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

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[www.cer.ie](http://www.cer.ie)
**Target Audience:**

This paper will be of interest to generators 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.**

- Previous consultation
  - CER Consultation paper (CER/09/127)
  - ESB Networks original contestability proposals

Responses to this consultation should be returned by email, post or fax and marked for the attention of John O’Connell 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

SI 226 of 2009 has introduced contestability to distribution connections. On 6\textsuperscript{th} August 2009 the Commission published a consultation paper in relation to how the DSO will process applications, offers and subsequent connection to the electricity system at distribution level on a contestable basis. The Commission also requested respondents to identify barriers and solutions to contestability.

Following the close of the consultation, the Commission forward all responses received to the consultation to the DSO and TSO for response/comment. The DSO and TSO have provided responses to the comments received and these papers are published alongside this paper. In addition the DSO has revised its proposals regarding contestability in light of the comment received and has provided more detail on its proposals. The Commission has also responded to the comments regarding the barriers to contestability and has provided more detail.

In a related matter, in May of this year the Commission consulted on possibility of an introducing an ‘open-book’ approach to connection offers for transmission assets. This issue has been addressed in section 3 of this paper.

This proposed decision paper seeks comments on the DSO’s amended proposals and any comments on the Commission’s analysis of the barriers to contestability.
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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 powers to regulate electrical contractors with respect to safety, to regulate to natural gas undertakings involved in the transmission, distribution, storage, supply and shipping of gas and to regulate natural gas installers with respect to 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 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 further seek the view of the public and the CER’s stakeholders with regard to contestability. In order to make an informed and impartial decision on this topic, the Commission wishes to obtain comments from members of the public, the energy industry, customers and all interested parties. The Commission commits to considering all views equally and affording each respondent the opportunity to clarify any issue raised in this paper.

1.3 Background

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 15th 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.

On 6th August 2009 the Commission published a consultation paper in relation to how the DSO will process applications, offers and subsequent connection to the electricity system at distribution level on a contestable basis. Included in that
paper, the Commission made proposals in relation to minimising the financial risk borne by developers building shared connection assets contestably at both distribution and transmission level.

Following close of the consultation, the Commission submitted all responses received to the consultation to the DSO and TSO for response/comment. This proposed decision paper addresses the responses received to the aforementioned consultation process.

1.4 Structure of this Paper

This paper is structured in the following manner:

- Section 2 provides a response on the barriers to contestability;
- Section 3 deals with the open book proposal;
- Appendix A provides the DSO and TSO response to comments and the DSO's revised proposals; and
- Appendix B provides the comments received from respondents.

1.5 Responding to this paper

Responses must be received by Friday 29th January 2010 and sent to:

John O'Connell  
Commission for Energy Regulation  
The Exchange  
Belgard Square North  
Tallaght  
Dublin 24  
Email: distribution@cer.ie

Tel: 01 4000 800  
Fax: 01 4000 850

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.

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 Paul Hickey in ESBN directly at paul.hickey@esb.ie. Thereafter, responses to this consultation should be forwarded to the Commission at the contact details given above.

Should respondents wish to seek clarification on any aspects of the TSO response paper prior to responding to this consultation, they should contact Shirley Kilcullen in EirGrid directly at shirley.kilcullen@eirgrid.com. Thereafter, responses to this consultation should be forwarded to the Commission at the contact details given above.
2.0 Responses Received

The Commission received thirteen responses to the consultation from:

- ABO Wind AG
- ART Generation Ltd
- ESB Networks Ltd
- DW Consultancy Ltd
- EirGrid
- Endesa Ireland Ltd
- Grattan Healy
- Enercomm International/Island Seafood Ltd
- Irish Grid Solution
- Irish Wind Energy Association
- Saorgus Energy Ltd
- SWS Energy
- Viridian Power & Energy

All responses are published in Appendix B.

2.1 Proposed Decision

The DSO has provided papers detailing its response to the comments received. The DSO amended their proposals in light of the comments received or provided additional information regarding their proposals which may resolve the issues highlighted by respondents. The Commission is publishing these revised proposals for comment.

The proposals put forward by the DSO provide significant additional detail and warrants additional consultation. Below the Commission addresses certain issues raised by respondents regarding the barriers to contestability and other issues.

Comments are welcome on the DSO’s proposals and the Commission’s consideration of the barriers to contestability.

