# Review of Electricity and Natural Gas Supply Licences

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[www.cer.ie](http://www.cer.ie)
Abstract: The CER has consulted on modifications to the electricity and natural gas supply licences granted by the CER under the Electricity Regulation 1999 and the Gas (Interim) (Regulation) Act 2002, respectively. This proposed decision details the outcome of that process and accordingly presents updated electricity and natural gas supply licences for final comment.

Target Audience:

This paper is for the attention of current holders of electricity or natural gas supply licences granted by the CER, those intending to apply for such licences to facilitate the supply of electricity or natural gas to final customers and any interested parties.

Related Documents:


(CER/08/255) CER Proposed Revision of the Natural Gas Shipping and Supply Licence, published on 11th December 2008.


For further information on this Decision Paper, please contact Seán mac an Bhaird (smacanbhaird@cer.ie) at the CER.
Executive Summary

The CER is responsible for licensing the supply of electricity and natural gas to final customers under Section 14 of the Electricity Regulation Act, 1999 and under Section 16 of the Gas (Interim) (Regulation) Act 2002, respectively. On 10th October, the CER published a consultation paper outlining modifications to the generic electricity supply licence, the interim public electricity supply licence and the natural gas supply licence. The modifications reflected new legislation, regulatory decisions and market developments, in both the electricity and gas retail markets. In line with legislative requirements the CER published a notice in the Irish Times drawing the publics’ attention to the proposed modifications, their nature and the reasoning for them. The CER has now reviewed all comments received and is proceeding with the next step of the licence modification process to implement the modifications as detailed in the consultation paper with minor amendments in the drafting of some conditions. The key proposed modifications are set out below.

Legislative Changes

1. 3rd Package - SI No. 463 of 2011
   - Requirement to comply consumer protection measures as specified in the CER’s Supplier Handbook.
   - Requirement to publish information where so directed by the CER

   - Obligation on suppliers not to offer tariffs that create incentives that may unnecessarily increase the volume of distributed or transmitted energy.

Regulatory & Market Developments

3. Deregulation of the electricity market (the provision of universal service)
   - a duty to offer supply, upon reasonable request, for domestic and small business (DG5) customers, where the supplier is active in those markets.
   - a requirement to act as the Supplier of Last Resort if so designated by the CER.

4. SEM
   - The deletion of Section B of the electricity supply licence referring to conditions up to SEM Go-Live and the deletion of section A, condition 2.
   - Deletion of conditions in the electricity supply licences to remove the duty to offer terms for meter provision.
   - Deletion of the conditions placing additional requirements on holders of licences under Section 14(1)(c) of the Electricity Regulation Act, 1999.
   - New electricity supply licence condition introducing an obligation on Demand Side Units to adhere to the Bidding Code of Practice.

In relation to the duty to offer supply the CER will determine the reasonableness or otherwise of a request on a case by case basis. In light of comments raised by
suppliers the CER is minded to deem the following instances raised by respondents as not being a reasonable request:

- where a customer is debt flagged
- where the supplier who is actively supplying in DG5 is not setup to supply the metering type of the customer in question

In addition to the above changes, modifications proposed in the consultation paper to definitions and references in the electricity supply licences to bring them up to date and which did not introduce new conditions nor require extensive modifications to existing ones are being maintained.

All proposed modifications to the supply licences that are currently in place are highlighted (through track changes) in the proposed supply licences published alongside this paper. The CER requests final comment on the proposed modifications by 17th January 2012. In line with legislative requirements the CER will publish a notice in the Irish Times drawing the publics’ attention to the proposed modifications, their nature and the reasoning for them.
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1.0 Introduction

1.1 The Commission for Energy Regulation
The Commission for Energy Regulation (‘the CER’) is the independent body responsible for overseeing the regulation of Ireland’s electricity and gas sectors. The CER was initially established and granted regulatory powers over the electricity market under the Electricity Regulation Act 1999. The enactment of the Gas (Interim) (Regulation) Act 2002 expanded the CER’s jurisdiction to include regulation of the natural gas market, while the Energy (Miscellaneous Provisions) Act 2006 granted the CER powers to regulate electrical contractors with respect to safety, to regulate natural gas undertakings involved in the transmission, distribution, storage, supply and shipping of gas and to regulate natural gas installers with respect to safety. The Electricity Regulation Amendment (SEM) Act 2007 outlined the CER’s functions in relation to the Single Electricity Market (SEM) for the island of Ireland. This market is regulated by the CER and the Northern Ireland Utility Regulator (UR). The CER is working to ensure that consumers benefit from regulation and the introduction of competition in the energy sector.

1.2 Purpose of this paper
The purpose of this paper is to set out the CER’s proposed decision, following consultation, on the modification of the electricity and natural gas supply licences granted by the CER under the Electricity Regulation, 1999 and the Gas (Interim) (Regulation) Act 2002, respectively. This paper also provides information on the implementation of the modified licences, which are published alongside this paper.

1.3 Supply Licence Modifications: Legislative Requirements
The CER is required to carry out modifications to ‘the terms, conditions or requirements’ of electricity and natural gas supply licences in accordance with sections 20 to 22 of the Electricity Regulation Act of 1999. Pursuant to Section 20, the CER on 10th October commenced the licence modification procedure with the publication of a consultation paper and a related Notice drawing the public’s attention to the proposed modifications, their nature and the reasoning for them. The Notice was published in the Irish Times and a copy of the Notice was provided to all licensed electricity suppliers. The Notice informed that any comments on /objections to the modification should be submitted to the CER before 8th November. This provided for the 28 days for comment as stipulated in Section 20 of the Electricity Regulation Act, 1999. In accordance with the requirements of section 20 of the Electricity Regulation Act, a copy of the Notice was also furnished to the Minister for Communications, Energy and Natural Resources, Mr. Pat Rabbitte.
Following the consultation period it is deemed prudent to provide further opportunity to comment, via a proposed decision, prior to implementation of any licence modifications. This is the process previously followed when the natural gas supply licence was last modified. In publishing this proposed decision the CER will, as required by legislation, publish the requisite notices and furnishing such to licensees and the Minister for Communications, Energy and Natural Resources.

Following this consultation process and where a public hearing is not held, the CER is required under Section 20(8) to notify those who submitted comments on the proposed modifications as to the reasons why their comments were not accepted and why a public hearing is not warranted – this will be conducted through the decision paper. Following such, the CER may, in line with the procedures detailed under Section 22(3) of the Electricity Regulation Act, 1999, proceed with the modification of the supply licences by:

(i) servicing a notice of the modification on holders of supply licences, and;
(ii) publishing a notice of the modification in a national newspaper.

The modifications will then take effect 28 days from when both of these notice requirements have been fulfilled. This does not prejudice the right of licensees, under Section 29 of the Electricity Regulation Act, 1999, to appeal the CER’s decision to modify the supply licences

1.4 Comments Received
The CER received 8 submissions to the Consultation Paper (CER/11/817). Submissions were received from the following organisations or individuals:

- Activation Energy
- Airtricity
- Bord Gáis Energy
- Dalkia Alternative Energy
- Electric Ireland
- Endesa Ireland
- Enercomm International
- Energia

Each of the responses received are published alongside this paper.

1.5 Structure of this paper
- Sections 2.0 Review of Responses to consultation
- Section 3.0 Conclusions & Next Steps.
2.0 Review of Responses to Consultation

2.1 Introduction

In light of the recent transposition of the consumer protection measures of the 3rd Package and the deregulation of the retail markets (full deregulation on the electricity side and publication of the roadmap for gas) the CER conducted a review of both the electricity and natural gas supply licences. This was to ensure that they reflected the current legislative and regulatory frameworks, as well as market developments in general. The key proposed modifications, which emanated from the review, are set out below.

Legislative Changes

1. 3rd Package - SI No. 463 of 2011
   - Requirement to comply consumer protection measures as specified in the CER Codes Practice.

   - Obligation on suppliers not to offer terms that may drive unnecessary electricity consumption.

Regulatory & Market Developments

3. Deregulation of the electricity market (the provision of universal service)
   - a duty to offer supply for domestic and small business (DG5) customers, where the supplier is active in those markets.
   - a requirement to act as the Supplier of Last Resort if so designated by the CER.

