



**Single Electricity Market**

**Proposed Conditions of the System Operator  
Licences – Second Consultation**

**Response to Industry Comments**

**5<sup>th</sup> April 2007**

**AIP/SEM/07/97**

## 1. Background

On 9 January 2007 the Regulatory Authorities published a consultation on the “Proposed Conditions of System Operator Licences”<sup>1</sup>. In response to this consultation the RAs received submissions from:

- Airtricity
- Eirgrid
- SONI
- ESB
- Viridian Power and Energy
- Moyle Interconnector Limited
- NIE

In light of these responses, following further consideration of the licences by the RAs and additional discussions with the System Operators the RAs are now issuing a second draft of the System Operator Licences for consultation along with a consultation paper outlining our responses to individual suggestions or queries raised.

Depending upon the nature of the comments received, it is envisaged that this consultation process will be the final opportunity for comment on the enduring conditions of these licences.

Comments on these licence drafts or the consultation paper are requested by 3 May 2007 and should be sent, preferably in electronic format, to [michael.campbell@ofregni.gov.uk](mailto:michael.campbell@ofregni.gov.uk) and [jorme@cer.ie](mailto:jorme@cer.ie)

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<sup>1</sup> <http://www.certestdomain.com/en/transmission.aspx?article=f860e739-031e-42c3-8135-5f560a31e566&amp;amp;amp;amp;mode=author>

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## **2. Changes to Licences**

As a general point the majority of changes to the previous version of the System Operator Licences are those arising from a detailed legal review of the drafting. Details of further changes made to the drafts are explained in the section of this paper which provides responses to individual queries raised.

### **2.1 SONI Licence**

In the SONI licence the main area of substantial change is in Condition 36, Arrangements in Respect of Moyle Interconnector. This condition has been updated to reflect corresponding drafting in the proposed conditions for Moyle. This draft also takes on board comments from Moyle Interconnector Ltd as set out in the next section.

### **2.2 EirGrid Licence**

The EirGrid licence has had relatively minor changes and again these are detailed in the next section.

It is useful to note that any further changes to SEM Legislation may require further updating of Eirgrid conditions which refer specifically to legislation.

### 3. Response to Comments from Interested Parties

#### 3.1 SONI Licence Comments

Condition	Comment	Respondent	Regulatory Response
General	A condition requiring the licensee to consult on changes to rules or procedures arising from their discharge of licence obligations should be included.	Airtricity	The RAs are of the view that it is appropriate that such matters are dealt with on a document specific basis rather than through a broad general condition. However, it is accepted that where there are specific areas which require consultation it is appropriate to include these in the licence condition (for example additional text has been included in the TIA licence condition in SONI's licence).
Condition 1 (4)	The obligation in relation to performing an obligation within a time limit should also expressly provide that where a time limit is not specified, the relevant obligation should be performed as soon as is reasonably practicable.	Moyle	The proposed wording reflects the equivalent drafting in other Northern Ireland electricity licences. The RAs do not feel it would be appropriate to depart from this precedent as part of the implementation of the SEM.
Condition 1 (7)	SONI must be responsible for ensuring that the SOA allows it to fulfil its functions under its licence. The TSO should not be in breach of its licence because it failed to ensure that the SOA permitted it to perform a licence obligation.	Moyle	The RAs are of the view that where appropriate SONI have been given a direct obligation to do certain things. In these cases the RAs have not diluted these obligations by requiring them to act in conjunction with the ROI SO. In other circumstances where it is necessary for the two SOs to work together to discharge obligations the RAs believe that it is appropriate to recognise this. However it should be noted that both RAs will have oversight through the JRA arrangements. Where one licensee's fails to support another in a joint process the RAs believe that an enforcement under

