

MODIFICATION PROPOSAL FORM			
Proposer <i>(Company)</i>	Date of receipt <i>(assigned by System Operator)</i>	Type of Proposal <i>(delete as appropriate)</i>	Modification Proposal ID <i>(assigned by System Operator)</i>
EPUKI	4 May 2023	Standard	CMC_11_23
Contact Details for Modification Proposal Originator			
Name	Telephone number	Email address	
Harry Molloy		h.molloy@tynaghenenergy.ie	
Modification Proposal Title			
Amendment to Drafting Introduced Under Modification CMC_15_22			
Documents affected <i>(delete as appropriate)</i>	Section(s) Affected	Version number of CMC used in Drafting	
Capacity Market Code	Section J Glossary		
Explanation of Proposed Change <i>(mandatory by originator)</i>			
<p>EPUKI is proposing a modification which would amend drafting introduced to the Capacity Market Code in January 2023 under modification CMC_15_22. We believe that this modification is consistent with the intent of CMC_15_22.</p> <p>The original drafting of modification CMC_15_22 was highly specific to avoid any unintended outcomes. However, we believe that this modification has failed to address scenarios which it was intended to. We have identified instances where third party challenges can give rise to delays in the planning process which in turn results in delays to the delivery of New Capacity projects.</p> <p>Specifically, a direction under Article 17 or Article 18 of the Planning (General Development Procedure) Order (Northern Ireland) 2015, made by the Department of infrastructure on the back of a third-party submission has the potential to introduce delays to the planning process. This modification seeks to introduce wording, consistent with CMC_15_22, which would address such instances.</p> <p>As with CMC_15_22, we believe that this modification benefits Security of Supply through the facilitation of delivery of much needed New Capacity projects. This modification is only applicable in Northern Ireland.</p>			
Legal Drafting Change <i>(Clearly show proposed code change using tracked changes, if proposer fails to identify changes, please indicate best estimate of potential changes)</i>			
<p>This modification proposes amendments to Section J.5 of the Capacity Market Code.</p> <p>J.5.5 Extension of Long Stop Date by Article 17/18 Direction, Third Party Planning Appeal or Judicial Review</p> <p>J.5.5.1 Subject to the requirements of paragraph J.5.5.2, a Participant or an Enforcing Party (on behalf of a Participant) may apply to the System Operators to extend the date of Substantial Financial Completion and Long Stop Date associated with a Capacity Market Unit by a period equal to the Third Party Extension Period where that Capacity Market Unit is subject to an Article 17/18 Direction, Third Party Judicial Review or Third Party Planning Appeal.</p> <p>J.5.5.2 The System Operators shall extend the date of Substantial Financial Completion and Long Stop Date under paragraph J.5.5.1 subject to the requirements of paragraph J.4.2.5 and the Participant submitting the following proofs to the System Operators:</p>			

(a) Documentary evidence confirming the commencement of the [Article 17/18 Direction](#), Third Party Judicial Review or Third Party Planning Appeal, and

(b) a statutory declaration signed on behalf of the Participant by a Participant Director confirming that the Participant and/or anyone related to (either directly or through marriage) or otherwise connected to the Participant and/or any of its agents and/or its employees had no involvement in instigating the [Article 17/18 Direction](#), Third Party Judicial Review or Third Party Planning Appeal.

J.5.6.7 The Regulatory Authorities may request that a Participant provide additional information or evidence in relation to a Third Party Extension Application.

J.5.6.8 If a Participant makes a Third Party Exception Application, then the Regulatory Authorities shall notify the Participant and the System Operators whether or not they approve the Third Party Exception Application and, if they do approve it the provisional value of the Capacity Quantity Extension Period to be applied to the Capacity Quantity End Date and Time

Third Party Extension Period means, in respect of date of Substantial Financial Completion and Long Stop Date extension under paragraph J.5.5.1, the period from the date on which the relevant Participant has either

i. in respect of Ireland, 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 to the date on which the Third Party Judicial Review is concluded, either by order, direction or decision of the court (not appealed by the third party to the Third Party Judicial Review), or otherwise;

or

ii. received a copy of the Third Party Planning Appeal to the date of the determination by An Bord Pleanála in respect of the Third Party Planning Appeal.

iii. Received notification that the Local Planning Authority reached a recommendation following the issue of an Article 17/18 Direction by the Department, to the date of determination of the planning application by the Local Planning Authority or the Department as the case may be.

Add the following definition to the Glossary:

Article 17/18 Direction means a direction from the Department to the local Planning Authority under Article 17 and/or 18 of the Planning (General Development Procedure) Order (Northern Ireland) 2015 (or equivalent provision), requiring that authority to notify the Department when it reaches a recommendation in relation to the planning application, such that the Department may consider whether or not to issue a direction to call-in the application for determination under Section 29 of the Planning Act (Northern Ireland) 2011 (or any equivalent provision).

Local Planning Authority means a council in Northern Ireland with powers to determine planning applications under the Planning Act (Northern Ireland) 2011 (or any equivalent provision).

Department means the Department for Infrastructure in Northern Ireland or its successor department.

Modification Proposal Justification

(Clearly state the reason for the Modification)

This modification seeks to address delays, arising from third-party challenges, which have not been covered under CMC_15_22. The justification and rationale for this modification is the same as

CMC_15_22, but this modification addresses a scenario which had not previously been included (Article 17/18 Direction).

This modification would benefit Security of Supply by supporting the delivery of New Capacity projects in Northern Ireland.

Code Objectives Furthered

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

EPUKI believes that this modification furthers a number of the Capacity Market Code Objectives:

- (a) *to facilitate the efficient discharge by EirGrid and SONI of the obligations imposed by their respective Transmission System Operator Licences in relation to the Capacity Market;*
- (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;*
- (f) *to ensure no undue discrimination between persons who are or may seek to become parties to the Capacity Market Code; and*
- (g) *through the development of the Capacity Market, to promote the short-term and long-term interests of consumers of electricity with respect to price, quality, reliability, and security of supply of electricity across the Island of Ireland.*

Implication of not implementing the Modification Proposal

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

Failure to address the gap identified in the applicability of CMC_15_22 raises a number of implications including:

- A significant weakening of the effectiveness of CMC_15_22 as applicable in Northern Ireland. As third-parties can still challenge and obstruct planning permission in NI through Article 17/18 directions, New Capacity delivering in Northern Ireland will not be able to benefit from the extensions as intended under CMC_15_22.
- Security of Supply. This modification, as with CMC_15_22, intends to support the delivery of New Capacity projects. Failure to implement this modification will leave New Capacity, particularly conventional plant, exposed to third-party challenge which will obstruct delivery of those projects. This has implications on termination (through the Long Stop Date), and economic feasibility (through contract erosion).
- Inconsistency. Failure to implement this modification will result in a continued inconsistency between the treatment of New Capacity in Northern Ireland and the Republic of Ireland. New Capacity in ROI can benefit from the extensions available under CMC_15_22 without the risk of delays incurred through Article 17/18. This modification ensures a level playing-field within the SEM.

Impacts

(Indicate the 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.