



## **Single Electricity Market**

**(SEM)**

### **Capacity Market Code Modifications**

#### **Workshop 33 Consultation Paper**

<b>CMC_18_23:</b>	<b>Amendment to Definition of Third-Party Extension Period</b>
<b>CMC_20_23:</b>	<b>Amendment to Timing of Opt Out Notifications</b>
<b>CMC_21_23:</b>	<b>Minimum Completion on Receipt of Interim Operational Notification</b>
<b>CMC_22_23:</b>	<b>Indexation of Capacity Payment Price for Inflation</b>

**SEM-23-084**

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Appendix A – Capacity Market Code Modification Timetable

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Appendix C – Response Template

# 1. OVERVIEW

## 1.1 ABSTRACT

1.1.1 The purpose of this consultation paper is to invite industry participants to provide feedback and comments regarding the proposed modifications to the Capacity Market Code (CMC) discussed at Workshop 33, held on 21 September 2023.

1.1.2 During this Working Group, six modifications were presented. This consultation paper relates only to the following four<sup>1</sup>:

**CMC\_18\_23: Amendment to Definition of Third-Party Extension Period**

**CMC\_20\_23: Amendment to Timing of Opt Out Notifications**

**CMC\_21\_23: Minimum Completion on Receipt of Interim Operational Notification**

**CMC\_22\_23: Indexation of Capacity Payment Price for Inflation**

## 1.2 BACKGROUND

1.2.1 On 07 September 2023, Kilshane Energy submitted one Modification Proposal (CMC\_18\_23); under the terms of B.12.4 of the CMC. The modification was marked as Urgent.

1.2.2 Following a review of the proposal, the RAs determined that the Modification Proposal should be treated as Standard.

1.2.3 On 07 September 2023, EPUKI submitted two Modification Proposals (CMC\_20\_23 and CMC\_21\_23); and Energia submitted one Modification Proposal (CMC\_22\_23) under the terms of B.12.4 of the CMC. These Modification Proposals were marked as Standard.

1.2.4 The RAs reviewed all Modification Proposals and determined that none were spurious.

1.2.5 The RAs then determined the procedure to apply to the Modification Proposals. This is shown in Appendix A. An overview of the timetable is as follows:

- i. The System Operators convened Workshop 33 where the Modification Proposals were considered on 21 September 2023.

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<sup>1</sup> Two other Modification Proposals were discussed at Workshop 33. These are CMC\_19\_23 and CMC\_23\_23, and are being addressed through two separate consultations, [SEM-23-082](#) and [SEM-23-080](#), respectively.

- ii. The System Operators, as set out in B.12.7.1 (j) of the CMC, prepared a report<sup>2</sup> of the discussions which took place at the workshop, provided the report to the RAs, and published it on the Modifications website after the workshop.
- iii. The RAs will now consult on the Modification Proposals, with a response time of no less than 20 Working Days (as defined in the CMC), from the date of publication of the Consultation.
- iv. As indicated by B.12.11 the RAs will make their decision as soon as reasonably practicable following conclusion of the consultation and will publish a report in respect of their decision.

### 1.3 PURPOSE OF THIS CONSULTATION PAPER

- 1.3.1 The purpose of this paper is to consult on the proposed standard modifications. Further detail is set out in the appended Modification Proposals in Appendix B.
- 1.3.2 The Regulatory Authorities hereby give notice to all Parties and the Market Operator of a consultation on the proposed modifications.
- 1.3.3 Interested Parties and the Market Operator are invited to make written submissions concerning the proposed modifications by no later than 17:00 on 01 December 2023.
- 1.3.4 **Please note that late submissions will not be accepted.**
- 1.3.5 Upon closure of the consultation process, the Regulatory Authorities intend to assess all valid submissions received and form a decision to implement, reject or undertake further consideration of each modification.

