



**Licence to Participate in Transmission for
NIE**

**to facilitate the implementation of the SEM
Directive in Northern Ireland**

Consultation Paper

AIP/SEM/07/44

7th March, 2007

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1 Introduction

1.1 General

In February 2007, the Commission for Energy Regulation (CER) and Northern Ireland Authority for Energy Regulation (NIAER), jointly referred to as the Regulatory Authorities (RAs), published a consultation (AIP/SEM/07/11) setting out an explanation of the proposed enduring licensing and contractual framework applying under the SEM. The paper also set out the associated changes required for EU Directive compliance in Northern Ireland.

In addition to requiring changes to the statutory framework underpinning the wholesale electricity arrangements, the introduction of the Single Electricity Market will involve changes to the licensing and contractual framework supporting the operation of the wholesale electricity market. This paper explained that while changes to licences and contracts are substantial in the Republic of Ireland, the changes in Northern Ireland are even more significant for two principal reasons:

First, the introduction of the SEM in Northern Ireland includes the establishment of a separately licensed company to carry out the activity of system operation (which will ultimately be corporately separated from generation and supply affiliates). This means that unlike in the Republic of Ireland, where equivalent changes have already taken place, the introduction of the SEM in Northern Ireland includes the additional development of a new system operator licence, associated changes to the transmission ownership licence and the requirement for associated consequential changes to a significant number of contractual relationships.

Second, the introduction of the SEM in Northern Ireland is taking place at the same time as a number of other significant changes (most notably restructuring arrangements which principally affect NIE) to meet the requirements of EU Directive 2003/54/EC (the "Directive") and the introduction of full retail competition. For example, in order to meet the Directive requirements, it is intended that the supply and PPB activities associated with NIE will be undertaken on a legally separate basis from the activity of Distribution system operation. This separation will result in the need to separate the existing licensed organisations and to either establish or amend an associated contractual framework. Changes to both licences and contracts for these purposes interact with the changes required for the SEM. Furthermore, similar issues and interactions arise with the introduction of full retail competition.

Under this proposed approach, NIE would hold a licence to participate in transmission which would include conditions relating to the ownership and operation of the distribution system and ownership of the transmission system, in Northern Ireland. NIE would not carry out the transmission system operator activity. Instead, SONI, initially a wholly owned subsidiary of NIE would be separately licensed to carry out the transmission system operator activity (governed also by a licence to participate in transmission)¹, in a manner that recognised that the system operator activity would subsequently be

¹ In January 2007, the RAs published a first consultation on the proposed conditions of the system operator licences to apply to SONI and Eirgrid. This consultation is available on the AIP website.

undertaken by a company that did not have any supply or generation affiliates in the SEM. In practical terms this will mean that the initial licensing arrangements for both SONI and NIE will reflect the fact that the system operator activity will be undertaken by a company that is not an affiliate of NIE. As noted in the January consultation, it was anticipated that SONI's divestment from NIE will be undertaken by November 2008.

This consultation sets out the proposed enduring conditions of the NIE licence to participate in transmission that will apply from the introduction of the SEM and Directive changes expected to be in place by November 2007. It is noted that a separate consultation setting out proposals for legal transition to the SEM and Directive will be undertaken in due course and that it is likely that elements of this proposed licence may be put in place for transitional purposes prior to November 2007.

It is intended that the changes required, in order to move from a situation under which NIE holds its current combined PES supply and transmission licence to one under which it holds a licence to participate in transmission based upon the one which is the subject of this consultation, will be implemented by a combination of the powers available in Northern Ireland to implement the EU Directive and to implement the SEM. This reflects the fact that some of the changes being made (e.g. the full separation of transmission system operation from any company with generation or supply affiliates) are principally driven by the introduction of the SEM, whereas other changes (e.g. separation of supply activities from distribution system operation and retail competition) are principally driven by the implementation of the Directive.

