

**Modifications to Electricity Supply Licences to Facilitate
the Single Electricity Market**

Decision Paper

AIP-SEM-07-564

25th October, 2007

Table of Contents

1. Introduction	3
2. Decision on Public Electricity Supply Licence.....	5
3. Decision on Other Forms of the Supply Licences.....	7
4. Responses to Comments Received.....	8
5. Next Steps and Licensing Process	10

1. Introduction

1.1 Consultation Background

On 17th September, the Regulatory Authorities published a consultation paper (AIP-SEM-07-472) on the outstanding changes that need to be made to supply licences in the Republic of Ireland to facilitate the introduction of the Single Electricity Market. These proposed changes applied to the following Supply Licences:

- Supply Licence
- Interim PES Supply Licence
- Green Supply Licence
- CHP Supply Licence
- ESBIE Supply Licence
- ESBIE Green Licence
- ESBIE CHP Licence

The consultation on the 17th September followed two previous consultations and subsequent decisions on supply licences modifications on the 16th May (AIP-SEM-07-156) and 26th June (AIP-SEM-07-339) respectively.

This paper sets out the Regulatory Authorities' decision on the proposed changes set out in the most recent consultation paper in September (AIP-SEM-07-472) that need to be made to supply licences in the Republic of Ireland to facilitate the Single Electricity Market. A final consolidated version of each supply licence is published with this paper. Each licence contains transition conditions (Section A); conditions to apply from SEM Go-Active to SEM Go-Live (Section B); and conditions to apply from SEM Go-Live (Section C).

Section 2 sets out the RAs' decision on the PES supply licence modifications while section 3 sets out the decision on all other supply licence modifications. Section 4 summarises the comments received and sets out the Commission's response while Section 5 provides the next steps in this process.

1.2 Legal Basis for Licence Modifications

The licence modifications are made pursuant to the power to modify licence conditions contained in section 14A of the Electricity Regulation Act 1999 (inserted by section 13 of the Electricity Regulation (Amendment) (Single Electricity Market) Act 2007).

It must be noted that Section 14A(1) provides that the Commission may:

“modify the conditions of a particular licence where the Commission considers it necessary or expedient to do so—

- (a) for the purpose of implementing, or facilitating the operation of, the Single Electricity Market, or*
- (b) in consequence of, or for giving full effect to, those arrangements.”*

Thus, for clarity, only modifications to licences which satisfy the test in section 14A(1) are implemented at this time.

2. Decision on Public Electricity Supply Licence

The RAs have approved the changes to the PES licence described in the consultation paper (AIP-SEM-07-472), published on 17th September 2007. A final version of the ESB PES supply licence is published with this decision paper. This licence contains transition conditions (Section A); conditions to apply from SEM Go-Active to SEM Go-Live (Section B); and conditions to apply from SEM Go-Live (Section C).

In summary, the following are the changes to the PES supply licence issued to ESB Customer Supply only.

Condition 3 - Terms of Supply to Final Customers

In the SEM Regulation paper, the Regulatory Authorities decided that ESB PES and NIE Energy must each produce a Tariff Methodology Statement for approval by the relevant Regulatory Authority. These documents, which form part of the new regulatory framework imposed on both ESB Customer Supply and NIE Energy, will provide transparency in the manner by which wholesale electricity costs and other costs are reflected by ESB Customer Supply and NIE Energy when setting retail tariffs. Licence provisions concerning the above are now incorporated into the final licence.

Condition 9 - Economic Purchasing of Electricity

Condition 9 of the interim PES licence sets out that the licensee must engage in the economic purchase of electricity¹. In the SEM Regulation paper the

¹ Part 7, 17 (1)(f) SI No. 60 of 2005 European Communities (Internal Market in Electricity) Regulation 2005

Regulatory Authorities set out the principles by which these purchases will be governed and also requires that the licensee to provide a Hedging Policy Statement. These principles and requirements are now reflected in the licence.

3. Decision on Other Forms of the Supply Licences

The RAs have approved the changes to the supply licences issued pursuant to Section 14(1)(b), (c), (d) of the Electricity Regulation Act 1999 described in the consultation paper (AIP-SEM-07- 472) published on 17th September 2007. A final version of each supply licence is published with this decision paper. Each licence contains transition conditions (Section A); conditions to apply from SEM Go-Active to SEM Go-Live (Section B); and conditions to apply from SEM Go-Live (Section C).

In summary, the following is the change to the licences issued pursuant to Section 14(1)(b), (c), (d) of the Electricity Regulation Act 1999.

Condition 4A - Prohibition of Certain Contracts or Arrangements

This condition is intended to prevent suppliers from “cherry-picking” regulated supply tariffs in the SEM. Accordingly the RAs have decided to insert a provision to apply in all relevant supply licences that prohibit the licensee from entering (or offering to enter) into an arrangement with a customer to be supplied by another supplier (or which has the effect of the customer being supplied by another supplier) for a period after which it is supplied again by the licensee.

4. Responses to Comments Received

This section summarises comments received on the licence modifications and sets out the Commission's response.

A number of respondents commented on aspects of the licence conditions which were outside the scope of this consultation. However, as stated in the consultation paper, any licence modifications required as a result of the Directive 2003/54/EC will be consulted upon separately under the licence modification process set out in the Electricity Regulation Act, 1999. This applies to provisions in relation to customer protection and Supplier of Last Resort and also to provisions in relation to fuel mix disclosure.

Only changes relevant to the implementation of the SEM are being considered on at this time and comments were invited on these SEM modifications only.

4.1 Prohibition of Certain Contracts or Arrangements

Respondent's Comment

A number of Respondents commented that the prohibition of commercial arrangements between suppliers and customers is not warranted and would represent an unnecessary restriction on commercial arrangements. One of these respondents further commented that this licence condition will have an unintentional effect of inhibiting the development of innovative and flexible products for some customers. This Respondent provided an example where a customer, who has micro-generation installed, may require flexible products, possibly sourcing their electricity from different suppliers at different times of the year.

Commission's Response

Having reviewed the responses the Commission is satisfied that this condition is a necessary licence modification and does not unreasonably impose restrictive commercial arrangements on suppliers or hinder product innovation.

Due to metering technology constraints, many of the regulated supply tariffs include a flat, averaged price of electricity throughout year. The Commission considers that where suppliers are exposed to market fluctuations, the practice of "cherry-picking" would be an attractive commercial proposition for some suppliers. The advent of the SEM provides increased opportunities for suppliers to obtain low priced short-term purchase contracts with which they could cherry-pick the regulated tariffs. Given the metering constraints the Commission maintains that it is legitimate for the RAs to prohibit activity of this sort through a licence condition at the commencement of the SEM, rather than wait for behaviour to occur and then for the RAs to react.

The Commission also notes that this decision is the implementation of an RA policy decision² and does not consider that any respondent has presented a strong case which would alter that previous decision. In response to specific comments, the Commission considers that an agreement for a customer to leave a supplier and then come back later to that supplier would not restrict the terms of the agreement between supplier and customer for the two individual periods of supply. Furthermore the condition prohibits the supplier from 'tying in' the customer in for a second period of contract; thereby allowing customers to exercise customer choice prior to the start of the second period of supply.

² AIP/SEM/165/06

5. Next Steps and Licensing Process

Each licensee will receive a physical copy of the final licences published today before the introduction of the SEM.