



**EIRGRID INTERCONNECTOR DESIGNATED  
ACTIVITY COMPANY**

**Response to Proposed Modifications  
to the Electricity Interconnector  
Operator Licence**

**17 January 2018**

## 1 INTRODUCTION

On 15 December 2017, the Commission for Regulation of Utilities (CRU) published an Information Paper on Proposed Modifications to the Electricity Interconnector Operator Licence. This licence was granted to EirGrid Interconnector Designated Activity Company (EIDAC) (previously EirGrid Interconnector Limited<sup>1</sup>) pursuant to Section 14(1)(i) of the Electricity Regulation Act 1999.

The modifications have been proposed by the CRU<sup>2</sup> in order to give effect to the new wholesale market arrangements on the island of Ireland, referred to as the Integrated Single Electricity Market (I-SEM). Separate exercises have already been conducted by the CRU with regard to modifications to EirGrid's Transmission System Operator (TSO) and Market Operator (MO) licences.

This paper constitutes EIDAC's response to the proposed modifications to its licence. The response is structured in four sections:

- this introduction;
- key points and observations which form the substance of our response;
- a summary table of high level responses to the proposed licence modifications to indicate where we are content with the suggested amendments;
- next steps

We would be happy to meet with CRU to discuss any matters included in this response.

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<sup>1</sup> On 29 August 2016, pursuant to the Companies Act 2014, EirGrid Interconnector Limited converted to EirGrid Interconnector Designated Activity Company.

<sup>2</sup> A similar process for licence modifications is being conducted by the Utility Regulator in Northern Ireland in respect of the Moyle Interconnector licence.

## 2 KEY POINTS AND OBSERVATIONS

We welcome the approach taken by CRU to developing the proposed modifications to the EIDAC licence, particularly the advance visibility of indicative changes and the opportunity for meaningful dialogue to clarify understanding. While we recognise that not all of the proposed modifications are strictly I-SEM related, we accept the proposed changes to the naming conventions used throughout the licence in line with EirGrid Interconnector Limited converting to EirGrid Interconnector Designated Activity Company in 2016. This is a pragmatic and necessary modification.

In general, we welcome the majority of proposed modifications (as outlined in section 3 below), but have noted some concerns for your consideration. These are primarily limited to three areas, covering:

- the definitions of 'Financial Transmission Rights' and 'Interconnector Revenues';
- additional proposals at licence condition 17 regarding prohibited activities;
- the validity of the retention of some content of condition 20 in relation to the I-SEM.

Our substantive comments are provided as follows:

### **Section A, Condition 1: Interpretation and Construction – Definition of 'Financial Transmission Rights' (and subsequent definition of 'Interconnector Revenue')**

CRU propose a new definition to the EIDAC licence, to define 'Financial Transmission Rights'; 'Financial Transmission Rights' are also referred to within the proposed new definition of 'Interconnector Revenue'.

While the proposed legal drafting for the definition of 'Financial Transmission Rights' is appropriate for I-SEM (as currently designed), we are strongly of the view that a definition for 'Long Term Transmission Rights' should instead be provided to encompass both financial and physical transmission rights; this should also be transposed to the new definition of 'Interconnector Revenue'.

We recognise that financial transmission rights have been agreed for I-SEM, however the position may change in the future (necessitating a further, and in our view unnecessary, licence change). Accordingly, it appears sensible to replace the definition of 'Financial Transmission Rights' with a new definition for 'Long Term Transmission Rights'. A suggested definition for 'Long Term Transmission Rights' is: 'has the meaning given to it in Article 2 of the FCA Regulation'. It is also important to note that our proposed change will have no impact on users of EWIC. Rather, it will future proof the EIDAC licence, avoiding the need in the future for the CRU to consult on this modification.

EIDAC have also been party to discussions with Ofgem on the possibility of specifying FTRs in the LTTR definition, but Ofgem are the view that the definition should remain more general, especially given the potential for implications of Brexit.

