

Hybrid Working Group Multiple Legal Entities Consultation

03/09/2020

Part of the FlexTech Integration Initiative



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1 Introduction and Background

The objective of this consultation paper is for the TSO and the DSO (collectively referred to in this paper as the System Operators or SOs) to gain stakeholders' perspectives on options for **Multiple Legal Entities** sharing a single connection point. References in this consultation paper to Connection Agreement include and incorporate Use of System Agreements.

This paper sets out a number of options based on the responses from industry to the FlexTech June 2019 Forum consultation. A link to the June 2019 FlexTech Consultation can be found [here](#) and the FlexTech Response to Consultation published on 14th of July 2020 is available [here](#).

Under the FlexTech programme of work, the Hybrid Working Group will seek to remove barriers associated with the further integration of Hybrid technology. The priority areas identified in the FlexTech response to consultation will focus on breaking down barriers across technical, operational, commercial, regulatory, and market challenges. In doing so, the objective is to maximise the opportunity for effective use of new and existing technologies to meet the needs of the future power system. Further details on the short, medium and long term objectives are set out the FlexTech response to consultation.

2 Hybrid Working Group

2.1 Overview

As part of the Climate Action Plan to help in achieving our 2030 targets and previously in the 2016-18 Hybrid Working Group, industry have expressed an interest in developing hybrid sites or hybrid units at both new and existing grid connections.

Hybrids present an opportunity for both SOs and private industry in maximising the use of existing network assets and increased diversity factors, with the potential improving security of supply. While it is currently possible to obtain a connection agreement for a Hybrid site or unit and connect to the network, in this consultation we would like to review the issue of one customer, one connection in relation to Multiple Legal Entities behind one connection point. If this can be implemented in a manner that works for the SOs and for industry, this may help to maximise the use of transmission and distribution infrastructure and assist in delivering our 2030 targets.

2.2 Definition of Hybrid Plant

The System Operators have developed the below definitions of 1. A **Hybrid Site** and 2. A **Hybrid Unit** which will help inform the work of the Hybrid Working Group.

1. A Hybrid Site to be any project that has multiple generating units or power generating modules which utilise multiple primary energy sources or technology types in generating/storing electricity and are electrically connected behind a single defined Connection Point to a licensed System Operator.
2. A Hybrid Unit is a single generating unit or power generating module which utilises multiple primary energy sources or technology types in generating/storing electricity and are electrically connected behind a single defined Connection Point to a licensed System Operator.

Any technical limitations (for example generation size or type) on what might be facilitated at a single connection in respect of either Hybrid Sites or Hybrid Units or otherwise will be considered separately by the SOs and is not part of this consultation.

2.3 Multiple Legal entities at a single connection point

2.3.1 Proposed framework

Given the potential for different technology types behind a single connection point to be owned by separate legal entities, the SOs are exploring a model whereby multiple legal entities might be permitted to connect behind a single connection point.

The scope of what may be permitted and any limitations on this model have not yet been worked out in any detail (e.g. questions of the corporate relationship between connecting parties, physical proximity/ contiguous nature of facilities, and/ or what number of entities might be permitted to connect), however the purpose of this part of the consultation is to set out at a very high level, the outline of a potential structure for having more than one legal entity beyond a single connection point.

In the event that this model is to be pursued further, the applicable parameters and, in particular, any proposed amendments to the Connection Agreement would require engagement with/ approval of the CRU, as applicable, following which further consultation may be required.

For the avoidance of doubt, whilst this issue has arisen in the context of considering hybrid connections, subject to applicable technical and legal parameters, any proposal here may also be considered for single technology arrangements.

The SO's starting point for this model is to look at the high-level corporate arrangements by asking industry to look at the following:

2.3.1(a) Onward connection

This would involve a single legal entity ("**Party A**") entering into the Connection Agreement with the relevant SO and assuming all obligations and liability to the SO under the Connection Agreement (i.e. for all facilities connected). The relationship between Party A and any onward connected party ("**Party B**") would be a commercial matter between those two entities. The SOs would owe no duty of care or otherwise have any obligations or be potentially liable to Party B and would be indemnified in respect of any such claim by Party A.

The SOs took all of the responses to the FlexTech Consultation in 2019 into consideration, and in Section 2.3.2 we have provided key aspects of a contract/ bilateral agreement between Party A and Party B. The SOs consider this might be a useful template for an industry bilateral agreement between two generators behind a single connection point, although this would not under this model, be a regulated agreement, and the relevant SO would have no involvement in a bilateral agreement between two generators behind a single connection point.

Key Aspects:

"**Party A**" – is party to the connection agreement with one of the System Operators (this would be a version of the current form of Connection Agreement, modified to allow onward connection in limited circumstances) and is developer of a project ("**Project A**"); and

"**Party B**" – is not party to that connection agreement but enters into a contract with Party A, and ancillary arrangements with the relevant SO or both SOs, if required, to allow connection of Party B's facility ("**Project B**") to the transmission or distribution system via that same connection point.

1. Party A enters into a Connection Agreement with System Operator.
2. Whether Party A and Party B are required to have a parent/subsidiary relationship or otherwise form part of the same corporate group to be considered.

