Hybrid Working Group
Multiple Legal Entities
Response to Consultation

26/04/2021

Part of the FlexTech Initiative

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1 Introduction and Background

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 in the FlexTech response to consultation.

The Hybrid Working Group Multiple Legal Entities consultation paper published on the 3rd of September 2020 (the "2020 Consultation Paper"), has been undertaken due to industry feedback through the FlexTech programme, to progress Multiple Legal Entities (MLEs) / onward connections.

This paper discusses the feedback by respondents to this consultation on Multiple Legal Entities. A link to consultation paper is available here. The objective of this consultation paper was for the TSO and DSO (collectively referred to in this paper as the System Operators or SOs) to gain stakeholders' perspectives on potential contractual options for Multiple Legal Entities sharing a single connection point. As set out further in Section 5, the focus of this consultation has been on the contractual framework, but the scope of arrangements that may be permitted for multiple legal entities will need to continue to be considered, and this is likely to require regulatory consideration.

2 Hybrid Working Group

2.1 Overview

As part of the Climate Action Plan to help in achieving Ireland's 2030 targets and previously in the 2016-18 Hybrid Working Group, industry has 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 industry to maximise the use of existing network assets and increase capacity factors, with the potential to improve 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 sought to review the issue of one customer, one connection point 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.

As per the Joint System Operator Recommendation Paper, in relation to the Connection Point Provisions Review 10 May 2016: The contractual relationship between a Customer and the relevant SO (the "Parties") in the Connection Agreement ensures that each Party has a direct contractual relationship with the other Party which can be enforced against that other Party. This protection is to the benefit of the Parties and is also ultimately to the benefit of the Use of System (the "UoS") Customer. The regulated nature of the Connection Agreement ensures that the risk to the Customer, SO and the UoS Customer is that which CER has deemed appropriate.

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 and give clarity to industry around the meaning of Hybrids

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 is 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 is electrically connected behind a single defined Connection Point to a licensed System Operator.

3 Responses to Consultation

We received twelve (12 No.) responses in total, four (4 No.) confidential responses and eight (8 No.) non-confidential responses. The non-confidential responses came from:

1. Irish Wind Energy Association and Northern Ireland Renewables Industry Group
2. Demand Response Association of Ireland
3. Energia
4. ESB Generation & Trading
5. Bord na Móna
6. RWE Renewables Ireland
7. Scottish and Southern Energy

The views of respondents have been summarised and addressed in this paper.

4 Industry Feedback Overview

4.1 Party A – Party B Framework

Industry Feedback: In general, respondents to the consultation were supportive of the high-level onward connection proposals to help facilitate further hybrid unit and hybrid site connections which were laid out in detail in Section 2.3.1(a) Onward Connection of the 2020 Consultation Paper ("MLE"). It was the view of respondents that this option offers a greater degree of flexibility when compared to Incorporated Joint Ventures ("IJV's") which was laid out in section 2.3.1(b) of the 2020 Consultation Paper.

The onward connection contract proposal involved a single legal entity ("Party A") entering into the Connection Agreement with the relevant SO, and Party A would assume all obligations and liability to the SO under that 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 B.

Respondents believe the onward connection proposal will assist in allowing the transmission and distribution assets to be utilised to their full potential, and aid Ireland to meet its 2030 policy targets of increased RES-E penetration. One respondent outlined their view of the merits of both options' (MLE and IJV), which they believed were dependent on the size of the project under consideration. Respondents also outlined several items that would require consideration and clarification from the SOs. These related to legal, commercial, market and operational factors. A detailed outline of these areas is discussed further in the paper.

However, some industry respondents outlined mixed views on the onward connection contract proposed in the 2020 Consultation Paper. The MLE/onward connection contract proposal in the 2020 Consultation Paper was based on a contract proposal that was provided by industry in the response to consultation for the first FlexTech consultation on the 30th of September 2019.

4.2 Incorporated Joint Venture (IJV) Considerations

Industry Feedback: Some industry respondents did not believe the existing ability to use IJVs to share a grid connection had enough flexibility for multi-phase, multi-technology projects. It was stated the application of IJV is already in existence and a proven method for multiple companies to have ownership of a generation project/development with a single grid connection/Connection Agreement.

Additionally, it was some respondents' view that an IJV is more appropriate for new large-scale projects in development, and some industry respondents felt that an IJV has considerable complexity in forming a shareholder's agreement and the potential pooling of liabilities.

Response: Based on the above feedback of respondents to the 2020 Consultation Paper in relation to IJVs in particular, the SOs are investigating a mechanism to allow for onward connection between Party A and Party B. The MLE/onward connection framework will be based on the high-level description set out in the 2020 Consultation Paper. The principle of onward connection has been set out below for consideration by industry.

Respondents to the 2020 Consultation Paper raised several further areas for investigation; while not directly discussed in this paper, the SOs will consider all aspects of onward connections that were raised in the consultation responses, as part of the 2021 proposed contractual framework scope of work or through the Hybrid Working Group under the FlexTech initiative, as appropriate.

4.3 Principle of Onward Connection

Under the proposal considered in our consultation, onward connection is the addition of multiple generation or storage units owned by Party B to the connection at the Customer's Premises, through the amendment of a Connection Agreement which Party A (single legal entity) has with the SO. In the context of Hybrid Units, this is typically with the intention of increasing the utilisation of the grid capacity at the Connection Point..

