

# TSO Monitoring Committee

## Terms of Reference

November 2023



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# 1 Introduction

The purpose of the TSO Monitoring Committee ('the Committee') is to provide an effective challenge to EirGrid TSO's proposed plans and approach to projects progressed through the Committee during PR5 and future price controls. The Committee will provide independent and ongoing oversight of the TSO initiatives that were deemed too uncertain to be included within the TSO's ex-ante allowance for PR5 and the TSO's ex-ante allowance for future price controls or TSO initiatives which had not been foreseen prior to the commencement of the relevant price control period.

The Committee is structured as follows:

- **Chair:** The Independent Advisor is appointed by EirGrid, as the TSO, subject to CRU approval and is the Chair of the Committee.
- **Secretariat:** EirGrid, as the TSO, is responsible for the Secretariat of the Committee.
- **Six independent members** sitting on the Committee and appointed by EirGrid as the TSO.

## 2 Scope

The purpose of the Committee is to provide an effective challenge to the TSO's proposed plans and approach to projects progressed through the Committee in PR5. This should minimise the risk that the TSO will incur inefficient expenditure, protect consumers and ensure strategically important projects are progressed in a timely manner.

The Committee will not have any formal decision-making power regarding the approval of revenue allowances as this responsibility sits with the CRU. However, as part of their reporting requirements, the Committee can make a recommendation regarding funding for a project. It will also be the responsibility of the Committee to set out the basis for their recommendation regarding funding for a project. The Committee's role will not replace the CRU's regulatory function of approving TSO forecast and outturn expenditure. Rather, the Committee will ensure:

- that a credible range of options have been explored and considered by the TSO.
- that projects are evaluated at each stage gate to ensure projects are progressing as planned; and
- that the TSO's proposed projects that come in front of the Committee align with the PR5/future price control strategic objectives and/or other relevant strategic considerations arising during a price control and that strategically important projects are progressed in a timely manner.

The CRU's role will be to consider the independent views of the Committee within the regulatory price control period, agree or disagree with the Committee's recommendation(s) regarding funding and review the cost efficiency of expenditure at the end of the regulatory price control period. This approach ensures that the independence of the Committee, and the CRU, is protected.

For the Committee to operate effectively the CRU considers that it is essential that the TSO's submissions<sup>1</sup> are of high quality and appropriately concise. The onus will be on the TSO to demonstrate the needs case for any project it presents to the Committee. Additionally, the onus is on the TSO to ensure that all

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<sup>1</sup> See Section 4.5 of [CRU20154-PR5-Regulatory-Framework-Incentives-and-Reporting-1.pdf](#) for further details re TSO submission inclusions. CRU agreement re TSO submission detailed template essential at the outset.

submissions meet the four-point standard for quality submissions established in PR5; submissions to the Committee should be clear, complete, candid, and constructive<sup>2</sup>. For the avoidance of doubt, it is not within the scope of the Committee to investigate beyond the submissions given to it by the TSO. Where the TSOs submissions do not meet the four-point standard or where the Committee is unable to form a view based on the information provided to it, the Committee should relay this information back to the TSO as a matter of urgency.

The CRU will only consider funding requests under this mechanism once they have gone through the Committee and the Chair submits its report to the CRU.

The Committee will consider the needs case for any project worth over €3.6m. Smaller projects may be grouped together to meet the €3.6m threshold only where there is clear rationale for doing so.

## 3 Meeting Particulars

The following sets out the manner in which Committee meetings are conducted, to facilitate the Terms of Reference:

### 3.1 Role of Chair

The independent advisor plays a pivotal role in the successful operation of the Committee. The independent advisor acts as chair and:

- Drafts the Committee's terms of reference in consultation with the TSO and approved by the CRU.
- With the aid of the TSO, administers the recruitment process for six Committee members. Committee members need to be independent with no conflicts and have broad range of expertise.
- Submits reports<sup>3</sup> on TSO requests to the CRU directly, encompassing the recommendations of the Committee.
- Determines meeting frequency and need for ad hoc meetings (if required) and chairs same.
- Manages general timekeeping during meetings.

The Chair must abide by the Code of Practice set out in Annex 1 of the Terms of Reference.

### 3.2 Role of Secretariat

The Secretariat shall be a nominated<sup>4</sup> individual from the TSO. The key administrative role of Secretariat includes:

- Provision of a schedule of meetings for each calendar year.
- Administration during meetings.