1.2 Responding to this consultation

The Regulatory Authorities would be interested to receive the views and comments of interested parties on the proposals contained within this consultation. The Regulatory Authorities intend to publish all comments received. If any respondent wishes certain sections of their submission to remain confidential they should submit these sections as an appendix marked confidential. Comments on this paper should be forwarded to Donna Hamill, preferably in electronic form and not later than 5.00pm on the 6th April 2007:

Donna.hamill@ofregni.gov.uk

Donna Hamill
Ofreg
Queen's House
Queen's Street
Belfast.

2 High-Level Overview of the proposed Licence

2.1 Introduction

The licence to participate in transmission will be held by NIE and is expected broadly to encompass the activities of transmission and distribution ownership and distribution system operation, in essence, the “TO”, “DO” and “DSO” activities.

Insofar as the arrangements for transmission ownership are concerned, the proposed licence conditions have been modelled upon the equivalent licence conditions prevailing in the licences of Scottish Power Transmission Limited and Scottish Hydro-Electric Transmission Limited in Great Britain. This is consistent with the intention that the arrangements between the transmission ownership and system operation in Northern Ireland for purposes of the SEM should be broadly along the lines of the arrangements applying between the transmission system operator and asset owners in Scotland. There are however some specific differences in Northern Ireland, including, for example, that in the case of Northern Ireland: there is a single transmission owner; that the detailed split in functionality between SONI and NIE differs in some cases from the split in Scotland; that in Northern Ireland the transmission owner is also expected to be carrying out distribution activities and finally; that the arrangements in Northern Ireland need to tie into those in the Republic of Ireland and part of the SEM.

From the perspective of distribution, the arrangements have been largely based upon existing arrangements in Northern Ireland. There are however several Directive-driven changes, for example: arrangements relating to retail competition and new contractual arrangements associated with the restructuring of NIE; and a number of SEM related changes, for example arrangements to deal with the new relationship between SONI and the DSO.

The remainder of this document provides highlights a number of issues associated with particular licence conditions of the proposed NIE licence.

2.2 Consideration of specific terms and conditions

Terms

As noted above, the way in which the NIE licence will be given effect is expected to be through an exercise of powers to implement the Directive and powers to implement the SEM. It is currently anticipated that the NIE licence will be created from an amended version of the transmission elements of NIE’s current combined licence and it is expected that the terms will reflect this arrangement.

Condition 1 Interpretation and Construction

The definitions in this condition have been generally reviewed and in a number of instances amended to match equivalent definitions in the MO and SO licences. The notion of a combined “transmission and distribution business” is included as this is used in a number of instances throughout the licence. Whilst there are a number of instances where the transmission and distribution activities need to be separate (e.g.

charging, offering terms, accounting etc.) generally it is not proposed to require business separation between the distribution and transmission activities. It is proposed that NIE would be permitted to carry on these activities through a single combined business under the licence.

Condition 2 Preparation of Accounts through to Condition 9A Financial Gearing and Credit Rating

This reflects the now largely standard approach to such conditions in NI.

Condition 10 Restriction on Use of Certain Information

This condition has been updated to be consistent with the proposed approach for the system operator and market operator licences.

Condition 11 Compliance with Supply Competition Code

It is intended that the provisions of the Supply Competition Code are expected to be substantially run-off as a consequence of SEM/Directive implementation.

Condition 12 Security Arrangements

This condition is essentially unchanged, although it is anticipated that the Fuel Security Code will be amended as part of or as a consequence of the introduction of the SEM.

Condition 13 Independence of the Licensed Business

This condition has also been drafted in a manner broadly consistent with the proposed equivalent conditions for the NI MO and SO activities. However, it is recognised that, consistent with the requirements of the Directive, NIE T&D will continue to be part of the Viridian Group on an ongoing basis and, with this in mind, additional provisions have been included to govern elements of the relationship between NIE T&D and its holding companies. Comments from respondents are particularly invited in this area.

Condition 14 Prohibited Activities

Generally this condition is intended to prevent NIE from carrying out, under the SEM, the activities of generation or supply. It is recognised however that NIE may own and operate some generation specifically for the purposes of carrying out the T&D activity and consequently it is proposed to permit this limited form of generation under this condition.

Condition 15 Ring Fencing

This condition has been updated to be consistent with the proposed approach for the system operator and market operator.

