

# **IWEA and Synergy Group**

**Position Paper on Connection Policy**

**29<sup>th</sup> July 2008**

## **Introduction**

The Irish Wind Energy Association and the Synergy Group welcome the opportunity to contribute our thoughts at this stage of the consultation process on ESB Networks' and EirGrid's connection Agreements.

The current connection agreements are unbalanced in favour of the asset owners and operators. Developers are currently exposed to all risks of cost and time overruns including those which are within the control of the asset owners and operators. IWEA and Synergy jointly submitted a principles paper to CER and the network operators on 29 February 2008 outlining 31 principles that needed to be addressed in order to develop a more balanced agreement. This principles paper is included as an annex to this submission.

Developing a wind generator is a complex and costly project and involves substantial investment of capital at risk. Delays in the connection programme have a disproportionately adverse impact on the overall project. Improved co-ordination between wind farm developers and network operators is required to allow more efficient project and risk management. We acknowledge that both system operators have made some proposals that will improve the situation for developers but we believe that a number of key issues remain. This paper sets out the key issues that remain to be addressed and should be read in conjunction with the original principles document.

## **Incentives and risk of delays**

### **Commercial Issues**

A delay in the availability of a connection exposes the developer to significant additional costs. In the event that turbines have been delivered ahead of the availability of a connection, developers will be incurring significant losses and may

need to amend their debt agreements with banks and other financiers. Such experiences cause banks to review their contingency requirements making future projects more difficult to finance. The incremental costs that the asset owner may have faced to avoid this delay could be very small relative to the loss that the developer is exposed to.

For example it is very cheap for the asset owners to maintain a supply of transformers 1-2 units 6-12 months ahead of their scheduled required date, since these are procured on a frame contract. If as a result, the system operators could then guarantee transformer delivery on time (with a remedy equivalent to the lost revenue), then perhaps 10 different wind projects could remove significant contingency from their financial models. Under the current system where the risk is with the developer, each of these projects has to finance the risk individually, by adding contingency for 6 months to 12 months delay on grid connection delivery. It is normal in a commercial contract to allocate the risk (a) to the party who has control of that risk or (b) to the party who can most cheaply mitigate against it. This is clearly the system operator in both cases.

Currently the asset operators have no direct incentive to complete work on time or penalties for failure to do so. Given the significant cost exposure faced by wind farm developers this is unreasonable and inefficient. It is essential that the TSO and DSO face appropriate incentives to execute projects within defined timescales and is consistent with the principle of allocating risk to those best placed to control it. We believe that the planned end date of the project should be made a “deemed firm date” for developers. This would provide the developer with the financial certainty required to allow investment in projects and would give the TSO and DSO more freedom to manage individual issues as they judged most appropriate in the overall national circumstances.

It is normal contractual practise that some portion of payment should remain outstanding until works have been completed. While it is accepted that the DSO and TSO will need reasonable processes to ensure monies due are collected, blocking MRSO data on projects where payment is not overdue seems disproportionate and could cause significant losses of generation revenue to the developer.

### **Detailed Issues**

Procuring wayleaves requires effective co-ordination with landowners, and our view is that the current process of not seeking wayleaves prior to the grant of planning consent is not optimal. Once planning permission for a route is obtained, there will be less flexibility in the wayleaving process as adjustments to routes may not be permitted. The TSO and DSO should get a signed and legally robust wayleave, reviewed by the landowners solicitor, prior to applying for planning permission, and seek further wayleaves if the planning requires a change of route. There should be more formal mechanisms for determining the dates for seeking planning permission. It is also vital that the requirements or otherwise for planning permission are specified prior to offer acceptance so developers are fully aware of the risks involved.

Similarly indicative timelines for underground cable development should be included. The current approach does not give the developer any comfort on the possibility of a fixed time scale. The process for securing costs and timelines for an underground connection at pre offer stage needs to be clarified.

### **Communications**

As distribution offers have become more expensive it is vital that improved pre offer communications are introduced. This will reduce the need for many modifications at a later stage in the process and reduce the number of connection offer disputes.

The proposal to provide regular formal reporting during the construction phase is welcomed as a significant improvement. This communication should explicitly provide for the developer(s) having an option to switch the connection method to underground if required. It is important that this communication meets the needs of the industry.

## **Cost issues**

### **Fixed costs**

It is essential that costs remain fixed to the greatest extent possible. For example, the TSO Pass-Through Costs for Grid Code Testing and Commissioning should be fixed rather than variable pass through. There should also be a remedy for the non-defaulting party in the event of delay by a party in carrying out its testing and commissioning obligations.

### **Capacity Bond**

The capacity bond should not be required before the 55% payment stage. At this stage developers typically have access to some debt financing. Ahead of this it may be very difficult for smaller developers to provide this bond.

