

<b>MODIFICATION PROPOSAL FORM</b>			
<b>Proposer</b> <i>(Company)</i>	<b>Date of receipt</b> <i>(assigned by System Operator)</i>	<b>Type of Proposal</b> <i>(delete as appropriate)</i>	<b>Modification Proposal ID</b> <i>(assigned by System Operator)</i>
EPEDL	7 <sup>th</sup> July 2022	Standard	CMC_10_22
<b>Contact Details for Modification Proposal Originator</b>			
<b>Name</b>	<b>Telephone number</b>	<b>Email address</b>	
Cormac Daly		c.daly@tynaghenergy.ie	
<b>Modification Proposal Title</b>			
<b>Introduction of New Remedial Action in the Event of Third Party Delays</b>			
<b>Documents affected</b> <i>(delete as appropriate)</i>	<b>Section(s) Affected</b>	<b>Version number of CMC used in Drafting</b>	
Capacity Market Code	J.5	Current Version	
<b>Explanation of Proposed Change</b> <i>(mandatory by originator)</i>			
<p>The CMC requires units delivering Awarded New Capacity to establish an implementation plan which outlines key milestone dates for the delivery of New Capacity. These milestones are outlined in Section J.2 of the CMC. A key milestone is the Substantial Completion milestone, which needs to be satisfied for a New Capacity Market Unit to be flagged as 'Actual' in the Capacity and Trade Register. Once the New Capacity Market Unit has been flagged as 'Actual' it receives capacity payments and is liable for RO obligations.</p> <p>In order to achieve Substantial Completion, participants must rely on System Operators, planning authorities and other statutory undertakers to exercise their functions in a timely manner. Specifically, the completion of the electricity grid connection, planning permission, and gas connection. Late delivery of any of these activities represents a significant risk to delivery of New Capacity which is beyond the control of the Participant. The risk of non-controllable, third-party delays will affect investment decisions made by Participants developing New Capacity projects, possibly resulting in the non-delivery of these projects.</p> <p>We are proposing a modification which would extend the long-stop date and the maximum duration of New Capacity in instances where Substantial Completion has been delayed as a result of the delivery of third party activities in a timely manner. We believe that this modification is consistent with the CRU direction to the TSO to issue grid connection offers to participants successful in Capacity Auctions who can fulfil capacity requirements as per LCCAs. To ensure security of supply and the delivery of New Capacity, it is important that the timelines for grid connections, planning permission, and gas pipeline connections align with project delivery and are in time for the relevant Capacity Year.</p> <p>This risk is more pronounced for units which clear in the T-3 Capacity Auction due to the shorter window for delivery of New Capacity and the large volume of New Capacity secured through the auction. EPEDL is concerned that these factors may create delays in the completion of works which are carried out by third parties and are necessary for the delivery of New Capacity.</p> <p>This modification, if passed, means that if a third party delay means that a milestone is completed after the date provided in the initial Implementation Plan, the long-stop date and Maximum Capacity Duration will be extended proportionally. Failure to address the risk created due to third-party activities will have a detrimental impact on investment decisions relating to New Capacity, possibly resulting in the non-delivery of much needed projects.</p>			

EPEDL believes that this modification aligns with the objectives of the Capacity Market Code and can be implemented within the *Remedial Actions* section of the Code.

#### Legal Drafting Change

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

It is proposed that the modification introduces a new Remedial Action under Section J.5.3 of the Code.

### **J.5.3 Extension Due to Connection and Consenting Related Delays**

*J.5.3.1 Where the completion of the Substantial Completion Milestone is delayed solely as a result of a failure of a third party to complete a milestone when required to do so in accordance with the initial Implementation Plan, a Participant or an Enforcing Party (on behalf of a Participant) may apply to the Regulatory Authorities for an extension to the Maximum Capacity Duration and Long Stop Date associated with the relevant Capacity Market Unit.*

*J.5.3.2 The application under paragraph J.5.3.1 shall include:*

- (a) reasons for the request in sufficient detail to enable the Regulatory Authorities to consider the request, together with sufficiently detailed supporting evidence; and*
- (b) an updated estimated date for final completion of the Awarded New Capacity with detailed reasoning.*

