



**Single Electricity Market
(SEM)**

**Capacity Market Code Working Group 18
Decision Paper**

SEM-21-048

22 June 2021

EXECUTIVE SUMMARY

The purpose of this decision paper is to set out the decisions relating to the Proposed Modifications to the Capacity Market Code (CMC) discussed at Working Group 18 held on 11 March 2021.

The decision within this paper follows on from the associated consultation (SEM-21-023¹) which closed on 4 May 2021.

This paper considers the proposed modifications presented at WG18. The proposed modifications relate to:

➤ **CMC_01_21: Amendment relating to the provision of the CAM Report following a Capacity Auction**

This modification proposes to amend B.10.4.1 of the CMC to require that the Capacity Auction Monitor provides their report on the Capacity Auction two Working Days after the provisional Capacity Auction Results have been released to Participants.

➤ **CMC_02_21: Amendment to Capacity Market Code Modifications Workshop Agenda Timeline**

This modification proposes to change the timeframes by which the System Operator must issue their agenda to participants in advance of a Modifications Working Group.

➤ **CMC_03_21: Modification to the provisions for Substantial Financial Completion**

This modification proposes to modify the process for meeting Substantial Financial Completion, with regard to DSUs and AGUs so as to provide greater flexibility in the delivery of Awarded New Capacity.

➤ **CMC_04_21: Verification Requirements for Implementation Plan Milestones**

This modification proposes to remove the obligations that require DSUs and AGUs to provide verification in respect of paragraphs that do not apply to DSUs and AGUs and replace this obligation with one that relates to the applicable paragraph J.2.1.3 (a).

Four responses were received to the Capacity Market Code Working Group 18 Modification Consultation Paper, none of which were marked as confidential.

¹ Capacity Market Code Working Group 18 Consultation Paper:
<https://www.semcommittee.com/sites/semc/files/media-files/SEM-21-023%20WG18%20Consultation%20Paper.pdf>

The purpose of the proposed modifications was to further the Code Objectives within the CMC, specifically:

A.1.2.1 This Code is designed to facilitate achievement of the following objectives (the “Capacity Market Code Objectives”):

CMC_01_21 –

- (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;*
- (e) to provide transparency in the operation of the SEM;*

CMC_02_21 –

- (b) to facilitate the efficient, economic and coordinated operation, administration and development of the Capacity Market and the provision of adequate future capacity in a financially secure manner;*

CMC_03_21 –

- (b) to facilitate the efficient, economic and coordinated operation, administration and development of the Capacity Market and the provision of adequate future capacity in a financially secure manner;*
- (d) to promote competition in the provision of electricity capacity to the SEM;*
- (f) to ensure no undue discrimination between persons who are or may seek to become parties to the Capacity Market Code*

CMC_04_21 –

- (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;*
- (b) 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;*

Summary of Key Decisions

Following consideration of the proposals and the responses received to the consultation the SEM Committee have decided:

Modification	Decision
CMC_01_21 – Amendment relating to the provision of the CAM Report following a Capacity Auction	Approve
CMC_02_21 – Amendment to Capacity Market Code Modifications Workshop Agenda Timeline	Approve
CMC_03_21 – Modification to the provisions for Substantial Financial Completion	Undertake further consideration
CMC_04_21 – Verification Requirements for Implementation Plan Milestones	Approve

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Appendix A (i) – CMC_01_21 (as consulted upon)

Appendix A (ii) – CMC_02_21 (as consulted upon)

Appendix A (iii) – CMC_03_21 (as consulted upon)

Appendix A (iv) – CMC_04_21 (as consulted upon)

Appendix B – Responses to *SEM-21-023*

Appendix C – Approved Modification Text Drafting – CMC_01_21

Appendix D – Approved Modification Text Drafting – CMC_02_21

Appendix E – Approved Modification Text Drafting – CMC_04_21

1. OVERVIEW

1.1. BACKGROUND

1.1.1. 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 (5.0)² was published on 24 May 2021 and the most recent version of the TSC³ was published on 3 November 2020.

Process for modification of the CMC

- 1.1.2. Section B.12 of the CMC outlines the process used to modify the code. In particular, it sets out the processes for proposing, consideration, consultation and implementation or rejection of Modifications to the CMC.
- 1.1.3. 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).
- 1.1.4. 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.
- 1.1.5. 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.
- 1.1.6. 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.
- 1.1.7. 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.
- 1.1.8. If a proposed modification is deemed urgent by the RAs, CMC Section B.12.9.5 will become active and the RAs will determine the procedure and timetable to be followed in the assessment of the Modification Proposal. The CMC states that the procedure and timetable may vary from the normal processes set out in the code, allowing for the modification to be fast-tracked.

