

Subject: FEBEG position on the public consultation on
CRM Design Note: Prequalification and Monitoring

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Please find here below the FEBEG's reaction on Elia's public consultation on the CRM design notes (Part II). For the sake of clarity, a separate document has been made for each document under consultation. This document addresses the **Prequalification and Monitoring**.

Disclaimer

The present position is based solely on the documents submitted to consultation. The comments on specific elements are thus based on available information on this specific topic and might evolve as additional elements are clarified in future documents and/or public consultation. Obviously, the availability of all documents in a pre-final stage is required in order to provide a global overview allowing the stakeholders to take a final position on the matter.

General comments

Main remarks

Prequalification requirements

Due the nature of the legal framework for the CRM, the **prequalification requirements will be spread over different regulatory documents**, e.g. Electricity Law, Royal Decrees (Federal Grid Code included), Market Rules, etc. Therefore, it would be highly welcomed if Elia could publish an exhaustive overview or guideline summarizing all relevant requirements for the prequalification. Such an overview will considerably facilitate the prequalification process as it will contribute to the respect of the obligation to prequalify and to the evaluation of all the requirements by the grid users having to sign a grid user declaration.

On top of that, it should also be clarified how Elia will deal with changes in one of these regulatory documents. As Elia aims to implement a continuous prequalification process – which is appreciated – there should be **rules describing the impact of a regulatory change on prequalified, but not contracted capacities assuming contracted capacities cannot longer be impacted by these regulatory changes**. What happens with capacities

whose capacity contract expired, but want to participate in a next auction: do they have to prequalify again when there were changes in the regulatory documents?

Linked bids and mutual exclusive bids should be identified and verified in the prequalification

Capacities ≥ 25 MW are obliged to participate as one 'Individual Capacity Market Unit'. This means, for example, that a CCGT with a delivery point for the gas turbine and a delivery point for the steam turbine will not be considered as one CMU, but as two different CMU's. As the steam turbine cannot function without the gas turbine, it should be possible to link both CMU's. In other words: the option of linked bids should be introduced.

At the same time, it has been agreed to introduce the possibility of mutual exclusive bids. This mutual exclusivity should be possible between CMU's of the same capacity holder on the same site and between the CMU's of the same capacity holder on different sites.

It seems logic that **Elia identifies and verifies the 'linked bids' as well as the 'mutual exclusive bids' during the prequalification phase**, especially when the CMU's belong to different capacity holders.

Relation between prequalification by Elia and evaluation contract duration by CREG

The CREG needs to receive the prequalification results to be able to investigate the investment files of parties aiming for a longer contract duration for their investment. According to the note, Elia will communicate the prequalification files by the latest by 1 /09. This gives very little time to CREG to do an in-depth review of the investment file.

The strict timings in the Electricity Law don't allow for the introduction of an appeal procedure to question the decision of the CREG on the capacity category and still allow the concerned party to participate in the upcoming auction. As a result, it becomes the more important to have sufficient time for exchanges – in an iterative process – with CREG to allow the CREG take a well-considered and adversarial decision.

It is already appreciated that Elia allows to introduce a prequalification file at any moment and prequalification files for projects that require a CREG decision are clearly identified. This approach could be complemented with the **introduction of a maximum delay for Elia to process a prequalification file and to communicate the result to CREG.**

In that way, by timely submitting a prequalification file, sufficient time can be created to initiate exchanges with CREG on the classification in a capacity category.

Bidding bonds preliminary to bank guarantee

Is a bank guarantee to be issued within 60 days after the result of the auction a real protection against gaming behavior? What would happen if the selected CRM Candidate – despite the capacity contract – does not provide his bank guarantee within the 60 days? What would be the real financial penalty in this case? The only penalty is the termination of the capacity contract by the contractual counterparty within 60 days and exclusion of that party from future auctions. What are the criteria to choose for one of the two or both penalties? What are the modalities (formal notice, registered letter, ...)? Will Elia in this situation – to replace the missing capacity – revert to the CRM Candidates that lost the auction to procure the missing capacity?

