



Mitigation of Impact on Participants relating to Electricity System Operator Grid Connection delays

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Mitigation of Impact on Participants relating to Electricity Grid Connection delays

This proposed modification allows for remedial action where Awarded New Capacity is subject to an Electricity Grid (“Grid”) Connection delay outside a Participant’s control, with the aim of

- reducing the risk of a Grid Connection delay by extending project milestones by a period equal to the duration of the delay; and
- achieving better outcomes for the system and consumers compared to terminating the Participant’s contract.

Background

- CMC_14_22 addressing delays in Grid or Gas Connections outside the Participant’s control was put “under further consideration” by the SEMC
- CMC_10_23 has been raised by Bord na Mona and is currently in consultation but that modification related specifically to the impact of Third Party Gas Connection Delays
- This modification is based on the same underlying principle as Decision paper SEM_23_001 (re; Mitigation of Impacts due to Third Party Planning and /or Judicial Review) that there are factors outside the Participant’s control for which it should not be penalised

Addressing SEMC concerns: this modification proposes the appointment of an Independent Expert to assess the justification for remedial action in case of disagreement between the SO and the Participant as to who attribution of the delay. The Independent Expert will:

- i. review the delay within the terms of the Grid Connection contract
- ii. identify if the SO is largely accountable for the delay to determine whether remedial action is justified (no remedial action if the delay is largely attributable to Participant); and if so,
- iii. specify the duration of the delay which will be proxy for the period of the extension

Justification for Remedial Action in the case of Electricity Grid Connection Delays

Grid Connection processes, timelines are often outside a Participant's control but are crucial for timely project delivery such that any delays can risk the delivery of the Awarded New Capacity and may result in termination due to

- i. decreased contract value which make the project economically unviable; and/ or
- ii. projects not achieving Substantial Completion.

Impact of not implementing remedial action for eligible Grid Connection Delays:

- Undermines investor confidence in this market at a time when it is really needed
- May result in the need for urgent procurement of additional temporary emergency generation
- Provides equivalent capacity to the terminated contract but likely to be procured at a higher cost than awarded capacity and will need to be replaced in future auctions as a permanent solution
- Overall increasing the cost to the consumer compared to enabling the contracted capacity to progress

Outcome of allowing for remedial action for eligible Grid Connection Delays:

- Allows 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.

Proposed Legal Drafting Changes 1/3

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) ...

(b) ...

(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.
- 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).

Proposed Legal Drafting Changes 2/3

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) . 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:

(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;

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) 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.

Proposed Legal Drafting Changes 3/3

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).

Next steps?

- We want to collaborate with the Regulatory Authorities, EirGrid and Market Participants to achieve consensus on the best way forward on this issue
- We welcome early engagement to find a timely solution