² Capacity Market Code: <https://www.sem-o.com/rules-and-modifications/capacity-market-modifications/market-rules/Capacity-Market-Code.docx>

³ Trading and Settlement Code: <https://www.sem-o.com/rules-and-modifications/balancing-market-modifications/market-rules/>

Process and Timeline for these Modifications

- 1.1.9. On 25 February 2021 the SOs notified the RAs of the four proposed modifications submitted for discussion at WG18 held on 11 March 2021.
- 1.1.10. CMC_01_21 was submitted by the RAs, CMC_02_21 by the SOs, CMC_03_21 submitted by the DRAI and CMC_04_21 by the SOs.
- 1.1.11. All four proposed modifications were marked as Standard and were processed through the normal Modification process.
- 1.1.12. On the 26 March 2021 the RAs determined the procedure to apply to the Modification Proposals. The procedure is shown in detail in Appendix A. An overview of the timetable is as follows:
 - i. The System Operators convened Working Group 18 where the Modification Proposals were considered on 11 March 2021.
 - 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.
- 1.1.13. The purpose of this decision paper is to set out the decision relating to Modification Proposals discussed during Working Group 18 to either:
 - a) Implement a modification;
 - b) Reject a modification; or
 - c) Undertake further consideration in regards to matters raised in the modification proposal.
- 1.1.14. This decision paper sets out a summary of the consultation proposals and sets out the SEM Committee's decision.

1.2. RESPONSES TO CONSULTATION

1.1.15. This paper includes a summary of the responses made to the Capacity Market Code Modifications consultation paper (SEM-20-023) which was published on 4 April 2021.

1.1.16. A total of four responses were received by close of the consultation period and none were marked confidential. The respondents are outlined below and copies of each response can be obtained from the SEM Committee website.

- Demand Response Association Ireland (DRAI)
- Bord Gáis Energy (BGE)
- Energia
- EirGrid/SONI

2. CMC_01_21 – AMENDMENT RELATING TO THE PROVISION OF THE CAM REPORT FOLLOWING A CAPACITY AUCTION

2.1. CONSULTATION SUMMARY

- 2.1.1. This modification was submitted by the RAs and proposed a change to paragraph B.10.4.1 of the CMC.
- 2.1.2. Under this paragraph, the Capacity Auction Monitor (CAM) is currently required to provide their report on the Capacity Auction two Working Days after the provisional Capacity Auction Results have been provided to the Regulatory Authorities (RAs). The RAs propose that this paragraph is modified to instead require that they provide their report on the Capacity Auction two Working Days after the provisional Capacity Auction Results have been released to Participants.
- 2.1.3. In previous Capacity Auctions the provisional Capacity Auction Results were provided to the RAs (under paragraph F.9.3.1) and released to Participants (under F.9.2.1) on the same date, occurring on the Provisional Capacity Auction Results Date as listed in the Capacity Auction Timetable.
- 2.1.4. However, for the T-1 CY2020/21 Capacity Auction and the T-2 CY2021/22 Capacity Auction, the System Operators provided the provisional Capacity Auction Results to the RAs on an earlier date. This earlier submission of provisional Capacity Auction Results from the SOs to the RAs resulted in an unexpected last-minute change to the deadline of Auction Monitor report on the Capacity Auction, requiring the Monitor to make resourcing changes to support earlier delivery of the report on the T-2 Capacity Auction.
- 2.1.5. This proposed modification would link the submission of the Auction Monitor report on a Capacity Auction to an event that is less likely to vary, providing more certainty for all parties planning inputs to, preparation of, and review of the report on a Capacity Auction whilst also mirroring the requirement for the Auction Monitor report on the Qualification Process, which is required two Working Days following the release of Provisional Qualification Results to Participants under E.9.2.1, E.9.2.2, and E.9.2.3.

2.2. SUMMARY OF RESPONSES

- 2.2.1. All four respondents provided support for the implementation of the proposal.
- 2.2.2. The DRAI advised that they are supportive of the proposal to modify the process / timeline associated with the provision to the Regulatory Authorities of the Capacity Auction Monitor's Capacity Auction report. They highlighted that the proposal, and the associated rationale behind the modification, seems reasonable and justified to avoid unnecessary resourcing issues and time pressure for the System Operators and the Capacity Auction Monitor.
- 2.2.3. BGE stated that, in principle, they support the proposal to amend the delivery deadline by the Capacity Auction Monitor (CAM) of their report on a Capacity Auction to link it to a pre-agreed date on the Capacity Auction timetable.

