John O’Connell  
Commission for Energy Regulation  
The Exchange  
Belgard Square North  
Tallaght  
Dublin 24.

Date 1 February 2010

RE: RECENT PROPOSED DECISION PAPER ON CONTESTABILITY FOR DISTRIBUTION AND TRANSMISSION LEVEL CONNECTIONS TO THE ELECTRICITY SYSTEM

Dear John,

DSO welcomes a further opportunity to comment on the proposed provisions for contestability as published by the CER on 15th December 2009.

In the first instance, and as previously set out, DSO welcomes the introduction of contestability to the Distribution System. The introduction of contestability provides developers with a further option, allowing them to take a more active role in the provision of their connection should they consider that such an option best suits their project. Given the changes which have already taken place with regard to the connection process for distribution, the other changes that are in train; and further the scale of work required to deliver circa 300 connections (for Gate’s 2 and 3 alone) – any rules and principles established need to be clear and easily implementable, provide certainty to both the industry and the SO’s, and be subject to review when this latest change is bedded in. To assist this process, DSO are continuing to engage with industry – in advance of the direction - to identify issues that may arise, and where possible to put processes in place to deal with them. This engagement has been positive, and invaluable in establishing the concerns and road-blocks that might otherwise arise during the course of the project.

In relation to the specifics of the direction, DSO would comment as follows:

Section 2.2.1 – Underwriting by the Final Customer

In this section CER have proposed that the UoS customer would underwrite a contestable connection – where a party drops out – in the same manner as a non-contestable connection.

CER further sets out that payment will be made:

1. on completion of the connection of all remaining subgroup members
2. once the connection agreement with the withdrawing party is terminated (either by request of the party, or by the SO)

In addition the CER sets out that the SO will terminate a connection agreement if a party goes into liquidation.
The first condition, in particular, is focussed on avoiding a scenario whereby the UoS customer pays for assets – which are ultimately never installed.

Following discussions with the industry, while they accept and welcome the provision that the UoS customer will fund a portion of the contestable build where a group member defaults, the timing of the funding is such that it does not remove the need for cross-bonding between developers.

DSO agrees that as an initial principle it is best that any funding from the UoS customer is based on both conditions being met. However DSO also considers that this matter could be reviewed, in the light of experience, to determine whether the process lends itself in practice to a more flexible approach that still affords protection to the interests of the user..

Section 2.2.3 – Ownership of the shallow connection

DSO agrees with CER’s proposal with regard to ownership of assets and welcomes the proposal that – where all parties agree to the transfer of the assets - a blanket approval from CER is assumed.

As set out in our initial response to the issues raised following the initial consultation, DSO would continue to have concerns where contestably built assets remain in private ownership. However should CER consider that this is the most appropriate course, DSO agree that certain minimum criteria must be met by the owner to ensure public safety in relation to these assets.

In the event that the ownership of the asset is not taken over in the first instance by the DSO, and at a future date the asset is required to connect other customers, or for system development, then the DSO will only take over the assets following an assessment of asset condition. In the event that the DSO considers that the asset condition is not up to the required standard then the asset owner will – at their own cost – be required to bring the asset up to the required standard. The timing of this assessment, and how it may impact on the ability of the DSO to issue offers whose LCTA connection is to use these assets, will need to be discussed and determined in due course.

Section 2.2.4 – Hybrid

DSO has already commented on this issue in our initial response to the issues raised following the initial consultation. However at this juncture we welcome the opportunity to expand further on our concerns.

Firstly, DSO’s understanding of the proposal is that the parties can opt for a non-contestable contract at Offer stage, but can opt to modify that offer to a contestable build at any time up to 55% payment stage.

DSO considers that this proposal will have a negative impact on delivery of all non-contestable contracts for the following reasons:

1. **Planning of resources.** In the event that DSO does not know – up to the 55% payment stage - whether a connection is to be constructed by ESB 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 DSO 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. Framework Contracts. Our framework 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, this will adversely impact on the quality of these predictions with consequential effects on connection times, and potentially impact on future framework contracts.

4. Engagement with contractors. As with the other points set out above, in the event that when we are entering negotiations with contractors on the basis of a non-contestable build – there is uncertainty as to whether ESBNetworks will be in a position to definitely award a contract, this uncertainty will inevitably factor into the quotes being submitted by contractors and will likely lead to a higher cost. As much of the generator work is undertaken on a standard cost basis (with the exception of civil works and other pass through items) this additional cost will be borne by the End-User.

Further to above and at an earlier stage post offer acceptance, ESB Networks will commence design work with a view to obtaining planning permission. A number of issues may arise where the non-contestable contract may be modified post this work being undertaken:

1. Our legal advice is that – where a build is to be undertaken on a contestable basis – the Planning Permission should be obtained by the party undertaking the build. ESB Networks consider that should we submit a project for Planning based on a non-contestable build, and ultimately the project is undertaken on the basis of a contestable build, at a minimum this may undermine our relationship with the Local Authority involved and with the landowners with whom we would have had some dealings in relation to the submission for Planning.

