

UR Consultation on Derogations from Code and Licence Requirements

A response by SONI Ltd

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Introduction

SONI welcomes the opportunity to respond to the Utility Regulator's (UR) 'Consultation on Derogations from Network Codes and Grid Codes / Standards in Electricity Generation, Distribution and Transmission Licences (the 'Consultation Paper').

SONI is the licensed Transmission System Operator (TSO) in Northern Ireland and has been part of the EirGrid Group since 2009. SONI is responsible for planning and operating the transmission system safely and securely to ensure a reliable supply of electricity.

SONI also operates the All-island wholesale electricity market with EirGrid (the TSO in Ireland) through the Single Electricity Market Operator which has been in operation since November 2007.

There are two aspects of this consultation that directly relate to SONI's activities. Firstly, SONI holds a transmission licence and on occasion requires derogation from some of the provisions within that, for example derogation from the obligation to enforce a particular requirement under the Grid Code in respect of a specific user. Secondly, the European Network Codes oblige SONI, as TSO, to undertake assessments of requests for derogation from those codes, prior to final determination by UR.

SONI's response to this consultation focuses on both of these roles.

Key Points

SONI's response addresses three key issues:

- **Requirement for the UR to consult on criteria for assessing derogations:** SONI is required to assess requests for derogation in respect of the requirements in the three connection Network Codes¹, on the basis of criteria and parameters determined by the Regulator following this consultation. While SONI welcomes the clarity provided by this paper, further specificity in respect of these criteria will be required before SONI will be able to implement the process outlined and subsequently fulfil its obligations under the Network Codes. We will be happy to work with UR, if required, to further develop these criteria to ensure an appropriate level of transparency, predictability and consistency for connecting parties.
- **Purpose of consulting on provisions in the Network Codes:** While SONI welcomes this presentation of the processes defined in the Network Codes, and the clarity added by this consultation on the derogations that are subject to local governance, we are not clear as to which aspects of sections 3.2-3.7 of the Consultation Paper are a matter for consultation, given that the processes set out in these sections of the Consultation Paper are already established in each of the Regulations and therefore are legally binding and cannot be changed.
- **Consistency between Grid Code and Network Code process:** SONI expects that the majority of derogations requested under the Grid Code will now also be Network Code derogations. Given the current primacy of the Network Codes, it may be better if all derogation requests followed the same process, or if the final guidance outlined the processes to be followed in these cases.

SONI would welcome an opportunity to meet with UR to discuss this response, to ensure that the final guidance facilitates our compliance with the Network Codes in an efficient manner.

¹ Article 61 of the COMMISSION REGULATION (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators ("RfG"); Article 51 COMMISSION REGULATION (EU) 2016/1388 of 17 August 2016 establishing a Network Code on Demand Connection ("DCC") and Article 78 (1) COMMISSION REGULATION (EU) 2016/1447 of 26 August 2016 establishing a network code on requirements for grid connection of high voltage direct current systems and direct current-connected power park modules ("HVDC").

Detailed Comments by Theme

Given the interaction between the various sections of the Consultation Paper, in this section we outline our main concerns by theme. We would welcome an opportunity to meet with UR to discuss these, to ensure that the final guidance facilitates our compliance with these obligations in an efficient manner.

Scope of the Matters for Consultation

This document covers a mix of derogation provisions that are subject to different governance arrangements. Some of these are within UR's remit, while others are defined at a European level. It would be very helpful if the final guidance document is clear about which aspects of its content are matters that UR has determined, and which it is providing clarity and interpretation around. For example, SONI understands that the processes set out in Sections 3.2 to 3.7 for applying and granting derogations under the Network Codes have already been determined and are now a matter of EU Regulation. We do not believe that the processes described therein can presently be amended within one jurisdiction.

The Consultation Paper states that:

"It also sets out the criteria UR will take into account when considering a derogation request, and the process that will be followed."

SONI believes that the primary purpose of the final Guidance Document is to fulfil the requirement under Article 61 of RfG² for the UR to consult on the criteria for granting derogations pursuant to Articles 62 and 63. It is not sufficiently clear to us where the specifics of these criteria are/will be set out.

For SONI to be able to fulfil our role under the codes, it will be important that these criteria are clear, specific and that the thresholds for passing or failing to meet the criteria are set out following consultation. This would allow SONI as TSO to take account of these criteria in a consistent, transparent and non-discriminatory manner when carrying out its assessment.

