IMERAPOWER

92/93 St. Stephens Green
Dublin 2
Republic of Ireland

www.imerapower.com

Rory O'Neill
Director

E: dublin@imerapower.com

Commission de régulation de l'énergie
15, rue Pasquier
75379 Paris Cedex 08
France

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By Email

Dear Sir,

We appreciate the opportunity to offer our opinions on your public consultation on exemption of new interconnectors and their conditions for access to the French electricity transmission grid.

The comments contained in this response are offered on behalf of the Imera Power Group. Please note this response is not confidential and so may be published on your website.

Imerapower has already been granted such exemptions for interconnectors between the UK and Irish markets. Imerapower welcomes this initiative to provide greater clarity to the information requirements of the CRE. As you know Imerapower has already applied to the CRE for such an exemption for a new interconnector linking the French and UK national transmission grids.

Investment in electricity transmission infrastructure particularly interconnectors is central to the effective current and future functioning of the electricity market in Europe. The exemption procedure is a vital tool to ensure investment, enhance competition, and provide security of supply in an efficient and expeditious manner using private capital with out burdening consumers.

Finally, it is essential that developers of this new non-socialised private infrastructure which assists the EU meeting competition and security of supply goals can see a stable regulatory regime if they are to be confident regarding the high levels of investment that will be needed to assist the development of the internal market and to secure Europe's energy supplies into the future.

Cordialement,

Rory O'Neill
Director

Consultation Response

On the principles:

Q1: Do you agree with the three principles that guided CRE when drawing up this proposal (section 1.2)?

Yes. Imerapower generally agrees that the three main principles are appropriate for assessing exemption requests.

Which other principles would seem relevant to you and should be taken into account?

National legislators and regulatory authorities must guarantee a strict adherence to the principles of the European *acquis*.

As an addition, we would propose that CRE considers a principle of 'light touch' regulation for new exempted interconnectors.

Specifically that where new interconnector infrastructure is developed on a merchant basis in a competitive environment, where there is existing competing infrastructure or where other parties could develop competing infrastructure providing alternative means of interconnection between France and other markets an exemption should be seen as the default position and regulation should be 'light touch'.

On the application of Article 7 of European Regulation 1228:

Q2: Do you agree with the estimation method proposed for the condition concerning the risk of the project (condition b, section 2.1.2)?

There are significant amounts of diverse risks associated with the development of a merchant project. We have outlined these to CRE in our existing exemption application. The range and level of risk undertaken by investors such as Imerapower is considerable and includes, but is not limited to, competing project risk, permitting, construction and technical risks, operational, supply, credit, and electricity price risks. The individual and combined magnitude of these risks can be very significant.

However, one of the principle reasons for seeking an exemption is to reduce regulatory risk. Without the exemption, there would be a danger that, if the interconnector were commercially successful, the returns to investors would be capped, if not entirely removed. However, if it is unsuccessful and there are revenue shortfalls, there is no mechanism for compensating investors.

Without a full exemption, it is not fully clear whether the approach based on long-term contracts is allowed. For the moment, the Congestion Management Guidelines mention that capacity allocation may be on an annual, monthly, weekly, daily and intra-day basis, depending on competition conditions. This formulation does not exclude longer-term contracts, but is not very favourable to them. In fact, most borders do not

have contracts that endure for more than one year. Moreover, these guidelines have already been revised once and can be further revised in the future, which means that an exemption is necessary to make sure that the long-term contracts that are the basis for the financing of such projects cannot be contested based on the current or future versions of the Congestion Management Guidelines.

The level of risk associated with a merchant interconnector is such that long-term capacity contracts are necessary for financing such a project.

Imerapower agrees that it is important to assess the level of risk associated with an application, and it is vital that the regulators provide a stable and predictable regulatory framework.

In particular, it is vital for project initiators, as well as for (potential) lenders, that the duration of an exemption is fully understood up front; any change to the exemption duration would seriously impact the financial viability of a project.