4.4 Onward Connection Party Relationship

Under the proposal considered in our consultation, onward connection from Party A to Party B would be a commercial matter between those two entities. A single connection agreement would exist between Party A and the SO only. Party A would be required to indemnify the SO from the onward connected party in relation to the connection agreement's terms and conditions. Whether Party A and Party B are required to have a parent/subsidiary relationship or otherwise form part of the same corporate group is part of the ongoing review process and may require regulatory consideration.

4.5 Further items raised in consultation

Under the proposed framework, several further items for consideration by the SOs were raised by industry. The areas have been summarised below and the SOs' response included. It should be noted some of the items will form part of the broader programme of work for Hybrids under the FlexTech initiative.

4.5.1 Step-in rights

Industry Feedback: Industry sought clarity on the application of "step-in rights". A few scenarios were outlined - for example, if Party A wished to scale up using spare capacity available from Party B what would be allowable? In the event of non-compliance with Grid Code by Party A, how would this impact Party B? It was suggested Party B could not gain "step in" rights until Party A was made insolvent. Respondents also outlined that the arrangements proposed between

Party B and the SOs may result in uncertainty in the ability to finance the onward connections.

Response: Further consideration will 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 or if this can effectively be achieved through existing mechanisms as part of the proposed contractual framework (for example, proposed changes to the Connection Agreement) workstream in 2021 as set out in Section 5 below.

4.5.2 Tripartite Agreement

Industry Feedback: Some responses suggested that a tripartite agreement was required to remove a portion of the inherent risks in onward connections from the developer onto the SO, and also allowing for the sale of generation unit Party B separate to generation unit Party A, behind the one grid connection, transferring risk onto the Use of System (UoS) fees/customer for any financial risk that may arise. Some respondents felt this could provide greater access due to the inherent risk reapportion, to parties wishing to avail of MLEs behind a Connection Point.

Response: It is the SOs’ view that the commercial agreement between Party A and any onward connected party (Party B) would be a commercial matter between those two entities.

4.5.3 Contiguous or in Close Proximity

Industry Feedback: Respondents sought clarity on the requirement for Project A and Project B to be either “contiguous or in close proximity”. Some respondents outlined that the item is currently part of the connection process and any deviation from this would not be required. Other respondents outlined that the meanings of close proximity or contiguous must not be considered and agreed in isolation by the SOs without discussion and consideration by industry and the regulatory bodies.

Response: It is the SOs' view that, at a minimum, the contractual terms between Party A and the SOs will remain aligned with the Connection Offer Policy and Process Paper (COPP May 2011) and the Grid Code and Distribution Code for the Transmission and Distribution Systems, respectively. The exact parameters of what will be permitted for MLEs will need to be considered at the next stage of the review and may require regulatory consideration as part of the proposed contractual framework (for example, proposed changes to the Connection Agreement) workstream in 2021 as laid out in Section 5 below.

4.5.4 Grid Code Requirements.

Industry Feedback: Respondents sought clarity relating to Grid Code non-compliance. One suggestion from industry was for the SOs to facilitate a small number of applications for hybrid connections outside of the ECP batch. It was felt this option would provide additional learnings for both SOs.

Respondents also noted consideration should be given for each connected technology to demonstrate compliance with specific grid code requirements. For example, if performance is only measured at the Connection Point, then the combined site may not be able to meet the more onerous requirement of the two technologies even though they both can meet their technology specific requirements separately. It was industry's view, that existing connections should not be adversely impacted by any changes and would therefore be grandfathered.

Response: It is the SOs' view that the same reference to the Grid Code and compliance requirements will be maintained for MLEs. Party A, being the Connection Agreement owner, will be responsible for the Grid Code compliance of Party A and any onward connected Party.

Any connections will require the technologies to meet Grid Code requirements, both at an individual technology and site level. In relation to the grandfathering of projects, this would require regulatory consideration.

4.5.5 Market Arrangements

Industry Feedback: Another area of discussion focusses on market arrangements. Firstly, industry sought clarification that the onward connection agreement allows Party B to contract directly with Energy and Capacity markets. Furthermore, respondents also raised the query of Party B contracting directly with the TSO for System Services.

Response: To the extent applicable to the SO role, the SOs' will consider the market related factors, including those raised above by industry relating to Energy, Capacity and System Services, as part of the broader programme of work under the Hybrid working group. This will follow a review of the contractual arrangements that may allow for the proposed framework discussed above.

4.5.6 Dynamic Sharing of MEC

Finally, while not considered as part of this consultation, the SOs would also like to acknowledge the level of feedback in relation to the need to investigate the role of dynamic sharing of MEC between the two technologies / legal entities on the power system.

5 Next Steps

In considering the suggested framework by industry, the SOs have initiated work on an impact assessment for delivery of Multiple Legal Entities. This will include a review of applicable parameters, associated system operator risk and the current connection agreement.

The focus of the consultation to date has been on the contractual structure. It is acknowledged that as part of considering the applicable parameters for Multiple Legal Entities, there will be issues that require regulatory consideration also in the context of the applicable legislative and regulatory framework, and the SOs will engage as appropriate with CRU, including in relation to any potential issues associated with private wires.

On conclusion of the review, in Q4 2021, the SOs will make recommendations to CRU on a proposed contractual framework (for example, proposed changes to the Connection Agreement) to accommodate Multiple Legal Entities and/or a range of items that CRU may need to include in their considerations. In Q3 2021, in advance of making a submission to CRU, the SOs will host an industry workshop to facilitate input from industry. In parallel, the SOs will continue to work on delivering the priority areas set out under the Hybrid Working Group.