



**Single Electricity Market  
(SEM)**

**Capacity Market Code Working Group 32  
Decision Paper**

**CMC\_15\_23: Amendments to Performance Securities for Extended  
Projects**

**SEM-23-069**

**08 September 2023**

## EXECUTIVE SUMMARY

The purpose of this paper is to set out the decision relating to a proposed modification to the Capacity Market Code (CMC). The proposed modification, CMC\_15\_23, was discussed at Working Group 32, held on 20 July 2023.

The decision within this paper follows the associated consultation ([SEM-23-060](#)) which closed on 25 August 2023.

- **CMC\_15\_23: Amendments to Performance Securities for Extended Projects**
- This modification proposes an amendment to the timelines associated with posting Performance Securities for projects which have received an extension under CMC\_15\_22 or any other extensions granted under any other delay modifications.

Six responses were received to the Capacity Market Code Working Group 32 Urgent Modification Consultation Paper (SEM-23-060) with none being marked as confidential. These have been published alongside this decision paper.

### Summary of Key Decisions

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

Modification	Decision	Implementation Date
<b>CMC_15_23:</b> Amendments to Performance Securities for Extended Projects	Make a Modification* <sup>1</sup>	08 September 2023

<sup>1</sup> \*The decision to 'Make a Modification' as per B.12.11.1 (a) of the CMC applies only to those extensions granted under the Third-Party Delay modification as approved in the SEM Committee decision paper SEM-23-001, and not any other extensions of time and applies to Awarded Capacity in the T-3 2024/2025 and T-4 2025/2026 auctions only and no other auctions/ Awarded Capacity.

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# 1. OVERVIEW

## 1.1. BACKGROUND

1.1.1. The SEM CRM 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 Capacity Market Code (CMC) and the Trading and Settlement Code (TSC). The latest versions of the CMC and the TSC are published on the SEMO website.

### **Process and Timeline for this Modification**

1.1.2. On 06 July 2023, EP Dublin Energy Limited (EPDEL) submitted an Urgent Modification Proposal under B.12.9.1. This Proposal was submitted without the required Legal Drafting Change and was deemed Standard by the Regulatory Authorities.

1.1.3. On 28 July 2023, EPDEL submitted an updated Urgent Modification Proposal to the System Operators for CMC\_15\_23 which included the Legal Drafting required (the Modification Proposal).

1.1.4. As per section B.12.9.3 of the CMC, the RAs re-assessed the proposal following re-submission and deemed it Urgent.

1.1.5. As stated in B.12.11.6, the RAs will make their decision(s) as soon as reasonably practicable following conclusion of the consultation and will publish a report in respect of these. The purpose of the decision paper is to set out the decision relating to the Urgent Modification Proposal discussed during Working Group 32 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.

1.1.6. This decision paper provides a summary of the consultations' proposals for CMC\_15\_23 and sets out the SEM C's decision.

## 1.2. RESPONSES RECEIVED TO CONSULTATION

1.2.1. This paper includes a summary of the responses made to Capacity Market Code Modifications Consultation Paper (SEM-23-060) which was published dated 16 August 2023 and closed on 25 August 2023.

1.2.2. A total of six responses were received to consultation SEM-23-060 with none being marked confidential. Responses were received from:

- Kilshane Energy Limited (KEL)
- Energia
- ESB GT
- Bord na Mona
- EPUKI
- EirGrid / SONI (System Operators)

## 2. CMC\_15\_23 – AMENDMENTS TO PERFORMANCE SECURITIES FOR EXTENDED PROJECTS

### 2.1. PROPOSAL AS CONSULTED UPON PRESENTED BY EPDEL

- 2.1.1. The Modification Proposal was submitted by EPDEL and proposed an amendment to the timelines associated with posting Performance Securities for projects which have received an extension under CMC\_15\_22 (Third Party Delays Planning and Permitting) and for other extensions of time.
- 2.1.2. EPDEL note CMC\_15\_22, as approved by SEMC, enables Participants with New Capacity projects to seek extensions to their capacity contracts under Sections J.5.5. and J.5.6. of the CMC. New Capacity projects which receive an extension under J.5.5. or J.5.6. will become misaligned with the timings for Performance Security postings.
- 2.1.3. EPDEL are of the view that this increases the magnitude of risk associated with termination for these projects, which in turn creates challenges for investment decisions.
- 2.1.4. EPDEL gave an example of a project being required to post Performance Securities 13 months prior to the Capacity year, resulting in a project posting full Performance Security before a decision is made with respect to its planning and/or extension request. EPDEL state this would mean greater termination charges for those projects relative to where they are in the capacity delivery process which would be disproportionate and make it more difficult to secure investment decisions.
- 2.1.5. The Modification Proposal noted extensions under CMC\_15\_22 is reserved for instances where the delay is beyond the control of the Participant, and it is therefore unfair that the consequences of such delays are detrimental to a project's feasibility.
- 2.1.6. Failure to implement the modification, according to EPDEL's Modification Proposal, would result in undue risk of exposure for New Capacity projects which received a no-fault extension under CMC\_15\_22. EPDEL state this would be detrimental to Security of Supply and ultimately result in projects being unable to secure investment.

