

**Single Electricity Market
Proposed Decision on Conditions of the
Generation
Licences and
Response to Industry Comments
9th May 2007
AIP/SEM/07/140**

Background

On the 28th February 2007 the Regulatory Authorities published a consultation on the “NI Electricity Generation Licence Modifications”¹. In response to this consultation the RAs received submissions from:

- NIE
- Synergen
- ESB Independent Energy
- ESB International Ltd
- Airtricity
- Viridian
- Premier power Ltd (PPL)
- ESB Regulatory Affairs
- ESB Customer Supply

In light of these responses, the RAs have given further consideration to the conditions in the Generation Licences. This consultation paper outlines our responses to the individual suggestions and queries raised and is accompanied by an updated draft of the Electricity Generation Licence in favour of Kilroot Power Limited. Changes made to this document will be reflected in all NI Generation Licences.

Depending upon the nature of the comments received, it is envisaged that this consultation process will be the final opportunity for comment on the enduring conditions of these licences.

Comments on these licence drafts or this paper are requested by 6th June 07 and should be sent, preferably in electronic format, to michael.campbell@ofregni.gov.uk

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¹ AIP 07/30 “Consultation Paper. NI Electricity Generation Licence Modifications”.

Changes to Licences

As a general point the majority of changes to the previous version of the Generation Licences are those arising from a detailed legal review of the drafting. Details of further changes made to the drafts are explained in the section of this paper which provides responses to individual queries raised.

N.B. The condition numbers in the table below are referring to those condition numbers contained in the first draft generation licence published on the 28th February 2007.

Condition	Comment	Respondent	Regulatory Response
Condition 1 (Para 3)	Explain why the additional wording been included in the definition of “authorised electricity operator”.	NIE	This additional wording is used in other licences and has been included for harmonization.
Condition 1 (Para 3)	We understand that references to “Northern Ireland Authority for Energy Regulation” will need to change to “Northern Ireland Authority for Utility Regulation”.	NIE	This definition will be changed in all licences.
Condition 1 (Para 3)	“cancellable generating unit agreement” - we believe that the wording in square brackets is needed, although there are potentially some additional interpretation issues which need to be inserted because of the paragraph numbering.	NIE	The wording in square brackets has been included and all references to conditions and paragraphs with regard to modification are correct.
Condition 1 (Para 3)	“Department” - should there be a reference to its predecessor, namely DED at the relevant time?	NIE	The definition now refers to relevant predecessors of The Department of Enterprise, Trade and Investment.
Condition 1 (Para 3)	“Distribution Licensee” – why does this cross refer to the definition in the TSO licence rather than setting it out here?	NIE/ESBRA	A definition of “Distribution Licensee” has now been included.
Condition 1 (Para 3)	“electricity purchase contract” – this definition doesn’t appear to be used.	NIE	The term “electricity sale contract” is used in condition 3 and its definition is construed from the definition of “electricity purchase contract” hence the definition is required.
Condition 1 (Para 3)	“generating unit agreement” - why has the reference to the power procurement manager been square bracketed? Is it just that the definition is yet to be completed?	NIE	Yes. The definition of power procurement manager has now been included and the square brackets have been removed from this definition.

Condition 1 (Para 3)	“interconnector” – need to ensure consistency with other licences and other documents such as the Trading and Settlement Code and Grid Codes.	NIE	This definition of interconnector is different from that in the TSC but it is the same as the definition in both the draft SO, MO and TO licences.
Condition 1 (Para 3)	“power procurement manager” – why has this been inserted in square brackets and not changed to reflect the revised structure? It refers to the definition of “transmission licensee” but this definition is also in square brackets.	NIE	This definition is now a cross reference to the definition of “Power Procurement Manager” in the NIE Energy Licence.
Condition 1 (Para 3)	“power purchase agreement” – is it correct here to refer to the “provision to the licensee” of capacity and/or output?	NIE	The Authority is of the opinion that the wording is correct for this definition.
Condition 1 (Para 3)	“relevant exempt self supplier” – what is happening in relation to relevant exempt self suppliers?	NIE	This definition has been removed as relevant exempt self supplier will be longer applicable post SEM. The definition of Second Tier Suppliers has been removed also.
Condition 1 (Para 3)	“System Support Services” – is there a need to recognise that the SSS may be sold to the TSO by PPB?	NIE	The definition states that the service may be offered for sale to the TSO. There is no need in a generation licence to mention that PPB currently holds the SSS service arrangements.
Condition 1 (Para 3)	“transmission licensee” – the precise definition will depend on how it is used in the licence.	NIE	This definition allows for the transmission licensee to be NIE plc as is currently the case or a new transmission owner licensee should the ownership of the transmission network change from NIE plc to another party.

