

APPENDIX D – RESPONSE TEMPLATE

SUMMARY INFORMATION

Respondent's Name	Demand Response Association Ireland
Type of Stakeholder	Industry Association
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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
<p>CMC_05_20</p> <ul style="list-style-type: none"> - Modification to Implement amendments as required by the Clean Energy Package Regulation EU 2019/943 	<p>Executive Summary:</p> <p>The DRAI supports the intent of the Modification to ensure compliance with the Clean Energy Package (CEP) requirements and fully supports the intent of Regulation 2019/943, incentivising any new investment to be clean and low carbon, while still utilising existing generation assets.</p> <p>The DRAI appreciates that the proposed modification has been prepared quickly to meet the tight timelines associated with ensuring CEP compliance and formulating the CO₂ limits into the Capacity Market Code. However, the proposed modification, as drafted includes a new definition of “started commercial production”, specific to AGUs/DSUs (Draft Technical Guidance Note, paragraph 8), which goes beyond the requirements of the CEP Regulation and threatens to introduce an impactful and discriminatory distinction between DSUs/AGUs and other unit types. The DRAI’s view is that going beyond the requirements of the CEP Regulation to introduce this discriminatory element, creating an un-level playing field between different unit types in the market, is not acceptable, especially within the timelines associated with the</p>	<p>The DRAI believes that the impact of the new definition of “started commercial production” specifically for DSUs/AGUs is not in line with the Code Objectives.</p>	<p>Removal of paragraph 8 from the draft Technical Guidance Note (Appendix C), which effectively applies a different definition of starting <i>commercial production</i> to AGUs/DSUs, introducing a significant market distortion.</p>

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	<p>urgent modification. In addition, the DRAI believes that introducing a definition to the CMC which discriminates against a particular type of unit and creates an un-level playing field in the market is not aligned with the CMC Code Objectives.</p> <p>The DRAI therefore strongly recommends that the new definition of “started commercial production” for DSUs/AGUs is amended or removed. This would not impact CEP compliance; all generators on the system and participating as part of a DSU/AGU will fully comply with the CEP CO₂ emissions limits, even without this additional definition. Making this change to the draft modification will significantly reduce issues, complexity, and risk of legal challenge, and will enable the DRAI to support the modification and its swift implementation.</p> <p>This change to the draft modification will not have a material impact on the demand side market, but if it is not made (and the proposed modification is implemented as currently drafted), this is likely to have a particularly large impact on certain participants. The change proposed by the DRAI ensures that the Capacity Market rules remain aligned with aggregator participants’ rational actions based on all previous guidance (and the wording of the Regulation itself and the ACER guidance) that generation capacity built before 4th July 2019 would be able to avail of a run hour limitation to comply with the CEP CO₂ limits. As is the case for all other unit types in the market, generators aggregated as part of DSUs/AGUs should be treated, for the basis of applying the CEP CO₂ limits, based on when they were commissioned.</p> <p>DRAI Detailed Comments and Responses:</p> <p>The DRAI would like to recognise the highly challenging nature of the proposed modification timeline, and the consequences of this. Having been raised as a non-urgent Modification Proposal on the 16th March, CMC-05-20 was considered by participants at the 31st March CMC Workshop, before being reclassified as an urgent modification and submitted for consultation 8th April. Consultation responses are due by 20th April, with a decision expected to be published by Friday 24th April, which is less than one working day before the final deadline for bids to be submitted for the 2023/24 T-4 auction (10am Monday 27th April). It is the DRAI’s view that making such material changes to the CMC, after qualification has been completed, and so close</p>	<p>The DRAI’s view is the proposed modification effectively introduces discrimination against a particular unit type, not in line with the Code Objectives to provide transparency, maximise efficiency and ensure no discrimination between participants or unit types.</p>	

