



Greenlink
c/o Element Power Ireland Limited
Unit C, Building 4200
Cork Airport Business Park
Cork
Ireland

T +353 (0)21 2427786
F + 353 (0)21 2380187
E info@elpower.com

www.greenlinkinterconnector.eu

Attn. David Lindsay

The Commission for Energy Regulation
The Exchange,
Belgard Square North,
Tallaght,
Dublin 24

2nd September 2016

Dear David,

Public response to CER Information Paper CER/16/239

As you are aware, Element Power is the developer of the Greenlink interconnector between Ireland and Great Britain. Greenlink has been demonstrated by many analyses to be beneficial to Irish and European customers, to improve security of supply and to assist with decarbonisation, and it has European PCI status.

Element Power therefore requests that the CER expedites the process of consultation, and does so based around specific proposal(s). We would further request that the CER undertakes interim measures to enable the initial approval of advanced projects that can demonstrate progress and the requisite benefits for Ireland, to enable investment to proceed in line with programmes agreed in the context of PCI and other regulatory processes.

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This response is made up of the following sections:

1. The benefits of interconnection between Ireland, France and GB.
2. Greenlink project maturity
3. The jeopardy of regulatory delay
4. European Projects of Common Interest
5. CER's duties
6. Connection Policy for Interconnectors
7. Energy White Paper
8. Clarity on Regulatory Regime and Process
9. Meeting with CER

The benefits of interconnection between Ireland, France and GB

In addition to the two CBAs carried out by Ofgem and Element Power to ensure that the project is viable and to achieve Ofgem's regulatory approval for the GB side of the interconnector, there have been a number of other studies to demonstrate the need for and benefits of further interconnection between Ireland and France and Ireland and GB. Two such studies are referenced below.

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TYNDP 2016

The ENTSO-E TYNDP 2016 under consultation¹ has modelled the required electricity transmission interconnection capacity across various European boundaries.

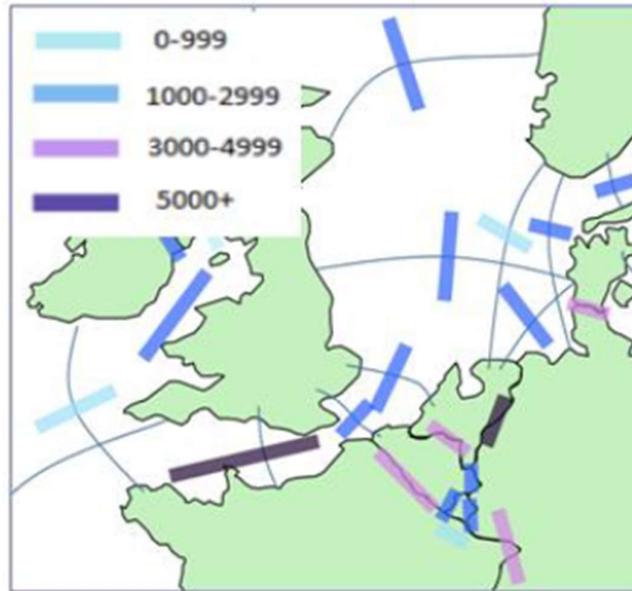


Figure 1 Extract from TYNDP 2016 consultation page 140.

Figure 1 shows that the capacity required between the Republic of Ireland and Great Britain to be 1000 to 2999MW compared to the 500MW provided by EWIC to date. Greenlink and EWIC will deliver the minimum capacity required. Celtic will deliver 700MW of the 0 to 999MW required between Ireland and France.

EirGrid Interconnection Economic Report

This report² is the basis for the development of the Celtic Interconnector to France³. As well as supporting the Celtic project it also supports further interconnection to Great Britain.

Following the EWIC and Moyle Interconnectors “there is an economic case for a third interconnector to Great Britain by 2020. A fourth interconnector to Great Britain is economically justified post-2020

¹ <http://tyndp.entsoe.eu/>

² http://www.eirgridgroup.com/site-files/library/EirGrid/Interconnection_Economic_Feasibility_Report.pdf

³ <http://www.cer.ie/docs/001099/CER16239b%20Briefing%20Note%20-%20Ireland%20France%20Interconnector%20Assessment%20-%20EirGrid.PDF>

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for some scenarios such as High Renewables.” Greenlink is the lead project to deliver that third interconnector.

Greenlink project maturity

Greenlink was awarded an Interconnector Licence in GB, by Ofgem (the GB regulator), on 10th February 2015⁴. Greenlink was granted a cap and floor regime through Ofgem’s Initial Project Assessment on 30th September 2015⁵, was awarded Connecting Europe Facility (CEF) funding⁶ and designated as an EU “project of common interest”. It has also been referenced in ENTSO-E’s Ten Year Network Development Plan (TYNDP) 2014 and is under assessment in ENTSO-E’s 2016 TYNDP⁷.

