



**COMMISSION DIRECTION TO REACH
AGREEMENT ON INFRASTRUCTURE
AGREEMENT COMPLYING WITH INDUSTRY
REQUIREMENTS**

CER/01/159

20 November 2001

Contents

1	INTRODUCTION	1
2	GENERAL PRINCIPLES TO APPLY TO INFRASTRUCTURE AGREEMENT.....	2
3	PREPARATION OF INFRASTRUCTURE AGREEMENT	3
4	SPECIFICATION OF TRANSMISSION SYSTEM ASSETS	4
5	RESPONSIBILITIES FOR DEVELOPMENT AND CONSTRUCTION	6
6	RESPONSIBILITIES FOR MAINTENANCE	13
7	AGREED LIST OF CONTRACTORS	19
8	REMUNERATION OF OWNER.....	20
9	STEP-IN RIGHTS	21
10	RELATIONSHIP WITH GRID USERS	22
11	RISK, LIABILITIES AND INDEMNITIES	23
12	ENERGISATION, DE-ENERGISATION AND DECOMMISSIONING.....	24
13	DUTY OF COOPERATION AND EXCHANGE OF INFORMATION.....	25
14	EMERGENCY ARRANGEMENTS.....	26
15	DISPUTE RESOLUTION	27
16	MODIFICATIONS OF AGREEMENT	28
17	PERIODIC REVIEW	29
18	TERM.....	30
	APPENDIX 1: DEVELOPMENT AND CONSTRUCTION ACTIVITIES	31
	APPENDIX 2: MAINTENANCE ACTIVITIES	32

COMMISSION DIRECTION TO REACH AGREEMENT ON INFRASTRUCTURE AGREEMENT COMPLYING WITH INDUSTRY REQUIREMENTS

1 INTRODUCTION

This direction is issued by the Commission for Electricity Regulation (“**the CER**”) in exercise of the powers conferred on it under Regulation 18(1) (b) of Statutor

y Instrument 445 of 2000 (“**the Regulations**”). The direction is addressed to

- EirGrid, in its capacity as designated transmission system operator and holder of the Transmission System Operator Licence (“**the Operator**”)
- ESB, in its capacity as owner of the transmission system and holder of the Transmission System Owner Licence (“**the Owner**”)

The Operator and the Owner are referred to collectively in this direction as “**the Parties**”.

The direction takes account of

- The discussions between the Parties on the negotiation of an Infrastructure Agreement held under the aegis of the CER prior to the “effective date” as defined in Regulation 3 of the Regulations.
- The CER Consultation Paper “**Transmission Infrastructure Agreement Principles Paper**” issued on 1 June 2001 and the submissions received in response to that Paper.
- Submissions made by the Parties to the CER arising from bilateral discussions held subsequent to the public consultation on the CER Principles Paper.
- The CER’s own final views on the provisions which should be included in the Infrastructure Agreement which would best advance the interests of consumers of electricity and the electricity industry itself and which are compatible with the Regulations and related European Union and domestic statutory requirements.

2 GENERAL PRINCIPLES TO APPLY TO INFRASTRUCTURE AGREEMENT

In drawing up and implementing the Infrastructure Agreement the Parties will acknowledge and be guided by the following general principles:

- The Parties acknowledge that each party is charged with its own statutory and licensed obligations which can be best discharged through a relationship which is mutually supportive within the context of a clear Infrastructure Agreement.
- The Parties acknowledge that the Infrastructure Agreement should be developed on the assumption of a co-operative, enduring and successful relationship while providing for reasonable dispute resolution mechanisms where appropriate.
- The Parties recognise that while a co-operative relationship should be developed and supported, it is nevertheless necessary that the Infrastructure Agreement provide sufficient protection to each party in respect of its ability to carry out its obligations in the event of disputes. This includes provisions which provide for rapid step-in rights by the Operator, as required by the Regulations, and for co-operation by the Owner should such step-in rights be instigated.

3 PREPARATION OF INFRASTRUCTURE AGREEMENT

As a first step in the preparation of the Infrastructure Agreement the Operator will prepare and give a draft of the Agreement to the Owner based on the provisions in this direction. The Parties will no later than two months from the date of this direction reach agreement on the text of an Infrastructure Agreement as provided for in Regulation 18 and incorporating the provisions of this direction and submit it to the CER for approval. In the event that agreement is not reached on particular provisions of the Agreement, notwithstanding this direction, the Parties will identify the differences to the CER and request a determination.

The Parties will immediately establish an Infrastructure Agreement Implementation Group which will oversee the preparation and implementation of the Agreement. The CER will be advised of the members of this Group and will receive weekly progress reports from it until the date the Agreement is submitted to the CER for approval.

The Agreement will be the basis of the relationship between the Parties and there will not be any other arrangement or agreement.

