



Single Electricity Market

(SEM)

Capacity Market Code Modifications

Workshop 31 Consultation Paper

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| CMC_10_23: | Mitigation of Impact on Participants Relating to 3rd Party Gas Connection Delays |
| CMC_11_23: | Amendment to Drafting Introduced Under Modification CMC_15_22 |
| CMC_12_23: | Facilitation of Unit Specific Price Caps for Existing Capacity in Excess of the Auction Price Cap |
| CMC_13_23: | Min Completion Prior to Long Stop Date |
| CMC_14_23: | Locational Capacity Constraint Violation Criteria |

SEM-23-044

14 June 2023

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Appendix C – Response Template

1. OVERVIEW

1.1 ABSTRACT

1.1.1 The purpose of this consultation paper is to invite industry participants to provide feedback and comments regarding the proposed modifications to the Capacity Market Code (CMC) discussed at Workshop 31, held on 18 May 2023.

1.1.2 During this Working Group, five modifications were presented. This consultation paper relates to:

CMC_10_23: Mitigation of Impact on Participants Relating to 3rd Party Gas Connection Delays

CMC_11_23: Amendment to Drafting Introduced Under Modification CMC_15_22

CMC_12_23: Facilitation of Unit Specific Price Caps for Existing Capacity in Excess of the Auction Price Cap

CMC_13_23: Min Completion Prior to Long Stop Date

CMC_14_23: Locational Capacity Constraint Violation Criteria

1.2 BACKGROUND

1.2.1 On the 4 May 2023, Bord na Móna submitted one Modification Proposal (CMC_10_23); EPUKI submitted two Modification Proposals (CMC_11_23 and CMC_12_23); and the TSOs submitted two Modification Proposals (CMC_13_23 and CMC_14_23) under the terms of B.12.4 of the CMC. These were all marked as Standard.

1.2.2 The RAs reviewed all Modification Proposals and determined that none were spurious.

1.2.3 The RAs determined the procedure to apply to the Modification Proposals. This is shown in Appendix A. An overview of the timetable is as follows:

- i. The System Operators convened Workshop 31 where the Modification Proposals were considered on 18 May 2023.
- 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 Modification Proposals, with a response time of no less than 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 five proposed standard modifications. Further detail on each is set out in the appended Modification Proposals in Appendix B.
- 1.3.2 The Regulatory Authorities hereby give notice to all Parties and the Market Operator of a consultation on the proposed Modifications.
- 1.3.3 Interested Parties and the Market Operator are invited to make written submissions concerning the proposed Modification by no later than 17:00 on Friday 21 July 2023.
- 1.3.4 **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 implement, reject or undertake further consideration of each modification.

2. MODIFICATION PROPOSALS

2.1 CMC_10_23 – MITIGATION OF IMPACT ON PARTICIPANTS RELATING TO THIRD PARTY GAS CONNECTION DELAYS

Proposer: Bord na Móna (BnM)

CMC_10_23: Proposal Overview

- 2.1.1 A key milestone of the implementation plan submitted by units awarded New Capacity contracts is Substantial Completion as it is only after this has been satisfied that New Capacity Market Units are flagged as 'Actual' in the Capacity and Trade Register.
- 2.1.2 To achieve Substantial Completion, participants must rely on third parties to exercise their functions in a timely manner. However, BnM note that timelines within gas connection contract structures allow the gas connection party to move out delivery timelines without recourse to the participant. Delivery timelines are framed as 'target completion dates' and these are not known with clarity until the gas connection contract is executed. As a result, market participants have effectively no way of managing such risks.
- 2.1.3 This modification presents a further development of CMC_14_22 (Mitigation of Impact of Third-Party Delays on Participants and Extension of Support Term) in so far as it focuses exclusively on third-party delays relating to gas connection which are not attributable to the participant. It also focuses on some of the limitations identified in Decision Paper SEM-23-001 and puts forward proposed solutions.
- 2.1.4 The proposed solutions include considering relevant contractual aspects of a typical gas connection contract which often comprises expert determinations. Where there is disagreement between the participant and the gas connection party, this provides a process for attribution of delay in relation to project delivery within relevant timelines using mechanisms within the gas connection contract. It also addresses the trigger issue in terms of what triggers the delay.
- 2.1.5 The proposed modification would result in the extension of the Long Stop Date and the Capacity Quantity End Date of New Capacity (maintaining Maximum Duration of New Capacity) in instances where Substantial Completion has been delayed because of the delivery failure of a third-party. However, BnM propose that this would only be in those instances which are clearly within the control of the Gas Connection parties.
- 2.1.6 By linking the extension of project milestones to the delivery of new elements required to deliver it, i.e., eligible gas connection delays, as within the scope of the Modification Proposal, it is argued that this would better balance the risk between investors and third parties.
- 2.1.7 Failure to implement this Modification Proposal will mean that participants in the T-3 2024/25, and subsequent auctions, will be exposed to an undue amount of risk which is outside of their control. This significantly jeopardises the delivery of New Capacity which is detrimental to the objectives of the CMC.

