

Comments on proposed generic Electricity Generation Licence published by Regulatory Authorities on 16 May 2007

A. Generic generation licence for transition period

1. **Condition 1 (Definition of “Single Electricity Market Trading and Settlement Code”)** – the interpretation provisions should contain general language in relation to references to Codes being to such Codes as amended from time to time rather than including it in each definition. Furthermore, there is a minor inconsistency in this definition only capturing amendments to the Code that are approved by the Commission as the Code includes the Agreed Procedures and the Agreed Procedures can be amended without Commission approval. This definition may therefore not capture Agreed Procedures as amended from time to time.
2. **Condition 1 (Definition of “Trading and Settlement Code”)** – see comments above.
3. **Condition 2 (Separate Accounts for the Generation Business)** – Although not proposed to be amended, the obligations under this Condition go well beyond what is required by Article 19 of Directive 2003/54/EC. While it is understandable why this Condition may be appropriate in the context of a dominant entity, it is not clear why it is necessary in the context market participants that are not dominant. We note also that the Companies Acts are from 1963 to 2006.
4. **Condition 3 (Prohibition of Cross-Subsidies and Discrimination)** - Although not proposed to be amended, there appears to be an inconsistency in this Condition in that pursuant to Condition 3.1, the Condition only applies where the Licensee is dominant. However, the relevant determination of the Commission as to dominance in Condition 3.7(b) considers at the Licensee together with its affiliates and related undertakings). It is therefore not clear that a determination of the Commission pursuant to Condition 3.7(b) may not be determinative of whether Condition 3 applies to an entity.
5. **Condition 7 (Central Dispatch)** - Although not proposed to be amended, it is not clear why “interconnector transfers” are regulated under a generation licence. Why is this condition imposed on generators but not on other parties who may hold interconnector capacity or own an interconnector. This does not appear appropriate. That said, there also appears to be a slight inconsistency in this Condition in that the definition of “interconnector transfer” refers to a flow of electricity. It is therefore not clear how an interconnector transfer could be submitted to central dispatch in the same way as a generator. It must be the interconnector itself, or the available capacity on the interconnector, that is submitted to central dispatch. The interconnector transfer is what happens once the interconnector is dispatched.
6. **Condition 10 (Connection to and use of the Licensee’s System – requirement to offer terms)** - Although not proposed to be amended, it is not at all clear that this Condition is appropriate. Surely a generator should not be obliged to offer connection terms to persons wanting to connect to the lines between its generating station and its connection point. Quite apart from the unreasonable interference that this would

create, it is not clear how the generator would be paid for electricity offtaken before its connection point.

7. **Condition 11 (Connection to and use of the Licensee's System – functions of the Commission)** – see comments above.
8. **Condition 14 (Trading and Settlement Codes)** – This has been amended to require Licensee to be party to and comply with the SEM TSC. However, no date is specified by which accession to Framework Agreement must take place. Condition 14.3 obliges the Licensee to ensure Intermediary is a party to the SEM TSC and complies with it in respect of the generator units. However, it is unclear why this is necessary. In order to register as an Intermediary under the SEM TSC, a person must be a party to the SEM TSC. It is therefore not clear why a generator should be in breach of their Licence simply because a person ceased to be a party to the SEM TSC. Furthermore, it is not clear what the policy rationale is for obliging a generator to ensure compliance with the SEM TSC by the Intermediary (even if as a practical matter it was possible for a generator to procure this). This should be an obligation for the Regulatory Authorities rather than a generator. If an Intermediary is in breach of the SEM TSC it is liable to sanction and ultimately the generator may lose the ability to participate in the market through its Intermediary. This, and this alone, should be the appropriate sanction. A generator should not also be deemed to be in breach of their licence in these circumstances.
9. **Condition 18 (Change in Control) and Schedule 2, clause 2(b)** – it would be useful if the Generation Licence could confirm what is meant by control in the context of the Licence as this has caused uncertainty for licensees in the past.

B. Generic generation licence for SEM period

1. **Condition 1 (Definition of “Interconnector”)** – query whether it is unnecessarily confusing to specifically exclude the North/South Circuits as it appears quite clear from the preceding wording that they are not included. If the reference is to be included it should be included “for the avoidance of doubt”, not to apparently exclude something that would otherwise be included.
2. **Condition 1 (Definition of “Single Electricity Market Trading and Settlement Code”)** – see comments in relation to Generic generation licence for transition period.
3. **Condition 1 (Definition of “Trading and Settlement Code”)** – see comments in relation to Generic generation licence for transition period.
4. **Condition 2 (Separate Accounts for the Generation Business)** – see comments in relation to Generic generation licence for transition period.
5. **Condition 3 (Prohibition of Cross-Subsidies and Discrimination)** - see comments in relation to Generic generation licence for transition period.
6. **Condition 7 (Central Dispatch)** - see comments in relation to Generic generation licence for transition period. Furthermore, the reference to “interconnector transfer”, as defined, appears in appropriate in the definition of “available”. It would seem that

availability is a concept relevant to the Interconnector, not the flows of energy across the interconnector. There appears to be a similar problem with the definition of “merit order system”.

