



When to Select a Contestable Offer – Decision timeline

Status: For discussion

Date: 09/03/2010

ESB Networks Ltd.

1. INTRODUCTION

One of the primary issues on which discussion was outstanding post the proposed direction on 'Contestability for Distribution and Transmission Level Connections to the Electricity System' was the issue of the hybrid connection offer whereby a decision to contest or not was made post offer acceptance as a modification request. This paper sets out ESB Networks position on this issue.

2. Original ESB Networks Proposal

ESB Networks original proposal on this issue – and our preferred position – is that prior to offer issue a generator, or group of generators should confirm whether they wish their offer to be issued on a contestable or non-contestable basis. In the event that the offer is to be issued on a contestable basis the generator (or group) will be required to advise which specific assets they wish to contest and which developer will be the point of contact and lead developer for the sub-group in relation to delivery of contestable assets. The decision to contest will be based on information provided by the DSO prior to offer issuance. The information to be advised will include the following :

1. Costs for contesting the connection versus not contesting. The costs will be broken down on a per line item basis and will include an estimate for costs to be incurred for project management and/or supervision¹
2. Which line items can be contested
3. Which developers have to agree for contesting specific line items
4. Templates to be provided advising of decision to contest; which assets are being contested and who is the lead developer (where appropriate)

This has the advantage that a decision to contest is made based on clear cost information, and without the delays and additional costs associated with processing a modification post offer acceptance. It is DSO's further preference, for reasons of work organisation and work delivery and in recognition of the scale of work to be delivered in

¹ These costs will also include the costs for review of functional specifications, designs etc.

order to facilitate connections under both Gate 2 and Gate 3, that – once an option has been taken not to contest the connection² – it will not be possible to request a contestable offer as a modification at a later date.

Justification for DSO preference

Once the offer is issued and accepted, DSO wish to be in a position to progress forward with the works. Clearly the staff to be involved and working on the connection will vary depending on whether the connection is contestable or not. In addition, should a generator opt for a non-contestable offer, but it is unclear whether they are still considering a contestable option, it is possible that any negotiations with contractors, and/or equipment suppliers which have been undertaken will

1. be wasted effort
2. undermine our relationship with these suppliers. The outcome of this is that – faced with uncertainty in the scale of the work which these contractors will be getting from DSO – prices are likely to increase for all our business.

While DSO accepts that on a case by case basis it may be possible to overcome difficulties in work scheduling and equipment ordering, as a licensed SO we are required to ensure that all parties are dealt with equally and fairly. In order to ensure this, and ensure the delivery of 300+ offers (in Gate 2 and 3) a clear and simple process is required.

Consideration of Industry position

The industry has put forward the view, however, that (due to the need for cross-bonding) it will not be possible to get agreement between group members prior to offer issuance. In consideration of this, DSO is prepared to offer the following on a trial basis and under the understanding that this option will be withdrawn if it proves difficult or impossible to operate:

1. Prior to offer issuance, customers will be asked to opt for a non-contestable, or contestable offer as previously set out. Where there is no response within 20 business days a non-contestable offer will be issued

² In the absence of any response, a non-contestable connection will be assumed. In order for shared assets to be contested, all parties must respond, and all parties must nominate the same lead developer.

-
2. Where the connection contains shared assets, then the customers will be given the further option of delaying a decision on the contesting of the shared assets until post offer issuance. We will term this option the Hybrid Option

Hybrid Option

In the event that parties in a sub-group cannot agree to build assets contestably, but all parties sharing the assets wish to have the option to decide to do so at a later date, DSO will agree to allow them opt for the Hybrid Option. A decision to opt for the Hybrid will be required following the customer communication pre-offer issuance (i.e. in the same timeframe as a decision to contest or not to contest.) Under the Hybrid option the following will apply

1. As set out above 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 contract³
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 PP 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 contestably⁴

³ How this option will be recognised within the connection agreement to be further considered

-
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 payment⁵. 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 option⁶ - advise DSO that they wish to have their connection built on a non-contestable basis, DSO will endeavour to program this work soonest.⁷

Other Considerations

Members of the industry also proposed that an option to modify from a non-contestable⁸ to a contestable connection might be offered in the following circumstances

Circumstance	SO position
No work has been carried out by SO post offer acceptance	No change possible
Minimal Work has been carried out	No change possible
Sub-group member has not accepted offer and redesign required	Customers to be advised of delay in progressing their connection and offered the option of agreeing to contest; Members will be polled again based on new Connection method
Connection method change requested as part of offer modification	May be possible. Case-by case assessment. As with any modification, customer liable for

⁴ Legal advice has indicated that wayleaves are most appropriately obtained by the party constructing the build. It is unclear whether any other party can legally undertake wayleaving

⁵ Exact timeframe to be confirmed on a project specific basis

⁶ Or a minimum of one member therein

⁷ As commitments will have already been given to existing projects which opted for the non-contestable offer, these projects will obviously have priority.

⁸ Assumption here is that hybrid option was not opted for in the first instance

	any costs incurred on original connection
Where there is a Change of Legal Entity on the site	No change possible

On this basis, where there is any potential desire to opt for a contestable connection amongst a group, the group should opt for the hybrid option. The exception being where

1. the group make-up, and possibly Connection Method design, changes post offer issue
2. A Connection Method Change⁹ request is submitted.

As both these circumstances are potentially outside the group control, and will lead to an offer re-issue in any event, it is reasonable to again poll group members on whether to contest the option or not.

⁹ The connection method change should be substantial i.e. a request to underground a small section of the circuit would not allow a modification to a contestable connection

