



**Single Electricity Market
(SEM)**

**Capacity Market Code
Workshop 36 Decision Paper**

- CMC_02_24:** **Modification to the Performance Security Requirement**
- CMC_04_24:** **Recovery of Net Present Value Lost as a Result of No-Fault
Delays to New Capacity Projects**

SEM-25-016

13 May 2025

EXECUTIVE SUMMARY

The purpose of this decision paper is to set out the decisions relating to two Proposed Modifications to the Capacity Market Code (CMC). These Modification Proposals were discussed at Workshop 36, held on the 21 March 2024:

- **CMC_02_24:** Modification to the Performance Security Requirement
- **CMC_04_24:** Recovery of Net Present Value Lost as a Result of No-Fault Delays to New Capacity Projects

The decisions within this paper follow on from the associated consultation ([SEM-24-027](#)), which closed on 20 May 2024.

A consultation period followed where eight responses were submitted, none of which were confidential. These responses are published along with this decision paper and also relate to CMC_03_24 and CMC_05_24, which were discussed in the same workshop.

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_02_24: Modification to the Performance Security Requirement	Not make a Modification	N/A
CMC_04_24: Recovery of Net Present Value Lost As a Result No-Fault Delays to New Capacity Projects	Not make a Modification	N/A

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Appendix A Responses

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). Current versions of the CMC and the TSC are published on the SEMO website.

Process and Timeline for this Modification

- 1.1.2. On the 07 March 2024, the DRAI submitted one Modification Proposal (CMC_02_24) and EPUKI submitted one Modification Proposal (CMC_04_24) under the terms of B.12.4 of the CMC. These Modification Proposals were marked as Standard.
- 1.1.3. The RAs reviewed all Modification Proposals and determined that none were spurious.
- 1.1.4. On the 14 March 2024, the RAs determined the procedure to apply to the Modification Proposal. An overview of the timetable is as follows:
- i. The System Operators convened Workshop 36 where the Modification Proposals were considered on 21 March 2024.
 - 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 the closing date of Monday 20 May 2024.
 - iv. As set out in B.12.11.6, the RAs shall make their decision as soon as reasonably practicable following conclusion of the consultation and publish a report in respect of their decision. The purpose of the decision paper is to set out the decision relating to the Standard Modification Proposal discussed during Workshop 36 to:
 - a) Make a Modification;
 - b) Not make a Modification; or
 - c) Undertake further consideration in relation to the matters raised in the Modification Proposal.
- 1.1.5. This decision paper provides a summary of the consultation proposals and sets out the SEM Committee's decision.

¹ [Capacity-Modifications-Workshop-36-Report-V1.0.pdf \(sem-o.com\)](#)

1.2. RESPONSES RECEIVED TO CONSULTATION

- 1.2.1. This paper includes a summary of the responses made to Capacity Market Code Workshop 36 Consultation Paper ([SEM-24-027](#)) which was published on 19 April 2024 and closed on 20 May 2024.
- 1.2.2. A total of eight responses were received to consultation SEM-24-027 with none marked as confidential. The responses are from:
- Energia
 - ESB Generation and Trading (ESB GT)
 - SSE
 - Bord Gáis Energy (BGE)
 - EP UK Investments (EPUKI)
 - DRAI
 - EirGrid and Soni (TSOs)
 - Bord na Mona (BnM)

2. MODIFICATION DECISIONS

2.1. CMC_02_24 – MODIFICATION TO THE PERFORMANCE SECURITY REQUIREMENT

- 2.1.1. This Modification Proposal was raised by the Demand Response Association of Ireland (DRAI) and seeks to amend J.3.2.3 of the CMC to allow for a differentiation in Performance Securities between capacity awarded for a duration of greater than one year and capacity awarded for a duration of one year.
- 2.1.2. Currently, there is no differentiation between contract lengths, meaning all Awarded New Capacity is subject to the same Performance Security rates, regardless of the contract duration.
- 2.1.3. The Modification Proposal also seeks to modify J.7.1.3 to allow the RAs to differentiate between one year Awarded New Capacity and greater than one year Awarded New Capacity when setting the Termination Charge.