### **Contracting**

All subcontracts should be through a public tendering process. The Customer should have the option to carry out or procure the carrying out of any civils work elements itself. The connection agreements should provide for this.

### **Term of Connection Agreements**

The term of the connection agreement should be for a minimum 20 years, with a right to renew without forfeiting capacity. Discussion around replacement of equipment at year 50 required.

## **Conclusions**

The IWEA and Synergy group believe that significant improvements to the connection agreement will result from this process. It is apparent that the network operators have developed a more in depth knowledge of the risks facing developers and that there is an openness to mitigating these. However, to provide developers and investors with sufficient commercial assurance more formal processes will be required in key areas. In particular the timescale for delivery of a connection needs to become more robust and commercially secure. While some costs will vary every effort should be made to minimise changes from the original offer. The more formal communications process is very welcome and will be of significant value to the industry.

## **Annex**

### **Synergy and IWEA Combined Principles Paper**

# **Synergy Group and IWEA combined Principles Paper in relation to changes required to transmission system and distribution system connection agreements**

**Prepared for the Commission for Energy Regulation, the Transmission System Operator and the Distribution System Operator**

**29 February 2008**

## **Background**

Following separate requests from the Synergy Group (“Synergy”) and the IWEA for a meeting with the CER to discuss the terms of the transmission system and distribution system grid connection agreements, a meeting was held at the offices of the CER on Friday 22 February 2008 between representatives of Synergy, the IWEA, the CER, EirGrid and ESB Networks (“ESBN”) The meeting was chaired by Michael Tutty, the Commissioner for Energy Regulation.

Synergy and the IWEA each provided a list of issues in advance of the meeting (copies of which are attached hereto) and presented some of their concerns regarding the terms of the connection agreements at the meeting. Many of the issues voiced by Synergy and the IWEA were common to both and as a result of the meeting (and in agreeing the next steps in the resolution of this matter) the Commissioner requested and Synergy and the IWEA agreed to present a combined principles paper presenting the views and concerns of the wind industry on the terms of the transmission system and distribution system connection agreements.

Synergy and the IWEA now submit this paper which outlines the combined principles of Synergy and the IWEA in respect of this matter. The principles included in this paper represent issues raised by members of both of our groups and it is our intention to prioritise these issues as the process progresses. It is intended that the agreed principles will form the basis for agreeing amendments to the terms of the connection agreements.

## **Introduction to Principles**

- Our concerns essentially fall under two general principles ‘Certainty of Time for Delivery’ and ‘Certainty and Transparency of Cost of Delivery’ which underlie the specific principles set out in this paper.

- As identified in some detail in the advance issues lists submitted by Synergy and the IWEA, certainty on time and costs is crucial in any construction project and particularly in windfarm projects given their up-front capital intensive nature, the financing structures almost invariably employed in such projects, and the interplay between the grid connection works and the completion of civil, electrical and turbine works. The delivery of a completed, energised project in accordance with a pre-defined programme for completion and with limited scope for price variations goes to the root of the economics and continued viability of a project both for the developer and for the financing banks. Delays and uncertainty in grid connection works (and the knock-on effects on other project contracts) have a cost to the project which will invariably have to be met by the project sponsors. Banks cover the risk of grid delay and cost over-run by adding in contingencies to the financing. For example, instead of modelling for a 6 month construction programme, the bank might model for a 9 month construction period, thereby requiring an additional three months' interest cover in the project economics which will adversely affect the equity return and possibly the decision to invest. The bank might also require a bridging loan facility or reserve loan facility at an increased commitment fee and margin which again is a cost to the developer. Ultimately, having to factor into the project economics additional costs for delays and unknown costs and to build float into the project programme to deal with delays either results in increased costs of wind generation and increased costs for end customers or in certain cases the death of the project. Accordingly, we wish to propose solutions to achieve a greater degree of certainty and transparency on time and costs and incorporate these solutions through amendments to the standard form EirGrid/ESBN connection agreements.
- We acknowledge that EirGrid and ESBN seek to operate on a cost neutral basis and do not wish to take commercial risk on connections that may have a cost implication for the end customer (without approval from the CER). However a commercial situation where a contractor commits to carry out construction works without some incentive to complete on time and on budget is very unusual and this is reflected in increased financing costs. The solutions we intend to propose will seek to improve on time and cost aspects of connections that are within EirGrid/ESBN's control.
- Some of the key principles which we are seeking to have incorporated into the terms of the connection agreements (most likely in the quotation/offer letter) are set out in paragraphs 1 to 31 below. Consequential amendments will also be needed in the connection agreement conditions (for example in the ESBN Major User Connection Agreement, clause 4.3, the reasonable endeavours obligation to obtain consents and clause 4.4, where assumptions are unlikely to be met, will need to be refined and aligned with any changes in the quotation/offer letter). We have provided some preliminary suggested drafting in the Annex to this paper however this drafting, together with consequential changes, will need to be developed by us as the principles are agreed.<sup>1</sup> We look forward to discussing these principles further with the CER, EirGrid and ESBN and agreeing appropriate amendments.

