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**Draft Supply Licence for Northern Ireland  
to facilitate the implementation of the  
Single Electricity Market and EU Directive**

**Second Consultation**

**15 May 2007**

**AIP-SEM-07-153**

## 1. Introduction

On 27<sup>th</sup> March 2007 the Regulatory Authorities published a document<sup>1</sup> consulting on the supply licences proposed to apply in Northern Ireland to implement the Single Electricity Market (“SEM”) and European Union Directive 2003/54/EC (the “Directive”). Non-confidential comments were received from:

- Airtricity
- ESB Regulatory Affairs
- ESB Customer Response
- ESB International
- Northern Ireland Housing Executive
- Northern Ireland Electricity plc; and
- Viridian Power & Energy

This paper reviews these comments and provides the Regulatory Authorities’ responses to these comments. Amended licence drafting is included as an Appendix.

The Regulatory Authorities would be interested to receive the views and comments of interested parties this second consultation draft. The Regulatory Authorities intend to publish all comments received. If any respondent wishes certain sections of their submission to remain confidential they should submit these sections as an appendix marked confidential.

Comments, preferably in electronic form, should be forwarded not later than 5.00pm on the 12 June 2007 to:

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<sup>1</sup> “Draft Supply Licence for Northern Ireland to facilitate the implementation of Single Electricity Market and EU Directive”, AIP-SEM-07-56, 27<sup>th</sup> March 2007.

## 2. Response to Comments

Condition	Comment	Respondent	Regulatory Authorities' Response
2	The requirement to define a company's financial year is unnecessary.	Airtricity	This condition appears in the existing second tier supply licences in NI, and a change of this nature would fall outside the scope of changes required to implement the SEM and Directive.
2	The Condition does not apply to NIE.	Airtricity	An equivalent condition applies to NIE Energy in Condition 47.
3	The Authority should consult with the licensee before relieving it of obligations under the Grid Code.	Airtricity	This condition appears in the existing second tier supply licences in NI, and a change of this nature would fall outside the scope of changes required to implement the SEM and Directive.
9	The Condition serves no purpose and should be removed.	Airtricity	This condition appears in the existing second tier supply licences in NI, and a change of this nature would fall outside the scope of changes required to implement the SEM and Directive.
11	The inclusion of a "k factor" does not provide any incentive for the Authority of Council to remain in budget.	Airtricity	This condition appears in the existing second tier supply licences in NI, and a change of this nature would fall outside the scope of changes required to implement the SEM and Directive.
12	There is no rationale for a prohibition of cross-subsidy for independent suppliers without monopoly assets from which to fund any cross-subsidy.	Airtricity	This condition appears in the existing second tier supply licences in NI, and a change of this nature would fall outside the scope of changes required to implement the SEM and Directive.
13	In paragraph 8(b)(ii)(B), insert "or affiliate" after "subsidy".	Airtricity	This is not considered to be a SEM/Directive change.

<b>Condition</b>	<b>Comment</b>	<b>Respondent</b>	<b>Regulatory Authorities' Response</b>
14	The Condition should be widened to prohibit misleading representation as to the source of or environmental impact of energy supplied.	Airtricity	The proposed change is not relevant to purpose of the Condition, i.e. prohibition of discrimination in supply, and is in any case covered by existing consumer legislation.
17	Suppliers' representatives will not have the expertise to detect theft. The responsibility should reside with the network operator and meter data collector.	Airtricity	The Condition exists in existing licences and a change of this nature would not be SEM or Directive related. It requires that the Supplier take only reasonable steps, which, by definition, does not require anything that is unduly onerous.
17	The Condition should be extended to discontinuation of supply for non-payment.	Airtricity	The provision concerns damage or interference caused by criminal acts, and a change is not of this nature necessary for SEM or Directive compliance.
22	The Condition should be extended to permit SOLR customer data to be aggregated under a different Supplier Unit.	Airtricity	It is not necessary for the licence to mandate how customer data is aggregated. This is a matter for the Trading & Settlement Code.
22	Any direction by the Authority is likely to specify that charges should approximate to annual tariffs. This could result in excess profits or excess costs to be recovered, creating an asymmetric risk.	Airtricity	The perceived problem of asymmetric risk presumes the content of any Direction by the Authority. Any problems could thus be averted by the detail of such Directions.
25	The definition of Domestic Customer is circular.	Airtricity	The definition has been redrafted to improve clarity.
26	The Condition should exempt a supplier that is not qualified to domestic customers under the Market Registration Framework Agreement.	Airtricity	The Condition only applies to the licensee if it is actually supplying Domestic Customers.

