

Utility Regulator
Queens House
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Commission for Energy Regulation
The Exchange
Belgard Square North
Dublin 24

17th February 2017

Dear Commission for Energy Regulation and Utility Regulator,

On behalf of the Confederation of European Waste to Energy Plants (CEWEP) Ireland, we are pleased to respond to the SEM Committee consultation on the Capacity Remuneration Mechanism (CRM) Capacity Market Code (CMC) (SEM-17-004).

CEWEP is the umbrella association of the owners / operators of Waste-to-Energy Plants, representing approximately 400 Waste-to-Energy Plants from 18 European countries. Our members make up 86% of the Waste-to-Energy capacity in Europe.

CEWEP Ireland is the Irish branch of CEWEP Europe and has two members. Indaver operates the Meath Waste-to-Energy facility and is proposing to develop similar facilities in Belfast and Cork. Covanta is currently constructing the Dublin Waste-to-Energy facility. By 2020 it is anticipated that members will have a total treatment capacity of over 1,070,000 tonnes per annum residual waste and export more than 90MW electricity and/or heat.

There has been less time to develop the concepts within the CMC in comparison to the Energy Trading Arrangements Trading and Settlement Code (T&SC), and this is reflected the Regulatory Authorities own comprehensive comments on the document in their accompanying consultation paper.

Our two most material comments are:

1. There remains a sizeable amount of detail regarding the secondary capacity products and several areas within and without the document which are subject to System Operator input. The objectives of such decisions are not well set out, and this raises questions as to nature of engagement with industry. This is of concern. Examples are:
 - a. The design of the secondary products is subject to System Operator consultation, but the evaluation criteria for System Operator decision making – particularly since they are also a capacity market participant – are unclear. These should be SEM Committee consultations on these matters.
 - b. De-rating methodologies should be included within the CMC, as per SEM-16-041.
 - c. The methodologies employed by the System Operator to reduce the volume of procured capacity in a constrained area – noting that the System Operator has a

material and subjective say as to who can qualify as New Capacity – is unclear and needs further definition. This impacts both new investment and existing investment, and currently the level of regulatory and system operator discretion (collaboratively or not) is not a predictable form of market design, and is therefore of great concern.

- d. We note that there is no forward looking information in relation to the likely evolution of constraints published in a relatable fashion (Level 1 constraints, Level 2 constraints, etc.) to CMC terminology to the industry. This is now required.
2. The new entrant provisions, and the implications of the stock-take transitional auction timing need to be tested properly with a few potential “use cases”, i.e. working through the steps of what new entrants (which might be operational earlier than the T-4 delivery year) will face taking part in the overall process. **In particular, the SEM Committee needs to liaise with the jurisdictional Regulatory Authorities in relation to connection policy.** Examples are:
- a. The need for a Connection Offer to qualify for an auction. This raises issues for qualification for the auction (T-4) when the connection offer does not yet exist, but there is material likelihood that the plant will have constructed by October 2022.
 - b. The need for a Connection Offer prior to the execution of the auction raises the spectre of paying non-refundable first-stage payments to the TSO, and then failing to clear the auction. This is an unreasonable risk for new entrants to take just to participate in an auction.
 - c. New Capacity must be, in the System Operator’s view, constructed prior to the start of the delivery period. The timing of the T-1 auctions (a few months prior to the start of the delivery year) means that New Capacity must build prior to receipt of a capacity payment as it cannot qualify for a T-1 auction. In practice, it can secondary trade capacity post construction for any delivery period for which it has not qualified but any such revenues are not known at financial close. This creates not immaterial complexity in financing arrangements. It is noted that running of a T-2 (or T-3 auction) is triggered by lowest overall costs to the consumer or for security of supply. We also believe that “promotion of competition” is another reasonable justification – in line with SEM Committee statutory duties – to run such auctions.
 - d. Furthermore, it is uncertain whether a generator can participate in T-1 auctions as Existing Capacity for annual capacity products, or whether it is restricted to “Prior Year” extended qualification.
 - e. There is excessive subjective evaluation of new entrants. New entrants should be required to post a bid bond equal to the initial value of the implementation bond prior to the auction, and the TSO should take a lighter reviewing roles at qualification stage. Furthermore, the level of oversight by the TSO is inappropriately onerous during the construction phase, which could lead to technical default under the CMC.

We have further detailed comments below for your consideration, which also encapsulate the thematically collated comments above.

