

Saorgus Energy Ltd submission to CER on the proposed direction to system operators regarding Connection and Pricing Provisions of the Group Processing Approach (CER/05/010)

4.4 Generators Affected

CER raises the issue of the potential conflict that will arise when a conventional plant applies for connection and a large amount of renewables is already in the queue. However, no solution is proposed except that CER may issue a direction on the matter. This is not good enough. Potential market entrants (both renewable and conventional) need to see that a set of clear rules govern the allocation of generation capacity so that a predictable investment environment exists. CER has not yet provided the necessary clear framework. Paragraph 4.4 is an admission that CER has not yet decided how such an important issue will be resolved and is simply stating that it will be dealt with later by direction. The basis for such a future direction is simply given as the wider public interest. Both conventional and renewable generators need to know, for example, whether or not a new application for connection of conventional plant will be given priority over pre-existing renewable energy applications.

4.5 Transmission Vs Distribution Connections

The proposed direction allows for the system operators to dictate that an application be deemed transmission or distribution. Existing agreed PPAs (including AER6) that have applied for distribution connection would have had prices set with the connection method in mind. Nominating such projects as transmission connected could make them uneconomic given the higher costs of transmission-level connection. This lack of rigour is indicative of the lack of a coherent approach in CER to dealing with existing applications. In effect it is changing the rules as we go along for the benefit of ESB but with no regard for effect on the ESB's generation customers.

4.6 Connection Method

No account is taken of connections which, using the least-cost, technically-acceptable (LCTA) criterion, must be connected as stand-alone. Similarly, no account is taken of projects where the applicant is willing to pay the cost of undergrounding the connection to the connection point. It will not be reasonable to force applicants into connecting to a new shared line if it can be shown that such a direct connection can pose no risk to the end-user TUoS and DUoS tariffs. Also see 4.8 below.

4.7 TSO's Dynamic Simulations for Windfarms

The inclusion of an unknown cost element in a connection offer will mean that the relevant generation project will not be financable. It is clear that the possibility of having to pay for unspecified deep reinforcement and having to be constrained to an unknown degree until the reinforcement is installed would constitute serious weaknesses in any business case. It is clear to us

that this is yet another “degree of freedom” that ESB wishes to reserve to itself in case its modelling is deficient. Potential customers of the TSO and DSO need to know what ESB can do to remove any perceived need for this “degree of freedom” and what independent investigations, if any, have been undertaken by CER to establish that the inclusion of such penal conditions would in fact be necessary for system stability and system planning. It is not good enough for the CER to simply state that “*the Commission believes that the TSO request is reasonable*”. It appears to us that CER has not in fact evaluated this proposal from ESB in any rigorous way. If this is not the case and CER has in fact examined the proposal appropriately, it would be helpful if CER could elaborate on the results of that examination.

4.8 Connection Charging Issues

It is stated in section 4.8 that the “overall connection method shall be in line with the Least Cost Technically Acceptable (LCTA) principle” . It is unclear from this and other CER directions if this principle is subordinate to the group processing philosophy or vice versa. If, as we suspect must be the case, the LCTA criterion must be adhered to, the group processing approach can only work if it can be shown to lead in all cases to the least cost, technically acceptable connection method. However, if it can be shown that in a particular case that another method is technically acceptable and if it is the least cost method (or if the generator pays the difference), that alternative method must also be accepted by TSO-DSO. For CER to not allow such a connection would then raise concerns about the basis of the decision to give the group processing approach priority over the LCTA criterion in a particular case when the opposite is generally the case.

The use of probability factors in calculating the cost of a connection is fraught with difficulty. CER proposes to use a probability factor of 1 in Gate 1. A factor of 1 assumes that the envisaged risks do not exist in gate 1. However, it is well known that there are many reasons within Gate 1 for connections to not proceed. Chief among these is planning permission which is not in place for the power lines in many if not most of the gate 1 connections. If planning permission cannot be obtained, the connection cannot go ahead in Gate 1 and a zero-risk philosophy will be shown to be wrong. CER needs to explain how risks that are clearly non-zero are all assigned a value of zero. If CER proposes to assign a zero overall risk in Gate 1, how does it then propose to evaluate the other risks that will need to be incorporated into the calculation of the probability factor in Gate 2? If, for example, planning permission is zero rated, why would other factors be deemed to be higher risk?

In fact, the Gate 2 probability factor is also proposed by CER to be set at 1. This is without the presentation by CER of any evaluation of the other risks (other than planning) of non-build within Gate 2. Therefore, for the time being CER appears to be discounting any risk of non-build in Gates 1 and 2. However, CER appears to also reserve the right to change the probability factor at a later date, even after some applicants have taken up their offers. This means that those who have accepted their offers could be retrospectively charged an unspecified amount. Alternatively, it means that those in a group/subgroup who have yet to accept an offer will be charged in a way that

others in the same group were not liable to pay. This ESB/CER approach of reserving the right to charge unspecified sums on the basis of subjective “probability factors” at some unspecified later date flies in the face of reality (and is not the only one proposed in this draft direction). Financing any project, even a domestic dwelling, is not possible if outside agencies have the power to impose unspecified costs when they choose. This “loose” approach proposed in this draft direction is clearly poorly conceived and unworkable.

It is also unclear how the proposed method of charging and bonding is to deal with the issue of planning permission for the export line. Applicants are not required to have arranged for planning permission and landowner agreements in place prior to offer acceptance. Therefore, if ESB is unable to obtain planning permission for the shared or dedicated portions of the connection, will the connection bond and paid charges be refunded? If the connection is contestable and the applicants themselves fail to get planning permission for the dedicated shallow connection, will a refund be made in this case? If landowners on the line route are uncooperative, will this be a justification for refund? Will planning permission or land access problems for other aspects of the project constitute grounds for refund? These are issues which, if not defined very carefully, will render the whole charging and bonding method ineffective and will bring the CER capacity allocation process further into disrepute. The proposed direction does not even mention planning permission.

