



Single Electricity Market

(SEM)

Capacity Market Code Modifications

Workshop 32 CMC_16_23 Consultation Paper

CMC_16_23: Extension to New Capacity Impacted by Indexation

SEM-23-062

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Contents

1. Overview 3

 1.1 Abstract..... 3

 1.2 Background..... 3

 1.3 Purpose of this Consultation Paper 4

2. Modification Proposals 4

 2.1 CMC_16_23 – Extension to New Capacity Impacted by Indexation 4

3. Consultation Questions..... 6

4. Next steps..... 7

Appendix A – Capacity Market Code Modification Timetable

Appendix B – CMC_16_23

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 modification to the Capacity Market Code (CMC) discussed at Workshop 32, held on 20 July 2023.

1.1.2 During this Working Group, three modifications were presented. This consultation paper relates to one of the modifications discussed at Workshop 32:

CMC_16_23: Extension to New Capacity Impacted by Indexation

1.2 BACKGROUND

1.2.1 On the 6 July 2023, EPDEL submitted one Modification Proposal (CMC_16_23); EPDEL under the terms of B.12.4 of the CMC. The proposed modification was marked as Urgent.

1.2.2 The RAs reviewed the Modification Proposal and determined that it wasn't spurious. They did not consider it to be urgent and therefore categorised the proposal as Standard.

1.2.3 As the original submission did not include draft legal text, the RAs requested that this be provided. An updated proposal was submitted on the 28 July 2023.

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

- i. The System Operators convened Workshop 32 where the Modification Proposal was considered on 20 July 2023.
- ii. The System Operators, as set out in B.12.7.1 (j) of the CMC, are to prepare a report¹ 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 Proposal, with a response time of no less than 20 Working Days (as defined in the CMC), from the date of publication of the Consultation.

¹ <https://www.sem-o.com/events/capacity-market-modificat-48/Capacity-Modifications-Workshop-32-Report-V1.0.pdf>

- iv. As per clause B.12.11 of the CMC 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 proposed standard modification. Further detail is set out in the appended Modification Proposal 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 Modification.
- 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 06 October 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 as per B.12.11.

2. MODIFICATION PROPOSALS

2.1 CMC_16_23 – EXTENSION TO NEW CAPACITY IMPACTED BY INDEXATION

Proposer: EPDEL

[CMC_16_23: Proposal Overview](#)

- 2.1.1 This modification proposes an extension similar to that granted under CMC_15_22 for projects which were awarded New Capacity in the 2024/2025 T-3 and 2025/2026 T-4 Capacity Auctions. This extension would take account of delays incurred to projects awaiting a SEM Committee decision with respect to indexation. A modification in relation to indexation of the capacity contracts was introduced in response to inflationary pressures which threatened the feasibility of New Capacity projects specifically in the T-3 24/25 and T-4 25/26 auctions.
- 2.1.2 The proposer stated, the level of risk caused by this inflation could potentially mean that projects which would otherwise be able to proceed were unable to make a Final Investment Decision (FID) until the impact of inflation, and any mitigation, was fully understood.

- 2.1.3 It is argued that no reasonable investor would be expected to commit to a FID where the feasibility of their project is still uncertain. Other projects may have compromised on project economics or contractual terms (such as fixed price contracts versus taking ongoing price risk) to commit to FID but at the risk of erosion of the project value.
- 2.1.4 Following the SEMC's decision paper in May 2023, Participants can now assess the feasibility of their projects and seek to move forward with key contractual decisions and reach FID. It is argued in this proposed modification however, this delay has meant that projects have become misaligned with their expected timelines and can cause issues:
- Exposure to higher rates of Performance Securities before FID;
 - Potential termination because of the Long Stop Date; and
 - Contract erosion because of delay
- 2.1.5 To mitigate against each of these issues, The proposed modification is to grant an inflationary extension period to New Capacity projects in the relevant Capacity Auctions, where the period proposed is the time between the raising of the Indexation Modification and the SEM Committee decision. This is deemed to be 343 days.
- 2.1.6 Further details on the Modification Proposal are set out in the appended Modification Proposal Appendix B, which includes the draft changes to the CMC.

Working Group Feedback

- 2.1.7 Capacity Market Code Modifications Workshop 32 took place on Thursday 20 July 2023 where the modification was presented and discussed.
- 2.1.8 EPDEL submitted the modification without the official legal drafting. Revised legal drafting was submitted on 28 July 2023
- 2.1.9 Energia are strongly opposed to the modification and stated that without legal drafting it was difficult to consider. They also stated that it would allow for blanket one year extensions for all capacity holders in the specific auctions cited. Energia raised concerns that continuous extensions would prevent projects from being completed. Tangible evidence was required to support proposed extensions.
- 2.1.10 EPDEL responded by explaining that the extension modification was due to the SEMC previously acknowledging inflationary delays and that the 12 months captured this. They clarified that there were no definite delays for 12 months on any EP projects. The proposer is trying to account for delays that arose in waiting on the decision on indexation to be made.
- 2.1.11 The TSO also raised concerns about the modification and stated that it was very broad in nature. They also questioned the basis for the trigger for application of inflationary delay and used an example of prudent and less prudent participants submitting offers and the risks involved for both. The market should be there to incentivise the prudent participant and disincentivise the non-prudent operator. Giving projects an incentive to wait on a regulatory decision on

something that may or may not proceed introduces risk and uncertainty around when participants are expected to deliver. The TSO also echoed concerns around the legal drafting and stressed the importance of it for a complete assessment of the modification.

- 2.1.12 EPDEL clarified that it was not the intent to incentivise less prudent projects. They stated that this was a Security of Supply issue as they were committed to delivering these projects and were cleared in the relevant auctions. However, they were impacted by inflationary risks that no prudent participant could have foreseen.
- 2.1.13 The TSO highlighted that any modification to the Code must apply to all situations and the proposer must be clear on what they want to address in the legal drafting. This modification addressed a unique scenario that is current. Referencing inflationary pressures such as war were very specific, and they questioned if this could be managed through drafting.
- 2.1.14 The RAs supported the points raised by the TSO. The period of 343 days between the raising of the modification and the SEMC decision included a considerable amount of work considering SEMC consideration, consultations with industry, and analysis. The RAs also highlighted concerns around lack of legal drafting and the difficulty to assess without this.
- 2.1.15 EPDEL acknowledged the basis for the trigger point concerns. It is to capture the time difference during the time projects were waiting on decisions.

CMC_16_23: Minded To Position

- 2.1.16 The SEM Committee welcomes feedback and comments regarding the proposed modification.
- 2.1.17 The SEM Committee recognise the inflationary pressures that participants have faced. However, this modification addresses a unique scenario with an arbitrary basis for a trigger point. The SEMC view policy direction such as indexation should not be a driver for a standstill approach on progress of projects, while industry await decisions. Therefore, the time taken to come to a policy decision is not an appropriate delay to facilitate an inflationary extension period.
- 2.1.18 The SEM Committee are minded to reject the modification proposal.

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, Grid Code and IT systems etc.; and
- the detailed CMC drafting proposed to deliver the Modifications.

4. NEXT STEPS

- 4.1.1 The SEM Committee intends to decide at the earliest, by 31 October 2023 on the implementation or otherwise of the Modification 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 06 October 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.