2. In addition to this DSO would consider that, if we are engaging with a Local Authority for a build over which we ultimately will have little control, there is a risk to our reputation – with the consequent knock-on impact on other projects - 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 land-owners. In non-contestable works preliminary wayleave discussions will take place at this stage. In the event that a different party is then undertaking final 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 adversely impact on the level of trust between DSO and landowners which could impact on our delivery of other work.

4. Designs prepared for Planning permission are based on ESB Networks Ltd. standard equipment and as such are based on specific sizes, construction etc. In the event that the build is being undertaken contestably, it is likely that a developer will be using non-standard equipment. In the event that the use of non-standard equipment by the IPP is approved, the station foot-print may change, which may in turn drive the need to revisit the PP with attendant impacts on cost and delivery. In addition any in-efficiencies in the use of DSO resources will undoubtedly have a knock-on impact on other projects.

5. The party preparing the initial design will have safety obligations for the entire build (as enforced by the HSA). While it may be possible to hand-over this obligation to the
constructor, this may be resisted on the ground (by the IPP) and again lead to delays, and a perception of unnecessary bureaucracy

Further to all of the above and as previously stated, DSO are concerned that should the options being made available at this stage introduce too much complexity, they will be difficult to operate and may ultimately result in a reduced level of service to all customers including generators. As with many of the provisions set out at this point, we are happy to review this issue in time, once processes are established and all players are familiar with the key barriers remaining.

**Interaction with the industry on this issue**

DSO, TSO and IWEA have met specifically on this issue. Our understanding is that the impetus for this option derives from the need to get agreement between parties sharing connection assets in the event that a contestable build is being considered. DSO appreciates that – since the introduction of Group Processing, and the increased likelihood of a connection including shared assets – this need for agreement between the parties has posed an obstacle. No matter what timeframe is allowed to reach agreement, the challenge in reaching such agreement is undiminished. However DSO considers that the key to overcoming some of the concerns which have been raised relates to the information available. To this end, DSO has proposed the following:

1. In relation to Gate 3 in particular, connection method meetings are held in most cases some months prior to offer issuance. These meetings set out the proposed connection method, and will identify which parties are sharing assets. DSO does not request the parties to indicate at this stage whether a contestable build is required. However should parties wish to consider this option, they will know the likely connection method, and also can identify which other parties need to be involved with the decision to contest shared assets

2. DSO will write out to all parties a minimum of 4 months prior to offer issue and provide the following information
   a. Which items in their connection can be built contestably
   b. Of these which items require agreement, and which parties in the subgroup need to agree
   c. What is the expected reduction in cost associated with each item which can potentially be built contestably
   d. What are the expected contestable costs - in relation to design reviews for example?

   The letter will also set out various conditions for a contestable build and will include a template - which all parties will be required to submit – should they wish to opt for a contestable build. DSO will be requesting a final decision on this matter within 20 business days in order to avoid any delay to offer issuance.

3. DSO intends – following a final decision on Distribution contestability – to publish on our web-site a comprehensive document setting out the principles of contestable connections. This will be similar in format to the key principles paper published alongside the proposed direction.
4. DSO would also welcome the opportunity to present on our position at any appropriate public for a – for example conferences on renewable energy in general.

5. DSO will continue in our engagement with the industry to explore other ways of facilitating contestability.

DSO and TSO have been discussing the above proposal, and will continue to work together with the aim of arriving at a process which can be supported by both SO’s; will have a minimum impact on the Gate 3 Offer Program and will satisfy industry’s need for information prior to decision without compromising DSO’s ability to deliver connections to all parties. In addition both SO’s have agreed that any potential impact on the Offer Program will be identified, and agreed with CER in advance of the process being finalised,

Section 2.2.5 Transmission Construction

DSO welcomes the decision to allow parties connecting to the Distribution System to construct Transmission assets on a contestable basis, should these assets form part of their shared connection (and subject to the usual requirements governing eligibility for a contestable build).

There are 2 options that have been discussed to date

1. TSO to conclude a separate contract with the party constructing the asset
2. The connection agreement between DSO and the generator to cover the associated obligations of the generator in relation to both Distribution and Transmission connection assets and DSO to act as the sole customer contact.

DSO is working with TSO to ensure that this issue is dealt with in the most appropriate manner taking account of all the issues. While a final agreement has yet to be reached DSO are confident that agreement will be in place prior to the final decision being published.

Section 3.0 Open Book

DSO welcomes CER’s decision not to introduce Open Book at this juncture. DSO agrees that the priority must be the introduction of contestability, as this arrangement confers most control over the project build onto the developer.

Yours Sincerely,

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