<b>Condition</b>	<b>Comment</b>	<b>Respondent</b>	<b>Regulatory Authorities' Response</b>
27	In paragraph 4(b), "time" should be replaced by "date".	Airtricity	Agreed.
31	Condition should be qualified to apply only to suppliers supplying Domestic Customers.	Airtricity	A qualification has been added.
32	Condition should be qualified to apply only to suppliers supplying Domestic Customers.	Airtricity	Conditions 32, 33 and 34 have been qualified as suggested.
33	Condition should be qualified to apply only to suppliers supplying Domestic Customers.	Airtricity	Conditions 32, 33 and 34 have been qualified as suggested.
35	The word "reasonably" should be inserted between "Authority may" and "require".	Airtricity	There is a considerable body of Public Law that constrains the actions of the Authority to be reasonable. This cannot be reflected simply by the insertion of the word "reasonably", as suggested, and is, in any case, unnecessary.
38	The Condition is not enforceable for so long as NIE retains a monopoly of meter reading. This monopoly should be abolished.	Airtricity	A monopoly on meter reading is not enshrined in the licences, and hence it is appropriate that the obligations are placed on the supplier.

Condition	Comment	Respondent	Regulatory Authorities' Response
42-52	<p>Support for the intention to enforce proper business separation, and for the prohibition of branding links between various businesses.</p> <p>There should be additional requirements on sharing of business premises to underline the prohibition on information sharing between staff. Also there should be a requirement for compliance officers to attend meeting between different business units.</p>	Airtricity	The proposed arrangements for separation of businesses are considered to be appropriate.
Schedule 2	The Schedule should set terms for the transfer of supplier responsibilities after the revocation of the licence until settlements obligations expire.	Airtricity	Settlements obligations are set out in the Trading & Settlement Code, and these obligations contractually survive licence revocation.
Schedule 2	Important for all issues surrounding licence revocation to be defined in advance of a Schedule 2 event.		This is not considered to be a SEM/Directive change.
General	NIE Energy and PPB should be licensed separately.	ESB Regulatory Affairs	Whilst separate licensing permits activities to be undertaken by separate licensees, it does not of itself deliver better ring fencing than can be achieved between the separate businesses of a single licensee. Furthermore, there is no prohibition that covers the PPB activity and hence it is not separately licensable.

<b>Condition</b>	<b>Comment</b>	<b>Respondent</b>	<b>Regulatory Authorities' Response</b>
General	Final drafting is contingent on the outcome of other consultations and decisions and market participants should have the opportunity to comment on the final draft.	ESB Regulatory Affairs	The PPB-related conditions of Part IV, and the specific issues of economic purchase obligation and tariff setting, are subject of separate consultations.
N/A	Conditions relating to tariff setting are not included	ESB Customer Supply	These conditions are the subject of separate consultation.
46	This condition will be updated when the economic purchase obligation criteria are agreed, and should be consistent between jurisdictions.	ESB Customer Supply	This condition is the subject of separate consultation.
21	A consultation is understood to be taking place on the development of a common PSO methodology and benchmark. Condition 21 does not reflect these considerations.	ESB Customer Supply	Conditions on the PPB activity have been consulted on separately. Nevertheless, Condition 21 concerns only binding suppliers into a mechanism for the payment of the PSO levy. It is under consideration as to whether the PSO levy will be collected from suppliers by NIE T&D, in which case, this Condition may not be required.