- 2.2.4. They advised they see the proposal to be a positive development in providing reporting deadline certainty to the CAM. They elaborated that the certainty of delivery deadline for the Capacity Auction report allows the CAM to ensure their own resources and processes are aligned to the required delivery deadline and are not impeded with unexpected changes to internal deadlines.
- 2.2.5. However, BGE ask the SEM Committee, in their final decision, to confirm that this proposed change does not impact or delay the provision to participants of the provisional results (or information relating to the provisional results) from the Capacity Auction.
- 2.2.6. Energia stated they are supportive of the proposed modifications in line with the SEM Committee minded to position to accept the proposal.
- 2.2.7. EirGrid and SONI provided their support for the intent of the proposed changes and agreed with the benefits to the code objectives as outlined in the consultation paper.
- 2.2.8. The SOs advised they have no objections in amending the process as per the new timelines outlined in this proposed modification. Further, they agree that this will have a beneficial impact on the market and will not change any of the essential publications currently issued to the Market Participants.

2.3. SEM COMMITTEE DECISIONS

- 2.3.1. The SEM Committee welcomes the feedback provided by participants, both as part of the Working Group forum and with regard to the Consultation process.
- 2.3.2. The SEM Committee confirm that implementation of this Modification will have no impact on notification Auction Results to Participants.
- 2.3.3. Given its minded-to position and the positive response to the modification, the SEM Committee approves the modification with the legal text given in Appendix C.
- 2.3.4. The SEM Committee have decided that this Modification should be implemented no later than 14 July 2021.

3. CMC_02_21 – AMENDMENT TO CAPACITY MARKET CODE MODIFICATIONS WORKSHOP AGENDA TIMELINE

3.1. CONSULTATION SUMMARY

- 3.1.1. This proposal was submitted by the SOs with the aim of the modification being to amend section B.12.7.1 (f) of the CMC. This section currently requires the SOs to issue an agenda at least 10 WDs ahead of a WG convening.

- 3.1.2. As it stands, the SOs are technically non-compliant with the CMC as the Secretariat is allowing the maximum time period possible for interested parties to register their attendance. The SOs state that it is also not possible to issue an agenda on this timescale as the deadline has not been reached for submission of new Modification Proposals meaning the agenda is not available within this current timeline.
- 3.1.3. It is proposed to modify the code to require the circulation of an agenda to participants at least 5 WDs in advance of a Working Group, as opposed to 10 WDs, which would mitigate the risk of a recurring non-compliance with this section of the CMC.
- 3.1.4. The SOs stated that amending this requirement to 5 WDs will allow for all other processes associated with submitting a proposal and publishing the agenda to complete naturally whilst also giving participants the maximum amount of time to review proposals and register their attendance at a Working Group.

3.2. SUMMARY OF RESPONSES

- 3.2.1. Of the four responses to this modification proposal, three were supportive of the minded-to position to approve the proposal for implementation and one respondent objected to implementation.
- 3.2.2. The DRAI, Energinet and SOs provided support for the proposal, whilst BGE stated they weren't in a position to favour implementation.
- 3.2.3. The DRAI advised that the modification appears to be a housekeeping proposal to ensure the pragmatic process currently followed by the System Operators is reflected in the CMC and to avoid a minor recurring technical non-compliance.
- 3.2.4. They stated that the proposed offset between the deadline for receipt of Modification Proposals and the deadline for the System Operators issuing the workshop agenda is reasonable and reflects the pragmatic process currently followed.
- 3.2.5. Energinet stated they are supportive of the proposed modifications in line with the SEM Committee minded to position to accept the proposal.
- 3.2.6. EirGrid and SONI state they support the intent of the proposed changes which will benefit the Code objectives by addressing a minor non-compliance issue and allow for a more efficient participation in Capacity Market Code Workshops.
- 3.2.7. Further, they advised that all Modification Proposals must undergo an evaluation and publication process which the SOs endeavour to complete as soon as possible and always within one working day of receipt of all Modification Proposals received; however, they reiterated that they cannot produce an agenda until the Proposals have been processed and verified.
- 3.2.8. They referred to section B.12.7.1 (f) of the CMC which states '*the System Operators shall circulate an agenda to Workshop participants at least 10 Working Days in advance of the Workshop*'.

