

APPENDIX C – RESPONSE TEMPLATE

SUMMARY INFORMATION

Respondent's Name	ESB Generation and Trading
Type of Stakeholder	<i>Generator</i>
Contact name (for any queries)	<i>Therese Murphy</i>
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Confidential Response	No

CAPACITY MARKET CODE MODIFICATIONS CONSULTATION COMMENTS:

ID	Proposed Legal Text and its Consistency with the Code Objectives	Impacts Not Identified in the proposed Legal Text	Detailed CMC Drafting Proposed to Deliver the Modification
CMC_03_23: Amendment to Long Stop Date for T-1 Capacity Auction	<p>ESB GT support the fundamentals underpinning the proposal to extend the LSD for the T-1 Capacity Auction.</p> <p>We welcome the SEMC's support for facilitating Awarded New Capacity whenever possible and their assessment recognising some of the merits of extending the LSD deadline by varying amounts.</p> <p>ESB GT believe there are considerable benefits in extending the LSD, as we</p>	<p>ESB GT support actions to encourage and facilitate the delivery of new capacity projects and acknowledge the benefits in adopting a pragmatic approach in efforts to avoid termination of much needed capacity, especially at this critical time for security of supply.</p> <p>We draw attention to the fact that this assertion was also highlighted in the EY report on the Performance of the SEM CRM (commissioned by the SEM Committee) - <i>A more permissive approach to extension applications could have</i></p>	<p>J.5.7 Extension of Date for Long Stop Date</p> <p>J.5.7.1 A Participant or an Enforcing Party (on behalf of a Participant) may, prior to the scheduled date for meeting the Long Stop Date in respect of Awarded New Capacity, as per the Capacity Auction Provisional Results Date, that arises from a Capacity Auction in respect of the Capacity Year 2023/24, with a capacity duration of one year or less apply to</p>

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	<p>acknowledge that this more flexible approach has the potential to facilitate the connection of awarded capacity projects for at least a portion of the capacity year, and through doing so make a valuable contribution to security of supply.</p> <p>We have reviewed the revised SEMC proposal to facilitate an extension to the LSD based on legal drafting analogous to J.5.2, which would allow the RAs to grant an extension to the LSD on a case-by-case basis to apply only to the Capacity Year 2023/24. Whilst we remain fundamentally supportive, we also raise concerns for how this proposal could work in practice (details provided in the right-hand column).</p> <p>ESB GT have therefore proposed a revised proposal that addresses our concerns by providing clarity and assurance to investors and reducing risk and uncertainty for all parties to the benefit of the customer.</p>	<p><i>secured capacity sooner and at lower cost to consumers than allowing the plant to participate in a fresh auction.</i></p> <p>However, whilst we remain fundamentally supportive of the proposal to extend the LSD, we also raise concerns for how the proposal to grant an extension on a case-by-case basis could work in practice. Specifically, we raise concerns for:</p> <ul style="list-style-type: none"> • No clarity or transparency regarding the criteria used to determine the LSD extension, which exposes the process to potential legal challenge. • Not implementable - the timeframe proposed for the application process (20 Working Days prior to the start of the applicable Capacity Year) is beyond the Capacity Auction Approval Date. • Disproportionate risk undermines a competitive and efficient market – exposing participants that enter auction to termination charges in the case where their application for an LSD extension is rejected is unfair - This is a known risk as applications to extend the LSD via Mods have been received. 	<p>the Regulatory Authorities to extend that date to a new date after the start of the applicable Capacity Year in which the Awarded New Capacity is to be provided.</p> <p>J.5.7.2 If the following criteria is met:</p> <ul style="list-style-type: none"> a) ION testing has been agreed post the start of the relevant capacity year, with the date of commission to be within the relevant capacity year; or b) Capital Expenditure committed or incurred greater than 50% of Total Project Spend. <p>then</p> <p>the application under paragraph J.5.7.1 shall includeprovide:</p> <ul style="list-style-type: none"> (a) reasons for the request in reasonably sufficient detail to enable the Regulatory Authorities to consider the request, together with sufficiently detailed supporting evidence; (b) details of the actions being taken to rectify the issues causing the delay;