Condition 16 Non-Discrimination

This condition has been developed from the existing obligation on NIE.

Condition 17 Transmission Interface Arrangements

This condition is based upon the SO-TO Code condition in GB licences to participate in transmission. It has been modified however to reflect the fact that it is proposed that this contract would deal not just with the relationship between the transmission owner and the transmission system operator, but also between NIE in its capacity as owner/operator of the distribution system and the transmission system operator.

Condition 18 System Security and Planning Standards

For transmission purposes this condition has been drafted to complement the obligations under the equivalent condition in the draft SO licence for SONI (and is again reflective of the arrangements in GB licences). For distribution purposes, the condition essentially just carries forward existing obligations on NIE.

Condition 19 Transmission Services

This condition is based substantially on the equivalent standard condition applying to the transmission ownership activity under GB conditions of licences to participate in transmission.

Condition 20 Obligations in Relation to Offers by the Transmission System Operator

Again, this condition is based substantially on the equivalent standard condition applying to the transmission ownership activity under conditions of GB licences to participate in transmission. It places a requirement on the transmission owner to offer terms to the transmission system operator in support of an offer of terms by the transmission system operator for connection to or use of the transmission system.

Condition 21 Functions of the Authority

This condition sets out the functions of the Authority in support of the arrangements in Condition 20.

Condition 22 Transmission Charging Statement

This condition sets out the obligations on licensee to prepare a statement of its charges to the transmission system operator. Again this is based substantially upon the equivalent provision in conditions of GB licences to participate in transmission.

Condition 23 Land Bank

This condition is based on NIE's current obligation in relation to the land bank which it is initially proposed should sit with NIE from November 2007.

Condition 24 PSO Agreement

It is envisaged that the various elements of the NI PSO will be split, with some being associated with NIE (e.g. land bank) and others (e.g. PPB related costs) with NIE Energy (the new company under which it is anticipated that NIE will carry out its principal supply activity in NI as well as the PPB activity).

It is envisaged that a new PSO related contract would be put in place between all NI suppliers, and those collecting (or paying) PSO costs in order to deal with the PSO arrangements on an ongoing basis.

Condition 25 Distribution Code

Currently the NI Grid Code deals with technical issues associated with connection to and use of the total system in Northern Ireland. As part of the separation of SONI from NIE (and with it the requirement to have in force a Grid Code), it has been recognised that it would be appropriate for the distribution activity to establish its own Distribution Code. For initial SEM and Directive purposes it is not proposed that a full, detailed Distribution Code would be put in place. Instead, it is intended that the initial Distribution Code will continue to rely substantially on the Grid Code by cross reference etc. Over time, it is expected that Distribution Code will develop to be more independent from the Grid Code

as the latter is enforced and administered by SONI to support transmission arrangements that are developed in conjunction with arrangements in ROI whilst the former continues to focus on NI distribution and is enforced and administered by NIE.

Condition 26 Market Registration Service and Market Data Service

This condition is expected to be retained in NIE's licence although changes to reflect the introduction of full retail competition will be required.

Condition 27 Market Registration Arrangements

This condition is largely unchanged, although the arrangements themselves will need to be amended to reflect supply competition changes as part of the implementation of the Directive.

Condition 28 Requirement to Offer Terms for Connection to or Use of the Distribution System

This condition is based substantially upon the existing condition in NIE's current licence.

Condition 29 Functions of the Authority – Distribution Disputes

As above.

Condition 30 Basis of Charges for Use of and Connection to the Distribution System

Again, this condition is based substantially upon the existing condition in NIE's current licence.

Condition 31 Provision of Information to Other System Operators

This condition has been included as part of the general changes for Directive compliance.

Condition 32 – not used

Condition 33 to Condition 41

There are a number of conditions in NIE's current licence which relate partly to the activity of supply and partly to the activity of distribution. Those that have distribution related elements to them are incorporated in conditions 33 to 41 of the proposed NIE licence.

Condition 42 Charge Restriction Applicable to the Transmission and Distribution Business

Charge restrictions would continue to apply to the NIE licence activities following the SEM/Directive changes.

Ends