



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

Review of Electricity and Natural Gas Supply Licences

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Commission for Energy Regulation

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Abstract: Following a proposed decision and consideration of comments received, the CER is presenting updated electricity and natural gas supply licences, which will come into force in 28 day's time. The updated licences take into account new legislation, regulatory decisions and market developments.

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:

([AIP-SEM-07-564](#)) Decision Paper on Modifications to Electricity Supply Licences to Facilitate the Single Electricity Market, published on 15th October 2007.

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

([CER/11/1030](#)) Proposed Decision on Natural Gas Shipping Licence and Natural Gas Supply Licence, published on 18th February 2011.

([CER/11/817](#)) Consultation Paper on Review of Electricity and Natural Gas Supply Licences, published on 8th November 2011.

([CER/11/220](#)) Proposed Decision Paper on Review of Electricity and Natural Gas Supply Licences, published on 16th December 2011.

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. The CER has consulted upon modifications to these licences, to bring them up to date in terms of legislation, regulatory decisions and market developments, in both the electricity and gas retail markets. Both a consultation ([CER/11/817](#)) and proposed decision ([CER/11/220](#)) were published. In line with legislative requirements, the CER publicised these documents and the proposed modifications detailed therein by posting notices in the Irish Times and furnishing both the minister and license holders with same. 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 proposed decision paper with minor amendments in the drafting of some conditions. The key 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
2. Energy Services Directive - [SI No. 542 of 2009](#)
 - 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 and in consideration of comments raised (in response to the consultation paper) the CER deems the following instances 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

The licences also detail other specific instances where requests are not reasonable. The CER considers that the guidance provided by these specific exceptions should be sufficient, in the majority of cases, to determine whether a request is reasonable. However, if questions should still arise, a mechanism for seeking clarity is detailed in the licence condition.

In addition to the above changes, modifications proposed 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.

The modified licences are published alongside this decision paper. The CER has today 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,

initiated the procedure to implement these modified electricity and gas supply licences. In line with the procedures detailed under Section 22(3) of the [Electricity Regulation Act, 1999](#), the licences will take effect in 28 days. 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.

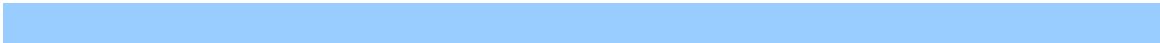


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1.0 Introduction

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 decision, following two rounds of consultation, on the modification of the electricity and natural gas supply licences granted by the CER under the [Electricity Regulation Act, 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, 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 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, 1999](#) a copy of the Notice was also furnished to the Minister for Communications, Energy and Natural Resources, Mr. Pat Rabbitte.

Following the consultation period and consideration of the comments received, it was deemed prudent to provide further opportunity for comment. As such, a proposed decision paper was published. The proposed decision was published on 16th December, and was open for comment up to 17th January. Once again, the requisite notices were published and furnished to licensees and the Minister for Communications, Energy and Natural Resources.

Following the consultation process (in this case consisting of a consultation paper and proposed decision paper) the CER is required under Section 20(8) of the [Electricity Regulation Act, 1999](#) to notify any respondent whose comments were not adopted on the reasons therefore and why a public hearing on the issues raised is not warranted. This is the purpose of this decision paper, which also presents the modifications to the electricity and gas licence to be implemented.

To bring the licences into force the CER must:

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

This is required by Section 22(3) of the [Electricity Regulation Act, 1999](#), which stipulates that after the above steps have been conducted the licences will take effect in 28 days. 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. With the required notices issued today the modified electricity and natural gas supply licences will come into force on 26th March, 2012.

1.4 Comments Received

The CER received 8 submissions to the Proposed Decision Paper ([CER/11/220](#)). Submissions were received from the following organisations or individuals:

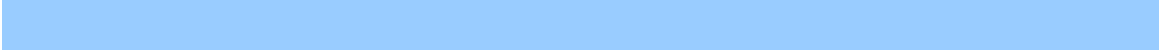
- Airtricity
- Bord Gáis Energy
- Endesa Ireland
- Enercomm International
- Energia
- Indaver
- PrePayPower
- VAYU

Each of the responses received are published alongside this paper.

