

EP UK Investments Response to Capacity Market Code Urgent Modifications: Workshop 37B Consultation Paper

EP UK Investments (**EPUKI**) welcomes the opportunity to respond to this consultation. This consultation concerns Capacity Market Code (**CMC**) modification (CMC_10_24), and the corresponding Workshop 37B Consultation Paper. This response relates only to the drafting changes associated with the modification, given that the principle of this modification has already been approved in SEM-24-035. EPUKI wishes to flag risks of unintended outcomes as a result of these changes, and concerns around changes which go beyond the scope of the modification and the original decision paper.

Several of the changes proposed in this modification are significant and may result in inefficient or unintended outcomes of the Capacity Auction. Given the criticality of the T-4 2028/2029 Capacity Auction, EPUKI believes that the implementation of SEM-24-035 should be done in a manner which minimises significant changes to the Capacity Market rules. Changes which are not strictly necessary for the effective introduction of Intermediate Length Contracts (**ILCs**) should be removed from this modification.

Specification of Investment Rate Threshold in Initial Auction Information Pack

It is understood that the RAs intend to publish investment rate thresholds and associated Maximum Capacity Durations in the Initial Auction Information Pack (**IAIP**). EPUKI also notes that the IAIP with respect to the T-4 2028/2029 Capacity Auction has already been published. This modification would thus require a revision to the T-4 2028/2029 IAIP which is concerning given that the qualification applications for the auction have already taken place and that the auction itself is scheduled in less than four months' time. While EPUKI recognises that this may be necessary in order to implement ILCs for the upcoming Capacity Auction, it is important to recognise that such changes undermine regulatory certainty and should not be considered acceptable from the point-of-view of regulatory best practice.

EPUKI also notes that the details provided in the IAIP are provided by the RAs in conjunction with the Market Operator and are not subject to consultation or consensus within industry. As such, it now appears that the ten-year maximum capacity duration associated with New Capacity and the five-year capacity duration for ILCs are no longer codified and could in theory be amended by the RAs without consulting industry.

This is a fundamental change to the Capacity Market rules and one which has implications far beyond the introduction of ILCs. The IAIP is not subject to consultation prior to publication and as such this amendment would mean that maximum contract durations can be changed with no notice or consultation with industry. As set out above, EPUKI supports an approach to this modification which minimises substantial changes to the market rules and unintended consequences. As such, this amendment is highly concerning. This change jeopardises future New Capacity projects and is procedurally unfair and against due process to date in the Capacity Market.

Amendment to the Definition of Market Manipulation

EPUKI is concerned about the proposed amendment to the definition of Market Manipulation within the CMC which has been included in this modification. These concerns relate to the necessity of this amendment, the impact of this amendment beyond the scope of the modification, and the timing of this amendment with respect to the upcoming Capacity Auction.

This change was not part of the SEM-24-035 decision and is not relevant or required to introduce ILCs to the Capacity Market. In the interest of transparency for market Participants, EPUKI believes that this

modification should only amend elements of the CMC which are necessary to reflect the decisions made in that paper. It is also not clear that this amendment satisfies the criteria for urgency set out in Section B.12.9 of the CMC, as this amendment is not required before the next Capacity Auction, nor does it deal with a matter which would imminently disrupt the operation of the Capacity Market or the Single Energy Market, nor does it seek to address a material error or inconsistency in the CMC. Based on this, EPUKI does not consider it appropriate to include this amendment in this modification.

Additionally, this amendment will have implications which extend beyond the scope of the modification. Exception Applications include applications for a Unit Specific Price Cap (**USPC**) and applications for a 10-year contract for New Capacity which were not identified in the decision paper but would be impacted by this amendment. For example, applications for either of the above could now be deemed to be Market Manipulation. EPUKI considers this amendment to be a fundamental change to Capacity Market rules. A breach of the Market Manipulation prohibition carries serious sanctions and implications for participants. Participants who are not planning to submit an application for an ILC may not be planning to respond to this modification and thus may not be aware of these changes. Therefore, any amendment to Market Manipulation rules which would impact participants not seeking an ILC should be subject to a separate consultation process.

EPUKI notes that Exception Applications with respect to the T-4 2028/2029 Capacity Auction have already been submitted. EPUKI reiterates that the amendment to the definition of Market Manipulation was not proposed or identified in SEM-24-035. On a procedural basis, EPUKI is opposed to implementing this change, which market Participants do not expect. Substantial changes to Capacity Market rules without adequate notice to Participants undermine regulatory certainty and investor confidence.

