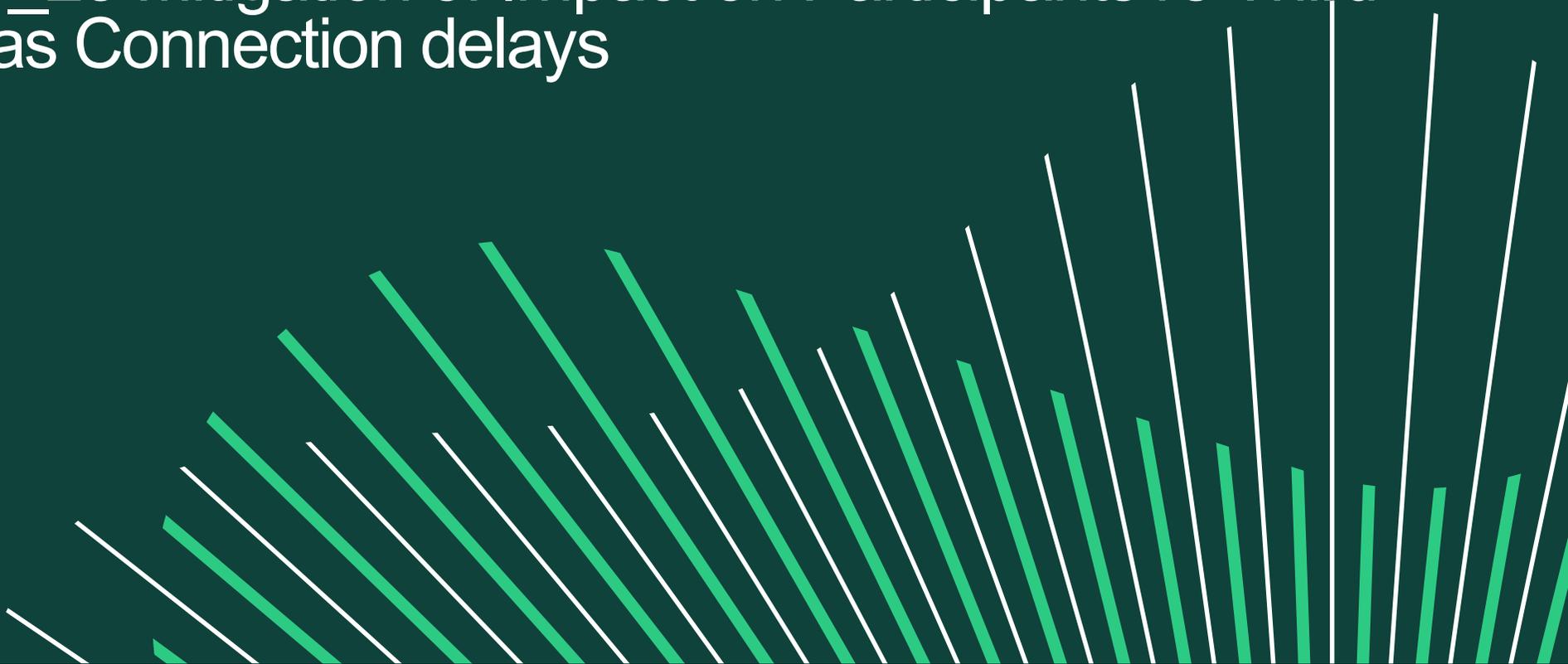


Bord na Móna

May 2023

CMC 10_23 Mitigation of Impact on Participants re Third Party Gas Connection delays



The Mod itself

- The effect of the Mod: where gas connection is delayed for third party external reasons outside of the control of the participant (including participant contingency planning) in the project implementation plan an equivalent extension is added to the Substantial Completion date, to the **Longstop period** and to the **Capacity Quantity End Date** (keeping **Max Duration of the Contract**).
- the Participant cannot be expected to accept the risk associated with the timing of third-party delivery which are outside of their control, even with contingency already been factored in. Gas Connection Agreements allow the Gas Connection Party to move timelines without penalty.
- Capacity market participant will clearly be responsible for some third-party activities, and these activities would be expected to be exposed to risk of delay. We propose that where there is not agreement between the Participant and the Gas Connection Party as to attribution of delay that the processes within the Terms of the Gas Connection Agreement, ie, Expert determination within the Contract are used for such determination, thereby removing the RAs/SOs from this process and burden. Outside of this we want to work with the RAs and SOs in further tightening the process – to their satisfaction.
- SOs already have a Risk Mitigation Strategy: The implementation plan submitted by New Capacity generators are assessed by the TSO and engagement occurs with the Gas Connection Party before a project can qualify to participate in the auction. Plans considered undeliverable result in projects not qualifying, those that are considered deliverable qualify for the auction. Linking the extension of project milestones to the delivery of new elements required to deliver Gas Connection (within the scope of this Modification Proposal) should better balance the risk between investors and third parties.

