



Single Electricity Market

(SEM)

Capacity Market Code Workshop 33

Decision Paper

CMC_19_23: **Modification to Implement the SEMC Decision set out in SEM-23-038 and SEM-23-045 on Indexation of Capacity Payments**

SEM-23-102

12 December 2023

EXECUTIVE SUMMARY

The purpose of this decision paper is to set out the decision relating to a proposed modification to the Capacity Market Code (CMC). The proposed modification, CMC_19_23, was discussed at Workshop 33, held on 21 September 2023.

- **CMC_19_23: Modification to Implement the SEMC Decision set out in SEM-23-038 and SEM-23-045 on Indexation of Capacity Payments**
- This proposed modification seeks to implement the SEM Committee’s decision set out in SEM-23-038 and SEM-23-045 to apply indexation to multi-year New Capacity projects who won in the 2024/25 T-3 and 2025/26 T-4 Capacity Auctions.

The decision within this paper follows on from the associated consultation ([SEM-23-082](#)) which closed on 17 November 2023.

Six responses were received to the Capacity Market Code Workshop 33 CMC_19_23 Modification Consultation Paper (SEM-23-082). One was marked as confidential. The non-confidential responses have been published alongside this decision paper.

Summary of Key Decisions

Following consideration of the proposal and the responses received to the consultation, the SEM Committee have decided to:

Modification	Decision	Implementation Date
CMC_19_23: Modification to Implement the SEMC Decision set out in SEM-23-038 and SEM-23-045 on Indexation of Capacity Payments	Make a Modification	Effective on publication

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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 September 2023, the Regulatory Authorities (RAs) submitted the Modification Proposal CMC_19_23 under the terms of B.12.4 of the CMC.

1.1.3. The RAs reviewed the Modification Proposal prior to submission and determined that it was not spurious nor urgent and therefore categorised the proposal as Standard.

1.1.4. The RAs then determined the procedure to apply to the Modification Proposal. An overview of the timetable is as follows:

- i. The System Operators convened Workshop 33 on 21 September 2023 where the Modification Proposal was considered.
- 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 with a response time of no less than 20 Working Days (as defined in the CMC) from the date of publication of the Consultation until 17 November 2023.
- iv. As per B.12.11 the RAs would make their decision as soon as reasonably practicable following conclusion of the consultation and would publish a report in respect of this. The purpose of the decision paper is to set out the decision relating to the RAs' Modification Proposal CMC_19_23, discussed during Workshop 33 to either:
 - 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 [Capacity-Modifications-Workshop-33-Report.pdf \(sem-o.com\)](#)

1.1.5. This decision paper provides a summary of the consultation proposals and sets out the SEM Committee's decision.

1.2. RESPONSES RECEIVED TO CONSULTATION

1.2.1. This paper includes a summary of the responses made to Capacity Market Code Modification Workshop 33 – CMC_19_23 Consultation Paper [SEM-23-082](#) which was published on 06 October 2023 and closed on 17 November 2023.

1.2.2. A total of six responses were received to consultation SEM-23-082 with one being marked as confidential. The non-confidential responses are from:

- SSE
- Bord na Móna
- Energia
- ESB Generation and Trading
- EirGrid/SONI

2. CMC_19_23 – MODIFICATION TO IMPLEMENT THE SEMC DECISION SET OUT IN SEM-23-038 AND SEM-23-045 ON INDEXATION OF CAPACITY PAYMENTS