Condition	Comment	Respondent	Regulatory Authorities' Response
26	The "PES-related" condition to supply customers with poor credit rating or undesirable load is not included.	ESB Customer Supply	The Condition requires the licensee to offer to supply Domestic Customers, irrespective of credit rating or load characteristics. Condition 27 requires suppliers supplying Domestic Customers to have standard terms and conditions. If the supplier wishes to distinguish Domestic Customers with poor credit ratings or undesirable loads from other Domestic Customers, then the standard terms and conditions may address this.
45,48,49 & 51	Business separation and ring fencing should be applied appropriately in both jurisdictions. Power Procurement Business will be a participant in the pool market and hence should be separately licensed and separate operationally, with appropriate business separation and ring fencing put in place. These conditions should address: (i) how will commercially sensitive information shared with the holding company be protected; and (ii) will there be a prohibition regarding staff/consultants working concurrently in different parts of the business?	ESB Customer Supply	Whilst separate licensing permits activities to be undertaken by separate licensees, it does not of itself deliver better ring fencing than can be achieved between the separate businesses of a single licensee. Furthermore, there is no prohibition that covers the PPB activity and hence it is not separately licensable. Notwithstanding the fact that PPB will be bidding into the pool, for the purposes of compliance with the Directive, the PPB activity is regarded as supply. The prohibitions on the separation of businesses are regarded as being appropriate.
N/A	A final decision is awaited on fuel mix / environmental impact disclosure	ESB Customer Supply	Fuel mix disclosure is to be considered separately from the SEM changes.



<b>Condition</b>	<b>Comment</b>	<b>Respondent</b>	<b>Regulatory Authorities' Response</b>
14	The Condition should be make it clear that the prohibition applies only in Northern Ireland	ESBI	The licence applies only to supply in Northern Ireland.
17	The condition imposes a requirement that current business models for suppliers cannot support.	ESBI	This is a condition in existing supply licences.
22	Directing a supplier, which is not the PES, is not consistent with a competitive market. It would be more appropriate for the Authority to invite suppliers to tender for the position of SOLR. Although costs are recoverable, it may not be possible for a supplier to incur increased working capital requirements.	ESBI	This condition is similar to a condition applied in GB, where it is not regarded as being inconsistent with a competitive market. There are limitations on the ability of the Authority to issue SOLR Directions, which safeguard the interests of suppliers. The condition allows the Authority to issue such directions, and select the SOLR, on a case-by-case basis (although it is acknowledged that in the first instance only NIE Energy will be in a position to fulfil the role of Supplier of Last Resort.)
26	A duty to offer terms places increased risk on suppliers who are not in a position to procure additional financial instruments. To oblige a supplier to offer terms to all customers is contrary to the principle of competition.	ESBI	Licensees have the ability to adjust their standard terms and conditions in order to manage their customer demand. Furthermore, the condition applies only to Domestic Customers, where it is considered inappropriate to allow price discrimination against some customers.

Condition	Comment	Respondent	Regulatory Authorities' Response
30-36	None of the conditions represent a problem but the increased reporting requirements are likely to increase costs to suppliers.	ESBI	It is recognised that measures that provide protection for Domestic Customers may involve costs to suppliers of those customers. Nevertheless, these measures are required by the Directive, and it is considered that the benefits to Domestic Customers will outweigh any increased costs.
General	Emerging best practice is for housing developments to include renewable generation, CHP, etc. Metering arrangements should be required that enable residents to capture the benefits of such schemes or, alternatively, arrangements should allow such generators to achieve close to market prices for electricity sold.	NIHE	This is not considered to be a SEM/Directive change.
1	No SEM or Directive justification for changes made to beginning of paragraph 3 or paragraph 4(a) and paragraph 4(c) is not required.	NIE	<p>Paragraph 3 is currently in the second tier supply licence and paragraph 4(a) is amended as paragraph 4(b) covers numbered Schedules and paragraph 4(c) taken from existing NIE licence.</p> <p>The creation of a single supply licence takes best elements of both types of existing licences and aligns them for consistency.</p>

