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## Consultation on the Introduction of Contestability in Connections

Dear Ronan,

### Introduction

SSE is pleased to have the opportunity to respond to this consultation on the introduction of contestability for connections in Northern Ireland and notes that responses to the earlier call for evidence<sup>1</sup> support this policy development. We also note that these responses have raised no material issues that could be perceived as show stoppers.

This consultation states that it *"intends to gather opinion on what activities should be made contestable, and what activities should remain non-contestable"*<sup>2</sup>. From this statement, SSE understands that the policy decision on contestability has now been made and that the *"next steps paper"* consultation, now scheduled for issue in June, will primarily address delivery of any licence or legislative adjustments required to underpin its operation.

**However, as both SONI and NIE support contestability, SSE is confident that the policy can be introduced in Northern Ireland in advance of any licence changes mandating delivery and performance standards.** In the meantime we see establishment of the UR's Contestability Working Group as a positive contribution to the timely implementation of contestability.

This response reviews issues raised in each section of the consultation and in Appendix 1, sets out SSE's responses to the specific questions raised.

### Scope of Contestability


In terms of the scope of contestability in Northern Ireland, SSE believes that, as a general principle, anything can be built contestably. However, for reasons of safety and security of the system, it is accepted that there may be restrictions on the contestability of final connections to live system<sup>3</sup>. Although SSE is unaware of any arguments against designation of some services as non-contestable for technical or safety reasons, we believe that the language used in

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<sup>1</sup> Contestability in Connections Call for Evidence- 9th September 2014  
([www.uregni.gov.uk/uploads/publications/Contestability\\_in\\_Connections.pdf](http://www.uregni.gov.uk/uploads/publications/Contestability_in_Connections.pdf))

<sup>2</sup> Section 1.1.6

<sup>3</sup> Restrictions could be based on connection voltage or (safety/technical) qualifications of those undertaking the work



documentation should presume contestability covers all works up to and including final connection to the live system. If certain activities must be reserved for technical or safety reasons, these should be explicitly documented by the TSO/DSO and subject to regulatory oversight.

**It is important that maximum flexibility must be provided for parties who choose to follow the path of contestable delivery for their connections.**

### **Background (Section 2)**

It is disappointing to see that Section 2.1.5 continues to give the erroneous impression that only distribution connections are open to contestable delivery in RoI. In the case of transmission, contestability was introduced in legislation in 2000<sup>4</sup> while, for distribution, this took place in 2009<sup>5</sup>. In March 2002, ESB National Grid (now Eirgrid) published a set of guidelines in an effort to formalise the contestability process. Eirgrid provided further clarification on the contestability process in 2007<sup>6</sup>.

Most contestably-delivered connections in Ireland have involved generation projects and the processes established and refined since 2000 have mainly proven satisfactory in that context. As most generation developers operate on an all-island basis and the parent companies of both SONI and NIE perform equivalent roles in RoI, **SSE believes that use of the RoI template would offer the lowest risk and shallowest learning curve for implementing contestability in Northern Ireland.**

It is important to note that contestable connection is already possible in Northern Ireland. SSE Renewables, as developer of the 72 MW Slieve Kirk Wind Park, contestably constructed the 110kV overhead line transmission connection under a bilateral arrangement with NIE. This project also included delivery of 500m of underground cable and air insulated switchgear equipment. In addition, installation of 33 kV cabling on the windfarm involved crossing public roads, laying cable in and along the carriageway, crossing a listed bridge and making a separate river crossing.

It has therefore been demonstrated that contestable connections can be delivered in Northern Ireland, in compliance with the existing NI legal framework for street works, overhead line construction and activities that interact with scheduled structures and environmentally-sensitive features. Councils, planners, environmental authorities and DETI were all content to provide appropriate licences and authorisations for these works and we therefore believe that the materiality of legal obstacles to contestability, as described in Section 4, may be less of an issue than feared.

