

MODIFICATION PROPOSAL FORM			
Proposer (Company)	Date of receipt (assigned by System Operator)	Type of Proposal (delete as appropriate)	Modification Proposal ID (assigned by System Operator)
Bord Gáis Energy	7th September 2023	Standard	CMC_23_23
Contact Details for Modification Proposal Originator			
Name	Telephone number	Email address	
Niamh Trant		ntrant@bordgais.ie	
Modification Proposal Title			
Mitigation of Impact on Participants relating to System Operator Grid Connection delays			
Documents affected (delete as appropriate)	Section(s) Affected	Version number of CMC used in Drafting	
Capacity Market Code	J.5, J.6, Glossary	9.0	
Explanation of Proposed Change (mandatory by originator)			
<p>This Modification proposes the implementation of remedial action in circumstances where Awarded New Capacity is subject to a Grid Connection delay which is entirely outside of the control of the Participant. The remedial action would reduce the risk of a Grid Connection delay by extending the Substantial Completion date and/ or other relevant milestones under the relevant Implementation Plan by a period equal to the duration of that delay.</p> <p>Decision paper SEM_23_001 provides for Third Party Extension Periods for eligible delays relating to Third Party Planning and to Judicial Review. The decision paper also put CMC_14_22, which relates to the implementation of mitigation measures in circumstances where New Capacity projects experience delays in Grid or Gas Connections which are outside of the control of the project, ‘under further consideration’. In its reasoning for placing CMC_14_22 under further consideration, the SEMC noted the tight timetable for the decision on this modification and the potential complexities that may arise as a result of third-party delays relating to grid connections including:</p> <ul style="list-style-type: none"> (a) there are a series of inputs that need to be made by the Participant to the third party’s process to deliver the connection. The failure of the Participant to fully provide these inputs in a timely manner will cause delays that would not be considered third party delays; and (b) there are a number of putative delivery dates for the third-party connection that will be given during the connection process, and which could be used for establishing a baseline against which delays could be measured¹. <p>This proposed Modification attempts to address the above concerns within the timelines set out in the Capacity Market Modifications Schedule to allow the SEMC appropriate</p>			

¹ The SEMC noted that “it is probable that the proposed delivery date only becomes “firm” once the third party can enter into the contract (either internally or externally) for the construction of the connection assets. It is not clear which dates should be used and different third parties may use different nomenclature and different definitions for any dates provided” [SEM_23_001, page 15]

time to consider the proposed Modification. This modification is an improvement on CMC_14_22 as it specifically does not allow remedial action to be taken in circumstances where the Grid Connection delay is found to be largely attributable to the Participant. This modification also requires the appointment of an Independent Expert to apportion the cause of the delay such that any request for an extension by a Participant to the capacity contract, to take account of the relevant delay, results in a fair outcome without the need for Regulatory Authority intervention.

The Modification is designed with the specific purpose that the proposed remedial action would only be initiated in circumstances where the System Operator has failed to deliver the relevant connection within the timelines set out in the project's Implementation Plan i.e., remedial action would not be justified in situations where the Participant is largely responsible for the delay in securing a Grid Connection.

The Modification proposes that, in the absence of agreement between the Participant and the System Operator with regards to the cause(s) of the delay, an Independent Expert would review the Grid Connection delay, within the terms of the Grid Connection contracts, to determine if remedial action is justified.

Since Decision SEM_23_001, the Capacity Market Code allows for extension periods in circumstances where Third Party Planning and/ or Judicial Review result in delays to key project milestones. Based on the same principle, that there are factors outside the Participant's control for which it should not be penalised, we can also expect SEMC approval of CMC_10_23 which considers the impact on Participants relating to third Party Gas Connection delays. It is therefore only reasonable to extend this principle such that the Capacity Market Code allows for an extension of the capacity market contract where a Grid Connection delay arises which is outside of the control of the Participant.

Legal Drafting Change

*(Clearly show proposed code change using **tracked** changes, if proposer fails to identify changes, please indicate best estimate of potential changes)*

This modification proposes the introduction of a new Remedial Action under Section J.5 of the Capacity Market Code.

J.5.5 Extension of Long Stop Date by Third Party Planning Appeal or Judicial Review or Eligible Third Party Grid Connection Delay

J.5.5.1 Subject to the requirements of paragraph J.5.5.2, a Participant or an Enforcing Party (on behalf of a Participant) may apply to the System Operators to extend the date of Substantial Financial Completion (and/or other relevant milestones, including, Mechanical Completion & Substantial Completion) and Long Stop Date associated with a Capacity Market Unit by a period equal to the Third Party Extension Period where that Capacity Market Unit is subject to a Third Party Judicial Review or Third Party Planning Appeal or Eligible Third Party Grid Connection Delay.