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	<p>before the auction in which it is intended for these changes to apply, is not appropriate and does not give participants the required certainty to participate in the auction.</p> <p>Despite this, the DRAI does note the significant amendments to CMC-05-20 (v2) following Working Group feedback, and supports the majority of these. - Specific comments on items significant to the DRAI are provided below.</p> <p>New paragraphs E.7.4.4/5: The DRAI supports the amendment of the treatment of aggregated units in E.7.4.4/5, making clear that the System Operators shall only reject the qualification of those elements of an aggregated unit that fail to meet the CO₂ limits (vs. the previous drafting which rejected the entire AGU/DSU). This is very reasonable and important.</p> <p>While paragraphs E7.4.4/5 reference the elements of a DSU/AGU we have some concern that there could be a risk of conflict with other paragraphs in the proposal that reference New Capacity / Candidate Unit. The DRAI requests that a review is completed to ensure that the wording throughout the draft modification is consistent with this intent, and assess if any changes are required or possibly a clarification of intent included in the decision document.</p> <p>D.4 / Technical Guidance: While the DRAI supports the provision of additional clarity by the RAs as to the determination of CO₂ emissions under the CMC (particularly for the significant areas where the ACER Opinion is unclear), it is a concern this will be provided in a Technical Guidance Note outside the CMC's governance / modification / consultation processes. The DRAI would prefer the additional clarifications to be explicitly written into the CMC.</p> <p>Draft High Level Technical Guidance Note:</p> <ol style="list-style-type: none"> 1. Treatment of high efficiency CHP. The DRAI welcomes the clarification by the RAs regarding how the CO₂ emissions from high efficiency CHP units will be calculated and the explicit guidance that the well-established EU ETS methodology determining CO₂ emissions 		

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	<p>associated with electricity produced by high efficiency CHP units can be used in this regard. The guidance provided by the RAs on this issue is in line with the treatment of high efficiency CHP under a range of other EU mechanisms, such as under the EU ETS and the Energy Efficiency Directive.</p> <p>2. Treatment of each element of an aggregated unit separately. The DRAI supports paragraph 7 of the Draft Technical Guidance (and amended sections E.7.4.4/5 of the draft Modification v2) clarifying that each element comprising an aggregated unit (i.e. DSU / AGU) will have their CO₂ emissions considered separately. This confirms the DRAI’s view that the emissions limits apply to Individual Demand Sites (IDS’) as opposed to the overarching DSU / AGU. The DRAI notes the term “element” of an AGU/DSU used in the proposed drafting is not defined or well-recognised.</p> <p>3. New definition of “started commercial production”: The DRAI strongly objects to paragraph 8 of the Draft Technical Guidance which sets out that each element of an AGU/DSU will be considered to have “started commercial production” under Article 22(4) of Regulation 2019/943 when it is first coupled with an aggregated unit.</p> <p>Background</p> <p>Regulation 2019/943 and the ACER Opinion make clear that the CO₂ emissions limits (specifically whether units can avail of the 350 kgCO₂/kW limit by restricting their run hours) apply to each electricity generator based on whether it started <i>commercial production</i> before 4th July 2019. <i>Commercial production</i> is not further defined in the Regulation or the ACER Opinion.</p> <p>The understood principle of the Regulation is that existing capacity, online prior to 4th July 2019, can continue to participate in capacity mechanisms if it accepts a run hours limit to comply with the 350 kgCO₂/kW limit, whereas new plant (online on/after 4th July 2019) has to comply with 550 gCO₂/kWh to participate.</p> <p>This is interpreted as applying based on when each electricity generator was commissioned. The draft Technical Guidance singles out a specific unit type (DSUs/AGUs)</p>		

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	<p>and applies a different requirement for determining <i>commercial production</i>, contradicting the CMC Code Objectives focussed on ensuring fair, transparent and efficient treatment of all unit types / capacity providers.</p> <p>The new definition of “started commercial production” proposed in the draft Technical Guidance Note is not defined in Regulation 2019/943, nor by the ACER Opinion. The only justification provided for the proposed treatment of DSUs/AGUs is reference to a clarification point made by ACER in a non-binding consultation response which was not included in their final guidance Opinion.</p> <p>Implementation elsewhere – GB comparison</p> <p>Faced with the same Clean Energy Package requirements, the UK Government has instead chosen to define “Commercial Production Start Date” explicitly within the capacity market rules (section 1.2) as: “the date on which a Generating Unit, when commissioned...: (a) first starts providing electricity...; and (b) is capable of being controlled independently from any other Generating Unit”. This definition, based on when the generator starts being used, is significantly more straightforward than proposed definition in the draft Technical Guidance Note.</p> <p>T-4 Directors’ Certificate Declarations</p> <p>The DRAI would like to highlight that its members have already qualified for the upcoming 2023/24 T-4 auction based on directors’ declarations (made in late January 2020) regarding whether generators included in the upcoming auction are existing generators with respect to the capacity market CO₂ emissions limits. They have done so based on our intuitive interpretation of the required test set out in Regulation 2019/943: whether a generator started commercial production before 4th July 2019. There was no indication in the Clean Energy Package text, the RA’s roadmap, the information papers published on 16th & 19th Dec (SEM-19-073 and SEM-19-074), the 17th Dec ACER Opinion, or the 16th March publication of CMC-05-20, that there was any intention that existing generators would be construed as having not started commercial production, and hence be treated as if they</p>		