**To facilitate the formal introduction of a broader scope of contestability in Northern Ireland, the legislative review should perhaps focus on issues related to demand connections.**

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<sup>4</sup> SI 445 of 2000: European Communities (Internal Market in Electricity) Regulations, 2000

<sup>5</sup> SI 226 of 2009, European Communities (Internal Market in Electricity) (Electricity Supply Board) Regulations

<sup>6</sup> Contestability of Connection Assets ([www.eirgrid.com/media/Contestability%20paper%20Oct%202007.pdf](http://www.eirgrid.com/media/Contestability%20paper%20Oct%202007.pdf))



## Local Factors (Section 4)

### Existing experience

SSE would urge the UR to be bold in its vision of the potential scope for contestability. The reticence about contestable construction of overhead lines for example, implied by Section 4.1.4, represents an unnecessary level of timidity in an area where considerable cost and time savings are demonstrably available. Ultimately, consumers will benefit if environmental generation targets are delivered sooner rather than later and success in this depends on implementing the broadest possible scope of contestability.

SSE sees no issue with the split of responsibilities between SONI and NIE. Northern Ireland is fortunate that the parent companies of both organisations have extensive experience of interaction with each other and have been effective in managing contestability arrangements in RoI for many years. This experience has been codified in proven procedures that can provide a solid foundation on which to develop arrangements for Northern Ireland in the shortest possible time.

### Value in all-island harmonisation

Adaptation of the RoI contestability model would also be desirable from the developers' perspective, as many of these operate across the whole island and would welcome the efficiencies inherent in having harmonised contestability arrangements across both jurisdictions.

### Existing legislative framework

Processes to deliver contestable connections will have to comply with existing legislation that involves infrastructure becoming a licensable activity at different times depending on the circumstance;

- Under the 1992 Order, a connection becomes a distribution system when electricity is actually conveyed<sup>7</sup>,
- The licensable activity of Distribution (or transmission) occurs when distribution (or transmission) of electricity takes place *"for the purpose of [giving a supply to any premises or enabling a supply to be so given]"*<sup>8</sup>,
- An overhead wire becomes an electric line, when it is, *"used for carrying electricity for any purpose ..."*<sup>9</sup>

Therefore, while contestable construction of physical connections appears possible without an electricity related licence or other authorisation, commissioning and handover processes must ensure that Article 40 consent is in place prior to a contestably-delivered overhead wire carrying electricity (when it becomes an overhead electric line) and adoption (if required) by an appropriate licensee takes place prior to any flow being recorded on a line (when it becomes a system). However, SSE's experience is that compliant contestable delivery of a connection is possible in Northern Ireland, in that;

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<sup>7</sup> For both distribution and transmission systems, The Electricity (Northern Ireland) Order 1992, Article 3 specifies that they are used "for conveying electricity".

<sup>8</sup> The Electricity (Northern Ireland) Order 1992, Article 10 (b) and 10 (c)

<sup>9</sup> The Electricity (Northern Ireland) Order 1992, Article 3

- an Article 40 consent can be obtained by an non-NIE entity;
- the existing (NIE) Article 40 application form needs no amendment (NIE is not mentioned in the document);
- an Article 40 consent can be assigned with the consent of the Department;
- an adoption process is possible, whereby ownership is transferred to NIE without contravening Article 10 of the Order, and;
- installation of electric lines across roads and rivers is accepted by relevant authorities as being adequately addressed by existing street works and environmental legislation, whether or not the developer is NIE or holds a licence under the 1992 Order.

While the particular arrangements developed for Slieve Kirk may not have been ideal in every respect, they nevertheless demonstrate that significant aspects of existing legislation support the contestable delivery of generation connections and that this experience can be developed into robust market processes.

### **Street Works**

Street works legislation applies to everyone; not just to NIE. In SSE's experience, there are no electricity related issues affecting the ability of a developer to obtain a street works licence.

Generation licences include the option for the UR to activate the "Statutory Undertaking" status of the licensee so that, as provided for in Schedule 4 (2) of the Order, a licence holder may, "for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on ... the following kinds of works ... installing under, over, in, on, along or across any street and inspecting, maintaining, adjusting, repairing or altering ...".

