Endesa Ireland welcomes the opportunity to respond to the consultation Review of Electricity and Natural Gas Supply Licences (CER/11/187). This response is set out in three parts, the first deals with a number concerns Endesa Ireland has around the legislation governing supply licences and the PES and the CER’s proposals. The second part of the response answers questions put in the consultation paper and the third lists other specific comments Endesa Ireland has on the wording proposed for the generic supply licence.

Legislation
At the outset Endesa Ireland would point out that under section 20(4)(b) of the Electricity Regulation Act 1999 the Commission must service a notice on the holder of the licence stating that it proposes to make a modification to the licence. Endesa Ireland notes that it has not received such a notice; however it may be that the Commission intends to proceed to a Proposed Decision stage and the notice is to be issued at this stage.

Endesa Ireland questions whether it is correct to impose a PES duty within a licence granted under section 14(1)(b) of the 1999 Act. The Act provides for a PES licence to be granted under section 14(1)(h) of the Act and states that ‘A licence under paragraph (h) of subsection (1) shall only be granted to the Board’.1 Endesa Ireland believes that the legislation requires that if suppliers are to have a PES duty that this should be imposed under a separate PES licence under 14(1)(h), but only if this is permitted by an amendment to the Act. Regulations 17-20 of SI 60 of 20052 set out particular conditions to be included in PES licences, for example maintenance of separate accounts and prohibition of cross-subsidy; some of these conditions may now be obsolete in a deregulated market but that issue should be clarified in circumstances where the legislation has not been amended so that suppliers are clear as to their duties. The proposal by CER is to extend the duty set out in Regulation 18(1) to meet all reasonable requests to supply electricity to all suppliers but not the other PES-related provisions; this does not seem to follow the legislative scheme. As ESB Electric Ireland under its 14(1)(h) licence and other suppliers under their 14(1)(b) licences are subject to different conditions the question of what the PES is needs to be clarified as the boundaries have been blurred.

As it stands ESB Electric Ireland has two licences, Endesa Ireland queries how a customer (or any other person) is to know which licence ESB Electric Ireland is supplying a particular customer under, and consequently what obligations must be complied with. It is envisaged

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1 See section 15(2)(2D) of the 1999 Act, as inserted by SI 60/2005. Similarly the ‘public electricity supplier’ is defined in the Act as the holder of a licence under section 14(1)(h).
2 Endesa Ireland can only find one amendment to this Statutory Instrument, that is SI 450/2010, which does not substantively change the provisions referred to.
by the proposed 14(1)(h) licence that the PES would be a separate entity; see condition 3 ‘The Licensee shall make arrangements in accordance with paragraph 3 to secure the complete and effective separation of the Public Electricity Supply Business...from any affiliate or related undertaking of the Licensee’.

In this regard, Endesa Ireland notes the CER’s statement in CER/11/039:

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.

The requirements of this legislation may be deemed not be desirable from a policy perspective but the legislation must be complied with until amended, otherwise the CER may be deemed to be acting ultra vires and suppliers may find themselves acting contrary to legislation. There are a number of questions arising from the CER’s proposals.

Questions posed by CER in Consultation Paper CER/11/187

Q1. 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.

Endesa Ireland generally agrees with the insertion of this Condition.

Endesa Ireland points out that the requirement to produce a customer charter should be limited to suppliers with household customers, as stipulated in section 21A of the 1999 Act (as inserted by Regulation 6 of SI452/2004).

Endesa Ireland submits that the requirement to produce Codes of Practice should not apply for QH metered customers at all on the basis that these customers are large and expert enough to deal with suppliers on equal footing and do not need customer protection rules.

As proposed, all suppliers are not required to produce all of the codes of practice named (eg if supplying large commercial customers); this should be reflected in the definitions of those codes of practice within the Condition. For example, the Prepayment Metering and
Vulnerable Customers Codes of Practice do not apply to suppliers of LEU customers only, yet the definitions of those Codes imply that all Suppliers are required to produce them – ‘which is required to be produced by the Licensee under this Condition 20’; this definition should be amended, subject to point made in previous paragraph.

