

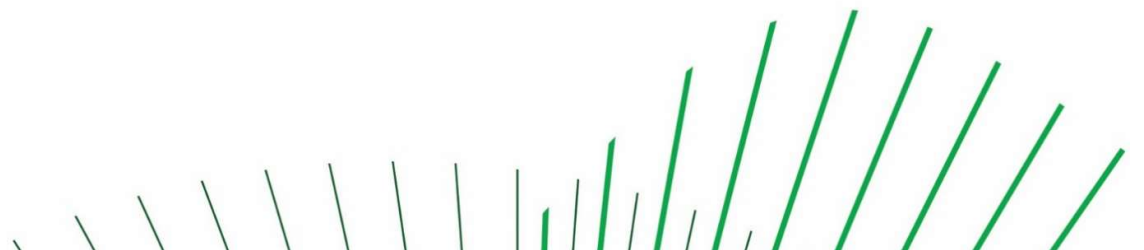
Bord na Móna

Supplementary Consultation Paper on modified
and combined Modifications to
Facilitate Delivery of Capacity

SEM 23 080

Bord na Móna Response

20th October 2023



1 Response

1.1 Introduction

Bord na Móna (**BnM**) welcomes this SEMC modification consultation, designed towards facilitating delivery of capacity in light of difficulties experienced by Participants, and the opportunity to respond to it. We are cognisant also that within CRU's October 2023 Information note on Electricity Security of Supply Programme of Work Update the focus of the 'Delivery' workstream on 'the delivery of projects successful in recent capacity market auctions under the CRM'.

BnM views the consultation as being progressive and totally appropriate in so far as it recognises primarily that Energy Security is paramount and that these modifications can lead to a material improvement in security of supply. Furthermore, they will benefit the consumer by facilitating delivery of capacity which is held up due to third party delays which are outside of the participant's control and which would likely be terminated without these modification.

We recognise and agree with the paper that the key benefit to consumers resulting from avoiding inappropriate project terminations, is avoiding lost load and/or the need for costly emergency measures, such as Temporary Emergency Generation, especially where the uncertainty in the delay in delivery of Temporary Emergency Generation can exacerbate what is already a critical supply issue.

It is noteworthy that the Paper recognises that many of the delays in project delivery are due to the sheer scale of capacity that the SEM is seeking to connect in order to transition to the low carbon economy, whilst meeting growing demand at the same time – and it cites that this 'unprecedented level of new connections is imposing or is likely to impose a strain on a number of institutions, including environmental permitting agencies, electricity TSOs and gas grid operators'. To this list, we would add Planning.

The Paper recognises the effect of delays on the project participant by contract erosion at best, which of itself will contribute to project termination owing to reduced financial outcomes which are lower than investor hurdle rates. However, in our view the paper does not sufficiently recognise the staged increasing level of risk to the participant arising from up front very large financial commitments, especially on foot of securing Substantial Financial Commitment (SFC) which is relatively early in the project implementation, without sufficient visibility of a secure investor outcome. The important point here being the need for balanced risk whereby the participant will have reasonable visibility of an outcome which will satisfy its investors and business case.

We welcome that the Paper carefully considers where a project could be legitimately delayed both before and after Substantial Financial Completion and proposes affording flexibility towards extending the SFC, the longstop date and/or the Capacity Quantity End Date. We explain further within our response below why we firmly believe that both proposals presented should be adopted.

There are two main areas to which we provide responses:

- i) to those Discussion Points raised within the Consultation (in Section 1.2 below)
- ii) to the three consultation questions (in Section 1.3 below)

1.2 Responses to Discussion Points raised within the Consultation

The paper expresses SEMC thinking and proposals in the form of two non-mutually exclusive options, as explained in Section 2.1 and Section 2.2 of the consultation paper – with application on a case by case basis. These options are:

Section 2.1 Linking approval of Substantial Financial Completion Delays to Long Stop Dates and Capacity End Date and Time for specific auctions

Section 2.2 Providing a mechanism for the SEM Committee to approve extensions to the Long Stop Date and Capacity Quantity End Date and Time for specific auctions

We generally support these proposed options and we provide our perspectives on what we consider relevant points on the options below:

A) *The Merits/Demerits of Sect 2.1 and/or Sect 2.2*

Section 2.1 is straightforward and if implemented reduces the level of risk early in the project, i.e. at SFC stage. However, the potential extension to the Long Stop date and to the Capacity Quantity End Date is locked in to the duration of the Third Party Extension period which directly relates to the extension period sought within the SFC extension request. While this is welcome, it is too restrictive and clearly does not go far enough on its own. It needs to be run in parallel with Section 2.2 provisions.

