I am writing on behalf of SSE to make a representation on the proposed modifications to our supply and generation licences. We would first like to state that we have no concerns with the following changes to our licences:

- Condition 23 – insertion of Capacity Market Code condition
- Condition 1 – amendments to Conditions to Apply from SEM Go Live
- Condition 13 – amendments to Condition on Intermediaries

However, we do have concerns regarding the proposed changes to Condition 19, covering the new Balancing Market Principles Code of Practice. SSE operates generation sites licenced by CER. These generation sites do not have ‘temporal and locational market power’. The rationale for the application of complex bid offer controls is to mitigate against the potential for abuse of temporal and locational market power arising from constraints on the electricity system (SEM-17-020).

However, instead of limiting these controls to that plant, the current decisions place these controls on all plant, in effect disadvantaging and impacting plant which could not exert this type of influence in the market. As a result of the design of the new I-SEM electricity market, particularly the removal of protections against early energy actions by the TSO (SEM-17-029b) and the design of the Balancing Market Net Imbalance Volume tagging process by the Regulatory Authorities (SEM-17-024) plant without temporal and locational market power, including our generation units will be exposed to price controls on their complex commercial offer data on a regular basis.

This will happen regardless of the fact that our generation units lack market pricing power for capacity or energy. Regulatory concern over local or temporal market power at individual generation sites was the sole reason identified by the SEM Committee as justification for the BMP COP licence modifications. There is no basis or justification for the universal application of these licence modifications provided in the aforementioned decisions, decision paper SEM-17-020 or the notice subsequently issued by the Commission.

The proposed changes to our licence and the regulatory and TSO decisions will allow the market access to the flexibility our units can provide at short run marginal cost, rather than the long run marginal cost we require to maintain and operate these licenced generation assets on a sustainable basis. This is not a fair, proportionate or targeted regulatory intervention. SSE believes this is inconsistent with the CER’s responsibility to ‘ensure licensees are capable of financing the undertaking of activities they are licenced to undertake’.
In addition to these concerns, we cannot understand why the proposed licence modification seeks to remove existing governance protections provided for under Condition 19 of our licence. SEM-17-020 justified this on the basis that:

“The SEM Committee believes that there would remain the risk that doubts could arise in relation to elements of the principles that remain in the relevant licence condition, and that those doubts could only be definitively resolved through court proceedings or licence modification, both of which processes are expensive and time-consuming. The SEM Committee is of the view that such a scenario is not in the interest of industry or consumers, and therefore proposed transferring relevant content from the generation licence into the BMPCOP document.”

Given the concerns raised by a number of participants with the universal application of the Balancing Market Principles Code of Practice to generation volume across the market, a comprehensive, well-defined governance process is clearly essential for the protection of industry and consumers.

Under the proposed changes our commercial access to energy markets will be limited on an ex-ante basis without a demonstrated cause and our ability to challenge changes to these restrictions will be limited through the envisaged governance arrangements. This is not an appropriate outcome in a competitive market nor do we believe it supports the development of competition. We request that Condition 19 is amended in line with the Commission’s functions. Amendments should reflect:

- Restrictions on commercial access would only be triggered when the Commission has demonstrated temporal and local market power at a generation unit in a licensees schedule of generation assets;
- The underlying components of Short Run Marginal Cost would be identified, outlined and subject to the defined governance process for modification defined through a Generation or Supply Licence.

We are happy to provide further information on this issue and its impact if required. We trust that our representations on the proposed modifications to the licence are taken into account by the Commission when reaching a final determination on Supply and Generation licence modifications.

Yours sincerely,

Fiona Hannon
Regulation, Ireland