4. SEM
   - The deletion of Section B of the electricity supply licence referring to conditions up to SEM Go-Live and the deletion of section A, condition 2.
   - Deletion of conditions 7 & 8 of the electricity supply licence to remove the duty to offer terms for meter provision.
   - New electricity supply licence condition introducing an obligation on Demand Side Units to adhere to the Bidding Code of Practice.

In addition to the above, the review identified some further modifications to the electricity supply licence which related to bringing definitions and references up to date. These additional modifications did not introduce new conditions nor require extensive modifications to existing ones. Furthermore, it was deemed prudent to align the conditions in both licences where appropriate. The CER published a consultation paper (CER/11/817) asking respondents to provide their views on the outcome of the review and the proposed modifications. This section provides a summary of the comments received from interested parties in response to the particular questions outlined in the consultation paper. Of the
eight respondents’, five were suppliers who commented in general on all consultation questions, while the remaining three respondents focused on the proposal in relation to Demand Side Units.

2.2 Codes of Practice

Under the CER’s consumer protection framework, suppliers are required to put in place Codes of Practice and Customer Charters setting out the levels of customer service that their customers can expect, and where appropriate for household customers the guarantees that apply if these service levels are not met. The CER proposed to modify the electricity supply licence to formally incorporate compliance with the customer protection provisions as a condition of the electricity supply licence. This reflects the position in gas, where licence condition 21 of the gas supply licence already obligates licensees to comply with them.

*Consultation Proposal 1. Codes of Practice*

The CER is proposing to incorporate an obligation on suppliers in their electricity supply licence to adhere to the Codes of Practice. It is proposed that this would be conducted by replacing condition 20 (additional conditions of licences supplying low usage final customers) of the electricity supply licence (condition 24 of the PES licence) with the wording of condition 21 of the natural gas supply licence (Consumer Protection).

*Consultation Question 1:* Respondents are invited to comment on the proposal to align condition 20 of the electricity supply licence with condition 21 of the natural gas supply licence? Are you in favour of the proposal? Outline reasons for agreement or disagreement.

2.2.1 Respondents’ Comments

Four respondents, all suppliers, commented on this proposal: Airtricity, Bord Gáis Energy, Endesa Ireland and Energia. All four were in broad agreement with the proposal to introduce a condition into the electricity supply licences to formally incorporate compliance with the consumer protection provisions under the Codes of Practice.

There was broad agreement amongst respondents to the alignment of the consumer protection conditions of the electricity and natural gas supply licences.

Endesa Ireland highlighted that, in line with Regulation 6 of SI No. 452 of 2004, a Customer Charter should only be required for household customers. Endesa Ireland also put forth that Codes of Practice should not be extended to customers with Quarter Hourly meters (in essence larger customers). They maintained that such customers are adept at dealing with suppliers and do not require the consumer protection measures as offered by the Codes of Practice. In addition,
Endesa Ireland recommended that, for clarity, the definitions of the various Codes of Practice should detail the customer categories to which they apply.

Airtricity emphasised that the definition of vulnerable customers must be practically useful and stated that as currently drafted it is not specific enough. Electric Ireland requested that, as per the CER’s decision on Customer Protection in the Deregulated Electricity Market (CER/11/057), the CER publish and consult upon interpretative guidelines as to what customers are captured under the vulnerable customers definition. This is to “enable clear and consistent interpretation” of eligibility. Bord Gáis Energy highlighted that the definition employed, as per SI No. 463 of 2011, does not take into account those with “special needs” in relation to their energy supply. Bord Gáis Energy noted that such customers are included under the definition currently operated to in the natural gas retail market and calls for the vulnerable customer definition to be expanded to include these customers. Bord Gáis Energy also highlighted that a decision had yet to be made in relation to the Supplier Handbook and that a decision on the definition here would pre-empt such. In addition, Bord Gáis Energy indicated that there is ambiguity as to the meaning of the term Customer Charter. In this regard, they stated that SI No. 463 of 2011 details a Customer Charter as a set of terms of condition to be included in customer contracts while the Customer Charter, as outlined in the CER’s Supplier Handbook, is a set of service standards guaranteed by the supplier. In light of this disparity, Bord Gáis Energy called for the CER to clarify the meaning of the term Customer Charter in the licence condition.

Energia sought clarity as to the requirement to provide all final customers with a copy of the Licensee’s terms and conditions. They also queried a requirement under the Codes of Practice to require 30 day’s notification of any changes in tariffs to business customers.

2.2.2 CER’s Response to Comments

The CER notes that all respondents were broadly in favour of the proposed alignment of the consumer protection conditions within the electricity and natural gas supply licences. The modification will see the electricity supply licence formally incorporating compliance with the Codes of Practice and the general consumer protection framework as detailed in the Supplier Handbook. This is already the case with the natural gas supply licence.

In relation to respondents’ comments on the specifics of the consumer protection provisions of the Supplier Handbook, the CER does not consider it necessary to

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1 The CER published a consultation (CER/11/168) on revised guidelines for suppliers regarding their terms and conditions of supply to household customers, codes of practice and customer charters. These guidelines are combined into one handbook, the Supplier Handbook, and take into account changes in the markets and new requirements under the 3rd package of energy legislation issued by the European Commission.
duplicate the detail of the Supplier Handbook within the licence. The CER would also note that its provisions were recently consulted upon (CER/11/168). The CER has fed comments raised on the specifics of the Supplier Handbook into that consultation process and they have been considered in the proposed decision paper on the matter, which was published today. In addition, the CER has addressed some of the key matters raised below.

**To whom the provisions apply** - The licence condition is structured around those measures that apply only to household customers and those that generally apply to all customers. That is, clause 1 and 2 of the condition outlines the required standard terms and conditions and customer charter for household customers. The Supplier Handbook details specifically to whom the provisions of the further clauses – provision of a copy of customer’s terms and conditions and the requirement for Codes of Practice – apply.

**Customer Charter** - The CER implemented its current customer protection framework in terms of Codes of Practice and Customer Charters prior to the full opening of the electricity market on 19th February 2005. Their content was based on the second directive, which had yet to be transposed into Irish Law – this was later conducted under SI No. 60 of 2005 and SI No. 452 of 2004. Under the consumer protection framework, the CER implemented Codes of Practice, which set out the service levels to which the suppliers must operate, a Customer Charter, which provided for payment by the supplier where service levels were not met, and standard terms of conditions for household customers. Although these provisions cover the consumer protection measures detailed in the subsequent Irish legislation (SI No. 60 of 2005 and SI No. 452 of 2004), the CER notes that the terminology used in practice differs to that used within the legislation. With industry operating to the current operational framework, a framework that covers the legislative requirements, for sometime now, it is not deemed beneficial at this stage to change the terminology used.

**Definition of vulnerable Customers** - The CER notes that the definition in the licence is per the definition adopted into national law by SI No. 463 of 2011. The CER would also note the consultation on the Supplier Handbook which considered the interpretation of the definition.

**2.2.3 CER’s Proposed Decision**

Noting respondents’ overall agreement to the proposal to formally incorporate compliance with the customer protection provisions into the electricity supply licence, the CER is proposing to proceed with the consulted upon modification. As to respondents’ comments on the specifics of the consumer protection provisions, these have been fed into the consultation on the Supplier Handbook and have been considered in the proposed decision paper thereon.
Proposed Decision 1.
The CER is minded to adopt the consulted upon modification to align condition 20 of the electricity supply licence (condition 24 of the PES licence) with condition 21 of the natural gas supply licence. This will formally incorporate compliance with all the customer protection provisions of the Supplier Handbook as a condition of the electricity supply licence. This is already the case in the natural gas supply licence.

2.3 Market Monitoring

In light of the CER’s enhanced market monitoring requirements under SI No. 450 of 2010, the provisions of the supply licences pertaining to the furnishing of information to the CER were reviewed. Following review it was proposed that the licence conditions within the natural gas and electricity supply licences be aligned, which would see an obligation on publishing information already in the natural gas licence being introduced into the electricity supply licences.