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	<p>In our view our revised proposal is pragmatic and benefits all parties by offering a solution, which is:</p> <ul style="list-style-type: none"> • Proportionate: Presents a balanced approach to facilitating the connection of awarded capacity and through doing so encourages auction participation. • Reasonable: offers a fair and reasonable opportunity to all market participants and does not expose them to termination fees. • Future-proof: the proposed solution can be applied to any capacity year and can therefore continue to support delivery of available awarded capacity through the critical Security of Supply period. • Non-discriminatory: the inclusion of assessment criteria provides clarity and transparency to market 	<p>In our view the revised proposal in the supplemental consultation paper introduces risks and uncertainty for both developers and the RAs.</p> <p>Inherent risks for developer</p> <p>The proposed timeline for making an application to extend the long stop date is “at least 20 Working Days prior to the start of the applicable Capacity Year”. In the case where the LSD was subsequently denied the developer would be required to pay termination fees (€30k/MW prior to the start of the Capacity Year and €40/MW after the start of the Capacity Year). A situation which would be extremely high risk for developers.</p> <p>ESB GT consider that the inherent risks for the developers in the proposal place unreasonable risk on market participants and could be expected to have an adverse impact on investor incentives and signals in the market, reflecting higher regulatory uncertainty and ultimately discouraging participation in the capacity.</p> <p>Risk of legal challenge for RAs</p> <p>We anticipate that the lack of transparency in the decision-making process will leave the RAs open to legal challenges from market</p>	<p>(c) a plan to rectify those issues, if any exist, the tasks that need to be undertaken to meet the revised Long Stop Date; and</p> <p>(d) details of any impact on other Implementation Plan dates, with detailed reasoning.</p> <p>J.5.7.3 If a participant utilises and achieves the criteria in J.7.5.2 (a) the extension of the long stop date will align with ION testing + 4 months;</p> <p>J.5.7.4 If this 4 month period is exceeded, and a FON hasn't been achieved, than the unit is deemed to have achieved a FON necessary for substantial completion and LSD requirements.</p> <p>J.5.7.5 if a participant utilises and achieves the criteria in J.7.5.2 (b) the extension of the long stop date will be the earlier of:</p> <ol style="list-style-type: none"> The date equivalent to [5%] of the project spend committed or incurred per month, or

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	<p>participants in regard to the application process.</p> <p>In doing so the ESB GT proposal provides assurance to investors and will encourage participation in the capacity market. This is expected to increase competition and ensure efficient economic outcomes which deliver real value for the end customer, and through doing so support the following of the Capacity Market Code objectives:</p> <p>(b) to facilitate the efficient, economic and coordinated operation, administration and development of the Capacity Market and the provision of adequate future capacity in a financially secure manner;</p> <p>(c) to facilitate the participation of undertakings including electricity undertakings engaged or seeking to be engaged in the provision of electricity capacity in the Capacity Market;</p>	<p>participants adversely impacted by their decision.</p> <p>In our view this assessment process is subjective and doesn't provide participants with clear direction on the criteria that will be used to determine whether their projects are eligible for an extension. It therefore has the potential to leave the RAs decision open to a legal challenge from parties that have been unsuccessful in their application for an LSD extension.</p> <p>ESB Proposal</p> <p>In our proposal set out below we seek to address the challenges highlighted above and through doing so reduce the risks for all parties.</p> <ul style="list-style-type: none"> • Assessment criteria: To improve transparency and provide clarity, we suggest publishing specific assessment criteria, requiring participants to demonstrate evidence of: <ul style="list-style-type: none"> a) Interim Operational Notification (ION) testing has been agreed post the start of the relevant capacity year, with the date of commission to be within the relevant capacity year; or 	<p>ii. The end of the relevant capacity year</p> <p>J. 5.7.6 The Regulatory Authorities shall consult with the System Operators in assessing a request under paragraph J.5.7.1.</p> <p>J.5.7.7 Where the Regulatory Authorities accept a request under paragraph J.5.7.1, they shall advise the System Operators of the new Long Stop Date and any other changed Implementation Plan dates and the System Operators shall record those changes in the Capacity and Trade Register.</p> <p>J.5.7.8 Any application made to the Regulatory Authorities under J.5.7.1 should be made at least 20 Working Days prior to the start of the applicable Capacity Year the Capacity Auction Approval Date in the relevant T-1 published Capacity Auction</p>

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	<p>(d) to promote competition in the provision of electricity capacity to the SEM;</p> <p>(g) through the development of the Capacity Market, to promote the short-term and long-term interests of consumers of electricity with respect to price, quality, reliability, and security of supply of electricity across the Island of Ireland.</p>	<p>b) Capital Expenditure committed or incurred greater than 50% of Total Project Spend.</p> <p>These criteria would provide clarity to market participants and would allow them to focus their efforts on adhering to the requirements and would also provide assurance to RAs and TSOs that the project is capable of satisfying key criteria.</p> <ul style="list-style-type: none"> • Implementation: we also suggest allowing participants successful in the capacity auction to request an LSD extension based on the provisional auction results – bringing the process forward to “at least 20 Working Days prior to the Capacity Auction Approval Date in the relevant published Capacity Auction Timetable”. <p>In the case where participants achieve criterion (a) the extension of the long stop date will align with ION testing + 4months. We also propose including a caveat to allow for a scenario where the 4 month period is exceed, and a Final Operating Notification (FON) hasn’t been achieved. In which case the unit is deemed to have achieved a FON</p>	<p>Timetable.</p> <p>J.5.7.9 If an application under J.5.7.1 has been rejected by the RAs no termination fee shall apply under J.6 if awarded new capacity is terminated prior to the start of the relevant capacity year.</p> <p>J.5.7.10 Alternatively a participant may apply to the Regulatory Authorities under J.5.7.1, where the Participant elects to voluntarily both:</p> <ul style="list-style-type: none"> c) increase the Termination Charge payable under section J.7.1.10; and d) increase the Required Level of Performance Security under J.3.2.8 and posted Performance Security equal to or in excess of this revised Required Level with the System Operators in

