



**RESPONSES TO COMMENTS RECEIVED
ON AIP/SEM/07/137**

**TRANSITIONAL CHANGES
TO LICENCES IN
IRELAND AND NORTHERN IRELAND
CONSULTATION PAPER**

3rd July 2007

AIP/SEM/07/383

On 4th May 2007 the Regulatory Authorities published a consultation paper entitled "Transitional Changes to Licences in Ireland and Northern Ireland".

The intention was to set out the transitional conditions to be applied to licences in both jurisdictions to cover both the introduction of the SEM (the period from Go Active to Go Live), as well as the run off of the existing arrangements (the period from Go Live).

Comments were received from Airtricity, EirGrid, Moyle, NIE and SONI.

The following table sets out the comments by these respondents together with the RA's responses.

The amended transitional conditions were themselves published on 19th June 2007 and thereafter incorporated and published in their parent licences in the period up to 29th June 2007.

Table of Responses

	Respondent	Condition	Comment	Response
1.	VP&E	General	Wide ranging powers to issue directions undermines due process for a proper consultative process within a reasonable timescale, renders consultation meaningless. Results in regulatory uncertainty for market participants. Important that enduring licence conditions are less ambiguous	The RAs rights to issue directions have been further clarified and where appropriate given a context. For example directions under Cond B 3 (ROI) have been amended so that Directions set out the steps "... which are, in the reasonable opinion of the Commission, appropriate in order to give full and timely effect to the matters.... that are applicable to it..."
2.	EirGrid	General	EirGrid believes that the timely switching-on of Condition 6 of its draft TSO licence which will oblige EirGrid to accede to the Single Electricity Market Trading and Settlement Code (T&SC), and as a result all of the associated obligations arising under the T&SC, together with EirGrid's existing obligations under its current licence with respect to compliance with laws and directions (Condition 30) should be sufficient to facilitate transition by EirGrid to SEM of those necessary matters that are reasonably within EirGrid's power to deliver.	Following discussion with EirGrid it is intended to commence Condition 1 (Interpretation – as required), Condition 4 (System Operator Agreement) and Condition 6 (SEM T&SC), at Go-Active. The balance of the conditions will be commenced at or shortly before Go-Live.
3.	Moyle	Cond A, 1(a) in respect of NIE plc. (page 51)	We query whether "SA" should not in fact be "SB".	Agreed
4.	NIE	Cond A	Clarification is required as to how it is intended to deal with run-off of the existing settlement arrangements under the different documents. In particular, the drafting does not make clear whether this would be an obligation imposed on SONI or NIE. (e.g. NIE has responsibility for RoF, and while the ISC falls to SONI, for practical reasons it is mainly administered by PPB). This should be clarified.	Amended

	Respondent	Condition	Comment	Response
5.	EirGrid	Cond A	<p>EirGrid notes that there appears to be inconsistent treatment of the two Transmission System Operators with respect to the “Run-Off” term for existing Transmission System Operator Licence Conditions, in that for NI TSO these conditions will continue to apply for 18-months, whereas for EirGrid, it is proposed that these conditions will continue to apply for 6 years and 1 month i.e. 73 months. EirGrid suggests that since its proposed draft TSO Licence for the most part expands its existing licence obligations to give effect to SEM, that the only condition in its current licence that requires to be specifically extended in duration beyond SEM Go-Live is existing Condition 5 – Settlement System and the Trading and Settlement Code, where a period of 15-months is considered by EirGrid to be sufficient to receive any final amendments to metered data from the Meter Data Provider, and to subsequently make any final amendments to settlement under today’s Trading and Settlement Code.</p> <p>Should the intent of this 71 month period of compliance with previous licence obligations relate to data retention, then EirGrid understands that the obligation to retain data for specific purposes and timeframes is covered under other legislation relating to Data Protection or similar, and as such does not think that such elongated timeframes require to be mandated under its TSO ‘transition’ licence conditions.</p>	<p>The proposed extended period is required to cover the possibility of disputes being raised under the existing (legacy) arrangements. Should the existing settlement arrangement be curtailed then the RAs would consider reducing this period.</p> <p>See above - the extended period is not specifically for data retention but to allow for disputes under the existing (legacy) arrangements.</p>
6.	Moyle	Cond A, 1(b) (page 51)	There is a considerable difference in run-off periods in Northern Ireland (18 months) and the Republic of Ireland (6 years). Can the RAs advise of the reason for this.	The difference in run off timescales is a function the settlement processes set out in the legacy settlement arrangements in both jurisdictions.

	Respondent	Condition	Comment	Response
7.	SONI/EirGrid MO.	Cond A (page 51)	For both the Ireland and Northern Ireland MO licences the transitional provisions set out in Conditions B and C (general and specific transition steps) are to continue to apply until 3 months after SEM Go-Live. Condition D (run-off steps) is to continue for 6 years in the Ireland MO licence and for 18 months in the Northern Ireland MO licence. It is not clear from the consultation paper why such different timings are necessary in relation to the run-off provisions in both MO licences. We are also not convinced that the MO licences need to have run-off provisions in any event as the run-off of the existing settlement arrangements will be a matter for the respective System Operators. This needs to be clarified.	<p>The 3-month time period is set out to allow enforcement action to be taken against a licensee who fails to comply with a transitional licence condition during Go-Active.</p> <p>The periods of 18 months and 6 years relate to the run – off of the existing settlement arrangements (see above).</p>
8.	SONI/EirGrid MO.	Cond A (page 51)	Moreover, pre-Go-Live a number of decisions have already been taken for example in relation to the testing, trialling and auditing of the various MO systems and processes and the scope of these has been agreed. The transitional licence conditions must take account of this. Also, post Go-Live any testing, trialling or auditing will be conducted in accordance with the relevant industry code, principally the Trading and Settlement Code, and again the transitional licence conditions need to take account of this. At the moment it is not clear how the transitional licence conditions fit in with the existing SEM framework.	The transitional conditions are intended to be “self cleaning”. Transitional Conditions B and C will expire 3 months after Go-Live and Condition D will expire at the end of the respective (settlement) run-off periods.

