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Submission to Commission for Energy Regulation

on

Review of Connection and Grid Access Policy: Initial Thinking & Proposed Transitional Arrangements

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Main points

In response to this first CER consultation on an enduring grid connection regime, which is to be welcomed, the Irish Wind Farmers Association (IWFA) would make the following five key points:

1. Grid access

The EU Member States now operate liberalised electricity markets and the EU aims to have one single liberalised electricity market, meaning that to the greatest extent possible, the market should decide on demand levels, generation type and volume, etc. Ideally it is for generators to decide whether or not they should seek to connect to the electricity system, depending on whether it is likely to be worth their while, also taking account of targets for the generation portfolio and related rules like priority access, set by the EU. Where projects are supported, as with REFIT, then it is a matter for Government to decide on the amount of such support to offer, to steer the market in the desired direction. All of the above should of course take account of the capability of the grid, but at the same time not be completely hamstrung by that, otherwise little or no grid development would take place in order to implement Government policy. On the contrary, the grid authorities need to respond to Government policy, and keep ahead of demand for network access, as more particularly required in Article 16 of the Renewables Directive.

It is in this context that we must consider the role of the Regulators in controlling access to the grid. The consultation before us indicates a continuation of the group processing approach (GPA), which has been carried out through a series of capacity-limited gates, and it seems that this method of implementation is being proposed for the enduring regime. A legacy of the previous gates is the enormous queue for grid access which, as the consultation states, is well beyond the country's needs or the capacity of the grid. We might note however that this does not take account of export, which should become much more feasible in the EU single market in the not too distant future.

The Electricity Act which transposes the Directives indicates that the system operators should either make a connection offer or refuse access on specific technical grounds. The Act does not envisage a policy of silence or delay, an approach that has left a huge amount of capacity in limbo, itself a product of the inappropriate access policies to date. Is it then correct for the regulators to set a limit to the capacity that can apply to grid in the first place. Group processing has useful traits, mainly in coordinating access for multiple projects. But given the nature of GPA, projects must be 'gated', and therefore access capacity must be capped. This seems to run counter to genuine liberalisation. And since, as currently implemented, GPA then leaves many projects with no answer to their application, it is not in the spirit of Irish law either.

These considerations do not appear in the consultation, which suggests that the CER assumes that the existing approach is, in broad terms the right one, but with some tweaks here and there. However, IWFA believes some overriding principles on access are required:
- assuming grid access delivery well within project planning horizon, planning to be a condition of access (as proposed by CER);
- indeed, planning to create a requirement for either a connection offer or a refusal on stated grounds, as per the Electricity Act;

- it is for the market and the Government (via its support scheme), and not really for the TSO or regulators, to decide on the level of demand for access, whereas it is for the TSO (as regulated) to decide if access must be refused;
- group processing to be maintained insofar as planning law permits (taking account of the implications of the O'Grianna case, as referred to in Section 4.4.7 of the consultation, and further discussed below);
- to enable group processing, some kind of gating would seem necessary, but in order to allow projects that achieve planning to proceed expeditiously, it will be necessary to have much more frequent 'gates' (as proposed by CER, and discussed below) possibly annually, with a pre-defined cut-off date set beforehand, not a capacity limit that is usually set afterwards, which is more open to manipulation.

2. Grid value

As any economist knows, items get a value and can be traded once they are scarce. This is clearly true in the private sector, but also applies in the regulated sphere, for example the value of planning or re-zoned land. Some wind projects that applied for connection in 2004 are still not connected 12 years later, and may wait another year or two before construction, and still more years after that to get firm access. The obstruction of wind by the authorities in the 2003/4 period, most particularly the CER's December 2003 wind moratorium with attendant ESB National Grid claims that only 400MW of wind could possibly connect to the grid (now shown to be utter nonsense), set a most unfortunate precedent. The consequent delays, queuing and complication all flow from those events. However, the root cause - ie: delay - has never really been tackled by CER. By rights any project that receives all of its other consents ought to receive a grid connection automatically and without delay, and in that event there would be no undue scarcity, no market value, and therefore nothing to trade. That would be a 'forward model', with an appropriate level of risk, increasing the success rate of projects and use of grid and minimising cost to the consumer.