4.9 Contestability

It appears to us that some reality in terms of competition law must come to bear on the approach proposed in this draft direction. In a previous submission to the CER (Annex 1 attached as part of this submission), Saorgus Energy pointed out to CER that it has a statutory role in preventing any abuse of market position by ESB Networks. In order to monitor any such abuse, Saorgus Energy advised the Competition Authority that when CER has decided on the fixed price to be charged by ESB Networks for new connections, the mandated prices will be compared with market prices. If appropriate, a formal complaint will be made to the Competition Authority at that time. In short, if CER allows ESB Networks to charge prices above open market prices, it will have failed in its regulation of a state monopoly to the detriment of the final electricity consumer.

Annex 1

Submission to CER of 4/2/05 – 4 pages

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Friday, 04 February 2005

Dear Aidan,

Saorgus Energy Ltd submission to CER on ESB Networks pricing submission

Saorgus Energy Ltd calls on CER not to approve the standard pricing proposals contained in the recent ESB Networks submission to CER. We call on CER to instead abolish the ESB Networks monopoly in construction of network assets at distribution level. This monopoly only serves to increase ESB Networks' profits at generators' expense.

Despite having a statutory duty to promote competition, CER has shown no inclination in the past to remove the ESB Networks monopoly. Indeed, the recent CER direction on group processing of connection applications for renewables further bolsters this monopoly. We have therefore found it necessary to write to the Competition Authority on the matter. The attached letter, which explains our position on pricing in more detail, should be treated as part of this submission.

Yours sincerely,



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Thursday, 03 February 2005

Abuse of dominant position by ESB Networks

Dear David,

Thank you for your phone conversation of today. ESB Networks has recently made a submission to the CER on pricing of construction of new power lines. The prices submitted for CER approval are well in excess of market-based prices and, in common with other electricity generators, we are concerned that CER will approve these prices.

By regulatory decision, ESB Networks has a monopoly on construction of distribution level (medium and low voltage) power lines. The term used is that the construction is "non-contestable". However, non-contestability does not mean that only ESB staff are allowed to do the construction. ESB Networks uses very many independent contractors for the construction of such lines. Neither is it because of network security – construction of more sensitive high voltage transmission lines is already contestable. It is clear that the only reason for the existence of non-contestability at distribution level can be to give ESB Networks an overall monopoly on the awarding of distribution level construction contracts. The advantages of this to ESB Networks when dealing with generators are obvious. ESB Networks can take full advantage of the market when dealing with its own sub-contractors in order to get the best price available. However, no such advantages are allowed to generators (customers of ESB Networks) who are forced to accept fixed and higher-than-market prices in return. Surely this is an example of abuse of a monopoly position where the advantages of the monopoly are not passed on to the customer. We are of the firm view that

the recent pricing submission from ESB Networks to CER is an attempt to get CER to consolidate ESB Networks' monopoly and to exacerbate the disadvantages suffered by its customers.

Although CER is charged with regulating the monopoly's prices, it is unanimously regarded by generators as being unable and unwilling to meaningfully challenge ESB Networks on such issues. If CER does not force ESB Networks prices to be set at the market level, it will have failed in its statutory duties to protect the interests of customers (in this case generators) and to promote competition. Instead it will effectively preserve and encourage the monopoly in network construction. There is no reason in terms of national economic good or in terms of network security for this monopoly to exist. However, the fact that it has been allowed to exist does not imply that the dominant position can be abused. Therefore, if CER continues to allow the ESB Networks monopoly to impose increased costs on generators, it will be incumbent on the Competition Authority to take action. Following the publication of the forthcoming CER direction on the matter, Saorgus Energy Ltd will make a further submission to the Competition Authority detailing the discrepancies (if any) that exist between ESB Networks prices and market prices.

To illustrate the points above, we would like to draw the Competition Authority's attention to a specific case. Saorgus Energy Ltd has informed ESB Networks that it wishes to construct an underground cable to export power from a new AER6 wind farm at Muingnaminnane in Co. Kerry to a local ESB substation. However, CER and ESB Networks are both working hard to preserve the ESB's monopoly in this case. A recent CER direction stipulates that only overhead ESB-constructed power lines can be used to connect wind farms to the network. In turn, ESB Networks have told us that only they can and will construct this export line. ESB Networks and CER have therefore imposed a situation where an independent contractor will in all probability do the actual work (ESB Networks have too few staff for current work commitments) but with the ESB imposed as a middleman. There can be no reason for this imposition except for ESB to take a CER-approved profit margin on a tendered cost of construction. This is an excellent example of abuse of a monopoly position, cemented in place by the regulator.

The only way to remedy this situation is for generators to be able to challenge costs. We would suggest that the simplest way for this to occur is to make work related to the design and construction of all power lines contestable. However, even if the ESB Networks monopoly remains in place for the short term, generators should be free to invoke the "least cost, technically acceptable" criterion that ESB Networks is itself already subject to. This can be implemented by allowing generators to refer ESB to a cheaper contractor for all aspects of a connection such as design, procurement and construction. Under the existing "least cost, technically acceptable" criterion, ESB Networks should then be required to accept this

contractor as a sub-contractor on the job with a nominal cost added for oversight. However, such a solution would be artificially complex and would allow a needless monopoly to continue. The abolition of the non-contestable rule remains the simplest solution and the only one consistent with current practice relating to transmission connections.

I will make a further submission to the Competition Authority when the CER direction is published.

Regards,

A handwritten signature in black ink, appearing to read 'Aidan Forde', with a stylized flourish at the end.

Aidan Forde