



**Single Electricity Market
(SEM)**

Capacity Market Code Modifications

CMC_06_24 Decision Paper

CMC_06_24: Performance Securities for Extended Projects

SEM-25-017

13 May 2025

EXECUTIVE SUMMARY

The purpose of this decision paper is to set out the decision relating to a Proposed Modification to the Capacity Market Code (CMC). The Proposed Modification, CMC_06_24, was discussed at Workshop 37, held on 29 May 2024:

➤ **CMC_06_24:** Performance Securities for Extended Projects

This Proposed Modification seeks to amend the timelines for posting Performance Securities and the associated level of termination payment to be paid if necessary for projects that have been granted an extension under J.5.5.

The decision within this paper follows on from the associated consultation ([SEM-24-047](#)) which closed on 02 August 2024.

Nine responses were received to the Capacity Market Code Modifications Workshop 37 Consultation Paper (SEM-24-047). Two were marked as confidential and one was marked as partially confidential. The non-confidential responses have been published alongside this decision paper.

Summary of Decision

Following consideration of the proposal and the responses received to the consultation, the SEM Committee have decided:

Modification	Decision	Implementation Date
CMC_06_24: Performance Securities for Extended Projects	Not make a Modification	N/A

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Appendix A Responses

1. OVERVIEW

1.1. BACKGROUND

- 1.1.1. The SEM CRM detailed design and auction process has been developed through a series of consultation and decision papers, all of which are available on the SEM Committee's (SEMC) website. These decisions were translated into legal drafting of the market rules via an extensive consultative process leading to the publication of the Trading and Settlement Code (TSC) and the Capacity Market Code (CMC). Current versions of the CMC and the TSC are published on the SEMO website.

Process and Timeline for this Modification Proposal

- 1.1.2. On the 14 May 2024, Shannon LNG Limited submitted one Modification Proposal (CMC_06_24) under the terms of B.12.4 of the CMC. The proposal was marked as Standard.
- 1.1.3. The Regulatory Authorities (RAs) reviewed the Modification Proposal and determined that it was not spurious as per B.12.6 of the CMC.
- 1.1.4. On the 11 June 2024, the RAs determined the procedure to apply to the Modification Proposal. An overview of the timetable is as follows:
- i. The System Operators convened Workshop 37 where the Modification Proposal was considered on 29 May 2024, alongside three other Modification Proposals¹.
 - ii. The System Operators, as set out in B.12.7.1 (j) of the CMC, prepared a report² of the discussions which took place at the workshop, provided the report to the RAs and published it on the Modification's website promptly after the workshop.
 - iii. The RAs then consulted on the Modification Proposal from the date of publication of the Consultation until the closing date of Friday 02 August 2024.
 - iv. As per B.12.11.6, the RAs shall make their decisions as soon as reasonably practicable following conclusion of the consultation and publish a report in respect of their decision. The purpose of the decision paper is to set out the decision relating to the Modification Proposal discussed during Workshop 37 to:
 - a) Make a Modification;
 - b) Not make a Modification; or
 - c) Undertake further consideration in relation to the matters raised in the Modification Proposal.
- 1.1.5. This decision paper provides a summary of the consultation proposal and sets out the SEM Committee's decision.

¹ CMC_07_24, CMC_08_24 and CMC_09_24. The decision paper for these mod proposals can be found [here](#).

² [Capacity-Modifications-Workshop-37-Report-V1.0.pdf \(sem-o.com\)](#).

