



Re: Proposed Decision - Review of Electricity and Natural Gas Supply Licences – CER/11/220

Endesa Ireland welcomes the opportunity to respond to the Proposed Decision on the *Review of Electricity and Natural Gas Supply Licences*.

If the CER does decide to amend the Supply Licence and issues a notice to Licensees to that effect, Endesa Ireland feels strongly that such notice should be sent in hard copy to the Licensee. The Licence itself is a formal legal document, carrying the seal of the Commission, and it is proposed that any modification should be treated in a similar manner.

Responses to Proposed Decisions

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 licence.

Endesa Ireland welcomes clarification of the CER's aim that paragraph 2 should only apply to suppliers of household customers but reiterates its point that the requirement in paragraph 2 to produce a Customer Charter should explicitly be restricted to those supplying household customers, as stipulated in section 21A of the 1999 Act (inserted by Regulation 6 of S1452/2004).

Endesa Ireland disagrees with the CER's interpretation that the current drafting means paragraphs 1 and 2 apply only to those supplying household customers. The introduction to paragraph 1 (which relates only to paragraph 1) does restrict it to household customers but there is no such wording in paragraph 2. In addition, 2(b)(iv) and (v) refer to situations where the supplier only supplies household customers, thereby suggesting that all suppliers must produce a customer charter. Endesa Ireland thus proposes that paragraph 2 contain an introduction similar to paragraph 1, restricting it to household customers and that specific references to household customers in 2(b)(iv) and (v) be deleted.

Endesa Ireland considers that it is not necessary to include definitions for specific Codes of Practice as they are not mentioned within the body of the Condition. We consider that the proposed definitions for the specific Codes of Practice are misleading in that they suggest that all suppliers have to produce each Code, whereas some of the Codes are only required where the licensee supplies domestic customers. We consider that the definition proposed for 'Codes of Practice' is sufficient and allows for all suppliers not being required to produce each Code of Practice, depending on customer types served by that supplier.

Endesa Ireland notes that under the terms of Condition 20, suppliers are to be required to publish their Code of Practice or Customer Charter on their website unless the Commission consents otherwise. Endesa Ireland hopes that the Commission will reasonably grant consent, particularly for small companies that are not serving the domestic market.

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).

Endesa Ireland is still strongly opposed to the modification insofar as it means that the CER can require a supplier to publish information which the supplier or its customer/s consider to be confidential, a scenario which Endesa Ireland considers is manifestly unreasonable. This requirement may make a supplier liable for breach of confidentiality actions from its customer.

Endesa Ireland does not take any comfort from the provisions of section 13 of the 1999 Act referred to by the CER in the proposed decision paper – that section prohibits the disclosure of information *by a person working for the Commission*, unless that person is *authorised by the Commission* to disclose the confidential information.

Endesa Ireland considers that the licence requirements must not be drafted in such a manner that they could result in the licensee being in breach of existing contractual obligations. In the event this modification to the licence condition is enacted, it should only be applicable to new contracts, such that these terms can be notified to the customer, but is concerned with the permitted scope in this wording.

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

The licensee shall ensure that their tariffs 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 26 of the PES licence and condition 22 of the natural gas supply licence).

As raised at consultation stage, and echoed by other suppliers, Endesa Ireland would welcome clarification on what is meant by this

condition.

Endesa Ireland notes that this condition is required by section 9L of the 1999 Act but is concerned by the difference in wording between the Energy Efficiency Directive (2006/32/EC) and s9L of the 1999 Act (as inserted by SI542/2009). Section 9L states:

9L. 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.

Whereas in Article 10 of Directive 2006/32/EC, states:

Energy efficient tariffs and other regulations for net-bound energy

1. Member States shall ensure the removal of those incentives in transmission and distribution tariffs that unnecessarily increase the volume of distributed or transmitted energy. In this respect, in accordance with Article 3(2) of Directive 2003/54/EC and with Article 3(2) of Directive 2003/55/EC, Member States may impose public service obligations relating to energy efficiency on undertakings operating in the electricity and gas sectors respectively.

Thus the Directive supposes that this obligation applies to transmission and distribution tariffs whereas transposition in Irish law has increased the ambit of the provision. Endesa Ireland encourages the CER to have regard to the initial Directive in its interpretation of this Condition.

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.

Appropriateness of Condition

Endesa Ireland does not follow the CER's logic in response to the argument made by Endesa Ireland in its consultation response. Our



point was that it is not appropriate under the 1999 Act to impose a PES duty in a licence granted under section 14(1)(b) of the 1999 Act. Regulation 18(1) of SI 60/2005 ‘*Supply Duty of the Public Electricity Supplier*’ states that ‘The public electricity supplier shall meet all reasonable requests to supply electricity.’ Endesa Ireland therefore considers that legislation sees this duty to supply as a PES duty. Endesa Ireland considers it to be the essential quality which makes the PES role unique and necessary, and considers it to be indivisible from the PES role.