2.1.8 Further details on the Modification Proposal are set out in the appended Modification Proposal Appendix B, which includes the draft changes to the CMC.

CMC_10_23: Working Group Feedback

2.1.9 Capacity Market Code Modifications Workshop 31 took place on Thursday 18 May 2023 where the modification was presented and discussed.

2.1.10 BnM reiterated that one of the key aspects of the modification was the expert determination within the contract and that the modification was about trying to work with third-party gas connection parties in order to ensure projects are delivered for security of supply reasons.

2.1.11 Referring to CMC_14_22 and the modifications approved in SEM-23-001, Energia reminded the workshop that their position was that those modifications were retrospective in nature and that that remained Energia's position in relation to those modifications and also this modification.

2.1.12 Energia also queried how the modification would work and asked if the dates that really mattered would be the mechanical completion date and the actual completion date. They also enquired how much scrutiny the RAs and TSOs could give those dates given the volume of participants seeking qualification and queried the role of the second engineer.

2.1.13 BnM disagreed that the proposed modification would be retrospective and stated that the key part was the attribution and the actual completion date considering whatever attributable delays there might be between the participant and the gas connection party. In terms of the second engineer, it was procedural as it mirrored the provisions within SEM-23-001.

2.1.14 EPUKI supported the modification believing it was critical for security of supply and welcoming the changes made to CMC_14_22.

2.1.15 BGE also echoed EPUKI's position and were broadly supportive of the modification.

2.1.16 Lumcloon Energy agreed that it made sense.

2.1.17 ESB GT stated that both gas and grid connection be treated similarly with aligned processes. They also requested some clarity how CMC_14_22 would be progressed in light of the new modification.

2.1.18 The RAs welcomed the work undertaken by BnM and thought parking CMC_14_22 in light of the more detailed considerations of CMC_10_23 would be most appropriate, given that CMC_10_23 had superseded it.

2.1.19 BnM asked that CMC_14_22 be kept open.

2.1.20 The RAs noted that the triggering issue was still there with CMC_14_22 and that it was still being considered with further work to be done.

CMC_10_23: Minded To Position

- 2.1.21 The SEM Committee welcomes feedback and comments regarding the proposed modification.
- 2.1.22 The Committee acknowledges some of the challenges currently faced by industry in terms of project delays which are outside of the control of the participant and the potential impact of these on timeframes within the Capacity Market. Recognition is also given to the extensive and detailed work undertaken by Bord na Móna in the development of modification CMC_10_23 and the attempt to address some of the potential issues relating to the earlier modification proposal CMC_14_22.
- 2.1.23 Given the issues raised and the apparent need for a process to extend key milestones to allow for third-party gas delays, the SEM Committee will take time to consider this proposed modification.

2.2 CMC_11_23 – AMENDMENT TO DRAFTING INTRODUCED UNDER MODIFICATION CMC_15_22

Proposer: EPUKI

CMC_11_23: Proposal Overview

- 2.2.1 This proposal sets out to address delays arising from third-party challenges which were not covered under CMC_15_22.
- 2.2.2 EPUKI argue that CMC_15_22 fails to address scenarios where a direction under Article 17 or Article 18 of the Planning (General Development Procedure) Order (Northern Ireland) 2015¹, made by the Department of Infrastructure as a result of a third-party submission, has the potential to introduce delays to the planning process.
- 2.2.3 Articles 17 and 18 state respectively:

Directions restricting the grant of planning permission.

17. The Department may give directions to a council restricting the grant of planning permission by a council, either indefinitely or during such period as may be specified in the direction, in respect of any development or any class of development, as may be so specified.