4 SPECIFICATION OF TRANSMISSION SYSTEM ASSETS

For the purpose of the Infrastructure Agreement the transmission system will comprise the following assets of the Owner as they exist at present and as they come into existence in accordance with the provisions of the Infrastructure Agreement:

- All plant operated at 400kV and associated equipment. This includes lines, cables, busbars, switchgear protection, control and metering. Transformers and some of their associated protection may be either part of the transmission system, the distribution system or a generator's connection depending on location in individual circumstances.
- All plant operated at 275kV and associated equipment. This includes lines, cables, busbars, switchgear, transformers, protection, control and metering.
- All plant operated at 220kV and associated equipment. This includes lines, cables, busbars, switchgear, protection, control and metering. Transformers and some of their associated protection equipment may be part of the transmission system, distribution system or a generator's connection depending on location in individual circumstances.
- All plant operated at 110kV and associated equipment which are part of the meshed 110kV network. This includes lines, cables, busbars, switchgear, protection, control and metering. Transformers and some of their associated protection equipment may be either part of the distribution systems or a generator's connection depending on location in individual circumstances. The radial or sectionalised 110kV system located in the Greater Dublin Area and other parts of the country which serves to supply electrical energy to distribution points in radial circuits will constitute distribution assets rather than transmission assets.
- All plant and associated equipment which connects a generator or an individual final customer directly to the transmission system are designated as transmission assets, noting that in certain instances under Section 37 of the Act the connecting party may at his own choice own these assets.
- All interconnections between the Irish electricity system and other electricity systems. This includes all lines, cables, switchgear, transformers, protection, control and metering equipment.

For the avoidance of doubt, the boundary between the transmission and distribution system will be the high voltage bushings of distribution transformers, the line terminal of teed distribution stations, and the outgoing disconnect of a tailed sectionalised or radially fed distribution circuit.

Where a situation arises which does not fit into one of the above categories the function of the asset in question will be assessed to determine whether it is part of the transmission system or not.

This specification will change in the future only if the CER directs such a change in response to representations from either or both of the Parties or on the CER's own initiative.

This specification is without prejudice to the outcome of negotiations between ESB and EirGrid on the Transfer Agreement in so far as this relates to telecommunications and SCADA equipment and other matters.

5 RESPONSIBILITIES FOR DEVELOPMENT AND CONSTRUCTION

The allocation of responsibilities between the Parties for the purpose of enabling the Owner discharge its duty under Regulation 18(3)(a) to carry out construction work in accordance with the Operator's Development Plan will be based upon the development and construction stages of activities set out in **Appendix 1**. These stages are summarised in **Table 1** below.

Table 1: Development and Construction Stages

<ol style="list-style-type: none">1. Conduct Planning and Feasibility Studies2. Develop Indicative Programme for Project Stages3. Advance to Planning Permission4. Preliminary Work for Procurement5. Prepare Project Detailed Design and Specification6. Construct Project7. Project Review8. Issue Declaration of Fitness, Commissioning and Hand Over

5.1 General Principles to Apply to Construction Responsibilities

The Owner will carry out construction work in accordance with the Operator's Development Plan using its own resources and outsourcing to contractors. The Owner will also implement any other works required under the Development Plan and carry out any other requirements applicable to it under the Regulations.

Where responsibility for an individual stage is assigned to the Owner but the Operator has a right to a degree of monitoring and oversight in order to discharge its obligations under the SI, this will be accommodated by the Parties drawing on the model of a "client's engineer" as used in construction and engineering contracts (where the "client" will be the Operator). For the avoidance of doubt, it is not the CER's intention here to attribute a contractual or legal status to the "client's engineer" as opposed to the Operator. The "client's engineer" will be the instrument for upholding the Operator's legitimate interests, as specified in further detail later in this direction. Neither is the CER requiring the Parties to adopt any particular one of the various models of client engineer employed in the industry. Whichever model is chosen by the Parties will inevitably have to be adapted to accommodate the unique features of the contractual relationship between the Parties to the Infrastructure Agreement.

Where responsibility for an individual stage is assigned to the Operator and this entails management of the Owner's assets, the Operator will use reasonable endeavours to ensure that the legitimate property interests of the Owner are protected, subject always to the extent compatible with the Regulations and all related legislation.

5.2 Responsibility for Individual Construction and Development Stages

The allocation of responsibilities for individual stages of construction and development will be as described in Sections 5.2.1 to 5.2.8 below. Provisions for the general duty of cooperation between the Parties in the discharge of these particular responsibilities are set out in Section 5.3.

5.2.1 Stage 1 – Conduct Planning and Feasibility Studies

Planning and feasibility studies will be the responsibility of the Operator.

The Owner will be required to make available to the Operator on request, cost projections for network planning and modelling purposes. The main steps in this process (which is highly iterative) are:

- the identification of system reinforcement requirements
- the identification of indicative options and selection of one or more options
- progression of an indicative option towards planning permission
- the identification of the costs to be incurred in carrying out such work

5.2.2 Stage 2 – Develop Indicative Programme for Project Stages

Developing indicative programmes for project stages will be the responsibility of the Operator. The activities carried out will involve identification of the optimum or preferred solution to particular requirements of the system. This will involve considerations such as the long-term development of the network, long-term economic evaluation of the alternatives, practical considerations regarding access and environmental considerations.