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<sup>2</sup> [Capacity-Modifications-Workshop-33-Report.pdf \(sem-o.com\)](#)

## 2. MODIFICATION PROPOSALS

### 2.1 CMC\_18\_23 – AMENDMENT TO DEFINITION OF THIRD-PARTY EXTENSION PERIOD

Proposer: Kilshane Energy

#### CMC\_18\_23: Proposal Overview

- 2.1.1 This Modification Proposal is intended to address an apparent gap in the definition of Third-Party Extension Period as it pertains to Ireland.
- 2.1.2 The current definition of Third-Party Extension Period covers the period from when a Participant receives a copy of the Third-Party Planning Appeal to the date of the determination by An Bord Pleanála (ABP) in respect of the Third-Party Planning Appeal. It also covers the period from when, in respect of Ireland, a Participant has been served with an originating notice or, in respect of Northern Ireland, been served with an application for leave to apply for judicial review, in respect of the Third-Party Judicial Review.
- 2.1.3 There is an 8 week period which follows the determination of ABP in respect of the Third Party Planning Appeal whereby an appellant can apply for leave to apply for judicial review of the ABP determination. Only after this eight week period has lapsed will a Participant be certain of either a judicial review proceeding or no further action and a final grant of planning permission being awarded.
- 2.1.4 Kilshane argue that as a result, no investment decisions can be made during this eight week period and that it follows that it is entirely consistent with decision SEM-23-001 to include this period in the definition of Third Party Extension Period, which will ensure the full period a Participant is delayed from being able to meet their SFC and LSD milestones aligns with any extension granted under J.5.5 of the CMC.
- 2.1.5 The Modification Proposal states that failure to implementing the proposal increases delivery risk of projects that have been delayed due to a Third-Party Planning Appeal.
- 2.1.6 Further details on the Modification Proposal are set out in the appended Modification Proposal Appendix B, which includes the draft changes to the CMC.

#### CMC\_18\_23: Working Group Feedback

- 2.1.7 Capacity Market Code Modifications Workshop 33 took place on Thursday 21 September 2023 where the modification was presented and discussed.
- 2.1.8 Energia questioned how the proposed modification ties in with the decision set out in SEM-23-069, which was to review delay mods going forward.

- 2.1.9 The RAs confirmed that work has been undertaken to develop an umbrella mod to capture all the unique delay mods that have been raised.
- 2.1.10 The TSOs commented that the modification proposal is to adapt rather than introduce a new remedial action itself.
- 2.1.11 Kilshane Energy agreed with the TSOs' comment and stated that the modification proposal is not to introduce a new remedial action, but an amendment to capture the delay period.
- 2.1.12 Bord na Móna (BnM) raised a general comment on the RA umbrella mod, stating that a Tynagh modification sought to do this before and the decision was made to split it out to make it individual and situation specific. A danger exists that if the various delay mods are grouped together, they could get very generic.

#### CMC\_18\_23: Minded To Position

- 2.1.13 The SEM Committee notes that the Supplementary Consultation on Modified and Combined Modifications to Facilitate Delivery of Capacity (SEM-23-080) referenced by the RAs at the workshop is currently live.
- 2.1.14 With respect to this modification the SEM Committee is minded to approve, as aligned with the original intention of SEM-23-001.
- 2.1.15 The SEM Committee welcomes additional feedback and comments regarding the proposed modification.

## 2.2 CMC\_20\_23 – AMENDMENT TO TIMING OF OPT-OUT NOTIFICATIONS

Proposer: EPUKI

#### CMC\_20\_23: Proposal Overview

- 2.2.1 This Modification proposes to amend the dates for Participants to submit an Opt-Out Notification to after the outcome of the exceptions application (USPC) process, rather than seven months before the auction as it currently the case in the auction schedule.
- 2.2.2 This would enable Participants who have Existing Capacity to Opt Out in the event that a USPC decision is insufficient for a unit to recover costs.
- 2.2.3 The Modification proposal states that this is necessary for older conventional units which are more likely to rely on a USPC to remain open in the future and that failure to obtain a USPC will result in such units being forced to operate at a loss unless they are permitted to opt out.
- 2.2.4 EPUKI argue that this risk of exposure to loss creates a negative retention signal for existing capacity in the Single Electricity Market (SEM), creating a situation where older generation may

opt to shutdown rather than make a USPC application and risk exposure to a year-long contract which does not cover their expected costs.

- 2.2.5 The Modification Proposal states that failure to implement this modification will result in continued and growing exposure for conventional generation units to material levels of risk, and that this risk exposure may result in Existing Capacity leaving the SEM due to being economically infeasible.
- 2.2.6 EPUKI make the case that that this will worsen a critical Security of Supply issue and result in a continued reliance on temporary emergency generation at cost to the consumer.
- 2.2.7 Further details on the Modification Proposal are set out in the appended Modification Proposal Appendix B, which includes the draft changes to the CMC.