Condition	Comment	Respondent	Regulatory Authorities' Response
1	Definition of Deemed Contract is not complete and as there are several categories of contract that could conceivably fall within the definition clarification would be helpful.	NIE	The definition has been completed to include the specific legislative reference.
1	Definitions of Distribution Code and Grid Code should be defined in full in this licence and not cross refer to definitions in other licences	NIE	Although in principle it is agreed that licences should be stand alone documents, as the definition of Distribution Code and Grid Code will inevitably need cross reference to other licences, it is unnecessary to amend the definitions in the manner suggested. Also it is better to cross-refer rather than have to change definitions in all licences if a definition changes in one particular licence.
1	Definition of General Consumer Council is to be updated to Consumer Council for Northern Ireland to reflect current name	NIE	This is not considered to be a SEM/Directive change.
1	Definition of Licensee (for purpose of NIE Supply) requires amendment to reflect definition in existing licence	NIE	This drafting enables the licences to be aligned.
1	Definition of SEM Order should include reference to the proposed legislation under s2(2) of ECA on which DETI is about to consult	NIE	The proposed s2(2) regulations are not made for the purposes of implementing SEM but for purposes of implementing the Directive. However, a separate definition, of the Directive Orders, has been included.

<b>Condition</b>	<b>Comment</b>	<b>Respondent</b>	<b>Regulatory Authorities' Response</b>
1	Is the definition of interconnector intended to capture the North-South Link? If not it needs to be amended.	NIE	The North-South circuits have been excluded from the definition.
5	Clarification requested as would not seem to be a generic requirement applicable to all supply licences	NIE	This condition is currently included in all supply licence but it is subject to separate consultation and decisions will be informed by that separate consultation.
9	Needs to reflect drafting in SO licence as Authority has agreed to the changes.	NIE	The changes have been made.
10	Paragraph 2 should also refer to Article 51 of the Energy Order and paragraph 3 to refer to Article 31(3) of the Order.	NIE	This change is not necessary for SEM or Directive implementation.

Condition	Comment	Respondent	Regulatory Authorities' Response
11	<p>Condition should reflect NIE's existing supply licence and therefore may be appropriate to move to Part III.</p> <p>Provisions which are now redundant (e.g. initial fee) should be removed and to be consistent with TO licence.</p> <p>Suggest paragraph 3(a) is deleted as it is NIE superseded by SEM.</p> <p>Suggest additional drafting to clarify paragraph 3(b)</p>	NIE	<p>The Condition is a standard condition for all supply licences therefore remains in this Part.</p> <p>As a general condition appearing in all supply licences, it is appropriate that the provisions regarding initial fees remain in all licences.</p> <p>The reference to power procurement costs has been removed.</p> <p>Additional drafting has been included.</p>
14.	Suggest a new provision at paragraph 3 to exclude from the prohibition any existing arrangements	NIE	Implementation of the SEM and Directive does not require any change.
16	Not required as obligations are satisfied by licensee entering into arrangements with Common Service Provider	NIE	The existing licences provide for the possibility of suppliers owning meters, and hence it is appropriate that the provisions remain. Nevertheless, the condition has been amended to make clear that obligation applies only in respect of relevant metering equipment that is owned by the licensee, and not in respect of other sites where the licensee is the supplier but does not own the relevant metering equipment.

<b>Condition</b>	<b>Comment</b>	<b>Respondent</b>	<b>Regulatory Authorities' Response</b>
17	The Condition goes too far in requiring supplier to detect and prevent theft.	NIE	The condition is in existing supply licences, and requires only reasonable steps.
19	The obligation to provide information is contained in the industry codes and also does not appear to SEM or Directive related.	NIE	This condition is taken from an existing condition in second tier supply licence and changes are SEM related.
22	Drafting comment relates to paragraph 6 not being aligned with GB provision.	NIE	Aligns with proposed changes to GB licences, which are scheduled to take effect shortly.
24 & 29	Do not relate to NIE's supply business but to Common Service Provider matters and therefore should be deleted and the relevant aspects picked up as Codes of Practice review.	NIE	Although NIE Supply does not need to undertake the relevant activities itself (i.e. it can sub-contract to the CSP) it is appropriate for the licence obligations to remain with NIE Supply. It can ensure that it has appropriate contractual mechanisms in place with its sub-contractor in relation to risk associated with licence breach.
25	Wish to understand how the exception in paragraph 2 for residential and accommodation services has been selected; drafting of paragraphs 1 and 2 needs to be clarified as the definition is circular; paragraph 6 to include at end 'until the Domestic Premises ceases to be supplied under a Multi-Site Contract'.	NIE	The drafting has been amended to improve clarity.

