

# SEM-23-044

## Mutual Energy response

Dear SEM Committee,

This response to the consultation paper on Capacity Market Code Workshop 31 is on behalf of Mutual Energy.

Mutual Energy own and operate the Moyle Interconnector between Scotland and Northern Ireland. Mutual Energy also own the Scotland-Northern Ireland gas pipeline and much of the onshore gas transmission network in Northern Ireland via three subsidiary companies who are licenced as gas TSOs by the Utility Regulator: Premier Transmission Ltd. (PTL), Belfast Gas Transmission Ltd. (BGTL) and West Transmission Ltd. (WTL). The majority of Northern Ireland's current and planned gas power stations are connected to pipelines owned by the Mutual Energy group.

Mutual Energy is a mutual company, this means that we have no shareholders and we reinvest surplus revenues for the long-term benefit of energy users in Northern Ireland. It also means that the company is effectively underwritten by NI consumers, and costs are passed through as appropriate.

This response relates to **CMC\_10\_23: Mitigation of Impact on Participants Relating to 3rd Party Gas Connection Delays** only.

We note that CMC\_10\_23 is similar in principle to CMC\_10\_22 and CMC\_14\_22, to which we have previously responded.

## 1. Overall issues with gas and electricity planning

### 1.1. Capacity market rules for developers in relation to gas connections

We have noted in our responses to CMC\_10\_22 and CMC\_14\_22 that there is currently no requirement for the developer of a potential new gas-fired power station to approach the gas TSO and enquire about a connection prior to being awarded a capacity market contract. Indeed, we have observed in Northern Ireland that new gas units have appeared on the Final Qualification Decisions report which, as a gas TSO, we had been unaware of. This report is published by SEMO after the conclusion of the capacity auction, so it is a likely scenario that we would only become aware of a potential new connection after a unit has been awarded a contract in the CRM.

As we explain in Section 3, we do not believe that a gas connection is technically required to commission and operate a unit for the purpose of the Capacity Market. However, on the basis that a unit cannot operate efficiently without a gas network connection, it would seem prudent that a potential developer should engage with the relevant gas TSO about seeking a connection at the earliest possible opportunity.

### 1.2. Co-operation between electricity and gas TSOs in the Capacity Market timeframe

We have engaged with SONI and EirGrid in relation to sharing information about potential new gas units ahead of capacity auctions. Our understanding is that in Ireland, developers may sign a document when approaching EirGrid in which they consent to information about their application being shared with GNI, the sole gas TSO in Ireland, for the purposes of CRM qualification – indeed this process is referenced in the CMC\_10\_23 modification proposal form.

Unfortunately, there is currently no equivalent process in Northern Ireland between SONI as the electricity TSO and either Mutual Energy or GNI (UK) as the gas TSOs. We have engaged with the relevant parties, including the Utility Regulator, and we are keen to remedy this situation and reduce the risk of delay to the delivery of good and sound projects.

### 1.3. Anticipatory investment in the NI gas network

While an information sharing agreement with SONI as outlined above might give an additional number of months for gas TSOs to facilitate connections, this will not be sufficient to solve more fundamental issues facing gas TSOs.

Additional demand placed on the gas network by new generator units might take the network beyond its current capabilities. In this case, 'deep reinforcements' might need to be undertaken to enhance the network capability and ensure the network is operable with future connections.

The nature of these 'deep reinforcements' might require substantive physical works on the network, which could require several years to design, plan and deliver, potentially taking longer than the circa 3 years between award of a capacity market contract and required delivery of that capacity.

The modification proposal makes reference to the CRU direction to GNI facilitating advance investment in the gas network. This direction gives clear guidance to GNI to undertake investment in the Irish gas network, including deep reinforcement work, in anticipation of expected future demand on the network. It is important to bear in mind that no such direction exists in Northern Ireland, but CMC\_10\_23 would impact both jurisdictions.

### 1.4. Work underway to solve these issues

Mutual Energy has identified the need for a more robust gas network planning framework in Northern Ireland, and we have begun working with other gas network operators and the Utility Regulator to begin outlining this work. This is consistent with UR's latest Forward Work Plan for 2023-24<sup>1</sup> which outlines a workstream to "Assess the impact on gas transmission arrangements of projected demand for gas".

In addition to identifying medium-term requirements for potential deep reinforcements, we believe that this approach will also highlight potential scenarios for a future net zero gas network, which will allow us to assess potential near term investments against long-term requirements.

In both the medium and long-term, engagement with the electricity sector, specifically SONI, will be key. With the energy transition accelerating, assumptions regarding electrification will impact both power station and domestic and industrial gas demand.

We will continue progressing this workstream, however, it will take several years to design and implement a cohesive network planning approach, and whatever design is landed on will come with additional resource requirements. The benefit of undertaking this work is that it should remove structural issues which might cause substantive delays to facilitating new gas connections, with which this modification proposal is concerned.