3. Project A and Project B are in close proximity or contiguous (details of this requirement to be further considered by the SOs).
4. Party A and Party B then enter into a contract whereby Party A grants 'access' to the connection point to Party B, such that the connection point connects both legal entities to the system.
5. The relevant SO would not be a party to this contract between Party A and Party B and the SOs do not envisage having any role in the oversight in respect of that contract (except possibly requiring evidence of the relationship between Party A and Party B). However, for information, it is envisaged that this contract is likely to need to cover various matters outlined in Annex 1 to this paper:
6. Whilst the extent of amendments to the standard Connection Agreement have yet to be worked out, it is anticipated that at a minimum that Party A's Connection Agreement would provide for:
 - (i) Connection of a separate legal entity to be permitted only in such circumstances as may be outlined in the Connection Agreement (as amended) and any applicable SO/CRU policies;
 - (ii) The conditions that are required by the SO to be met in order to permit such connection (e.g. securing the relevant direct commitments from Party B – see further below) and measures that are required in order that compliance with these conditions can be enforced;
 - (iii) Party A remains liable at all times for performance of the customer's obligations under the Connection Agreement in relation to all assets using the connection point, including, for the avoidance of doubt, Grid Code compliance in respect of all the assets (i.e. it is responsible to the SO for actions/compliance of Party B). It would be expressly acknowledged by Party A that the SOs would owe no duty of care or otherwise have any obligations or be potentially liable to Party B and would be indemnified in respect of any such claim by Party A;

- (iv) Further consideration would need to be given to various issues including, without limitation, the question of whether Party B might be given the right or obligation to “step into” the connection agreement in certain circumstances (e.g. insolvency of Party A) or if this can effectively be achieved through existing mechanisms (e.g. novation).
 - (v) Indemnification in respect of Party B’s access to the connection point may require additional security being required from Party A;
 - (vi) Restrictions on the ability for Party A to permit Party B to novate its rights unless the transferee has met the relevant SO conditions
7. The SOs will likely require certain direct commitments/indemnities from Party B. Whilst the extent of these commitments has yet to be scoped, examples would include, grant of access to lands and a waiver to the effect that the SO would have no liability to Party B where disconnection/termination due to the actions of Party A.

The detail of such arrangements, potential impact and risks for the SOs would have to be considered further. However, before exploring this further as a potential option, the SOs are keen to understand whether this is a model that would be in principle desirable for industry participants.

2.3.1(b) Incorporated joint venture arrangement

There is also the option for industry to incorporate a joint venture, this solution is currently available. This would involve an incorporated legal entity (“**Party A**”) entering into a shareholder agreement with a connected party (“**Party B**”), both of which in turn would incorporate a joint venture company (**JV**). The JV would obtain a novation of the Connection Agreement with the relevant SO and would assume all obligations and liability to the SO under the Connection Agreement (i.e. for all facilities connected). All project assets, revenues and liabilities would rest in the JV. The shareholder agreement between Party A and Party B would be a commercial matter between those two incorporated entities and would address the issues associated with sharing assets, revenues and liabilities.

2.3.2 Consultation Questions

Questions 1 – Do stakeholders believe, that the above high-level proposals for Multiple Legal Entities behind a single connection point, which in part was informed by the 19 FlexTech consultation responses in 2019, allow for a suitable approach in facilitating Hybrid unit and site connections as defined in Section 2.2?

Question 2 – Where stakeholders disagree with any of the above contract approaches, we ask that you provide reasons and an alternative approach for consideration at the point of connection with the SO-Connection Agreement/Connection Point primarily within the existing SO regulated contracts.

A link to the feedback template can be found [here](#)

Respondents are asked to only provide a response to the outlined proposal for facilitation of **Multiple Legal Entities** and not on technical issues associated with hybrid connections which will be dealt with separately.

Consultation Feedback

We welcome feedback on the questions posed within this paper. Responses should be submitted to FlexTech@EirGrid.com before the **12th of October 2020**. Respondents to the consultation are asked to please only respond regarding perspectives on options for **Multiple Legal Entities** to share a single connection point. Other commercial, regulatory and market factors will be considered in due course as part of the Hybrid Working Group. It would be helpful if answers to the questions include justification and explanation and are submitted within the questionnaire template provided with this consultation. It would be helpful if responses are not confidential. If you require your response to remain confidential, you should clearly state this on the coversheet of the response. We intend to publish all non-confidential responses.

Next Steps:

Following on from this consultation the system operators will continue to engage on the short, medium and long term priorities of the Hybrid Working Group that have been outlined in the FlexTech response to consultation. In progressing this proposal, the SO's may publish a more developed consultation at a later stage.

Annex 1

Sample of issues to be covered in contract between Party A and Party B

- a. Rights of way and licences for the construction and operation of Project B.
- b. Terms and conditions relating to shared grid connection equipment and access.
- c. Apportionment, as between Party A and Party B, of technical and financial risks and responsibilities associated with shared use of the connection point (and including issues related to the construction, commissioning and operation of Party B's project).
- d. Protections for Party B against transfer of ownership by Party A of grid connection
- e. Arrangements in relation to consequences of material breach and termination of the Connection Agreement