EP UK Investments Response to SEM-23-084

EP UK Investments (**EPUKI**) welcomes the opportunity to respond to this Consultation Paper. This response will address each of the four modifications presented in the Consultation Paper separately.

CMC_18_23 Amendment to Definition of Third-Party Extension Period

Consistent with our position in relation to other modifications to the Capacity Market Code (**CMC**), EPUKI are supportive of the principle of extensions for projects which have incurred delays which are not the fault of the Participant.

CMC_20_23 Amendment to Timing of Opt-Out Notifications

EPUKI is disappointed with the SEM Committee's (**SEMC**) minded-to position to reject this modification. This modification was proposed in order to address the risk which exists where a capacity unit does not receive a unit specific price cap (**USPC**) which allows it to recover its costs. Under the current rules, this would mean that this unit is forced to operate at a loss for a year due to the timing for submitting an opt-out notification.

Under the existing rules, a unit may only submit an opt-out notification if it will be closed down, decommissioned, or otherwise rendered non-operational by the end of the Capacity Year to which the relevant Capacity Auction relates. Alternatively, if the unit intends to undertake a Planned Outage which will result in it being unavailable for three months during the relevant Capacity Year, or otherwise will be mothballed, it may submit an opt-out notification.

These qualifiers significantly reduce the likelihood of a Capacity Market Participant using opt-out notifications as a means to exercise market power. Under the proposed modification, where a unit does not receive a USPC which allows it to recover its costs, it will essentially need to close for the Capacity Year to which the relevant auction relates. This is aligned with closure notice guidelines of at least three years as per Security of Supply requirements for T-3 and T-4 auctions.

In absence of this modification, a unit will be required to undertake a capacity obligation for a year which it is unable to recover its costs and subsequently intending to close. EPUKI believes that this is an unfair balance of risk for generators and creates a disincentive for older generation to remain in the Capacity Market and seek a USPC (rather than opting out before this).

The Consultation Paper raises concerns that this modification could result in late opt-outs impacting volume determination. If a significant volume of capacity was opting out of participation in a Capacity Auction, this would imply that all of this capacity is intending to close (or otherwise undergo planned outage for greater than three months). EPUKI believes this scenario to be highly unlikely and were such a situation to arise, it would suggest material issues with the Regulatory Authorities (**RAs**) assessment of USPCs (i.e., if multiple capacity providers cannot afford to recover their costs and hence opt to shut down rather than take a capacity obligation).

Additionally, an opt-out prior to the publication of the Final Auction Information Pack would enable the Transmission System Operators (**TSO**) to reflect any capacity which has chosen to opt-out in the capacity requirement. EPUKI believes that this approach is fairer given the TSOs' responsibility to ensure Security of Supply. Additionally, this would align with the requirement for non-participating capacity providers to close, given that this Existing Capacity will be replaced by the relevant Capacity Year with any New Capacity which has contributed to fulfilling the capacity requirement. This would be an effective market signal for older generation to leave the market, while providing access for newer units.

CMC_21_23 Minimum Completion on Receipt of Interim Operational Notification

EPUKI is disappointed with the SEMC's minded to position to reject this modification. In the Consultation Paper, the SEMC state that this modification is due to limited availability of capacity at the Interim Operational Notification (**ION**) stage, and the incomplete nature of testing. EPUKI understands that the 5MW maximum ION has a straightforward workaround, and that the incomplete nature of testing is the primary motivation behind raising this modification (i.e., because testing may be incomplete for a significant period of time during which a unit is capable of providing capacity to the grid). As such, we believe that these two points should not be used as reasons to reject this modification.

The purpose of this modification was to enable New Capacity to receive Capacity Payments in cases where they have demonstrated the ability to provide capacity to the grid. EPUKI has identified certain requirements (i.e., Black Start Testing) which may be necessary for a unit to receive its Final Operational Notification (**FON**). These tests require specific system conditions in order to be completed, and as such a unit undergoing commissioning or Grid Code testing may be unable to undergo these tests for a number of months.

Similarly, the validation of some tests may require system operator staff to be available at times when the testing is to be carried out. This might also introduce delays to the completion of testing, if a system operator does not have the resources available to demonstrate that testing has been completed. This is exacerbated in cases where a testing window may become available at short notice. This challenge, combined with the requirement for appropriate system conditions as identified above, could result in extensive delays for the completion of certain testing, through no fault of the party delivering New Capacity.

If this modification was approved, a unit would need to be available in order to receive Capacity Payments. This would ensure that units which have not demonstrated an ability to provide capacity through testing will not receive payment. EPUKI believes that this is consistent with the intended application of the CMC rules.