*J.5.3.3 Applications made under paragraph J.5.3.1 shall be granted by the Regulatory Authorities in the absence of due cause not to do so.*

*J.5.3.4 Where a request for extension under J.5.3.1 is approved, the relevant Maximum Capacity Duration and Long Stop Date must be extended on a day for day basis in accordance with the approved extension.*

*It is envisioned that a change may also be required to Section E.5 of the CMC to take account of the wording around the exemption application, particularly in relation to the ten-year duration.*

### **E.5 EXCEPTION APPLICATIONS**

*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 **with the addition of any extension period approved under Section J.5.3**; or*

*[...]*

*E.5.1.8 If a Participant makes an Exception Application, then the Regulatory Authorities shall notify the Participant and the System Operators whether or not they approve the Exception Application and, if they do approve it:*

- (a) if the Exception Application is seeking a Maximum Capacity Duration for New Capacity of longer than one year, the Maximum Capacity Duration approved by the Regulatory Authorities for the New Capacity (which must be 10 Capacity Years **with the addition of any extension period approved under Section J.5.3**); or*

*(Clearly state the reason for the Modification)*

In the CRM, participants receive revenue from the date that they achieve Substantial Completion. If a participant fails to achieve completion by the start of the Capacity Year, they will not be remunerated for the period of the delay which is effectively a penalty imposed on the participant. While this is pragmatic in instances where a participant has failed to deliver New Capacity in line with their implementation plan, it is not appropriate in instances where the participant has no ability to manage delivery. Failure to address this risk will impact investment decisions made by New Capacity developers, as a result of additional risk and significantly lower project returns in the event of a third-party delay.

EPEDL recognises that a capacity market participant will be responsible for some third party activities (such as work undertaken through an engineering, procurement and construction contract), and these activities should be exposed to risk of delay. However, we consider it inappropriate for market participants to be exposed to risks as a result of the activities of System Operators, planning authorities, and other statutory undertakers, whose activities cannot be managed by participants. There are no penalties imposed on these statutory undertakers for late delivery of their obligations and instead if they fail to deliver it is the participant who ends up being penalised. Market participants have effectively no way of managing such risks and should not be penalised for late delivery of these items.

While the risk as a result of third-party delays exists in all capacity auctions, in T-3 auctions, the risk is compounded as a result of the shorter commissioning time. This is worsened still as a result of the significant volume of new capacity expected in the coming years. All of this new capacity will be seeking to secure connections to the Irish network, as well as relevant planning and consents, which could very possibly strain third-party processes. We do not believe that market participants should be held accountable for this risk.

In March 2021, the CRU issued a direction to EirGrid to issue a grid connection offer to all successful participants in the 2024/2025 T-3 Capacity Auction. In order for this measure to have a material impact on the delivery of New Capacity, the delivery of TSO-related works associated with these offers must enable the connection of projects in time for the relevant Capacity Year.

The delivery of New Capacity in the SEM is essential as a result of security of supply risks and tighter generation margins on the island of Ireland. The risks and costs associated with third-party delays could seriously undermine the investment case for New Capacity and subsequently put projects at risk.

**Code Objectives Furthered**

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

EPEDL believes that this modification furthers a number of the Capacity Market 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;*
- (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;*
- (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)*

Failure to implement this modification proposal would mean that participants in the T-3 capacity auctions will be exposed to an undue amount of risk which is outside of their control. This jeopardises the delivery of New Capacity which is detrimental to the objectives of the CMC.

**Impacts**

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

If passed, this modification proposal may require the Regulatory Authorities to assess applications made for extensions under the proposed new Remedial Actions. Such applications would likely only be made in relation to T-3 auctions, and only where a milestone has not been achieved in time solely due to delays associated with the delivery of Connection Agreement by the System Operators or other authorised undertakings.

This likely represents a minimal impact on Regulatory Authority resources.

***Please return this form to the System Operators by email to [CapacityModifications@sem-o.com](mailto: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.