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6th January 2023

RE: SEM-22-083 - Consultation on Capacity Market Code Terms of Reference for the Year 4 Market Audit

Dear Donna and Kevin,

Bord Gáis Energy (**BGE**) welcomes the opportunity to respond to this consultation on Capacity Market Code (**CMC**) Terms of Reference for the Year 4 Market Audit.

In principle, BGE welcomes that the Terms of Reference (**TOR**) for the audit of Year 4 operations of the Capacity Market Code will mirror those that covered audits in the previous 3 years. Consistency of approach and reporting is important to ensure the operation of the CMC within its scope and in line with requirements. Similarly, the retainment by the Regulatory Authorities (**RAs**) of the requirements set out in SEM Committee Decision Paper SEM-17-023¹ support continuity in the approach, roles and completion of the audit process including the application of recognised international standards².

BGE maintains its belief (as expressed in our feedback to the consultation on the TOR for the audit of Year 3 operations³) that the audit report of Year 4 operations should provide a view on the operation of the secondary trading arrangements under the Capacity Market Code. We reiterate our ask that the design and operational requirements of secondary trading process in the Capacity Market are reviewed in the audit and any potential improvements to the process are identified given that Year 4 saw the continued operation of both the Alternative Secondary Trading Arrangements and the Interim Secondary Trading Arrangements alongside each other. We believe this review should incorporate views in the audit report on:

- Requirements for the full and timely information publication and transparency. This can include clearly linking both sides (buy/sell) of each trade where applicable as this can only be generally inferred from the register/ list currently available⁴, and open review access to the updated secondary trade register,
- A liquidity assessment to understand if secondary trade liquidity is being impeded by design or operational limitations or counterparty actions as poor liquidity levels have been seen to date⁵. Limitations can arise on the scope of units to find available counterparties for secondary trading due to constraints within and across Level 1 Constraint areas. These limits can unnecessarily undermine or exclude parties from secondary trading. In response to the recent CMC_16_2022 we flagged the concern that limiting secondary trades only to Level 1 areas with no RA discretion permitted to allow secondary trades outside Level 1 areas undermines the mitigation of the risk CMC_16_2022 is trying to address. Neither does it cater for the fact that in the ~4 years between an auction and delivery date a constraint may have changed such that it is reasonable for the RAs to approve that a new unit can secondary trade with an existing unit outside its Level 1 area. We ask that the audit report provides views on the impact of limiting secondary trade counterparties to Level 1 areas when Level 1 areas can be as small as “Greater Dublin” and the potential usefulness (in terms of secondary trading liquidity)

¹ SEM-17-023: Capacity Remuneration Mechanism Terms of Reference for the Capacity Market Auditor and Capacity Auction Monitor

² International Standard on Assurance Engagements (ISAE 3000).

³ BGE's response to SEM-21-039, dated 18th May 2021

⁴ https://www.sem-o.com/documents/general-publications/List-of-Secondary-Trades-30_09_18-to-13_10_21.xlsx

⁵ https://www.sem-o.com/documents/general-publications/List-of-Secondary-Trades-30_09_18-to-13_10_21.xlsx

of enabling the RAs to have discretion to determine that parties can secondary trade outside of their Level 1 areas.

- Assurances that secondary trading is providing benefit to the SEM participants at large and not limiting the benefits only to participants with a wide asset base.

We would welcome the auditors' views in the audit report on the design and operation of the secondary trading arrangements (especially those aspects listed above) across operations in Years 3 and 4, and the identification of potential improvements to the secondary trading process in the Capacity Market.

We ask that the timelines for the registration of units in the Capacity Market is also reviewed on the basis of the negative impact the current >60 days to complete the registration of units in the market can have on the commercial standing of units. Process limitations which drive the >60 days registration timescale should be identified and improvements suggested to minimise the market registration timescale for units.

BGE would welcome the opinions of the auditors in the report on whether improvements in the outcomes of the three capacity auctions in the scope of the TOR would have been expected if some of the proposals contained in the EY Review of the CRM from Q3 2022 were already applied. We believe that the audit report should consider if the EY proposed changes to the CRM⁶ such as longer "lag" periods between auction and delivery, or more collaboration between RAs/ EirGrid/ GNI/ EPA/ DECC on ensuring capacity is delivered on time, or whether a more permissive approach/ RA discretion to requests for extensions from new units (in our opinion for evidenced risk of unforeseen or unplanned delay) should apply, could result in an overall cost benefit for the consumer. We ask for any views by the auditors as to which proposals (had they been in operation for the auctions covered by the timescale of the TOR's audit period) could have provided better cost benefit outcomes to the consumer in the context specifically of better signalling entry signals for existing and new capacity.

Market participants put time and resources into providing views and feedback on the modification proposals to the Capacity Market Code (CMC). Yet at times it is not clear that the responses provided have been taken on board or addressed when decisions are published. We ask that the audit report provide assurances that participant views and responses receive due review and consideration within the modification process. The focus should particularly be on those modifications which were rejected across the term of the audit period to which these TOR apply.

Finally, BGE continues to support the independent oversight of the CMC operations played by both the Auction Monitor and Auction Auditor. Our position remains that these two roles should remain separate and be performed by different entities to avoid any potential undermining of the integrity of each role due to perceived/ actual conflicts of interest that may arise.

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

Yours sincerely,

Ian Mullins
Regulatory Affairs – Commercial
Bord Gáis Energy

{By email}

⁶ Excluding those proposals that sought to target perceived "availability" issues e.g., administered scarcity pricing as such proposals in our view only serve to further undermine signals for entry for existing and new capacity