Abstract:

This decision paper relates to the procedures and policy concerning the contestable construction of connections for generators to the distribution system. It also extends the underwriting of connection costs, under the group processing approach, to contestable transmission and distribution connections.

Target Audience:

This paper will be of interest to generators, generator representative groups and those 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.
- Proposed decision paper
  - CER Consultation Paper (CER/09/193)
  - ESB Networks revised contestability proposals
- Original consultation
  - CER Consultation paper (CER/09/127)
  - ESB Networks original contestability proposals
- Group Processing Approach for Renewable Generator Connection Applications

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Executive Summary

SI 226 of 2009 has introduced contestability to distribution connections. 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. The Commission also requested respondents to identify barriers (and solutions) to contestability. On 15th December 2009 the Commission published a proposed decision and invited further comments from interested parties. This decision paper addresses all the comments received during the consultation.

The decisions outlined in this paper include:

- Connecting parties can select a contestable, hybrid or non-contestable connection offer;
- The final customer will pay the share of a withdrawing parties shared connection costs in line with the arrangements that exist for non-contestable connections;
- Unanimity is required for parties to select a contestable or hybrid connection offer, non-contestable connection is the default;
- Connecting parties are given the option to provide the DSO with a performance bond, the level and timing of the bond is to be agreed by the connecting parties and the DSO;
- Ownership of the connection can be retained by the connecting parties in certain circumstances; and
- The Commission will undertake a review of these arrangements after a bedding in period.
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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 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 purpose of this paper is to outline and describe the Commission's decision with regard to the implementation of distribution contestable generator connections and to reduce or remove barriers to contestability. This Commission has carried out a full public consultation on this topic, publishing a consultation paper on the matter on 6th August 2009 and a proposed decision paper on 15th December 2009, and has considered fully the comments and submissions received. Issues raised throughout the consultation process will be addressed in this paper, as well as outlining the final decision and next steps on this topic.

1.3 Comments Received

The Commission received 8 submissions to the proposed decision paper (CER/09/193). Submissions were received from the following organisations:

- Bord Gáis Energy
- EirGrid
- Endesa Ireland
- ESB Networks Ltd
- Irish Wind Energy Association (“IWEA”)
- Saorgus Energy Ltd
• SSE Renewables (“SSE”) ¹

• Viridian Power & Energy

The Commission publishes each of the comments received along with this decision paper. In addition the Commission sent some queries to respondents to clarify their submission and met with IWEA and SSE to discuss their comments further. The Commission also forwarded all responses to the SOs for consideration and discussed their response. The SOs responses to the comments received are published with this paper.

1.4 Background Information

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, amends Section 34 of the Act and 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 (CER/09/127) 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 the close of the consultation, the Commission forwarded all responses received to the consultation to the DSO and TSO for response/comment. The proposed decision paper (CER/09/193) addressed responses received to the aforementioned consultation and discussed further the issues raised. Similarly the Commission forwarded the responses to the proposed decision paper to the SOs for comment. The SOs responses to the comments are published along with this decision paper. All issues raised throughout the consultation process will be addressed in this paper, as well as outlining some decisions on the issues.

¹ Please note that SSE Renewables also responded to the original consultation paper and this response was considered by the Commission, however due to an error on the Commission’s part this response was not referenced in the proposed decision paper or published. The response has now been published along with the other responses to the original consultation paper.
1.5 Structure of this paper

This paper is structured in the following manner:

- **Sections 2** outlines the detail of the substantive issues which the Commission sought views on and is now making its decision on;

- **Section 3** contains the direction and the next steps.
2.0 Comments and Decisions

This section details and discusses the comments made by parties specifically in response to the DSO’s proposals to implement distribution contestability and to the Commission’s questions on barriers to contestability and other matters.

Please note, while certain aspects of this paper relate to transmission connection arrangements, notably sections 2.6. and 2.7, this paper is concerned with the introduction of distribution generator contestability and the sections below do not apply to transmission connection arrangements unless otherwise stated in that particular section. EirGrid will be reviewing transmission contestability arrangements in the near future and will take comments received to this consultation into consideration in that review. Also, for the avoidance of doubt, this direction supercedes CER/05/049 in allowing distribution parties build transmission assets contestably.

2.1 When to Commit to Contestability

The DSO proposed that parties should commit to a contestable or non-contestable offer three months prior to the issue of the connection offer. A number of respondents to the original consultation highlighted that this would be a significant barrier to contestability. They suggested that not all parties are ready to commit to contestability at this early stage and reaching unanimous agreement can take a number of months. On this basis some respondents suggested that connecting parties should not be required to decide on a contestable option until later in the process. Under this hybrid approach the connection parties would accept non-contested connection offers and modify the connection offers to contestable connections, possibly after planning permission is granted and the DSO invoice for the second stage payment.