<b>Condition</b>	<b>Comment</b>	<b>Respondent</b>	<b>Regulatory Authorities' Response</b>
26	Requirement for supply contract to be in writing should be deleted (as contracts concluded over telephone and deemed contracts not in writing)	NIE	The Condition has been redrafted to exclude Deemed Contracts, although it is considered still that all Contracts need to be in writing.
27	Too prescriptive and more appropriate to consult on the arrangements separately.	NIE	The Condition is considered necessary for compliance for the Directive.
28	Deemed Contracts have not been defined, and clarification is sought of the meaning of Non-Domestic Customers and the relationship with Condition 27(5)	NIE	Defined terms have been added or amended for Contracts, Deemed Contracts and Domestic and Non-Domestic Customers.
28	Termination charges are excluded for Deemed Contracts.	NIE	It is not considered appropriate for termination charges to be levied on customers that are being supplied by the licensee as a result of Supplier of Last Resort Direction rather than customer choice.
29	Covers the same ground as Codes of Practice and standards set by legislative means. Not aware of any precedent in the equivalent GB arrangements.	NIE	The Condition is modelled on the equivalent condition in the gas supply licences. It only applies if the Authority directs, and applies to aspects of the service provided by Suppliers that is not addressed by the Codes of Practice.

Condition	Comment	Respondent	Regulatory Authorities' Response
36	This Condition is not appropriate as it relates to the Common Service Provider.	NIE	The licences do not prevent suppliers from obtaining services from other providers (although this does not preclude the possibility that other industry documents may do so). Accordingly, it is considered appropriate that the obligation is placed on Suppliers, who can ensure that they have the appropriate contractual mechanisms in place.
38	This Condition needs to recognise the role of the Common Service Provider.	NIE	The licences do not prevent suppliers from obtaining services from other providers (albeit other industry arrangements may presently do so). Accordingly, it is considered appropriate that the obligation is placed on Suppliers, who can ensure that they have the appropriate contractual mechanisms in place.
40	This Condition should include consideration of on-line marketing activities.	NIE	On-line marketing activities are covered by existing consumer legislation.
41	Definitions of "Distribution Business", "System Support Services" and "Transmission Owner Business" should be defined in full in this licence and not cross refer to definitions in other licences.	NIE	It is considered preferable to cross-refer in this case.



Condition	Comment	Respondent	Regulatory Authorities' Response
42	References to “the Supply Businesses and the Power Procurement Business” should be replaced by a reference to “Separate Businesses”; the definition of “ultimate controller” should be limited to persons exerting significant influence; and references to “arrangement” should be “arrangements” and to “rights” to “right”.	NIE	The terms, “Separate Businesses” and “arrangements”, have been used. The term “ultimate controller” is used in the current NIE licence, and a change of this nature would not be SEM-related.
44	A limit on own-generation is inappropriate under the SEM., and the condition is too wide in scope in applying to affiliates of the licensee.	NIE	The Condition has been amended such that the limit on own generation will fall away on the divestment of SONI. All other changes would not be necessary for SEM.
44	The limit on own generation was modified by direction of the Authority and the provision should be amended accordingly.	NIE	The direction of the Authority did not modify the licence, although the effect of the direction is still in place.
44	NIE has not been provided with Schedule 2 to this licence and hence cannot comment on the definition of “specified event”.	NIE	The definition of “specified event” refers to the terms of revocation, not of the licensee’s licence, but of the licence of another generator.
44	Definition of “land bank” should be included in full	NIE	It is considered better not to cross-refer, and would not be a SEM-related change.

