WEI Submission on CRU Section 48 & 49 Guidance Note

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1 Introduction

Wind Energy Ireland (WEI) welcomes the opportunity to make this submission to CRU's 'CRU21110 Consultation on the Guidance Note for Section 48 and Section 49 Applicants'.

WEI is the representative body for the Irish wind industry, working to promote wind energy as an essential, economical and environmentally friendly part of the country's low-carbon energy future. We are Ireland's largest renewable energy organisation with more than 170 members who have come together to plan, build, operate and support the development of the country's chief renewable energy resource.

Ireland has just over 300 operational wind farms, which represents an investment of over €7 billion, regularly powering 65% of Ireland's electricity needs. The wind energy industry also supports 5,000 jobs and annually pays more than €45 million in commercial rates to local authorities. We are a country with enormous renewable energy resources and are world leaders at incorporating onshore wind into the national grid.

Government policy on renewables is continuously progressing and on 4th Oct. 2021, the Government published the National Development Plan 2021 – 2030, which increased Ireland's renewable electricity target from 70% to **80% by 2030**. This was reinforced in the Climate Action Plan (CAP) on 5th November 2021. To meet these and our intermediate targets to 2025 and 2027, (as required under the EU Governance Regulation[1]), the necessity of clear and streamlined licensing process for Section 48 & 49 is of upmost importance.

WEI have reviewed the changes proposed in the consultation paper and we wish to make specific comments on the questions posed by the CRU.

Our submissions and observations are presented below.

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1999&from=EN

2 Response To Consultation Questions

2.1 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.

WEI agrees fully with the removal of references to contestability from the 'Guidance Note'. We would only add that it is important that specific reference to internal cabling is made as such cables are neither contestable nor non-contestable. This will prevent any confusion arising between CRU, developers, and System Operators regarding status of internal cables.

2.2 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.

WEI do not consider that the changes to the requirements under the confirmation of asset transfer to be appropriate. We believe that it is unnecessary and an over-reach by the CRU. Sections 48 and 49 of the Electricity Regulation Act date back to the original Act in 1999, long before the concept of contestability was introduced to the Act. It is therefore clearly intended by the Oireachtas that these powers would be exercisable in respect of non-contestable works (because contestable works did not exist when then provisions were enacted).

As such, it must follow that it was the intention of the Oireachtas that the CRU could grant consents under section 48 and 49 without having to demonstrate anything regarding asset transfer. When section 34(1A) and (1B) were introduced permitting contestability (2001 and 2009 respectively), they did impose any changes in relation to the operation of section 48 and section 49 and thus we must proceed on the basis that the operation of those provisions remained unchanged. This means that any regard that the CRU has to confirmation of asset transfer is an irrelevant consideration in the discharge of their statutory functions.

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

WEI do not consider the introduction of the demonstration of necessity requirement to be appropriate for several reasons. Firstly, ESB enjoys the rights afforded by Section 52 of the Electricity Supply Acts as of right. The ability to exercise of this right is a practical and efficient way of allowing authorised undertakers to perform their activities. There is no reason why the standard for authorisation holders should be different to ESB.

On top of this point we don't consider it necessary that the CRU *"seek to understand the requirement for the particular alignment of a grid connection"* as outlined in Section 2.3 of the 'Consultation on Update to CRU Guidance Note on Section 48 & Section 49 Applications' document.

A Section 48 or Section 49 application will only be made following the granting of planning permission for the grid connection by the Competent Planning Authority. For such grid connection planning applications, the applicant is required to prepare an Environmental Impact Assessment Report (EIAR). Within, the EIAR the applicant gives detailed consideration to all feasible alternative grid connection routes (GCRs) having regard to the environmental and technical constraints identified along each route.

The Competent Planning Authority subsequently conduct their own Environmental Impact Assessment (EIA) of the selected GCR (and the feasible alternative GCRs) and determine whether or not it is appropriate, having regard to planning and environmental legislation and policy. Accordingly, the Competent Planning Authority make their determination to either grant or refuse planning permission for the selected GCR.

