

BGE – RESPONSE– SEM-25-023 CONSULTATION WORKSHOP 43

SUMMARY INFORMATION

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CAPACITY MARKET CODE MODIFICATIONS WORKSHOP 43 CONSULTATION COMMENTS:

Bord Gáis Energy (BGE) welcomes the opportunity to respond to this consultation paper on Capacity Market Code (CMC) modifications addressed at Workshop 43 (SEM-25-023). Please see below our views on the 6 respective modifications followed by summary table of CMC Objectives impacts.

1. CMC_04_25: Adjustment of CMC auction qualification criteria to facilitate complex projects within State Aid approval

While BGE supports the principle of this modification, we are concerned about the implications of codifying the delivery of capacity up to 18 months after the usual month of September in which initial delivery would have been expected at the time of the Capacity Auction and do not believe this modification is the appropriate solution. In principle, there is a need to hold auctions with sufficient delivery timeframes ideally at least or in excess of five (5) years before the month delivery is initially required. Such a lead time before capacity delivery would help mitigate the major supply chain, planning and gas/ electricity grid connection challenges that developing projects are currently enduring.

BGE also shares the Regulatory Authorities (RAs') concerns about the implications and accuracy of the volume calculations for capacity auctions if delivery of some projects being procured is ~18 months later than other projects, which could undermine the expected security of supply levels for a particular capacity year ultimately to the detriment of consumer costs. We urge the RAs to prioritise the need to hold auctions >5 years in advance

BGE – RESPONSE– SEM-25-023 CONSULTATION WORKSHOP 43

of capacity delivery – consideration to such lead times is in our view necessary imminently, and certainly as part of the new capacity remuneration mechanism that will comply with the new EU State Aid requirements. In the interim, projects should continue to aim for delivery by the September of the delivery year connected to the auction, and if delays are experienced the Remedial Actions' processes under section J.5 of the CMC should be utilised (e.g. CQEDT extensions).

2. CMC_05_25: Early Termination of Intermediate Length Contract Capacity

BGE supports the need for units that obtain an Intermediate Length Contract (ILC) to be able to terminate their ILC for legitimate reasons, without the risk of losing 1 year+ capacity revenues, and participate in capacity market auctions as “Existing Capacity” in the scenario where the unit cannot achieve its Substantial Completion by the long stop date under the ILC.

Take for example a unit that is due to deliver its ILC refurbishment by October 2028 under its ILC. Say in 2027 it becomes apparent to the unit in that it cannot deliver its committed ILC investment on time (for supply chain reasons for example). Under current rules there is no official route to terminate, and the unit cannot exit the ILC/terminate until Oct 2029 when it fails to achieve substantial completion. At this point it will have missed opportunities to enter a T-1 for Year 2, and enter T-4 auctions for Years 3-5. Therefore the unit:

- (i) will likely miss the opportunity to earn capacity remuneration for capacity year 2029/2030 (on the basis that the T-1 for 2029/2030 will be held >1-year pre the initial delivery month of Oct 2029 and T-1 qualification will be several months before that again)
- (ii) will not have participated in T-4 auctions that would provide capacity remuneration for 2031-2033.

In this scenario, due to unexpected external factors, the unit in question will be left without capacity remuneration for the relevant years which is an inequitable outcome for capacity that will still have contributions to make towards maintaining security of supply and system adequacy. The solution per this CMC mod proposal for (i) above is to remunerate the unit at the Auction Clearing Price (which is aligned with section G.3.1.9 CMC which already provides that until the earlier of Substantial Completion or the LSD, repowered/ refurbished capacity shall continue to be considered “Existing Capacity with a Capacity Payment Price equal to the Auction Clearing Price”). The solution for (ii) above is to terminate years 2-5 of the ILC and allow the unit to participate in the T-1s that enable it to earn a capacity payment in the intervening years to 2031 (in this example).

