

**Notification to Supply Licensees of Proposed
Amendments to Electricity Supply Licences for the
Single Electricity Market**

Consultation Paper

AIP-SEM-07-156

16 May, 2007

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1. Introduction

1.1 Background

Earlier this year, the Commission for Energy Regulation (CER) and the Northern Ireland Authority for Utility Regulation (NIAUR) outlined a number of retail issues that need to be addressed prior to November 2007. The paper was titled “A Strategy for the Regulation of ESB and NIE in the Single Electricity Market: A Consultation Paper (AIP/SEM/07/16)”.

One of the matters covered in the paper related to the necessary changes that need to be made to supply licences as a result of the introduction of the Single Electricity Market. This paper sets out the Commission’s proposed changes to the wording of supply licences.

The various changes included in this document will impact to varying level on each of the following licence forms:

- Supply Licence
- Interim PES Supply Licence
- Green Supply Licence
- CHP Supply Licence
- ESBIE Supply Licence
- ESBIE Green Licence
- ESBIE CHP Licence

Amended versions of each of the above licences will be published with this paper with all changes explicitly marked. Two versions of each will be published; one for the period from Go-Active to Go-Live and a second for the period from Go-Live.

1.2 Legal Basis for Licence Modifications

The proposed licence modifications are made pursuant to the power to modify licence conditions contained in section 14A of the Electricity Regulation Act 1999 (to be inserted by section 13 of the Electricity Regulation (Amendment) (Single Electricity Market) Act 2007).

1.3 Consultation paper

Section 2 of this paper outlines the responses received to the recent consultation paper on regulating ESB and NIE in the SEM¹ and the proposed approach to amending licence conditions which will occur in two stages (for SEM “Go Active” (3rd July 07) and “Go Live” (1st November 07)). Section 3 sets out the proposed changes to the ESB’s Public Electricity Supplier licence. Section 4 outlines changes to other forms of supply licences. Section 5 provides information on the transitional arrangements, including draft licence transition conditions, and Section 6 provides the next steps in this process.

1.4 Consultation

The Commission requests comment from interested parties in relation to the proposals set out in this document. All responses should be forwarded, preferably in electronic form, to <mailto:cjohnston@cer.ie> or to:

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¹ The paper was called “A Strategy for the Regulation of ESB and NIE in the Single Electricity Market: A Consultation Paper (AIP/SEM/07/16)

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Comments received may be published on the Commission's website; therefore any comments that are deemed confidential should be marked as such and, where possible, placed in an annex to the comments. Relevant responses to comments made will be covered in the next published paper on this issue.

The deadline for receipt of comments is 17.00 on Friday 8th June 2007.

2. Background

An important part of the Regulatory Authorities' recent consultation paper² was the need to review and develop a suitable framework for licensing electricity suppliers. In this regard the Regulatory Authorities considered two models;

- The first model proposed the development of a specific supply licence for each Public Electricity Supplier and a separate form of supply licence for all other suppliers. This is currently the model employed in both jurisdictions.
- The second proposal is the development of one supply licence for all suppliers in each jurisdiction (i.e. a single supply licence for NI and a single supply licence for IRL). This licence would have a certain set of conditions that apply solely to the designated PES and other conditions that apply to equally to all licensees. In addition conditions that relate solely to the affiliates of PES may also be required such as those relating to ring fencing arrangements.

The Regulatory Authorities proposed to adopt the second approach. However it was also proposed that there would be no concept of PES in Northern Ireland and instead NIE Supply would be treated like any other supplier but with additional obligations similar to those imposed upon ESB PES.

Further the recent consultation paper³ also set out proposals related to the Supplier of Last Resort (SOLR) and Universal Service Obligation (USO). The SOLR relates to a situation whereby a supplier goes out of business and its customers must be served by an alternative supplier in the market. The Universal Service Obligation relates to the right to be supplied with electricity of a specified

² See footnote 1

³ See footnote 1

quality within their territory at reasonable, easily and clearly comparable and transparent prices. In accordance with the provisions of EU Directive 2003/54/EC the European Commission will require notice of the imposition of such obligations on a supplier. The Regulatory authorities proposed that, given the lack of response from other interested parties, both the SOLR and USO would rest with ESB Customer Supply in ROI and NIE Supply in Northern Ireland.

