APPENDIX C – RESPONSE TEMPLATE

SUMMARY INFORMATION

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Type of Stakeholder	*Generator (SEM); Supplier (Ireland)*
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Confidential Response	*N*

CAPACITY MARKET CODE MODIFICATIONS WORKSHOP 47 CONSULTATION COMMENTS – SEM-26-009 Consultation:

Bord Gáis Energy (**BGE**) welcomes the opportunity to respond to this SEM Committee consultation on "*Termination and Re-Entry*" (SEM-26-009). In summary, for reasons expanded on in Section A below, BGE believes that:

i. The risk of a project terminating with the intention to benefit instead from a subsequent T-1 auction outcome is minimal given a) the significant risks for a project of such an approach from a financing perspective particularly considering the risk of "stranding" the asset for 2½ + years as well as CAPEX outlay, and b) the range of tools the RAs have within the existing Capacity Market Code to mitigate the risk that is the focus of this Mod CMC_22_25;.

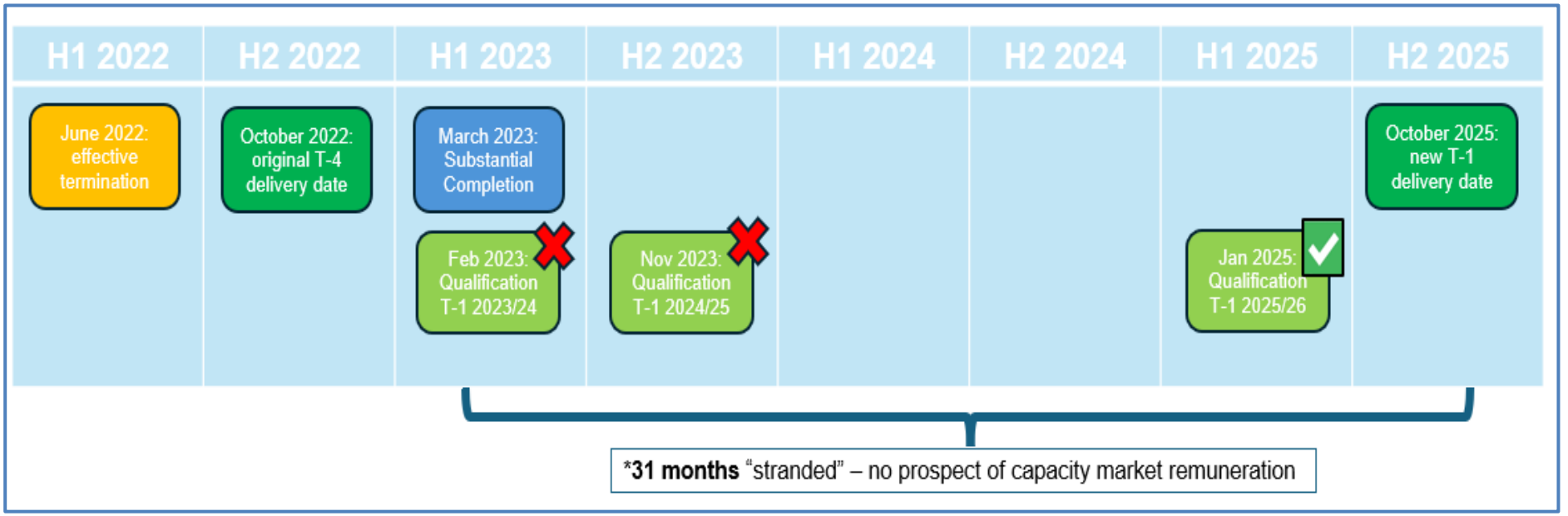
ii. A project should only be prohibited from re-entering a maximum of two T-1 auctions held in the subsequent two years post-termination, if the project itself initiates termination with no attempt to extend milestone dates. I.e. a project that has applied for a long-stop-date (**LSD**) extension in line with the Capacity Market Code (**CMC**), which application is rejected by the Regulatory Authorities (**RAs**) should be permitted to enter all capacity auctions (including T-1s) occurring after the effective termination of the capacity contract. This would mitigate any asymmetrical regulatory risk of contract termination for legitimately progressing projects and by corollary mitigate the prospect of such risk being built into capacity market bids.