The SOs stated that this obligation presents difficulties as it results in a shortened period of time for interested parties to register to attend. With the invitation issued one month in advance the current process only provides for a two week registration period.

- 3.2.9. The SOs have advised that the proposal stems from the receipt of requests for registration after the deadline. The SOs advised that they have taken a constructive decision to increase this registration period to allow for greater participation in Workshops. They are of a view that increasing the registration period will allow for greater participation in Workshops as the registration period is increased from two weeks to three weeks. They highlighted that the result of this change is that the agenda is now issued five working days, rather than ten working days in advance.
- 3.2.10. The SOs stated that with the proposed timeline, workshop attendees will see no change or difference to the service currently being delivered. The Workshop Agenda itself is a generic format with a standing order including hyperlinks to all Modifications raised. They reiterated their comments from WG18 that this Proposal seeks to align the timing of this administrative step of issuing the agenda to align with what is current practice which will remove the non-compliance issue and reflect current practice.
- 3.2.11. The SOs referred to the question of the review period being shortened for Participants, was raised at Workshop 18. The SOs advised that Modifications are publically available on the SEMO website after the submission deadline, almost two weeks in advance and this will not change with the introduction of this Proposal. This means that currently Proposals are available to review up to two weeks in advance and that will remain the position and is not affected or changed by this Proposal.
- 3.2.12. In their response, BGE stated that they do not support the proposal to amend the CMC Modifications Workshop Agenda timeline. They highlighted that they see the provision by the SOs of the Working Group agenda to participants at least 10WD in advance of the workshop as an important enablement to the involvement of participants in amendments to the CMC.
- They are of the view that the timeline gives participants the time to review the proposed modifications and complete their own internal due diligence in preparation for each WG.
- 3.2.13. Further, they believe that any technical non-compliance with the 10WD deadline as recognised by the SOs should be addressed in the sequence of the new modification submission process and Working Group registration process to meet this requirement rather than seek to amend the agenda deadline as proposed.

3.3. SEM COMMITTEE DECISIONS

- 3.3.1. The SEM Committee welcomes the feedback provided by participants, both as part of the Working Group forum and with regard to the Consultation process.
- 3.3.2. While noting BGE's concerns, the SEM Committee observes that the timing of Working Group meetings is provided months in advance, that the agenda is of a standard form and that the

Modifications are published on the SEM-O website within one day of receipt by the SOs. The Committee further observe that the proposed process is the one that has been followed for all 18 Working Groups held to date.

- 3.3.3. Given its minded-to position, the generally positive response and the fact that the modification is bringing the CMC in line with the process that has been successfully followed for more than two year, the SEM Committee approves the modification with the legal text given in Appendix D.
- 3.3.4. The SEM Committee have decided that this Modification should be implemented no later than 14 July 2021.

4. CMC_03_21 – MODIFICATION TO THE PROVISIONS FOR SUBSTANTIAL FINANCIAL COMPLETION

4.1. CONSULTATION SUMMARY

- 4.1.1. This proposal was submitted by the DRAI and proposed to enable Participants to voluntarily increase their financial commitment to the delivery of Awarded New Capacity, in lieu of the standard Substantial Financial Completion milestone.
- 4.1.2. The proposal aims to change section J.2.1.3 of the CMC, modifying a number of Implementation Plan milestones for DSUs / AGUs, to provide an alternative route for achieving Substantial Financial Completion by electing to voluntarily increase the Termination Charge payable (and associated Performance Security) based on the next upcoming termination charge rate (€/MW).
- 4.1.3. The proposal sets out that for a typical T-4 auction requiring Substantial Financial Completion within 18 months from the Auction Results, this would require a Participant to voluntarily increase its Termination Charge exposure (and associated Performance Security) to 30,000 €/MW 22-24 months prior to start of the Capacity Year, and approximately 1 year earlier than would otherwise be required.
- 4.1.4. The proposal retains the requirement for DSUs / AGUs to provide proof of contract with the physical capacity but instead moves the deadline for this provision closer to the start of the Capacity Year (not less than 4 months prior). The proposed modification states this retains this significant milestone, but in a manner which does not unnecessarily limit the period during which aggregators can continue the sales process to recruit and enrol the new customers required to meet their obligations.

4.2. SUMMARY OF RESPONSES

- 4.2.1. Of the four responses received there was a split between respondents on whether to approve or reject this modification for implementation.

