



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

CER/09/193

EirGrid response

January 2010

EirGrid welcomes the opportunity to comment on the Commission's consultation on Contestability for Distribution & Transmission Level Connections to the Electricity System (CER/09/193).

EirGrid recognises that as additional generators connect to both the Distribution and Transmission Systems and increasingly complex inter-gate issues arise, provision for contestability will become more of a challenge. With this in mind, EirGrid will examine its own framework which provides for contestability at transmission level (EirGrid's Contestability of Connection Assets Position Paper, October 2007) to determine whether it will also require some level of revision in the coming months.

In light of the Commission's earlier request that respondents give further consideration to the barriers to contestability "to ensure that options for parties to build their connection is facilitated to the greatest extent possible", both System Operators have constructively engaged with each other and jointly with industry to get a greater understanding of the key challenges being faced at present in this context and to explore how these challenges might be overcome.

EirGrid would like to comment on the following sections of the proposed decision paper (listed 1 – 6 below), in addition to the following sections of ESB Networks' Key Principles and Processes Paper (Appendix A of the proposed decision paper) (listed 7 – 8 below) -

1. Section 2.2.1 – Underwriting by the Final Customer
2. Section 2.2.2 – Unanimity
3. Section 2.2.3 – Ownership of Shallow Connection Assets
4. Section 2.2.4 – Hybrid
5. Section 2.2.5 – Transmission Construction
6. Section 3 – Open-Book
7. Appendix A - Section 5 - Financial Arrangements
8. Appendix A - Section 6.1 - Connections eligible to be built contestably – Transition Period

1. Section 2.2.1 – Underwriting by the Final Customer

The Commission proposes that customers wishing to contest their connection (at either transmission or distribution) should not have to risk paying the costs associated with generators who cannot or who choose not to proceed (prior to or following offer acceptance). The Commission therefore proposes that these costs be underwritten by the TUoS/DUoS customer (in a similar manner as if the System Operators were to construct the connection). The portion of shared costs will be added to the Transmission or Distribution regulatory asset base, based on standard charges.

EirGrid has considered the Commission's proposal and regards it as reasonable. In particular, EirGrid considers it appropriate that, in this manner, contested and non-contested connections are treated the same. This is subject to the costs being underwritten being no greater than would apply where parties did not elect to contest their connection. This will ensure that there is not a barrier to parties that share assets building contestably due to the risk of generators in a subgroup choosing not to proceed with their connection.

It is EirGrid's understanding that industry still has some concern regarding the timing of the provision of funds from the end user i.e. on energisation of the works, as a result of which cross-bonding between developers might still be a requirement. This issue may need further consideration.

As an aside, it is of value to note that the insolvent winding up or dissolution of a customer is already expressly recognised as an event of default in the General Conditions of the TSO's Connection Agreement, with the consequent termination of same.

2. Section 2.2.2 – Unanimity

EirGrid considers the retention of the unanimity principle regarding sub-group agreement as critical to the long term delivery of generation assets in future. The unanimity principle is a core element of the Group Processing Approach, without which substantial time delays and connection asset inefficiencies are likely. As a result, EirGrid welcomes the Commission's proposal not to alter the requirement for unanimous decision-making for transmission and distribution connections.

3. Section 2.2.3 – Ownership of Shallow Connection Assets

EirGrid welcomes the Commission's proposals regarding both the provision of blanket approval where all parties agree to the transfer and the specification of certain criteria which will be used in the decision-making process where blanket approval does not apply.

4. Section 2.2.4 – Hybrid

The Commission has requested that both System Operators consider the potential implications of facilitating the deferral of a generator's decision to go contestable/non-contestable until planning permission has been granted for the shallow connection works.

Per EirGrid's comments on the responses to the consultation, submitted to the CER in October 2009 – "The concept of a contestable/non-contestable hybrid was proposed, whereby a System Operator would be responsible for the planning aspects of a proposal, while the assets would be built on a contestable basis. EirGrid recognises that such a proposal would involve a number of complexities and that the implementation of such an arrangement would not be simple. This proposal would need to be considered in the context of the current industry framework, to ascertain if there are alternative ways of achieving the same end goal. EirGrid will consider this issue when reviewing EirGrid's Contestability of Connection Assets Position Paper in the coming months."

Please note that the TSO's earlier comments were based on the understanding that the hybrid model being proposed involved the relevant System Operator applying for the requisite planning permission and carrying out the wayleaving function, where a customer had already requested a contestable connection agreement pre-offer issuance. It now appears that the hybrid model being proposed allows a developer to defer the decision to go contestable/non-contestable until after planning permission is granted and the wayleaving has been completed.

EirGrid has considered this further in recent months, having consulted extensively with ESB Networks and taken specialist advice on this issue. EirGrid understands that there may be legal issues if anyone other than the party who has obtained planning permission in respect of connection assets undertakes the build of those connection assets.