Q2. 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.

Endesa Ireland does not agree with this proposal.

Endesa Ireland does not agree that the supplier should be obliged to publish information as the Commission may require, particularly where the Commission’s view on the confidentiality is to be final. This would mean that a supplier may be obliged to publish information which it, and its customers, consider to be confidential if the CER so directs.

Suppliers should not be forced to accept exposure to actions for breach of confidentiality in circumstances where they publish against their will. Endesa Ireland notes that elsewhere legislation has been clear that suppliers will not be required to do anything that would breach Data Protection Acts (eg Regulation 19 of SI 542/2009)

Endesa Ireland is content to provide information to the CER, as currently required by licence condition, who may publish the information if they wish, subject to confidentiality requirements.

Q3 & 4. 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.

Endesa Ireland considers this proposal to be puzzling but accepts that this condition is required by SI 542/2009. We would welcome clarification on what exactly is prohibited, for example, lower priced offers depending on volume of consumption or time of use should not be taken to incentivise use of electricity or gas.

The proposed wording of the condition is not as clear as it could be, it might be more direct to phrase as follows ‘licensee shall ensure that the charges for the supply of electricity do not create incentives.....’

Q5. 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.

Endesa Ireland does not agree with this proposal based on the legislative concerns outlined above.

Endesa Ireland considers that for the purpose of this condition DG5 customers should be explicitly broken into sub-categories based on the market assurance requirements for different metering types. For example, a supplier supplying only QH metered DG5 customers would not have the capacity to supply a non-QH metered DG5 customer without incurring great expense and implementing more robust IT systems. On this basis Endesa Ireland strongly argues that suppliers should only be required to offer supply to the sub-category of DG5 customers it is already engaged in supplying.

In addition, it appears that this Condition requires a supplier to make an offer to any customer who requests it. Does this mean that a supplier is obliged to enter a tendering process for a non-domestic customer if invited to? This would place an unrealistic burden on suppliers.

In subcondition 4 the definition of ‘request’ should include furnishing MPRN number and historic consumption information to the Supplier. It is also suggested that sub-conditions (4), (5) and (6) require some re-formatting as the definition of ‘supply contract’ visually appears to be in reference to the definition of request. Suggest including all definitions in one sub-condition.

Q6. 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.

Endesa Ireland is not in favour of this condition as drafted.

The CER states at page 14 of consultation paper (CER/11/187) that the CER will consult further on the circumstances in which a SoLR direction may be issued in Q4. As some conditions are included in draft Condition 24 it is not clear whether CER/11/187 is that consultation.

The wording of sub-condition 4 is confusing as the definition of a ‘Supplier of Last Resort Direction’ defines it as a direction given to the supplier to act as the SoLR whereas the text of sub-condition 4, which states in the opening line will be given ‘in respect of the Licensee’ seems to refer to a situation where the supplier’s customers would be moved from it to a supplier acting as SoLR. Perhaps
Endesa Ireland submits that a procedure and criteria for issuing a SoLR Direction must be put in place to ensure that all parties are treated fairly. Endesa Ireland also considers that this section should not be activated until arrangements for collecting the SoLRs costs have been arranged, it is stated in CER/11/187 that the SoLR should supply these customers at its standard tariffs and any additional costs will be socialised. Ideally the SoLR should be guaranteed in the text of this licence condition that it will recover its costs.

Endesa Ireland does not consider that 4(a) and (d) should constitute grounds for a SoLR direction. Failure to comply with Condition 2 could range from minor to serious breach, it is submitted that a SoLR direction should only ever be made in a serious case which would merit licence revocation, therefore Endesa Ireland submits that the Direction should only be made where a supply licence has been revoked. ‘The process of revocation’ in subsection (d) may, in the end, not result in revocation in the end, but if a supplier has already lost all of its customers to the SoLR its business will be ruined. Endesa Ireland would agree that final revocation may ground a SoLR Direction and that preparations may be made during the 30 days notice which the CER must give to a supplier before revocation.