J.5.5.2 The System Operators shall extend the date of Substantial Financial Completion (and/or other relevant milestones, including, Mechanical Completion and Substantial Completion) and Long Stop Date under paragraph J.5.5.1 subject to the

requirements of paragraph J.4.2.5 and the Participant submitting the following proofs to the System Operators:

- (a) Documentary evidence confirming the commencement of the Third Party Judicial Review or Third Party Planning Appeal, and
- (b) a statutory declaration signed on behalf of the Participant by a Participant Director 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 the Third Party Judicial Review or Third Party Planning Appeal.

(c) Documentary evidence showing

i) the indicative dates for the Grid Connection within the Capacity Auction Qualification Implementation Plan, as submitted to, and as accepted (by the capacity market team and the Regulatory Authorities at time of Qualification for the Auction), together with any further relevant correspondence requested within the Qualification Review / Dispute Procedures within the Qualification process

ii) with respect to the Grid Connection provider, the date of the connection contract offer (Offer), complete with term of expiry of period within which the Offer must be executed

iii) the 'target completion date' (or equivalent meaning term) provided by the Grid Connection provider at the time of the execution of the connection contract, where this 'target completion date' (or equivalent meaning term) gives rise to a delay beyond that described within the termination provisions in J.6.1.2 (b)

iv) evidence of any further updated delays to the 'target completion date' (or equivalent meaning term) provided by the Grid Connection provider and Participant up to completion of agreed works, including Mechanical Completion, within the connection contract (Contract)

v) In case of doubt regarding the existence of a relevant delay in Grid Connection, and the attribution of this between the Grid Connection provider and the Participant (in the absence of agreement between the Participant and the Grid Connection provider), this will be decided by an Independent Expert determination which determination will be used as evidence also.

vi) The appointment of the Independent Expert referred to in (v) above shall be mutually agreed by the Grid Connection party and the Participant and shall be a suitably qualified expert from a relevant discipline qualified to provide the Certificate required under section J.5.6.3 who has an understanding of the electricity industry and electricity connection agreements and processes or has the ability to quickly acquire such an understanding. Where mutual agreement on who to appoint as the Independent Expert is not reached, the Regulatory Authorities shall choose the appropriate Independent Expert within 10 Working Days of being advised that the parties cannot reach mutual agreement on who to appoint as the Independent Expert.

~~(b)~~ vii) the Independent Expert referred to in (v) above must also meet the standards of “independence” as described under J.5.6.4 (a) – (d).

J.5.5.3 The System Operators may propose to the Regulatory Authorities the termination of the Awarded New Capacity for which an extension was granted under J.5.5.1 if:

(a) ...;

(b) ...; or

~~(c)~~....

~~(c)~~ the review of the Third Party Grid Connection Delay as submitted within the Third Party Exception Application Process under section J.5.6 is deemed invalid by the System Operators/ Regulatory Authorities by virtue of the delay not being attributable to the System Operator (confirmed where relevant by the Independent Expert determination under J.5.5.2 (c)).

J.5.6 Extension of Capacity Quantity End Date and Time

...

J.5.6.3 A Third Party Exception Application shall:

J.5.6.3(A) In the case where the extension being claimed under this section J.5.6 can be directly attributed to the Third Party Judicial Review or Third Party Planning Appeal that led to an extension being granted under J.5.5.1:

...

(B) In the case where the extension being claimed under this section J.5.6 can be directly attributed to the Third Party Grid Connection Delay as submitted within the Third Party Exception Application Process that led to an extension being granted under J.5.5.1:

(a) contain the information required by the Regulatory Authorities;

~~(a)~~(b) contain a certificate from the Independent Expert (under J.5.5.2 (c)) to be relayed to the Regulatory Authorities in support of the extension being claimed under this section J.5.6 being directly attributed to the eligible Third Party Grid Connection Delay that led to an extension being granted under J.5.5.1.

~~(c)~~(d) be in the form prescribed by the Regulatory Authorities; and

(d) be made in the manner prescribed by the Regulatory Authorities.

J.5.6.6 In a certificate given under paragraph J.5.6.3 (A) (b) or (B)(b), the Certified Engineer or Independent Expert giving the certificate shall confirm that they are

independent within the meaning of paragraph J.5.6.4 and shall certify each of the matters referred to in paragraph J.5.6.4.