1.5 Structure of this paper

- **Sections 2.0** Review of Responses to the Proposed Decision Paper.

- **Section 3.0** Conclusions & Next Steps.
- **Appendix 1** List of Decisions.



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 of Practice.
2. Energy Services Directive - [SI No. 542 of 2009](#)
 - Obligation on suppliers not to offer terms 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 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. These views were addressed in a subsequent proposed decision ([CER/11/220](#)), which offered further opportunity to comment on the proposed modifications. The consultation

period closed on 17th January. Eight responses were received, all from suppliers bar one, which focused on the proposal in relation to Demand Side Units. This section reviews those comments and details the associated decisions. The decisions in relation to the conditions that were not commented on, by any respondent, are as per the proposed decision paper. A list of all decisions is provided in Annex I of this document.

2.2 Codes of Practice

Under the CER's consumer protection framework, suppliers are required to put in place Codes of Practice setting out the levels of customer service that their customers can expect, and where appropriate, for household customers, a Customer Charter detailing the guarantees that apply if specific service levels are not met. The CER proposed to modify the electricity supply licence to formally incorporate 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. All respondents to the consultation paper were broadly in favour of the proposed alignment of the consumer protection conditions within the electricity and natural gas supply licences.

Proposed Decision 1. Codes of Practice

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.

2.2.1 Respondents' Comments

4 respondents commented on the introduction of a licence condition to the electricity supply licence binding suppliers to the CER's customer protection framework as provided under the Supplier Handbook (which is currently being consulted upon – [CER/11/223](#)).

Endesa Ireland noted the intent that a Customer Charter should only be applicable to household customers but suggests changes to the licence to clarify this. Endesa Ireland also considered the inclusion of definitions for each Code of Practice as unwarranted and could cause confusion as they suggest that all suppliers must produce each code, when this is not the case. VAYU questioned the definition of a Customer Charter and suggested that it should refer to Section 5 of [Sl. No. 463 of 2011](#).

Energia commented on specifics of the Code of Practice, such as the 30 day's notice for changes to tariffs and instances where soft copies of contracts are sufficient. Energia and Airtricity sought guidance as to who, in practice, would be encompassed under the Vulnerable Customer definition included in the licences. Indaver queried the extent to which the consumer protection provisions extended

to electricity self suppliers. Energia, while acknowledging their broad support of binding suppliers to Codes of Practice through licence, stressed that any changes to the Codes of Practice should follow the same consultation requirements associated with licence changes.

2.2.2 CER's Response to Comments

The CER notes suggestion re changes to the condition to clarify that the Customer Charter applies, as is the intention and detailed in the proposed decision paper, only to domestic customers. As to the Customer Charter, the CER notes that the terminology used in practice differs to that used within legislation. With industry operating to the current operational framework, a framework that covers all the legislative requirements, for sometime now, it is not deemed beneficial at this stage to change the terminology used. The CER would note that the requirements of the Supplier Handbook, such as the 30 day's notice, are being dealt with in another consultation process, specific to the Supplier Handbook. Currently that process is at a proposed decision stage ([CER/11/223](#)). The provision of guidance as to who falls under the definition of a Vulnerable Customer per [S.I. No. 463 of 2011](#) is also being considered under the consultation process for the Supplier Handbook.

Finally, regarding modification to the licence as distinct to the Codes of Practice, the CER notes the legislative requirement to follow a specific consultation process, which includes publication of notices in national newspapers, for the modification of licences. This process is not generally required. Nonetheless, consultation is the norm within the CER (though be it, without the publication of notices in newspapers). For example, the CER is currently consulting on the introduction of a Supplier Handbook, which sees the consumer protection measures, which suppliers must put in place, being detailed in one document. The CER has published a consultation paper and a proposed decision on this topic. In the same vane, CER will consult on any future changes to the Supplier Handbook. A decision on the Supplier Handbook will follow implementation of the licence modifications detailed in this paper.

