

NORTHERN IRELAND ELECTRICITY plc

**Licence to Participate in
Transmission for NIE to facilitate the
implementation of the SEM / Directive
in Northern Ireland**

**Consultation Paper
7 March 2007
AIP/SEM/07/44**

NIE's Response to Consultation

6 April 2007.



Introduction

This document sets out Northern Ireland Electricity plc's ("NIE") response to the consultation paper for a Licence to Participate in Transmission for NIE, to facilitate the implementation of the SEM Directive in Northern Ireland. Comments follow the order of the conditions as they appear in the draft Transmission Licence.

The Transmission Licence is a key document for NIE and it is important that NIE is able to assess fully the impact of its licence obligations on its business. NIE is keen therefore to engage with NIAUR to ensure that the licence modifications made as part of this process allow for the proper implementation of obligations imposed under the Electricity Directive, and also for the SEM. The changes should not extend beyond those required for those purposes.

NIE is currently carrying out a review of the impact of the proposed modifications on business processes and may therefore revert to NIAUR if further issues are identified as part of that review.

Also, the issue of transition is not currently clear from the draft licence. It is important for NIE to understand early how the transition process will be effected, when particular licence conditions may become operative and how run-off issues will be dealt with.

1. Part 1 – Terms of the Licence

- 1.1 NIE's transmission licence is not a new licence, but a continuation of the current transmission licence and it is anticipated that the licence to be held by NIE Energy will be a continuation of the current supply licence of NIE with the addition of conditions specific to PPB. Any discontinuity in the licensing arrangements for NIE or NIE Energy could impact on existing contractual arrangements.
- 1.2 In line with arrangements in GB, a legislative power to transfer licences should be included in the proposed new legislative arrangements currently being drafted by DETI to facilitate this. NIE's comments both on NIE's transmission licence and the supply licence are based on this assumption.

2. Condition 1 – Interpretation and Construction

- 2.1 ***Northern Ireland Interconnector Definition:*** This definition should conform with the current definition of "Interconnector" and be consistent with the current version of the TSC. To achieve this, the word "solely" should be inserted after "used" on line 1.
- 2.2 ***"Total System" Definition:*** The words "the Licensee's" should be inserted before the word "transmission system" on line 1 and the words "the Licensee's" should be removed before "distribution system" on line 2.

3. Condition 6 – Health and Safety of Employees

- 3.1 The Authority has agreed to changes to this condition (both in this licence and in other licences, as reflected in the draft TSO licence). Please reflect the wording proposed in the draft TSO licence in this licence. Note: This condition is generic to all NI licences. The need to modify it was referred to Ofgem (James Hutchinson) in August 2004 following discussion with the generators and the supplier's representative at the Grid Code Review Panel in May 2004. Ofgem agreed to the proposal and began the exercise by incorporating the revised licence condition in the new SONI licence. It was agreed to defer modifying the remaining licences until Ofgem carried out the NIE licence separation exercise required under the Electricity Directive

4. Condition 7 – Payment of Fees

- 4.1 The provisions in relation to the costs of the General Consumer Council (as renamed) should be reinstated on the basis that the TO licensee pays a share of those costs. The remaining costs should be spread across all supply licensees who supply domestic customers. The wording in NIE's existing licence should be modified to read as follows: "the relevant proportion to be borne by the Distribution Business, as determined by the Authority from time to time, of the amount notified to the Authority by the General Consumer Council and approved by the Department as being the General Consumer Council's estimate of its likely costs during the year in question in the exercise of the functions relating to electricity assigned to it by or under the Order and the Energy Order and any other such functions as it has been or may be required to exercise by the Authority or, in the event that the Authority shall not have received such notification by 31 July in the year in question, the relevant proportion of the amount being the Authority's estimate of such likely costs (having regard to any estimate of such costs in any forward work programme published by the General Consumer Council in respect of the year in question);"

5. Condition 9 – Disposal of Relevant Assets and Indebtedness

- 5.1 We note that views of authorised electricity undertakings in the Republic of Ireland as well as Northern Ireland, and in both cases, liable to be materially affected, are to be taken into account. For consistency in the SEM arrangements, it would be important to ensure that a corresponding obligation also applies to the TO in the South.
- 5.2 Also, in paragraph 8, we agree with the proposal in relation to existing financing arrangements, and suggest the following wording: "(b) whilst the Transmission System Operator is an affiliate of the Licensee, enter into arrangements with the Transmission System Operator for the purposes of intra-group financing arrangements, including loans".