Activation of this Condition is not necessary for carrying out street works in relation to contestable delivery of connections, but may be appropriate in particular circumstances that should be determined on a case-by-case basis.


### **Necessary Wayleaves**

Acquisition of necessary (or compulsory) wayleaves and access rights are dealt with under paragraphs 10-12 of Schedule 4 to the Electricity (Northern Ireland) Order 1992. The Order states that such wayleaves may be granted, by the Department, to a licence holder "for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on". While resorting to the necessary wayleave process should always be a last resort, this route is currently open to any licence holder and not only to NIE.

Where a developer who wishes to build a connection contestably (and arguably for all demand connections) does not have a licence, arrangements for contestability could be structured so as to define the developer as a contractor to NIE. On the other hand, it is not clear why responsibility for wayleaving should not be returned to NIE in such circumstances. SSE considers that this is an area that should be addressed by the Working Group.

### **Crown Estate**

As clearly defined procedures exist for offshore connections in relation to the Crown Estate, it is likely that GB processes could apply equally to Northern Ireland. While there are issues around the effectiveness of GB OfTO arrangements in providing incentives for the repair of connection



faults, these are not relevant to contestable delivery of the assets. Procedures for dealing with the Crown Estate<sup>10</sup> should not be materially affected by having a different operational model in Northern Ireland. Again, SSE agrees that this area would be best addressed in the Working Group.

## **Other Jurisdictions (Section 5)**

### **Building on existing experience**

As discussed above, SSE strongly believes that the experience and ownership structure of both network assets and the SONI and NIE businesses, with their successful management of numerous contestable connection projects over many years, should be a material consideration in choosing a template for contestability in Northern Ireland. Developers, many of whom operate on an all-island basis, would also prefer to have harmonised processes in both jurisdictions. Therefore, while wishing to see the widest possible scope of contestability in Northern Ireland, SSE would be happy to accept the scope and restrictions applying in RoI at least for the initial implementation.

We believe that the GB processes would have to be materially better than those in RoI to justify the hiatus that a new system would cause to SONI, NIE and developers already active on the island. In particular, SSE would be concerned if developers were restricted or delayed through the introduction of any costly and unnecessary registration and accreditation process for contractors and others providing contestable connections. This would also be a barrier to participation in the market for some NI contractors.

### **Clarification regarding RoI**

It should be noted that both transmission and distribution are contestable in RoI, notwithstanding the consultation omitting to mention contestability of the former. This has been an option since 2000. It should also be noted that contestability of RoI connections is based on statute rather than by regulatory decision, as stated. While this is different from the arrangement in GB, SSE does not believe that statutory underpinning is required for contestability to be successfully implemented and operated in Northern Ireland.

### **Quality of delivery**

Quality of asset delivery is an obligation on the developer, with whom the risk of failure to achieve the contractually required standard firmly lies. While Independent Connection Providers (ICP) are part of the contestability arrangements in GB, SSE believes that the particular circumstances and scale of activity prevailing in that jurisdiction<sup>11</sup> are not relevant to Northern Ireland.


It is unquestionably the developer's responsibility to select a suitably-qualified contractor to deliver the connection to the specified standard. This responsibility cannot be dependent on whether a contractor has some form of accreditation or not. Accreditation should be neither a prerequisite nor a bar to participation in a developer's procurement process. The cost of

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<sup>10</sup> [www.thecrownestate.co.uk/energy-and-infrastructure/](http://www.thecrownestate.co.uk/energy-and-infrastructure/)

<sup>11</sup> GB has multiple DNOs, each responsible for a much larger area than NIE. It is therefore important that standards are harmonised as much as possible.





accreditation could also deny otherwise suitable contractors the opportunity to compete for connections work in Northern Ireland, in the face of ready-qualified contractors gaining competitive advantage from their existing accreditation in GB.