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 to proceed with the consulted upon modification, with a change to wording to ensure clarity that the Customer Charter is applicable to household customers only. As to respondents' comments on the specifics of the consumer protection provisions, these are the subject of an alternative consultation. The CER does not consider it necessary to duplicate the detail of the Supplier Handbook within the licence. The CER will consult on any future changes to that document.

Decision 1.

The CER is to implement a 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.

2.2 Market Monitoring

In light of the CER's enhanced market monitoring requirements under [S.I. No. 630 of 2011](#), 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. This which would see an obligation on publishing information already in the natural gas licence being introduced into the electricity supply licences. Respondents to the consultation paper were generally in favour of the proposed modification. There was, however, comment regarding the breath of the provision in relation to what information could be called for and one respondent was against the requirement to publish information where so directed.

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).

2.2.1 Respondents' Comments

Five respondents commented on the proposed licence condition. Three of which (Energia, BGE and PrePayPower) commented on the extent of the data to be provided under the condition, while Vayu, Endesa Ireland and PrePayPower commented on the publication requirements.

Information that can be called upon

Energia requested that the specifics of the requirements pertaining to provision of information be clarified alongside the licence review rather than within the separate market monitoring consultation, which, they noted, commenced after the licence review process. Both BGE and PrePayPower stressed that the condition is too wide in terms of the information that could be requested. BGE focused on the potential to call on accounting information that goes beyond that required in the Regulatory Accounts. They maintained that this was beyond the CER's statutory powers. They suggested that, where the CER has concerns re the competitive aspects of the market, the provisions of competition law should be followed.

Publication of information

Vayu stated that suppliers should have input in determining whether information is confidential or not. They call for a mechanism to be put in place for such. Endesa Ireland aired their strong opposition to the CER requiring the licensee to publish information and in particular the determination by the CER as whether such information is not confidential and suitable for publication. They emphasised that such action could place them in breach of their existing contractual obligations. Where the requirement is to remain in the supply licence they requested that it be limited to new contracts. This is to allow for the requirement to be notified to their new customers. PrePayPower also highlighted concern as to the determination by the CER, of whether or not information is confidential.

2.2.2 CER's Response to Comments

The CER grants licences to supply electricity under Section 14 of the [Electricity Regulation act, 1999](#). The supply licences are granted are subject, as specified in Section 14, to:

“such terms and conditions as may be specified in the licence”.

Currently the licence conditions in the electricity and natural gas supply licences are generic, not specifying the extent of information that may be required, but allowing for the CER to call on any information that it deems necessary to fulfil its statutory functions.

With the enactment of [S.I. No. 630 of 2011](#), the retail market monitoring requirements of the 3rd package for both electricity and gas markets are now transposed into Irish law. These requirements place an explicit obligation on the CER to monitor the retail market across a range of indicators and to take action where necessary to prevent distortion or restriction of competition in the supply of electricity and natural gas to final customers, or to ensure that final customers are benefiting from competition in the supply of electricity and natural gas. Notwithstanding the legislative provisions to take measured action, the CER would, in relation to comments on the reliance on competition law, point to the responses received in developing the Roadmap for Deregulation ([CER/10/058](#)). In their response to that decision, the Competition Authority stated that competition law should not, in the first instance, be relied upon to address market outcomes that are inherently unpredictable. This was reflected by other market participants but the comments on whole were mixed.

Competition in the market in conjunction with the consumer protection and assistance measures implemented by the CER, should deliver real benefits for the consumer. However, it is not possible to predict all outcomes. Monitoring will play a key role in sustaining a clear view of the market place and ensuring that customers are benefiting. The CER, having looked to best practice, is currently reviewing and consulting on (including industry workshops) its market monitoring framework ([CER/11/221](#)). This will provide opportunity for participants to comment on the details of the information required under the market monitoring

requirements. Once this consultation process has been completed, the decision will provide participants visibility as to the information requirements under the framework. The CER does, however, note that with the inability to predict all market outcomes, ad hoc information request will remain; but to a lesser extent than would otherwise be the case.