Directions requiring information.

18. The Department may give directions requiring a council to give to the Department, and to such other persons as may be specified in the direction, such information as may be so specified with respect to applications for planning permission made to the council, including information as to the manner in which any such application has been dealt with.

- 2.2.4 This proposed modification therefore seeks to introduce wording which would address such instances and be consistent with the intent of CMC_15_22.

¹ [The Planning \(General Development Procedure\) Order \(Northern Ireland\) 2015 \(legislation.gov.uk\)](https://legislation.gov.uk)

- 2.2.5 The Modification Proposal states that failure to implement the proposal may weaken the effectiveness of CMC_15_22 as applicable in Northern Ireland with third parties still being able to challenge and obstruct planning permission in Northern Ireland through Article 17/18 directions. It would also result in inconsistency between the treatment of New Capacity in Northern Ireland and Ireland.
- 2.2.6 Further details on the Modification Proposal are set out in the appended Modification Proposal Appendix B, which includes the draft changes to the CMC.

CMC_11_23: Working Group Feedback

- 2.2.7 Capacity Market Code Modifications Workshop 31 took place on Thursday 18 May 2023 where the modification was presented and discussed.
- 2.2.8 Energia believed that the proposal was different to CMC_15_22 and questioned whether it should be an extension to this modification given no decision would have been made. They also thought a more appropriate end date would be the date on which the Department might decide to call the application in.
- 2.2.9 EPUKI said the issue over whether a decision had been made had been considered but that it may not necessarily be relevant in the context of the extension as, if the planning had been rejected, an extension would not be sought. If the decision was to approve the application, then the approval would have been received in absence of Article 17 and 18.
- 2.2.10 BGE understood that there were some jurisdictional inconsistencies and agreed that there was merit in looking to address these. They also highlighted that they were aware of other planning delays that might require the future broadening of the scope of CMC_15_22 or another modification.
- 2.2.11 ESB GT asked whether a participant could receive an extension under the current proposal and then once planning permission received, ask for a second extension as a result of a separate third-party delay.
- 2.2.12 The TSOs' responded that they believed CMC_15_22 had a review process in place with an independent assessor to examine the legitimacy of delays. This should help prevent participants accumulating delays on an illegitimate basis.

CMC_11_23: Minded to Position

- 2.2.13 The SEM Committee welcomes feedback and comments regarding this proposed modification.
- 2.2.14 As outlined in A.1.2.1 (f), one of the objectives of the Capacity Market is to ensure no undue discrimination between persons who are or may seek to become parties to the Capacity Market. Therefore, it is essential there are minimal jurisdictional inconsistencies in the CMC.

- 2.2.15 The SEMC may amend the legal drafting of this modification if a decision is made to implement to comply with any legal aspect of the insertion of planning legislation into the CMC.
- 2.2.16 SEMC are seeking views on this modification and do not have a 'minded to' position.

2.3 CMC_12_23 – FACILITATION OF UNIT SPECIFIC PRICE CAPS FOR EXISTING CAPACITY IN EXCESS OF THE AUCTION PRICE CAP

Proposer: EPUKI

CMC_12_23: Proposal Overview

- 2.3.1 This modification proposes to enable participants with Existing Capacity to apply for a Unit Specific Price Cap (USPC) in capacity auctions which exceeds the Auction Price Cap (APC).
- 2.3.2 APC is currently based on the calculation of Best New Entrant (BNE) Net Cost of New Entry (CONE).
- 2.3.3 The modification argues that although New Capacity may be more costly to deliver than retaining Existing Capacity, there may be instances where the retention of Existing Capacity is more efficient and effective than seeking to deliver New Capacity.
- 2.3.4 EPUKI believe that there are a number of drivers which may lead to an Existing Capacity unit requiring a USPC greater than the APC. These include increased maintenance costs as a unit becomes older; an Existing Unit required to remain on the system needing to recover investment costs over a shorter period; a reduction in System Services revenue; a reduction in efficiency resulting in little or no inframarginal rent; and a reduction in MW availability of existing units.
- 2.3.5 Failure to implement the modification may leave the Single Electricity Market exposed where there is insufficient cover through either New Capacity or Emergency Generation. In such instances it may be practical or cost efficient to pay more to retain older Existing Capacity.
- 2.3.6 Further details on the Modification Proposal are set out in the appended Modification Proposal Appendix B, which includes the draft changes to the CMC.