5.2.3 Stage 3 – Advance to Planning Permission

The securing of planning permission is integral to both overall network planning and to the specification of transmission development. On this basis all activities in this stage and will be the responsibility of the Operator, including:

- Route and site selection
- Identification of environmental requirements
- Landowner relationships
- Handling ongoing publicity
- Preparation of Environmental Impact Statement (EIS) and use of mitigation measures
- Preparation and submission of planning application

5.2.4 Stage 4 – Preliminary Work for Procurement – Role of Project Agreements

Responsibility for the preliminary work stage will be split between the Operator and Owner. Individual projects will be identified by the Operator in the Development Plan. The Development Plan will, amongst other things, outline Conceptual Projects, Public Planning Contingent Projects and Committed Projects. Responsibility for progressing specific projects up to and including planning permission will rest with the Operator while responsibility for progressing projects from the grant of Planning Permission to commissioning will rest with the Owner.

The Operator will provide an outline design and costs for each specified project which will be in sufficient detail for the Owner to develop detailed designs and go out to tender for equipment and installation as required.

In addition, the Operator will have responsibility for negotiating wayleaves with landowners on behalf of the Owner. The Owner will serve the wayleave in accordance with the terms agreed by the Operator.

Projects will be identified by the Operator as Committed Projects once planning permission has been achieved and will be subject to a handover from the Operator to the Owner. The handover requirements will include:

- Functional specification for the project - to be determined and provided by the Operator
- Outline design specification - to be provided by the Operator
- All generic design standards to be used – to be provided by the Operator
- Any additional design standards - to be determined and provided by the Operator
- Project review mechanisms – to be agreed between the Parties
- Capitalisation of the Operator’s input in the development and construction of projects including payment by the Owner to the Operator for such costs.

Handover requirements will need to be finalised after completion of public planning but may be the subject of iteration between the Operator and the Owner.

The Owner will have the right to propose alternative design standards and the Operator will give due consideration to such proposals.

There will be a **Project Agreement** for each project. A generic Project Agreement will be annexed to the Infrastructure Agreement. The Project Agreement will describe each project in sufficient detail in terms of physical characteristics, outline design, works to be carried out, costings and planned implementation schedule to enable it form the basis for reviewing the discharge by each of the Parties of their respective responsibilities. The sum of the Project Agreements for any particular year will, in principle, correspond to that year’s Development Plan output. It will also form the basis of the allowed capital costs to be recovered under the Transmission Use of System tariffs for that year.

The Project Agreement will not purport to affect the basic contractual relationship between the Parties. This will be determined by the Infrastructure Agreement alone. Any conflict between the Infrastructure Agreement and a Project Agreement will be taken as unintended and will be resolved in favour of the Infrastructure Agreement.

Upon receipt of the handover requirements, and within a timescale to be agreed, the Owner will indicate to the Operator the measures it intends taking to implement each project. The Operator will approve (or reject) the Owner's implementation plan on the basis that it fulfils (or otherwise) the requirements of the Development Plan, the outline design specification, the generic design standards, the functional specification and the planned implementation schedule.

The Operator will appoint a "client engineer" for each transmission project who will be the formal interface between the Parties and will have the following responsibilities:

- Review the Owner's detailed design and procurement specifications against the Operator's outline design, the generic design standards, functional specification and the requirements of the planning permission.
- Review detailed design documents that can have a bearing on the ultimate performance of the system.
- Monitor the Owner's progress on the project against the Development Plan and agreed project milestones and request that remedial actions are taken to correct any slippage in the schedule.
- Appraise any change requirements proposed by the Owner and approve, or otherwise, consequential changes to the Operator's outline design, generic design standards and functional specification and review consequential changes to the Owner's detailed design.
- Determine the transmission system requirements for commissioning tests to proceed.

The Operator's "client engineer" will not have a substantive on the ground role in the implementation by the Owner of the Development Plan. The Operator will operate in this regard through inspection rather than direction and on a selective audit type basis.

On procurement, the Owner will be responsible for developing a procurement and contract strategy as well as for the actual procurement of materials, equipment etc. The Owner will, however, have certain duties to cooperate with the Operator on procurement activities and the Operator will have certain rights to oversee and intervene in these activities. The forum for this cooperation will be a **Procurement Strategy Committee** to be established by the Parties. This Committee will be chaired by and have a majority representation of the Owner, but will have substantive input from the Operator. The Committee will determine and approve

- Overall transmission procurement strategy
- Supplier diversity policy
- Generic terms and conditions of contract
- Approval of bid lists - by agreement (materials and supply)
- Asset spares policy

The Operator's primary input in the procurement of materials and contractors will be exercised through the agreement of bid lists prepared by the Owner. The Owner will be responsible for management of individual contracts.

The Operator may, where it considers that the integrity of the transmission system requires it to do so, require the Owner in advance of contract award or post contract award to use best endeavours to modify the terms of a specific contract.

The Operator's right to intervene in individual cases should only arise in exceptional circumstances and where the Operator can show that the general protection it will have through setting standards, approving lists of contractors etc. is not sufficient to protect its position.

5.2.5 Stage 5 – Prepare Project Detailed Design and Specifications

The Operator will be the technical design authority and will establish and maintain generic standards and designs as are required. As stated above (Stage 4), the Operator will undertake the outline design of projects required, amongst other things, to secure planning permission. The Owner will undertake the detailed design required to progress from the planning permission to commissioning. This will be subject to meeting the Operator's outline designs, generic design standards and functional specifications.

On occasions detailed design may be required to achieve planning permission. In such circumstances the Owner will provide an accelerated detailed design at the request of the Operator.

