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20 October 2023

**RE: SEM-23-080 Supplementary Consultation Paper on modified and combined Modifications to Facilitate Delivery of Capacity**

Dear Capacity Market Teams,

Bord Gais Energy (“**BGE**”) welcomes the opportunity to respond to the Supplementary Consultation on modified and combined Modifications to Facilitate Delivery of Capacity (“**the Consultation**”). We also welcome the timing of this consultation given (i) the focus on delays by participants, evident through recently raised modifications on delays, and (ii) difficulties outside the control of recent capacity auction winners in meeting key contractual deadlines<sup>1</sup> amidst the unprecedented level of new connections in the SEM.

BGE asks the Regulatory Authorities (“**RAs**”) to establish a clear set of non-exhaustive guidelines to provide transparency to investors on the assessment process. For clarity, we believe that the RAs may use their discretion to consider exceptions to any guidelines, however we ask that some level of clear guidance is provided on how requests will be assessed. We agree that the RAs should assess applications for extensions on a case-by-case basis with the aim of providing value to the consumer and the system by way of maintaining security of supply, without any significant strain on the RAs’ resources. However, we believe more can be done to provide transparency with regards to the process for determining whether an extension to a project’s timelines is justified. This transparency must be provided from the outset of this modification to ensure that investors have clear guidance on what justifies an extension such that (i) any perverse investor incentives resulting from the modification are mitigated, and (ii) the contracted level of capacity to provide security of supply can be maintained, at an optimum cost to the consumer. It is also important that the RAs clearly set out their reasoning for either approving or disallowing an extension such that investors fully understand the RAs’ considerations with respect to any request submitted.

Section 1 of this response sets out our views on how the RAs can ensure that the extension application and decision-making processes result in optimum outcomes for the consumer, including:

- i. Investors should not be penalised for delays which are outside their control (please refer to Section 1.1 below)
- ii. The RAs must implement specific provisions to prevent the creation of perverse incentives and scope for market distortion (please refer to Section 1.2 below)

Section 2 sets out our response to the specific questions posed in the consultation paper, our key points for this section include:

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<sup>1</sup> Such as delays in the delivery of grid and/or gas connections.

- i. Clear guidance on the burden of proof required by the RAs to grant an extension is needed from the outset (please refer to Section 2.1 below)
- ii. Both modifications proposed by the RAs must be implemented together (please refer to Section 2.1 below)

## **1 The RAs must ensure that the extension application and decision-making processes result in optimum outcomes for the consumer**

### **1.1 Investors should not be penalised for delays which are outside their control**

Capacity providers should not be expected to bear contract erosion for delays for which they cannot reasonably anticipate nor control e.g., electricity grid connection delays and gas grid connection delays resulting from an unprecedented level of projects connecting to the system.

We ask the RAs to reflect the acute impact of delays on T-3 projects in their decision-making processes. All projects should be given equal consideration by the RAs with respect to extension applications. However, we believe that there is merit to considering the sliding scale of challenge facing investors, depending on if they were successful in a T-3 or T-4 auction, to reflect that T-3 projects are more susceptible and sensitive to third-party delays. BGE asks for the RAs to reflect this such that any request to extend a T-3 project timeline receives urgent and focused consideration. This would also ensure that knock-on effects of delays are minimised for subsequent auction winners.

We also agree that the RAs should take a permissive approach for winners of T-4 auctions, especially where a T-4 auction is preceded by a T-3 auction. In such cases, delays in T-3 projects<sup>2</sup> may have knock-on effects resulting in delays for T-4 projects. Allowing T-4 winners to progress their projects, subject to providing evidence of a third-party delay, results in a better outcome to consumers where the alternative is to procure Temporary Emergency Generation (“TEG”). The RAs should also factor in the cost of carbon when assessing the benefit of allowing an extension for a T-4 project compared to procuring TEG. Notwithstanding the scale of capacity expected to connect to the system and any resulting backlog in completing connections and/ or testing, it is our view that the T-4 lead time is sufficient to deliver new capacity units and therefore the financial incentive for capacity developers to deliver their projects on time must be maintained. Extensions granted in such cases must clearly deliver a benefit to the consumer, such as when an extension facilitates the contracted increase in security of supply and/ or reduces any need for costly emergency interventions.