<b>Condition</b>	<b>Comment</b>	<b>Respondent</b>	<b>Regulatory Authorities' Response</b>
45	Paragraph 1 of the Condition has been superseded by the requirement to buy from the pool.	NIE	Not all generation is necessarily pooled, and hence there may be purchases of non-pooled electricity.
46	The form of this Condition will be impacted by the outcome of the consultation being run by NIAUR and CER, but the Condition should be amended to delete references to affiliates.	NIE	The Condition is being separately consulted upon.
47	The relevant date for the start of the first financial year is 1 April 1992.	NIE	Date amended.
47	The reference to payment security policy in the current NIE licence should be retained.	NIE	This provision has been moved by Part IV, and was consulted upon in the separate consultation on PPB-related conditions <sup>2</sup> .
48	The provision needs to be amended to delete the obligation to procure compliance by affiliates. The licence should not seek to indirectly regulate other entities in the group.	NIE	This is not considered to be a SEM or Directive - related change.
49	The licence should not seek to indirectly regulate other entities in the group.	NIE	This is not considered to be a SEM or Directive - related change.

<sup>2</sup> "Draft Power Procurement Business Licence Conditions to facilitate the implementation of the Single Electricity Market and EU Directive. Consultation Paper", AIP-SEM-07-115, 13 April 2007.

<b>Condition</b>	<b>Comment</b>	<b>Respondent</b>	<b>Regulatory Authorities' Response</b>
50	The obligation in paragraph 2 should be limited to that required to SEM and Directive compliance. The obligation should not come into effect until such time as specified by the Authority.	NIE	The Condition has been amended to take effect from a date as directed by the Authority.
51	The words "complete and effective" are highly ambiguous. Propose drafting consistent with the TO licence.	NIE	The words "complete and effective separation" have been replaced by "full managerial and operational independence" and a new paragraph 5 provides consistency as suggested. However, in response to concerns that the licensee should not be required to procure undertakings from affiliates, the obligation has been qualified.
Sch. 2.	References in 1(d) should be changed to sections 193 and 194 of the Enterprise Act 2002 should be changed.	NIE	This considered not to be a SEM or Directive related change
Sch. 2.	The inclusion of a new provision in 1(e) is not a SEM-related change, and should be deleted.	NIE	The drafting is intended to mean that, for NIE Energy, the licence can be revoked, as in the current licence, should the licensee cease to carry on the Supply Business. The other provisions, relating to non-supply for a five year period, reflects the current second tier licences, and is intended to apply to licensees other than NIE Energy.
Grant	Grant and Terms of Licences will differ for different licences, depending on whether a licence is newly granted or converted from an existing licence. It is critical to ensure that no existing supply licences terminate.	VP&E	It is the intention that no existing supply licence will be terminated.

<b>Condition</b>	<b>Comment</b>	<b>Respondent</b>	<b>Regulatory Authorities' Response</b>
6-9, 17,18,39	A number of provisions appear to be inappropriate in the context of a supply business, and reflect the historic position that supply was undertaken by the same entities that owned distribution systems.	VP&E	The conditions exist in the existing second tier supply licences as a consequence of distribution not being a separately licensable activity. A change of this nature would fall outside the scope of changes required to implement the SEM and Directive.
1	The intention of the definition of "authorised electricity supplier" is not clear in the light of current interconnector access arrangements in Northern Ireland.	VP&E	The definition, together with that of "interconnector", has been revised.
1	The definition of "interconnector" needs to be changed to refer to conveying electricity into or out of the SEM, rather than Northern Ireland.	VP&E	The definition has been revised.
9	Is this condition appropriate for an electricity supply licence?	VP&E	The condition is in the existing second tier licences and removing the requirement would fall outside the scope of changes required to implement the SEM and Directive.
13	The rationale for a prohibition on disclosure of commercially sensitive information to any Regulated Business is unclear, and it is discriminatory to apply this to prohibition only to Energia.	VP&E	The provision is in Energia's existing second tier supply licence. (The provisions may have been transcribed into some other second tier licences, although here the provisions have largely no effect and have been included clearly in error.) The rationale for the provision is not affected by SEM or the Directive and hence a change of this nature would fall outside the scope of changes required for SEM and Directive Implementation