As to Endesa Ireland's comments regarding 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. The CER will engage with the party prior to requiring publication and would consider any representations made when deciding whether or not information is confidential. The CER notes Endesa Ireland statement that an obligation to publish may not be in line with their current terms and conditions. This could be an issue for any supplier but the CER considers it possible to update, if necessary, the terms and conditions.

2.2.3 CER's Decision

The CER considers that the marketing monitoring framework currently being consulted upon will provide participants considerable guidance (and opportunity to comment) as to the information requirements under this licence condition. As to the publication of data, the CER is also considering this under the market monitoring paper but will engage with participants prior to requiring any publication and will consider any representation made as to the confidential nature, or otherwise, of information.

Decision 2.

The CER is to adopt the modification to condition 12 (Provision of information to the Commission) of the electricity supply licence (condition 16 of the PES licence) presented in the proposed decision paper. 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).

2.3 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 S.I., the CER proposed to introduce a licence condition in both electricity and natural gas supply licences to prohibit such tariff offerings. There was overall agreement to the new licence condition, presented in the consultation paper, prohibiting tariffs that *create incentives that may unnecessarily increase the volume of distributed or transmitted energy*. However, due to representations regarding the clarity of the condition, the CER reworded the condition so that its title and body aligned with the terminology used in [S.I. No. 542 of 2009](#).

Proposed Decision 3.

The CER is minded to reword the consulted upon licence condition as follows:

Prohibition of charges that create incentives that may unnecessarily increase the volume of distributed or transmitted energy.

This licensee shall ~~not supply electricity to a final customer, unless~~ ensure that their tariffs ~~the charges~~ for the supply of electricity / gas do not create incentives that may unnecessarily increase the volume of distributed or transmitted energy. This will form a new condition in the electricity and natural gas supply licences (22 of the generic electricity supply licence, condition

2.3.1 Respondents' Comments

Energia pointed to differences in European and Irish legislation as to tariffs that may unnecessarily increase the volume of transmitted or distributed electricity. They stated that the relevant European legislation relates to transmission and distribution tariffs while [S.I. No 542 of 2009](#) refers to tariffs offered by “energy undertakings”, which include electricity and natural gas suppliers. They sought guidance as to the meaning of the requirement and how the wholesale market price floor sits with it.

Endesa Ireland also emphasised the difference between European and Irish legislation and called for clarity as to the meaning of the licence condition. In light of these differences they recommended that the CER pay regard to the European provisions in its interpretation of the licence condition. Airtricity re-emphasised their consideration that the new condition introduces “*a perverse incentive for customers to waste energy*”.

2.3.2 CER's Response to Comments

The Energy Services Directive came into force on 17th May 2006, as a means to enhance end-use energy efficiency across the EU. This was transposed into Irish legislation by [S.I. No. 542 of 2009](#). Regulation 19 of S.I. No. 542 of 2009, 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 S.I..

2.3.3 CER's Decision

While noting the comments raised by respondents in relation to the provision in European legislation, the CER is, in fulfilling the legislative requirements of [S.I. No. 542 of 2009](#), introducing a licence condition prohibiting tariffs that create incentives that may unnecessarily increase the volume of distributed or transmitted energy.

Decision 3.

The CER is to adopt the modification as detailed in the proposed decision paper. This will see, as per the legislative requirements, a licence condition prohibiting tariffs that create incentives that may unnecessarily increase the volume of distributed or transmitted energy.

2.4 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. Respondents to the consultation paper were generally in favour of the proposed condition, while one respondent aired their objection to

it. In addition representations were made in relation to the reasonableness of a request.

2.4.1 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.

2.4.1.1 Respondents' Comments

Three respondents (Endesa Ireland, Energia and Vayu) commented on the condition providing for a duty to offer supply. Energia commented on general aspects of the Condition relating to the reasonableness of a request and Vayu on the terms of an offer made. Endesa Ireland, also commented on such aspects, while emphasising their strong objection to the introduction of a duty to offer supply on any supplier other than the PES, whose duty is enshrined in legislation.

