



Single Electricity Market

(SEM)

Capacity Market Code Workshop 37B

Decision Paper

CMC_10_24: Introduction of Intermediate Length Contracts

CMC_11_24: Implementation of Early Delivery Incentives

SEM-24-063

16 September 2024

EXECUTIVE SUMMARY

The purpose of this decision paper is to set out the decision relating to two Proposed Urgent Modifications to the Capacity Market Code (CMC). These were discussed at Workshop 37B, held on 10th July 2024.

The decision within this paper follows on from the associated consultation [SEM-24-052](#) which closed on 12th August 2024.

This paper considers the Proposed Urgent Modification presented at Workshop 37B relating to:

- **CMC_10_24: Introduction of Intermediate Length Contracts**
This proposed modification seeks to implement the policy decisions set out in SEM-24-035 to introduce Intermediate Length Contracts in the CRM.
- **CMC_11_24: Implementation of Early Delivery Incentives**
This proposed modification seeks to implement the policy decisions set out in SEM-24-037 to introduce Early Delivery Incentives in the CRM.

Five responses were received to the Capacity Market Code Workshop 37B Modification Consultation Paper SEM-24-052. None were marked as confidential.

Summary of Key Decisions

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

Modification	Decision	Implementation Date
CMC_10_24: Introduction of Intermediate Length Contracts	Make a Modification	Effective on publication
CMC_11_24: Implementation of Early Delivery Incentives	Make a Modification	Effective on publication

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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, all of which are 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). Updated versions of the CMC and the TSC are published on the SEMO website.

Process and Timeline for this Modification

1.1.2 On the 5 July 2024, the Regulatory Authorities (RAs) submitted the Urgent Modification Proposals CMC_10_24 and CMC_11_24 under the terms of B.12.9.1 of the CMC. As per B.12.9.3 of the CMC, the Regulatory Authorities assessed the proposal and deemed it Urgent.

1.1.3 The RAs reviewed the Modification Proposal and determined that it was not spurious.

1.1.4 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 timeline 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."*

1.1.5 As Workshop 38 was not scheduled to take place until 23rd July 2024, the RAs determined that a separate, earlier Workshop was required for the Urgent Modification.

1.1.6 The RAs determined the procedure to apply to the Urgent Modification Proposal. An overview of the timetable is as follows:

- i. The System Operators convened Workshop 37B on 10 July 2024 where the Urgent Modification Proposals were considered.
- ii. The System Operators, as set out in B.12.7.1 (j) of the CMC, prepared a report¹ of the discussions which took place at the workshop, provided the report to the RAs and published it on the Modifications website promptly after the workshop.
- iii. The RAs then consulted on the Modification Proposal from the date of publication of the Consultation until 12 August 2024.
- iv. As per B.12.11 the RAs would make their decision(s) as soon as reasonably practicable following conclusion of the consultation and would publish a report in respect of these.

¹ [Capacity-Modifications-Workshop-37B-Report-V1.0.pdf \(sem-o.com\)](#)

The purpose of the decision paper is to set out the decision(s) relating to the Modification Proposals discussed during Workshop 37B to:

- a) Make a Modification;
- b) Not make a Modification; or
- c) Undertake further consideration in relation to the matters raised in the Modification Proposals.

1.1.7 This decision paper provides a summary of the consultation proposals and sets out the SEM Committee's decision(s).

1.2 RESPONSES RECEIVED TO CONSULTATION

1.2.1 This paper includes a summary of the responses made to Capacity Market Code Urgent Modification Consultation Paper SEM-24-052 which was published on the 22 July 2024 and closed on 12 August 2024.

1.2.2 A total of five non-confidential responses were received to consultation SEM-24-052. The respondents are listed below.