### CMC\_20\_23: Working Group Feedback

- 2.2.8 Capacity Market Code Modifications Workshop 33 took place on Thursday 21 September 2023 where the modification was presented and discussed.
- 2.2.9 Bord Gáis Energy (BGE) stated they were generally in agreement with the modification and were of the view that there is a mismatch to the timelines if they miss the Opt Out date. However, they stated the proposed date and market signal is very late.
- 2.2.10 BGE also stated the USPC process should be overhauled and believed that the USPC decision should be made before the Opt Out deadline, allowing participants to react to market signals.
- 2.2.11 The TSOs sought further clarification and discussed two scenarios; one where applications for a USPC were rejected in its entirety and one where a USPC lower than the application was granted. They questioned whether the Opt Out could be used in both circumstances.
- 2.2.12 EPUKI confirmed that the modification is intended to apply for both instances.
- 2.2.13 Energia echoed BGE's position and were supportive of the modification. Energia also queried where proposed timing of 6 weeks in advance of the auction came from and believed the modification proposal was the only feasible option and that the USPC process should be brought forward.
- 2.2.14 The RAs responded to say the USPC process is optional for existing plants to take part in, and that it is a very intensive process similar to a mini price control. The proposed timing of 6 weeks in advance of the auction is a risk to Security of Supply, price to consumers and risks participants going into auctions too late.
- 2.2.15 The RAs further stated they would be open to looking at the USPC process as a whole and there could be merit in reviewing the process, for example by combining draft and final decisions into one.

- 2.2.16 EPUKI acknowledged the work and resources that go into the USPC process and appreciated that 6 weeks is very close to the auction. However, EPUKI also questioned the feasibility of the auction if a significant number of generators opted out so close to the auction, given this would suggest that they are also closing down.
- 2.2.17 The RAs stated that closing down of plants, grid clauses in terms of timelines are 3 years. All clauses would need to be reviewed and assessed.
- 2.2.18 BnM supported the modification but were concerned with the timelines associated with it.

### CMC\_20\_23: Minded To Position

- 2.2.19 The SEM Committee acknowledge the support for this Modification Proposal, and for a review of the USPC process.
- 2.2.20 The SEM Committee is minded to reject this proposal given the concerns around the potential for exercise of market power in the absence of mandatory bidding for existing generators as laid out in SEM-15-103 Capacity Remuneration Mechanism Decision 1.
- 2.2.21 The SEM Committee have additional concerns around the uncertainty which late opt outs would introduce to the volumes determinations at FAIP stage, and general risks to RA operational processes as currently structured which this Modification would introduce.
- 2.2.22 The SEM Committee welcomes additional feedback and comments regarding the proposed modification.

## 2.3 CMC\_21\_23 – MINIMUM COMPLETION ON RECEIPT OF INTERIM OPERATIONAL NOTIFICATION

Proposer: EPDEL

### CMC\_21\_23: Proposal Overview

- 2.3.1 This Modification proposes an amendment to the Capacity Market Code to trigger Minimal Completion on receipt of an Interim Operational Notification (ION), rather than the Final Operational Notification (FON). The proposal indicates that this would align with the Capacity Market process in GB.
- 2.3.2 This change would mean that, if all other requirements were achieved, a New Capacity unit would begin receiving Capacity Payments on receipt of an ION, representative of the point in time at which a New Capacity unit can begin providing capacity to the grid.
- 2.3.3 In order to obtain an ION, a project must provide a significant amount of documentation to the TSO for review and approval to demonstrate that the unit is suitable for connection to the Grid. This includes technical data for all equipment, system studies, and simulation models.



- 2.3.4 If a unit is unavailable or unable to provide capacity to the SEM, it will be exposed to Difference Charges and therefore will not benefit if it is not capable of providing capacity as a service to the SEM. Due to the requirements of the Commissioning and Grid Code testing programme, it may take a significant length of time to complete all testing, with months between certain tests. During this time, a New Capacity unit will be available to provide capacity.
- 2.3.5 If this modification is implemented, a unit would still be required to complete all Commissioning and Grid Code testing prior to its Long Stop Date or face termination.
- 2.3.6 Further details on the Modification Proposal are set out in the appended Modification Proposal Appendix B, which includes the draft changes to the CMC.

