

## APPENDIX C – RESPONSE TEMPLATE

### SUMMARY INFORMATION

<b>Respondent's Name</b>	Bord Gais Energy
<b>Type of Stakeholder</b>	Generator in the all-island single electricity market; supplier in the Irish retail market
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<b>Confidential Response</b>	[N]

### Summary of Main Messages

Bord Gáis Energy (**BGE**) welcomes the opportunity to respond to this SEM-22-092 consultation on the modification proposals that were initially discussed at the Capacity Market Code (**'Code'**) Working Group 28:

### **RAs Single Proposal (Combination of CMC\_12\_22, CMC\_13\_22 and CMC\_15\_22)**

BGE is supportive of this Proposal. As we have stated before there is an urgent need to build capacity on the island to reduce the real possibility of blackouts and improve the security of electricity supply. Successful completion of this capacity will benefit the consumer as a reduction in capacity scarcity will drive down wholesale prices. This new proposal is more all-encompassing than CMC\_13\_22 and we favour its tighter drafting compared to CMC\_12\_22 and CMC\_15\_22. It is noted the scope includes both delays caused by planning appeal and delays caused to environmental licences/permits caused by Judicial Review of the grant. We believe this greater scope is a significant improvement on CMC\_13\_12 which was too narrow in scope in our view.

While a simple 12-month extension to the Substantial Financial Completion date is too rigid in BGE's view, there is sufficient discretion to cater for cases that may need more than the 12-months as 'may' is used rather than 'shall' and the RAs rightly have final discretion on the matter as per section J.5.5.5.

### **CMC\_14\_22: Mitigation of Impact of Third-Party Delays on Participants and Extension of Support Term:**

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BGE is strongly supportive of this proposal. As we have stated before there is an urgent need to build capacity on the island to reduce the real possibility of blackouts and improve the security of electricity supply. Successful delivery of this capacity will benefit the consumer, reducing capacity scarcity, which will in turn drive down wholesale prices. It is unreasonable to expect that Project Owners should be fully exposed to the risk of delays caused by a delay to grid (gas and/ or electricity) connection that is entirely and demonstrably outside of their control. Based on the RAs' new modification proposal discussed above, the RAs also agree on the principle that a Project owner should not be exposed to a risk that is entirely and demonstrably outside their control. This rationale and principle holds true whether the delay is a result of delays caused by planning issues, or as a result of delays in electricity grid or gas connection. We urge the RAs to apply this same principle in determining their decision on the two Modifications under discussion here.

We note the RAs' minded positioning on CMC\_14\_22, namely that they chose not to include Gas and Grid Connections in their new proposal as *'there is significant scope for disagreement between the Participant and the connection provider as to the cause of the delay. We do not believe it is reasonable to expect the connection provider would be willing to provide a letter confirming the degree of delay for which they are responsible.'*

BGE disagrees with the sentiment of this statement. There is a clear distinction in where responsibilities lie in terms of delivering Gas and electricity Grid connection. GNI/ESBN are wholly responsible for delivery of the Gas Pipeline/Electrical Cable to the site boundary. The Project Owner is responsible from that point onwards. GNI/ESBN are regulated bodies that are answerable to the RAs, and as such should be willing to confirm the extent of the delay for which they are responsible and at the very least outline objectively the factors that have led to the delays on the gas/electricity connection side of the capacity market project in question. The distinction is clearly marked in the respective grid codes:

- For Electricity Grid Connection up to the LV Transformer on site is the responsibility of the ESNB, responsibility for everything after than lies with Project Owner.
- For Gas Grid Connection up the Customer Steel Connection Point on site is the responsibility of GNI, responsibility for everything after that lies with Project Owner.

Furthermore, documentary evidence (e.g. connection agreements) provided by Eirgrid and GNI shows the indicative agreed dates for the Grid and Gas Connection respectively. In the event of a delay in gas/electricity grid connection further evidence will be produced to the Project Owner informing them of such and this for example can be the source of the information needed under CMC\_14\_22 to justify the extended end date of the capacity contract to align with the length of the delay in the relevant connection. However, **in the interests of clarity, BGE does not necessarily believe that it is a letter from GNI and EirGrid confirming their responsibility for a delay that is required. Rather it is a letter from either/ both (as relevant) grid operator outlining whether a delay in connection is expected, and what the reasons for those delays are regardless of whether GNI/ EirGrid is wholly responsible or not.** This type of information then, relayed in a **non-technical summary format to the RAs**, could be used by the RAs to determine the reasonableness of a delay in gas/ electricity grid connection justifying a new end date for the relevant capacity contract.

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Should the above approach not be amenable to the RAs, **an alternative might be, based on the rationale proposed in section J.5.6.3 (Third Party Exception Application) of the RA proposed mod, an independent certified engineer who is agreeable to both parties can produce a certificate for the RAs and the asset owner and for the SOs with his/her determination of the reasons (in non-technical speak) for any delays** with or without insight on with whom the responsibility for delays lies.

This mod specifically refers to Maximum Capacity Duration being extended in line with the duration of the Delay. As the RAs **noted extending the Maximum Capacity Duration would have no impact and instead it's necessary to modify the Capacity End Date and Time**. It is worth reiterating the importance of this being extended in line with the delay. Failure to do so would reduce capacity revenue streams while keeping costs fixed and possibly result in projects becoming no longer economically viable. By ensuring full capacity payments in the event of delays demonstrably outside of the control of a Project owner the risk of termination will be mitigated.

