

**Modifications to Electricity Supply Licences to Facilitate
the Single Electricity Market**

Draft Decision Paper

AIP-SEM-07-302

19th June, 2007

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1. Introduction

1.1 Consultation Background

On May 16th the Regulatory Authorities published a consultation paper on the necessary changes that need to be made to supply licences in the Republic of Ireland as a result of the introduction of the Single Electricity Market. These proposed changes applied to the following Supply Licences:

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

Comments were due by the 8th June 2007 and responses were received from the following parties:

ESB Corporate

ESB Customer Supply

Airtricity

ESBIE

This paper sets out the Regulatory Authorities' proposed modifications and amendments to the Licences and summarises comments received.

Amended versions of each of the above licences are published with this paper. Two versions of each are published; one for the period from Go-Active to Go-Live and a second for the period from Go-Live.

Please note that the licences may be subject to minor consequential changes which will be included in the final versions to be published on June 26th. These final licences will include the transitional conditions.

Transitional conditions (which will impose obligations on licence holders in respect of transition from the existing market to the SEM) will also form part of the Supply Licence. These were consulted upon separately (AIP-SEM-07-137 published on the 4th of May 2007). These conditions will be incorporated into the revised licences published on the June 26th.

Section 2 of this paper provides information on the licensing framework for the retail market. Section 3 sets out the RA's proposed decision on the PES supply licence modifications while section 4 sets out the proposed decision on all other supply licence modifications. Section 5 summarises comments received and sets out the Commission's response. Section 6 discusses the transitional arrangements, including licence transition conditions, and Section 7 provides the next steps in this process.

1.2 Legal Basis for Licence Modifications

The 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).

It must be noted that Section 14A(1) provides that the Commission may:

“modify the conditions of a particular licence where the Commission considers it necessary or expedient to do so—

- (a) for the purpose of implementing, or facilitating the operation of, the Single Electricity Market, or*
- (b) in consequence of, or for giving full effect to, those arrangements.”*

Thus, for clarity, only modifications to licences which satisfy the test in section 14A(1) are being considered and implemented at this time.

2 Other Regulatory Considerations

2.1 Licensing Framework

In relation to the overall licensing framework for the retail market the Regulatory Authorities considered two models in the SEM Regulation consultation paper. These options are;

- The first model would involve the development of a specific supply licence for the PES entity and a separate supply licence for all other suppliers. This is currently the model employed in both jurisdictions.
- The second model would involve the development of one supply licence for all suppliers in both jurisdictions

As part of the consultation paper the Regulatory Authorities proposed to opt for the second model. A further proposal is that in the absence of an alternative proposal from the market the Regulatory Authorities propose to designate ESB Customer Supply as PES in the Republic of Ireland.

In general there was support for the general principle of creating one form of supply licence in place of existing arrangements where many suppliers hold multiple licences. Further there was general agreement that ESB Customer Supply be designated to be the Supplier of Last Resort (SOLR) and carry the Universal Service Obligation (USO) in the SEM.

The Commission acknowledges the general level of support for these proposals and have decided that ESB will be the SOLR and USO provider in the SEM. Having consulted with participants it was agreed that ESB is the only entity in SEM that can take on this role. This decision will be reviewed on a periodic basis to take into account changes in the market.

3. Draft Decision on Public Electricity Supply Licence

The RAs propose to approve the changes to the PES licence described in the consultation paper (AIP-SEM-07-156) and as explicitly marked in the Go-Active to Go-Live versions of the PES Licence document that accompanied the publication of the consultation paper. However, there will be very minor amendments to some of the modification wording to ensure consistency across all licences.

3.1 Notes on Modifications to PES 'Go-Live' Licence:

As noted in the consultation paper, modifications to the following conditions of the PES 'Go-Live' licence are currently being developed and will be consulted on separately. Detailed licence conditions will be published during the transition period between Go-Active and Go-Live.