It is important to distinguish, however, that there might be two reasons for a gas connection not being in place for the start of a capacity contract:

- 1) A relatively short-term delay caused by project milestones slipping, potentially because of supply chain issues, for example. We understand that this is the type of delay that this modification is primarily concerned with.

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<sup>1</sup> <https://www.uregni.gov.uk/files/uregni/documents/2023-03/FWP%202023-24%20Final.pdf>

- 2) Delays due to more structural issues relating to network planning and gas connections requiring wider deep reinforcement work. These would likely be long term delays (i.e. years) and would be as a result of inadequate due diligence by the developer prior to entering into the electricity capacity auction. We also note that there is no requirement in the CMC for such diligence ahead of participation in capacity market auctions.

The first type of delay is presumably the scenario which the modification proposal is attempting to mitigate against. Whilst we do not support this modification in general, we particularly do not believe that any mitigation should be given to developers where gas connection 'delays' can be attributed to the second type of reason – in that scenario developers should not be participating in the capacity market in the first place.

## 2. Specific issues with CMC\_10\_23

While there are structural issues with planning for potential new connections that we are seeking to address, we feel that the proposals outlined in CMC\_10\_23 may be counterproductive and potentially shift some of the risks of participating in the capacity market from developers to consumers. Additionally, there are several practical issues with the proposal. We have several specific concerns, outlined below.

### 2.1. Dictating contractual terms

Through reference to an 'expert' and 'target completion date', the proposed modification is making assumptions around the specific contents of bilateral agreements between the gas TSO and the power station developer.

In practice, developers and TSOs will have specific requirements in different circumstances, and so long as the TSO can facilitate these requirements in accordance with its legal and regulatory duties, it will seek to do so. This means that the exact terms of connection agreements may differ between parties. Any move to standardise connection agreements would necessarily result in less scope for developers to make specific requests and a more rigid contractual framework.

Whilst dispute resolution clauses will exist in 'template' connection agreements, they are not designed around the connectees downstream commercial obligations such as the capacity market, and this proposal risks creating conflict with those terms.

### 2.2. Applicability to gas TSOs

Gas TSOs are not a signatory to the Capacity Market Code (CMC), as such the proposed amendment would not oblige gas TSOs to include specific terms around expert determination or target dates in any connection agreement. In a similar vein, the NI Network Gas Transmission Code cannot dictate contractual terms between a power station and SONI, as SONI is not a signatory to that Code. Amending the CMC is an inappropriate mechanism to introduce the sort of obligations that this proposed modification purports to do.

Additionally, where a dispute resolution clause in a bilateral contract does provide for expert determination, it is also common for both parties to have to agree to enter into such a process. Again, the CMC cannot require parties which are not signatory to it (the gas TSOs) to agree to such a request from the power station developer. In the circumstances contemplated by this modification the developer has a clear financial incentive to enter into the expert determination process in the event of a delayed gas connection, even when their case is weak. On the other hand, a gas TSO has nothing to gain from entering into the process but would need to incur cost and expend resources participating in it.

### 2.3. Ability to enhance security of supply

The modification proposal suggests that the change is required for security of supply purposes, and that delays to gas connections might result in viable projects not going ahead. We do not agree with this suggestion and the idea of requiring an expert determination of itself increases security of supply risk.

While we have not needed to enter into expert determination with regard to a connection agreement, we do have recent experience of the process.

Expert determinations are costly, time consuming efforts. They require an expert to first be agreed, appointed and mobilised, and only then do they hear the arguments of either party and make their determination. This is not a quick process, and it is only entered into as a last resort. The process typically takes years to run to completion.

Additionally, expert determination processes are resource intensive – this means that in the case where a gas connection might be experiencing delays, by resorting to expert determination, attention will be diverted from actually resolving the delays to litigating the determination process. This could compound any security of supply issues.

Where there is a delay to delivering a gas connection which does not require deep reinforcement to the network, it is unlikely that this delay would be more than a number of months. Using an expert to determine who is responsible in that case would be completely disproportionate to the issue and would not actually aid in getting the connection completed. Therefore, it is not clear what potential benefit there is for security of supply.

Where deep reinforcements are required to facilitate a connection, the gas TSO will likely have given the developer an expected completion date far beyond the start of the electricity capacity contract that they have been awarded. It is important that this is not considered a 'delay' to a gas connection, rather it is insufficient due diligence on the part of the developer. Regardless, as reasonable and prudent operators, gas TSOs' primary concern is that of the safety of the network – connections cannot be 'fast-tracked' for commercial purposes if this would place the wider gas network at risk. In this case, having an expert determination process will not deliver a gas connection any faster in the absence of a proper framework for anticipatory investment decisions for the gas network.