7. **Condition 10 (Connection to and use of the Licensee’s System – requirement to offer terms)** - see comments in relation to Generic generation licence for transition period. The point in relation to net load is even more important in the SEM given the obligations to trade through the Pool.
8. **Condition 11 (Connection to and use of the Licensee’s System – functions of the Commission)** – see comments in relation to Generic generation licence for transition period.
9. **Condition 14 (Trading and Settlement Codes)** – see comments in relation to Generic generation licence for transition period. In addition, the obligation to be a Party to the Trading and Settlement Code should be further qualified in an enduring Licence. It should perhaps automatically lapse when the time limit for settlement adjustments under the Trading and Settlement Code expires. Finally, we note that we had previously sought an amendment to the SEM TSC to expressly provide that generators could sell physical power to Intermediaries rather than through the Pool. We were advised that this would not be included in the SEM TSC but would instead be included in the Licence. Condition 14.3 of the Generation Licence may be intended to cover this point by providing that "the Licensee shall not be required to be a party to the [SEM TSC] in respect of such generation units". However, we believe it would be preferable if this was clarified in either the SEM TSC or the Licence, or alternatively if the Commission could at least confirm that Condition 14.3 has this effect.
10. **Condition 15 (Cost Reflective Bidding in the Single Electricity Market)** – As a general principle, we are of the view that rules in relation to bidding in the SEM should be contained in a common document covering the whole SEM with the licences containing an overarching obligation to comply with such document. Otherwise, there is a significant risk of regulatory arbitrage if bidding rules are contained in different documents prepared and enforced by different regulatory bodies in different jurisdictions and governed by different law. Any difference in the way that these provisions are drafted or interpreted between the two jurisdictions can distort the market. The Bidding Code of Practice is therefore welcome if and to the extent that it is a common document governing all market participants in the SEM. However we do have the following concerns:
 - (a) **Market Distortion** - we remain concerned that it is not clear that the Bidding Code of Practice must be a common document governing participants in both jurisdictions at all times, nor does it appear that it would be governed by a single law, which may lead to distortion and regulatory arbitrage. We assume that the Bidding Code of Practice will be treated as an SEM Matter and any modification to this document will be made by the SEM Committee and implemented uniformly across both jurisdictions. Any potential for divergent bidding rules between jurisdictions is not acceptable. We would be grateful if the Commission could confirm how this will be achieved.

- (b) **Regulatory Uncertainty** – the level of regulatory uncertainty created by these provisions is not acceptable. Participants must have certainty in relation to the bidding rules. The fact that they can be readily changed, grant powers of direction to the Regulatory Authorities and require licensees to comply with such directions, without limitation, creates significant uncertainty as to what market participants are exposing themselves to. Participants must have confidence that the bidding rules will operate in a way that does not disadvantage them, whether by forcing them to run below cost due to the mechanism for calculation of Short Run Marginal Cost or otherwise. Certainty is essential for current participants and to encourage future market entry.
 - (c) **Powers of Direction** - We are also uncomfortable with the level of unfettered discretion that the Commission is given itself to give binding directions. To the extent that it is given power to give directions by legislation and in the context of legislative authority this is not problematic. However, in this case the Commission is relying on a legislative power to determine the terms of the licence, then insert a Condition allowing itself the right to impose a bidding Code of Practice, which document may give it rights to impose binding directions on participants. We are concerned that this may be too broad and would prefer to see a much more structured process applicable to amendments to the Bidding Code of Practice, such as that applicable to modifications under the SEM TSC. Specifically, it is critical that market participants be given an opportunity to propose and comment on proposed changes to the Bidding Code of Practice, and have their comments taken into account.
 - (d) **Definition of “Short Run Marginal Cost”** – We note that this is currently consistent with the Northern Ireland Generation Licences, although as is noted above it is not clear how it will be ensured that this remains consistent.
11. **Condition 19 (Change in Control) and Schedule 2, clause 2(b)** – see comments in relation to Condition 18 of Generic generation licence for transition period.