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<sup>2</sup> See Annex 6 : Quality of Regulatory Submissions of [CRU20154-PR5-Regulatory-Framework-Incentives-and-Reporting-1.pdf](#) for further information

<sup>3</sup> See Annex 15 of [CRU20154-PR5-Regulatory-Framework-Incentives-and-Reporting-1.pdf](#) for detail re content of Chair's report to the CRU

<sup>4</sup> Nominated and approved by EirGrid's Senior Management

- Preparation and circulation of all relevant material to the Committee (i.e., agenda and slide pack).
- Preparation of initial draft of minutes and circulation of same to the Committee.
- Finalisation of minutes and circulation of same to the Committee.
- Maintenance of the Committee email circulation list, including amendments to allow for additions/removals etc.
- Organisation of each Committee meeting (location, equipment, conference call dial in details etc as required).
- To act as administrator to ensure appropriate filing<sup>5</sup> of all documentation relating to the work of the Committee.

The TSO, acting as Secretariat of the Committee, must abide by the Code of Practice set out in Annex 1 of the Terms of Reference.

### 3.3 Role of the Committee

The Committee shall be made up of members appointed in accordance with Section 4 of this document, 'Membership'. The responsibilities of the Committee include:

- Consideration of proposals put forward by the TSO.
- Conduct an assessment of the range of options explored and considered by the TSO for each proposal.
- Engage with the TSO to seek further clarity on the TSO's proposal where required.
- Determination of a recommendation(s) with regards to each proposal put forward by the TSO.
- Report annually and as required (see section 5).

### 3.4 Schedule of Meetings

Meetings shall be scheduled as required by the Chair. The Chair sets the meeting frequency. The Chair can call ad hoc meetings at their discretion. The Committee must meet at least twice a year. In terms of the timing of meetings and conclusion of Committee recommendations, the Committee will consider the milestones applicable to the annual revenue approval cycle. Subject to there being TSO proposals for Committee consideration, it is assumed that the Committee will meet in January and March each year as a minimum, to align with the TSOs annual revenue approval cycle.

### 3.5 Minutes

Approved Minutes of each meeting will be kept of all meetings of the Committee.

### 3.6 Quorum

A quorum of at least the Chair and three additional members of the Committee is required.

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<sup>5</sup> All documentation must be stored on the CRU's secure portal. With external access only granted to the Chair, nominated Secretariat and Committee members.

# 4 Membership

The CRU wishes to include the views of a wide range of stakeholders. In order to facilitate open discussion and active participation, the Committee membership will be kept to six. Members must be independent with no conflicts of interest. Members must not have been employed by EirGrid/SONI/CRU/UR for a minimum of five years and should have a minimum of eight years of relevant experience. Collectively, members should have a broad range of expertise and experience relevant to the Committee's role.

## 4.1 Appointment of the Chair

EirGrid will administer the recruitment process for the Chair. The Chair will be appointed by EirGrid with the approval of CRU. The Chair will be appointed for the period of the price control unless the Chair resigns. In the case where the Chair resigns, and a new Chair is appointed, the new Chair's appointment will cover the remaining period until the end of the price control.

The Chair should give a minimum of 30 days' notice of their intent to resign/terminate.

In the case where a Chair resigns, EirGrid will propose a current member of the Committee to assume the role of Acting Chair until a permanent Chair is appointed. Should a member of the Committee be appointed as the new Chair then EirGrid will commence a recruitment process for a new member of the Committee. The CRU will approve the proposed interim chair.

## 4.2 Appointment of the Committee Members

EirGrid will run the recruitment process and the Chair will ultimately select and appoint the members and provide oversight on the TSO's recruitment approach and progress.

The members should have expertise in some of the following areas:

- Major Electricity Network Development (onshore and/or offshore);
- Non-Network Infrastructure Development (i.e., IT Infrastructure design, specification etc).
- Electricity Infrastructure or Major Project Management.
- Electricity Network operation and maintenance.
- Procurement specialist.
- Research and development (ideally in the energy sector).

The members will be appointed for the period of the price control unless a member resigns. In the case where a member resigns and a new member is appointed, the new member's appointment will cover the remaining period until the end of the price control. A member should give a minimum of 30 days' notice of their intent to resign/terminate.