BGE is of the opinion that the changes should apply to the two auctions held this year as a substantial amount of capacity is to be delivered pursuant to these. We believe this modification should be applied for the T-3 & T-4 auctions for CY 2024/25 & 2025/26, in addition to the upcoming auctions. From the notes on the Workshop held on this Modification (outlined in the Consultation), it is clear that other market participants are of this view too. Should the RAs decide not to apply the Mod to the T-3 CY24/25, T-4 CY25/26 then BGE requests that the RAs clearly outline their rationale for such an approach taking account of the following views on the matter of BGE:

- The argument regarding retrospectivity and the notion (flagged in the consultation) that this modification is unfair on participants who did not clear is disingenuous. The facts are as follows: the T-3 Auction had insufficient bids vs the Auction Required Quantity and cleared at the price cap – all bidders cleared. No participant can reasonably claim that prior knowledge of this modification would have completely altered the business case resulting in them bidding into the auction. The T-3 auction outcome for example would have been the same had this modification existed or not. This mod does not make a project more financially attractive, rather it aims to mitigate the risk of non-Delivery, due to factors that are entirely outside of the control of project owners.
- The security of electricity supply should be the foremost priority of the RAs and capacity market committee as per section A.1.2.1 of the Capacity Market Code Objectives. Specifically section (f) *“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.”* Not including the T-3 2024/5 and T-4 2025/6 would be at odds with this core objective of the CMC. Over the past two years there has been ample evidence of how tight the system is in terms of capacity and with an aging thermal fleet every MW of procured capacity must be delivered. The amount of gas-based capacity that was procured since 2018 in capacity auctions that have since terminated adds impetus to the need to ensure the undermining of the financeability

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of new projects is mitigated as far as possible. Even with a return to full availability, the system has already received multiple “notifications of tight generation margins” this winter. The RAs’ duties under the Electricity Act 1999 (and equivalent in Northern Ireland) respectively require “securing that all reasonable demands by final customers of electricity for electricity are satisfied” and to “promote the continuity, security and quality of supplies of electricity” – we believe that these statutory requirements should necessarily trump any concerns over applying this Modification to the T-3 CY24/25 and T-4 25/26 auctions.

### CAPACITY MARKET CODE MODIFICATIONS CONSULTATION COMMENTS:

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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
<p><b>RAs new Proposal:</b> Combination of CMC_12_22, CMC_13_22 &amp; CMC_15_22</p>	<p>BGE Supports the proposed modification as it is in keeping with the objectives of the capacity market, in particular:</p> <ul style="list-style-type: none"> <li>(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.</li> <li>(f) to ensure no undue discrimination between persons who are or may seek to become parties to the Capacity Market Code; and</li> <li>(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.</li> </ul>	N/A	N/A

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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
<b>CMC_12_22:</b> Remedial Action in the event of planning application delay to a project that qualifies under a Direction	Please see above	N/A	N/A
<b>CMC_13_22:</b> Third Party Judicial Review Remedial Action	Please see above	N/A	N/A

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<p><b>CMC_14_22:</b> Mitigation of impact of Third-Party Delays on Participants and extension of Support term</p>	<p>BGE Support the proposed modification largely as it is in keeping with the objectives of the capacity market, in particular:</p> <ul style="list-style-type: none"> <li>(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; “ -</li> <li>(f) to ensure no undue discrimination between persons who are or may seek to become parties to the Capacity Market Code; and</li> <li>(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.</li> </ul> <p>The Capacity End Time and date being updated in the event of 3<sup>rd</sup> party delay will ensure participants won’t ensure discrimination based on the arbitrary nature of delays in gird and gas connection. (f) in addition it will ensure that interests of consumer are protected by delivering</p>	<p>No specific reference regarding which T-3, T-4 auctions this mod is applicable for, however BnM agreed it should apply for all T-3/T-4 auctions, including 2024/25, 2025/26. This should be clarified to remain in keeping with the code.</p>	<p>We believe that it isn’t necessarily an admission of responsibility for delays that is required from EirGrid/ GNI rather a list of the reasons such that the RAs can objectively understand and determine an extension to the end date of the contract is what is a legitimate outcome to ensure security of supply at optimum cost to the consumer.</p> <p>Should the RAs instead prefer an independent engineer view on the matter however, as outlined in more detail on pages 2-4 above we suggest</p>
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cheaper wholesale costs and improved security of supply on the island of Ireland. (g)

This modification is in keeping as with the code as it not retrospective as outlined earlier, in addition as T-3 and T-4 have not yet been delivered it cannot be retrospective. Ultimately the Security of Supply situation outweighs any concerns about retrospectivity as it is for the greater good of electricity security of supply and maintaining such at optimum cost for the consumer. (g)

legal drafting akin to that suggested in the RAs' proposed section J.5.6.3 i.e. an independent certified engineer who is agreeable to both parties (asset owner and relevant GNI/ Eirgrid operator) can produce a (non-technical if preferred) certificate for the RAs and the asset owner and for the SOs with his/her determination of why there are delays and with/without a view on where the responsibility for delays lies. In reality both parties are unlikely to accept blame so an independent engineer would resolve this issue and at least be in a position to provide an objective view on the reasons for the



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			delays. Please see pages 2-4 above for further explanation and suggestion.
<b>CMC_15_22:</b> Introduction of New Remedial Action to Enable Extensions due to Planning and Permitting Delays	Please see above comments on RAs' proposed merging of CMC_12, _13 and _15		

NB please add extra rows as needed.