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<sup>1</sup> Certain consequential amendments may be required in the ESB/EirGrid infrastructure agreement.

## Principles

1. A preliminary line route for both overhead line and underground cable connection methods should be identified (together with a supporting map or maps) and priced in the quotation/offer letter. The underground cable connection method should underlie public roads, where possible. The connection offer pricing for the overhead line connection method should be firm as it is the LCTA. The connection offer pricing for the underground cable connection method should be an early indicative and reasonable estimate (attaching as much certainty as possible). We have provided suitable drafting in the Annex to this paper.

This pre-supposes that the routes will have been walked or flown by the relevant system operator and an analysis done of the connection point in advance of issuing the offer.

- The Commission Decision *Standard Pricing Approach for Connecting Renewable Generators to the Distribution Network*<sup>2</sup> endorses the DSO proposals that DSO connection offer pricing is based upon a desk top study, a site visit and approved standard charging. This Decision must be complied with as a matter of course.
- We understand that for TSO connection offers there is no standard charging, that only a desk top study is done and that a drive through survey or connection point analysis does not always take place. Connection distances appear to be desk top approximations with over 30% added at times for uncertainty and the route lined is assumed.

We require that a common agreed methodology for the feasibility of the connection method is adopted by ESBN and EirGrid (including the introduction of standard pricing for EirGrid connection assets).

2. The quotation/offer letter should contain a list of what planning and other consents are required to be obtained by EirGrid/ESBN in respect of the connection method including details of the relevant planning procedure (e.g traditional or strategic infrastructure) and whether an environmental impact statement is required. We have provided suitable drafting in the Annex to this paper.

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<sup>2</sup> CER/05/090.

3. Following offer acceptance EirGrid/ESBN should identify all landowners along the overhead line route. An agreed time period will be incorporated into the connection agreement for EirGrid/ESBN to enter into agreements with landowners and other third parties along the overhead line route so as to secure all necessary wayleaves and third party consents. Where agreements have not been forthcoming from all landowners along the route within the specified time, a liaison mechanism will be incorporated into the connection agreement pursuant to which the Customer will have a number of options, including the option to request EirGrid/ESBN to exercise its statutory powers to secure the consents and/or to proceed on the basis of the underground cable connection method. We have provided suitable drafting in the Annex to this paper.
4. Similarly where an underground solution is being proceeded with, agreed timelines will be incorporated for EirGrid/ESBN to secure any necessary consents from competent authorities, for example, road opening permits (subject to paragraph 7 below pursuant to which the Customer may elect to carry out or procure the carrying out of the civils works himself). We have provided suitable drafting in the Annex to this paper.
5. An agreed time period will be incorporated for EirGrid/ESBN to submit an application for any necessary planning permission. We have provided suitable drafting in the Annex to this paper.
6. The connection agreement needs to contain a mechanism for regular reporting and information sharing during the pre-construction phase and construction phase. For example, the connection agreements do not capture the choices that a developer has when it comes to the decision to cease pursuing an overhead line solution and go underground. Given that this is a common and important decision point for many developers, the connection agreement should clearly provide for an opportunity for the developer to consider this option, the pre-conditions to making the change, what happens to costs incurred to date, any limits to when it may not be allowed and how long it will take to update the connection offer. It is important that it is not a fresh connection offer, but an updating of the existing offer. We have provided preliminary drafting in the Annex to this paper however this will need to be developed further.
7. The Customer should have the option to carry out or procure the carrying out of any civils work elements itself. The connection agreements should provide for this. We have provided preliminary drafting in the Annex to this paper however this may need to be developed further.
8. Following the Consents Issue Date (and as a pre-condition to the Customer making the pre-construction stage payment) EirGrid/ESBN should provide a detailed programme (in Gantt chart or similar format) setting out the work-streams and the critical path to achieving the connection works completion date and operational date. Together with the programme (and as a pre-condition to the Customer making the pre-construction stage payment) EirGrid/ESBN should provide a list of all equipment required for the Company's Connection Works. The order dates and delivery periods for all required Company equipment should be detailed in the programme. The programme should also include a period for the performance of commissioning tests. An outline programme

should be provided with the quotation/offer letter, which programme will then be updated following the Consents Issue Date. The programme must be reasonable, appropriate and specific to the connection method and should not include inflated or unrealistic time periods. We have provided suitable drafting in the Annex to this paper.

