

Bord na Móna

November 2022

CMC 14_22 Modification re Mitigation of Impact of Third Party delays on Participants and Extension of Support term update



Intro

- BnM welcomes this opportunity to present CMC 14_22
- Mod CMC 14_22 addresses the issues raised by market participants relating to third party delays which impact a party's ability to achieve Substantial Completion.
- This modification focuses on the completion of the Electricity grid connection and Gas connection and seeks to address shortcomings identified in the RA decision on MOD 10_22
- The SEM 22 074 Decision Paper noted the following in considering Mod_10_22
 - too broad & potential implications in current form
 - tighter definitions around 3rd party delay & burden of proof supporting requests for extensions sitting with RAs
 - participants own contingency planning & credibility/potential for misdirected/weakening of incentives
- Mod CMC_14_22 may not be a perfect solution – we propose it be finessed to a workable solution **in Partnership.**
- There is a clear identified **need** (& conscious that many Gas units have been terminated over recent auction – with just one succeeding)
- Recognise the good intentions of the RAs and of the SOs in responding to the policy intentions of DECC

The 'Need'

- CRU 21115 “Security of Electricity Supply – Programme of Actions’ – there is explicit reference to:
- “1. Delivery of T-3 (24/25) and T-4 (25/26) and subsequent capacity auctions (at least 2000MW)
- In order to meet growing demand, replace retiring generators and support additional penetration of renewables, it is necessary to procure and deliver at least 2000MW of additional flexible gas-fired generation capacity by 2030 at the latest”.
- BnM & Others want to respond to that Need – focusing here on Grid & Gas Connection

We welcome RA's policy actions with SOs and GNI

“The CRU has undertaken a number of actions in recent months, in cooperation with other stakeholders, to enhance delivery in the critical forthcoming capacity auctions. These actions include:

- Policy signal: the CRU is providing clarity that additional gas-fired generation is vital for the successful delivery of Ireland's 2030 renewable electricity and climate targets”.
- “The CRU has issued a **Direction to the electricity network operators** to prioritise the granting of connection offers for generators, reducing timeline-related risks to developer projects.
- The CRU has issued a **Direction to GNI facilitating advance investment in the gas network**, in order to avoid potential delays in delivering gas connections and associated reinforcements”.

The Mod itself

- The effect of the Mod: where grid or a gas connection is delayed for third party external reasons outside of the control of the participant (including participant contingency planning) in the project implementation plan an equivalent extension is added to the Substantial Completion date, to the **Longstop period** and to the **Capacity Quantity End Date** (keeping **Max Duration of the Contract**).
- the Participant cannot be expected to accept the risk associated with the timing of third-party delivery which are outside of their control, even with contingency already been factored in.
- ‘Capacity market participant will be responsible for some third-party activities (such as work undertaken through an engineering, procurement and construction contract), and these activities should be exposed to risk of delay.’ We propose that a Declaration by the SOs and GNI for delays demonstrably within their control could simplify the process with minimum burden; outside of this we want to work with the RAs and SOs in tightening definitions – to their satisfaction, if this is required, outside of the Declaration proposal.
- SOs already have a Risk Mitigation Strategy: The implementation plan submitted by New Capacity generators are assessed by the TSO and engagement occurs with GNI (where gas connection is required); best 3rd party information is provided before a project can qualify to participate in the auction. Plans considered undeliverable result in projects not qualifying, those that are considered deliverable qualify for the auction. Linking the extension of project milestones to the delivery of new elements required to deliver it i.e. grid and gas (within the scope of this Modification Proposal), and planning, should better balance the risk between investors and third parties.

Proposed wording

- **J.5.5 Extension Due to Connection Related Delays**
- *J.5.5.1 Where the completion of the Substantial Completion Milestone is delayed as a result of a failure of a third party to complete its Substantial Financial Completion milestone for works relating to Grid Connection and Gas Connection when required to do so in accordance with the initial Implementation Plan, a Participant or an Enforcing Party (on behalf of a Participant) may apply to the Regulatory Authorities for an extension to the Capacity Quantity End Date, (maintaining the Maximum Capacity Duration) and Long Stop Date associated with the relevant Capacity Market Unit.*
- *J.5.5.2 The application under paragraph J.5.5.1 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. The guidance would be for the duration of the extension request to be aligned with the third-party delay in Grid and Gas Connection beyond those factored in the Substantial Financial Completion milestone within the Implementation plan, including contingencies, submitted at Qualification – where such delay is demonstrably attributable to Grid and Gas connection processes outside of the control of the participant. The verification of the delay being external to the participant, and belonging to the third party could be by formal declaration by the third party Gas/Grid asset owner of the delay duration beyond that agreed and not caused by the participant.*

Proposed wording contd

- ***J.5.5 Extension Due to Connection Related Delays contd***
- *J.5.5.3 Applications made under paragraph J.5.5.1 shall be granted by the Regulatory Authorities in the absence of due cause not to do so.*
- *J.5.5.4 Where a request for extension under J.5.5.1 is approved, the relevant Capacity Quantity End Date (maintaining the Maximum Capacity Duration) and Long Stop Date must be extended on a day for day basis in accordance with the approved extension.*

- Further wording relating to:
- ***E.5 Exception Applications***

- And to:
- ***J.6 Termination of Awarded New Capacity***

Partnering to find a Solution

- BnM (and likely Others) want to work together with the RAs and SOs in finding a solution which delivers on the RAs Policy and RAs /SOs requirements, balancing the Risk – and ENABLING projects for Security of Supply.
- We note the careful wording proposed in an SO mod CMC_13_22 towards approaching delay from a JR – and believe that a similar approach has been adopted to account for delays in Electrical Grid and Gas Connection:

“Mitigation (of impact of delay from JR) focuses on a delivery risk which is beyond the control of the Participant and does not impact on the formation of realistic, contingency inclusive implementation plans and on incentives for meeting delivery milestones. The approach intends to minimise the administrative burden involved in implementing the facility.

As the duration of a Judicial Review and hence the length of extension is unknown until concluded, the proposed legal drafting also seeks to address termination milestones which may bind during the Third Party Judicial Review period”.