EirGrid will attend Committee meetings to present and/or respond to queries as required. EirGrid shall not be in attendance when the Committee is considering the TSO's submissions, making their deliberations and discussing reports to be submitted to the CRU. Industry participants, stakeholders, other experts may be invited for specific agenda items at the discretion of the Chair. The Chair will keep Committee membership under review to ensure it continues to be appropriate.

The members must abide by the Code of Practice set out in Annex 1 of the Terms of Reference.

## 5 Reporting

The Committee will be required to make annual submissions to the CRU, as well as a submission at the end of each regulatory price control period. Annual reports will align with Revenue submissions to be made by the TSO in April each year. These annual reports are drafted having assessed and discussed the TSO's submissions.

The responsibility for the drafting of the reports will be assigned to a member or members of the Committee by the Chair. The Chair is ultimately responsible for the completion of the reports. The Chair may also, as required, seek contributions from committee members to the drafting and completion of the reports.

The Chair's *Annual Recommendation Submission* to the CRU, submission of which is required no later than 30 April each year, where required, should include the following:

- An assessment on the standard of the TSO's engagement with the Committee (i.e., has it met four-point test: clear, complete, candid and constructive).
- A view on the operation of the Committee.
- A recommendation with regards to the needs case for each project(s).
- An assessment on the standard of the TSO's cost controls for each project.
- An assessment on the quality of the TSO's need, additionality and cost efficiency assessments.
- A summary of funding recommendations made by the Committee during the applicable reporting period.
- A recommendation on whether, in the Committee's view, funding for the project(s) should be granted.

The Chair's *Close Out Report at the End of the Price Review* should include the following:

- Chair Report on an assessment of the operation of the Committee.
- Recommendation/(s) with regards to the operation of the Committee.
- The standard of the TSO's project management for each approved project.
- The standard of the TSO's cost controls and cost efficiency for each approved project.
- Timeliness of each project.
- Standard of the TSO's engagement with the Committee.

## 6 Committee Conduct

Members shall:

- Confirm attendance at scheduled meetings at the earliest opportunity and shall inform the secretariat of any factor affecting attendance as soon as it is known.
- Endeavour to be as prepared as possible for scheduled meetings by ensuring that they have read all required documentation for the meeting.
- Commit to listening to and respecting others' opinions.
- Commit to acting in an open and honest manner at all times.
- Adhere to the meeting rules and procedures. Group members will aim to create a constructive and positive environment in which to have informed and productive debate.
- Whilst the recruitment process will give consideration to the potential for conflict of interest, should an actual or potential conflict of interest arise post conclusion of the Committee member recruitment process, the applicable Committee member will, within forty-eight hours of any actual



- or potential conflict of interest arising, disclose same directly to the Chair and absent themselves from the Committee's deliberations on the conflicted matter/proposal.
- In the event of an actual or potential conflict of interest arising, the Chair will, in its absolute discretion, decide on the appropriate course of action. Where the Chair finds there to be no conflict of interest or that such conflict is immaterial, it may permit the Committee Member to continue acting on the conflicted matter/proposal. Where the Chair considers there is no material conflict of interest, it may, at its sole discretion, permit the Committee Member to continue acting on the conflicted matter/proposal subject to appropriate safeguards being agreed between the Chair and the Committee Member and the Chair being satisfied that those safeguards have been put in place. Where the Chair considers there to be a material conflict of interest which cannot be managed to the satisfaction of the Chair, the Chair may decide that the Committee Member absent themselves from the Committee's deliberations on a continuing basis and terminate the Committee Member's position.

## 7 Committee Remuneration

- All members and Chair are to be paid market rates commensurate with the role, expertise and experience of the individuals.
- Non-member attendees who have been requested to attend by the Chair will receive vouched travel costs only.
- EirGrid to recover costs on a pass-through basis.

# 8 Annex

## 8.1 Annex 1 Code of Practice

### Obligations of Confidentiality

The Committee will provide ongoing independent challenge to EirGrid's plans and projects deemed too uncertain to be included within the CRU's *ex-ante* PR5 Decision. In doing so, it is important to ensure that Information related to this work is handled appropriately.

The Chair and members of the Committee will be required to sign a Non-Disclosure Agreement (NDA) setting out the obligations of the members and Chair of the Committee in relation to confidential information shared with the Committee. Please refer to Annex 2 for a template NDA.

All documents and deliberations associated with the Committee shall be considered Confidential Information. The Committee and the Secretariat shall keep all documentation and deliberations confidential, except with prior written consent from the CRU, and shall not:

- a) Use or exploit the Confidential Information in any way except for its intended purpose;
- b) Disclose or make available Confidential Information in whole or in part to anyone other than the Chair, Committee, secretariat and the CRU;
- c) Copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the purpose.