9. The connection agreement should contain a provision whereby the Customer can request EirGrid/ESBN to accelerate the programme where there is a delay in the Programme, including placing orders for material or equipment. The Customer will take the risk on any additional costs arising as a result of accelerating the programme provided that the Company has not been the cause of the delay. We have provided suitable drafting in the Annex to this paper.
10. The connection agreement will need to contain an incentive mechanism to ensure completion and energisation of the Company's Connection Works in accordance with the programme with appropriate remedies against EirGrid/ESBN for failing to meet the programme for matters within its control. We will propose drafting for this in due course.
11. The list of Pass-Through Costs needs to be clearly defined. Even though they are Pass-Through Costs, a reasonably accurate estimate of the costs must be provided in the quotation/offer letter. The costs should then be firmed up within a defined period following the Consents Issue Date (and as a pre-condition to the Customer making the pre-construction stage payment). The process for passing through these costs should be transparent and drafted in clearly defined terms in the connection agreements. We would expect that the provisions of the Commission's Decision 05/090 relating to Pass-Through Costs<sup>3</sup> would be reflected/re-iterated in the terms of the connection agreements (which is currently not the case). As requested in our recent meeting we will require reports from EirGrid and ESBN detailing when Pass-Through Costs can first be estimated (and with what degree of detail) and then firmed up. Also as requested in our recent meeting, we will require EirGrid and ESBN to report on what additional works (for example surveys) would need to be carried out by them pre-connection offer in order to provide an accurate estimate of Pass-Through Costs at offer stage and Consents Issue Date stage and what impact (if any) these would have on the cost and timing of issuing connection offers. Related to this point is to what extent provision is already made in the connection offer applications fees for these surveys and works. We await receipt of these reports. We would welcome the CER's input in terms of verifying EirGrid/ESBN's costs and timelines and the degree of work required from EirGrid/ESBN at pre-offer and pre-construction stage. We also require there to be an agreed cap on Pass-Through Costs (other than Pass Through Costs of consents).
12. The quotation/offer letters currently include a long list of Assumptions, any change in which may result in a change in the Connection Charge. Many of the Assumptions are drafted in a vague and open ended manner leading to ambiguity and uncertainty as to their scope and consequences. For example:

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<sup>3</sup> In paragraphs 42 to 51.

- a. DSO Quotation Letter Clause 12.10 (Line or Cable Route and Grounds Conditions): There is no definition provided as to what might constitute “reasonable line or cable routes and ground conditions”. A definition of what constitutes “reasonable ground conditions” is given in the TSO Offer Letter (clause 3.5) but not in the DSO Quotation Letter.
- b. DSO Quotation Letter Clause 12.11 and TSO Offer Letter Clause 3.9 (Delivery Dates): “The delivery/availability of all [items of plant and] materials [will be within] current standard delivery periods”. There is also additional “endeavour” and “as expeditiously as possible” language in DSO Clause 12.11. If reasonable and considered periods are included in the programme reflecting the estimated current delivery periods for the relevant items of equipment etc required and ESBN/EirGrid place the orders in line with the programme, then this risk is within ESBN/EirGrid control (save perhaps in exceptional circumstances, e.g Force Majeure). As with any contract, a default of a subcontractor does not relieve the principal contractor of his obligations. This is particularly important with recent increases in transformer delivery times. A number of developers have experienced delay here.
- c. TSO Quotation Letter Clause 3.11 (Weather Conditions): There is a reference to “adverse environmental and weather conditions”. These need to be defined.
- d. TSO Quotation Letter Clause 3.10 (Changes in Construction, Access and Commissioning Dates and Periods): ‘The dates and periods in Appendix 1 remain as set out’. Other than the Consents Issue Date these dates are within ESBN/EirGrid control.

Each of the Assumptions needs to be eliminated or clearly defined with EirGrid/ESBN. The consequences of each Assumption arising must be clearly stated and defined in the connection agreements.

- 13. There needs to be greater clarity in the provisions of the connection agreements that deal with the grounds for and consequences of termination. We intend to review and clarify these provisions and will provide suitable amendments in due course. For example, the Company should not have the right to terminate the Connection Agreement where the Operational Date has not occurred by the Scheduled Operational Longstop Date due to the Company’s default. Also it is not clear why the Company should have an immediate right to terminate where the Customer does not have a supply agreement in place. The mechanism for refunding the connection charge less any costs incurred by EirGrid/ESBN needs to be clarified.
- 14. There is insufficient detail in the connection agreements with respect to the consequences for the developer where an interacting offer is not accepted or is withdrawn after it has been accepted. In general the group processing model of shared assets (which are in reality network assets) is problematic. The current system whereby

interacting offers which are either not accepted or are withdrawn result in no increased charges for the remaining group members, while in theory seems beneficial, in practice results in a great degree of delay and uncertainty for developers. Furthermore the “no increased charges” principle does not deal with delay cost suffered by the developer. We would wish to explore drafting solutions with EirGrid/ESBN for the inclusion of appropriate provisions in the connection agreements. At a minimum there needs to be a fast track process and a longstop date for the issue of any modified offer. Also, a defined scope of work should be advanced prior to offer acceptance by the entire sub-group.