CMC_12_23: Working Group Feedback

- 2.3.7 Capacity Market Code Modifications Workshop 31 took place on Thursday 18 May 2023 where the modification was presented and discussed.
- 2.3.8 BGE did not think the second proposed approach was a satisfactory solution from a consumer perspective as potentially increasing the price new units could bid in could result in a significant cost to the consumer, particularly if related to multi-year contracts. As the proposal's rationale

was to retain older units to help address security of supply concerns, they believed single year contracts would be more appropriate.

- 2.3.9 However, BGE did not believe there was a strong justification for any changes to the CMC but were interested in additional clarity.
- 2.3.10 Energia thought there were some issues with the USPC process in general and were open and supportive of the proposal's rationale. They also raised the issue where any investment and refurbishment in plant to make it more efficient can only be recovered through a high USPC process and this should also be examined.
- 2.3.11 ESB GT agreed with Energia in that some capacity on the system may not fit within the existing mechanism and may need to be reviewed. They also thought consideration should be given to knock-on effects to the auction process.
- 2.3.12 The RAs noted that SEM Committee decisions try to balance difficult calls with costs to consumer. They re-iterated that were happy to provide clarity to the existing USPC process.
- 2.3.13 EPUKI stated that they did not think there was a prevention from the RAs to have USPCs above the APC. This only obstacle was an issue with the Demand Curve being set. They believed the RAs could approve such a USPC.
- 2.3.14 The RAs stated the USPC could only be applied for up to the APC.
- 2.3.15 The TSOs confirmed that the definition of APC stated that it was the Maximum Price Allowed.

CMC_12_23: Minded To Position

- 2.3.16 The SEM Committee welcomes feedback and comments regarding this proposed modification.
- 2.3.17 Capacity Market Auction Price Caps (APCs) are currently defined within the Capacity Market regime with reference to the Best New Entrant Net Cost of New Entry (BNE Net CONE).
- 2.3.18 The SEM Committee believes that the current Auction Price Cap (APC) as set, should facilitate investment from a range of technologies and that these should, as stated, be the Maximum Price Allowed. The new BNE decision has been published² following an extensive modelling and quantitative analysis process.
- 2.3.19 The ability to apply for a price above the APC raises legitimate concerns over potential cost implications for consumers as there would no longer be an upper limit for USPCs and it is unclear if such an instrument might indirectly influence the final Auction Price.
- 2.3.20 The SEM Committee are minded to reject this modification.

² <https://www.semcommittee.com/publications/sem-23-016-best-new-entrant-decision-paper>

2.4 CMC_13_23 – MIN COMPLETION PRIOR TO LONG STOP DATE

Proposer: System Operators

CMC_13_23: Proposal Overview

- 2.4.1 This modification proposes that where capacity achieves Minimum Completion after the beginning of the Capacity Year and the participant acknowledges that Substantial Completion will not be achieved, the System Operator can reduce the Awarded Capacity as determined in G.3.1.8 of the CMC and will terminate the remainder before the Long Stop Date.
- 2.4.2 The proposal would amend the CMC rule whereby if Minimum Completion has been obtained but Substantial Completion has not, the participant has to wait until the Long Stop Date to receive their capacity payment.
- 2.4.3 The TSOs believe that this would allow participants who have achieved Minimum Completion to inform the System Operator, via an updated Implementation Progress Report, as soon as they are aware of the situation rather than having to wait until the Long Stop Date.
- 2.4.4 If the proposal is not implemented, the TSOs' argue that it will mean that parties who are unable to reach Substantial Completion but have met Minimum Completion will need to wait until the Long Stop Date and will lose revenue from the start of the Capacity Year to the Long Stop Date and will not be subject to Difference Charges.
- 2.4.5 Further details on the Modification Proposal are set out in the appended Modification Proposal Appendix B, which includes the draft changes to the CMC.