Relevant background 1

Context vs Previous similar Mods

- Substantial Completion, participants must rely on third parties including the System Operators, planning authorities and other statutory bodies to exercise their functions in a timely manner.
- Decision paper SEM 23 001 is now in force and permits Third Party Extension Periods for eligible delays relating to Third Party Planning and to Judicial Review.
- The same decision paper has placed ‘under further consideration’ proposals around Mod 14_22 which relate to 3rd Party delays for Grid and Gas connection.
- This Mod presents a further development of Mod 14_22 in so far as it focusses exclusively on third party delays relating to Gas Connection which are not attributable to the participant, and temporarily leaving Grid connection delays to one side for now.
- What differentiates this Mod from previous mods is that it picks up on the shortcomings identified in Decision paper SEM 23 001 and presents proposed solutions.

Relevant background 2 contd

Remind – why is this important?

- What happens without the Modification?
- Real threat to Security of Supply, without these modification provisions, where there is a fault in the fundamental market mechanisms, that ‘good and sound projects’ will be terminated – they will make room for new projects.
- These new projects, by virtue of participating in a subsequent auction, will be targeting to bring capacity to the market later than the ‘good and sound projects’ would have. These subsequent projects will, in turn, be faced with the very same challenging issues, including termination risks for the same reasons. The cycle will repeat, but, significantly, with further delay.

Relevant background 3 contd

- This is about **Security of Supply** and RAs call for New Gas Capacity

Previous modifications have referred to the Security of Supply issue addressing the shortfall in delivery of System Requirements.

Conscious of the non-delivery/termination of a number of Gas units, which were successful over the last number of auctions; CRU 21 115 makes very clear the RAs calling out the need for facilitating new Gas Capacity in its direction to GNI in Ireland. “Security of Electricity Supply – Programme of Actions’ there is explicit reference to:

- **“1. Delivery of T-3 (24/25) and T-4 (25/26) and subsequent capacity auctions (at least 2000MW)**

In order to meet growing demand, replace retiring generators and support additional penetration of renewables, it is necessary to procure and deliver at least 2000MW of additional flexible gas-fired generation capacity by 2030 at the latest”.

Policy signal: 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”.

The CRU has issued a **Direction to GNI facilitating advance investment in the gas network**, in order to avoid potential delays in delivering gas connections and associated reinforcements”.

Issues for the Participant 1

- What kind of delays & where does the liability sit?
- The conflict between the CRM and gas connection contracts arises because:
Timelines within gas connection contract structures allow the gas connection party to move out delivery timelines without recourse to the Participant.
Delivery timelines are framed as ‘target completion dates’ and these are not known with clarity until the gas connection contract is executed.
- These dates, likewise can be moved out without recourse to the Participant, reaching an ‘actual completion date’. This occurs despite engagement with the Gas connection party at the Qualification stage, as well as over the period where Gas connection Contract Offer takes place.
- There are no penalties imposed on these undertakers for late delivery of their obligations and instead if they fail to deliver it is the participant who ends up being penalised. Market participants have effectively no way of managing such risks and should not be penalised for late delivery of these items.
- The Risk from the Gas Connection Contract feeds forward into the Engineering, Procurement and Construction Contract Risk for the whole Gas generation project.

Issues for the Participant 2 contd

- What kind of one-sided Financial Risks? What does Reality for the Participant Look like?
- Not knowing the 'target' and the 'actual' completion dates the participant is required to take on very considerable financial risk very early in typical gas connection contract structures within Substantial Financial Completion within the CMC. The Risk from the Gas Connection Contract feeds forward into the Engineering, Procurement and Construction Contract Risk for the whole Gas generation project.
- The modifications to date have not presented adequately the level of uncertainty and the consequences of 'failure to deliver' to the Participant of the Substantial Completion milestone relating to Gas Connection delays.
- 1) CMC Provisions: Requirement to put in place a significant **Performance security** before there is a connection offer and before there is a Target Completion date for Gas connection (not known until Gas Connection Offer Execution). The Participant is at further risk from both the Target & Actual Completion dates for Gas Connection being outside the Substantial Completion timeline – Termination Costs plus Loss of Capacity Revenues
- 2) Gas Connection Party Agreement Provisions: Again, before having an executed connection agreement, to expedite matters, the Participant will commit themselves financially by entering an agreement with the Gas Connector and will have paid the first Stage Payment of the Gas Connection Cost (typically 10%) plus a Financial Security in place for the c.90% Balance of the Full Connection Cost – with unfavourable termination provisions for the Participant
- 3) Full EPC Gas Generation Contractual Provisions: Causing serious risk to the Participant, the Participant will typically appoint an Engineering, Procurement and Construction (EPC) Contractor for delivery of the Full Gas generation project. Even Limited Notice to Proceed can be at 15% to 20% of the Full EPC Contract – without certainty on Gas Connection Timelines required to reach Substantial Completion. This feeds forward to Notice to Proceed covering 100% of the Full Project Cost.

