



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

Interconnector Operator Licence

DOCUMENT TYPE:	Consultation Paper
REFERENCE:	CER/09/178a
DATE PUBLISHED:	29 October 2009
CLOSING DATE:	25 November 2009
RESPONSES TO:	Paul Hogan



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

*The Commission for Energy Regulation,
The Exchange,
Belgard Square North,
Tallaght,
Dublin 24.*

www.cer.ie

CER – Information Page

Target Audience:

This paper will be of interest to parties involved or concerned with the construction or operation of interconnectors. The paper would also be relevant for anyone proposing to avail of capacity on an interconnector.

Related Documents:

Below is a list of documents related to this topic:

- [Regulation \(EC\) no 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation \(EC\) No 1228/2003](#)
- [Authorisation to Construct an Interconnector – Background Documents and Application Form](#)

Responses to this consultation should be returned by email, post or fax and marked for the attention of Paul Hogan 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

The Energy (Miscellaneous Provisions) Act 2006 (the “2006 Act”) introduced, among other things, a regime for the authorisation and licensing of electricity interconnectors by the Commission for Energy Regulation (the “Commission”). It did this by way of amendments to the Electricity Regulation Act, 1999 (“the 1999 Act”). Prior to this there was no specific statutory obligations relating to their construction or licensing.

Pursuant to the statutory provisions the Commission is drafting a new licence for the purpose of licensing interconnectors. The proposed interconnector licence is published together with this paper. The new licence contains twenty conditions as set out in the following section. The licence contains the standard conditions which are consistent with, and take the form of, the standard conditions as set out in other licences issued by the Commission. Other conditions deal with capacity utilisation, use of revenues, and access to the interconnector.

Overall the Commission is asking interested parties to comment on the appropriateness of the conditions in the licence. The Commission is also asking interested parties to suggest if further conditions are required. Finally the Commission is seeking views as to whether the licence adequately covers the future provisions of the 3rd Package¹.

¹ In brief, the 3rd Package consists of, with respect to electricity:

- The Directive concerning common rules for the internal market in electricity 3648/09, 10814/09 ADD1 REV 3,
- The Regulation on conditions for access to the network for cross-border exchanges in electricity 3651/09, 10817/09 ADD1 REV2, and
- The Regulation establishing an Agency for the Cooperation of Energy Regulators 3650/09, 10816/09 ADD1 REV1.

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 Structure of this paper	6
1.4 Responding to this paper.....	6
2.0 Legislative Background	7
3.0 Overview of the Licence Conditions.....	8
4.0 Conclusions and Next Steps	16
Appendix A – Response Format	17

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 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 Energy (Miscellaneous Provisions) Act 2006 (the "2006 Act") introduced, among other things, a regime for the authorisation and licensing of electricity interconnectors by the Commission for Energy Regulation (the "Commission"). It did this by way of amendments to the Electricity Regulation Act 1999 (the "1999 Act"). Prior to this there was no specific statutory powers relating to their construction or licensing.

The Commission may grant a licence to maintain and transport electricity across an interconnector pursuant to Section 14 of the 1999 Act, as amended by Section 8 of the 2006 Act. This Section, as amended by Section 16 of S.I. 60 of 2005, stipulates that the licensee shall be subject to terms and conditions of the licence as may be specified. Also, as inserted by the Electricity Regulation (Amendment) (EirGrid) Act 2008, the Commission can bring summary proceedings against a person who transports electricity across an interconnector without being duly licensed to do so.

Pursuant to the legislative requirements the Commission has drafted such an interconnector licence and is issuing same for public consultation. The purpose of this paper is to provide a high level outline of the Conditions detailed in the draft interconnector licence. References in this document to licence can be construed as references to interconnector licence.

1.3 Structure of this paper

The paper is structured in the following manner:

- Section 2 details the legislative background;
- Section 3 gives an overview of the new licence and briefly describes each condition in turn;
- Section 4 details the conclusion and next steps;
- Appendix A shows the response format to be used;

1.4 Responding to this paper

Responses must be received by 25 November 2009 and sent to:

Paul Hogan
Commission for Energy Regulation
The Exchange
Belgard Square North
Tallaght
Dublin 24
Email: phogan@cer.ie

Tel: 01 4000 800

Fax: 01 4000 850

Appendix B contains a response sheet, detailing the format in which responses should be made for clarity.

Please note that the Commission intends to publish all responses to this paper on their website at 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.

2.0 Legislative Background

The Energy (Miscellaneous Provisions) Act 2006 (the “2006 Act”) introduced, among other things, a regime for the authorisation and licensing of electricity interconnectors by the Commission for Energy Regulation (the “Commission”). It did this by way of amendments to the Electricity Regulation Act, 1999 (the “1999 Act”). Prior to this there was no specific statutory powers relating to their construction or licensing.

