



ELECTRICITY SUPPLY BOARD
BORD SOLÁTHAIR AN LEICTREACHAIS

REGULATORY AFFAIRS

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Sráid MacLiam Íochtair, Baile Átha Cliath 2, Éire.

25th October, 2006.

Mr. Peter McLay,
Commission for Energy Regulation,
Plaza House,
Belgard Road,
Tallaght,
Dublin 24.

RE: Proposed Conditions of Market Operator Licences

First Consultation Paper

Reference: AIP/SEM/159/06

Dear Mr. McLay,

I attach as requested comments in relation to the proposed enduring conditions of the Market Operator (MO) Licences set out in the above paper. We note that a number of uncertainties persist at this time which will impact on the final drafting of the licences and which remain of concern to ESB:

- The nature and extent of the joint regulatory arrangements in relation to dealings with the respective MO licensees and any eventual disparities between separate arrangements in the respective jurisdictions

- Legislative changes including the possibility of the MO licence conditions being incorporated into the System Operator (SO) licences
- The nature and extent of the final separation requirements for SONI
- Certain key conditions e.g. the charging and revenue restriction condition
- The link to the Market Monitoring Role proposed for the Regulators

We further note that a second public consultation is envisaged in relation to transition arrangements. We believe that the any subsequent consultation should also offer the opportunity for participants to comment on any new enduring conditions or significant changes to those currently drafted or to revise our comment on the current issues should some of the above matter be resolved in the interim.

At the outset, we have an overarching objective of seeing the establishment of a single market operator for the island which is accountable for the delivery of market services to the market participants and answerable to a single regulatory authority in as far as is practical.

Issues from the Consultation Document

One of the assumptions underlying the drafting of the licenses is that additional conditions will be required to facilitate the market monitoring role of the Regulatory Authorities (RA's). For clarity, we are of the view that these amendments should be confined to data provision/reporting only and should not confer on the MO's any interpretation or investigative activities.

Section 3.8 of the paper suggests that there remains considerable uncertainty around the separation of the MO activity in Northern Ireland (NI). We would like to reiterate that licence conditions relating to separation will have to be equally robust and transparent in both jurisdictions. If they do not have equivalent effect, then the confidence of market participants will be affected.

Issues from the Draft Licenses

1. Part 1: Terms of Licence / Grant of Licence¹

The EirGrid licence is in effect “in perpetuity” unless revoked in accordance with the Schedule. The SONI licence is granted for a period of at least 35 years unless revoked. The terms should be the same if the framework plan to have one SO and one MO is to be meaningful.

2. Market Operator Agreement (Condition 2/Condition 16)

Where a dispute is referred to the Regulator/Authority, the drafting implies that joint regulatory agreement is not required before a change to the MO Agreement is

¹ EirGrid Condition ref followed by equivalent SONI condition ref.

required. Joint regulatory agreement should be required to proposed changes to the agreement.

3. Market System Development Plan (Condition 4/Condition 18)

We believe the Development Plan should be subject to industry consultation.

4. Relevant Market Assets (Disposal etc) (Condition 6&7/Condition 9&10)

There are differences in drafting between the licenses which may give rise to confusion where jointly owned assets are concerned. However, given the importance of IT systems (hardware and software) to the operation of the MO, a more relevant issue may be obsolescence and replacement/upgrade of technology. The MO should have an obligation to notify participants of any major changes in platforms etc.

5. Performance of the Single Market Operation Business (Condition 10/Condition 19)

This condition requires the MOs to propose performance criteria against which they will be judged and also to propose changes to these performance criteria. A number of points arise:

- (a) Market participants, as the recipients of the MO's services, should be able to input to the setting /amendments to performance criteria
- (b) The performance criteria should be identical across both jurisdictions
- (c) The circumstances in which changes are permitted should be clear
- (d) Market participants should have a substantial role in judging the performance of the MO against the set criteria.

Penalties and/or incentives associated with performance targets should be consulted upon in the second round of consultation.

6. Prohibited Activities (Condition 11 and Condition 13)

The drafting of these conditions reflects differences in approach. Whereas EirGrid is prohibited from engaging in the generation or distribution or supply of electricity on the Island of Ireland, the MO business in SONI is prohibited from carrying out any electricity trading either physically or financially. The drafting needs to be considered in conjunction with the EirGrid plc and SONI Ltd System Operator licences to ensure clarity.

7. Restrictions on the Use of Certain Information (Condition 12 and Condition 11)

We would query the adequacy of the obligations required by the draft licences. The drafting requires “reasonable endeavours” to prevent disclosure and to limit distribution of commercially sensitive information on a need-to-know basis. This approach is not adequate in our view. A mechanism for dealing with complaints from participants is required as is an obligation to publish Annual Compliance Reports. Independent audits of the MO processes and activities should also be a requirement.

8. Separate Accounts (Condition 13 and Condition 2)

Regulatory Accounts should be published in the interest of consistency and transparency.

9. Code of Conduct

This condition only appears in the EirGrid plc license. This ought to be a requirement for the SONI license.

We would like to thank you for the opportunity to input to the consultation process.

Yours sincerely,

(original signed by)
Marie Sinnott
Regulatory Affairs