

Response to SEM-23-044

Capacity Market Code Modifications Workshop 31 Consultation

21st July 2023



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1. Introduction

EirGrid holds licences as independent electricity Transmission System Operator (TSO) and Market Operator (MO) in the wholesale trading system in Ireland. System Operator Northern Ireland (SONI Ltd) is the licensed TSO and MO in Northern Ireland. The Single Electricity Market Operator (SEMO) is part of the EirGrid Group and operates the Single Electricity Market on the island of Ireland.

EirGrid and SONI have been certified by the European Commission as independent TSOs. EirGrid also owns and operates the East West Interconnector, while SONI acts as Interconnector Administrator for both of the interconnectors that connect the island of Ireland and GB.

EirGrid and SONI, both as TSOs and MOs, are committed to delivering high quality services to all customers, including generators, suppliers and consumers across the high voltage electricity system and via the efficient operation of the wholesale power market. EirGrid and SONI therefore have a keen interest in ensuring that the market design is workable, will facilitate security of supply and compliance with the duties mandated to us and will provide the optimum outcome for customers.

EirGrid and SONI have duties under licence to advise the CRU and UR respectively on matters relating to the current and expected future reliability of the electricity supply. We have also been allocated responsibility for administering the Capacity Market Code through our TSO licences. This response is on behalf of EirGrid and SONI in their roles as TSOs for Ireland and Northern Ireland.

1.1. EirGrid and SONI View on the Consultation Topic

EirGrid and SONI, in our role as System Operators, welcome the opportunity to respond to the SEM Committee's consultation paper ([SEM-23-044](#), 14th June 2023) in relation to the proposed Capacity Market Code modifications:

- CMC_10_23: Mitigation of Impact on Participants Relating to 3rd Party Gas Connection Delays
- CMC_11_23: Amendment to Drafting Introduced Under Modification CMC_15_22
- CMC_12_23: Facilitation of Unit Specific Price Caps for Existing Capacity in Excess of the Auction Price Cap
- CMC_13_23: Min Completion Prior to Long Stop Date
- CMC_14_23: Locational Capacity Constraint Violation Criteria

1.1.1. APPENDIX: Response Template

SUMMARY INFORMATION

Respondent's Name	SONI & EirGrid
Type of Stakeholder	System Operators
Contact name (for any queries)	Provided
Contact Email Address	Provided
Contact Telephone Number	Provided
Confidential Response	No

CAPACITY MARKET CODE MODIFICATIONS CONSULTATION COMMENTS:

Mitigation of Impact on Participants Relating to 3rd Party Gas Connection Delays

CMC_10_23	EirGrid and SONI Response
<p>Proposed Legal Text and its Consistency with the Code Objectives</p>	<p>EirGrid and SONI recognise that events outside of the control of a Participant impact on New Capacity delivery timelines and we welcome opportunities to work with participants to mitigate these risks. EirGrid and SONI believe that any mechanism intended to address delivery risks needs to be specific and targeted to secure the delivery of capacity rather than to facilitate delays.</p> <p>EirGrid and SONI are concerned by a potential creeping effect in relation to remedial actions which could evolve over a number of modifications from specific mechanisms with objective triggers to a means to mitigate third party risk in general.</p> <p>Risks associated with connection of a project are reasonably within the control of a developer given they choose when to start engaging with System Operators and where to locate their project. By ensuring that the risk of non-delivery of the connection remains with the developer, it provides a necessary incentive for more straightforward connections to come forward as opposed to more complex ones (all other things being equal). Removing this could result in an increase in the number of complex and difficult connections coming forward to participate in capacity auctions.</p> <p>EirGrid and SONI believe this proposal is not consistent with a number of the Code Objectives set out in A.1.2.1 of the Capacity Market Code, in particular:</p> <ul style="list-style-type: none"> <i>(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;</i> <i>(e) to provide transparency in the operation of the SEM;</i> <i>(f) to ensure no undue discrimination between persons who are or may seek to become parties to the Capacity Market Code; and</i> <i>(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.</i>