### **Risk mitigation for inexperienced developers**

Whilst we believe that some form of contractor accreditation may reassure smaller-scale developers that their contractual construction risk is reduced, compared with employing a non-accredited contractor, any accreditation scheme must be understood in the context that it is a developer/contractor issue. Any contractor accreditation scheme must not be allowed to become a barrier to a developer's choice of contractor(s) for delivery of their contestable connection and contractor accreditation should therefore be no more than an option, rather than an obligation.

### **Scope of contestability**

SSE notes the differing scope of contestability in RoI and GB in relation to live jointing and commissioning activities and reiterates its belief that contestability in Northern Ireland should aim for the widest possible scope.

### **Ofgem Perspective (Section 6)**

The market structure in GB is different from that in Northern Ireland; network ownership and management interactions; number of DNOs; numbers of connections; overall value of the connections market all differ. In Northern Ireland there is a single DNO, a single asset owner and an asset owner/asset operator interface that will have an impact on contesting transmission connections.

Different access rights of third parties, compared with DNOs, may be an issue in some cases. However, as was argued earlier, SSE believes that a Northern Ireland licence holder can already be granted a necessary wayleave. Schedule 4 of the Order is quite widely drawn. The wording, *"for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on"*<sup>12</sup> does not suggest an NIE monopoly on eligibility.

Similarly, entry onto land for the purposes of ascertaining whether the land is suitable for a licence holder's use also seems adequately to be addressed in the Order<sup>13</sup>. Section 6.3 of the consultation describes concerns uncovered by the Ofgem review, but it is encouraging to note that none of these represents an insurmountable obstacle to the delivery of contestable connections. Indeed, given the differences in market structure there, it is by no means obvious that these identified issues are likely to read across to Northern Ireland.


### **Responses to Earlier Consultation (Section 7)**

In reviewing responses to the earlier call for evidence, SSE is pleased to note the degree of alignment in the answers they provide to the questions raised and the common desire to move quickly towards implementation of contestability in Northern Ireland. It is also encouraging to note respondents' wide range of skills and experience of delivering contestably in other

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<sup>12</sup> The Electricity (Northern Ireland) Order 1992, Sch 4 para10 (1), etc

<sup>13</sup> The Electricity (Northern Ireland) Order 1992, Sch 4 para15



jurisdictions and their clear desire to use these in contestable delivery of the widest scope of connection assets. This is a clear indication that the a la carte approach to implementing contestability must be correct. Trying to define a coherent policy scope, based on technology type or scale of project, is more likely to create anomalies, inefficiencies and dissatisfaction than deliver effective implementation.

While the majority of responses stated that any work related to the existing live Transmission and Distribution systems should be non-contestable, this should not be ruled out for all time. With experience, this might come to be seen as desirable in the medium/longer term; however SSE does not see this as a “Day 1” issue.

### Barriers to Contestability

Other than any specific legislative or regulatory requirements that may emerge following further consideration by the Working Group and Utility Regulator, there do not appear to be any material barriers to implementing contestability in Northern Ireland.

#### On the contrary, SONI’s positive statement that:

*“SONI is a member of the EirGrid Group along with EirGrid as TSO in Ireland and the Single Electricity Market Operator (SEMO). Through this arrangement SONI staffs have experience of delivering contestable and non-contestable transmission connection arrangements in Ireland. With experience in both jurisdictions SONI believe that contestable transmission connection arrangements would be an appropriate and progressive change to existing transmission connection arrangements in Northern Ireland providing benefits for the connecting parties and harmonising the commercial options for generators across both jurisdictions in the SEM”,*

**neatly expresses the conviction of many project developers; that implementation of contestability in Northern Ireland should be entirely straightforward.**

One important consideration that has not featured prominently in the contestability debate is that any unnecessary delay in the introduction of contestability will undermine achievement of Northern Ireland’s renewable targets. NIE’s inability to provide definitive dates for the connection of renewable generators means that developers cannot provide, the “*letter from the network operator which estimated or set a date no later than 31 March 2017 for delivery of the connection*”, that is in order to meet the ROC extension deadline. **Unless they are able to take control of connection delivery timescales, developers will not be able to finalise their investment decisions.**