Vayu recommended that meeting a supplier's security requirements should be a condition of providing supply under the duty. Energia stated that it was not workable to ascertain the reasonableness of a request on a case by case basis. Endesa Ireland suggested that a requirement be placed on a party, requesting supply under the condition, to provide their MPRN and historic consumption data. Endesa Ireland also highlighted their preference that exclusions from the duty to offer supply be included in the licence. They noted that without such, the licensee must (from a legal perspective) be able to fulfil the requirements as stated in the condition. Endesa Ireland further requested clarification of whether or not a supplier, under the duty to offer supply, would have to respond to all calls for tender.

In addition to the above, Endesa Ireland stressed their strong objection to placing a duty to offer supply within a generic supply licence. They regarded such a duty intrinsic to the PES and indivisible from that role. They argued that legislation does not provide for the addition of a core PES function on all suppliers. In this regard they referenced [S.I. No. 60 of 2005](#) and also the CER's consultation paper on the Role of the PES and SOLR in the Deregulated Electricity Market ([CER/11/039](#)), as well as references within the proposed decision paper stating that, without primary legislation, only the Board can be designated as the PES.

Finally Endesa Ireland commented on the activity of the PES in general. They considered that the CER should, in its market reports and documents in general,

differentiate between customers served under ESB Electric Ireland's generic supply licence and its PES licence. Endesa Ireland also pointed to Regulation 19 of the [S.I. No. 60 of 2005](#) and stated that it requires the CER to approve tariffs charged by the PES and also the publication of same.

2.4.1.2 CER's Response to Comments

The duty to offer supply presented in the proposed decision requires a licensed supplier to meet all reasonable request for electricity, specifically addressed to the supplier (as such open tenders do not fall under this obligation). On receipt of such a request, the supplier would be obliged to:

(a) offer to enter into a supply contract to supply electricity to the single premises in respect of which the supply is requested; and

(b) where the terms offered are accepted by the customer, give a supply of electricity to those premises in accordance with the terms offered.

The customer must not accept the offer.

In relation to the terms offered by the supplier, the CER notes Article 3 (3) of the 3rd Package as transposed by [S.I. No. 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 of the 3rd Package 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.

Electric Ireland still hold the PES licence and are required to fulfil all functions there under. Currently no customers are being supplied under this licence but where a case should arise where an explicit function of the PES is called upon the customer served there under would fall under the PES licence.

The licence to discharge the functions of the PES was granted to the Board under Regulation 16 of [S.I. No. 60 of 2005](#). Regulation 16 stipulates that such a licence discharging the functions of the PES can only be granted to the Board.

These functions, as well as specific conditions of the PES licence, are outlined in Regulations 17 through to 20 of [S.I. No. 60 of 2005](#). They include the duty to offer supply and duty of non discrimination. The CER reviewed both of these obligations. In [CER/11/059](#) (Price Discrimination & Customer Protection in the Deregulated Electricity Market) the CER concluded that it was premature to introduce a non discrimination clause to all suppliers in the market at that time. In [CER/11/060](#) (Role of the PES and the SoLR in the De-regulated Electricity Market) the CER decided not to designate a single party as the PES but rather that all supply licences would incorporate a duty to supply for domestic and small business (DG5) customers. The CER did note that notwithstanding a CER decision, a change to primary legislation would be required to remove the stipulation in [S.I. No. 60 of 2005](#) that a licence to discharge the functions of the PES will only be granted to “the Board”. Therefore, until such time as these changes are provided for, the requirements of the PES will remain 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. These requirements extend beyond the duty to offer supply and even that duty is more onerous on the PES than that to be placed on all suppliers. The CER does not deem it appropriate to place all PES functions on all suppliers and in the absence of the ability to offer the licence to the market these requirements will reside with Electric Ireland until a change in legislation is provided for. The CER would reiterate that it considers its decision to include a duty to offer supply in a supply licence granted under Section 14 (1)(b), 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 CER would note that [S.I. No. 450 of 2010](#) provided for the regulation of tariffs, prices and charges of the PES but removes the necessity for such. Specifically Regulation 4 of [S.I. No. 450 of 2010](#) amends Regulation 17(1) of [S.I. No. 60 of 2005](#) by replacing paragraph (h) with the following:

“(h) requiring the licensee to supply electricity as the public electricity supplier in accordance with any approvals that may be granted or made by the Commission as respects charges, prices and tariffs under Section 9 of the Act of 1999”

The CER notes the specific instances detailed in the licence where providing supply is not reasonable and the CER’s proposal, following consideration of comments, that requests from a customer who are either debt flagged or whose meter type the supplier is not setup to supply are not reasonable. The CER considers that the guidance provided by the above should be sufficient, in the majority of cases, to determine whether a request is reasonable. However, if questions should still arise, the CER points to the mechanism for seeking clarity detailed in the licence condition.

2.4.1.3 CER's Decision

The CER is to adopt the consulted upon condition, which will require the licensed electricity supplier, 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 deems the specific instances detailed in the licence where providing supply is not reasonable and the CER's determination that requests from customers who are either debt flagged or whose meter type the supplier is not setup to supply are not reasonable sufficient guidance, covering the majority of cases, to determine whether a request is reasonable. However, if questions should still arise, the CER points to the mechanism for seeking clarity detailed in the licence condition.

Decision 4.

The CER is 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 questions 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

2.4.2 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. While queries as to the specifics of the SoLR process were raised, the majority of respondents to the consultation paper agreed with the proposed modification.

Proposed Decision 6.

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.

2.4.2.1 Respondents' Comments

Endesa Ireland was the sole respondent who commented on the condition pertaining to the SoLR. Endesa Ireland recommended that the SoLR requirement

should only be placed on the market segments in which the supplier is active. They highlighted their preference that the details of the SoLR process be included in the supply licence. Endesa Ireland called for a SoLR direction only to be implemented after the revocation process of the licence has been initiated. Endesa Ireland highlighted that the circumstances under which a SoLR can be called upon are detailed in Regulation 21 of [S.I. No. 60 of 2005](#). They recommended reference to this in the licence and caution that the CER must operate in the bonds of the Regulation.

2.4.2.2 CER's Response to Comments

The condition states that a SoLR Direction (directing a supplier to act as a SoLR and commence supplying customers of a specified supplier) may be issued where:

- a supplier has ceased or failed to supply electricity in accordance with its contractual obligations,
- a 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 Endesa Ireland's comments that a SoLR should only be called in instances of licence revocation, the CER would note that the inclusion of failure to meet contractual arrangements mirrors the provisions of Regulation 21 of [S.I. No. 60 of 2005](#). In addition Regulation 21 also references instances where the CER is of the opinion, following supplier representations, that conditions warrant a direction to the SoLR to supply electricity to a final customer. Regarding the latter, the CER will consult on such in the forthcoming consultation on the details of the specifics of the SoLR process. The CER would however note that to call on the SoLR the CER must issue a direction. As detailed in [CER/05/238](#) and pointed to in the proposed decision paper, the CER recognises that the main reason for the SoLR to be initiated is supplier exit from the market. This can manifest itself in a number of ways, namely via:

- 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 processes to be followed for supplier exit from the market, be it planned, unplanned or due to revocation of a supply licence, are covered under the

Trading and Settlement Code. Under the Code, a supplier planning to exit from the market must obtain consent from the CER, provide the Single Electricity Market Operator (SEMO) with 90 working days notice and adhere to the deregistration process. If these obligations are fulfilled, the SEMO will then issue a voluntary termination consent stating the termination date (the date at which the party becomes deregistered and must cease trading in the pool).

With regards a licence revocation and or an unplanned exit, SEMO ultimately issues a termination order. However, this is preceded by a suspension order. A suspension order is issued with prior approval by the CER. A suspension order, unless subsequently withdrawn, suspends a supplier unit's participation in the Pool – unlike termination the party is not deregistered and the suspension may be reversed. However, from issue of the order, a suspension delay period of 14 days applies. The process followed under the 14 day period is described in Agreed Procedure 1 of the Trading and Settlement Code. If the situation leading to the suspension order being issued is not rectified, the CER must then determine, no later than 5 days prior to the end of the suspension delay period, whether or not the SoLR will step in and supply the affected demand.