Consultation Proposal 2. Provision of information to the Commission
It is proposed that condition 12 (Provision of information to the Commission) of the electricity supply licence (condition 16 of the PES licence) be modified to include an obligation to publish information under the CER’s market monitoring framework if, and when, the CER deems it to be necessary. This will align the condition with that of the natural gas supply licence (condition 4).

Consultation Question 2. Respondents are invited to comment on the proposal to align the conditions in the electricity and natural gas supply licenses pertaining to the provision of information to the commission (conditions 12 and 4 respectively)? Are you in favour of the proposal? Outline reasons for agreement or disagreement.

2.3.1 Respondents’ Comments

Electric Ireland was in agreement with the proposed alignment of the conditions pertaining to the provision of information to the CER. Airtricity and Bord Gáis Energy were also in broad agreement with the alignment but had some comments, while Endesa Ireland was against the modification.

Airtricity stated that the condition should specify that the information requested be reasonable and proportionate. In addition, they recommended that the licence condition include a stipulation that the licensee should be afforded an “appropriate timeframe” to submit the requested information and that this timeframe should take into account the extent of the work involved in preparing the requested information.

Bord Gáis Energy highlighted differences in clauses 1 and 2 of the conditions between the electricity and natural gas supply licences. Bord Gáis Energy also highlighted that clause 2 of the electricity supply licence specifies that the CER
may request additional accounting information to that prescribed in licence condition 2 requiring separate accounts for the supply business. Bord Gáis Energy considered that the accounting information should be limited to that detailed in condition 2 and recommended that the ability to call for additional unspecified accounting information be removed from condition 12. They also highlighted that a similar requirement is not included in the natural gas supply licence.

Endesa Ireland highlighted that the licence condition provides for the determination by the CER as to whether information is confidential or not. They emphasised that such a determination by the CER may not be in agreement with the position of the licensee or its customers. As such, Endesa Ireland was not in favour of the condition stipulating that the CER may direct a licensee to publish information, that the CER has deemed non confidential. Rather, they maintained that the current process, where the CER may publish submitted information that CER deem non confidential, as more appropriate and should be retained.

2.3.2 CER’s Response to Comments

The CER notes that respondents were generally in favour of the proposed modification of the information requirements of the electricity supply licences to introduce an obligation on the licensee to publish information where the CER requires it. This will see the broad alignment of the conditions within the electricity and natural gas supply licences.

In relation to respondents’ comments as to the extent of the information requests, the CER would emphasise that in fulfilling its functions, the CER strives to minimise the requirements placed on market participants. As to the example of market monitoring, the CER has specific duties under SI No. 450 of 2010 to monitor the electricity retail market across a range of indicators and to take actions where it determines it to be necessary to:

(i) prevent a distortion or restriction of competition in the supply of electricity to final customers, or

(ii) ensure that final customers are benefiting from competition in the supply of electricity,

In light of these duties, the CER has reviewed its current market monitoring framework. The review looked towards best practice and the consultation will consider in detail any representations from market participants. The resultant decision paper will detail the specific information required and the submission

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2 These market monitoring requirements specified in the 3rd Package for natural gas markets have as of yet not been transposed into national law. However, the requirements of the 3rd Package for gas markets are the same as that for the electricity markets.
times for same. This will provide suppliers sight of the specific requirements and their obligations under the market monitoring framework.

As to Endesa Ireland’s comments as to the CER’s determination of the confidentiality of data, the CER would highlight Section 13 of the Electricity Regulation Act, 1999, pertaining to the prohibition on unauthorised disclosure of information. It states:

“In expressing information to be confidential, the Commission shall have regard to the requirement to protect information of a confidential commercial nature”

and in terms of what is confidential information it states:

““confidential information” means that which is expressed by the Commission to be confidential either as regards particular information or as regards information of a particular class or description”.

The CER is required to adhere to these requirements in all aspects of its work, including where the CER were to request a supplier to publish any information.

2.3.3 CER’s Proposed Decision

Noting the broad agreement to the proposal to modify condition 12 (Provision of information to the Commission) of the electricity supply licence (condition 16 of the PES licence) to include an obligation to publish information where the CER so requires, the CER is proposing to proceed with the consulted upon modification. As to respondents’ comments on the extent of the information requests, the forthcoming market monitoring consultation paper considers the issue further.

**Proposed Decision 2.**
The CER is minded to adopt the consulted upon modification to condition 12 (Provision of information to the Commission) of the electricity supply licence (condition 16 of the PES licence). This will see the introduction of an obligation to publish information where CER deems it to be necessary. This will broadly align the condition with that of the natural gas supply licence (condition 4).

2.4 Energy Services Directive

In the context of energy efficiency and the Energy Services Directive, SI No. 542 of 2009 prohibits suppliers from offering tariffs that incentivise unnecessary use (and in turn distribution or transmission) of electricity or natural gas. In accordance with Regulation 19 of the SI, the CER proposed to introduce a licence condition in both electricity and natural gas supply licences to prohibit such tariff offerings.
Consultation Proposal 3. Prohibition of tariffs incentivising unnecessary consumption

It is proposed that a new condition be introduced into both the licence to supply electricity and the licence to supply natural gas (condition 22 of the generic electricity supply licence, condition 26 of the PES licence and condition 22 of the natural gas supply licence) to prevent suppliers from offering tariffs that may incentivise unnecessary use (and in turn distribution or transmission) of electricity or natural gas.

Consultation Question 3. Respondents are invited to comment on the text of condition 22 of the generic supply licence and condition 26 of the PES licence prohibiting suppliers from offering tariffs that may incentivise unnecessary use (and in turn distribution or transmission) of electricity? Are you in favour of the proposal? Do you agree with the drafting of the condition? Outline reasons for agreement or disagreement.

Consultation Question 4. Respondents are invited to comment on the text of condition 22 prohibiting suppliers from offering tariffs that may incentivise unnecessary use (and in turn distribution or transmission) of natural gas? Are you in favour of the proposal? Do you agree with the drafting of the condition? Outline reasons for agreement or disagreement.

2.4.1 Respondents’ Comments

Electric Ireland was in favour of the modification prohibiting suppliers from offering tariffs that may incentivise unnecessary consumption. They did however highlight that the reference to “unnecessary consumption” did not align with the language used in the relevant EU Directive ((2006/32/EC), which refers to “unjustifiable volume-driven incentives”. Electric Ireland considered that this could lead to confusion in interpretation and called on the CER to clarify that the intent of the licence condition is to deliver the aim of EU Directive (2006/32/EC) in prohibiting “unjustifiable volume-driven incentives”.

Airtricity stated that they agreed that customers should not be incentivised to waste energy but highlighted that the terminology used was ambiguous and called for the CER to detail what would constitute unnecessary consumption. Energia also called for clarification of the term unnecessary consumption.

Bord Gáis Energy was in favour of the modification but proposed, to improve clarity, the following alternative wording:

“Suppliers may not offer tariffs or make charges to customers for the supply of electricity / gas consumption by the customer and thereby increase the volume of distributed or transmitted electricity.”

Endesa Ireland accepted that the modification is a requirement of SI No. 542 of 2009. As with Bord Gais Energy, they proposed alternative wording:
“Licensee shall ensure that the charges for the supply of electricity do not create incentives.”

2.4.2 CER’s Response to Comments

The Energy Services Directive came into force on 17\textsuperscript{th} May 2006, as a means to enhance end-use energy efficiency across the EU. This was transposed into Irish legislation by SI 542 of 2009. Regulation 19 of SI 542, which amends Section 14 of the Electricity Regulation Act, 1999, states:

“The Commission shall, through licence conditions, place a requirement on energy undertakings to ensure that their tariffs do not create incentives that may unnecessarily increase the volume of distributed or transmitted energy”.

The new condition in the supply licences is to implement the above regulation of the SI. The CER also notes respondents’ suggestion regarding revised wording and the ambiguity of the term “unnecessary consumption” utilised in the title of the condition.

2.4.3 CER’s Proposed Decision

The CER notes respondents’ overall agreement with the new licence condition prohibiting tariffs that create incentives that may unnecessarily increase the volume of distributed or transmitted energy. The CER is minded to adopt the consulted upon conditions but reworded in light of comments raised in relation to clarity. This will see the condition’s title and body using the terminology as per SI No. 542 of 2009.