BGE – RESPONSE– SEM-25-023 CONSULTATION WORKSHOP 43

BGE supports the modification proposals as pragmatic in addressing a real risk of investment challenges faced by projects today and supports the SOs' assertion that the drafting in J.6.1.6 could be adjusted to incorporate refurbished/repowered units. We do however acknowledge the RAs' and SEMC's concerns on the modification and opine that it is necessary to ensure that this provision is legitimately used. While existing provisions in the CMC will help (such as the need for Parties to ensure information submitted is accurate and not misleading¹), we believe that there is further scope to regulate against the flagged gaming opportunities including robust requirements for ILC applications (to ensure they're not frivolous or vexatious) and mitigation of high price benefits for a Party's portfolio where applicable and appropriate. Moreover, the lack of milestones and related penalties for missing milestones under ILC contracts in our view requires an enhanced scrutiny to be applied to ILC units' Implementation Progress Reports. We need to mitigate the scope for scenarios to arise whereby very short notice of being unable to deliver on an ILC is given. Transparent, reasonably detailed and suitably regular Implementation Progress Reports on ILC progress should help in this regard. For future contracted ILC units, BGE suggests that termination charges are considered with a view to deterring short notice ILC terminations. In terms of concerns raised the Workshop 43 regarding units realising close to delivery that the LSD will not be met, BGE's view is that extension applications under section J.5 of the CMC are equally applicable to ILC units which should help mitigate concerns of missed capacity revenues due to late delivery in such a scenario.

3. CMC_06_25: Amendment of ARHL De-Rating Factor Definition to Exclude Intermediate Length Contracts

BGE cannot support this proposal as we believe the proposal runs contrary to the SEM Committee decision on ILCs (SEM-24-035) which was explicit in stating *inter alia* that:

- if a unit is subject to run-hour limits, ILC investments should aim to remove the emission restrictions or at least not exacerbate it; and
- regarding decarbonisation the introduction of ILCs to refurbish existing units may reduce the need to lock-in New Capacity with an economic life extending further into the future, by which time zero and low-carbon technologies are anticipated to be available.

These points to our mind make it very clear that the expectation from ILC contracted units was that they would be an improvement, or at least a step towards improvement, in mitigating emissions levels from units. While it is pertinent that, given their ongoing contribution to generation adequacy in the near term, we should avoid giving existing units with run-hour limitations a further exit signal it is even more important that an

¹ Clause B.8.1.5 (d)

BGE – RESPONSE– SEM-25-023 CONSULTATION WORKSHOP 43

entry signal is not introduced for plants (whether new or repowered/refurbished) that are run-hour limited. ILC contracts offer considerable levels of remuneration such that the investments made should be appropriate and aligned with the decarbonisation and emissions targets in place at an EU and jurisdiction level and if a unit being invested in under an ILC will, after the investment, be run hour limited then that reality needs to be reflected in market outcomes. ILC invested units should be capable of making a significant contribution to capacity adequacy once completed, which would not be the case with run-hour limited units. ILC invested units should also result in units with characteristics that are conducive to the energy market transition from a set of higher-carbon units to lower-carbon and eventually net-zero-carbon units.

4. CMC_07_25: Maintaining Net Present Value in new capacity market contracts for no-fault delays

As the proposer of this mod CMC_07_25 BGE urges the SEMC to strongly consider adoption and implementation of the proposal with a view to reinforcing regulatory confidence in the capacity market and valuing the delivery of security and reliability of supply to benefit end consumers.

The purpose of this proposed modification is to preserve the Net Present Value (NPV) of capacity payments for projects that experience no-fault delays (e.g. delays which are not the responsibility of the project developer such as those caused by third parties like GNI or EirGrid). At present, pursuant to modification CMC_16_23, projects that suffer no-fault delays can obtain an extension to their Capacity Quantity End Date and Time (CQEDT) under section J.5 of the CMC. This preserves the duration of the capacity contract but the NPV of the capacity revenues are eroded as payments are shifted to commence at a later date than initially planned (commensurate with the duration of the delay). This delayed start in capacity payments undermines the economic viability of investments. It also unfairly penalises the market participant for delays which are not its responsibility or under its control. The regulatory risk that would persist should the modification not be approved could harm ongoing and prospective investments and negatively impact security of supply and the value the consumer is getting from procured capacity.