2.4.2.3 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 does not consider it appropriate to detail the specifics of the SoLR process and its obligations in the licence itself. The CER also considers the licence condition, as presented in the proposed decision paper, as fitting with the legislative requirements in terms of when a SoLR can be called upon – including where the CER considers it necessary. The CER is to further consult on these scenarios within the forthcoming consultation on the specifics of the SoLR appointment process. At least, until such time as that consultation process is completed, the CER deems it appropriate that Electric Ireland, in their role as the PES, remain as the SoLR.

Decision 5.

The CER is 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.

2.5 Demand Side Vision

Demand side participation can deliver a number of benefits to electricity markets, including increased security of supply (or a reduced cost of delivering the same level security of supply), greater efficiency in consumption and increased

competition both in the wholesale and retail markets. In recognition of these benefits, the Regulatory Authorities have set out a vision for demand side participation in the year 2020 – the [SEM Demand Side Vision for 2020](#).

In the context of the Demand Side Vision, the Regulatory Authorities have recommended to the SEM committee, for approval, 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 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. All five respondents to the consultation paper were in favour of the proposed modification.

Proposed Decision 8. Demand Side Units

The CER is minded to adopt the consulted upon modification. This will see a licence condition being introduced into the electricity supply licence (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.

2.5.1 Respondents' Comments

One respondent, Enercomm International, commented on the proposed licence condition. Enercomm International stressed their objection to the proposed licence conditioning aimed at binding DSUs to the BCOP. They considered it overly burdensome that a DSU would be required to hold a supply licence and instead maintained that only a licence to generate electricity is relevant. This is based on their understanding that a DSU, although different to a generator in nature, will be treated in the wholesale in the same manner as a predictable price maker generator. They stressed that, by requiring a supply licence, a DSU would have to maintain both a supplier unit and a netting generator unit, thereby unnecessarily increasing the burden over where just a licence to generate would be required.

2.5.2 CER's Response to Comments

DSUs will submit bids in to the SEM, and therefore it is essential to ensure that parties comply with the BCOP. The modification was recommended for approval at the Modifications Committee meeting on 1st February 2011, subject to the Regulatory Authorities ensuring that DSUs are bound by the BCOP. As a DSU will not be generating electricity, a licence to generate electricity is not appropriate for a DSU. As such, it is not possible to bind the DSU to the BCOP through such a licence. Following further review of the options available, introducing a condition in the supply licence was deemed as the most appropriate approach. It provides a practical method of binding a DSU to the BCoP and requires the DSU to register only as a self supplier. Registering as a self supplier requires the party to undertake a minimum set of retail market assurance and

under the decision on the operational parameters in November 2011 (SEM-11-099) and the new sliding scale fixed credit cover requirements, fixed credit cover requirements are a minimum.

2.5.3 CER's Decision

The CER notes the agreement aired by respondents to the consultation to the proposed modification to the electricity supply licence to bind licensees operating in the Single Electricity Market as DSUs to the BCOP. While noting the comments raised by Enercomm International, to the proposed decision paper, the CER would note that the legislative framework does not facilitate the licensing of DSUs under a licence to generate electricity. To change this would require primary legislation – a potentially long process, which would unduly delay the entry of DSUs to the market. The CER considers the binding of the DSU through a supply licence as practicable, imposing minimum but necessary additional requirements on the DSU.

Decision 8.

The CER is 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.

2.6 Other comments

Two respondents, Endesa Ireland and Energia, raised comments further to those relating to those outlined in the previous sections of this document.

2.6.1 Respondents' Comments

In light of their comments on the proposed decision, Energia stated that it was necessary that the CER consult once more with suppliers.

Endesa Ireland recommended that the definition of Participating interest be included in the licence. Endesa Ireland also suggested that the definition of transmission system should be amended to refer to Eirgrid as the owner of the interconnector.