- 4.2.2. The DRAI were supportive of the proposal and Energia and SONI/EirGrid were opposed. BGE stated that in principle, they support the proposal to encourage the opportunity for DSUs/AGUs to deliver Awarded New Capacity by a voluntary alternative for these unit types to achieving Substantial Financial Completion (SFC) much closer to capacity delivery in exchange for increased Termination Charges payable. BGE elaborated that it is their belief that a balance is required between alternative opportunities given to DSUs/ AGUs and the requirement to ensure the delivery of capacity as awarded.
- 4.2.3. The DRAI, the proposer of CMC_03_21, reiterated that they are supportive of the provisions within the proposal. They have highlighted their belief that the current requirement to have contracts in place more than two years in advance of bringing a new Demand Site into the market is a major barrier to the delivery of New Capacity. Further, the DRAI stated that whilst this requirement aligns with the delivery of new-build conventional power generation projects with materially longer and less flexible delivery timelines, it is an impediment to the development of demand side capacity.
- 4.2.4. They further highlighted that it is possible for an aggregator to bring a new Individual Demand Site (IDS) into a DSU / AGU within a number of weeks. They advised that the rigidity of the existing SFC process restricts the amount of capacity such units can bring forward by requiring all new IDSs to be recruited at least two years in advance of market participation. With this being the case they advised that the current SFC milestone is a significant barrier to the full and optimal utilisation of demand side assets in the Capacity Market and the associated benefits for security of supply and lower end consumer prices.
- 4.2.5. The DRAI believe that in offering flexible market participants an alternative option to achieve completion of the SFC milestone, this proposal would allow aggregators more time to build their portfolios and therefore maximise the amount of capacity they can bring to the market in a given Capacity Year.
- 4.2.6. The DRAI advised the proposal supports the existing principle of differentiated requirements for different unit types, whilst ultimately ensuring that all Participants provide the same level of commitment and delivery certainty. In doing so, the DRAI believe the modification strikes an optimal balance between providing aggregators flexibility to recruit customer sites until closer to the start of the Capacity Year while retaining a financial incentive to deliver as early as possible and maintaining the current levels of delivery commitment.
- 4.2.7. In their response, the DRAI stated they recognise the risks associated with amending or delaying the SFC deadline. It is as a result of the risk involved that the modification proposes a significant increase in the financial commitments to the delivery of New Capacity to ensure no reduction in delivery certainty/ reliability levels relative to the current arrangements.
- 4.2.8. The DRAI stated that by increasing the financial commitment to capacity delivery by the same deadline as for Substantial Financial Completion, ahead of the last opportunity to replace any capacity which fails to deliver, this will provide certainty to end consumers. Further, they state this will remove a material barrier to demand side participation.

4.2.9. In their response, the DRAI took the opportunity to reflect the changes made to the proposal following the submission of CMC_03_21 v2. They referred to:

- The amendment to clarify the proposed alternative route to achieve Substantial Financial Completion will only be possible for Awarded New Capacity with a duration of 1 year. This is to ensure that a DSU / AGU which has secured 10 year Awarded Capacity will remain subject to the standard Substantial Financial Completion milestone; and
- The amendment to bring forward the 40 k€/MW commitment by 13 months where a Participant has elected to bring forward the 30 k€/MW rate to meet Substantial Financial Completion. This is to ensure that there is still a remaining milestone providing an incentive to terminate capacity where it becomes clear this is no longer able to be delivered.

4.2.10. In their response, the DRAI referred to paragraph 2.3.31 of the consultation paper which notes the potential risk of multiple DSUs pursuing the same Demand Site(s) and this coming to light later under the proposed process. The DRAI state that whilst this is theoretically a risk in any market, they are not aware of this situation causing difficulties in the GB, PJM, ISO-NE, Ontario and NY-ISO capacity markets. The DRAI therefore queried the rationale in supporting the view that this issue is of increased concern in a smaller market, such as the SEM.

4.2.11. The DRAI suggested that, where the SOs require further information to assess / quantify risk, an implementation Progress Report could be amended to include the required information. The DRAI stated that this would enable the SOs to form a detailed view on whether the potential for double counting presents a serious risk and, if required, to take mitigating actions. The DRAI do not believe this risk is material and believes the existing avenues available to the System Operators are sufficient to assess / quantify this risk and to take any mitigation action if required.

4.2.12. BGE advised it is their belief that a balance is required between alternative opportunities given to DSUs/ AGUs and the requirement to ensure the delivery of capacity as awarded. They have elaborated that in order to achieve a balance, it could be achieved through the use of a number of mitigating factors.