Condition	Comment	Respondent	Regulatory Authorities' Response
13	The prohibition on employing someone who has, within 3 months, been engaged by a Regulated Business puts Energia at a competitive disadvantage.	VP&E	The provision is in the existing Energia second tier licence and a change of this nature would not be a change required for SEM or Directive implementation.
14	The test for dominance should not include affiliates, as treating affiliates as a single entity implies that ring-fencing obligations will not work or will be consciously breached.	VP&E	<p>The condition is in the existing second tier licences and a change of this nature would fall outside the scope of changes necessary to implement the SEM or Directive.</p> <p>Furthermore, the potential for the exercise of dominance does not necessarily depend on explicit communication between affiliates that would breach any ring-fencing provision. Hence the condition continues to be appropriate.</p>
22	If a Supplier of Last Resort Direction ceases after six months then customers that have not chosen to transfer to a supplier other than the supplier of last resort will presumably have no supplier.	VP&E	After six months, any customer transferred under a Supplier of Last Resort Direction will be deemed to enter into a new Deemed Contract. In respect of customers supplied under such a direction, a supplier may make higher charges and is entitled also to recover additional costs. It is considered appropriate that these rights should fall away after six months and that these customers should be then supplied under a normal Deemed Contract.

Condition	Comment	Respondent	Regulatory Authorities' Response
44	Whilst VP&E has no immediate interest in constructing or owning gas pipelines, the restriction is queried. The restriction is discriminatory against Viridian.	VP&E	A restriction on own generation and gas pipeline capacity is in the existing NIE licence (and applies to any affiliate of NIE). It is considered that removing this condition would be inappropriate whilst NIE (and any affiliate) is still affiliated with SONI. When SONI is divested, under the SEM, arguably the location of generation within the island of Ireland should not matter, and it would be inappropriate to have a restriction applying only in Northern Ireland. Accordingly the condition has been modified to make it conditional on affiliation with the holder of a licence for system operation on the island of Ireland.
46	There appears to be error in drafting such that the economic purchase obligation on NIE Energy will apply also to its affiliates, i.e. Energia.	VP&E	The condition exists in the current NIE licence, albeit the condition is 'switched off', and in this draft still no change has been made.  A decision as to new arrangements for the regulation under the SEM of the PES and former PES businesses is subject of a separate consultation and any changes that are considered necessary as a result of the SEM will be made consequential to that separate consultation.

### **3. Changes to the First Consultation Draft**

#### *General*

A revised draft of the NI supply licence is included in the Appendix, change-marked against the first consultation draft. The changes that have been made are changes in response to the comments received, as discussed in the previous section.

Where suggested changes have been rejected, in some cases it does not mean necessarily that the Regulatory Authorities do not see any merit in the suggestion. The Regulatory Authorities may merely consider that the changes are not related to the implementation of SEM or the Directive, and hence the changes would not be appropriate using the legislative powers for SEM and Directive implementation. Where the Regulatory Authorities do see merit in the suggested change, it is possible that it could be made by agreement with the licensee.

#### *Condition 44*

Attention is drawn to Condition 44 on the restriction on own-generation and gas pipeline capacity, as exists in the current NIE licence (applying to NIE and any affiliate of NIE). As outlined in Section 2, it is considered that removing this condition would be inappropriate whilst NIE (and any affiliate) is still affiliated with SONI. When SONI is divested, under the SEM, arguably the location of generation within the island of Ireland should not matter, and it would be inappropriate to have a restriction applying only in Northern Ireland. Hence the condition has been modified to make it conditional on affiliation with the holder of a licence for system operation or a licence for market operation on the island of Ireland.

The rationale for having and, under SEM, removing a restriction on own-generation, contingent on SONI divestment may be clear. However, it is less clear how the SEM should affect the ownership of gas pipelines. The Regulatory Authorities would thus welcome views as to whether it would be appropriate that the restriction on the ownership of gas pipelines also be removed upon the divestment of SONI.

#### *Conditions 32, 33 and 34*

Attention is also drawn to Conditions 32, 33 and 34. NIE has existing obligations to produce the Codes of Practice required by these Conditions. NIE's obligations extend to all of its customers, both Non-Domestic as well as Domestic, even though licences of current second tier suppliers, as suppliers of only Non-Domestic, do not contain equivalent obligations. The Regulatory Authorities recognise that to impose these obligations on suppliers that do not intend to

supply Domestic Customers would be onerous, although the requirement is considered essential in respect of Domestic Customers. Two options have been considered:

- (i) to require any supplier that supplies Domestic customers to owe the obligations in these Conditions to all Customers; or
- (ii) to drop the requirement on NIE Energy in respect of its Non-Domestic Customers.

