

Response to SEM-22-092

Capacity Market Code Modifications Workshop 28 Consultation Paper

EirGrid and SONI Response
14th December 2022



Introduction

EirGrid holds licences as independent electricity Transmission System Operator (TSO) and Market Operator (MO) in the wholesale trading system in Ireland. System Operator Northern Ireland (SONI Ltd) is the licensed TSO and MO in Northern Ireland. The Single Electricity Market Operator (SEMO) is part of the EirGrid Group and operates the Single Electricity Market on the island of Ireland.

EirGrid and SONI have been certified by the European Commission as independent TSOs. EirGrid also owns and operates the East West Interconnector, while SONI acts as Interconnector Administrator for both of the interconnectors that connect the island of Ireland and GB.

EirGrid and SONI, both as TSOs and MOs, are committed to delivering high quality services to all customers, including generators, suppliers and consumers across the high voltage electricity system and via the efficient operation of the wholesale power market. EirGrid and SONI therefore have a keen interest in ensuring that the market design is workable, will facilitate security of supply and compliance with the duties mandated to us and will provide the optimum outcome for customers.

EirGrid and SONI have duties under licence to advise the CRU and UR respectively on matters relating to the current and expected future reliability of the electricity supply. We have also been allocated responsibility for administering the Capacity Market Code through our TSO licences. This response is on behalf of EirGrid and SONI in their roles as TSOs for Ireland and Northern Ireland.

EirGrid and SONI Views on the Consultation Topic

EirGrid and SONI, in our role as System Operators have considered the documentation, the points raised during Capacity Market Workshop 28 and the SEM Committee's subsequent consultation paper ([SEM-22-092](#), 1st December 2022), in relation to the proposed Capacity Market Code modifications:

- [CMC 12 22](#): Remedial Action in the Event of Planning Application Delay to a Project that Qualifies under a Direction
- [CMC 13 22](#): Third Party Judicial Review Remedial Action
- [CMC 14 22](#): Mitigation of Impact of Third-Party Delays on Participants and Extension of Support Term
- [CMC 15 22](#): Introduction of New Remedial Action to Enable Extensions due to Planning and Permitting Delays

EirGrid and SONI welcome the opportunity to participate in this consultation. Our response provides commentary on the modification proposals collectively and on the SEM Committee's alternative legal drafting.

APPENDIX: Response Template

SUMMARY INFORMATION

Respondent's Name	SONI & EirGrid
Type of Stakeholder	System Operators
Contact name (for any queries)	-
Contact Email Address	-
Contact Telephone Number	-
Confidential Response	No

CAPACITY MARKET CODE MODIFICATIONS CONSULTATION COMMENTS:

ID	EirGrid and SONI Response
Proposed Modification and its Consistency with the Code Objectives	<p>EirGrid and SONI recognise that events outside of the control of a Participant impact on New Capacity delivery timelines and we welcome opportunities to work with participants to mitigate these risks. EirGrid and SONI believe that any mechanism intended to address delivery risks needs to be specific and targeted to secure the delivery of capacity rather than to facilitate delays.</p> <p>CMC_13_22 ensures that the mitigation focuses on a delivery risk which is beyond the control of the Participant and does not impact on the formation of realistic, contingency inclusive implementation plans and on incentives for meeting delivery milestones.</p> <p>EirGrid and SONI welcome the exclusion of connections (gas and electrical) from the RAs' alternative proposal. Introducing a remedial action with respect to connections would introduce a significant degree of subjectivity and uncertainty in the implementation of the remedial action. Such a remedial action would present a further risk to timely delivery of capacity.</p> <p>The inclusion of Third Party Judicial Review proceedings with respect to emissions permitting and licensing is welcome as it represents a similar threat to Awarded New Capacity as Third Party Judicial Reviews of planning decisions.</p> <p>EirGrid and SONI welcome the addition of a requirement to review extensions granted under the remedial action and a requirement to consult with the Regulatory Authorities in relation to any potential termination.</p>

<p>Impacts Not Identified in the Modification Proposal Form</p>	<p>With respect to the inclusion of planning appeals in the proposed remedial action, infrastructure consenting and planning processes by their nature are deliberative and consultative with opportunities for public participation and appeal. There are associated risks which require appropriate planning, management, mitigation and contingency. Further, the existing contractual milestones for capacity - including Minimum Completion before the applicable Long Stop Date (18 months after the start of the first Capacity Year in which the Awarded New Capacity is to be provided) - provide reasonable contingency for delays which may arise, including a planning appeal.</p> <p>A remedial action which includes planning appeals could potentially be used as a form of project contingency and influence unrealistic implementation plans for new capacity to the detriment of the delivery of capacity to meet demand in a capacity year and to the detriment of other potential capacity which may be displaced in the qualification / auction process.</p> <p>With respect to the proposed 12 month limit on extending Substantial Financial Completion, the threat posed by Third Party Judicial Reviews is not practically addressed if a cap is introduced. The instigation alone of Judicial Review proceedings may be enough to prevent any further investment in Awarded New Capacity if the duration of the remedial action is not solely linked to the Judicial Review duration. Placing an arbitrary time limit on the remedial action undermines it to the extent that it becomes redundant.</p> <p>EirGrid and SONI note the Irish Government's ongoing review of planning legislation and Judicial Review processes which may in due course necessitate a review of definitions referencing Irish legislation.</p>
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Detailed CMC Drafting Proposed to Deliver the Modification

Further to the above comments which are relevant for aspects of the RAs' proposed legal drafting, EirGrid and SONI wish to make the following recommendations:

- In relation to the new remedial action, the inclusion of a paragraph as follows may be prudent: *“Any extension under this Section J.5.5 shall constitute the Participant’s sole and exclusive remedy caused by a etc.”* (Ref. V2 CMC_13_22)
- In relation to the party responsible for implementing the extension (addressing ‘the who?’), inclusion of more active text such as the following may provide greater clarity: *“The System Operators shall extend the date of Substantial Financial Completion etc.”* (Ref. V2 CMC_13_22)
- The intention of the reference to *“the requirements of paragraph J.4.2.6”* is more accurately represented by *“the requirements of paragraph J.4.2.5.”* (Ref. V2 CMC_13_22)
- The following is more robust in addressing the intention of J.5.5.2(b): *“...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 etc.”* (Ref. V2 CMC_13_22)
- The proposed text J.5.5.4 does not appear to reflect the Extension of Date for Substantial Financial Completion remedial action and the potential for Awarded New Capacity to *‘extend that date to a new date more than the Substantial Financial Completion Period after the Capacity Auction Results Date in the Capacity Auction Timetable for the Capacity Auction in which the capacity was allocated’*.
- A Judicial Review of a local authority decision is possible in Ireland, therefore the definition of Third Party Judicial Review should address this in order to be complete: *“In respect of Ireland, statutory judicial review proceedings commenced, by a party other than the Participant or an Associate of the Participant, pursuant to Section 50(2) of the Planning and Development Acts 2000-2022, as amended, and relating to a decision of a local authority or An Bord Pleanála to grant planning permission required for the development or operation of a new or refurbished Generator Unit or Interconnector in respect of the delivery of Awarded New Capacity.”* (Ref. V2 CMC_13_22)
- The definition for the Third Party Extension Period doesn’t appear to be clear.