			one of the two licences should generally be available.
Condition 1 (8)	<p>“Authorised Electricity Operator” - It appears that this definition does not include an IC owner or operator, unless an IC owner is to be licensed to participate in the transmission of electricity. It seems unlikely based on other definitions of the “transmission system” and “transmission services”. However this definition does include a capacity holder while it is using its capacity or a person who has applied for such use. It is also therefore not clear whether it includes a capacity holder that is not using its capacity? It is essential that Moyle is treated as an “Authorised Electricity Operator” for the purposes of this Licence and the position of capacity holders that are not using their capacity should be clarified.</p>	Moyle	<p>The RAs are of the view that in policy terms it is right that Moyle should be captured within this definition, and in legal terms Moyle is captured within this definition, as Moyle will be licensed to participate in transmission. There is no concept of interconnector licensee in Northern Ireland, and so Moyle cannot be referred to as an interconnector licensee. The definition of transmission system refers to the transmission system of NIE plc. Persons who have the right to use interconnectors are also captured by the definition of authorised electricity operator.</p>
Condition 1 (8)	<p>“Connection Agreement” - It is not clear what is meant by “entry and exit points” in the context of this licence.</p>	Moyle	<p>It is intended that these refer to points of connection to NIE’s Transmission System.</p>
Condition 1 (8)	<p>“Electricity Undertaking” – If Moyle is not an “Authorised Electricity Operator” it follows that it is not an “electricity undertaking”. This impacts on a whole range of rights under this Licence in particular in the context of being consulted in relation to matters which affect it. Critical that Moyle is treated as an electricity undertaking.</p>	Moyle	<p>An authorised electricity operator is a subset of “electricity undertaking”. Moyle will therefore be an electricity undertaking.</p>

Condition 1 (8)	“Grant and Licence” – Grant is defined as being part of the Licence and the Licence is defined as being comprised in the Grant. This circularity should be rectified.	Moyle	Amendments have now been made to this effect.
Condition 1 (8)	“ROI SO Licence” – EirGrid was not formed under Regulation 34 but is established under the Companies Act although the obligation to incorporate it was contained in Regulation 34 of the EC Regulations 2000.	Moyle	The Condition has been amended to this reflect this comment.
Condition 1 (8)	“Total System” – It is not clear how Moyle will be considered to be participating in the Transmission of Electricity under the SEM. This means that Moyle would not form part of the “total system”. It is not clear if this was intended?	Moyle	The Moyle Interconnector is not intended to form part of the Total System. The definition of Total System refers only to the system owned by NIE T&D, so that (for example) the obligations on SONI and NIE T&D regarding connection refer only to NIE T&D’s system, as the access rights in respect of the Moyle Interconnector are different.
Condition 1 (8)	“Transmission System” – Again Moyle is currently licensed as a transmission licensee, but based on the definitions in this licence it appears that this may not be the case under the SEM. Clarification is required.	Moyle	The definition of transmission system in the SONI licence refers only to the transmission system of NIE plc. However, this does not prevent Moyle being licensed to participate in the transmission of electricity as defined in the Order.
Condition 1 (8)	“Ultimate Controller” – It is not clear who is the “Ultimate Controller” of SONI and this should be clarified. It may be arguable that through Moyle’s contracts with SONI it may be capable of influencing SONI’s policy by virtue of contractual arrangements. This should not be the	Moyle	The RAs agree that Moyle should not be considered SONI’s ultimate controller. However, the RAs do not consider that the current drafting has this effect. Moyle has contractual rights concerning the operation of the Moyle Interconnector and the collection of certain revenues. Moyle does not have influence over SONI’s business generally.

	case.		
Condition 3 1(b)	SONI should also be required to comply with its obligations under the SEM Order.	Moyle	This amendment has now been made.
Condition 3 6	It is not clear what happens if SONI cannot comply with its obligations to procure the giving of the undertakings required from its “ultimate controllers”.	Moyle	If SONI fails to comply with any of its obligations then they will be deemed to be in breach of their licence.
Condition 3 6(c )	Query whether the references to “holding company” in this condition should refer to the “controller”.	Moyle	This amendment has now been made.
Condition 3	Appointment of an independent non-executive director should be required prior to SONI divestment.	Airtricity	The structure of the SONI board is under consideration as part of the Viridian takeover and divestment discussions. Therefore this will not be considered in light of the SEM licence discussions.
Condition 6	Health and Safety obligation should take into account the safety of 3 <sup>rd</sup> parties and property.	Airtricity	The RAs are of the view that this is unnecessary, as such conditions do not generally exist in other UK licences.
Condition 9	Given that under the terms of the Licence the Moyle IC and the network are arguably employed by SONI in the exercise of its obligations, this may make these relevant assets for the purposes of Condition 9 (9(6)). This is inappropriate.	Moyle	To the extent SONI may have any interest in an Interconnector from time to time, the Authority would wish to exercise control over any disposal or other dealing with that interest.
Condition 11	This imposes obligations on SONI to protect information provided by any person. It appears	Moyle	Licences only create relationships between the licensee and the grantor. The relationship between licensees and other