Condition 2 General	The need for independent accounts to be provided for independent undertakings is unclear. The Directive is clear on the need for this when the businesses are part of a vertically integrated undertaking that includes monopoly wires activities, but Article 19 cannot be interpreted as being universally applicable. Specifically paragraph 3 of this Article requires such undertakings to keep separate accounts for their transmission and distribution businesses and "for other electricity activities not relating to transmission or distribution". There is no general obligation for generators without wires interests to unbundle their accounts.	Airtricity	This condition is in the existing generation licence and it is not subject to removal for either SEM or directive purposes and the Authority is therefore of the opinion it should be retained as all licence changes are for SEM or directive compliance. The only substantive change is the insertion of paragraph 3 (d) for directive implementation. This change is discussed below.
Condition 2 Para 3 (d)	The requirement, in paragraph 3(d), to use reasonable endeavours to procure a report by the Auditors verifying the internal accounting and financial arrangements is considered excessive in view of the requirement in paragraph 3(c) to produce an audit report. This requirement should therefore be removed.	Premier Power Ltd.	The audit referred to in paragraph 3 (c) is a normal financial audit. Paragraph 3 (d) however is required to fulfill the requirement in paragraph 4 of Article 19 of the Directive 2003/54/EC which states "the audit referred to in paragraph 2 shall, in particular, verify that the obligation to avoid discrimination and cross-subsidies referred to in paragraph 3 is respected.
Condition 2 Para 6	The requirement, in paragraph 6, to produce an additional set of accounting statements under the current cost basis is considered to be outdated and unnecessary and was removed from generation licences in Great Britain a number of years ago. This requirement should therefore be removed.	Premier Power Ltd.	This requirement is in the existing generation licence and it is not subject to changes for either SEM or directive purposes and the Authority is therefore of the opinion it should be retained as all licence changes are for SEM or directive compliance.

Condition 2 General	No explicit provision for Regulatory Account of generator to be published and made available to public. This should be available. Will unaudited interim P&L accounts be available as in ROI. There is no threshold to disclosure of individual transaction which licensee has charged to or from any other business. This should be considered.	ESB Regulatory Affairs	The Authority is of the view no change is required for either SEM or directive compliance.
Condition 3 Para 2	This condition prevents the licensee from offering electricity to its affiliates at terms that are more favorable than it would offer electricity to other persons or suppliers. While it is accepted that cross subsidisation is not appropriate, it should not prevent a generator from offering to sell electricity exclusively to its own supply business.	ESBIE	This condition has not been substantively changed. The one change has been the insertion of the words “within the Island of Ireland” and this change has been enacted to reflect the all island nature of SEM.
Condition 3 Para 11 (a)	In order to be consistent with the likely market structure at the outset of the SEM the reference to installed generation capacity should be expanded to include generation capacity for which the licensee or an affiliate acts as an intermediary.	ESBIE	Paragraph 11 (formerly paragraph 12) has been changed only to reflect the all island nature of SEM with the insertion of the words “the Island of”.