We would also welcome confirmation within the final guidelines that the process followed to assess and provide derogations from the Grid Code remains unchanged at this time. However, given that the majority of future derogation requests are likely to fall under both Grid and Network Code requirements, it would be helpful if the final guidelines also set out how these two processes will interact. In the longer term, SONI thinks there might be efficiencies to be obtained through updating the Grid Code process to align with that identified in the Network Codes, simplifying the regulatory arrangements for all market participants.

Rights to Apply For and Retain a Derogation

We note that the processes outlined in the document focus on applications for derogations made by licensees. We note however that RfG Article 62 (12) allows for third parties to apply for derogations on behalf of licensees for Type A generators e.g. manufacturers may submit

² RfG Article 62 (4) states: "The relevant System Operator shall, in coordination with the relevant TSO and any affected adjacent DSO or DSOs, assess requests for a derogation and the provided cost-benefit analyses, taking into account the criteria determined by the regulatory authority pursuant to Article 61." Similar provisions apply in HVDC and DCC.

class derogation requests. We also note that these articles allow for prospective owners to apply for derogations and it may be the case that these prospective owners are not yet licensees. Furthermore, parties that are exempt from holding a licence in NI are still required to comply with the Grid Code and the Network Codes. The Consultation Paper makes no reference to parties that are exempt from holding a licence, and SONI believes that the final guidance document should identify how these processes relate to parties claiming an exemption.

While we note that the Consultation Paper states that:

“A derogation is granted to an individual licensee and cannot be transferred. Thus, if a non-compliant system or plant item is sold, the new licensee will need to apply for a new derogation.”

We would like to highlight that often assets are transferred through sale or share purchase of the sub-company that holds the licence. In these situations the party holding the derogation remains the same, despite the change in control and a new application would not be required.

Non-compliance during assessment

While we note the intention that derogations should not apply retrospectively, there may be an issue in relation to compliance over the period between the date the application for derogation is made and a decision is published. Under RfG Article 61 (3) the Regulatory Authority may decide that the power generating module for which a request for a derogation has been filed does not need to comply with the requirements from which the derogation has been sought whilst the assessment is being completed. SONI would welcome clarity from the UR if this approach is to be adopted by the UR either as a general rule or on a case by case basis. If this will be done on a case by case basis we request that the UR set out how and when applicants will be informed if they must comply with the requirement whilst the assessment is being made. The option of a derogation applying from the date of application may also merit consideration.

Submitting a Derogation Request

Applicable Process

This document covers two derogation frameworks, those defined at a European level to integrate the market and those that apply at a local level. While the paper states that “A request for derogation should be submitted to the UR in writing”, the Network Codes require the derogations submitted by Power Generating Modules to be submitted to the relevant System Operator in the first instance and not to the Regulatory Authority. SONI considers it appropriate that the final guidance sets out clearly upfront the two separate processes and identifies when each should be followed.

We believe there may be some potential confusion for licensees submitting derogation requests as to whether the requirements they are seeking derogation from are Grid Code requirements or Network Code requirements. We expect that many Grid Code requirements will also be Network Code requirements and in these cases, we believe the UR should make it clear that derogations must follow the Network Code derogation process.

It is our understanding that the majority of the existing standards will fall under the category of Network Code standards and as such we would recommend consideration of alignment between the Grid Codes and Standards derogation processes with that of the Network Code processes as outlined in sections 3.2 – 3.7.

Consistency in Assessment of Impact of a Derogation

While the paper sets out some of the information and processes to be applied in the assessment of derogations, it is not clear what the basis of carrying out these analyses will be or how UR will ensure a consistent application of approach between different applicants/licensees when submitting their assessment of these impacts. We believe that the UR needs to set out in detail how each of these items will be assessed, what cost basis should be used for carrying out the assessment and the overall framework for assessing the impact on environmental costs, increased consumer costs, impact on security of supply, competitive advantage, and Government Policy.

We also believe that it is important that the UR defines and applies rules of proportionality and materiality to these assessments. Without this information and clear assessment parameters, the derogation processes lacks transparency which reduces confidence in market participants. This can deter investors from choosing Northern Ireland as a location in which to do business.