Irrespective of whether or not the current legal regime permits the submission of planning applications for connection assets by parties other than the party undertaking the build, there are other practical issues to consider e.g. the building and maintenance of positive working relationships with statutory consultees and other interest groups, members of the relevant local community, landowners and other stakeholders. Should pre-planning permission negotiations and consultations be carried out by a System Operator, with the physical build of the assets being carried out by a third party post-planning permission, this could potentially undermine the reputation of the relevant System Operator. Compliance with planning, regarding both planning conditions and permitted detailed design, could also pose problems. There is also concern that the management of relationships with stakeholders during the construction process would still require the extensive involvement of the relevant System Operator, giving rise to challenges with human resource planning and potential for delays to the delivery of project-specific connection assets and wider system development assets.

As mentioned previously, both System Operators have constructively engaged with each other and jointly with industry to get a greater understanding of the key challenges being faced at present regarding contestability and to explore how these challenges might be overcome. In particular, the issue of the hybrid was discussed and both System Operators were made aware of the challenges associated with getting unanimous agreement within subgroups to go contestable/non-contestable under the current contestability regime at transmission. It is EirGrid's understanding that the availability of costs for both options and other information (e.g. the subgroup's single line diagram) and the timing of same are key issues. EirGrid understands that the DSO is currently considering a number of options regarding the timing of both the provision of information and the making of the decision to go contestable/non-contestable as a means of addressing this barrier to contestability (see Appendix A - Section 6.2 - Connections eligible to be built contestably – Rules Going Forward for the DSO's proposal as at November 2009).

As the Commission is aware, both System Operators have scheduled and are currently delivering on the Gate 3 project to deliver over 6,000 MW of connection offers to conventional and renewable plant over the next 18 months. The Gate 3 Offer Programme has been developed based on certain assumptions regarding scope of work. The Gate 3 Offer Programme does not currently include provision for additional work due to the introduction of distribution contestability. EirGrid is however committed to facilitating the introduction of distribution contestability. On this basis, provided the impact of the DSO's proposals on the delivery of the Gate 3 Offer Programme and related projects is agreed with CER, the TSO is committed to supporting the DSO in their consideration of the various options. In order to assess the impact of including additional distribution contestability work in the Gate 3 project, a formal impact assessment would have to be carried out as has been highlighted and discussed at recent Gate 3 Liaison Group meetings. Once there is further clarity on the DSO's proposals, the TSO intends to engage with the DSO to carry out this formal impact assessment.

5. Section 2.2.5 – Transmission Construction

In previous discussions with the Commission, the TSO suggested that it may require a direct contractual relationship with all parties constructing shared transmission connection assets contestably, i.e. including DSO customers.

Following further discussion with the DSO on this issue, it may be possible to provide for such a situation via the DSO's Connection Agreement with their customers, though this is still being considered. While discussions are ongoing with the DSO regarding this issue, it is expected that a final decision is imminent.

6. Open-Book

EirGrid welcomes the Commission's decision to focus on addressing certain issues regarding contestability, as opposed to introducing an open-book proposal.

7. Appendix A - Section 5 - Financial Arrangements

It is proposed that a developer undertaking a contestable build be required to post a performance bond with the DSO in respect of the connection works. EirGrid welcomes the provision of further information on the mechanics of the DSO's proposals regarding the bond and supports these in principle.

It is the TSO's understanding that the bond amount will be based on the cost of shared connection works being built contestably (as opposed to all connection works being built contestably), calculated using standard charges. Also, where a DSO customer is building shared transmission connection works, it seems sensible that the performance bond be calculated to cover the shared transmission connection works also, though this may need further consideration. Following recent discussions with the DSO, the TSO understand that the DSO proposes that the bond would remain in place until the last of the relevant sub-group members is energised. This cut-off date may require further consideration also.

8. Appendix A - Section 6.1 - Connections eligible to be built contestably – Transition Period

Per EirGrid's comments above, the TSO is conscious that the Gate 3 Offer Programme is currently well underway and some connection offers may have advanced to a stage whereby the timelines to engage on contestability options may have passed. In those cases it may be necessary to adopt an additional category to the 'Transition Period' section. The extent to which this will be relevant will depend on the timing of the final direction on this matter and the confirmation of the appropriate rule-set to apply to connection offers under development. The connection offers potentially affected will be confirmed through the impact assessment to be undertaken for Gate 3.

To conclude, as stated previously, EirGrid recognises that as additional generators connect to both the Distribution and Transmission Systems and increasingly complex inter-gate issues arise, provision for contestability will become more of a challenge. With this in mind, EirGrid will examine its own framework which provides for contestability at transmission (EirGrid's Contestability of Connection Assets Position Paper, October 2007) to determine whether it will also require some level of revision in the coming months.