

APPENDIX E – RESPONSE TEMPLATE

SUMMARY INFORMATION

Respondent's Name	Bord Gáis Energy
Type of Stakeholder	Generator in the all-island single electricity market; supplier in the Irish retail market
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Confidential Response	N

Summary of Main Messages

Bord Gáis Energy (**BGE**) welcomes the opportunity to respond to this SEM-22-050 consultation on the modification proposals that were initially discussed at the Capacity Market Code (**'Code'**) Working Group 26:

CMC_10_22 Introduction of New Remedial Action in the Event of Third-Party Delays: BGE is strongly supportive of this Modification, especially given the security of supply situation and current tight generation margins in Ireland. We believe that approval of this Modification would, for projects that are already contracted for delivery from capacity year 2024/25 and beyond in particular, substantially alleviate the increasing financial risks these projects are facing in the current unprecedented market circumstances. In practice what these contracted projects are seeing is increased difficulty in delivering projects rapidly compared to what would have been the case in the past. The unprecedented market environment we are in and the major global supply chain issues all entities including EirGrid, GNI, turbine manufacturers are facing are a major challenge to rapid delivery. BGE does not believe that it is in any of the consumers'/ regulators'/ project developers' interests to deliver capacity late, but in the interests of providing contracted 2024/25+ units better financial confidence around the future viability of their projects approval of this Modification is critical. These projects are currently contending with internal financial questions around the challenges of timely delivery and eroding returns on investments if delivery is late. If the returns are not as expected at the time the contract was won, projects are at high risk of being cancelled. The risk is real and present and if it is not addressed via approval of this Modification (and the

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parallel Trading & Settlement Code modification around inflation risk, Mod_07_22) we ask the RAs to outline how these financial risks that are putting delivery of these projects under pressure will be addressed otherwise? We understand the RAs' concerns as expressed in the consultation around contingencies and submission of realistic Implementation Plans but believe that the current unforeseen market environment warrants consideration of the projects most at risk here (for 2024/25, 2025/26 delivery) differently. We address the RAs' concerns below and how these could be mitigated to provide confidence for the RAs around project developers' commitment to delivery and provide confidence to developers as to the protection of the 10-year duration of the capacity contract initially awarded. We cannot emphasise enough how important a positive decision on this Modification, alongside the T&SC Mod_07_22 on inflation, will be to go/no-go decisions around already contracted units that are progressing development as fast as possible. We urge the RAs to consider this Mod and Mod_07_22 (T&SC) in the round before coming to a final decision on the matter.

The effect of the Modification in practice is that, if approved, the 10-year duration of the contracts (being the duration under which initial investment case decisions would have been made) will continue to be respected such that the overall revenues for the project will be closer to the financials¹ that informed initial go/ no-go decisions. The duration of payments, i.e., the 10 years, for capacity projects that are currently developing their projects as quickly as possible remains a critical factor in ongoing internal decisions around financing and delivering such projects. We urge the RAs to seriously consider any scope they have to reasonably mitigate the financial risks and facilitate ongoing go/ no-go decisions of projects planned for delivery in the next 2-3 years. Approval of this Mod is one step that can be taken towards mitigating the financial risks developing projects currently face. We believe that approval of the parallel Modification being considered in the Trading and Settlement Code modifications committee at present is another step that could be taken towards facilitating these projects' ongoing considerations around the continued financial feasibility of delivering. We note the timetable for this Consultation states that a decision will be made on 11th October next but also note that under the Capacity Market Code that before making a decision the RAs have a chance to take time for further consideration of matters raised in this response. We urge the RAs to consider our response to this Mod and the aim of Mod_07_22 (T&SC) in the round before coming to a final decision on the matter. We cannot emphasise enough the criticality of these two modifications for ongoing internal financial decisions on project delivery. Ultimately, we also believe that approval of both Mods will bode best for the consumer in terms of costs and security of supply concerns as expanded on further below.

The security of supply issue the system is currently facing is a result of the failure of the capacity market to deliver its stated aims. The system is facing a capacity crunch due to insufficient All Island Generation Adequacy. This system tightness is driving wholesale prices higher for the consumer and placing

¹ The financials would likely be some way short because for example projects would usually model their revenues based on capacity revenues being available from year one and there would be additional interest costs associated with the capacity payments commencing at a later time period than year one. In practice even if this Mod is approved projects will likely be absorbing the gap in revenues resulting from interest costs due to delay repayments.

