



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

Consultation Paper

**Review of Generic Supply Licence Issued under Section 14(1) of
the Electricity Regulation Act, 1999**

**4th December 2002
CER/02/221**

Background

In the Commission for Energy Regulation ('CER') Deliverables document, (July-December 2002), the CER expressed its intention to review the present generic supply licence, under Section 14(1) of the Electricity Regulation Act, 1999. The objective of this review was to ensure that the present conditions of the existing supply licence were sufficient to guard against potential inappropriate transfers of information or cross subsidisation between a competitive supply business and its affiliates in the regulated market, where the Licensee is dominant in the electricity supply market or where it is part of a vertically integrated utility. In addition the need for stricter ringfencing / business separation conditions were also examined.

The result of this review was the following proposed changes to the generic supply licence outlined below.

Summary of Proposed Changes

Definitions of the following have been added:

- "Distribution Business";
- "Distribution System Operator (DSO)";
- "participating interest";
- "PES Business";
- "related undertaking";
- "Transmission System Owner (TSO)";
- "Transmission System Owner's Business";
- "Transmission System Operator".

The key changes concern Condition 3, relating to the 'Prohibition of Cross-subsidies' and Condition 3A regarding 'Separation of the Supply Business':

- These conditions will only apply as outlined in 3(1)(a) and (b), where the supply business, along with its affiliates and related undertakings is in a dominant position in the market for the supply of electricity or where the supply business or any affiliate or related undertaking of the supply business also carries on a transmission / distribution / public electricity supply and generation business.
- In 3(5) the intention is to prevent the passing of commercially sensitive information to the eligible supply business from any affiliate or related undertaking or any related undertaking of an affiliate of the supply business.
- In 3(4), 3(5) and 3A(3)(b) 'except as otherwise provided by law' has been incorporated to allow normal expected lines of communication between a business and its subsidiaries to remain open.
- In 3A(1) the intention is that any non-regulated activity shouldn't be prohibited from having a relationship with other non-regulated businesses.

- In 3A(2) the opportunity is provided for the CER to review the business separation arrangements in place and direct the supply business to take certain actions periodically.
- 3A(3)(a) outlines a reporting mechanism on compliance with the business separation condition.
- 3A(3)(c) concerns quarantine provisions that afford due regard to the seniority of staff and their involvement in commercially sensitive activities.
- 3A(3)(d) lays down the requirement to maintain a register confirming that the provisions regarding the disclosure of commercially sensitive information and the quarantine arrangements are adhered to.
- 3A(3)(e) requires that the supply business does not enter into contractual arrangements with any affiliate or related undertaking or any related undertaking of an affiliate other than on normal commercial terms.
- 3A(3)(f) prohibits the use of any assets obtained from an affiliate or related undertaking or any related undertaking of an affiliate by the supply business.
- 3A(3)(h) bars the use of a name, brand, trade name in advertising or publications which has associations with affiliates which are regulated companies and lays down the requirement for the supply business to make clear its independence from these regulated companies to existing and future customers.
- 3A(3)(i) requires the licensee to prepare a code of conduct on ring fencing for the independent supply business.

The full text of the proposed changes to the generic supply licence is as follows:

Condition 1. Interpretation and construction

1. Unless the contrary intention appears:
 - (a) words and expressions used in the Conditions or the Schedules shall be construed as if they were in an enactment and the Interpretation Acts, 1937 to 1997 applied to them; and
 - (b) references to an enactment shall include primary and subordinate legislation and in both cases any modification or re-enactment thereof after the date when this licence comes into force.
2. Any word or expression defined in the Act for the purposes of any provision of the Act shall, unless the contrary intention appears, have the same meaning when used in the Conditions or in the Schedules.
3. In the Conditions and in the Schedules, unless otherwise specified or the context otherwise requires:

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| "affiliate" | in relation to the Licensee or any subsidiary of a holding company of the Licensee, means any holding company of the Licensee or any subsidiary of the Licensee or any subsidiary of a holding company of the Licensee, in each case within the meaning of the Companies Acts, 1963 to 1999; |
| "Ancillary Services" | has the meaning given in the Grid Code; |
| "Auditors" | mean the Licensee's auditors for the time being holding office in accordance with the requirements of the Companies Acts, 1963 to 1999; |
| "Board" | means the Electricity Supply Board; |
| "Distribution Business" | means the business division of the Board designated by the Board to exercise the functions of the Distribution System Operator as required by Regulation 22 of the Regulations; |
| "Distribution Code" | means the Distribution Code required to be prepared by the Board pursuant to Section 33 of the Act, and approved by the Commission, as from time to time revised, amended, supplemented or replaced with the approval or at the instance of the Commission; |
| "distribution system" | means all electric lines of the Board (except lines forming part of the Board's transmission system) and any other electric lines which the Board may, with |

the approval of the Commission, specify as being part of the Board's distribution system, and includes any electric plant, transformers and switchgear of the Board and which is used for conveying electricity to final customers;