4.2.13. The first factor is the implementation of capacity volume caps on the amount of capacity being proposed under this path in each auction.

BGE stated that the intent of the SFC milestone is to identify failing projects early to minimise costs to consumers for replacement capacity. They referred to that the fact that whilst the proposal incentivises the delivery of Awarded New Capacity by the voluntary adoption of increased Termination Charges payable, it does not remove all risk of failure to deliver.

In regards to this, BGE believe that the impact of any failure to deliver the awarded capacity can be mitigated with a capacity volume cap in an auction, set by the RAs/ SOs as to the volume of capacity (in total), that can be secured via this alternative route. They highlight that a cap will allow the RAs/ SOs to control the risk to the system and consumer should units on this alternative path fail to deliver on the capacity awarded to them.

4.2.14. The second factor suggested by BGE is through the use of unit qualification controls which would be overseen with RA approval.

They advised that when qualifying a unit(s) which would follow this alternative path in a capacity auction, participants should be required to apply to the RAs for a CRM Exception to allow the RAs control the volume of capacity seeking to use this alternative.

BGE elaborated that this application would need to declare if the capacity providers are existing or new-build units, with new-build units being excluded from the alternative process in order to manage the increased delivery risk that new-build units can offer. Further to this, New-build units would subsequently follow the existing process so giving the RAs / SOs use of the checks and controls that are already existing in the CMC.

4.2.15. The third mitigating factor put forward was through increased reporting frequency of units taking this alternative up to the delivery of the capacity.

BGE suggested that Awarded New Capacity using the alternative path under this proposal should be required to adopt an increased status reporting schedule to allow the SOs to ensure they have an early warning of any failure to deliver the capacity as contracted.

4.2.16. In terms of amendments to the proposed text within the modification, BGE suggested amending the text as follows:

E.5.1.1 A Participant may seek the approval of the Regulatory Authorities for:

- a) proposed New Capacity to have a Maximum Capacity Duration of more than one and up to 10 Capacity Years; or
- b) all or a specified part of Existing Capacity to be subject to a Unit Specific Price Cap in a Capacity Auction.
- c) *a DSU/ AGU proposing to use the voluntary increase in Termination Charges payable under J.2.1.3 (a)(ii)*

4.2.17. Both Energia and the SOs were not in favour of progressing this medication.

4.2.18. Energia stated that implementation of this proposal would pose an increased risk and threat to security of supply. They disagreed with the assertion in the proposal that there will not be “any detrimental impact on security of supply...” from the modification.

4.2.19. Energia are of the view that once the 30,000 (€/MW) Termination Charge becomes effective (i.e. 18 months after the Capacity Auction), this is effectively now a ‘sunk cost’ for the DSU / AGU who has been Awarded New Capacity. They are of the view that the financial incentive for the DSU / AGU is strongly in place to meet its obligation to deliver the capacity and to take advantage of the allotted time of up to 4 months prior to Capacity Year to achieve this.

4.2.20. As stated in the proposal the process to bring in new Demand Sites can take a few weeks In regards to this, Energia believe that the increased Termination Charge of 40,000 (€/MW) 13 months prior to Capacity Year will not alleviate this incentive given the ‘sunk cost’ that has already occurred.

- 4.2.21. Energia elaborated that this differs from other Awarded New Capacity where build out may be required as it will be clear at a certain point in time if delivery will be met depending on progress. Further, Energia have argued that given the concerns by DSU / AGU about meeting the current obligations, this also raises concerns over their ability to fulfil T-1 auction capacity requirements on the assumption that those successful in T-4 auctions will have exhausted all options.
- 4.2.22. Taking account of their response, Energia believe it is clear that the DSU / AGU who secures Awarded New Capacity has a financial incentive to use all of the allotted time to secure contracts with Demand Sites despite the increased Termination Charges applying at an earlier date. They are of the view that this increases the risk that some DSU / AGU fail to secure the required customers to deliver the capacity and this only becoming an issue 4 months prior to the start of the Capacity Year when there are no further options available to the System Operator to address the capacity shortfall.
- 4.2.23. In their response the SOs stated that, in its current form, they would be unable to support the proposed modification. However, advised that they may be in a position to provide support the proposal at some stage in the future if the level of certainty regarding delivery could be increased.
- 4.2.24. The SOs stated they have concerns about any reduction in certainty on awarding new capacity beyond the commitments of the Participants involved.
- 4.2.25. The SOs acknowledged comments made at WG18, which were also echoed by other respondents, that the intent for Awarded New Capacity being required to achieve Substantial Financial Completion within the SFC Period, is to identify failing projects early to minimise costs to consumers for replacement capacity or as a result of decreased security standards.
- 4.2.26. The SOs further acknowledged that this modification proposes an alternative route for DSUs/AGUs to achieve Substantial Financial Completion by amending J.2.1.3 for DSUs / AGUs delivering Awarded New Capacity with a capacity duration of one year by voluntarily increasing the Termination Charge payable (and associated Performance Security) based on the next upcoming termination charge rate (€/MW).

