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Peter McLay
CER
Plaza House
Belgard Road
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AIP/SEM/159/06: First Consultation on Proposed Conditions of Market Operator Licences

Dear Peter

Thank you for providing us with the opportunity to respond on this first consultation paper. This document is being submitted on behalf of both ESBI and Independent Generation and we have no objection to all or part of it being published by the Regulatory Authorities.

Since this is a first consultation we assume that there will be some further public iterations on these licence documents and would like to suggest, differing jurisdictional approaches to licensing notwithstanding, that they are re-drafted to clarify which conditions correspond to each other in each licence. Attached to this letter is ESBI's attempt to match the titles of the conditions and schedules in the two draft licences provided, but the content differs between the two drafts even under conditions with the same title.

We are not clear from the information provided in this paper, and previous documentation relating to the SMO, how the entity will function. For example: Who will the staff be employed by? Where will they and/or the SMO business be located? How will the market clearing systems (software and hardware) be upgraded? How will all-island regulation by two separate jurisdictional regulators work? Why is there a dividend condition in the SONI licence for a non-profit-making entity? Will accounts be prepared in both jurisdictions for the same businesses, where will taxes be paid, etc., etc?

It would be helpful if the next consultation paper could provide a more detailed description of the SMO and how it is envisaged by the Regulatory Authorities and / or the Transmission System Operators. The paper should include a table explaining the differences in the licence conditions and indicating where, for example, a SONI licence condition is covered for EirGrid by legislation and vice-versa.

It is not acceptable to ESBI that the MO licensees themselves will develop the criteria against which their performance would be monitored by the RAs. As written it appears that each of the MO licensees will submit criteria to each of the RAs for approval, raising the possibility of a different set of criteria being approved for one element of the joint venture than the other. A single set of criteria should be developed jointly by the RAs, with MO input, and published for consultation.

ESBI notes that condition 11 in the EirGrid licence prohibits the Market Operator licensee from engaging in electricity generation, distribution or supply on the island of Ireland but that SONI, which has affiliates engaged in these businesses, is not subject to such a restriction. While there have been occasional references during the SEM consultation process to the separation of SONI from Viridian Group, no indicative time-table has been published, so it would be helpful if NIAER's plans in this regard could be shared with the market participants as soon as possible.

We appreciate the work which has gone into drafting the licence documents and the accompanying consultation paper and look forward to participating in further development of these documents.

Kind regards

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Encs.

Attachment: Comparison of Licence Conditions

1. Licence Conditions Common to Both Licences

Condition No.		Condition Description
EirGrid	SONi	
1	1	Interpretation and Construction
13	2	Preparation of Accounts / Separate Accounts for Separate Businesses
12	11	Restriction on Use of Certain Information
5	21	Procurement of Assets (and Services)
17	7	Provision of Information to the Authority / Commission
8	20	System Operator Agreement
21	6	Health and Safety (of Employees)
14	5	Prohibition of (Subsidies and) Cross-subsidies
10	19	Performance of the Single Market Operation Business
2	16	Market Operator Agreement
7	9	(Additional Use or) Disposal of Relevant Market Assets
11	13	Prohibited Activities
9	15	(Duty of) Non-Discrimination
3	17	(Market System and the) Single Electricity Market Trading and Settlement Code
6	10	Relevant Market Assets / Restriction on Dealings with Assets
4	18	Market System Development Plan

2. Licence Schedules Common to Both Licences

Schedule No.		Schedule Description
EirGrid	SONi	
n/a	2	Right of Commission to Revoke this Licence Revocation

3. Licence Conditions Not Common to Both Licences

Condition No.		Condition Description
EirGrid	SONi	
15		Public Service Obligation
16		Payment of Levy
18		Code of Conduct
19		Compliance with Laws and Directions
20		Environment
	3	Availability of Resources and Undertaking of Ultimate Controller
	4	Restriction on Dividends
	8	Payment of Fees
	12	Independence of the Market Operation Activity
	12A	Ownership of the Market Operation Activity
	14	Security Arrangements
	22	Charging and Revenue Restriction

4. Licence Schedules Not Common to Both Licences

Schedule No.		Schedule Description
EirGrid	SONi	
	1	Authorised Area