EPUKI Response to SEM-23-044

EP UK Investments (**EPUKI**) welcomes the opportunity to respond to this consultation. This consultation concerns several Capacity Market Code (**CMC**) modifications, raised at Capacity Workshop 31 in May 2023.

This response addresses each of these modifications separately.

CMC_10_23 – Mitigation of Impact on Participants Relating to Third-Party Gas Connection Delays

EPUKI supports this modification. Through the approval of CMC_15_22, the SEM Committee (**SEMC**) accepted the principle that New Capacity projects should not incur erosion to their contracts as a result of no-fault third-party delays. EPUKI believes that this modification is consistent with that principle.

It is acknowledged that a previous modification was raised which sought to address the issue of third-party gas connection delays. There were a number of details relating to this medication which the SEMC considered needed to be clarified. EPUKI believes that CMC_10_23 addresses previous issues which were raised and is a more workable solution to address third-party delays.

Due to the criticality of Security of Supply challenges, EPUKI believes that the SEMC should encourage and protect investment in New Capacity in the Single Electricity Market (**SEM**). This benefits consumers through Security of Supply and downward competitive pressure on electricity prices. In recent years, capacity shortfalls in Republic of Ireland (**ROI**) have resulted in consumers paying hundreds of millions for Temporary Emergency Generation (**TEG**). The cost of TEG is far less efficient than capacity procured through the Capacity Market and EPUKI believes that a continued reliance on TEG should be avoided at all costs.

Erosion of New Capacity contracts as a result of third parties' actions which are beyond the control of a Participant creates an environment which is unfair and unattractive to new investment. Further, contract erosion means that third-party delays may result in termination of New Capacity depending on the length of delay incurred and the subsequent impact on a project's expected return.

Based on the above, EPUKI is supportive of an immediate approval of this modification.

CMC_11_23 – Amendment to Drafting Introduced Under Modification CMC_15_22

EPUKI proposed this modification in order to fully address circumstances which we consider should have been included under the original drafting of CMC_15_22. EPUKI appreciates the necessity for specific legal drafting in order to avoid unintended consequences associated with a modification. However, in this instance, we believe that the tightness of the legal drafting has left New Capacity projects in Northern Ireland exposed to instances CMC_15_22 previously sought to address.

This modification specifically seeks to include instances where a direction has been issued by the Department of Infrastructure under Article 17 and/or Article 18 of the Planning (General Development Procedure) Order (Northern Ireland) 2015. Such directions are often made in response to third-party requests to the Department. These directions effectively prevent the local planning authority from granting planning consent following the planning approval decision, until after the application has been considered and assessed by the Department, causing significant delay to the delivery of New Capacity projects that is entirely beyond the Participant's control.

Due to the fact that this delay is incurred before a planning is granted, (as opposed to a planning appeal in ROI, where planning is granted and then challenged), these delays are not covered by

CMC_15_22. EPUKI notes that a planning appeal process, while available in ROI, is not available in Northern Ireland. This means that in effect, a third-party request for an Article 17/18 direction in Northern Ireland is the equivalent to a planning appeal in ROI, which is covered by CMC_15_22. We thus consider it fair to extend CMC_15_22 to address such instances. Additionally, we believe that this would achieve the SEMC's stated aim to minimise inconsistencies across jurisdictions of the SEM. Failure to approve this modification would leave New Capacity projects in Northern Ireland at a significant disadvantage to comparator projects in ROI and exposed to a significant risk of contract erosion due to delays.

EPUKI note that CMC_15_22 introduced a range of measures to ensure that Participants cannot benefit from third-party delays. Additionally, extension requests are subject to an independent inspection to ensure that requests are legitimate. This will ensure that extension requests made in response to Article 17/18 directions are consistent with the approach set out by the SEMC in CMC_15_22.

EPUKI notes feedback received at Capacity Workshop 31, specifically that the nature of Article 17/18 directions is fundamentally different to that of planning appeals or judicial review, because a planning has not yet been granted, despite the authority deciding to award i. It is worth re-iterating that this is not the case, specifically because an extension is only sought and necessitated where a planning application is approved. If an application is rejected, an extension serves no purpose to a New Capacity project (which will likely need to terminate). Therefore, while a decision has yet to be made under Article 17/18, for all intents and purposes, one can assume that a decision to approve a planning application has been made.

Ultimately a direction under Articles 17 or 18 will result in a delay which is beyond the control of the Participant and ultimately result in contract erosion. This is consistent with the principle of New Capacity being protected from contract erosion arising from no-fault third-party delays to planning.

