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Commission for Energy Regulation  
The Exchange  
Belgard Square North  
Tallaght  
Dublin 24  
Ireland

18<sup>th</sup> September 2009

Re: SWS response to consultation "Distribution Contestability CER 09/127"

Dear Brid,

Thank you for affording us the opportunity to respond to your recent consultation on the options for processing Gate 3. We have worked closely with IWEA on their response, and we support their document in full. There were just a few points we wanted to add some more detail on:

**Shared Assets:** With respect to the proposal that the risk of a party "choosing not to proceed" having already commenced a contestable build would be borne by the TUoS/DUoS customer, SWS feel that this is a very positive proposal. It makes sense that the method by which a connection asset is being built (contestable or non-contestable) is independent from the risk of a party failing to proceed. It may well remove one of the largest barriers to shared contestable builds, namely the requirement to place intercompany bonds for large amounts when not all projects are at the same stage of development or are of a similar size.

We would however like to see some more detail around the definition of "choosing not to proceed". Since in a contestable build there is less interaction between a member of a group and the system operator, there are no obvious criteria against which the system operator determines this choice. A developer could fall out with his contestable partners, but simply sit back and not take any action, while the remainder of the group are obliged by commercial pressure to finish the grid connection work on their own. We believe that the test of "choosing not to proceed" should instead be at the discretion of the contestable group. It is likely that the co-development agreement put in place between the members of the group will have obligations (typically to keep paying the selected contractor on a specified timescale) and

remedies for non compliance. We would envisage that the rest of the group may want the right to notify the system operator that one of its members has breached the terms of the co-development agreement (e.g. failing to keep up with payments), and in so doing is effectively “choosing not to proceed”. This would be particularly important if one of the members was in a bankruptcy process for example, and as such unable or unprepared to communicate with the system operator. We don’t see that this would put any additional administration workload or responsibility to adjudicate on the system operator, since it would be up to the group to negotiate between themselves prior to commencing the work the terms under which a “choosing not to proceed” notice would be issued. If the group can’t agree co-development terms with a suitable remedy for one member failing to proceed, then they shouldn’t be doing a contestable build together.

Requirement for Agreement: We agree with the requirement for unanimous agreement within the subgroup, and that the default is non-contestable. This has the lowest impact in the event that agreement cannot be reached.

Key Principles: We are a little concerned at not having the option of returning contestably built assets to ESB Networks. This would be a departure from standard practice to date, and as wind developers, we don’t usually want to get into issues around the public liability risks of owning and operating high voltage overhead lines and cables outside of the site which we control. We would prefer the option to return the assets to ESB Networks.

We also welcome the provisions in the last bullet point to try to weed out generators attempting to gain advantage over other generators or the DUoS customer and other generators.

Non-contestable assets: We do not believe that there is any case for keeping communications, protection and metering non-contestable. We are not aware of any provision in the legislation that prevents the communications being constructed contestably, and believe that this is a throwback to a standard set arbitrarily for transmission. If it is possible to write a functional specification for a 38kV breaker, it is possible to write a functional specification for an RTU. On some of our previous contestable builds, we asked our contractor to quote for the telecoms work (when ESB Telecoms were late in delivering it) and the price was under 50%. It cannot be argued that telecoms, metering and protection is particularly critical to the integrity of a substation. (It is critical, but surely no more so than the main breakers for example, for which there is no difficulty supplying on a contestable basis.) We feel strongly about this point not only on a cost basis, but in order that we can better wrap up the project management under one contractor, since we have had difficulty on a number

of occasions in securing ESB Telecoms personnel as required by our contestable build programme.

We also feel that work in live stations should not necessarily be ruled out. Where developers choose contractors (Kirby's, Powerteam, Enterprise etc.) who are fully approved and already completing such work, or indeed when developers choose contractors that can be readily approved, we don't see why developers should not be able to provide this manpower. Clearly supervision and the role of PSCS would remain with ESB Networks and under method statements approved by system operators.

**Financial Arrangements:** This is the area that we feel needs most additional detail before we can see if it is feasible to build shared contestable assets. We understand the scenarios outlined do require a bond in case that the group prove unable to deliver a substation. However the value of this bond could be large, especially as it is given on the basis of standard prices rather than the actual contestable build cost. If 100% of this value has to be posted too early in the process, this could be a barrier. We would therefore propose the following refinements to the mechanism:

1. The bond is only placed just before ground is broken on site. (There can't be any exposure to the system operator if there is no work done).
2. The bond value should be set as 30% of the value of the shared connection assets (based on standard pricing).
3. ESB Networks should monitor work on site to ensure that there is never more than 30% work completed between visits, so that it is not possible that any work could be messed up to the extent that to roll back would cost more than 30% of the value of the project.
4. The group members should show ESB Networks that they are up to date with payments to their contractor on each visit, and ESB Networks could draw the performance bond and step in if they found a shortfall.
5. The group members would typically in turn obtain a 30% performance bond from their subcontractor and make payments in arrears based on achieving milestones as signed off by an engineer. This value is in almost all cases sufficient to terminate a contract, and remobilise a second contractor.
6. In the event of a more serious screw-up, it is likely that both the contractor performance bond and the ESB performance bond would be drawn, thus giving ESB Networks security for nearly 60% of the connection value. Particularly where there are multiple geographically separate assets, its hard to envisage a scenario where any more than this value could be at risk.

7. Should ESB Networks need to draw the bond to complete the build to accommodate a future connection, it should be clear that the value to be drawn should only be to develop the new LCTA method of connecting the subsequent connection, if that was cheaper than finishing the bonded assets a refund of the portion of the bond not required should be paid to those parties that originally placed the bond.
8. There should be no requirement to place a bond if there is clearly no use by subsequent gates or the system (which is quite likely if assets are “full”, or there are no other applicants within the area being processed for connection).

One area we didn't see described in either paper was the question of system operator resourcing and readiness. While on the face of it contestable builds seem to remove scope from the system operator, it will in fact increase load on certain areas. For example developers building contestable assets will submit designs to the system operator for approval. There should be a service level agreement for a turnaround on these, and 10 working days seems reasonable given that ESB Networks are likely to subcontract this work to ESBI in any case. (The project programme supplied by the developer should highlight likely documentation submission dates). There should also be a commitment that project specific functional specifications are issued to developers within 30 days of having accepted a contestable offer, and that the overall generic set of functional specifications should be made available to any developer who requests it. (All of these provisions are in place already for transmission contestable builds). We feel that it would be important for ESB Networks to state or demonstrate that they have the people and processes in place to handle the new contestable mechanism.

SWS is a member of the Gate 2 Glenough group, and the group is seriously considering using these new arrangements immediately to build a 4 bay 110kV station with 2 63MVA transformers, nearly 60km of 38kV cable and 2-3 38kV tailed stations, with a total value of close to €15m, so we will test these processes shortly. We have made the proposals above based on our internal review, but since we are going to be doing a full external legal review of a co-development agreement for the Glenough group, it is possible that this will throw up more details which could require clarification. We will attempt to get this feedback to you in the next 2 weeks, and hopefully it can be taken into account in your final direction.

We hope that the points above will help in adding some detail to the processes, and we remain available if you wish to discuss our proposals. At a high level we are very pleased with the introduction of contestability at distribution level, we believe the work done to date is

well thought out, and we look forward to working with the system operator under the new arrangements.

Regards,

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Peter Harte  
SWS Energy