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undue pressure on existing conventional generation. This has resulted in higher running, less time for scheduled maintenance and ultimately the likelihood of long term forced outages. There is already evidence of this, with significant and sustained unplanned outages over 2021/22. It is crucial that new capacity is delivered to ensure the goals of the capacity market are achieved, particularly given that termination of capacity that has occurred in recent auctions. From our analysis, of the 680MW of gas fired generation procured under 10-year contracts for the three T-4 auctions 22/23 to 24/25, only 104MW of that has not been cancelled. Almost 580MW of new gas units alone have been cancelled. We cannot afford to risk more termination of capacity happening again considering that >1,600 MW of 10-year gas contracts are currently under development for delivery in 2024/25 – 2025/26. Allowing more terminations would threaten the security of supply and place an undue burden on the already stretched consumer through even higher wholesale prices. The consumer would also be at higher risk of increased costs due to the likely need to procure costly, short term “emergency generation” to fill any gaps by terminated capacity.

Any third-party actions, which are demonstrated to be entirely out of the control of capacity contract holders and result in a loss of capacity revenues, thereby threatening the financial viability of projects should not inequitably impact the project in question. As we see it, this Mod is not asking for capacity contract durations that extend beyond 10 years, what is sought is that the original 10 year duration of the capacity contract on which original investment go/ no-go decisions would have been based, is respected. And only in incidences when the delayed start of the project is down to activities of third parties that were not completed in a timely manner, beyond the control of the market participant. A major part of this will be down to global supply chain issues driven largely by the Ukraine war which could not have been forecast at the time of the relevant auctions. We acknowledge references in the Consultation to the view that market participants could build in contingencies to their implementation plans to account for such delays. However, the challenging market environment we find ourselves in today is unprecedented, e.g. supply chain delays not helped by the war in Ukraine, and it is recognition of this environment that was not fully understood at the time of these auctions, that we seek recognition of via this Mod.

BGE is very concerned with the RAs’ “minded to” decision to reject this Mod. With a view to addressing some of the concerns raised in the Consultation BGE asks the RAs to consider the following:

- i. To the point around how participants should have built in “contingency” to address such concerns, these auctions occurred before the war in Ukraine commenced and we are in unprecedented territory where delays especially to global supply chains could not reasonably have been foreseen at the time of the auction. These supply chain delays are unexpectedly impacting all types of parties be they EirGrid, GNI, turbine manufacturers and other suppliers that project developers rely on. The Mod as we see it would help revise the contingency to a more informed contingency period that can now be more reasonably forecast – that extra time would be determinable based on the evidence market participants, supported we expect by third parties, would submit. The Substantial Completion and LSD dates could then be revised in tandem.

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- ii. The RAs' concern that unrealistically optimistic implementation plans for delivery of capacity may be submitted which could displace capacity from other participants to our mind can be mitigated based primarily on the more realistic insights that the SOs, RAs and market participants have today on delivery. Given the experience of the last 8 months or so, it will be much easier in our view for the SOs to determine the appropriateness of implementation milestones and we do not expect that the Qualification process would be any more difficult than it is today. The primary focus for this Modification however we believe should be on capacity that has contracted already and planned for delivery in 24/25 and 25/26. These units would be updating already submitted implementation plans so the realism of the dates for these particular projects would be much easier to decipher. As part of that process, the RAs should have the right to determine whether extended timelines are unsubstantiated such that the timeline asked for is frivolous or not and perhaps suggest an alternate timeline where appropriate. Strict controls around what matters are outside developers' controls ("allowable delays") which could not have reasonably been contracted for or foreseen should help mitigate any concerns around this issue.
- iii. Regarding the System Operators' query around who are "third parties" – BGE proposes some changes to better define what kind of "allowable delays" may be captured by such. The idea is not that the SOs are considered "third party" to the capacity market, rather they are recognised as an entity that is critical to the timely delivery of these projects in question. If for example EirGrid is hampered by supply chain delays, that is outside their control too as well as outside of market participants' control. This needs to be recognised in our view.
- iv. Regarding the SOs' concern that only market participants could make representations to the RAs on proposed extensions, we believe that there is no limitation on the RAs to seek information from any licenced party or indeed any other party. Wording to this effect could be included in the Modification if it would provide some comfort around the issue.
- v. Regarding the SOs' view that extending the Long Stop Date (LSD) could exacerbate security of supply risks as projects could deliver three Winter periods after the original contract was meant to start: BGE believes that this concern can easily be mitigated by for example being very clear on the "allowable delays" adopted for the Mod. Consideration too could be given to a sunset clause which may be applied on an auction-by-auction basis, i.e. this 'extension' option may expire for contracted units after X years for example in that this Mod would be of "interim effect" to get us through the security of supply crisis. Moreover, though we believe that the threat to security of supply and of projects not being able to deliver before the LSD is higher if this Mod is not approved. If the Mod is not approved, it is very possible that projects will not deliver on time and if they could be delayed by >18 months it raises the risk of being terminated. In the grand scheme of things if the project is late due to third party delays, then those third-party delays would most likely be experienced by all other projects so there would be little prospect of projects contracted later being able to deliver on time – again the definition of "allowable delays" will help manage this concern. Ultimately too discretion lies with the RAs to make the decision to extend the LSD unless there is due reason not to. So, the security of supply concern is lessened in our view if this