- Bord Gáis Energy (BGE)
- Energia
- EP UK Investments (EP UKI)
- ESB Generation and Trading (ESB GT)
- SSE

2 CMC_10_24 – INTRODUCTION OF INTERMEDIATE LENGTH CONTRACTS

2.1 CONSULTATION SUMMARY AS PRESENTED BY THE REGULATORY AUTHORITIES (RAS)

- 2.1.1. This modification seeks to implement the policy decisions set out in SEM-24-035 to introduce Intermediate Length Contracts (ILC) to the CRM which allows both existing and new capacity to apply to the RAs to obtain a contract length of up to five years.
- 2.1.2. Under the pre-existing market design, market participants can only bid for a contract of one-year in duration, or, in the case of New Capacity which has successfully applied to the RAs to obtain a New Capacity Exception, a contract of up to 10 years.
- 2.1.3. The decision in SEM-24-035 sets out that a unit can apply for an ILC where the market participant can demonstrate that:
 - 2.1.3.1. The unit will be investing more than €100,000/MWd (the Intermediate Contract Investment Rate Threshold (ICIRT)), and that this investment will be efficiently incurred and delivers relevant benefits to consumers.
 - 2.1.3.2. Post-investment, the unit will emit no more than 550gCO₂/kWh. If a unit is subject to run-hour limits, investment made under an ILC contract should aim to remove the emission restriction on run hours or, at the least, not exacerbate the restriction.
- 2.1.4. In order to implement the proposed modification, the RAs, after engagement with the Transmission System Operators, propose changes to the following sections of the CMC: Section D.3.1.2; Section E.5.1.1; Section E.5.1.8; Section E.5.8.1; Section E.8.5.1; Section E.8.5.2; Section E.8.7.1; Section F.7.1.1; Section F.7.1.3; Section G.3.1.9; Section J.2.1.1(c); Section J.6.1.1(b); Section M and the Glossary.

2.2 RESPONSES

- 2.2.1. The responses to CMC_10_24 were supportive of the introduction of Intermediate Length Contracts but suggested changes to the CMC modifications proposed.
- 2.2.2. ESB GT and EP UKI opposed the inclusion of 'Exception Applications' in the Market Manipulation definition (B.9.1.2).
- 2.2.3. ESB GT argued that market manipulation is already sufficiently covered, and EP UKI was of the opinion that the implications of this change extend beyond the scope of the modification proposed and would affect other applicants that may not be aware of this change.
- 2.2.4. BGE, EP UKI and SSE didn't agree with the change to the Maximum Capacity Duration in E.5.1.1(a). They argued that since the value is no longer codified, the Maximum Capacity Duration is now a parameter that could in theory be amended without consultation.

- 2.2.5. BGE, ESB GT, SSE and EP UKI opposed the changes proposed to Section J.2.1.1(c)(i) that introduces 'Exception Application' in the definition of Substantial Completion.
- 2.2.6. The respondents argued that there is still much uncertainty when an Exception Application is submitted and the scope of the work could change so they argue that minor changes could put units at risk of non-delivery.
- 2.2.7. SSE commented that provisions should be made for ILC units for setting of milestones since they argued that not all milestones and delivery requirements are applicable for ILC and brownfield sites.
- 2.2.8. EP argued against including Annual Run Hour Limits (ARHL) in the definition of Substantial Completion in Section J.2.1.1(c)(vi) and proposed wording to consider a scenario where legislative changes could affect the ARHL before project delivery.
- 2.2.9. BGE, SSE and ESB GT sought clarity on the applicability of extensions to ILCs since ILC units will be treated in the same way as New Capacity and they could also face delays in project delivery.
- 2.2.10. In relation to Sections G.3.1.9 and J.6.1.1, SSE argued that an ILC unit could also experience delays and should be allowed to apply for an LSD extension.
- 2.2.11. ESB GT sought confirmation that Section J.5 (Remedial Actions) was applicable to ILC units as major refurbishment works could depend on third parties and incur delays outside the control of the developer.
- 2.2.12. All respondents opposed the introduction of section M.15, which was proposed to be introduced, on a temporary basis, to allow the SEM Committee to issue directions to ensure full implementation of SEM-24-035.
- 2.2.13. The respondents argued that any urgent changes can be made through the urgent CMC modification process and this new section removes the opportunity for industry to participate in a consultation process.
- 2.2.14. EP UKI argued that M.15 is not needed since section B.4 says that any changes directed by the RAs will be given priority over the CMC.

2.3 SEM COMMITTEE DECISION

- 2.3.1 The SEM Committee welcomes the feedback provided by participants both as part of the Workshop and through the consultation process.
- 2.3.2 The SEM Committee notes the support amongst respondents for this Modification and its urgent implementation.
- 2.3.3 In relation to the comments received on the legal drafting, the SEM Committee notes that the responses received were, on a high level, supportive of the proposed implementation of

Intermediate Length Contracts in the CRM; however, suggested changes to the legal drafting were raised by the respondents.