The Commission requested the DSO to consider the comments received and to outline their issues with the “hybrid” approach. The DSO duly responded and highlighted its main concerns which were:

- Resources – The DSO believe that it would be difficult to efficiently manage their resources, both internal and external, if parties could choose to pursue a contestable or non-contestable distribution connection up to the start of construction.

- Legal and Reputational – The DSO believe that they may be liability issues concerning the obligations to comply with planning conditions which may fall on the DSO due to non-compliance by the party constructing the connection. The DSO had not fully bottomed out this issue and was to seek legal advice on the matter. They also highlighted that non-compliance with commitments given to local authorities or other stakeholders in the planning phase may damage the DSO’s reputation and adversely affect its ability to do other work.
- Practical – The DSO believes that during the planning permission phase of the project wayleaving the line route begins and then continues through to the construction phase. Changing the party delivering the project during this phase may lead to issues.

The Commission requested both SOs to review this matter further and propose solutions where possible to the issues raised.

Respondents to the proposed decision underlined that requiring parties to commit to contestable or non-contestable construction far in advance of receiving a connection offer is a significant barrier to contestability. IWEA highlight that to require connection parties to commit to a contestable build in, say, 2010 for a connection with firm access in 2017 or 2018 is a barrier. IWEA, while accepting the SOs assertion that facilitating a hybrid approach would be difficult from a resourcing perspective, if contestability was a viable option for more parties then this may in turn lead to an overall decrease in resources required by the SOs for the construction phase of the project. Saorgus makes the same point; in essence that contestability should reduce rather than increase the DSOs resourcing requirements. SSE echoes these comments highlighting that parties with connection offers with connection dates between 2011 and 2025 would not be able to decide on the build arrangements so far in advance. In addition, SSE highlight that the concerns of the DSO that relationships with contractors would be damaged, if they failed to proceed with every enquiry, is misplaced. Indeed, it is the norm in private business that contractors accept an amount of unproductive tendering. BG Energy understands that there may be resource and legal implications for the hybrid approach however, given the potential improvement to the arrangements this option would bring, further examination is warranted.

The DSO has responded to the propose decision paper on this issue and in essence confirmed its original position that the hybrid solution poses resourcing and legal issues. The DSO provides further detail as to the potential issues. The TSO echoes these concerns in its response.

The responses to the consultation would suggest that the industry does not accept that there are material impacts on resources or at least that the impacts can be managed. On the issue of transferring planning permission for a connection, SSE sees no legal obstruction and believes the DSO’s legal concerns can be easily addressed via a legal assignment of information.

Both SOs have consulted with IWEA on this issue during the consultation period. The DSO has sought to understand why the industry wants the hybrid approach and to see if the industry’s requirements can be accommodated in other ways. The DSO has concluded that the primary issue is parties sharing connection assets need more information available earlier in the process to decide whether to progress their connection on a contestable or non-contestable basis. This decision has to be made at some stage. This has led the DSO to propose to provide the following information at least four months before offer issuance:
• Which items can be constructed contestably;
• Which items are shared by other parties and require agreement;
• What is the expected cost of the connection if provided by the system operator; and
• What is the expected cost of non-contestable items (including supervision and design reviews, etc.) if the connection is provided by the connecting parties.

All parties to the relevant subgroup would then be required to make a decision within 20 business days of receiving this information on whether they wish to construct their connection contestably.

There are a number of points to be considered from the above arguments. The Commission assumes that IWEA and SSE’s concern regarding having to make a decision on contestability long before firm access dates relates to connecting parties that elect not to connect in advance of having firm access to the system. The Commission believes that the DSO’s proposal is written from the perspective of parties wishing to connect as soon as possible and most likely in advance of firm access dates as has been the experience to date. If a party were to received a connection offer in, say, 2010 with a firm access date in 2020 and the party elected not to connect in advance of having firm access then the Commission assumes that no work would be carried out on the shallow connection for a number of years. Similarly if it were a shared connection and all parties to the connection decided not to connect in advance of having firm access we believe the same would happen. This would give parties a number of years to determine whether to pursue a contestable or non-contestable connection. It would be questionable whether the hybrid solution would be relevant in this situation. The Commission agrees that parties in this case should not be required to select which option to pursue prior to signing a connection offer. The Commission believes that prior to the time when the DSO would begin to start planning the work; the DSO should request parties to make a decision.

