

| <b>MODIFICATION PROPOSAL FORM</b>  |  |   |   |
|--|--|---|---|
| <b>Proposer</b><br><i>(Company)</i>  | <b>Date of receipt</b><br><i>(assigned by System Operator)</i> | <b>Type of Proposal</b><br><i>(delete as appropriate)</i> | <b>Modification Proposal ID</b><br><i>(assigned by System Operator)</i> |
| <b>Bord na Móna</b>  | <b>3<sup>rd</sup> November 2022</b>                            | <b>Urgent</b>   | <b>CMC_14_22</b>  |
| <b>Contact Details for Modification Proposal Originator</b>  |  |   |   |
| <b>Name</b>  | <b>Telephone number</b>  | <b>Email address</b>                                      |   |
| <b>Justin Maguire</b>  |  | <b>jmaguire@bnm.ie</b>                                    |   |
| <b>Modification Proposal Title</b>   |  |   |   |
| <b>Mitigation of impact of Third-Party Delays on Participants and extension of Support term</b>  |  |   |   |
| <b>Documents affected</b><br><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><br><i>(mandatory by originator)</i>  |  |   |   |
| <p>Units awarded New Capacity contracts are required to submit an implementation plan that includes key milestone dates for delivery under 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>To achieve Substantial Completion, participants must rely on third parties including the System Operators, planning authorities and other statutory bodies to exercise their functions in a timely manner. Conscious of the rejection of Mod 10_22 on the basis that it was too broad, we refer specifically within this Modification Proposal to the completion of the electricity grid connection and gas connection. It is well established in the market that there are interactions between these entities in delivering their functions to enable projects to progress. We fully acknowledge the importance of the Project to have inbuilt a reasonable level of contingency in relation to both connections.</p> <p>Where there are delays in Grid or Gas Connections which are outside of the control of the Project then it is only reasonable for these to be taken into account, as proposed below. Such delays could occur due to many grid or gas connection related processes which are outside the control of the Project, but which are firmly and clearly demonstrably within the control of the System Operators and Asset Owners.</p> <p>A delay in the delivery of one of all these elements represents a significant risk to delivery of New Capacity which is beyond the control of the Participant. This affects the decisions made by Participants developing New Capacity projects, possibly resulting in the non-delivery of these projects.</p> <p>In this regard, we are conscious of the non-delivery/termination of a number of Gas units, which were successful over the last number of auctions, which highlights the urgent need for corrective or indeed enabling action.</p> |  |   |   |

In the context of the energy supply shortfall, this has occurred where there has been clear direction from the RAs to the SOs to make Grid Connection offers to participants successful at auction – and where within CRU 21 115

“Security of Electricity Supply – Programme of Actions’ there is explicit reference to:

**“1. Delivery of T-3 (24/25) and T-4 (25/26) and subsequent capacity auctions (at least 2000MW)**

In order to meet growing demand, replace retiring generators and support additional penetration of renewables, it is necessary to procure and deliver at least 2000MW of additional flexible gas-fired generation capacity by 2030 at the latest”.

“the CRU has undertaken a number of actions in recent months, in cooperation with other stakeholders, to enhance delivery in the critical forthcoming capacity auctions. These actions include:

**Policy signal:** the CRU is providing clarity that additional gas-fired generation is vital for the successful delivery of Ireland’s 2030 renewable electricity and climate targets”.

”The CRU has issued a **Direction to the electricity network operators** to prioritise the granting of connection offers for generators, reducing timeline-related risks to developer projects.

The CRU has issued a **Direction to GNI facilitating advance investment in the gas network**, in order to avoid potential delays in delivering gas connections and associated reinforcements”.

This proposed modification would extend the long-stop date and the maximum duration of New Capacity in instances where Substantial Completion has been delayed because of the delivery of third-party activities – but only those instances which are firmly and clearly demonstrably within the control of the System Operators and Asset owners,

The inclusion of a default extension related to delays in third party elements mentioned above provides a more balanced approach to managing risk between the market participant and the third party. In effect the Mod would mean that where grid or a gas connection is delayed for third party external reasons outside of the control of the participant (including participant contingency planning) in the project implementation plan an equivalent extension is added to the Substantial Completion date.

To ensure security of supply and the delivery of New Capacity, it is important that the timelines for grid connections, and gas pipeline connections align with project delivery and are in time for the relevant Capacity Year; the Participant cannot be expected to accept the risk associated with the timing of third party delivery which are outside of their control, even with contingency already been factored in.

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.

**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 as a result of a failure of a third party to complete its Substantial Financial Completion milestone for works relating to Grid Connection and Gas Connection 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. The guidance would be for the duration of the extension request to be aligned with the third party delay in Grid and Gas Connection beyond those factored in the Substantial Financial Completion milestone within the Implementation plan, including contingencies, submitted at Qualification – where such delay is demonstrably attributable to Grid and Gas connection processes outside of the control of the participant.*

*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**);

#### **Modification Proposal Justification**

*(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.

It is recognised 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. The implementation plan submitted by New Capacity generators are assessed by the TSO and engagement occurs with GNI (where gas connection is required) before a project can qualify to participate in the auction. Plans considered undeliverable result in projects not qualifying, those that are considered deliverable qualify for the auction. Linking the extension of project milestones to the delivery of new elements required to deliver it i.e. grid and gas (within the scope of this Modification Proposal), and planning, should better balance the risk between investors and third parties.

However, we consider it inappropriate for market participants to be exposed to risks because of the activities of System Operators and GNI in relation to Grid and Gas Connection whose activities cannot be managed by participants. These entities are regulated by the RAs responsible for the CMC and CRM, and this mod would apply to their activities. The activities of planning authorities, and other statutory undertakers, similarly impact Participants but those activities are not within the enforcement remit of the RAs. 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.

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. There has been clear direction from the RAs to the SOs to offer Grid Connections to successful auction participants. Likewise, the Security of Supply paper CRU 21 115, referred to above, makes very clear the RAs calling out the need for facilitating new Gas Capacity in its direction to GNI. Evidence, in the form of terminations in the Gas projects which were successful over a series of recent auctions points to the current system not working effectively for participants.

Currently the risks and costs associated with third-party delays seriously undermine the investment case for New Capacity and have clearly been putting projects at unsustainable risk. We believe that this modification has the power to reduce this level of participant risk to a more sustainable level.

#### **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;
- (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 will mean that participants in the T-4 2026\_27 capacity auction, and subsequent 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 will require the Regulatory Authorities to assess applications made for extensions under the third party mitigation action re Third Party Delays and extension of Support term from investors awarded New Capacity contracts for the T-4 2026\_27 auction and subsequent auctions.

We believe that applications should be straightforward to process identifying delays arising as a result of Grid connection and Gas Connection, where delays are clearly outside the reasonable control of the participant and where such delays clearly exceed contingency planning within the participants implementation plan.

In consideration of bringing value to the Consumer we do not believe that this places an undue burden on Regulatory Authority resources, particularly as it should be straightforward to evaluate the legitimacy of a representation relating to a third-party delay, outside of the participants reasonable control.

***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.**