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<td>The CER is minded to reword the consulted upon licence condition as follows:</td>
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<td><strong>Prohibition of charges that create incentives that may unnecessarily increase the volume of distributed or transmitted energy.</strong></td>
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<td>This will form a new condition in the electricity and natural gas supply licences (22 of the generic electricity supply licence, condition 26 of the PES licence and condition 22 of the natural gas supply licence).</td>
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2.5 Role of the Public Electricity Supplier

In light of deregulation of the electricity retail markets and changing market dynamics, the CER reviewed the roles of the Public Electricity Supplier (PES) and the Supplier of Last (SoLR). The review explored how the PES and SoLR obligations would continue to be met in parallel with the former price regulated electricity incumbent Electric Ireland’s operation as an unregulated supplier in a fully deregulated electricity market. Following that review, the CER decided:

1. that all supply licences will include a duty to supply for domestic and small business (DG5) customers, and;
2. that the role of the SoLR will be offered to the market under a competitive process and that all supply licences will contain an obligation to serve as the SoLR, where so directed by the CER.

To further implement these decisions, the CER proposed modifications to the electricity supply licences.

Consultation Proposal 4. Universal Service
Further to the CER’s decision on the roles of the Public Electricity Supplier (PES) and Supplier of Last (SoLR) in the deregulated electricity market, it is proposed to introduce the following text into the electricity supply licence:

1) a duty to offer supply for domestic and small business (DG5) customers
2) an obligation to act as the SoLR if designated by the CER as such

The duty to offer supply only applies where the supplier is actively supplying in the relevant market, and the obligation to act as a SoLR is limited to those markets in which the supplier is active.

2.5.1 Duty to offer supply

In accordance with the CER’s decision on the role of the PES in the deregulated electricity market, the CER proposed to modify the electricity supply licence to introduce a duty to offer supply for domestic and small business customers.

Consultation Question 5. Respondents are invited to comment on the text of condition 23 requiring the licensee to offer supply for domestic or small business (DG5) customers if the licensee is actively supplying in those market segments? Are you in favour of the proposal? Do you agree with the drafting of the condition? Outline reasons for agreement or disagreement.
2.5.1.1 Respondents’ Comments

Of the five suppliers who commented on the proposed modification to introduce a duty to offer supply into the electricity supply licence, three agreed with the proposal, one did not and another did not indicate their preference. The three suppliers in favour were Airtricity, Bord Gáis Energy and Electric Ireland. Endesa Ireland was not in favour of the modification.

While stating their agreement with the modification, Bord Gáis Energy highlighted that the duty to offer supply in the natural gas supply licence is only placed on Bord Gáis Energy. They stated that they assume this will be changed, come full deregulation of the natural gas retail markets, to mirror the extension of the duty in relation to domestic and small business customers to all suppliers in the electricity supply licence.

Airtricity noted that the aim of universal service is to promote access to a “reasonable and affordable” energy supply and does not aim to promote debt hopping. In this light, Airtricity put forth that suppliers should not be required to offer supply to customers that have been flagged for debt outstanding or to those who have been de-energised due to non payment of account (unless they are willing to accept the installation of a prepayment meter). Regarding the latter, Airtricity noted that in accordance with the Disconnection Code of Practice suppliers are required to offer a prepayment meter to customers as an alternative to disconnection. Where a customer has refused such, a meter and has been disconnected, Airtricity suggested that the duty to offer supply should only be imposed where the customer accepts the installation of a prepayment meter.

Energia sought clarification of what constituted a reasonable request of supply and the process for determination of the reasonableness or otherwise by the CER.

Endesa Ireland, who did not agree with the proposed modification, considered it inappropriate to place a requirement on a licensee supplying small business customers (DG5) to offer supply to all such customers. They stressed that small business customers can be either Quarter Hourly or Non Quarter Hourly metered and that the resources required to supply these customers are very different, for example in terms of IT infrastructure. Endesa Ireland argued that it would be an “unrealistic burden” to require investment by the licensee in order to be able to supply both Quarter Hourly and Non Quarter Hourly metered customers and fulfil a duty to offer supply for all small businesses. In light of such, they recommend that a duty to offer supply for business customers should recognise this distinction between customers in DG5 (Quarter and Non Quarter Hourly metered) and limit the requirement to the customer type that the licensee is actively supplying. Endesa Ireland also suggested that the definition of a request should include a requirement on the customer to provide historic consumption data and their MPRN to the licensee. Endesa Ireland in general questioned whether the extension of the duty to offer supply was appropriate and permitted within the
current legislative framework. In this regard, they considered that it was not appropriate to extend the duty to offer supply, as detailed in Regulation 18 (1) of SI. No. 60 of 2005, to all electricity suppliers through the electricity supply licence granted under Section 14 (1) (b) of the Electricity Regulation Act, 1999. Rather they stated that this should be done through a PES licence granted under Section 14 (1) (h), of the Electricity Regulation Act, 1999. However, Endesa Ireland maintained that this was not possible. In this regard they referenced the CER consultation on the role of the Public Electricity Supplier and the SoLR in the De-regulated Electricity Market (CER/11/039) and provided the following extract.

“Finally, it should be noted that notwithstanding a CER decision which designated a party other than Electric Ireland as the PES and/or SoLR, a change to primary legislation would be required to remove the stipulation in S.I. No. 60 of 2005 that only the Board will be designated as the PES. Until such time as these changes are provided for, the role of the PES will remain with the supply incumbent, Electric Ireland”.

Endesa Ireland also considered that it was not fitting with the legislative framework to extend one element (the duty to offer supply) of the PES functions while not extending the others. Finally they sought clarity as to the current role of the PES and how customers of ESB Electric Ireland can determine whether they are being supplied by ESB Electric Ireland under their PES or generic supply licences.

2.5.1.2 CER’s Response to Comments

The CER notes that the majority of respondents’ agreed with the proposed modification to the electricity supply licence to introduce a duty to offer supply. The modification follows a CER decision resulting from a review of the PES obligations and consideration as to how they would endure in a fully deregulated competitive electricity market. With the domestic natural gas market yet to be deregulated, a similar review has yet to be conducted on the gas side. The CER will review the provision of universal service for customers in the natural gas market in due course and how they will endure in a fully deregulated competitive market. Further licence changes may be needed to implement the outcome of that review, which will determine how universal service will be delivered and by whom.

In relation to suggested exclusions from the duty to offer supply raised by respondents, the CER notes that under the proposed licence condition, while specific instances are detailed where the supplier is not obliged to offer supply of electricity, the reasonableness or otherwise of a request is ultimately determined by the CER. The CER will determine the reasonableness or otherwise of a request on a case by case basis. The CER would deem the following instances raised by respondents as not being a reasonable request:
where a customer is debt flagged
where the supplier who is actively supplying in DG5 is not setup to supply
the metering type of the customer in question

In relation to the terms offered by suppliers under the duty to offer supply, the CER notes Article 3 (3) of the 3rd Package as transposed by SI 463 of 2011, which states that;

“Member States shall ensure that all household customers.... enjoy universal service, that is the right to be supplied with electricity of a specified quality within their territory at reasonable, easily and clearly comparable, transparent and non-discriminatory prices

In addition Annex I requires that customers are offered a wide choice of payment methods, and that any difference in terms and conditions shall reflect the costs to the supplier. As such, suppliers must ensure that if the customer’s choice of payment method reduces the cost to serve, that this is reflected in that customer’s tariff. For example, many suppliers offer discount for direct debit options, where the risk of the customer falling into arrears is reduced. The CER will, as part of its retail market monitoring framework, monitor how suppliers discharge their obligations with respect to the provision of universal service and tariffs offered.

