

APPENDIX C – RESPONSE TEMPLATE

SUMMARY INFORMATION

Respondent's Name	Bord na Móna
Type of Stakeholder	<i>Generator</i>
Contact name (for any queries)	<i>Justin Maguire</i>
Contact Email Address	<i>Justin.maguire@bnm.ie</i>
Contact Telephone Number	<i>0862378864</i>
Confidential Response	[N]

For reasons outlined in the reference note below, BnM strongly believes that time defined Gas and Grid connection should rightly be a legitimate expectation of the project developer. We have noted the reasons presented for not including them, as described within the Consultation Paper SEM 22 092 – and have learned from the Proposed Legal Drafting text referred to within 2.5.28 of the Minded to part of the Consultation.

From these learnings, we have in fact adapted that text to inform both of our responses, being i) our update of our own Mod 14_22 and ii) our proposed additions to the Minded to Proposed Legal drafting itself so as to incorporate the Gas and Grid Connection mitigation of 3rd party delay provisions on participants.

The biggest distinction between our original draft and our current draft is that we have learned that SEMC appears to value independent third-party active involvement in determining the Third-Party Extension Period. And in this regard, we propose that the independent certified expert engineer who is agreeable to both parties plays the key role in certifying eligible delays.

The text of our own Mod 14_22 then becomes – pls ref Appendix 1 (in the attached Word doc)

The text of the BnM adjustments to the Proposed Legal Drafting within SEM 22 092 then becomes – ref Appendix 2

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Reference note:

To re-iterate some high level points: We believe that that time defined Gas and Grid connection should rightly be a legitimate expectation of the project developer, given:

- where there has been full and open engagement with GNI on the potential feasibility of the gas connection for the project prior to submitting an application for qualification and where the project has shown deliverability and commitment, etc, within the Qualification process
- backed up by the direction issued from the CRU to “GNI facilitating advance investment in the gas network, in order to avoid potential delays in delivering gas connections and associated reinforcements” within CRU 21115 of 29th September 2021 as well as (see next)
- by The Policy signal within the same document: the CRU is providing clarity that additional gas-fired generation is vital for the successful delivery of Ireland’s 2030 renewable electricity and climate targets, linked to the expressed need to procure and deliver at least 2000MW of additional flexible gas-fired generation capacity by 2030 at the latest
- the direction from CRU to EirGrid within CRU202258a of June 2022 to issue a grid connection offer to any applicant located within the Ireland Level 1 Locational Capacity Constraint Area, that is successful in the T-4 Capacity Auction for 2026/27, taking into account a number of requirements and considerations set out in the letter – most especially where the project developer has fully engaged with EirGrid on the potential feasibility of their grid connection prior to submitting an application for qualification and where the project has shown deliverability and commitment, etc, within the Qualification process..
- in addition there is a precedent in other jurisdictions for connection agreements which incorporate service level penalties. We would refer particularly to the UK’s ‘The Electricity (Connection Standards of Performance) Regulations 2015’

There are no penalties imposed on the statutory undertakers, System Operators and GNI, for late delivery of their obligations and instead, if they fail to deliver, it is the participant who is penalised. As we have already represented, Market participants have no way of managing such risks and should not be penalised for late delivery of these items. As these entities are regulated by the RAs who are also responsible for the CMC and CRM, this modification would apply to their activities.

We also wish to stress that we believe that that the solution reached needs to recognise that if a contract was to be terminated, it is likely to be replaced by another project one year out which could face the same challenges, given the very tight timelines and findings within the recent EY report which will similarly impact succeeding projects.

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We would urge and hope that the decisions made are weighted towards finding solutions to facilitate the projects needed for the future, for system security and for diligent investment, taking into account current restrictions, to overcome issues such as gas and grid connection delays which are not attributable to the participant.

