1.0 Commentary on Electricity Supply Licence Condition 12

Bord Gáis Energy has reviewed the proposed CER Decision on the Review of the Electricity and Gas Supply Licences published 16 December 2011. We note that few of the changes suggested by respondents were taken into account by the CER. While we may be willing to accept the original drafting of the Licence Conditions as proposed by the CER in 11/817 without any changes, we simply cannot accept that the drafting of Electricity Supply Licence Condition 12 proceeds as drafted in CER 11/817.

We believe that the CER exceeds its statutory powers to state in Licence Condition 12 that “the Commission may call for the furnishing of accounting information which is more extensive than or differs from that required to be prepared and supplied to the Commission under Condition 2 [Regulatory Accounting Information]”.

The purpose of Licence Condition 2, Regulatory Accounting Information in the Electricity Supply Licence, is to establish clearly what information may be sought from Suppliers in the Regulatory Accounts. Detailed Regulatory Accounting Guidelines (RAGs) have been drawn up under the Licence to establish just what these accounting requirements are. It is completely unreasonable to then render Licence Condition 2 and the RAGs obsolete with the power in Condition 12 to request the furnishing of more extensive or different accounting information, which information is completely unspecified. Clearly, there is no regulatory certainty for Suppliers with this wording and such requests cannot be considered reasonable in a market which has been declared competitive by the CER.

Bord Gáis Energy made these comments in response to CER 11/817. In its reasoning for not accepting them, the CER stated that it has duties under SI 450 of 2010 for electricity retail market monitoring and has a duty to prevent a distortion or restriction in competition in the supply of electricity to final customers and ensure that customers
are benefiting from competition in the supply of electricity. We note that the CER is consulting separately on Market Monitoring in CER 11/221a.

Bord Gáis Energy has reviewed SI 450 of 2010 (and indeed the other Acts which establish the powers of the Commission) and can see no legal justification for a Supply Licence Condition which requires Electricity Suppliers in a competitive market to furnish (completely unspecified) different or more extensive accounting information than that required and agreed via the Regulatory Accounting Licence Condition 2 and the RAGs. While we accept that the CER has obligations to monitor the retail electricity market via SI 450 of 2010, this does not automatically legally translate into an obligation on Suppliers in a competitive market to provide any (unspecified) accounting information so requested by the CER. If the CER has genuine concerns about the competitive aspects of the Electricity Supply market, the parameters of the Competition Acts should be used and the appropriate legal procedures observed were such an investigation to take place.

We note that the CER’s Market Monitoring Consultation has only just begun. We do not consider it reasonable that the CER seeks to pre-empt this by conferring powers upon itself via a Supply Licence to request unspecified accounting information from Suppliers in a competitive market.

Bord Gáis Energy urges the CER to remove this language from the Electricity Supply Licence. It is totally unreasonable to confer such unfettered powers on the CER with regard to accounting information provision and it provides no regulatory certainty in a competitive market.