	that the obligation only exists to the Authority and not to the person whose information is required to be protected. This obligation should be expressed to extend to the person affected.		persons should be dealt with contractually and not in the licence.
Condition 11	This condition should require that before disclosing any protected information, SONI notify the person whose information it is and give them an opportunity to comment on the proposed disclosure and take steps to protect it as necessary.	Moyle	Again licences are only intended to deal with the relationship between the licensee and the person granting the licence. This relationship should therefore be dealt with in an agreement between the SO and market participants.
Condition 12 2(c)	Decisions relating to the transmission system should be taken by the people described but it should be emphasised that it is these people alone and no others who are the decision makers.	Airtricity	The RAs have amended this condition accordingly.
Condition 12 2(d)(i)	Full separation is required including separate branding. There should be no sharing of any facilities to prevent inadvertent or casual information exchange.	Airtricity	The RAs believe that the separation provisions of the licence are sufficiently strong as drafted. This condition has been amended to allow employees of associated businesses the same access rights as afforded to other electricity undertakings.
Condition 12 2(d)(ii)	Should be strengthened to emphasise that shared systems are not permitted. Separate servers and back up facilities must be used.	Airtricity	The RAs are of the view that the current condition is robust and that any associated businesses will not have access to TSO documents/data or communications.
Condition 12	Additional condition similar to Condition 28 in the ROI licence should be added to require the TSO to prepare a code of conduct for every	Airtricity	This condition was included in the ROI licence as a continuation of the existing SO licence in ROI. The RAs do not believe that it is necessary for this to apply explicitly in

	director and employee employed under a contract of employment.		the licences in NI, although it is noted that this could form part of a future compliance plan if it was considered explicitly necessary.
Condition 12	It is not clear that the business separation obligations in Condition 12 go as far as is required by Direction 2003/54/EC.	Moyle	The RAs believe that the TSO is separated from generation and supply in a manner which is robust in light of the Directive.
Condition 12	The term “[distribution]” is included in paragraph 2(e) of the condition, in two places. We do not believe it is correct to include distribution in the list of businesses which cannot share directors with the TSO Business. We also consider that there is no basis for restricting the transfer of staff from the TSO to a distribution function. Since both the TSO and TO (which includes distribution) licence holders are “networks” companies with no commercial interests in generation or supply, no potential unfair commercial advantage can accrue from sharing directors or transferring staff. The strictures set out in paragraph 2(e) are therefore inappropriate. In addition, paragraph 2(e) is at odds with the definition of “Associated Business” (paragraph 14) which (correctly) excludes the Distribution Licensee from the businesses which can be an Associated Business.	NIE	The RAs agree with this comment and have made amendments accordingly.
Condition 13	SONI should not be permitted to purchase electricity under any circumstances. Allowing them to do so will distort prices. The SO would	Viridian	The RAs are of the view that the currently drafted condition remains appropriate and that SONI is restricted from purchasing electricity unless the Authority has approved

