



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

CER/09/193

EirGrid comments on responses received

March 2010

EirGrid welcomes the opportunity to comment on the responses received to date by the Commission regarding the consultation on Contestability for Distribution & Transmission Level Connections to the Electricity System (CER/09/193). EirGrid notes that, while the title refers to transmission, the majority of amendments being considered at this juncture relate specifically to contestability at distribution. Transmission amendments will be considered separately and EirGrid's comments are without prejudice to any decision that might be made in respect of transmission contestability.

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, <http://www.eirgrid.com/media/Contestability%20paper%20Oct%202007.pdf>) 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 continued to engage with each other and jointly with industry regarding the key challenges being faced at present in this context, to explore how these challenges might be overcome. Notwithstanding this, the current split responsibility model at transmission does imply a greater level of complexity of contestability arrangements. For example, under the current model, both EirGrid and ESB have a right of due diligence and there are more parties to interface with in order to transfer direct lines. This will be improved upon asset transfer.

While this consultation deals primarily with the issue of introducing contestability at distribution level, EirGrid would like to comment on the following issues raised in the responses to the proposed decision paper -

1. Underwriting by the Final Customer
2. Ownership of Shallow Connection Assets
3. Hybrid
4. Transmission Construction
5. Financial Arrangements
6. Connections eligible to be built contestably – Transition Period
7. Non-contestable connection works

It should again be stressed that while points 1 and 2 above relate to both transmission and distribution connection assets, most of the remaining elements of this consultation relate to the introduction of contestability at distribution only. It is of relevance to refer to the rule-set applicable at transmission for comparison purposes only. As aforementioned, the rule-set applicable at transmission is set out in EirGrid's Contestability of Connection Assets Position Paper, October 2007, and will be subject to review later this year.

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 (i.e. the share of the non-contested standard charges). 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.

Per the responses received, it is clear 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 has been further considered and both System Operators propose to give each remaining sub-group member formal written assurance regarding the funds due from the end user, on termination of the defaulter's connection agreement. It is assumed that any payments made under these arrangements would be in accordance with paragraph 3.6 of Schedule 7 of the Infrastructure Agreement¹.

2. 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.

One respondent suggested that connection assets should be transferred at market value. Another respondent requested clarification where a generator owns a connection asset, that this ownership doesn't give that generator any additional future access rights. Another respondent suggested that there should be a specific time limit imposed on the decision of whether or not an asset is to be developed further.

¹ Payments, including without limitation connection charge credits and refunds of capital contributions, made by the Board to a Customer shall be paid in the first instance by the Board to the TSO which will remit the monies to the Customer in their entirety with no netting-off.

From a transmission perspective, it is appropriate to refer to Sections 2.3.2 and 4.2.8 of EirGrid's Contestability of Connection Assets Position Paper, October 2007, where the regulatory framework for transferring ownership of "Applicant Provided Assets" at transmission is set out. Under the current framework, a transmission-connected generator is liable for the full cost of their connection (excluding deep reinforcement works) and any transfer of ownership of connection assets is, as a result, made for a nominal sum only (usually €1). The TSO may request that the legal ownership of Applicant Provided Assets be transferred to the TAO under certain circumstances, at the TSO's discretion, subject to the CER's approval, at any point in time post-commissioning. Great flexibility is afforded to these provisions and it is key that this flexibility remains going forward, without time limits and without limiting the discretion of the TSO in this context.

Finally, one respondent suggested that where a generator wishes to retain connection assets, there should also be an obligation to demonstrate an ability to secure appropriate public liability insurance. Whilst there is some merit in extending the criteria set out in Section 2.2.3 of CER/09/193, this is a decision for the Commission.

3. 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.

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. 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). These options have been discussed with TSO, with a view to assessing their potential impact on the delivery of Gate 3.

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 a final decision on contestability is published and there is consequently further clarity regarding the DSO's proposals, the TSO will engage with the DSO to carry out this formal impact assessment.

4. 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.

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.

6. 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.

7. Non-contestable connection works

A number of respondents have commented on the scope of works which can be built contestably. Whilst this issue has been referred to in EirGrid's earlier submissions regarding this consultation, a review of this issue, as it applies at transmission, will be carried out as part of the review of EirGrid's Contestability of Connection Assets Position Paper, October 2007, in the coming months.

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.