CMC_13_23: Working Group Feedback

- 2.4.6 Capacity Market Code Modifications Workshop 31 took place on Thursday 18 May 2023 where the modification was presented and discussed.
- 2.4.7 Energia queried if there would be an opportunity for a participant to revise their position after they had been awarded Minimum Completion.
- 2.4.8 The TSOs stated that where the process had been applied and a decision issued, it would not be possible to change it. However, the TSOs would review any submissions from participants before a decision would be made.
- 2.4.9 Energia also asked if there would be any complication between the modification being proposed and other modifications relating to extensions of the Long Stop Date.
- 2.4.10 The TSOs responded that they were content.

CMC_13_23: Minded To Position

- 2.4.11 The SEM Committee welcomes feedback and comments regarding this proposed modification.
- 2.4.12 Given the current challenges around the development of new capacity within the SEM, the SEM Committee welcomes proposals that assist in maximising the capacity that may be available.
- 2.4.13 As this proposed modification provides a facility which allows capacity to be utilised at an earlier stage, the SEM Committee are minded to approve this modification.

2.5 CMC_14_23 – LOCATIONAL CAPACITY CONSTRAINT VIOLATION CRITERIA

Proposer: System operators

CMC_14_23: Proposal Overview

- 2.5.1 This modification seeks to provide further detail to the CMC following design of the algorithm used to give effect to modification CMC_08_22.
- 2.5.2 CMC_08_22 was proposed in order to address scenarios where more capacity could be cleared in a part of the power system than can feasibly be accommodated in the timeframes involved in the delivery of capacity. It introduced Locational Capacity Constraint Maximum Quantities into the capacity auctions.
- 2.5.3 This proposal updates the definition of Locational Capacity Constraint Information to provide price quantity values that would be used by the Capacity Auction software to violate a Locational Capacity Constraint where no feasible solution exists in accordance with F.8.2.3. F.8.2.3 is also updated to ensure that the CMC explicitly states the manner in which these constraint violations should proceed.
- 2.5.4 If this proposal is not implemented, the TSOs believe that the implementation of CMC_08_22 could give rise to results where the capacity auction results are not clearly defined under the CMC.
- 2.5.5 Further details on the Modification Proposal are set out in the appended Modification Proposal Appendix B, which includes the draft changes to the CMC.

CMC_14_23: Working Group Feedback

- 2.5.6 Capacity Market Code Modifications Workshop 31 took place on Thursday 18 May 2023 where the modification was presented and discussed.

- 2.5.7 Energia queried that if the proposal solved on the basis of the minimum cost and if, for example, this was to violate the Minimum quantity, would there be a risk that not enough capacity could be procured to solve the Locational Capacity Constraint.
- 2.5.8 The TSOs argued that there were multiple scenarios possible and that different magnitudes of violation would result in different impacts. The constraints published were to ensure auction outcomes were in line with the ability to accommodate the capacity in those locations and the objective was to try to get as close to those constraints as possible.
- 2.5.9 ESB GT asked if a methodology could be provided to help industry understand what would go into the decision-making process.
- 2.5.10 The TSOs stated that the CMC deals with the application of the numbers as well as the various methodologies outside of the CMC. The TSOs believed that is where consideration of this is placed.
- 2.5.11 ESB GT asked if data from an historic auction could be provided as an example if it was not possible to have a methodology.
- 2.5.12 The TSOs said they would be reluctant to provide data from a previous auction as there had not been a situation where the scenario had arisen. It was more about the principles.
- 2.5.13 BnM echoed Energia's support that the Minimum LCC capacity be maintained. They did not think it appropriate to go below that.

CMC_14_23: Minded To Position

- 2.5.14 The SEM Committee welcomes feedback and comments regarding this proposed modification.
- 2.5.15 At the time of writing the SEMC has not formed a minded to position on this modification.

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 in respect of:
- the proposed modification and its consistency with the Code Objectives.
 - any impacts not identified in the Modification Proposal Forms, e.g., to the Agreed Procedures, the Trading and Settlement Code, IT systems etc.; and
 - the detailed CMC drafting proposed to deliver the Modifications.
- 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 decide at the earliest, by 31 August 2023 on the implementation or otherwise of the Modifications outlined within this consultation paper as per B.12.11.1 of the CMC.
- 4.1.2 Responses to the consultation paper **must** be sent to both the CRU and UR CRM Submissions inboxes (CRMsubmissions@uregni.gov.uk and CRMsubmissions@cru.ie), **by close of business 17:00pm on Friday 21 July 2023. Please note that late submissions will not be accepted.**
- 4.1.3 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.