



NETWORKS



CONSULTATION ON UPDATE TO CRU GUIDANCE NOTE ON SECTIONS 48 & 49

ESB Networks Response

19th November 2021

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1. Introduction

ESB Networks is committed to actively supporting all electricity customers at this time of fundamental change in the energy sector. The energy industry is experiencing significant transformation, driven by climate change and decarbonisation considerations set down in various European (notably the Clean Energy Package) and national policies, directives, and legislation. Following on from the first Climate Action Plan (CAP) in 2019, the Irish government laid out, in the 2021 CAP launched in November, Ireland's strategy to meet its increased ambition regarding 2030 climate and energy targets. Building on the sustained commitment made to decarbonising electricity generation in Ireland over the past two decades, the plan, by 2030, sets a target of 80% renewable electricity, and the decarbonisation of the heat and transport sectors.

ESB Networks is at the centre of the current transformational energy transition and is proud to be playing a leading role. The electricity system is evolving to become a low-carbon energy system where 80% of the electricity generated in Ireland will come from renewable sources by 2030. The electrification of heat, transport and our economy will see our customers adopting low carbon technologies such as heat pumps, electric vehicles and microgeneration such as solar PV. Our purpose has evolved with the central role that electricity plays in climate action as we accommodate and connect high levels of renewable generation so that clean energy can drive the carbon out of heat, transport, and our economy.

Connecting sufficient quantities of renewable electricity to the electricity system is fundamental to the success of meeting our decarbonisation targets. This will involve the delivery of the steady drumbeat of projects from now out to 2030. It will also be necessary to introduce solutions enabling the system operators to manage the system at significantly increased system non-synchronous penetrations (SNSP), and electricity system operation needs to be adapted rapidly to accommodate the necessary pace of growth in renewable generation and low carbon demand. ESB Networks is already delivering this fundamental change in how the electricity distribution system is developed and managed through our National Network, Local Connections Programme.

ESB Networks welcomes the opportunity to respond to this important CRU *Consultation on Update to CRU Guidance Note on Section 48 and Section 49 Applications* (CRU/21110).

ESB Networks makes this submission on behalf of ESB Networks DAC in its capacity as DSO, and on behalf of ESB's TAO and DAO functions (operated through the ESB Networks business unit).

2. CRU Questions and ESB Networks Response

1. Do you consider the removal of references to contestability to be appropriate? If not, please elaborate what you consider to be a more appropriate step to address this issue.

ESB Networks does not necessarily have an issue with the removal of this reference. However, we consider that this is a complex issue and we believe that making this change gives rise to a requirement for further clarifications in the guidance. As set out further below, it is ESB Networks' view that the circumstances in which a developer could rely on these rights in a non-contestable scenario may be limited, and it would be welcomed if this could be made clearer within the guidance.

As CRU set out in its paper, either the holder of an authorisation (i.e., to construct a generating station) or the holder of a direct line permission may apply for consent under Section 48 and 49.

There are very limited circumstances in which CRU may grant permission for a direct line under Section 37 of the Electricity Regulation Act 1999 as amended (the 1999 Act). In summary, consent for a direct line can only be granted where a system operator has refused a connection on capacity grounds, or CRU has otherwise determined a connection dispute by requiring that a direct line be built by a developer. We are not aware of any such instances of a direct line permission having been granted by CRU.

For completeness, it might be noted that there is also provision in Section 34 of the 1999 Act, that where a developer builds a connection contestably, then that connection is deemed to be a direct line for the purposes of Section 37(4) (i.e. the provisions on transfer of direct lines to the Board (ESB)). However, as this is only deemed to be a direct line for a very limited provision in the Act, we do not consider it follows that an entity building contestably should be deemed to be the holder of a 'direct line permission' within the meaning of Sections 48 and 49.

This means that as a matter of law, any generation developer with an authorisation to construct can apply for rights under Sections 48 and 49 (but see following comments on limitations on where it may be appropriate that this be granted). For demand customers, whilst they may build contestably at transmission level, it is ESB Networks' interpretation that they cannot avail of Section 48 or 49 unless they are expressly granted a direct line permission (which as noted above, would be very unusual). This means that demand customers are

largely out of scope for the purposes of this guidance, and it would be helpful for CRU to set this out more clearly.

