



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

**Contestability for  
Distribution & Transmission Level Connections to the  
Electricity System**

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RESPONSES TO:	Bríd O'Donovan

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## CER – Information Page

### Target Audience:

This paper will be of interest to parties involved or concerned with connection to the electricity system at distribution and transmission level, and the system operators.

### Related Documents:

SI 226 of 2009, European Communities (Internal Market In Electricity) (Electricity Supply Board) Regulations.

Responses to this consultation should be returned by email, post or fax and marked for the attention of Bríd O'Donovan at the Commission.

**The Commission intends to publish all submissions received.** Respondents who do not wish part of their submission to be published should mark this area clearly and separately or enclose it in an Appendix, stating the rationale for not publishing this part of their comments.

## Executive Summary

Part V of the Electricity Regulation Act, 1999 (the Act) is concerned with Access to the Transmission and Distribution Systems, with Section 34 of the Act specifically referring to the terms for connection to, and use of the transmission or distribution system.

New legislation, SI226 of 2009 (European Communities (Internal Market in Electricity) (Electricity Supply Board) Regulations 2009) signed by the Minister for Communications, Energy & Natural Resources on 15<sup>th</sup> June 2009, now permits offers for connection to the electricity network at distribution level on a contestable basis i.e. the applicant and/or the Distribution System Operator (DSO) may arrange the construction of the connection to the system.

This consultation paper offers interested parties the opportunity to have input into how the DSO will process applications, offers and subsequent connection to the electricity system at distribution level on a contestable basis.

With the introduction of distribution contestability<sup>1</sup> the Commission believes it is timely to review rules governing contestability in general. The purpose of this review is to ensure that options for parties to build their connection is facilitated to the greatest extent possible. This review relates to both transmission and distribution connections. Therefore, this paper also offers interested parties the opportunity to express their views in relation to proposals by the Commission to minimise the financial risk borne by generators building shared connection assets contestably at both distribution and transmission level.

The Commission intends to submit responses to this consultation to the DSO and TSO for response/comment. Respondents may request that their response not be forwarded to DSO/TSO in which case the respondent should clearly mark the document(s) to that effect and include the reasons for confidentiality.

Finally, the Commission will consider the responses to this consultation paper and thereafter intends to conclude the consultation with a decision paper in autumn 2009.

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<sup>1</sup> *Contestability is the right of applicants to construct, or arrange to have constructed, a generator connection to the distribution system – please also see Appendix A of this document.*

## Table of Contents

Executive Summary .....	3
1.0 Introduction .....	5
1.1 The Commission for Energy Regulation .....	5
1.2 Purpose of this paper .....	5
1.3 Background Information .....	6
1.4 Structure of this paper .....	6
1.5 Responding to this paper.....	7
2.0 Distribution System Operator (DSO) Paper .....	8
3.0 Review of Barriers to Contestability .....	10
3.1 Shared Assets .....	10
3.2 Requirement for Agreement within Sub-Group .....	10
Appendix A.....	11
‘Contestability on the Distribution System – ESB Networks Position Paper 2009’	
Appendix B.....	12
Extract from SI226 of 2009 European Communities (Internal Market in Electricity) (Electricity Supply Board) Regulations 2009	

## **1.0 Introduction**

### ***1.1 The Commission for Energy Regulation***

*The Commission for Energy Regulation* ('the Commission') is the independent body responsible for overseeing the regulation of Ireland's electricity and gas sectors. The Commission was initially established and granted regulatory powers over the electricity market under the Electricity Regulation Act, 1999 (the "Act"). The enactment of the Gas (Interim) (Regulation) Act, 2002 expanded the Commission's jurisdiction to include regulation of the natural gas market, while the Energy (Miscellaneous Provisions) Act 2006 granted the Commission additional powers in relation to gas and electricity safety. The Electricity Regulation Amendment (SEM) Act 2007 outlined the Commission's functions in relation to the Single Electricity Market (SEM) for the island of Ireland. This market is regulated jointly by the Commission and the Northern Ireland Authority for Utility Regulation (NIAUR). The Commission is working to ensure that consumers benefit from regulation and the introduction of competition in the energy sector.

### ***1.2 Purpose of this paper***

The purpose of this paper is to seek the views of interested parties with regard to the DSO arrangements for dealing with connection offers accepted with the option of pursuing contestability for connections to the electricity system at distribution level. This paper also seeks the views of interested parties in relation to the financial risk associated posed to generators in situations where parties choose not to proceed with the contestability route following acceptance of a contestable offer, for shared connection assets. This risk is currently borne by generators at transmission level and the Commission intends to address the issue for both distribution and transmission level generators.