2.2. RESPONSES TO MODIFICATION PROPOSAL

- 2.2.1. Of those that commented, most respondents were not supportive of the proposal in their responses, citing that a differentiation and potential reduction in rates may give rise to an increase in speculative bids.
- 2.2.2. Other concerns revolve around moving away from the EY recommendation to increase Performance Security rates. DRAI responded to this in its consultation response, stating that it is seeking a scenario where the Performance Security rates are fairly applied to parties with differing contract durations. It further outlined that they are not seeking a reduction in rates as Performance Security rates are determined as part of the parameters pre-auction process.
- 2.2.3. SSE stated in its consultation response that this proposal appears to benefit DSUs, who historically would bid for a one-year contract.
- 2.2.4. ESB GT expressed concern about a possible distortion of Performance Security rates if this Modification Proposal were to be accepted. It argued that in light of the introduction of ILCs, Performance Security rates for shorter term ILCs would not be adjusted, leaving contract holders of a two- or three-year ILC disadvantaged when compared with one-year contract holders.
- 2.2.5. ESB GT also argued that given the lower level of investment for a one-year New Capacity contract, it would carry a significantly lower level of risk for the developer. On that basis, it argued that “an appropriate level of Performance Security would continue to act as a safeguarding instrument” to ensure such capacity delivers.
- 2.2.6. ESB GT also noted that one-year contracts for New Awarded Capacity have been predominately awarded to DSUs that are not required to bid into auctions and may bid up to the Auction Price Cap. In its view, as a result, DSUs as a technology class have more flexibility to participate in auctions if they believe it to be financially viable and can qualify as existing capacity, meaning they do not have to always lodge Performance Security.

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 comment from the proposer that CMC_02_24 seeks to differentiate the Performance Security rates for one-year and greater than one-year Awarded New Capacity. It further notes the proposer's comment that the Modification Proposal does not explicitly provide for a lower rate of Performance Security for a one-year contract. As noted by the proposer, Termination Charges and Performance Security levels form part of the parameters consultation ahead of each auction. In deciding the appropriate level of Performance Securities to be posted, following consultation, the SEM Committee continues to recognise the importance of balancing the financial incentives to deliver with the risks of deterring investors from exposing themselves to delivery risk.
- 2.3.3. While the SEM Committee recognises comments from respondents that the Modification Proposal would be likely to primarily benefit DSUs given that, historically, one-year New Capacity contracts have primarily been awarded to DSUs, it notes that the legal drafting as proposed by the DRAI does not differentiate between technology classes, but rather only contract duration.
- 2.3.4. That said, the SEM Committee also acknowledges the comment from one respondent about the possible distortion of Performance Security rates if this Modification Proposal were to be accepted and notes the argument that the proposal does not consider shorter-term ILCs, e.g., two- or three-year ILCs, which may leave shorter-term ILC holders disadvantaged against one-year contract holders if Performance Security rates for one-year contracts were subsequently lowered. In this regard, the SEM Committee also notes that the proposal does not distinguish between the integer number of years for a standard (non-ILC) contract for Awarded New Capacity with a duration greater than one-year.
- 2.3.5. Continuing this point, the SEM Committee has further concerns. A key purpose of Performance Securities is to protect consumers against the non-delivery of contracted capacity. Performance Securities are also a signal of intent from the developer to deliver that capacity. The appropriate levels of Performance Security, as stated earlier, are decided by the SEM Committee following consultation ahead of each auction.
- 2.3.6. The SEM Committee also notes the SEM-16-022 decision paper on the high-level design of the CRM details the policy decisions around Performance Security. The paper states that Termination Charges should be determined by the cost to consumers of undelivered capacity. In order to avoid unduly discouraging investment, termination fees were capped at a level that is significantly lower than the cost of procuring a replacement contract, including a one-year contract. The SEM Committee does not see currently see a sufficient rationale for differentiating between termination payments for one-year contracts and multi-year contracts.
- 2.3.7. Based on the reasons outlined above, the SEM Committee has decided to not make a Modification. As noted above, the SEM Committee will continue to review Performance Security and Termination Charge rates ahead of each auction, and adjust these rates to strike the correct

