



**Single Electricity Market  
(SEM)**

**Capacity Market Code Working Group 26  
Modifications Consultation Paper**

**SEM-22-050**

**22 August 2022**

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# 1. OVERVIEW

## 1.1 ABSTRACT

- 1.1.1 The purpose of this consultation paper is to invite industry participants to provide feedback and comments in regards to the proposed modifications to the Capacity Market Code (CMC) discussed at Working Group 26 held on 21 July 2022.
- 1.1.2 During this Working Group, one modification was presented and related to:
- **CMC\_10\_22: Introduction of New Remedial Action in the Event of Third Party Delays**  
The aim of this proposal is to modify the CMC to extend the long-stop date and the maximum duration of New Capacity, in instances where Substantial Completion has been delayed as a result of the delivery of third party activities in a timely manner.

## 1.2 BACKGROUND

- 1.2.1 The SEM CRM detailed design and auction process has been developed through a series of consultation and decision papers, these are all 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). An updated version of the CMC (6.0)<sup>1</sup> was published on 18 February 2022 and the most recent version of the TSC<sup>2</sup> was published on 17 May 2022.

### **Process for modification of the CMC**

- 1.2.2 Section B.12 of the CMC outlines the process used to modify the CMC. In particular, it sets out processes for proposing modifications, as well as the consideration, consultation and implementation or rejection of modifications.
- 1.2.3 The purpose of the Modifications process is to allow for modifications to the CMC to be proposed, considered and, if appropriate, implemented with a view to better facilitating code objectives as set out in Section A.1.2 of the CMC. (B.12.1.2).
- 1.2.4 Modifications to the CMC can be proposed and submitted by any person (B.12.4.1), at any time. Unless the modification is urgent modifications are subsequently discussed at a Working Group held on a bi-monthly basis. Each Working Group represents an opportunity for a modification proposer to present their proposal(s) and for this to be discussed by the workshop attendees.
- 1.2.5 For discussion at a Working Group, Modification proposals must be submitted to the System Operators at least 10 working days before a Working Group meeting is due to take place. If a proposal is received less than 10 working days before a Working Group and is not marked as urgent it is deferred for discussion to the next Working Group.

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<sup>1</sup> <https://www.sem-o.com/rules-and-modifications/capacity-market-modifications/market-rules/>

<sup>2</sup> <https://www.sem-o.com/rules-and-modifications/balancing-market-modifications/market-rules/>

1.2.6 Following each Working Group, and as per section B.12.5.6 of the CMC, the RAs are required to publish a timetable for the consideration, consultation and decision relating to the Modification(s) proposed during a Working Group.

1.2.7 If a proposal is received and deemed to be contrary to the Capacity Market Code Objectives or does not further any of those objectives, the Regulatory Authorities (RAs) will reject the proposal on the grounds of being spurious, as set out in section B.12.6 of the CMC.

### **Urgent Modifications**

1.2.8 A proposer may choose to mark a Modification proposal as “Urgent” (B.12.9.1). In this case, the RAs, as per section B.12.9.3 of the CMC, will assess whether or not the proposal should be treated as urgent. If the RAs deem a proposal to be urgent they have the power to fast-track the proposal.

1.2.9 In this regard B.12.9.5 provides:

*“If the Regulatory Authorities determine that a Modification Proposal is Urgent, then:*

*a) the Regulatory Authorities shall determine the procedure and timetable to be followed in assessing the Modification Proposal which may vary the normal processes provided for in this Code so as to fast-track the Modification Proposal; and*

*b) subject to sub-paragraph (a), the System Operators shall convene a Workshop.”*

1.2.10 The RAs may request the SOs to convene a Working Group to discuss the proposed Modification.

### **Process for this Modification**

1.2.11 On 8 July 2022 the SOs notified the RAs of the proposed modification submitted for discussion at WG26 held on 21 July 2022.

1.2.12 This proposed modification was marked as urgent, however, upon review of the proposal, the RAs deemed it to be standard and will therefore be processed through the normal Modification process.

1.2.13 Following a review of the proposal, the Regulatory Authorities determined that the proposal was not spurious.

1.2.14 On the 4 August 2022 the RAs determined the procedure to apply to the Modification Proposal. The procedure is shown in detail in Appendix A. An overview of the timetable is as follows:

- i. The System Operators convened Working Group 26 where the Modification Proposal was considered on 21 July 2022.
- ii. The System Operators, as set out in B.12.7.1 (j) of the CMC, are to prepare a report of the discussions which took place at the workshop, provide the report to the RAs and publish it on the Modifications website promptly after the workshop.

- iii. The RAs will then consult on the Proposed Modification, with a response time of 20 Working Days (as defined in the CMC), from the date of publication of the Consultation.
- iv. As contemplated 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 following proposed modification:
  - CMC\_10\_22: Introduction of New Remedial Action in the Event of Third Party Delays
- 1.3.2 Further detail on each of the modification is set out in the appended modification proposal, Appendix B.
- 1.3.3 The Regulatory Authorities hereby give notice to all Parties and the Market Operator of a consultation on the proposed Modifications.
- 1.3.4 Interested Parties and the Market Operator are invited to make written submissions concerning the proposed Modification **by no later than 17:00 on Tuesday, 20 September 2022. 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 either implement or reject a modification or undertake further consideration as regards to matters raised through the consultation process in regards to the proposed modification.