	Respondent	Condition	Comment	Response
9.	SONI SO	Cond A (page 51)	<p>The transitional provisions set out in Conditions B and C (general and specific transition steps) are to continue to apply until 3 months after SEM Go-Live and the provisions in Condition D (run-off steps) for 18 months after SEM Go-Live. There are two issues here. First, pre-Go-Live a number of decisions have already been taken for example in relation to the testing and trialling of the various systems and processes and the scope of these has been agreed. The transitional licence conditions must take account of this. Second, post Go-Live any testing or trialling will be conducted in accordance with the relevant industry code, principally the Trading and Settlement Code, and again the transitional licence conditions need to take account of this. At the moment it is not clear how the transitional licence conditions fit in with the existing framework.</p> <p>Also, it is not clear from the transitional conditions who will be responsible for running off the existing settlement arrangements under the different documents (ISC and ROF). In particular, will the obligation be on NIE or SONI to run-off of the existing settlement arrangements?</p>	<p>The intention here in respect of the 3-month period is to allow for enforcement action against any licensee who breached any of its transitional obligations. The period of 18 months is required to run-off the existing settlement arrangements including their dispute provisions.</p> <p>The runoff obligations for the existing arrangements will lie with NIE.</p>

	Respondent	Condition	Comment	Response
10.	Airtricity	Cond A, 1 (c) and (d)	<p>Paragraph 1, clauses (c) and (d) in the ROI MO section appear to be somewhat extraneous, as the information relating to the dates that particular transitions come into effect features in the table outlining the licence conditions.</p> <p>However if the Commission feels the necessity of continuing this provision, it would be sensible to ensure that the conditions are better harmonised with the general NI transition conditions.</p> <p>Paragraph 1, clauses (c) and (d) of the NI general licence states that the “<i>Conditions [1 etc] shall apply...</i>” The scope of this article is vague and requires reference to the tables detailing the conditions anyway.</p> <p>It seems the most efficient way to harmonise these clauses would be to delete the current wording in both licences and insert an alternate clause of the wording (or something equivalent) “Conditions shall apply from the dates stated in the table”.</p>	<p>Agreed, amended.</p> <p>Agreed</p>
11.	Airticity	Cond B	<p>The concerns regarding the lack of integrated thinking between the northern and southern authorities manifest themselves again in this section. Despite being entitled a general set of clauses, Condition B is more general within the NI set of transition conditions applying to all NI licensees. Within the ROI transition conditions which, though broadly similar, contain a condition (Condition 4(b)) specific to each licensee.</p> <p>The terms defined in the two sets of transition conditions are inconsistent. The ROI content defines “core industry documents” but the NI content defines “SEM and Directive Arrangements”. We would suggest a there be a standard set of definitions utilised across both sets of documents.</p>	<p>This reflects the differing way in which licences have in general been consulted upon in both jurisdictions with licence amendments for go-active and go-live published separately for consultation.</p> <p>The “Directive Arrangements” while wholly appropriate for NI is not appropriate for ROI.</p>

	Respondent	Condition	Comment	Response
12.	NIE, Moyle, EirGrid, SONI	Cond B, 1	<p>Condition B(1) is currently too wide and lacks context. From a Licensee’s perspective, there is a need for certainty of our licensed obligations. Including extensive substantive licence obligations, the scope of which is impossible to determine in advance, gives NIE cause for concern. The obligation should be structured such that it allows the Licensee to consider and process the relevant information and come to a view as to what is required – if the Licensee does not take the required action then at least there is a yardstick against which to assess the failure to comply with the obligation. As a further safeguard against the Authority’s concern that actions it considers necessary are not taken, this could be specifically provided for. We propose that the Condition be amended as set out below, and suggest that this wording should meet the Authority’s requirements that actions are taken as required while providing Licensees with greater certainty as to the scope of their obligations. It was also not clear to us what the difference was between ‘reasonable steps’ and ‘reasonable things’, and we have suggested that this ambiguity also be removed.</p> <p>“1 The Licensee shall take all reasonable steps as are within the Licensee’s reasonable opinion necessary (or as otherwise directed by the Authority) in order to give full and timely effect to the SEM and Directive Arrangements, so that the Licensee is able to comply with the SEM and Directive Arrangements that are applicable to it from the time at which they are effective.”</p>	In the opinion of the RAs this condition (B1) is neither considered too wide nor lacking in certainty. Minor changes have been made, but this condition contains the essence of the transitional conditions.