A. The likelihood of the concern the Mod seeks to mitigate arising is low given existing CMC rules and practical realities of projects

In terms of the driver for this proposed Modification CMC_22_25 (the "**Mod**"), BGE believes that the extent to which the risk of a project terminating with the aim of obtaining higher market revenues in a subsequent T-1 could materialise, merits significant consideration. Our view is that:

i. The risk of stranding an asset for at least two years is high enough to disincentivise market participants executing the RAs' gaming concern

To support this point please see the graphic below which demonstrates the effect that this Mod would have had, if it had been in place since the first T-4 2022/23. In the illustrative example, a project which was successful in T-4 2022/23 auction terminates its contract in June 2022 ahead of contract go live in October 2022. Based on the published dates for T-1 Auctions, this project would then be excluded from T-1 2023/24 auction (qualification for which was Feb-23) and the T-1 2024/25 auction (qualification for which was-Nov-23). The next auction in which the asset would be eligible is the T-1 2025/2026 (qualification for which was in Jan-25). In this example the project would be ineligible to enter T-1 auctions for a period of 23 months (Feb-23 to Dec-24) and would have 31 months 'stranded' with no prospect of capacity market revenues despite being physically available (Mar-23 to Sep-25).



ii. The CAPEX incurred by a project after SFC in line with the S-Curve helps dissuade the concern the Mod is targeting and, when taken together with the existing CMC provisions that the RAs have to mitigate the concern as discussed below, would render the identified T-1 gaming risk redundant

If a project with a long-term contract progresses past Substantial Financial Completion (**SFC**), at the point of SFC a project can on average be expected to have committed to spending ~30% of its total CAPEX for the project. The closer a project gets to Substantial Completion, the more CAPEX is committed/ spent (in line with the "S-Curve"). It is generally understood in financing terms that an energy project which reaches commissioning stage (~3-4 months before completion/ market entry) has committed to spending at least 80-90% of its total project capex and often higher. The CAPEX commitment is huge for projects that secure capacity market contracts ergo the idea that such projects may consider intentionally terminating their capacity contract with a view to obtaining a higher price in a subsequent T-1 capacity auction, for which prices are largely volatile and difficult to predict, is in our view extremely unlikely. When taken together with the existing CMC provisions that the RAs have to mitigate the risk as discussed below, we believe that the prospect of this gaming concern arising is highly improbable.

In this context we note that the prices and volumes for the latest T-1 (CY2025/2026) are both the lowest prices/ volumes seen in the last three T-1 capacity auction results in SEM. It is also necessary to note that in the last two T-1s all contracts awarded were one-year contracts except for one 10-year contract for only 1.32MW. The trend in T-1 outcomes would therefore also suggest that it is unlikely a project would terminate in favour of a T-1 being a viable alternative for a large capex project. Ultimately, it is an unreasonable risk for any project to consider entering 1-year capacity contracts to finance New Capacity that would be largely financed on the basis of a 10-year contract, especially when also considering the CMC tools the RAs can use to mitigate market manipulation risks (please see point (iv) below).

iii. Performance security levels rise steeply between SFC and Substantial Completion helping to dissuade acting on the gaming concern in question here

Based on updated performance security levels for capacity contracts applicable today[1], in the example under sub point (i) above, a project terminating in June 2022 would be exposed to €50,000/MW on termination of its contract. This of itself is another very strong disincentive for a project to terminate a contract with a view to obtaining a higher price in a T-1.

iv. The CMC provides for strong controls against market manipulation risks arising

The RAs have very strong rights to control and mitigate attempts at market manipulation under REMIT and the CMC itself. Specifically, section B.9 CMC ('Prohibition on Market Manipulation') stipulates that market participants shall not for example for illegitimate reasons submit information to any person or take/refrain from taking, an action that could result in an artificially high Auction Clearing Price or that could distort competition in any Capacity Auction. These two examples (of many in the CMC) provide sufficient incentives to market participants to avoid/ provide power to the RAs to control, the gaming concern the Mod is aimed at addressing. Furthermore, the Director's certificates required to be submitted as part of an Exception Application (section E.5.1.3 CMC) and the Application for Qualification (CMC appendix D, 6) confirming that the application is not connected with Market Manipulation are a strong legal disincentive for projects to undertake the gaming risk this Mod identifies given the potential legal consequences of inaccurate certificates (e.g. heavy fines, disqualification and imprisonment) depending on the gravity of the situation.

v. The RAs' Exception Application process is an existing avenue to help mitigate the Mod's gaming concern

The RAs also have section E.5 CMC ("Exception Applications") as an avenue to control whether a unit can obtain a capacity contract for a duration of longer than 1-year whereby, in line with the CMC provisions, the RAs have discretion to reject requests for long/ 10-year contract applications (should for e.g. legitimate gaming concerns arise). This could have the effect of a project being reduced to contracting on a 1-year recurring basis which, given the Capex commitments explained in point (ii) above and the extent of existing CMC provisions that facilitate mitigation of market manipulation, is a risk that is simply not tenable for any reasonable large capex projects such as those procured on long-term contracts under SEM's CRM.

vi. A strong regulatory and public reputational risk exists for projects to avoid the gaming concern this Mod addresses

BGE also strongly believes that were a project to terminate its capacity contract in order to game in line with the concern raised in the Mod, that would raise considerable questions for the project, and related market participant(s) behind the project, from a reputational perspective.