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		<p>necessary for substantial completion and LSD requirements.</p> <p>In the case where participants achieve criterion (b) the extension of the long stop date will be the earlier of:</p> <p>i. The date equivalent to 5% of the project spend committed or incurred per month – for instance:</p> <ul style="list-style-type: none"> - 55% exp = Nov LSD - 60% exp = Dec LSD - 70% exp = Feb LSD - 80% exp = Apr LSD - 90% exp = June LSD - 100% exp = Aug LSD <p>or</p> <p>ii. The end of the relevant capacity year;</p> <ul style="list-style-type: none"> • No exposure to termination charges - in the case where the application for an LSD extension is rejected prior to the start of the relevant capacity year, we consider that it would be fair and reasonable to waive all penalties. <p>We also propose an alternative, where participants can elect to voluntarily both:</p>	<p>accordance with the requirements of J.3</p> <p>J.7.1.10 Where a Participant has elected to increase the Termination Charge and associated Performance Security under section J.5.7.1, the termination fee and performance security rates set out in the initial Auction Information Pack for the relevant Capacity Auction in which the relevant Awarded New Capacity was allocated are modified so that both the termination fee rate and performance security rates will, from the Trading Day starting immediately after the original Long Stop Date, increase by a rate (€/MW) of €2,500/month;</p>

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		<p>a) increase the Termination Charge payable under section J.7.1.10; and</p> <p>b) increase the Required Level of Performance Security under J.3.2.8 and posted Performance Security equal to or in excess of this revised Required Level with the System Operators in accordance with the requirements of J.3. This is akin to the provision under J.2.1.3 (a) (ii) and J.3.2.8 of CMC which allows AGUs and DSUs to increase penalties to achieve Substantial Financial Completion.</p> <p>In the case where participants elect to increase the Termination Charge and associated Performance Security, we propose introducing a sliding scale increasing by a rate (€/MW) of €2,500/month, from the Trading Day starting immediately after the original Long Stop Date – For example:</p> <ul style="list-style-type: none"> - Oct – E40k - Nov – E42.5k - Dec – E45k - Jan – E47.5k - Sept – E67.5k 	

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		<p>Additional comments</p> <p>ESB GT emphasise that connection of available awarded capacity projects at any stage during the capacity year must be seen as an benefit – extra MWs that can provide much needed support to the system during this critical time for security of supply, high net demand and periods of commission testing for upcoming new capacity from the T-3 and T-4 auctions.</p> <p>Specifically, we refer to our response to SEM-23-011, where we drew attention to the the benefits outlined in CRU21115¹, and subsequently strengthened in CRU letter to the Minister on the 24th May 2022, where specific reference is made to a number of market solutions that are currently being progressed.</p> <p><u>TSO Capacity planning</u></p> <p>From a TSO (capacity planning / generation adequacy) perspective, we consider that it is both beneficial and prudent to support the entry of new generation at any stage – recognising that it will ease the pressing concerns relating to the significant supply</p>	

¹ [CRU21115-Security-of-Electricity-Supply--Programme-of-Actions.pdf \(divio-media.com\)](#)

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		<p>shortfall forecast in the EirGrid Generation Capacity Statement 2021.</p> <p>In this period where the capacity market is effectively seeking to catch-up, facilitating the delivery of capacity in train (real assets) will ultimately increase capacity in the market sooner and at lower cost to consumers, than the alternative which would require procurement via a fresh auction.</p> <p>In our view this is a pragmatic approach that can be expected to prevent re-runs or shortfalls in auctions, which could adversely affect security of supply.</p> <p><u>Delivering security of supply for all customers</u></p> <p>We also consider that this pragmatic approach has the potential to deliver real value to the end consumer, as the units will be economic and available to support the system, especially at this time of heightened risk, and since capacity payments will only made after the units have been commissioned the system will not incur unnecessary costs.</p> <p><u>Amber Alerts</u></p> <p>ESB GT draw attention to the fact that 18 amber alerts have been issued over the last 3 years,</p>	

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		<p>and only 2 of these occurred in the winter months. We also note that the first amber alert in CY22/23 occurred in 12-Jun-23. Clearly, demonstrating that capacity margins can tighten at any stage during the capacity year.</p> <p><u>Net demand position</u></p> <p>In our previous response we highlighted the fact that the highest net demand position tends to occur in late summer early Autumn – during these periods the system is most reliant on conventional generation.</p> <p>This fact further reinforces the system benefit in delivering new capacity at any stage during the capacity year. For instance, during outage periods when existing assets are on planned outage for necessary maintenance as well as facilitating potential transmission outages required to commissioning and testing for other new builds. Experience in the last two summers has shown that there has been insufficient capacity to allow full flexibility during the planned outage season. We also emphasise the importance of facilitating necessary maintenance and testing during this period in order to ensure this capacity is available to the</p>	

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		system during of high demand in the winter months.	

NB please add extra rows as needed.