



Response by Energia to SEM-23-060

***Capacity Market Code Workshop 32 Urgent
Modification Consultation Paper***

25 August 2023

Executive Summary

Urgent Modification CMC_15_23 seeks to extend the timelines for CRM contract holders to post increased Performance Securities and be subject to increased Termination Charges in the event that they have been approved for a Third Party Extension Period.

Energia is not supportive of the proposed modification. Energia has consistently opposed modification proposals that have sought to retrospectively change the terms of concluded auctions. Energia's view, that we have expressed in multiple consultation responses, is that retrospectively changing key terms of concluded auctions is unfair and uncompetitive, and contrary to the SEMC's regulatory obligations.

Energia acknowledges the concerns expressed by the System Operators that rates levied through Termination Charges are based on the costs to the end consumer where there is non-delivery of capacity. Since it became clear that New Capacity awarded in the T-3 2024/25 and T-4 2025/26 auctions would not be able to deliver on time, alternative solutions were available for the RAs that would have served the consumer better than seeking to change the rules of the CRM to favour particular contracts.

Energia also has several concerns regarding the legal drafting of the proposed modification, that we were unable to comment upon at Workshop 32 as the legal drafting was not presented at that meeting.

1 Introduction

Energia welcomes the opportunity to respond to this urgent consultation on CMC_15_23, Amendment to Performance Securities for Extended Projects. Energia participated at Workshop 32 on 20 July 2023, but limited our contributions in relation to the proposed modification as we preferred to review the modification in full once the legal drafting was made available.

2 Retrospectivity

The proposed modification amends the Performance Security Posting dates/events and the Termination Charge dates/events for CRM contract holders that have been granted a Third Party Extension Period. Third Party Extension Periods were introduced to the CMC by modification CMC_16_22.

Energia expressed strong opposition to modification CMC_16_22, as it sought to fundamentally change the terms governing concluded auction processes. In Energia's view, these changes were unfair and uncompetitive, and thus contrary to the objectives of the CMC including promoting transparency and competition, and to the RAs' regulatory requirements. In addition to CMC_16_22, Energia has opposed all other modifications that have sought to fundamentally change the terms governing concluded auction processes.

With regards to the T-3 2024/25 and the T-4 2025/26 auctions that are referenced in the consultation paper, participants entered those auctions in full knowledge of the relevant Performance Security and Termination Charge dates and events. Some participants may have decided not to enter the auction on the basis of those dates and events relative to the delivery risk for New Capacity. Energia does not support the

proposed modification, that would seek to retrospectively change those dates and events.

Energia acknowledges the concerns raised by the System Operators, that Termination Charges and the rates levied are based on the costs to the end consumer where there is non-delivery of capacity. Since it became clear that New Capacity for T-3 24/25 and T-4 25/25 was at risk of delivery, Energia has consistently argued that a better approach for the consumer would have been to allow those contracts to terminate in a timely manner and hold new auctions with appropriate lead times, risk allocation and other relevant changes as required. Existing levers are available that allow the RAs to intervene in order to address security of supply concerns without retrospectively changing the key terms of concluded auctions.

3 Legal Drafting of CMC_15_23

In addition to our overall objections to CMC_15_23 as outlined above, Energia has several concerns regarding the legal drafting of the proposed modification. Specifically:

- The modification allows for extensions where participants have been granted an “Inflationary Extension Period”. The concept of the Inflationary Extension Period is proposed in CMC_16_23, that is currently out for a consultation that is not due to close until 6 October 2023. It would be inappropriate to include legal drafting for a provision in the CMC that does not currently exist, will not exist by the time a decision is made on this modification, and may never exist if it is rejected by SEMC.
- As per the approved legal drafting, a Third Party Extension Period only ends when the relevant legal proceedings have concluded. Therefore, at the time that a participant applies to extend the dates of their Performance Securities and Termination Charges, it will essentially be an open-ended extension, with no certainty as to when the relevant charges will come due.
- The legal drafting allows for Performance Securities to be subject to “any extensions under this Code”. As outlined above, there are multiple modifications currently under active consideration that propose additional extensions for New Capacity contract holders. Energia is opposed to these modifications that propose respective changes to concluded auctions and would oppose additional extensions to Performance Securities and Termination Charges dates/events for these extensions also.

4 Conclusion

In conclusion, Energia is not supportive of proposed modification CMC_15_23, on the basis that it seeks to further retrospectively change the fundamental terms of concluded auctions, that will continue to ultimately lead to higher costs for consumers and the worsening of Ireland’s security of supply situation as explained in this response and our previous submissions. Energia also has several concerns regarding the proposed legal drafting. On that basis, Energia urges SEMC to reject the proposed modification.