SSE also makes the point that connection offers may change hands, which may leave the purchaser unnecessarily with a non-contestable offer. The Commission assumes that the purchaser would factor this into the price paid for the project and is not in itself a strong argument for allowing a change from a non-contestable to a contestable offer given the impact this may have on the DSO’s ability to deliver generator connections efficiently.

On the matter of the hybrid option the Commission does not accept that the legal and reputational issues associated with transferring planning permission and health and safety obligations from the DSO to the connection parties are not insurmountable. Given the significant costs that will be incurred by the connecting parties for both the generating stations and the connection itself, the
Commission believes the connecting parties would have an equal incentive to ensure that best practice was employed, in terms of compliance with health and safety requirements and planning permission, in the construction of the shallow connection.

On the other hand the Commission understands the DSO’s concerns regarding the planning of its resources. SSE compares the DSO to a private business and highlights some of the flexibilities a private business has in procuring services and materials. However the DSO is not a private business and there are two main differences that have a bearing in this respect, the requirements of public procurement and the requirement of the DSO to offer terms for connection. The first obligation means that the DSO cannot issue tenders for goods or service without there being a high degree of certainty that there is a requirement for the goods or service. The second obligation means that the DSO cannot refuse to construct a connection, something which a private business can do. The Commission accepts that without proper planning of resources, particularly when the quantity of connections envisaged in Gate 2 and 3 are realised as well as the required investment in the transmission and distribution network, it is likely that the costs and timelines for DSO provided connections will tend to increase, and potentially for contestable connections.

The hybrid approach may make it more difficult for the DSO to manage its internal and external resources as it will not know until a late stage in the process whether it is required to provide the connection or not. However it is questionable whether the DSO needs to know three months prior to offer issue from a construction resourcing perspective. The DSO does not know which parties will accept their connection offers until the end of the offer validity period. However, the Commission accepts that not knowing which option is being pursued some months prior to offer issuance may mean that work on a contestable and a non-contestable connection offer will have to be undertaken which has the potential to increase applications costs and delay the offer programme. We return this topic in section 2.9.1 below.

The Commission met with both SOs and some industry participants to discuss the issues raised and to see if a solution could be found to the issue. The DSO now proposes a “Hybrid Option”, the details of this option are detailed in a DSO proposal paper publish alongside this decision paper, the main elements are outlined below:

“Hybrid Option:

1. The hybrid option will only be available for connections with shared assets.
2. This option will only be available with full agreement of all parties sharing the assets. If at any point, prior to the group formally requesting a modification to a contestable connection, one or more subgroup members advises DSO in writing that they no longer wish to pursue this option and have no interest in pursuing the contestable option, the hybrid option will
be revoked and connection will progress based on a non-contestable option.

3. The contract issued to all parties will be a non-contestable contract and will require first stage payment on the basis of standard costs for a non-contestable contract.

4. In the event that, having opted for a hybrid offer, a decision has not been reached as to whether the subgroup wish to contest their connection prior to the DSO being in a position to commence design for the connection, then the design will commence as though the connection was to be built non-contestably. The design and planning permission will be completed by the DSO with the generators fully liable for the costs of the works incurred.

5. DSO will not undertake the following until a final decision is advised by the group:
   a. Any advance engagement with contractors
   b. Any pre-ordering of equipment
   c. Scheduling of internal staff for construction or ongoing project management

6. DSO will not undertake any wayleaving until such time as the developer or sub-group determine that a non-contestable connection is the preferred option.

7. DSO will not undertake wayleaving for a connection to be constructed contestably.

8. For reasons of 4. above, and the uncertainty which the hybrid option entails, if a hybrid option is selected the parties will not be eligible for the fixed date contract.

9. Final decision on whether to contest or not contest to be confirmed a minimum of 2 weeks in advance of invoice issuing for 2nd stage payment. In the event of a request to modify to a contestable connection, the timeline for the issuing of the 2nd stage payment request will be delayed until after the modified offer have been accepted.

10. A request to opt for a contestable option will be dealt with as a modification request, with the sub-group fully liable for the cost of processing that request. While DSO will endeavour to issue modified offers speedily, any modification request can take up to 90 business days to process.

11. DSO will not be in a position to engage on a contestable construction and/or issue functional specifications until such time as the modified offer is accepted by all parties.

12. In the event that the sub-group – having initially opted for a hybrid option - advise DSO that they wish to have their connection built on a non-contestable basis, DSO will endeavour to program this work soonest.”