Any variations from the Operator's outline design, generic design standards or functional specification required by the Owner during the course of the project, will only be implemented following consultation with and approval of the Operator.

The Owner will provide the Operator's client engineer with access to detail design documents and drawings for projects to ensure compatibility with functional specifications. This will enable the Operator to satisfy itself that site specific requirements meet the Operator's design standards and that any major errors or omissions which would affect the long term performance reliability of the plant are identified and corrected.

The Operator may provide comments to the Owner as to whether, in its view, the detailed designs or procurement specifications meet the requirements of the Operator's outline design, generic design standards and functional specification. The Owner will have due regard of the Operator's comments and will demonstrate to the Operator that its design will not adversely affect the physical integrity of the network.

In the event of a dispute on detailed design, dispute resolution procedures will be implemented as per Section 15. The dispute resolution procedures will include interim resolutions which ensure that urgently required projects are not held up pending resolution of a dispute.

5.2.6 Stage 6 – Construct Project

The Owner will be responsible for constructing all projects in accordance with the Operator's Development Plan using its own resources and outsourcing to contractors.

The Owner will manage the project from hand-over to commissioning. During that process the Owner will report on progress to the Operator on a frequent basis, including signalling any possible difficulties or delays arising. This reporting will be carried out under the specific cooperation procedures for construction and development matters described in Section 5.3 below.

For the avoidance of doubt, the obligation on the Owner to carry out construction work on behalf of the Operator will include the construction of "shallow" connections to demand or generator customers as required by Section 34 of the 1999 Act, except where the customer avails of the opportunity to construct or have constructed a connection pursuant to Sub-Section 34(1A) of the Act. In the event that the Operator requests the Owner to carry out shallow connection works, the Owner will carry out shallow connection works on the basis of quotations which it will give the Operator. In the event that the customer avails of the opportunity to arrange to construct the shallow connection, the Owner will be free to provide quotations to customers.

5.2.7 Stage 7 - Project Review

The Owner will have primary responsibility for project review. The Parties will cooperate on project reviews in accordance with the procedures described in Section 5.3 below.

If the overall project time scales and main milestones as informed by the Owner and approved by the Operator provide for a commissioning date which is materially beyond that required by the Development Plan then the Parties will engage with each other in order that the appropriate actions are determined. This may include re-prioritisation of projects or other means of addressing the delay or step-in by Operator.

Any material change in the expected milestones must be advised to the Operator, including how the Owner intends to address the situation and the impact, if any, on the scheduled completion date.

5.2.8 Stage 8 - Declaration of Fitness, Commissioning and Hand-Over

New plant and equipment will be commissioned in accordance with the Operator's procedures for declaration of fitness, pre-commissioning, commissioning and hand-over procedures. The Owner will give the Operator reasonable notice to enable the Operator witness testing of major plant should the Operator wish to do so. The Operator will consult the Owner when drawing up these procedures.

The Owner will submit a declaration of fitness with supporting documentation.

The Operator will determine whether a declaration of fitness is accepted and whether a new asset can be commissioned.

5.3 Cooperation between the Parties on Development and Construction Activities

In discharging their respective responsibilities for development and construction, the Parties will observe the following cooperation procedures:

There will be a programme put in place for regular meetings between the Parties to review both general progress and individual project developments. Meetings on the former will be in the nature of Programme Implementation Progress Meetings. They will address matters of concern brought forward by the Operator, through its client engineer, or the Owner on committed projects, and will review arrangements for Public Planning Contingent Projects. The meetings will consider prioritisation of timescales and projects to meet broader programme objectives.

In addition to these meetings, there will be regular progress meetings on a project-by-project basis. The Operator will have an input to such meetings to the extent that they deal with technical performance matters or overall project progress.

6 RESPONSIBILITIES FOR MAINTENANCE

The allocation of responsibilities between the Parties for ensuring the maintenance of the transmission system, and for actually maintaining it, will be based upon the stages of activities set out in **Appendix 2**. These are summarised in **Table 2** below.

Table 2: Maintenance Stages

<ol style="list-style-type: none">1. Set and Revise Maintenance Policy and Standards2. Determine Maintenance Requirements3. Draw Up Maintenance Plan and Programme4. Procure Materials5. Carry Out Maintenance6. Deal with Discovered Work7. Fault Maintenance8. Manage Programme9. Check Work, Issue Declaration of Fitness, Commission and Hand-Over
--

6.1 General Principles to Apply for Maintenance Responsibilities

The Parties will acknowledge their mutual interests in an efficient determination of maintenance requirements and efficient allocation of resources to meet maintenance requirements. They will undertake to cooperate in respect of each other's respective functions in order to develop longer term (up to 5 years) maintenance requirements and resource plans.

The Owner will carry out maintenance tasks as required by the Operator, using its own resources and outsourcing to contractors. The Operator will ensure maintenance of the transmission system.

6.2 Responsibility of Individual Stages

Responsibilities for each of the stages in Table 2 will be allocated between the Parties as follows:

6.2.1 Stage 1-Setting Maintenance Policies and Standards

The Operator will be responsible for setting maintenance policies and standards. The Operator will have regard to the views of the Owner through the forum of a

Maintenance Policy and Standards Committee. This Committee will be chaired by and have majority representation of the Operator. It will meet at regular intervals and will have the function of reviewing

- transmission maintenance policies and standards
- replacement and refurbishment policies and standards.