As to Endesa Ireland’s representations that it is inappropriate to include a duty to offer supply in a supply licence granted under Section 14 (1)(b), the CER considers this step is inline with the developments in competition and the CER’s legislative duty, under the Electricity Regulation Act, 1999, to ensure that all reasonable demands by final customer for electricity “are satisfied” while not “discriminating unfairly between holders of licences”. The role of the PES is provided for under S.I. No. 60 of 2005. Regulation 16 specifies that the role can be discharged through licence but only to the Electricity Supply Board (‘the Board’). The PES licence was granted to Electric Ireland, in 2006 under Section 14 1 (h) of the Electricity Regulation Act, 1999. Electric Ireland is a ringfenced supply arm of ESB. Regulations 17, 18, 19, 20 and 26 of SI 60 prescribe the duties and obligations of the PES. These duties are outlined in CER/11/039 and include, amongst others, a duty to meet all reasonable requests to supply electricity, i.e. the “supply duty” under Regulation 18 of S.I. No. 60 of 2005. The “supply duty” aims at delivering universal service to the market. With deregulation of the electricity markets the CER reviewed the PES obligations and considered how they would endure in a fully deregulated competitive market. Taking account of the need to establish a fairer method of ensuring universal service provision for customers in a competitive market than the designation of a single supplier (through the “supply duty” on the PES), the CER looked to other jurisdictions, where regulators have imposed a duty to supply on all suppliers in the market and this proposal was consulted upon. The approach was broadly supported by respondents to the consultation, however, they maintained that it should be
limited to domestic customers. The CER did not agree with this as in practice many small business customers are similar to domestic customers and small business customers often exhibit the same behaviours as domestic customers with regard to their engagement with the market in terms of shopping around and switching supplier. As such, the CER decided that all supply licences will include a duty to supply for domestic and small business (DG5) customers. That decision does not remove the requirement on the PES to meet all reasonable demands and all the specific roles of the PES as detailed in S.I. No. 60 of 2005. It rather supplements them in the interest of customer protection.

In relation to Endesa Ireland’s query as to the licence under which Electric Ireland operates, further to the publication of the Roadmap for Deregulation of the Electricity Retail Market (CER/10/058) and, in preparation for deregulation of the business markets, ESB applied for a 3rd licence under Section 14 (1)(b) of the Electricity Regulation Act, 1999. In September 2010, the CER awarded the licence under which ESB Customer Supply and ESB Independent Energy could serve the unregulated business customers. Since deregulation of the domestic electricity market on 4th April 2011, Electric Ireland has served both their business and domestic customers under that licence. However, it should be noted that notwithstanding a CER decision, which designates a party other than Electric Ireland as the PES and/or SoLR, a change to primary legislation will be required to remove the stipulation in S.I. No. 60 of 2005 that only “the Board” will be designated as the PES. Therefore, until such time as these changes are provided for, the role of the PES will remain, unchanged, with the supply incumbent Electric Ireland. As such in the event that a customer is served by Electric Ireland in its capacity as the PES, the current regulations apply.

2.5.1.3 CER’s Proposed Decision

The CER notes respondents’ overall agreement with the new licence condition introducing a duty to offer supply into the electricity supply licence. The CER is minded to adopt the consulted upon condition, which will require the licensee, upon receipt of a reasonable request, to offer supply to domestic or small business (DG5) customers (if the licensee is actively supplying in those market segments). The CER will determine the reasonableness or otherwise of a request on a case by case basis. The CER is minded to deem the following instances raised by respondents as not being a reasonable request:

- where a customer is debt flagged
- where the supplier who is actively supplying in DG5 is not setup to supply the metering type of the customer in question

Proposed Decision 4.
The CER is minded to adopt the consulted upon modification. This will see a new condition in the electricity supply licence (condition 23) requiring the licensee, upon receipt of a reasonable request, to offer supply for domestic or small business (DG5) customers. This duty to offer supply only applies where the
supplier is actively supplying in the relevant market and upon receipt of a reasonable request for supply. Where a question arises as to the reasonableness or otherwise of a request the CER will determine this on a case by case basis. The CER is minded to deem the following instances raised by respondents as not being a reasonable request:

(i) where a customer is debt flagged
(ii) where the supplier who is actively supplying in DG5 is not setup to supply the metering type of the customer in question

2.5.2 Role of the Supplier of Last Resort

In accordance with the CER’s decision on the role of the SoLR in the deregulated electricity market, the CER proposed to modify the electricity supply licence to introduce an obligation on suppliers to act as the SoLR where so directed by the CER.

Consultation Question 6. Respondents are invited to comment on the text of condition 24 (27 of the PES) requiring the licensee to act as the SoLR if so designated by the CER? Are you in favour of the proposal? Do you agree with the drafting of the condition? Outline reasons for agreement or disagreement.

2.5.2.1 Respondents’ Comments

Of the four suppliers who commented on the proposal, three agreed with the proposal and one did not.

Bord Gáis Energy noted that the new condition added to the electricity supply licence to require the licensee to act as the SoLR (if so designated by the CER), is aligned with the relevant condition in the natural gas supply licence (Condition 17, Supplier of Last Resort) and stated their agreement with the proposal.

Electric Ireland also stated that they were in favour of the proposal. Electric Ireland suggested that procedurally there would be merit, where no supplier was forthcoming to undertake the role of the SoLR, to designate a supplier as the SoLR for a period of 24 months and to exempt the supplier so designated from undertaking the role in the next 24 month period. Electric Ireland also called for the CER to consult on, as committed to in CER/11/060, the cost recovery mechanism for the role.

Airtricity stated that they were in favour of the proposal subject to designation as the SoLR being contingent on supplier consent.

Endesa Ireland stated that they did not agree with the proposal. Before such a licence condition could be activated they stated that the CER must put in place procedures and criteria for:

- appointing a SoLR, and;
• issuing a SoLR direction

In addition, they stipulated that the cost recovery mechanism for the role should be in place prior to any such licence condition being activated. Endesa Ireland considered it appropriate that the licence condition should include the mechanism for cost recovery as referenced in the consultation paper. Endesa Ireland further referenced the consultation paper stating that it was decided therein to consult on the circumstances in which a SoLR direction would be issued. With the licence condition specifying such circumstances, Endesa Ireland question whether this is the consultation referred to in the consultation. As to the circumstances, they questioned their appropriateness and highlighted that such a direction should only be issued in serious circumstances. They suggested that an instance warranting a licence revocation would be the appropriate trigger. Endesa Ireland also highlighted that the reference to a SoLR Direction is unclear, specifically whether such a direction applies to just the designated SoLR or both the designated party and licensed suppliers in general. They called for this to be clarified in the condition. Finally, Endesa Ireland stated that where customers are being transferred to the SoLR the requirement for the exiting supplier to share information should not extend to commercially sensitive information.

2.5.2.2 CER’s Response to Comments
The CER notes that the majority of respondents’ agreed with the proposed modification to the electricity supply licence to introduce an obligation to act as the Supplier of Last Resort if so designated by the CER. As per the CER’s decision on the role of the PES and SoLR in the deregulated electricity market (CER/11/060), and therein it was decided upon that where, following a competitive process, no supplier was forthcoming the CER may designate a supplier as the SoLR. As to respondents’ questioning the specifics of the SoLR process, the CER will consult on these in Q1 2012. It is suggested that the licence modification be conducted while acknowledging that the Electric Ireland, in their role as the PES, will remain as the SoLR until such time as the SoLR process has been consulted upon. The CER would also note that it deems it inappropriate to detail the specifics of the process in the supply licence.

In relation to Endesa Ireland’s questions as to when a SoLR Direction can be issued, the CER is conscious that such a direction should only be issued in serious circumstances. The Direction will direct a supplier to act as a SoLR in respect to a particular licensee, whose customers the SoLR will commence supplying (those customers are given a chance to change supplier if they so wish3). As detailed in CER/05/238, the main reason for a SoLR Direction to be initiated is supplier exit from the market. This can manifest itself in a number of ways, namely via:

3 The duties and obligations of the SoLR as well as the process behind a SoLR event are detailed in CER/06/006.
• Unplanned exit: e.g. a supplier exits the market due to insolvency.
• Planned exit: e.g. a supplier exits the market of its own free will (however, in such an event, the exiting supplier should use all available means to inform customers of the supplier exit and to transfer customers to another supplier once timing of exit is known).
• Serious licence breach and subsequent revocation of licence: a supplier’s licence is revoked for serious or continuous breaches of its licence conditions.