In support of this view we refer to statement by the CER in CER/11/060 (Sections 2.4.2 and 2.5.2) which states that ‘the CER decided that it was not appropriate to have a single PES supplier and that all supply licences will contain a duty to supply’. The CER also stated in CER/11/039 in Section 3.2 – ‘The core function of the PES is the duty to supply...So if a customer cannot get service from any of the independent suppliers, they would currently default to Electric Ireland as the PES.’

The CER itself has stated (CER/11/039) that a change to primary legislation is needed before a body other than the ESB/Electric Ireland can be designated as PES. Endesa Ireland does not accept the CER’s line of reasoning that because the proposed condition does not remove the requirement on the PES to meet reasonable demands and that as ESB/Electric Ireland must still meet the other PES duties set out in SI60/2005 that this proposal ‘supplements’ the PES rather than designates new PES suppliers.

Endesa Ireland notes the CER’s comments that in a deregulated market it wishes to establish a fairer method to ensure universal service and that it has examined procedures in other jurisdictions but considers these points to be irrelevant in circumstances where the legislation clearly provides that the only ESB/Electric Ireland should be designated PES. Endesa Ireland’s objection is not to the merits of the CER’s proposal but is that that the proposed implementation is inconsistent with the legislative scheme.

Endesa Ireland is perplexed by the CER’s statement at page 22 ‘...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.’ Is the CER stating that its proposed decision to give other suppliers a PES duty is ultra vires and of no effect?

It is important to suppliers that the duties under their licences are clear so that they can comply with them and not be in fear of having their licence revoked and business destroyed.



Endesa Ireland welcomes clarification around Electric Ireland's licences but is still not clear how a customer can know which licence it is being supplied under. Similarly, when publishing Change of Supplier figures or retail market reports, Endesa Ireland considers that the CER should distinguish between Electric Ireland customers under the PES and generic licences. Endesa Ireland notes that under Regulation 19 of SI60/2005 the tariffs charged by the PES should be approved by the CER and should be published in a manner considered appropriate by the Commission.

Text of proposed Condition

Endesa Ireland welcomes the CER's agreement that a supplier should not be obliged to offer supply to a DG5 customer where the supplier is not set up to supply customers of that metering type (quarter-hour and non-quarter-hour meters) but considers that this should be explicitly stated in the condition itself. Endesa Ireland would note that from a legal perspective, unless the licence specifically states otherwise, licensees must be in a position to fulfil this requirement. Suppliers that are only serving quarterly-hour customers will not be in a position to fulfil this requirement. It is not reasonable to include a licence requirement that a supplier will be unable to fulfil. We strongly request that this condition is reworded to exempt suppliers that only serve DG5 customers with quarterly hour meters from having to supply all DG5 customers.

Endesa Ireland would prefer that the exceptions regarding debt flagging and meter type setup be written into paragraph 3 of Condition 23, as it is a more appropriate approach.

Endesa Ireland reiterates its query as to whether this Condition would require a supplier to respond to any notification of a request for tenders from customers, or must a customer state that its request is pursuant to this Condition.

Endesa Ireland proposes that in subcondition 4 the definition of 'request' should include requirements for a customer to furnish its MPRN number/s 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.

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.

Endesa Ireland would prefer to see the details as to the appointment of an SoLR and recovery of SoLR costs in this Condition but welcomes the clarification by CER that the role of SoLR will remain with the PES until the specifics of the SoLR process have been decided upon.

As discussed in relation to Proposed Decision 4 above, Endesa Ireland proposes that the condition itself should explicitly state that a SoLR should only be required to supply customers from the segments of the market it is active in; this would include supplying only customers with meter types that the supplier is set up to deal with. To require otherwise would impose a great burden and risk on suppliers.

Endesa Ireland welcomes the CER's proposal to remove as a ground for issuing a SoLR direction a licensee's failure to comply with Condition 2 (Paragraph 4(a)), but notes that this has not been marked up in the track change version of the proposed licence. We also welcome the proposed amendment regarding information to be transferred from the existing supplier to SoLR.

As raised in our consultation response, we consider that 4(d) should be amended and that a SoLR Direction should be made after a notice of revocation has been issued by the CER. The process of revocation could be a long one and may not end in revocation, but if a supplier's customers have already been transferred to the SoLR its business will have been destroyed. The CER must give at least 30 days notice of revocation (under Schedule 2 of the licence) so this period could be used to prepare for the transfer of customers to the SoLR.

Endesa Ireland highlights that the circumstances under which the SoLR may supply final customers of another licensed supplier are set out in Regulation 21 of SI60/2005 and urges caution that any directions made by the CER must fall within the terms of that Regulation, not merely the Supply Licence Condition. Endesa Ireland would welcome a reference to the CER's powers in this regard within the Condition itself.