	be conflicted in its' independent role and could be in contravention of Condition 15 – non discrimination.		such action.
Condition 16	The SCC should be considered as a vehicle for handling governance while requiring NIE to perform a facilitating role.	Airtricity	The RAs are of the view that the SCC should be run-off prior to SEM implementation. Any issues arising will be dealt with via supply and generation licences or licence exemptions.
Condition 17 6(b)	It is incorrect to require the Grid Code to specify how the Licensee will operate the total system. The TSO licence only permits the Licensee to participate in the transmission of electricity in NI so the Grid Code can only specify how the Licensee will operate the system in NI having regard to the obligation to act in conjunction with the ROI TSO.	Airtricity	For day 1 operation of the market the Grid Code will still contain some Distribution Code conditions. Therefore the RAs are of the view that the drafting of Condition 17 6(b) is appropriate.
Condition 17	It is not clear what rights an electricity undertaking will have to seek modification to the Grid Code other than when a decision is taken to review such Code.	Moyle	The RAs are of the view that the current amendment arrangements are sufficient. Any change made to these arrangements would not be an SEM change.
Condition 17 (2)	The materiality threshold in this condition should be deleted. The obligation should be to consult with any electricity undertaking who may be affected. It is not acceptable that the SO makes decisions as to the materiality of an electricity undertaking's interest in a Code change.	Moyle	The RAs are of the view that the current arrangements are sufficient and again any amendments to this condition would not constitute and SEM related change.

Condition 17 (5)	This condition makes reference to another Licence that is not specified. It is not clear what is intended. When this Condition is clarified, if it has the potential to impact on Moyle or its capacity holders, Moyle is of the view that the Condition should be amended to afford the same protection to Moyle and/or its capacity holders as given to generators. This section also refers to PPAs (although not defined) which we understand may be impermissible under the SEM.	Moyle	This has now been specified as the NIE Energy Supply Licence.
Condition 19	NIE note that this condition may need to develop as the TIA itself is developed.	NIE	The RAs agree with this comment.
Condition 19 (2)	It is not clear what the process will be for the production of the initial draft of this document to be designated on SEM go-live, in particular any process for input by interested parties. This document will be highly material for all connected parties and a process should be developed for ensuring that input is obtained.	Moyle	This document will be produced and consulted upon in due course. The draft document will be substantially similar to the STC in GB although a number of changes have been made to reflect the different arrangements in NI.
Condition 19 (3)	This obligation appears only to relate to the interface between the TSO and the Transmission Owner. It is not clear how interfaces with connected parties will be managed. Moyle believes that it will be important that connected parties have some level of contractual interface with the TO to manage site specific issues.	Moyle	The RAs are of the view that the licence should only deal with the relationship between the licensee and the grantor of that licence. Matters involving third parties should be dealt with through agreements between the TSO and the user.

Condition 19 (7) and (10)	The Authority should have the power to direct amendments to these arrangements as well as the right to approve amendments. The Licence must also contain an obligation to publish this document and an obligation to consult with all parties that may be affected.	Moyle	It is unusual to have the right to direct amendments and the RAs do not feel that this is appropriate. The RAs have inserted a clause requiring SONI to publish and consult with affected parties.
Condition 21	The non-discrimination provisions of Condition 15 should be amplified in this condition to include a requirement not to discriminate between parties connected to the system when determining constraints to be applied in order to maintain security of supply.	Airtricity	The RAs are of the view that this is dealt with in the merit order dispatch condition (Condition 22) and through the more general non-discrimination condition (Condition 15).
Condition 21 (4)	An optimal and transparent methodology for determining the most efficient running of the system for when it is not possible to run according to the Unconstrained Schedule should be published as part of the compliance plan.	Viridian	The RAs are of the view that it should not be the objective of the SOs to run the system as close as possible to the unconstrained schedule. In any case the unconstrained schedule will not be available until after dispatch.
Condition 24 (5)	Third parties that may be affected should be consulted in relation to the terms of the SOA.	Moyle	This amendment has now been made.
Condition 24 (8)	It is important that the Licence require that the SOA be published in full.	Moyle	While the RAs agree with this comment in principle it may not be appropriate to publish all of the SOA. For example control centre phone numbers should not be published to avoid prank calls etc.
Condition 25	It is not clear what is the mechanism for transferring relevant contracts from NIE to SONI,	Moyle	This is a transitional issue and will be dealt with in the transition workstream. A more detailed consultation on this