The Commission understands that the most significant difference between the hybrid and a non-contestable offer is outlined in paragraphs 5, 6 and 7. The Commission understands that these conditions relieve the DSO’s concerns regarding the organisation of its resources and are consistent with the DSO’s belief that wayleaving needs to be undertaken together with construction. The
Commission understands that if a sub-group were to pursue a non-contestable connection after selecting this hybrid option, then, depending on when the sub-group notify the DSO of their decision, the provision of the connection may take longer that would otherwise have been the case.

The Commission believes that the hybrid option outlined by the DSO is a reasonable solution as the connection is progressed, allowing the connecting parties to reach agreement on the contestable option.

The DSO has highlighted in its proposals that if these arrangements become impossible to implement then it will reserve the right to withdraw the proposal. The Commission believes that if the hybrid option becomes impossible to administer then it would be prudent to review what the difficulties and look for solutions at that stage. In any event the Commission proposes to review the implementation of these contestability arrangements after an initial bedding in period, say two years, to ensure that contestability is a real option for connecting parties and the arrangements envisaged remain practical to implement.

Decisions:

To recap on the above, the Commission makes the following decisions:

1. Distribution connecting parties can select a contestable, hybrid or non-contestable connection offer; the hybrid connection offer to be consistent with the above outline.

2. Where a sub-group or a party that is not part of a sub-group elects to connect on a firm basis, they can select a non-contestable offer in the first case and request a modification to a contestable offer at a later stage assuming that the firm connection date is significantly in the future. The DSO will notify the parties when a final decision needs to be made.

2.2 Changing to a Contestable Connection

IWEA in its response has raised the issue of allowing parties the option of making a decision to change to a contestable connection in the following situations:

- When minimal or no work has being carried by the System Operators post connection offer acceptance.
- Where a member of a sub group has not accepted its offer or has its connection offer terminated then the proposed connection can be subject to re-design.
- Where an offer modification warrants a change in connection method design.

SSE believes that the parties should be allowed to choose a contestable connection where there is a significant change to the connection method during
the construction phase. The example given is where a connection is forced to go underground due to wayleaving issues.

The DSO has proposed that once parties have opted for a non-contestable offer the option to request a contestable offer at a later date is not allowed. The Commission believes this is reasonable if parties were previously allowed to select the “hybrid option” outlined above. For those that were not offered the hybrid option, i.e. connection offers issued prior to the implementation of the decisions contained in this paper, the DSO should allow parties, where practical, to modify their connection offer to a contestable or hybrid offer. The TSO echoes these comments and believes that an additional category – those in Gate 3 that have received offers before the implementation of the contestability arrangements – be adopted to the “Transitional Period” section. The Commission believes that, where possible, parties wishing to build a contestable connection should be accommodated and flexible processes should be adopted by the DSO to facilitate this. On the other hand the Commission is mindful that the DSO has finite resources to process modifications to offers and connecting parties need to bear this in mind.

In the case where a sub-group redesign is proposed due to some members of a subgroup not accepting their connection offer the DSO have proposed to allow parties to select a contestable offer. Also where there is a significant change to the connection method (e.g. due to a modification request or a failure to achieve consents) the DSO has proposed, on a case by case basis, to allow parties to select a contestable offer. The Commission believe these proposals are reasonable.

Decisions:

To recap on the above, the Commission makes the following decisions:

1. Where parties did not have opportunity to select the hybrid option and where minimal or no work has been undertaken by the SOs then a request to pursue a modification to a hybrid or contestable offer will be accommodated by the DSO.

2. Where a significant change to the connection method is required, where a connecting party has not accepted or terminated a connection offer a request to pursue a modification to a hybrid or contestable offer will be assessed on a case by case basis and will be accommodated by the DSO where possible.

2.3 What is contestable

BG Energy accepts and agrees with the DSO’s principle that all contestable assets will be built in compliance with the distribution standards provided by the DSO. BG Energy believes that communication and metering equipment should
be contestable provided that the assets used comply with the standards specified by the SOs.

The Commission understands that, as with protection equipment, communication and metering equipment is a relatively small portion of the overall cost of the connection however they are very important elements of the connection which can have a significant effect on the project timelines. Connecting parties are keen to have the delivery of these items of equipment under their control to ensure their timely delivery.

The DSO has considered this issue further and have outlined in their response to comments a similar model as proposed for protection equipment, i.e. that the connection party can procure and install the equipment –certain equipment being specified by the DSO to the make and model - with the commissioning of the equipment being carried out by the DSO. The exception to this arrangement is that the DSO will provide and install the revenue meter. The Commission believes that this is a reasonable proposal. Obviously, where elements of the connection are non-contestable, there is an obligation on the DSO to ensure that these elements are undertaken in a timely manner and align with the connecting parties delivery of the connection. The issue of DSO resources is addressed further below.

