SEM committee

Single Electricity Market

(SEM)

Capacity Market Code Working Group 29 Modification Consultation Paper

CMC_01_23:	**Amendment to Substantial Completion Drafting**
CMC_02_23:	**Amendment of Milestones Associated with Substantial Financial Completion**
CMC_03_23:	**Amendment to Long Stop Date for T-1 Capacity Auction**

SEM-23-011

09 February 2023

Contents

1. OVERVIEW

1.1 ABSTRACT

1.1.1 The purpose of this consultation paper is to invite industry participants to provide feedback and comments with regard to the proposed modifications to the Capacity Market Code (CMC) discussed at Working Group 29 held on 24 January 2023.

1.1.2 During this Working Group, three standard modifications was presented. This consultation paper relates to:

CMC_01_23:	**Amendment to Substantial Completion Drafting**
CMC_02_23:	**Amendment of Milestones Associated with Substantial Financial Completion**
CMC_03_23:	**Amendment to Long Stop Date for T-1 Capacity Auction**

1.2 BACKGROUND

1.2.1 The SEM CRM detailed design and auction process has been developed through a series of consultation and decision papers with these being 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 (v8.0) was published on 9 December 2022 and the most recent version of the TSC (v26.0) was published on 17 May 2022.

Process for modification of the CMC

1.2.2 Section B.12 of the CMC outlines the process used to modify the CMC. In particular, it sets out processes for proposing modifications as well as the consideration, consultation and implementation or rejection of modifications.

1.2.3 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).

1.2.4 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.

1.2.5 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.

1.2.6 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.

1.2.7 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.

Urgent Modifications

1.2.8 A proposer may choose to mark a Modification proposal as "Urgent" (B.12.9.1). In this case, the RAs, as per section B.12.9.3 of the CMC, will assess whether or not the proposal should be treated as urgent. If the RAs deem a proposal to be urgent they have the power to fast-track the proposal.

1.2.9 In this regard B.12.9.5 provides:

"If the Regulatory Authorities determine that a Modification Proposal is Urgent, then:

a) the Regulatory Authorities shall determine the procedure and timetable to be followed in assessing the Modification Proposal which may vary the normal processes provided for in this Code so as to fast-track the Modification Proposal; and

b) subject to sub-paragraph (a), the System Operators shall convene a Workshop."

1.2.10 The RAs may request the SOs to convene a Working Group to discuss the proposed Modification.

Process for this Modification

1.2.11 On the 10 January 2023 EPUKI submitted three Modification Proposals (CMC_01_23, CMC_02_23 and CMC_03_23) under the terms of B.12.4.

1.2.12 As the Modification Proposals were marked as Standard, they will be dealt with through the normal modification process.

1.2.13 Following a review of the proposal, the Regulatory Authorities determined that they were not spurious.

1.2.14 On 03 February 2023, 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 Working Group 29 where the Modification Proposal was considered on 24 January 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 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.

1.3 PURPOSE OF THIS CONSULTATION PAPER

1.3.1 The purpose of this paper is to consult on the three proposed standard modifications. Further detail on each modification 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 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 Thursday 09 March 2023. **Please note that late submissions will not be accepted.**

1.3.4 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_01_23 – AMENDMENT TO SUBSTANTIAL COMPLETION DRAFTING

Proposer: EPUKI

Proposal Overview

2.1.1 This modification proposes to amend the drafting under Section J.2.1.1 (c) of the Capacity Market Code (CMC) relating to requirements for Substantial Completion.

2.1.2 Specifically, it seeks to introduce the ability of the Regulatory Authorities to waive requirements under Section J.2.1.1 (c) (iv).

2.1.3 This section requires participants to have met "all Trading and Settlement Code and Grid Code requirements for participating in the Balancing Market."

2.1.4 The modification asserts that this creates a risk whereby all requirements may have been satisfied with the exception of one minor condition under the TSC. This may have the potential to prevent the unit from being deemed Substantially Complete under the CMC.

2.1.5 In order to help mitigate this risk, the proposal suggests a mechanism whereby the Regulatory Authorities may waive requirements under this Section at their discretion. This would provide the Regulatory Authorities with flexibility to facilitate delivery of New Capacity which would be in the interest of consumers.

