



**Single Electricity Market  
(SEM)**

**Capacity Market Code Urgent Working Group 28**

**Appendix B**

**Approved Modification Text Drafting**

**SEM-23-001**

**09 January 2023**

**Add the following new paragraphs:**

**J.5.5 Extension of Long Stop Date by Third Party Planning Appeal or Judicial Review**

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 a Third Party Judicial Review or Third Party Planning Appeal.

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:

- (a) Documentary evidence confirming the commencement of the 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 Third Party Judicial Review or Third Party Planning Appeal.

J.5.5.3 The System Operators may propose to the Regulatory Authorities the termination of the Awarded New Capacity for which an extension was granted under J.5.5.1 if:

- (a) Substantial Financial Completion has not been achieved after more than eighteen months has passed since the end of the Substantial Financial Completion Period of the Capacity Auction Results Date in the Capacity Auction Timetable for the Capacity Auction in which the capacity was allocated (or such longer period as accepted by the Regulatory Authorities pursuant to J.5.2.4);
- (b) an Implementation Progress Report indicates that Substantial Financial Completion will not be achieved after more than eighteen months has passed since the end of the Substantial Financial Completion Period of the Capacity Auction Results Date in the Capacity Auction Timetable for the Capacity Auction in which the capacity was allocated (or such longer period as accepted by the Regulatory Authorities pursuant to J.5.2.4); or
- (c) the Third Party Judicial Review or Third Party Planning Appeal has been finally decided in favour of the third party appellant.

J.5.5.4 When considering any termination proposed under paragraph J.5.5.3, the Regulatory Authorities may request further information on the Awarded New Capacity from the relevant Participant.

J.5.5.5 If following due consideration the Regulatory Authorities approve the proposed termination, the System Operators shall terminate the affected Awarded New Capacity.

**J.5.6 Extension of Capacity Quantity End Date and Time**

J.5.6.1 Where the System Operators have granted an extension under paragraph J.5.5.1, a Participant or an Enforcing Party (on behalf of a Participant) may seek the approval of Regulatory Authorities for an extension to the Capacity Quantity End Date and Time associated with a Capacity Market Unit by a period no greater than the Third Party Extension Period.

J.5.6.2 A Participant seeking approval of the Regulatory Authorities under paragraph J.5.6.1 shall submit an application (called a "Third Party Exception Application") to the Regulatory Authorities within [20] Working Days of the determination of the Third Party Extension Period.

J.5.6.3 A Third Party Exception Application shall:

- (a) contain the information required by the Regulatory Authorities;
- (b) contain a certificate addressed to the Regulatory Authorities from an independent Certified Engineer, with experience and expertise in the construction and operation of the relevant type of equipment or technology, approved by the Regulatory Authorities (such approval not to be unreasonably delayed or withheld) certifying that, having made all due and careful enquiry and to the best of their knowledge, the extension being claimed under this section J.5.6 can be directly attributed to the Third Party Judicial Review or Third Party Planning Appeal that led to an extension being granted under J.5.5.1;
- (c) be in the form prescribed by the Regulatory Authorities; and
- (d) be made in the manner prescribed by the Regulatory Authorities.

J.5.6.4 For the purposes of paragraph J.5.6.3(b), a person is regarded as independent if:

- (a) the person is not an Affiliate of the relevant Participant;
- (b) the person is not a current employee of the relevant Participant or an Affiliate of the relevant Participant;
- (c) the person has not been an employee of the relevant Participant or an Affiliate of the relevant Participant with the previous two years; and
- (d) the person is not engaged on terms, nor party to any other arrangements, which could allow the Participant or any Affiliate of the Participant to exercise undue influence on any report, assessment, certificate or commentary prepared by that person or otherwise compromise the objectivity of such report, assessment, certificate or commentary.

J.5.6.5 A certificate under this section J.5.6 shall be in the form published from time to time by the Regulatory Authorities.

J.5.6.6 In a certificate given under paragraph J.5.6.3(b), the Certified Engineer giving the certificate shall confirm that they are independent within the meaning of paragraph J.5.6.4 and shall certify each of the matters referred to in paragraph J.5.6.4.

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.

J.5.6.9 At the earlier of the Substantial Completion Date and the Long Stop Date, the final value of the Capacity Quantity Extension Period shall be determined as the minimum of:

(a) the provisional Capacity Quantity Extension Period; and

(b) the period from the Capacity Quantity Start Date and Time to the Capacity Quantity Commissioning Date where this period shall be zero if the Capacity Quantity Commissioned Date is prior to the Capacity Quantity Start Date and Time.