**Decisions:**

To recap on the above, the Commission approves the DSO’s proposal regarding the provision of communications and metering equipment.

### 2.4 Financial Arrangements

BG Energy fails to understand the purpose or benefits of the performance bond and seek further information on its purpose and what instances it would be drawn down. IWEA suggests that the bond is set to 30% of the cost of the shared connection assets and that the DSO would monitor the work on site to ensure that any roll back of work required would never be greater than 30% of the value of the share assets. EirGrid suggests that the performance bond be calculated to cover the shared transmission connection works also and that the term of the bond be examined further.

The Commission’s understanding of the performance bond proposed by the DSO is to protect the connecting parties in the event of the failure of the lead developer. A lead developer providing a performance bond to the DSO may eliminate the need for the connecting parties to cross bond each other. In the event of the failure of the lead developer or if the sub-group unanimously decided to request the DSO to complete the connection, the DSO would draw down the bond and complete the connection for the connecting parties. If the bond was not sufficient to cover the costs of the completing the connection then the connecting parties would be required to pay the remainder.
This would not protect the lead developer from default of one of the other connecting parties. This risk may be addressed in the commercial arrangements between the parties and the underwriting by the final customer would reimburse the share of the shared assets costs after the defaulting party’s connection agreement was terminated.

The DSO has provided additional clarity on its proposals namely:

1. The performance bond is optional.
2. The purpose of the performance bond is to facilitate connecting parties to reach agreement, and is to the benefit of the remaining connection parties in the event of failure of the lead developer.
3. The sub-group need unanimous agreement where it does not want to provide a bond. Where one party in the sub-group opts for the performance bond, a bond will be required.

The Commission believes that the DSO proposals are reasonable. The DSO does not specifically address the IWEA comment regarding the amount required for the bond or EirGrid’s comment regarding the term of the bond. The Commission believes that the amount of the bond and when the bond is returned to the connecting parties should be discussed and agreed between the connecting parties in the first instance and then with the DSO. The only stipulation that the Commission makes is the arrangements should be easy to administer.

Decisions:

To recap on the above, the Commission directs the DSO to facilitate the bonding arrangements outlined above in agreement with the connecting parties.

2.5 DSO Resources

IWEA highlights that the DSO need to have adequate resources in place to ensure that the benefits of contestability, e.g. control over timelines, is not lost. In particular the availability of commissioners seems to be an issue but also adequate resources will be required to modify connection offers, prepare functional specifications, review designs and carry out on site inspections. IWEA suggest that the SOs provide for the option of contract commissioners engaged by the connecting party and who are pre-approved and would report/answer to the SOs. Also commissioners need to be available on weekends and during holiday periods. One of the issues raised in discussions with generators is that they believe that inconsistent commissioning standards are applied: what is acceptable to one commissioner is rejected by the next commissioner.

The DSO responded to these comments by stating that resources are best managed in co-operation with all parties and by having clear processes, roles and responsibilities.
The Commission understands the concerns of developers and believes that clear communication, requirements, processes, roles and responsibilities are necessary to efficiently manage resources and the interface. As part of previous consultations on related matters the DSO have given commitments to:

- Provide a project manager for each sub-group;
- Meet on a regular basis with connecting parties to discuss progress on the connection, risks and issues;
- Provide a commissioner at the appropriate time in accordance with the project plan and a firm date agreed four weeks in advance.
- Provide clear commissioning procedures to ensure that all pre-commissioning undertaken by the connecting party conforms to the DSO requirements.

The Commission believes that the commitment by the DSO to provide clear uniform specifications and standards will ensure consistency. The regular meetings will allow all parties to be aware of the project timelines, to ensure that all requirements are known and being met, and that risks are analysed and strategies are development to limit the potential impacts. The Commission expects the DSO to provide sufficient resources to fulfil its commitments and that these resources are managed to ensure the successful delivery of the connection.

2.6 Ownership

The Commission examined the issue of ownership of the connection and requested parties to put forward the benefits of retaining ownership. As stated in the proposed decision the Commission’s opening assumption was that the benefits of retaining ownership would be outweighed by the costs. This was based on the fact that no party disputed, to the Commission, the transfer of connection assets. However, SSE disputes this and states that it has always disputed the transfer of assets and sees it as tantamount to expropriation of their property.

A number of parties have suggested additional reasons why a connecting party may wish to retain ownership, SSE attributes value to the ownership of shallow connection assets, Viridian believes that generator and shallow connection outages can be co-ordinated better and Saorgus re-iterate that connecting parties will have more control over the costs of operation and maintenance.