Add to Glossary:

“Independent Expert” = is as described in J.5.5.2 (c) (vi).

Eligible Third Party Grid Connection Delay means = the delay period to the Substantial Financial Completion (SFC) milestone, as submitted by the Participant, caused by either an executable grid connection contract not being available within the SFC milestone or by a delay in the provision of an executable version of the contract beyond the timeframe permitted under the offer version of the contract, where such delay is demonstrably attributable to the Grid Connection provider. There may be further eligible delays in the target or actual completion date of the connection attributable to the Grid Connection provider beyond the ‘target completion date’ for connection (or equivalent meaning in the electricity grid connection contract) and beyond the SFC milestones which negatively impact the achievement of milestones after the SFC which are also relevant to the determination of the delay period. Where a series of related delays accumulate beyond the Substantial Completion date the Participant will submit such delays within the prescriptions herein in an application for Third party extension period. As stated in J.5.5.2 (c), in case of doubt regarding the existence of a relevant delay in Grid connection, and the attribution of this between the Connection provider and the Participant, this will be decided when required (in the absence of agreement between the Participant and the Grid Connection party), by an Independent Expert.

Third Party Extension Period means = in respect of date of Substantial Financial Completion and Long Stop Date extension (and/or other relevant milestones, e.g., Mechanical Completion and Substantial Completion)

... (iii) a determination of Eligible Third Party Grid Connection Delay, following due process (using any appropriate determinations from an Independent Expert of attribution of delays between the Grid Connection provider and the Participant or by agreement between the Participant and the Grid Connection provider).

Modification Proposal Justification
(Clearly state the reason for the Modification)

Since Decision SEM_23_001, the Capacity Market Code allows for extension periods in circumstances where Third Party Planning and /or Judicial Review result in delays to key project milestones. Based on the same principle, that there are factors outside the Participant’s control for which it should not be penalised, we can also expect SEMC approval of CMC_10_23 which considers the impact on Participants relating to third Party Gas Connection delays. It is therefore only reasonable to extend this principle such that the Capacity Market Code allows for an extension of the capacity market

contract where a Grid Connection delay arises which is outside of the control of the Participant.

A Grid Connection delay may stem from the System Operator's Grid Connection process which is outside the control of the Participant, but which is clearly within the control of the System Operator. Consequently, any delay in Grid Connection process presents a significant risk to the timely delivery of Awarded New Capacity which is beyond the control of the Participant. This situation impacts the investment decisions made by Participants and could potentially lead to Awarded New Capacity not being delivered thereby undermining security of electricity supply.

Participants must rely on the System Operator delivering a Grid Connection on time to reach Substantial Completion. The period between the System Operator receiving the set of inputs required from the Participant to deliver the Grid Connection and that connection being completed is outside the control of the Participant and is fully dependent on the System Operator's ability to deliver the connection by the Target Date. Where the Independent Expert's report demonstrates that the Grid Connection delay is largely attributable to the System Operator, the proposed remedial action would correspondingly extend the Substantial Completion date and dates for all relevant milestones by the length of the delay.

Critically, from the perspective of the consumer and security of supply, the proposed modification would help mitigate the impact of Grid Connection delays where the delay is significant enough to make the delivery of Awarded New Capacity impossible within the contracted timelines. Given the current security of supply challenges facing the system and noting that the project's original contract value would remain unchanged, allowing for a delay in such circumstances would result in better outcomes for the system and consumers compared to terminating the Participant's contract.

Code Objectives Furthered

(State the Code Objectives the Proposal furthers, see Sub-Section A.1.2 of the CMC Code Objectives)

- (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 efficient, economic and coordinated operation, administration and development of the Capacity Market and the provision of adequate future capacity in a financially secure manner;
- (c) 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;
- (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; and
- (g) through the development of the Capacity Market, to promote the short-term and long-term interests of consumers of electricity with respect to price, quality, reliability, and security of supply of electricity across the Island of Ireland

Implication of not implementing the Modification Proposal

(State the possible outcomes should the Modification Proposal not be implemented)

Awarded New Capacity can only achieve Substantial Completion once it has been flagged as 'Actual' in the Capacity and Trade Register, which then allows the Generator Unit to start receiving capacity payments from the beginning of the relevant Capacity Year. Substantial Completion cannot be met without a Grid Connection² and therefore any potential Grid Connection delays that affect Substantial Completion may negatively impact the value of capacity contracts and undermine the investment cases for the Awarded New Capacity. This may result in termination of New Capacity due to decreased contract value which make the project economically unviable or due to projects not reaching Substantial Completion. This undue amount of risk is not appropriate where a Participant has no ability to control the delivery of the Grid Connection. This is also inconsistent with the objectives of the CMC outlined above and greatly undermines investor confidence in this market at a time when it is really needed.

