

# PHILIP LEE

SOLICITORS

DUBLIN • BRUSSELS

5 March 2008

PL/MO'R

***By e-mail only***

John O'Connell,  
Electricity Distribution,  
Commission for Energy Regulation

[joconnell@cer.ie](mailto:joconnell@cer.ie)

**Re: Consultation CER/08/017 – comments on behalf of Art Generation Ltd**

Dear Mr. O'Connell,

We have been instructed to provide comments on behalf of Art Generation Ltd (“Art”) in relation to consultation CER/08/017 - the “DSO’s proposals on the Least Cost Technically Acceptable Criteria, Rebates and Fees” (the “consultation document”).

As a preliminary point, please note that nothing in this letter should be construed as an acceptance of the LCTA connection method or the group processing approach. However, because Art acknowledges that these issues are not specifically the subject of the consultation document its comments are confined to the contents of that document.

The main thrust of the Distribution System Operator’s (the “DSO”) proposal is that costs incurred by developers should be factored into the Least Cost Technically Acceptable (the “LCTA”) assessment. In principle, Art agrees with this approach. However, Art objects to the fact that the DSO wishes to assume responsibility for assessing what these costs will be.

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The DSO has no particular expertise in assessing these costs, which are market driven and more often than not, the developers themselves will be better placed to carry out this exercise.

With respect to the specific aspects of the DSO's proposal, Art requests that the CER take full account of the following points:

### **LCTA approach is not sufficiently flexible**

1. The DSO states that *“The LCTA method of connection will always, in the first instance, be offered to generators. Under the group processing approach this will be the connection method associated with the overall sub-group”*<sup>1</sup>.
2. On first reading, the word “offered” in the first sentence of the above extract suggests that a developer has a choice as to whether to accept the LCTA connection method or opt for an alternative method. However, it is misleading to suggest that developers, particularly those of a smaller scale, have any alternative but to abide by the LCTA method. Because of this fact, it is vital that the LCTA connection method is sufficiently flexible to allow examination of the maximum possible number of viable connections.
3. At present, such flexibility is absent from the LCTA approach. This is clearly undesirable and a more workable approach must be adopted to avoid this occurrence. In circumstances where there is insufficient capacity at the first choice of node, it would be preferable for the DSO to consider the next nearest connection point with the capacity to absorb that developer's project.
4. If the purpose of the LCTA method is to ensure connection at an appropriate connection point, it must be mandatory for the DSO to first ensure that connection is actually possible at the point it has deemed LCTA – i.e. that there is sufficient capacity for that developer at that node. It is only when this fact is established that the DSO should be able to carry out its LCTA assessment of the point.

### **The LCTA criteria does not consider the costs implication of time delays as a result of “grouping” and the inflexible approach to LCTA**

5. The DSO has proposed that a developer's costs should be considered when assessing LCTA. Specifically, it suggests that the costs associated with carrying out the civil works and procuring transformers for a project should be considered when determining the LCTA connection point. However, these are not the only costs which should be considered.

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<sup>1</sup> Paragraph 1, page 4 of the DSO proposal

6. Developers currently have no say in determining what will be the LCTA connection point for their project on the basis of their actual costs. If a point is truly LCTA, all the developer's costs must be taken into account. Under the DSO's current proposal, less obvious costs, such as those associated with delays in achieving grid connection, are ignored.
7. The time delays experienced by developers of smaller projects are often attributable to their inclusion in a "sub-group" with a much larger project. Projects in a "sub-group" will share and finance the required connection assets in proportion to their size. Accordingly, a smaller project cannot realistically achieve connection to the grid until the larger project is also in a position to do so.
8. However, the lead in time for larger projects is usually much longer and more uncertain. As a result and despite the fact that it would otherwise be ready to achieve connection, a smaller project will be unable to connect to the grid until its larger group member is also ready to do so. This delay results invariably in increased costs for the smaller project. Financially, it will often be impossible for smaller projects to withstand such pressures.
9. Instead of assuming this risk of delay, smaller developers may well prefer a connection point that is slightly further away than what the DSO has deemed LCTA if that alternative point would allow them to avoid sharing connection assets with larger projects with no firm connection prospects. For these developers, the costs associated with increased distance would be cancelled out by their earlier connection and the avoidance of being tied to an uncertain larger project.

### **Costing the Civil Works**

10. The DSO has proposed that it will assess LCTA on the basis of, amongst other criteria, its estimate of the costs the developer will incur in the carrying out or procuring of the civil works<sup>2</sup>. Art rejects this proposal for the following reasons:
  - a. It is inappropriate for the DSO to assume the responsibility of costing the civil works. The DSO does not have any particular expertise with respect to this task and is no better placed than any developer would be to do so.
  - b. This proposal does not contemplate the possibility of the individual developers carrying out or procuring these works. Each developer must be given this option. The developer, if given the opportunity to do so, may be able to carry out or procure the civil works at a lower cost than the DSO and would undoubtedly avail of this option in such situation.