	Respondent	Condition	Comment	Response
13.	NIE, EirGrid, SONI	Cond B, 2	Condition B(2) should effectively be a subset of paragraph (1) and accordingly it is not clear why it is necessary. It is not clear what is envisaged within the scope of this obligation, and it gives rise to the same concern articulated in paragraph (1). In particular, the obligation to do all such reasonable things to enable all licensees North and South to comply with modifications to their licences, directions and statutory and licence obligations leaves NIE highly uncertain as to how this obligation might be interpreted. Again, if this provision is to be retained, it should be specific as to what is required of licensees. It should indicate that the steps to be taken are those that are “in the Licensee’s reasonable opinion necessary (or as otherwise directed by the Authority)”. As drafted, we would reiterate that this obligation is of uncertain scope. We also note that these obligations would continue for some time after Go Live.	The drafting has been amended to provide for a reference to the RAs where a request for co-operation is seen as unreasonable.

	Respondent	Condition	Comment	Response
14.	NIE	Cond B, 3,4 and 5.	<p>The obligations imposed on NIE under Condition B(3) and B(4) are by reference to Directions of the Authority.</p> <p>(a) It is important that such Directions are sufficiently specific, reasonable and clear so that they can effectively be complied with. If the Directions are drafted widely, they would replicate the uncertainty identified above.</p> <p>(b) In relation to Condition B(4)(a) and (b), NIE cannot be expected to enable compliance by other electricity operators in the wider sense of that wording. A more workable and clear Condition would be to place a requirement on a Licensee to ensure that it is in a position to comply with its own (anticipated) Licence requirements. We also suggest the insertion, in Condition B(4), of the word “reasonable” before “opinion”.</p> <p>The Licensee could not unilaterally ‘effect’ the novation of any of the core industry documents as set out in Condition B(5)(b) as this would require consent and signatures from other party or parties. The drafting should be amended to reflect this and NIE suggests inserting the words “take all reasonable steps within the licensee’s power to” before the word “effect”.</p> <p>For the same reasons, NIE alone could not “secure” its obligations under Condition B(5)(a) and B(5)(c). In Condition B(5)(a) the words “insofar as is within the licensee’s power” should be inserted after “(a) to secure...”, and the words “insofar as is within the licensee’s power” should also be inserted in Condition B(5)(c) after “(c) for securing ... “.</p> <p>NIE would like clarification on how disputes would be dealt with under Condition B(5)(d) as this is not clear. As NIE understands the position on this, it would be to the Commission and not the Authority to whom disputes in relation to Republic of Ireland operators would proceed for determination, and to that extent this provision should in any case be amended to remove the reference to the Republic of Ireland operators.</p> <p>NIE should be allowed to recover the cost of complying with Directions.</p>	<p>Agreed, it is intended that any Directions issued by the RAs will be specific.</p> <p>Paragraph 5 sets out the type of matter where directions can be anticipated. The wording of 4 allows for directions in unanticipated areas.</p> <p>Agreed.</p> <p>Agreed. although it was always envisaged that any such direction would be to all affected licensees.</p> <p>Agreed, although it was always envisaged that any such direction would be to all affected licensees.</p> <p>Disputes of this matter would be addressed by the SEM Committee once it is in existence. Prior to that they would be decided by the Regulatory Authorities issuing a joint decision.</p>

	Respondent	Condition	Comment	Response
15.	SONI/EirGrid MO.	Conds B, 3-7 (page 53 to 54)	<p>Whilst the MO is happy to comply with directions from the Regulatory Authorities these must be reasonable and sufficiently precise to enable the MO to take defined actions and must not be ambiguous or open ended. For example, a direction to do all things necessary to ensure that transition takes place would be too open ended to be reasonably achievable.</p> <p>The Regulatory Authorities should only issue directions which are in their “reasonable” opinion appropriate. Also, why should the MO have to take steps to enable other electricity operators to comply with their statutory or licence obligations? It would be more appropriate and more workable for each licensee to be obligated to comply with directions from its own Regulatory Authority. The most that the MO can do in this respect is enter into the MOA and other core documents.</p> <p>The MO could not comply with a direction to “secure” the co-ordinated and effective commencement and implementation of and operations under the Trading and Settlement Code. Such obligations are unattainable and unreasonable. The MO could perhaps take reasonable steps within its power to facilitate this but could not, acting alone, secure it.</p> <p>It does not seem right Condition B for electricity operators to refer disputes to the Regulatory Authority in the other jurisdiction for determination. Surely electricity undertakings can only refer matters to their own Regulatory Authority?</p> <p>We note that the transitional licence provisions do not appear to enable the Regulatory Authorities to require the MO to comply with any directed changes to the Trading and Settlement Code which is something we would have thought would have been necessary to include. There are likely to be a number of essential changes to the Trading and Settlement Code during the transitional period and it is necessary for the Regulatory Authorities to retain the ability to direct changes where necessary or expedient. This could be against a criteria set out in the licences. The current proposal to use the Urgent Modifications process is cumbersome and not appropriate at all for necessary changes.</p>	<p>The word “reasonable” has been inserted. Further the conditions have been amended to provide greater context.</p> <p>Agreed, although it was always envisaged that any such direction would be to all affected licensees.</p> <p>As a signatory to the Trading and Settlement Code the MOs will be obliged to comply with any amendments made to the T&SC.</p>