- 2.3.4 The SEM Committee notes comments raised by respondents against the inclusion of 'Exception Application' in the definition of Market Manipulation in B.9.1.2, but it is of the opinion that there is an increased risk of gaming with the introduction of ILCs which is being addressed by this modification in line with the approach to prevent gaming as described in SEM-24-035.
- 2.3.5 The SEM Committee notes the concerns raised by respondents in relation to the change introduced to Maximum Capacity Duration in E.5.1.1(a) arguing that, because the value is now set out as a parameter in the Initial Auction Information Pack (IAIP) instead of being hard coded in the CMC, the Maximum Capacity Duration could be changed without consulting the industry. The SEM Committee notes that the intention of this modification is not to change the ability for New Capacity that is above the NCIRT to acquire a contract of up to ten years, which has always been a key component of the CRM and is allowed for in the State aid approval. Parameterising Maximum Capacity Duration is purely done to facilitate the introduction of ILCs.
- 2.3.6 In relation to the inclusion of 'Exception Application' in the amended definition of Substantial Completion J.2.1.1(c)(i), the SEM Committee notes the concerns raised by respondents around uncertainty when an Exception Application is submitted. To address these concerns, the SEM Committee has revised the wording consulted upon by referring to the 'decision of the Regulatory Authorities approving the relevant Exception Application' rather than 'the submitted Exception Application' and by clarifying that this is would only be applicable in the case of New Capacity that is repowered or refurbished capacity based on previous Existing Capacity.
- 2.3.7 In addition, in line with the decision in SEM-24-035 to apply steps to ensure that investments are made and money is spent materially in line with the plans submitted as part of the Exception Application process and in response to the concerns raised by respondents, the SEM Committee has decided to include wording requiring investment and expenditure (based upon the 'Total Project Spend' under the relevant plan) 'materially in line with' the approved Exception Application in section J.2.1.1(c)(i) as noted in Appendix 2. This is to ensure that, as set out in the policy decision paper, investment in refurbishment is efficiently incurred and delivers relevant benefits to consumers.
- 2.3.8 The SEM Committee notes the comment raised on excluding Annual Run Hour Limits (ARHL) in the definition of Substantial Completion in Section J.2.1.1(c)(vi). However, keeping in line with the decision in SEM-24-035 that investment made under an ILC contract should aim to remove or not exacerbate run hour limits restrictions, as well as preventing the risk of stranded assets, the SEM Committee has decided to include ARHL in the definition of Substantial Completion, as proposed in the consultation. The SEM Committee considers that the risk associated with reduced ARHLs should not be borne by the consumer.
- 2.3.9 The SEM Committee agrees with the comment that provisions should be made for ILC units for setting of milestones and recognises that, as described in SEM-24-035, not all milestones used

for New Capacity would be appropriate to retain and 'flexibility in this regard will be applied, where applicants can demonstrate that some of the standard milestones would not apply'. The SEM Committee notes that J.2 is divided into major and additional milestones and that it is clearly stated in J.2.1.4 that the SOs may waive the requirement for a participant to satisfy or issue reports in respect of the additional milestones if not applicable.

- 2.3.10 In relation to queries around the applicability of extensions to ILC contracts, where respondents argue that ILC units are to be treated as New Capacity, the SEM Committee is of the view that it is unclear whether a unit with an ILC would meet the same sorts of delays faced by New Capacity. However, if such delays were to be experienced, for example due to a third-party planning appeal or Judicial Review, the SEM Committee considers that it would be appropriate for a party with an ILC contract to be entitled to the same treatment as a party with a 10-year RO. The SEM Committee also notes that in the case of other types of extension requests, it evaluates the request on a case-by-case basis. It would take this approach with any extension request received from an ILC contract holder. Overall, the SEM Committee does not envision it likely that there is a need for those with ILC contracts to request extensions to milestones and such extensions would only be approved if proven necessary.
- 2.3.11 The SEM Committee has noted the concerns raised by respondents against the temporary introduction of section M.15 and has decided not to include this change. If necessary, in the future, the SEM Committee may raise urgent CMC modifications and the SEM Committee notes that Section B.4 allows any directions issued by the RAs which may conflict with the CMC to be given priority over it.
- 2.3.12 On the basis of the reasons outlined above, the SEM Committee approves Modification Proposal CMC_10_24, with the amendments discussed, as shown in Appendix A.