Condition 3 Para 11 (b)	Perhaps this condition would be more appropriately stated as relating to Paragraph 2 instead of Paragraph 1 of Condition 3. Paragraph 1 relates to all businesses of the licensee and is one of the strongest and most important clauses that prevents e.g., a networks business from subsidising a generation business. Paragraph 2 of the licence relates predominantly to supply businesses. Article 10(2) of the Order also relates to licensees with a supply business. It would be more appropriate to say that paragraph 2 (and not paragraph 1) of the Condition 3 does not apply where the licensee or any affiliate shall not hold a licence under Article 10(2) of the Order.	ESBIE	This paragraph has not been changed from the current licence and the changes suggested for this paragraph by ESBIE are not relevant for the purpose of SEM or directive compliance.
Condition 3 General	<p>Cross subsidies should be prohibited – unless players are of a de-minimis level and their behaviour cannot distort prices (in any spatial or temporal market). There should be a de-minimis limit at or below 5% not 20% suggested in this Condition – given that 20% capacity market share could be a significant market share in, say, the baseload market. There is a real possibility that allowing cross subsidies in such circumstances would distort SEM outcomes.</p> <p>RA should explain logic behind the disapplication of Condition 3.1 (giving or receiving of cross-subsidy) where the installed capacity of the licensee does not exceed 20% of the aggregate total installed capacity of generators on the Island of Ireland.</p>	<p>Synergen</p> <p>ESB Regulatory Affairs</p>	<p>The principal changes to this condition have been made for SEM compliance, namely “Northern Ireland” has been amended to “the island of Ireland” and “Director” has been amended to “Authority”.</p> <p>Under UK and EC Competition Law applying percentages of market share to test for “significant market power” and “market dominance” is a normal practice and the utilization of these percentages is a well understood regulatory concept. The Authority is not of the view that the 20% threshold should be changed.</p>

<p>Condition 3 General</p>	<p>Procurement of generation capacity by a supplier is a normal response to managing price volatility in a competitive market. Unless it is intended to regulate transfer prices between the activities of electricity undertakings that have no capability to exercise market power, Condition 3 is irrelevant to such market participants. Article 19 in general and 19 (3) in particular, is clearly aimed at electricity undertakings associated with transmission and distribution activities. We therefore believe that Condition 3 should be removed from the licences of independent generators who have no control of such assets.</p> <p>It is wholly inappropriate to seek to limit business flexibility on companies in structuring their businesses, unless there is a specific rationale to limit market power or control special regulatory treatment of an entity. If this condition was applied to independent entities such as VPE it would damage our ability to efficiently structure our business and increase costs to end customers. A windfarm for example, as a special purpose vehicle company, relies on preferential treatment from a supplier, such as Energinet, to underpin financing arrangements. This type of arrangement should be allowed for affiliates.</p>	<p>Airtricity</p> <p>Viridian Power & Energy</p>	<p>This condition is concerned with cross subsidization of a generator with any of its affiliates not just affiliates associated with transmission and distribution activities.</p>
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Condition 4 Para 3	<p>Assume paragraph 3 is part of separate consultation on cancellation, and has been square bracketed for that reason.</p> <p>Given the focus of paragraph 3 on pre-SEM market arrangements and the TSO licence obligation to revise the Grid Code in line with the Authority's order, we believe that this paragraph serves no purpose and should be deleted.</p>	<p>NIE</p> <p>Airtricity</p>	<p>The Authority is agreeable to removing paragraph 3 of this condition as it is part of the TSO licence and so revisions to the Grid code, in order to implement the requisite arrangements, can be made pursuant to that licence condition.</p>
Condition 5	<p>Proposed revisions are reasonable, but definition of "relevant standard should be revised to reflect any move to separate standards for transmission and distribution</p>	<p>Airtricity</p>	<p>The Authority now proposes to remove this condition. It has been removed from the Supply Licences. Distribution is not a separately licensed. Under the Directive 2003/54/EC paragraph 3(3) it would be discriminatory to include this condition.</p>
Condition 6	<p>The licence redraft should be used to update licences to recognise that not all generators use fossil fuels and to include the Condition only when relevant.</p>	<p>Viridian</p>	<p>Not a SEM issue. The Authority are currently required under the Electricity Order to include this Condition in all generation licences.</p>
Condition 7 Para 1	<p>Are Interconnector transfers “from” Northern Ireland subject to central dispatch? It would be helpful to clarify the obligation to submit available generation sets to the TSO for despatch to reflect that the use of an intermediary, and the Intermediary Agreement, is not a breach of this condition</p>	<p>NIE</p>	<p>Interconnector transfers from Northern Ireland are subject to central despatch. A generator must still submit its generating sets for central despatch despite the use of an intermediary.</p>
Condition 7 Para 2	<p>Merit order obligations do not appear to be correct in context of TSC and MO functions</p>	<p>NIE</p>	<p>The obligations are consistent with those imposed on the TSO in the TSO licence.</p>