#### CMC\_21\_23: Working Group Feedback

- 2.3.7 Capacity Market Code Modifications Workshop 33 took place on Thursday 21 September 2023 where the modification was presented and discussed.
- 2.3.8 Kilshane Energy supported the modification proposal and stated it was very good at highlighting concerns. They believed there should be ESB and EirGrid resources and personnel to get the Interim Operational Notification (ION) to Final Operational Notification (FON).
- 2.3.9 Kilshane Energy also questioned whether there are enough resources to progress projects.
- 2.3.10 The TSOs clarified that Minimum Completion is only assessed at the end of the Long Stop Date (LSD) and that there is no avenue under the current drafting of the CMC to go from Minimum to Substantial Completion.
- 2.3.11 The TSOs clarified that if a unit reaches Minimum Completion, they are required to terminate the difference between the percentage that is minimally complete and the percentage that is substantially complete. The way the CMC is drafted now, and with CMC\_13\_23, a unit can either meet Minimum Completion or Substantial Completion. There is not an avenue for both based on the drafting provided.
- 2.3.12 EP recognised the TSOs' comments and stated they weren't aware of this and will take away and read into the point around termination.
- 2.3.13 BGE supported the principal of the proposal and stated at a high-level, it made sense.
- 2.3.14 The TSOs added that ION Capacity is capped at 5MW until further testing and certification and questioned if there is exposure for a period of time.
- 2.3.15 BnM also supported the general idea of this proposal.
- 2.3.16 The TSOs stated they will engage with the testing team to get a better understanding of the process.
- 2.3.17 Energia sought clarity on the point around 5MW, if a unit has an ION.

- 2.3.18 The TSOs confirmed that the ION is capped at 5MW, and ION would allow capacity to be exported onto the grid capped at 5MW until a dispatch test is performed and is needed for the operational.
- 2.3.19 EP stated a unit has an ION and FON separate from the dispatch test, the dispatch test being what limits the available capacity to 5MW. An argument for a unit receiving full capacity until it gets its dispatch test could be made too.
- 2.3.20 EP clarified that the purpose of the modification is that a unit should be paid when it is providing energy to the grid and fulfilling its capacity.
- 2.3.21 BGE queried whether Operational readiness confirmation is the more appropriate point for capacity payments to be made.
- 2.3.22 Kilshane Energy queried why an ION and Operational test couldn't happen at the same time and stated under the current process, there is a 2-week period of nothing happening between both tests and there could be an opportunity for improvement.
- 2.3.23 The RAs confirmed that under network code requirements, there is a need to be careful of what the definitions of ION and FON are. They clarified that ION is a notification from the SO allowing them a grid connection for a limited period to allow for compliance.

#### [CMC\\_21\\_23: Minded To Position](#)

- 2.3.24 The SEM Committee is minded to reject this modification due the apparent limited availability of capacity at the ION stage (5MW cap) and the incomplete nature of the testing at that point of the process.
- 2.3.25 The SEM Committee welcomes feedback and comments regarding the proposed modification.

## 2.4 CMC\_22\_23 – INDEXATION OF CAPACITY PAYMENT PRICE FOR INFLATION

Proposer: Energia

#### [CMC\\_22\\_23: Proposal Overview](#)

- 2.4.1 This Modification proposes that capacity contract prices are indexed over the lifetime of the contract, whether that is a 1 year contract or a 10 year contract.
- 2.4.2 In order to avoid retrospective effect, the indexation of capacity contract prices would only take place for capacity auctions which have yet to take place and would not apply to capacity auctions which have already been completed.

