

April 9<sup>th</sup> 2010

Mr. Clive Bowers  
Commission for Energy Regulation  
The Exchange  
Belgard Square North  
Tallaght  
Dublin 24

Dear Clive,

**RE: Review of Transmission Exit Capacity Transfers in the Gas Market**

Bord Gáis Energy (BG Energy) welcomes the Commission's review of Transmission Exit Capacity Transfers in the Gas Market and would like to make a number of observations and comments which we trust you will consider. These comments principally relate to the operation of the current regime, the Commission's market impact analysis and the relationship between this review and a decision on the future regulation of the Regulated Tariff Formula (RTF).

**1. The current regime for Secondary Transfers of Exit Capacity:**

As a first point of note, the consultation infers that BG Energy is the sole provider of secondary capacity. However, other entities also provide the service and indeed could be the first port-of-call for third parties seeking secondary capacity as their tariffs are not regulated.

As the regulated supplier of Transmission Exit Capacity in the Gas Market, BG Energy has offered third party shippers access to interruptible secondary capacity on a first come first served, non-discriminatory and transparent basis. BG Energy communicates with those third parties who have signed a capacity transfer agreement on a regular basis and daily reports are circulated to shipper/suppliers advising them of available capacity. Recent entrants to the market have also contacted BG Energy and entered into contracts for the purchase of secondary capacity.

Given that BG Energy has not received any comments or feedback from participants to suggest that the process is not appropriate, BG Energy does not accept the assertion

that it acts as a barrier to entry to the market. Evidence from the recent 1-in-50 event in January of this year proves that the processes and mechanisms in place are effective for competitors in the market while also ensuring that the security of gas supplies is maintained for customers. Furthermore, this practice is not unusual and is a regulated model that is widely used elsewhere in introducing liquidity to a developing market e.g. ESB Directed Contracts in the SEM.

Notwithstanding that, if the Commission is considering amending the secondary capacity regime, consideration should also be given to amending the capacity booking requirements for NDM customers to allow for greater flexibility around meeting the 1-in-50 peak day obligation.

## **2. European Legislation Relating to Capacity Trading and Transfers:**

In terms of the objectives of secondary capacity, it is widely recognised amongst industry stakeholders that the product provides liquidity to the Irish gas market and is an important element in the continuing development of competition in the small, medium and large business customer segment.

This is duly recognised in the Third Energy Gas Regulation which states that “trading of primary capacity rights is an important part of developing a competitive market and creating liquidity” and prescribes that the *“Regulation should therefore lay down basic rules relating to such trading”*. To this end, Article 22 of the Regulation states *“Each transmission, storage and LNG system operator shall take reasonable steps to allow capacity rights to be freely tradable and to facilitate such trade in a transparent and non-discriminatory manner. Every such operator shall develop...procedures on the primary market to facilitate secondary trade of capacity and shall recognise the transfer of primary capacity rights where notified by system users”*. This article reinforces the principles of Article 5(3) and 8 of Regulation (EC) No. 1775/2005 which provide that transmission system operators shall take reasonable steps to allow capacity rights to be freely tradeable and to facilitate such trade.

Given these legislative provisions, BG Energy is of the view that there is an obligation on the Commission to ensure that such a product is available to the Irish gas market. Further-still, none of the European legislative provisions provide a differentiation between entry and exit capacity and BG Energy would question why the Commission

proposes to discriminate between the two types of capacity. BG Energy would be very interested in hearing the Commission's views and legal opinions in this regard.

### **3. Market Impact Analysis:**

BG Energy considers it a moot point to suggest that a gas fired peaker would still be in merit compared to a distillate fired peaker even with short term daily capacity costs included in the bid price. While the Commission's analysis may be correct, a gas fired peaker might not retain its competitive position vis-à-vis other fuels. Furthermore, the inclusion of short term daily capacity costs in the bid price will increase operating costs for a gas fired peaker and therefore reduce its margins. For that reason, the proposal to remove secondary capacity would have a greater impact on gas-fired SEM participants than is suggested by the Commission in its consultation.

### **4. Relationship between the RTF and Secondary Trading at the Exit:**

In its review of the RTF in October 2009 the Commission explicitly stated that *"Whatever the outcome of this consultation exercise on secondary capacity, the Commission is satisfied that it should not affect the Commission's analysis of the third criterion for retaining/removing the RTF regime"*. BG Energy is therefore bemused at the Commission's most recent indications that a decision on the RTF regime is contingent on its review of the secondary capacity regime. BG Energy is strongly of the view that the review of secondary capacity and the review of the RTF are distinct and separate issues. This is on the basis that the removal of price regulation in the RTF sector will have no bearing on how the capacity is sold and utilised by the market. In two of its most recent reviews of the RTF, the Commission has found that the secondary capacity market does not bestow a competitive advantage on BG Energy or act as a barrier to entry in the market. This is monitored extensively by the Commission through the submission of quarterly reports on the sales of secondary capacity by BG Energy. We therefore question how it is "a valid concern" with respect to the Commission's current review of the secondary capacity regime.

The coupling of these two reviews is delaying a decision with respect to the consultation on the RTF that began almost 6 months ago. This is creating even greater uncertainty in a customer segment already dealing with economic and financial difficulties and reduces the number of competitive tenders on offer in the

market. **In the interests of providing regulatory certainty to the RTF market, BG Energy requests that the Commission recognise the distinction between the two reviews and issue a final decision on its deregulation as soon as possible.**

I hope you find the comments above useful in carrying out your review of Transmission Exit Capacity Transfers in the Gas Market. Please do not hesitate in contacting me should you have any comments or queries on the issues raised.

Yours sincerely,

Dermot Lynch  
Commercial Regulation  
Bord Gáis Energy

{by e-mail}