Where the Termination of a Participant's contract is resultant of the System Operator's failure to deliver a Grid Connection on time, it is possible that additional temporary emergency generation would have to be urgently procured to provide the equivalent amount of capacity to that of the Participant's Terminated contract. We can expect that the temporary emergency generation required will be procured at a higher cost to the consumer than the cost of the awarded capacity. The cost of the Termination to the consumer further increases as the Awarded New Capacity would need to be replaced in future auctions as a permanent solution.

Impacts

(Indicate the impacts on systems, resources, processes and/or procedures)

The overarching impact of the Modification is to allow for Awarded New Capacity to be efficiently delivered, notwithstanding delays in the Grid Connection process, to provide value to the consumer and the system by way of increasing security of supply without any significant strain on stakeholder resources, namely those of the Regulatory Authorities.

The Modification proposes that, in the absence of agreement between the Participant and the System Operator with regards to the cause(s) of the Grid Connection delay, an Independent Expert would be appointed to

- i. review the delay within the terms of the Grid Connection contract
- ii. identify if the System Operator is demonstrably accountable for the delay to determine whether remedial action is justified; and if so,
- iii. specify the duration of the delay which will be proxy for the extension to the Substantial Completion date and dates for all relevant milestones.

This ensures a straightforward and transparent process for determining whether an extension to project timelines is justified without undue burden to the Regulatory Authorities' resources.

² Please refer to CMC Section J.2.1.1(c)

Please return this form to the System Operators by email to CapacityModifications@sem-o.com

Notes on completing Modification Proposal Form:

1. If a person submits a Modification Proposal on behalf of another person, that person who proposes the material of the change should be identified on the Modification Proposal Form as the Modification Proposal Originator.
2. Any person raising a Modification Proposal shall ensure that their proposal is clear and substantiated with the appropriate detail including the way in which it furthers the Code Objectives to enable it to be fully considered by the Regulatory Authorities.
3. Each Modification Proposal will include a draft text of the proposed Modification to the Code unless, if raising a Provisional Modification Proposal whereby legal drafting text is not imperative.
4. For the purposes of this Modification Proposal Form, the following terms shall have the following meanings:

CMC / Code:	means the Capacity Market Code for the Single Electricity Market
Modification Proposal:	means the proposal to modify the Code as set out in the attached form
Derivative Work:	means any text or work which incorporates or contains all or part of the Modification Proposal or any adaptation, abridgement, expansion or other modification of the Modification Proposal

The terms "System Operators" and "Regulatory Authorities" shall have the meanings assigned to those terms in the Code.

In consideration for the right to submit, and have the Modification Proposal assessed in accordance with the terms of Section B.12 of the Code, which I have read and understand, I agree as follows:

1. I hereby grant a worldwide, perpetual, royalty-free, non-exclusive licence:
 - 1.1 to the System Operators and the Regulatory Authorities to publish and/or distribute the Modification Proposal for free and unrestricted access;
 - 1.2 to the Regulatory Authorities to amend, adapt, combine, abridge, expand or otherwise modify the Modification Proposal at their sole discretion for the purpose of developing the Modification Proposal in accordance with the Code;
 - 1.3 to the System Operators and the Regulatory Authorities to incorporate the Modification Proposal into the Code;
 - 1.4 to all Parties to the Code and the Regulatory Authorities to use, reproduce and distribute the Modification Proposal, whether as part of the Code or otherwise, for any purpose arising out of or in connection with the Code.
2. The licences set out in clause 1 shall equally apply to any Derivative Works.
3. I hereby waive in favour of the Parties to the Code and the Regulatory Authorities any and all moral rights I may have arising out of or in connection with the Modification Proposal or any Derivative Works.
4. I hereby warrant that, except where expressly indicated otherwise, I am the owner of the copyright and any other intellectual property and proprietary rights in the Modification Proposal and, where not the owner, I have the requisite permissions to grant the rights set out in this form.
5. I hereby acknowledge that the Modification Proposal may be rejected by the Regulatory Authorities and that there is no guarantee that my Modification Proposal will be incorporated into the Code.