Issues for the Participant 3 contd

- What kind of one-sided Financial Risks? What does Reality for the Participant Look like?
- After securing the executed connection agreement – and up to ‘Mechanical Completion’ the financial exposure in relation to the Gas Connection Provider is the Full Cost of the Gas Connection; could be 10s of €m; typical schedule:

Stage Payment	Project Milestone	Amount to be paid based on the Estimate
1	Agreement Date	10% of Estimate
2	Receipt of materials	30% of Estimate
3	Substantial Completion Date*	40% of Estimate
4	Receipt of final invoices from suppliers	20% of Estimate

* of the Mechanical Completion date; NOT to be confused with Substantial Completion of the whole Gas Fired Project

- The participant receives a ‘Target completion date’ or equivalent term which can be moved without penalty accruing to the Gas Connector.
- The Full Engineering Procurement and Construction Gas Generation Contractual Provisions move from ‘Limited Notice to Proceed’ to ‘Notice to Proceed’ which brings Full EPC Gas Generation Project Cost Exposure
- In the context of the Total Gas generation project, as noted, the Participant is exposed to extremely large ‘Engineering, Procurement & Construction’ contract provisions; with Gas Connection timeline uncertainty and potential project termination
- This leaves the participant totally exposed to an imbalanced risk without recourse should the project exceed Substantial Completion of the entire Project (per Implementation Plan) – in the absence of this modification.

The Proposed Solution

1 Picks up on Shortcomings within the Recent Decision Paper

-What differentiates this Mod from previous mods is that it picks up on the shortcomings identified in Decision paper SEM 23 001, and presents proposed solutions.

-it provides a solution to attribution of delay between the Participant & the Gas Connection Party (taking into account relevant contractual aspects of a typical gas connection contract which typically include Expert determinations)

-Unlike previous similar modification proposals, within the mechanisms proposed in this modification, in absence of agreement, the decisions as to apportionment of delays between the Participant and the Connection provider are determined by the Expert and/or Independent Certified Engineer – within the terms and provisions and due processes of the Gas Connection contract.

Thereby not burdening the Regulatory Authorities to have to act as arbiters, avoiding using their valuable resources

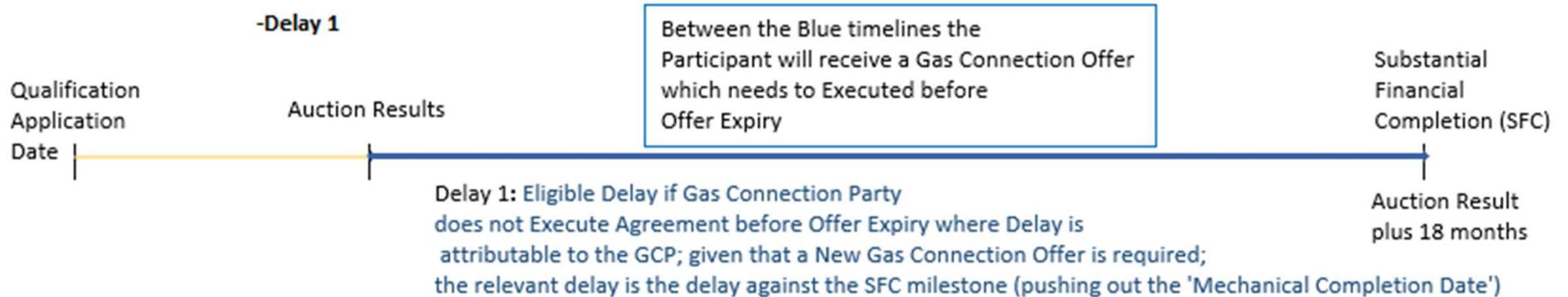
-it addresses the trigger issue, as to what triggers the delay and how to factor eligible 3rd party gas connection delay