1.2. RESPONSES RECEIVED TO CONSULTATION

- 1.2.1. This paper includes a summary of the responses made to Capacity Market Code Modifications Workshop 37 Consultation Paper ([SEM-24-047](#)) with regard to CMC_06_24 only, which was published on 01 July 2024 and closed on 02 August 2024.
- 1.2.2. A total of nine responses were received to consultation SEM-24-047 with two being marked as confidential and one being marked as partially confidential. The non-confidential responses are from:
- Bord Gáis Energy
 - Bord na Móna
 - EirGrid and SONI
 - Energia
 - ESB Generation and Trading
 - Shannon LNG
 - SSE

2. CMC_06_24 – PERFORMANCE SECURITIES FOR EXTENDED PROJECTS

2.1. CONSULTATION SUMMARY AS PRESENTED BY SHANNON LNG LIMITED

- 2.1.1. This Modification Proposal seeks to amend the timelines for posting Performance Security and Termination Charges for projects that have been granted an extension under J.5.5 and J.5.6 of the CMC. The Modification Proposal form, as drafted, states that this relates to extensions granted under SEM-23-101. However, the SEM Committee notes that the proposed Modification as drafted relates to extensions granted under J.5.5 and J.5.6, which fall under SEM-23-001.
- 2.1.2. Currently, the timelines for posting Performance Security and Termination Charges are extended where a project receives an extension under J.5.5 and J.5.6, and this applies only to the T-3 2024/25 and T-4 2025/26 auctions. This proposal would provide for an enduring mechanism for all auctions.
- 2.1.3. The proposal seeks to do this by amending J.3.2.9 and J.7.1.3 of the CMC to delete direct reference to the T-3 2024/25 and T-4 2025/26 auctions, thereby widening the applicability of the CMC Modification, CMC_15_23, and the SEM Committee's decision, SEM-23-069, to all auctions.

2.2. RESPONSES

- 2.2.1. Most respondents were in favour of implementing this Modification.
- 2.2.2. Bord Gáis Energy (BGE) considered there to be merit in extending the scope of CMC_15_23 to include all auctions, given that in its view, third-party delays are not isolated specifically to participants awarded a contract in the T-3 2024/25 and T-4 2025/26 auctions and such delays are expected to impact future auction participants too.
- 2.2.3. BGE stated that if the Modification Proposal fails to be implemented, it will result in good projects that are feasible but facing delays terminating rather than taking on unquantifiable risk, thus increasing the pressure on Security of Supply and risk to the consumer.
- 2.2.4. BGE also stated that, upon further reflection following Workshop 37, the Modification Proposal does not undermine consumer protections. This, according to BGE, is owed to the high level of RA and SEMC oversight of the extension application process, which reduces the risk of speculative extension applications being granted and subsequent changes in Performance Security timelines.
- 2.2.5. Under the current provisions, Bord na Móna (BnM) supported what was set out in the Modification Proposal and considered that it achieved CMC Objectives (b), (c), (d), (e) and (f).
- 2.2.6. With regard to future implementation, however, BnM stated that consideration of this Modification Proposal should be mindful of the EY report on the 'Review of the Performance of the CRM', which includes a recommendation for placing a requirement on New Capacity to have all necessary consents to pre-qualify for auctions, and it noted that the SEM Committee had

expressed an intention to progress this recommendation for the T-4 2029/30 auction in SEM-23-036.

- 2.2.7. EirGrid and SONI (the SOs) highlighted their previously expressed concern in relation to extensions of Performance Securities arising from delays. In their view, a reasonable counterargument to extending Performance Securities is to suggest that it relaxes an incentive to manage delivery risks.
- 2.2.8. The SOs noted that the purpose of Performance Security and Termination Charges is to protect consumers from the impact associated with non-delivery of capacity which was secured at an auction. When a project is delayed, the SOs stated that the delivery risk increases rather than decreases and therefore relaxing risk mitigation for the developer may be inappropriate and counterproductive.
- 2.2.9. The SOs, however, were of the view that given this facility has already been introduced for one cohort, it should be done holistically for all cohorts. The SOs recommended that the CMC should apply as universally as possible and to minimise obligations and facilities to specific auctions. In their view, this would maintain transparency in the application of the Code and avoid the introduction of parallel Codes.
- 2.2.10. Energia noted that it opposed CMC_15_23 based on its view that the changes were retrospective. It also noted that it supported the TSOs' view that increased Performance Security and Termination Charges for delayed projects were appropriate given elevated risks to consumers.
- 2.2.11. Energia further noted that nothing has occurred since its original consultation response to SEM-23-060 to change its view and therefore, it does not support the extension of the original changes as proposed in this Modification.
- 2.2.12. ESB Generation and Trading (ESB GT) supported the Modification Proposal as in its view, it ensures equal treatment for all projects granted an extension under J.5.5 and J.5.6 and mitigates undue risk exposure for Awarded New Capacity from a potential Third-Party Planning Appeal or Judicial Review proceedings.
- 2.2.13. ESB GT considered that the current arrangements risk deterring investment in the Capacity Market where delayed projects are expected to post a disproportionately large Performance Security without regard to project maturity and progression, for reasons beyond their control.
- 2.2.14. ESB GT also urged the RAs to consider widening the applicability of the Modification Proposal to extensions granted under J.5.7 and J.5.8 of the CMC and reiterated that decisions should apply consistently to all Capacity Auctions and projects insofar as possible to mitigate the negative impacts of regulatory uncertainty and discourage speculative behaviours.
- 2.2.15. Shannon LNG Limited stated its Modification Proposal needed to be implemented as soon as possible and, if not, several units will be at increased risk of termination. It considered it to make little sense to have a mismatch between required implementation steps and increases in Performance Security.