6.2.2 Stage 2 - Determine Maintenance Requirements

The Owner will carry out asset condition assessment (including patrolling) and provide regular *Condition Reports* to the Operator at frequencies and to standards of practice in accordance with policies set by the Policy and Standards Committee. The Operator may inspect/audit such work at a frequency and time scales that it determines to be appropriate.

The Operator may reserve the right to carry out its own condition assessments but would make this information fully available to the Owner. This may arise for example if the Operator is not satisfied with the work carried out by the Owner or if, say, the Operator wishes to carry out specialist monitoring. There should be minimal duplication of activities by the parties on economic efficiency grounds.

6.2.3 Stage 3 – Draw Up Maintenance Plan/Programme

For the purpose of determining allowable system maintenance expenditure to be recovered by transmission use of system charges, the Operator will facilitate the Owner's submissions to the CER by indicating the volume of generic maintenance works, by asset and work class, forecast to be required in the forthcoming price control period in addition to development of longer term maintenance requirement and resource plans.

The total resource available for the maintenance period will be notified by the Owner in advance of the maintenance period consistent with the Owner's allowed maintenance revenue. The total resource available will be categorised by the Owner in relation to crews, specific competencies and by capacity.

The Owner will define its work practices and procedures in a manner which will implement the Operator's maintenance policies and standards.

The Operator will be the final determinant of the actual maintenance to be undertaken in the maintenance period.

The Owner will have a right to request additional maintenance works to be carried out on the transmission system and the Operator will have regard to such request. The Operator will take the final decision on whether such maintenance should be scheduled or not, taking account of other information such as long and short term system security and generator outage requirements.

The Owner will determine the resource available and the duration of the maintenance tasks.

The Operator will determine when transmission system outages can be taken.

The alignment of maintenance resources with requirements will require significant cooperation and communication between the Parties and will be processed as follows:

The Operator will determine the maintenance work required, in line with the maintenance policies and standards, its assessment of asset condition reports provided by the Owner, other input from the Owner and other assessment information available to the Operator. This will result in a ***Comprehensive List of Maintenance Tasks*** which the Operator will provide to the Owner. The Owner may request supplementary maintenance tasks to be included in this List. The List will be an unconstrained list (from a resource and system perspective) arising solely from a consideration of condition reports and the application of transmission standards and policies. Consequently, it will need to be modified through further consideration by Operator of available outages, transmission system conditions and generation requirements.

The Owner will provide the Operator with projected maintenance works costs to enable the Operator to take such costs into account in determining the scope of maintenance required.

The Operator, in submitting the Comprehensive List of Maintenance Tasks to the Owner, will indicate major outage constraints. Given that the Operator will have knowledge of likely outage durations associated with specific work types, the List may also indicate work which is likely to be required to be done (a) live, (b) with mobile bays, or (c) on an accelerated work schedule. In giving such indications the Operator will have regard to the total maintenance resource capacity previously indicated by the Owner to the Operator.

The Owner will submit to the Operator the outage duration required on each asset to complete work along with maintenance resource capacities and reasonable logistical restrictions. In general, where the work conforms to standard work sets (e.g. a normal service or detailed service on switchgear), it would be expected that down-times specified by Owner would conform to these. However, it will be for the Owner to determine the duration of each maintenance task, the maintenance capacity and reasonable restrictions. Based on this information, the Operator will draw up a proposed work programme of the maintenance tasks which it wishes to schedule taking into account other requirements known to the Operator, including system conditions, generation outage requirements and balancing of short and long terms system security. The Owner may make representations to the Operator if it has concerns with the proposed work programme.

The Operator will convene Maintenance Planning Meetings, in advance of the maintenance period, where the Parties will discuss the proposed work programme and the outage programme. Amendments may be made to take into account reasonable resource maintenance restrictions in line with maintenance capacities, reasonable resource optimisation, resource and outage interactions with the committed development programme, and other local factors known to the Parties. This programme will include a review and revision of work to be done using live-line, mobile bays, accelerated schedules etc. It may also include alterations to the work to be done, for example including postponements of work or adding other work. The

Parties will ensure throughout this process that operational efficiency is advanced and that local knowledge is fully utilised.

At the end of these meetings (which may well entail some back-checking following the meetings as there are regional boundary and system interacting issues which will mean some alterations will be required in the preliminary programme emerging from earlier meetings due to issues arising at later meetings) the Operator will issue a formal **Transmission Outage Programme** for the forthcoming maintenance season. The Owner will issue a formal **Agreed Maintenance Works Programme** detailing the agreed maintenance works and resources consistent with the Transmission Outage Programme. Both programmes will be issued in a timely manner to ensure the proper planning, including financial planning, for the coming maintenance season. All maintenance tasks identified in the Comprehensive List of Maintenance Tasks but not scheduled in the Transmission Outage Plan will be rescheduled into further maintenance periods.

Regular review meetings will take place during the year, convened by the Operator. Typically, these will happen every two to three weeks during the maintenance season. At these meetings the Transmission Outage Programme and the Maintenance Works Programme may be amended due to

- (a) changed system conditions
- (b) additional maintenance requirements including "as-found"
- (c) resource issues
- (d) planning slippage.