In ESB Networks' experience, with the exception of contestable build, another reasonably common situation in which generation and demand customers may be carrying out works on third party lands or on public roads, arises where the customer agrees, under the terms of the non-contestable Connection Agreement, to carry out civil works associated with the connection (e.g. civil works on the 'DAO' side of the connection).

It is ESB Networks' view that where this arises, any service of statutory wayleave notices and applications for road opening licences associated with the civil works should, in the normal way, be carried out by ESB (through its subdivision ESB Networks).

This arrangement can arise for both generation and demand customers and as noted above, the demand customer cannot in any event rely on Section 48 or 49 powers. Further, even for generation customers, it may not be appropriate or 'necessary' in these circumstances for a non-contestable generator to be granted consent to exercise statutory way leaving rights or breaking open of roads, as it will only create significant confusion if there is the potential for the service of multiple statutory wayleave notices on a landowner or multiple applications for road opening licences in respect of the same project (e.g. by both the customer and by ESB). This would also create confusion concerning ownership of, and future access to, the relevant assets. It would seem more streamlined that such actions be taken by ESB, acting through its subdivision ESB Networks.

This can be a complex area, and accordingly, we would request that CRU might note in its Guidance that if a developer is carrying out works on the DAO/TAO side of the connection, e.g. civil works under the non-contestable Connection Agreement, it may be more appropriate for statutory powers associated with such works to be exercised by the DAO/TAO, and therefore the grant of consent in such circumstances would not, or is unlikely to, meet the criterion that it is 'necessitated'.

Finally, the remaining scenario in which we envisage a non-contestable generator developer might seek to exercise powers under Section 48 and 49 would be in relation to so-called 'internal network', that is network on the generator side of the connection, e.g. between turbines or solar panels. It is not fully clear if the process/guidance is intended to apply to such network, e.g. in the event that a developer proposes such lines/networks will traverse public or private (third party) lands. Private network, and the various forms this can take, is subject to separate consideration in the context of the Climate Action Plan and with the connection of new and hybrid technologies.



We envisage that the appropriate regulatory framework for privately owned networks, including associated safety considerations, might require to be considered in more detail within the wider context of the CAP and is beyond the scope of the Guidance. However, at the very minimum, ESB Networks considers it would be important to be clear within the CRU Guidance on Section 48 and 49 that any generator network would be subject to review by the System Operators in accordance with COPP (i.e. so that it cannot interfere with future development of the grid), and must comply with applicable law etc. (e.g. cannot create a distribution system).

Again, we wish to flag that this is a complex area, and if the guidance is intended to apply to generator internal network then it would be important to ensure that market participants understand that other considerations may also apply.

ESB Networks has a concern that if the limitation to 'contestability' is removed from the guidance, this may be viewed as a signal that there are a wide range of non-contestable scenarios where applications for consent would be granted by CRU. But for the reasons set out in this paper it is ESB Networks' view that the circumstances in which a customer could rely on these rights in a non-contestable scenario may be limited, and it would be welcomed if this could be made clearer within the guidance.

2. Do you consider the changes to the requirements under the confirmation of asset transfer to be appropriate? If not, please elaborate what you consider to be a more appropriate step to address this issue.

As a general point, prior to granting Section 48 and Section 49 applications for contestable assets all other relevant consents and related processes should be in place e.g. planning permission, EIA assessment/reports, and also engagement with private landowners prior to the statutory wayleave process. This would demonstrate to the CRU when they are assessing the application that the applicant has fully engaged with the landowners, local authorities, Transport Infrastructure Ireland, rail and tram operators etc.

In terms of the confirmation of asset transfer, we consider it is appropriate to require the applicant to confirm that the assets will be transferred (assuming that the relevant assets are connection assets, or that transfer of the relevant assets is otherwise required under the Connection Agreement). However, it is important to note that this may not always be the case if internal generator network is within scope of the Guidance.

Equally, CRU may wish to seek confirmation from the relevant system operator that the Connection Agreement is in place for the relevant connection and contains the normal asset transfer provisions. However, ESB Networks has a significant concern about the following proposal to seek confirmations from ESB Networks (representing ESB as asset owner).