15. The connection agreements do not include express provisions for rebates to the Customer for later connections to the constructed assets. We would wish to explore drafting solutions with EirGrid/ESBN for the inclusion of appropriate provisions in the connection agreements. In particular the following principles need to be incorporated into the connection agreements:
- a. the ten year rebate rule should be extended closer to 50 years as this is the typical design life of the assets;
  - b. the rebate should be calculated on the basis of the connecting party’s per MW share of the present day cost of constructing the asset (i.e at the time of connection) and not the depreciated historical cost;
  - c. where the later connection is made to an underground cable constructed at the cost of a developer the actual cost of construction should be the basis of the rebate rather than the LCTA;
  - d. there should be a rebate to the Customer where the connection method results in previously installed equipment with a residual value being re-used by the system operator elsewhere.<sup>4</sup>

These comments should be considered by the CER as a submission on the rebates issue included in Consultation Paper CER/08/017.

16. The connection agreements should make provision for retention of an agreed percentage of the connection charge until after energisation has been completed and the operational date confirmed. We have provided suitable drafting in the Annex to this paper.
17. ESBN should make a tester available for carrying out the G10 commissioning tests within one week of request by the Customer. Where ESBN fails to do so the Customer

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<sup>4</sup> We can provide you with an example of where a transformer which is no longer required in Donegal is being re-used by the system operator in another part of the network (unrelated to the connection method) without providing any rebate for the residual value of the transformer to the Customer.

should be entitled to procure an approved independent third party to carry out the G10 tests at ESBN's cost (with the amount being deducted from the retention monies).

18. The current requirements for Grid Code testing are proving very difficult to schedule due to the amount of variables involved. For example, the requirement that there must be a minimum level of wind on the system and that the project is operating at 75% output is outside of the Customer's control. We suggest that the bar be lowered to facilitate scheduling of the grid code tests to 50% output instead as it is more likely to satisfy the test conditions. We would wish to discuss changes to the requirements with EirGrid.
19. EirGrid/ESBN should clearly define the information they require from the Customer at the connection offer stage. Any inadequacy in their list of requirements must be at EirGrid/ESBN's risk.
20. Where EirGrid/ESBN sub-contracts any part of the works, supplies or services which are necessary for the performance of the Company Connection Works (including, for the avoidance of doubt, project management and other consultant services) such sub-contracts should be procured through public tender processes in compliance with national and EU procurement rules.
21. EirGrid/ESBN must ensure that all necessary internal approvals required in order for it to proceed with capital works or the order of materials are obtained in good time to ensure compliance with the programme. Any such internal approvals and necessary timelines for obtaining them should be included in the programme. We have provided suitable drafting in the Annex to this paper.
22. We indicated the need for a Deemed Firm Date to be included in the connection agreements. With increasing constraints projected on the system, non-firm access will become an increasing problem and will ultimately impact on the bankability of a project without a mechanism such as a Deemed Firm Date and guaranteed firm financial access being incorporated. This is a matter of increasing concern which we would wish to discuss further with you.
23. There is also uncertainty in the current mechanism of non-firm access contained in the connection agreements. For example, there is no clarity on whether the Customer would receive compensation in the following circumstances:
  - a. where the Customer is constrained in excess of what was estimated in the constraint report;
  - b. if the Deep Operational Date is not achieved by the date stated in the connection offer.

These matters need to be resolved.

24. The current policy with regard to contestability of shared transmission connection assets whereby all applicants – transmission and distribution – sharing the transmission asset within a sub-group must come to a unanimous agreement amongst themselves that they wish to make the shared transmission connection asset contestable is problematic. It can result in unfair leverage being exerted within the group. We would wish to explore solutions with EirGrid/ESBN for a change to this policy, for example, that a qualified majority based on MW replace the requirement for a unanimous agreement and that those who do not agree to the assets being contestable be given offers based on the non-contestable price.
25. Bringing in contestability at 38kV and 20kV would go a long way to alleviating developer's concerns regarding distribution system connection offers as many of the time and cost risks currently sitting wholly with distribution system connected developers could be passed through to the connection works contractor which is currently not the case with the ESBN/EirGrid works. We note that the CER and ESBN both supported contestability of distribution system connections during our recent meeting. We intend to escalate our lobbying of the Minister to introduce this on a legislative basis as a priority. Synergy wrote to the Minister on 21 February 2008 calling on him to make connection to the distribution system for renewable generators contestable and urging him to propose the immediate adoption of legislation transposing fully Directive 2001/77/EC<sup>5</sup>.
26. The timing of the capacity bond is unreasonable (i.e as a pre-condition to offer acceptance). Why should developers be required to fund this at this stage? We note that under Gate 1 offers the capacity bond was not required to be in place until prior to the Operational Date. The connection agreements should be amended to require delivery of the capacity bond either as a pre-condition to the Operational Date or no earlier than the Consents Issue Date. We welcome the recent decision in respect of the obligation under transmission connections to provide the connection charges bond at the Consents Issue Date.
27. It is not clear at all why Customers should have to pay on-going service charges in addition to TUoS and DUoS charge. This is something we wish to have clarified by you. Furthermore it is not clear why transmission offer service charges and distribution offer service charges vary to such a great extent.
28. The obligation to grant freehold interests/100 year lease in the sub-station is unduly onerous and in most cases is legally impossible for the developer to comply with (for example where its interest in the site is based on a 30 year commercial lease). This requirement needs to be reviewed by EirGrid/ESBN.
29. The term of the connection agreement needs to be considered. The initial term should match the lifecycle of the turbines and the agreement should be renewable upon the