The draft licence conditions have adopted option (i). However, the Regulatory Authorities would welcome views on this approach.

#### *Condition 52*

A few changes have been made which are not in response to comments received to the consultation. Attention is drawn to a new Condition 52, which requires NIE Energy to register the Error Supplier Unit under the Trading & Settlement Code (TSC). This new condition has been added for consistency with the TSC.

#### *Condition 47*

A change has been made to paragraph 3(c), as a result of comments received concerning the equivalent provision in other licences being amended for SEM and Directive purposes, and to maintain consistency with them. The new wording is also consistent with the equivalent provision in GB distribution licences.

#### *Other Changes*

Other changes are not included in the draft but are anticipated. In particular:

- (i) The condition requiring the licensee to enter into the PSO Agreement may be removed if it is decided that the PSO Levy is collected by the Transmission or Distribution Business of NIE, rather than the Power Procurement Business;
- (ii) As mentioned in Section 2, the provisions concerning economic purchase obligations are subject of separate consultation<sup>3</sup>. It is envisaged that this consultation will be concluded upon before Go-active, but that detailed licence conditions will be published during the transition period between Go-active and Go-live. Whilst the exact details will be discussed in this consultation, the existing economic purchase obligation may be replaced

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<sup>3</sup> "A Strategy for the Regulation of ESB and NIE in the Single Electricity Market: A Consultation Paper", AIP/SEM/07/16, 26th February 2007.



by a new condition which requires the licensee to adopt an approved methodology satisfying the principles:

- (i) the licensee shall procure contracts at the best price reasonably obtainable having regard to the contracts available to it;
- (ii) The licensees shall procure contracts in a fair, open and transparent manner
- (iii) As mentioned in Section 2, provisions concerning tariff methodologies are currently being developed and will be consulted upon separately. Details will be described as part of this other process, with the intention that the proposals will provide transparency in the manner by which wholesale electricity costs and other costs are reflected by NIE Energy and ESB Customer Supply when setting retail tariffs. Licence conditions will be published during the transition period between Go-active and Go-live.
- (iv) As described in November 2006 paper on Directed Contracts<sup>4</sup>, there will be a licence condition requiring that suppliers who elect to receive Directed Contracts will certify to the Regulatory Authorities that they have not and will not enter in to agreements with customers that pre-arrange for the supplier to serve a customer for part of the year and have NIE Energy serve the customer for part of the year or pre arrange for the customer to be switched to NIE Energy and return to the supplier.

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<sup>4</sup> "Market Power Mitigation in the SEM Directed Contracts: Price, Form and Allocation: Supplemental Decision Paper", AIP-SEM-165-06, 3 November 2006

#### **4. Next Steps**

Responses to this consultation are requested by 12 June 2007. Views are particularly sought on the points raised in Section 3, as well as points concerning the drafting that have not already been covered.

Following a consideration of the responses and other relevant matters (for example consequential changes arising from the consideration of other consultations etc.) it is expected that the enduring conditions of the licence will be finalised for implementation from SEM/Directive Go-active, planned for 3 July 2007. It is noted that a separate consultation exercise is being undertaken on the transitional conditions that it is proposed will also apply from SEM/Directive Go-active.

A separate paper, discussing responses to the consultation on the PPB-related conditions is planned for publication on 18 May 2007. As discussed above, a decision following the conclusion on regulation of NIE Energy and ESB Customer Supply and the economic purchase obligation will be published before Go-active, with draft licence conditions being published either prior to Go-active or during the transition phase between Go-active and Go-live.

**APPENDIX**

**ELECTRICITY SUPPLY LICENCE**

**(incorporating conditions for NORTHERN IRELAND ENERGY  
and ENERGIA)**

**SECOND CONSULTATION DRAFT**

**Change-marked against first consultation draft**