EPUKI consider this modification a necessity to protect New Capacity projects in Northern Ireland. We believe that this modification is consistent with CMC_15_22 while ensuring fairness and consistency across both jurisdictions within the SEM. Securing New Capacity is critical for both Security of Supply and the low-carbon transition. Additionally, New Capacity procured through the Capacity Remuneration Mechanism (**CRM**) is delivered at a significantly cheaper rate for consumers then capacity procured outside the market. As such, we are supportive of modifications which protect New Capacity investments, particularly where they are exposed to risks beyond the control of the Participant.

CMC_12_23 – Facilitation of Unit Specific Price Caps for Existing Capacity in Excess of the Auction Price Cap

EPUKI notes that this modification was put forward with three separate approaches in relation to this issue. It is disappointing that the SEMC have presented a minded-to position to reject this modification without commenting on the various options presented. The modification itself notes that under the current market ruleset it is ambiguous as to whether the Unit Specific Price Cap (**USPC**) may be set at a level which exceeds the Auction Price Cap (**APC**). Based on this ambiguity, one of the options presented in CMC_12_23 was a clarification note from the SEMC on this issue. We therefore oppose the minded-to position to reject this modification without offering clarity on this point.

Under the current drafting, the CMC does not prohibit USPCs in excess of the APC. The only barrier to bidding above the APC is the parameters of the Demand Curve associated with the Capacity Auction as set out under F.3.1.5 (e). However, EPUKI is of the view that this obstacle could be circumvented even without a modification being implemented. As seen with SEM-23-009, the SEMC has the ability to amend the APC at any point prior to a Capacity Auction to a point which is independent of the Best New Entrant (**BNE**). As such, where the SEMC approve a USPC which exceeds the APC, the APC could be updated to reflect this without any modification to the CMC.

EPUKI notes that in order to be approved for a USPC, a Participant must first make an application to the RAs for approval. The SEMC's minded-to position to reject this modification raises questions as to how this application process is conducted. If USPC applications are assessed on a project-by-project basis, we see no reason why this modification should not be approved, given that the SEMC will have the ultimate power to determine whether or not to approve a USPC above the APC (i.e., should the benefit in doing so outweigh the impact of not doing so). Alternatively, if the USPC application process is purely objective, with no flexibility or decision-making involved, it would seem unfair to refuse a USPC above the APC where a Participant can robustly demonstrate the need for such a USPC.

This issue was raised as a mechanism which the SEMC may never require but may wish to have available at some point in the future. It is stated that the current APC should facilitate adequate investment in capacity in the SEM, however EPUKI is not confident that this is the case.

The electricity system on the island of Ireland is undergoing unprecedented change as we transition to a low-carbon future. Increased renewable penetration will result in reduced market clearing and running for conventional generators. Additionally, the SEMC are currently developing a framework for low-carbon procurement for System Services. This will result in a reduction in both System Services and energy market revenue for conventional units. Simultaneously, as these units age, it is likely that maintenance and operational costs will increase. This creates a material possibility that Capacity Payments will need to contribute greater proportions of conventional units' revenue streams in order for those units to remain operational. Should this materialise, EPUKI believe it would benefit the SEMC to have the ability to approve USPCs which exceed the APC.

In addition to the transitionary nature of the electricity market, we believe that the historic performance of the CRM also justifies the introduction of flexibility where possible. Since the introduction of the CRM, a significant volume of capacity has exited the Irish market which has contributed to addressing the ongoing Security of Supply shortfall. At the same time, New Capacity has not successfully been able to deliver through the CRM due to high levels of risk and uncertainty. While EPUKI acknowledges the SEMC's actions to date on improving deliverability for New Capacity, we believe it is also important to deliver the correct market signals for Existing Capacity. This modification will enable the SEM to retain Existing Capacity where necessary for limited periods of time. This will counter the revenue stream reduction identified above, particularly in areas where it may not be possible to secure new investment in appropriate capacity.

CMC_13_23 – Minimum Completion Prior to Long Stop Date

EPUKI is supportive of this modification, particularly as relevant to CMC_03_23 which proposes to amend the Long Stop Date (**LSD**) for single year contracts awarded through the T-1 Capacity Auction. EPUKI believes that the LSD amendment is beneficial for Security of Supply and the consumer interest. This modification will protect Participants from unintended consequences which arise as a result of changing the LSD. Based on this, EPUKI is supportive of this modification.

