

MODIFICATION PROPOSAL FORM			
Proposer (Company)	Date of receipt (assigned by System Operator)	Type of Proposal (delete as appropriate)	Modification Proposal ID (assigned by System Operator)
RAs	30 th May 2025	Standard	CMC_11_25
Contact Details for Modification Proposal Originator			
Name	Telephone number	Email address	
		CRMsubmissions@cru.ie crmsubmissions@uregni.gov.uk	
Modification Proposal Title			
Clarification on provisions relating to ‘final and binding’ and dispute resolution under the CMC			
Documents affected (delete as appropriate)	Section(s) Affected	Version number of CMC used in Drafting	
Capacity Market Code	B.2.1.2, B.14.2.7, B.14.7.1, B.14.8.8, B.14.8.9, B.14.8.10, E.9.4.8 and F.9.4.4	12.0	
Explanation of Proposed Change (mandatory by originator)			
<p>This proposed modification follows a review undertaken by the RAs of certain provisions of the CMC.</p> <p>Firstly, it seeks to clarify that the ‘final and binding’ provisions within the Capacity Market Code (“CMC”) do not apply to RA decisions made dishonestly or maliciously and also to clarify the relationship between these provisions and those dealing with the jurisdiction of the courts to resolve CMC-related disputes.</p> <p>Secondly, it proposes to delete B.14.2.7 and provide clarity in a modified B.14.7.1 as to the basis on which Parties to the CMC can commence litigation under the CMC.</p>			
Legal Drafting Change (Clearly show proposed code change using tracked changes, if proposer fails to identify changes, please indicate best estimate of potential changes)			
<p><u>In B.2.1.2, add the following:</u></p> <p>B.2 GOVERNING LAW AND JURISDICTION</p> <p>B.2.1.1 This Code and any disputes arising under, out of, or in relation to this Code shall be interpreted, construed and governed in accordance with the laws of Northern Ireland.</p> <p>B.2.1.2 Subject to the provisions relating to the Dispute Resolution Process <u>(and, for the avoidance of doubt, the provisions of paragraphs [XX.6], E.9.4.8 and F.9.4.4)</u>, the Parties hereby submit to the jurisdiction of the Courts of Ireland and the Courts of Northern Ireland (and no other court) for all disputes arising under, out of, or in relation to this Code.</p> <p><u>Delete B.14.2.7:</u></p>			

~~B.14.2.7 The provisions set out in this Dispute Resolution Process shall not prejudice or restrict any Party's entitlement to seek interim or interlocutory relief directly from the appropriate Court or Courts having competent jurisdiction.~~

In B.14.7.1, delete the following, and add:

B.14.7 CMDRB: General Provisions

B.14.7.1 ~~Referral of a Dispute to a CMDRB in accordance with the Dispute Resolution Process and compliance with the provisions set out in sections B.14.1 to B.14.9 is a pre-condition to the entitlement to refer a Dispute to Court. The Parties shall not commence any litigation in respect of any Disputes or any decisions taken under this Code save (i) where the malice or dishonesty exception to a final and binding decision applies or (ii) the matter has been referred to the CMDRB and the requirements of this section B.14 have been complied with.~~

In B.14.8, amend the following:

B.14.8 CMDRB Procedures

B.14.8.8 If any Disputing Party is dissatisfied with the CMDRB's decision, then that Party may, within 2 Working Days in the case of a Qualification Dispute or 15 Working Days in the case of a General Dispute after receiving the decision, give notice to the other Disputing Party or Parties and the CMDRB in writing of its dissatisfaction. If the CMDRB fails to give its decision within the relevant period under paragraph B.14.8.54, then any Disputing Party may, within 2 Working Days in the case of a Qualification Dispute or 15 Working Days in the case of a General Dispute after such period has expired, give notice to the other Disputing Party or Parties and the CMDRB in writing of its dissatisfaction.

B.14.8.9 A notice of dissatisfaction referred to in paragraph B.14.8.8 shall state that it is given under that paragraph, shall set out the Dispute and the reason(s) for dissatisfaction. ~~Except as stated in paragraph B.14.2.7 and section B.14.10, no Disputing Party shall be entitled to commence any Court proceedings of whatever nature in relation to or in connection with a Dispute unless a notice of dissatisfaction has been given in accordance with paragraph B.14.8.8.~~

B.14.8.10 If the CMDRB has given its decision on a Dispute to the Disputing Parties and no notice of dissatisfaction has been given by any Disputing Party within the applicable period under paragraph B.14.8.8 after the date of the CMDRB's decision, then the decision shall (save in the case of dishonesty or malice) be final and binding upon all Disputing Parties.