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<sup>5</sup> Directive of the European Parliament and of the Council of 27 September on the promotion of electricity produced from renewable energy sources in the internal electricity market.

expiry of the initial term at the Customer's option. This is also relevant to our comments above at paragraph 15 relating to rebates.

30. Consideration needs to be given to the risk of change in the project economics due to unforeseeable changes in the TLAf and DLAF over the life of the project.
31. Changes to the basis for calculating LCTA are relevant to concerns regarding costs, and therefore to the principles outlined in this paper. We would wish to discuss the current CER Consultation Paper 'DSOs' Proposals on Least Cost Technically Acceptable criteria, Rebates and Fees' dated January 2008 (CER/08/017) and related DSO Proposals during the course of our discussions on these principles with you.

**The Synergy Group**

**The Irish Wind Energy Association**

## Annex

### Drafting

#### Note:

1. The drafting proposed is subject to further development and will need to be appropriately incorporated into the terms of the connection agreements. Further amendment to related terms of the connection agreements may also be necessary.
2. We will provide appropriate definitions for defined terms included in this drafting but not currently defined prior to the drafting being finalised.

#### Principle 1

##### 1 Preliminary Designs and Route Map

1.1 As a condition precedent to the Customer's obligations to satisfy the Customer Conditions Precedent set out in Schedule 3, Section 1 of the Agreement, the Company shall provide with this Quotation/Offer Letter preliminary designs for the following:

1.1.1 a connection method based on an overhead line solution; and

1.1.2 a connection method based on an underground cable solution (which shall be based entirely on a route that underlies public roads, as far as reasonably practicable),

together with a map or maps identifying the route of each connection method.

#### Principles 3 and 6

**“Commencement Date” means the date that the conditions precedent specified in Schedule 3, Part 1 of the Agreement have been satisfied.**

##### 2 Access Arrangements

2.1 Within the 2 (two) month period immediately following the Commencement Date the Company shall approach all of the landowners along the route of the connection method referred in clause [1.1.1] above (the **“OHL Route”**).

- 2.2 If within that 2 (two) month period, the Company has not entered into a legally binding agreement with each of the landowners along the OHL Route pursuant to which agreement the Company has an unconditional and irrevocable right of access to the relevant landowner's property sufficient and appropriate to ensure the performance of the Company's Connection Works in accordance with this Agreement, the Company and the Customer shall meet to discuss the next steps to be taken in accordance with the procedure set out in clause [3] (Meetings).
- 2.3 During the course of the initial or any subsequent meetings convened pursuant to clause [2.2] and clause [3] (Meetings), the Customer shall have the option to instruct the Company to do any or a combination of the following:
- 2.3.1 exercise its statutory powers to obtain all the necessary wayleaves and consents from the disputing landowners along the OHL Route;
  - 2.3.2 proceed with such part of the OHL Route that is not the subject of a dispute with a landowner in accordance with the connection method identified in clause [1.1.1] above;
  - 2.3.3 proceed with such part of the OHL Route that is the subject of a dispute with a landowner in accordance with the connection method identified in clause [1.1.2] above (the "UC Method"); and/or
  - 2.3.4 proceed with the UC Method for the entire route of the connection works.
- 2.4 If the Customer gives an instruction to the Company to proceed on the basis of the UC Method pursuant to clause 2.3, the Company shall within 20 (twenty) working days issue an updated quotation/offer letter which shall include all relevant details of the cost and programme changes arising from the instruction. The Company shall give any further information about the changes as may be requested by the Customer. The Company shall not implement the proposed instruction unless and until the Customer has confirmed the instruction as given.

