Date 10.11.2009

RE: FURTHER FOLLOW UP IN RELATION TO CONTESTABLE CONSULTATION

Dear Brid

Our recent correspondences in relation to response received on the Contestable Consultation and follow up discussions (including those held with member of the industry) refer.

Following our discussions, there were a number of areas on which I undertook to respond

Non-contestable Protection

DSO proposed approach is as follows:

- DSO specifies the relay manufacturer, type, model, firmware version and software version that must be used
- DSO provides elementary design drawing according to which the outside world must be connected up
- IPP acquires the relay from said manufacturer or chosen intermediary (not ESBN) and installs it as per the elementary
- DSO provides the relay configuration and setting file when requested by the ESBN appointed Project Manager

This is in line with the approach currently adopted by TSO.

Non-contestable Communications

DSO considers that, in general, communications should be fully non-contestable (i.e. procurement, installation and commissioning). However DSO undertakes to monitor delivery in this area and review our position should the need arise.

Non-Contestable metering
DSO proposed approach would be for the IPP to undertake much of the preparatory work in relation to metering and in particular in relation to the dedicated CT/VT’s. This would include purchasing the CT/VT’s a specified by ESBN (make and model), civil and steel works and certain of the electrical works.

ESBN will be supplying marshalling box & meter cabinet and meter, charged for via a standard cost methodology. In addition DSO would then be exclusively responsible for the electrical works from the CT/VT’s onto the metering room, installing, labelling and checking all meters and ultimately commissioning the meters.
Commissioning and Pre-commissioning

As discussed the developer is required to undertake pre-commissioning tests. In order to aid the developer, ESB Networks intends to provide documentation setting out pre-commissioning checklists/procedures.

ESB Networks position is that if the pre-commissioning work is carried out correctly, the commissioning work should be completed on schedule, thereby optimising the use of the commissioning resource to the benefit of all parties.

Performance bond

Following discussion with CER and with developers, DSO would like to propose a modification to our original response on this issue.

In our response we set out that the primary purpose of the Performance bond was two-fold:

1. Where other developers are connecting to an asset which is to be built contestably, it ensures that there is finance available to complete a job, should the party undertaking the contestable works be unable to complete the works.

2. Where the DSO is issuing an offer for connection to assets which are to be built contestably, and the construction of such assets is incomplete at the time of the offer issue, it ensures that there is finance available to allow DSO take over the build, in the event that the contractual longstop date isn’t met, without incurring additional costs on the end-use.

However DSO did allow that should the lead developer not be able to obtain a bond, the contestable build could proceed. The basis for ESB taking over the would be that the job would be requoted, and payments would be made by the developers in the usual manner for a non-contestable build.

Following discussions, it appears that developers are happy to accept that – if a contestable build ultimately is to be completed on a non-contestable basis – ESB Networks Ltd would requote for the job, with no account being taken of monies already provided to the party which took on the contestable build.

With regard to the 2nd situation, however, the problem of not having a bond in place is a bit different.

Where a party (developer A) is being issued a connection offer to assets which are being built contestably, but developer A did not in the first instance agree to that contestable build, then the basis for charging developer A for their share of the contestable assets will be standard pricing. In this case, in the event that the build has to be completed on a non-contestable basis, and there is no bond in place, then it would not be reasonable to expect developer A to pay any additional cost for the completion of the build. In this instance, therefore, it is likely that any cost over and

1 With refunds being paid in the usual manner to the parties who financed the build in the first instance.
above the contribution received from developer A, would have to be borne by the End-User. DSO would propose that such an instance is only acceptable where DSO have the option to review the connection method and consider whether completing the contestable build and connecting developer A based on the original connection method is optimum from the perspective of minimising cost to the End-User. In certain cases this may result in a delay connecting developer A.

In summary, ESB Networks consider that it is reasonable to give developers of contestable assets the option of putting a Performance Bond in place, rather than insisting on such a provision. However this would be on condition that

1. all parties, when communicating their agreement to a contestable build for shared assets would also be required to indicate their agreement to proceed without a Performance Bond being put in place by the lead developer.

2. where a party in the future is being issued with an offer to a contestable build, which has yet to be completed then
   a. the customer has the option of negotiating with the developers undertaking a contestable build, in which case the new customer would be requoted in the event that the contestable build fails or
   b. the customer is quoted based on standard prices, but – should the contestable build fail, and there is potential for the End-User to be required to partially fund the connection to the future customer – the SO would assess the cost to the end user and redesign the connection with the aim of minimising that cost.

