

<b>Respondent's Name</b>	Kilshane Energy Ltd
<b>Type of Stakeholder</b>	Generator
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<b>Confidential Response</b>	N

13<sup>th</sup> December 2022

**RE: SEM-22-092 – CMC\_(12, 13, 14, 15)\_22 Urgent WG28 Consultation Paper**

Dear Sem Committee,

Kilshane Energy Limited (KEL) welcomes the opportunity to respond to the consultation SEM-22-092. KEL was awarded a ten-year capacity contract for a 293MW Open Cycle Gas Turbine project (The Project) located within the Greater Dublin Locational Capacity Constraint area in the T-3 2024/25 CRM auction (T-3) held in January 2022. The T-3 auction was atypical and supplementary to the T-4 2024/25 CRM auction that failed to delivered the necessary capacity requirement. KEL are working towards delivery of new capacity for October 2024.

**KEL Response to SEM-22-092**

KEL notes the SEM Committee (SEMC) Minded to Position from 2.5.16-2.5.27. With the exception of 2.5.22 KEL agrees with the structure and intent outlined therein. However, KEL have suggested some minor changes to the drafting which we believe more fully reflects the intent of the SEMC's Minded to Position.

**KEL position on 2.5.22**

KEL believe that the introduction of a finite period outlined in the SEMC's Minded to Position 2.5.22 is in conflict with 2.5.19 and 2.5.23.

Both of the above clauses allow for the open-ended nature and that due process must be followed under a Judicial Review (JR). KEL disagrees with the statement that allowing an extension period to cover the full extent of the JR process constitutes a "blank cheque". We recognise that extensions

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granted under the proposed Mindset to Position should be subject to review on a periodic basis to ensure the integrity of the capacity auction process is protected.

### **KEL Amendments to SEMC Proposed Legal Drafting**

#### **J.5.5.4**

J.5.5.4 The System Operators may, subject to J.5.5.5, terminate the New Capacity for which an extension was granted under J.5.5.1 if:

**(a) Substantial Financial Completion has not been achieved after the end of the Substantial Financial Completion Period as extended under J.5.5.1;**

**(b) an Implementation Progress Report indicates that Substantial Financial Completion will not be achieved after the end of the Substantial Financial Completion Period as extended under J.5.5.1; or**

**(c) the Third Party Judicial Review or Third Party Planning Appeal has been decided in favour of the third party appellant.**

*Rationale - The amended drafting reflects KELs disagreement with 2.5.22 as outlined above.*

#### **J.5.6.1**

J.5.6.1 Where the System Operators have granted an extension under paragraph J.5.5.1, a Participant may seek the approval of Regulatory Authorities **(such approval not to be unreasonably delayed or withheld)** for an extension to the Capacity Quantity End Date and Time associated with a Capacity Market Unit by a period no greater than the Third Party Extension Period.

*Rationale – KEL believe that the RA's have an obligation to approve an extension under J.5.6 where such a grant can be deemed reasonable.*

### **Definitions**

**Third Party Planning Appeal** means an appeal pursuant to Chapter III of the Planning and Development Acts 2000-2022, as amended, and relating to a decision of **the Relevant Planning Authority to** An Bord Pleanála to grant planning permission affecting a new or refurbished Generator Unit or Interconnector in respect of the delivery of Awarded New Capacity.

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*KEL Rationale – KEL believe this addresses a drafting error*

**Third Party Extension Period** means, in respect of date of Substantial Financial Completion and Long Stop Date extension under paragraph J.5.5.1, the period from the date on which the relevant Participant has either

- i. been served a notice of motion in respect of the Third Party Judicial Review to the date on which the Third Party Judicial Review is concluded, either by order, direction or decision of the court (not appealed by the third party to the Third Party Judicial Review), or otherwise; or
- ii. ***the end of the period of leave to Judicially Review a determination from An Bord Pleanála in respect of the Third Party Planning Appeal.***

*Rationale – Due process under an appeal to An Bord Pleanála is not complete until the period of leave to Judicially Review has expired. We believe that the criteria to achieve Substantial Financial Completion will not be met until such expiry.*

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