6. Condition 10 – Restriction on Use of Certain Information

- 6.1 This condition should not restrict information flows between the combined parts of the transmission and distribution business. We note that the reference to "Separate Businesses" could have that effect. The

references to the Separate Businesses in this condition should therefore be amended to refer to the Transmission and Distribution Business.

- 6.2 Proposed paragraph 2 of this Condition would require NIE to procure compliance from affiliates and related undertakings. As NIE has indicated, it is not appropriate for the licences in the new arrangements to seek to impose obligations indirectly in this way on the wider group. To the extent that such obligations should be placed on different entities within the Group, this is a matter for direct regulatory enforcement and not for indirect enforcement of such obligations via NIE. The relevant obligations should be in each of the relevant licences and enforced directly. There is in NIE's view no Electricity Directive or SEM justification for imposing the obligations in this way, which would then entail contractual arrangements being required between different Group companies that are contractually enforced. This provision should therefore be deleted from this Condition.

7. Condition 11 – Compliance with Supply Competition Code

- 7.1 If the SCC is run-off as proposed, there will be a need to consider transition issues in relation to the SCC.

8. Condition 13 – Independence of the Transmission and Distribution business

- 8.1 This Condition has the potential for wide-ranging impacts on NIE's business. It is therefore important that it be properly circumscribed so that it does not prevent proper functioning of NIE's business. We note the scope of this provision potentially goes beyond the requirements of the Electricity Directive or what is required for the purposes of the SEM. The overall obligation in paragraph 1 needs to be qualified to ensure that it is no wider than the obligation for operational and managerial independence required by the Electricity Directive. To the extent that there is a particular requirement that goes beyond the Electricity Directive which is thought to be needed for SEM purposes, for clarity it would be helpful if these were set out separately. As drafted, the Authority can require changes to the compliance plan that do not need to relate either to the Electricity Directive or to the SEM.

- 8.2 The three month "gardening leave" restriction imposed by paragraph 3(e)(ii) is inappropriate as a blanket requirement for all employees. The wording in parentheses starting on line four should be changed to provide the requisite flexibility to enable the appropriate approach to be taken to different types of employees: "(being a period of 3 months or such shorter period as the Authority may direct in respect of any person or class of persons)".

9. Condition 14 – Prohibited Activities

- 9.1 The "carve out" in paragraph 4 needs to include the generating sets on Rathlin Island. We suggest the following re-wording: "For the avoidance of doubt, the restriction in paragraph 2 shall not apply to generation sets which are used solely for the purposes of the Transmission and

Distribution Business, including all mobile generation sets and the generation sets on Rathlin Island.”

10. Condition 15 – Ring Fencing

10.1 In paragraph 8, the paragraph reference in line 2 should be a reference to paragraph 6 (not to paragraph 8 as currently drafted).

11. Condition 16 – Non-discrimination

11.1 The Consultation Paper notes that this is based on the existing NIE licence. The existing NIE Licence does not contain a broad-brush non-discrimination obligation in this way, but rather ensures that the obligation is set out in the appropriate context.

11.2 The key obligation is set out in Condition 15(2) Part II of the existing NIE licence where the obligation relates to “the provision of top-up or standby or use of system or in the carrying out of works for the purpose of connection to the licensee's system” and the obligation contains an important exception “except insofar as any difference in the amounts charged for or any other terms or conditions of such provision or carrying out of works reflects, to the satisfaction of the Authority, the difference between the costs or other circumstances of such provision or carrying out to one person or class of persons and another.”