Condition 7 Para 3	<p>Cross reference in definition of “available” is confusing in context of Generation licence given that TSO licence refers to both Grid Codes</p> <p>Express some concern that “available” should be defined as in SO licence rather than in Grid Code</p>	<p>NIE</p> <p>PPL</p>	The licence now points directly to the Grid Code for the definition.
Condition 7 Para 3	The definitions in Condition 7.3 do not appear in the transmission system operator license.	ESB Regulatory Affairs	The definitions appear in Condition 22 of the TSO licence,
Condition 8	We assume that this condition will be revised when the System Support Services arrangements become clearer in the future	ESB Regulatory Affairs	Changes to the System Support Arrangements are a Day 2 issue. There may or may not be changes needed to the licence provision to support this.
Condition 9	<p>This condition is still relevant</p> <p>This condition is no longer relevant – but if retained requires refinement</p> <p>This condition is no longer relevant</p> <p>Given the possibility of a company operating another power station, the condition should be retained and needs to reflect that there are other power stations in Northern Ireland apart from Kilroot and Ballylumford</p>	<p>NIE</p> <p>Airtricity</p> <p>PPL</p> <p>ESB Regulatory Affairs</p>	On consideration of the responses, and the discriminatory nature of the clause in respect of Kilroot and Ballylumford, the condition will be deleted.

Condition 10	<p>This Condition is irrelevant to the majority of licensees or potential licensees, and it should be reconsidered as to whether there is a general need for it to continue.</p> <p>Can the background to these license conditions be clarified as there are no equivalent provisions in RoI licenses</p>	<p>Airtricity</p> <p>ESB Regulatory Affairs</p>	<p>This condition exists in dormant form in all of the licences – albeit that the wording varies slightly between the licences. The basis of this condition (and condition 11) is provided for in legislation.</p> <p>Circumstances could be imagined where a Generator could look for such powers.</p> <p>The Authority proposes to include this condition in the licence of any licensee in whose existing generation licence it is currently effective, and may in other cases be added by way of modification agreed with the Authority – see Article 13(1)(b) of the Electricity (Northern Ireland) Order 1992.</p>
Condition 11	Can the background to these license conditions be clarified as there are no equivalent provisions in RoI licenses	ESB Regulatory Affairs	Response as for Condition 10.
Condition 12	While supporting the principle of third party access, it would be appropriate given the major impact of the SEM on trading relationships and liability structures, for this Condition to be fully impact assessed against the overall SEM market framework, to determine whether its wording is appropriate in the context of the SEM.	Airtricity	In light of the decision on Condition 5, this Condition is no longer applicable
Condition 13	<i>No comments received</i>	-	As for Condition 12.
Condition 14 General	Condition requires licensees to work jointly with other licenses. There should therefore be a <u>common</u> condition in all licences. Revised condition agreed	NIE	The Authority agrees with this point and this condition has been amended for the purposes of harmonization with the System Operator Licence.

