

APPENDIX D – RESPONSE TEMPLATE

SUMMARY INFORMATION

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CAPACITY MARKET CODE MODIFICATIONS CONSULTATION COMMENTS:

ID	Proposed Modification and its Consistency with the Code Objectives	Impacts Not Identified in the Modification Proposal Form	Detailed CMC Drafting Proposed to Deliver the Modification
CMC_05_20 - Modification to Implement amendments as required by the Clean Energy Package Regulation EU 2019/943	See comments below – outside table for improved legibility	See comments below – outside table for improved legibility	See comments below – outside table for improved legibility

Overall comments

We endorse the DRAI's detailed comments on this modification. This submission focuses solely the definition of "started commercial production", as the serious impacts of the proposed wording merit very detailed consideration.

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Demand response aggregation is a long-term business. We invest a lot of effort in talking to customers to persuade them that it's a good idea for them to make their flexibility available to the power system: that if the system operator can count on their availability, then they'll be part of the solution, rather than part of a problem. That they'll enable the power system to be greener at lower cost. This expensive engagement sometimes goes on for years before a customer is ready to join a DSU.

This is very much the case with our Irish business for next week's auction, and for the following year's: we have been planning our participation and investing in recruiting customers for a long time. Many of these customers are data centre operators with existing backup generators that they would like to use to provide demand flexibility.

We have been making these investments on the basis of our understanding of the Clean Energy Package requirements. We understand these well, because our business also participates in several other countries which have been implementing the same carbon emission limits.

Our understanding of the difference between new and existing generation was set out in the letter we sent on 3 February 2020, following up on our Director's Certificate for the upcoming auctions, and seemed entirely uncontroversial.

This new definition of "started commercial production", first proposed in Appendix C of the 8 April 2020 consultation, is surprising, and radically different from what we were expecting, and the basis on which we had been planning our business. If implemented, it would disrupt our business, and that of our customers.

Specifically, implementing this definition would substantially reduce the volume of new capacity we would offer into next week's auctions, and hence the ultimate scale of our Irish business.

It would also undermine our credibility with customers, as it would mean their expectations will not be met. We could explain to them that their dashed expectations are not our fault, but rather down to an arbitrary and capricious choice by the Regulatory Authorities, but suspect this would not help much.

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This does not only affect the upcoming auctions. Adopting this wording would also damage our ability to meet our capacity market commitments for the 2022-23 Capacity Year, as we took on those commitments in the expectation that we would be able to recruit backup generators in existing data centres for our growing portfolio. While this definition does not directly prohibit such generators from participating in 2022-23 (as it first applies in 2023-24), it would prevent them from doing so in practice. This is because participation for a single year is not an attractive proposition for a customer. And telling them that participation would become “not clean” in 2023-24 also undermines the argument we have been making that it is better for them to make their flexibility available to help decarbonise the power system.

While it might be possible to find other customers to meet our 2022-23 commitments under these changed circumstances, there’s no guarantee that we could do so. It would definitely lead to extra costs, and may lead to capacity shortfalls, undermined reliability, and penalties.

Furthermore, such treatment would also damage investor confidence more broadly. As well as its demand-side aggregation business, Enel is also a major investor in wider aspects of the energy transition, particularly wind generation and large-scale battery storage. Our appetite for investment in a country’s power system is partly informed by our evaluation of the quality of governance. Ill-considered code changes that affect DSUs undermine our confidence in the governance of all aspects of the codes.

Proposed Modification and its Consistency with the Code Objectives

The issue is not with the proposed modification itself, but with the proposed wording in Appendix C of the consultation paper. Our evaluation of the proposed modification, including Appendix C, against the Code Objectives is as follows:

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(a) to facilitate the efficient discharge by EirGrid and SONI of the obligations imposed by their respective Transmission System Operator Licences in relation to the Capacity Market;

Neutral. The modification is neutral to objective (a).

(b) to facilitate the efficient, economic and coordinated operation, administration and development of the Capacity Market and the provision of adequate future capacity in a financially secure manner;

Negative. The modification harms objective (b), because implementing an unnecessary, unexpected and highly impactful policy change after first proposing it less than three weeks before the auction it affects would clearly be a poor development process.

(c) to facilitate the participation of undertakings including electricity undertakings engaged or seeking to be engaged in the provision of electricity capacity in the Capacity Market;

Negative. The modification harms objective (c) because rather than facilitating participation, it would block it. If this were necessary or environmentally beneficial, it might be understandable, but in this case it is neither.

(d) to promote competition in the provision of electricity capacity to the SEM;

Negative. The modification harms objective (d), in that it would needlessly reduce the range of resources which can compete to supply capacity.

(e) to provide transparency in the operation of the SEM;

Negative. The modification harms objective (e), because imposing this unexpected definition, which directly and unnecessarily damages the businesses of some participants, without adequate consultation, could not be construed as transparent operation.

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(f) to ensure no undue discrimination between persons who are or may seek to become parties to the Capacity Market Code; and

Negative. The modification harms objective (f) because it would discriminate against aggregators. Adopting a special definition of “started commercial production” for aggregated units means that the same generator would be counted as existing if it participated by itself and as new if it participated in an aggregated unit.

(g) through the development of the Capacity Market, to promote the short-term and long-term interests of consumers of electricity with respect to price, quality, reliability, and security of supply of electricity across the Island of Ireland.

Negative. The modification harms objective (g), because it would needlessly increase the amount of capacity that needs to be built to maintain a given level of security of supply -- hence increasing prices, against the interests of consumers in both the short- and long-term.

If the definition of “started commercial production” in Appendix C were removed (so that the phrase took on its natural meaning), then it would be positive for objectives (b), (c), and (g), and be neutral to the others.

Impacts Not Identified in the Modification Proposal Form

The impact of this issue was not identified on the modification proposal form, because it was not part of the modification. This issue was raised for the first time in Appendix C of the 8 April 2020 consultation paper.

As discussed in the “overall comments” section, implementing the proposed modification complete with the definition of “started commercial production” given in Appendix C of the consultation paper would:

- Substantially reduce the volume of new capacity we can bid for in next week’s auction.

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- Waste the investment we have made in developing a pipeline of customers for future delivery years.
- Put delivery for the 2022-23 Capacity Year at risk.
- Damage our reputation with customers.
- Undermine investor confidence in the market more generally.
- Cause more new-build generating capacity to need to be procured, which is likely to increase CO₂ emissions.

Detailed CMC Drafting Proposed to Deliver the Modification

To fix this issue, no change is needed to anything on the Modification Proposal Form. All that is needed is to omit from the high-level technical guidance the definition of “started commercial production” suggested in Appendix C of the consultation paper. As discussed in the DRAI submission, there is no obligation to define the term this way. If the definition is omitted, then a common-sense interpretation can apply.

Alternatively, the term could be explicitly defined in a more obvious way, as it has been in the GB Capacity Market Rules. The key point is that generators which were already in service on 4 July 2019 should not be treated as if they were newly built after that date. For example, the following definition would do:

“started commercial production” means when the generator was first put into service for its intended purpose.