However, because it has been taking much longer to get grid access (especially firm access) than the standard wind planning horizon (formerly 5 years, now more usually 10 years), Gate 3 could not impose planning as a criterion. This created a 'backward model' of development, where grid capacity had to be obtained first, which then chased planning, was traded, relocated, and so on. A cursory analysis of such a model would show it to be much risker, by several multiples, which is bad for all parties involved. But it is worth repeating, as the point is not properly reflected in the consultation: there is a single cause for this whole issue - delay in delivering grid.

It is in this context that we must examine the CER's main proposal in the current consultation - to restore planning as a criterion for grid connection. If it can be achieved and actually made to work, then it is to be very much welcomed. **But the fundamental point is that it simply cannot work at all unless grid access is delivered more quickly and well within the planning horizon of projects.** A continuation of the delays created by all of the complications, studies, revised studies, allocation systems etc, will push grid access beyond projects' planning horizons and lead to project collapse and a huge waste of everyone's time and resources. That delay will again cause scarcity, and while it may appear that grid 'value' has been removed from the equation by the new regime, that will not be the case, as ways will be found to give that scarce resource a value. Once again, it is the incorrect approach adopted by the authorities, most specifically tolerating huge grid delays, that has given grid a tradable value.

The retort to the above is usually that Eirgrid/ESB Networks cannot guarantee to deliver grid within planning horizons, though mind you it does appear they have generally been able to do so for fossil plant. Indeed because of that risk, there would need to be some rule-set dealing with failure to deliver within a regulated time limit (say 3 years), and there appear to be two options: deemed access and liquidated damages.

3. Role of application date order

Related to the previous point is the function of application date order. It has always had a key role in the timing of offers under the '70 day' process, but took on a much greater importance under group processing, in particular Gate 3 because of the issues that arose in that gate, as set out in the previous point. If a suitable time limit for delivery of grid is imposed and planning can once again be a practical condition for grid access, then 'application date' will have much less importance, returning it to roughly where it previously stood. Assuming the primary criterion for access to a new 'gate' would be planning (and related consents), then if gates are to have a capacity limit (which is questionable), then some thought has to be given to a second filter to regulate entry to the gate where the quantity of planning available exceeds designated gate capacity. Either application date order or planning consent date order could perform that function. Applicants in the post Gate 3 queue today had no sense that planning would even be a criterion for entry to a gate, so to also impose planning date order as the secondary criterion might be a step too far. Using application date order would reflect the current reality as created by the authorities, but since planning would be the primary criterion, application date order would take on a much lesser significance than heretofore. Any residual 'value' in that date would not be hugely different from the old '70 day' process, and accompanying restrictions on relocating grid and surrendering it, or some means of voluntarily delaying the offer date, could minimise any remaining 'trading' of grid.

However, where there is a predefined cut-off date for entry to each gate, then there is no need for a secondary filter and planning date will effectively perform that function.

A possible transitionary solution would be to allocate a modest Gate 4 on date order only, to recognise the decisions that applicants have made to date in good faith. That would provide sufficient time for the adjustment to be made in order that all future gates could be based on the planning condition for access, subject to the conditions stated herein.

However, date of application will no doubt continue to play a role in the allocation of firm access, where planning date order would seem to have no direct relevance.

4. Size of 'gates'

There has been a lot of criticism of the size of Gate 3, on the assumption that the scale of it caused all of the delay. But each gate has engendered serious delay. Eirgrid increased the amount of detailed stages in processing Gate 3, an indeed repeated some of the analysis, increasing the overall time to complete it. Delays in support schemes have also played their part. In some ways we are lucky that Gate 3 was so large, because we now have the scale of projects required to meet our targets, although other matters are still getting in the way, raising some doubts. At this stage, any 'Gate 4'

along the lines proposed by CER is unlikely to have any noticeable impact on 2020 targets. If Gate 3 had been a lot smaller, we would have no chance at all.