### 2.4. Appropriateness of using an expert

Fundamentally, an expert determination process in a connection agreement is not designed to make the type of decision that this modification proposal envisages. Expert determination is typically a legal process which looks to resolve disagreements over interpretation of contractual clauses. The expert determination process does not directly seek to assign blame for outcomes to specific parties.

We understand that one of the issues that previous attempts to introduce this sort of mitigation for developers is that it was felt that it would be inappropriate for the regulatory authorities to determine blame for delays in a connection. However, in some contracts, the 'expert' may actually be the regulatory authority anyway. In these cases, CMC\_10\_23 would not be an improvement on previous proposals which were rejected.

### 2.5. Settlement issues

Practically, CMC\_10\_23 proposes an insufficient and incomplete mechanism to introduce insulation for developers from delays relating to a gas connection. Unlike in other modifications relating to issues around planning for example, where it is clear cut whether a planning objection has been submitted or not, the nature of the delay is the point of contention that this proposal is concerned with.

Given the likely timelines involved with an expert determination (i.e. potentially years), there will be impacts in terms of payment and settlement which would need to be considered in any modification of this nature. In other words, if the expert determination process runs beyond key dates such as Substantial Completion (or itself causes delay in meeting those dates), how would the capacity provider be treated in respect of that period? In particular, if the gas TSO is not found to have caused a delay, would the capacity provider be subject to any additional penalty?

### 3. Gas connections delaying Substantial Completion

The key driver of the proposed modification, as well as previous modifications, appears to be a concern that failing to achieve a connection to the gas network would leave a developer unable to achieve Substantial Completion under the Capacity Market Code (CMC), and therefore unable to receive capacity payments. However, we do not believe that the current regulatory and legal framework contains such a requirement for a gas connection to be in place.

It is worth examining the pre-requisites for Substantial Completion as outlined in clause J.2.1.1(c) of the CMC. This states that:

*Substantial Completion... is achieved when:*

- i. all the construction, repowering or refurbishment works associated with providing the Awarded New Capacity are substantially complete (subject only to snag or punch list items or any other matters which do not prevent substantial completion or taking over the works taking place under the applicable Major Contracts);*
- ii. a Final Compliance Certificate, Operational Certificate or Final Operational Notification has been issued under the applicable Grid Code in respect of each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity;*
- iii. the Proportion of Delivered Capacity in respect of the Awarded New Capacity is not less than 90%; and*
- iv. each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity has met all Trading and Settlement Code and Grid Code requirements for participating in the Balancing Market; and*
- v. each new or refurbished Generator Unit providing Awarded New Capacity complies with the CO<sub>2</sub> Limits.*

It is clear from the definition above that completing a gas connection is not explicitly listed as a pre-requisite for achieving Substantial Completion. Rather, the requirements in plain English are that the generator unit has been built and it has been awarded the relevant certification by the electricity system operator to allow it to generate and connect to the network.

A gas connection provides fuel for the generator, but in itself it is not a requirement for achieving Substantial Completion.

Additionally, there are requirements on generators laid out in the EirGrid<sup>2</sup> and SONI<sup>3</sup> Grid Codes to be capable of operating on a secondary fuel. In the EirGrid Grid Code this is laid out directly via CC.7.3.1.1(ee). In the SONI Grid Code this is achieved by reference to the NI Fuel Security Code. In practice this means that generators in both Ireland and Northern Ireland have to be capable of using a secondary fuel, including to start up, and have sufficient reserves of this secondary fuel on site.

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<sup>2</sup> <https://www.eirgridgroup.com/site-files/library/EirGrid/GridCode.pdf>

<sup>3</sup> [https://www.soni.ltd.uk/media/documents/Feb23\\_SONI-Grid-Code.pdf](https://www.soni.ltd.uk/media/documents/Feb23_SONI-Grid-Code.pdf)

Importantly, there is no requirement laid out in either Grid Code that a generator operate on its primary fuel as part of its Commissioning/Acceptance testing, which it is required to complete in order to achieve a Final Operational Notification.

Therefore, even in the case where achieving a gas connection faces delays, there are ways by which a generator could still technically achieve Substantial Completion under the Capacity Market Code.

Of course we would not want to see this theory tested in practice- generators are not designed to operate on secondary fuel for extended periods, and there would be significant concerns about reliability and security of supply from doing so. Secondary fuel is also likely to be less efficient, more polluting and more costly. Therefore, it is in everybody's interests that a gas connection is made and completed on time.

However, given there is currently no provision requiring a gas connection within the CMC, adding in explicit mitigations for gas connection delays seems to be trying to solve a problem which does not actually exist, and would simply introduce unintended consequences, including potentially shifting costs onto gas consumers.

As such, we recommend that this modification is rejected.