CAPACITY MARKET CODE MODIFICATIONS CONSULTATION COMMENTS:

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
CMC_12_22: Remedial Action in the event of planning application delay to a project that qualifies under a Direction			
CMC_13_22: Third Party Judicial Review Remedial Action			

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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>CMC_14_22: Mitigation of impact of Third-Party Delays on Participants and extension of Support term</p>	<p>The proposed modification is to replace much of the existing wording with wording proposed by SEMC within SEM 22 092 so as to expedite a workable solution</p> <p>Ref Code Objectives</p> <p>(a) to facilitate the efficient discharge by EirGrid and SONI of the obligations imposed by their respective Transmission System Operator Licences in relation to the Capacity Market;</p> <p>(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;</p> <p>(f) to ensure no undue discrimination between persons who are or may seek to become parties to the Capacity Market Code; and</p> <p>(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.</p>	<p>The original modification proposal form did not present a mechanism to SEMC which they believed would work in that they did 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.</p> <p>The Modifications presented herein address this impact by proposing an alternative mechanism which would involve the services of an independent certified engineer – which is aligned with SEMC’s proposed minded to approach in relation to Third Party Exception Applications re-Planning and JR third party delays.</p>	<p>Please find Appendix 1 below which takes the learnings from the Proposed Legal Drafting within SEM 22 092 – but adjusts its scope to <u>only</u> Gas and Grid Connection Third-Party Delays</p>

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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
CMC_15_22: Introduction of New Remedial Action to Enable Extensions due to Planning and Permitting Delays			

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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>We propose BnM adjustments to the Proposed Legal Drafting within SEM 22 092</p>	<p>The Proposed modification is to include provision for Eligible 3rd Party Grid or Gas Connection Delay Ref Code Objectives</p> <p>(a) to facilitate the efficient discharge by EirGrid and SONI of the obligations imposed by their respective Transmission System Operator Licences in relation to the Capacity Market;</p> <p>(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;</p> <p>(f) to ensure no undue discrimination between persons who are or may seek to become parties to the Capacity Market Code; and</p> <p>(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.</p>	<p>The main impact not identified in the Proposed Legal Drafting within SEM 22 092 is the exclusion of third party delays relating to Gas and Grid Connection which are beyond the control of the participant in relation to the understood provisions of the Drafting.</p>	<p>Please find Appendix 2 below which takes the learnings from the Proposed Legal Drafting within SEM 22 092 – but adjusts its scope to <u>also include</u> Gas and Grid Connection Third-Party Delays</p>

NB please add extra rows as needed.

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Appendix 1 BnM Revised Mod 14_22

J.5.5 Extension of Long Stop Date Eligible 3rd Party Grid or Gas Connection Delay

J.5.5.1 Subject to the requirements of paragraph J.5.5.2, a Participant may apply to the System Operators to extend the date of Substantial Financial Completion and Long Stop Date associated with a Capacity Market Unit by a period equal to the Third Party Extension Period where that Capacity Market Unit is subject to an **Eligible 3rd Party Grid or Gas Connection Delay**.

J.5.5.2 The date of Substantial Financial Completion and Long Stop Date shall be extended under paragraph J.5.5.1 subject to the requirements of paragraph J.4.2.6 and the Participant submitting the following proofs to the System Operators: (a) Documentary evidence showing the indicative agreed dates for the Grid and Gas Connection with Eirgrid and GNI respectively at the time of Qualification for the Auction, and that portion of the delay in their updated expected delivery date which is directly attributable to these connection providers which are outside of the control of the project, mindful of process versus delivery, which gives rise to a delay beyond that described within the termination provisions in J.6.1.2 b).