Furthermore, Imerapower does not understand why the CRE would assess that the condition could not be met, due to a similar regulated project being proposed by another party. The market is liberalised, which indicates that the initiative for projects is with market parties and it is not the responsibility of the CRE to determine which party 'wins' the project.

Q3: Do you agree with the estimation method proposed for the condition on detriment to competition and the effective functioning of the internal electricity market (condition f, section 2.1.3)?

Imerapower has a number of concerns regarding the required analysis proposed, given that the capacity on a new merchant interconnector is likely to only represent a very small percentage of capacity in the overall market, particularly in a regional context. Interconnectors that offer some degree of third party access by their very nature offer competition benefits and security of supply as well as a step towards achieving the EU goals of creating a regional market.

Where there is already effective competition between markets on an existing interconnector and in an already competitive market, it will become increasingly difficult to demonstrate conclusively that a new exempted interconnector will produce a demonstrable increase in competition. It would be unfortunate (to say the least) if a proposed new project in an already highly competitive market did not go ahead because it could not conclusively demonstrate that it passed the "enhancing competition test".

It is our view that the key test should be framed in terms of "Is there already adequate competition in the market concerned and will that position remain so as a result of the development of the new project".

Where this first test is not considered to be met then the question "whether the proposed new infrastructure will enhance competition and security of supply" should then be addressed.

While we agree that defining the market and assessing the impact of the proposed exempted interconnector on the affected markets it is important to note that additional

information on other concerned parties or impact analysis may be beyond the ability of the applicant to provide, and would likely represent speculation on behalf of the applicant.

In assessing the impact of the investment on competition the CRE should take in to account additional information that it should hold as part of its existing duty to monitor the level of competition in the market. For example customer churn rates, wholesale liquidity and past capacity usage of similar facilities. The exemption applicant will likely not have access to this data in any comprehensive format.

Imerapower agrees that it is appropriate that any significant change in shareholding should be notified to CRE.

Q4: Do you agree with the estimation method proposed for the condition against detriment to the regulated system (condition f, section 2.1.3)?

In general yes, with the estimation method proposed for the condition against detriment to the regulated system.

We agree that the TSO is the most appropriate entity to prepare this analysis and a timely approach is required in order to provide transparency and allow adequate risk assessment by investor and CRE. It would be useful for such timings to be included in any process guidelines adopted.

However, we are concerned at the potential for this process to negatively affect a project. There is one example that may not be appropriate not: In cases where a new interconnector project might in some unrealistic scenarios "cause constraints on the regulated system requiring investments thereby having a significant adverse effect on the welfare of system users".

It would be unfortunate for example, if a transmission system operator or another affected consultee (i.e. generator), were able to use these criterion to frustrate (for their own benefit) the projects of a new competing interconnector who would otherwise qualify for exemption. CRE must ensure that the transmission system operator should have clear and transparent mechanisms governing this analysis and along with other network investments.

High Voltage Direct Current Voltage Source Convertor (HVDC VSC) is the most likely technical solution for new merchant interconnection.

We would like CRE to note that the nature of newer HVDC VSC based technology has a very limited impact 'outside the fence' on the regulated network. In fact, the modern HVDC converter stations have the capability to provide a number of beneficial ancillary services to the regulated network such as blackstart, reactive power and voltage support etc.

Q5: Do you think it is relevant for CRE to maintain its power to approve rules for allocation and management of interconnection capacity (section 2.1.5)?

No. Any rules should be agreed upfront. Any review or ongoing approval procedure should not be able to be used as a means for retrospective regulation as this would create uncertainty for projects, uncertainty for capacity holders and would be detrimental to investment.

Imerapower agrees that transparent and non-discriminatory rules of capacity allocation management and congestion management are necessary to ensure that capacity is efficiently used and to prevent 'capacity hoarding'.

Imerapower is still of the opinion that while it is the responsibility of the regulatory authorities to set the general regulatory framework as in your proposals in section 2.1.5, the investor /exempted operator has the prerogative to choose the capacity allocation and congestion management methods that are best suited to the interconnector investment.

