



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

**Decision on Modifications to Electricity Generation
Licences to Facilitate the Single Electricity Market**

Decision Paper

AIP-SEM-07-313

BACKGROUND

On the 4th of May 2007, the Commission published an Information Note to notify interested parties that it was proposed to modify existing generation licences granted by the Commission for the purposes of giving effect to the Single Electricity Market (SEM). Comments on this paper were sought by the 25th of May 2007.

The Information Note explained that the single electricity market for the island of Ireland (SEM) will come into operation on the 1st of November 2007 (the Go-Live Date) and that a period of preparation for the SEM during which, inter alia, market trials will be conducted, is expected to commence on the 3rd of July 2007 (the Go-Active Date). In order to give full effect to the SEM, it will be necessary to modify the conditions of generation licences granted by the Commission under section 14(1)(a) of the Electricity Regulation Act 1999. Pursuant to the power to modify licence conditions contained in section 14A of the Electricity Regulation Act 1999 (as inserted by section 13 of the Electricity Regulation (Amendment) (Single Electricity Market) Act 2007), the Commission proposed to modify the conditions of generation licences for the period from the Go-Active Date to the Go-Live Date and from the Go-Live Date onwards.

Section 14A(4) of the Electricity Regulation Act 1999 (as inserted by section 13 of the Electricity Regulation (Amendment) (Single Electricity Market) Act 2007) requires the Commission to consult on proposals to modify licence conditions pursuant to the power in section 14A of the Electricity Regulation Act 1999. During the consultation period, the Commission informed licensees by letter and through a public notice that it was proposed to modify their licences.

This document outlines the Commission's responses to the comments received and confirms the modifications that are necessary to the current licences to facilitate the SEM.

The consultation detailed the proposed modifications to the following three licences:

- ⇒ Generic Electricity Generation Licence
- ⇒ Synergen's Electricity Generation Licence
- ⇒ ESB Power Generation's Electricity Generation Licence

Each generation licence will be modified so that one set of licence conditions applies in the period from the Go-Active Date to the Go-Live Date and another set of licence conditions applies in the period from the Go-Live Date onwards.

A draft decision and draft electricity generation licences were published on the 19th of June on the All-Island Project website, www.allislandproject.org. A public notice was published and a letter was sent to all generation licence holders to notify them of the draft decision. This draft decision informed licence holders of the impending publication of the final license and a final decision on the modifications.

Transitional conditions (which impose obligations on licence holders in respect of transition from the existing market to the SEM) also form part of generation licences. These were consulted upon separately (AIP-SEM-07-137 published on the 4th of May 2007). Revised transition conditions were published on the 19th of June on the All-Island Project website www.allislandproject.org. These transitional conditions have been incorporated into the revised licences that accompany this decision. The process of consolidating the licence conditions in this manner required minor consequential amendments to the licences published today. These included the following:

- A number of definitions to apply to the transition conditions (i.e. those conditions in Section A of the licence);
- A provision that the general interpretation condition (Condition 1 of Sections B and C) is to apply to the transition conditions;
- An amendment to paragraphs 3 and 5 of Condition 1 of each of Sections B and C.

In addition, an amendment to the definition of "merit order system" in Condition 7 of Section C was made to ensure consistency with the System Operator Licence. This also required a definition for "All-Island Networks" and "Northern Ireland total system" to be inserted.

RESPONSES

The Commission received a number of responses to the consultation on the proposed modifications (AIP-SEM-07-139 and CER/07/059) from interested parties. These were received from:

1. Airtricity
2. Aughinish Alumina
3. ESB Power Generation
4. Synergen
5. Viridian

These comments are published along with this decision. This document outlines the Commission's consideration of comments received.

Note that the Northern Irish generation licences have also been consulted upon by the Northern Ireland Authority for Utility Regulation (NIAUR) and the Regulatory Authorities have ensured alignment between the licences in the two jurisdictions, where appropriate.

The responses received fall into six broad headings:

1. Interpretation and Construction of the Licences

Comments were received from some parties on the interpretation sections of licences and on the use of certain definitions and references. The

Commission, with its legal advisers, has considered these comments and, where appropriate, has incorporated the suggested amendments in the revised licences. In the Commission's view, a number of the suggested amendments did not satisfy the test for modification of licence conditions set out in section 14A of the Electricity Regulation Act 1999 and, therefore, were not made.

2. Comments on Licence Conditions which are not SEM related

A number of respondents commented on conditions which were not proposed to be modified for the Single Electricity Market. At this point in time, the Commission is only concerned with changes that are necessary for the new market. The Commission has not considered any comments which are beyond the limited scope of this process.

3. Trading and Settlement Code

A number of comments were made about the condition relating to the SEM Trading and Settlement Code (Condition 14 of the generic licence). These concerned the definition of the SEM Trading and Settlement Code and the obligation on licensees to ensure an Intermediary is party to the SEM Trading and Settlement Code. In addition, a request was made for the licence to explicitly specify that the SEM Trading and Settlement Code provides that generators could sell physical power to Intermediaries rather than through the pool.

In response to a comment that Agreed Procedures, which form part of the SEM Trading and Settlement Code, can be amended without the approval of the Commission, the Commission has amended the definition of 'Single Electricity Market Trading and Settlement Code'.