However, to restore planning as a criterion for entry to a gate, it must then be possible to have a grid connection (and ideally firm access) delivered within the planning horizon of a project. If having achieved planning, an application can only be processed three years later due to gate frequency, then 3 years of the planning horizon have already been used up before the application is processed in a group. This would make the proposed method virtually unworkable. Assuming the imposition of the planning condition for a grid offer, the implication is that the proposed gates need to be a lot more frequent as CER has suggested, possibly even annually. This would leave Eirgrid with a tricky problem - processing gates in an overlapping manner, then delivering some, while more are coming along behind. This whole proposal needs very careful consideration in order for it to be workable.

5. Efficient use of grid

It is in principle correct and in everyone's interest that the grid is used efficiently. However the 'maximum' use of grid capacity has several downsides. The main point is that it is well established among economists that spare grid capacity is the key to competition in electricity markets. Firstly, transmission constraints offer anti-competitive opportunities to those sitting behind those constraints. Secondly the lack of grid capacity makes it very difficult for new entrants to gain access to the market, reducing competition. Finally, the complications that arise from allocating capacity on a 'marginal' basis (ITC, etc) makes processing of applications very lengthy, and further reinforces the position of incumbents. As we have seen throughout the British Isles, reduced competition gives rise to higher electricity prices. So clearly, there is a trade-off in the level of spare grid capacity. Sweating the last MW of grid capacity is a recipe for reduced competition, increased cost of power, reduction in new entrants, and therefore greater difficulty in transforming the electricity market from its current unsustainable and not very competitive model based on imported fossil fuels, to a more sustainable competitive one based on cheaper, abundant and secure domestic renewable sources.

Based on this analysis we would suggest to CER that it ought to require Eirgrid to revise the Incremental Transfer Capacity (ITC) programme so that ultimately the system retains an agreed level of spare capacity. An immediate move to do so would of course reduce available grid capacity now, which means this change can only be implemented over time, and on condition that it is accompanied by measures taken by the grid owners to increase grid flexibility and capacity, using both traditional and new technologies.

This logic also suggests that, while it is easier (and on the face of it, cheaper) to facilitate projects (and possibly large demand) that use spare capacity rather than requiring significant (and potentially difficult) reinforcements, as set out rather one-sidedly in sections 4.4.3 & 4.4.4, this ought not to be a primary criterion in deciding the allocation of grid capacity. Rather it should influence the timing of the delivery of firm access, and also ought not to dissuade the authorities from investing in the grid to keep it well ahead of the requirement for both demand and generation throughout the country.

Other issues:

Rather than addressing the questions posed in the consultation paper, which do not cover all of the industry's concerns, the IWFA would like to highlight a number of further issues as follows:

1. Section 1.2, Legislative context

It is quite extraordinary that, after 14 years of RE Directives, and so many reminders over the years from IWFA, that neither the current RE Directive nor its updated transposition instrument (SI 2014/483) is even mentioned in this section, particularly because that is the legal instrument that has the most to say about generator access (priority access and guaranteed transmission). Some reference is made to the Directive in section 4.4.5, though it mixes polices and law, where clearly law overrides policy; laws must be respected, whereas polices need to be co-optimised.

2. Renewables

The focus in the consultation on the electricity target is somewhat myopic. The actual binding target on Ireland is 16% of all primary energy, and it is clear to all that the transport and heating/cooling targets will not be achieved, nor even close. CER ought to make itself aware of the implications for the electricity target in 2020, and needs to start building this into its plans and specifically connection policy, where relevant.

While section 4.2 refers to the requirement under PCI to favour interconnectors, section 4.1 omits reference to priority access for renewables.