Section 2.2 would allow for application for extensions to Long Stop date and Capacity Quantity End Date for where SFC has been achieved but where there have been uncontrollable subsequent delays, where such application can be made a period up to 20 working days before the project Long Stop Date. Again, while this is welcome, it clearly does not go far enough on its own, because it needs to include a provision which includes where the SFC is extended. It needs to be run in parallel with Section 2.1 provisions.

For clarity we approve of options Section 2.1 and 2.2 together – in that they usefully complement each other in presenting an effective solution in facilitating delivery of capacity.

B) *Which auctions should these modifications apply to...should its application be restricted to specific auctions; the question arises as to whether the proposed modifications should be time bound or not*

In terms of which auctions to provide for, we support the rationale for the broader application of these provisions to apply to all auctions (perhaps subject to sunset review). We are conscious of continuing foreseeable strains on environmental permitting agencies, electricity TSOs, gas grid operators and Planning offices arising from unprecedented level of new connections, leading to third party uncontrollable delays.

At a minimum the provisions should allow New Capacity which has been granted SFC extensions prior to the implementation of this Modification, but have not yet met SFC, to apply to the RAs for extensions to their Long Stop Dates and Capacity Quantity End Date in relation to provisions outlined within Section 2.1.

Section 2.2 current provisions are more clearly applicable to all auctions which have not yet reached Substantial Completion and which are close to their Long Stop date, given that these provisions refer specifically to extensions to Long Stop dates and Capacity Quantity end dates and do not refer to SFC extension. However, in our detailed drafting of CMC drafting proposals to deliver the modifications we propose a text which does include provision for SFC Extension within Section 2.2 provisions – thereby effectively combining Section 2.1 and Section 2.2 provisions together.

C) *Supporting SEMC Decision Making*

We support the proposal that Applicants will work with SEMC in making their decisions by, supplying reason(s) for the delays, the new projected dates for completion on foot of supplying SEMC with information that they deem appropriate, including documents from third parties.

D) *Limitation to the Third Party SFC Extension Period*

‘Whilst the Third-Party Extension Period is not explicitly limited, the SOs may propose to the Regulatory Authorities the termination of the Awarded New Capacity for which an extension was granted if the Capacity Market Unit (CMU) does not achieve the SFC within 18 months of the original SFC Date’. In consideration of Security of Supply the Regulatory Authorities may want to retain some flexibility in this regard.

E) *Need for Performance Security Provisions to be altered; We outline two non mutually exclusive scenarios.*

We believe that the timing of posting of performance securities should be addressed.

i) *Where the Limitation to Third Party Extension Period is NOT exceeded*

For the general case where there are eligible Third Party Umbrella delays there needs to be provision for the permitted pushing out of posting of Performance Security uplifts. We propose that this would be akin to CMC Mod 15_23 which currently provides extension to the posting of Performance Securities for projects which have eligible third party delays under SEM 23 001 decision in relation to planning delays (third party planning appeal and JR proceedings).

ii) *Where the Limitation to Third Party Extension Period IS exceeded*

We note that the SOs may propose to the Regulatory Authorities the termination of the Awarded New Capacity for which an extension was granted if the Capacity Market Unit (CMU) does not achieve the SFC within 18 months of the original SFC Date.

We are not in favour of this, however, were it to be adopted we believe that the Participant should not be penalised for such delays not attributable to the Participant where the project will be Terminated as a result. Where Eligible Third Party Umbrella delays push out the achievement of SFC beyond the 18 months of the original SFC Date we propose that any performance securities in place should not be called in. We propose that any participant liabilities normally associated with termination should be waived if the third party delay is the cause of not reaching SFC.

