use their portfolio of DSUs to deliver the awarded capacity to ensure the full intent of this proposal can be realised.

- 2.6.6 Further detail on the Modification Proposal as well as the amendments to the text within the CMC is set out in the appended Modification Proposal (Appendix B (6)).

⁴ https://www.semcommittee.com/sites/semc/files/media-files/SEM-20-039%20CMC%20Mods%20WG12%20CMC_04%20CMC_06%20Decision%20Paper.pdf

Working Group Feedback

- 2.6.7 The RAs referred to Proposal 2, advising that this may need some further finessing as the current drafting doesn't update the awarded capacity for each DSU and this doesn't reflect a rearranging of mixed capacities. The RAs were of the view that this could potentially result participants incurring difference payments at the settlement stage.

The SOs advised that with regards to Proposal 2, they would echo the comments put forward by the RAs and believe this proposal should be looked at further.

- 2.6.8 The DRAI advised they are willing to revisit the drafting again and also advised that in forming the modification proposal they did look at the difference payments calculation and this appears to look at the aggregates of all a participants DSUs, within an LCCA, and subsequently aggregates the difference payments across all units.

The DRAI advised it is their understanding that in the situation where an IDS has been moved a participant would under deliver on its RO for the moved DSU and therefore face difference charges, however the new DSU would then over deliver and the financial impact would then be mitigated.

- 2.6.9 The SOs advised that they have a number of comments on the proposal, however, given the time availability during the Working Group they will reflect the majority of these in their response to the consultation.

However, during the working group the SOs advised that they would be broadly supportive of Proposal 1 and it is evident that the DRAI have tried to address the 'lumpiness' issues.

- 2.6.10 The SOs observed that in its current drafting, each PQ pair would be limited to the size of the largest constituent Candidate Unit, in this case, a DSU. The SOs elaborated that this may sit better under Chapter F within the CMC, where offers are validated.

- 2.6.11 The SOs also took their opportunity to state that this proposal would require an assessment on with regard to a systems perspective, as they envisage there would be an impact on their systems.

Further to this, they highlighted that there would be merit in assessing whether there is an avenue to achieve something similar, but with less complexity involved.

- 2.6.12 The DRAI recognised validity behind the SOs comments around potential systems impacts and advised that this had not been considered as part of the initial proposal.

They elaborated that the modification is aimed at removing administration barriers, however consideration should be given as to what system changes would be required.

- 2.6.13 The DRAI queried if it would be worth discussing this at a more in-depth level once the SOs have had a chance to consider the proposal further, ahead of going out for consultation.

The RAs highlighted that there is the opportunity for a further workshop, if requested, ahead of the consultation period, or potentially a follow up meeting post consultation.

2.6.14 Energia agreed with the SOs comments that there is a lot to take on board with this proposal and that the opportunity to have a follow up working group may be an appropriate option.

2.6.15 The SOs queried the extent to which the drafting of the proposal can change following the consultation process, or is it anticipated that the drafting would be fairly advanced by the time the proposal is being consulted upon.

The RAs highlighted that feedback from Industry would provide a view as to whether a follow up workshop should be convened where the proposal is brought back with greater detail and subsequently consulted on again or, whether the proposal is advanced in its current state to mitigate the need for further discussion and consultation.

2.6.16 ESB asked that in attempting to determine the value of qualified capacity for a DSU is this the total sum of IDS units combined together multiplied by the de-rating factor from an Initial Auction Information Pack. The RAs confirmed this is the case but elaborated that this is not the same behaviour used for AGUs, which are de-rated individually and the total then summed.

2.6.17 ESB queried if there was the potential here to shift a DSU from one DRF band to another by moving an IDS from one DSU to another.

2.6.18 The RAs advised that there is the potential for this to occur, but that given the DRF change on 10 MW increments, any potential change would be result in a minimal MW change up or down.

2.6.19 The DRAI also recognised that there is the potential for this situation to occur.

2.6.20 ESB also asked, with regard to Proposal 1, whether this addresses the problem associated with moving existing units which then are deemed new and having to post additional collateral for this.

The DRAI advised that it does and referred to the example provided in Proposal 1, whereby from October 2025 the units would be considered existing and therefore would be fine.

The SOs commented that, from their point of view this isn't overly clear and that additional focus on this section would be merited.

2.6.21 The DRAI were asked if they would see either of the two aspects of the proposal as being the preferable option to move forward with. In response, the DRAI advised they are two options that are both aimed at addressing admin barriers however, given that Proposal 2 would have an effective date from the moment of approval (as opposed to waiting to October 2025 with Proposal 1), this could be the most useful option.

However, the DRAI also commented that there were a number of outside factors, including other modification proposals, which increase the complexity of the situation.

2.6.22 Energia were concerned that this proposal would provide DSUs / Aggregators with additional benefits and flexibility that isn't afforded to other technology types. They highlighted that this could be interpreted as discrimination against participants who wouldn't be able to avail of the proposal.

