



**SSE Renewables - Response to
Proposed Decision on Contestability for Distribution &
Transmission Level Connections to the Electricity System
(CER/09/193)**

29 January 2010



Proposed Decision on Contestability for Distribution & Transmission Level Connections to the Electricity System (CER/09/193)

Introduction

SSE Renewables is pleased to respond to the Commission's draft decision on connection contestability and is pleased to note the extent to which comments on the initial consultation have resulted in changes to the initial draft. As our response to the September consultation has not been included on the Commission's website, or referred to in the draft decision, the comments set out below re-emphasise our perspective on those areas of proposed policy where we believe the draft inadequately addresses the needs of connecting Parties.

Our main concerns relate to the proposed timeline for notification of the requirement for a contestable offer and the definition of the various stages of development; particularly in relation to the construction phase. We also fully support the proposal to allow developers to retain ownership of their connection assets.

SSE's Power Distribution business owns 128,000 km of overhead and underground cables that supply power to over 3.5 million premises, in addition to owning the transmission system assets in approximately 25% of the GB land area. As an experienced owner and operator of power systems, we know that there is no technical or safety reason for a blanket requirement that developers transfer their connection assets to the ESB and we therefore look forward to retaining control of our assets in Ireland.

Barriers to Contestability

Contestability on change of connection arrangements

Section 6.1 (3) of ESB's proposals describes situations in which a connection will be completed by ESB Networks; including where the construction phase has started. We do not believe that the construction phase is clearly enough defined, properly to address situations where the connection has materially changed and the existing construction agreement has become frustrated through inability to perform.

This scenario can occur where an overhead line was originally agreed on, but wayleaving issues subsequently result in the connection having to be underground. In such circumstances, even though ESB Networks may have ordered material or entered into an agreement with a contractor, the original project cannot be delivered because the underlying agreement has been frustrated and the contract must therefore be terminated on the grounds of

non-performance. As the alternative connection is unrelated to and materially different from the original, it should be recognised as a new project that the developer should be able to build contestably.

While ESB Networks may have made preparations in good faith to start construction of the original connection, this is not relevant to the new project for which design must start again from the beginning. In respect of ESB Networks' abortive costs, defined contract termination payments would apply. The following should therefore be appended to 6.1 (3);

“however, if the connection option is changed once the construction phase has commenced, for example if the connection is forced to go underground due to wayleaving issues, the work will be treated as a new connection that the developer may contest in the normal way.”

Timeline for notification of contestable connection

ESB proposed policy paper 6.2 states that a developer must indicate that they require a contestable connection 3 months prior to issue of the offer (or earlier) and once issued it will not be allowed to change to a contestable offer. This is unreasonable for a number of reasons;

- Connection offers are being issued for Gate 3 with connection dates that will be between 2011 and 2025. It is highly unlikely that a developer will be able to decide on build arrangements so far in advance. In the case of a group contestable build, it is even less likely that agreement on a contestable build can be reached in this timescale; particularly as agreement on the connection, payment arrangements, sites and route selection must sometimes be reached within the subgroup. Where windfarm projects do not yet have planning permission such agreements will clearly be very difficult to complete by a deadline that could be 10 years before the project is expected to connect..
- Connection offers change hands between developers. If a small developer chooses non-contestable build (which many will) such an early decision, that is unnecessarily irreversible, means that the new project owner will not have the option to speed up its connection through the option of contestable build.
- The reason given by ESB Networks for such early commitment is that they do not want to assign internal resources to the projects and engage contractors in discussions for Grid connections and then not follow through on the contract. Networks are concerned that this may compromise relationships with these contractors. Such cosy relationships are not the norm in private business, where contractors accept an amount of unproductive tendering as part of the normal contracting process. It is our experience that there is no impact on working relationships, quality of delivery or any other factor, as a result of failure to proceed with every enquiry.

The contestability process must demonstrate a degree of flexibility that reflects the diversity of real-world circumstances.

Ownership of the shallow connection

We would dispute the Commission's assertion that transfer of the shallow assets has been mutually agreed in all cases up to now. From the outset Airtricity has always objected to the enforced loss of assets from our balance sheet and their transfer to the ESB for ridiculously low sums, regarding the loss as tantamount to expropriation of our property. At the time there seemed to be no alternative, but this is no longer the case. The Commission may well, "assume that the benefit of retaining ownership of the shallow connection ... would be outweighed by the costs", but this does not make the statement true.