Restoring Compliance in Cases of Lifetime Derogation Requests

We believe parties should be asked to provide a cost estimate for works required to restore compliance in the case of lifetime derogation requests.

Timing of Derogation Request

SONI's connection processes assume that applicants will be compliant with all relevant codes and standards. It is plausible that an applicant may know at, or before, the connection application stage that the plant or apparatus that they are seeking to connect will not be Grid Code/Network Code compliant. If an applicant does not expect to be able to comply with the relevant codes, and does not hold a derogation before they apply for a connection, the time that SONI will require to process the connection offer may need to be extended to allow for a derogation request to be processed and to ensure that the correct parameters are referenced in the contractual documents. SONI would welcome clarification in the final guidance around the point in the connection process when UR expects derogation requests to be submitted, and the approach that will be adopted for any consequential derogation requests by System Operators.

Derogations from Other Requirements

While the Consultation Paper covers derogations from Network Codes and Grid Codes / Standards in generation, distribution and transmission licenses, in general the procedures

set out in sections 2 and 3 do not make any reference to the process for applying for derogations to standards set out in documents other than the Grid Code, Distribution Code, Network Code and Wind Farm setting schedule.

There are a number of other options under the SONI Transmission Licence for applying for derogations, such as Condition 20 where derogations can also be applied for in respect of SONI's obligation to plan, operate, and co-ordinate and direct the flow of electricity onto, and over, the transmission system in an efficient, economic and coordinated manner in accordance with the Transmission System Security and Planning Standards (TSSPS), the Distribution System Security and Planning Standards, the Grid Code and the Transmission Interface Arrangements (TIA). There is also the option under Condition 25 of derogation against the time permitted to issue a connection offer. SONI would ask that the final guidance sets out where/if these derogations from TSSPS, TIA, and Duty to Offer Terms etc. are included in the table 2 in Section 3.1. We note that an additional consultation may be required if this guidance is to extend to derogation against these provisions, as they have not been included within this paper.

We think it should be explicit that sections 2.1 and 3.1 only apply to derogations from the Grid Code, Distribution Codes and Wind Farm Power Station Settings Schedule where there are no equivalent standards or obligations set out in the Network Codes. All Grid Code and Distribution Code requirements that are also Network Code requirements should be managed as derogations from the Network Codes.

With regard to the information being submitted by applicants in section 2.1 and sections 3.1 to 3.7, we recommend that by default applicants have to identify both the relevant Grid Code and Network Code clauses in the information submitted. If there is no equivalent Grid Code or Network Code standard then that section would be described as "N/A". If there is a Network Code standard then the applicant must follow the processes set out in sections 3.2 to 3.7

We believe that the majority of the existing standards will fall under the category of Network Code standards and as such we recommend the UR consider aligning the Grid Codes and Standards derogation processes with that of the Network Code processes in sections 3.2 to 3.7

Specific comments on the processes set out in 3.2-3.7

SONI would like to make some comments on the processes outlined in Sections 3.2 to 3.7 of the Consultation Paper.

General

We suggest that there may be merit in clarifying that where a request is initially submitted to a System Operator and later submitted from the System Operator to the UR, the UR decision is due within 6 months from the day after the request is received by UR from the System Operator (to avoid confusions with the day the request is received by the System Operator from the applicant).

In general, in line with the process defined in the Network Codes, where the UR request additional information, the applicant has the right to contest that the application is complete and therefore not furnish additional information. In these circumstances the request is not deemed withdrawn.

The tables describe the process in terms of the “SO” submits/confirms/assesses etc. We believe it is more correct to refer to the “Relevant SO”.

Section 3.2, 3.4 and 3.6

Under the heading **SO submits request to the UR** the time frame in each of these sections³ should be amended to replace the “or” highlighted below with “and”.

“This period may be extended by 1 month where the SO seeks further information from the PGM owner (or HVDC/DCC etc. per each code) or by 2 months where the SO requests the TSO to submit an assessment of the request.”

SONI believes it is more correct to say “and” by 2 months instead of “or” as the effect is cumulative.

Section 3.3

We believe the time frame on the third row “TSO Confirms if request is complete” should be clarified to say that if further information is required it must be submitted within 1 month.

We would be happy to meet with UR to discuss these requests.

³ Pages 13 and 17 of the Consultation Paper