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| "Distribution System Operator" | means the person licensed to operate the distribution system under Section 14 (1) (g) of the Act; |
| "electricity undertaking" | means any person engaged in the generation, transmission, distribution or supply of electricity including any holder of a licence or authorisation or a person who has been granted a permit under Section 37 of the Principal Act and any person transferring electricity to or from Ireland across an interconnector or who has made an application for use of an interconnector which has not been refused; |
| "eligible customer" | means a consumer of electricity whose consumption of electricity at any single premises in any 12 month period is estimated and calculated to be or likely to be greater than four gigawatt hours or such other figure as the Minister may, by Order, substitute; |
| "financial year" | has the meaning given to it in paragraph 1 of Condition 2; |
| "Generation Business" | means the business (if any) of the Licensee and any affiliate or related undertaking of the Licensee in the generation of electricity or the provision of Ancillary Services; |
| "Generator" | means a person licensed to generate electricity under Section 14(1)(a) of the Act; |
| "Grid Code" | means the Grid Code required to be prepared by the Board pursuant to Section 33 of the Act, and approved by the Commission, as from time to time revised, amended, supplemented or replaced with the approval or at the instance of the Commission; |
| "holding company" | means a holding company within the meaning of Section 155 of the Companies Acts, 1963 to 1999; |
| "interconnector " | means the electric lines and electric plant used solely for conveying electricity directly to or from a substation or converter station within Ireland, into or out of Ireland and where conveying of electricity may |

occur within but not into or out of Ireland without such electric lines and electric plant in their entirety;

"Licensee"

"Metering Code"

means the Metering Code prepared by the Board and approved by the Commission, as from time to time revised, amended, supplemented or replaced with the approval of, or at the instance of, the Commission;

"metering equipment"

means meters, time-switches, measurement transformers, metering protection and isolation equipment, circuitry and their associated data storage and data communications equipment and wiring which are part of the active energy and reactive energy measuring equipment at or relating to a site;

"modification"

includes addition, omission, amendment and substitution, and cognate expressions shall be construed accordingly;

"participating interest" has the same meaning as defined in Regulation 35 of the European Communities (Companies: Group Accounts) Regulations, 1992 (S.I. 201 of 1992);

"Public Electricity Supply Business"

means the business of the Board for the supply of electricity to final customers;

"Regulations"

means the European Communities (Internal Market in Electricity) Regulations 2000;

"related undertaking"

means any undertaking having a participating interest in the licensee or any undertaking in which the licensee has a participating interest;

"representation"

includes any objection or any other proposal made in writing;

"Supplier"

means a person licensed to supply electricity under Sections 14(1)(b), (c) or (d) or 14(2) of the Act or the Board in its capacity as public electricity supplier;

"Supply Business"

means the licensed business of the Licensee and any affiliate or related undertaking of the Licensee as a Supplier but shall not include the business carried out by the Board in its capacity as public electricity supplier;

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| "subsidiary" | has the meaning given in the Companies Acts, 1963 to 1999; |
| "total system" | means the transmission system and the distribution system of the Board taken together; |
| "Trading and Settlement Code" | means the Trading and Settlement Code to be developed pursuant to Sections 9(1)(a), (b) and (d) of the Act; |
| "Transmission System Owner" | means the Person licensed as owner of the transmission system under section 14 (1)(f) of the Act; |
| "Transmission System Owner's Business" | means the licensed business of the Board as owner of the transmission system; |
| "transmission system" | means the system of electric lines comprising wholly or mainly the Transmission System Owner's high voltage lines and electric plant and which is used for conveying electricity from a generating station to a substation, from one generating station to another, from one substation to another or to or from any interconnector or to final customers (but shall not include any such lines which the Board may, with the approval of the Commission, specify as being part of the distribution system) and shall include any interconnector owned by the Board; |
| "Transmission System Operator" | means person licensed to operate the transmission system under Section 14 (1) (e) of the Act; and |
| "unmetered supply" | means a supply of electricity to single premises, which is not, for the purpose of calculating the charges for electricity, supplied to the final customer at such single premises, measured by metering equipment. |