	some time ago with NIAER is in SO licence. Other licences should follow this pattern.		
Condition 14 General	<p>Health and safety is fully covered by statute and issues to do with the involvement, or otherwise, of the licensee's employees in health and safety matters is also appropriately covered in legislation.</p> <p>We do not believe that the Authority's remit extends to governance of the internal employee relations of licensees and consider that the scope of the generation licence should be restricted to issues relevant to generation, competition and technical adequacy and safety in the context of security of supply. We therefore believe that this Condition should be removed.</p>	Airtricity	<p>The Authority's duties under Article 12(5)(e) of the Energy Order 2003 require it "to secure the establishment and maintenance of machinery for promoting the health and safety of persons employed in the generation, transmission and supply of electricity</p> <p>Article 11(1) of the Electricity Order 1992 makes it clear that licence conditions can be used to give effect to this duty.</p> <p>This condition is therefore required to fulfil these statutory duties</p>
Condition 15 General	There is no provision for the Authority to publish information obtained from the generator if necessary as is the position in the RoI market. We also note that the definition of "information" is quite restrictive and does not cover electronic formats or explanations (written or Oral) for example.	ESB Regulatory Affairs	Paragraph 5 has been added to facilitate the operation of the Market Monitoring Unit in the Single Electricity Market. It is the opinion of the Authority this is the only change that is required for SEM.
Condition 16 General	How will All Island market costs be shared equitably across all generators?	ESB Regulatory Affairs	This condition relates only to the payment of jurisdictional fees for the granting of a generation licence and has been updated only to reflect the change from Director to Authority.
Condition 18 General	Whilst this condition probably more falls under the separate consultation on cancellation which it is understood will take place, the reference to the Power	NIE	The reference to power station has been changed at the end of the first paragraph of clause 3 and the point NIE make regarding the 2003 Order is noted and its application in respect

	<p>Station at the end of the first paragraph under Clause 3 should be the same Power Station referred to two lines further up. Additionally, given the power or the requirement in the 2003 Order to regard references to the “Director” in any document as references to “the Authority”, is the change here necessary and if so how does it fit in with the requirement which applied, which was utilised, to include the original wording in the Generating Unit Agreements prior to that time? Does it mean that insertions of that wording are now rendered incorrect by the change effected under this set of changes?</p> <p>Cancellable generating unit agreements are relevant to only a small subset of licensees. This condition should be reworded to reflect the ability of the Authority to direct particular licensees to perform specific obligations, on the basis of specified legal powers. General licences should not include obligations specific to individual generators.</p> <p>Is it the intention to consult on this Condition when Condition 20 is put out for consultation? They are linked.</p>	<p>Airtricity</p> <p>ESB Regulatory Affairs</p>	<p>of the Generating Unit Agreements is still valid.</p> <p>The inclusion of the term “cancellable generating unit agreements” and its corresponding definition makes it implicit that the condition will apply only to those generators to whom the condition should apply.</p> <p>The Authority agrees that this condition is linked to the cancellation condition but can be amended now. Amendments to it are no more than the updating of the term Director General of Electricity Supply for Northern Ireland to Northern Ireland Authority for Energy Regulation.</p>
Condition 19	What is thinking on generators acceding to TSC when they use an intermediary	NIE	Generators will not be obliged to accede to the TSC when they use an Intermediary, but will have to ensure that the Intermediary is party to the TSC.
Condition 19	Alternative wordings should be provided to reflect the	Airtricity	The threshold generation size for the requirement for a

	fact that licensees may not be obliged to accede to the Trading and Settlement Code if they are below the de minimis threshold.		generation licence is the same as the threshold
Condition 19	The obligation to comply with the TSC should be placed on the Intermediary with respect to the legacy PPAs and licence breaches pursued against the Intermediary rather than the generator.	PPL	In respect of the legacy PPAs, an obligation to comply with the TSC will be put on the NIE PPB, and the generators will not be required to comply with the TSC.
Condition 23 General	<p>The RAs had decided to rely on bidding principles, rather than bidding rules. It should be limited to an obligation to observe the principle in paragraph 1 that bids should be cost reflective.</p> <p>Extremely concern at proposed SRMC bidding requirements as set out in Condition 23.</p> <p>Inconsistent with AIP/SEM/116/06 Bidding Principles & Local Market Power Decision paper as it introduces the concept of replacement cost as the basis of (in particular) fuel costs to be reflected in the SRMC bid instead of opportunity cost;</p> <p>The LC (as drafted) is rule based, not principle based;</p> <p>Replacement cost is problematic in terms of its implementation;</p> <p>Deep concern over “replacement cost of fuel” in SRMC licence over “opportunity cost”:</p> <p>There isn’t a liquid market in Ireland for coal or oil</p>	<p>NIE</p> <p>Synergen</p> <p>Synergen</p> <p>Synergen</p> <p>Synergen</p> <p>ESBI</p> <p>ESBI</p>	<p>The difficulty is translating Opportunity Cost, as generally understood, into a clear licence condition has led the RAs to conclude that it is more appropriate to capture the bidding principles in a “Bidding Code of Practice” which will formalize the content of the Bidding Principles decision paper and consultation paper.</p> <p>However, the RAs do not accept as valid the criticisms put forward. In particular the decision paper makes clear that fuel costs are to be bid based on “real resource costs” and explicitly rules out taking account of participants hedged positions.</p> <p>This Bidding Code of Practice will reflect the fact that the bids should be made on the basis of prevailing market prices.</p>

