Information Memorandum

Longstop Dates for Generation Connection Agreements

February 2012

Introduction

ESB Networks Ltd ("DSO") and EirGrid plc ('TSO') issue connection agreements for the connection of generation facilities to the electricity system. Since 2004, the majority of offers have been issued under the Group Processing Approach as follows:

Gate 1 - issued in 2005, totalling 380MW.
Gate 2 – issued in 2007 and 2008 – totalled approx. 1300MW.
Gate 3 – issued 2009-2011 – totalled approx. 5200MW[1].

In addition, there were offers issued pre-Gate 1, and indeed offers continue to issue outside the Group Processing Approach (reserved for small projects, or those which have a specific public interest value).

In the event that all parties currently with live and/or executed connection agreements progress with their respective projects, there will be no spare capacity on the electricity system for future parties to connect. As a consequence, generation capacity on the electricity system is a scarce and valuable commodity and it is important to ensure that all parties contracted to avail of this generation capacity progress with their respective projects on a timely basis, to ensure that Ireland meets its renewable targets.

Additionally, it is important from a network development and access planning perspective that the SO's have an accurate view of the projects which will actually come online in the future and when. Increased uncertainty in this context has the potential to impact on the ability of ESBN and EirGrid to deliver system reinforcements in a timely and cost effective manner and can also have a negative impact on the validity of the SO's short circuit, dynamic, ITC and reinforcement association studies. Also, the continued inclusion of potentially speculative projects in these studies could significantly impact on the number of studies required and the complexity of same. Furthermore, if speculative projects are allowed to "sit on" their connection agreements for a protracted period, then this could impact negatively on the development of future GPA policy and when those in future Gates might get access.

ESB Networks and EirGrid met with CER to discuss connection agreement Longstop Dates on 10th October 2011. Additionally, following that meeting, there were a number of SO/CER follow-up discussions on the issue. Thereafter, at CER's request, this issue was presented on at the Gate 3 Liaison Group Meeting on 30th November 2011, and further discussed at the Gate 3 Liaison Group on 7th February 2012. At the request of industry representatives present at the February meeting, this document is now being circulated to the group for comment. Once this engagement with industry is complete, the SO's intend to publish this information memorandum, with a view to informing industry of the practice going forward where it relates to termination rights in the event that Longstop Dates are exceeded.

It is important to note the following points when considering this information note:

- The right of the SO's to terminate a connection agreement on the passing of a Longstop Date without the attainment of the relevant project milestone has been enshrined in the SO's CER-approved Connection Agreements for some time.
- While the SO's do not consider that CER approval is required for this document, the CER has confirmed that this memorandum implements the intention of the policy on Longstop Dates.

Thus, this information memorandum serves only to clarify future practice in relation to when this right to terminate a Connection Agreement would be enforced, and does not constitute a change in policy per se.

[1] Includes approx. 1200MW of conventional generation

Purpose of Industry Engagement

As set out above, the right of the SO's to terminate a connection agreement on the passing of a Longstop Date without the attainment of the relevant project milestone has been enshrined in the SO's CER-approved Connection Agreements for some time. In addition, the Longstop Date definitions are set out in the CER direction CER/09/138[2] .

As a result, industry is invited to comment on matters of detail in this paper (e.g. submit requests for further clarification) rather than matters of policy.

With the above points in mind, industry is invited to submit comments on this document no later than **Friday March 9th 2012**. Comments should be submitted to -

Fiona O'Donnell (ESB Networks) at fiona.odonnell@esb.ie and
Shirley Kilcullen (EirGrid) at shirley.kilcullen@eirgrid.com

[2] CER/09/138 did not specifically define the Longstop Date associated with the Connection Agreement Effective Date, as per the DSO Connection Agreement. However this has now been defined as being 36 months post Scheduled Connection Agreement Effective Date.

Definition of Longstop Dates

The offers issued, and ultimately the currently approved connection agreement between SO's and the Customer, set out a number of key dates:

DSO

Scheduled Planning Permission Date. [3]This is the date by which the DSO expects to have Planning Permission (where required), and to be issuing the request for the second stage payment.

Scheduled Connection Agreement Effective Date[4]. This is the date by which the DSO expects the project to be energised, and exporting onto the electricity system.

DSO's Connection Agreement further defines longstop dates associated with each of the above dates. At present these are defined as being 36 months post the relevant scheduled date.