J.5.5.3 Where the System Operators have granted an extension under paragraph J.5.5.1, they shall review this decision no less often than on receipt of each Implementation Progress Report required in respect of the affected New Capacity under paragraph J.4.2.1

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 more than [twelve] months has passed since the end of the Substantial Financial Completion Period of the Capacity Auction Results Date in the Capacity Auction Timetable for the Capacity Auction in which the capacity was allocated;
- (b) an Implementation Progress Report indicates that Substantial Financial Completion will not be achieved after more than [twelve] months has passed since the end of the Substantial Financial Completion Period of the Capacity Auction Results Date in the Capacity Auction Timetable for the Capacity Auction in which the capacity was allocated; or
- (c) the Third Party Judicial Review or Third Party Planning Appeal has been decided in favour of the third party appellant.

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(d) the review of the 3rd Party Grid or Gas Connection Delay as submitted within the 3rd Party Exception Application Process is deemed invalid by the System Operators/RAs.

J.5.5.5 The System Operators shall consult with the Regulatory Authorities prior to taking any action under paragraph J.5.5.4.

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 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.

J.5.6.2 A Participant seeking approval of the Regulatory Authorities under paragraph J.5.6.1 shall submit an application (called a “Third Party Exception Application”) to the Regulatory Authorities within [20] Working Days of the determination of the Third Party Extension Period.

J.5.6.3 A Third Party Exception Application shall:

(a) contain the information required by the Regulatory Authorities;

(b) contain a certificate addressed to the Regulatory Authorities from an independent Certified Engineer, with experience and expertise in the construction and operation of the relevant type of equipment or technology, approved by the Regulatory Authorities (such approval not to be unreasonably delayed or withheld) certifying that, having made all due and careful enquiry and to the best of their knowledge, the extension being claimed under this section J.5.6 can be directly attributed to the **Eligible 3rd Party Grid or Gas Connection Delay** that led to an extension being granted under J.5.5.1:

(c) be in the form prescribed by the Regulatory Authorities; and

(d) be made in the manner prescribed by the Regulatory Authorities.

J.5.6.4 For the purposes of paragraph J.5.6.3(b), a person is regarded as independent if:

(a) the person is not an Affiliate of the relevant Participant;

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(b) the person is not a current employee of the relevant Participant or an Affiliate of the relevant Participant;

(c) the person has not been an employee of the relevant Participant or an Affiliate of the relevant Participant with the previous two years; and

(d) the person is not engaged on terms, nor party to any other arrangements, which could allow the Participant or any Affiliate of the Participant to exercise undue influence on any report, assessment, certificate or commentary prepared by that person or otherwise compromise the objectivity of such report, assessment, certificate or commentary.

J.5.6.5 A certificate under this section J.5.6 shall be in the form published from time to time by the Regulatory Authorities.

J.5.6.6 In a certificate given under paragraph J.5.6.3(b), the Certified Engineer giving the certificate shall confirm that they are independent within the meaning of paragraph J.5.6.4 and shall certify each of the matters referred to in paragraph J.5.6.4.

J.5.6.7 The Regulatory Authorities may request that a Participant provide additional information or evidence in relation to a Third Party Extension Application.

J.5.6.8 If a Participant makes a Third Party Exception Application, then the Regulatory Authorities shall notify the Participant and the System Operators whether or not they approve the Third Party Exception Application and, if they do approve it the updated value of the Capacity Quantity End Date and Time that will apply.

J.5.6.9 The System Operators shall update the Capacity Quantity End Date and Time in Capacity and Trade Register as set out in Appendix F to reflect any changes approved by the Regulatory Authorities.

J.6.1.1 For the purposes of this section:

(a) Minimum Completion: Awarded New Capacity achieves Minimum Completion when:

(i) all the construction, repowering or refurbishment works associated with providing the Awarded New Capacity are substantially complete (subject only to snag or punch list items or any other matters which do not prevent substantial completion or taking over taking place under the applicable Major Contracts);