### 3 Meetings

- 3.1 The Company and the Customer shall attend regular<sup>6</sup> meetings scheduled by the [Company's Project Manager] **Drafting note: The person with responsibility for co-ordinating meetings is to be agreed** and any special meeting called by either of them to discuss a particular issue identified when calling the meeting. The Company may invite other Company's Personnel and the Customer may invite other Customer's Personnel to attend meetings. The Company shall arrange for the attendance at a meeting of any Company's Personnel requested by the Customer. The time and place of meetings shall be set by the [Company's Project Manager] **Drafting note: See drafting note above**, after consulting with the Customer, acting reasonably.
- 3.2 Within 5 working days after each meeting the [Company's Project Manager] shall issue minutes of the meeting to the Company and the Customer. The Customer

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<sup>6</sup> We would like to suggest suitable frequencies for meetings.

shall notify the [Company's Project Manager] of any objection to the minutes within 10 working days of receiving them, otherwise, unless clearly wrong, they shall be considered correct.

## Principles 2, 4, and 5

**“Company’s Consents”** means the permits, licences and approvals listed in Schedule [●] of the Quotation/Offer Letter and which the Company shall be responsible for in accordance with clause [●].

**“Offer Acceptance of the Sub-Group”** means the date on which all connection offers issued to the members of the sub-group of which the Customer is a member have been accepted or otherwise have lapsed.

*Drafting Note: this clause pre-supposes that the CER will require Eirgrid/ESBN to list all consents required for the Company's Connection Works in the quotation/offer letter (including for the avoidance of doubt whether an environmental impact statement is required).*

### 4 Company’s Consents and Permits

- 4.1 The Company shall obtain the Company’s Consents at the Customer’s cost in accordance with this clause [●]. In obtaining the Company’s Consents the Company shall use all reasonable endeavours to minimise the cost to the Customer and shall consult with the Customer before incurring costs additional to those included in the Connection Charge for obtaining the Company’s Consents.
- 4.2 Where planning permission is required for a Dedicated Connection Asset the Company shall submit a complete and valid application for planning permission for the Dedicated Connection Asset in accordance with the requirements of the **[Drafting note: refer to relevant planning legislation]** within 1 (one) month of the date on which the last of the agreements referred to clause [2.2] is entered into, save that the provisions of clause [4.3] shall apply in respect of any part of the OHL Route that is the subject of a dispute with a landowner.
- 4.3 Where the Company has been unable to conclude an agreement with a landowner along the OHL Route in accordance with clause [2.2] and the Customer has exercised its option pursuant to clause [2.3.2] the Company shall submit a complete and valid application for planning permission in accordance with the requirements of the **[Drafting note: refer to relevant planning legislation]** in respect of the part of the OHL Route that is not the subject of a dispute within 1 (one) month of the date on which the Customer notifies the Company of its decision to proceed in accordance with clause [2.3.2].
- 4.4 Where planning permission is required for any part of the Shared Network, [without prejudice to the Company’s obligations pursuant to clause 2 (Access Arrangements)], the Company shall submit a complete and valid application for planning permission in accordance with the requirements of the **[Drafting note: refer to relevant planning legislation]** within [3 (three)] months of the Offer of Acceptance of the Sub-Group.

- 4.5 Where the Customer has elected pursuant to clause [2.3] to proceed in whole or in part with the UC Method, the Company shall, following consultation with the Customer (but subject to the Customer's right to carry out the civil works pursuant to clause [●] (Civils Works)), make [all appropriate applications for road opening permits and other necessary consents to the relevant Competent Authorities] **[Drafting note: Permit requirements for the UC Method need to be confirmed]** as may be required in respect of the UC Method within a period of 1 (one) month from the date on which the Customer notifies the Company of its decision to proceed with the UC Method in accordance with clause [2.3].
- 4.6 The Company shall obtain all other Company Consents in a timely manner and shall keep the Customer regularly informed of its progress in obtaining the Company's Consents.

## Principle 7

### 5 Civil Works

- 5.1 The Customer may elect to carry out or procure the carrying out of any civil works along the OHL Route or that are required for the UC Method. Where the Customer so elects, he shall notify the Company in accordance with the liaison procedure set out in clause [3] (Meetings).
- 5.2 The Company and the Customer shall support reciprocal co-operation for the purpose of the carrying out and completion of the civil works, including co-operation with and between the Company's Personnel and the Customer's Personnel. Without limitation to the foregoing, each of the Company and the Customer shall provide appropriate rights of access to the Site (provided such access is within their control) to the other party and the Company's Personnel and the Customer's Personnel for the purpose of the carrying out and completion of the civil works.