The importance of contestability in determining whether or not renewable projects can comply with the imminent deadlines, on which their financial viability depends, cannot be overstated. This is confirmed by Consultation responses that consistently express the reality that cost and timing of connection delivery are the two most critical issues for developers. **In the absence of NIE being able to commit to delivery of connections by a backstop date, lack of contestability represents a material risk to project viability and a barrier to delivery of Government renewables targets.**



## **Policy and Practical Considerations (Section 8)**

SSE notes the policy and practical considerations described in Section 9. However most, if not all of these issues have been addressed in delivery of contestability elsewhere. As noted earlier, SSE believes that effective implementation of contestability in Northern Ireland strongly suggests adoption and adaptation of the RoI model. A key step in delivery should therefore be to map these section 8 issues to RoI documentation. This will assist in identifying both policy gaps to be addressed and differences that must be applied.

One issue that must be addressed in the context of contestability is that Northern Ireland's cluster connection policy will facilitate both transmission and distribution connections at the same node. Contestability policy must therefore require SONI to charge NIE for the provision of distribution connections at hybrid voltage substations, so that the latter can charge appropriately for subsequent users of the capacity and SONI can pass the funds back to the original cluster connection provider. Current legislation provides for the costs of distribution connections to be rebated as new load is added but, unless SONI charges NIE for capacity provision, there is no mechanism available to recompense the developer of a transmission substation for providing capacity to which a distribution connection is subsequently made.

## **CWG (Section 9)**

SSE strongly supports establishment of the Contestability Working Group. This is an effective means for exploring the detail of issues and bringing practical experience to bear in the implementation of contestability in Northern Ireland.



## Responses to Consultation Questions

**Q1. Are there any other factors in Northern Ireland not discussed in Section 4 that should be taken into consideration when implementing Contestability?**

No. The key legislative areas have been identified.

**Q2. From the models highlighted in RoI and GB (Section 5), which do you think would present the best option for NI and why?**

SONI's response pointed out that they are part of the Eirgrid Group that has extensive experience of the operation of contestability in RoI. NIE is in a similar position as part of the ESB Group. The ownership and operational structure of Northern Ireland's network assets is more closely aligned with RoI than GB and many NI project developers operate on a cross-Border basis and take advantage of contestable delivery in the South, but are unfamiliar with the GB contestability process.

For these reasons, adoption of the RoI template is more likely to result in the efficient, practical and timely introduction of contestability that developers (the actual customers for the policy) in Northern Ireland want. The GB template would have to offer considerable advantages in order to justify the aggravation of introducing arrangements of which none of the key stakeholders has any experience.

**Q3. From the issues highlighted in Ofgem's review (Section 6), are there any that cause a significant threat to contestability being successful in NI?**

None of Ofgem's issues represents an insurmountable obstacle to the delivery of contestable connections and indeed, given the differences in market structure there, it is by no means obvious that these are likely to read across to Northern Ireland.

**Q4. Is there any documentation that has been missed from the list detailed in 7.11.1?**

No. The list is comprehensive. However other issues may arise as contestability enters the detailed implementation stage.

**Q5. Are there any other non-contestable works that are not outlined in 7.12 that should be considered?**

As indicated above, SSE considers that the scope of contestability should be as wide as possible. While reservations may have been expressed about contestability for certain activities, we believe that the scope should be kept under review and revised from time to time on the basis of demand and practicality.

**Q6. Do you agree with the approach described in 7.13.1?**

Yes.

**Q7. Should the connecting party be allowed to choose what contestable elements they wish to undertake?**

Yes. This is the one of the reasons that SSE believes the menu approach to contestability is the most appropriate.

**Q8. Are there any further policy considerations that have not been considered in 8.1?**

No. It is important now to move ahead on the basis of known requirements, while accepting that other issues may emerge at the detailed implementation stage.

**Q9. Are there any further practical considerations that have not been considered in 8.2?**

No. SSE believes that all issues have now been sufficiently aired to allow the contestability project to move to the implementation phase.