### **Licence Condition 17 (Prohibited Activities)**

CRU propose that additional wording be inserted at the end of paragraph 1 of this condition to clarify that 'The Licensee shall not, and shall procure that any Affiliate or Related Undertaking of the Licensee shall not, on behalf of the Licensee, engage in the generation, trading or supply of electricity on the Island of Ireland, save where explicitly permitted through the written consent of the Commission' (with additional wording underlined).

We are of the view that the additional proposed wording by CRU should be followed by 'or save where permissible at law'. This will mean that any requirement under any of the Network Codes which allows such activities would be permitted (as they would supercede this licence).

### **Licence Condition 20 (Access to the Licensee's Interconnector)**

CRU propose only a modification to paragraph 1 of the condition as follows (with proposed deletions struck out in the text): 'The Licensee shall ~~offer access to the Interconnector and~~ make the capacity of the Interconnector available in accordance with the arrangements made under the CACM Regulation, [the] FCA Regulation and their subsidiary ~~methodologies enter into agreements for capacity with any person on~~ methodologies on a non-discriminatory, objective and transparent basis in accordance with Section 34A of the Act.<sup>3</sup>

While we have no issue with the proposed modifications to paragraph 1 of the condition, or with the retention of paragraph 2, we are strongly of the view that paragraphs 3 to 18 of condition 20 should be deleted. The key reason for this is that the licence condition has now been superseded by the Forward Capacity Allocation (FCA) Regulation; as a matter of European law, the FCA Regulation takes precedence over the licence.

To illustrate our view further, from I-SEM go-live, the charging methodology will no longer be relevant as capacity will pursuant to the FCA and CACM Regulations be allocated implicitly, and the applicable rules for allocation of capacity after the I-SEM go-live date are set out in CACM and FCA Regulations, which we refer to in Condition 20(1) and (2) of the draft modified licence submitted by EIDAC.

Paragraphs 3 to 18 of the EIDAC licence set out the basis for the EWIC Access Rules and Charging Methodology. As per the approved and binding SEM-GB HAR regional specific annex, the EWIC Access Rules and Charging Methodology shall only govern access to the interconnector until the I-SEM go-live date. After that date, it is proposed (as per EIDAC's consultation) that the Access Rules<sup>4</sup> will cease to have any effect (save for settlement of outstanding obligations relating to the period up to I-SEM go-live). On that basis, sub-provisions 20(3) to (18) in the EIDAC licence are not applicable after the I-SEM go-live date

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<sup>3</sup> Note that the word 'the' before 'FCA Regulation' is missing from the CRU's marked-up version of the EIDAC licence on its website. There is also a square bracket before the word 'arrangements' which we suggest should be removed in the final version. This comment is repeated in the summary table in section 3 of this response.

<sup>4</sup> [http://www.eirgridgroup.com/site-files/library/EirGrid/170721-EWIC\\_Access\\_Rules\\_v5.pdf](http://www.eirgridgroup.com/site-files/library/EirGrid/170721-EWIC_Access_Rules_v5.pdf)

and should be deleted, otherwise they will remain in the licence as redundant provisions unnecessarily.

We note that a Transition provision is proposed at the end of condition 20 (as paragraph 20). It is not clear from the CRU's Information Paper if the intention of this Transition provision is to allow for the 'switching off' of any of the preceding provisions of licence condition 20. EIDAC seeks clarity on CRU's proposals.

As an alternative to deleting paragraphs 3-18, EIDAC requests that the CRU clarify that the provisions of condition 21 apply to paragraphs 3-18 of condition 20 (as opposed to applying to condition 20 in its entirety).

All other responses to the proposed modifications are outlined in the table in section 3.