[1] E.g. The T-4 2029/30 IAIP, table 20

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B. If the RAs progress with the proposed Mod, certain drafting amendments are necessary including precluding certain projects from its application

The drafting of the Modification needs amendment in BGE's view regarding four aspects which we've expanded on below:

a) To mitigate the asymmetrical risk of the RAs terminating a capacity contract, we suggest that a new section J.6.1.10C is added as follows:
   - "*For the purpose of J.6.1.10 New Capacity which has applied for an extension to its Long Stop Date in accordance with sections J.5.5, J.5.7 or J.5.8 of the CMC, but has had its application rejected by the RAs, shall be precluded from the application of J.6.1.10 (b*)." This drafting recognises that provided a project appropriately follows the CMC requirements for LSD extension application(s), and that application is rejected by the RAs, the project can plausibly enter all subsequent capacity auctions with a view to avoiding inequitable stranding of their asset. This helps protects legitimate developers progressing their projects.

b) To clarify that it is possible that only one T-1 may occur in the 24-month period following effective termination, we suggest that "T-1 Capacity Auctions" is adjusted to read "*T-1 Capacity Auction(s)*", to avoid any misinterpretation that prohibition from at least two T-1s is necessary.

c) To mitigate the increased risk to projects of prohibiting them from T-1s from the effective termination date, we believe that as well as limiting the application of the prohibition to 24 months from the effective termination, the prohibition should also be limited to a maximum of two T-1 auctions (removing the risk that a 3-auction ban could apply in practice if three T-1s occurred within a two year period). We therefore suggest adding the underlined words to the Mod as follows: "*for the same capacity <u>for a maximum of two</u> T-1 Capacity Auctions held in the two years following termination*;"

d) As "effective date of the termination" is not a defined term in the CMC, we suggest that the words "*as stated in the Capacity Termination Notice*" are added to the end of J.6.1.10 (b)(i) (i.e. at the end of the words "…falls after the effective date of the termination".)

In conclusion, on balance, while we understand the risk that the RAs are flagging in this Mod, we believe that the range of current CMC provisions discussed above and the practical realities of projects (especially considering CAPEX commitments post-SFC), warrant rejection of this Mod. We believe however that urgent consideration should be given to updating the existing 2023 Best New Entrant (BNE) basis for several auction parameters given the ongoing and increasingly worsening supply chain risks and challenging inflation dynamics in the industry. If the RAs do however proceed with amending the CMC rules to address their concern in this Mod, we urge the RAs to consider BGE's proposed amended drafting in the Mod particularly around precluding projects that have correctly applied for a Long Stop Date (LSD) extension but had such an application rejected by the RAs. Otherwise, we believe the Mod as drafted would introduce considerable regulatory uncertainty and project risk for legitimate developers with the prospect of such risks being reflected in capacity auctions going forward adding cost for the consumer.

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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_22_25: Termination and Re-Entry	Please see response above – we believe project realities and existing CMC provisions provide sufficient mitigation against the concerns the Mod raises and the Mod should therefore not proceed. Should the Mod proceed however, provided BGE's proposed drafting, noted under point B of our response above, is adopted we believe that the Mod would be consistent with all 7 of the Code Objectives.	Please see our response above. Legitimate developers progressing their projects past SFC and committing high levels of total capex (from 30% at SFC rising rapidly to 90% in the 2 years pre-Completion in line with the S-curve) would be negatively affected unless BGE's proposed drafting amendments are adopted in our view.	Please see BGE's response above. We believe existing CMC provisions, together with the realities of project spend and financial risk discussed above, mitigate the concern the Mod is seeking to address. Should the Mod proceed, please see section B on the page immediately above for the rationale for the below proposed amendments in drafting: i. a new section J.6.1.10C – "*For the purpose of J.6.1.10 New Capacity which has applied for an extension to its Long Stop Date in accordance with sections J.5.5, J.5.7 or J.5.8 of the CMC, but has had its application rejected by the RAs, shall be precluded from the application of J.6.1.10 (b)*." ii. we suggest that "T-1 Capacity Auctions" is adjusted to read "*T-1 Capacity Auction(s)*" iii. we suggest adding these underlined words: "*for the same capacity <u>for a maximum of two</u> T-1 Capacity Auctions held in the two years following termination*;" iv. we suggest that the words "*as stated in the Capacity Termination Notice*" are added to the end of J.6.1.10 (b)(i)