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- Mod is introduced. The Mod should also in practice reduce costs for consumers given the need for emergency short term generation that would likely need to be procured to fill any gap between terminated capacity and the delivery of new contracted auction capacity.
- vi. Regarding comments around the “retrospective” nature of the Mod, we would agree that this should not be a concern as it relates to future delivery. More critically, the RAs have a statutory duty to protect consumers and ensure security of supply and these obligations in pursuit of public policy should trump any concerns around retrospectivity. There is scope too if the RAs were so minded, to consider a ‘sunset clause’ or duration of effect/ interim nature of this Mod given that it is to address project risks that are seeking to deliver in times of unprecedented risks which could not have been reasonably foreseen. A timeline for example of projects contracted to deliver over the next at least 3 Winters or a period decided by the RAs that will ensure we get through the tight capacity margin challenges we’re seeing, may be suitable.
 - vii. Regarding the SOs’ and RAs’ concerns around pressure to make judgments on new updated planned delivery timelines, we believe that the information submitted by market participants and the third parties in question should be robust and detailed enough to make these decisions much simpler. Again, we would point to the expected short-term need for this type of extension facility and how the RAs could consider some type of “sunset clause” on how long these extensions might be for which would also greatly mitigate any concerns around hoarding of contracts.
 - viii. To help the RAs with their assessment of updated Implementation Plans consideration to the types of delay drivers that might be accepted as being outside the control of a unit and not foreseeable or possible to be contracted for, could be given. We ask that at least unprecedented global supply chain issues being experienced today are amongst the matters that are allowable drivers for extension requests. We understand that resource issues can also be a challenge for third parties which can constrain the speed at which projects can be progressed. The RAs should however retain discretion for the weight they can give to such drivers depending on the evidence submitted and weigh up the benefit for the consumer in terms of costs, security of supply if units’ delay risks are mitigated, as against seeking replacement capacity or emergency capacity if units are terminated.

With respect to which “third parties” might be entities whose delayed activities might drive a market participant’s submission for extensions to Substantial Completion and Long Stop dates. We do not believe that it is necessary to name an exhaustive list of entities that are key to delivery of projects. A major issue is the global supply chain effect that exists, and we ask that these effects and the range of parties they could extend to, are recognised in the Modification.

Finally, to alleviate any concerns about participants submitting unrealistic timelines for delivery we ask the RAs to consider a ‘sunset clause’ for this extension option. The duration of the clause should cover the capacity that is contacted to deliver over the tight capacity margins predicted over the next 3 to 4 years. This reflects the unprecedented market environment we are working in.

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CAPACITY MARKET CODE MODIFICATIONS CONSULTATION COMMENT

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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
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<p>CMC_10_22</p> <ul style="list-style-type: none"> - Introduction of New Remedial Action in the Event of Third Party Delays 	<p>BGE Support the proposed modification as it is in keeping with the objectives of the capacity market, in particular:</p> <ul style="list-style-type: none"> (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; (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. 	<p>Even a year long delay in the beginning of the capacity market can threaten the viability of a project. Financial models are built around the principle of the Time Value of Money and repayments start at year one. The delay of capacity market revenues will affect the capacity holder’s ability to begin debt repayments – ideally they would recoup their payments as promised from the time by which they could reasonably have expected to deliver (at the start of the contract) were it not for the third party delay.</p> <p>We do not want to see projects delivering late as it is not in consumers’ or projects’ interests, but consumer costs will likely be higher if emergency generation has to be procured to replace future terminated capacity particularly that due for delivery in 2024/25+. An alternative solution to alleviate the financial risks to developers</p>
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		<p>today needs to be determined if this Modification and the parallel T&SC modification (MOD_07_22) is not approved as projects are at high risk of not delivering given the unprecedented delays and related increased costs we're seeing that could not have reasonably been forecast or contracted for at the time of auctions.</p>	