BGE is cognisant that the SEMC has previously considered (and rejected) a similar NPV theme under mod CMC_04_24. BGE has however examined the drivers for the SEMC's rejection of that mod CMC_04_24 and addressed them through our proposed solution and in the drafting of this mod CMC_07_25. Specifically:

BGE – RESPONSE– SEM-25-023 CONSULTATION WORKSHOP 43

- i. BGE suggests the use of the SEMC's approved Best New Entrant WACC rate² (which is currently 7.27%) as the standard discount rate to use in the NPV formula for all projects seeking capacity payment NPV preservation. While Participants' actual discount rates may be above or below this BNE WACC, the BNE WACC is an objective reference source and removes subjectivity in case-by-case analysis, is very transparent and simplifies the process and workload for both the RAs and TSOs in assessing applications.
- ii. Strong incentives to deliver capacity remain on the market participant given that the NPV retention proposed only applies to capacity payments. This is not a "make whole" proposal – capacity payments only are covered. Projects are still wholly financially exposed to loss of energy and ancillary services revenues as well as material construction prolongation costs even if this CMC mod is approved.
- iii. Instead of front-loading costs of NPV erosion through the recovery of higher capacity payments in the early years of a long-duration capacity contract, our suggestion is to spread the cost of NPV retention over the contract term which results in a fair balanced outcome for consumers who pay for the secure capacity contracted over the full capacity contract duration.
- iv. While eligibility to apply for an NPV extension depends on whether a unit applies for/ has received an extension under J.5.7 and/ or J.5.8 there is no assumption of automatic approval by the RAs of an NPV preservation application even if the RAs approve an extension of a Capacity Quantity End Date and Time (CQEDT) and/or a Long Stop Date (LSD) under J.5.7 and/or J.5.8 of the CMC. Separate (albeit in many cases it is expected to be parallel) assessments of applications for a) CQEDT and/or LSD extensions and b) NPV preservation, would apply. The RAs retain the discretion to decide in favour of or against an NPV preservation application consistent with the CMC objectives³ and their statutory duties⁴.
- v. Unlike CMC_04_24 which specified a tight window for RA decision, BGE suggests the RAs make their decision to approve or not an NPV preservation application "within a reasonable timeframe". In practice we believe it would help appease the RAs' workload to assess such NPV applications in parallel with extension applications under sections J.5.7/8 but this is at the RAs' discretion consistent with CMC objectives and statutory duties. The fact that there are two separate applications does not necessarily warrant two different timelines for assessment in our view.
- vi. Regarding the SEMC's view that in a "no-fault" delay scenario there may need to be a clear attribution of fault before the RAs can conclude that a delay is not the project's fault, BGE opines that as is standard in contract theory risk should be allocated to the party that is best able

² The formulaic NPV preservation adjustment is calculated based on the delay duration (in months) and the BNE WACC factor – please see mod proposal form for full formula.

³ Under section A.1.2 of the CMC. We also expect that a market participant would have to justify the NPV preservation request with robust evidence.

⁴ Under s.9 of the Electricity Regulation Act 1999 as amended

BGE – RESPONSE– SEM-25-023 CONSULTATION WORKSHOP 43

to manage it – that is not the project developer who has no responsibility or control over a delay(s) such as those associated with electricity or gas connections. Moreover, it should not be necessary for the impacted developer or the SEMC to enter into a contentious process with a third party in order to determine that the developer was not at fault. As in any civil process, there is a fundamental difference between determining that something is not Party A's fault and determining that the fault is Party B's. The cost to the consumer requires that the SEMC makes a reasonable and reasoned determination in line with their statutory functions which include having regard to the interests of the consumer. Equally the RAs have an obligation under the Electricity Regulation Act 1999⁵ to secure that market participants can finance the activities they undertake in SEM. So, to strike the balance between the financeability of projects and the costs to consumers, an objective assessment by the SEMC that a project developer is simply not at fault (without having to determine who is at fault) would be an appropriate threshold to apply before approving a NPV adjustment request. We therefore urge the SEMC to consider that to balance the RAs' statutory duties to the consumer and to the financeability of projects under the ERA 1999 it is sufficient for the SEMC to satisfy itself that the fault is outside the control of the market participant without explicitly allocating fault to another party. I.e. there is no requirement to prove third-party fault, only that the developer is not at fault.