The proposed licence condition states that a SoLR Direction directing a supplier to act as a SoLR and commence supplying customers of a specified supplier, can be issued where:
• the specified supplier has ceased or failed to supply electricity in accordance with its contractual obligations,
• the specified supplier is having its supply licence revoked, or;
• the CER is of the opinion that circumstances exist, which warrant such a supplier of Last Direction.

In relation to the latter, the CER will consider these circumstances in the aforementioned consultation paper to be published in Q1 of next year. The CER would also highlight regulation 21 of SI No 60 of 2005 that states that the SoLR shall supply electricity to final customers of another licensed supplier where that supplier has ceased or failed to supply electricity to final customer in accordance with its contractual obligations. The CER also notes that there was an erroneous reference to acting as a SoLR where a licensee fails to comply with condition 2 of the licence. The CER will delete this reference.

As to the provision of information to the SoLR from Licensee’s, the CER notes reference to “all customer data”. Under a SoLR event, it is important that the SoLR is furnished with sufficient information to effectively manage the event. The MRSO provides such information to the SoLR. The CER agrees that the licence condition referencing the provision of “all customer data held by the Licensee” goes beyond this and should be deleted. The CER will consult on the information transfer requirements in the Q1 consultation on the role of SoLR.

2.5.2.3 CER’s Decision

As per the CER’s decision on the role of the PES and SoLR in the deregulated electricity market (CER/11/060), and therein it was decided upon that where, following a competitive process, no supplier was forthcoming the CER may designate a supplier as the SoLR. The CER considers it appropriate that the Electric Ireland, in their role as the PES, remain as the SoLR at least until the specifics of the SoLR process are decided upon. A consultation paper on this will be published in Q1 2012.

Proposed Decision 5.
The CER is minded to adopt the consulted upon modification. This will see a new condition in the electricity supply licences (condition 24 of the generic supply licence and 27 of the PES licence) requiring the licensee to act as the SoLR if so designated by the CER. The CER is proposing that the role of the SoLR remains with the PES until such time as the specifics of the SoLR process have been decided upon.

2.6 Generic, Green and CHP Licences

With all licences now deemed, under SI No. 147 of 2011, to be licences granted under Section 14 (b) of the Electricity Act, 1999, licences no longer distinguish between suppliers in terms of their energy sources. This is now conducted under fuel mix disclosure. As such, the CER proposed to remove the additional conditions which applied to the now redundant licence types.

Consultation Proposal 5. Additional conditions for holders of green licences

With green and CHP licences been deemed generic supply licences by (SI No. 147 of 2011), it is proposed to remove condition 21 of the generic supply licence and condition 27 of the PES licence which place additional conditions on holders of green and CHP supply licences.

Consultation Question Q7. Respondents are invited to comment on the proposal to remove conditions 21 of the generic supply licence and condition 27 of the PES licence? Are you in favour of the proposal? Outline reasons for agreement or disagreement.

2.6.1 Respondents’ Comments

Endesa Ireland stated that they are in favour of the proposal to remove conditions 21 of the generic supply licence and condition 27 of the PES licence but highlight that the deletions were not tracked in the draft licences published alongside the consultation. Electric Ireland also indicated their agreement with the proposed deletions.

Although Airtricity considered it appropriate to the delete the current conditions they maintained that a new condition should be added in their place. The new condition should require all licensed suppliers to “cooperate and support market developments”.

Bord Gáis Energy, while noting that green supply licences will no longer be granted by the CER, considered that the check and balance required under the condition in relation to the sale of green electricity not surpassing the green electricity available to the licensee should be retained. They recommended that rather than deleting the condition it should be redrafted to detail a new check and balance regime, where SEMO register a green supplier under a green supplier unit identifier, against which green sales can be allocated and compared to the number of guarantees of origin held by the supplier.
2.6.2 CER's Response to Comments
The CER notes respondents’ agreement with the proposed deletion of conditions 7 and 8 of the electricity supply licence.

Regarding Fuel mix disclosure, the CER notes the proposal put forth in relation to the registration of a green supplier unit against which green sales and guarantees of origin could be registered. The CER does not deem it necessary to detail any check and balance mechanism in relation to the sale of green electricity not surpassing the green electricity available to the licensee in the licence. In this regard, the CER notes the recent SEM Committee decision on the Fuel Mix Disclosure Calculation Methodology (SEM-11-095) that considered the same proposal by the respondent and stated in response:

“On the proposal by the respondent, the SEM Committee considers it would only work for 100% and 0% green products variations. It would therefore not be compatible with approaches where suppliers may offer various percentages of green, low-carbon products, technology/fuel specific (e.g. wind, biomass, or even gas). All these would be associated with a fuel mix but would not work within the respondent’s proposal. The SEM Committee notes in that context that the respective RAs may require the provision of fuel mix or CO\textsubscript{2} emission information from licensed suppliers to them, in particular information relating to where suppliers sell specific products based on differentiated fuel mixes or CO\textsubscript{2} emissions, as they deem necessary and appropriate. This is a matter for the respective RAs in respect of their respective licensed suppliers”.

2.6.3 CER’s Decision
The CER notes the majority of respondents’ agreed in general with the removal of conditions 21 of the generic supply licence and condition 27 of the PES licence, pertaining to additional requirements of holders of green licences. The CER is minded to adopt the consulted upon deletion.

**Proposed Decision 6.**
The CER is minded to adopt the consulted upon modification. This will see condition 21 of the generic supply licence and condition 27 of the PES licence, which place additional conditions on holders of green and CHP supply licences, deleted.

2.7 Metering Provisions
As it is ESB Networks, in its function as the licensed Distribution System Operator, rather than suppliers who own and provide the metering equipment of record (that on which bills are based) in the Irish market, it was proposed to delete the licence conditions relating to ownership of meters by suppliers.

**Consultation Proposal 6. Metering Provisions**
It is proposed that conditions 7 and 8 of the generic electricity supply licence (conditions 13 and 14 of the PES licence) are removed as they relate to the ownership of meters (meters of record) by suppliers – something that is not supported in the Irish electricity supply market model.

Consultation Question Q8. Respondents are invited to comment on the proposal to delete conditions 7 and 8 of the electricity supply licence? Do you agree with this proposal? Outline reasons for agreement or disagreement.

2.7.1 Respondents’ Comments
Endesa Ireland and Bord Gáis Energy stated that they were in favour of the proposal to delete conditions 7 and 8 of the generic electricity supply licence (conditions 13 and 14 of the PES licence) but highlighted that the deletions were not tracked in the draft licences published alongside the consultation. Electric Ireland also indicated their agreement with the proposed deletions. Airtricity highlighted their support of the proposed deletions.

2.7.2 CER’s Response to Comments
The CER notes respondents’ agreement with the proposed deletion of conditions 7 and 8 of the electricity supply licence. The CER also notes that the deletion, though detailed in the consultation paper itself was not tracked in the draft licences published alongside it.

2.7.3 CER’s Decision
The CER notes that all respondents agreed with the proposed deletion of conditions 7 and 8 of the generic electricity supply licence (conditions 13 and 14 of the PES licence). The CER is minded to adopt the consulted upon deletion.

Proposed Decision 7.
The CER is minded to adopt the consulted upon modification. This will see the deletion of conditions 7 and 8 of the generic electricity supply licence (conditions 13 and 14 of the PES licence) which relate to the ownership of meters (meters of record) by suppliers – something that is not supported in the Irish electricity supply market model.

2.8 Demand Side Vision
In the context of the Demand Side Vision, the Regulatory Authorities have approved a Modification (Mod_36_10) to the Trading and Settlement Code (T&SC), which sought to facilitate the participation of Demand Side Units (DSUs) in the SEM. The approval was contingent on DSUs, who under the T&SC must hold a supply licence, being bound to the Bidding Code of Practice (BCOP). In light of such, the CER proposed to introduce a new condition to the electricity supply licence binding the licensee, where acting as a DSU, to the BCOP.
Consultation Proposal 7. Demand Side Units
To facilitate the operation of demand side units in the SEM the CER is proposing a new condition, condition 21 of the generic supply licence (condition 25 of the PES licence), to introduce an obligation on any Demand Side Unit to comply with the Bidding Code of Practice.