### 3 SUMMARY RESPONSES TO PROPOSED MODIFICATIONS

Licence condition	Nature of modification	Summary response
Part 1 Terms of the Licence	The proposed modification is to reflect the change in name of the licence holder from 'EirGrid Interconnector Limited' to 'EirGrid Interconnector Designated Activity Company'.	We welcome the modification as this updates the licence to align with the EIL's change of name to EIDAC in August 2016. EirGrid Interconnector DAC (EIDAC) is licenced by the CRU to operate in Ireland the East West Interconnector (EWIC).
Section A, Condition 1: Interpretation and Construction	It is proposed to expand the definition of 'Ancillary Services' to include other services as directed by the Commission from time to time.	<p>We welcome the modification. The existing definition of 'Ancillary Services' is stated as 'has the meaning given in the Grid Code'. The Grid Code refers to system services and the DS3 system services technical definitions. However, CRU propose to complement this definition with additional wording as follows: 'has the meaning given in the Grid Code <i>and shall be deemed to also include such other services as directed by the Commission from time to time</i>'. The proposed modification enhances the definition since the existing definition for 'Ancillary Services' is not inclusive of all services provided.</p> <p>We also note that the definition of 'Ancillary Services' has not been inserted in the Moyle Interconnector licence.</p>
Section A, Condition 1: Interpretation and Construction	Introduce definition for the term CACM Regulation.	We welcome the modification and note that the definition is consistent with the EirGrid Market Operator licence.
Section A, Condition 1: Interpretation and Construction	Introduce definition for the term Capacity Market Code.	We welcome the modification.
Section A, Condition1: Interpretation and Construction	Introduce definition for the term Companies Act	We welcome the modification.
Section A, Condition1: Interpretation and Construction	Introduce definition for the term Electricity Market Regulation.	We welcome the modification, noting that the reference to '2003' is not in the EirGrid TSO licence, but this is an omission in the EirGrid TSO licence which needs to be amended.

		In Conditions 20(5)(b)(iv), 20(8)(b)(v) and 20(9)(a) and (b), the words “ <i>Regulation 714/2009 of the European Parliament and the Council on conditions for access to the network for cross-border exchanges in electricity, or any re-enactment thereof</i> ” should be replaced with “ <i>the Electricity Market Regulation</i> ” for consistency with the modifications made to Conditions 15(1), 18(1), 18(4)(b)(i) and (ii) and 21(2).
Section A, Condition1: Interpretation and Construction	Introduce definition for the term FCA Regulation.	We welcome the modification.
Section A, Condition1: Interpretation and Construction	It is proposed to introduce a definition for Financial Transmission Rights, as the proposed modification to Condition 15 (Capacity Utilisation) contains reference to this term.	We welcome the modification.
Section A, Condition1: Interpretation and Construction	It is proposed to introduce a definition for Harmonised Allocation Rules	<p>We welcome the modification.</p> <p>However, the official title of the Allocation Rules in the definition is not correct.</p> <p>It should be as follows:</p> <p><i>“Harmonised allocation rules for long term transmission rights in accordance with Article 51 of the FCA Regulation”</i></p> <p>Regulation 52 should not be referenced (as it is not in the official title of the rules but also given that Article 51 of the FCA Regulation contains the enabling provision requiring the harmonised allocation rules to be prepared.</p>

		Please see the link in the footnote <sup>5</sup> which constaints the Allocation Rules (and the correct title on the first page):
Section A, Condition1: Interpretation and Construction	Introduce definition for the term Interconnector Revenue	The proposed definition includes reference to 'Ancillary Services', and the definition of 'Ancillary Services' has been expanded 'to include other services as decided by the Commission from time to time'.  We consider that the definition for 'Interconnector Revenue' is sufficient to allow the ability for all system services income to be included.  The word "the" should be included before "CACM Regulation".
Section A, Condition1: Interpretation and Construction	Amend the definition of 'Licensee'	We welcome the modification.
Section A, Condition1: Interpretation and Construction	Delete the definition of Market Operator licence	We welcome the modification.
Section A, Condition1: Interpretation and Construction	Introduce definition for the term Network Codes	We welcome the modification.  One minor comment is to add a semicolon (ie, ";") at the end of the definition.
Section A, Condition1: Interpretation and Construction	Introduce definition for the term Nominated Electricity Market Operator.	We welcome the modification.
Section A, Condition1: Interpretation and Construction	Amend the definition of SEM Trading and Settlement Code so that it refers to the specific section of the Act under which the Act is made.	We welcome the modification.
Section A, Condition 6: Compliance and Codes	Introduce a new requirement requiring the licence holder to be party to and comply with the Capacity Market Code, insofar as applicable to it. It is also proposed to add the Capacity	We welcome the modification.

