

## Comments on Proposed Conditions of the Northern Ireland System Operator's Licence

Moyle Interconnector Limited (“Moyle”) is grateful for the opportunity to comment on the proposed conditions of the Northern Ireland System Operator's Licence as part of the Consultation on Proposed Conditions of System Operator Licences (AIP/SEM/232/07). Moyle's comments are set out below:

### 1. General Comments

- (a) We understand that it is proposed that SONI, NIE and Moyle will all be required to hold Licences to Participate in the Transmission of Electricity, but that given the different capacities that each will hold their Licences it is envisaged that each Licence will be very different in substance. We therefore believe that it is important that each Licence to Participate in the Transmission of Electricity make it very clear in what capacity the relevant Licensee holds the Licence, be it System Operator, Transmission Asset Owner, Interconnector Owner or other.
- (b) It appears that this Licence is intended to commence and SONI is intended to assume the functions of TSO as principal with effect from the commencement of the SEM. If this is correct, we are concerned that there is significant work to be done to establish the interface arrangements with NIE and connected parties in a very short time period. Query whether it is practical for these changes to be co-incident with SEM go-live or whether it may be prudent to stagger them given that this will mean that significant change will take place on the same date?

### 2. Condition 1 – Interpretation and Construction

- (a) **Condition 1.4** – The obligation in relation to performing an obligation within a time limit should also expressly provide that where a time limit is not specified, the relevant obligation should be performed as soon as is reasonably practicable.
- (b) **Condition 1.7** - SONI must be responsible for ensuring that the SO Agreement allows it to fulfil its functions under its Licence. While it must be obliged to seek any required amendments to the SO Agreement, it should not be able to avoid being in breach of a Licence obligation because it failed to ensure that the SO Agreement permitted it to perform a Licence obligation.
- (c) **Condition 1.8: “Authorised Electricity Operator”** - It appears that this definition does not include an interconnector owner or operator, unless an interconnector owner is to be licensed to participate in the transmission of electricity. While we understand that this is the intention, it seems unlikely based on other defined terms in this Licence including “transmission system” and “transmission services”. However, this definition does include a capacity holder while it is using its capacity or a person who has applied for such use. It is also therefore not clear whether it includes a capacity holder that is not

using its capacity? It is essential that Moyle is treated as an “Authorised Electricity Operator” for the purposes of this Licence and the position of capacity holders that are not using their capacity should be clarified.

- (d) **Condition 1.8: “Connection Agreement”** – It is not clear what is intended by the “entry and exit points” terminology in the context of this Licence.
  - (e) **Condition 1.8: “electricity undertaking”** – If, as it appears, Moyle is not an “Authorised Electricity Operator”, it follows that it is not an “electricity undertaking”. This impacts on a whole range of rights under this Licence, in particular in the context of being consulted in relation to matters which affect it. It is critical that Moyle be treated as an electricity undertaking.
  - (f) **Condition 1.8: “Grant” and “Licence”** - It appears that the Grant is defined as being part of the Licence and the Licence is defined as being comprised in the Grant. This apparent circularity should be rectified.
  - (g) **Condition 1.8: “Republic of Ireland System Operator Licence”** – A minor technical comment, but EirGrid was technically not formed under Regulation 34 the European Communities (Internal Market in Electricity) Regulations 2000. It is a company established under the Companies Acts, although the obligation to incorporate it under the Companies Acts was contained in Regulation 34 the European Communities (Internal Market in Electricity) Regulations 2000.
  - (h) **Condition 1.8: “total system”** – Moyle is currently licensed as a transmission licensee. While we understand that it is envisaged that Moyle will be Licensed to Participate in the Transmission of Electricity, based on defined terms in this Licence including “transmission system” and “transmission services”, it is not clear how Moyle will be considered to be participating in the Transmission of Electricity under the SEM. This means that Moyle would not form part of the “total system”. It is not clear if this is intended?
  - (i) **Condition 1.8: “Transmission System”** – See above. Moyle is currently licensed as a transmission licensee, but based on the definitions in this licence it appears that this may not be the case under the SEM. Clarification is required.
  - (j) **Condition 1.8: “Ultimate controller”** - It is not clear who would qualify as an “ultimate controller” of SONI and this should be clarified. It may be arguable that through Moyle’s various contracts with SONI it may be capable of influencing SONI’s policy by virtue of contractual arrangements. It must be clarified that this is not the case.
3. **Condition 3 – Availability of Resources and Undertaking of Ultimate Controller**
- (a) **Condition 3.1(b)** – SONI should also be required to comply with its obligations under the SEM Order.