2.1.6 Failure to implement the Modification Proposal would result in difficulties for New Capacity seeking to achieve Substantial Completion and would increase the risk within the New Capacity delivery process.

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

2.2 WORKING GROUP FEEDBACK ON CMC_01_23

2.2.1 Capacity Market Modifications Workshop 29 took place on Tuesday 24 January 2023 where the modification was presented and discussed.

2.2.2 The RAs noted that the Grid Code (GC) and TSC requirements being referenced in the proposal related to *participation in the Balancing Market (BM)*. They further noted that as the CRM was settled through the TSC, waiving of these requirements may prevent settlement.

2.2.3 EPUKI stated that the RAs would have to be content with the proposed change and if this impacted settlement then it was unlikely they would sign off on it.

2.2.4 The TSOs shared similar concerns to the RAs stating that the paragraph was intended to ensure that units delivered could participate in the BM to permit settlement. They suggested that it might be useful to see an example of a requirement that would need to be waived to better understand the issue and any potential impact on settlement.

2.2.5 A similar point was raised by Energia who also thought an example would be beneficial. They were keen to see an example of minor aspects of the TSC or GC that that wouldn't affect a unit's ability to participate in the BM.

2.2.6 ESB GT questioned whether the proposal would include instances where a unit was under test or where an aspect was out of the control of the participant - for example, a delay as a result of a third party.

2.2.7 EPUKI didn't think this was the case as it was unlikely an Operational Certificate would be issued under GC unless testing had been undertaken. They felt it would be more an administrative issue than something fundamental.

2.2.8 Energia stated that they were unclear why the modification was required and which requirements were being addressed. They expressed concern over any removal of transparency from the process by allowing the RAs discretion to waive requirements for one unit and not another. They believed that there was a risk of an uneven playing field.

2.2.9 EPUKI thought clarity might be able to be provided on what could be waived. They felt that the modification was important in terms of helping address security of supply issues and contracting new capacity as soon as possible. They agreed transparency was something that should be considered.

2.2.10 Bord na Móna (BnM) supported the view that if the requirement being waived was minor, then it should not hold back new capacity.

Minded to Position

2.2.11 The SEM Committee welcome feedback and comments with regard to this proposed modification.

2.2.12 The SEM Committee note that the intention of the requirements under Section J.2.1.1 (c) (iv) is to permit participation in the Balancing Market for settlement purposes.

2.2.13 The Committee is concerned that any dilution of these obligations via a process whereby the RAs can waive requirements on an ad-hoc basis, may inadvertently create an uneven playing field for participants.

2.2.14 Due to a potential lack of clarity within the process and the subjective nature of what is considered a 'less significant' obligation, there is scope for one participant to decide not to enter an auction due to a requirement not being met while another successfully asks to have the requirement relinquished. This has the potential to create unfairness.

2.2.15 Recognition is given to the fact that there are a sizeable number of requirements to be met under both the TSC and the GC. The SEM Committee accept that these vary in terms of participant effort to be compliant with each and the levels of applicability to each participant.

2.2.16 However, as it is not clear from the proposed modification which TSC and/or GC requirement(s) the modification might specifically relate to, the SEM Committee would welcome the provision of further evidence in order to be able to make an informed decision.

2.3 CMC_02_23 – AMENDMENT OF MILESTONES ASSOCIATED WITH SUBSTANTIAL FINANCIAL COMPLETION

Proposer: EPUKI

Proposal Overview

2.3.1 This proposal aims to amend the milestones required in order to achieve Substantial Financial Completion as set out in Section J.2.1.1 the CMC.

2.3.2 Section J.2.1.1 (a) of the CMC includes a requirement for all major contracts, permits, consents and finance documents associated with the delivery of New Capacity to be in full force and effect. This also includes a reference to '*commissioning*'.

2.3.3 The modification states that the Commissioning and Grid Code Testing period of New Capacity delivery happens substantially later in the process than Substantial Financial Completion and therefore, the inclusion of this in a milestone which is 18 months post contract award is pre-emptive.