TSO

Scheduled Consents Issue Date. This is TSO's estimate of the date that the Consents Issue Date (the date on which both the TSO and the Customer will have obtained the Consents re the Connection Works and the Facility) will be achieved. Typically, the occurrence of CID will trigger the issuance of an invoice for a portion of Connection Charges.

Consents Issue Date Longstop Date. This is the date falling five hundred and forty five (545) days after the Scheduled Consents Issue Date,[5] subject to extension as agreed between the TSO and the Customer.

Connection Works Completion Date. This is the date on which EirGrid is satisfied that the Connection Works have been completed to the extent necessary to allow all appropriate Commissioning Tests to be performed.

Commissioning Tests Completion Date Longstop Date. This is three hundred and sixty five (365) days after the Connection Works Completion Date.

Scheduled Operational Date. This is TSO's estimate of the date that the Operational Date (the date on which the Grid Code Tests and Capacity Tests have been passed and all monies payable have been paid to the TSO) will be achieved.

Scheduled Operational Date Longstop Date. This is a date falling three hundred and sixty five (365) days after the date of the Scheduled Operational Date.[6]

It is worth noting that in general, and certainly for all of Gate 3, both SO's have issued offers to date on the assumption that the offer will be accepted on the basis of firm/non-firm access to the Transmission System. This assumption is reflected in the Scheduled Dates included with those offers. Should any customer opt to accept their offer on the basis of firm access to the Transmission System, or modify their offer from firm/non-firm to firm, their Scheduled Dates, and associated Longstop Dates, will have to be revised via the standard modifications process.[7].

In bullet points 7 and 8, pages 84 and 85 of CER/09/138, the CER's Decision on Electricity Network Connection Policy (please see http://www.cer.ie/GetAttachment.aspx?id=82d63fbc-bc0b-4e28-a4f7-342b57ac98a8 for further details), the CER directed that, for renewable generators connected to the Transmission system and all generators connected to Distribution System, the CID Longstop Date would be extended by 18 months to 36 months post Scheduled CID and the Scheduled Operational

[3] Pre Gate 3 the equivalent date was termed Scheduled Consents Issue date
[4] Pre Gate 3 the equivalent Date was termed Scheduled Operational Date
[5] To be updated to 36 months post CID as per CER/09/138. Current consultation on TSO Connection Agreements (CER/10/232) refers.
[6] To be updated to 30 months post Scheduled Operational Date as per CER/09/138. Current consultation on TSO Connection Agreements (CER/10/232) refers.
[7] For definitions of firm/non-firm and firm access, please see Section 11 of the Connection Offer Policy and Process Paper (CER/11/093).

Date Longstop Date would be extended by 18 months to 30 months post Scheduled Operational Date.

In 2010, via CER/10/232, the CER's Consultation on the Transmission Connection Agreement Review, the TSO proposed that the scope of CER/09/138 be extended to include all generators connected to the Transmission system i.e. renewable and non-renewable (please see http://www.cer.ie/en/consultations.aspx?type=electricity&article=cce588c4-33a8-45cb-9b35-029ca1c65aeb for further details). The CER is yet to issue its decision on this consultation.

Purpose of Longstop Dates

The purpose of the longstop dates is to acknowledge that on occasion a project will not be able to progress as it may be impossible to get planning permission and/or other issues might arise as a result of which it may be impossible to deliver the project. In addition, the longstop dates can act as a deterrent against projects stalling, thereby preventing IPP's from indefinitely hoarding scarce capacity and negatively impacting on network development and access planning as referred to above.

Both the TSO and DSO Connection Agreements provide for termination of a connection agreement in circumstances where the Longstop Dates are exceeded.

It should also be noted, however, that as per page 85 of CER/09/138, the CER's Decision on Electricity Network Connection Policy (see http://www.cer.ie/GetAttachment.aspx?id=82d63fbc-bc0b-4e28-a4f7-342b57ac98a8 for further details), it is stated that –

> *"The period between the scheduled dates and longstop dates allows for contentious planning or construction issues. However, in the event that the longstop dates were reached before connection and the developer wished to continue with the development and can demonstrate that all reasonable steps had been taken to progress the project and there was a reasonable possibility that the project could be connected in a reasonable timeframe, the Commission would consider extending the longstop dates for individual projects."*

Practice to Date

To date, the SO's have tended to take a lenient position where parties have passed their longstop dates. This has been primarily with following two issues in mind -

- promoting the renewable agenda and acknowledging that those with connection agreements in place are on balance most likely to connect to the system within a short timeframe, and
- minimising costs to all End-User customers (who may well be liable for costs should parties drop out or their connection agreements be terminated).

