

Subject: FEBEG comments on ELIA's public consultation on the Low Carbon Tender & CRM contracts
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FEBEG thanks ELIA for having the opportunity to react to the formal public consultation on the contracts for the CRM and the tender for low carbon capacities (LCT)¹.

FEBEG refers to past comments and concerns shared about the CRM contract.

The inputs and suggestions of FEBEG are not confidential.

Introduction comment

FEBEG wants to inform Elia that some projects are being realized in a rather complex financial and contractual set-up. As a result, several rights and obligations of the capacity contract are passed on in other contracts. Modifications of the capacity contract, especially the operational processes and settlements, will typically have an impact on other contracts, e.g. service agreements, tolling agreements,... The proposed modifications will, hence, have to be introduced in these contracts, implying renegotiation of these contracts and administrative burden. **FEBEG therefore urges Elia to strive towards a stable capacity contract and to foresee a sufficient transition period.**

Additional comments on the proposed track changes²

- **Page 5:** Elia adds that the Electricity Act changes from time to time. What is the added value of this new element? Would that mean that every change of the Electricity Law related to CRM could potentially have an impact on the past and future signed contracts?

Generally speaking, the retroactive application of new rules on existing contract merits a careful discussion, FEBEG takes therefore the opportunity to share its concern on the topic. Next to the economic parameters, the **CRM Functioning Rules have a significant impact on the costs, risks and liabilities of Capacity Providers** and are, hence,

¹ https://www.elia.be/en/public-consultation/20230206_Formal-public-consultation-on-the-CRM-and-LCT-Capacity-Contract

² The comments are based on the EN version of the contracts

determining business cases and investment decisions, decisions on whether to participate in the Y-4 or Y-1 auction and decisions whether to participate in the capacity remuneration mechanism or not at all.

As a general principle, FEBEG opposes any retroactive application of a modification to the CRM Functioning Rules, without prior agreement with the concerned stakeholders. The CRM Functioning Rules are the basis for the abovementioned economic and strategic trade-offs and decisions that lead to a number of bids at a certain price level in the capacity auction of which some are translated in capacity contracts which should not change.

FEBEG is very concerned about the impact of modifications on long term contracts, e.g. 15 year contracts, especially as the CRM Functioning Rules will be reviewed on an annual basis. Several small retroactive modifications, each time slightly increasing costs, risks and/or liabilities, might over time completely distort the balance of rights and obligations in a long-term contract.

According to FEBEG, there's a general exception to this general rule of no retroactive application, namely hardship. An event that could not be foreseen by the contracting parties, that cannot be controlled by the contracting parties, that is common to all parties and that impacts their legitimate expectations and the balance of rights and obligations, justifies a retroactive application of a modification to the CRM Functioning Rules. In this perspective, FEBEG is of the opinion that a retro-active application of the indexation mechanism of the Strike Price is justified.

In addition, FEBEG can also acknowledge that certain operational modifications can be made retroactive when duly justified. This is the case for instance on changes related to the availability monitoring providing clarifications on the control modalities.

- **Page 9 (4.5):** Elia proposes to add “insofar this Payback Obligation is applicable”. We understand Elia already foresees that some technologies like DSM could be exempted by the payback obligation. FEBEG would like to remind its position with regards to the proposed changes on the payback obligation. FEBEG considers it of utmost importance that the new formula for the indexation of the strike price proposed by Elia in the Functioning Rules V3 is also applied for past yearly and long-term contracts.

The war in Ukraine and its impact on the price level in the electricity market should be considered as an unforeseen and uncontrollable event – common to all capacity providers – that justifies a retroactive modification. Capacity Providers prepared their bid – also depending on their risk appetite – based on forecasts of future market evolutions and assumed a number of pay-back obligations. The soaring energy prices resulting from the war in Ukraine could not be foreseen, let alone controlled.

The analysis of Elia during the Elia WG 'Adequacy' of the 13th of September, 2022 clearly demonstrates that his unforeseen and uncontrollable rise of electricity prices impacts the legitimate expectations of the capacity providers and that it impacts the balance of rights and obligations in the capacity contract: the current CRM Functioning Rules would lead – if the current price level would persist – to almost 3.000 hours with payback obligations, meaning that the capacity providers would lose their capacity remuneration for such a delivery year while the capacity providers legitimately expected to still receive a capacity remuneration taking into account an number of payback obligations (while still being subject to the unavailability penalties).

- **Page 9 (5.1.3):** Can we send two ex-ante invoices; for instance: one ten working days before the end of the month and a second one in case there is a new transaction before the limit of 5 working days before the end of the month.

- **Page 13 (5.4.1.1):** In the second bullet, the references to article 5.1.1 should be changed to 5.1.5.

- **Page 20 (6.3.2):** Elia writes that “the payment by the CAPACITY Provider is made at the latest on the last day of the month after the month of the date of receipt by email or the date of input in the CRM IT interface”. This could be simplified by saying that the payment is made by the end of the next month after receipt of the invoice.

- **Page 22 (7.2.5):** Should Elia not write Grid Users and/or CDS instead of Grid Users or CDS?

- **Page 31 (Appendix A.1):** Contracted Capacity (MW) per Delivery Year; we understand that this change aims at integrating the technology degradation parameter provided in the FR V3.