4.3. SEM COMMITTEE DECISIONS

- 4.3.1. The SEM Committee welcomes the feedback provided by participants, both as part of the Working Group forum and with regard to the Consultation process.
- 4.3.2. The SEM Committee recognises the issues created for demand side participation created by the timing of the Substantial Financial Close milestone and the changes made by DRAI following the Working Group.
- 4.3.3. The Committee further notes the approach taken in the GB capacity market where the Substantial Financial Close milestone does not apply to demand response.
- 4.3.4. The comments from BGE do highlight a lack of clarity in the drafting of the Modification as to the timing of the election to be made in J.2.1.3.

It is unclear whether this is to occur as part of the Qualification Process, as the Substantial Financial Close milestone approaches or at some other time(s).

- 4.3.5. It is also unclear what volume of DSU capacity might make such an election. It would be of concern if a significant volume of capacity remained at higher risk of delivery until 4 months prior to delivery, e.g. in the T-4 CY2024/25 Auction 420 MW of de-rated capacity was awarded to DSUs.
- 4.3.6. While BGE suggest imposing a cap on the total capacity, it is unclear how the RAs could apply such a cap fairly without, potentially, creating the perverse incentive of increasing the volume of capacity choosing to make the election.
- 4.3.7. The SEM Committee do not believe that increasing the reporting frequency for DSUs would be beneficial. However, they do note that the RAs could make better use of the ability to adjust the reporting schedule to take account of the timing of later “top-up” auctions.
- 4.3.8. The Committee note the suggestion by DRAI to enhance the Implementation Progress Reports to mitigate some of the concerns raised by the SOs. They feel this might be a fruitful option to pursue further.
- 4.3.9. While the SEM Committee are of the view that the profile of increasing Termination Fees does provide incentives at each change to cancel projects which have little chance of delivery, they note that the current three-date structure is not a part of the CMC. The current choice of three dates and levels flows from a previous SEM Committee parameters decision and could be changed at some point in the future.
- 4.3.10. The potential for different profiles of Termination Fees indicates a need to make the drafting of J.7.1.9 more robust to changes, rather than requiring further Modification to the CMC following any change to the termination fee parameters.

The SEM Committee believe there is potential for the Modification to be improved to address with the remaining concerns around timing and the associated process, the potential volumes of capacity involved, enhancements to the Implementation Progress Reporting and its robustness to changes to the profile of Termination Fees.

- 4.3.11. Given the discussions at Working Group 18 and the feedback received to the consultation, the SEM Committee has decided that further consideration is required in relation to the proposed Modification. The SEM Committee ask the CRM Team to work with DRAI and other relevant parties to prepare an updated Modification.
- 4.3.12. The intention would be for the updated Modification to be taken back through the Working Group process prior to consultation and final decision.

5. CMC_04_21 – VERIFICATION REQUIREMENTS FOR IMPLEMENTATION PLAN MILESTONES

5.1. CONSULTATION SUMMARY

- 5.1.1. This proposal was submitted by the SOs and proposed to remove the obligation to always provide an independent Certified Engineers report and replace it with one where it must be provided on request from the System Operator.
- 5.1.2. The CMC currently requires DSUs and AGUs to provide verification in respect of paragraphs that do not apply to DSUs and AGUs (i.e. J.2.1.1 (a) (i) to (v)). This proposal replaces this obligation with one that relates to the applicable paragraph J.2.1.3 (a).
- 5.1.3. The SOs stated that as the Candidate Unit has undergone commissioning under the relevant grid code and has also registered under the Trading and Settlement Code, in many cases this may represent sufficient evidence of substantial completion.
- 5.1.4. The SOs advised that the CMC includes a requirement that a participant provide an independent Certified Engineers report in respect of Substantial / Minimum Completion and highlighted that while this may be required in certain instances, in their view it is not required in all circumstances and represents an onerous and unnecessary obligation on capacity providers.
- 5.1.5. The System Operators have also advised that an additional change as part of the proposal is that some of the requirements of substantial financial completion refer to a number of elements of the definition of substantial financial completion, as contained in J.2.1.1 (a) which don't apply to DSUs / AGUs generally. The proposal is aiming to provide clarity around the distinction here and ensure consistency of the code.

