

Additional Information on Operation of Infrastructure Agreement

Operation, Development/Construction and Maintenance

1.1 As laid down in the Infrastructure Agreement ("IA"), EirGrid retains ultimate and sole responsibility for, and control over, the operation, maintenance and construction/development functions of the transmission system:

- EirGrid has a statutory duty to develop the transmission system if necessary and to prepare a Development Plan for these purposes that it must revise each year. EirGrid also has the sole and exclusive right to determine and identify which development projects will be undertaken and the timing requirement for the development of such projects. ESB's role is limited to the execution of the development plan and development projects at the direction of EirGrid;
- The IA expressly acknowledges that the TSO has the sole responsibility for the operation of the transmission system, and that ESB shall not intend to constrain the manner of operation of the transmission system. In addition, ESB must carry out all operational services as expressly directed by EirGrid in accordance with the arrangements in Schedule 2 of the IA;
- Pursuant to the 2000 Regulations and the TAO Licence, ESB is required to facilitate the discharge of EirGrid's functions and to provide such cooperation as EirGrid requires to carry out its functions; and is expressly prohibited from directing or giving instructions to EirGrid in relation to any of the TSO functions conferred on EirGrid by the relevant legislation and/or the TSO licence
- EirGrid has exclusive powers (as set out in the IA) to set the maintenance policies and standards and produce the annual maintenance programmes. ESB is obliged to carry out the maintenance under the direction of EirGrid.
- Pursuant to the 2000 Regulations, the terms of the TAO Licence and the IA, ESB is required to provide EirGrid with any information which EirGrid requires to discharge its functions as TSO.¹
- Finally ESB is obliged under the terms of its TAO licence to comply with the IA at all times and as directed by EirGrid.

Third Party Grid Access / Connection

1.2 All connections and Use of System agreements are entered into by EirGrid and the relevant customer, including for those connections which ESB is to provide. The arrangement of the provision of an uncontested offer for connection work is regulated by the IA section on the development of the system. In addition, ESB is under an obligation pursuant to legislation, the TAO Licence and the IA to provide EirGrid with any information that it requests from ESB. These arrangements create a high degree

¹ Regulation 19(c), 2000 Regulations; Condition 18, TAO licence.

of transparency and prevent ESB from acting under any conflict of interest, or from preventing or deterring the access of new market entrants.

Wayleaves and Land Acquisition Rights

- 1.3 Certain powers vested in ESB pursuant to the 1927 Act in relation to wayleaves, the acquisition of land and the break up of roads for the laying of transmission lines, were not transferred to EirGrid at the time of its establishment. However, in acknowledgement that these are functions that should be exercisable by EirGrid, ESB has, pursuant to the IA, irrevocably appointed EirGrid as its agent to perform these functions, and the parties have operated efficiently under this structure since 2006.
- 1.4 This delegation of power means that all arrangements made with landowners in relation to acquisition of wayleaves or land must be negotiated by EirGrid with the relevant landowner and all relevant agreements are entered into between EirGrid and the relevant landowner. ESB is then obliged to do all that is required of it pursuant to these agreements, such as issuing any wayleave notices, survey notices, and purchasing the rights, on the terms as negotiated and agreed upon between EirGrid and the relevant landowner.²
- 1.5 ESB would not be in a position to refuse to perform the required functions, or if it did, EirGrid could refer the issue to the CER for a direction (pursuant to the legislation or IA) or request the right to step in and perform the functions that ESB is in default of in accordance with the IA's step-in procedure.³
- 1.6 Consequently, although we understand that the omission of these provisions from the list of ESB Transferable Functions is generally accepted to be an anomaly, the provision in the IA is an effective solution that has not caused any operational difficulties in practice.

Maintenance Planning and Outages

- 1.7 EirGrid is responsible for the operation of, and for ensuring the development⁴ and maintenance⁵ of the network, although ESB, as TAO, is required to carry out the actual maintenance and development of the network using its own resources⁶. A detailed process in respect of planning and implementing maintenance of the transmission system is provided for under the Infrastructure Agreement. In summary, however, EirGrid *inter alia*, sets the maintenance policy, prepares the long-term maintenance

² Clause 7.6.4, IA; Cl 7.6.5, IA.

³ Pursuant to the clause 78 of the MOU between ESB and ESB Networks Ltd, ESB retains responsibility for the granting of wayleaves and easements, and the negotiation of terms on which such licences and interests may be granted.

⁴ Section 7.1.1 of the Infrastructure Agreement..

⁵ Section 8.1.1 of the Infrastructure Agreement

⁶ Section 8.1.1 of the Infrastructure Agreement..

plan and is the final determinant of the actual maintenance to be undertaken in a Maintenance Period.

- 1.8 Under the Infrastructure Agreement, EirGrid is responsible for setting the Maintenance Policies and Standards⁷. While EirGrid must have regard to the views of ESB⁸, as expressed through its minority representation on the Maintenance Policies and Standards Committee, ultimately it is EirGrid's decision, as TSO, whether to accept or reject a recommendation of that committee⁹. Also, ESB is required to implement the Maintenance Policies and Standards in carrying out the maintenance, replacement and refurbishment of the network¹⁰.
- 1.9 In respect of the development of the long-term maintenance plan, EirGrid provides the long term maintenance plan for the purposes of the price control review process undertaken by the Commission for Energy Regulation (the "**Regulator**") and ESB must provide to EirGrid a draft plan to implement EirGrid's plan in accordance with the resources approved by the Regulator¹¹.
- 1.10 While ESB and EirGrid interact to develop the Agreed Maintenance Programme for each Maintenance Period, the Infrastructure Agreement provides that EirGrid is the final determinant of the actual maintenance to be undertaken in the Maintenance Period¹². Maintenance work required by EirGrid must be scheduled by ESB in line with transmission system outages, which are determined by EirGrid. While EirGrid must endeavour to accommodate reasonable resource restrictions in determining maintenance to be scheduled, the Infrastructure Agreement provides that the needs of the system predominate and the outages programme is ultimately decided by EirGrid.¹³
- 1.11 The Infrastructure Agreement provides for safeguards which, in our view, have the result that it is not in ESB's interests to breach its obligations to carry out EirGrid's requirements in respect of maintenance of the system. In particular, ESB is subject to supervision of the CER in carrying out its obligations under the Infrastructure Agreement¹⁴. If ESB fails to comply with its maintenance obligations, the CER can direct ESB to comply with those obligations, or give a direction that EirGrid "step-in" to carry out such obligations¹⁵. As ESB must bear the costs of work carried out if EirGrid

⁷ Section 8.2.1 of the Infrastructure Agreement

⁸ Section 8.2.1 of the Infrastructure Agreement

⁹ Section 8.3.5 of the Infrastructure Agreement..

¹⁰ Section 8.2.6 of the Infrastructure Agreement..

¹¹ Sections 8.4.1 and 8.4.3 of the Infrastructure Agreement

¹² Section 8.5.4 (g) of the Infrastructure Agreement

¹³ Section 8.5.4 (d) and Section 8.5.4 (e) of the Infrastructure Agreement..

¹⁴ See Regulation 18(3)(a) and 18(5) of S.I. 445 of 2000.

¹⁵ See Regulation 18 of S.I. 445 of 2000 and section 21 of the Infrastructure Agreement

is directed by the CER to exercise its step-in rights, there seems to us to be a significant incentive for ESB to properly implement EirGrid's maintenance requirements for the network.