



SEM-23-080 Supplementary Consultation Paper on modified and combined Modifications to Facilitate Delivery of Capacity

SSE Response



1. Introduction

SSE welcomes the opportunity to respond to SEM-23-080 Supplementary Consultation Paper on modified and combined Modifications to Facilitate Delivery of Capacity. For the avoidance of doubt, this is a non-confidential response.

1.1. Who we are

SSE is the largest renewable energy developer, operator, and owner in Ireland's all-island Integrated Single Electricity Market. Since entering the Irish energy market in 2008, SSE Group has invested significantly to grow its business in Ireland, with a total economic contribution of €3.8bn to the State's economy over the past five years. We have also awarded over €9 million to communities in the past 10 years as part of our community benefit programme.

SSE is building more offshore wind energy than any other company in the world right now. We are currently constructing the world's largest offshore wind energy project, the 3.6 GW Dogger Bank Wind Farm in the North Sea, a joint venture with Equinor and Eni. This is in addition to Scotland's largest and the world's deepest fixed bottom offshore site, the 1.1 GW Seagreen Offshore Wind Farm in the Firth of Forth, a joint venture with TotalEnergies, which reached first power in recent weeks. In the most recent Scotwind process, SSE Renewables was awarded the rights, along with partners Marubeni Corporation (Marubeni) and Copenhagen Infrastructure Partners (CIP), to develop what will become one of the world's largest floating offshore wind farms off the east coast of Scotland.

We plan to bring our world-leading expertise in offshore wind energy to Ireland with plans to deliver over 3 GW of offshore wind energy in Irish waters, starting with our Arklow Bank Wind Park Phase 2 project off the coast of Co. Wicklow.

Through our SSE Thermal business, we continue to provide important flexible power generation. SSE's power station Great Island is Ireland's newest combined cycle gas turbine (CCGT) power station and one of the cleanest and most efficient on the system, generating enough electricity to power half a million homes. The acute need for flexible generation in Ireland has been demonstrated over the last twelve months, with EirGrid's most recent generation capacity statement showing that a shortfall in generation capacity was a significant risk this coming winter and for a number of winters to come, resulting in emergency measures being implemented by the CRU and Government.

While existing power stations continue to play a critical role on the system, SSE view the future of dispatchable thermal generation as being abated thermal, with Carbon Capture and Storage, hydrogen or other low-carbon fuels being the primary options. SSE have over 5 GW of zero and low carbon thermal under active co-development in the UK. We will continue to evaluate opportunities to bring our expertise and investment in decarbonised flexible generation to Ireland, but it is vital that the state, Regulator and TSO provides an appropriate investment landscape to unlock such developments.

2. SSE Response

2.1. Introduction

This consultation follows the SEM Committee's approval of CMC_12_22, CMC_13_22, and CMC_15_22 in SEM-23-001 which allows awarded new capacity projects delayed by judicial review and/or planning

appeal to apply for extensions to their Long Stop Date (LSD) and Capacity Quantity End Date and Time (CQEDT)¹.

As a result of these previous modifications, under J.5.2 of the Capacity Market Code, market participants who have been awarded new capacity can apply for extensions to their SFC date for any reason. However, they cannot be granted a commensurate extension to their LSD and CQEDT unless the project is subject to judicial review or planning appeal².

In addition to those modifications above that have been approved, an additional 5 modifications (listed in Table 1) were also proposed, indicating additional instances of third-party delays that should also be accommodated under the extensions structure of the Capacity Market Code (CMC). Rather than address each of these event types individually, the SEM Committee proposes to address delays on a case-by-case basis by linking the approval of Substantial Financial Completion (SFC) delays to Long Stop Dates (LSD) and Capacity Quantity End Date and Time (CQEDT) for specific auctions and/or providing a mechanism for the SEM Committee to approve extensions to the LSD and CQEDT for specific auctions.

It is our view that cases for extensions should be case by case, however, third-party delays need also to be formally recognised to ensure they identify and acknowledge which parties certain risk mitigation appropriately sits with. And that these extensions approved on the basis of these additional circumstances, can carry with them commensurate extensions in LSD and CQEDT.