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	<p>were newly built. Each of these either talked about “existing” or “new” generators, or directly quoted the Clean Energy Package text.</p> <p>The DRAI also sent a letter to the RAs (dated Mon 20th Jan) setting out its members’ interpretation of the implementation of the CEP CO₂ limits for the 2023/24 T-4 auction, and the basis on which its members’ directors’ declarations were made. DRAI members’ capacity has been qualified for the upcoming auction on the basis of its directors’ declarations (and the interpretations in its letter), despite no response having been received from the RAs. The qualification results also form the basis upon which all other auction participants will offer in the auction.</p> <p><i>Implications of proposed new definition</i></p> <p>The first indication of a proposed alternative (counter intuitive) definition came in the 8th April consultation paper, even then only being mentioned in Appendix C. The DRAI’s view is that it is too late to now make a material change to a central definition which has the potential to significantly impact capacity which participants have already qualified for the auction. Aggregators have not only signed declarations based on a different (more common sense) interpretation / definition of <i>commercial production</i>, in line with that adopted by the UK Government, but have been broadly building their pipelines and planning their businesses on the basis of their reasonable understanding of the requirements.</p> <p>The adoption of the proposed definition of “started commercial production” in the draft Technical Guidance Note would do considerable harm to the development of demand-side flexibility in Ireland and would undermine confidence in the governance of the SEM.</p> <p>Apart from being unexpected and not legally required, excluding existing backup generators also makes little sense from an environmental perspective. The point of the CRM is to ensure sufficient capacity is available. Resources with high energy costs, such as backup generators, are likely to be dispatched for very few hours – possibly no more than they would typically be for routine tests – such that the incremental carbon emissions from</p>		

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	<p>their participation will be negligible. However, having their capacity available in the CRM means that less new capacity has to be built to maintain resource adequacy.</p> <p>The new-build capacity that is displaced by existing backup generators (a) is likely to have its own CO₂ emissions, (b) if it has lower energy costs (e.g. gas generators) is likely to run for many more hours, and (c) regardless of its emissions when dispatched, will have substantial embodied emissions from being constructed. Therefore, while applying strong limits to newly-built generators makes perfect sense, it does not make sense to do the same for existing backup generators. This is why the CEP applies emissions limits to existing generators only where they have substantial running hours.</p> <p>Adopting a counter intuitive definition, such that existing backup generators are treated as if they are new, means that more other fossil-fuelled generation capacity will be built. This will increase carbon emissions.</p> <p><i>DRAI Proposal</i></p> <p>The DRAI therefore strongly recommends that the RAs either remove paragraph 8 of the draft Technical Guidance Note, or define “started commercial production” in a similar manner to the UK Government. This will allow individual electricity generators within an AGU/DSU to be evaluated based on (as is understood to be the intent of Regulation 2019/943), when it was commissioned / started being used. This is simple, transparent, easy to prove / track, and would ensure a level playing field for all unit types.</p> <p>The Modification, as drafted, already ensures that any on-site backup generation units linked to providing demand response within the Capacity Market (as for all other unit types) are subject to the Regulation 2019/943 Article 22(4) emissions limits, and the DRAI fully supports this. The DRAI does not support the implementation of the proposed specific guidance document treating DSUs/AGUs differently from other unit types (by applying a different, unjustified definition of <i>commercial production</i>).</p>		