2.3.4 Commissioning at this point would require detailed discussion with other counterparties such as the Transmission System Operators (TSOs) and this would be inappropriate at this point.

2.3.5 The modification proposes removing the reference to commissioning under this milestone.

2.3.6 Failure to implement the Modification Proposal may result in difficulties for New Capacity seeking to achieve Substantial Financial Completion and this may undermine investor confidence by making it unclear how a unit would be capable of achieving its required milestones.

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

2.4 WORKING GROUP FEEDBACK ON CMC_02_23

2.4.1 Capacity Market Modifications Workshop 29 took place on Tuesday 24 January 2023 where the modification was presented and discussed.

2.4.2 The RAs suggested that the text referred to may need clarification in the Capacity Market Code (CMC) as, in their view, it had been misinterpreted in the proposed modification. They stated that the use of the term 'commissioning' was in relation to the action undertaken by an Engineering, Procurement and Construction (EPC) contractor and that the term was replicated under "Major Contracts' in the CMC's Glossary.

2.4.3 The TSOs raised a comparable point, remarking that they felt the term related to the major contracts being in place. They thought that if there were aspects which represented a risk to participants being able to meet these obligations, it would be useful to understand this. They weren't clear that there was an issue to be resolved and didn't think that removing it was necessary.

2.4.4 Energia agreed that they weren't clear about the nature of the modification and said that there was already a mechanism to request extensions for Substantial Financial Completion deadlines rather than moving a requirement altogether.

2.4.5 EPUKI agreed that it was helpful to differentiate between commissioning with the TSO and commissioning as part of the construction with contractors.

Minded to Position

2.4.6 Following discussion of the proposed modification at Workshop 29 on Tuesday 24 January 2023, the proposer has asked that CMC_02_23 be withdrawn. Therefore, the SEM Committee **do not** require further feedback or comments on this proposed modification.

2.5 CMC_03_23 – AMENDMENT OF LONG STOP DATE FOR T-1 CAPACITY AUCTION

Proposer: EPUKI

Proposal Overview

2.5.1 This proposal aims to extend the Long Stop Date (LSD) associated with the single year T-1 capacity contracts from one month after the beginning of the relevant Capacity Year to three months.

2.5.2 The modification notes that the LSD for single year capacity contracts was previously set at 18 months after the beginning of the relevant Capacity Year. However, as this was after the expiry of the contract itself, this was revised in SEM-18-030 to the current one month.

2.5.3 The proposal argues that there was no justification as to how one month was chosen and that as there was a lack of analysis on whether one month was appropriate, this should now be properly assessed and re-considered.

2.5.4 The original Consultation Paper referred to significant volumes of Demand Side capacity which was coming through the CRM. However, while this was largely true in 2018, the T-1 auctions have now become a possible option for other technology types, specifically conventional generation extensions.

2.5.5 These projects typically have shorter timeframes than New Capacity delivered through T-4 auctions although this may be longer than Demand Side projects.

2.5.6 As the context of the SEM has changed significantly since the 2018 Consultation Paper, it was not envisaged that substantial investment in New Capacity would be required in order to satisfy demand. Due to the closure of older plant and sharp increases in demand, the need for delivering New Capacity has increased exponentially. The modification states that the CMC should reflect this need through increased facilitation and flexibility with regard to new conventional plant.

2.5.7 Although an LSD extension to three months would fall on 1 January CY+1 meaning the New Capacity would not be present for the winter period of the relevant Capacity Year, the proposal believes that this is a better outcome than terminating an entire year of New Capacity.

2.5.8 The New Capacity would not receive any payments until they are delivering.

2.5.9 The modification should not affect multi-year capacity contracts delivered through the T-1 auctions as they would maintain the original 18 month LSD.

2.5.10 Failure to implement the Modification Proposal may result in the potential termination of New Capacity awarded single year contracts in the T-1 auctions. This may include extensions to existing conventional generation or new plant delivering early.

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

2.6 WORKING GROUP FEEDBACK ON CMC_03_23

2.6.1 Capacity Market Modifications Workshop 29 took place on Tuesday 24 January 2023 where the modification was presented and discussed.