- vii. Finally, there is no risk of retrospective application here as BGE does not seek to affect settled transactions and in terms of consumer value there is no risk of paying units that are not delivering capacity as Awarded Capacity will only be paid in line with the settlement provisions for the capacity market, i.e. following the point in time when Minimum / Substantial Completion is achieved.

Overall, we ask the SEMC to consider this requested modification objectively and pragmatically as we firmly believe that its approval would enhance investor confidence through improvement of the regulatory investment environment in support of financial viability/ongoing and future investments, ensuring security and reliability of supply, and mitigating risks of further costs to the consumer e.g. via more Temporary Emergency Generation⁶.

If the modification is not approved, we will continue to have projects exposed to unfair penalisation for delays outside their control and outside their responsibility such as electricity and gas grid connections, and it can reasonably be expected to impact assessment of prospective capacity

⁵ (S9BC) (as amended)

⁶ Noting that Temporary Emergency Generation is currently costing consumers ~€300m/ year

BGE – RESPONSE– SEM-25-023 CONSULTATION WORKSHOP 43

market investments. Approval of this modification would positively promote all 7 CMC objectives as outlined in detailed in our Modification proposal form and in further detail in the summary table at the end of this response (p.10).

5. CMC_08_25: Ensuring robust, transparent and objective qualification criteria in the Capacity Market

BGE does not believe that the TSO proposed modifications here are necessary or appropriate. Firstly, the CMC already covers the need for an Application for Qualification to include a Connection Agreement (and, ergo, granted planning permission) before it can be assessed:

- Appendix D (“Qualification Data”) point 5(g) of the CMC provides for the requirement to include a *“copy of either the Connection Agreement(s) or a Connection Offer(s) from the relevant Transmission System Operator or Distribution System Operator”*, and
- the Enduring Connection Policy (ECP) requires full planning permission as a pre-requisite to obtaining a Connection Agreement/Offer from the TSO/DSO. BGE notes the SOs’ comment that connection policy can change in time but given that this pre-requisite for planning permission has been in place for ~6 years under ECP and the increasing need for projects to be as “shovel ready” as possible to deliver on time, it is reasonable to expect that this planning pre-requisite for a connection agreement will persist for some time yet.

Secondly, and of more concern in this modification is, the risk that introducing an obligation to hold a gas connection agreement/ offer as a pre-requisite to qualification⁷ raises to narrowing the field of competitors in upcoming capacity auctions. BGE urges the SEMC to engage with Gas Networks Ireland (GNI) on this matter before making a decision. In practice, introducing a pre-qualification requisite to hold a gas connection agreement/ offer imposes a considerable workload on GNI to process pre-gas-connection applications quickly and effectively within much more condensed timelines than at present. In essence, the gas connection process has no concrete timeframes connected with it akin to the electricity ECP process which is a major drawback of this modification as it risks leaving projects in limbo in terms of deciding which capacity auction it may feasibly qualify for due to the open-endedness of timeframes for obtaining gas connection offers/ agreements. Overall, the RAs should in our view ensure that the electricity and gas system operators are aligned in terms of time periods needed to assess and offer connections such that alignment of electricity and gas connection offers/ agreements tie in with timeframes for capacity auction qualification and delivery.

⁷ BGE is very concerned about and disagrees with the proposal to add that the SO *shall reject* a qualification application unless they consider that: *“...the Participant possesses a connection offer or letter of offer or connection agreement from the relevant gas system operator with sufficient exit capacity to accommodate the New Capacity.”*

BGE – RESPONSE– SEM-25-023 CONSULTATION WORKSHOP 43

Finally, until such time as the SEMC is satisfied on alignment between EirGrid and GNI on timings for electricity and gas connection offers/agreements, in the interim the SOs can rely on the existing provision in the CMC that allows them sufficient flexibility to reject the unit at Qualification stage if the delivery of part or all of it *“is not feasible (either technically or in the applicable time frame);”* (section E.7.2.1 (f)).