Endesa Ireland still believes that there is some confusion over what a SoLR Direction is; the Proposed Decision Paper describes it as a direction to a supplier to act as the SoLR whereas the Condition itself suggests that it is made to the supplier who is to lose customers. Endesa Ireland accepts that this can be clarified in the CER's work on the specifics of the SoLR process.

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 licences deleted.
Endesa Ireland agrees with the proposed decision on this point.
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.
Endesa Ireland agrees with the proposed decision on this point.
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.
Endesa Ireland agrees with this proposal.
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).
Endesa Ireland agrees with this proposal.
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”.
Endesa Ireland is in agreement with this proposal.
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).
Endesa Ireland remains generally in favour of this proposal but makes the following points: <ul style="list-style-type: none"> • If CER intend that ‘Participating Interest’ has the meaning given in Regulation 35 of the European Communities (Companies: Group Accounts) Regulations 1992 then this should be stated in the licence, not deleted as proposed. This will give clarity to licensees on what their duties are. • The definition of transmission system should be amended to state ‘...and shall include any interconnector owned by the Board EirGrid’
Additional Comments

Condition 2	<p>Endesa Ireland reiterates its proposal that Condition 2 should be amended to provide 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. This is due to the fact that there may be a substantial time lag between these events and the supply business will not have any substantial costs or revenues until it begins to supply final customers.</p>
Condition 10	<p>Endesa Ireland considers that reference in this Condition to the commission of a criminal act, and the duties on suppliers where they are of the opinion a criminal act has been committed (paragraph 3 and 4) are inappropriate. Endesa Ireland considers that it is not the place of a supplier to form a view as to whether an offence has been committed, nor is it appropriate to convey that view to another party, other than An Garda Síochána, or to base the information or policies it provides to the 'owner' on such a view. Endesa Ireland feels that there is a risk of defamation by suppliers in this regard.</p> <p>Endesa Ireland is fully in favour of co-operating with 'the owner' where it is concerned about theft, damage and meter interference, including requirements to provide information under Use of Service Agreements. Endesa Ireland proposes the deletion of the reference in paragraph 3 to the Licensee having reason to believe that 'any incident reported to the owner in accordance with paragraph 2 has been caused by the criminal act of any person'.</p> <p>Further, in subcondition 4 the Licensee is required to inform the owner of its policies regarding incidents described in subcondition 3 and particularly circumstances in which it requires the owner to remedy such incidents by:</p> <ul style="list-style-type: none"> - The substitution of alternative meters - The provision of pre-payment meters - The discontinuation of supply to the premises at which the incident occurred. <p>Considering the role given to ESB Networks as meter operator and CER rules on pre-payment meters and disconnection, Endesa Ireland considers it superfluous to require Licensees to develop policies on these issues.</p>

	<p>Endesa Ireland notes the comments made in the consultation response submitted by Bord Gáis Energy and agrees that the DSO/TSO/CER is better placed to detect and prevent theft and will be given a greater role under the Energy (Misc Provisions) Bill 2011.</p>
<p>Conditions 18, 19 & Schedule 2</p>	<p>Regarding the meaning of a Transfer of the Business or Change of Control, Endesa Ireland queries, for example, whether a 100% share purchase constitutes a transfer? It would seem that in this case a new entity has 'acquired' the entity.</p> <p>The CER states in the Proposed Decision that a change of control is 'where there is a <i>new</i> shareholder of the licensee'. This does not seem to be a comprehensive account of that term. If a new shareholder purchases 1% of shares is that a change of control? Also, if an existing 1% shareholder buys the other 99% of shares is that not a change of control because there's no new shareholder? Finally, is it only the shareholding of the licensee itself that is considered relevant, or would a change to the licensee's parent qualify for the requirement to notify the CER? It would be very difficult to track and report upon changes in shareholders of parent companies where these shares are actively traded.</p> <p>Endesa Ireland still considers that Schedule 2, paragraph 1(f) is not enforceable. A Licensee is simply not capable of ensuring that its own shareholders are changed, this decision lies with the shareholders themselves.</p>
<p>Schedule 1</p>	<p>Endesa Ireland considers that Schedule 1 or the definition of eligible customers must be amended to refer to SI 632 of 2003. The definition at present does not relate itself to the definition of eligible customers in the Act, so an alternative may be to refer to that provision.</p> <p>At present, a person would find it extremely difficult to know where to look for a Ministerial Order defining 'eligible customer' threshold figure. SI 632 of 2003 amends the eligible customer threshold in section 27(2), it is not clear that this intends to amend the definition in the Supply Licence or that it does in fact amend the licence definition.</p> <p>For the sake of clarity, Endesa Ireland proposes that a modification be made so it is clear what type of supply is covered by the licence. Endesa Ireland does not see any justification for not doing so.</p>



Conditions 7 & 8

Due to the deletion of Conditions 7 and 8 the CER may consider renumbering the following Conditions or specifying that Conditions 7 and 8 are intentionally blank. In addition, a change to the Table of Contents page is required.