To mitigate the risk of **possible gaming behavior between the communication of the auction results and the delay of 60 days to provide the bank guarantee**, Elia could consider the following proposals:

- Elia could **introduce ‘bidding bonds’**. A bidding bond –for a lower amount than the bank guarantee itself– could be easier to obtain by the CRM Candidates than the full amount of the bank guarantee. In case the Capacity Provider doesn’t deliver the bank guarantee within 60 days, the bidding bond could be seized by the Contractual Counterparty.
- Elia could also **request a conditional bank guarantee**, meaning that – instead of promising to sign a bank guarantee – the CRM Candidate already proves to have signed a bank guarantee with the condition that bank guarantee becomes applicable of the moment of the selection of the CRM Candidate in the auction.

Drawing of the bank guarantee

In the design note the bank guarantee serves several purposes according to Elia, namely the prevention of gaming and the prevention of not (timely) commissioning, for which the latter can be the result of not obtaining or having delays in the permitting process and the construction process. FEBEG fully supports the prevention of gaming by selected CRM candidates and the use of bank guarantees as a means to enforce this.

With respect to the environmental permitting, construction permitting, etc. the selected CRM candidate should be bound by an obligation of means rather than the foreseen obligation of results – he should act as a prudent and reasonable party, but he can’t guarantee a certain result as he is not in charge of all aspects, such as an appeal initiated

by third parties. Hence, the drawing of (part of) the bank guarantee can only take place in case of a fault by the selected CRM candidate.

Impact of late or no connection by Elia and/or third party

During the prequalification Elia will check the ability to timely connect the capacity. Elia makes a difference between:

- Connection to Elia-grid: Elia requires the signature of a technical agreement between the grid user and Elia that is valid until the date of the communication of the auction results;
- Connection to Fluxys or DSO-grid: Elia requires a firm written confirmation – modalities still to be determined – of that third party that it is possible to timely connect the capacity.

The **nature of this firm written confirmation should be thoroughly investigated** as Elia and third parties often express, in their documents, constraints limiting their liability in case of permitting issues.

Elia should also clarify the consequences in case a CMU would be selected in the auction but is not able to deliver its Nominal Reference Power due to – notwithstanding the written confirmation – a delay in the connection or the impossibility to connect by that third party. **In no circumstances the Capacity Provider can be exposed to penalties if, due to the fact that Elia or the third party did not (timely) connect the capacity, he would not be able to timely deliver the CRM Service or if he would not be able to deliver the CRM service at all.** On top of that, Elia should also completely restitute the bank guarantee. Elia and the third parties should also demonstrate that they have – as good housefather – did their best efforts to obtain the required permits.

Appeal procedure

The procedure and timings as foreseen in the design note do not allow the protection of the rights of defense in case of a decision taken by Elia, contrary to the interests of the CRM candidate. Appropriate and specific mechanisms are thus to be foreseen.

As Elia aims to implement a **continuous prequalification process – which is appreciated – there's no reason not to implement an appeal procedure.** Except for the first auction for which the timing is very strict as the regulatory framework still needs to be set up, the CRM Candidate could opt to timely start the prequalification process to create sufficient time for a possible appeal without jeopardizing his potential participation to the next capacity auction.

Upwards evolution of nominal reference power and related eligible volume

Describing the evolution of a CMU in time Elia mainly focusses on events that could trigger a reduction of the nominal reference power and the related eligible volume. The opposite could also occur.

Suppose a CCGT manages to obtain a contract for 15 delivery periods. During this period several interventions on the installations (maintenance, upgrades, new parts, ...) will need to be done which could lead to a significant increase of the nominal reference power. How will this 'additional capacity' be taken into account, as the Capacity Provider would like to be able to offer this capacity on the secondary market? The related CMU will have to be prequalified again? Does the capacity contract for the concerned CMU need to be modified?

Verification of contracted capacity during the pre-delivery monitoring

During the pre-delivery monitoring Elia will check if the nominal reference power used for the determination of the contracted capacity effectively corresponds to the observed measurements. Is this correct?