### **1.2 The RAs must implement specific provisions to prevent the creation of perverse incentives and scope for market distortion**

We ask that the RAs (i) only enact the proposed modification under a time-limited “sunset” approach for the purpose of mitigating security of supply risks, and (ii) share their proposed review of the operation of the modification with participants once completed. While the RAs are considering restricting the provision of automated extensions to specific auctions, we believe that any modifications to allow for extensions to projects should be time-limited as proposed by the sunset period. BGE supports the importance of investor responsibility and investors bearing a level of risk. As such, we agree that participants should be held accountable where their actions, or events which may reasonably have been anticipated and/or mitigated by participants, have contributed to delays. We agree that the proposed sunset period should mitigate (i) the risk of investors seeking to qualify capacity with inherent greater risks of delay, and (ii) the risk of discouraging investors to choose locations where they are more likely to get permissions and connections quickly. In addition, we believe that applying the sunset approach to the proposed change may also prevent market distortion by limiting the incentive for investors to seek to qualify riskier but more cost-effective projects, in the expectation of being granted an extension. While such projects may decrease the cost of capacity to the consumer in the short term, the consumer will ultimately bear the increased risk of contract termination and the resulting need for TEG.

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<sup>2</sup> For example, delays in securing environmental permits, electricity grid connections and gas grid connections.

BGE also agrees with the implementation of provisions which would allow 2024/25 T-3 auction contract holders who have been granted SFC extensions before the implementation of this modification but have not yet met SFC, to apply to the RAs for extensions to their Long Stop Dates and Capacity Quantity End Date<sup>3</sup>.

## 2 BGE Response to Consultation Questions

The SEMC has invited participants to provide comments and feedback on the proposed modifications in respect of:

### 2.1 The proposed modifications and their consistency with the CMC Objectives

We agree with the proposed modifications and view them as largely consistent with the following CMC Objectives. However, we believe further steps can be taken by the SEMC to improve the consistency of the modifications with the following CMC Objectives:

- (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;
- (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;
- (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.

Per our response to Section 1.1, clear guidance on the burden of proof required by the RAs to grant an extension is needed from the outset. This would ensure improved consistency of the modifications with CMC Objective (b) above. BGE requests that the SEMC provides clarity and guidance that the burden of proof is realistically achievable.

BGE believes both proposed modifications must be implemented together. Linking the approval of Substantial Financial Completion Delays to Long Stop Dates and Capacity End Date does not protect the investor from contract erosion resulting from third-party delays<sup>4</sup>. However, simultaneously providing a mechanism to extend the Long Stop Date and Capacity Quantity End Date and Time prevents contract erosion and so protects investors from the impact of third-party delays. Implementing both modifications together therefore provides an approach which is consistent with each of the CMC Objectives outlined above.

### 2.2 Any impacts not identified in the Modification Proposal Forms, e.g., to the Agreed Procedures, the Trading and Settlement Code, Grid Code, testing and outages, and IT systems etc.

BGE has not identified any impacts in addition to those already set out.

### 2.3 The detailed CMC drafting proposed to deliver the Modifications

BGE does not have any comment on the proposed CMC drafting.

I hope you find the above comments and suggestions helpful. If you have any queries thereon please do not hesitate to contact me.

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<sup>3</sup> Given the SFC deadline for the 2024/25 T-3 auction was 4 September 2023, and extension applications were due 20 working days in advance of the SFC deadline.

<sup>4</sup> Apart from where the relevant unit has been subject to a Third-Party Judicial Review or Third-Party Planning Appeal per SEM-23-00

Yours sincerely,

**Niamh Trant**  
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**Bord Gáis Energy**  
*{By email}*