## 6 Programme

- 6.1 The Company's initial Works Programme for the carrying out and completion of the Connection Works is contained in Schedule [●] of the quotation/offer letter. The Company shall submit a more detailed programme to the Customer within 28 (twenty eight) days after the Consents Issue Date. The Company shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Company's obligations. Each programme shall be prepared in accordance with section [●] **[Drafting note: Synergy/IWEA will submit minimum requirements that the programme must meet]** and shall include:
- 6.1.1 the order in which the Company intends to carry out the Connection Works, including the anticipated timing of each major stage of the Connection Works,
  - 6.1.2 the time (or times) at which the Company requires rights of access to and possession of any part of the Site,
  - 6.1.3 the time (or time) for ordering and delivery of materials and equipment by the Company,
  - 6.1.4 the time (or times) for obtaining any necessary internal approvals required by the Company,
  - 6.1.5 the sequence and timing of inspections and tests specified in the Agreement, and
  - 6.1.6 a supporting report which includes:
    - (i) a general description of the methods which the Company intends to adopt for the execution of each major stage of the Connection Works, and
    - (ii) the approximate number of each class of Company's Personnel and of each type of Company's Equipment for each major stage.
- 6.2 Unless the Customer, within 21 (twenty one) days after receiving a programme, gives notice to the Company stating the extent to which it does not comply with the Agreement, such programme shall constitute the Works Programme and the Company shall proceed in accordance with the Works Programme, subject to its other obligations under the Agreement. The Customer's Personnel shall be entitled to rely upon the Works Programme when planning their activities.

- 6.3 The Company shall promptly give notice to the Customer of specific probable future events or circumstances which may adversely affect or delay the execution of the Connection Works. In this event, or if the Customer gives notice to the Company that a programme fails (to the extent stated) to comply with the Agreement or to be consistent with actual progress and the Company's stated intentions, the Company shall submit a revised programme to the Customer in accordance with this clause [6].

## 7 Company's Equipment

- 7.1 The Company shall provide to the Customer a list of all necessary equipment and materials required for the carrying out and completion of the Company's Connection Works within 28 (twenty eight) days after the Consents Issue Date.

**Drafting note: Delivery of the programme and the list of Company's Equipment will be a condition precedent to the requirement on the Customer to make the preconstruction/first construction stage payment. This will need to be drafted into the quotation/offer letter.**

## 8 Acceleration of the Programme

- 8.1 If, at any time:

8.1.1 actual progress is too slow to complete by the [Connection Works Completion Date], and/or

8.1.2 progress has fallen (or will fall) behind the current programme under clause [6] (Programme),

then the Customer may instruct the Company to submit, under clause (6) (Programme), a revised programme and supporting report describing the revised methods which the Company proposes to adopt in order to expedite progress and complete by the [Connection Works Completion Date].

- 8.2 Unless the Customer notifies otherwise, the Company shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's Personnel and/or Goods and/or the order of Company Equipment, at the risk and cost of the Company. Except where the delay in the Programme was due to an act, omission or default by the Company, if these revised methods cause the Company to incur additional costs, the Customer shall subject to clause [●] **[Drafting note: refer to Company's claims clause]** pay these costs to the Company.

### Principle 10

See comments made under this principle. We will provide drafting in due course.

**Principle 11**

See comments made under this principle. We will provide drafting in due course.

**Principle 12**

See comments made under this principle. See comments made under this principle. We will provide drafting in due course.

**Principle 13**

See comments made under this principle. We will provide drafting in due course.

**Principle 14**

See comments made under this principle. We will provide drafting in due course.

**Principle 15**

See comments made under this principle. We will provide drafting in due course.

**Principle 16**

The payment schedules in the quotation/offer letter will need to be amended to provide that the final Connection Charge payment will be made by the Customer after the Company has issued the Operational Certificate.

In addition the following clause will need to be inserted:

## 9 Retention

- 9.1 The Customer shall be entitled to withhold [●] per cent of any amount due to the Company under this Agreement (the “**Retention Money**”).
- 9.2 When the Commissioning Tests have been completed [50] per cent of the Retention Money will be paid to the Company.
- 9.3 Upon the issue of the Operational Certificate, the outstanding balance of the Retention Money will be paid to the Company.

### Principle 17

See comments made under this principle. We will provide drafting in due course.

### Principle 18

See comments made under this principle. We will provide drafting in due course.

### Principle 19

See comments made under this principle. We will provide drafting in due course.

### Principle 20

See comments made under this principle. We will provide drafting in due course.

### Principle 21

## 10 Company Approvals

- 10.1 The Company shall obtain all necessary internal Company approvals (the “**Company Approvals**”) in a timely manner and shall keep the Customer regularly informed of its progress in obtaining the Company’s Approvals.
- 10.2 The Company shall be liable to the Customer for any delay in obtaining the Company Approvals which causes a delay in the Works Programme.

#### **Principle 22**

See comments made under this principle. We will provide drafting in due course.

#### **Principle 23**

See comments made under this principle. We will provide drafting in due course.

#### **Principle 24**

See comments made under this principle. We will provide drafting in due course.

#### **Principle 25**

See comments made under this principle. We note that this is a policy matter to be progressed with the Minister.

#### **Principle 26**

See comments made under this principle. The timing for delivery of the capacity bond will need to be amended in the quotation/offer letter.

#### **Principle 27**

See comments made under this principle.

**Principle 28**

See comments made under this principle.

**Principle 29**

See comments made under this principle.