3. In either case, where the lead developer has reached the contractual longstop date, ESBN reserves the right to step in to complete the build on a non-contestable basis. However this would be subject to discussions with all parties contracted to use, or proposed to connect to, the asset in question.

Review of Standards

CER queried whether standards were reviewed on a regular basis to ensure best fit for the needs of all customers using the system.

Following discussions, I can confirm that as part of our process of preparation for Term Contracts, DSO undertakes a review of the plant equipment and sizes being used. This may result in an enquiry being sent out for new equipment sizes, following which a technical and financial evaluation is undertaken to ensure any change represents good value for money.

Please note, however, that there is a significant cost incurred by the DSO in any change, and this cost is also considered when evaluating any proposal for change.

On an ongoing basis DSO keep abreast of current developments in the field with a view to minimising the cost of developing, operating and maintaining our system.

In addition to the above, there are a number of other issues on which DSO would like to provide some more clarity
Future-proofing works being undertaken (raised at meeting with industry whereby Gate 2 connection is to be built contestably but parties would like to also build assets required in Gate 3.)

We are strongly of the view that any works being undertaken contestably would be agreed with the DSO and would be based on the Connection Agreement with the DSO. While the DSO has in the past facilitated requests from developers to ‘oversize’ their connection, and has on occasion re-issued connection offers to facilitate this, it has always been on the basis that such assets are not necessarily available for use by the party who originally paid for them. However it was also on the basis that should the asset ultimately be used by another party rebates would apply in line with normal rebating policy.

We would see no reason to depart from this process for contestably built assets.

Where future party connects into assets built contestably, they will be charged based on standard prices. Again one of the parties raised this issue and suggested that their preference would be to deal directly with the group who had built the assets contestably.

Regardless of whether ownership of contestably built assets will in all cases remain with the DSO, we would consider that where contestably built assets are required to issue a connection offer in the future these assets will certainly require to be in the ownership of the DSO. On this basis, the original builders of the asset have no authority to negotiate with any future users of that asset, and the charge for use of the asset would have to be based on standard pricing, with refunds in the usual manner going to the builders of that asset.

However in the event that one of the parties involved in a contestable build of shared assets, also considers that he may receive a future connection offer to that asset, he is entitled to enter into an agreement with the other parties with regard to how rebates for use of that asset – passed on to the developers from the DSO - would be shared amongst them.

**Contestability and Fixed date**

The intention of the fixed date contract between DSO and a developer of generation is that DSO will provide some certainty to the developer as regards their energisation date, and where this date is not achieved DSO would make some payments to that developer. Where any part of a connection to a developer is being built contestably, DSO have no control over the energisation date for that connection and therefore DSO will not be in a position to offer a fixed date contract where any of the connection assets are being built contestably.

**Clarity on when DUoS customer would fund any shortfall on contestable build due to party dropping out**

As part of the consultation, CER put forward the proposal that – should one of the parties sharing a contestable build ultimately drop out – the UoS customer would fund the share of the asset which was not covered by this party. This is to be consistent with the non-contestable situation.
At a meeting with developers the query was raised as to when this funding would be available. DSO's understanding of CER's proposal is that the funding would be available once

A. the connection to all other parties was energised

B. the connection agreement with the defaulting party was terminated. (at a minimum this would happen once the Connection Agreement Longstop Date was reached and the developer was not yet energised.)

Further clarity on when developers can opt for contestable build

In ESB Networks position paper on contestability – published as part of the recent consultation – ESB Networks set out when developers could opt for a contestable build. This focussed on the Transition period – with a view to allowing some Gate 2 developers build their connections contestably. In addition ESBN proposed that on an ongoing basis:

Where an offer has been issued on a non-contestable basis a developer can opt for a modification to a contestable offer where the connection offer has been accepted, but where work has not commenced.

Having further considered this matter ESBN would consider that there are few instances post offer acceptance where costs incurred – via orders being placed, or contractors being appointed – would be such that a non-contestable offer should be modified. Therefore – for clarity for all parties - DSO considers that the developer should not be allowed to modify their offer to a contestable offer once accepted.

Take over of Assets – need for CER direction

As presently set out for Transmission Assets, in the event that a contestably built asset is to be taken over by the TAO, DSO understands that a direction is issued by CER on a case-by-case basis. With the extent of assets to be built on the Distribution System, and especially taking account of Gate 3, this process has the potential to become onerous. We would ask CER to consider, therefore, whether an alternative, less onerous mechanism might be put in place.

Yours Sincerely,

Fiona O'Donnell
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ESB Networks Ltd.