The CRM Candidate could have deliberately chosen for a lower reference power than the nominal reference power, e.g. to take into account ambient conditions. So, one would expect that Elia checks if the reference power corresponds to the observed measurements. In other words: the partial opt-out volumes – difference between nominal reference power and reference power – are to be considered as a kind of margin/buffer that will evaporate before penalties become applicable.

Specific requirements for additional capacities

FEBEG cannot agree with the fact that Elia would participate to project's meetings as external advisor, nor can FEBEG agree with the fact that Elia would request meeting reports, invoices, purchasing orders and or communication with third parties. It should suffice for the capacity provider to provide a regular update

Transfer of a CMU

A situation that currently doesn't seem addressed in the Design Note and that would need more clarification is the transfer (at any given stage during the CRM process) of a prequalified or a contracted CMU from one capacity holder to another (i.e. what are the conditions for transfer, would there be an impact in terms of prequalification, the signed

contract etc.). FEBEG assumes it should be possible to transfer a CMU with respect for the existing prequalified status and signed capacity contract (if already applicable), under the condition that the new capacity holder fulfils the same prequalification conditions (administrative and financial situation). FEBEG would appreciate a formal confirmation of the applicable conditions.

Detailed comments

Terminology

Definition 'Prequalified CRM Candidate'

Detail: 'for at least on Capacity Market Unit' should be 'for at least one Capacity Market Unit'.

Definition 'Capacity Market Unit'

In the second example on page 8 the following third configuration is also possible: one aggregated CMU consisting of 3 Delivery Points, and using the metering devices of the Delivery Points (not from the Access Point as there could be some other technical installation behind the Access Point). Can Elia confirm that the Capacity Provider is free to choose whether the Delivery Point is at access point level or at submetering level (independently of the presence of a RTU of Elia) ?

Part I – Prequalification Process

0 Overview of legal framework

1 Interactions with third parties

1.1 Prequalification of DSO-connected capacities

Second sentence: 'Indeed, Demand Side Response has contributed to deliver successfully balancing services such as FCR and mFRR'. It should be pointed out that 'generation' at DSO level is also – even longer – contributing to the balancing services.

'DSO-CRM Candidate Agreement':

- the prerequisite to sign this contract is also applicable for parties with no ambition to participate in the CRM, but that only want to participate in the secondary market; the notion 'DSO-CRM Candidate Agreement' could therefore be a bit misleading;
- as harmonization is important, it seems logic that this 'DSO-CRM Candidate Agreement' is inspired by the 'DSO-FSP Contract' but it is important to note that market parties continue to have questions and comments with regard to this contract (administrative burden, shifting risks to market parties, unreasonable liability clauses, ...).

1.2 Interactions foreseen in the CRM Law

1.2.1 Obligation to prequalify

The CRM Law foresees an obligation from any capacity holder with production exceeding the minimal threshold to submit a prequalification file. It is much appreciated that Elia tries to facilitate this obligation with a fast track prequalification.

The respect of this legal obligation is very important, not only to create a level playing field between market participants – as complying with this obligation will generate costs and administrative burden – but also to ensure that all capacities are duly identified to take into account in the volume calculation (based on a ‘declared reference power, see comment 4.2). It is therefore expected that the FPS further clarifies how all concerned parties will be informed of this obligation and how the respect of the obligation will be effectively monitored and what the consequences of a non-respect are (e.g. penalties) (see also ‘main comment’).

The volumes identified by the fast track prequalification will be considered as ‘opt-out’ volumes and taken into consideration accordingly in the volume determination. This should be further clarified in the sense that it should be made clear that these volumes are not counted upon in the volume determination. Is this a correct view? Can Elia confirm that there’s a different treatment of ‘opt-out’ volumes: opt-out volumes resulting from fast-track prequalification are ‘out’; ‘opt-out volumes’ not resulting from fast-track prequalification are ‘in’ (see page 46, #19 of the Design Note ‘Auction Process’)?

1.2.2 Production permit

It is stated that Elia will check – based on a list provided by the FPS – if all required information is provided. When this verification is positive, Elia will send the prequalification file to FPS to get their formal confirmation on that specific aspect.

