



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

DECISION PAPER

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

**10th November 2003
CER/03/274**

Background

In the Commission for Energy Regulation's ('the Commission') Deliverables document, July-December 2002 (CER/02/103), the Commission expressed its intention to review the present generic supply licence, under Section 14(1) of the Electricity Regulation Act, 1999 ('the Act'). 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 it was intended to examine ringfencing conditions.

On the 4th December 2002, the Commission published a Consultation Paper on the Review of the Generic Supply Licence (CER/02/221). In response to this Consultation submissions were received from the following parties:

- ESB National Grid
- ESB
- ESB Independent Energy

On the 29th August, the Commission published a Draft Decision on the Review of the Generic Supply Licence (CER/03/217) in response to which the Commission received submissions from the following:

- Airtricity
- ESB
- Viridian

(See attached Response Paper to issues raised).

Arising out of this review and consultation process the main changes proposed to the Generic Supply Licence relate to ringfencing provisions requiring business separation arrangements of the Supply Business from the Transmission System Owner's Business, Distribution Business, Public Electricity Supply Business and the Power Generation Business. In addition, a restriction is placed on the use of brand name associated with a regulated business by the supply business in the 'brown' market. This restriction shall not apply if the supply business only supplies electricity to customers having at least one site at which annual consumption is greater than 225,000KWh. The following is a summary of the amendments:

Summary of Proposed Changes

Definitions of the following have been added:

- "Distribution Business";
- "Distribution System Operator (DSO)";
- "participating interest";
- "Permitted customer"
- "Permitted source"

- “Power Generation Business”
- “Public Electricity Supply Business”;
- “related undertaking”;
- “Regulated Business”
- “Transmission System Owner (TSO)”;
- “Transmission System Owner’s Business”;
- “Transmission System Operator”.

Conditions 3, relating to the ‘Prohibition of Cross-subsidies’ and 3A regarding ‘Separation of the Supply Business’ will apply to licences issued under Section 14 (1) (b), (c) and (d) of the Act. In addition 3B ‘Restriction on use of Brand Name’ will apply to licences issued under Section 14 (1) (b) of the Act.

- These conditions will only operate 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 or ESB Power Generation.
- In 3(5) the intention is to prevent the passing of commercially sensitive information to the eligible supply business from any regulated business of the supplier or of 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 insofar as the Licensee may be required to do so by law, or permitted pursuant to arrangements or agreements approved by the Commission' 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. ‘Power Generation Business’ applies solely to the business of the Board as owner and operator of conventional generation units and excludes Dublin Bay Power Ltd. The Renewable Affiliates Licence covers the activities of renewable generation under the ownership of ESB.
- In 3A(2) the opportunity is provided for the Commission 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)(b) covers the disclosure of commercially sensitive information between the supply business and the regulated businesses of ESB.
- 3A(3)(c) concerns quarantine provisions between the supply business and the regulated businesses of ESB 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 the regulated businesses of ESB (PES, TSO, DSO or ESB Power Generation) by the supply business, while not prohibiting the supply business from using the transmission or distribution system in accordance with industry agreements and Codes approved by the Commission ('as entitled by law').
- 3A(3)(g) deals with the provenance of data used in making offers to customers by enumerating "permitted sources" that can be used by a licensed supplier.
- 3A(3)(h) requires the licensee to prepare a code of conduct on ring fencing for the independent supply business.
- 3B bars the use of a name, brand or trade name in advertising or publications associated with a regulated business by the supply business and lays down the requirement for the supply business to make clear its independence from these regulated companies to existing and future customers. This Condition shall not apply if the supply business only supplies electricity or only offers to supply electricity under this Licence to customers having at least one site at which its annual consumption is estimated and calculated to be or likely to be greater than 225,000KWh.