Consultation Question Q9. Respondents are invited to comment on the proposal to introduce a new condition into the electricity supply licence to bind any Demand Side Units to the Bidding Code of Practice? Are you in favour of the proposal? Do you agree with the drafting of the condition? Outline reasons for agreement or disagreement.

2.8.1 Respondents’ Comments
Electric Ireland highlighted its acceptance of the proposal to introduce a new condition into the electricity supply licence to bind any DSUs to the BCOP. Electric Ireland stated that how this would function in practice is unclear and should be clarified prior to any decision to include a licence condition binding DSUs to the BCOP.

Airtricity supported the modification but highlighted that the BCOP required review to ensure that it “adequately reflects the characteristics of for Demand Side Units”.

Activation Energy welcomed the modification and sought “swift implementation” of the changes to the licence and the associated changes to the Trading and Settlement Code.

Dalkia Alternative Energy also called for the swift implementation of the modification and highlighted that the associated modification to the Trading and Settlement Code was submitted some 14 months ago. In addition, Dalkia Alternative Energy highlighted the CER’s decision on the Winter Peak Demand Reduction Scheme (CER/11/815), which approved Eirgrid’s proposal to wind down the scheme over two years contingent on the development of a suitable alternative, market based, demand side management scheme in the SEM.

Enercomm International welcomed the modification to the electricity supply license binding DSUs to the BCOP. They cautioned that bidding by DSUs would be more complicated to administer than that for generators. This was associated with the potential for multiple sites being managed by a single DSU. Due to the highlighted complexity, Enercomm International called for a pragmatic approach to the treatment of DSUs and their adherence to the BCOP. Enercomm International also highlighted that DSUs may, under the relevant modification to the Trading and Settlement Code, opt out of supplying customers. They recommended that for instances where a DSU has opted out of supplying customers, their Credit Cover Requirements should be aligned with that for generators and not suppliers. In conjunction with this proposal they stressed that
it is important that DSUs are not imposed with unnecessary financial burdens and highlighted that the accommodation of DSUs within the SEM is already several years late in getting off the mark. Finally, Enercomm International called for the application of market operation charges to be fair and equitable for DSUs.

2.8.2 CER’s Response to Comments
The CER acknowledges respondents’ agreement to the proposed licence modification, the aim of which is to introduce a requirement, under licence, for DSUs to comply with the BCOP. This in turn is to facilitate the approval of Modification (Mod_36_10) to the Trading and Settlement Code (T&SC), which sought to facilitate the participation of DSUs in the SEM.

As regards, respondents’ concerns as to how DSUs will be administered in practice, this is out of the scope of this consultation. However, the CER notes that it is the BCOP that sets out the principles to be used in calculating the costs to be reflected in the commercial offer data submitted to the Market Operator and it is Market Monitoring Unit who, as part of the Market Power Mitigation strategy for the SEM, monitor adherence with such.

In relation to credit cover arrangements the CER notes that they are consulted upon annually by the SEM Committee. Following consultation, a decision on 2012 Operational parameters was published on 22nd November 2011 (SEM-11-099).

Regarding market operation charges for DSUs, the SEM Committee published a three year revenue control for SEMO in 2010 (SEM-10-082) which sets the revenues that SEMO can recoup from the market. The indicative market operator charges for the three year period were set as part of the revenue control decision. The next revenue control will be consulted upon and will commence in 2013.

2.8.3 CER’s Decision
The CER notes respondents’ agreement with the proposed modification to the electricity supply licence to bind licensees operating in the Single Electricity Market as DSUs to the BCOP. The CER is minded to implement the consulted upon modification.

**Proposed Decision 8.**
The CER is minded to adopt the consulted upon modification. This will see a licence condition being introduced into the electricity supply license (condition 21 of the generic supply licence and condition 25 of the PES licence), to oblige a supplier acting as a DSU to comply with the BCOP.

2.9 Compliance with all Applicable Laws
The Review of the supply licences highlighted that the natural gas supply licence was more comprehensive in terms of licensee’s complying with all their legislative
and regulatory requirements. In light of such and for completeness it was proposed to align the compliance conditions in the electricity and natural gas licences.

**Consultation Proposal 8. Compliance with all applicable laws**
The CER is proposing to align condition 17 of the electricity supply licence (Compliance with Directions etc.) and condition 16 of the natural gas supply licence (Compliance with Laws and Directions). This is to extend the condition to all applicable laws.

**Consultation Question Q10.** Respondents are invited to comment on the proposal to align condition 17 of the electricity supply licence (condition 21 of the PES licence) with condition 16 of the natural gas supply licence? Are you in favour of the proposal? Outline reasons for agreement or disagreement.

2.9.1 Respondents’ Comments
Endesa Ireland stated that they had no objection to the modification to align condition 17 of the electricity supply licence (condition 21 of the PES licence) with condition 16 of the natural gas supply licence. This was however subject to the removal of clause 2, as it is was deemed out of context. Bord Gáis Energy was in agreement with the modification but stated that clause 2 should refer to all “applicable laws” and not, as currently drafted, to “such directions, determinations and court orders”. Airtricity noted that all suppliers must adhere to all relevant legislation and, as such, questioned the value of the modification. Electric Ireland was in agreement with the modification.

2.9.2 CER’s Response to Comments
The CER notes that clause 2 of the condition erroneously referenced “such directions, determinations and court orders” rather than “all applicable laws”. The CER also notes Airtricity’s comment that the modification maybe of questionable value as suppliers must adhere to all relevant legislation. The CER acknowledges that suppliers must adhere to all relevant legislation but the CER deems it appropriate to reinforce this under licence condition. This would allow the CER to take measured action under the licence to any non compliance with legislation.

2.9.3 CER’s Decision
The CER notes respondents’ agreement with the proposal to align condition 17 of the generic electricity supply licence and condition 21 of the PES licence (Compliance with Directions etc.) and condition 16 of the natural gas supply licence (Compliance with Laws and Directions). This is to extend the conditions in the electricity supply licences, for completeness, to all applicable laws. The CER is minded to adopt the modification as consulted upon.

**Proposed Decision 9.**
The CER is minded to adopt the consulted upon modification. This will see condition 17 of the generic electricity supply licence and condition 21 of the PES licence (Compliance with Directions etc.) being aligned with condition 16 of the natural gas supply licence (Compliance with Laws and Directions).

2.10 Changes to Definitions
Changes to the definitions of the electricity supply licences, which were last reviewed in 2007, were proposed to achieve greater consistency in terminology across electricity licences. No proposed changes were proposed in relation to the natural gas supply licence. This reflects its more recent review.

Consultation Proposal 9. Update of Definitions
It is proposed that the definitions of the electricity supply licence be updated to be generally aligned with those in other electricity licences and to introduce reference to the licensed transmission or distribution activity rather than maintaining a reference to the ‘Board’.

2.10.1 Reference to the licensed transmission or distribution activity
Though legal unbundling is already reflected in the electricity supply licence, the ‘Board’ referring to the Electricity Supply Board (ESB), is still referenced throughout the definitions. In line with the other electricity licences, it was proposed to remove such references, where appropriate, and replace them with references to the specific licensed activity – e.g. distribution system operator.

Consultation Question Q10. Respondents are invited to comment on the proposal to modify the definitions in the electricity supply licence to introduce reference to the licensed transmission or distribution activity rather than maintaining a reference to the ‘Board’? Are you in favour of the proposal? Do you agree with the drafting of the definitions? Outline reasons for agreement or disagreement.

2.10.1.1 Respondents’ Comments
Endesa Ireland, Airtricity, Electric Ireland and Bord Gáis Energy agreed with the proposal to modify the definitions in the electricity supply licence in order to introduce reference to the licensed transmission or distribution activity rather than maintaining a reference to the ‘Board’. However Bord Gáis Energy did highlight that a reference to the Board remained in Condition 1 of Section C. They questioned whether that reference was necessary.