	Respondent	Condition	Comment	Response
16.	EirGrid	Cond B, 4	Paragraph 4 of this condition relates to compliance with Commission directions. EirGrid is particularly concerned with 4(b) under which the Commission may set out steps requiring EirGrid to perform certain activities so as to enable Northern Ireland authorised electricity operators to comply with their statutory or licence obligations. EirGrid believes that it would be more workable for each licensee to comply with directions from its own Regulator.	New drafting should allow for greater certainty.
17.	EirGrid	Cond B, 5	<p>EirGrid is also concerned with paragraph 5(b) in that it might not be able to comply with a direction of the Commission to secure the coordinated and effective commencement and implementation of the Single Electricity Market Trading and Settlement Code and operations there under of electricity undertakings and others. While EirGrid could facilitate this in so far as matters are within its control, it would be unreasonable to direct EirGrid to “secure” this. Such obligations are unattainable and EirGrid requests that they be removed.</p> <p>EirGrid also notes that where complying with directions of the Commission in aiding any undertaking or operator referring a dispute to the Commission, under paragraph 5(c), that its TSO licence conditions relating to the provision of information would apply in all such instances.</p>	It is agreed that EirGrid could not unilaterally secure such commencement, which is why the same condition is replicated in other licences. This will allow the Commission to issue direction to the relevant licensees.

	Respondent	Condition	Comment	Response
18.	Moyle	Conds B and D (page 53)	The phrase "Republic of Ireland electricity operators" appears throughout these conditions. While "authorised electricity operators" is defined in Moyle's licence to mean persons holding a licence pursuant to the Electricity (Northern Ireland) Order 1992 or transferring electricity to or from Northern Ireland across the interconnector, neither "Republic of Ireland electricity operators" nor "electricity operators" is defined. These terms do not appear to be used in licences issued by the CER. Given the wide obligations imposed on the licensee in respect of Republic of Ireland electricity operators we would be grateful for definition of the term. (The same comment applies to use of the term "Northern Ireland authorised electricity operators" in respect of the transitional licences for the Republic of Ireland.)	The terms are appropriately defined in the new SEM licences.

	Respondent	Condition	Comment	Response
	Aitricity	Cond B, 7	<p>Paragraph 7 of the NI transition conditions states, that before the Authority makes any direction regarding the licensee’s compliance with the regulations to bring about SEM, it will consult with the licensee <i>“in such manner as the Authority deems appropriate”</i>. We would suggest this gives the regulator too much discretion in deciding what constitutes an appeal and that a clause be inserted to the effect that such appeal should entail at least a face to face hearing before the Authority.</p> <p>There is no provision for such appeal within the ROI licence, which although potentially justifiable for dominant bodies within the market but presents potential for smaller generators and suppliers to not sufficiently represent their interests. It also points to an inconsistency between the transition conditions north and south.</p> <p>Both sets of conditions allow for the regulatory authorities to obtain information from the licensee of a sort and in a timescale that <i>“the Authority [or Commission] may reasonably require”</i>. There are broad parameters set on the type of information that the regulatory authorities may procure from the licensee. This could be key in ensuring that the regulatory authorities have oversight over the actions of dominant actors and as such is commendable in that context.</p> <p>Such a broad provision applied to independent generators & suppliers allows for the possibility of them being compelled to provide commercially sensitive information. A clause permitting some measure of appeal against providing such information for this class of generators and suppliers would be useful.</p>	<p>The wording reflects the statutory authority given to the regulator to consult with the licence holder and such other persons as it considers appropriate.</p> <p>See new drafting</p> <p>The statutory and legislative framework differs in both jurisdictions.</p> <p>Information provided would be to the regulator and therefore not for commercial advantage.</p>

	Respondent	Condition	Comment	Response
19.	NIE, EirGrid, SONI	Cond B, 8	<p>Condition B(8) is very generally worded at present and as drafted it is hard to know what NIE and other licensees would be dealing with. We note again in this context that the definition of SEM and Directive Arrangements is used, which is a very wide definition. This Condition could effectively be deleted and combined with Condition B(12) as follows:</p> <p>“12. If the Licensee becomes aware of any matter or circumstance which it considers will (or which it should reasonably consider likely to) materially hinder or frustrate the giving of full and timely effect to the SEM and Directive Arrangements that are applicable to it, the Licensee shall promptly inform the Authority of such matter or circumstance and shall comply with any directions given by the Authority in relation to such matter or circumstance.”</p>	The condition has been amended but is worded so as to prohibit the “intended” frustration of arrangements.
20.	VP&E	Cond B Para 9 (page 55)	<p>VP&E consider that conferring a specific requirement on licensees to give written notice to the Authority where a conflict does arise seems unnecessarily overbearing given that it is the responsibility of the RAs to ensure that a conflict does not arise in the first instance. As under these circumstances the licensees are likely going to report the conflict we consider that this obligation should be removed.</p>	This condition has been amended.
21.	Moyle	Conds B, 10 and D, 9 (page 55)	<p>Under this condition the licensee may be required to act in breach of its licence where directed by the Authority. We query whether this is not an excessive use of regulatory powers that goes beyond the due process obligations appropriately pertaining to amendment of licence obligations. The same comment applies to Condition D and we note that similar provisions are included in the transitional licences for the Republic of Ireland. We are encouraged to see an obligation on the Authority to consult with the licensee before issuing directions, the equivalent of which does not appear to be included in the transitional licences for the Republic of Ireland.</p>	The hierarchy of conditions has been set out more fully.

