Dear John,

Your draft proposed decision on contestability and in particular the proposed hybrid solution refers.

Firstly, I would like to set out DSO’s understanding of the proposal. This is as follows:

1. That parties can opt for a non-contestable contract at Offer stage, but can decide at 55% payment stage, to opt for a contestable contract

2. That parties can opt for a contestable contract at Offer stage, but on the basis that the high level design and Planning Permission would be completed by ESB Networks Ltd (or EirGrid where Transmission Assets were involved.)

ESB Networks would have a number of concerns about either proposed approach. However with regard to the first option, the following issues should be considered:

1. **Planning of resources.** In the event that DSO do not know – up to the 55% payment stage – whether a connection is to be constructed by Networks or a developer, it will not be possible to plan resources – either for a detailed design or construction – to have them available for the project in question. This uncertainty will inevitably lead to delay for any projects which are to be built non-contestably and in addition is likely to lead to inefficient use of these resources – which cost will ultimately be borne by the End-User.

2. **Material Planning.** On the same basis we will be unable to plan to have even standard stock items available for the non-contestable job. Again this is likely to lead to delays in delivery of the connections, and will lead to less efficient stock management.

3. **Frame-work Contracts.** Our frame-work contracts for materials, and also for contractors are based on certain predicted levels of activity – although we have an option of revising our predictions provided we can provide a reasonable level of notice. Should developers be allowed to opt for a contestable contract at 55% payment stage, any predictions we have made, and on which these contracts are based are likely to be inaccurate.

In relation to both options (as Option 2 is a subset of option 1) we also have concerns.
1. In the event that ESB Networks Ltd (or EirGrid where Transmission Assets were involved), obtain Planning Permission for assets which are ultimately built by the developer, it is unclear whether the party who obtained the Planning Permission is liable in the event that the party constructing the assets does not comply with conditions set out in the Planning Permission. We are awaiting a legal view on this issue which we hope to have before Christmas or in any event as part of our response to the proposed decision paper.

2. Even where there is no legal liability, as set out above, ESB Networks Ltd. would consider that, if we are engaging with a Local Authority for a build over which we do not have control, then at a minimum there is a risk to our reputation with that Local Authority should the build not comply with conditions set out

3. As part of applying for Planning Permission, the party undertaking this work will inevitably have dealings with landowners. In the event that a different party is then undertaking wayleave clearance (and again it is our understanding – that this should be done by the party constructing the build), this is likely to cause problems for the build itself and in addition may drive a lack of trust between ESB and landowners which could impact on our delivery of other work.

As a general comment ESB Networks Ltd. consider that the pre-construction works are the more difficult, time-consuming and less predictable part of the works and will require a large resource commitment from ESB Networks Ltd. While ESB Networks Ltd. has previously stated that we welcome contestability – on the grounds that we – along with the industry – hope that it would allow speedier delivery of certain connections, we would also consider that the hybrid proposal is not a contestable build but equates to the developer ‘cherry-picking’ and purely acting as a contractor for the build.

DSO respectfully requests, therefore, that the proposed clause on this issue is revised as follows:

‘Some respondents have commented that requiring sub-groups to commit to build the shallow connection contestably before the connection offer is issued is a barrier. If one party does not agree then contestability cannot be pursued.

On this basis some parties have suggested that they should not be required to decide on a contestable option until the 55% payment stage.

Both System Operators believe that facilitating a hybrid approach would be difficult, posing complex legal issues. The Commission requests both System Operators to review the issues and consider whether this option is feasible.’

This proposed change is also marked up in the proposed decision paper.

I trust the above sets out our position on this issue. However if you have any further queries please contact me at 7027078
Yours Sincerely,

Fiona O'Donnell
DSO Regulation
Asset Management
ESB Networks Ltd.