

MODIFICATION PROPOSAL FORM			
Proposer <i>(Company)</i>	Date of receipt <i>(assigned by System Operator)</i>	Type of Proposal <i>(delete as appropriate)</i>	Modification Proposal ID <i>(assigned by System Operator)</i>
EP UK Investments Ltd.	15 th March 2023	Standard	CMC_09_23
Contact Details for Modification Proposal Originator			
Name	Telephone number	Email address	
Cormac Daly		c.daly@tynaghenergy.ie	
Modification Proposal Title			
Removal of Section J.6.1.6 of the Capacity Market Code			
Documents affected <i>(delete as appropriate)</i>	Section(s) Affected	Version number of CMC used in Drafting	
Capacity Market Code	Section J.6.1.6		
Explanation of Proposed Change <i>(mandatory by originator)</i>			
<p>This modification proposes to remove Section J.6.1.6 of the Capacity Market Code in order to avoid termination of delayed New Capacity which may be detrimental to Security of Supply in the SEM. Under the current drafting, if the Regulatory Authorities consider a project will likely be delayed, and not deliver by the beginning of the Relevant Capacity Year, they may instruct the TSO to terminate the first year of the Awarded Capacity Contract.</p> <p>This clause creates a substantial risk for New Capacity projects, and one which may have a significant impact on project finances. If a New Capacity project was set to deliver in the second week of October, there is a material risk that Section J.6.1.6 would be triggered, resulting in the project losing an entire year's worth of Capacity Payments. This live risk creates an obstacle to investment in the CRM, as the penalty significantly outweighs the cause.</p> <p>The purpose of Section J.6.1.6 was to ensure that in the event of a delay, the CRM does not result in the same capacity being procured twice. However, the outcome of both T-1 and T-4 Capacity Auctions in recent years suggest that this would not be the case. Recent Capacity Auctions have not delivered volumes of New Capacity required to meet the need of the system and subsequent T-1 auctions have been unable to deliver on this capacity shortfall. As such, the possibility of procuring the same New Capacity twice (once through a T-4 which is delayed, then through the T-1) is non-existent.</p> <p>Currently the risk of termination represents a disincentive for potential investors in the CRM. The Security of Supply benefit from removing this risk would outweigh the unlikely risk that the same capacity would be procured twice.</p> <p>Termination of delayed capacity is already provided for through:</p> <ul style="list-style-type: none"> - Failure to achieve Substantial Financial Completion within the Substantial Financial Completion Period; - Failure to achieve Minimum Completion by the Long-Stop Date; <p>In addition, Section J.6.1.3 provides fourteen additional triggers for termination. Termination under any of these clauses would be more appropriate than having a year of Awarded Capacity terminated, even if only incurring a minor delay.</p> <p>As such, given the lack of excess capacity delivered through T-1 Capacity Auctions, and possibility of termination under other Sections of the CMC, Section J.6.1.6 serves as little more than a risk which undermines investor confidence into the CRM and threatens Security of Supply.</p>			
Legal Drafting Change			

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

~~J.6.1.6 The System Operators shall terminate all or part of the Awarded New Capacity in respect of New Capacity only for the first Capacity Year for which that capacity was awarded if requested to do so by the Regulatory Authorities if it is determined by the Regulatory Authorities (based on an independently verified report) prior to the T-1 Capacity Auction for the Capacity Year that all or part of the Awarded Capacity is not likely to be delivered by the start of the Capacity Year.~~

This amendment removes the risk of termination in the event that a project is delayed.

Modification Proposal Justification
(Clearly state the reason for the Modification)

Throughout the course of delivering New Capacity projects, EPUKI has identified a material risk of termination as a result of Section J.6.1.6 of the CMC. Of particular concern is undesirable outcomes in which New Capacity which is delayed by only a small amount of time, is terminated as a result of this delay. This would mean that this New Capacity would not be present for the winter period, a time when Security of Supply margins are most tight. Such an outcome would be detrimental to investors and consumers alike.

The presence of this risk has a negative impact on investment confidence as developers are exposed to a risk of termination of New Capacity, even where there is no benefit to such termination. As such, we have proposed this modification in order to remove the risk of termination of Awarded New Capacity under Section J.6.1.6. of the CMC.

During the development of the CRM, Section J.6.1.6 of the CMC was included in order to avoid procuring capacity twice. The concept of this clause was that if New Capacity was delayed through a T-3 or T-4 Capacity Auction, and unlikely to be in place for the start of the Capacity Year, this shortfall could be made up through the T-1 Capacity Auction.

While the intention behind Section J.6.1.6 is reasonable, the Capacity Auctions which have taken place since the CMC was drafted demonstrate that there is insufficient capacity in T-1 Auctions to make up any short-fall in delayed capacity from T-4. Therefore, subsequent termination of the delayed capacity would have a negative effect on the Security of Supply objectives. In fact, termination of the delayed capacity simply removes the incentive for delayed capacity to deliver before the beginning of the following Capacity Year. This means that New Capacity which might otherwise be delayed for a number of weeks (but still deliver on time for the majority of the winter period), would instead not deliver until the following Capacity Year.

Termination of New Capacity under Section J.6.1.6 would potentially represent discriminatory treatment between New and Existing Capacity Units. If an Existing Capacity Unit was to be unavailable over a number of winter months, it would not incur termination. Conversely, where a New Capacity Unit to be delayed for as little as one week, there is a risk that this unit will have its entire first year terminated. If a unit is unavailable, the net outcome for the electricity system is the same regardless of whether or not capacity is New and Existing, and in fact in the above example, the impact of the New Capacity unit would be significantly less than that of the Existing Unit. However, the penalty for New Capacity is much greater.

Code Objectives Furthered

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

A.1.2.1

(b) to facilitate the efficient, economic and coordinated operation, administration and development of the Capacity Market and the provision of adequate future capacity in a financially secure manner;

(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

(d) to promote competition in the provision of Electricity Capacity to the SEM;

(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 would continue to disincentivise new investment in the CRM through risk of potential termination of a year of Capacity provision. Investors are likely to pursue projects in regulatory jurisdictions where they perceive less risk making delivery of New Capacity in the medium and long-term more challenging.

As outlined above, without implementing this modification there is a substantial risk of unintended outcomes whereby otherwise available, but delayed, Capacity would be terminated and miss several months of capacity provision. This would be detrimental to Security of Supply, particularly at a time when system margins are tight. Recent weeks have demonstrated that even outside of the traditional winter period, system alerts are frequent when wind is low. It is therefore necessary to ensure all available Capacity is available on the system at all points of the year.

Impacts

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

EPUKI expects the impact of this modification to be minimal. The proposed amendment to the CMC drafting is straightforward and no system changes are envisioned at this time.

Please return this form to the System Operators by email to 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.