

**Response from Viridian Power and Energy**

**To**

**SEM**

**Proposed Conditions of Market Operator Licences**

**Second Consultation Paper**

**26<sup>th</sup> February 2007**



## **Introduction**

VP&E note the second consultation on the SEM proposed conditions of Market Operator Licences as a necessary part of the SEM implementation.

VP&E would welcome addition of a number of clauses in the licence including:

1. There should be an obligation on the Market Operator to act in a transparent manner and to publish all information subject to Regulatory Authority oversight.
2. The Market Operator should have the right to sub-contract some or all of their activities but only after consultation with market participants and agreement with the Regulatory Authorities.
3. If poor performance by the market operator results in material loss to one or a number of market participants, in a manner where that loss is not equally shared among market participants, then the market operator should make good that loss and recover this loss through its standard charging arrangements.
4. The Market Operator should not have the right to withhold monies from market participants except where market participants have bad debts with the market operator. The amount withheld shall not exceed the level of bad debt of the market participant with the market operator.

## **Applicable Governing Law and resolving difficulties with the Joint Venture**

It has been determined that the Trading and Settlement Code “shall be interpreted, construed and governed in accordance with the laws of Northern Ireland” (T&SC Section 2.1). In relation to licencing of the Market Operator as a joint venture it has been determined that in the event of a dispute with the Market Operator both SONI and Eirgrid are “jointly and severally liable” and there are two separate licences subject to differing legislative structures in the two jurisdictions. Could the Regulatory Authorities clarify how is this to be resolved in the event of a dispute between a Market Participant and the Market Operator in the discharging of their function? With which entity should the dispute be raised and which jurisdictional law will apply?

## **Performance Measuring and Reporting**

In our response to the first consultation we pointed out that it is critical, in the discharging of their duties, that the responsibilities of the Market Operator are clearly defined and measurable. VP&E also stated that it should be clear what the liabilities and penalties of underperformance are and, in tandem with that, what the incentives are for delivery. We therefore welcome the amended conditions that allow for consultation on these issues. However we consider that the Regulatory Authorities should be the party charged with undertaking the role of proposing the performance criteria for subsequent consultation as an objective party, and not the Market Operator (ie the licensees) who would be naturally

conflicted in proposing their own performance criteria. Condition 17 Paragraph 1 of the SONI licence and Condition 10 Paragraph 1 of the Eirgrid licence should be reviewed to reflect this.

In order to deliver appropriately governed monitoring processes necessary to deliver full transparency and accountability of the Market Operator function we would suggest that the conditions are further amended to close the door on allowing the Market Operator to propose their own performance criteria as an option. This should not preclude the Regulatory Authorities from engaging with the Market Operator in the first instance in formulating the performance criteria.

VP&E also welcome the new proposals to consult on the price controls for the Market Operators.

### **PSO condition in Eirgrid's Licence**

VP&E concur with the Regulatory Authorities determination to remove the PSO condition from Eirgrid's licence.