Table 1. Proposed modifications referenced in SEM-23-080

Modification	Proposed By	Summary
CMC_04_23	Castlelost FlexGen Ltd.	Would enable LSD and Capacity Quantity End Date and Time to be extended in instances where awarded new capacity projects face delays outside of their control due to
CMC_10_23	Bord Na Mona	Extraordinary supply chain disruptions Gas connection Article 17/18 direction Indexation Grid connection
CMC_11_23	Tynagh Energy	
CMC_16_23	Tynagh Energy	
CMC_23_23	Bord Gais	

Investors of new capacity face termination and contract erosion in the current CRM design if they cannot meet milestones because of third-party delays. The proposed changes are important measures that would mitigate the commercial risks currently faced by investors, help solve the capacity shortfall laid out in Eirgrid's 2022 Generation Capacity Statement and improve security of supply³.

In our response, we express the following opinions on these changes:

1. Grounds for extensions
 - a. The proposed modifications referenced in this consultation outline reasonable instances of third-party delays that currently affect the delivery of awarded new capacity in the 2020s.
 - b. Third party delays should reasonably include delays associated with connections as a priority.
2. Governance of extensions

¹ [SEM-23-001](#), Capacity Market Code Urgent Modifications Working Group 28 – Decision Paper

² Capacity Market Code, September 1, 2023

³ Eirgrid Generation Capacity Statement, 2022

- a. Developers should have time to fully address third party delays through granted extensions.
- b. These changes should apply from a specific effective date, rather than to specific auctions.
- c. There should be transparency in all areas of the auction process, including the publication of any extensions granted.

Prior to outlining our response under topics one and two above, there are two other related matters that we wish to raise. Both of these broadly relate to delays and process delivery under the CRM process.

- To date, market participants have experienced repeated delays and missed deadlines in the issuing the FAIP. These are unhelpful and have consequences for market participants. These delays should be communicated to market participants as early as possible, but this often is not the case. It is understandable that there may be delays from time to time but when they happen, it would be very useful if these were communicated in a timely manner.
- Another issue relates to the publication of the Qualification Capacity Register which would be a practical way to provide information to market participants in advance of the FAIP. The Register is covered in Section G.1 of the Capacity Market Code. We suggest this Register (or an abbreviated version of it) could be published on the website. This is the case for the UK Capacity Market Register, as included in Chapter 7⁴.

2.2. Grounds and Governance of Extensions

2.2.1. Grounds for Extensions

There are several concerning assumptions in relation to the proposed modifications that are still under consideration from the SEMC, or which have been previously rejected. Specifically, the paper makes the following statements in response to the modifications that have yet to be delivered:

1. *“do not facilitate the distinction between delays where market participants may never contribute to resolving the capacity gap in the mid-2020s and projects which could contribute to resolving the gap, with a more permissive approach”.*
2. *“do not do enough to distinguish between delays which are outside the control of market participants, and those which could not reasonably have been anticipated or mitigated by market participants”.*
3. *“seek to define ex ante the types of events which would merit automatic extensions”.*

It is our view, that these perspectives are unfair and suggest that the modifications did not consider proportionate amendments to the CMC, with an awareness of impact, fairness and reinforcing the responsibility of developers to be prudent and pragmatic. All of these modifications work on the basis that risk apportionment should be fairly borne by those best able to mitigate the risk.

Specifically, CMC_4_23 clearly demonstrates the wide-reaching challenges in supply chain at present, particularly in the procurement of critical raw materials needed in the delivery of new capacity.⁵ It clearly demonstrates that external factors, which cannot have been foreseen, and clearly lie outside the control of the participant, impact delivery of milestones and should qualify for consideration under an extension request.

⁴ [UK Capacity Market Rules, 2022](#) Chapter 7

⁵ [OECD, The Supply of Critical Raw Materials Endangered by Russia's War on Ukraine, August 2022](#)

Additionally, CMC_10_23 and CMC_23_23 clearly demonstrate additional delays that are in the control of the system operator, rather than the participant, even if the participant has engaged early in this process. None of the modifications suggest that extensions should be automatic. These particular modifications go to great lengths (and did so in the industry code workshops) to demonstrate that documentary evidence must be required, and every effort should be made by the participant to support a legitimate request for extension (including the suggestion for an Independent Expert).

As outlined in CMC_14_22 and CMC_23_23, it is quite clear that connection policy and connection delivery is in the control of network operators in electricity and gas. Whilst a developer should apply for a connection in a reasonable and timely manner, where this is delayed, or if connection delivery is later than expected; this cannot be an activity that the developer can positively effect. But yet they face termination of the contract in these cases and cannot reasonably apply for an extension in these cases. These risks deter investment in new capacity, thereby worsening security of supply issues.