With respect to the criteria for transferring assets most respondents believe that the criteria are reasonable. Saorgus suggest that an international standards organisation is used to determine whether a party is competent to retain ownership. SSE believe that measures to maintain public safety standards are paramount and suggest that a process of expert accreditation and a licensing framework should be used to assess and maintain safety standards. IWEA
suggest an additional criterion, the ability to secure appropriate liability insurance, be added.

The Commission agrees that there may be benefits for parties to retain ownership of a shallow connection and these benefits may out weight the costs. The Commission agrees with the respondents in this respect. While we believe that the regulated standard charges for O&M costs reflect the efficient costs borne by the DSO, competitively set prices are better.

In the DSO’s proposals they propose to seek the transfer of all contestably built connections, and at a minimum the transfer, of the connection assets:

- For reasons of public safety;
- Where the assets are required to connect other customers or where the connection assets are shared by a number of connecting parties;

These proposals seem reasonable. In addition, although it may be implicit in the DSO’s proposals on this matter, the Commission assumes that the DSO would also seek the transfer of connection assets if the assets were needed for some wider system reason. The legislation does not give the Commission powers to compel the DSO to seek the transfer of assets, therefore it is a matter for the DSO under which circumstances it seeks the transfer of assets.

Where agreement is reached between the DSO and the connection party or parties for the transfer of the connection assets then no issue arises. The Commission gives a blanket approval to the transfer.

Where parties dispute the transfer of the connection the Commission has outlined in the proposed decision paper some (non-exhaustive) criteria which we propose to use. The criteria can be summarised as follows. The Commission would direct the transfer where it believed it was in the interests of public safety or where the connection was needed to connect other parties or needed for wider system reasons. There may be other criteria. The Commission does not preclude the use of further criteria in individual circumstances.

IWEA stressed that the SOs should retain the right to determine who is given access to the system and that the owner of a shallow connection does not have any rights to specify who gets access to system via the shallow connection. The Commission believes that ownership of a shallow connection does not confer rights on the owner to offer or deny access to the system. The legislation gives the SOs the exclusive function of offering access to the transmission and distribution system.

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2 In the proposed decision paper the Commission outline some of the possible requirements to ensure public safety, such as the provision of emergency response service, competency to maintain and operate, 24 X 7 point of contact, public safety awareness etc.
SSE stresses that the transfer of the asset should only happen when there is a definite and immediate need, i.e. a third party is about to connect. The Commission agrees with this in principle, although preparation for a transfer may begin at an earlier stage so that when the need materialises the transfer can take place quickly.

SSE also suggests that full market value should be paid for assets transferred. The connection policy currently provides for connection assets to be funded 100% by connecting generators. Consistent with this connection charging policy generation connection assets funded by connecting parties are not included in regulatory asset base of the SOs. Thus to date the transfer of contestably constructed connection assets to the TSO have been transferred at a nominal value. The Commission does not propose to change connection charging policy for generators, i.e. a generator pays a 100% contribution. The corollary of the SO paying full value for contestably constructed connection assets is that the SO would charge the connecting generator this amount for the connection. This may lead to cash flow issues and would be seem to be unnecessarily bureaucratic.

A number of the issues raised here will require further consideration such as, a possible licensing framework and a public safety framework. Also there may be other issues that may need to be examined such as the treatment of privately owned shallow connections under the market arrangements.

**2.7 Underwriting by the Final Customer**

The Commission proposed to extend the underwriting of the connection costs connecting parties would expect to pay based on their original offer. The DSO or TSO will pay the remaining generators the portion of the shared connections costs that would have been borne by a 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 Commission proposed that the payment would be made upon completion of the shallow connection and the termination of the connection agreement of the withdrawing party.

A number of respondents, including IWEA, Saorgus and BG Energy, believe that the payment of the withdrawing party’s share of the connection costs upon completion of the connection and after termination of the withdrawing party’s connection agreement is too late in the process. It will require the remaining parties to finance the additional connection cost in the meantime. This may be difficult for smaller connecting parties to bear and may ultimately require connecting parties to have cross bonding arrangements in place.

The Commission is mindful of the concerns raised by respondents. The goal of providing for the underwriting of the connection costs is to make contestability more accessible to all connecting parties. However this has to be balanced with
the requirement to protect the final customer from unnecessary exposure as well as some practical matters. For instance how would the SOs know if the party was withdrawing, as opposed to having a dispute with the constructor, until their connection agreement was terminated? If the connection was abandoned after the SOs paid the withdrawing party’s costs how would the SOs recover the final customers’ contribution? Obviously, it would be expected that this would only occur rarely, but it is seen as a distinct possibility given the industry’s belief that in the absence of early payment cross bonding of connecting parties would be required.