- 2.6.23 The DRAI welcomed these comments and advised that they have given thought to the comments around potential discrimination following previous submission and discussions around this proposal. The stated that it was important to note that DSUs / aggregators have a number of different characteristics to contend with when compared to those of a more 'traditional' unit.

The DRAI commented that they are of the view this wouldn't be discriminatory against other technology types, instead it is an attempt to reflect the different characteristics of being a DSU.

Minded to Position

- 2.6.24 The SEM Committee recognise the work out in by the DRAI in producing the two proposals given in the Modification and the very useful feedback received during the Working Group. In particular, the proposal to manage the issues that aggregation can cause when interacting with managing 'lumpiness' in the auction solution is a very positive step in dealing with one of the key issues with earlier proposed Modifications that sought to increase the level of aggregation permitted under the CMC.
- 2.6.25 On the basis of the working group, it appears that Proposal 1 is the most promising option but recognise that there was only limited time to provide feedback at the working group and that this situation might change following responses to this consultation. From a practical perspective, issues that arise from implementing a version of either proposal will be key in offering a timely solution to the issues identified by the DRAI.
- 2.6.26 The SEM Committee note that the proposed drafting change to E.7.6 and, in particular, the addition of sub-paragraph (j) will also affect units with a Registered Capacity below the De Minimis Threshold and Variable Generator Units.
- 2.6.27 The SEM Committee note that CRM settlement in the T&SC treats each Generator Unit (and so DSU) separately when determining Difference Charges. This means that Proposal 2 would need further development to deliver the desired effect.
- 2.6.28 The use of Secondary Trading might be a possibility to deal with the issues remaining if Proposal 2, or a similar change, were implemented. However, the current drafting of both the Alternative Secondary Trading Arrangements (in M.12) and the enduring solution (in chapter H) would not enable useful trades. In particular, if any New Capacity CMU delivers more capacity than its Initial Capacity (Total) when demonstrating Substantial Completion this additional capacity is ignored by the CMC and does not become available for Secondary Trade. A change to allow this might be a first step in resolving some of the issues identified by DRAI.
- 2.6.29 Given the above, the SEM Committee are minded to take the responses to this consultation as the basis for a revised Modification. Depending on the nature of the consultation responses, it may be appropriate to take some (or all) of a revised Modification back to a future working group prior to a second consultation ahead of a final implementation decision.

2.7 CMC_11_21 – EXTENSION OF ASTN ARRANGEMENTS

Proposer: Energia

Proposal Overview

- 2.7.1 This modification seeks to extend existing Alternative Secondary Trade Notification arrangements as per M.12 of the Capacity Market Code, which was decided under the decision SEM-20-064⁵ in relation to CMC_09_19.
- 2.7.2 The modification proposes to include the option that, when entering a secondary trade, a seller may have the option to trade above the unit's de-rated capacity volume. In their submission, Energia highlight that whilst this element was included in the original proposal for the modification CMC_09_19, it was de-scoped to facilitate the modification's implementation.
- 2.7.3 As part of their submission, Energia stated that the proposal will contribute to Security of Supply. They elaborate that this will be as a result of participants being in a position to trade above their de-rated capacity in the market.
- 2.7.4 They are of the view that this modification will allow parties to trade obligations and reduce their exposure and it is considered a necessary supplement to the existing interim solution and a driver to ultimately fulfilling the Capacity Market Code enduring requirements under section H Secondary Trading.

Working Group Feedback

- 2.7.5 The RAs stated that this does form part of the enduring solution which was approved by the SEM Committee, under *SEM-16-022 CRM Decision 2*⁶, in 2016.

When approval was granted to trade above a de-rated capacity value, the SEM Committee placed a condition within the enduring solution which placed a 70 day limit as without this limit, there was the potential to erode not only the hedge to consumers but also security of supply.

Taking this into consideration, the RAs view that this limit should remain in place.

- 2.7.6 Energia advised that the focus when producing this proposal was to allow for additional flexibility to participants when utilising the Secondary Trading Processes. They further advised that from their view they believe this is adding a restriction for which they can't see any benefit for market participants.
- 2.7.7 The SOs disagreed with this, advising that the limit is in place to mitigate concerns associated with putting the system at risk.

