

Airtricity

AIP-SEM-07-461

Submission on the consultation document on proposed changes to SONI's SEM Operator licence relating to the production of the Market System Development Plan and changes to NIE's transmission licences of all NI Suppliers in relation to the PSO Agreement

2.1: Condition 15 of SONI's SEM Operator Licence, "Market System Development Plan"

We support the aim of the Authority to align the licence obligations on Soni with the equivalent obligations placed on Eirgrid.

2.2 PSO Agreements

Instead of putting in place a multilateral PSO Agreement, the Authority now proposes to put in place a standard form of bilateral PSO agreements. We accept the consequential changes that have to be made to the supply licences and to the licence to participate in transmission held by NIE T&D in order to reflect the revised approach.

It is unclear what benefit the revised approach is going to have. The justification on grounds of expediency and practicality is not compelling as convenience should not be elevated over substantive benefit.

Paragraph 2 of the NIE's licence to participate in transmission is going to be amended, but it is difficult to see how the Authority will be in a position to ensure that each PSO Agreement is sufficient to secure that the licensee is entitled to recover the PSO Charges from the relevant persons. A standard multilateral agreement would be a more efficient way of securing this aim.

3. Draft PSO Agreement for Northern Ireland

Overall, this draft agreement lacks balance and leans heavily in favour of SONI. As it stands, this Agreement is unacceptable to Airtricity. We would advocate a revision to ensure that equal rights and obligations are afforded to both parties. In particular, adequate notice needs to be given to the User in circumstances where the company decides to increase security cover, change its payment policy and the circumstances for same should be limited. The circumstances in which

security cover can be increased need to be clearly delineated in advance and tightly regulated in operation. The agreement should also provide for adequate consultation with the User. Furthermore, the time frames for pay up are unreasonable. More often than not, the draft agreement provides that the User is subject to 5 Business day limits, whereas the Company gets 10 Business days. The Agreement is unbalanced and inequitable and would give rise to concerns about duress.

Comments on Individual Clauses

Clause 2.4:

Where PSO changes are not calculated using procedures established by Industry arrangements, it is imperative that the USER is consulted prior to approval by the Authority.

Clause 2.5:

This clause needs to be qualified by the words 'with notice to the User'.

Clause 2.12:

In the interests of fairness and equality, the Company should also be subjected to a 13 month cut-off period after which it cannot raise any dispute in relation to any amount owed or paid. We would advocate that both parties should be subject to a 13 month cut-off period after which all liabilities will be more or less final.

Clause 3.2:

We would contend that this clause is unreasonable and advocate at a minimum that the words 'reasonable' be inserted before notice and the words 'at any time' should be deleted. The User should be given an opportunity to be heard prior to termination.

Clause 3.3:

This clause provides the Company with too much discretion. The Company's payment security cover ought to be subject to rigorous control. The User should also be consulted prior to adoption of a new policy.

Clause 3.4:

The unreasonableness of this Clause is linked to Clause 3.3. The Company must act reasonably and the circumstances in which it can increase the security cover required must be limited. The words "and any other reason" should be deleted. Moreover, the User needs to be given 10 Business Days to procure an increase.

Clause 3.5:

The words “having regard to 3.3” should be deleted as it provides the Company with a catch all justification for refusing to reduce the level of security. Also, in order to ensure reciprocal treatment, the Company should be bound by a time limit of 5 Business days (10 if the User’s time limit increases pursuant to 3.4) to acquiesce to the request.

Clause 3.6 and 3.7:

As with 3.4, the time limit for procurement of increase or replacement Security Cover should be increased to 10 Business Days.

Clause 3.8:

Security Cover should be released within 5 Business days and the words ‘undisputed’ should be inserted before amounts (ii).

Clause 3.9:

This clause is grossly biased in favour of the Company. At a minimum, a grace period of 10 Business Days needs to be provided for in (a) and the word ‘undisputed’ needs to be inserted before the word amount. Also, (c) is unreasonable considering 3.3 confers such a wide and vague discretion on the company. Unless this unreasonableness is corrected, (c) should not remain a reason for draw down.

Clause 3.10:

The word ‘forthwith’ should be deleted and replaced with within 10 Business days.

Clause 4.1:

- (a) The words ‘whether or not’ should be deleted and replaced with “provided”.
- (b) The word ‘within’ should be replaced with ‘after’ or ‘following’.
- (c) Again, as 3.3 et al are unreasonable, this provision is also unreasonable by association.

Clause 4.2:

The Company ought to give reasonable notice to the User.

Clause 4.3:

The Agreement should contain an event of default clause for the Company, particularising events which entitle the User to terminate. An example would be the non payment of an amount owing and non compliance with contractual obligations.

Clause 5:

The timeframe of 28 days needs to be reduced in order to reciprocate the entitlements of the Company pursuant to Clause 4.2.