The interconnector has a website to keep the public and stakeholder in touch with developments⁸.

We welcomed the request from CER that we prepare a Greenlink project document⁹, alongside a document to be prepared by EirGrid for the Celtic Interconnector, for publication alongside CER’s current ‘call for information’. CER have not stated in the consultation why these two projects were asked to provide such documents therefore we would like to highlight that the Greenlink and Celtic Interconnector projects are the only two current interconnector projects, considered mature enough to be named on the current PCI list which connect to markets out with the Island of Ireland and connect the Single Electricity Market to other electricity markets in Europe. We believe that Greenlink is therefore a key project for the successful delivery of the vision outlined in the recent Energy White Paper.

Element Power has engaged with CER from June 2014 with regard to Greenlink so that the regulator has been kept abreast of developments and has had chance to review relevant information.

⁴ <https://www.ofgem.gov.uk/publications-and-updates/greenwire-transmission-pembroke-limited-notice-grant-electricity-interconnector-licence>

⁵ <https://www.ofgem.gov.uk/publications-and-updates/decision-initial-project-assessment-greenlink-interconnector>

⁶ https://ec.europa.eu/inea/sites/inea/files/cef_energy_brochure_superfinal_web.pdf

⁷ <https://www.entsoe.eu/major-projects/ten-year-network-development-plan/ten%20year%20network%20development%20plan%202016/Pages/default.aspx>

⁸ <http://www.greenlinkinterconnector.eu/>

⁹ <http://www.cer.ie/docs/001099/CER16239a%20Greenlink%20-%20CER%20Document.PDF>

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The jeopardy of regulatory delay

Greenlink had been scheduled for commissioning in 2021 which required subsea surveys to be carried out in the spring/summer of June 2016. Greenlink began engaging with CER in June 2014 to ensure that the project could gain sufficient clarity on the Irish regulatory regime to enable the allocation of the substantial funds required to undertake the subsea surveys. Due to the lack of regulatory certainty at the beginning of 2016 the decision was made to postpone the subsea surveys for a year in order to provide additional time for CER to provide the clarity required. The publication of the Information Paper CER/16/239 marks the start of the process to gain clarity. Greenlink requires regulatory certainty at the end of 2016, or at latest beginning of 2017, in order to commit to seabed surveys for the spring/summer of 2017. Without regulatory certainty the seabed survey will be delayed again, delaying benefits to Irish electricity consumers.

According to the project Cost Benefit Analysis (CBA) the first year's delay could have cost the Irish consumer €10m and the further year's delay would add an additional cost of €17m.

In order to minimise further delay, Element Power therefore requests that CER urgently confirms the regulatory regime it intends to apply to the Greenlink electricity interconnector and in particular considers the results of the cost-benefit analysis of the Greenlink project and analyses the specific risks incurred by its promoters in accordance with the requirements of European law.¹⁰

European Projects of Common Interest

Status as PCI

Interconnectors have long been promoted at European Union level, both as a matter of policy and law, but in spite of this, the European Commission considers that the current level of interconnection is insufficient to make the internal energy market work properly, with twelve Member States (including Ireland) remaining below the 2020 minimum electricity interconnector target of 10% of installed electricity production capacity.¹¹ The Commission's focus is for the interconnection target to be met mainly through implementation of the projects of common interest ("PCIs").

The Greenlink interconnector has been designated a PCI pursuant to Chapter II of the Regulation (EU) No 347/2013 (the "TEN-E Regulation") and the Commission Delegated Regulation (EU) 2016/89. PCI status means that the Greenlink project has been recognised as a project that

¹⁰ In this context we note that in the Consultation Paper CER refers to interconnector developers other than EirGrid as "merchant developers". This does not reflect the regulated approach to all interconnectors (whether or not promoted by the TSO) provided for by European law and we are concerned that the use of the term may indicate that this is not fully appreciated.

¹¹ COM/2015/082 final

contributes the most to the implementation of the strategic energy infrastructure priority corridors and areas.