CMC_14_23 – Locational Capacity Constraint Violation Criteria

EPUKI is strongly opposed to this modification and has concerns on the Transmission System Operator's (**TSO**) approach to the CRM. These concerns represent a significant risk to long-term

Security of Supply and should be addressed urgently. EPUKI urges the SEMC to reject this modification immediately.

This modification seeks to amend the algorithm used for deriving the Capacity Auction solution to account for violations of Locational Capacity Constraint Maximum Quantities. EPUKI considers it inappropriate for the TSO to prioritise maximum capacity constraints given the current Security of Supply situation in the SEM. The CRM should be focused on ensuring adequate capacity levels for Security of Supply in the SEM, this is aligned with the consumer interest and the objectives of the CMC. As such, it is contradictory to focus on imposing maximum thresholds and run a Capacity Auction which seeks to limit the volume of capacity delivered through the CRM.

Furthermore, this modification further enables the TSO to distort and manipulate the Capacity Auction in a way which will have significant negative consequences in the long-term. As the TSO continues to introduce new Locational Capacity Constraint Areas (**LCCA**) and can set minimum and maximum capacity quantity volume for these areas, it enables the TSO to 'pick and choose' the locations and volumes of capacity. This is contrary to the competitive nature of the CRM and will result in less efficient procurement of capacity for consumers.

Over a short period, in exceptional circumstances, it may be viewed as beneficial to introduce constraints to influence the outcome of the Capacity Auctions. However, a sustained and increasing reliance on these constraints would be catastrophic for CRM performance. An over-constrained CRM is far-removed from the original design of the CRM, which was approved as part of the EU State Aid Decision. Such a market will be exposed to significant unintended consequences which will prove hard to unravel without further constraining the Capacity Auction.

EPUKI does not consider the introduction of maximum LCCAs has been justified by the TSOs. Additionally, the fact that this modification would allow the violation of Minimum LCCAs is not explained. EPUKI believes that Security of Supply should be an absolute priority for the CRM. Based on this, we believe that Minimum LCCAs should take precedence over Maximum LCCAs. We believe that this modification gives the TSO an inappropriate level of control over the outcomes of the Capacity Auction which is an unacceptable departure from the CRM design.

The magnitude of this shift in control and outcomes of the Capacity Auction is very substantial in terms of the CRM and one which we believe may warrant an impact assessment and further consideration of State Aid compliance.

An enduring reliance on constraints was identified as a risk as part of the EU State Aid Approval for the CRM. This paper notes "*there is a concern that the presence of constraints could create conditions where new entry could exploit limited competition in the constrained zones to gain a high priced 10-year contract* [...] *when cheaper transmission investment solutions may be available".* Recent Capacity Modifications focusing on the introduction of new CRM constraints indicate that this concern is being realised. Adequacy issues in ROI have arisen due to the closure of legacy conventional plant and rapidly expanding demand, combined with underinvestment in transmission infrastructure. We believe it is likely that attempting to address these issues through the further constraining of the Capacity Market will result in long-term problems which will need to be addressed at a later date.

The EU State Aid approval further suggests that auction constraints arise largely due to grid congestions which are to be addressed by "*grid expansion projects"* and will be "*resolved to a large extent by the end of the transitional period, i.e., 2024".* The completion of the North-South Interconnector is identified as an example of this. It is clear that the TSO has not delivered on these grid expansion projects in a manner adequate to address grid congestion. Allowing for further constraining of the Capacity Market removes the incentive for the TSO to prioritise this work and creates a risk that these issues will not be resolved. This would have an enduring impact on both the Capacity Market and wider Security of Supply.

The EY Review of the Performance of the SEM Capacity Remuneration Mechanism identified a number of measures which would improve the performance and outcomes of the Capacity Market. One of these measures was "*greater focus on delivery of infrastructure to enable more competitive all-island market and reduce pressure for new builds to be situated in particular locations".* This was categorised as a high benefit, maximum impact measure. It is thus surprising that this modification is proposed when it appears to do the complete opposite of the recommended measure.

Good regulatory policy should shape the transmission network in the SEM around available capacity. This will ensure efficient network development and capacity portfolio. This modification supports a policy which shapes capacity around existing network infrastructure. This results in constraints and inefficient market outcomes, greater costs for consumers, capacity shortfalls, and weakened incentives for the TSO to expand and reinforce the transmission network.