



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

**RESPONSE PAPER**

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

**4<sup>th</sup> November 2003  
CER/03/275**

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### **Ring-fencing provisions**

One respondent stated that while they generally welcome the efforts of the Commission to improve the ring-fencing of the different business units of the dominant undertaking, they are generally concerned that these efforts may ultimately be doomed to failure. As long as these business units have the same board and the same senior management, it is not possible for them to operate entirely independently.

### **Commission response**

The issue of the disaggregation of ESB is a Government decision. The Commission in carrying out its licensing function is satisfied by the ring-fencing measures it has put in place. The Commission expects that ESBIE will comply with all ring-fencing measures, as required. The Commission has also put in place a monitoring system to ensure compliance.

### **Definition of Power Generation Business**

One respondent drew attention to the fact that in the Generic Supply Licence 'Power Generation Business' is defined to mean the Board in its capacity as owner and operator of generation units, but specifically excludes any interest in the Dublin Bay Power Ltd. joint venture. It is asserted that the impact of this definition is that Dublin Bay Power Ltd is not included in either:

- (a) the 'regulated business' of the Board for the purposes of the prohibition on disclosure of commercially sensitive information contained in the amended Condition 3; or
- (b) the separation of the different aspects of the Board's business for the purpose of the new Condition 3A.

This amendment to the proposed generic licence has the effect of weakening the ring-fencing of the different businesses of the Board and so weakening the Commission's control over their dominant position in the Irish electricity market, [particularly given that we understand that ESB has a controlling interest in Dublin Bay Power and therefore has control of that company within the meaning of the Companies Acts].

### **Commission response**

The regulation of Synergen is effectively managed through their generation licence. This licence provides adequate ring-fencing in relation to commercially sensitive information. However, the Commission agrees that the carve-out in the draft Supply Licence does broaden the exclusion beyond the information that passes under the power purchase agreement between Synergen and ESB. In light of this the following amendments have been made to address this in the generic Supply Licence:

- (i) deletion of the exclusion of Dublin Bay Power Limited in the definition of Power Generation Business;
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(ii) in Condition 3, paragraph 4, addition of the text "or as permitted pursuant to arrangements or agreements approved by the Commission" after the words "...required to do so by law".

(iii) in Condition 3A, paragraph 3(b) addition of the words "or as permitted pursuant to arrangements or agreements approved by the Commission" after the words "...other than as required by law".

This should ensure Dublin Bay Power Limited is adequately covered, while still allowing information to pass under the ESB/Synergen agreement.

### **Condition 3A**

One respondent noted that while they understand the intention of the CER in drafting this clause, they are concerned that the practical effect of this clause may ultimately not be what is intended by the Commission. They recommend that this clause expressly permit access to the Distribution and Transmission systems and otherwise exclude use of any assets of the Transmission System Owner's Business, Distribution Business, Public Electricity Supply Business, or the Power Generation Business, as defined.

### **Commission response**

Licensed Suppliers in Ireland are not required to enter into use of system and connection agreements with ESB, and as such do not 'use' the transmission or distribution systems. Even if they were so obliged, Suppliers would still not transmit or distribute power (which is a function of the Transmission System Operator's Business or the Distribution Business). The Commission does not therefore consider there is any need to amend this Condition. In order to clarify this issue, the following sentence has been added at the end of paragraph 3(f): "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".

### **Definition of Supply**

One respondent stated that the definition of "Supply" in the Act states that "supply" in relation to electricity means supply through electric lines to final customers for consumption. In the generic Supply Licence, a 'Supplier' is defined as a person licensed to supply electricity under the Act or the Board in its capacity as public electricity supplier.

The combination of these two definitions suggests that an electricity supplier actually physically delivers the electricity to the customer. This is clearly not the case and has severe liability for implications for suppliers if it is ever suggested that this may be the case.

A supply contract is essentially a contract pursuant to which the supplier undertakes a financial settlement function in relation to electricity used by the customer. The supplier does not have physical control over the electricity itself or the wires through which it passes at any time. Therefore, it is important that the definition of supplier should reflect the fact that the supplier cannot be held responsible for the transmission and distribution of the electricity, which is actually carried out by the transmission and distribution system operators respectively.

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In Directive 2003/54/EC (the “**Electricity Directive**”), ‘supply’ is defined to mean ‘the sale, including resale, of electricity to customers’. This definition captures the actual actions of the supplier more accurately and emphasises that it is a financial, rather than physical, delivery. While we are aware that the CER cannot amend the Act as part of this process, it is suggested that the definition of supply in the Generic Supply Licence should be amended to clarify the role and responsibilities of the supplier and to reflect the Electricity Directive. In future, we would request that the CER take steps to have the Act amended to reflect this reality.

### **Commission response**

This issue arises out of the definition of "supply" in the Act, which the Commission has no power to amend. As such, the activity that this Supply Licence allows the licensee to carry out is still "supply" as defined by the Act.

### **Definition of Eligible Customer**

One respondent noted that the definition of ‘eligible customer’ should be amended to reflect S.I. No. 3 of 2002, which reduced the eligibility criteria to consumption of 1 Giga Watt hour of electricity per annum.

### **Commission response**

This concern is addressed by the current drafting of this definition which states that the figure will be 4GW or "such other figure as the Minister may, by Order, substitute".

### **Definition of PES**

One respondent noted that the Draft Generic Supply Licence defines the PES as follows:

*“Public Electricity Supply Business” means the business of the Board for the supply of electricity to final customers.*

There is a concern that this definition of the Public Electricity Supply in the Draft Licence does not make it sufficiently clear from this definition alone that the PES does not include any other licensed supply businesses of the Board or of its affiliate or related undertakings.

In order to avoid unnecessary ambiguity it may be useful to amend the definition of the PES as suggested below.

*“Public Electricity Supply Business” means the business of the Board for the supply of electricity to final customers who are not being supplied in accordance with a licence granted under paragraph (b) (c), or (d) of Section 14(1) of the Act.*

### **Commission Response**

The Commission does not see the need to amend this definition. It is clear that it does not apply to affiliates or related undertakings of the Board.

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