	including connection agreements and certain Moyle contracts including the Collection Agency Agreement. While we would not expect this to be contained in the Licence, it is important that this issue is addressed as continuity of existing contractual arrangements is paramount. In this context, it is critical that this be effected in a way that does not impact on third party financing arrangements, whether through increased counterparty credit risk or otherwise.		issue will be issued in due course.
Condition 25 2(a)	Full line item breakdown of costs should be provided so applicants fully understand the detailed scope of what is being offered.	Airtricity	SONI will be required to provide detail on how it has calculated the costs of connection by a combination of Condition 30 and paragraph 2(f)(i) of Condition 25.
Condition 25 (2)	A new paragraph should be added to ensure applicants have information on the potential for constraints or curtailment that may be applied to the connection during the period of the Connection Agreement.	Airtricity	The RAs expect that connection offers will be made on the basis of firm access rights. Any reference to potential constraints or curtailment would suggest otherwise and the RAs have therefore chosen not to include such provisions.
Condition 25 (2)	A new clause is required to ensure the scope of monopoly scope is defined sufficiently to enable the applicant to assess the potential for contestability of any portion of the required construction works.	Airtricity	Contestability will continue to be considered, and (if appropriate) taken forward, separately.
Condition 25 2(b)	Additional wording should be included to ensure an obligation to provide timescales for the resolution of issues.	Airtricity	The RAs are of the view that Condition 20 provides the necessary means for resolving any disputes arising in relation to connection offers.

Condition 25 2(d)	Alternative remedies need to be provided for applicants who have already connected to the system and are therefore not in a position to walk away from an agreement. The TSO must be required to treat the connection for all purposes, including eligibility for constraint and similar payments, as though the other required works had actually been delivered.	Airtricity	It is currently anticipated that generally existing parties with firm local access rights will be given All Island access rights without identifying a need for additional works.
Condition 25 6(c)	As drafted this section provides a complete get out clause for all of this condition. The TSO should not be able to walk away without penalty when an applicant has no other means of obtaining the service.	Airtricity	This condition does not give sole discretion in offering connections to either the TSO or the TO. Any disputes by connectees/ potential connectees will be governed by the RA dispute process in Condition 26.
Condition 26	Highly prescriptive nature makes it impractical, rigid and unworkable and most real disputes would not be covered. There is a lack of any defined timescales for resolution. It would be more appropriate to require the Licensee to develop a disputes process in consultation with undertakings and potential connectees and the final signoff of the Authority.	Airtricity	The RAs feel that this is a standard approach in licences. If there are disputes it is appropriate that these will be dealt with by the RAs as there may be competition implications.  The RAs also feel that this approach is flexible due to RA discretion.
Condition 27 1(a)	The interaction between the TSO and TAO in arranging to carry out works on the transmission system is unclear. May be addressed in the TIA but there should be an obligation on the TSO to carry out physical works in Condition 19 to ensure that 27 can be effectively discharged.	Airtricity	The RAs are of the view that this is made clear given the definitions of the Transmission Owner and Transmission Services.

Condition 28	There should be a paragraph requiring the Authority to seek to co-ordinate with the CER in resolving disputes between TSOs.	Airtricity/ ESB	This will be dealt with via the SEM regulatory arrangements.
Condition 30	3(a) to (c) requires the statement to describe charges and the principles on which they will be based, but 3(f) has started to design the tariff structure. It is intended to develop a cost-reflective charging structure. Whether charges are intended to provide consumption incentives and whether any such an approach takes account of the ability of each customer class to respond to the charging signals. 3(f) should be deleted and this whole section should spell out clearly what tariff aspects are prescriptive and which are discretionary.	Airtricity	3(f) has been deleted.
Condition 30 1(d) and 12	Confirmation is required that the Collection Agency Income Requirement powers to recover monies from customers are expressly included within the charges that may be levied by the Licensee. Ideally the Collection Agency Income Requirement should be expressly listed as a separate charge that can be passed through, or otherwise should be included within the definition of “Other System Operator Charges” or charges for the use of the All Island Networks (See Condition 19A of the current NIE Licence).	Moyle	The RAs confirm that it is intended that existing protections over the Collection Agency Income Requirement will be retained under the revised licensing structure. In relation to the second point, the definition of “Other System Operator Charges” is sufficiently flexible to allow this during the continuation of the Collection Agency arrangements.
Condition 30	It is not clear what is meant by “entry and exit	Moyle	As in Condition 1, these are points on the NIE Transmission