Condition 3. Prohibition of cross-subsidies

1. This Condition and Condition 3A applies:
 - (a) where the Licensee (taken together with its affiliates and related undertakings) is in a dominant position in a market for the supply of electricity to final customers, which shall be determined by the Commission in accordance with Condition 5; or
 - (b) where the Licensee (or any affiliate or related undertaking of the Licensee) also carries on a Transmission System Owner's Business, or a Distribution Business, or a Public Electricity Supply Business and a Generation Business.
2. Where this Condition applies, the Licensee shall procure that the Supply Business does not give any direct or indirect cross-subsidy to, nor receive any direct or indirect cross-subsidy from, any other business of the Licensee or of an affiliate or related undertaking of the Licensee.
3. Nothing, which the Licensee is obliged to do or not do pursuant to this licence or any other licence granted to the Licensee under the Act, shall be regarded as a cross-subsidy for the purposes of this Condition.
4. The Licensee shall procure that the Supply Business does not disclose directly or indirectly any commercially sensitive information to any other business of the Licensee or of an affiliate or related undertaking of the Licensee, except insofar as the Licensee may be required to do so by law, e.g. for accounting purposes, directors' duties etc.
5. Other than the information made available to all Suppliers and customers, the Licensee shall procure that the Supply Business does not use or obtain any commercially sensitive information from any affiliate or related undertaking of the licensee, or any related undertaking of an affiliate of the Licensee, except insofar as the Licensee may be required to do so by law, e.g. for accounting purposes, directors' duties etc.
6. For the purposes of this Condition, the Commission shall determine any question as to:
 - (a) what is or is not commercially sensitive information; and
 - (b) what constitutes a cross subsidy.

Condition 3A: Separation of Supply Business

1. The licensee shall make arrangements in accordance with paragraph 3 to secure the complete and effective separation of the Supply Business from the Transmission System Owner's Business, Distribution Business, Public Electricity Supply Business, and the Generation Business.
2. The arrangements referred to in paragraph 1 shall be subject to the approval of the Commission, who may from time to time direct the Licensee to take such steps or desist from such action as the Commission considers appropriate to secure compliance with this Condition.
3. The Licensee shall:
 - (a) appoint an officer of adequate seniority to monitor compliance with the provisions of the Condition (who shall not be a member of the board of the Licensee or any affiliate or related undertaking of the Licensee, or any affiliate of a related undertaking of the Licensee) who will report at regular intervals to the Commission;
 - (b) ensure that any employees (whether part or full time), officers, agents or consultants of the Licensee do not disclose or use commercially sensitive information obtained directly or indirectly from any affiliate of the Licensee, nor disclose any commercially sensitive information about the Supply Business to any other person, including any affiliate or related undertaking of the licensee or a related undertaking of an affiliate of the Licensee, except insofar as required by law, e.g. for accounting purposes, directors' duties etc.;
 - (c) not engage in any capacity whatsoever any person who has worked for or on behalf of the Distribution Business, Transmission System Owner's Business, Public Electricity Supply Business, or Generation Business, or for any affiliate or related undertaking of the Licensee, or for any affiliate of a related undertaking of the Licensee, at any time during the [six] months prior to joining the Licensee, without the prior approval of the Commission, with due regard to considerations of seniority and involvement in commercially sensitive activities;
 - (d) establish and maintain an up to date register of all persons engaged by the Licensee confirming that the provisions of paragraphs (b) and (c) have been complied with in respect of each person engaged by the Licensee;
 - (e) not enter into any contracts with any affiliate or related undertaking of the Licensee, or a related undertaking of an affiliate of the licensee, other than on arms length basis on normal commercial terms;
 - (f) not, save as provided for by this licence, use any assets of (or obtained from) an affiliate or related undertaking of the Licensee, or a related undertaking of an affiliate of the Licensee, for any purpose whatsoever,

and for the purposes of this Condition, “asset” shall include (without limitation) any premises, offices, information systems, software, hardware, electronic systems, equipment, materials, resources, intellectual property, telephone numbers or lines, mobile telephones, email systems or addresses, websites or computer services;

- (g) not offer a supply of electricity to any customer or conclude a contract with any customer where information used directly or indirectly in formulating the offer to that customer or in concluding a supply of electricity to that customer has not been obtained from that customer directly;
- (h) not use a name, brand, trade name in advertising or publications which has associations with affiliates which are regulated companies, and shall make it clear in all its dealings with existing and future customers that the Licensee is independent of the regulated companies; and
- (i) prepare for approval by the Commission and comply with a code of conduct on ring fencing provisions in relation to the transfer and/or movement of employees, either full time or part time, between the Licensee and any affiliate or related undertaking of the Licensee, or any affiliate of a related undertaking of the Licensee.