⁵ https://www.semcommittee.com/sites/semc/files/media-files/SEM-020-064%20CMC%20Mods%20WG12%20CMC_09_19%2007_20%2008_20%20Decision%20Paper.pdf

⁶ <https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-16-022%20I%20SEM%20CRM%20Detailed%20Design%20Decision%20Paper%202.pdf>

- 2.7.8 Energia advised that they can go back to their proposal to reconsider this.
- 2.7.9 The SOs advised that they would have several concerns with the proposal, specifically around units trading above their de-rated capacity in general. Further elaborating on this, whilst they could see there are benefits to providing market participants with extra flexibility, they are of the view that this would put the system at risk.
- 2.7.10 Energia highlighted that, given the ability for a unit to trade above this de-rated capacity forms part of the enduring solution, this should be progressed. Further to this, they advised that it is disappointing that this hasn't been progressed following previous modifications and didn't form part of the "road map" for implementation of the process.
- 2.7.11 The SOs advised that what is being proposed within the modification is quite broad, and they are of the view that it should be narrowed to focus on what is being facilitated as well as identifying what other elements may need to be brought in to the fold.
- 2.7.12 ESB advised that they wouldn't share concerns over the ability to trade above a de-rated capacity. Further, they stated that at the moment participants can use the interim secondary trading process and give back the capacity obligation. If an RO event occurs and a participant has traded above their gross de-rated capacity, they will have lost the capacity but would be covered against the higher prices.
- ESB believe this would lower the chance of their being a hole in the hedge and therefore believe there is a benefit to being able to trade above and would fully support implementing this.
- 2.7.13 The RAs also referred to comments provided by the DRAI earlier in the working group, noting that there could be commonality between CMC_11_21 and the DRAI proposal, CMC_10_21 and it may be of use to consider both these proposals in conjunction with each other.
- 2.7.14 The SOs took this opportunity to re-iterate comments provided under CMC_11_21, highlighting that any changes made as part of these proposals would have an impact from a systems point of view.
- They further advised that additional clarity would be appreciated in terms of the design requirements associated with the proposal. Once this is available they would then be able to assess this from a systems perspective.
- 2.7.15 Tynagh queried whether there would be an interim step that could be implemented whilst system updates are going on. They referred to the five day validation period and asked if it would be possible to reduce this as completion of system updates would take at least 18 months to implement.
- Both Energia and ESB echoed the comments from Tynagh and support a reduction of the five day validation period to one day.
- 2.7.16 In response to the query put forward by Tynagh, as to why a reduction in the validation period wasn't included within the proposal, Energia stated this was covered in the decision made to implement Secondary Trading that was taken in 2020 and therefore the focus here was on the

ability to trade above a de-rated capacity value. However, Energia advised they can take this away and discuss internally as to whether it should be included as part of this proposal.

- 2.7.17 The SOs noted that reducing the five day's notice to trade would also increase flexibility in the ASTA arrangements, though as noted during the consideration of CMC_09_19 this would require system development.
- 2.7.18 Tynagh also took the opportunity to highlight that if a participant has a secondary trade and there is movement relating to outages, it is currently the responsibility of the participants to cancel the trade. They elaborated that it may be of more use if the outage is moved and participants then being given the option to cancel, thus the default would be that the trade would not progress with the outage.

Minded to Position

- 2.7.19 Following the working group and the comments by the SOs, Energia have updated the proposed Modification to reduce the time between submitting an Alternative Secondary Trade Notification and the change becoming effective in the Capacity and trade Register (M.12.3.1).
- 2.7.20 In the updated drafting Energia have not reinstated the 70 day limitation on the period for which a Seller can offer above its de-rated capacity. This is part of the enduring solution for secondary trading set out in Chapter H.

The SEM Committee believes that the arguments it put forward in CRM Decision 2 (SEM-16-022) remain valid and that the 70 day limit is a key element in permitting trade above de-rated capacity and offers important protection to consumers.

- 2.7.21 Given the Modification continues to move closer to the enduring solution, the SEM Committee are minded to approve the modification, subject to two caveats:
- a) inclusion of the 70 day limit on sales above de-rated capacity; and
 - b) the practicality of implementing a reduction in the notice period for trades under M.12.

3. CONSULTATION QUESTION

- 3.1.1 The SEM Committee welcomes views and responses on the proposed modifications raised within this consultation paper.
- 3.1.2 Respondents are invited to provide comments and feedback for each of the proposed Modifications in respect of:
- the proposed modification and its consistency with the Code Objectives;
 - any impacts not identified in the Modification Proposal Form, e.g. to the Agreed Procedures, the Trading and Settlement Code, IT systems etc.; and
 - the detailed CMC drafting proposed to deliver the Modification.
- 3.1.3 A template has been provided in Appendix D for the provision of responses.

4. NEXT STEPS

- 4.1.1 The SEM Committee intends to make a decision in September 2021 on the implementation of the Modifications outlined within this consultation paper.
- 4.1.2 Responses to the consultation paper **must** be sent to Kevin Lenaghan (Kevin.Lenaghan@uregni.gov.uk) and Kevin Baron (Kevin.Baron@uregni.gov.uk) **by no later than 17.00 on Tuesday, 10 August 2021.**
- 4.1.3 Please note that we intend to publish all responses unless marked confidential. While respondents may wish to identify some aspects of their responses as confidential, we request that non-confidential versions are also provided, or that the confidential information is provided in a separate annex. Please note that both Regulatory Authorities are subject to Freedom of Information legislation.