	charges” and “entry or exit points” in the context of this Licence		System.
Condition 31	The reference to the CAIR monies in Condition 36.10 refers to Condition 31 which is currently blank. This will be critical to Moyle’s business and Moyle reserves the right to comment on this Condition once drafted. The Licence should also contain, whether in this Condition or elsewhere, an express incentive and/or an obligation on SONI to minimise costs to customers, in particular constraint costs.	Moyle	The RAs agree that Moyle will have the opportunity to comment once this condition is drafted.
Condition 32 and Condition 34 (2)	The TSO is a monopoly service provider and does not engage in trading electricity. This restriction should be removed.	Airtricity	The RAs are proposing that NIAER will need to give their consent not to publish data and that this will be monitored by the Authority on an ongoing basis.
Condition 33	It appears that this Condition may contain obligations that pertain to both capacity adequacy and third party access. In the context of capacity adequacy, we are of the view that the only relevant information is projected interconnector availability which we understand is already required under Condition 34(1)(b). Provisions dealing with capacity availability for third party access purposes is not appropriate in this Licence where an interconnector is not owned by the System Operator, as is the case in respect of Moyle.	Moyle	The subjectivity of these Conditions has been removed taking on board comments from Moyle.

Condition 33 1	It is not exactly clear from the drafting of Condition 33 exactly what is intended to be achieved by the Interconnector Capacity Statement. In addition to actual capacity of the interconnector that will be available, it appears to seek a forward forecast of both uncontracted capacity (Condition 33.1(c)) and contracted capacity (Condition 33.1(b)). It is difficult to understand how the System Operator, in its capacity as System Operator, would be capable of estimating this information. This should be deleted from this Licence and instead be included in the Interconnector Owner's Licence.	Moyle	Again the subjectivity in these conditions has been removed given Moyle's comments.
Condition 33 1(b) and (c)	We do not believe that it is appropriate that SONI (or indeed anyone) be publishing estimates of projections of contracted capacity while it is responsible for running auctions. The Interconnector Owner Licence should contain obligations to publish details of available capacity from time to time.	Moyle	These conditions have now been removed.
Condition 33 1 and 2	Wording dealing with timing of obligations in relation to statements should be clarified.	Moyle	The RAs consider that the current drafting is sufficiently clear.
Condition 36	Condition has been drafted as through Moyle will always be the only NI Interconnector. Paragraph 2 should therefore be Moyle specific. Any new interconnector asset owner's terms for connection should be governed by Condition 25 including a	Airtricity	Condition36 has been reviewed in light of comments received from Moyle Interconnector Ltd.

	requirement to adhere to the Grid Code.		
Condition 36 1 to 9	These Conditions should be deleted or at least expressly disapplied to interconnectors, such as Moyle, that are not owned by the System Operator. While we acknowledge that this Condition essentially replicates Condition 21 of the existing NIE Licence, this Condition is somewhat anomalous in the context of the Moyle interconnector given that NIE as a matter of practice does not, nor is capable of, complying with this Condition. It appears that this Condition would have been appropriate prior to the mutualisation of Moyle but would not have been appropriate thereafter or indeed in the case of any interconnector that is not owned by the System Operator. Equally, SONI currently does not have the ability to comply with this obligation as it does not have the capacity rights to give.	Moyle	This condition has now been substantially amended to reflect comments from Moyle.
Condition 36 10 and 13	These Conditions must only impose obligations on SONI to the extent that Moyle does not terminate SONI's appointment to fulfil these roles.	Moyle	This condition has now been substantially amended to reflect comments from Moyle.
Condition 36 10	Moyle note that the Collection Agency Obligations of NIE must be novated or otherwise transferred to SONI to enable it to comply with its obligations under this Condition	Moyle	This condition has now been substantially amended to reflect comments from Moyle.