Should a Section 48 or 49 application be made to the CRU, it will only ever be on the basis of planning permission having been granted by the Competent Planning Authority. The CRU can therefore be assured that all feasible alternative GCRs have been fully assessed by the Competent Planning Authority and that robust justification has been provided for choosing the selected GCR. Therefore, it would be wholly unnecessary to further request the applicant to demonstrate the necessity of selection a particular alignment of a grid connection when this process has been robustly considered and assessed as part of the lengthy planning process.

It is also worth noting that in this section of the consultation CRU refers to having all other permissions, licences or authorisations should be in place when consent is sought. However, in the next section of consultation, the CRU indicate that consents can be issued prior to receipt of road open license in some instances, albeit those consents will only come into effect after the road opening license is received. This is a contradiction. The wording of this section needs adjustment to eliminate this contradiction. Given that all windfarm developments need relevant CRU consents to be able to install cables under access road in accordance with terms of planning permission/road opening license granted, there should be no need for developers to demonstrate that CRU section 48/49 consents are needed.

2.4 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.

WEI agrees with the proposed changes to the treatment of Road Opening Licences. It is good to know that the CRU is aware of the current issues facing applicants in this area. Rights under Section 52 of the Electricity (Supply) Acts can only be exercised after consulting with the relevant Roads Authority, who will require a Road Opening Licence to be obtained. Requiring such a Licence to be obtained to be granted a right which can then only exercised subject to obtaining such a licence is completely circular and sometimes requires two Road Opening Licences to be obtained. One to get the Section 48 consent and a later one to do the work itself. This

creates an unnecessary and unfair burden on developers and Local Authorities and WEI appreciates that it has been changed.

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

Yes, WEI do welcome the proposed housekeeping changes. We would only note that the details provided are very high-level and in our opinion more information is required.

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

Having reviewed the consultation, **we have two further recommendations and would like to highlight a missed opportunity to fix a Section 48/49 issue causing problems for older projects.** Firstly, WEI recommends the following:

1. **WEI notes that Section 1 in the 'Guidance Note' refers to windfarms only. We recommend that this is updated to renewable generation to include solar etc.**
2. **Internal cables should be added as a third cable type category in the application form, in addition to contestable and non-contestable.**

Finally, the consultation missed an opportunity to solve a regularisation issue that causes difficulties for older projects. The CRU has always taken the view that a Section 48 consent must be given before cables are laid and cannot be used to cure an irregular situation where a cable has been laid in a road without a section 48 consent. This causes issues to older projects that may want to sell, refinance, or need to repair cables. There are several projects which do not have Section 48 consents, through no fault of their own because for many years developers did not know that a consent was needed to put a cable in a road. Therefore, where a project now wants to regularise their situation, the CRU is not allowing them to apply for a Section 48 consent in respect of an existing cable. This creates risk and cost for developers as there is limited options to regularise their position particularly if they intend on leaving existing cables in place.

This is harming the industry to the detriment of electricity consumers. The CRU should be interested in allowing projects to be 'good citizens' and regularise their position. Legal experts ensure WEI that the CRU has the power to solve this.

Whenever the ESB takes over cables from developers, ESB from that point forward relies on Section 52 of the Electricity (Supply) Acts going forward in respect of an existing cable. If ESB can rely on Section 52 for an existing cable, a project with a Section 48 consent can also avail of Section 52 in respect of an existing cable. If this is not correct, then we have a big problem with ESB not being entitled to locate any cables in public roads that were transferred to them contestably. This clearly cannot be correct. Note that this does not grant any retrospective rights. It cannot cure a prior trespass, but it can allow projects to regularise things going forward. I think it is important to get this addressed now because this will be a big issue as we begin to repower older sites.

Thank you for providing an opportunity to consult on the above matter. We would be happy to clarify any matters arising.

ENDS