- (b) **Condition 3.6** - It is not clear what happens if SONI cannot comply with its obligations to procure the giving of the undertakings required from its “ultimate controllers”.
- (c) **Condition 3.6(c)** – Query whether the references to “holding company” in this condition should refer to “controller”.

4. **Condition 9 – Disposal of Relevant Assets**

Given that under the terms of the Licence, the Moyle interconnector as well as the transmission network itself are arguably employed by SONI in the exercise of its Licence obligations, this may make both the interconnector and the transmission network relevant assets for the purposes of Condition 9 (Condition 9.6). This is inappropriate and should be clarified.

5. **Condition 11 - Restriction on Use of Information**

- (a) Condition 11 imposes obligations on SONI to protect information provided by any person. It appears that the obligation exists only to the Authority and not to the person whose information is required to be protected. This obligation should be expressed to extend to the person affected.
- (b) This condition should require that before disclosing any protected information, SONI notify the person whose information it is and give them an opportunity to comment on the proposed disclosure and take steps to protect it if necessary.

6. **Condition 12 - Independence of TSO Business**

It is not clear that the business separation obligations in Condition 12 go as far as is required by Directive 2003/54/EC.

7. **Condition 17 - Grid Code**

- (a) **Generally** - It is not clear what rights an electricity undertaking will have to seek modification to the Grid Code other than when a decision is taken to review such Code.
- (b) **Condition 17.2** – The materiality threshold in this condition should be deleted. The obligation should be to consult with any electricity undertaking who may be affected. It is not acceptable that the System Operator makes decisions as to materiality of an electricity undertaking’s interest in a Code change.
- (c) **Condition 17.5** – This condition makes reference to another Licence that is not specified. It is not clear what is intended. When this Condition is clarified, if it has the potential to impact on Moyle or its capacity holders, Moyle is of the view that the Condition should be amended to afford the same protection to Moyle and/or its capacity holders as given to generators. This

section also refers to PPAs (although not defined) which we understand may be impermissible under the SEM.

8. **Condition 19 - Transmission Interface Arrangements**

- (a) **Condition 19.2** - It is not clear what the process will be for the production of the initial draft of this document to be designated on SEM go-live, in particular any process for input by interested parties. This document will be highly material for all connected parties and a process should be developed for ensuring that input is obtained.
- (b) **Condition 19.3** - This obligation appears only to relate to the interface between the TSO and the Transmission Owner. It is not clear how interfaces with connected parties will be managed. Moyle believes that it will be important that connected parties have some level of contractual interface with the TO to manage site specific issues.
- (c) **Condition 19.7 and 19.10** - The Authority should have the power to direct amendments to these arrangements as well as the right to approve amendments. The Licence must also contain an obligation to publish this document and an obligation to consult with all parties that may be affected.

9. **Condition 24 - System Operator Agreement**

- (a) **Condition 24.5** - Third parties that may be affected should be consulted in relation to the terms of the System Operator Agreement.
- (b) **Condition 24.8** - It is important that the Licence require that the System Operator Agreement to be published in full.

10. **Condition 25 – Requirement to Offer Terms**

It is not clear what is the mechanism for transferring relevant contracts from NIE to SONI, including connection agreements and certain Moyle contracts including the Collection Agency Agreement. While we would not expect this to be contained in the Licence, it is important that this issue is addressed as continuity of existing contractual arrangements is paramount. In this context, it is critical that this be effected in a way that does not impact on third party financing arrangements, whether through increased counterparty credit risk or otherwise.