	Respondent	Condition	Comment	Response
22.	EirGrid	Cond B, 10	<p>Paragraph 10 of this Condition deals with the provision of, among other things, status reports to the Commission concerning steps necessary to be taken by EirGrid in order to give timely effect to modifications to the licences of electricity undertakings including those arising from amendments to core industry documents. Other information likely to be required to be provided by EirGrid in this regard includes drafts of legal documents by which such steps are to be achieved. While EirGrid would have no difficulty with the provision of draft versions of regulated documents to the Commission, as would be normal practice, the generality of this condition and the extension beyond such regulated documents would likely give rise to considerable costs and EirGrid believes that it could be very problematic.</p> <p>EirGrid is also concerned with the generality of the definition of “core industry documents”. EirGrid believes that in terms of its TSO licence obligations that this should relate solely to the Grid Code and not any other documents, particularly those within the control of electricity undertakings.</p>	<p>The condition has been amended to require the Commission to “reasonably require”.</p> <p>The Commission considers this broader definition to be appropriate in the context of these transitional obligations only. Where the term appears in B.1.d this is self limited – “so that the Licensee is able to comply with such modifications, conditions and matters from time to time at which they are effective”. Where it appears in 5.a. the reference allows for securing or facilitating amendment or establishment of core industry documents.</p>
23.	SONI/EirGrid MO.	Cond B, 11 (page 55)	<p>There is a very wide obligation on the MO to provide information, including status reports and draft legal documents to the Regulatory Authorities. Both EirGrid and SONI have genuine concerns about the width of this requirement given that not all legal documents require Regulatory approval. There is also a need to balance the requirement to provide information against the need to give sufficient resources to completing the tasks.</p>	<p>The obligation has been qualified so that the RAs must act “reasonably”.</p>

	Respondent	Condition	Comment	Response
24.	NIE, SONI	Def of " SEM and Directive Arrangements"	As mentioned, the definition of "SEM and Directive Arrangements" is very wide. It is also unclear by the inclusion of the words "(or which the Licensee knows, or should reasonably know, are to be made)" in sub-paragraph (a). Given the way in which the obligations have been drafted, this definition makes it unclear what the scope of the overall obligation would be. If the obligations are amended as suggested in our response, there would be a need to reconsider this definition to determine whether it is appropriate in light of the amendments, and allows licensees to adequately and clearly determine their obligations.	The words identified have been removed and inserted into paragraph (b) where it is considered more appropriate.

	Respondent	Condition	Comment	Response
25.	Airtricity	Cond C	<p>Paragraph 1(c) of transition conditions for the ROI MO, TSO & DSO state that the licensee shall “<i>co-operate with electricity undertakings and Northern Ireland Authorised electricity operators</i>” as regards testing. The NI MO, NI SO and NIE T&D conditions state that the licensee shall “<i>co-operate with authorised electricity operators and Republic of Ireland electricity operators</i>”. This suggests that the terminology used (“undertaking” and “operator”) are not being consistently utilised and that the terms may need further clarification. If they refer to the same object then one name would be useful. If they are different for such reasons as the legislation being unique to the respective regimes, then term the ROI organisation “undertaking” and the NI organisation “operator” and do so universally. This mixed usage occurs throughout the document.</p> <p>In all ROI sets of transition conditions, the term “meter data” is defined, but no such definition appears in the Northern set of conditions. The only exception is the ROI Generation and Supply set of conditions, where Condition C concerns general “run off” conditions unlike every other potential licensee where Condition C sets out licence specific matters.</p> <p>The table below cursorily contrasts the NI & ROI approach to Condition C. Though both supposedly refer to licence specific matters, the NI approach is more prescriptive and more specific in its content. This relatively shallow comparison does show that there are differences in approach that cannot entirely be put down to conditions specific to a geographic area. This divergence in approach requires some resolution or may create problems in the single market.</p>	<p>The definitions are jurisdiction specific and do not in the opinion of the RAs lead to any real confusion.</p> <p>This is because the term is not used in the ROI Supply and Generation Conditions.</p> <p>The different approaches are recognised and relate to the differences in the licence consultations undertaken so far. In ROI for instance the consultations on both Supply and Generation Licences have included full drafts of licences to apply at Go-Active and at Go-Live.</p>

	Respondent	Condition	Comment	Response
26.	EirGrid	Cond C	<p>EirGrid has assumed that the fact that paragraph 1 commences with sub-section (e) is a typographical error rather than an omission of sub-sections (a) to (d).</p> <p>In paragraph 1(g), EirGrid believes that any obligation to co-operate with electricity undertakings who wish to test and trial their systems in connection with the SMO Business systems, processes and procedures should be dealt with under transition provisions relating to the Market Operator licence and not the Transmission System Operator licence. In any event any such co-operation would only be to the extent that during the period between SEM Go-Active and 3 months after SEM Go-Live, that such co-operation is possible with reflection of SMO capability and resourcing during that period.</p> <p>EirGrid is concerned as to the intent behind paragraph 1(h) with respect to co-operation with any audits conducted by the Commission over this Go-Active to Go-Live+3 months period. EirGrid notes that the scope of any such audit would require to be agreed with EirGrid in advance of its commencement.</p>	<p>The assumption was correct and the condition has been amended.</p> <p>It was considered expedient to extend this licence condition to the SO in the event that data may be required from the SO.</p> <p>While EirGrid's concern is noted, the Commission considers that the Licensee should co-operate with any such audit.</p>