<p>Impacts Not Identified in the proposed Legal Text</p>	<p>EirGrid and SONI believe, on balance, the remedial action would increase risk associated with the timely delivery of capacity to improve Security of Supply.</p> <p>The existence of the proposed remedial action may negatively influence the engagement between third parties and project promoters in the expectation that delays or perceived delays would be debated, catalogued and presented to the Regulatory Authorities for adjudication. The existence of a remedial action of this nature could influence the nature, terms and conditions of the connection process going forward.</p> <p>The proposed facility could potentially be used as a form of project contingency and influence unrealistic implementation plans or incentivise or de-risk more complex locations for New Capacity to the detriment of the delivery of capacity to meet demand in a Capacity Year and to the detriment of other potential capacity which may be displaced in the qualification / auction process. CMC_10_23 could impact on the formation of realistic, contingency inclusive implementation plans and on incentives for meeting delivery milestones.</p> <p>EirGrid and SONI previously welcomed (in relation to CMC_14_22) the exclusion of connections (gas and electrical) from the RAs' alternative proposal. Notwithstanding the proposer's attempts to mitigate concerns in relation to CMC_14_22 in CMC_10_23, introducing a remedial action with respect to connections could introduce a significant degree of subjectivity and uncertainty in the implementation of the remedial action. Such a remedial action would present a further risk to timely delivery of capacity.</p>
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<p>Detailed CMC Drafting Proposed to Deliver the Modification</p>	<p>If the remedial action is to be implemented, and the System Operators do not support this proposal, the proposed legal drafting needs further modification to integrate the text into the Code e.g. J.5.5.2 needs an ‘or’ statement as (a) and (b) are not applicable.</p> <p>The text appears to introduce numerous terms which may require or, at the very least, benefit from definition.</p> <p>The proposal refers to a resolution path based on decisions and ‘mechanisms’ ‘within the terms of the Gas Connection Agreement’. It is not clear what these terms are or could be. Proactive engagement by the Regulatory Authorities with Gas System Operators who may not be engaged in the Capacity Market Code modification process in relation to this proposal would appear to be essential.</p> <p>The drafting refers to a termination facility if the submission made under the remedial action is ‘deemed invalid by the System Operators / Regulatory Authorities’ however the criteria or process for such determination is not clear.</p> <p>As gas connection risk is only relevant to capacity that requires a gas connection it should be considered if provision of a remedial action which is fuel type specific is in any way discriminatory.</p> <p>It is not clear if the lead-times or dates associated with the gas connection offer and contracting process are binding or indicative. Should dates be indicative it is not clear if a later delivery constitutes an actual delay for all parties.</p> <p>The glossary definitions proposed contain a significant amount of narrative and in doing so could introduce in themselves scope for interpretation.</p> <p>It is not clear what benefit, expertise or rigour the second engineer applies to the process given the text states that the ‘second engineer simply takes determinations from the appropriate expert or first independent engineer and ensures that they are submitted appropriately’ and their ‘role is to simply provide relevant information received from those working within the contractual arrangements (the Participant and the Gas Connector Provider) to the Regulatory Authorities’. As described it appears to be an administrative role rather than one which provides rigour to the submission.</p>
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Amendment to Drafting Introduced Under Modification CMC_15_22

CMC_11_23	EirGrid and SONI Response
<p>Proposed Legal Text and its Consistency with the Code Objectives</p>	<p>EirGrid and SONI’s proposal for a Remedial Action (CMC_13_22) in relation to the planning process was specific and targeted solely at the Judicial Review stage of the planning process in order to address a particular third party risk. As the SEM Committee’s Decision implemented a broader application it is reasonable to ensure the broader application is complete jurisdictionally. Whilst CMC_11_23 potentially deviates from or extends the existing Remedial Action in that it remediates a period prior to a planning decision being effective, the period constitutes a part of the planning process in Northern Ireland.</p> <p>EirGrid and SONI believe therefore this proposal may be consistent with a number of the Code Objectives set out in A.1.2.1 of the Capacity Market Code, in particular:</p> <ul style="list-style-type: none"> <i>(a) to facilitate the efficient discharge by EirGrid and SONI of the obligations imposed by their respective Transmission System Operator Licences in relation to the Capacity Market;</i> <i>(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;</i> <i>(f) to ensure no undue discrimination between persons who are or may seek to become parties to the Capacity Market Code; and</i> <i>(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.</i>