2.1. CONSULTATION SUMMARY AS PRESENTED BY THE REGULATORY AUTHORITIES (RAS)

- 2.1.1. CMC_19_23 is intended to implement the SEM Committee’s decision, set out in SEM-23-038 and SEM-23-045, to apply indexation to multi-year New Capacity projects who won in the 2024/25 T-3 and 2025/26 T-4 Capacity Auctions.
- 2.1.2. The Modification would introduce a new section under Chapter M: Interim Arrangements of the CMC and a total of six subsections under this new section, specifying:
 - To whom the indexation measure will apply to,
 - The start date of the period over which indexation will apply,
 - The end date of the period over which indexation will apply,
 - The option to limit indexation until Substantial Financial Completion (SFC) or 30 days after the publication of SEM-23-045,
 - How the Indexation Factor is to be calculated, and
 - That the Capacity Payment Price for the affected projects shall be the Indexation Factor multiplied by the Capacity Payment Price determined in accordance with F.9.1 of the CMC.
- 2.1.3. The Modification would also introduce new definitions into the glossary of the CMC to account for the new terms used within the legal drafting.
- 2.1.4. The Modification also seeks to correct what appears to be errors within the CMC to maintain consistency with the proposed changes to the Code and to avoid conflict with the new proposed arrangements under Chapter M.
- 2.1.5. Clause E.8.6.1 of the CMC, which the new provisions proposed to be introduced under Chapter M depend on, currently refers to the term “Exception Qualification”. This term is not defined within the CMC and is not used anywhere else in the Code and is therefore proposed to refer instead to the defined term “Exception Application”.
- 2.1.6. The Modification also proposes to delete clause F.9.1.2 of the CMC which states “Except to the extent provided in the Trading and Settlement Code, the Capacity Payment Price shall not be subject to adjustment or indexation”. This clause appears to have no effect and would create conflict with the new arrangements under Chapter M proposed to be introduced. This clause, therefore, is being proposed to be deleted to avoid any confusion.
- 2.1.7. As originally drafted, the Modification proposed to introduce this wording under M.13 of the CMC. However, following the decision to approve CMC_07_23 (SEM-23-077), the drafting will now fall under M.14.

- 2.1.8. Failure to implement this Modification would mean the CMC would not reflect the decision set out in SEM-23-038 and SEM-23-045.

2.2. RESPONSES

- 2.2.1. Many respondents agreed that the Proposed Modification is necessary to implement the SEM Committee's decision as set out in SEM-23-038 and SEM-23-045.
- 2.2.2. SSE agreed the Modification is consistent with the Code Objectives and accepted that the changes are appropriate to implement the decision. It stated it would be useful to see a worked example to understand the impact of the indexation formula.
- 2.2.3. SSE also stated that there are continuing risks to generators as a result of inflationary pressures with project financing still being tight and projects struggling in this inflationary environment. SSE stated that where inflation risk is removed from investors, ultimately consumers will be better served if the CRM contracts offer protection from high inflation and therefore mitigate the risks of inefficient exit or failure of delivery for new capacity.
- 2.2.4. SSE also argued that given the current Security of Supply (SoS) challenges, there needs to be a mechanism to account for indexation for further auctions as inflation continues to be unpredictable, and that the effects of ongoing higher inflation should be factored into capacity payments.
- 2.2.5. In the absence of an enduring mechanism for Indexation, SSE suggested the Modification Proposal be widened to the subsequent 2026/27 T-4 Capacity Auctions, to enable new capacity to be built to underpin SoS.
- 2.2.6. Bord na Móna (BnM) strongly welcomed indexation of Capacity Payments being afforded to Capacity Payments for the 2024/25 T-3 and 2025/26 T-4 Capacity Auctions, but, like SSE, believed indexation of Capacity Payments is fully justified for future Capacity Auctions. BnM further argued that Indexation should be adjusted annually over the Capacity Duration.
- 2.2.7. BnM also called for the index used (CSO's Wholesale Price Index for Building and Construction Materials) be kept under review, regarding its potential replacement by an index which more closely reflects the actual material levels of inflation experienced across different technologies. BnM sought an extension of these provisions for future Capacity Auctions, in addition to the 2024/25 T-3 and 2025/26 T-4 Capacity Auctions.
- 2.2.8. Regarding impacts not identified in the Modification Proposal Form submitted by the RAs, BnM believed that the relevance of protection to the investor against annual capex inflation exceeding 2% for Capacity Auctions other than the 2024/25 T-3 and 2025/26 T-4 auctions must be considered, in addition to the relevance of protection to the consumer by avoiding the avoidable cost of Emergency generation.
- 2.2.9. BnM also proposed new additions to the legal drafting provided by the RAs to allow the provisions proposed under Chapter M to apply to all other subsequent T-3 and T-4 auctions.