11.3 The list of Conditions subject to the non-discrimination obligation is not explained or justified in the Consultation Paper. The drafting is based on the GB precedent, which is limited (e.g. in Condition D5 of the Scottish Power licence) to:

- “(a) in meeting its obligations under standard condition D2 (Obligation to provide transmission services);
- (b) in meeting its obligations under standard condition D3 (Transmission system security standard and quality of service);
- (c) in meeting its obligations under standard condition D4A (Obligations in relation to offers for connection etc); ;and
- (d) in meeting its obligations under standard condition B12 (System Operator - Transmission Owner Code).”

On the basis of the precedent, please delete the following:

- “(e) Condition 22 (Transmission Charging Statement);
- (f) Condition 25 (Distribution Code);
- (g) Condition 26 (Market Registration Service and Market Data Service);
- (h) Condition 27 (Market Registration Arrangements);

- (i) Condition 28 (Requirement to Offer Terms for Connection and Use of the Distribution System); and
- (j) Condition 30 (Basis of Charges for Use of and Connection to the Distribution System)."

11.4 In relation to the MRC, Condition 26(4) already contains a non-discrimination requirement specifically crafted for that provision.

11.5 For distribution connection and use of system, a provision based on the existing Condition 15(2) would be appropriate, rather than the GB precedent which is based on a pure transmission owner licence context. For example, under the condition as currently drafted would NIE be obliged to charge the same regardless of voltage levels?

12. Condition 17 – Transmission Interface Arrangements

12.1 The Transmission Interface Arrangements are currently under development. It is important that they contain what is required to enable the parties to the document to be able to comply with respective legal and regulatory obligations. This Condition may therefore need to be revisited once the full scope of that document is settled, and any changes to the Condition also reflected in the licence of the Transmission System Operator. As a corollary to that, it is also important that the Interface Arrangements remain within the boundaries of what they are seeking to achieve, rather than allowing ancillary matters to be dealt with in that document. For example, paragraph 3(c)(ix) should be amended to insert criteria around the information to flow between the Licensee and the TSO, namely, that it should be as required only in order to comply with the respective licences, as well as each party being so authorized to disclose.

12.2 In paragraph 3(c)(vi) of this condition the reference to "All-Island Networks" should be replaced with "All-Island Transmission Networks".

12.3 There may be instances where payments must be made in relation to, for example, the exchange of information under paragraph 3(c)(ix). Therefore paragraph 3(c)(viii) should be included as the last item on the list of terms for inclusion in the Transmission Interface Arrangements to allow for this.

13. Condition 18 – Obligation to Provide Transmission Services

13.1 The word "Transmission" should be included before the words "Interface Arrangements" in the first line.

14. Condition 19 – System Security and Planning Standards

14.1 The equivalent condition to this in the SO licence is entitled "Operation of the transmission system and the System Security and Planning Standards". Therefore, for consistency, condition 19 in the Transmission Licence should be entitled "Operation of the distribution system and the System Security and Planning Standards".

- 14.2 The draft TSO licence makes a reference to “coordinating and directing the flow ...transmission system”. Paragraph 1 of condition 19 in this Transmission licence makes a reference only to “...operate ...the distribution system”. Under the current proposals there is an implied gap between the two licences in terms of who “co-ordinates and directs the flow on the distribution system”. This condition needs to be amended to provide that such co-ordination is carried out by the Licensee.
- 14.3 This condition relates to System Security and planning standards or, as provided for by paragraph 1(b) “such other standards of planning and operation”. NIE T&D will not be a party to the Grid Code and the Distribution Code is dealt with in a separate condition of this licence. Therefore references to the Grid Code and Distribution Code should be removed from paragraph 1(a).
- 14.4 The reference to “Transmission Owner” in paragraph 2(c) should be replaced with a reference to “Transmission System Operator”.
- 14.5 Paragraph 5 requires that the Licensee set out criteria by which “performance of the Licensee in maintaining transmission system security, distribution system security and availability and quality of service may be measured”. As currently drafted, it is not clear whether the availability and quality of service requirement is to apply to the distribution system or to the transmission system also. It is assumed that availability and quality of service apply to the distribution system only, however this needs to be clarified in the Licence and also reflected in the SO licence as appropriate in relation to the reporting on transmission availability and quality of service.
- 14.6 Consideration needs to be given as to whether distribution works are dealt with differently, from a contractual perspective, from the main transmission work. Following a further review of this issue as part of the transmission interface arrangements, there may be a need to reconsider the proposed licence drafting in due course.
- 15. Condition 20 on Obligations in Relation to Offers by Transmission System Operator**
- 15.1 A new paragraph 2 (d) “the carrying out of works (if any) on the transmission system as are required for the installation of such switchgear or other apparatus (if any) as may be required for the interruption of supply“ should be included to maintain consistency with condition 28 paragraph 2(d).
- 16. Condition 23 on Land Bank**
- 16.1 In relation to the Land Bank Business, this is currently carried out by the power procurement business. NIE is considering the implications of retaining the Land Bank Business within NIE plc or transferring the business to SONI Limited. We agree that as a preliminary view the Land Bank Business may sit with NIE plc, and that this should be the current working assumption.