1.3 Direct responses to Invitation to feedback in Respect of Three Areas:

The paper also raises three direct questions and respondents are invited to provide comments and feedback on the proposed Modifications in respect of three areas.

i) **the proposed modifications and their consistency with the Capacity Market Code Objectives;**

The modifications are ostensibly aligned most particularly with:

A.1.2.1 of the CMC

- b) to facilitate the efficient, economic and coordinated operation, administration and development of the Capacity Market and the provision of adequate future capacity in a financially secure manner;
- 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) to promote competition in the provision of electricity capacity to the SEM;

g) 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.

ii) any impacts not identified in the Modification Proposal Forms, e.g., to the Agreed Procedures, the Trading and Settlement Code, Grid Code, testing and outages, and IT systems etc.; and

We refer in the first instance to the broader comment which we provide above in '1.2 BnM Responses to Discussion Points raised within the Consultation'

In addition, we would ask whether there is any mechanism open to the Participant to query where the SEM Committee may choose to set a time limit for the extension to the Long Stop Date and the Capacity Quantity End Date and Time, which is shorter than requested by the applicant.

Thirdly we flag the need for Performance Security provisions to be altered (this is a repeat of what is stated in '1.2 Responses to Discussion Points raised within the Consultation', section E))

i) Where the Limitation to Third Party Extension Period is NOT exceeded

For the General Case where there are eligible 3rd Party Umbrella delays there needs to be provision, for the permitted pushing out of posting of Performance Security uplifts where there are eligible 3rd Party Umbrella delays. We propose that this would be akin to CMC Mod 15_23 which currently provides extension to the posting of Performance Securities for projects which have eligible 3rd party delays under SEM 23 001 decision in relation to Planning delays (3rd party planning appeal & JR proceedings).

ii) Where the Limitation to Third Party Extension Period IS exceeded

We note that the SOs may propose to the Regulatory Authorities the termination of the Awarded New Capacity for which an extension was granted if the Capacity Market Unit (CMU) does not achieve the SFC within 18 months of the original SFC Date.

We are not in favour of this, however, were it to be adopted we believe that the Participant should not be penalised for such delays not attributable to the Participant where the project will be Terminated as a result. Where Eligible Third Party Umbrella delays push out the achievement of SFC beyond the 18 months of the original SFC Date we propose that any performance securities in place should not be called in. We propose that any participant liabilities normally associated with termination should be waived if the third party delay is the cause of not reaching SFC.

We also flag that this modification does not provide for planning delays other than those relating to 3rd Party Planning Appeal and Judicial Review. Neither does it provide for third party delays in Environmental licencing.

iii) the detailed CMC drafting proposed to deliver the Modifications.

All additional text amendments are *shown in red*

J.2 Content of Implementation Plans

J.2.1.2.....

(a) Mechanical Completion: this milestone is achieved:

(i) in respect of a new or refurbished Generator Unit, when the primary mechanism to generate electricity (whether this is via a turbine, any mechanical or electrical device or installation of any other technology, e.g. photo voltaic) is installed on-site; and

(ii) in respect of a new or refurbished Interconnector, when the necessary cabling is installed;

(iii) in respect of Gas Connection, when the necessary gas connection 'AGI – Above Ground Installation' and all necessary upstream piping and infrastructure is installed

J.5.5 Extension of Long Stop Date by Third Party Planning Appeal or Judicial Review or Eligible 3rd Party Umbrella Delay

J.5.5.1 For Third Party Judicial Review or Third Party Planning Appeal

Subject to the requirements of paragraph J.5.5.23, a Participant or an Enforcing Party (on behalf of a Participant) may apply to the System Operators to extend the date of Substantial Financial Completion and Long Stop Date associated with a Capacity Market Unit by a period equal to the Third Party Extension Period where that Capacity Market Unit is subject to a Third Party Judicial Review or Third Party Planning Appeal.

J.5.5.2 For Eligible 3rd Party Umbrella Delay

Subject to the requirements of paragraph J.5.5.23, a Participant or an Enforcing Party (on behalf of a Participant) may apply to the System Operators to extend the date of Substantial Financial Completion and/or Long Stop Date and Capacity Quantity End Date associated with a Capacity Market Unit by a period equal to the relevant Third Party Extension Period(s) where that Capacity Market Unit is granted Third party Extension Period(s) relating to Eligible 3rd Party Umbrella Delay(s).