Additionally, under CMC rules, New Capacity would still need to achieve Substantial Completion by the Long Stop Date or face termination. This would mean that all testing (in absence of RA approved derogations) would still need to be achieved by the New Capacity project. This ensures that while a New Capacity project will not be unduly penalised by not being able to undergo testing, it would eventually achieve all pre-requisites which currently exist within the CMC.

The Consultation Paper identifies the 5MW ION limit as a reason for not approving this modification. EPUKI understands that this limitation is only in place when the ION is first awarded. Following dispatch tests, (which are part of the Commissioning and Grid Code testing programme), a unit's export limit is increased in blocks of 10MW. This would mean that the 5MW restriction is not prohibitive to the intended purpose of this modification. In fact, EPUKI consider this to be consistent with the reasonable and fair application of this modification (i.e., where a unit will only receive Capacity Payments for the volume of capacity which it has demonstrated it can deliver). It is not the intent for this modification to receive its full Capacity Payments upon receipt of ION before it has demonstrated an ability to dispatch at this level. Under the proposed modification the volume of capacity for which a unit receives payment is increased based on its demonstrable performance.

EPUKI believes that this is an important modification for both New Capacity which will be Commissioning imminently, and newly Awarded Capacity which will need to undergo testing in the coming years. All projects which need to complete Commissioning and Grid Code testing will be exposed to this risk regardless of any preparations or mitigation measures. If a New Capacity project is unable to carry out necessary tests in order to receive Capacity Payments, this may result in a significant period with no Capacity Payments. This would need to be reflected in the valuation of projects which may result in New Capacity projects either terminating or opting not to partake in the Capacity Market to begin with.

CMC_22_23 Indexation of Capacity Payment Price for Inflation

EPUKI is supportive of the introduction of indexation to Capacity Payments, and thus supportive of CMC_19_23 at a high level. However, we have concerns around the specific application of indexation through CMC_19_23 as currently drafted.

Specifically, EPUKI is concerned around the drafting of this modification which would apply indexation to capacity awarded in auctions which take place after the modification is approved. There is no clear rationale for applying the modification in such a manner and this specification would represent an unequitable outcome for New Capacity which has already been awarded.

The drafting included in the modification proposal suggests that this particular application has been included to avoid perceived retrospective effect. However, EPUKI believes that this is a misinterpretation of the definition of retrospectivity in the context of the Capacity Market Code (**CMC**), and that this application has no bearing on whether or not indexation on Awarded Capacity would constitute retrospective action.

Based on the above, EPUKI supports the approval of this modification with amended legal drafting to apply to all Awarded Capacity, rather than restricting this modification only to Awarded Capacity in future Capacity Auctions.

EPUKI believes that restricting the application of this modification to future Capacity Auctions only would be an unfair outcome for Existing Capacity and other Awarded New Capacity. EPUKI is currently delivering 350MW of New Capacity in Northern Ireland. Inflation throughout the lifetime of this project will result in diminishing returns on this investment, due to increasing operating costs and fixed capacity payments. If CMC_19_23 was approved, all future capacity will be protected from this value erosion, while Existing Capacity will not be. EPUKI does not see any reason for this distinction.

The indexation modification previously approved by the Trading and Settlement Code (**TSC**) Modifications Committee (**Mod 07_22**) sought to address inflation risk during the construction period. This modification was proposed in response to unanticipated inflation in the wake of the Russian Invasion of Ukraine. This modification would have effectively stopped tracking inflation after the completion of construction. This is not the case for CMC_19_23, which would apply for the entire lifetime of the contract and protect against all operating inflation.

Mod 07_22 was applied to specific auctions as the construction inflation represented a specific risk. This is not the case for the proposed CMC_22_23 and therefore it should not be restricted to specific Capacity Years. Because CMC_19_23 addresses inflation to ongoing operating costs over the lifetime of a capacity contract, there is no reason to apply it to future Capacity Auctions only. We believe there should be very clear rationale to apply this modification in such a way and careful consideration is required to ensure no undue discrimination between New Capacity and Existing Capacity.

Consistent with SEM-23-001, EPUKI does not believe that applying indexation to all capacity would constitute retrospective effect. This is because the calculation of Capacity Payments occurs continually over the lifetime of a project, rather than at the point of capacity award.

EPUKI recommend that the application of indexation should be implemented through to the Trading and Settlement Code (**TSC**) rather than the Capacity Market Code. The TSC is where Capacity Payments are currently calculated and therefore is the natural location for including an indexation calculation. The inclusion of this amendment to the Capacity Market Code appears to be directly contradictory to clause F.9.1.2 which specifically disallows any indexation to the Capacity Payments, except to the extent that it is included in the TSC.

EPUKI is supportive of this modification so long as it is applied to all Awarded Capacity. Currently, there is no reason for this modification to apply to capacity awarded in future Capacity Auctions only. Such application would represent an unfair outcome for Existing Capacity in the Single Energy Market.