

CMC_12_22 Capacity Market Modification Proposal

Remedial Action in the event of planning application delay to a project that qualifies under a Direction

17th November 2022



Rationale for Modification

- CRU Directions (“The Direction”) implicitly introduces planning risk to projects that have qualified for a CRM auction under The Direction.
- Elapsed time to receipt of a final planning grant is almost entirely outside the control of the developer and can be considered open ended.
- This is due to everyone's right to appeal and a subsequent judicial review (JR) of a planning application.
- The CMC as currently drafted assumes that projects have qualified in the absence of The Direction, particularly in the context of the Long Stop Date.
- This modification is required to resolve the conflict between a project yet to receive a final grant and the existence of the inflexibility of the Long Stop Date and subsequent termination clause.
- This modification does not propose to remove from the RA’s the right to project termination where they feel it is appropriate.
- However, it will allow Participants to place planning risk where it belongs in the overall business model. Thus, leading to a more competitive auction outcome.



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How will it work

- The solution proposed by this modification, is to introduce a day-for-day extension to the Maximum Capacity Duration and Long Stop Date for projects, where a delay has occurred solely as a result to their respective planning application being appealed or judicially reviewed.
- Participants will have to apply to the RA's for the extension and provide evidence of the extent and nature of the delay.
- If the RA's accept the application, the Participant's New Capacity Maximum Duration and Long Stop Date are extended by a duration directly proportional to the planning delay.



Why is it needed

- A number of gas units in Ireland procured over three T-4 Capacity Auctions (2022/23, 2023/24, 2024/25) have terminated prior to delivery.
- Exacerbating an already challenging security of supply environment.
- This Modification proposal is to provide an essential mitigation for projects who have qualified for an auction under The Direction
- Without this Modification, an appellant simply has to delay a planning application long enough, either through an appeal or JR, making it impossible for a project to meet the Long Stop Date.
- Whilst there are statute decision timelines as part of the process, the overall timeline to receiving a final planning grant is open ended.
- Max Capacity Duration extensions are required to deliver a competitive auction as without it, auction bid prices will be based on an 8.5 year contract.



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Suggested Wording

J.5.3 Extension Due to Delay in Obtaining Final Grant to Planning Application

J.5.3.1 Where the completion of the Substantial Completion Milestone is delayed solely as a result of a delay in obtaining final grant of planning permission due to an appeal or judicial review, 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.*

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.



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