We note that the TEN-E Regulation, which is directly applicable to CER as a national regulatory authority, provides (among other things) for:

- (i) PCIs to be implemented as quickly as possible and to be given “priority status” at national level to ensure rapid administrative treatment;¹² and
- (ii) national regulatory authorities to ensure a stable and predictable regulatory framework with incentives for PCIs.¹³

Requirement to provide incentives for PCIs

As a national regulatory authority, CER must ensure that appropriate incentives are granted where a project promoter incurs higher risks for the development, construction, operation or maintenance of an interconnector with PCI status compared to the risks normally incurred by a comparable infrastructure project.¹⁴ In determining the incentives CER must consider the results of a cost-benefit analysis (on the basis of the methodology drawn up pursuant to the TEN-Regulation¹⁵) and analyse the specific risks incurred by the project promoters, the risk mitigation measures taken and the justification of this risk profile in view of the net positive impact provided by the project, when compared to a lower risk alternative.¹⁶ ACER has also published a recommendation (drawn up pursuant to the TEN-E Regulation) regarding the regulatory treatment of PCI projects. ACER recommends that incentives should aim at mitigating risk (or providing adequate compensation for it), especially when such risk could cause project promoters and/or investors not to invest or to delay their investment decisions.¹⁷

We, as the project promoter of the Greenlink interconnector, are carrying out development at our own risk, while other interconnectors and infrastructure projects are underwritten by the Irish consumer. This (and in particular the forthcoming seabed surveys) must be taken into account by CER when determining the incentives to apply to the Greenlink interconnector, whether these be aimed at mitigating risk or providing compensation for it.

¹² See Recitals 25 and 28 and Chapter III of the TEN-E Regulation

¹³ See Recital 38 and Chapter IV (Article 13) of the TEN-E Regulation

¹⁴ Article 13(1)

¹⁵ ENTSO-E Guideline for Cost Benefit Analysis of Grid Development Projects, as approved by the European Commission on 4 February 2015

¹⁶ Article 13(2)

¹⁷ Recommendation of the Agency for the Cooperation of Energy Regulators No 03/2014 of 27 June 2014

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We urge CER now to confirm the regulatory regime, including incentives, that it would apply to the Greenlink project, taking into account the above provisions of the TEN-E Regulation as well as the requirements of Regulation (EC) No 714/2009 (the “**714 Regulation**”) regarding a regulated approach for interconnectors. In this context, we note that:

- (i) CER indicated last year, when it published its methodology and criteria to evaluate investments in electricity and gas infrastructure projects as required by the TEN-E Regulation, that it would consider whether it is appropriate for the general customer to bear any of the risk associated with the specific project;¹⁸
- (ii) we submitted a cost-benefit analysis on the Greenlink interconnector to CER in May 2015. So far as we are aware, CER has considered it, and we have answered all questions in relation to it.

Cross-border allocation of costs

We also note that the TEN-E Regulation facilitates investment in PCIs by setting out a process for allocating the costs of such projects across borders, following a request from a project promoter. It provides for the efficiently incurred investment costs relating to a PCI within the interconnector category to be paid for (to the extent not covered by congestion rents or other charges) by network users in Member States to which the project provides a net positive impact.¹⁹ A process is set out for the national regulatory authorities to take coordinated decisions on the allocation of investment costs to be borne by each system operator for the project, as well as their inclusion in tariffs.²⁰ If the national regulatory authorities fail to reach an agreement within six months of a request being received, ACER can take the decision.²¹

We are reluctant to make use of this route for the Greenlink interconnector because it risks the costs of the interconnector being allocated between Irish and GB consumers on an unequal basis - in particular leaving Irish consumers with the risk of a greater proportion of the costs. Given Ofgem’s decision to award a “cap and floor” regime in principle to the Greenlink interconnector for 50% of the costs following the Initial Project Assessment, we believe that it would be preferable for CER to put in place its own regulated regime for 50% of the costs and to avoid the possibility of Irish customers bearing risks in relation to more than 50% of the costs of the interconnector.

¹⁸ CER/15/269

¹⁹ Article 12(1)

²⁰ Article 12(4)

²¹ Article 12(6)

Impacts of Brexit

The development of Greenlink has been initiated and progressed by Element Power due to the compelling needs case for additional strategic interconnection, and the significant benefits it will bring to consumers in Ireland and GB. Greenlink's recognition as a Project of Common Interest by the European Commission was an important step, and is testimony to its advanced status and the strength of its case to proceed. The UK referendum decision has not altered the case for Greenlink, which remains as strong as ever. Throughout Europe there are many examples of electricity and gas interconnectors, both existing and planned, between EU member and non-member states. Greenlink would emulate the relevant regulatory and policy arrangements.

Increasing levels of interconnection remains of key national strategic importance to both Ireland and GB. Greenlink will provide significant additional interconnection between Ireland, the UK and continental Europe. It will also provide additional transmission network capacities, reinforcing the existing electricity grids in south-east Ireland and south Wales. The development and construction of Greenlink will deliver increased security of supply, fuel diversity and greater competition in Ireland, Wales, Great Britain as a whole and continental Europe.