While Eirgrid is required to comply with CRU directions relating to the delivery of connections for projects that have been awarded Capacity Contracts, the TSO also must deliver connections through ECP rounds as well as connections for other ringfenced workstreams, such as Low Carbon Inertia Services. It is understandable that this could lead to strained resources to deliver these services in a timely fashion, resulting in developers of Capacity Awarded projects facing long delays. It is imperative that therefore, there is space given in connection delivery for the extraordinary speed and volume of connections that need to be achieved under these various streams of work. And that there is a mechanism within the CMC to extend not just the SFC date but the LSD and CQEDT for such delays.

It is welcome that the SEMC notes the Ernst & Young (EY) recommendation for a more permissive approach to requests for extensions from new build projects, which in their view would reduce the risk that viable projects delayed by factors outside of their control are terminated due to the tight lead time between auction and delivery year⁶. Where the SEMC does not provide suitable acknowledgement of all reasonable third-party delays or seeks to dictate specific lengths to extensions before termination, this could be seen as counter-productive to the intended recommendation from EY.

It is well demonstrated that projects continue to regularly terminate their capacity contracts, and any measures to help prevent this and improve delivery certainty, would be best for consumers and the system. It is our opinion that the implementation of meaningful extensions policy and transparency in publication will help to facilitate the delivery of the 2GW of additional flexible gas-fired generation capacity needed by 2030, protect customers, and create a fair and effective investment landscape for future auctions to avoid future capacity shortfalls.

2.2.2. Governance of Extensions

In this consultation, the SEMC suggests that they may impose a time limit on extensions which is shorter than what is requested by the applicant. If external delays are not resolved within that period, the participant still faces the commercial risks of termination and contract erosion. This is likely to undermine the purpose of the extension and if codified as a specific arbitrary timeframe, would send a negative investment signal to future developers. Any extensions granted to the LSD and CQEDT should reflect the best possible estimates of the length of external delays, so as not to penalise market participants for circumstances outside of their control.

It is our view that the approach to granting of extensions is robust enough, if it has sufficient evidence requirements to support a request for extension. There should be a reasonable accommodation for the developer to signal the most realistic extension length needed. If not already in the Code, a backstop

⁶ [Performance of the SEM Capacity Remuneration Mechanism, EY](#)

provision for the SEMC to be able to terminate a connection if the extensions appear extensive, could be a useful compromise depending on the wording. It should also be considered whether repeat extensions should be treated differently. We have no view on this, but have noted that in some cases, projects have terminated following repeated extensions not being approved.

This consultation suggests that if the proposals were made for an unlimited period, that new capacity projects at greater risk of external delays would seek qualification under the assumption that they could obtain an extension later on. Current extensions to LSD for planning appeal and judicial review are made at the discretion of the System Operators and Regulatory Authorities upon review of submitted evidence supporting the assertion that such delays are in fact outside of participant control⁷. Applications for extensions to Capacity Quantity End Date and Time for judicial review and planning appeal must include a certificate from an Independent Expert verifying that the delay being claimed is directly attributable to third party planning appeal or judicial review.⁸ CMC drafting of the modifications proposed in this consultation provide clear intention that there should be robust evidence and due diligence undertaken to ensure that the provision for extensions is not abused.

The Consultation also outlines a view that the proposals should be attached to a specific capacity auction in the future or may apply in retrospect. In line with the SEMC position on other modifications, application in retrospect may be a step too far. However, the benefit of such a process as extensions, is that it should not be tied to an auction, as much as it should be tied to the timeframe up to Substantial Financial Completion of an in-flight project. Therefore, it is our view that if these changes are made to accommodate other types of third-party delays under extension criteria, this should have an **effective date**, not a link to a specific future auction. This can therefore ensure that those projects that may currently need an extension for pertinent reasons, can seek an extension. Lastly, this approach with an effective date, would also align with the Regulatory Authorities' acknowledgement of the criticality of more recent tranches of CRM projects which are directly addressing the capacity shortfall⁹.

We welcome the proposal for publication of extensions to the market. This aligns to the CMC objective of providing transparency in the operation of the SEM. In our view, it is critical that all extensions granted to the SFC, LSD, and CQEDT of CMUs are published in a timely manner and available to all market participants. We agree that extensions are best published in the Capacity and Trade Register per G.2.1.5 alongside other information about the delivery of new capacity as outlined in G.3.1.8.

⁷ Capacity Market Code, J.5.5.2

⁸ Capacity Market Code, J.5.6.3

⁹ The security of supply focus is evidenced by the recent CRU direction on the CRM relating to Capacity Auction 2026/27 for instance.