In relation to a comment that the interpretation section of the licences should contain a general statement to the effect that references to Codes, should be to such Code as amended from time to time (rather than including such wording in the definition of the relevant Code), the Commission considers it necessary to define the SEM Trading and Settlement Code as distinct from the existing Trading and Settlement Code. The SEM Trading and Settlement Code will be made pursuant to section 9BA of the Electricity Regulation Act 1999 (to be inserted by section 7 of the Electricity Regulation (Amendment) (Single Electricity Market) Act 2007) and designated in regulations due to be made by beginning of July. Therefore it is appropriate to include language regarding amendment etc. in each definition, for the avoidance of doubt.

A respondent also commented on the obligation on Licensees to ensure that their Intermediaries are parties to the SEM Trading and Settlement Code. This is necessary to ensure that the Regulatory Authorities retain licence enforcement action over the generator units should the Intermediary cease to comply with the Trading and Settlement Code or if the Intermediary ceases to be a party to the Trading and Settlement Code. It is clear that a

generator should be in breach of their Licence if the Intermediary has ceased to be a party to the SEM Trading and Settlement Code and the generator has not then acceded and registered the generator units itself.

The Regulatory Authorities confirm that generators can sell physical power to Intermediaries rather than through the pool.

4. Bidding

A number of respondents commented on the level of detail in the bidding condition (Condition 15 of the Generic Licence) and how this differs from previous Regulatory Authorities' Decisions, for example AIP/SEM/116/06.

The Regulatory Authorities believe that the investigation of adherence to bidding principles will be a relatively rare event and that economic forces will cause most bids to be at or close to the generator's short run marginal cost (SRMC).

However, where necessary, it is important that the Regulatory Authorities be able to take enforcement action against a generator to require that generator to comply with its licence obligation and bid in a manner which is reflective of its SRMC. Such enforcement would require the Regulatory Authorities to demonstrate that the generator had not been submitting bids in accordance with the obligation imposed on it through its licence. This in turn would require that the obligation imposed on the generator be clearly set out and have sufficient certainty as to its terms. Therefore, the Commission has introduced a degree of detail in relation to SRMC which they believe is necessary to enable effective enforcement of the licence condition and protect the interests of other market participants.

Aughinish Alumina requested a particular section to be included in the licence dealing with Cost-Reflective Bidding of CHP plant. The Commission believes that this level of detail is only required in the Bidding Code of Practice and that it is not appropriate to include it in the licence conditions.

Some respondents commented on the risks associated with the change control process of the Bidding Code of Practice. An insertion has been made into the licence to provide for consultation with holders of generation licenses and such other persons as the Commission considers appropriate on any proposed changes to the Bidding Code of Practice.

A number of comments were received on concerns about the uniform treatment of all market participants, North and South. There will be only one Market Monitoring Unit who will be examining the market on an all-island basis. The SEM Committee will be responsible for oversight of the SEM (including the establishment of a Market Monitoring Unit). This group comprises of three voting members – one vote for the Commission, one vote

for NIAUR and one vote for an independent member. On this basis, monitoring and enforcement will be carried out on an all-island basis.

The Regulatory Authorities also believe that it is appropriate that Cost Reflective Bidding be enforced directly through the generators licences, rather than indirectly through inclusion in the Trading and Settlement Code.

5. Synergen's Ringfencing arrangements

Synergen made a number of comments in relation to their ringfencing arrangements and the extent to which they differ from those in the generic generation licence. In the context of the SEM, the Commission only proposes to modify licence conditions to the extent that it considers such modifications necessary for the purposes of the SEM. Having regard to this limited scope of the current modification process and, inter alia, the review of wholesale market ringfencing carried out by NERA (AIP-SEM-91-06), the Commission does not consider it necessary to alter the existing ringfencing arrangements at this time (other than to make amendments to reflect the nature of the new market). Consequently, paragraphs 4-6 of Condition 3 of the generic licence have been reinserted.

6. Directed Contracts

The proposed condition 3 paragraph 6 of ESB Power Generation Licence, which is a requirement on ESB PG to notify the Commission and suppliers of the cumulative megawatt subscription during a day, has been amended to reflect current practices. Also an obligation to offer Directed Contracts to Northern Irish Suppliers has been included.

DECISION

The licence conditions which will apply from the Go-Active Date to the Go-Live Date and from the Go-Live Date onwards are published along with this decision paper. These are the final licences, and include the requirements for transition from the current market to the SEM. These accompanying licences are consolidated licences of the licences that are effective from Go-Active to Go-Live, the licence for Go-Live and the transitional conditions.

This decision also confirms the treatment of ESB Power Generation's generation licence and confirms the treatment of ESB PG in the new market as was proposed in the consultation paper "A strategy for the Regulation of ESB and NIE in the Single Electricity Market" (AIP-SEM-07-16). This decision confirms that the Commission will not impose any specific regulatory requirement on ESB PG to offer Contracts for Difference to the market other than the volume of directed contracts required to mitigate its market power. Notwithstanding this, any contractual arrangements it enters into must abide by the basic regulatory principles which will also apply to NIE PPB. The Commission requires that ESBPG deal with market participants in the contracts market on an arms-

length (from its affiliates) and non-discriminatory basis, and on fair commercial terms.

Please contact Dana Kelleher at the Commission by email (dkelleher@cer.ie) or by phone (01-4000 800) should you require a hard copy of the modified licences.