With the enactment of new legislation, SI 226 of 2009 (European Communities (Internal Market in Electricity) Regulations 2009) in relation to contestability at distribution level, applicants are now permitted to arrange construction of a connection to the distribution system (and/or the applicant and the system operator in agreement may arrange the connection). Such contestability has been allowed for transmission level connections since 2000 (under SI445 of 2000) and the Commission welcomes this new legislation to equally apply to distribution level connections.

To aid the Commission in this consultation, the DSO has developed a procedure for the purpose of accommodating distribution contestability and it is the DSO's paper which forms the main body of this consultation paper.

The Commission has also carried out a review in relation to the rules governing contestability in general and specifically in relation to the financial risk currently borne by a generator when pursuing a contestable connection, when one (or more) of the other generators with whom they share connection assets, does not proceed with their connection, following acceptance of contestable offer.

The Commission therefore seeks the views of interested parties in relation to the issues outlined above.

### ***1.3 Background Information***

Part V of the Electricity Regulation Act, 1999 (the Act) is concerned with Access to the Transmission and Distribution Systems, with Section 34 of the Act specifically referring to the terms for connection to, and use of the transmission or distribution system.

New legislation, SI226 of 2009 (European Communities (Internal Market in Electricity) (Electricity Supply Board) Regulations 2009) signed by the Minister for Communications, Energy & Natural Resources on 15<sup>th</sup> June 2009, now permits offers for connection to the electricity network at distribution level on a contestable basis i.e. the applicant and/or the DSO may arrange the construction of the connection to the system.

This new legislation is intended to be used for both future offers (in particular in relation to Gate 3 generator connection offers) and may apply retrospectively to existing offers, depending on the maturity of the offer and the current project phase of that connection.

Legislation to allow contestability for connections to the electricity network at transmission level has been in place since 2000 (Section 33 of SI445, 2000). Since the enactment of that legislation, the Commission has had submissions from interested parties in relation to the need for legislation with respect to contestability for connections to the electricity network at distribution level.

### ***1.4 Structure of this paper***

The paper is structured in the following manner:

- Section 2 outlines the paper developed by the Distribution System Operator's regarding their implementation of the new legislation;
- Section 3 discusses the potential barrier to contestability that financial risk poses and outlines the Commission's proposal to overcome this barrier;

- Appendix A contains DSO's paper 'Contestability on the Distribution System – ESB Networks position paper 2009'
- Appendix B shows extract from SI226 of 2009

### ***1.5 Responding to this paper***

Responses must be received by Friday 18<sup>th</sup> September 2009 and sent to:

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Belgard Square North  
Tallaght  
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Please note that the Commission intends to publish all responses to this paper on their website at [www.cer.ie](http://www.cer.ie). Respondents may request that their response be kept confidential. The Commission shall respect this request, subject to any obligations to disclose information. Respondents who wish to have their responses remain confidential should clearly mark the document(s) to that effect and include the reasons for confidentiality.

The Commission intends to submit responses to this consultation to the DSO and TSO for response/comment. Respondents may request that their response not be forwarded to DSO/TSO in which case the respondent should clearly mark the document(s) to that effect and include the reasons for confidentiality.

Should respondents wish to seek clarification on any aspects of the DSO paper prior to responding to this consultation, they should contact ESNB directly at [paul.hickey@esb.ie](mailto:paul.hickey@esb.ie). Thereafter, responses to this consultation should be forwarded to the Commission at the contact details given in Section 1.5 below.

## 2.0 Distribution System Operator (DSO) Paper

The Distribution System Operator has developed a paper outlining its plans for dealing with generator applications, and the subsequent process in relation to contestable offers. The paper includes discussions in relation to issues such as balancing generators' rights with the responsibilities of ESB Networks Ltd, contestability eligibility, and agreement requirements for multiple customers in order to develop shared assets contestably.

A broad outline of the paper is as follows:

- Sections 1 and 2 introduce the key principles relating to contestability, reflecting the principles currently in place for contestability at transmission level.
- Sections 3 and 4 give details of the activities which are contestable (and those which are not), together with outlining the process for cases where for system security and stability, the status of certain contestable activities needs to be made non-contestable.
- Section 5 gives DSO's proposal to have generators put in place a bond in relation to contestable offers in order to protect - generators in subsequent gates connecting to contestable assets; and - the DSO requiring contestable assets for system development.
- Section 6 details DSO's proposals regarding the eligibility of projects to be built contestably. This section also includes the process for facilitating pre-Gate 3 projects and the circumstances under which contestable offers may be sought by generators. Finally, the section discusses the DSO's proposals with respect to how contestable offers will be issued in the future and the criteria/conditions for reverting between contestable and non-contestable offers.
- Section 7 gives an outline of the process for receiving a contestable offer and includes details of information to be provided alongside contestable offers.