-the thrust of the solution is non jurisdictional

-contingency planning within the implementation plan is far from the answer, given the delay provisions permitted to the Gas Connection Provider within typical gas connection contracts, as well as short project delivery times even within a T-4 auction

- The Trigger
- There is not absolute clarity of implementation timelines at the time of Qualification. It can take a considerable period of time post capacity auction results to get clarity, and, as noted, these can subsequently be moved even post Contract execution with no recourse to the Participant. The participant can only make reasonable endeavour and make representation to their System Operator in their Qualification submissions, having taken reasonable process to secure reasonable timeline estimates.
- The implementation plan submitted by New Capacity generators is assessed by the System Operators and engagement occurs with GNI (where gas connection is required) before a project can qualify to participate in the auction. At this stage it is proper that the System Operators, as they currently do, make a judgement call on overall demonstration of project delivery and commitment on the part of the participant. Plans considered undeliverable result in projects not qualifying (E.7.2 of the CMC), those that are considered deliverable qualify for the auction.
- Linking the extension of project milestones to the delivery of new elements required to deliver it i.e. eligible gas connection delays (within the scope of this Modification Proposal) would better balance the risk between investors and third parties.

1. Eligible 3rd Party Gas Connection delay - visual



-Delay 2 (post SFC)

On Execution of Contract - Participant is given a 'Target Completion Date'

Proposal is that Difference between 'Target Completion Date' and (pushed out) 'Mechanical Completion Date' within Participant Implementation Plan is Eligible delay (where attributable to GCP)

-Delay 3

In Practice the GCP can move the 'Target Completion Date' out - without being subject to Penalty

Proposal is that Difference between 'Target Completion Date' and 'Actual Completion Date' agreed as being attributable to the GCP is Eligible Delay

Eligible 3rd Party Gas Connection delay - text

- **Eligible 3rd Party Gas Connection Delay means,** In the first instance the delay period to the Substantial Financial Completion (SFC) milestone, as submitted by the Participant, caused by either an executable gas connection contract not being available within the SFC milestone or by a delay in the provision of an executable version of the contract beyond the timeframe permitted under the offer version of the contract, where such delay is demonstrably attributable to the Connection provider. This delay in SFC would contribute to the knock on delay of the Mechanical Completion milestone which involves linking of the AGI to the exit point by the Connection Provider, thereby pushing out the Mechanical Completion milestone to the 'target completion date' (or equivalent meaning) as stated within the executable contract. *The participant can demonstrate non attribution of delays by having the generation equipment ready once the gas connection is provided to operate on gas and a deliverable plan for the generation unit to be connected to the AGI**.* For clarity, the eligible delay to include that time between the 'target completion date' and the pushed out Mechanical Completion milestone date.*

There may be further eligible delays in the completion date of the connection attributable to the Gas Connection Provider beyond the 'target completion date' (or equivalent meaning). Where these series of related delays accumulate beyond the Substantial Completion date the Participant will submit such delays within the prescriptions herein in an application for Third party extension period.

- As stated in J.5.5.2 (c), in case of doubt regarding the existence of a relevant delay in Gas connection, and the attribution of this between the Connection provider and the Participant, this will be decided, when required (in the absence of agreement between the Participant and the Gas Connection party), within the process and terms of the Gas Connection Agreement, which can be used as evidence.

*this is additional text would like to add to that submitted within the Modification CMC 10_23

**might require slight adjustment of 'Mechanical Completion' milestone within the CMC

Mechanical Completion – consideration re-gas connection

J.2.1.2 Subject to paragraphs J.2.1.3 and J.2.1.4, the Implementation Plan in respect of Awarded New Capacity shall also include the following Additional Milestones in respect of each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity (and dates by which they must be achieved):

- (a) **Mechanical Completion**: this milestone is achieved:
- (i) in respect of a new or refurbished Generator Unit, when the primary mechanism to generate electricity (whether this is via a turbine, any mechanical or electrical device or installation of any other technology, e.g. photo voltaic) is installed on-site; and
 - (ii) in respect of a new or refurbished Interconnector, when the necessary cabling is installed;

Relevant to the Gas Connection part.....

The participant can demonstrate non attribution of delays by having the generation equipment ready once the gas connection is provided to operate on gas

and a deliverable plan for the generation unit to be connected to the AGI

(iii)when the necessary gas connection 'AGI - Above Ground Installation' is installed...