2.2 Barriers to Contestability

2.2.1 Underwriting by the Final Customer

In the consultation paper the Commission proposed to extend the underwriting of shared connection assets costs to contestable connections, whereby if a party to a contestable connection withdraws the final customer will pay the share of the shared assets costs of the withdrawing party. All respondents welcomed this proposal.
Based on discussions with the DSO and respondents the Commission has firmed up its proposals in this area. The Commission proposes that following where a generator drops out of a contestable connection:

- The DSO/TSO will pay the remaining generators the portion of the shared connections costs that would have been borne by the withdrawing party, as would have been payable in the case of a non-contested connection, calculated using the standard pricing principles i.e., the portion of shared assets would generally be based on the MW share of the connection of the withdrawing party;
- The payment is made on completion of the connection of all remaining subgroup members;
- The payment is made after the withdrawing party has terminated its connection agreement or where the relevant SO has terminated the connection agreement under the various termination clauses set out in the connection agreement¹;
- A condition of the contestable connection agreement will be that the DSO/TSO will terminate the connection agreement if a party goes into liquidation.

These conditions are primarily designed to ensure that the DUoS/TUoS customer does not pay for assets that may never be installed. The Commission would like to make clear that the policy with respect to contestability of connection asset costs is not intended to expose the DUoS/TUoS customer to excessive costs. Should the sum of such costs become significant the Commission reserves the right to reconsider overall policy in this area.

2.2.2 Unanimity

The Commission has chosen to direct the System Operators to offer contestable connections to a sub-group only where all parties agree to pursue the contestable route. To do otherwise may, in extremis, deny parties connection to the network. Some parties have suggested that if a majority of the generators, in terms of MWs, wish to pursue a contestable connection then this should be accommodated. The Commission does not believe that this is a workable solution. A single generator with a large connection application does not automatically lead to competence to construct a shallow connection nor would it respect the right of smaller generators to have a connection provided by the System Operator.

¹ Where a member of the group has not accepted their offer in the first instance, then the proposed connection is subject to re-design in order to minimise the cost to the End-User in the normal manner. In such a case payment will be made on connection and energisation
The Commission proposes not to alter the requirement for unanimity for transmission and distribution contestable connections.

2.2.3 Ownership of the Shallow connection

Some respondents believe that the generator should have the right to retain ownership of their shallow connection or want clear criteria for when ownership would be transferred.

The relevant legislation is Section 37(4) of the Electricity Regulation Act 1999 which states:

“37 (4) (a) Where there is a connection made between a direct line and the transmission or distribution system of the Board, on the application of the Board, the Commission may direct the owner of a direct line constructed under subsection (1) to transfer the ownership of the direct line to the Board on such terms, including terms as to compensation, as may be agreed between the Board and the owner of the direct line.

(b) In default of agreement between the Board and the owner as to compensation, such compensation shall be assessed under the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919, and for this purpose the Board shall be deemed to be a public authority.”

Section 37(4)(a) does not specify a criteria that the Commission must use to determine whether to direct the owner of a shallow connection to transfer into the ownership of the TAO or DAO, nor does it give the Commission the power to direct the TAO or DAO to seek the transfer. This has not been an issue to date as the transfer of shallow connection assets has been mutually agreed in principle by the TSO/TAO and the connecting generator in all cases.

The Commission assumes that the benefits of retaining ownership of the shallow connection, avoiding paying regulated operation and maintenance costs, would be outweighed by the costs, such as the requirement to hold spares, public liability insurance, emergency repair service etc. It may be preferable to see all shallow connections transferred to ownership of the licensed network owners, TAO or DAO, from a public safety perspective.

On the assumption that the connection assets are built to an acceptable standard – which is a pre-requisite for any decision to take over ownership of the assets - the following arrangements may be used in assessing the transfer of a shallow connection:

- Where the owner(s) and the DSO or TSO agree to the transfer of the connection assets to the DAO or TAO, no direction is required and the
Commission gives a blanket approval that these assets are added to the DAO or TAO asset base.  

- Where the owner(s) and the DSO or TSO do not agree to the transfer, the DAO or TAO may request the Commission to direct the transfer of the assets. The Commission proposes the following (non-exhaustive) criteria to determine whether to direct the transfer:
  
  o Are assets required to connect other customers, demand or generation; or
  o Are the assets required for system development reasons.

Where either of these conditions applies the Commission believes it is reasonable to direct the transfer of assets. If neither of these conditions applies then the following additional criteria may apply:

  o Is the owner(s) able to provide an emergency response service equivalent to the service provided by ESB Networks;
  o Is the owner(s) able to demonstrate the competency to maintain and operate the connection assets; and
  o Is the owner(s) able to demonstrate that all reasonable steps will be taken to ensure public safety, i.e. 24 X 7 point of contact, public campaigns on overhead line/underground cable safety, participate in a national electrical line mapping database etc.