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- (ii) each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity has undergone commissioning testing;
- (iii) a Final Compliance Certificate, Operational Certificate or Final Operational Notification has been issued under the applicable Grid Code in respect of each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity;
- (iv) the Proportion of Delivered Capacity in respect of the Awarded New Capacity is not less than 50%; and
- (v) each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity has met all Trading and Settlement Code and Grid Code requirements for participating in the Balancing Market; and
- (vi) each new or refurbished Generator Unit providing New Capacity complies with the CO2 Limits; and

(b) Long Stop Date: the Long Stop Date in respect of Awarded New Capacity means

- (i) in the case of a Capacity Award with a capacity duration greater than one year, the last day of the eighteenth full calendar Month after the start of the first Capacity Year in which the Awarded New Capacity is to be provided; or
- (ii) in the case of a Capacity Award with a capacity duration of one year or less, the last day of the first full calendar Month after the start of the first Capacity Year in which the Awarded New Capacity is to be provided; or
- (iii) such later date as specified under paragraph J.5.5.1.

J.6.1.2 The System Operators shall terminate all the Awarded New Capacity in respect of a new or refurbished Generator Unit or Interconnector in the event that:

- (i) Substantial Financial Completion has not been achieved within the Substantial Financial Completion Period of the Capacity Auction Results Date in the Capacity Auction Timetable for the Capacity Auction in which the capacity was allocated;

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- (ii) such later date as allowed by the Regulatory Authorities under section J.5.2; or
 - (iii) such later date as specified under paragraph J.5.5.1; or
- (b) Minimum Completion has not been achieved by the by the applicable Long Stop Date.

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 of the third party delay in Grid and Gas Connection beyond those timelines factored in the Substantial Financial Completion milestone within the Implementation plan, including contingencies, as submitted at Qualification where the relevant delay is as determined within the procedure and requirements set out within J.5.6.3 specifically and, more broadly within J.5.6., noting that these involve a certificate addressed to the Regulatory Authorities from an independent Certified Engineer.

Eligible 3rd Party Grid or Gas Connection Delay means the indicative agreed dates for the Grid and Gas Connection with Eirgrid and GNI respectively at the time of Qualification for the Auction, and that portion of the delay in their updated expected delivery date which is directly attributable to these connection providers which are outside of the control of the project, mindful of process versus delivery, which gives rise to a delay beyond that described within the termination provisions in J.6.1.2 b).

Appendix 2 BnM adjustments to the Proposed Legal Drafting within SEM 22 092

J.5.5 Extension of Long Stop Date by Third Party Planning Appeal or Judicial Review or Eligible 3rd Party Grid or Gas Connection Delay

J.5.5.1 Subject to the requirements of paragraph J.5.5.2, a Participant may apply to the System Operators to extend the date of Substantial Financial Completion and Long Stop Date associated with a Capacity Market Unit by a period equal to the Third Party Extension Period where that Capacity Market Unit is subject to a Third Party Judicial Review or Third Party Planning Appeal **or Eligible 3rd Party Grid or Gas Connection Delay.**

J.5.5.2 The date of Substantial Financial Completion and Long Stop Date shall be extended under paragraph J.5.5.1 subject to the requirements of paragraph J.4.2.6 and the Participant submitting the following proofs to the System Operators: (a) Documentary evidence confirming the commencement of the

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Third Party Judicial Review or Third Party Planning Appeal, and (b) Statutory declaration signed on behalf of the Participant by a Participant Director confirming that the Participant, its agents and/or its employees had no involvement in instigating the Third Party Judicial Review or Third Party Planning Appeal (c) **Documentary evidence showing the indicative agreed dates for the Grid and Gas Connection with Eirgrid and GNI respectively at the time of Qualification for the Auction, and that portion of the delay in their updated expected delivery date which is directly attributable to these connection providers which are outside of the control of the project, mindful of process versus delivery, which gives rise to a delay beyond that described within the termination provisions in J.6.1.2 b).**

J.5.5.3 Where the System Operators have granted an extension under paragraph J.5.5.1, they shall review this decision no less often than on receipt of each Implementation Progress Report required in respect of the affected New Capacity under paragraph J.4.2.1