The secretariat, as custodian of all documents, must also ensure that no Confidential Information is disseminated or communicated to any personnel within the EirGrid Group.

## 8.2 Annex 2 Non-Disclosure Agreement

THIS AGREEMENT is made the                      day of                      20XX

**BETWEEN: -**

- (1) **EIRGRID plc** a statutory corporation having its principal office at **The Oval, 160 Shelbourne Road, Ballsbridge, Dublin 4** which expression shall include where the context so admits or requires include its assigns and legal successors in title under any restructuring by the Government of Ireland of the One Part (the **“Disclosing Party”**);
- (2) **[XXX]** Name- Job title- business address for correspondence brief description of their appointment under the TSO Monitoring Committee (the **“Receiving Party”**)

(each being a **“Party”** and together the **“Parties”**)

**WHEREAS:**

- (A) The purpose of the TSO Monitoring Committee (‘the Committee’) is to provide an effective challenge to EirGrid’s proposed plans and approach to projects progressed through the Committee in PR5 as set out in the Committee Terms of Reference. The Committee will provide independent and ongoing oversight of the TSO initiatives that were deemed too uncertain to be included within the TSO’s ex-ante allowance for PR5.
- (B) The Disclosing Party has engaged the Receiving Party to provide advisory services] to the Disclosing Party in relation to the Project. The Disclosing Party shall be disclosing to the Receiving Party certain commercially sensitive and confidential information for the Project.
- (C) It has been agreed that the Parties enter into this Agreement to protect the confidentiality of the information so disclosed by the Disclosing Party and also that any reports and conclusions by the Committee and individual Committee members that have been made as a result of the use of the Confidential Information would also be protected.

**NOW THEREFORE** in consideration of the mutual covenants and agreements herein and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

1. **Interpretation**

As used herein:

- |                                   |   |
|-----------------------------------|---|
| <b>“Agreement”</b>                | means this agreement to include any schedules or appendices attached hereto.  |
| <b>“Confidential Information”</b> | means Information disclosed by the Disclosing Party to the Receiving Party in connection with the Project and any deliberations made as a result of use of this Confidential Information. |
| <b>“Information”</b>              | means information, knowledge, know-how, communications, data, or other material in any form transferred orally,   |

visually, electronically or by any other means and/or any other sources.

"Party" means a party to this Agreement.

"Project" means TSO Monitoring Committee.

## 2. Confidentiality Obligation

In consideration of the disclosure of Confidential Information by the Disclosing Party to the Receiving Party, the Receiving Party agrees:

- 2.1 to maintain the Confidential Information received hereunder in strict confidence and will not disclose or allow access to same to any person whatsoever (other than in accordance with the terms of this Agreement) without the prior written consent of the Disclosing Party and in strict accordance with the terms of such consent;
- 2.2 to use the Confidential Information solely in connection with the Project and not to make any commercial use of the Confidential Information or any part thereof other than for the Project;
- 2.3 to only take such copies of any document or other material embodying any of the Confidential Information as are strictly necessary for the Project; and
- 2.4 that any Confidential Information disclosed hereunder shall remain at all times the property of the Disclosing Party.

## 3. Exceptions

The obligations set out in clause 2 of this Agreement shall cease to apply to Confidential Information which:

- 3.1 is or becomes generally available to the public other than as a result of a breach of this Agreement; or
- 3.2 is prior to any disclosure hereunder demonstrably already in the possession of the Receiving Party without restriction as to use or disclosure owed to the Disclosing Party; or
- 3.3 comes into the possession of the Receiving Party from a third party not under any confidentiality obligations to the Disclosing Party regarding the same; or
- 3.4 the Receiving Party is obligated to produce as a result of an order of a court of competent jurisdiction or pursuant to a statutory obligation, or other competent regulatory authority provided that the Disclosing Party shall have been given prompt written notice (not less than 5 business days) upon receipt of such court order or government or regulatory action and an opportunity to contest and assist in opposing any requirement to produce or
- 3.5 the Receiving Party is obliged to produce to the CRU as set out in the above Committee Terms of Reference.