J.5.6.10 The Capacity Quantity End Date and Time shall be extended by the Capacity Quantity Extension Period and the System Operators shall update the Capacity and Trade Register as set out in Appendix F accordingly.

***Amend the following existing paragraphs as shown below:***

J.6.1.1 For the purposes of this section:

- (a) Minimum Completion: Awarded New Capacity achieves Minimum Completion 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 taking place under the applicable Major Contracts);
  - (ii) each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity has undergone commissioning testing;
  - (iii) 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;
  - (iv) the Proportion of Delivered Capacity in respect of the Awarded New Capacity is not less than 50%; and
  - (v) 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
  - (vi) each new or refurbished Generator Unit providing New Capacity complies with the CO2 Limits; and
- (b) Long Stop Date: the Long Stop Date in respect of Awarded New Capacity means

- (i) in the case of a Capacity Award with a capacity duration greater than one year, the last day of the eighteenth full calendar Month after the start of the first Capacity Year in which the Awarded New Capacity is to be provided; or
- (ii) in the case of a Capacity Award with a capacity duration of one year or less, the last day of the first full calendar Month after the start of the first Capacity Year in which the Awarded New Capacity is to be provided; or
- (iii) such later date as specified under paragraph J.5.5.1.

J.6.1.2 The System Operators shall terminate all the Awarded New Capacity in respect of a new or refurbished Generator Unit or Interconnector in the event that:

(a)

- (i) Substantial Financial Completion has not been achieved within the Substantial Financial Completion Period of the Capacity Auction Results Date in the Capacity Auction Timetable for the Capacity Auction in which the capacity was allocated;
- (ii) ~~(or~~ such later date as allowed by the Regulatory Authorities under section J.5.2); or
- (iii) such later date as specified under paragraph J.5.5.1; or

(b) Minimum Completion has not been achieved by the applicable Long Stop Date.

J.6.1.6 Except where an extension has been granted under paragraph J.5.5.2, ~~T~~the System Operators shall terminate all or part of the Awarded New Capacity in respect of New Capacity only for the first Capacity Year for which that capacity was awarded if requested to do so by the Regulatory Authorities if it is determined by the Regulatory Authorities (based on an independently verified report) prior to the T-1 Capacity Auction for the Capacity Year that all or part of the Awarded Capacity is not likely to be delivered by the start of the Capacity Year.

**Add the following definitions to the Glossary:**

Relevant Planning Authority means, in respect of Ireland, the Department of Housing, Local Government and Heritage and any relevant local authority in the discharge of its planning functions from time to time pursuant to the Planning and Development Acts 2000-2022 and, in respect of Northern Ireland, the Department for Infrastructure, the Planning Appeals Commission or a district council in the discharge of their planning functions from time to time pursuant to the Planning Act (NI) 2011.

Third Party Judicial Review means:

- i) In respect of Ireland, judicial review proceedings commenced, by a party other than the Participant either
  - a. pursuant to Section 50(2) of the Planning and Development Acts 2000-2022, as amended, and relating to a decision of a Relevant Planning Authority or An Bord

- Pleanála to grant planning permission affecting a new or refurbished Generator Unit or Interconnector in respect of the delivery of Awarded New Capacity, or
- b. In response to a licence issued under Part IV of the Environmental Protection Agency Act 1992 which is required under paragraph J.2.1.1(a)(v) to achieve the Substantial Financial Completion milestone in respect of the delivery of Awarded New Capacity;  
or
- ii) In respect of Northern Ireland, judicial review proceedings commenced, by a party other than the Participant, pursuant to the Rules of the Court of Judicature (Northern Ireland) 1980 Order 53, as amended or re-enacted from time to time, and relating to a decision either
- a. of the Relevant Planning Authority to grant planning permission affecting a new or refurbished Generator Unit or Interconnector in respect of the delivery of Awarded New Capacity, or
  - b. of the Department of Agriculture, Environment and Rural Affairs to grant a permit pursuant to the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013 which is required under paragraph J.2.1.1(a)(v) to achieve the Substantial Financial Completion milestone in respect of the delivery of Awarded New Capacity.

**Third Party Planning Appeal** means an appeal to An Bord Pleanála pursuant to Part III, Chapter IV of the Planning and Development Acts 2000-2022, as amended, and relating to a decision of the Relevant Planning Authority to grant planning permission affecting a new or refurbished Generator Unit or Interconnector in respect of the delivery of Awarded New Capacity.

**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.

**Capacity Quantity Extension Period** means the extension to the Capacity Quantity End Date and Time approved in respect of a Third Party Extension Application in accordance with section J.5.6