The Commission may grant a licence to maintain and transport electricity across an interconnector pursuant to Section 14 of the 1999 Act, as amended by Section 8 of the 2006 Act. This Section, as amended by Section 16 of S.I. 60 of 2005, stipulates that the licensee shall be subject to terms and conditions of the licence as may be specified. Also, as inserted by the Electricity Regulation (Amendment) (EirGrid) Act 2008, the Commission can bring summary proceedings against a person who transports electricity across an interconnector without being duly licensed to do so.

Furthermore the Commission is proposing that any one that holds and authorisation to construct an interconnector would not need to reapply for an interconnector operator licence. The holder of the licence could also be a party nominated by the holder of the authorisation to operate the interconnector. The Commission would envisage that this reduce regulatory and administrative burden.

3.0 Overview of the Licence Conditions

The proposed interconnector licence is published together with this paper. The new licence contains twenty conditions as set out in the table below. Each condition will be discussed in turn in the following section. For the avoidance of doubt a brief overview by way of summary is provided for each condition. However the wording as provided in the draft licence takes precedence over the wording provided in this document.

<u>Part I - Terms of the Licence</u>					
<u>Part II – Conditions of the Licence</u>					
Section A Standard Conditions				Section B Revenue and Third Party Access	
Condition 1	Interpretation and Construction	Condition 9	Provision of Information to the TSO or DSO	Condition 17	Use of Revenues
Condition 2	Separation of Accounts	Condition 10	Central Dispatch and Interconnector Transfers	Condition 18	Access to the Licensee's Interconnector
Condition 3	Provision of Information to the Commission	Condition 11	Ancillary Services	Condition 19	Application of Licence Conditions 17 and 18
Condition 4	Compliance with Laws and Directions	Condition 12	Environment		
Condition 5	Payment of Levy	Condition 13	Assignment of Licence and Transfer of Interconnector Business		
Condition 6	Compliance with Codes	Condition 14	Change in control of the Licensee		
Condition 7	Public Service Obligation	Condition 15	Capacity Utilisation		
Condition 8	Security Arrangements	Condition 16	Dispute Resolution		

Part I - Terms of the Licence

This condition names the party to which the licence is granted and the date the licence comes into force. The interconnector or interconnectors to which the licence applies is set out in Schedule 1. The licence shall continue in full force and effect until determined by not less than 25 years' notice and that such notice not to be served earlier than the 25th anniversary of the date on which this licence comes into force.

The issuing of the licence is subject to the Conditions set out in Sections A and B in Part II.

Part II – Conditions of the Licence

This section is divided into sub sections A and B. Section A refers to the “Standard Conditions” and Section B refers to “Revenue and Third Party Access Conditions”.

Section A applies equally to all holders of an interconnector licence whereas an applicant may seek and be granted an exemption from the provisions of Section B of the licence.

Section A: Standard Conditions

Condition 1 Interpretation and Construction

This Condition deals with how the words and expression used in the Conditions are to be interpreted and construed. Also, a list of terms is defined as used in the Licence. Notably the definition of Interconnector is presented.

Condition 2 Separation of Accounts

This Condition set out the financial year for the Licensee with respect to the preparation of accounts. It also contains terms to ensure that the Licensee maintains accounting and reporting arrangements which enable separate accounts to be prepared for the interconnector business as distinct to any other business the licensee may be involved with.

Condition 3 Provision of Information to the Commission

This Condition sets out the terms under which information is to be provided to the Commission. It also defines what information is in this context.

Condition 4 Compliance with Laws and Directions

This Condition stipulates that the licensee shall comply with the 1999 Act, Statutory Instrument Numbers 445 of 2000 and 60 of 2005, the Conditions of the interconnector licence and all relevant EU and Irish laws.

It also stipulates that the licensee shall comply with any directions or determinations made by the Commission.

Condition 5 Payment of Levy

This condition specifies that the licensee shall pay the Commission any amount as specified in a Levy Order as made by the Commission under paragraph 16 of Schedule 1 of the 1999 Act.

Condition 6 Compliance with Codes

This condition specifies that the licensee shall at all times comply with the provisions of the various technical codes, `vis-à-vis` the Grid Code, Distribution Code and the Metering Code. It also specifies that the licensee shall be party to and shall comply with the SEM Trading and Settlement Code insofar as applicable to it.

Condition 7 Public Service Obligation

This condition specifies that the licensee shall comply with any public service obligation imposed on it by the Commission pursuant to Section 39 of the 1999 Act.