J.5.5.23 The System Operators shall extend the date of Substantial Financial Completion and Long Stop Date under paragraph J.5.5.1 and J.5.5.2 subject to the requirements of paragraph J.4.2.5 and the Participant submitting the following proofs to the System Operators:

a)....

b)....

(c) Documentary evidence supplying SEMC with information that they deem appropriate, including documents from third parties.

J.5.5.3 The System Operators may propose to the Regulatory Authorities the termination of the Awarded New Capacity for which an extension was granted under J.5.5.1 or J.5.5.2 if:

(d) Eligible 3rd Party Umbrella Delay

J.5.6.1 For Third Party Judicial Review or Third Party Planning Appeal Delays

Where the System Operators have granted an extension under paragraph J.5.5.1, a Participant or an Enforcing Party (on behalf of a Participant) may seek the approval of Regulatory Authorities for an extension to the Capacity Quantity End Date and Time associated with a Capacity Market Unit by a period no greater than the Third Party Extension Period.

J.5.6.2 For Eligible 3rd Party Umbrella Delay

Where the System Operators have granted an extension under paragraph J.5.5.2, a Participant or an Enforcing Party (on behalf of a Participant) may seek the approval of Regulatory Authorities for an extension to the Capacity Quantity End Date and Time associated with a Capacity Market Unit by a period no greater than the Third Party Extension Period(s) which are Eligible as 3rd Party Umbrella Delay(s).

J.5.6.3 A Third Party Exception Application shall:

- (a) contain the information required by the Regulatory Authorities;
- (b) **In the case of Third Party Judicial Review or Third Party Planning Appeal** contain a certificate addressed to the Regulatory Authorities from an independent Certified Engineer, with experience and expertise in the construction and operation of the relevant type of equipment or technology, approved by the Regulatory Authorities (such approval not to be unreasonably delayed or withheld) certifying that, having made all due and careful enquiry and to the best of their knowledge, the extension being claimed under this section J.5.6 can be directly attributed to the Third Party Judicial Review or Third Party Planning Appeal that led to an extension being granted under J.5.5.1:
- (c) **In the case of Eligible 3rd Party Umbrella Delay Exception Application contain documentary evidence supplying SEMC with information that they deem appropriate, including documents from third parties.**
- (ed) be in the form prescribed by the Regulatory Authorities; and
- (de) be made in the manner prescribed by the Regulatory Authorities.

J.6 Termination of Awarded New Capacity

J.6.1.1 For the purposes of this section:

6.1.1 b) **Long Stop Date:** the Long Stop Date in respect of Awarded New Capacity means
(iii) such later date as specified under paragraph J.5.5.1 **and/or J.5.5.2.**

J.6.1.2 The System Operators shall terminate all the Awarded New Capacity in respect of a new or refurbished Generator Unit or Interconnector in the event that:

6.1.2 a)

(iii) such later date as specified under paragraph J.5.5.1 **and/or J.5.5.2;** or

Add the following definitions to the Glossary:

Eligible 3rd Party Umbrella Delay means the determination following due process using appropriate determinations from independent Experts, if/where required, pre SFC or post SFC, on that part of the relevant delay(s) between the Participant and the relevant Third Party which is attributable to the Third Party, based on robust evidence, or by agreement between the Participant and the relevant Third party.

For Third Party Judicial Review or Third Party Planning Appeal Delays

Third Party Extension Period means, in respect of date of Substantial Financial Completion and Long Stop Date extension under paragraph J.5.5.1, the period from the date on which the relevant Participant has either

- i. in respect of Ireland, been served with an originating notice or, in respect of Northern Ireland, been served with an application for leave to apply for judicial review, in respect of the Third Party Judicial Review to the date on which the Third Party Judicial Review is concluded, either by order, direction or decision of the court (not appealed by the third party to the Third Party Judicial Review), or otherwise; or
- ii. received a copy of the Third Party Planning Appeal to the date of the determination by An Bord Pleanála in respect of the Third Party Planning Appeal.

For Eligible 3rd Party Umbrella Delay

Third Party Extension Period means, in respect of date of Substantial Financial Completion and/or Long Stop Date extension under paragraph J.5.5.1, a determination of **Eligible 3rd Party Umbrella Delay(s), which can be i) a Third party extension period towards extension to SFC and/or ii) a Third party extension period towards extension to the Long Stop Period and Capacity Quality End Date.**