balance between balancing the financial incentives to deliver with the risks of deterring investors from exposing themselves to delivery risk.

2.4. CMC_04_24 – RECOVERY OF NET PRESENT VALUE AS A RESULT OF NO-FAULT DELAYS TO NEW CAPACITY PROJECTS

- 2.4.1. This Modification Proposal, raised by EP UK Investments (EPUKI), seeks to amend the CMC by introducing an adjustment that would be applied to Capacity Payments where an extension is granted. As noted by EPUKI, this Modification Proposal is aimed at keeping the Net Present Value (NPV) and cash flow for the project whole.
- 2.4.2. The proposed change would be achieved through the introduction of a new section to the Code. According to EPUKI, the rationale for introducing this Modification Proposal is to avoid unfairly penalising the market participant for 'No Fault Delay Costs'. The proposal sets out that as these instances are not the fault of the market participant, their capacity payments should be modified if an extension is granted. The amount equal to the 'No Fault Delay Cost' will, as this proposal outlines, be recovered as an amendment to the capacity payments over a period of twelve months.
- 2.4.3. EPUKI has argued that the proposed changes would achieve greater certainty for investors and that the economic cost of adjusting capacity payments would be less than that of the non-delivery of Awarded New Capacity.

2.5. RESPONSES TO MODIFICATION PROPOSAL

- 2.5.1. Feedback to this Modification Proposal was mixed. Of those that commented, numerous respondents signalled support for the proposal.
- 2.5.2. BGE supported the proposal in principle and considered it to be in line with CMC objectives (b) and (g) but recognised it would create additional workload for the RAs, with each application under the proposed Modification akin to a mini USPC application.
- 2.5.3. BGE also offered an alternative approach where deferred payments would be frontloaded in the first month post-delay, equal to the number of payments missed due to the delay. This approach would see delayed projects receive a lump sum of capacity payments. Under this approach, BGE also proposed that participants who are in receipt of the frontloaded payments would be provided with cover for the capacity difference charges element of the Reliability Option (RO) they hold but not receive capacity payments for the period equal to the delay after the Capacity Quantity End Date and Time, meaning a full 10 years of RO cover is provided for.
- 2.5.4. While ESB GT noted its support and commented that this proposal would help deliver capacity, it stated that there is a significant degree of subjectivity involved in determining discount rates for the purpose of assessing NPV, which in its view, could give rise to a competitive advantage for market participants availing of the proposed arrangements. In this regard, ESB GT considered that an independent arbitrator would be best placed to deliver such an assessment and urged the need for a transparent process.

- 2.5.5. EPUKI reaffirmed its rationale for the Modification Proposal, where it gave additional clarity on how it envisioned the calculation for the 'No Fault Delay Cost' using a Weighted Average Cost of Capital figure calculated at every auction added to the length of the delay.
- 2.5.6. EPUKI further expressed disappointment that the SEM Committee's initial minded to position was to reject the Modification Proposal as it considered it to be strongly aligned with the objectives of the CMC.
- 2.5.7. EPUKI stated that the SEM Committee should take steps to ensure New Capacity is not threatened by external circumstances which participants have no means to address. It further noted its view that the current arrangements under the Capacity Market represents an inappropriate balance of risk.
- 2.5.8. EPUKI also clarified its proposals stance on 'No Fault Delay Costs', contending that the existing precedent under the delay mods is that a market participant applying for an extension must simply not be at fault and therefore blame does not have to be attributed.
- 2.5.9. Energia opposed the proposal on grounds that it would be complex to calculate an appropriate NPV value.
- 2.5.10. SSE casted doubt on the effectiveness of the proposal. It further stated that it supports the Modification in principle but opined that this Modification Proposal would benefit from more robust assessment and an example of this issue.
- 2.5.11. The TSOs also expressed opposition to the proposal. Concern from the TSOs revolved around the 'no fault' concept, which they argued is not well defined in the initial proposal and would place a significant burden on the RAs to determine it, paired with an increased potential for legal challenges. They also stated that tracking capacity would become more complex if this Modification Proposal were to be accepted.