- 2.2.16. Shannon LNG Limited considered it to be practical and reasonable that increases in Performance Security match the timing of extensions, otherwise two potential perverse outcomes will arise: firstly that a viable unit terminates because there is an increase in Performance Security while it is still waiting for final planning permission or, secondly, that a unit that is no longer viable but has reached the maximum Performance Security does not terminate at the appropriate time.
- 2.2.17. Shannon LNG Limited also noted that a number of parties have asked for the Modification to apply beyond the text of its Proposal and stated that it is within the RAs' remit to adjust the text of the Modification Proposal if they so decide. However, it stated that any adjustment to the text should not be used as a reason to delay the implementation of this change.
- 2.2.18. SSE supported the Modification Proposal and considered it to be a practical one which avoids unintended consequences.
- 2.2.19. SSE further stated that it was of the view that all possible causes of delay should be captured in the scope of the proposal.

2.3. SEM COMMITTEE DECISION

- 2.3.1. The SEM Committee welcomes the feedback provided by participants both as part of the Workshop and through the consultation process.
- 2.3.2. The SEM Committee notes the support amongst most respondents for the Modification Proposal and the arguments in favour of an enduring solution that is not limited in its applicability to the T-3 2024/25 and T-4 2025/26 auctions.
- 2.3.3. The SEM Committee also notes that the Modification Proposal envisages the arrangement first proposed in CMC_15_23, i.e. where an extension has been granted to Awarded New Capacity, the Performance Security posting dates would be extended by the same period, and that this would not be limited to any particular auctions.
- 2.3.4. In its decision on CMC_15_23, the SEM Committee decided to limit the applicability of this modification to the T-3 2024/25 and T-4 2025/26 auctions. Projects awarded via these auctions have been recognised by the SEM Committee to have been impacted by unforeseen global events, notably the invasion of Ukraine, with subsequent unexpected rates of inflation impacting their financial viability.
- 2.3.5. The SEM Committee continues to consider that participants awarded in the two aforementioned auctions were particularly impacted by these factors, and that, while there are many other challenges facing developers, such unexpected events have not arisen since the publication of SEM-23-069 in September 2023.
- 2.3.6. The SEM Committee also notes its instruction to the RAs in SEM-23-069 (where a decision to CMC_15_23 was issued) to further consider how different types of delays are dealt with. The SEM Committee is satisfied that this work was undertaken, resulting in the introduction of J.5.7 and J.5.8 of the CMC.