Condition 8 Security Arrangements

This condition places a requirement on the licensee to cooperate with the Commission in strategic contingency planning. This condition is deemed necessary by the Commission to ensure security of supply for electricity.

Condition 9 Provision of Information to the Transmission System Operator or Distribution System Operator

This condition stipulates that the Licensee give information concerning the operation and technical specifications of the licensee's interconnector to the Transmission System Operator ("TSO") or the Distribution System Operator ("DSO"). The condition also sets out how and when this information is to be provided. However, it also specifies that the condition shall not require the Licensee to produce any documents or give any information which it could not be compelled to produce or give in evidence in civil proceedings before the court.

Condition 10 Central Dispatch and Interconnector Transfers

This condition requires the interconnector operator to submit to central dispatch. The process is in accordance with the SEM Trading and Settlement Code where central dispatch is required by the Grid Code.

Condition 11 Ancillary Services

This condition is concerned with the licensee providing any ancillary services which the interconnector unit is capable of providing. These services would be provided in accordance with the provisions of the Grid Code. Note that this condition does not supersede the requirements under the Grid Code to provide certain minimum requirements.

Condition 12 Environment

Under this condition the licensee shall comply with all applicable European Union and Irish Environmental Laws, among others, the Environment Protection Agency Acts 1992 and 2003 and the Waste Management Act 1996.

The condition also sets out that the licensee shall, in consultation with the Commission, prepare a written policy setting out the manner in which the licensee proposes to comply with its duties and obligations under all applicable laws. Also the licensee shall report annually to the Commission on its environmental performance.

Condition 13 Assignment of Licence and Transfer of Interconnector Business

This condition deals with the assignment of the interconnector licence or the transfer of the interconnector business to another party. Under this condition the licensee shall not, without the prior written consent of the Commission, assign this licence, or transfer to another person all or any part of the interconnector business to another party.

The condition also sets out the requirements of the Commission that need to be met by the licensee if the licence is to be assigned or transferred to another party. These include technical and financial capability to comply with the Conditions of the licence.

Condition 14 Change in Control of the Licensee

Similarly to the previous Condition 13 this condition is concerned with the licensee notifying the Commission of a change in control of the licensee. There is a requirement to notify the Commission as soon as is practicable after such a change in control occurs. Note that Schedule 2(1)(f) also applies where a change of control of the Licensee occurs.

Condition 15 Capacity Utilisation

This condition is concerned with how capacity on the interconnector is treated and places a requirement on the licensee to make available the maximum capacity of the licensee's interconnector.

The condition also stipulates that the licensee shall:

- Implement and publish on its website open, transparent and non-discriminatory mechanisms for the allocation of capacity. The licensee shall also publish on its website detailed and current information regarding the services it offers, the relevant conditions, together with the technical information.
- Develop procedures on the primary market to facilitate the secondary trade of capacity between primary capacity holders and any person seeking to acquire capacity rights from such primary capacity holders. It is also a requirement that the licensee will recognise the transfer of primary capacity rights.
- Take all reasonable steps to allow and facilitate capacity rights to be freely tradable in a secondary market
- Offer unused capacity on the primary market.
- Submit its congestion management methods to the Commission for evaluation.

Condition 16 Dispute Resolution

This condition deals with how disputes between the licensee and another person seeking access to the interconnector are conducted. Disputes can cover the terms offered and the proposed charge, including tariffs or non-price terms and conditions of access. A dispute can also include a refusal by the licensee to offer access on the grounds that insufficient capacity is available. The Commission may, pursuant to section 34A(5) of the 1999 Act, settle any terms in dispute and the licensee shall comply with and be bound by any such determination.

Part II – Section B: Revenue and Third Party Access

An applicant may seek and be granted an exemption only from the provisions of Section B of the licence.

Condition 17 Use of Revenues

As set out in this condition revenues which the Licensee has received from the allocation of Interconnector capacity can only be used for one or more of the following purposes by the licensee:

- Guaranteeing the actual availability of the allocated capacity; and/or
- Investment in maintaining or increasing interconnection capacities.

The condition also requires the licensee to prepare and submit to the Commission an annual “use of revenues statement” setting out how the use of these revenues satisfies the above condition. The condition also sets out the timings around the preparation and submission of this statement.

However, if the revenues cannot be efficiently used for the purposes above, they may be used, subject to the approval of the Commission, as income to be taken into account by the Commission when approving the methodology for calculating network tariffs, and/or in assessing whether tariffs should be modified.

Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 (“Regulation 714/2009”) on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No. 1228/2003 will come into effect on 3 March 2011. This condition therefore reflects the provisions envisaged by Regulation 714/2009², without being overly burdensome on the licensee. Under Regulation (EC) No. 1228/2003 of the European Parliament and of the Council (“Regulation 1228/2003”) the licensee has the option to apply revenues “as an income to be taken into account by regulatory authorities when approving the methodology for calculating network tariffs, and/or in assessing whether tariffs should be modified”.