It is not clear what is exactly the objective of this. Elia will check the completeness of the file and the FPS will check it again (formal confirmation)? What is the point of this check by Elia? One could wonder if this is even possible as it should be the responsibility of the permit granting authority to check the completeness of the file. The best solution would be if Elia would just transfer the documents to the FPS to check the completeness of the file. Elia should clarify the consequences of the fact that the file submitted to Elia would not be complete.

1.2.3 Capacity Contract Duration

See ‘main comment’.

It should be clear that the notification in the prequalification process of the intention to submit an investment file at the CREG, cannot be considered as a confirmation that the capacity will be available or as an obligation to effectively submit a bid in the capacity auction.

1.2.4 Eligibility Criteria

Elia will require an official commitment of the CRM Candidate on the compliance with the eligibility criteria. This commitment may be subject to an audit from the relevant authorities.

At this moment, it is not clear how effectively the respect of this obligation will be enforced. On top of that, Elia doesn't specify the penalties when a CRM Candidate would nevertheless obtain a capacity contract based on (un)wilfully wrong commitment. Enforcing the respect of this obligation – especially as relates to the rules for the cumulation of support schemes – is important in order to ensure a level playing field. In this respect, Elia should not only provide an overview of the applicable requirements (see 'main comment) but also further clarify the process. It should be described how the audit by the relevant authorities will be organized. The relevant authorities should elaborate a smart audit scheme, in that sense that the most important criteria – e.g. combination of support schemes – are de facto checked.

The Electricity Directive – resulting from the Clean Energy Package – also provides additional rules for participation to the CRM, for example with regard to CO₂-emissions. Is this condition considered as an eligibility criterion? How will this be checked?

1.3 Technical possibility to connect the proposed capacity

Elia will require a written confirmation of third parties that the Nominal Reference Power can effectively be timely connected. The nature of this commitment will be determined in collaboration with the involved parties.

Elia is invited to provide clarity on this aspect as soon as possible: the market rules will only formally be published on 15/5 but market parties should know well upfront if a connection study is required or if a comfort letter is sufficient. If a comfort letter is sufficient, Elia should further elaborate on the content and modalities of this letter. Next to that, the legal implications of such a letter should be investigated and clarified.

2 Timing

The prequalification file must be completed by 15/7. The maximum delay for Elia to provide feedback to the CRM Candidate on the completeness of the prequalification file should be clearly fixed and should be shorter than 20 working days. Otherwise – in the hypothesis a CRM Candidate has submitted his file only on 15/6 – he would only have 10 days which is really short to complete his prequalification file.

The continuous prequalification process is welcomed and supported. Nevertheless, as the CRM market rules are only published on 15/5, the question rises to what extent CRM Candidates that have been prequalified before 15/5 can be impacted by the new market rules. Does the prequalification remains valid or does it need to be redone taking into account the new market rules?

As Elia proposes to start the first prequalification from 1.04.2021 (which we think is a good proposal), can we assume that the DSO will make it possible to run the DSO track before that date?

3 ELIA Prequalification Process

3.1 Step 1 – CRM Candidate registration

3.1.1 *Become a qualified CRM Candidate*

Elia still has to develop the 'CRM application form'.

3.1.2 Bank guarantee

See main comment.

Elia should also accept a 'parent guarantee' as an alternative for the proposed 'bank guarantee'.

For DSR, if the industrial facility from which the DP is dependent closes in the pre-delivery period, will the bank guarantee be lost? One could argue that if the industrial facility is not replaced, the load on the Elia grid decreases and so the demand curve, so that it is not necessary to replace the contracted capacity of the DP.

3.2 Step 2 - Commitment with CRM set of rules

This step 2 is not clear as it refers to a 'confirmation of the agreement with the CRM rules' and to the 'capacity contract that will be a regulated contract'. Is it a correct interpretation that the CRM Candidate will be asked in this step to sign a confirmation with CRM rules and the effective signature of the regulated capacity contract will take place after the selection in the auction?