- 2.3.7. As mentioned above, the SEM Committee recognises that projects successful in recent auctions, and not those uniquely contracted via the T-3 2024/25 and T-4 2025/26, have faced a variety of challenges in delivering their contracted capacity. Since the decision to approve CMC_15_23 was made, the SEM Committee has introduced further measures to mitigate risks associated with third-party delays. The SEM Committee, in its SEM-23-101 decision, decided to implement two Modifications allowing the Committee to consider extensions to the Long Stop Dates and/or Capacity Quantity End Date and Times for a wider range of reasons, on a case-by-case basis for multi-year New Capacity contracted in T-3 or T-4 auctions to be delivering from 01 October 2024, effective until such time as the SEM Committee considers it appropriate.
- 2.3.8. While the SEM Committee accepts that it would be undesirable for viable projects that are facing delays to terminate rather than taking on risks associated with posting Performance Security, having been faced with a Third-Party Judicial Review or Planning Appeal, the SEM Committee is concerned with the enduring solution proposed in CMC_06_24. A key purpose of Performance Security is to protect consumers against the non-delivery of contracted capacity. Performance Security is also a signal of intent from the developer to deliver that capacity. Delaying the posting of Performance Securities may blunt these purposes, could lead to instances where participants submit speculative bids in future auctions, increase the risk of non-delivery of capacity and be inconsistent with CMC Objective (g).
- 2.3.9. The SEM Committee also acknowledges the arguments made by some respondents to widen the applicability of CMC_06_24 to consider extensions granted under J.5.7 and J.5.8. The SEM Committee has concerns with this suggestion. Extensions under J.5.7 and J.5.8 cater for a broad range of delays and require the SEM Committee to assess a complex range of contributing factors. As stated before, the SEM Committee considers the posting of Performance Security as a signal of intent from the developer to deliver its contracted capacity. The SEM Committee considers it particularly undesirable if Performance Security posting dates are aligned with extensions under J.5.7 and J.5.8, where the cause of delay cannot easily be attributable to a third-party, as is the case for a Third-Party Judicial Review or Planning Appeal.
- 2.3.10. The SEM Committee acknowledges the comment of one respondent that a high level of RA and SEM Committee oversight of the extension application process exists, thereby reducing the risk of speculative extension applications and subsequent changes in Performance Security timelines. This is true for the case of extensions granted under J.5.6, J.5.7 and J.5.8. However, the SEM Committee notes that, in line with the CMC, the SOs must grant extensions to Substantial Financial Completion and Long Stop Dates under J.5.5, provided the conditions of J.5.5.2 are met.
- 2.3.11. The SEM Committee also notes the comment from one respondent that in regard to future implementation, consideration of the Modification Proposal should be mindful of the EY review of the CRM (SEM-22-054A), which included a requirement on New Capacity to have all necessary consents to pre-qualify for auctions. In this regard, the SEM Committee also notes that for the T-4 2029/30 auction, the CRU Grid Connection Direction to EirGrid requires projects seeking to qualify for the auction, that are located in Ireland and do not hold a grid connection offer/agreement, to submit evidence of full planning permission for the facility by the Qualification Application Date. This requirement means that units will be at a more advanced

stage of project completion before qualifying for an auction and thus will not be subject to the same planning delays for the unit.

- 2.3.12. The SEM Committee also notes the arguments against the Modification Proposal, particularly around the proposal potentially reducing risk mitigation for developers and that rather, increased Performance Security and Termination Charges would be appropriate to protect consumers from elevated risks. The SEM Committee notes, in this regard, another recommendation of the EY review of the CRM, which included requiring Performance Security to be lodged prior to an auction and increasing Performance Security following an auction. The SEM Committee may give further consideration to this going forward.
- 2.3.13. The SEM Committee would like to emphasise that it continues to recognise the importance of balancing financial incentives to deliver with the risk of deterring investors due to high delivery risk, some of which may be outside their control. The SEM Committee, as expressed in SEM-23-101, continues to keep this issue under review and to consult on the level of Termination Charges and Performance Security prior to each auction.
- 2.3.14. On the basis of the reasons outlined above, the SEM Committee will not make a Modification.

3. NEXT STEPS

- 3.1.1. Given that the SEM Committee has decided to reject the Proposed Modification CMC_06_24, there are no actions required of the System Operators with regards to its implementation.
- 3.1.2. All SEM Committee decisions are published on the SEM Committee website: www.semcommittee.com.