- 2.4.3 The modification follows the GB model and uses the relevant CPI depending on the jurisdiction of the capacity as the index. The modification does not allow for the Capacity Payment Price to be reduced from the price awarded in the auction. Where NetCONE / price caps have been inflated for certain capacity auctions (for example in the upcoming T-4 27/28 auction), the modification allows for this to be accounted for in the inflation modifier calculation.
- 2.4.4 To allow for the relevant indices to be published and for the SEMO CMC team to process the calculation, the modification proposes using the indexation figure at the end of June, three months prior to the start of the relevant capacity year.
- 2.4.5 Energia argue that this proposal is a proportionate and necessary change to the CRM that would help safeguard the delivery of new capacity and provide inflationary protection for holders of existing capacity. Whilst inflation risk is removed from investors, ultimately consumers will be better served if the CRM contracts offer protection from high inflation, and therefore mitigate the risk of inefficient exit or failure of delivery for new capacity.
- 2.4.6 Further details on the Modification Proposal are set out in the appended Modification Proposal Appendix B, which includes the draft changes to the CMC.

#### [CMC\\_22\\_23: Working Group Feedback](#)

- 2.4.7 Capacity Market Code Modifications Workshop 33 took place on Thursday 21 September 2023 where the modification was presented and discussed.
- 2.4.8 BGE stated they are in general support of the modification. However, BGE questioned the rationale for choosing June and asked whether this was to account for delays in publishing the figure for CPI.
- 2.4.9 Energia responded to state CPI would allow appropriate timelines for calculations to be worked out and fed into processes. This would also allow time for what the Inflation Modifier should be and then flow through the relevant teams.
- 2.4.10 BGE asked whether if deflation were to occur, would the formula (CINF) be capped at 1.
- 2.4.11 Energia confirmed this and stated Multi-year Reliability Options would be accounted for and filtered through to the relevant years. This allows for deflation/inflation for individual years.
- 2.4.12 The RAs stated that inflation up to the first Capacity delivery year would have a bigger impact than inflation thereafter.
- 2.4.13 Energia responded to state costs outside of building New Capacity would need to be accounted for.
- 2.4.14 The RAs stated it would be useful to see a breakdown of costs in relation to what is building costs and what is maintenance costs.
- 2.4.15 Energia responded to state they could provide breakdown of costs.

- 2.4.16 BnM welcomed the modification and are supportive of it. They stated that it recognises the risks faced by generators as a result of inflation.
- 2.4.17 Kilshane Energy echoed comments made and are supportive of the modification. They also stated that there could be indexation processes for Existing and New Capacity and the inflationary pressures that both face.

#### CMC\_22\_23: Minded To Position

- 2.4.18 Given the substantial change to current policy proposed by this Modification the SEM Committee is minded to reject this proposed modification.
- 2.4.19 As noted in SEM-23-045 the SEM Committee will consider whether to prioritise a workstream on an enduring indexation mechanism for capacity contracts in the context of the SEM Committee's Forward Work Programme for 2023/24.
- 2.4.20 For the avoidance of doubt, there should be no expectation that any form of enduring indexation that might be introduced in the future would necessarily replicate any element of the indexation mechanism set out in SEM-23-045.
- 2.4.21 The SEM Committee welcomes feedback and comments regarding the proposed modification.

### 3. CONSULTATION QUESTIONS

- 3.1.1 The SEM Committee welcomes views and responses on the proposed modifications raised within this consultation paper.
- 3.1.2 Respondents are invited to provide comments and feedback in respect of:
- the proposed modifications and their consistency with the Code Objectives.
  - any impacts not identified in the Modification Proposal Forms, e.g., to the Agreed Procedures, the Trading and Settlement Code, IT systems etc.; and
  - the detailed CMC drafting proposed to deliver the Modifications.
- 3.1.3 A template has been provided in Appendix C for the provision of responses.

## 4. NEXT STEPS

- 4.1.1 The SEM Committee intends to decide at the earliest, 16 January 2024 on the implementation or otherwise of the Modification outlined within this consultation paper as per B.12.11.1 of the CMC.
- 4.1.2 Responses to the consultation paper **must** be sent to both the UR and CRU CRM Submissions inboxes ([CRMsubmissions@uregni.gov.uk](mailto:CRMsubmissions@uregni.gov.uk) and [CRMsubmissions@cru.ie](mailto:CRMsubmissions@cru.ie)), **by close of business 17:00pm on Friday 01 December 2023. Please note that late submissions will not be accepted.**
- 4.1.3 We intend to publish all responses unless marked confidential. While respondents may wish to identify some aspects of their responses as confidential, we request that non-confidential versions are also provided, or that the confidential information is provided in a separate annex. Please note that both Regulatory Authorities are subject to Freedom of Information legislation.