Contrary to the statement in section 4.4.2 (DS3), a focus on renewables in connection policy will need to be maintained as long as they have a legal right to priority access.

3. Non-GPA

There is no obvious reason why the threshold is 5MW generally but 0.5MW for wind, which always seemed discriminatory. The same level should apply to all generators. Wind turbines are now generally 2-3MW in capacity, and the typical unit today is 2.3MW. So we propose that the threshold be set at 2.5MW for all generators. Clearly highly innovative and research-based projects that offer helpful new technologies and special services need to be examined on their merits and not necessarily be subject to that threshold.

4. Community schemes

In section 4.4.5, the consultation anticipates the publication of the Minister's White Paper on energy policy, which has since been published, and that focuses a lot on community initiatives. We suggest that the CER revisit that document with this in mind, and also note that all policies should be 'rural-proofed'. IWFA supports its members in developing and operating their projects as close to the community as possible and would also

encourage more communities to take up the opportunity themselves, with the requisite policy, regulatory, technical and financial support of the authorities.

5. Planning

Planning has become more difficult, and grid re-location has been a useful logical consequence of the 'backward development model' described above, providing some mitigation of the planning difficulties. Switching to a 'forward model', on the conditions mentioned herein, would mitigate the need for relocation. In the meantime, to get the best use out of contracted grid capacity for 2020, the CER ought to include greater flexibility in the relocation rules than currently exist, rather then necessarily restricting re-location to within a 110kV node.

The judgement in the O'Grianna case requires inclusion of the grid connection in an EIA to avoid what the court saw as 'project splitting'. However, the rules surrounding the EIA Directive do not necessarily require that inclusion, and the judgement ought to have been challenged to a higher court. Whereas the boundary of a 'project' may be clear enough, the boundaries of the infrastructure associated with it, thereby needing inclusion in the EIA, are certainly not clear. Are shared assets to be included, possibly deep reinforcements triggered, maybe even interconnectors where some export might take place. This logic also applies to any other 'subsidiary infrastructure' of a project, such as water, roads, data connections etc. The European Commission has examined these questions, and issued guidance on them, though the details are well beyond the scope of this paper. Suffice to point out that the inclusion in the EIA of such subsidiary infrastructure should occur 'where possible'.

The crux of the matter seems to revolve around whether inclusion in an EIA automatically implies the need for planning. The former is a question of EU law, the latter appears to be a matter for national law, and therefore something on which our authorities can decide.

However, the Government has now decided to 'legislate for O'Grianna'. In point of fact, what Government should be legislating for is the EIA Directive, taking account of the Commission's interpretations. Nevertheless, the Dept. of Environment has now taken the drastic step of promulgating a Statutory Instrument that de-exempts planning for connections (and other related infrastructure) for projects requiring EIA or AA. This will cause a major problem for the whole sector, especially if CER moves to a planning condition for grid access. Meeting the new rule would require either a detailed design and connection application before any EIA or AA, or an examination of all of the possible connections within the EIA followed by a re-examination and possible further application after the original planning once the grid connection design is known. What is more, this will be even more difficult in sub-groups. In fact we foresee the current implementation of O'Grianna as a death-knell for group processing, and we gather that CER, Eirgrid and ESB Networks have similar concerns.

This now appears to be a very knotty problem involving three major statutory bodies, not to mention all of the related stakeholders. It would appear that the solution to be proposed would need to be worked out between DOE, DCENR and CER at the very least, to resolve the conflicting requirements the EIA and Habitats Directives, the Renewables Directive, and CER's grid access arrangements (connection policy/GPA, grid development, etc). We believe that Ireland should now argue to the EU, given the

serious threat to national policy on grid development via GPA, that the grid connection cannot automatically be included in an EIA and should only be included 'where possible'. The rules should clearly exclude shared connections, and any other connection that can't be defined before the project planning itself. By all means a subsequent screening can be required, but that should not automatically require an additional planning application. In the meantime, to give certainty to ESB Networks and wind projects already constructed, currently under construction, or being financed, some legislation should be considered to make any new rules applicable only from their date of adoption.