Finally, the definition for Market Manipulation in the CMC already covers “*submitting bids and offers*” and “*taking any action*” which satisfies criteria specified in Section B.9.1.2, and as such, the amendment to the definition to include Exception Applications appears to be unnecessary, particularly when weighed against potential unintended outcomes and reduced investor confidence.

EPUKI requests that the SEM Committee consider the comments made above and remove the proposed amendment to the definition of Market Manipulation, as is necessary and appropriate in light of ensuring proper consultation and following due process.

Reference to Exception Application in Definition of Substantial Completion

EPUKI is opposed to amending the definition of Substantial Completion to include a requirement to complete all construction or repowering works “*as described in the approved Exception Application where applicable*”. This requirement is likely to lead to an unintended outcome where either ILC projects are unable to be completed, or these projects are completed in a manner which is sub-optimal.

Due to the timelines associated with applying for an ILC and carrying out the works, there are a number of reasons for a planned investment to change from inception to delivery. For example, costs, timelines, supply chains, or improved analyses may result in more efficient or effective refurbishment options being available to participants. However, under the proposed drafting any departure from the original plan for investment (even minor) would result in a project being unable to achieve Substantial Completion. This creates a material risk for Security of Supply whereby a significant volume of Existing Capacity which has amended its investment plans (through optimisation or through necessity) will instead never obtain a valid and active capacity contract. The timing for this also means that this capacity could not be replaced by New Capacity.

EPUKI considers that adequate safeguards for refurbishment have already been included in the modification. The minimum investment threshold, and requirements around CO2 emissions and Annual Run Hour Limitations (**ARHL**) will deliver the investment that has been committed to in the ILC contract. This amendment has high potential for unintended consequences, the risk of which should be minimised insofar as possible.

EPUKI understands that this amendment was included in the modification to mitigate against the risk of gaming through the ILC mechanism. However, a more prescribed approach is necessary to avoid the unintended outcomes.

Substantial Completion Linked to Annual Run Hour Limit

EPUKI has concerns around the inclusion of the ARHL requirement in the definition of Substantial Completion. Specifically, where external amendments to laws or legislations may result in changes to ARHL specifications from the point that a refurbishment was planned. This risk is particularly relevant given the four-year delivery window associated with the upcoming Capacity Auction. EPUKI requests that this language is amended to make exceptions where external circumstances beyond the scope of the refurbishment result in a reduction to a unit's ARHL. Alternatively, the condition for Substantial Completion could be linked to the specifications for ARHL at the time of the relevant Capacity Auction (rather than the ARHL itself). Failure to protect against this risk may result in unintended outcomes whereby refurbished generators can never be completed despite satisfying the original criteria for qualifying for ILCs as set out in SEM-24-035. This also creates a termination risk for Existing Capacity undergoing refurbishment as a result of new or unforeseen laws and legislation which is not the intended purpose of the modification. This amendment requires a change in law or permitting provision in order to avoid undermining Security of Supply.

Introduction of Section M.15

The proposed introduction of section M.15 to the CMC is concerning in the context of the intended purpose of the Code. EPUKI recognises that because ILCs are a new proposal, there may be instances where changes are required in order to enact SEM-24-035. However, a provision for modifications to the CMC, and for urgent modifications, already exists within the Code for this purpose. Additionally, Section B.4 of the Capacity Market Code outlines the priority of governance noting that "*any applicable requirement, direction, determination, decision, instruction, or rule of any Competent Authority*" is given priority over the CMC.

Given that the need for flexibility and to implement decisions in a short timeframe is already covered by the CMC as outlined above, the proposed introduction of Section M.15 does not seem to provide any benefit to the functioning of the Capacity Market. Instead, this mechanism undermines the CMC and negatively affects regulatory certainty. The CMC is a document which clearly establishes the rules and processes governing the Capacity Market. The inclusion of a clause which essentially gives the RAs the freedom to update market rules in an arbitrary manner. This removes the certainty and clarity that Participants currently expect from the CMC and does not represent best practice regulation. Further, this uncertainty will potentially deter participants' decisions to invest in Existing Capacity further impacting Security of Supply.