Any modifications to the Agreed Maintenance Works Programme will be by agreement, such agreement not to be unreasonably withheld where revised works are within the maintenance capacity of the Agreed Maintenance Works Programme.

The Operator will keep under review the volume of works required under the Agreed Maintenance Works Programme. In the event that the volume differs from the volume agreed in the allowable expenditure determination by the CER, the Owner will inform the CER of such variance. The CER will determine whether any over or under recovery arising from the volume variance should be effected, and if so how and when.

At all stages in this process there will have to be significant day to day interaction between Operator and Owner personnel, in addition to scheduled meetings. The Operator will endeavour to accommodate reasonable resource restrictions in determining the maintenance to be scheduled. In the end, however, the needs of the system will often have to predominate over other factors - e.g. following generation outages, major constraint cost issues, reconfiguration of network due to other line outage requirements and so on. The solutions to specific cases will often involve a rearrangement of a number of scheduled work items by either or both Parties. Ultimately, and where necessary, the Operator solely will make the decision as to the outage programme, as only the Operator will have the full information as to the state of and requirements of the transmission system.

Should remedial maintenance be required (unplanned or breakdown), this may take precedence over planned maintenance and the planned maintenance for the period may be readjusted by rescheduling planned maintenance works into the following season.

6.2.4 Stage 4 - Procure Materials, Maintenance Stocks

The Owner will have responsibility for procuring and maintaining stocks of equipment for normal repairs and maintenance activities as well as strategic spares. Materials will be purchased by the Owner to the Operator's standards. The legitimate interests of the Operator in the discharge of the Owner's procurement activities will be accommodated in the **Procurement Strategy Committee** described in Section 5.2.4 above.

6.2.5 Stage 5 - Carry out Maintenance

The Owner will carry out the maintenance programme each year as specified by the Operator.

The Owner will perform maintenance work and be responsible for work specifications and working methods.

6.2.6 Stage 6 - Deal with Discovered Work

Except where the Owner is delegated authority from the Operator, the Operator will decide what remedial or non-urgent repair work is required. Where the Owner has the delegated authority to decide on work discovered during maintenance or following inspection, the Owner will be required to keep the Operator informed of the work identified, target dates for completion and progress.

The Operator may revise target dates in line with agreed procedures to meet system requirements.

Where, in performing maintenance, possible additional requirements are identified by the Owner while carrying out the maintenance then the Operator must be informed as soon as possible so that the Operator may decide what action is required.

6.2.7 Stage 7 - Fault Maintenance

The Parties will draw up and agree standard procedures for dealing with faults including reporting faults and investigation of faults so that the Operator may decide what action is required. The Owner will execute the discovered and fault maintenance work to standard procedures.

The Operator will have the final decision on what maintenance is required and carried out due to a fault on the system. For certain defined work, the Owner may have the delegated authority from the Operator for deciding the work required.

The Owner will provide routine stand-by and emergency cover.

6.2.8 Stage 8 - Manage Programme

The Owner will have responsibility for managing the maintenance programme subject to transmission system considerations. The Owner will liaise closely with the Operator through formal reporting and interface arrangements to be specified in the Infrastructure Agreement.

6.2.9 Stage 9 - Check work, Issue Declaration of Fitness, Commission and Hand-Over

The Operator will carry out scope completion and quality audits on selected works.

The Owner will be responsible for pre-commission and commissioning tests carried out to the Operator's procedure and, where required by the Operator, will submit a declaration of fitness for approval.

The Operator will be responsible for the safe return of assets to service where applicable.

Detailed, accurate records on work progress must be provided by the Owner to the Operator to agreed time-scales.

If the Operator believes that the Owner is failing to maintain the system to the required standards or within the planned timescales the Operator will make the Owner aware of its concerns and the Owner will undertake measures calculated to address these concerns, in line with agreed Step-In procedures.

7 AGREED LIST OF CONTRACTORS

Where the Owner decides to outsource construction or maintenance work it will, in addition to complying with EU public procurement rules, select contractors only from a list of potential contractors which has been agreed in advance with the Operator. This list may differentiate between different categories of contracts or services as the Parties see fit.

The Owner will be responsible for maintaining and updating the agreed list of contractors. The addition or removal of a contractor to/from the list will be subject to the approval of the Operator. Where the Operator refuses to give this approval it will give reasons to the Owner.

For the avoidance of doubt, outsourced contractors will include the separate businesses of ESB.

For the purpose of securing agreement on the list of contractors, the following procedures will apply:

- The Owner will draw up proposed pre-qualification criteria for different work activities.
- The Owner will consult and agree these criteria with the Operator.
- The Operator will advise of additional names (if any) to be included in pre-qualification invitation
- The Owner will draw up a draft Pre-Qualification Evaluation Report categorising respondents as “on” or “off” the list on the basis of the application of the pre-qualification criteria
- The Owner will consult with Operator on this Report and the Parties will agree a list of approved contractors.
- The Owner will notify contractors as per agreed list.

8 REMUNERATION OF OWNER

The remuneration due to the Owner for construction and maintenance works carried out will be determined solely by the CER. It will be identified in advance on an annual basis and communicated to the Parties.