“Additional information may be added to the Guidance Note as to what the CRU deems to be acceptable confirmation. The CRU recognises that contestable Connection Agreements typically include a clause which agrees to this asset transfer in principle. However, this clause is not deemed sufficient confirmation by the CRU. Instead, applicants are asked to provide correspondence with ESB Networks (as the asset owner) as proof that they are aware that an application has been made and that work on the development is scheduled to go ahead and that the assets are scheduled to be transferred.”

It is most unlikely that ESB Networks would be in a position to provide any such confirmations, in particular at the point in time when the application for consent is being made to CRU, as that is likely to significantly precede the scheduling or commencement of works associated with the connection. As regards a confirmation that ‘the assets are scheduled to be transferred’, again ESB Networks is not clear what this would involve or be based on, but ESB Networks could not give any confirmation until the transfer has been effected by the developer.



ESB Networks is strongly of the view that the appropriate confirmations to be sought here would be (i) confirmation from the developer that it shall transfer the assets to ESB in accordance with the requirements of their Connection Agreement; and (ii) confirmation from the relevant system operator that a Connection Agreement is in place and contains the normal asset transfer provisions.

3. Do you consider the introduction of the requirement to demonstrate the necessity of the consent to be appropriate? If not, please elaborate what you consider to be a more appropriate step to address this issue.

Yes, ESB Networks considers the requirement to demonstrate necessity is key to ensure that these powers are only exercised by developers, who do not have any public statutory mandate or duty in relation to electrical networks, only if and to the extent that it is necessary to do so. There is a significant risk that any misuse of, or over-reliance on, these powers by developers could lead to a lack of public, landowner and other stakeholder support for future transmission and distribution infrastructure projects.

As noted earlier in this response, we consider that CRU should specifically comment on whether the grant of rights is likely to be deemed necessary in the scenario of a developer carrying out civil works on the system operator side of the connection. We also consider it would be appropriate that in assessing the necessity of the consent, CRU might reserve the right to consult with ESB (through ESB Networks) in its capacity as asset owner, as in most cases the relevant assets will most likely transfer to ESB.

With regard to any proposed internal network on the generator side of the connection, it should, at a minimum, be considered as part of the CRU review whether this internal network has been assessed by the system operators in terms of compliance with COPP. We further note in our earlier comments and in question 6 below, the unregulated nature of such networks and the need for further consideration of this issue by CRU.



4. Do you consider the proposed changes to the treatment of Road Opening Licences to be appropriate? If not, please elaborate what you consider to be a more appropriate step to address this issue

Yes, ESB Networks support this pragmatic proposal.

5. Do you welcome the proposed housekeeping changes to the Guidance Note? If not, please elaborate how you think these changes can be addressed.

ESB Networks notes that the proposed housekeeping includes reference to Section 5 declarations. We consider this to be a substantive issue and if it is proposed to provide guidance on this, it is important that ESB Networks has an opportunity to input on any proposed guidance or wording, given that these assets will ultimately transfer to ESB as asset owner.

6. Do you have any further recommendations for additional information which may be included, or areas where additional clarity may be necessary?

The issue of internal generator network is a complex matter with considerations beyond the scope of the guidance, it may be appropriate for this to be noted in the final published guidance.

ESB Networks frequently receives queries from customers about the statutory wayleave notice process and considers there would be significant benefit for industry in the CRU publishing guidance (either together with this guidance or separately) which would set out the key elements that should be included in a statutory wayleave notice and pointers on the process for serving wayleave notices. ESB Networks would be happy to feed into such a guidance document.

3. Conclusion

ESB Networks welcomes the opportunity to comment on this important consultation. We have set out our responses to all of the consultation questions within this paper.

As set out in detail in our response, ESB Networks consider that there are areas where the potential for reliance on Section 48 and Section 49 powers by developers and the limitations around these powers, would benefit from further clarification. ESB Networks has set out a number of key points in our response which we believe would aid future projects where Section 48 and Section 49 powers would be relied upon by developers.

ESB Networks looks forward to continued engagement with CRU and other industry stakeholders in the continuing development of the electricity system which will underpin the decarbonisation of heat, transport and our economy. We remain available to discuss the feedback in this consultation response at any time.