Yours faithfully,

CEWEP

SUMMARY INFORMATION

Respondent's Name	CEWEP
Type of Stakeholder	Priority Dispatch Dispatchable Generators, New Entrant
Contact name (for any queries)	Catherine Joyce O'Caollai
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I-SEM CMC COMMENTS

ID	I-SEM CMC Reference	Short Title	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
1	A.1.2.1	Objectives	Consider state aid compliance as a Code objective to assist in Modification Proposal considerations		
6	B2.2.2.1	Governing Laws	Consider whether in the context of State Aid compliance whether the document should be interpreted within the rules of Northern Ireland, soon to be within a Third Country.		
10	B.10.2.9, B.11.2.8	Market Monitor, Market Auditor	The requirement to comply with "any direction" by the Regulatory Authorities is excessively broad and may restrict prudent competent applicants from taking on the role.		

ID	I-SEM CMC Reference	Short Title	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
	C.2	System Operator providing sufficient market information to customers	There should be an obligation to publish forward-looking constraint information within the Generation Capacity Statement or other similar forward-looking document utilising terminology similar to the CMC, e.g. Level 1, Level 2 constraints		
	C.3.3	Connection Offer for qualification	The requirement to have a Connection Offer for qualification of capacity needs substantial review with jurisdictional connection policy, both in terms of the requirements for first stage payments, and the long-stop dates, etc. contained within connection offers to ensure that the cumulative effect is not unmanageable risk for new entrants.		
	D.2	Capacity Auction Timetables	In general, tighter definition of the Capacity Auction Timetable is required, both in terms of the individual steps but also in the wide period of time in which an auction may occur. This makes any forward planning of a multi-year project difficult.		

ID	I-SEM CMC Reference	Short Title	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
	E.7.5.1	Balancing between subjective System Operator opinion and Bid Bonds	We believe that bid bonds equivalent to the level of the starting implementation bond should be provided by new capacity prior to the auction. The reliance on System Operator consideration as a gateway for new participants is not appropriate.		
	E.7.5.1	Timing of new capacity in T-1 auctions	<p>It appears that the requirement to deliver new capacity in advance of the capacity year means very high risk for any New Capacity in T-1 auctions, and consequentially, it is pragmatically impossible to get a long-term contract prior to commencing 2023.</p> <p>For the transitional years, this should not be a requirement (fully understanding the implications for “hole in the hedge” that arise).</p>		

ID	I-SEM CMC Reference	Short Title	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
	E.8.5.2	Long-term CRM product	We are uncertain whether a successful participant in a T-4 auction, securing a 10-year contract, can/must participate in any T-1 auction for which is already existing capacity. We also want to make sure that this clause does not inadvertently prohibit 10-year capacity from Oct 2022 (as it is impossible to be new 10-year capacity in a T-1 auction due to timing issues).		
	E.9.2	Querying of interim results.	Approval of interim results and the ability to challenge same, etc. should be left as is until the market beds down (i.e. for the transitional phase)		

ID	I-SEM CMC Reference	Short Title	Commentary / Explanation	Suggested Drafting Change to the CMC	Relevant Cross-Reference for any impacted section
	F.4, F.4.1.13, F.8.4.3	Locational constraints	<p>In general, the process for changing the locational constraint target – a signal on which certain generation may rely – is bad market governance. It has too high a level of step-in by the System Operators and the Regulatory Authorities. This whole section needs further consideration.</p> <p>CEWEP has, and intends to have further, generation in constrained areas. Some generators may be arbitrarily excluded from the capacity auction, or demand targets may be shifted to the same effect. This is not investible.</p>		
	H	Objectives of secondary trading products	<p>In general, the flexibility shown to the System Operator (and the System Operator led process) in the creation of secondary products is too broad. The CMC should make it clear that the development of the Secondary Products should be to fulfil the Code Objectives, strong consideration should be given to Regulatory Authority consultation for these products, and the timelines for changes to products must only be made with due regard for participants’</p>		

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	H.4.1.2	Secondary auction calendar	There is zero governance of the secondary auction calendar. This needs – at the very least – equivalent governance equivalent to the current drafting in H.3 for the secondary reserve products.		
	J2.1.1.c	Operational Certificate delay	Getting an Op Cert can be delayed by resource constraints on the EirGrid / SONI side, despite completion of all testing. Such delays should not trigger technical default.		
	J.2.1.2	Demonstration of implementation	Any document required from EirGrid/SONI/Networks should have Grid Code standing. This list of documents should be reviewed.		
	J.2.1.6, J.5	Excessive oversight when delivering projects	If there is a change to project milestone, we agree that the System Operator needs to be notified. Requiring permission from the System Operator is unnecessary and becomes a delivery and financial due diligence risk.		