The Parties will agree a system of monthly payments to the Owner as they see fit but subject to the principle that these payments should seek, in so far as is reasonably practical, to mirror the anticipated flow of income accruing to the Operator from TUoS tariffs and the anticipated timing of outlays by each party.

The CER will review at the end of each year the discharge by each Party of its responsibilities under the Infrastructure Agreement. Should any adjustment to the aggregate remuneration by the Operator to Owner for that year be necessitated by the outcome of that review this will be effected by the relevant Party.

9 STEP-IN RIGHTS

The Operator will have the right to arrange for work to be undertaken by an approved contractor in the case of delay or default by the Owner. The costs of such will be borne by the Owner.

If the Operator believes that the Owner is delayed or in default, then the Operator will notify the Owner and the CER of its concerns, providing all information as may be required to substantiate the claim.

The Owner will be required to respond to the Operator's notification of delay or default within two weeks of the notification of same by the Operator. The Operator shall seek a direction from the CER to exercise step-in rights.

Where the Owner accepts that there is a delay or default it will propose ways to reduce, minimise or alleviate any delay or default. The Owner will be required to submit such proposals within two weeks of the delay or default coming formally to the attention of the CER.

Where the Owner does not accept that delay or default has occurred it will set out its reasons with supporting information. The Owner will be required to submit such reasons to the CER and Operator within two weeks of the delay or default coming formally to the attention of the CER.

The CER will be the sole determinant as to whether there is a delay or default by the Owner.

Rather than directing the Operator to exercise step-in rights, the CER may at its discretion, in the interests of customers, direct the Owner to undertake corrective actions proposed by the Operator or other corrective actions that it may see fit.

To ensure that the Operator is in a position to effectively exercise its step-in rights the Agreement will require that all contracts for the provision of labour and/or materials entered into by the Owner will contain a provision that allows the Operator to take over such contract. Also, the Owner will ensure that the Operator is in receipt of all information relating to any contracts entered into for the provision of labour or materials on an on-going basis.

The above procedures are without prejudice to the rights of the Operator to seek emergency-style step-in rights and for the CER to allow such rights where it is satisfied that exceptional circumstances require more rapid step-in.

In managing the commercial aspects of contracts, the Owner must not combine Distribution and Transmission work in one contract.

10 RELATIONSHIP WITH GRID USERS

The Operator has exclusive statutory responsibility for offering terms and entering into agreement with third parties for connection to and use of the transmission system. Third parties, in turn, have the right - enshrined in EU and domestic law – to connect to and use the transmission system on the basis of regulated agreements with the Operator. On this basis, third parties will have connection and use of system contracts exclusively with the Operator and will not have separate contracts with the Owner.

The Operator will ensure that contracts with third parties protect the legitimate property interests of the Owner. These rights should be curtailed only to the extent necessary to uphold the Operator's statutory duties and the statutory rights of third parties. The Parties will cooperate on identifying and protecting these rights in drawing up the Infrastructure Agreement.

Agreements between the Operator and third parties may contain reasonable limitations on the rights of redress of third parties in the event of a breach by the Operator. This will, among other things, serve to contain the potential exposure of the Owner under the indemnities, which it will be required to provide to the Operator (see Section 11 below). It is recognised that these agreements between the Operator and third parties will continue to be subject to the CER approval in the first place.

11 RISK, LIABILITIES AND INDEMNITIES

It is a necessary consequence of the Infrastructure Agreement itself, that the Parties will incur risks and potential liabilities to each other and to third parties in the discharge of their respective functions. These risks and liabilities will be contractual in nature in so far as they arise between the Parties and themselves. They will also be contractual in so far as they arise between the Operator and third parties which have been granted access to and use of the transmission system. In addition to contractual exposure, both Parties will be exposed to risks and liabilities to third parties in tort and on grounds of breach of statutory duty.

This direction does not purport to deal with the scope or detail of such risks and potential liabilities which are matters of general law. The Parties are free to negotiate suitable provisions dealing with risk management and allocation in drawing up the Infrastructure Agreement, subject to incorporating the following principles:

- Risk should be allocated between the Parties to reflect the allocation of their respective responsibilities under the Agreement.
- Each Party will indemnify the other in respect of liabilities which that other Party incurs to third parties to the extent that these liabilities result from the fault of the first Party. For the avoidance of doubt, this provision is not intended to modify the existing limitation on ESB liabilities to third parties or to expose the Owner to a potentially greater degree of liability than is at present the case.
- The Parties will acknowledge that both of them will have a potential exposure to third party liabilities arising from the Operator's contracts with third parties and, more generally, from the operation of the law, statute and otherwise. The Parties will also acknowledge that they will be relying on each other to limit this potential exposure, to the extent compatible with CER regulated agreements with third parties and with the Parties' general statutory obligations. They will also undertake to cooperate in the management and containment of any liability if and when it arises.

12 ENERGISATION, DE-ENERGISATION AND DECOMMISSIONING

The Agreement will provide that the Operator is solely responsible for authorising the energisation or de-energisation of any part of the transmission system. The Owner will be required to comply with any instructions from the Operator relating to the energisation or de-energisation of parts of the transmission system.

Where decommissioning of parts of the network is required this will be included in the Development Plan prepared by the Operator and implemented by the Owner.