The Commission discussed this issue further with IWEA representatives to understand their concerns. Arising from these discussions the Commission has amended its proposals. The Commission now proposes that SOs pay the remaining parties, as would have been payable in the case of a non-contested connection, in the following sequence:

- The withdrawing party’s connection agreement is terminated;
- A performance bond is provided by the remaining parties prior to payment and will be returned upon successful completion of all the relevant connection works and energisation. The level of the bond will be equal to the amount to be paid by the SOs to cover the costs of the withdrawing party; and
- The SOs will make payments to the remaining parties as costs are incurred.

Alternatively, if the performance bond is not provided then the SOs would make the relevant payments upon successful completion of all the relevant connection works and energisation. At the customer’s request, and once a withdrawing parties connection agreement has been terminated, the SOs may also provide the connection parties a letter detailing the payments due to them upon successful energisation. The Commission believes that the proposals outlined above are reasonable and address the comments raised.

As before 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.

**Decisions:**

To recap on the above, the Commission directs the SOs to facilitate connection costs underwriting consistent with the details outlined above.
2.8 Unanimity

The requirement for unanimous agreement to build shared connection assets was introduced with group processing\(^3\). The reasoning behind this decision was to protect all parties’ right to connect to the system. The arguments are set out in “Group Processing Approach for Renewable Generator Connection Applications - Connection and Pricing Provisions (CER/05/010). At that time only transmission connections were contestable. With the introduction of distribution contestability the Commission has proposed to continue the requirement for unanimity amongst connecting parties to pursue a contestable connection. The Commission accepts that this is a barrier to contestability; however no solution that addresses the concerns outlined in CER/05/010 has been proposed.

IWEA agrees that contestable connections should only be offered to a sub-group where all parties agree to pursue the contestable route. Viridian and Endesa disagree.

Viridian suggests that if one or more generators have in excess of 90% of the connection capacity then they should be allowed to build a contestable connection without agreement from the remaining parties. Endesa strongly argue that the legislation providing for contestability does not required agreement from all parties for the exercise of this right and that the Commission is acting ultra vires in issuing a direction which is not consistent with the legislation.

The practical considerations outlined in previous consultations which make unanimity a requirement are given below:

- For a variety of reasons, an individual party, by delaying the provision of the shared connection, can hold up the development of other party’s projects without incurring any penalties and the other party having no remedy rights.
- In a contestable situation it is necessary to decide which party(s) builds the shared connection. Other parties will have to pay for their “piece” of the shared connection which could lead to potential disputes e.g. a party feels aggrieved by the fact that they did not build the shared connection and that they could have done it more cheaply. This would suggest that all parties connecting would have the right to tender to build the contestable assets.
- The standards to which the shared connection assets are built will affect all connecting parties. If disputes arise over the quality or standards of construction methods or material used then this will affect the timing of all other parties’ connections.

\(^3\) Note that connecting parties can build their dedicated assets without agreement of other parties in the sub-group as, by definition, the dedicated are not used to connect other parties.
The impact of providing future connections to applicants in the same area.

The Commission believes that the relevant legislation does give the Commission the power to specify the terms and conditions of an offer for connection and the terms and conditions upon which an offer is made. This relates to both contestable and non-contestable offers.

A possible alternative would be to allow all parties to build dedicated connections. The Commission believes that this would not be an efficient outcome as it would increase the connection cost for all and lead to an inefficient development of the system ultimately leading to higher costs to the final customer. It is a duty of the Commission to promote efficiency on the part of electricity undertakings and the DSO to develop the distribution system in an economical and efficient manner.

Viridian suggests that if one or more generators have in excess of 90% of the connection capacity then they should be allowed to build a contestable connection without agreement from the remaining parties. The Commission disagrees. We believe that Viridian’s proposal does not address the issues outlined above.

Therefore to the extent that the requirement for unanimity curtails the unfettered right of a parties to construct, or have constructed, the shared asset – by virtue of having to secure the agreement of the other sub group members relying on that shared asset - the Commission considers this to be reasonable. It arises solely and unavoidably as a consequence of moving to a group processing regime. The other sub group members will also be relying critically on the construction of the shared asset and it is reasonable that they should have a say in by whom and how it is constructed.

The Commission is open to exploring any proposal which would effectively address the issues outline above and allow the relaxation of the requirement for unanimity.

Decisions:

To recap on the above, the Commission directs the DSO to issue contestable or hybrid connection offers to sub-groups only where there is unanimous agreement to pursue a contestable or hybrid connection.