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 more than [twelve] months has passed since the end of the Substantial Financial Completion Period of the Capacity Auction Results Date in the Capacity Auction Timetable for the Capacity Auction in which the capacity was allocated;
- (b) an Implementation Progress Report indicates that Substantial Financial Completion will not be achieved after more than [twelve] months has passed since the end of the Substantial Financial Completion Period of the Capacity Auction Results Date in the Capacity Auction Timetable for the Capacity Auction in which the capacity was allocated; or
- (c) the Third Party Judicial Review or Third Party Planning Appeal has been decided in favour of the third party appellant.
- (d) **the review of the 3rd Party Grid or Gas Connection Delay as submitted within the 3rd Party Exception Application Process is deemed invalid by the System Operators/RAs**

J.5.5.5 The System Operators shall consult with the Regulatory Authorities prior to taking any action under paragraph J.5.5.4.

J.5.6 Extension of Capacity Quantity End Date and Time

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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 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.

J.5.6.2 A Participant seeking approval of the Regulatory Authorities under paragraph J.5.6.1 shall submit an application (called a “Third Party Exception Application”) to the Regulatory Authorities within [20] Working Days of the determination of the Third Party Extension Period.

J.5.6.3 A Third Party Exception Application shall:

- (a) contain the information required by the Regulatory Authorities;
- (b) contain a certificate addressed to the Regulatory Authorities from an independent Certified Engineer, with experience and expertise in the construction and operation of the relevant type of equipment or technology, approved by the Regulatory Authorities (such approval not to be unreasonably delayed or withheld) certifying that, having made all due and careful enquiry and to the best of their knowledge, the extension being claimed under this section J.5.6 can be directly attributed to the Third Party Judicial Review or Third Party Planning Appeal **or Eligible 3rd Party Grid or Gas Connection Delay** that led to an extension being granted under J.5.5.1;
- (c) be in the form prescribed by the Regulatory Authorities; and
- (d) be made in the manner prescribed by the Regulatory Authorities.

J.5.6.4 For the purposes of paragraph J.5.6.3(b), a person is regarded as independent if:

- (a) the person is not an Affiliate of the relevant Participant;
- (b) the person is not a current employee of the relevant Participant or an Affiliate of the relevant Participant;
- (c) the person has not been an employee of the relevant Participant or an Affiliate of the relevant Participant with the previous two years; and

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(d) the person is not engaged on terms, nor party to any other arrangements, which could allow the Participant or any Affiliate of the Participant to exercise undue influence on any report, assessment, certificate or commentary prepared by that person or otherwise compromise the objectivity of such report, assessment, certificate or commentary.

J.5.6.5 A certificate under this section J.5.6 shall be in the form published from time to time by the Regulatory Authorities.

J.5.6.6 In a certificate given under paragraph J.5.6.3(b), the Certified Engineer giving the certificate shall confirm that they are independent within the meaning of paragraph J.5.6.4 and shall certify each of the matters referred to in paragraph J.5.6.4.

J.5.6.7 The Regulatory Authorities may request that a Participant provide additional information or evidence in relation to a Third Party Extension Application.

J.5.6.8 If a Participant makes a Third Party Exception Application, then the Regulatory Authorities shall notify the Participant and the System Operators whether or not they approve the Third Party Exception Application and, if they do approve it the updated value of the Capacity Quantity End Date and Time that will apply.

J.5.6.9 The System Operators shall update the Capacity Quantity End Date and Time in Capacity and Trade Register as set out in Appendix F to reflect any changes approved by the Regulatory Authorities.