In E.9.4.8, add the following:

E.9.4 Final Qualification Decisions

E.9.4.8 The Final Qualification Decisions approved, or deemed to have been approved, by the Regulatory Authorities (and as substituted by the Regulatory Authorities) under this section E.9.4 are (save in the case of dishonesty or malice) final and binding on the Parties.

In F.9.4.4, add the following:

F.9.4 Release and Effect of Final Capacity Auction Results

F.9.4.4 The final Capacity Auction Results relating to a Participant are (save in the case of dishonesty or malice) final and binding on that Participant.

Modification Proposal Justification

(Clearly state the reason for the Modification)

As noted above, the RAs consider it necessary, and beneficial to Participants, to add the wording outlined above to the CMC in order to provide clarity on the meaning of the 'final and binding' provisions in the CMC, and in particular that decisions made dishonestly or with malice are excepted from the final and binding provisions.

The drafting proposed in B.2.1.2 seeks to clarify that the court's jurisdiction is subject to the provisions of E.9.4.8 (Final Qualification Decisions) and to F.9.4.4 (Final Capacity auction results), both being final and binding on Parties.

The RAs consider that the proposed deletion of B.14.2.7 does not alter the rights of participants to have recourse to the Court, as those rights are now clarified in the proposed revision to B.14.7.1.

Code Objectives Furthered

(State the Code Objectives the Proposal furthers, see Sub-Section A.1.2 of the CMC Code Objectives)

This Modification Proposal would further the following CMC Objectives:

(b) to facilitate the efficient, economic and coordinated operation, administration and development of the Capacity Market and the provision of adequate future capacity in a financially secure manner

And

(c) to facilitate the participation of undertakings including electricity undertakings engaged or seeking to be engaged in the provision of electricity capacity in the Capacity Market

And

(e) to provide transparency in the operation of the SEM

Implication of not implementing the Modification Proposal

(State the possible outcomes should the Modification Proposal not be implemented)

Should this Modification Proposal not be implemented and the clarifications laid out in the legal drafting not be made, the CMC would continue to hold a degree of uncertainty and confusion.

Impacts

(Indicate the impacts on systems, resources, processes and/or procedures)

No impacts on systems, resources, processes and/or procedures.

Please return this form to the System Operators by email to CapacityModifications@sem-o.com

Notes on completing Modification Proposal Form:

1. If a person submits a Modification Proposal on behalf of another person, that person who proposes the material of the change should be identified on the Modification Proposal Form as the Modification Proposal Originator.
2. Any person raising a Modification Proposal shall ensure that their proposal is clear and substantiated with the appropriate detail including the way in which it furthers the Code Objectives to enable it to be fully considered by the Regulatory Authorities.
3. Each Modification Proposal will include a draft text of the proposed Modification to the Code unless, if raising a Provisional Modification Proposal whereby legal drafting text is not imperative.
4. For the purposes of this Modification Proposal Form, the following terms shall have the following meanings:

CMC / Code:	means the Capacity Market Code for the Single Electricity Market
Modification Proposal:	means the proposal to modify the Code as set out in the attached form
Derivative Work:	means any text or work which incorporates or contains all or part of the Modification Proposal or any adaptation, abridgement, expansion or other modification of the Modification Proposal

The terms "System Operators" and "Regulatory Authorities" shall have the meanings assigned to those terms in the Code.

In consideration for the right to submit, and have the Modification Proposal assessed in accordance with the terms of Section B.12 of the Code, which I have read and understand, I agree as follows:

1. I hereby grant a worldwide, perpetual, royalty-free, non-exclusive licence:
 - 1.1 to the System Operators and the Regulatory Authorities to publish and/or distribute the Modification Proposal for free and unrestricted access;
 - 1.2 to the Regulatory Authorities to amend, adapt, combine, abridge, expand or otherwise modify the Modification Proposal at their sole discretion for the purpose of developing the Modification Proposal in accordance with the Code;
 - 1.3 to the System Operators and the Regulatory Authorities to incorporate the Modification Proposal into the Code;
 - 1.4 to all Parties to the Code and the Regulatory Authorities to use, reproduce and distribute the Modification Proposal, whether as part of the Code or otherwise, for any purpose arising out of or in connection with the Code.
2. The licences set out in clause 1 shall equally apply to any Derivative Works.
3. I hereby waive in favour of the Parties to the Code and the Regulatory Authorities any and all moral rights I may have arising out of or in connection with the Modification Proposal or any Derivative Works.
4. I hereby warrant that, except where expressly indicated otherwise, I am the owner of the copyright and any other intellectual property and proprietary rights in the Modification Proposal and, where not the owner, I have the requisite permissions to grant the rights set out in this form.
5. I hereby acknowledge that the Modification Proposal may be rejected by the Regulatory Authorities and that there is no guarantee that my Modification Proposal will be incorporated into the Code.