	Respondent	Condition	Comment	Response
27.	EirGrid	Cond D	<p>The obligations under Condition D are potentially very wide ranging and are likely to be difficult to achieve. For example, the obligations under paragraph 2 of this condition D in relation to expedient run-off of pre-SEM arrangements don't align with the desire that this condition continues to apply for a period of 6 years and 1 month after SEM Go-Live.</p> <p>In addition as the current trading arrangements in Ireland are restricted to market participants registered in the current market in Ireland, EirGrid does not see the merit in obliging it to enable Northern Ireland authorised electricity operators to comply with their respective statutory or licence obligations to run-off pre-SEM arrangements.</p> <p>EirGrid suggests that with respect to the general run-off steps, that section 1 of this condition as worded is all that is required in order to enable efficient and timely run-off of pre-SEM arrangements.</p>	<p>See above (5).</p> <p>The condition has been amended to provide the right to refer "unreasonable" requests to the Commission.</p> <p>Noted.</p>
28.	SONI/EirGrid MO.	Cond D (page 59)	<p>The general requirement in both MO licences is extremely wide and places a potentially unattainable obligation on the MO fully and effectively to run-off the pre-SEM Arrangements. We are not even sure the run-off requirements for the existing settlement arrangements are relevant to the MO as this will be largely undertaken by the relevant System Operators. Clarification on this is needed.</p> <p>In any event, as a general point, whilst licensees can take all reasonable steps within their power to facilitate run-off, no licensee acting alone can fully and effectively run these off. Moreover, the current settlement arrangements are only applicable to one or other jurisdiction and not both so we do not see the relevance of requiring the licensee to ensure that electricity undertakings in the other jurisdiction are able to comply with run-off.</p>	<p>The conditions are deemed necessary and have been included in the MO licence in the event that any arrangements are novated to the MO. It should be noted however that the condition relates to the pre-SEM arrangements they are responsible for.</p> <p>See above</p>

	Respondent	Condition	Comment	Response
29.	SONI, NIE	Cond D (page 59)	<p>Again, the general requirement in paragraph 1 of Condition D is extremely wide and places an unattainable obligation on the SO fully and effectively to run-off the pre-SEM Arrangements. Whilst the SO can take all reasonable steps within its power to facilitate run-off it cannot, acting alone fully and effectively run these off. SONI as SO is happy to do all things in its opinion necessary or otherwise where directed by the Authority to do something but it cannot take responsibility generally for run-off. We request that the provision is redrafted as follows:</p> <p>“1. The Licensee shall take all reasonable steps as are within the Licensee’s reasonable opinion necessary (or as otherwise directed by the Authority) in order to fully and effectively run-off the Pre-SEM Arrangements from SEM Go-Live.”</p>	Drafting amended to reflect the obligation only in respect of documents for which they are responsible.
30.	NIE	Cond D, 2	As indicated above, NIE is not in a position to enable compliance by other electricity operators in Northern Ireland and the Republic of Ireland. Condition D(2) should therefore be removed, particularly as Condition D(1) sufficiently covers the issue.	See above – will only relate to the docs for which it is responsible.
31.	SONI SO	Cond D, 2 (page 59)	As outlined above, paragraph 2 of Condition D raises a number of concerns for SONI as SO since it requires the SO to be responsible for ensuring that other electricity undertakings in both Northern Ireland and the Republic of Ireland are able to comply with their statutory or licence obligations or any direction from the Authority. Whilst the SO is happy to co-operate with all undertakings for the purposes of run-off generally it cannot take responsibility for other entity’s compliance in this way. We would request that this paragraph is deleted as the requirement to co-operate is already covered by paragraph 1. Alternatively there should simply be an express obligation to co-operate with others for the purposes of run-off where this is within the Licensee’s reasonable opinion necessary or as otherwise directed by the Authority.	The condition has been amended to provide the right to refer “unreasonable” requests to the Commission.

	Respondent	Condition	Comment	Response
32.	NIE	Cond D, 3-6	NIE would expect any directions from the Authority to be sufficiently specific and reasonable so that NIE can reasonably comply with them. We also suggest the insertion, in Condition D(4), of the word "reasonable" before "opinion".	Drafting amended
33.	SONI SO	Cond D, 3-6 (page 59 - 60)	Whilst the SO is happy to comply with directions from the Authority these must be reasonable and sufficiently precise to enable the SO to take defined actions and must not be ambiguous or open ended. A direction to do all things necessary to ensure that run-off takes place would be too open ended to be reasonably achievable. In paragraph 4 the Authority should only issue directions which are in its " <i>reasonable</i> " opinion appropriate.	Drafting amended
34.	SONI SO	Cond D, 7 (page 60)	Again, paragraph 7 appears to be very widely drafted. The point would be covered in a much more workable way by amending paragraph 11 to read: "11. If the Licensee becomes aware of any matter or circumstance which it considers will materially hinder or frustrate the full and effective run-off of the pre-SEM Arrangements from SEM Go-Live, the Licensee shall promptly inform the Authority of such matter or circumstance and shall comply with any directions given by the Authority in relation to such matter or circumstance."	See reference to B 8
35.	Airtricity	Cond D, 10	Paragraph 10 in Condition C of the ROI Generation and Supply conditions (equivalent to Condition D for other licensees) provides the Commission with powers to procure extensive tranches of information from the licensee. The only limitation is the vaguely defined clause that such information be provided " <i>in such manner and at such times as the Commission may reasonably require</i> ". This condition which would adequately serve as one potential safeguard against the market dominance of the monopoly holder, would place onerous obligations upon smaller generators and suppliers. It could potentially leave them vulnerable to exposing commercially sensitive information.	The clause has been amended by the insertion of the word reasonable.