Furthermore, at a customer's request, the SO's have on occasion been agreeable to putting a project on hold and deferring further works until such time as the customer advises they are again ready to proceed.[8]

Future Practice

In light of the scale of offers issued in Gate 3 (and indeed connected and contracted prior to Gate 3), ESB Networks and EirGrid now consider that a more rigorous approach is required to optimise the development of the system and ensure that those projects which are contracted are most likely to contribute to renewable targets.

[8] Customer requests can be driven by issues such as problems with facility planning permissions, issues achieving financial close

The SO's are now notifying industry that with immediate effect Longstop Dates will be administered and enforced in accordance with their respective connection agreements and the policy as set out in CER/09/138. To this end, the SO's will maintain a database of contracted generation to track Longstop Dates.

While the primary responsibility will be on the customer to ensure that their own Longstop Dates are not exceeded and to make a case for extending these dates if required, the SO's also intend to undertake the following :

- 6 months prior to a customer's Longstop Date, the relevant SO will write to the IPP flagging the imminent Longstop Date, requesting a detailed update on the project, and
- If it is decided not to terminate a connection agreement, the customer will be required to request a modified connection agreement wherein the new Longstop Dates would be agreed and recorded contractually.

In the case of existing contracted projects, the following should also be noted -

- For Transmission connection agreements, the amendments to the General Conditions proposed in CER/10/232, which apply to all Transmission connection agreements, automatically give effect to the changes in Longstop Date definitions as directed by CER per CER/09/138.
- For Distribution connection agreements where offers were issued pre CER/09/138, the contractual Longstop Dates will be amended to those directed under CER/09/138. Post CER/09/138 the revised Distribution Connection Agreements already incorporate this change.
- Where a longstop date has been passed or is imminent, the party will be give a minimum of 6 months to provide an update on their project and make a case as to why it is inappropriate to terminate.
- As above, if it is decided not to terminate the connection agreement, the customer will be required to request a modified connection agreement wherein the new Longstop Dates are agreed and recorded contractually.

Decision to Terminate or Modify a Connection Agreement

In considering whether to terminate a connection agreement or not, the SO's will consider the following –

- What has caused the delay? In particular was the delay caused by ESBN or EirGrid (see below).
- Is there an expectation that the issue will be resolved within a short timeframe?
- Is the customer impacting on a group connection? If yes –
    - Can the final connection for the group be determined without knowing whether the party in question will proceed or not?
    - Is there a cost to End-User customers if the connection agreement is terminated?

  If the answer to both supplementary questions is 'Yes', the SO's will tend to agree a request to modify the agreement and extend the Longstop Dates
- Are there parties being delayed from connecting due to the project which has stalled (e.g. a non-GPA)?
- Is the project which has stalled driving higher costs for another project which is being processed?

Request to put a project on hold

Also with immediate effect, should a customer submit a request to put a project on hold -

- The issues listed above (which the SO's will consider when considering whether to terminate a connection agreement or not) will also be considered by SO's when deciding whether to agree/not to agree to a request to put a project on hold.
- If the request is facilitated, the customer will be formally reminded, in writing, of their Longstop Dates per their connection agreement. These Longstop Dates will remain unchanged, regardless of whether a project is on hold or not.
- Requests to put a project on hold must be based on a defined timeframe i.e. projects cannot be put on hold indefinitely.
- Once a pre-defined "hold period" has expired, the IPP will be required to request an additional extension to this "hold period".
- If a request for an extension to the "hold period" relates to shared works, all parties impacted must advise the SO's in writing that they agree to the requested deferral.
- If a project is officially "on hold", no further SO work will be done on the project until the agreed timeframe has elapsed and/or the IPP requests that the project be taken off hold.
- If stalling the project is likely to lead to additional costs to the customer, the customer will be advised of this and notified that these costs will be passed through.
- If a project on hold ultimately reaches a longstop date, the SO's will be minded to terminate the connection agreement.

Please note the SO's intend to engage with customers whose projects are already on hold or whose Longstop Date/(s) have passed or are imminent over the coming months as appropriate with regard to the content of this information memo.

Where a project's delay is as a result of SO resource issues and/or other similar SO specific avoidable issues, a connection agreement will of course not be terminated as a result.[9] For clarification, if there are SO specific, unavoidable and insurmountable project specific challenges (e.g. it is impossible to get planning for a connection method) which render a project undeliverable, these issues may be considered as reasonable grounds for termination.

[9] In such a case any modification required will not be chargeable to the IPP.