Endesa Ireland recommended that the requirement to submit Regulatory accounts should only commence once the supplier has become active in the market. Endesa Ireland considered that it is not appropriate that the licence only refers to information provision and cooperation with ESB Networks in instances where the supplier suspects criminal activity by its customer. Rather this should be the case for all instances of meter interference and damage. In light of the CER's rules on disconnection and prepayment meters the CER deems it superfluous that a supplier should be required to inform ESB Networks of their policies in relation to instances of criminal activity.

Endesa Ireland sought further clarity as to what constitutes a transfer and change in control of the licensee and provide specific examples. They maintained that Schedule 2 paragraph 1(f) is not enforceable. They stated that a licensee can not control the decisions of their shareholders.

Finally, Endesa Ireland recommended that the licence should explicitly detail what constitutes an eligible customer, rather than referencing Ministerial Orders on the matter.

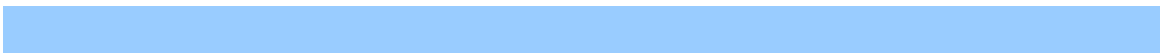
2.6.2 CER's Response to Comments

In relation to separate accounts for supply businesses the CER would highlight that Regulation 27 of [Sl. No. 445 of 2000](#) requires unbundling of accounts for electricity undertakings. That Regulation requires electricity undertaking to maintain annual accounts in accordance with the requirements of the Companies Acts 1963 to 1999 and where the energy undertaking is involved in more than one area of the market (for example supply and generation) to keep separate accounts for each activity. The licence condition reflects this obligation.

As to the definition of the transmission system, the Electricity Regulation stipulates under its definition of transmission that the transmission system “*shall include any interconnector owned by the Board*”.

Regarding change in control of a licensee, the CER notes that the licence states that the CER will consider the quantity of shares held by the new shareholder in any assessment of their technical, financial or managerial strength. Once informed of the change in control, the CER will, at that stage, consider whether the licence holder will have to inform the CER if the new shareholder increases their shareholding.

In relation to eligible customers, the [Electricity Regulation Act, 1999](#) states that the Minister may by order set the consumption level associated with eligible customers. This is reflected in the supply licence.



3.0 Conclusions and Next Steps

The CER has reviewed comments from the proposed decision paper on 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 modifications detailed therein with minor amendments in the drafting of some conditions. The modified licences are published alongside this decision paper. The CER has today 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.

initiated the procedure to implement these modified electricity and gas supply licences. In line with the procedures detailed under Section 22(3) of the [Electricity Regulation Act, 1999](#), the licences will take effect in 28 days. 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

Appendix 1 – List of Decisions

Decision 1 - Codes of Practice

The CER is to implement a 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.

Decision 2 – Provision of Information to the Commission

The CER is to adopt the modification to condition 12 (Provision of information to the Commission) of the electricity supply licence (condition 16 of the PES licence) presented in the proposed decision paper. 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).

Decision 3 – Energy Services Directive

The CER is to adopt the modification as detailed in the proposed decision paper. This will see, as per the legislative requirements, a licence condition prohibiting tariffs that create incentives that may unnecessarily increase the volume of distributed or transmitted energy

Decision 4 - Universal Service

The CER is to adopt the modification as detailed in the proposed decision paper. 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

Decision 5 – Supplier of Last Resort

The CER is to adopt the modification as detailed in the proposed decision paper. 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.

Decision 6 - Additional conditions for holders of green licences

The CER is to adopt the modification as detailed in the proposed decision paper. 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.

Decision 7 - Metering Provisions

The CER is to adopt the modification as detailed in the proposed decision paper on. 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.

Decision 8 - Demand Side Units

The CER is to adopt the modification as detailed in the proposed decision paper. This will see a licence condition being introduced into the electricity supply licence (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.

Decision 9 - Compliance with all applicable laws

The CER is to adopt the modification as detailed in the proposed decision paper. 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).

Proposed Decision 10 – References to the Board

The CER is 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”.

Proposed Decision 11 – update of definitions and alignment across licences

The CER is to adopt the modification as detailed in the proposed decision paper. 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).