## 4. General

- 4.1 Notwithstanding the provisions of clause 2 and clause 3 of this Agreement the Receiving Party shall be entitled to make any disclosure of the Disclosing Party's Confidential Information to those directors, officers, employees or advisors of the Receiving Party or of any of its Affiliates who have a need to know such Confidential Information in order to perform their roles or professional functions for the

purpose of working towards the Project, and only upon making such persons aware of the confidential nature of the Confidential Information and their obligation to maintain the confidence thereof.<sup>6</sup>

4.2 The provisions of this Agreement shall apply for a period of [five (5) years]<sup>7</sup> from the date of disclosure of Confidential Information.

#### 5. Remedies

The Receiving Party agrees that money damages would not be a sufficient remedy for any breach of this Agreement and that the Disclosing Party shall be entitled to seek injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this Agreement by the Receiving Party or any of its employees.

#### 6. Warranty to protect Confidential Information

The Receiving Party warrants that it applies reasonable safeguards against the unauthorised disclosure of confidential and proprietary information and agrees that it shall protect the Confidential Information in the same manner and to the same degree that it protects its own confidential and proprietary information.

#### 7. Prior disclosure

Any Confidential Information disclosed to or obtained by the Receiving Party prior to the execution of this Agreement in respect of the Project shall be considered in the same manner and be subject to the same treatment as Confidential Information made available after the execution of this Agreement.

#### 8. Return of Confidential Information

8.1 Upon expiration of the obligations of confidentiality and non-disclosure under this Agreement or sooner upon the written request of the Disclosing Party, all Confidential Information in written or electronic form and all copies thereof in the possession of the Receiving Party shall be returned to the Disclosing Party or destroyed at the option and instructions of the Disclosing Party.

8.2 The provisions of sub-clause 8.1 of this Agreement shall not apply to:

- (i) a copy of any Confidential Information which the Receiving Party is required to retain to comply with any regulation or rules of compliance; and/or
- (ii) a copy of any Confidential Information which may not reasonably be destroyed due to computer data backup procedures.

#### 9. Failure or delay not a waiver

No failure or delay by the Disclosing Party in exercising any right or power shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof, or the exercise of any other right or power hereunder.

#### 10. No warranty as to accuracy of Confidential Information

The Parties acknowledge that no warranty is given or implied as to the accuracy or completeness or fitness for any particular purpose of the Confidential Information.

#### 11. Property in Confidential Information

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<sup>6</sup> Depending on the sensitivity of the information being disclosed, consider whether there should be a more onerous obligation.

<sup>7</sup> Depending on the information being disclosed, confirm what is an appropriate period.

Nothing contained in this Agreement shall be construed as granting or conferring title or rights by licence or otherwise in any Confidential Information (including but not limited to patents, trademarks, copyrights to trade secrets) disclosed to the Receiving Party. Confidential Information disclosed shall remain the sole and exclusive property of the Disclosing Party.

12. **No Partnership**

This Agreement is not and shall not be construed as a commitment or agreement by either Party to enter into any type of transaction or contractual arrangement. This Agreement does not create a partnership, joint venture or any similar entity or relationship between the Parties. Neither Party shall be deemed to be a representative, agent or contractor of the other Party, nor shall either Party have any authority or right to assume or create any obligation of any kind or nature, express or implied, on behalf of or in the name of the other Party, nor to bind the other Party in any way. Except as expressly provided herein, this Agreement shall not restrict either Party's freedom to enter into or to refrain from entering into any transaction with any third party.

13. **Notices**

All notices served by either Party under this Agreement shall be in writing and sent by pre-paid registered post to the other Party at the address stated above or such other address as a Party may notify in accordance with this clause 13.

14. **Severability**

If any term or provision in this Agreement shall be held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law or otherwise, such term or provision (or part thereof) shall to that extent be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement shall not be affected.

15. **Amendment and Assignment**

15.1 Any amendment to this Agreement must be in writing and signed by a duly authorised officer of each Party.

15.2 This Agreement is personal to the Parties and may not be assigned, unless both Parties agree in writing.

16. **Counterparts**

This Agreement may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one Agreement.

17. **Electronic Signatures**

Each Party agrees that this Agreement may be signed by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of each Party's intention to be bound by this Agreement as if signed by each Party's manuscript signature.

18. **Governing law and jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of Ireland and both Parties agree to submit to the non-exclusive jurisdiction of the Irish courts.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date first set forth above.

**SIGNED** by

For and on behalf of

**EIRGRID PLC**

**SIGNED** by

**[XXX]**