3 CMC_11_24 – IMPLEMENTATION OF EARLY DELIVERY INCENTIVES

3.1 CONSULTATION SUMMARY AS PRESENTED BY THE REGULATORY AUTHORITIES (RAS)

- 3.1.1. This modification seeks to implement the changes approved by the SEM Committee in the decision paper SEM-24-037 in relation to the implementation of Early Delivery Incentives in the CRM.
- 3.1.2. The SEM Committee decided to progress with the introduction of EDIs for multi-year New Capacity and incremental multi-year ILC capacity, which will receive payment for early delivery at the same price as its awarded capacity and will commence not more than one year before the start of the capacity delivery year for the auction in question.
- 3.1.3. The SEMC decided to apply EDIs to all future auctions until further notice (including T-1 auctions). EDIs will not apply to auctions which have already taken place, so the T-4 2028/29 is the first auction to which this incentive will apply.
- 3.1.4. In order to implement EDIs in the CMC, it is proposed to define an Early Delivery Incentive Start Date in the Glossary and change the definition of Maximum Capacity Duration to include the additional time subject to the one-year limit for early delivery.
- 3.1.5. The Early Delivery Incentive Start Date is proposed to be introduced in the description of Capacity Quantity Start Date and Time (Appendix F (6)), in the Form of Capacity Auction Results (Section F.9.1), and in the IAIP (D.3.1.2, D.3.1.3) and FAIP (F.5.1.3).
- 3.1.6. The wording on the definition of Early Delivery Incentive Start Date in the Glossary and the wording on the changes in sections D.3.1.2, D.3.1.3, and F.5.1.3, are based on the approval of the changes to the definition of New Capacity in the ILC modification proposal (implementing SEM-24-035).

3.2 RESPONSES

- 3.2.1. From the five responses to SEM-24-052, four respondents (BGE, ESB GT, Energia, and SSE) were supportive of the CMC_11_24 proposal without further changes and EP UKI did not comment on CMC_11_24.
- 1.2.3 The respondents expressed no concerns around the implementation of CMC_11_24. BGE agreed the change is specifically in line with code objectives (a) and (b), and ESB GT agreed the change is in line with code objectives (b) and (g).
- 3.2.2. Energia sought confirmation that participants who reach minimum completion early and won't reach substantial completion will receive adjusted early delivery payment.

3.3 SEM COMMITTEE DECISION

- 3.3.1. The SEM Committee welcomes the feedback provided by participants both as part of the Workshop and through the consultation process.
- 3.3.2. The SEM Committee notes the support amongst respondents for this Modification and its urgent implementation and acknowledges the potential of this Proposal to address security of supply issues through incentivising capacity to be delivered early without introducing an additional risk.
- 3.3.3. In relation to the comments received on the legal drafting, the SEM Committee notes that the responses received were supportive of the proposed implementation of Early Delivery Incentives in the CRM and no concerns were raised around the proposed changes to the CMC.
- 1.2.4 The SEM Committee notes the query raised around early delivery payments when participants reach minimum completion early who do not expect to reach substantial completion. In response to this query, and in line with the decision to allow for early delivery payments on reaching minimum completion set out in SEM-24-037, section J.6.1.4A of the CMC has been amended as shown in the legal drafting attached in Appendix A.
- 3.3.4. On the basis of the reasons outlined above, the SEM Committee approves Modification Proposal CMC_11_24, with the amendments discussed, as shown in Appendix A.

4 NEXT STEPS

- 4.1.1. The SEM Committee will make proposed modification CMC_10_24 and CMC_11_24 using the legal drafting accompanying this Decision Paper.
- 4.1.2. All SEM Committee decisions are published on the SEM Committee website:
www.semcommittee.com
- 4.1.3. A number of additions are required to the IAIP for the upcoming T-4 2028/29 auction to implement key aspects of the ILC and EDI modifications published today. These additions are limited to the inclusion of the performance security and termination payment rates for refurbishing capacity, to be set at zero, the addition of the 12-month Long Stop Date for refurbished capacity, and the addition of the “Early Delivery Incentive Start Date” for the Capacity Year 2028/2029. The RAs will request the System Operators to republish the IAIP in line with these additions.