We do agree with the broad principles of the Congestion Management Guidelines and the allocation and management of capacity for exempted interconnectors should be generally compliant with those guidelines (voluntarily). **We would expect an investor of an exempted interconnector to give an undertaking to operate within the spirit of those guidelines.**

As far as our own projects are concerned, we have a commitment to applying an effective Use It or Lose It scheme as well as a commitment to facilitate a Secondary Market.

In the case of access rules to our proposed exempted interconnector we propose to broadly adopt the rules currently operated by IFA for consistency in the market however, in consultation with our capacity users we will seek to introduce additional efficiencies and flexibility where practicable in order to optimise the exempted interconnector asset.

Q6: Do you think it is relevant that rules for allocating and managing capacity should be based on the same principles as for a regulated interconnector, except in the case where an exemption to Article 20 of Directive 2003/54/EC is granted? If yes, do you agree with the principles stated (section 2.1.5)?

Yes, we agree with the principles stated in section 2.1.5. As we have stated above Imerapower agrees that transparent and non-discriminatory rules of capacity allocation management and congestion management are necessary to ensure that capacity is efficiently used.

Imerapower is still of the opinion that while it is the responsibility of the regulatory authorities to set the general regulatory framework in your proposals in section 2.1.5, the investor/exempted operator has the prerogative to choose the capacity allocation and congestion management methods that are best suited to the facility.

Imerapower believe that Third Party Access rules should be developed in the spirit of the principles stated, and the exempted interconnectors should operate their facilities where possible on a (rTPA) compliant basis.

Q7: Do you think the list of documents to be provided in an exemption application is relevant (section 2.1.6)?

In general, yes. The documentation seems to be appropriate, applications for an exemption require a thorough analysis on a case-by-case basis taking into account all aspects and issues. However, there is an information asymmetry risk in preparing some of the requested analysis, in that an applicant can only rely on information in the public domain. We have already discussed this in our responses to questions 3 and 4.

Imerapower agrees that it is important to thoroughly assess applications exemptions, however, whilst it is important to assess related information, it is also important to ensure that there is a balance in terms of the information requirement and the associated costs for the project investor, given that such projects, if unsuccessful, will not go ahead and therefore any upfront costs may represent a significant risk.

We do have some issues for CRE to consider particularly in relation to documents (ii), (iii) and (iv).

As a merchant developer projects are driven by a combination of market demand and the emergence of new and the availability of technologies and manufacturing processes. It may be extremely difficult to provide a thorough analysis of the optimal capacity and as we have outlined above as a merchant investor we will only invest in available and proven technologies secured via an economic procurement process.

Specifically on a document (ii) pertaining to 'Measures advocated to ensure a dominant player does not increase his market power,' this requirement seems to suggest the possibility of a different treatment for each party. It is our view that in a non-discriminatory market there should be equal treatment for all parties. An interconnector by its very presence will increase competition and reduce market share. An interconnector will also enable potential new market entrants. We would welcome a further discussion with CRE on this issue.

With regards to a specific socio-economic study given the overall capacity on a new interconnector is likely to represent only a very small percentage of capacity in an overall market and the relevance of any such social study is questionable. It may not be possible to access sufficiently robust market data; however, we would welcome a discussion to clarify.

With regards to document (iv) regarding optimal capacity and costs/risks related to an increase in the planned capacity, this is very much dependent on the chosen technology as in some cases larger capacity equipment may not be commercially available, in this case we would kindly seek guidance from CRE about assessing alternative comparable technologies and equipment.

Q8: What do you think of the conditions under which an exemption can be amended? Do you see any other cases where amending would be necessary (section 2.2.1)?

It is fundamental to investor decision making that there is a stable and predictable regulatory framework, and this applies equally to the granting and application of exemptions. Therefore, the only appropriate form of review concerns the pre-set conditions specified when an exemption is granted. Amendment or revocation of an exemption should only be possible in case the applicant breaks applicable law or does not comply with the conditions set in advance by the authorities. Any uncertainty or discretional approach on the criteria/conditions will undermine investments.