CER's Duties

The Electricity Regulation Act 1999 (the "Act"), as amended, sets out the regime for the authorisation and licensing of electricity interconnectors by CER. The regime provides for the licence to include terms and conditions and we envisage that such terms and conditions would set out any regulated regime that CER decided to apply.

The Act provides that, in carrying out its functions and exercising its powers relating to licences and authorisations interconnectors, it is the duty of CER to act in a manner which:

- (i) does not discriminate unfairly.....between applicants for authorisations or licences; and
- (ii) it considers protects the interests of final consumers.²²

We believe providing an appropriate regulatory regime for the Greenlink interconnector (including clarity on how it would work and the process for securing it) would be entirely consistent with these duties. A failure to do so could jeopardise the Greenlink project, which would be against the interests of consumers given the benefits to Irish consumers shown by market modelling, and would discriminate between applicants.

²² Section 9 of the Act

Connection Policy for Interconnectors

We note the previous Consultation Paper (CER/15/284) 'Enduring Connection Policy', (to which Greenlink also made a response) showed a clear preference for treating the connection of Interconnectors differently i.e. "Responses to CER/15/284 showed a clear preference for treating electricity interconnectors separately to the wider enduring connection policy that pertains to generation and demand."

We welcome and fully support the approach of treating interconnectors in a similar manner to other transmission reinforcements with regard to connection. Interconnectors are transmission reinforcements on a pan-European scale, and facilitate the connection of demand and generation rather than competing with such connections. Therefore the connection of any interconnector should be part of the CER's decision making process for that interconnector.

This CER/16/239 consultation paper notes that "Under section 34 of the Electricity Regulation Act 1999 (as amended), the CER may give directions to the Transmission System Operator (TSO) and Distribution System Operator (DSO) for the terms and conditions of access to the distribution and transmission system. Specifically section 34 (2) (c) provides that directions given by the CER to the TSO or DSO may outline *"the terms and conditions upon which an offer for connection to the transmission or distribution system is made"*. In our view CER should utilise these powers to approve the connection of Greenlink to Great Island as part of the regulatory approval process, subject to the necessary studies with EirGrid.

Furthermore, and in order to ensure a level playing field between project promoters, be they TSOs or otherwise, the financial securities by non-TSO project promoters should be the same as TSO promoters.

We note that there are currently no specific connection application processes in EirGrid for interconnectors and given the clear message from the CER/15/284 consultation we would welcome working with CER and EirGrid and others to put suitable processes in place.

Energy White Paper

We note the references to the Energy White Paper and the need for increased interconnection to meet short, medium and long term energy objectives up to 2050.

As demonstrated by the TYNDP 2016 in the above section "The benefits of interconnection between Ireland, France and GB" there is a need for both Greenlink and Celtic interconnectors. With appropriate regulatory actions, Greenlink could be under construction in 2019 in order to contribute to the White Paper objectives for the 2020s.

Clarity on Regulatory Regime and Process

For the reasons set out above, we submit that CER should use its forthcoming consultation to set out the regulatory regimes it intends to apply to interconnector projects that are PCIs and set out a clear process and timetable for assessing whether to grant that regulatory regime to a particular project, such as that provided for by Ofgem in respect of cap-and-floor applications.

If a “traditional” approach to consultation is to be taken from this point forwards (i.e. a Proposed Decision, Final Decision, Call for Projects/CBA, Assessment of DBA, Proposed Decision, Final Decision on CBA), then it is hard to see how any regulatory certainty could be reached before the end of 2017. We do not believe that such a time consuming process is justified. There are two projects which are now mature, Celtic and Greenlink, and which in Greenlink’s case at least, could be jeopardised by delaying development further. The question is straightforward, and goes to the heart of the regulator’s responsibility: Do the consumer benefits set out in the Greenlink CBA represent sufficient value for the Irish consumer to justify a cap and floor regime underwriting 50% of the project in conjunction with Great Britain? This is a weighty and long term decision, but there is no reason it cannot be taken in 4-6 months from now.

The first step in the process must be to consider the results of the cost-benefit analysis of the Greenlink project, as provided for by the TEN-E Regulation and submitted to CER in May 2015. We are therefore resubmitting our cost-benefit analysis from May 2015 and we urge CER to use its forthcoming consultation to set out any further information it requires from us.

Meeting with CER

As one of two Interconnector projects under focus in this consultation we would welcome a meeting with the CER as soon as possible to discuss the timetable and next steps in the CER’s processing of Greenlink’s application for a regulatory regime.

Yours sincerely

A handwritten signature in black ink that reads "Peter Harte".

Peter Harte