2.9 Other issues

2.9.1 Further Information and Multiple Offers

Endesa suggests that the DSO should provide a contestable and non-contestable offer to allow parties to compare prices with those of other competitors and to do otherwise may be anticompetitive. SSE believes that, in the absence of competition, if the DSO does not provide a service, in this case
providing for the hybrid model, which would be available in a properly competitive market that it would represent an unreasonable exercise of dominance.

The Commission believes that the regulated and published standard charges provide considerable transparency to the DSO charges for connection to the distribution system. Once the connection method is known to the connecting party the cost of the connection that will be in the connection offer can be calculated to a reasonable level of accuracy. The Commission understands that the connection method and an estimate of the connection charge is discussed at the pre-offer connection method meetings held by the DSO. The DSO has also committed to providing additional information outlined above in Section 2.1. The Commission believes that issuing one offer to connecting parties should be sufficient given the level of information that will be provided before issuing the offer. However, before finally deciding on this matter we need to see the impact of issuing both a contestable and non-contestable offer. The SOs have committed to undertaking a review of the impact of the contestability arrangements will have on the Gate 3 offer timelines. The Commission has requested the SOs to include in this review the impact of:

(a) the timing of when a decision to select a contestable, non-contestable or hybrid offer (i.e. impact of making a decision 3 months prior to offer issue or later in the process); and
(b) producing multiple connection offers,

in terms of the impact on the Gate 3 offer timeline and application costs. The SOs will report the findings at the Gate 3 Liaison Group meeting and a decision will be made following discussion with the members.

2.9.2 Anti-Competitive Behaviour

The Commission understands that connecting generators can and have organised the construction of their shallow connection, including the planning permission element of the connection i.e. the applicant can undertake or arrange for a third party to plan and/or construct elements of a connection. The Commission would not see the DSO’s reluctance to offer the hybrid model as an exercise of dominance. The requirement for the hybrid model seems to stem from the reluctance/inability of the connecting parties to initially agree to contestably build a connection rather than a lack of offers from third parties or inability of the connecting applicant(s) to undertake the work. In any event the DSO is now proposing to offer a hybrid model.

2.9.3 Review of Implementation

The Commission plans to undertake a review of the contestability arrangements and assess the success of these arrangements. Given the Gate 3 timeline, this review is planned for two years from the publication of this decision paper.
2.9.4 Open Book Approach

In general the responses to the proposed decision paper agreed with the Commission’s proposal to focus on eliminating the barriers to contestability. However, should the review of the contestability arrangements conclude that the barriers to contestability are insurmountable and that contestability is not a realistic option for connecting parties then the Commission will re-examine the open book approach.

2.9.5 DSO Specifications

The DSO has prepared generic functional specifications for the relevant distribution connection equipment. In relation to a specific connection, DSO would consider that – in most cases - functional specification can be provided to the connecting parties within 60 business days\(^4\) after a contestable offer is accepted.

2.9.6 Contracting

The SOs have been examining the contractual framework which will allow distribution connecting generators to construct transmission elements of a connection. The Commission understands that the SOs are proposing, subject to final confirmation there are no insurmountable legal issues, that the distribution contract will provide these matters and no additional contract with the TSO will be needed. The Commission welcomes this proposal and believes it will provide for simpler and more streamlined management of the connection.

2.9.7 EirGrid’s review of transmission contestability arrangements

EirGrid have committed to undertaking a review of the transmission contestability arrangements. EirGrid have actively engaged with the Commission and the DSO to put in place distribution contestability arrangements. EirGrid will be considering the issues raised as part of its imminent review of contestability.

\(^4\) Please note that in the case of simple connections DSO would hope to have this work complete in less than 60 business days.
3.0 Direction and Implementation Steps

3.1 Direction

The Commission, pursuant to Section 34(1) and 34(1B) of the Electricity Regulation Act 1999, hereby directs ESB Networks Ltd acting as the distribution operator to offer to parties seeking connection the option to construct the connection to the distribution system consistent with the arrangements outlined in this decision paper.

3.2 Steps to Implementation

The next steps are:

1. The SOs are to review and report to the Gate 3 Liaison Group on the impact that the distribution contestability arrangements have on the Gate 3 roll out of connection offers and to review the impact that the possible permutations of timings on connection offer selection.

2. The DSO is to develop and publish detailed contestable connection procedures. The aim is to provide clear and comprehensive information on the arrangements which allow those seeking to connect to the distribution system to construct their own connection.

3. The DSO is to develop and consult with interest parties on the contractual arrangements that will give effect to contestability.