BGE does not agree with the SO position that there is a need for the CMC to be more explicit in the reasons why the SOs can reject an application for qualification. Applicants are already well-aware of the thresholds needed to achieve qualification – we do not believe that narrowing the pool of competitors (which is the inevitable outcome of this mod, especially if introduced for T-4 2029/30) through introducing a gas-connection-offer/agreement pre-requisite to qualification is currently justified. Moreover, the RAs’ ongoing directions to EirGrid and GNI respectively, regarding expediting electricity/ gas connections for capacity market auction winners further undermines the need for consideration of these changes at the present time.

6. CMC_09_25: Registration and Qualification Auction Timetable Milestones

BGE does not believe that this modification should apply to the T-4 2029/2030 given the timetable has already been published and market participants are already making plans and investment decisions based on those timelines.

Going forward after the T-4 2029/30, should the SEMC decide to accept this proposed modification, we urge the SEMC to bring the Initial Auction Information Pack (IAIP) publication forward by at least 8 weeks (to week ~A-34) in order to give units pragmatic time to consider their options and obtain internal approvals for auction participation – this would greatly help mitigate the risk of units being qualified that are less realistic than if units make decisions to apply for qualification based on the full information from an IAIP.

BGE – RESPONSE– SEM-25-023 CONSULTATION WORKSHOP 43

Summary table (template):

ID	Proposed Modification and its Consistency with the Code Objectives	Impacts Not Identified in the Modification Proposal Form	Detailed CMC Drafting Proposed to Deliver the Modification
CMC_04_25: Adjustment of CMC auction qualification criteria to facilitate complex projects within State Aid approval	We believe the proposal could undermine CMC objectives (a) and (g) for the TSOs to ensure security of supply in particular time periods.	Potential unintended consequences for capacity auction volume calculations and delivery of secure reliable capacity.	N/A – we do not support implementation of this proposal. Please see section 1 in response above.
CMC_05_25: Early Termination of Intermediate Length Contract Capacity	We believe if administered appropriately (with the flagged SEMC concerns addressed) this proposal should help promote CMC objectives (a); (b); (c); (g) in terms of helping ensure security/reliability of supply; enabling existing capacity contribute to capacity adequacy aims; facilitating continued participation in the market; and promoting consumer interests whereby value from existing capacity persists for as long as is appropriate.	Please see BGE response under section 2 above.	Please see BGE response to section 2 above – SEMC concerns raised may need to be addressed in final drafting such as scrutiny of ILC Implementation Progress Reports.
CMC_06_25: Amendment of ARHL De-Rating Factor Definition to Exclude Intermediate Length Contracts	BGE believes this proposal conflicts with CMC objectives: (b) – it would undermine efficient, economic operation and development of the Capacity Market; (c) – it would undermine the transparency in how units with run-hour limits that are technically “New” are treated different to other “New” units that aren’t the subject of an ILC; (g) – it would undermine the quality/reliability of the electricity supply across the Island.	Please see BGE response under section 3 above.	N/A – we do not support implementation of this proposal. Please see section 3 in response above.

BGE – RESPONSE– SEM-25-023 CONSULTATION WORKSHOP 43

ID	Proposed Modification and its Consistency with the Code Objectives	Impacts Not Identified in the Modification Proposal Form	Detailed CMC Drafting Proposed to Deliver the Modification
CMC_07_25 Maintaining Net Present Value in new capacity market contracts for no-fault delays	BGE firmly believes the proposed Mod positively promotes all 7 CMC objectives as outlined in detail in the original modification proposal form. ⁸ We urge the SEMC to consider its approval and implementation with a view to enhancing regulatory confidence for existing and prospective investments and ultimately to the benefit of end consumers. Please see our response under section 4 above.	No negative impacts of approving the Mod as drafted have been identified. Please see section 4 in response above.	We suggest that the Mod is implemented in accordance with the drafting proposed in the original modification proposal form.