The CER must also publish a procedure for the criteria and arrangements for appointing a supplier to act as SoLR.

Endesa Ireland submits that the transfer of any commercially sensitive data should not be required by sub-condition (3) and this should be reflected in the wording of that sub-condition.

Q7. Respondents are invited to comment on the proposal to remove conditions condition 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.

Endesa Ireland is in favour of the removal of Condition 21 of the generic supply licence regarding conditions of holders of licences under section 14(1)(c) . The deletion of this condition does not seem to be tracked in the documents accompanying the consultation paper.

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.

Endesa Ireland agrees with the proposal to delete conditions 7 and 8 of the generic supply licence. Note that this deletion is not tracked in the generic supply licence accompanying the consultation.

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.

Endesa Ireland has no objection to this Condition but notes that there is a word missing in sub-condition 4 – ‘the costs attributable to the XXX of a Demand Side Unit’.

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.

Endesa Ireland has no objection to this change, subject to removal of paragraph (2) as it does not fit within the proposed drafting.

Q11. 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.

Endesa Ireland agrees with the proposed change.

Q12. 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.

Endesa Ireland is generally in favour of this proposal.

However, although ‘Participating Interest’ is capitalised within the definition of ‘related undertaking’ it is not defined elsewhere. Suggest providing clarity on what is meant by this term, particularly if the reference to legislative definition is to be removed, Suppliers must be able to easily understand this if they are expected to comply with relevant licence conditions.

We would suggest that the definition of ‘supply business’ should now be altered if all companies are to have a PES duty (subject to comments above). ‘supply business’...but shall not include the business carried out by the Board in its capacity as public electricity supplier’

It is queried whether the definition of ‘total system’ should specify that it refers to the Irish system and suggested that the definition of ‘transmission system’ should refer to ‘any interconnector owned by EirGrid’.
<table>
<thead>
<tr>
<th>Condition Number</th>
<th>Comment</th>
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<tbody>
<tr>
<td>Condition 2</td>
<td>Endesa Ireland suggests that a supply business’ first financial year should run from when it first becomes active in the market, rather than when its supply licence is granted. There may be a substantial time lag between these events and the supply business will not have separate costs until it begins to supply final customers.</td>
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<td>Condition 9</td>
<td>Endesa Ireland notes that the Code of Practice on Billing imposes much more onerous requirements on suppliers than foreseen in the licence itself.</td>
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<tr>
<td>Condition 14</td>
<td>Endesa Ireland is not opposed to the proposed modification of Condition 14 but questions why it is necessary.</td>
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<tr>
<td>Condition 18</td>
<td>Endesa Ireland considers that the licence should clarify what is meant by a transfer of the business. It is submitted that it is excessive that the CER would purport to be able to refuse approval for a transfer to take place, particularly where the transferee must obtain a new supply licence in any event. The requirement that the transferee obtain a new licence creates uncertainty for any transferee and does not fit with commercial reality.</td>
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<tr>
<td>Condition 19</td>
<td>Endesa Ireland considers that the licence should define what is meant by a ‘change of control’ – for example, when and how does it differ from a transfer (Condition 18).</td>
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<td>Schedule 1</td>
<td>Endesa Ireland strongly suggests the removal of reference to eligible customers as a matter of some urgency. If, as per definition of eligible customers, a customer’s consumption is less than 4GWh the implication is that a supplier is no longer permitted to supply them. It is suggested that the CER should make representations to have this definition amended in the 1999 Act if necessary. Note that Condition 20 of the generic licence (proposed for removal) was in direct contradiction to the proviso that the supplier can only supply eligible customers.</td>
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<tr>
<td>Schedule 2</td>
<td>Endesa Ireland does not consider that paragraph 1(f) is enforceable, particularly regarding ensuring a further change of control in the Licensee.</td>
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