Third Party Extension Period - text

- Third Party Extension Period means, in respect of date of Substantial Financial Completion ([and/or other relevant milestones, eg, Mechanical 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. in respect of Ireland, been served with an originating notice or, in respect of Northern Ireland, been served with an application for leave to apply for judicial review, 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. received a copy of the Third Party Planning Appeal to the date of the determination by An Bord Pleanála in respect of the Third Party Planning Appeal.
 - iii. [a determination of Eligible 3rd Party Gas Connection Delay, following due process \(using any appropriate determinations from an Expert or 'first independent engineer', within the process and terms of the Gas Connection Agreement of attribution of subsequent delays between the Gas Connection provider and the Participant or by agreement between the Participant and the Gas Connection party.](#)

[*this is additional text to that submitted within the Modification CMC 10_23 to cater for consideration of the 'Target Completion Date'](#)

Eligible 3rd Party Delay Scope

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

J.5.5.1 Subject to the requirements of paragraph J.5.5.2, a Participant or an Enforcing Party (on behalf of a Participant) may apply to the System Operators to extend the date of Substantial Financial Completion (and/or other relevant milestones, eg, Mechanical 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 Gas Connection Delay.

J.5.5.2 The System Operators shall extend the date of Substantial Financial Completion (and/or other relevant milestones, eg, Mechanical Completion) and Long Stop Date under paragraph J.5.5.1 subject to the requirements of paragraph J.4.2.5 and the Participant submitting the following proofs to the System Operators:

- a)
- b)
- c) Documentary evidence showing:.... next slide

*this is additional text to add to that submitted within the Modification CMC 10_23 to cater for consideration of the 'Target Completion Date' and 'Actual Completion Date'

Eligible 3rd Party Delay & Proofs/Inputs; documentary evidence, including Expert determination as required

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

(c) Documentary evidence showing:

- i) the indicative dates for the Gas Connection within the Capacity Auction Qualification Implementation Plan as submitted to, and as accepted (by the capacity market team and the Regulatory Authorities at time of Qualification for the Auction), which are incorporated within the Substantial Financial Completion and Mechanical Completion milestones, together with any further relevant correspondence requested within the Qualification Review / Dispute Procedures within the Qualification process
- ii) with respect to the Gas Connection provider, the date of the connection contract offer, complete with term of expiry of period within which the Offer must be executed
- iii) the 'target completion date' (or equivalent meaning term) provided by the Gas Connection provider at the time of the execution of the contract, where this 'target completion date' (or equivalent meaning term) gives rise to a delay beyond that described within the termination provisions in J.6.1.2 b)
- iv) evidence of any further updated delays to the 'target completion date' (or equivalent meaning term) provided by the Gas Connection provider up to completion of agreed works, including Mechanical Completion, within the Contract including any Expert determinations, within the process and terms of the Gas Connection Agreements of attribution of subsequent delays between the Connection provider and the Participant
- v) Per iii) and iv) above, in case of doubt regarding the existence of a relevant delay in Gas connection, and the attribution of this between the Connection provider and the Participant (in the absence of agreement between the Participant and the Gas Connection party), this will be decided, within the terms of the Gas Connection Agreement, which can be used as evidence

Third Party Exception Application – following due process

J.5.6 Extension of Capacity Quantity End Date and Time

J.5.6.3 A Third Party Exception Application shall:

(A) In the case where 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 that led to an extension being granted under J.5.5.1:

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

(B) In the case where the extension being claimed under this section J.5.6 can be directly attributed to the the 3rd Party Gas Connection Delay as submitted within the 3rd Party Exception Application Process that led to an extension being granted under J.5.5.1:

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

(b) contain a certificate addressed to the Regulatory Authorities from an independent Certified Engineer (the 2nd independent Certified Engineer) – see Glossary – operating externally to the contractual determinations provided by the 1st Independent Engineer or Expert, but nonetheless with experience and expertise in the construction and operation of the relevant type of equipment or technology, and approved by the Regulatory Authorities (such approval not to be unreasonably delayed or withheld) having been provided with relevant information from the 1st Independent Engineer or Expert, to be relayed to the Regulatory Authorities in support of the extension being claimed under this section J.5.6 being directly attributed to the eligible 3rd Party Gas Connection Delay that led to an extension being granted under J.5.5.1: Important to note that the role of the 2nd independent Certified Engineer is to be a party which is external to the contractual arrangements whose role is to simply provide relevant information received from those working within the contractual arrangements (the Participant and the Gas Connector Provider) to the Regulatory Authorities.

Partnering to find a Solution

- BnM want to continue to work together with the RAs and SOs in fine tuning this Gas Connection delay solution to help deliver on the RAs Policy and RAs /SOs requirements, balancing the Risk – and ENABLING projects for Security of Supply
- We welcome the common appreciation of the critical importance of finding solutions
- We look forward to further engagement