Anyhow, the following comments can be made with regard to this confirmation:

- it should be carefully designed and formulated to make clear that the signatory has no obligation – even not when pursuing the following steps of the prequalification – to effectively bid in the auction;
- it is still not clear who the Contractual Counterparty in the capacity contract will be: if this party is not Elia, then the contract should clarify the role of Elia that will act as a kind of subcontractor for the prequalification; in short: the roles and responsibilities of Elia and the Contractual Counterparty should be clarified, especially with regard to the competences related to monitoring;
- as of the moment of the signature of this confirmation, Elia uses the notion 'capacity provider': this is not in line with the definition as the capacity provider is the one that won the auction which has not yet taken place when the contract is signed; it could even be that the party, that has signed the contract, will never win an auction as he only wants to participate in the secondary market.

It is appreciated that Elia accepts that the CRM Candidate is allowed to only prove its compliance with operational processes not required for the introduction of a bid during the pre-delivery period.

3.3 Step 3 - Communication tests

It is a strange that Elia already requires communications tests to verify information at the level of the CMU or the delivery point while the CMU's are only established in the next phase of the prequalification process.

3.3.1 Metering data exchange platform and metering requirements

The requirements mentioned in this title are logically only applicable on existing units in this phase of the prequalification process.

3.3.2 Prequalification platform

Additional information on the prequalification platform would be welcomed. It should also be further clarified if this platform will become the single and formal channel for communication between Elia and the CRM Candidate or is this platform to be considered as a facilitation by Elia next to a written procedure.

3.3.3 Auction tool

Additional information on the auction platform would be welcomed. On top of that, it is considered of utmost importance that the business and IT requirements related to this tool are communicated to the market well upfront. CRM Candidates should have the possible to get familiar with and to extensively test this auction tool.

3.3.4 Availability test trigger

No comments.

3.4 Step 4 - CMU acceptance

According to FEBEG, on pg. 25 (3.4), the “nominal reference power” should replace the “reference power”.

3.4.1 Compliancy with Eligibility Criteria

See main comments and comments 1.2.4.

3.4.2 Generic requirements

We consider it logic that the candidate has to confirm he has, or will have, a valid environmental permit (if applicable) for the duration of the requested contract. In case a renewal of the permit is needed throughout the contract duration, information upon the planning to do so should be given.

3.4.2.1 Individual or aggregated CMU

No comments.

3.4.2.2 Capacity Contract Duration

See comments 1.2.3.

3.4.2.3 Energy Constrained Assets

No comments.

3.4.2.4 Technical information

The overview of the required technical information is very clear. Could Elia clarify how it intends to obtain and cross-check this information, e.g. Pmin/Pmax –currently – communicated through CIPU, ...

3.4.2.5 Grid user declaration

Providing a grid user declaration is indeed common practice in the balancing services to establish the link between the BSP and the Grid User. One could wonder if – in the framework of the CRM – the declaration should not be provided by the ‘Capacity Holder’ rather than the ‘Grid User’.

How will Elia look at this for projects for the development of new capacities, as it might not be possible yet – no connection realized – to identify the grid user? From the approach followed for existing capacities, it can be concluded that there isn’t an ownership obligation. Translating this to new projects several options should be possible, e.g. new capacity is develop in a joint venture and only one party of the joint venture becomes CRM Candidate, new capacity is developed in a joint venture and both parties jointly becomes CRM Candidate, a party develops a new project but appoints another party as CRM Candidate, ...

So, Elia should rather ensure that the CRM Candidate is properly mandated by the Capacity Holder to provide the CRM service.

3.4.2.6_DSO – CRM Candidate Agreement

See comments 1.1.

3.4.2.7_Metering / Submetering requirements

No comments.

3.4.2.8_Combination with other Capacity Providers

No comments.

3.4.3 Specific requirements (Additional Capacities)

As the specific requirements are only applicable on additional capacities, the logic conclusion is that Elia will not check in any way the production permit, construction permit, etc. of the existing capacities. Could Elia confirm this explicitly?