## 2. MODIFICATION PROPOSAL

### 2.1 CMC\_10\_22 – INTRODUCTION OF NEW REMEDIAL ACTION IN THE EVENT OF THIRD PARTY DELAYS

#### Proposer: EPEDL

#### Proposal Overview

- 2.1.1 The aim of this proposal is to modify the CMC to extend the long-stop date and the maximum duration of New Capacity, in instances where Substantial Completion has been delayed as a result of the delivery of third party activities in a timely manner.
- 2.1.2 Within their submission, EPEDL state that the CMC requires units delivering Awarded New Capacity to establish an implementation plan which outlines key milestone dates for the delivery of New Capacity.

Further to this they highlight that a key milestone is the Substantial Completion milestone, which needs to be satisfied for a New Capacity Market Unit to be flagged as 'Actual' in the Capacity and Trade Register.

- 2.1.3 Further to this they state that, in order to achieve Substantial Completion, participants must rely on System Operators, planning authorities and other statutory undertakers to exercise their functions in a timely manner. Specifically, the completion of the electricity grid connection, planning permission, and gas connection.

EPEDL highlight that late delivery of any of these activities represents a significant risk to delivery of New Capacity which is beyond the control of the Participant and advise that the risk of non-controllable, third-party delays will affect investment decisions made by Participants developing New Capacity projects, possibly resulting in the non-delivery of these projects.

- 2.1.4 EPEDL are of the view that this proposal is consistent with the CRU direction to the SO to issue grid connection offers to participants successful in Capacity Auctions who can fulfil capacity requirements as per LCCAs.

- 2.1.5 EPEDL advise that, if implemented and in the event of a third party delay which results in a milestone being completed after the date provided in the initial Implementation Plan, the long-stop date and Maximum Capacity Duration will be extended proportionally.

- 2.1.6 This modification proposes the introduction of a new remedial action under section J.5.3 of the CMC, to include the following:

***J.5.3 Extension Due to Connection and Consenting Related Delays***

*J.5.3.1 Where the completion of the Substantial Completion Milestone is delayed solely as a result of a failure of a third party to complete a milestone when required to do so in accordance with the initial Implementation Plan, a Participant or an Enforcing Party (on behalf of a Participant) may apply to the Regulatory Authorities for an extension to the Maximum Capacity Duration and Long Stop Date associated with the relevant Capacity Market Unit.*

*J.5.3.2 The application under paragraph J.5.3.1 shall include: (a) reasons for the request in sufficient detail to enable the Regulatory Authorities to consider the request, together with sufficiently detailed supporting evidence; and (b) an updated estimated date for final completion of the Awarded New Capacity with detailed reasoning.*

*J.5.3.3 Applications made under paragraph J.5.3.1 shall be granted by the Regulatory Authorities in the absence of due cause not to do so.*

*J.5.3.4 Where a request for extension under J.5.3.1 is approved, the relevant Maximum Capacity Duration and Long Stop Date must be extended on a day for day basis in accordance with the approved extension.*

- 2.1.7 Further detail on the Modification Proposal are set out in the appended Modification Proposal Appendix B.

## Working Group Feedback

2.1.8 The SOs advised that upon reviewing the proposal, it isn't immediately clear what is meant by the term 'Third Party'. Further to this they referred to the impacts section of the proposal and stated that the SOs shouldn't be considered a Third Party to the Capacity Market

2.1.9 The SOs also advised that clarity would be needed with regards to whether a Third Party is solely responsible for a delay. They also stated that there does not appear to be a remedy for a Third Party to make a case to the RAs with regards to a delay, instead it is the Participant alone who would be in a position to make a submission to the RAs. The SOs queried whether this would be correct.

2.1.10 EPEDL advised that at the end of the process it would be a requirement of the RAs to make a decision and therefore it should be up to the RAs as to whether they wish to contact any Third Party.

EPEDL further stated that proof of a delay would have to be given by a Participant and if the RAs are not content with this, they can request further information at that point.

2.1.11 The SOs queried, in the event that a Participant makes the accusation that a Third Party is responsible for a delay in a project's development, would the RAs then be able to contact said Third Party to allow them to make their case ahead of any decision being made, or would it be the case of at the RAs discretion.

EPEDL advised that it would be at the RAs discretion, however advised that the RAs would carry out their due diligence in the event that this situation were to arise.

2.1.12 With regards to the Long Stop Date (LSD), the SOs raised concerns that a change to this area of the code could exacerbate risks to the Security of Supply. Elaborating on this, the SOs advised that there could be the situation where a project is delivered three winter periods after the start of the original contracted Capacity Year.

2.1.13 Energia took this opportunity to advise that whilst the welcome appropriate measures to mitigate against Third Party delays, the proposal appears to be problematic from a legal point of view given that it could have a retrospective effect in that it affects capacity already awarded.