Condition 36 10	NIE assumption is that SONI will take on responsibility for the Collection Agency Agreement and drafting should be more explicit in making reference to obligations under the Agreement.	NIE	This condition has been updated to reflect the proposals from Moyle in relation to this arrangement.
Condition 36 13	Moyle is of the view that this Condition should also require SONI to assume the IA and IEA roles in SEM for as long as Moyle requires.	Moyle	This condition has now been substantially amended to reflect comments from Moyle.
Condition 36 15	The “Moyle Operating Agency Agreement” was correctly termed the “Moyle Interconnector Operation Agency Agreement” and was dated 14 April 2003.	Moyle	This condition has now been substantially amended to reflect comments from Moyle.
Schedule 1	We note that in the context of different parties being granted Licences to Participate in the Transmission of Electricity in different contexts, paragraph 2 may need to be revised to ensure that there is no inconsistency between the various Licences.	Moyle	The RAs have opted to remove paragraph two from Schedule 1.
Schedule 2 1(f)	Reference to the Gas (NI) Order 1996 may not be relevant to the TSO Licence.	Airtricity	The Authority has opted to retain reference to the Gas Order. Provisions relating to the Electricity Order are present in gas conveyance licences. These conditions are present in order to reflect the seriousness with which the

			Authority would view offences under these articles.
Schedule 2	Moyle note that there does not appear to be any restriction on assignment of the licence or change in control of the licensee, or power to revoke the Licence in either event if the consent of the Authority is not obtained.	Moyle	The Authority is considering in what circumstances it would want the right to revoke the SO licence on change of control. This is not a right that currently appears in NIE's licence document.

### 3.2 EIRGRID Licence Comments

Condition	Comment	Respondent	Regulatory Response
Part 2 Condition 1	While the All Island considerations or aims and objectives are valid there are concerns with the way they are applied. Further consideration needs to be given to whether the SOs alone or working together can meet such objectives.	EirGrid/S ONI	The RAs believe that the aims that the SO is to take account of in discharging its obligations are appropriate given the new role of the SO in the SEM.
Part 2 Condition 1 8(iv)	Needs development. It is not clear how the TSO can minimise the cost of distribution and supply, except inasmuch as generation scheduling and constraint management contribute to the final cost of supply to customers. Consideration should be given as to what is actually deliverable by the TSO rather than general market aspirations.	Airtricity	The RAs believe that the aims that the SO it to take account of in discharging its obligations are appropriate given the new role of the SO in the SEM.

Condition 4	EirGrid/SONI are concerned that the SOA is described in Condition 4 and in the consultation paper could give an impression that it is something which it is not. For example, the purpose of the System Operator Agreement is described as enabling each SO licensee to obtain from or to provide to the other SO licensee such things as are required by it in order to comply with its licence and statutory obligations. Whilst on one level this is true, it is not the case that the System Operator Agreement on its own will enable each SO licensee on an ongoing basis to comply with all its licence or statutory obligations.	EirGrid/S ONI	The RAs agree with the comment that the SOA alone will not enable each SO licensee to comply with all its licence or statutory obligations and feel that the licence drafting, as it stands, does not conflict with this view.
Condition 5	Agree that the SO licence should not seek to precisely describe the SOA. There are, however, a number of instances where both the consultation paper and SO licences are overly prescriptive as to what the SOA should contain.	SONI/Eir Grid	The RAs are of the view that this is appropriate as there are certain matters which the RAs feel must be contained in the SOA and therefore feel there should be a licence obligation to this effect. However, a slightly less prescriptive approach has been adopted to maintain consistency with general convention in ROI drafting.
Condition 5	Concern that reference is being made to “the all-island system” when what in fact will exist is two separate transmission systems being operated by two separate SOs under a single market.		The existence of two separate transmission systems is acknowledged by the RAs. Condition 5 makes clear that connection is made to the transmission system and then use is made of the collective “All-Island Transmission Networks”.
Condition 10	Procedure for scheduling and dispatch must reflect the day-to-day reality of operation	SONI/Eir Grid	Appropriate amendments to this condition have been made as a result of further discussion with the SOs.