It is also important to point out that some existing capacities have been constructed long time ago, and, for example, before there was the obligation to have a federal generation permit. So, it will not be possible for all existing installations to provide Elia with a federal generation permit.

3.4.3.1 Grid connection

No comments.

3.4.3.2_Production permit (if relevant)

See comments 1.2.2.

3.4.3.3_Network constraints (Fluxys, DSO)

See main comments and comments made in 1.3.

3.4.3.4 Construction permit (if relevant)

In order not to impact the liquidity in the Y-4 auction, Elia will not consider the availability of a construction permit (omgevingsvergunning in Flemish region) as a prequalification requirement. The following comments can be made in this respect:

- Elia describes how it will check and monitor the delivery of the construction permit (omgevingsvergunning in Flemish region), the Environmental Impact Assessment (EIA) and environmental permit is not mentioned, although it should also be monitored;
- Elia should – taking into account the pre-delivery monitoring process and related penalties – precisely identify the permits that are subject to monitoring;
- Elia should check the availability of the required permits in the prequalification process as they could already be available which could alleviate the pre-delivery monitoring process.

Elia states that a period of 4 years is – in theory – long enough to build up and connect a capacity. It is important to point out that building the required connection line to connect a capacity is not always possible within a timeframe of 4 years.

It is noted that Elia will check the spatial planning for additional capacities. This check doesn't seem so straight forward as it is not really the core competence of Elia to evaluate compliance with spatial planning. Candidates might still be in the process for

modification of the spatial plan while still be able to be ready on time. It should not be a pre-requisite in the pre-qualification to provide the proof that the spatial plan does not need modifications. Elia should, instead, accept the proof of the involved parties that they investigating or starting the modification of the spatial plan in order to build the new capacity or the connections.

3.4.3.5_Terrain

Although this check is logic and supported, it should be further clarified which role should exactly provide this prove. This remark is also linked to the comment on the grid user declaration (see comment 3.4.2.5.): the CRM Candidate should provide that the Capacity Holder – which mandates the CRM Candidate – has the right to use the terrain.

Elia should have in mind that this verification is not possible for the construction of a connection line.

3.4.3.6_Detailed project planning

In order to ensure a true level playing field between all projects (large power plant versus demand response, repowering versus new, ...) for additional capacities, Elia should further detail, e.g. in guidelines, its expectations with regard to the milestones and the level of detail of the description of the project planning and permitting processes. Having such clear guidelines ‘ex ante’ is very important to be able to streamline the coordination with third parties, e.g. equipment suppliers, contractors, etc.

Furthermore, FEBEG is of the opinion that Elia should focus on the milestones. No binding obligations should arise from such a detailed planning for the CRM candidate as this is always an estimate. Indeed, such a planning does not take into account possible mitigating measures that a CRM candidate can take in the event of delays in for example permits.

Elia is making a remark for additional capacities exceeding a threshold – 400 MW is proposed – which would have the obligation to deliver the required permits within 24 months. FEBEG understands the background and motivation of this remark. The problem is that such an obligation would create a barrier for those projects that would face a longer permitting procedure but short building period. Such a situation could arise for large modifications on existing power stations. These projects should not be excluded when detailed planning would clearly indicate the feasibility of such projects. This obligation cannot be pulled clear-cut as such and would form a barrier to the participation of certain economic and feasible projects. Instead, Elia and the CRM candidate should agree upon appropriate milestones.

With respect to setting the threshold to 400 MW capacities for the obtention of the required permit within 24 months after the auction outcome, FEBEG proposes to lower the threshold to 300 or 350 MW to include all types of OCGT’s. We would not understand that e.g. an F-class OCGT would be treated differently than an H-class OCGT in this matter.

See also comment ‘3.4.2.4.’ and ‘3.4.3.3.’