5.2. SUMMARY OF RESPONSES

- 5.2.1. All four respondents provided support for the implementation of the proposal.
- 5.2.2. The DRAI agreed that the requirement for an Independent Certified Engineer's report is an onerous obligation which in many cases represents an undue burden and cost on Participants. Therefore, clarifying this is only required when specifically requested by the System Operators is a significant improvement. In particular the DRAI agreed that successful commissioning under the Grid Code and registration under the Trading and Settlement Code will, in the majority of cases, be sufficient evidence of Substantial Completion.
- 5.2.3. They also provided support for the proposal to clarify that DSUs / AGUs are not required to provide verification in respect of paragraphs / Milestones that do not apply to these units, and to replace this with an obligation to provide verification of compliance with the modified Milestone under J.2.1.3.(a).

- 5.2.4. The DRAI noted the System Operators' clarification at WG18 that this modification intends to modify the CMC in line with the pragmatic process that the System Operators have actually followed regarding the achievement of Substantial Completion and the delivery of New Capacity since the new Capacity Remuneration Mechanism's inception and which they believe is fully in line with the CMC objectives.
- 5.2.5. BGE stated that they support the proposal, in, principle, to align the verification requirement for participants to evidence their Implementation Plan Milestones under the CMC with the obligations attached to their unit type.
- 5.2.6. In their response they highlighted that the requirement remains that participants awarded new capacity contracts must meet the Implementation Plan requirements (deadlines and evidence) under the CMC. BGE believes that the checks and controls in the Implementation Plan under the CMC are fundamental to ensure the timely delivery of the Awarded New Capacity for the consumer. They are of the view that the evidential burden should be appropriate for the units delivering new capacity and should meet the requirements of the SOs.
- 5.2.7. BGE highlighted they support the proposal to mitigate unnecessary verification obligations where the SOs requirements are satisfied through other unit data sources but that the SOs reserve the right to implement the full verification obligations at their request.
- 5.2.8. However, they requested that a process requirement flow and timelines are provided to support this proposed modification to ensure all impacted participants have clarity on the application and expectations under this proposed process. They elaborated that any change to established processes within the CMC should ensure there is no impact to the certainty of delivering Awarded New Capacity for the consumer.
- 5.2.9. EirGrid and SONI supported the intent of the proposed changes which will benefit the Code objectives by facilitating the efficient discharge by EirGrid and SONI of the obligations imposed by their respective Transmission System Operator Licences in relation to the Capacity Market.
- 5.2.10. They stated the modification proposal is recommended in order to remove the need to verify requirements of the CMC that do not apply to DSUs/ AGUs. Furthermore, they advised the proposal seeks to remove the obligation to provide in all circumstances an independent Certified Engineers certificate but retains the right for the System Operators to seek this if they deem it necessary.
- 5.2.11. EirGrid and SONI reiterated their comments from WG18, that if this modification proposal is not implemented, obligations would remain in the CMC which are not applicable to DSUs and AGUs.

5.3. SEM COMMITTEE DECISIONS

- 5.3.1. The SEM Committee welcomes the feedback provided by participants, both as part of the Working Group forum and with regard to the Consultation process.
- 5.3.2. Given its minded-to position and the positive response to the modification, the SEM Committee approves the modification with the legal text given in Appendix E.
- 5.3.3. The SEM Committee have decided that this Modification should be implemented no later than 14 July 2021. The SOs should publish an indicative timetable for the modified process prior to the implementation date.
- 5.3.4. The SEM Committee requests the CRM Team to review the existing reporting schedule(s) with a view to making any adjustments needed as a result of implementation of this Modification and the process identified by the SOs.

6. NEXT STEPS

- 6.1.1 Given that the Proposed Modifications approved within this decision paper do not have any immediate systems implications, the SEM Committee require that the SOs incorporate the approved Modifications contained within this paper into the CMC via an appropriate version control process and the Modifications are to become effective by no later than 14 July 2021.
- 6.1.2 All SEM Committee decisions are published on the SEM Committee website: www.semcommittee.com