## 2.2. RESPONSES TO SEM-23-060

- 2.2.1. Six responses were received in total to the consultation on the Modification Proposal. In general terms, four responses were supportive, with two responses opposing it.
- 2.2.2. Kilshane Energy Limited (KEL) stated that extensions under CMC\_15\_22 are vital to ensure delivery of newly awarded capacity contracts and ultimately benefit the end consumer through security of supply.
- 2.2.3. KEL support the Modification Proposal agreeing with EPDEL that projects extended under J.5.5. or J.5.6. will become misaligned with the timings for Performance Security postings which increases the risk associated with termination and creates challenges for investment decisions.
- 2.2.4. KEL believe that approving the Modification Proposal would ensure consistency with the original intentions of the Capacity Market Code as well as the delivery progression of projects that have had an extension granted under J.5.5. or J.5.6.
- 2.2.5. ESB GT is supportive of the Modification Proposal and stated it should be implemented as an enduring solution, not limited to specific auctions. This possible limitation would, in their view, undermine investors' confidence for future projects that may be impacted by third-party delays.
- 2.2.6. ESB GT stated the unpredictability of a third-party delay, which puts a project on hold until a decision is made, means investors should not be expected to lodge a higher Performance Security as they were not able to complete the milestones expected in the original implementation plan by no fault of their own.
- 2.2.7. Bord na Mona (BnM) are supportive of the Modification Proposal as it is raised in face of the imbalance of risk which currently faces a project developer within the CRM. They uphold the view expressed by EPDEL that costs to the consumer may be greater if they terminate at the outset rather than avail of this modification.
- 2.2.8. BnM state that the Value of Lost Load (VoLL) is greater than that of having sufficient incremental capacity to ensure Security of Supply.
- 2.2.9. BnM note within their response that the latter provision of this proposal, includes any other extensions granted under any other delay modification, as being totally integral to this Modification Proposal.
- 2.2.10. BnM, as with ESB GT, are of the view that the Modification Proposal, if adopted, should not be limited to specific auctions. They are of the view that this is a general issue which is likely to remain common to all auctions, past and future, where projects have been/will be granted an extension under J.5.5. or J.5.6.
- 2.2.11. BnM referred to SEM-23-001 and note that Security of Supply must take priority when considering this proposal.

- 2.2.12. EPUKI supporting EPDEL, as the proposer, strongly supports the Modification Proposal and believe it is necessary for Security of Supply. They also believe that if this modification is not approved the effectiveness of CMC\_15\_22 will be reduced considerably.
- 2.2.13. EPUKI note the drafting of CMC\_15\_22 ensures that projects can only receive an extension where the delay is unavoidable and beyond the control of the Participant which they believe to be a fair approach and one which protects projects from external challenges.
- 2.2.14. EPUKI state that the exposure to higher levels of risk is unequitable - if a challenge was successful and planning permission was overturned, it would effectively end the project. They go on to note that these Participants may be forced to commit to higher levels of Performance Securities and Termination Charges while not having certainty over the status of their planning permission. This will make it challenging or impossible to secure funding to proceed and would result in projects terminating despite receiving an extension under CMC\_15\_22.
- 2.2.15. EPUKI reiterated this modification will make the delivery of these New Capacity projects more likely which is positive for the consumer and Security of Supply as it offsets the dates for increasing Performance Security and Termination Charge rates by a period equal to the period of any extensions awarded under the CMC.
- 2.2.16. EPUKI stated they do not consider this modification as having a material cost impact on consumers as Participants will still be required to pay Termination Charges if the project does not deliver. They note those Participants will not be exposed to rates which are prohibitively high, particularly where they are still awaiting a final decision on a third-party planning challenge.
- 2.2.17. EPUKI note the understanding that the increasing rates of Performance Securities and design of same is based on Capacity Year and intended to cover the cost of New Capacity terminating. However, they believe that the long-term value of remedying this issue will have much greater value for the consumer than the short-term cost of potential termination.
- 2.2.18. Energia are not supportive of the Modification Proposal.
- 2.2.19. Energia's view is that retrospectively changing key terms of concluded auctions is unfair and uncompetitive which is contrary to the SEMC's regulatory obligations. They also stated it is contrary to the CMC Objectives including promoting transparency and competition.
- 2.2.20. Energia state that the Modification Proposal is retrospective and makes a fundamental change to the terms of concluded auctions, that will ultimately lead to higher costs for consumers and the worsening of Ireland's Security of Supply situation.
- 2.2.21. Energia acknowledged the concerns expressed by the System Operators that rates levied through Termination Charges are based on the costs to the end consumer where there is non-delivery of capacity.
- 2.2.22. Energia are of the view that all Participants entered the auctions (T-3 2024/2025 and T-4 2025/2026) in full knowledge of relevant dates and some Participants may have decided not to enter the auction(s) based on those dates and events relative to the delivery risk for New Capacity.

