

<b>MODIFICATION PROPOSAL FORM</b>			
<b>Proposer</b> <i>(Company)</i>	<b>Date of receipt</b> <i>(assigned by System Operator)</i>	<b>Type of Proposal</b> <i>(delete as appropriate)</i>	<b>Modification Proposal ID</b> <i>(assigned by System Operator)</i>
EPEDL	3 <sup>rd</sup> November 2022	Urgent	CMC_15_22
<b>Contact Details for Modification Proposal Originator</b>			
<b>Name</b>	<b>Telephone number</b>	<b>Email address</b>	
Cormac Daly		c.daly@tynaghenergy.ie	
<b>Modification Proposal Title</b>			
<b>Introduction of New Remedial Action to Enable Extensions due to Planning and Permitting Delays</b>			
<b>Documents affected</b> <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> <i>(mandatory by originator)</i>			
<p>This modification introduces a new remedial action which would be activated in the event that a New Capacity project is delayed as a result of challenges to related necessary planning and permitting decisions. Such challenges can result in significant delays to project timelines and are typically outside the control of participants.</p> <p>EPEDL previously submitted a modification proposal to enable contract extensions. Despite significant support from industry, the SEM Committee (SEMC) ultimately rejected this modification on the basis that it was too broad. Therefore, this modification seeks to facilitate extensions in more specific circumstances, namely where challenges have been launched against projects' planning and permitting decisions (through both standard channels for challenges and through Judicial Review).</p> <p>New Capacity in the CRM is currently facing significant obstacles to delivery. Eight of the last nine gas units in Ireland procured over three T-4 Capacity Auctions (2022/23, 2023/24, 2024/25) terminated prior to delivery. This highlights the difficulties that developers face in completing projects. This is particularly concerning given the ongoing Security of Supply crisis in Ireland, with an increasing risk of power shortages and black outs in the coming years.</p> <p>The timetable for T-4 Capacity Auctions provides three and a half years for planning, construction and commissioning. Thermal generation project developers in Ireland, almost without exception, have not proceeded with development expenditure such as planning until a successful capacity award has been achieved. This has been, and continues to be, a feature of the Irish market given that the grid connections for thermal generation are only available to successful projects in the CRM. Significant funding is required to finance planning and project development and is therefore incurred only after a successful Capacity Market award. This is driven by the fact that the CRU has directed EirGrid to offer grid connections to successful projects in the T-3 and T-4 auction. There have been no fully pre-consented thermal generation plants in any Capacity Market auction to date in Ireland. In contrast in the GB market there are over 10GW of thermal projects, with planning consents, where developers have incurred substantial development expenditure because they all have valid grid connections from National Grid.</p> <p>This modification would introduce a new remedial action, which would extend the Long-Stop Date and Maximum Capacity Duration of projects, to account for challenges to the necessary planning and permitting decisions related to the New Capacity. It is envisioned that in the event of a challenge to a</p>			

planning or permitting decision, participants would apply to the SEMC for an extension under the proposed new Remedial Action. This extension would be granted provided that the extension request is not frivolous or factually inaccurate.

Extensions granted under this modification would be calculated based on the delay faced as a result of the planning and permitting challenge. Any extension granted under this modification would reflect, on a day-for-day basis, the period between (i) the date when the challenge window for the planning or permitting decision closes and (ii) the date when any court or statutory body upholds the planning or permitting decision which enables the project to proceed. This includes challenge routes available within the relevant planning process and also judicial reviews.

In the event that a project is subject to planning or permitting challenges but is still delivered on time, we do not expect any extension to be granted.

#### **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 Challenges to Planning and Permitting Decisions**

*J.5.3.1 Where the achievement of the Substantial Completion Milestone is delayed as a result of a challenge to a project's planning and permitting decision(s), 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) the duration of the extension required. This should equal, in number of days, the period between (i) the date when the challenge window for a planning and permitting decision closes and (ii) the date when any court or statutory body upholds the planning and permitting decision which enables the project to proceed.*

*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.*

*J.5.3.5 The Maximum Capacity Duration shall be limited to 10 years from the date of Substantial Completion.*

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**); or*

#### **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 Substantial 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 some 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 control or mitigate the reasons for the delay. This can often be caused by challenges to planning or permitting decisions, which can result in many months of delays even when challenges are unsuccessful.

Unfortunately, the risk of such delays is critical for all Capacity Auctions. Challenges to planning or permitting decisions (including judicial reviews) can result in significant project delays. The impact of such a delay on feasibility varies depending on lead-time and project type (e.g. OCGT vs. CCGT), however in all cases it severely reduces the likelihood of delivery in line with the auction timetable. In some instances (e.g. a CCGT in a T-4 auction) it will be virtually impossible to deliver on time if a planning decision is subject to challenge.

Whilst participants can ensure that their project plan and consent applications are complete and robust, there remains the possibility that planning decisions can be appealed (in Ireland) and then subsequently challenged through the Judicial Review process.

The timetable for T-4 Capacity Auctions provides three and a half years for planning / permits, construction and commissioning. Thermal generation project developers in Ireland, almost without exception, have not proceeded with development expenditure such as planning until a successful capacity award has been achieved. This has been a continues to be a feature of the Irish market given that the grid connections for thermal generation are only available to successful projects in the CRM. Significant funding is required to finance planning and project development and is therefore incurred only after a successful Capacity Market award. This is driven by the fact that the CRU has directed EirGrid to offer grid connections to successful projects in the T-3 and T-4 auction. There have been no fully pre-consented thermal generation plants in any Capacity Market auction to date in Ireland. In contrast in the GB market there are over 10GW of thermal projects, with planning consents, where developers have incurred substantial development expenditure because they all have valid grid connections from National Grid.

While this modification, if passed, will result in capacity projects connecting later and maintaining their original contract value, we believe that delayed capacity is better than terminated capacity; particularly given the ongoing Security of Supply crisis.

We acknowledge that the wider issue may be partly addressed pending the ongoing review of the CRM. Specifically, one recommendation being explored by the SEMC is a requirement for auction participants to have all consents in place prior to the auction. While this may reduce the need for this Remedial Action in the future, it does not address New Capacity which has already contracted and is at risk of erosion and termination. Additionally, this requirement to have all consents in place, if introduced, would take several years to implement.

#### **Code Objectives Furthered**

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

EPEDL believes that this modification furthers a number of the Capacity Market 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;*
- (d) *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 would mean that participants delivering New Capacity will be exposed to an undue amount of risk which is outside of their control. This risk is in the form of potential delays which erode the value of capacity contracts undermining investment cases in the process. This may result in termination of New Capacity as a result of either contract value erosion making projects economically unfeasible, or projects exceeding their longstop date.

#### **Impacts**

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

If passed, this modification proposal may require the Regulatory Authorities to assess applications made for extensions under the proposed new Remedial Actions. Such applications should be straightforward to process. These applications would consist of identifying a delay which has arisen as a result of a planning or permitting challenge and subsequently setting out the duration of the delay.

This likely represents a minimal impact on Regulatory Authority resources, particularly as it should be straightforward to evaluate the legitimacy of a challenge and the associated delay.

***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.