<p>Impacts Not Identified in the proposed Legal Text</p>	<p>EirGrid and SONI understand that Article 17/18 Directions which prevent a Local Planning Authority from granting planning permission may not specify a time period for a conclusion of the process however the provisions of J.5.5.3 (a) or J.5.5.3 (b) may be sufficient if a potentially open-ended Remedial Action is undesirable from a SEM Committee perspective.</p> <p>The provisions of Article 17/18 are broader than the definition proposed in CMC_11_23. EirGrid and SONI suggest the below amended definition (highlighted) to reflect a broader meaning. EirGrid and SONI have also highlighted additional minor amendments to the defined terms below.</p> <p>Further to these amendments, in relation to this proposal and the Remedial Action in general, it would be important that any extension arising would apply only where the participant has applied due process with regard to the planning application e.g. the participant has applied to the planning authority that is appropriate for their project and in line with planning rules and associated guidelines and engaged in the correct preplanning consultations with the relevant authorities.</p> <p>EirGrid and SONI also believe the existing definition of Third Party Extension Period should be reviewed to clarify practical implementation issues. In relation to determinations by An Bord Pleanála in Ireland, there is an eight week period post-determination during which a Third Party may seek a Judicial Review. It could be said that final grant of planning is therefore not achieved until the eight week period has lapsed. The definition may also benefit from additional clarity to address circumstances where a project is subject to both a planning appeal and Judicial Review.</p>
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<p>Detailed CMC Drafting Proposed to Deliver the Modification</p>	<p><u>Legal Drafting</u></p> <p>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</p> <p>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;</p> <p>or</p> <p>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</p> <p>or</p> <p>iii. <u>in respect of Northern Ireland, received notification that the Local Planning Authority has received an Article 17/18 Direction by the Department, to the date of determination of the planning application by the Local Planning Authority or the Department as the case may be.</u></p> <p>Article 17/18 Direction means a direction from the Department to the local Planning Authority under Article 17 and/or 18 of the Planning (General Development Procedure) Order (Northern Ireland) 2015 (or equivalent provision), requiring that <u>Local Planning Authority</u> to notify the Department when it reaches a recommendation in relation to the planning application, such that the Department may consider whether or not to issue a direction to call-in the application for determination under Section 29 of the Planning Act (Northern Ireland) 2011 (or any equivalent provision) <u>or a direction to the Local Planning Authority preventing a Local Planning Authority from granting planning permission indefinitely or for a specified period in respect of any development or any class of development.</u></p> <p>Local Planning Authority means a council in Northern Ireland with powers to determine planning applications under the Planning Act (Northern Ireland) 2011 (or any equivalent provision).</p> <p>Department means the Department for Infrastructure in Northern Ireland or its successor department.</p>
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Facilitation of Unit Specific Price Caps for Existing Capacity in Excess of the Auction Price Cap	
CMC_12_23	EirGrid and SONI Response
Proposed Legal Text and its Consistency with the Code Objectives	It is not clear if it is appropriate that the issues cited as justification for the proposal are most appropriately addressed through the Capacity Market e.g. increased maintenance costs, reduction in System Services revenue, loss of inframarginal rent, running cost per MW available increasing as MW availability declines.
Impacts Not Identified in the proposed Legal Text	A systems change would be likely following an impact assessment of approved text.
Detailed CMC Drafting Proposed to Deliver the Modification	<p>The System Operators reiterate that the maximum price allowed is defined as the Auction Price Cap and Unit Specific Price Caps or any price caps in excess of the Auction Price Cap are therefore not possible without amending the definition of the Auction Price Cap.</p> <p>Should the modification proceed one option may be to amend the definition of Auction Price Cap to <i>'means the maximum Auction Clearing Price allowed in a Capacity Auction and is determined by the Regulatory Authorities and provided to the System Operators under paragraph D.3.1.3'</i></p>

Min Completion Prior to Long Stop Date	
CMC_13_23	EirGrid and SONI Response
Proposed Legal Text and its Consistency with the Code Objectives	Nothing further to the proposal and subsequent Workshop 31 discussion.
Impacts Not Identified in the proposed Legal Text	N/A
Detailed CMC Drafting Proposed to Deliver the Modification	As per the modification proposal.

Locational Capacity Constraint Violation Criteria	
CMC_14_23	EirGrid and SONI Response
Proposed Legal Text and its Consistency with the Code Objectives	Nothing further to the proposal and subsequent Workshop 31 discussion.
Impacts Not Identified in the proposed Legal Text	<p>This proposal seeks to introduce a method to resolve infeasibilities in the auction process with respect to Locational Capacity Constraints: minima, maxima and inflexibility of offers. Without this there is a risk that there is no defined solution to an auction.</p> <p>To provide additional clarity, the mechanism is intended to assign penalty costs to violations which minimise the quantity of MW limit which is relaxed. If the cost assigned to maximum and minimum violations are the same then the smaller MW relaxation will be the result.</p> <p>The penalty costs can be set in a manner which minimises the quantity of violation (e.g. by setting the penalty values to the same amount) or to prioritise one constraint over another. This priority would be established based on the likely impact on costs to consumers of different outcomes, e.g. VoLL arising from under-procurement to Net CONE arising from over-procurement.</p> <p>The approval process by the RAs can ensure that the appropriate priority is given to the constraints e.g. to prioritise minima over maxima.</p>
Detailed CMC Drafting Proposed to Deliver the Modification	As per the modification proposal.