2.6. SEM COMMITTEE DECISION

- 2.6.1. The SEM Committee welcomes feedback from participants from both the initial workshop and the subsequent consultation period.
- 2.6.2. The SEM Committee understands that numerous challenges must be overcome by developers to deliver capacity, many of which are outside the remit of both the SEM Committee and industry participants. The SEM Committee notes this proposal seeks to address some of these challenges and that it would be tied to the existing extension application process.
- 2.6.3. EPUKI, as part of its Modification Proposal, wishes for capacity units, to be 'made whole'. However, the SEM Committee continues to have concerns regarding the complexities involved with accurately calculating the values of this proposed new term.
- 2.6.4. Whilst EPUKI has stated in its response that RA approval confirms the validity of an extension, the RAs' process does not set out to make a binary decision on fault attribution. The SEM Committee considers that a policy introducing compensation for loss of NPV for 'no fault' delays

would need to ensure fault attribution ahead of any compensation being awarded given the potential cost to consumers.

- 2.6.5. The SEM Committee also notes the alternative approach proposed by one respondent, which would see deferred payments frontloaded in the first month, post-delay, equal to the number of payments missed due to the delay. The SEM Committee understands that this would lead to an instance where a project that has been delayed, and received a Capacity Quantity End Date and Time extension under J.5.6, J.5.7 or J.5.8, paid for a period in which it was not available to be dispatched. This would also lead to an instance where the unit would not receive payments for a period equal to the delay after the Capacity Quantity End Date and Time, despite already being commissioned and available for dispatch, but would be exposed to any difference charges in this period. The SEM Committee has considerable concerns with this suggestion and the implications it would have for the integrity of the overall CRM design.
- 2.6.6. The SEM Committee is concerned at the additional workload that acceptance of the proposed Modification may create for the RAs, and considers that any purported benefits of accepting the proposal may not justify its operational cost. The SEM Committee notes the comment of one respondent that an independent arbitrator could be used for the purposes of assessing NPV and determining fault attribution. As referenced in the consultation paper and outlined in SEM-23-101, the SEM Committee considers that there may be a range of legal and practical difficulties in using independent expert witnesses to determine fault attribution. In addition, if approved, this proposal may create a situation where projects which have previously had extension applications approved seek to be 'made whole'. The proposal also states that a decision would need to be made within ten working days of receiving the application. These factors may all add considerable workload to the RAs' processes.
- 2.6.7. Finally, the SEM Committee believes that there is a delicate balance to be struck between exercising a permissive approach to extension requests while encouraging timely delivery of Awarded New Capacity to maintain security of supply. The SEM Committee considers that it would be inappropriate to tilt this balance further in favour of providing leniency for projects that are experiencing delays as this may weaken incentives for developers to deliver capacity on time and place undue risk on the consumer. There is a significant cost for consumers associated with late delivery, of which the SEM Committee is keenly aware.
- 2.6.8. Based on the reasons outlined above, the SEM Committee has decided to not make a Modification.

3. NEXT STEPS

- 3.1.1. The SEM Committee will make not make any changes to the CMC based on these Modifications.
- 3.1.2. All SEM Committee decisions are published on the SEM Committee website: www.semcommittee.com.