3.5 Step 5 – Nominal Reference Power calculation

As the nominal reference power is based on historical data or a test, it doesn’t take into account the ambient conditions, e.g. temperature, pressure, humidity, ..., which

significantly impact the output of CCGT's and OCGT's. Therefore, the CRM Candidate has basically two options:

- he accepts the proposed nominal reference powers and counts on the secondary market to cover for the missing capacity in case the ambient conditions are less favourable at moments of AMT or test;
- he agrees with Elia on a lower reference power by opting out part of his capacity: this way he manages his risk of not being able to deliver the required capacity while he can sell his surplus capacity when ambient conditions are favourable (see design note 'Secondary market').

When a CRM Candidate wants to lower its nominal reference power, Elia requires a written justification detailing the reasons of that choice. What is the purpose of this document? What is the legal character of this document? Will Elia challenge the justification? It is important to point out that the justification of the CRM Candidate will not solely be linked to a technical reason, but will also depend on his risk evaluation and risk appetite.

1 st method – use of historical data

No comments.

2 nd method – use of historical balancing results

No comments.

3rd method – Organize a new prequalification test

No comments.

3.5.1.1 Test organization

No comments.

3.5.1.2 Test remuneration

No comments.

3.5.1.3 Determination of Nominal Reference Power

No comments.

Determination of Nominal Reference Power for Additional Capacities

It seems logic that also for additional capacities the CRM Candidate has the possibility to opt-out part of his capacity. See also comment 3.5.

3.6 Step 6 – Derating Factors and Opt-out Volumes

See comment 3.5.

3.7 Step 7 – Result communication to third parties

See main comments.

4 Fast track prequalification

See comment in 1.2.1

4.1 Step 1 – CRM Candidate registration

No comments.

4.2 Step 2 – CMU acceptance

For Elia it is sufficient that a CMU opting for the fast track prequalification only declares its ‘reference power’. Elia will apply a derating factor on this declared reference power to calculate the ‘fast-track volume’.

Will this ‘fast-track volume’ be taken into account in the adequacy studies and the determination of the volumes? If yes, should Elia not cross-check this declared reference power with available information?

4.3 Step 3 – Derating Factor

No comments.

4.4 Step 4 – Result communication

No comments.

5 Evolution of a CMU in time

See main comments.

Evolution of a CMU in time : “ the parameters related to a Contracted Capacity remain valid all along the Capacity Contract Duration” : according to 7.3, the initial Contracted Capacity can be reduced (volume based penalty, as in Scenario 4 for an existing capacity).

5.1 No results from pre-delivery monitoring process or availability controls

No comments.

5.2 Evolution of prequalified Eligible Volume to include pre-delivery monitoring results

See main comments.

Evolution of prequalified Eligible Volume to include predelivery monitoring results: although it is already mentioned in the 2nd paragraph on top of this page, it would be clearer if in 5.2 (and 5.3) it was also stated that the modification of the Eligible Volume and Reference Power is applicable to a later Delivery Period or Auction cycle.

In case the of detection of a missing volume in the predelivery period, is it possible to reduce the Opt-out volume and so maintain the reference power at the initial level, as Elia is both referring to Eligible Volume as Reference Power?

5.3 Evolution of prequalified Eligible Volume to include availability monitoring results

No comments.

5.4 Evolution of an aggregated CMU

No comments.

Part II – Pre-delivery monitoring

6 Monitoring related prequalification requirement

6.1 Bank guarantee

See main comments.

6.1.1 Determination of bank guarantee for capacities subject to a similar obligation in connection contract

The final proposals to adapt the capacity reservation process in the Federal Grid Code are not known yet. Although the main principles of the Elia proposal for modification of the Federal Grid Code are supported, all rights are preserved with regard to the final proposals.

6.1.2 Determination of bank guarantee for capacities not subject to a similar obligation in connection contract

It is appreciate that Elia wants to avoid to have to impose double bank guarantees. Nevertheless, Elia ensure a level playing field between parties having an obligation to submit a bank guarantee in their connection contract and parties not having such an obligation. Therefore, Elia should foresee a cap, e.g. the bank guarantee for capacities not subject to a similar obligation in the connection contract should be capped to 3 to 5 % of the project's total cost which is the requirement for parties with an obligation in the connection contract.