Condition 18 Access to the Licensee’s Interconnector

This condition stipulates that the licensee shall offer access to the interconnector and enter into agreements for capacity with any person on a non-discriminatory, objective and transparent basis. The licensee shall submit a charging methodology and any subsequent modification to the charging methodology to the Commission for approval having ensured that it has taken all reasonable steps to ensure that all persons who may have a direct interest in the access arrangement are consulted. The licensee is required to furnish to the Commission a report setting out:

- The terms originally proposed in the charging methodology;

² Recital 21 and Articles 16(6)

- The representations, if any, made by interested persons; and
- Any change in the charging methodology intended as a consequence of such representations.

The licensee is also required to demonstrate how the proposed charging methodology meets the congestion management guidelines as set out in Regulation 1228/2003. As discussed previously Regulation 714/2009 repealing Regulation 1228/2003 will come into effect on 3 March 2011. The interpretation section of the licence (“Condition 1 – Interpretation and Construction”) already refers to “references to an enactment shall include.... any re-enactment thereof” but the references throughout this Condition are “...as set out in Regulation (EC) No. 1228/2003 of the European Parliament and of the Council of 26 June 2003 on the conditions for access to the network for cross-border exchanges in electricity, or any re-enactment thereof” makes it clear for the avoidance of doubt.

If the licensee refuses access on the grounds that it lacks the necessary capacity it must inform the person seeking access and the Commission giving it substantiated reasons for the refusal and demonstrating that it is either not economic or not technically feasible to provide the capacity. As a result the licensee shall not be in breach of this condition where there is a lack of capacity in respect of which to grant access to the Licensee’s Interconnector.

However, if the licensee refuses access on the grounds that it lacks the necessary capacity and the person seeking access so requests, it shall provide relevant information on measures that would be required to provide that capacity.

Condition 19 Application of Licence Conditions 17 and 18

This condition provides for an exemption to be granted to the licensee for all or some of the provisions of Condition 17 “Use of Revenues” and Condition 18 “Access to the Licensee’s Interconnector”. Licence Conditions 17 and 18 are collectively termed “the relevant conditions”. Such an exemption would constitute any or all of the relevant conditions not being in effect or being suspended from operation.

The Commission in considering such an application must be satisfied that the following requirements are met³:

- The investment in the Licensee’s Interconnector enhances competition in electricity supply;
- The level of risk attached to the investment is such that the investment would not take place unless an exemption order was issued;
- The licensee’s interconnector will be owned by a natural or legal person which is separate at least in terms of its legal form from the relevant system operators to whose systems that infrastructure will be connected;
- Charges will be levied on users of the licensee’s interconnector;

³ Article 7 of Regulation 1228/2003 and Article 16 of Regulation 714/2009

- Since the partial market opening referred to in Article 19 of Directive 96/92/EC, no part of the capital or operating costs of the licensee's interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the licensee's interconnector; and
- That it is not detrimental to competition or the effective functioning of the internal electricity market, or the efficient functioning of the regulated system to which the licensee's interconnector is linked.

Condition 20 Application of Licence Conditions

This condition allows the Commission to suspend from operation any condition of the licence which the Commission believes is required after consultation with the licensee.

SCHEDULE 1 Interconnectors to which this Licence Applies

The interconnector or interconnectors for which the licensee is licensed are detailed in this section. It is anticipated that the reference to the appropriate authorisation is also referenced here.

SCHEDULE 2 Right of the Commission to Revoke this Licence

This Schedule 2 sets out the terms and conditions as to how and why the Commission may revoke the licence. The reason include, among others, if the licensee fails to comply with a direction or order under Sections 24, 25, and 26 of the 1999 Act, or fails to comply with any order made by the Minister under Sections 39 or 40 of the 1999 Act, or if the licensee is unable to pay its debts or has a receiver or an examiner or is dissolved or declared bankrupt or if there is a change in the control of the Licensee and the Commission is satisfied that the new shareholder does not have adequate technical or financial strength.

Also the licence may be revoked if in the event that licensee has not commenced carrying on the interconnector business within 6 months of the date this Licence comes into force or the date when the interconnector successfully comes into commercial operation.

4.0 Conclusions and Next Steps

The Commission will consider the responses to this consultation paper and amend the proposed licence accordingly. Thereafter the Commission intends to conclude this consultation and make the new licence available to those that already have been issued with an authorisation to construct and interconnector, who by this process, would be automatically be eligible to receive a licence to operate the same interconnector and to new applicants.