- 2.2.23. The Transmission System Operators (TSOs) did not support the modification, believing that it was counter to the CMC Objectives – in particular, promoting 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.
- 2.2.24. The TSOs argued that when a project is delayed the risk to delivery increases rather than decreases. The TSOs believed that relaxing the risk mitigation for the developer appeared to be inappropriate and contrary to the outcome of the consultation exercises undertaken when the CMC was established. They thought that relaxing Performance Security requirements not only reduced commitment to an auction outcome but reduces the incentive on the project developer to take steps to secure consents in a timely manner.
- 2.2.25. Referring to the proposal, the TSOs noted that the opposite argument could be made where projects for which risk has increased should be associated with increased risk mitigation to protect the consumer rather than a relaxation.
- 2.2.26. The TSOs also remarked that the rationale for the implementation of the proposal for a specific time period or for specific auctions, was not clear.

### 3.1. SEM COMMITTEE DECISION

- 3.1.1. The SEMC welcomes the feedback provided by participants, both as part of the Workshop and the consultation responses.
- 3.1.2. The SEMC notes the varying opinion in relation to the Modification Proposal, received within both the written responses but also Workshop feedback, particularly around the risk to consumers, Termination Charges and Security of Supply.
- 3.1.3. The measures implemented under SEM-23-001 were important in that they helped mitigate against third-party planning delays, particularly at a time when there are real and current security of supply challenges in the SEM. Unless the Performance Securities arrangements are changed:
- (i) a participant will be entitled to extensions of time following a largely unpredictable third-party planning delay.
  - (ii) at the same time, be exposed to a series of Performance Charges that have a timeline structured on the basis that no significant delay has occurred. This is undesirable, because the underlying delays may make it more difficult for projects to be financed on an ongoing basis, and raising finance for additional Performance Securities will likely be more challenging. The SEMC believes that it would be undesirable to permit extension of time for a third-party delay under SEM-23-001 without recognising that the underlying delay can lead to issues in respect of Performance Securities.
- 3.1.4. The SEMC note the comments from several respondents in favour of the modification proposal, who argue that the proposal should be an enduring solution. The SEMC does not presently share



this view and considers it preferential to narrowly focus the modification at this time and apply it only to the T-3 CY2024/25 Capacity Auction and the T-4 CY2025/26 Capacity Auction.

- 3.1.5. The SEMC has asked the RAs to give further consideration to how different delays to projects are dealt with under the CMC, in any one or more auctions. This review will result in development of a consultation to address the different types of delays to projects that have been identified.
- 3.1.6. Performance Securities should always align and track Termination Charges where Performance Securities are cover in the instance that a participant does not pay Termination fees. Accordingly, it is logical to align Termination Charges to the changes in timings of Performance Securities.
- 3.1.7. In making this modification decision the SEMC also considers that the relevant dates or events used to calculate Termination Charges should also be extended, because otherwise developers' ultimate liability for termination fees would not be adjusted to reflect the underlying delay, whilst the relevant project dates and Performance Securities would have been. This would be inconsistent and may well create further issues with the financeability and viability of projects.
- 3.1.8. The SEMC notes several Participants raised concerns around the Legal Drafting submitted within the Modification Proposal and the inclusion of the "Inflationary Extension Period" text which is referred to under CMC\_16\_23. The SEMC confirms that any reference to "Inflationary Extension Period" will not be adopted as part of this Modification Proposal and Legal Drafting.
- 3.1.9. The consultation responses made some helpful comments on the detailed drafting which we have reflected on. The legal drafting of the modification to be included in the CMC has been revised.
- 3.1.10. The SEMC believes that this proposed modification is important to ensure the delivery of awarded New Capacity and is consistent with CMC Objectives. For that reason and those outlined above, the SEMC approve this Modification Proposal.
- 3.1.11. The decision to 'Make a Modification' as per B.12.11.1 (a) of the CMC applies only to those extensions granted under the Third-Party Delay modification as approved in the SEM Committee decision paper SEM-23-001, and not any other extensions of time and applies to Awarded Capacity in the T-3 2024/2025 and T-4 2025/2026 auctions only and no other auctions/ Awarded Capacity. The SEMC has asked the RAs to give further consideration to how different delays to projects are dealt with under the CMC, in any one or more auctions. This review will result in development of a consultation to address the different types of delays to projects that have been identified.

## 4. NEXT STEPS

- 4.1.1. The SEMC will make the proposed modification CMC\_15\_23 using the amended Legal Drafting accompanying this Decision Paper.
- 4.1.2. All SEMC decisions are published on the SEMC website: [www.semcommittee.com](http://www.semcommittee.com)