	<p>which would allow this kind of bidding; and</p> <p>For gas-fired generators the rational response of obliging bids to be at replacement, i.e. day-ahead, fuel prices would be to shift from forward purchases to day ahead purchases of fuel. Irish daily gas purchases would move the price of gas.</p> <p>The TSC is a more appropriate place for these obligations to be placed rather than in each individual generator license.</p> <p>Viridian would prefer the final view of SRMC to be set out by the market monitor in principles rather than unclear rules in the licence.</p>	<p>ESBI</p> <p>Viridian</p> <p>Viridian</p>	
Condition 23 General	<p>The provision for the Authority to issue directions to modify the meaning of cost reflective gives wide scope and should be bounded by due process within the wider SEM context</p> <p>Request for copy of the proposed form of direction and conditions under paragraph 9 under which application of the condition would be suspended while the Intermediary Agreements are in place.</p> <p>Does any person acting on its behalf" refers to an agent only or also catches the intermediary in terms of the Generator's obligation to ensure cost reflectivity of bids. This may have a bearing on the bids PPB must submit if they are not in line with the contract</p>	<p>NIE</p> <p>NIE</p> <p>NIE</p>	<p>The originally proposed Paragraph 9 foresaw the possibility of disapplying the SRMC bidding conditions on PPB contracted generators as the responsibility for submitting bid would lie with PPB.</p> <p>The development of the role of intermediaries and the decision to publish a Bidding Code of Conduct means that this paragraph is unnecessary and has been dropped.</p> <p>It is the view of the RAs that PPB contracted generation should be bid at underlying SRMC and not contract costs. This is in line with the treatment of other generators. As with other generators particular issues will be dealt with in the context of the Bidding Code of Conduct.</p>

	<p>rates in the PPAs and on the info PPB needs under the IA with the Generators.</p> <p>Paragraph 9 indicates that the Authority may give directions to the licensee "which may be subject to such terms and conditions as the Authority thinks fit". While accepting that regulatory authorities should not generally expect to have their discretion fettered, we believe that this wording goes beyond reasonable boundaries.</p> <p>The consultation paper states that "this condition may be disapplied for units contracted under the PPAs". Nowhere does the licence provide that this requirement will not apply if the Intermediary has a licence obligation to bid at SRMC, nor is there any statement saying that in such cases regulatory action would be taken against the Intermediary and not the generator. An urgent decision is required on whether Condition 23 is to be disapplied and the consequential drafting provided to ensure the necessary protection to Generators in the generation licence.</p> <p>Deep concern that this condition "may" be disapplied. Seek clarification that this will only be disapplied if</p> <ul style="list-style-type: none"> • plants have intermediaries bidding on their behalf • intermediary has a licence condition to submit bids on SRMC principles • <p>Proposal to allow exemption for SRMC bidding for PPAs by Viridian undermines RA's SRMC decision,</p>	<p>Airtricity</p> <p>PPL</p> <p>ESB Regulatory Affairs</p> <p>ESB Supply</p>	<p>This condition will be applied to all PPB contracted generators, but must be seen in conjunction with the obligation to enter into an Intermediary agreement with PPB and the fact that the Authority must approve that document.</p> <p>It is anticipated that the Intermediary Agreement will govern how the information which allows PPB to submit cost reflective bids will be passed between Generators and PPB.</p>
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	and allows generators to exert market power by submitting bids above SRMC. This relaxation is uncompetitive.		
Condition 24 General	While some licensees may be compelled to enter into and Intermediary Agreement, other licensees may choose to do this, in which case the licence should indicate that there is a derogation from acceding to the T&SC. The Intermediary decision (AIP/SEM/07/029) is highly discriminatory and anti-competitive, in that it imposes an additional cost burden on independent licensees that is not placed on incumbents.	Airtricity	The licence drafting is consistent with the decision paper.
Condition 24 Para 2	The condition should be time-limited to the life of each GUA. It is not clear that the paragraph 2 reference to “the agreements specified at Schedule 2” only catches active agreements with generating units.	NIE	It is considered that the use of a schedule is the most convenient way to catch the active agreements with generating units.
Condition 24 General	Compliance with bidding principles should lie with the generators but, if the regulators decide otherwise, then it should be specifically allocated to NIE-PPB acting as an intermediary. We do not believe that this is achieved by Condition 24	ESBI	Compliance with the bidding principles is achieved through condition 23 and the equivalent condition which will be imposed in the NIE PPB Licence. The responsibility on bidding will therefore be shared between NIE PPB and the Generators. The Intermediary Agreement will be used to define the responsibilities of each of the parties. While there will be no disapplication of the Condition 23, the licence must be read in the whole together with the responsibilities on each of the parties under the Intermediary Agreement.