	Respondent	Condition	Comment	Response
36.	NIE	Cond D, 10	<p>Condition D(10) appears to have been left incomplete missing the parallel references shown in Condition B(11). We would make an analogous point here, as above, proposing the deletion of Condition D(7) and suggesting the following substitute drafting: “11. If the Licensee becomes aware of any matter or circumstance which it considers will (or which it should reasonably consider likely to) materially hinder or frustrate the full and effective run-off of the pre-SEM Arrangements from SEM Go-Live, the Licensee shall promptly inform the Authority of such matter or circumstance and shall comply with any directions given by the Authority in relation to such matter or circumstance.”</p>	Noted, the Condition has been amended.
37.	SONI SO	Def “Pre-SEM Arrangements” (page 61)	The reference to “Interim Settlement Agreement” should be to the plural “Interim Settlement Agreements”	Amended
38.	NIE	Def “Pre-SEM Arrangements” (page 61)	The reference to “Interim Settlement Agreement” should be to the plural “Interim Settlement Agreements”	Amended
39.	SONI SO	Cond C (page 62)	As mentioned above, we have concerns that the very wide licence obligations in relation to the testing and trialling take no account of the scope of the testing and trialling arrangements already agreed, both pre Go-Live and post Go-Live under the Trading and Settlement Code. This needs to be clarified.	The testing and trialling obligations have been placed on the MO.

	Respondent	Condition	Comment	Response
40.	SONI/EirGrid MO.	Cond C (page 62)	<p>The concern with the way that these licence obligations are drafted is that they do not recognise the fact that there is already a prescribed market trialling and testing procedure taking place. The requirement, for example, to cooperate with electricity operators on the island of Ireland who wish to test and trial systems etc. does not take account of the fact that there is a defined process in place for the trialling and testing of systems with participants being conducted pursuant to the market trial agreement and participants must follow that procedure. This obligation implies that electricity operators can simply request the MO to cooperate on their terms which is not the case. This obligation must tie in with the process agreed in relation to testing and trialling in preparation for SEM Go-Live.</p> <p>Similarly, there is already an agreed procedure in place for conducting the audit of the MO's systems and post Go-Live this is governed by the Trading and Settlement Code. This licence obligation implies that the Regulatory Authorities can override this agreed procedure and introduce a different auditing regime which is a real concern for the MO.</p> <p>In the Ireland SO licence there is a requirement to co-operate with electricity undertakings wishing to test and trial systems in connection with the MO systems which does not seem correct. Shouldn't this obligation be in the MO licence rather than the SO licence?</p>	<p>The ROI licence has been amended to allow a referral to the Commission in the event that a request for co-operation is considered unreasonable.</p> <p>The NI condition has also been amended to make more specific reference to the testing and trialling of the MOs systems etc.</p>

	Respondent	Condition	Comment	Response
41.	Moyle	Condition C, Obligations in respect of MICFA (p.76)	Moyle will seek Authority approval of the MICFA well in advance of 1 September 2007 in order to run capacity auctions during June 2007. Moyle has published a draft MICFA on the website of Northern Ireland Energy Holdings, consultation on which closed on 28 May 2007. Moyle believes that (a) suppliers will consider it most appropriate for annual capacity to be aligned with the customer contract year and tariff year, and (b) it would be most appropriate to hold auctions for annual capacity at or about the same time as directed contracts are offered to the market. Approval of the draft MICFA by the Authority within a short timeframe will be crucial to enable Moyle to offer capacity to interconnector users in time for the period beginning 1 November 2007. We would therefore like to see this condition made subject to the Authority providing its approval (or comments) within a reasonable timeframe to enable Moyle to fulfil its commitment to interconnector users and with regard to the SEM.	Noted, this has been amended.

	Respondent	Condition	Comment	Response
42.	NIE	Page 63	<p>The licence currently titled NIE Energy should be amended to NIE plc. Also, not all of the run-off arrangements referred to in Condition SD belong to NIE Energy and the condition should recognise that. Also, we propose that the wording should be amended as follows:</p> <p>“The Licensee shall comply with the requirements of Conditions SB and SD so as to enable NIE Energy Limited (as the prospective licensee under the licence which will contain the conditions set out in Chapter 3) rather than itself to:</p> <p>(a) comply with those modifications, conditions and matters referred to in Condition SB; and</p> <p>(b) comply with the obligations relating to run-off of the arrangements referred to in Condition SD.</p> <p>from such date as the supply licence is transferred to NIE Energy. Where the Licensee (as the holder of a transmission licence) is obliged, by this Condition TC, to enter into an agreement with itself (as the holder of a supply licence), the Licensee may where it considers it appropriate instead enter into an agreement with NIE Energy Limited (as the prospective licensee under the licence which will contain the conditions set out in Chapter 3).”</p>	The conditions have been re-formatted, and the specific arrangements identified.
43.	NIE	Distribution Code	A consultation is currently being carried out. It is unclear why the drafting provides for a possible subsequent consultation on this.	The condition is clearly drafted in its terms.
44.	NIE	Market Registration Code	Please could you clarify the reference to Chapter 2 here. If the intention is that the amendments are to meet the objectives set out in the proposed revised MRC licence condition in the T&D licence, this should be made clear.	The condition has been amended.
45.	NIE	Transmission Use of System Agreement	The reference to a draft TUoSA requires further definition, as the term refers to a number of different types of agreements - there will be at least three different types of TUoSAs (Suppliers, Generators and embedded Generators).	Further definition has been inserted in the condition.