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 a separate consultation. It is envisaged that detailed licence conditions will be jointly 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

4. Draft Decision on Other Forms of the Supply Licences

The RAs propose to approve the changes to the supply licences issued pursuant to Section 14(1)(b), (c), (d) of the Electricity Regulation Act 1999 described in the consultation paper (AIP-SEM-07-156) and as explicitly marked in the Go-Active to Go-Live versions of these Licence documents that accompanied the publication of the consultation paper. However, there will be very minor amendments to a number of modification wordings to ensure consistency across all licences.

4.1 Notes on Go-Live version of the non-PES licences:

As noted in the consultation paper an additional modification to condition 4 of the 'Go-Live' supply licences issued pursuant to Section 14(1),(b), (c), (d) of the Electricity Regulation Act 1999 are currently being developed and will be consulted on separately. It is envisaged that the detailed licence condition will be published during the transition period between Go-Active and Go-Live.

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 condition will be published during the transition period between Go-Active and Go-Live.

4.2 Notes on proposed change to Green and CHP Licences

The following additional change was proposed to 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 21 - Additional Conditions for holders of licences under Section 14(1)(c) and (d)

The consultation proposed to amend this condition 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.

However, the RAs propose to re-instate the certification in relation to electricity balancing criteria for the period from Go Active to Go Live. While such certification would not be appropriate in the context of the new market, the certification requirement should be in place up until Go Live.

5. Transitional Arrangements

The Regulatory Authorities' consulted on Transitional Changes to Licences in Ireland and Northern Ireland (AIP-SEM-07-137) on 4th May. A draft decision on these draft transitional conditions to the licences has been published along with this paper.

6. Responses to Comments Received

This section summarises comments received on the licence modifications and sets out the Commission's response.

A number of respondents commented on all aspects of the licence conditions, both non-SEM and SEM related. However, as stated in the consultation paper, any licence modifications required as a result of the Directive 2003/54/EC will 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 to implement SEM are being considered on at this time and comments were invited on these SEM modifications only.

The following table summarises comments received on the proposed SEM licence modifications:

Condition	Comment	Respondent	Regulatory Authorities' Response
Common Provisions	There is no reason for maintaining a distinction between generic Supply Licences and Green/CHP Licences in SEM. It is a colour-blind market. The proposed contracts for difference (CfD) tracking mechanism cannot track greenness.	Airtricity	Agreed. Currently there is no legislative basis for ending the distinction therefore the licences must remain in place. Proposals for the consideration of tracking mechanisms in the new market are currently under development.
Common Provisions	Term "Generation Unit" appears in Supply Draft but not PES Draft	Airtricity	Agreed. Licence amended.

Condition	Comment	Respondent	Regulatory Authorities' Response
Common Provisions	The definition of interconnector in the ROI and NI Supply licences is slightly different. Both should be similar.	ESB Customer Supply	Agreed. Amendment being considered.
Condition 21 (PES) and 15 (Others)	Respondent notes concerns about PES acting under the guise of an intermediary and utilising such status to increase market dominance and suggests the inclusion of a condition whereby any suspicious intermediary transactions can be investigated, and that any such activity on PES's part must not contribute to market dominance.	Airtricity	An RA decision document of 8 th December 2006 on market Monitoring in the SEM (AIP/SEM/217/06) determined that the Market Monitoring Unit has been established to perform the specialised function of monitoring the SEM spot market. Upon its appointment, the MMU Manager will publish guidelines on how it expects to interface with market participants. The MMU will investigate well documented complaints and refer complaints that it believes to be well founded to the Regulatory Authorities for review.
Condition 21 (PES) and 15 (Others)	PES Draft doesn't feature the definition of "Intermediary" carried in the other licences	Airtricity	Agreed. Licences amended for consistency.

7. Next Steps and Licensing Process

A notice of the accompanying licence modifications will be served on each of the licence holders. The date on which modifications are to take effect will be made clear and there will, to the extent possible, be a reasonable period between notification and the date the modifications take effect.

A notice of the licence modifications will also be placed in a national newspaper.

As noted above, modifications to conditions of the PES and non-PES 'Go-Live' licence identified in sections 3 and 4 of this paper are currently being developed and will be consulted on separately. It is envisaged that detailed licence conditions will be published during the transition period between Go-Active and Go-Live.