Elia foresees a 50% refund at the start of the commissioning phase. FEBEG considers 'the start of the commissioning phase' to be a very vague concept. Unlike the end of the commissioning phase – which is characterised by the successful commissioning test run, the start can described in many ways. Can Elia more clearly specify?

How will the percentages be re-divided if there is no need for a permit delivery?

6.2 Specific requirements for Additional Capacities

It is important to verify the legal and regulatory framework of the proposals for the project monitoring. Who has what rights? Who has the legal competence? Who will be contractual counterparty?

Elia identifies several possibilities to monitor projects: audits on site, request for any relevant information, request purchasing orders, communication with third parties, etc.

FEBEG cannot agree with the fact that Elia would participate to project's meetings as external advisor, nor can FEBEG agree with the fact that Elia would request meeting reports, invoices, purchasing orders and or communication with third parties. It should suffice for the capacity provider to provide a regular update.

7 Pre-delivery monitoring principles

See main comment.

7.1 Principle # 1 – the pre-delivery monitoring process is organized in two phases: prior and after Y-1 volume calculation

Elia divides the monitoring process in two phases, respectively monitoring phase 1 (period of 25 months) and monitoring phase 2 (period of 23 months). This split in phases is artificial and could be considered as an entry barrier as the split doesn't necessary match with a concrete project planning: a project could for example have a longer permit cycle while it could be built up in a rather short timeframe (see comments 3.4.3.6). At the other hand, the contrary is also valid as a construction period for new big projects might easily be beyond 23 months.

It seems acceptable that Elia monitors the projects in the pre-delivery periods on a continuous basis, but for the application a distinction should be made between a non-compliance within the monitoring phase and a non-compliance at the end of the monitoring phase. Indeed, although the Capacity Provider missed a milestone, he could possibly still meet the foreseen milestones at the end of the concerned monitoring phase. So, the penalties – which are very severe – should be fully applied when the non-compliance is demonstrated at the end of the concerned monitoring phase.

7.2 Principle # 2 – verification of Contracted Capacity

The process for the verification of the contracted capacity is not clear. First of all, as the Capacity Provider could have decided to opt-out part of the volume, Elia should rather check the 'Obligated Capacity' or 'Reference Power' rather than the Nominal Reference Power. This comments is also valid for the examples. Furthermore, Elia will use the 15 min measurements of the related CMU. FEBEG would like to remind that CMU with scheduling obligation availability is proven via Pmax. So the 15 min measurement data will have no function here.

7.3 Principle # 3 – The financial penalty (see section 8) must reflect the Capacity Provider possibility to mitigate the risk and increases in time

Elia list three possible penalties. It feels uncomfortable it would be left to the sole discretion of Elia to choose one of the penalties.

So, the criteria and the modalities for the application of these penalties should be further detailed. As the penalties can be very impacting, it should also be considered to involve a third party, e.g. for penalties leading to a reduction of the contracted capacity or of the contract duration Elia could put together a file that will be transmitted to a third party, e.g. CREG, that finally decides on the penalty. At least an appeal procedure should be foreseen.

8 Concrete examples and associated penalties

8.1 Scenario 1

With respect to the environmental permitting, construction permitting, etc. the selected CRM candidate should be bound by an obligation of means rather than the foreseen

obligation of results – he should act as a prudent and reasonable party, but he can't guarantee a certain result as he is not in charge of all aspects, such as an appeal initiated by third parties. Hence, the drawing of (part of) the bank guarantee can only take place in case of a fault by the selected CRM candidate.

8.2 Scenario 2

No comment.

8.3 Scenario 3

See main comments, for 'existing capacity'.

Scenario 3 : It appears that the consequences of a missing volume are more severe when detected in phase 1 (reduction of the contract duration with 1 year and 33% of the bank guarantee is lost) than when detected in phase 2 (penalties following the availability monitoring): e.g. in case of a delay of less than 1 year or a small missing volume. This is contrary to the principle on page 49 (d).

When speaking about delays, some thresholds should be specified: a delay of 1 month should not be treated as a delay of one year (although as the delivery period begins in November, the first 4 months are the most important).

8.4 Scenario 4

No comment.