Section 8 discusses the issues surrounding the need for agreement between generators in order to build shared assets contestably.

In section 8.1 the DSO proposes that **unanimous agreement** be required from generators sharing connection assets in a specific gate and addresses the issue of inter-gate contestability as follows:

- Where contestable offers are issued **in advance** of offers to a party in a subsequent gate – the party in the subsequent gate has no right of veto and pays for connection using standard pricing with the contestable party being rebated in the usual manner.
- Where contestable offers are issued **following** offers to parties in a subsequent gate – the contestable parties require consent also from the party in the subsequent gate.

This approach on inter-gate contestability is broadly in line with that which is currently in place contestability at transmission level.

DSO also poses key questions in relation to:

- liability regarding sunk costs where a party opts out of the contestable build; and
- the requirement by all parties to accept modified offers prior to works commencing on the contestable build.

Conversely Section 8.2 discusses the issues arising from a decision to **not require unanimous agreement** from generators sharing connection assets prior to contestable build. Specifically this section poses key questions in relation to:

- which party should be allowed to undertake the contestable works (where more than one party wishes to do so); and
- incentives for generators to complete works in timescales desired by other generators and for generators to share any cost saving associated with a contestable build

The full paper is included in Appendix A.

As mentioned in Section 1 above, should respondents wish to seek clarification on any aspects of the DSO paper prior to responding to this consultation, they should contact ESNB directly at [paul.hickey@esb.ie](mailto:paul.hickey@esb.ie). Thereafter, responses to this consultation should be forwarded to the Commission at contact details in Section 1.5 above.

## **3.0 Review of Barriers to Contestability**

With the introduction of distribution contestability the Commission believes it is timely to review rules governing contestability in general. The purpose of this review is to ensure that options for parties to build their connection is facilitated to the greatest extent possible. This review relates to both transmission and distribution connections.

### **3.1 Shared Assets**

A risk currently borne by a generator when pursuing a contestable connection relates to the risk of when one (or more) of the other generators with whom they share connection assets, does not proceed with their connection, following acceptance of a contestable offer. This in effect leaves the other generators bearing all of the costs associated with the shared connection assets, including those originally apportioned to the party who no longer wishes to proceed with the connection. Currently, under the non-contestable route, generators do not bear these costs. The TUoS/DUoS customer underwrites the costs - thus forming a financially lower risk project for the remaining generators on the shared connection assets.

The Commission believes that the contrast in the risk associated with contestable and non-contestable offers outlined above, forms a barrier to contestability. Under the current transmission contestability rules, customers may revert to a non-contestable connection option at any point during their project. However, to choose such a route would depend heavily on the maturity of the project and how far into construction the project may be at the point, when one or more parties in the sub-group withdraw.

The Commission believes that customers wishing to pursue a contestable route (at either transmission or distribution levels) should not have to risk paying the costs associated with generators who choose not to proceed (following offer acceptance). The Commission therefore proposes that these costs be underwritten by the TUoS/DUoS customer (in a similar manner as if the system Operators were to construct the connection). The portion of shared costs will be added to the Transmission or Distribution regulatory asset base, based on the standard charges.

### **3.2 Requirement for Agreement within Sub-Group**

As discussed in Section 2 above, Section 8 of the DSO paper is concerned with the issue of requiring unanimous agreement among generators in order to build contestably. The Commission is interested in hearing from parties in relation to solutions to the questions posed in that Section. The Commission is also interested in hearing from parties identifying any other issues which should be considered as part of this consultation.

## **Appendix A**

### **'Contestability on the Distribution System – ESB Networks Position Paper 2009'**

## Appendix B

### **Extract from SI226 of 2009 European Communities (Internal Market in Electricity) (Electricity Supply Board) Regulations 2009**

Section 2 of SI226 of 2009 reads as follows:

'Section 34 of the Electricity Regulation Act 1999 (No. 23 of 1999) is amended by inserting after subsection (1A) (inserted by Regulation 33 of the European Communities (Internal Market in Electricity) Regulations 2000 (S.I. No. 445 of 2000) and amended by Regulation 30 of the European Communities (Internal Market in Electricity) Regulations 2005 (S.I. No. 60 of 2005)) the following:

*“(1B) An offer under subsection (1), made for the purpose of connecting a generating station to the distribution system, may, on request of the applicant, be on the basis that the applicant constructs, or that either or both the applicant and the distribution system operator arranges to have constructed, the connection to the distribution system, and any such connection constructed or arranged to be constructed by the applicant shall be the property of the person with whom the agreement is made, and shall, for the purposes of section 37(4), be deemed to be a direct line.”*