The Commission believes that the above criteria are reasonable, consistent with the duties of the Commission as prescribed in legislation and in line with the service that the regulated network companies provide.

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**Question 1** Are there additional benefits to owning a shallow connection?

**Question 2** Do you believe that the above criteria are reasonable?

**Question 3** Do you believe that there are additional items that should be added to the criteria?

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### 2.2.4 Hybrid

Some respondents have commented that requiring sub-groups to commit to building the shallow connection contestably before the connection offer is issued

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2 Note that generator connection assets are generally fully paid for by the connecting generators and therefore the assets are added to the distribution or transmission RAB at a nominal fee.
is a barrier. Not all parties are ready to commit to contestability and reaching unanimous agreement can take a number of months. On this basis some parties have suggested that they should not be required to decide on a contestable option after the planning permission is granted.

Both System Operators have responded that facilitating a hybrid approach would be difficult from a resourcing perspective and posing complex legal issues. The Commission requests both System Operators to review the issues and consider whether this option is feasible and propose solutions where possible. The Commission will consider this issue further in arriving at a final decision.

### 2.2.5 Transmission construction

The Commission, in section 4.9 of direction CER/05/049, set out the high level rules for contestability for shared transmission assets. One of the rules specifies that only transmission connecting parties could build the transmission shared connection assets. Obviously these rules were established prior to the introduction of distribution contestability. With the introduction of contestability to all generators the Commission’s view is that regardless of whether a generator is connected at distribution voltage they have the right to construct their shallow connection assets.

The TSO has suggested that it may require a contractual relationship with all parties constructing transmission shared connection assets. The Commission has requested both System Operators to propose the most practical way forward in this respect.
3.0 Open-Book

On 1st May the Commission published its decision on the electricity transmission standard charges and timelines to be used in network connection offers (CER/09/077). The aim of CER/09/077 was to provide a reasonable degree of financial certainty for parties, particularly the forthcoming Gate 3 renewable generators, seeking to connect to the Irish network. Following Commission engagement with industry and EirGrid/ESB Networks, these standard charges and timelines were significantly lower and shorter than those previously consulted on. In addition, CER/09/077 contained a section on an open-book proposal for post offer issuance, on which specific comment was requested from stakeholders.

This open-book approach to connections would involve transmission shallow connection assets being subject to competitive tender by EirGrid and/or ESB Networks subsequent to offer issuance. The lowest acceptable tender submitted to EirGrid/ESB Networks, which the connecting parties would be able to see, would then form the basis of the connection cost. This means that the transmission standard charges (as decided in CER/09/077) in the connection offer would be indicative only – the connecting parties would, with this approach, face the location-specific connection charge as determined by the tender rather than the certain “average”/standard charge.

3.1 Decision on Open-Book proposal

There were fifteen responses to the open-book proposal consulted on in CER/09/077, with most respondents being generally in favour of the idea. Upon review of the comments received the Commission requested the System Operators (SOs) to formulate proposals on how an open-book process could be implemented in the current connection offer methodology. The Commission also decided to facilitate a round-table discussion with Saorgus, the IWEA, (“the wind developers”) and the SOs on the open-book proposal.

At this meeting, held in October, the SOs stated that they believed an open-book process would require a high degree of agreement among the entire sub-group of developers, e.g. agreement among all the parties to go open-book as opposed to the standard charge, agreement on the successful tender and agreement on the application of penalty clauses. The wind developers generally acknowledged that reaching agreement among all developers within a sub-group for an open-book approach could be difficult. ESB Networks believed that the open-book proposal would extend timelines on material delivery because material could not be ordered until the open-book contractor is appointed, with the net result being delayed projects.

Also, the wind developers stated that their main concern with the standard charges was transparency and that they would like to see contestability work more effectively for transmission assets. This would mean that connecting parties
within a subgroup could more fully exercise their legal right to build the connection assets themselves (e.g. if they thought that they could do so cheaper than the standard charges).

The Commission queried the wind developers as to whether the proposal outlined in the contestability consultation paper, CER/09/127, to make contestability work more efficiently, would increase the viability of going contestable for transmission assets. The wind developers stated that it would, that they were supportive of this proposal and their preference was for contestability to be made work, as opposed to introducing an open-book approach to connections. The System Operators also maintained that they were supportive of the proposal laid out in CER/09/127.

Hence, upon review of comments to CER/09/077 and the round-table discussion, the Commission has decided to focus on addressing certain issues with regard to contestability, as opposed to introducing an open-book proposal to transmission connections. Section 2.2 of this paper details the various measures that the Commission is proposing to address barriers to contestability, one of the significant issues addressed is the risk of parties withdrawing from a contestable build.
Appendix B - Consultation Responses