11. **Condition 30 - Charging Statement**

- (a) **Condition 30.1(d) and 30.12** - Confirmation is required that the Collection Agency Income Requirement powers to recover monies from customers are expressly included within the charges that may be levied by the Licensee. Ideally the Collection Agency Income Requirement should be expressly listed as a separate charge that can be passed through, or otherwise should be included within the definition of “Other System Operator Charges” or charges

for the use of the All Island Networks (See Condition 19A of the current NIE Licence).

- (b) **Condition 30.3(e), 30.4(a), 30.4(d) and 30.7** - It is not clear what is intended by “entry and exit charges” and “entry or exit points” in the context of this Licence?

12. **Condition 31 - Charge Restrictions**

The reference to the CAIR monies in Condition 36.10 refers to Condition 31 which is currently blank. This will be critical to Moyle’s business and Moyle reserves the right to comment on this Condition once drafted. The Licence should also contain, whether in this Condition or elsewhere, an express incentive and/or an obligation on SONI to minimise costs to customers, in particular constraint costs.

13. **Condition 33 - Interconnector Capacity Statement**

- (a) **Generally** – It appears that this Condition may contain obligations that pertain to both capacity adequacy and third party access. In the context of capacity adequacy, we are of the view that the only relevant information is projected interconnector availability which we understand is already required under Condition 34(1)(b). Provisions dealing with capacity availability for third party access purposes is not appropriate in this Licence where an interconnector is not owned by the System Operator, as is the case in respect of Moyle.
- (b) **Condition 33.1** - As is noted above, it is not exactly clear from the drafting of Condition 33 exactly what is intended to be achieved by the Interconnector Capacity Statement. In addition to actual capacity of the interconnector that will be available, it appears to seek a forward forecast of both uncontracted capacity (Condition 33.1(c)) and contracted capacity (Condition 33.1(b)). It is difficult to understand how the System Operator, in its capacity as System Operator, would be capable of estimating this information. This should be deleted from this Licence and instead be included in the Interconnector Owner’s Licence.
- (c) **Condition 33.1(b) and (c)** - We do not believe that it is appropriate that SONI (or indeed anyone) be publishing estimates of projections of contracted capacity while it is responsible for running auctions. The Interconnector Owner Licence should contain obligations to publish details of available capacity from time to time.
- (d) **Condition 33.1 and 33.2** – Subject to our comments above in relation to relevant information being made available by the Interconnector Owner rather than the System Operator, we think we understand when these statements are intended to be produced, but we believe that the wording dealing with timing of obligations could usefully be clarified.

14. **Condition 36 - Northern Ireland Interconnectors**

- (a) **Condition 36.1 to 36.9** – These Condition should be deleted in this Licence or at least expressly disapplied to interconnectors, such as Moyle, that are not owned by the System Operator. While we acknowledge that this Condition essentially replicates Condition 21 of the existing NIE Licence, this Condition is somewhat anomalous in the context of the Moyle interconnector given that NIE as a matter of practice does not, nor is capable of, complying with this Condition. It appears that this Condition would have been appropriate prior to the mutualisation of Moyle but would not have been appropriate thereafter or indeed in the case of any interconnector that is not owned by the System Operator. Equally, SONI currently does not have the ability to comply with this obligation as it does not have the capacity rights to give.
- (b) **Condition 36.10 and 36.13** – These Conditions must only impose obligations on SONI to the extent that Moyle does not terminate SONI’s appointment to fulfil these roles.
- (c) **Condition 36.10** – We note that the Collection Agency Obligations of NIE must be novated or otherwise transferred to SONI to enable it to comply with its obligations under this Condition.
- (d) **Condition 36.13** – Moyle is of the view that this Condition should also require SONI to assume the IA and IEA roles in SEM for as long as Moyle requires.
- (e) **Condition 36.15** – The “Moyle Operating Agency Agreement” was correctly termed the “Moyle Interconnector Operation Agency Agreement” and was dated 14 April 2003.

15. **Schedule 1 – Authorised Area**

We note that in the context of different parties being granted Licences to Participate in the Transmission of Electricity in different contexts, paragraph 2 may need to be revised to ensure that there is no inconsistency between the various Licences.

16. **Schedule 2 – Revocation**

We note that there does not appear to be any restriction on assignment of the licence or change in control of the licensee, or power to revoke the Licence in either event if the consent of the Authority is not obtained.