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<sup>2</sup> Table 1, page 2 of the DSO's proposal

- c. There is a danger that the costs estimates made by the DSO will, in the future, become the *de facto* benchmark against which the civil works would be priced for all future connection offers. These estimates may bear no correlation to actual costs at that time.
- d. If the CER is unwilling to accept that the DSO should not be allowed to estimate the civil costs, then the DSO must be compelled to define the meaning of “civil works” and to specify the extent and nature of the works covered by its estimates. For this purpose, there should be a technical description of the final scope of works included in the estimated figures provided by the DSO, with inclusions and exclusions clearly specified.
- e. The DSO must also provide details to the CER and the consultees of the analysis carried out for the purpose of estimating the civil costs. The means by which these figures were derived must be the subject of consultation.

### **Costing the Transformers**

- 11. The DSO proposes that the costs of the transformers be determined by reference to graphs intended to be representative of the costs incurred by developers in obtaining transformers for projects of varying scales. This approach is flawed for the following reasons:
  - a. The analysis undertaken by the DSO is too simplistic and is not based on a comprehensive technical analysis of these costs. A detailed engineering study must be carried out for this purpose.
  - b. It would have been more appropriate for the transformer costs to be derived from detailed bids made by the major manufacturers. The market must determine these costs.
  - c. The DSO must provide details to the CER and the consultees of the analysis which was carried out for the purpose of compiling its graph of transformer costs. The means by which these figures were derived must be the subject of consultation.

### **The rebates policy is incorrect**

- 12. A generator will bear the cost of providing its own connection assets. The DSO has proposed a system of rebates so that a generator will be compensated if a new party subsequently connects to its asset. Art agrees that such rebates are vital. However, it does not agree with how the DSO has suggested this policy will operate, and in particular has the following objections:

- a. The DSO proposes that rebates may only be claimed within 10 years of the generator energising. This period is unacceptably short given that the generators are required to build connection assets with a much longer design life. It is unfair to expect a generator to pay for an asset which must last for a much longer period of time but to forego adequate compensation for this outlay. The rebate should be available for the entire life of the asset.
- b. The DSO proposes that the rebate be calculated on the basis of “depreciated historical costs”. With respect, this approach is unfair and instead, the rebate should be based on replacement costs, being what a new party would otherwise incur. Depreciation may be factored into this replacement cost, if appropriate.

### **The fee for re-assignment of the connection agreement is excessive**

13. The DSO has proposed the introduction of a processing fee of €2,000.00 to cover its costs when required to facilitate the re-assignment of a connection agreement. In Art’s view, this figure is excessive and is not reflective of the actual costs incurred by the DSO. Further, because the figure is not competitive it impedes the ability of developers to re-assign their connection agreements. If the DSO insists that this sum is reflective of actual costs, it must provide a detailed breakdown of and justification for all of the costs typically incurred in such a transaction.

### **The need for further consultation**

As Art understands it, the CER views the DSO’s proposal as no more than a “high level principles” document and the details of the expanded LCTA criteria, rebates and fees will not be finalised until a later date. With respect, this is not the case.

Instead what the CER has termed “high level principles” are in reality the equivalent of conceptual or design phase engineering. Therefore, the CER must ensure that it is fully apprised of the engineering analysis which underlies the DSO’s proposal so that it can independently evaluate the merits of such. In Art’s view, it is not apparent from consultation paper CER/08/017 that this independent analysis has been undertaken.

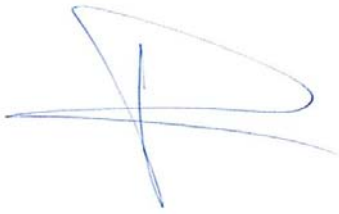
Moreover, the current proposal is clearly relevant to the ongoing Gate 3 consultation. Together the outcome of these two consultations will shape the wind industry for years to come. As such, extensive and complete consultation must take place on the DSO’s current proposal so that all consultees have the opportunity to understand and properly comment on its contents and relevance to the various Gate 3 options.

In light of the above issues, we look forward to your confirmation that:

- a. the CER will convene a public workshop to explain the detail of the DSO's proposal and its interaction with Gate 3; and following this
- b. the CER will issue a draft direction on the DSO's proposals for public comment.

In the meantime, please feel free to contact us if you have any queries.

Yours faithfully,

A handwritten signature in blue ink, consisting of a large, stylized 'P' followed by a horizontal line and a vertical line crossing it.

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**PHILIP LEE SOLICITORS**

Cc: Commissioner Michael Tutty  
James McSharry, CER