J.6.1.1 For the purposes of this section:

(a) Minimum Completion: Awarded New Capacity achieves Minimum Completion when:

- (i) all the construction, repowering or refurbishment works associated with providing the Awarded New Capacity are substantially complete (subject only to snag or punch list items or any other matters which do not prevent substantial completion or taking over taking place under the applicable Major Contracts);
- (ii) each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity has undergone commissioning testing;
- (iii) a Final Compliance Certificate, Operational Certificate or Final Operational Notification has been issued under the applicable Grid Code in respect of each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity;

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- (iv) the Proportion of Delivered Capacity in respect of the Awarded New Capacity is not less than 50%; and
 - (v) each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity has met all Trading and Settlement Code and Grid Code requirements for participating in the Balancing Market; and
 - (vi) each new or refurbished Generator Unit providing New Capacity complies with the CO2 Limits; and
- (b) Long Stop Date: the Long Stop Date in respect of Awarded New Capacity means
- (i) in the case of a Capacity Award with a capacity duration greater than one year, the last day of the eighteenth full calendar Month after the start of the first Capacity Year in which the Awarded New Capacity is to be provided; or
 - (ii) in the case of a Capacity Award with a capacity duration of one year or less, the last day of the first full calendar Month after the start of the first Capacity Year in which the Awarded New Capacity is to be provided; or
 - (iii) such later date as specified under paragraph J.5.5.1.
- J.6.1.2 The System Operators shall terminate all the Awarded New Capacity in respect of a new or refurbished Generator Unit or Interconnector in the event that:
- (i) Substantial Financial Completion has not been achieved within the Substantial Financial Completion Period of the Capacity Auction Results Date in the Capacity Auction Timetable for the Capacity Auction in which the capacity was allocated;
 - (ii) such later date as allowed by the Regulatory Authorities under section J.5.2; or
 - (iii) such later date as specified under paragraph J.5.5.1; or
- (b) Minimum Completion has not been achieved by the applicable Long Stop Date.

Relevant Planning Authority means the Department for Infrastructure, the Planning Appeals Commission or a district council.

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Third Party Judicial Review means:

- i) In respect of Ireland, statutory judicial review proceedings commenced, by a party other than the Participant either
 - a. pursuant to Section 50(2) of the Planning and Development Acts 2000-2022, as amended, and relating to a decision of 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, or
 - b. In response to a licence issued under Part V of the Environmental Protection Agency Act 1992 which is required under paragraph J.2.1.1(a)(v) to achieve the Substantial Financial Completion milestone in respect of the delivery of Awarded New Capacity; or ii) In respect of Northern Ireland, judicial review proceedings commenced, by a party other than the Participant, pursuant to the Rules of the Court of Judicature (Northern Ireland) 1980 Order 53, as amended or re-enacted from time to time, and relating to a decision either
 - a. of the Relevant Planning Authority to grant planning permission affecting a new or refurbished Generator Unit or Interconnector in respect of the delivery of Awarded New Capacity, or
 - b. of the Department of Agriculture, Environment and Rural Affairs to grant a permit pursuant to the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013 which is required under paragraph J.2.1.1(a)(v) to achieve the Substantial Financial Completion milestone in respect of the delivery of Awarded New Capacity.

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 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

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. been notified of the determination An Bord Pleanála in respect of the Third Party Planning Appeal

In relation to Gas and Grid Connection the 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 of the third party delay in Gas and Grid Connection beyond those timelines factored in the Substantial

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Financial Completion milestone within the Implementation plan, including contingencies, as submitted at Qualification where the relevant delay is as determined within the procedure and requirements set out within J.5.6.3 specifically and, more broadly within J.5.6., noting that these involve a certificate addressed to the Regulatory Authorities from an independent Certified Engineer.

Eligible 3rd Party Grid or Gas Connection Delay means the indicative agreed dates for the Grid and Gas Connection with Eirgrid and GNI respectively at the time of Qualification for the Auction, and that portion of the delay in their updated expected delivery date which is directly attributable to these connection providers which are outside of the control of the project, mindful of process versus delivery, which gives rise to a delay beyond that described within the termination provisions in J.6.1.2 b).