There were 10 responses to the consultation paper. The respondents were:

- AES
- Airtricity
- Bord Gáis
- ESB Customer Supply
- ESB Independent Energy
- ESB Power Generation
- ESB Regulatory Affairs
- NIE
- Synergen
- Viridian

In general, the respondents were in agreement with the proposals set out in the paper in relation the licensing framework and the SOLR/USO conditions of the licence.

A number of respondents requested clarity on the reasons for the difference in treatment of the PES in IRL and NI. They state that there should be no difference in treatment between each supplier. The Regulatory Authorities' view is that although there are slight differences in licensing arrangements, in that while ESB Customer Supply will be officially designated as a PES and NIE Supply will not, the aims and objectives of the regulatory framework are the same.

Further, while most respondents supported the second approach to licensing they requested that the RA's ensure that the appropriate ringfencing conditions are in place and are consistent in both jurisdictions.

While some suppliers expressed an interest in taking over the SOLR role once the market has matured, no supplier expressed an interest in taking over the SOLR in the shorter term. The RA's are committed to re-examining the role of the SOLR and USO once the market is more fully developed.

In respect of amending the licences, in Ireland, all existing supply licences will be amended in two stages. Stage one will take effect from Go-Active (3rd July 2007) when licensees will be operating under their existing licences, with the addition of transition-specific conditions requiring them to generally do what is within their power to give full and timely effect to the SEM arrangement along with some enduring conditions that are considered necessary pre-Go Live (Go live date: 1st November 2007). The second stage is when the licences are further amended with effect from Go-Live (or immediately prior thereto) to give effect to the enduring SEM licence condition. The RAs consider this two-stage approach will provide regulatory certainty for licensees as well as the least risk during the Go-Active phase.

This document sets out both proposed transition-specific and enduring conditions for each supply licence that will apply from:

1. 3rd July 2007 (Go-Active) in the case of transition-specific conditions
2. 1st November 2007 (Go-Live) in the case of further enduring SEM changes

The Commission proposes that any licence modifications required as a result of the Directive 2003/54/EC will also be consulted upon separately under the licence modification process set out in the Electricity Regulation Act, 1999. This applies to provisions in relation to customer protection and Supplier of Last

Resort and also to provisions in relation to fuel mix disclosure. Only changes required as part of the SEM project will be considered at this time.

3. Public Electricity Supply Licence

The following changes to the PES licence are required to implement the Single Electricity Market. The following changes will impact directly on the PES supply licence issued to ESB only. Similar changes will be made to the equivalent licences in Northern Ireland via a separate process.

Condition 1 - Interpretation and Construction

A number of additional definitions are required to give affect to the changes required for SEM. In addition changes have also been made to a number of definitions already set out in the licence. These proposals are universal and apply where relevant to all supply licences and also to the proposed generation licence.

Condition 3 - Terms of Supply to Final Customers

The SEM Regulation paper proposed that ESB PES and its Northern Ireland equivalent must produce Tariff Setting Methodology and a Tariff Policy Statement for approval by the relevant regulatory authority.

Provisions concerning the above are currently being developed and will be consulted on 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.

Condition 9 - Economic Purchasing of Electricity

Condition 9 of the interim PES licence sets out that the licensee must engage in the economic purchase of electricity. In the SEM Regulation paper the

Regulatory Authorities set out the principles by which these purchases will be governed.

Detailed provision concerning economic purchase obligations will be the subject of separate consultation. 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 by a new condition which requires the licensee to adopt an approved methodology satisfying the general principles:

- The licensee shall procure contracts at the best price reasonably obtainable having regard to the contracts available to it;
- The licensees shall procure contracts in a fair, open and transparent manner

Condition 20 - Trading and Settlement Code

This Condition has been amended such that the licensee must be a party to, and comply with, the Single Electricity Market Trading and Settlement Code (TSC). In addition the settlement of energy under the TSC is reliant upon the PES registering an Error Supplier Unit for its jurisdiction, and that the TSC is drafted so that this requirement sits in the licence. The drafting of this provision reflects this requirement.

