



Electricity Supply Board
Bord Soláthair An Leictreachais

REGULATORY AFFAIRS

Lower Fitzwilliam Street, Dublin 2, Ireland. Telephone: 01-7026105 / 6765831. Fax 01-6765504.
Sráid MacLiam Íochtair, Baile Áha Cliath 2, Éire.

5th April, 2007.

Ms. Donna Hamill,
Ofreg,
Queens House,
14 Queen Street,
Belfast
BT1 6ED.

RE: Licence to Participate in Transmission for NIE

Consultation Paper

Reference: AIP/SEM/07/44

Dear Ms. Hamill,

I refer to the above consultation paper and the attached licence which has been published for comment. ESB welcomes the circulation of the Licence to Participate in Transmission for NIE for consultation by the Regulatory Authorities (RAs).

Comments on Draft Licence

Title

The title of the Licence should be amended to reflect the fact that both transmission and distribution activities are covered by the text.

Condition1 Interpretation and Construction

We note that you intend to match equivalent definitions in the MO and SO licences with definitions used in this licence. We propose that a further review of definitions be conducted as there are still discrepancies/differences between the terminologies used in the various documents, e.g. "All-Island Networks"

Condition 2 Preparation of Accounts

Article 19.4 of the Directive requires the external auditor to verify the obligation to avoid discrimination and cross-subsidies. This requirement does not appear to be addressed in the licence.

Condition 2.3(b) also refers. Does the RA intend to request the licensee to provide for disclosure of separate transactions between businesses that are material e.g. greater than £100k per transaction? Such information would be of assistance in assessing whether any cross-subsidies are being provided.

With regard to Condition 2.7 will market participants be consulted on the reasonableness of the terms of the payment security policy?

Condition 5 Prohibition of Cross-Subsidies

The term “cross-subsidy” is not defined in the licence. Who will determine what constitutes a cross-subsidy?

Condition 9 Disposal of Relevant Assets and Indebtedness

We note that this condition does not address the situation where it is proposed to use the transmission or distribution assets for interests other than or in addition to the specified functions of the licensee. For example if assets are permitted to be used by a third party for revenue generation, this should be notified to the RA, who should approve the proposed use and determine the benefit to accrue to the customer if the use is permitted.

Condition 10 Restriction on Use of Certain Information

The definition of “protected information” should be expanded to include information about the activities of the licensee itself which if disclosed in a discriminatory manner would be commercially advantageous. This is required by Article 16 of the Directive.

Neither does the licence specify what remedies are available to the RA where a breach of this condition has occurred. In the Republic of Ireland, the legislation has provided for the possibility of legal proceedings to be taken against the individual in the courts.

Condition 13 Independence of the Transmission and Distribution Business

As the title of this condition suggests, the measures detailed focus on the independence of the T&D business. Article 15 of the Directive also places significant emphasis on the requirement to exclude discriminatory behaviour. This latter requirement has not been adequately addressed by the draft licence.

Independence

Condition 13.3 should provide for specific separation of web-sites for the licensee and associates businesses.

Condition 13.3(e) (ii) also refers. We note that a quarantine period of at least 3 months is provided for. We take this to mean that the RA may consider a longer period if the particular transfer merits it, as could arise in foreseeable instances.

Condition 13.4 Compliance Plan

The purpose of the Compliance Plan should be outline how independence of the separate business is to be achieved and to outline the specific measures required to ensure that the licensee does not engage in discriminatory behaviour. This obligation is set down in Article 15 (d) of the Directive. As drafted the condition focuses on measures to ensure independence but does not deal adequately with the prohibition on discriminatory behaviour. The plan should:

- specify measures designed to ensure that the company does not engage in discriminatory behaviour
- specify the obligations on management and staff of the company that will ensure that such behaviour does not happen

The licence should also include provisions designed to ensure that the professional interests of those managing the DSO are to be taken into account (e.g. remuneration not linked to performance of generation or supply interests) to allow them to discharge their obligation to maintain the independence of the subsidiary.

The procedures required by the Compliance Plan should explicitly cover the transfer of staff to/from Associated Businesses, and rules of conduct covering how commercially sensitive information will be protected particularly when shared with the holding company.

The Compliance Manager is required by the Directive to report annually on the measures taken to avoid discriminatory behaviour and the licence should state this (Article 15(d) refers).

Condition 13.14 should also require the Compliance Manager to include details and outcomes of any other investigations carried out by other relevant third parties, e.g. competition authorities, during the relevant period.

Condition 14 Prohibited Activities

The proposal to allow NIE to own and operate generation specifically for the purposes of carrying out the T&D activity is unusual and is not adequately justified in the consultation paper. An explanatory commentary is needed.

Condition 15 Ring Fencing

The relevance of the date 8th February, 1998 should be set out. It not immediately clear how the proposed approach is consistent with MO and SO licences as stated in the consultation paper

Condition 16 Non-Discrimination

The condition lists 10 specific conditions to which this obligation applies. The issue here is that the list may not be complete. The wording should include a general obligation not to engage in discriminatory behaviour.

Condition 17 Transmission Interface Arrangements

Does the RA intend to publish the proposed arrangements for comment prior to approval?

Condition 18 Obligation to Provide Transmission Services

What role does the TSO have in relation to maintenance of the transmission system?

Condition 19 System Security and Planning Standards

Condition 19.6 refers. The report submitted should be published by the RA.

Condition 20 Obligations in Relation to Offers by Transmission System Operator

The possibility that applicants for connection to the transmission system may seek independent quotations for the construction of their connections is not provided for in the licence. Neither does the licence address what happens if the TSO rescinds an agreement due to a material breach by the licensee. Will the TSO have step in rights to arrange for the construction of the connection?

Condition 26 Market Registration service and Market Data Service

This is an extremely sensitive area and should be subject to independent audit/review of process and procedures. The outcomes of such reviews should be made available to market participants. In addition, staff working in this area should sign specific Trust and Confidentiality Agreements to underline the sensitivity of the information in their business area.

Condition 27

Please clarify if changes are still required to this condition.

Condition 31 Standards of Performance

We note that this condition will be reviewed again. We would expect to see incentive/penalties linked to performance standards.

Yours sincerely,

Marie Sinnott
Group Regulatory Compliance Manager