The full text of the proposed changes to the relevant sections of the Generic Supply Licence are highlighted below:

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:

"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, 2000 (S.I. 445 of 2000);

"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;
"Distribution System Operator"	means the Board in its capacity as distribution system operator licensed pursuant to 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"

means (insert name of 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);

"Power Generation Business"

means the business of the Board in its capacity as owner and operator of generation units. ;

"Public Electricity Supply Business"

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

"Regulated Business"

means the Transmission System Owner's Business, the Distribution Business, the Public Electricity Supply Business or the Power Generation Business;

"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;
"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 Board as owner of the transmission system under section 14 (1)(f) of the Act;
"Transmission System Owner's Business"	means the 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 the 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, Condition 3A and Condition 3B apply:

- (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 Regulated 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 regulated 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 or as permitted pursuant to arrangements or agreements approved by the Commission.
- 5. Other than information made available to all Suppliers and/or customers, or a class of information made available to Suppliers and/or customers on equivalent terms, the Licensee shall procure that the Supply Business does not use or obtain directly or indirectly any commercially sensitive information from any regulated business of the Licensee or of an affiliate or related undertaking of the Licensee, or of any related undertaking of an affiliate of the Licensee, except insofar as the Licensee may be required to do so by law, or permitted pursuant to arrangements or agreements approved by the Commission.
- 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 Regulated Businesses.
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) nominate an officer of adequate seniority to monitor compliance with the provisions of the Condition and Condition 3B (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 solicit, disclose or use commercially sensitive information obtained directly or indirectly from the Regulated Businesses, other than as required by law or as permitted pursuant to arrangements or agreements approved by the Commission;
 - (c) not engage in any capacity whatsoever any person who works or has previously worked for or on behalf of the Regulated Businesses, at any time during the period of three (3) months prior to joining the Supply Business of the Licensee, without the prior approval of the Commission; the Commission shall have due regard to considerations of seniority and involvement in commercially sensitive activities in deciding whether to give its approval;
 - (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 required by law or as provided for by this Licence, use any assets of (or obtained from) the Regulated Businesses, 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 servers. For the avoidance of doubt, this paragraph shall not restrict any rights the Licensee may have in respect of access to the transmission and/or distribution system;

(g) except insofar as the Licensee may be required to do so by law, or permitted pursuant to arrangements or agreements approved by the Commission, not offer to supply electricity to any customer or conclude a contract with any customer where customer metering or billing information or other commercially sensitive customer information used directly or indirectly in formulating that offer has been obtained from a source other than a permitted source; and

(h) 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.

4. [For the purposes of this Condition, the Commission shall determine any question as to what is or is not commercially sensitive information.]

In this Condition:

'permitted source' means:

(i) historical metering data provided to the Licensee by the Meter Registration System Operator for the purposes of invoicing that customer for electricity consumed; (ii) historical meter reading or billing data provided to the Licensee directly by the customer; (iii) historical meter reading data provided to the Licensee by the Meter Registration System Operator with the written consent of the customer; (iv) historical meter reading or billing data provided to the Licensee by a person authorised by the customer to provide such information; (v) the Licensee's estimates of consumption for that customer or (vi) metering data which may be made available to all Suppliers on a non-discriminatory basis from such sources as may be authorised from time to time by the Commission and notified to all Suppliers.

Condition 3B: Restriction on Use of Brand Name

1. Subject to paragraph 2, the Licensee shall not use a name, brand or trade name associated with a regulated business in the Licensee's name, brand, trade name or advertising and shall make it clear in all its dealings with existing and future customers that the Licensee is independent of the regulated businesses.
2. The restriction in paragraph 1 shall not apply if the Licensee only supplies electricity or only offers to supply electricity under this Licence to permitted customers.
3. The Licensee shall submit a certificate addressed to the Commission, approved by a resolution of the board of directors of the Licensee and signed by a director of the Licensee pursuant to that resolution. Such certificate shall be submitted together with the accounting statements referred to under paragraph 3(b)(i) of Condition 2 of this Licence. Each certificate shall be in one of the following forms:
 - (a) "The directors of the licensee certify that the licensee has not during the accounting period to which the accounting statements relate, supplied or offered to supply electricity to customers other than permitted customers"; or
 - (b) "The directors of the licensee certify that the licensee has during the accounting period to which the accounting statements relate, supplied or offered to supply electricity to customers other than permitted customers".
4. Without prejudice to paragraph 3, the Commission may require the Licensee to certify the matters referred to in paragraph 3 at such times and in respect of such periods as the Commission may determine from time to time.
5. In this Condition:

'permitted customer' means a customer having at least one site at which its annual consumption is estimated and calculated to be or likely to be greater than 225,000KWh.

'site' means a supply point with a single meter registration point number.