Condition 24 Para 2(a)	The scope of paragraph 2(a) needs to be widened so that the purpose of the IA also covers those aspects of the IA that relate to directive compliance (e.g. the restructuring of NIE).	NIE	Current proposals are that such aspects should be covered in amending agreements to the power purchase agreements.
Condition 24 Para 2(b)	<p>Paragraph 2(b) allows the Authority to unilaterally modify the IA. We expect the contracted generators would not be happy with it, unless its scope is limited to practical matters rather than changing the commercial balance of the PPAs.</p> <p>The condition says that the Intermediary Agreement shall contain such "further provisions of such description as may from time to time be set out in a direction given to the licensee by the Authority". NIAER can therefore prescribe terms to go into an arms length contract between two commercial parties without limitation or restriction. PPL believes that contracts freely negotiated between independent parties should not be re-opened unless they are shown to be detrimental to competition or the development of the SEM. Licence obligations and the requirement that the Intermediary Agreement is consistent with the TSC provide the Authority sufficient protection</p>	<p>NIE</p> <p>PPL</p>	The clause in this second draft will make it clear that there is no intention to change the commercial balance of the PPAs. The precise wording may change to take retain compatibility with equivalent conditions in the PPB licence conditions currently subject to consultation.
Other Comments	Since this appears to be one of the few opportunities to raise this issue, ESBI draws the RAs' attention to the omission of the NI Fuel Security Code and how it will be dealt with in the SEM from the Trading & Settlement Code and the regulatory work-streams.	ESBI	The Fuel Security Code is a matter for DETI

Other Comments	It would appear to be a useful approach to Generation Licensing to adopt a license in two parts, with generic conditions in Part 1 applying to all generators and Part 2 consisting of specific conditions relating to legacy requirements arising out of pre-SEM arrangements or new requirements to deal with market power for example.	ESB Regulatory Affairs	While this is a useful approach it is beyond the scope of the current exercise in generation licensing.
Other Comments	The RA's have made the point in recent consultations on draft licenses (MO and SO) that while the legislative structures in the two jurisdictions will give rise to different license structures, in relation to key operational issues, the license drafting will be identical. This approach should be followed in relation to generation licenses also.	ESB Regulatory Affairs	The MO and SO licences are new licences. It is therefore feasible to adopt this approach, whereas the generation licences contain historical differences.
Other Comments	Licence does not appear to require generator to recognise that Eirgrid and SONI are joint MO and SO.	ESB Regulatory Affairs	The MO and SO licences make this position clear
Other Comments	Propose that contents of Intermediary Agreements should be consulted upon	ESB Regulatory Affairs	This is difficult since the Intermediary Agreements deal with confidential power purchase agreements. The RAs propose that any back off arrangements in respect of the Intermediary Agreements between NIE PPB and SONI in a document to be called the PSIA should generally be made public.

Next Steps

The Regulatory Authorities request comments from interested parties in relation to these proposed decisions on generation licences.

Comments should be forwarded, preferably in electronic form, to michael.campbell@niaur.gov.uk or posted to:

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