SSE Renewables is totally opposed to handing its assets over to any third party without good cause and payment at full market value.

In response to the specific questions in the draft decision;

Question 1

Are there additional benefits to owning a shallow connection?

The issue of asset ownership should be a decision for each individual organisation and should not be a matter for critique by others as the basis of a policy decision. Given the opportunity, if a business sees benefit in retaining its assets it will do so, and vice versa. SSE Renewables attributes value to the ownership of its shallow connection assets.

Question 2

Do you believe that the above criteria are reasonable?

In terms of assessing suitability for the care and control of potentially hazardous assets, we absolutely agree that measures to ensure public safety and competence of the organisation to maintain safety standards are paramount. We believe that the proposed criteria are reasonable in this regard.

In terms of assessing the suitability of an organisation to own, operate and maintain its shallow connection, we believe that the statutory participation in transmission licensing arrangements could be invoked to licence appropriate organisations and maintain appropriate regulatory oversight of ongoing standards of performance. The Commission has experience of using expert accreditation to determine whether defined standards for operation of market processes have been attained by market participants and the same approach, of expert assessment, could be used to assess licence applicants.

Question 3

Do you believe that there are additional items that should be added to the criteria?

In terms of safety and competence, we believe the Commission's proposals are adequate. In terms of ongoing regulatory oversight, we believe that a form of licensing is the best way to ensure that initial standards are maintained and proper interaction with the DSO enforced.

Forced asset transfer

Where legal criteria are invoked to enforce an asset sale, transfer should only be required at the point where the law would otherwise be infringed; ie a third party is about to connect; ESB Networks is on the point of incorporating the asset into a larger development scheme. Transfer should not be forced merely on the basis of plans for future works.

Hybrid schemes

In relation to the hybrid approach, we reject ESB Networks' objection, "that the hybrid proposal is not a contestable build but equates to the developer 'cherry-picking' and purely acting as a contractor for the build". This is an argument based on pure self-interest and without any objective validity. In the commercial environment, organisations are free to choose the work they wish to do and to contract out the remainder. There is no reason why ESBN should not undertake, "the more difficult, time-consuming and less predictable part of the works", that, "will require a large resource commitment from ESB Networks Ltd", so long as the work is paid for.

SSE Renewables is presently undertaking a connection project in Northern Ireland that exactly follows the hybrid model. Planning permission was obtained by NIE T&D and SSE Renewables is undertaking the project and managing the construction phase. There have been no legal issues to obstruct this, as ESBN's legal concern over the planning consent issue was easily addressed via a legal assignment of information. We would challenge ESBN to justify its assertion of this being an issue of legal constraint.

In the context of providing connections, ESB Networks acts as the default contractor of last resort; the service provider. Developers are the customers. A normal commercial relationship involves the service provider delivering the service requested by the customer in return for reasonable payment. In the absence of competition, refusal to provide a service that would be available in a properly competitive market represents an unreasonable exercise of dominance. NIE T&D is willing to offer the flexibility of contractual scope that ESBN refuses, so it can only be concluded that the latter's stance is based on a belief that it has the power to impose contractual uniformity. In the wholesale electricity market, the Commission has gone to considerable lengths to prevent the exercise of dominance and a similar stance should be taken in regard to dominant behaviour by ESB Networks.

Summary

While there are genuine issues of public safety and legal obligations surrounding ownership of shallow connections, the Commission must ensure that asset transfers are only enforced at the point in time when they cannot legally remain with the owner. In all other cases, developers should be free to make their own choice as to whether to retain the assets or transfer them. Retention should be based on continuous employment of a properly accredited and licensed operator for the assets – either in-house or contracted-in. In relation to deadlines for commitment to contestable build and the contractual demarcation of responsibility between ESB Networks' and the developer, the Commission must make a judgement on basis of balance between essential technical drivers and the exercise of dominance. As an experienced network owner and operator, SSE knows that there are few genuine technical issues associated with contestable build and we expect that the Commission's final decision will reflect this fact.