Condition 21 - Intermediaries

This is a new condition and it provides that the licensee, where acting as an intermediary, shall comply with the Single Market Trading and Settlement Code in so far as it is applicable in respect of any generation units for whom it is acting

and it shall also comply with the bidding principles with which a generator is, through its licence, required to comply.

4. Changes to Other Forms of the Supply Licences

The following changes apply to supply licences issued pursuant to Section 14(1), (b), (c), (d) of the Electricity Regulation Act 1999.

Condition 1 - Interpretation and Construction

A number of additional definitions are required to give effect to the changes required for SEM. In addition changes have also been made to a number of definitions already set out in the licence. These proposals are universal and apply where relevant to all supply licences and also to the proposed generation licence.

Condition 4A - Prohibition of Certain Contracts or Arrangements

As described in November 2006 paper on Directed Contracts, 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 ESB PES 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.

A detailed licence conditions will be published during the transition period between Go-Active and Go-Live.

Condition 14 - Trading and Settlement Codes

This Condition has been amended such that the licensee must be a party to, and comply with, the Single Market Trading and Settlement Code.

Condition 15 – Intermediaries

This is a new condition and it provides that the licensee, where acting as an intermediary, shall comply with the Single Market Trading and Settlement Code in so far as it is applicable in respect of any generation units for whom it is acting.

The Licensee shall also, when submitting the price components of Commercial Offer Data under the Single Electricity Market Trading and Settlement Code, comply with the relevant conditions of the licence granted pursuant to Section 14(1) (a) of the Act to the person on whose behalf the Licensee is acting as Intermediary.

4.1 Additional change to Green and CHP licences

The following are additional change (to those set out above) apply only to Green and CHP supply licences issued pursuant to Section 14(1)(c) and (d) respectively of the Electricity Regulation Act 1999.

Condition 20 - Additional Conditions for holders of licences under Section 14(1)(c) and (d)

This condition is amended by removing the requirement for the licensee to certify that the Licensee has, for the previous year to the anniversary of the date of issue of the licence, complied with the electricity balancing criteria, pursuant to the Trading and Settlement Code.

5. Transitional Arrangements

The Regulatory Authorities' consultation paper on Transitional Changes to Licences in Ireland and Northern Ireland (AIP-SEM-07-137) published on 4th May provides draft transition conditions for licences in both jurisdictions. The conditions are set out in a consistent manner but with specific changes to recognise the different legislative backgrounds existing in the two jurisdictions as well as the differing run off⁴ requirements.

Condition A of the draft transition conditions provides a means of switching on various transition conditions at various times and just as importantly of deleting those conditions that cease to be relevant.

Condition B of the draft transition conditions provides a general set of transition arrangements. Paragraph 1 contains a general obligation for licensees to do all reasonable things within their power to give full and timely effect to the SEM arrangements. Paragraph 2 requires licensees to co-operate with each other and across jurisdictions. Paragraphs 3, 4 and 5 are concerned with the directions that the CER and the Authority can make. Paragraph 6 (and 7 of the NI Condition) relate(s) to how such directions will be made. The succeeding paragraphs set out obligations on licensees not to frustrate the implementation of the SEM, the way in which any identified conflict between the transition condition and any other condition or direction is to be dealt with, and lastly the information that may be required of the licensee at the behest of the RAs.

Condition C of the draft transition conditions sets out licence specific matters that are in the opinion of the RAs essential for the full and timely implementation of the SEM arrangements.

⁴ In relation to any arrangements, run-off means the bringing to an end of those arrangements, which shall include the determination and settlement (including by way of reconciliation) of electricity and payments in connection with periods up to and including the point at which such arrangements are brought to an end.

Condition D of the draft transition conditions addresses the general set of run off conditions to be applied in each jurisdiction.

Condition E of the draft transition conditions sets out any licence specific matters that are in the opinion of the RAs essential for the full and timely run off of the legacy arrangements.

6. Next Steps and Licensing Process

All Suppliers will be advised that the Commission proposes to modify supply licences for the purposes of the SEM, that the Commission is required to consult with them on such modifications and that a consultation document is being published.

Following the consultation process and once the proposed modifications are finalised, the modifications will be published and that notice of the modifications be served on each of the licence holders. The date on which modifications are to take effect should be made clear and there will, to the extent possible, be a reasonable period between notification and the date the modifications take effect.