EP UK Investments Response to SEM-23-060 – Urgent Consultation on Modification CMC_15_23 Amendment to Performance Securities for Extended Projects

EP UK Investments (**EPUKI**) welcomes the opportunity to respond to this consultation paper. Additionally, we welcome the accelerated timeline which the SEM Committee (**SEMC**) have adopted for the consideration and decision for this modification. The critical nature of this modification for New Capacity projects necessitates an urgent timeline to provide certainty to new developments as soon as possible.

EPUKI strongly supports this modification and believes it is necessary for Security of Supply. This modification addresses high levels of risk which New Capacity providers may be exposed to through no fault of their own. In approving modification CMC_15_22, the SEMC evidently wished to protect New Capacity which incurred delays to planning and permitting as a result of third-party challenges. This modification seeks to protect such projects from a termination risk which arises in such cases. EPUKI believes that if this modification is not approved the effectiveness of CMC_15_22 will be reduced considerably.

Currently, a New Capacity project may receive an extension under CMC_15_22 which protects it from termination by Long Stop Date (**LSD**) or contractual erosion. Such an extension is only available where a New Capacity project is delayed as a result of a third-party challenge to planning and permitting. The drafting of CMC_15_22 ensures that projects can only receive an extension where the delay is unavoidable and beyond the control of the Participant. EPUKI considers this to be a fair approach and one which protects projects from external challenges.

However, a project which is awarded an extension under CMC_15_22 will face exposure to higher rates of Performance Securities and Termination Charges relative to the progress of the project. This is compounded by the fact that such projects may be awaiting the outcome of a third-party challenge to their planning permission. If a challenge was successful and planning permission was overturned, it would effectively end the project. We believe that this exposure to higher levels of risk is unequitable, particularly as these instances only arise where challenges are associated with a third-party.

This means that a New Capacity project, through no fault of the Participant associated with, may be forced to commit to higher levels of Performance Securities and Termination Charges while not having certainty over the status of their planning permission. In such cases it will be very challenging, or impossible, for a Participant to secure funding to proceed with a project as investors will not be willing to commit to the greater levels while there remains uncertainty around the planning permission. This will result in projects terminating despite receiving an extension under CMC_15_22, as investors will not be willing to take on a greater level of risk.

This modification remedies the above risk by offsetting the dates for increasing Performance Security and Termination Charge rates by a period equal to the period of any extensions awarded under the Capacity Market Code (**CMC**). This protects New Capacity projects, which receive an extension under CMC_15_22, from an unfair level of risk exposure. This makes the delivery of these New Capacity projects more likely which is positive for the consumer and Security of Supply.

Alignment with Code Objectives

The SEMC have requested feedback from Participants on how this modification aligns with the objectives of the CMC. As part of the modification proposal, EPUKI identified alignment with the following objectives under Section A.1.1 of the CMC:

(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;

The modification aligns with this objective by addressing roadblocks to the delivery of New Capacity and attempting to avoid inefficient outcomes. In recent years, the delivery of New Capacity through the Capacity Remuneration Mechanism (**CRM**) has been very challenging and resulted in a number of Awarded New Capacity projects terminating. This has contributed to the Security of Supply issues facing Ireland and Northern Ireland.

One of the key obstacles in the delivery of New Capacity is the planning process, which is arduous in nature and often delayed compared to intended timelines. The planning process also introduces a window in which third-parties may challenge the decision of the relevant authority in making the decision. Such challenges mean that the timeline for receiving planning permission is extended even further. This can affect the feasibility of New Capacity projects and result in projects terminating.

In raising this modification, EPUKI is seeking to address a risk which exists due to third-party challenges with the objective of reducing the likelihood of New Capacity terminations. This will increase the likelihood of the CRM providing "*adequate future capacity*" by removing a roadblock to delivery of same.

As set out above, this modification also seeks to resolve inefficiencies in how delayed New Capacity projects are treated. Currently, a New Capacity may receive an extension under CMC_15_22 following a challenge to its planning permission. An extension request will be assessed by the Transmission System Operators (**TSOs**) and the Regulatory Authorities (**RAs**) prior to approval. As outline above, a New Capacity project which receives an extension under CMC_15_22 may still be exposed to non-viable levels of risk. This will result in the project facing termination despite receiving an extension under CMC_15_22. EPUKI considers this to be an inefficient outcome where the RAs, TSOs, and the Participant have dedicated time and resources to an extension process which does not fully protect New Capacity from third-party challenges. This modification thus seeks to remedy this, which aligns with the economic operation of the Capacity Market.

(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;

Without this modification, New Capacity providers can be obstructed from delivering capacity by means of third-party challenges to planning permission and permits. While CMC_15_22 provides some protection from these challenges, the exposure to greater levels of risk will threaten the feasibility of projects. In particular, smaller operators with less financial backing will be prevented from participating in the delivery of New Capacity. This is because these parties will be less capable of undertaking the risk associated with Performance Securities and Termination Charges increasing while still awaiting the outcome of a planning appeal.

(d) to promote competition in the provision of electricity capacity to the SEM;

As outlined above, this modification will enable greater participation in the Single Electricity Market (**SEM**) Capacity Auctions. Addressing the infeasible level of risk exposure as a result of third-party challenges will mean that New Capacity projects are more likely to deliver. Not only do we expect this to increase competition in the CRM itself, but also in the wider SEM markets. With more electricity capacity online, we expect downwards competitive pressure on ex-ante and balancing market prices, as well as in the competitive provision of System Services.

(e) to provide transparency in the operation of the SEM;

This modification provides clarity on the rules associated with Performance Securities and Termination Charges, specifically, the interaction between extensions under CMC_15_22 and these elements of the CMC. While an extension granted under CMC_15_22 is intended to protect New Capacity projects which incur third-party planning and permitting challenges, this is currently not the case. This modification would clarify that an extension under CMC_15_22 protects Participants from both termination associated with LSD and contract erosion, and termination due to material risk exposure.

(f) 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.

This modification aligns with the short-term and long-term interests of consumers in Ireland and Northern Ireland. In the short-term the addition of New Capacity to the SEM will increase competition leading to downward price pressure for consumers.

In the longer term, this modification addresses a significant challenge to the delivery of New Capacity through the CRM. This aligns with the consumer interest with respect to both current Awarded New Capacity and future investment in electricity capacity projects. New Capacity, particularly during the ongoing Security of Supply crisis, will ensure high quality and reliability of the Irish generation portfolio.

Other Comments

The SEMC stated in the consultation paper that they wish to balance the decision to ensure Security of Supply with cost consideration to consumers. EPUKI does not consider this modification as having a material cost impact on consumers. Participants will still be required to pay Termination Charges if their project does not deliver. However, those Participants will not be exposed to rates which are prohibitively high, particularly where they are still awaiting a final decision on a third-party planning challenge.

It is understood that the increasing rates of Performance Securities and design of same based on Capacity Year is intended to cover the cost of New Capacity terminating. However, we believe that the long-term value of remedying this issue will have much greater value for the consumer than the short-term cost covering of potential termination, both directly (through Security of Supply) and indirectly (through competitive downwards pressure in the market).