- 2.2.10. Energia reiterated its strong opposition to SEM-23-038 and SEM-23-045. Energia's view remained that the proposed Modification represents a retrospective change to the fundamental terms of concluded auction processes and on that basis is unfair, uncompetitive, and contrary to the requirements of the CMC.
- 2.2.11. Energia further stated the proposal to delete Section F.9.1.2 is evidence that the proposed modification is contrary to the terms of the CMC as they stood at the time of the relevant auctions as were clearly understood by auction participants.
- 2.2.12. Energia had no other specific comments on the proposed legal drafting in the modification and called for transparency from the SOs in terms of publishing the final Capacity Payment Prices awarded when Indexation concludes on the first month of the first delivery year of the relevant Capacity Auction (or earlier as per proposed M.13.4).
- 2.2.13. Energia also reiterated their support for forward-looking Indexation of Capacity Payments and urges the SEM Committee to facilitate this at the earliest opportunity.
- 2.2.14. ESB Generation and Trading (ESB GT) referring to its response to SEM-23-014, believed the short-term reactionary proposal can create an unfair competitive advantage in the current economic conditions and the introduction of the enduring solution would send a more appropriate investment signal for the future capacity auctions.
- 2.2.15. ESB GT agreed that the proposed modification sufficiently covers the mechanics of the Capacity Payment Price Indexation Factor (FPCP) calculation but noted that the actual obligation for the TSOs to publish the final value for each auction is not codified.
- 2.2.16. ESB GT understand that different values for the FPCP may be used for different projects that opted for the option where the Capacity Payment Price Indexation End date is the date of SFC, but believe the publication of the overall FPCP value based on the Capacity Payment Price End Date set up to the day before the first day of the first Capacity Year to which the Awarded new Capacity relates should be available to all market participants. This degree of transparency is required to ensure the modification fully aligns with Code Objective (d) and meets the requirements of Code Objective (e).
- 2.2.17. ESB GT proposed an additional clause to the legal drafting, to require the publication of the FPCP to be no later than the start of the first Capacity Year to which the Awarded new Capacity relates.
- 2.2.18. EirGrid and SONI (the SOs) commented that, to remove the risk of any potential ambiguity in the legal text as proposed, Section M.13.2 should be redrafted to explicitly state which date applies to which cohort.
- 2.2.19. EirGrid and SONI also commented that the new Section M.13.6 introduces a circular reference or one parameter (Capacity Payment Price) which now may have two values for a cohort of capacity. They state the revised definition for Capacity Payment Price now describes two points of reference for a single parameter. They suggested that, as Chapter M prevails over other chapters of the Code, the drafting could also include a specific reference to sections prevailed over.

- 2.2.20. The SOs said that Section F.9.1.2, which has provided clarity in relation to indexation to date, should be retained and only amended at this time to accommodate interim indexation arrangements until a decision is made in relation to an enduring indexation policy or mechanism.
- 2.2.21. The SOs also said there is potential for ambiguity in relation to the specific wholesale price indices to be used for the calculation, and that further clarity on this would be important to avoid any confusion.
- 2.2.22. The SOs also expressed concern in relation to the availability of the reference indices in the context of settlement timeframes. They were concerned that the indices would not be available within settlement timeframes meaning the implementation would require resettlement. They said that meeting settlement timeframes might require an “indexation gap” where the most recent available indices are used.
- 2.2.23. The SOs suggested that, to ensure clarity, the calculation of the Capacity Payment Price Expected Inflation would benefit from further definition and the drafting should explicitly state who is responsible for calculating the FPCP. They said that, if the SOs are to undertake the calculation, a clear methodology or procedure will be required to ensure consistency and that the correct inputs are sourced to ensure the SEM Committee’s decision in this regard is implemented correctly.
- 2.2.24. The SOs also said that they considered that clarity on the matter of enduring indexation is important to provide certainty for future auction processes.

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 that there was support amongst respondents for an enduring mechanism for indexation to be introduced, both as part of this consultation on the Proposed Modification to implement the decision set out in SEM-23-038 and SEM-23-045, and as part of the Consultation and Call for further Evidence on Indexation of Capacity Payments ([SEM-23-014](#)).
- 2.3.3. The SEM Committee is also mindful of the Proposed Modification CMC_22_23: Indexation of Capacity Payment Price for Inflation, which will be considered in the context of the separate consultation on the other modifications discussed at Workshop 33 ([SEM-23-084](#)).
- 2.3.4. As stated in SEM-23-045, the SEM Committee will consider whether to prioritise a workstream on an enduring indexation mechanism for capacity contracts in the context of the SEM Committee’s Forward Work Programme for 2023/24.
- 2.3.5. Also, for the avoidance of doubt, the SEM Committee would like to remind industry that there should be no expectation that any form of enduring indexation that might be introduced in the future would necessarily replicate any element of the indexation mechanism set out in SEM-23-038 and SEM-23-045.