	practice. This has to be the case from day 1.		
Condition 12	It should be the TAO who needs to be constrained in disposing of its assets. Would be useful to provide some guidance as to the types of assets relevant to the TSO.	Airtricity	The RAs are of the view that the definition of relevant asset contained in the licence provides a sufficient level of guidance.
Condition 17	Needs strengthened by a requirement to appoint a senior manager as a compliance officer. This officer should attend all meetings of the TSO and any affiliated, associated or subsidiary entity.	Airtricity	This condition has been taken from the current licence. The RAs feel that this condition should not be amended through this consultation as it is not a SEM related change.
Condition 21	There are concerns over the way in which this condition is drafted and would hope that the provisions maintain the same scope as is in the current licence.	SONI/Eir Grid	The RAs are content that this condition provides the same scope as the current licence.
Condition 31	Clarification needed on how EU directives are to be complied with – do they have to be transposed into national law first, or should the TSO be required to interpret the Directive as published? What action should be taken if the EU law affects the structure of the TSO?	Airtricity	Licensees are generally obliged to comply with EC directives only as far as these are transposed into Irish law. In limited cases, EC Directives may be capable of directly creating obligations for certain entities provided that strict legal criteria are met.

### 3.3 General Comments

Condition	Comment	Responde	Regulatory Response
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NI Condition 22/ ROI Condition 10	Request updated text in relation to priority dispatch	Airtricity	The RAs are of the view that the reference to priority dispatch in the licences is sufficient. The detail of priority dispatch arrangements will be dealt with in the Grid Code.
NI Condition 22/ROI Condition 10	An additional factor should be included as 5(h) to include a requirement to follow the indicative dispatch schedule of the SMO to the greatest extent having regard to the rest of the condition.	Airtricity	The RAs do not agree that following the SMO despatch schedule is an appropriate basis for despatch. The indicative dispatch schedules may not be the most efficient or economical dispatch given real-time market conditions.
NI Condition 24/ROI Condition 4	Paragraph 4 should include a requirement to consult with electricity undertakings on any issues that have a material impact on their business or operation of the SEM and take due consideration of the responses.	Airtricity	The RAs have taken on board this suggestion in both Licences.
NI Condition 33/ROI Condition 9 [1(b) & (c) for NI] [3(b) for ROI]	It is inappropriate for TSO to forecast rights of capacity holders. It is not clear what the purpose of this would be. The TSO always has the authority/capability to vary interconnector flows, irrespective of scheduled transfers, so any privilege of “reserved” capacity is unnecessary for system security.	Airtricity	This paragraph is based on the current SO Licence in the Republic of Ireland. The RAs do not feel that paragraph 3(b) should be deleted through this consultation as it is not a SEM related change.
Across both licences.	Wording “consistent basis” needs to be revised to ensure that the end result of such consistency delivers real benefits and improvements.	Eirgrid/S ONI	The RAs accept that the use of this phrase does not suggest absolute consistency but that documents are in a format which facilitates comparison.
Consultation	Whilst it is understood that co-operation is	SONI/Eir	The RAs recognise and acknowledge that this is the case.



Paper 3.2	required it is important to draw a distinction between EirGrid and SONI as SOs working closely and in acting jointly as the MO. The consultation paper suggests that these two situations are the same. The business functions of EirGrid and SONI as SOs remain separate whereas those of EirGrid and SONI in relation to the MO are not.	Grid	
n/a	Level of co-operation between SONI and EirGrid is unclear.	Viridian	This will be detailed in the SOA which will be published by the SOs.
n/a	Format of licences needs to be aligned as much as possible.	Viridian	Due to the varying legislative backgrounds in each jurisdiction there are necessarily differences in the format and drafting of licences. As a minimal change process has been adopted the RAs have no set out to align conditions numerically.
n/a	There is a concern that there is no clear plan for SONI divestment.	ESB	In the SONI licence, SONI is clearly prohibited from having any interest in supply or generation. The RAs have committed to divesting SONI and are continuing discussions with SONI and DETI to agree a timetable for divestment.
n/a	NIE would expect to see a provision included within one of the SONI licence conditions for the licensee to have in place a payment security policy describing the licensee's security cover and debt recovery procedures in respect of charges for transmission use of system and	NIE	The RAs agree in principle, and indicative text has been included in paragraph 8 of Condition 2 of the SO licence.

	system support services.		
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