⁸ BGE believes that the proposals in CMC_07_25 will further the 7 CMC Code Objectives as follows:

(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; BGE: the TSOs have responsibility inter alia to maintain a secure and reliable system. This Mod should have the effect of enhancing investors' regulatory confidence in retaining the value of current investments where value is undermined for third party driven reasons. This in turn should help enhance regulatory confidence for future prospective capacity market investments.

(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; BGE: the Mod would alleviate the inequitable revenue losses, caused by third parties, that projects are incurring currently which will in turn improve future investor confidence in the market. BGE's proposed objective BNE WACC reference and formula for the NPV adjustment will enable efficiency in administration and contribute to economic development of capacity investments.

(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; BGE: protecting and maintaining investor confidence by approving this Mod should better facilitate participation in the capacity market resulting in prospective new investments materialising.

(d) to promote competition in the provision of electricity capacity to the SEM; BGE: approval of this Mod would support new investments due to confidence in the value of capacity being fairly maintained where deemed appropriate by the SEMC and, in turn, increase competition.

(e) to provide transparency in the operation of the SEM; BGE: the choice of an industry approved standard (the BNE WACC) in the calculation of the NPV adjustment factor applies substantial objectivity to this proposed Mod and by formulaically encoding this in the Code makes it clear to existing and future investors, how such NPV value is regarded and applied with the RAs' discretion. Transparency in its treatment in turn aids investor confidence which should result in better informed and viable investments that contribute to competition and reliability/ security of supply.

(f) to ensure no undue discrimination between persons who are or may seek to become parties to the Capacity Market Code; and BGE: our proposed Mod does not seek to distinguish or discriminate between existing or future parties to the CMC. Where the RAs decide, in applying their discretion, to grant an NPV adjustment our view is that can be applied to any person(s) with Awarded Capacity that the RAs deem fit to receive it.

(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. BGE: enhanced investor confidence leads to more investments and more competition. Better competition is good for consumer price outcomes and overall reliability and security of supply interests will in our view be served better if the proposed Mod is approved. Furthermore, the effect on consumer payments to cover the capacity price adjustment to cater for NPV is spread evenly with no front- or back- loading of payments for consumers which is positive for consumers.

BGE – RESPONSE– SEM-25-023 CONSULTATION WORKSHOP 43

ID	Proposed Modification and its Consistency with the Code Objectives	Impacts Not Identified in the Modification Proposal Form	Detailed CMC Drafting Proposed to Deliver the Modification
CMC_08_25 Ensuring robust, transparent and objective qualification criteria in the Capacity Market	The proposal conflicts with CMC Objectives: (b) – without explicit alignment between EirGrid and GNI in Ireland, in terms of timings for connection offers/agreements ahead of qualification windows, it greatly risks undermining the efficiency and coordinated operation, administration and development of the Capacity Market; (c) – it would inevitably reduce the pool of competitors and not facilitate the participation of undertakings seeking to provide capacity; (d) – undermines competition in SEM; (g) – with reduced competition, consumers' interests with respect to price and security of electricity supply would be undermined.	It will really narrow the pool of participants that can 'pass' qualification given the expected timeline for pre-qualification gas connection offer/ agreement work required of GNI. GNI perspective needs to be understood, and market participants need to have more transparent reliable guidelines as to the likely timeframe it will take to receive a gas connection offer/ agreement so that they can be as informed as early as possible as to which capacity auctions they should seek to qualify in.	N/A – BGE does not support the approval or implementation of this Mod. Please see section 5 in response above.
CMC_09_25 Registration and Qualification Auction Timetable Milestones	The Mod should help promote CMC objectives (a) and (b) but risks undermining (d) and (g) if the Initial Auction Information Pack (IAIP) is not published at an earlier time.	The proposal does not recognise that to maximise participants' assessment of whether to submit a qualification application, earlier publication of the Initial Auction Information Pack (IAIP) should occur. This would mitigate the risk of units being qualified that are less realistic than units that decide to try qualification based on with the full info from IAIP.	BGE suggests that the IAIP timeline is brought forward by ~8 weeks to week ~A-34 for reasons noted in column to the left and in response under section 6 above. We ask that this is reflected in the final drafting.

NB please add extra rows as needed.