2.6.2 The RAs sought clarity on the issue the proposed modification was trying to address.

2.6.3 Energia asked if there had been a significant number of T-1 terminations in the past as a result of the one-month deadline. They also raised concerns over whether the modification might allow capacity to bid into an auction knowing they might be up to three months late and miss a substantial proportion of the winter. In their view, this could put at risk capacity that might have delivered during this period.

2.6.4 EPUKI believed that the intention was to give New Capacity as much of an opportunity as possible to deliver.

2.6.5 The TSOs confirmed that historically, there had been terminations as a result of the one-month LSD deadline. They agreed that the previous change to the one-month deadline had been important as any participant taking part in a T-1 auction would need to delivery that capacity or face serious consequences.

2.6.6 ESB GT questioned whether there should be a three-month deadline. They thought that if there was a security of supply issue within a period then this might be alleviated by loosening the deadline to six or nine months.

2.6.7 From a participant's perspective, the TSOs expressed interest in whether it was likely that there was capacity that could deliver in the necessary timeframes but, because of the risk of being delayed by more than the one month deadline, would not participate as the risk was too high.

2.6.8 Should the RAs deem there to be benefit in the modification, the TSOs suggested that it might be worth parameterising this section of the CMC.

2.6.9 From a practical perspective, the TSOs also cautioned that three months would end on the 31 December and this may need consideration as it would be difficult for capacity to achieve Substantial Completion over the Christmas and New Year holiday.

2.6.10 They considered the close proximity of the LSD deadline to the start of the Capacity Year an important incentive to deliver and reduce speculative applications.

2.6.11 Bord Gáis Energy (BGE) were concerned that moving the deadline to three months weakened the incentive to deliver and allowed a participant to miss a significant proportion of the winter in a one-year contract.

2.6.12 They thought that if a unit was going to miss the deadline by a few weeks, then it did not make sense to terminate it. BGE asked if there might be a way such scenarios could be dealt with on an ad-hoc, discretionary basis whereby a participant could demonstrate to the RAs that they could deliver within a few weeks. They did considered that a three-month deadline might lead to more speculative applications.

2.6.13 Energia also had concerns over the potential change to three months and argued that one possible option might be to hold T-1 auctions in a more timely manner so new capacity could be confident that they could deliver on time. If this was the case then there should be no need to move the LSD deadline.

2.6.14 Energia queried when, i.e. to which auctions, the modification might apply.

2.6.15 EPUKI thought that the forthcoming T-1 auction would be the ideal time for it to be implemented.

2.6.16 The TSOs believed that there was a trade-off in terms of auction timing to ensure a T-1 gets the optimal amount of capacity.

Minded to Position

2.6.17 The SEM Committee welcome feedback and comments with regard to this proposed modification.

2.6.18 The SEM Committee notes some of the challenges expressed by participants in meeting the one-month LSD for single year T-1 contracts.

2.6.19 The SEM Committee would welcome feedback from participants in respect of the SOs question (2.6.7) as to whether the tightness of the deadline had prevented projects from coming forward in T-1 auctions given the risk that a relatively minor delay could lead to termination.

2.6.20 Given the importance of appropriate incentivisation measures to encourage capacity to deliver in a timely manner, the Committee has concerns about relaxing the one-month LSD milestone and extending it to three months.

2.6.21 However, should such relaxation encourage additional capacity to be brought forward in the T-1 auction or the early delivery of awarded New Capacity from a T-4 or T-3 Auction, then the Committee recognises that there might be value in an alternative approach such as the parameterisation of the LSD deadline as this may allow a degree of flexibility when considering the parameters for a T-1 auction.

2.6.22 The SEM Committee would be interested in feedback on the relative merits of a parameterised LSD versus an exception-type process that could allow the RAs to grant an extension to the LSD if a project needed additional days (or weeks) to meet delivery requirements.

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 modifications and their consistency with the Code Objectives;
- any impacts not identified in the Modification Proposal Form, e.g. to the Agreed Procedures, the TSC, 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 make a decision by 31 March 2023 on the implementation of the Modification outlined within this consultation paper.

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 no later than 17:00 on Thursday 09 March 2023. Please note that late submissions will not be accepted.**

4.1.3 Please note that 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.