2.1.14 Energia advised that this could make it difficult for the RAs to approve any such proposal and, if implemented, would be susceptible to challenge. Energia therefore recommended that strong consideration should be given to any retrospective effect of the proposal.

In response to this, EPEDL advised that they disagree with the comments provided by Energia and stated they do not believe this to be the case.

2.1.15 The RAs raised a concern with regards to the additional responsibility that would be placed on both the SOs and the RAs and effectively adds pressure on both Parties to make judgements, such as, whether an implementation plan gives sufficient for planning permission or gas connection agreements to be achieved.

2.1.16 The RAs suggested that there should be some degree of contingency built into the Implementation Plan, with the intention being that if/when a delay occurs there is space to allow for this. The RAs were unable to see the reasoning for an extension to the LSD because time set aside as part of a contingency plan is eroded.

2.1.17 The RAs also raised concerns with regards to the possibility that Participants may, subsequently to any implementation of this proposal, submit unrealistically optimistic implementation plans for the delivery of capacity and the impact that this could have, namely displacing Capacity from other Participants who have included sufficient contingency and have taken a more realistic view of project delivery.

2.1.18 The RAs highlighted that through the use of the Long Stop Date and the reduction in the Maximum Capacity Duration, an incentive was placed on Market Participants to ensure that their implementation plans were deemed realistic and not overly optimistic.

The RAs advised that in the event that a Participant is overly optimistic this could lead to the possibility of issues arising in the future delivery of projects.

2.1.19 EPEDL advised that at the beginning of each Auction process, the SOs review all New Capacity submissions and following this deem projects to be realistic or not.

They also agreed that a degree of contingency planning is perfectly reasonable. However, they advised that there could be an occasion whereby an extreme delay is experienced, that could not have been foreseen.

2.1.20 The comments from EPEDL relating to the SO review process at the beginning of each Auction were also echoed by BnM. They elaborated that the SOs process should weed out unrealistic projects at a very early stage.

BnM advised that given this, what should be left therefore should be a fair representation of what Participants timelines.

2.1.21 ESB advised that the CRM was created to allow for a four year period to progress a project and build an asset. However, they advise that over the last number of years Auctions are being held closer to a Capacity Year, highlighting that T-4 Capacity Auctions have taken place 3½ years before a Capacity Year – which they stated can put pressure on developers.

ESB are of the view that this is the root cause of this proposal and clarity is needed with regards to Third Parties.

2.1.22 ESB highlight that there are areas that need to be addressed within the proposal – one of which being the open ended timeframe which could impact on the Security of Supply.

2.1.23 However, they advised there is merit in exploring the contract erosion mitigation measures suggested, due to an unexpected Third Party risk related to RA directions that have been applied to previous Capacity Auctions.



### Minded to Position

- 2.1.24 The SEM Committee welcome feedback and comments with regards to this proposed modification.
- 2.1.25 The Committee are concerned about the failure of the modification to take account of the contingency which they would expect to form part of any Implementation Plan.
- 2.1.26 The Committee are concerned that by removing many of the penalties which arise if capacity is not delivered in a timely fashion, it creates an incentive to submit more optimistic Implementation Plans than is currently the case.
- 2.1.27 The proposed Modification also has the potential to exacerbate the situation where capacity which will not be delivered for the start of the first Capacity Year displaces capacity that could have been delivered on time in the Auction.
- 2.1.28 Managing the potential adverse consequences of the proposed Modification is likely to require greater scrutiny of New Capacity applications at the time of Qualification (in particular, by the System Operators under E.7.5.1 (b) and (c)). This may lead more applications to be rejected and, consequently, more requests for reviews and disputes of the SOs Qualification decisions.
- 2.1.29 When reviewing the proposed Final Qualification Decisions, and in particular when using their powers under E.9.4.5, the RAs would need to be cognisant of the presumption under the proposed J.5.3.3 that they will be granting extensions when New Capacity is delayed. As with the SOs decisions under E.7.5.1, the need to protect consumers' interests and to comply with Code Objective A.1.2.1 (b) to facilitate adequate future capacity, mean that the RAs may have to take a more robust view on the probability of timely deliverability of New Capacity.
- 2.1.30 Given the concerns above, the SEM Committee are minded to reject this proposal for implementation.

## **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 for each of the proposed Modifications in respect of:
- the proposed modification and its consistency with the Code Objectives;
  - any impacts not identified in the Modification Proposal Form, e.g. to the Agreed Procedures, the Trading and Settlement Code, IT systems etc.; and
  - the detailed CMC drafting proposed to deliver the Modification.
- 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 make a decision in October 2022 on the implementation of the Modifications outlined within this consultation paper.
- 4.1.2 Responses to the consultation paper **must** be sent to Kevin Lenaghan ([Kevin.Lenaghan@uregni.gov.uk](mailto:Kevin.Lenaghan@uregni.gov.uk)) and Donna Maye ([Donna.Maye@uregni.gov.uk](mailto:Donna.Maye@uregni.gov.uk)) **by no later than 17:00 on Tuesday, 20 September 2022. Please note that late submissions will not be accepted.**
- 4.1.3 Please note that 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.