

Paul Brandon
Manager - Electricity Transmission
Commission for Energy Regulation
The Exchange
Belgard Square North
Tallaght
Dublin 24

10th June 2011

Dear Paul

**Re – TSO’s Connection and Use of System Agreement Review (CER/10/232)
Comments on industry responses received**

EirGrid has attached the word versions of each of industry’s submissions on the above consultation in the following order (with EirGrid’s responses embedded in red in the text itself) -

1. IWEA
2. Bord Gáis Energy
3. SSE Renewables
4. Viridian Power and Energy
5. ESB Networks
6. ESB Power Generation
7. Endesa Ireland

Please note that since there are a number of cross-references in these documents, it is advisable that they are read in the above order. Also, please note that EirGrid has commented only on elements of BGE’s submission which aren’t already included in IWEA’s response (i.e. those listed in the section entitled “Suggested Drafting Amendments and Other Minor Comments”).

Additionally, EirGrid has also attached a letter from the TAO, in which TAO has commented on issues raised in the consultation responses which are of concern to TAO. The TAO has also commented on a number of amendments proposed to Schedule 12 detailed in Viridian Power and Energy’s (VPE’s) consultation response (TAO having inserted comments in VPE’s response where appropriate).

In addition to the points made by TSO and TAO in the attached documentation, please note the following additional issues (in no particular order) regarding the Transmission Connection Agreement Documentation -

- 1. Proposed Interface Undertaking with DSO** – Discussions on this issue, as referred to in EirGrid’s letter of 14th December 2010, have since concluded.

Additionally, the CER's decision on the Distribution Connection Agreements (CER/11/001) has since been published, directing that the DSO Quotation Letter be amended, to include an Interface Undertaking whereby the liability of EirGrid, as Transmission System Operator, and customers connected directly to the Transmission System, be limited in the same manner as though EirGrid (and Transmission customers) were parties to the DSO Connection Agreement. The TSO's Connection Agreement will be similarly amended to ensure that ESB Networks Limited, as Distribution System Operator, and Distribution connected customers are not exposed. An Interface Undertaking similar to that included in the DSO's Connection Agreement will be included in the final suite of documents for publication.

2. **Capacity tests for non-firm connections** - Please note that, in EirGrid's letter of 14th December 2010 on the Connection Agreement Review, under the heading "Issues to be dealt with as part of the imminent Joint Connection Offer Process and Policy Consultation, involving both DSO and TSO or as part of future consultations", EirGrid incorrectly stated that the application of capacity tests to non-firm connections would be dealt with in a separate consultation to be managed jointly by both SO's. Such a separate joint consultation is not considered necessary at this time.
3. **Approved Credit Rating** - The TSO proposes that the term Approved Credit Rating be used throughout the documentation instead of Approved Rating.
4. **Schedule 12 of the Connection Agreement** – In an effort to add clarity re the scope of Schedule 12, it is proposed that the heading of Schedule 12 be reworded as follows – "Transfer of Ownership of Contestably-Built Transmission Assets to TAO". Additionally, it is proposed that the introductory paragraph in Schedule 12 of the Connection Agreement be reworded as follows – "Where the ownership (including transfer of site ownership and equipment and/or rights over land) of Contestably-Built Transmission Assets is to be transferred to TAO, the following checklist of requirements will apply..." Additionally, to cover situations where a facility might energise within six months of CID, it is proposed that the following amendments be made to the third sub-heading of Schedule 12 (additional text highlighted in red):

"WITHIN SIX MONTHS OF CONSENTS ISSUE DATE OR PRIOR TO ENERGISATION WHICHEVER IS THE EARLIER OF THE TWO.

*The Customer is required to produce to the Company, for the benefit of the TAO, the following items **no later than six months after the Consents Issue Date or prior to energisation whichever is the earlier of the two.***

In relation to VPE's suggested insertions in Schedule 12, under Sub-heading "One Month After the Consents Issue Date", point 4, the TAO and TSO are in agreement that VPE's proposed insertions are inappropriate since it is our understanding that no regulator can fetter its own discretion and, as a result, the CER cannot bind itself to make or not to make a decision.

- 5. Handover Certificate** – Following discussions with TAO, it has been suggested that point 4 of Clause 23.3 of the General Conditions regarding the Handover Agreement be reworded as follows -

“Subject to the terms of Clause 1 above occurring, the Parties agree that access to the Site-Related Connection Equipment for the Customer shall be subject to agreement from the TSO. Further, at the request of the TSO, the Customer will complete outstanding items on the Snag List and will resolve any faults arising from Commissioning and/or Energisation. The access route to the Site-Related Connection Equipment shall be maintained by the Customer, until the formalisation of the property transfer from the Customer to the TAO in accordance with Clause 5 of Schedule 10 (Contestable) of the Connection Agreement, as appropriate.”

- 6. Intellectual Property Rights** – The TAO has highlighted that currently the Transmission Connection Agreement doesn't deal with the issue of Intellectual Property Rights (IPR's). As a result, at the TAO's suggestion, the TSO intends to include provisions for IPR's in both Schedule 10's (Contestable and Non-Contestable). The proposed wording of this additional text is as follows (similar to that in Clauses 2.3.3.3 and 2.3.3.4 of the DSO's Standard Connection Agreement as approved by the CER in CER/11/001) –

“In advance of the commencement of the Commissioning Tests, notwithstanding paragraph 13.4 of the General Conditions, where the Contestable Components are to be transferred to TAO, all copyright and other intellectual property rights in the As-Built Records and in any other relevant information, documentation or data which may be reasonably requested by the Company shall be vested in and belong to the Company. The Customer shall not use the As-Built Records for any purpose other than in connection with the Contestable Components or grant a licence of any such intellectual property rights to any third party, without the prior written consent of the Company.

In the event the Contestable Components are retained by the Customer, the Customer shall be deemed, immediately after the Customer's pre-commissioning tests, to give the Company a non-terminable transferable non-exclusive licence to copy, use and communicate the As-Built Records, including making and using modifications of them. The licence shall:

- *Apply in perpetuity*
- *Entitle any person in proper possession of the relevant part of the Contestable Components to copy, use and communicate the As-Built Records for the purposes of controlling, operating and/or regulating the Network and Customer's Equipment.*
- *Entitle the Company to provide copies of as-laid maps and drawings showing the Contestable Components to third parties without the consent of the Customer.”*

- 7. Additional Definitions to be added to the General Conditions** – It is proposed that the following definitions be added to the General Conditions -

“As-Built Records” means the calculations, computer programs and other software, maps, drawings, manuals (including but not limited to safety and training), models and other documents recording the Contestable Components and appropriate access rights and wayleaves and easements (if applicable) constructed by or on behalf of the Customer.

“Offshore” means seaward of the Mean High Water Mark as shown on Ordnance Survey Maps;

“Foreshore” means the land and seabed between the high water of ordinary or medium tides (shown HWM on Ordnance Survey Maps) and the limit of territorial waters.

We would welcome the opportunity to meet with CER, once CER has reviewed the attached documents, to go through any issues which are deemed to require further discussion. On conclusion of those discussions, EirGrid will update the Connection Agreement documents themselves to take account of the then agreed changes, for eventual publication by CER.

In the meantime, please do not hesitate to contact me should you have any queries.

Yours sincerely

Shirley Kilcullen
EirGrid