13 DUTY OF COOPERATION AND EXCHANGE OF INFORMATION

The Parties will cooperate at all times in order to facilitate the discharge of their respective functions as specified under the 1999 Act, the Regulations, their licences and the Infrastructure Agreement itself.

This duty to cooperate will include the provision of information held or obtained by the Owner in the discharge of its functions under the Act, the Regulations and its licence to the Operator as may be required by the Operator to discharge its functions as specified under the Act, the Regulations and its licence.

The Owner will have access to all information relating to the condition of its assets which it reasonably requires to protect its legitimate property interests except to the extent that disclosure of such information would entail the Operator breaching its duties to third parties or its licence obligations.

14 EMERGENCY ARRANGEMENTS

The Agreement will contain provisions incorporating Regulation 18(7). Specifically, it will require each Party to unilaterally take the necessary safeguarding and remedial measures where the Party is of the opinion that an emergency, as described in the Regulation, has arisen and to report as soon as practicable to the other Party and to the CER. The Agreement will specify, in so far as is possible, the procedures to be followed by both Parties in the event of an emergency arising.

The Operator will take over the operation of any emergency safeguards or remedial actions put in place by the Owner where it considers it appropriate.

15 DISPUTE RESOLUTION

The Parties will use all reasonable endeavours to resolve any dispute on the interpretation or implementation of the Agreement that may arise under the Agreement. The Parties will have a right to refer a dispute to the CER for determination, either jointly or unilaterally. This should not preclude the existence or an alternative dispute resolution mechanism providing this mechanism does not purport to deny the right of either party to refer a dispute to the CER.

16 MODIFICATIONS OF AGREEMENT

The Agreement will contain a procedure that will be followed when either party or both require the Agreement to be modified.

All modifications to the Agreement will be subject to the approval of the CER.

The CER may direct the Parties to agree a modification to the Agreement at any time to reflect CER's industry requirements.

17 PERIODIC REVIEW

The Agreement will contain provisions for the periodic review of the Agreement.

The first such review will commence one year after the Agreement has come into effect and will be carried out jointly by the Parties. Thereafter, the Parties will annually review the Agreement. After each review, the Parties will submit independently a report as required by Condition 2(4) of their respective licences to the CER within two months of this review.

This report will include:

- Any recommendations for modification to the Agreement
- Commentary on the overall operation of the Agreement

18 TERM

The Agreement will be of indefinite duration subject to the Regulations being repealed or amended.

Tom Reeves

Member of Commission

APPENDIX 1: DEVELOPMENT AND CONSTRUCTION ACTIVITIES

1. Conduct Planning/Feasibility Studies

- Model network scenarios
- Model load scenarios
- Evaluate options
- Determine required-by date for reinforcement
- Select one or more indicative options

2. Develop indicative programme for project stages

3. Advance to planning permission

- Identify alternative route(s)
- Identify substation site(s)
- Issue Survey Notices
- Prepare Environmental Impact Statement(s)
- Iterative discussions with planners
- Carry out public consultation
- Select preferred route
- Prepare preliminary design and survey
- Go through planning process (submission of preferred candidate project; ongoing discussions with planners; planning appeals; oral hearings; legal appeals)
- Project planning approval

4. Preliminary work for Procurement

- Outline design
- Outline costs
- High level programme
- Contract Strategy
- Procure materials/contractor where appropriate

5. Prepare Project Detailed Design and Specification

- Prepare detailed designs -line designs, civil works, layout and electrical

6. Construct Project

- Wayleaves
- Carry out work
- Report on work progress

7. Project Review

- Supervise, check, audit, monitor
- Quality Assurance
- Vary as required
- Interim Certification

8. Issue Declaration of Fitness, Commission and Hand-over

- Commission
- Issue Declaration of Fitness
- Certify Substantial Completion
- Certify Completion
- Hand-over

APPENDIX 2: MAINTENANCE ACTIVITIES

1. Set and Revise Maintenance Policies and Standards

- Analyse system performance
- Assess performance of asset types and classes
- Revise maintenance policies
- Policies include maintenance prioritisation criteria in so far as possible

2. Determine Maintenance Requirements

- Patrol networks
- Carry out condition assessment
- Generate tasks from Policy, Patrols, CA, Backlog, etc., etc.
- Decide between maintenance and refurbishment
- Draw up list of maintenance tasks

3. Draw up Maintenance Plan/Programme

- Prioritise maintenance tasks
- Determine outage requirements (unconstrained)
- Produce draft outage plan
- Produce draft work plan
- Produce approved transmission outage plan (following engagement and discussion)
- Finalise maintenance work plan

4. Procure Materials etc.

5. Carry out Maintenance

- Carry out maintenance work
- Carry out scope completion audits
- Report on work progress

6. Deal with Discovered Work

- Decide on appropriate response to additional requirements discovered during maintenance

7. Fault Maintenance

- Implement Standard Procedure

8. Manage Programme

- Review Work done
- Confirm Next Period
- Advise Changes
- Issue Revision

9. Check work, Issue Declaration of Fitness, Commission and Hand-over

- Carry out a regular review of work to date
- Carry out QA audits
- Issue Declaration of Fitness
- Pre-commission
- Commission
- Hand-over