	Respondent	Condition	Comment	Response
46.	NIE	Transmission Connection Agreement	The reference to “novate and amend” does not reflect the anticipated process, whereby the novation and amendments will be done through two separate agreements. Amending the wording to say “novate and/or amend” may provide the flexibility needed on that.	The condition has been amended and provides greater clarity of the requirements.
47.	NIE	Transmission Application Offers	These will be dealt with on a case by case basis, and the timings here may not align completely with the timings under the interface agreement between NIE and SONI. The offers may be tripartite, such that NIE, SONI and the applicant are a party and the agreements are automatically amended to deal with changes to the standard forms on SEM Go Live, and the principal counterparty becomes SONI from that date. However, this will need to reflect required practice, and the transition obligation as drafted does not assist with that. It would be better to delete that and deal with the issue on a case by case basis.	The condition has been amended to allow for the Licensee to apply to the Authority on an individual case-by-case basis to progress applications unilaterally.

	Respondent	Condition	Comment	Response
48.	NIE	Distribution Connection Agreements	<p>Assuming that the draft condition deals with licensed and non-licensed counterparties, NIE believes that the drafting is too restrictive at present and should allow greater flexibility as to how these may be dealt with. Some may be dealt with through the process as indicated, others through the Transfer Scheme under the proposed DETI Regulations to implement the Electricity Directive (which should provide for amendment of agreements that remain with NIE plc as part of the property arrangements scheme which can be implemented under those Regulations), others through processes provided for in the agreements themselves to amend and others by notice where permitted. The proposed obligations should not apply to demand side agreements or new connection terms and conditions that may be required with existing tariff customers as the proposed approach is not appropriate for these agreements. We suggest that the drafting clarify the Connection Agreements referred to and, as stated above in our general point, allow flexibility in relation to how these could be dealt with, e.g. by amending the wording as follows:</p> <p>"...(a) a draft proposal for amendments to the existing Connection Agreements, on which it has consulted on with relevant counterparties as it considers appropriate..."</p>	<p>This has been spilt to make provision for agreements with generation and with other connectees, requiring consultation in respect of how best to proceed in respect of the other connectees.</p>
49.	NIE	NIE Power Purchase Agreements	<p>Although the Property Arrangements Scheme can deal with a transfer of the PPAs, the description in the third column should recognise that the intention is that the transfer of the PPAs would be by novation (using the powers to designate and mandate). Also, the description in the fourth column in the final paragraph suggests that all three identified licensees (NIE T&D, NIE Energy and the Generator) will be party to the amendment agreement. This is not expected to be the case based on how the contracts are currently structured – it will be either T&D or NIE Energy, and not both, that will be a party to that agreement</p>	<p>The condition has been amended to allow for intended novation of the agreements.</p>

	Respondent	Condition	Comment	Response
50.	NIE	Intermediary Agreements	The reference to "NIE Energy (as PPB)" in the second column needs also to recognise that in practice for timing reasons the original counterparty may be NIE plc with a transfer of the Intermediary Agreement to NIE Energy at the appropriate time. (Formally, NIE Energy will be the counterparty).	The obligation has been placed on NIE's supply licence as being the proper enduring licence.
51.	NIE	System Support Services Agreement and Moyle Collection Agency Agreement	The reference to an agreement "to novate (with amendment where appropriate)" needs to be amended to reflect that the novation and amendment are likely to be carried out under separate agreements.	The SSSA condition has been amended to reflect this two stage process.

	Respondent	Condition	Comment	Response
52.	NIE	NIE Energy Deemed Supply Contracts	<p>The reference to deemed contracts here requires definition. We would ask that the licence obligation be explicit as to which form of 'deemed contract' is contemplated.</p> <p>(a) It could feasibly cover Terms and Conditions which will apply to tariff customers who transfer to NIE Energy whereas these are governed entirely by Regulation 42 of the draft DETI Regulations for the implementation of the Electricity Directive currently under consultation. These "deemed contracts" should be outside the definition of deemed contracts under the transition licence consultation.</p> <p>(b) The reference would also be applicable to the deemed contracts applicable in an SOLR scenario and the deemed contracts applicable under the "Default Supplier" arrangements under the Market Registration Code. The process for approval of these is also covered in the new Electricity Supply Code being proposed under the draft DETI Regulations. Is it intended that there should be a dual process, one under the Regulations and one under the Licence?</p> <p>(c) Also, it is not clear why the obligation is only on NIE Energy, when the deemed contract scheme obligation under the Electricity Supply Code is on all suppliers.</p>	This has been taken out of the transitional conditions.
53.			Additional comments received in respect of default price controls did not form part of the consultation , and will not form part of this response.	