17. Condition 25 on Distribution Code

17.1 NIE considers a practical interim solution is the approach of a “short form” Distribution Code which, in its context, cross-refers to the Distribution level related elements of the Grid Code. The Code would need to be binding on distribution connected parties and parties using the Distribution System, and referred to in respective licences and in the appropriate Connection and Use of System Agreements. In due course, a fuller Distribution Code should be created, and the Grid Code amended to take out the Distribution related issues which will no longer be appropriate. There will also be a need, for the interim period until a full separate Distribution Code is in place, for the SO licence to be amended to provide (in relation to Distribution Code elements of the Grid Code) for a specific procedure for change, to ensure that a change to the Grid Code does not inadvertently have an effect on the Distribution Code provisions.

18. Condition 26 – Market Registration Service and Market Data Service

18.1 Further consideration needs to be given to paragraph 2 in the context of unmetered supplies and in aspects that may become irrelevant under SEM, for example, market settlement characteristics. For instance, in paragraph 2(d) after the word “customer”, the words “in the case of permanently metered supplies,” needs to be included to reflect this.

18.2 Paragraph 3 may need to be updated once the T&D functions after the implementation of SEM in relation to the Market Data Service have been finalised.

19. Condition 27 – Market Registration Arrangements

19.1 Further consideration may need to be given to paragraph 6(a)(iv) in the context of the development of Condition 25.

20. Condition 28 – Requirement to Offer Terms for Connection and Use of Distribution System

20.1 As currently drafted, paragraph 2(g) of this condition implies that metering obligations (for special metering, telemetry or data processing equipment) will be set out in the Distribution Code. Until NIE has considered the scope of the short-form Distribution Code it is not possible to confirm the appropriateness of this condition.

20.2 As with paragraph 5 of condition 20, which makes provision for any necessary distribution work that could be associated with a transmission connection, a corresponding provision needs to be included as a new paragraph 7 in condition 28 to deal with transmission work associated with a distribution connection. This would allow the consequential transmission works to be part of the offer permitted by the Licence. Separately, the transmission interface arrangements would provide for the interactions between the Licensee and the Transmission System Operator in relation to such transmission work. The wording of paragraph 5 of condition 20 should therefore be included with the appropriate modifications.

- 20.3 Consideration will also need to be given as to how relevant distribution connectees will be subject to the Grid Code. While this could be done through the Distribution Connection Agreement, an alternative would be to implement a separate Generator Transmission Use of System Agreement with SONI dealing with this. The final approach on this would need to be reflected once the approach on that is settled.
- 21. Condition 30 – Basis of Charges for Use of and Connection to the Distribution System.**
- 21.1 Please clarify the reference to the review mentioned in notes under paragraphs 3 and 16 of this condition.
- 22. Condition 31 – Standards of Performance**
- 22.1 Please note that this condition will be subject to further review once legislative changes have been developed.
- 23. Condition 39 – Charge Restriction Applicable to the Transmission and Distribution Business**
- 23.1 Please indicate which changes, if any, are considered to be necessary to the current T&D price control provisions as currently set out in Schedule 4 of the current licence.