- 2.3.6. The Proposed Modification this consultation relates to is the implementation of the policy decision already made as set out in SEM-23-038 and SEM-23-045.
- 2.3.7. The SEM Committee is of the view that a change to the proposed drafting to implement the decisions already made to account also for enduring indexation would not be consistent with the intent of the proposal or the decisions as set out in SEM-23-038 and SEM-23-045.
- 2.3.8. The SEM Committee has considered the arguments in relation to retrospectivity. In arriving at its decision as set out in SEM-23-038 and SEM-23-045, the SEM Committee were satisfied that the proposed indexation arrangements will not operate retrospectively within the meaning of the relevant legal instruments (described further in Section 3.2 of SEM-23-045), e.g., by seeking to reopen settled transactions or alter the conduct of ongoing processes.
- 2.3.9. As regards detailed comments on the drafting, the SEM Committee's response is as follows.
- 2.3.10. The SEM Committee acknowledges the comment that there could be some confusion over which date applies to which cohort and has amended M.14.1 accordingly.
- 2.3.11. The SEM Committee does not agree that there is any circularity in the definition and calculation of Capacity Payment Price. It is clear that where Section M.14 does not apply, the Capacity Payment Price is as calculated in accordance with Section F.9.1, but that where Section M.14 does apply, M.14.6 takes the value calculated in accordance with F.9.1, modifies it, and the new value replaces the old. Moreover, M.14 does not replace F.9.1, but is additional to it and, as such, the definition of Capacity Payment Price needs to refer to both F.9.1 and M.14.6.
- 2.3.12. The SEM Committee does not agree that F.9.1.2 adds clarity. On the contrary, given that its inclusion does not change the meaning of the Code, it creates rather than removing confusion.
- 2.3.13. The SEM Committee also notes the comments made around the potential for ambiguity in relation to the specific value for the wholesale price indices to be used for the calculation. The Committee agrees that the indices referred need clarification. In particular, WPA15 is an annual price index, and the reference should be to WPM28. Section M.14.5(a) has been amended accordingly.
- 2.3.14. The SEM Committee also notes the comment that the necessary indices may not be available within settlement timeframes. It understands this to mean that the indices may not be available in time for the final value of Capacity Payment Price to be determined for its use by the Market Operator for the settlement of Capacity Payments, under the TSC, at least for the first couple of runs. The SEM Committee's view is that the Market Operator should proceed on the basis of a best estimate of the Capacity Payment Price, with the final value being available for resettlement. The SEM Committee's view is that, if any new provisions are required, these should be included in the TSC, or more likely a TSC Agreed Procedure.
- 2.3.15. The SEM Committee notes the comment that the party responsible for the indexation calculation needs to be stated. F.8.6.1 strongly implies that it is the responsibility of the System Operators, but M.14.5 has been amended to remove any possible ambiguity. Furthermore, M.14.5 clarifies that the indexation calculation will be subject to RA approval. This is consistent with the process

under the CMC around the approval of the Final Capacity Auction Results, prior to its release by the SOs.

- 2.3.16. The SEM Committee also acknowledges the comments on the publication of the final Capacity Payment Prices and Capacity Payment Price Indexation Factor for the purposes of transparency, furthering Code Objective (d) and meeting Code Objective (e), and has added Section M.14.7 accordingly. The final Capacity Payment Prices can be derived from the Capacity Payment Price Indexation Factor.
- 2.3.17. The SEM Committee does not have a view at this stage on what procedures may be needed to underpin the implementation of the new indexation calculation. However, the SEM Committee considers that section M.14, with the amendments discussed above, is sufficiently clear, such that there should be no ambiguity.
- 2.3.18. On the basis of the reasons cited above, the SEM Committee approves Modification Proposal CMC_19_23, with the amendments discussed, and shown in Appendix A.

3. NEXT STEPS

- 3.1.1. The SEM Committee will make proposed modification CMC_19_23 using the draft legal text accompanying this Decision Paper.
- 3.1.2. All SEM Committee decisions are published on the SEM Committee website: www.semcommittee.com