The mere suggestion that an exemption, once granted, could be changed or revoked on other grounds than stated above may severely impact on the investment climate.

Q9: According to you, are the conditions at the end of an exemption acceptable? If not, what changes would you propose (section 2.2.2)?

Yes, we consider the conditions at the end of an exemption are acceptable.

Q10: Do you agree with the procedure proposed for implementing technical requirements (section 3.1.1)?

Yes. We believe that this proposal will assist in creating an adequate process to ensure the efficient connection. We would hope in the case of a DC interconnector that this procedure would only deal with the AC connection from the DC convertor station to the Transmission Grid.

Q11: What do you think of the procedure proposed for processing a request to connect a new exempt interconnector (section 3.1.2)? In particular, should such an interconnector be on the waiting list for injections in the same way a generator is?

Imerapower believes that this proposal will ensure efficiency in the connection process and remove uncertainty for new investors. We believe that it is necessary for transparency on the decision-making and consultation process and for this to be completed within a reasonable timeframe.

We would kindly request CRE to provide guidance on the treatment of existing interconnector applications for a grid connections, which is currently done based on a standard generation application and standard demand application.

Imerapower strongly believes that such interconnectors should not be on the waiting list in a similar way to generators.

There are a number of reasons for connecting an interconnector asset to the transmission network as a priority, some of which have already been discussed, such as strategic security of supply, increased competition and further market integration.

An interconnector can export excess power from the system if required as well as inject power to the system and given some of the technical characteristics the presence of an interconnector asset on the network could possibly enable more efficient network development including the deferment of potential grid reinforcement and allow an increased amount of intermittent renewable generation sources to connect to the transmission network. In addition, a modern HVDC interconnector will have an availability of greater than 98% and is extremely controllable.

Q12: What do you think of the proposed financial conditions for connection and access (section 3.2)? Do these conditions, combined with the proposed valuation of the conditions for risk (condition b, section 2.1.2) and for non-detriment to the regulated system (condition f, section 2.1.3) and after consultation of interested parties, give sufficient protection to the interests of network users?

We strongly support the CRE proposals for connection costs and network access; we believe that this strikes a fair balance between investor's project risks, the associated socialised benefits that arise from the interconnection investment and the impact on the existing transmission network.

A major uncertainty in the development of such interconnector projects across Europe is the lack of visibility on grid connection and access charges. This proposed process gives investors more confidence in the development process.

CRE have suggested that an investor may distribute part of his profits to the community. We believe that there is a case to be made where investor may reinvest a portion of profits in additional interconnector capacity, which may increase security of supply. We would welcome a meeting to discuss such proposals.

Q13: Do you agree with the level of firmness proposed (section 3.3.1)? In particular, must there be compensation for capacity curtailments that were not forecasted in the technical and financial proposal for connection? If yes, what do you think of the compensation mechanisms proposed?

Yes. We agree with the level of firmness proposed. We also agree that there must be adequate compensation for un-forecasted capacity curtailments.

Imerapower are neutral on the proposed capacity compensation mechanisms however, we would recommend the consideration of input and views from potential capacity holders.

We welcome the CRE proposals on network balancing and on establishing a scheduling procedure for new exempt interconnectors by the TSO.

General:

Q14: Do you have any additional comments on CRE's proposal?

We consider the CRE's approach to new exempted interconnection to be comprehensive, progressive and well balanced.

In our opinion, the proposal should clearly specify the interaction between two or more Regulators that may be involved in a particular project.

These questions remain unaddressed by the consultation: e.g.

- There is no answer to the question about the scope of the consultation of one Regulator with another and the underlying principles.
- What is the method of resolving potentially conflicting decisions by regulators concerning the same project?
- Would the entity applying for an exemption have access to, for instance, the correspondence between the Regulators concerning its case?

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