



Commission for Energy Regulation
An Coimisiún um Rialáil Fuinnimh

Guidance on Applications under Section 5 of the ESB (Electronic Communications Networks) Act, 2014

Information Paper

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Regulating Water, Energy and Energy Safety in the Public Interest

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1 Introduction

1.1 Commission for Energy Regulation

The CER is Ireland's independent energy and water regulator. The CER was established in 1999 and now has a wide range of economic, customer protection and safety responsibilities in energy. The CER is also the regulator of Ireland's public water and wastewater system. At a high-level, the CER's overall mission is to act in the interests of consumers is to ensure that:

- Energy and gas are supplied safely;
- The lights stay on,
- The gas continues to flow;
- There is a reliable supply of clean water and efficient treatment of wastewater;
- The prices charged are fair and reasonable;
- The environment is protected; and
- Regulation is best international practice.

Further information on the CER's role and relevant legislation can be found in [here](#).

1.2 Background

The CER has been requested to provide information on the approval process under Section 5 (1) of the ESB (Electronic Communications Networks) Act, 2014 (the "Act"). Section 5 (1) outlines that a company who has been granted access by ESB Networks to its infrastructure, can exercise the powers conferred on ESB Networks as provided for in the Act. In light of this, the CER has published this information Paper to provide guidance to potential applicants. However, it should be noted that this is not a routine process and is subject to CER review as further experience develops. Accordingly, this is a living document and may be changed or be updated during the course of an application.

1.3 Legal Background

Section 3 of the ESB (Electronic Communications Networks) Act, 2014 allows ESB Networks to grant a company access to its electricity infrastructure to develop electronic communications networks and services.

Section 5 of this Act allows a company that has received access permission from ESB Networks, subject to CER approval, to carry out actions in accordance with subsections (1), (3), (4), (5) and (9) of section 53 of the Electricity Supply Act, 1927 (the “1927 Act”).

The 1927 Act lists the powers conferred on ESB, under subsections (1), (3), (4), (5) and (9) of section 53¹ that a company can exercise, once the criteria in the 2014 Act are met, i.e. the application pertains to a ‘company’ as defined²; ESB has provided access to its infrastructure and CER has provided consent.

Where ESB allows a company to access its electricity infrastructure, that company can, subject to CER approval, exercise powers under subsections (1), (3), (4), (5) and (9) of section 53 of the 1927 Act.

In summary, the powers a company can exercise are as follows:

- The company is allowed to place an electric line across any land (above or below ground) not including a street, road, railway, or tramway. *Subsection (1)*.
- The company must serve a written notice to the owner and occupier of the land before placing an electric line across any land. *Subsection (3)*.
- If the owner and occupier of the land give their consent (within 14 days of receiving the notice) to the placing of such line the company may proceed to carry out the work as stated in the notice. *Subsection (4)*.
- If the owner or occupier of the land fails to give his consent (within 14 days of receiving the notice) the company, with the consent of the Board but not otherwise may place such line across such land in accordance with what is stated in the notice. *Subsection (5)*.
- Where a company is authorised to place or retain any electric line across any land the company may at any time enter on such land for the purpose of placing, repairing, or altering such line. *Subsection (9)*.

¹ See appendix for summary of the powers

² The company must be formed and registered under the Companies Act 1963, or established under the laws of a state and corresponding to a body formed and registered under the Companies Act 1963.

2 Request for Access to ESB Infrastructure

In order for the CER to make a well informed decision to grant consent or otherwise, there are a number of actions required, including the provision of information to CER.

This Information Paper sets out those actions and provides an overview of the steps necessary to process a request. In summary, this involves:

- The applicant requesting approval from ESB Networks to use its assets;
- ESB Networks requesting the CER's approval for such additional use of its assets;
- The applicant requesting CER's consent to place electric lines³ across any land; and
- The CER acquiring the relevant information from ESB Networks and the applicant.

2.1 Use of the network assets

In the first instance, the applicant must request approval from ESB Networks to access its infrastructure. This is pursuant to Section 3 of the Act. Under that Section 3, ESB Networks has the right to grant access to its electricity infrastructure by way of a network access agreement to another company in order for that company to develop electronic communications networks and services as provided for in the Act.

For ESB Networks to then grant that permission to the applicant, ESB and ESB Networks must respectively act in accordance with Condition 4 of the Distribution System Owner Licence and Condition 6 of the Distribution System Operator Licence. Those Conditions require the Licensee to notify the CER of any additional use of the network assets.

2.2 Placing of Electric/Communication lines

Should ESB Networks grant access to the applicant to use of ESB Networks infrastructure under Section 3 of the Act, the applicant must then request the CER's consent pursuant to Section 5(1) of the Act. Section 5 of the Act outlines that a company to whom access has been granted under Section 3 of the Act may, with the consent of

³ "Electric lines" has the meaning in the Act; any line which is used solely or amongst other things for carrying electricity or electronic communications services. See section 4(1) of the ESB (Electronic Communications Networks) Act 2014.

the CER, for the purpose of that access, exercise the powers conferred on ESB Networks by subsections (1), (3), (4), (5) and (9) of section 53 of the 1927 Act.

2.3 Information required

For the CER to make a decision on consent under Section 5 of the Act the CER will require sufficient information pertaining to the request. Some of this information may be requested directly from ESB Networks as part of the approval process for the additional use of the network assets under Condition 6 of the Distribution System Operator Licence. Additional information may also be requested from the applicant of the consent request. In any case, such information is likely to cover:

- Actions to ensure the primacy of the integrity of the electricity network;
- Scope of the use for the specific powers, including technical achievability;
- Commercial arrangements for use of the distribution system agreed with ESB Networks;
- Material impacts to electricity customers;
- Timelines;
- Responsibilities and interface between the company and ESB Networks;
- Associated further construction work intended; and
- Safety considerations.

3 Conclusion

Considering the information set out in this paper, an applicant's request for the CER to grant consent to exercise powers conferred on ESB Networks pertaining to accessing electricity distribution assets should be issued following receipt of confirmation from ESB Networks granting access to its infrastructure under Section 3 of the Act. Subject to the applicant receiving that confirmation from ESB Networks, and subject to the CER obtaining relevant supporting information, the CER would then be in a position to begin processing a consent request from an applicant under Section 5 (1).

As noted above, the process, and in particular the information likely to be requested, for an application under Section 5 of the Act set out in this Information Paper represents the CER's guidance to potential applicants as to the likely approach. This process will be kept under review and is therefore subject to change.

Applications or queries in relation to this Information Paper should be sent to Aoife Parker-Hedderman at aparkerhedderman@cer.ie.