2.10.1.2 CER’s Response to Comments
The CER notes respondents’ agreement to introducing reference to the licensed transmission or distribution activity rather than maintaining a reference to the

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4 The electricity licences considered were: Distribution System Operator Licence, Distribution Asset Owner Licence, Transmission System Operator Licence, Interconnector Operator Licence and the Licence to Generate Electricity.
‘Board’. Regarding Bord Gáis Energy’s query as to the necessity to maintain certain references to the Board, the CER notes that the definitions have been aligned with those in the relevant operator licences.

2.10.1.3 CER’s Decision
The CER notes respondents’ agreement with the removal of references, where appropriate, of the Board and replacing them with references to the specific licensed activity – e.g. distribution system operator. The CER is minded to adopt this consulted upon modification.

**Proposed Decision 10.**
The CER is minded to adopt the consulted upon modification. This will see the definitions in the electricity supply licences modified to introduce reference to the licensed transmission or distribution activity rather than maintaining a reference to the ‘Board’.

2.10.2 Alignment with other relevant electricity licences
For a greater consistency in terminology in general it was proposed to align the definitions of the electricity supply licence with those in the other relevant electricity licences.

**Consultation Question Q10.** Respondents are invited to comment on the proposal to modify the definitions in the electricity supply licence to align with other relevant electricity licences? Are you in favour of the proposal? Do you agree with the drafting of the definitions? Outline reasons for agreement or disagreement.

2.10.2.1 Respondents’ Comments
Airtricity, Electric Ireland and Bord Gáis Energy agreed with the proposal to modify the definitions in the electricity supply licence to align with other relevant electricity licences. Bord Gáis Energy stated that this would bring clarity for market participants. Endesa Ireland highlighted their general acceptance of the modification but suggested some changes. They suggested that:

- “Participating Interest” should be defined
- the definition of “Supply Business” should be amended to state that “it shall not include the business carried out by the Board in its capacity as public electricity supplier”
- the definition of “Total System” should have reference to the Irish system
- the definition of “Transmission System” should include reference to “any interconnector owned by EirGrid”
2.10.2.2 CER’s Response to Comments

The CER notes respondents’ agreement to the proposal to modify the definitions in the electricity supply licence to align with other relevant electricity licences. Regarding Endesa Ireland’s suggested changes, the CER notes:

- the definition of the distribution system and transmission system (which combined is the total system) are aligned with those in the relevant operator licences
- Participating Interest is as per the definition in Regulation 35 of the European Communities (Companies: Group Accounts) Regulations, 1992 (S.I. 201 of 1992);
- The definition of Supply Business already includes an exclusion in relation to the “business carried out by the Board in its capacity as public electricity supplier”

2.10.2.3 CER’s Decision

**Proposed Decision 11.**
The CER is minded to adopt the consulted upon modification. This will see the definitions in the electricity supply licences being aligned with those in the other relevant electricity licences (e.g. distribution system operator licence).

2.11 Other comments

Two respondents raised comments further to those relating to the consultation questions. Those comments are considered in this section.

2.11.1 Respondents’ Comments

Endesa Ireland suggested that the first financial year for the supply business should commence on the date on which the supplier begins supplying its first customer and not from the date on which the supply licence was granted.

Endesa Ireland noted that condition 9 of the generic electricity supply licence places less onerous billing requirements on suppliers than the proposed Billing Codes of Practice.

Endesa Ireland questioned the value in removing reference to the Trading and Settlement Code in condition 14 of the generic electricity supply licences.

Endesa Ireland requested clarification as to the meaning of a transfer of a business, as referred to in condition 18 of the generic electricity supply licence. Endesa Ireland maintained that the ability for the CER to refuse approval of a transfer of the supply business is excessive, especially because the person to whom the business is being transferred must obtain a new supply licence (which is also deemed by Endesa Ireland to be excessive). Endesa Ireland requested
that the CER provide clarity as to the distinction between a transfer and a change of control as referred to in condition 19 of the generic electricity supply licence.

Endesa Ireland maintained that paragraph 1(f) of Schedule 2 of the generic electricity supply licence is non enforceable. Paragraph 1(f) pertains to revocation of the licence in relation to instances where a change in the control of the licensee has occurred, and relates to where the CER is satisfied that the new shareholder (together with the other companies in its group) does not have adequate technical, financial or managerial strength to undertake the supply business.

Endesa Ireland highlighted that the definition of eligible customers pertains to customers with a consumption of greater than 4 GWh per annum. They requested that this should be changed and representation made, if necessary, to modify the Electricity Regulation Act, 1999 to reflect such.

Finally, Energia called for an iterative process to the licence modifications, as was followed when updating the natural gas supply licences. In that case the CER, following initial consultation, published a proposed decision paper before implementing the licence changes (CER/11/030).

2.11.2 CER’s Response to Comments
As to Condition 9 of the generic electricity supply and Endesa Ireland’s observation that it places less onerous billing requirements on suppliers than the proposed Billing Codes of Practice, the CER notes that this condition relates to the provision of information to final customers on a specific aspect, i.e. security and safety of supply. This information must be provided to customers when they join the supplier and also on a continuous basis and at least annually. Though this can be done through customer billing, there is no stipulation that this must be the channel. In contrast, the Billing Code of Practice details the minimum set of information that must be included on customer bills.

Endesa Ireland questioned the removal of reference to the Trading and Settlement Code in Condition 14 of the electricity Supply Licence. This deletion was put forth as the “Single Electricity Market Trading and Settlement Code” is now in effect and the “Trading and Settlement Code” that was in place is now obsolete.

The CER notes Endesa Ireland’s comments regarding the process of change of control in a licensee or transfer of the Supply Business. Transfer of all or part of a Supply Business means that the licensed business of the licensee (or part thereof) is being acquired by another entity. This is distinct to a change in control of the licensee where there is a new shareholder of the licensee. In ensuring a high level of protection for final customers in their dealings with licensed suppliers, it is important that any person intending to supply final customers has the financial and technical capabilities to undertake such. Where a person
applies for a supply licence the success of the application is contingent on the applicant demonstrating such to the CER. Once operational, the CER monitors licensee’s adherence with their license. In addition, where new entities become involved in the Supply Business are in place to ensure that the financial and technical capabilities are maintained. These processes are outlined in the licence. For assignment of the licensee or transfer of the Supply Business, as detailed in condition 18 of the electricity supply licence, prior approval is required and this approval is contingent on the CER being satisfied that the assignee or transferee has the financial and technical capability to comply with the conditions of the licence. In the case of transfer it is also contingent on the CER issuing a new licence to the transferee (as they would not be a licensed supplier without one). As to change of control, condition 19 states that the licensee shall notify the CER of a change in control as soon as practicable after such a change in control occurs. Schedule 2 states that the CER may revoke a licence if the new shareholder (taking into account the size of its shareholding in the licensee) does not have adequate technical, financial or managerial strength. This is subject to the licensee, after being informed of the intention to revoke the licence by the CER, not conducting such further change in control of the licensee as specified in the notice of revocation within a period of three months. The CER deems the above detailed processes appropriate to ensure the CER’s legislative function of ensuring a high level of protection for final customers in their dealings with licensed suppliers.

The CER would highlight that the consultation did not put forth any changes to the definition of an eligible customer. The definition does, as pointed to by Endesa Ireland, refer to a 4 GWh annual consumption threshold but also states that ultimately this threshold is set by Order by the Minister. In this regard, the electricity retail markets were fully opened on 19th February 2005. This is detailed in S.I. No. 632 of 2003, made by the then Minister for Communications, Marine and Natural Resources, Dermot Ahern, which set the threshold as 0.1 KWh.

Finally, the CER notes Energia’s request that the CER conduct another round of consultation prior to any modifications to the supply licences. This proposed decision provides for that additional round of consultation.
3.0 Conclusions and Next Steps

The CER has reviewed comments from the consultation paper on proposed modifications to the natural gas and electricity supply licences. Following review of comments received the CER is minded to proceed with the implementation of the consulted upon modifications with minor amendments in the drafting of some conditions.

All proposed modifications to the supply licences that are currently in place are highlighted (through track changes) in the proposed supply licences published alongside this paper. The CER requests final comment on the proposed modifications by 17th January 2012. In line with legislative requirements the CER will publish a notice in the Irish Times drawing the publics’ attention to the proposed modifications, their nature and the reasoning for them.