6. Connection charging

It is a long-standing conviction of the IWFA that the current connection charging policy needs to be revised, for the following reasons:

a) Larger transmission-connected projects have a shallow charging policy, so they don't pay for any network reinforcements, while distribution-connected projects, like those of very many of our members, are subject to a 'deep' distribution connection charging policy and do pay for reinforcements, admittedly not the transmission ones. Nevertheless, this is unfair and favours utilities over smaller independent projects;

b) Regulations provide that projects cannot own their connection assets but must nevertheless pay for them, as well as any distribution reinforcements, and then gift the connection to the network owner, ESB Networks, for € 1 (although ESB are not allowed to earn a return on same);

c) Even though they don't own the assets, projects must nevertheless depreciate these costs in their accounts, and fund them at a commercial cost of capital, and these costs must be covered by DCENR's support scheme;

d) Funding such assets through ESB Networks in the usual way would be cheaper, since they enjoy a lower cost of capital and can apply a longer depreciation period closer to design life. So the current policy is not only raising the cost of projects, which along with all of the complications acts as a barrier, but also maximises the ultimate cost to the consumer of financing them; there is a report prepared by economist Dr Kevin Hannigan on this point here: http://www.nowireland.ie/uploads/docs/Report.pdf

e) Our members have projects that are now unnecessarily blocked because of these regulations and this is exactly the type of barrier that the State is meant to be removing under Article 13 of the Renewables Directive (as transposed by SI 2014/483);

f) Article 16 of that Directive, dealing with grid, permits the State to decide on such charging policy as they see fit, but in a non-discriminatory manner.

We urge such a review as part of the definition of the enduring regime.

7. Market exit

In the past, owners of connections for fossil fuel plant have declared exit, which then influenced Eirgrid's GAR/GCS analysis, only to reverse their decision after others had acted on Eirgrid's updated information. This is clearly unacceptable, and may amount to market manipulation. Connection policy needs to include a clear exit process whereby a unit that decides to exit formalises that decision, surrenders its grid capacity at an agreed date, and is made to stick to that decision, by not being given the capacity back

again without going through the same process as everyone else. Anything else amounts to what CER is describing as 'hoarding capacity'.

8. Transitional arrangements

It is of concern that CER feels it can devise and adopt transitionary measures leading towards an enduring regime, when even the principles of that regime have yet to be established, which tends to suggest that CER already has a pretty good idea of what that regime will look like. This raises a number of questions:

a) CER's emphasis is once again optimal use of planned capacity but we repeat our earlier point that such an approach is rather one-sided, and needs to be counterbalanced by the need for spare grid capacity for the several reasons already stated;

b) there will certainly be some applicants who will find that they have insufficient information to make a decision to give up grid capacity by 30th June, when the enduring regime they may be somehow depending on will not be defined until next year;

c) where applicants have gone beyond paying the 10% grid deposit, up to what point can they exit and recover payments?

d) the proposal to offer increased capacity to existing generators on certain conditions is welcome in principle, but may have a number of downsides, such as:
- reinforcing the position of incumbents, which is anti-competitive;
- most wind connections have been so tightly designed using the marginal grid capacity tool, ITC, and in very many cases rely on delayed firm access, that it is had to see how this can help wind projects;
- given all of the analysis already required for Gate 3, the 120% rule and future connections, which has caused so much delay since 2009, this looks like an extra layer of complication that is likely to cause further delay we could all do without.
IWFA considers that this proposal should be reconsidered.

e) the first condition suggested for the DS3 capacity offers currently states:

> "The unit can provide system services identified by the TSO as being in insufficient supply from the current fleet."

This seems to assume existing players will get first refusal on new service provision, and this has a hint of over-management and anti-competitiveness about it, and might therefore be reconsidered.