	Market Code as one of the Codes that the licence holder is required to report to the Commission in terms of compliance.	
Section A, Condition 9: Provision of Information to the TSO, DSO or MO	The proposed modifications extend the categories of entities to whom the Interconnector is obligated to furnish information, by including NEMOs and any transmission system operators licensed in the EU. It is also proposed to increase the granularity of the information furnished by the Licensee to include information concerning capacity and constraints of the Licensee's Interconnector.	We welcome the modification.
Section A, Condition 10: Scheduling and Dispatch and Interconnector Transfers	Amend the condition, including its title, to refer to 'scheduling and dispatch' rather than 'central dispatch'. A further modification is proposed to paragraph 1 to obligate the Licensee to have appropriate arrangements in place to ensure that all interconnector transfers for scheduling and dispatch are submitted in accordance with the SEM Trading and Settlement Code.	We welcome the modification.
Section A, Condition 11: Ancillary Services	This condition presently requires the Licensee to facilitate the provision of Ancillary Services when requested by the TSO and in accordance with the provisions of the Grid Code. This proposed modification enables the Commission to direct the Licensee to facilitate the provision of ancillary services above the minimum requirements set out in the Grid Code.	We welcome the modification.  We note that an 'interconnector user', as referenced in paragraph 1 of the condition, will not exist in I-SEM.
Section A, Condition 15: Capacity Utilisation	Amend condition so that the Licensee's obligation to make available the maximum capacity of the interconnector in compliance with safety standards is stipulated as being 'as set out in any of the Network Codes and the Electricity Market Regulation'.  Further amendment to obligate the Licensee to make available arrangements for the auctioning of Financial Transmission Rights, as required under legislation.	We welcome the modification.
Section A,	This modification gives precedence to	We welcome the modification.

Condition 16: Dispute Resolution	the dispute resolution process contained with the Harmonised Allocation Rules (HAR) over the existing dispute provisions in circumstances where the HAR provisions are engaged. This reflects the new arrangements from I-SEM Go Live.	
Section A, Condition 17: Prohibited Activities	Modify condition to allow the Licensee to engage in the listed prohibited activities only in specific circumstances provided for in an explicit written consent granted by the Commission.	See comments in section 2 above.
Section A, Condition 18: Restriction on Use of Certain Information	It is proposed to amend paragraph 1 and 4(b) (i) to include updated and accurate references to the sources of the obligations placed on the Licensee in respect of restrictions on use of information. It is proposed to update paragraph 4(c) to refer to the Capacity Market Code in the list of arrangements under which the Licensee may be expressly permitted or required to disclose that information.	We welcome the modification.
Section B, Condition 19: Use of Revenues	It is proposed to amend paragraphs 1 and 2 to refer to the new defined term of 'Interconnector Revenues' so as to capture sources of revenue other than those already set out in the condition.  A further amendment to paragraph 2 creates the potential for Interconnector Revenues to be used for such purposes as may be directed by the Commission from time to time, as well as for the two existing acceptable purposes already stated in the condition which are to be retained.	See comments in section 2 about the definition of 'Interconnector Revenues'
Section B, Condition 20: Access to the Licensee's Interconnector	It is proposed to modify paragraph 1 of this condition to oblige the Licensee to make the capacity of the Interconnector available in accordance with arrangements made under CACM, the FCA regulations, and their subsidiary methodologies (as well as in compliance with s34 of the Act).	See comments in section 2 above, (and also the comments in this table regarding Section A, Condition1: Interpretation and Construction (introduction of a definition of Electricity Market Regulation) which will be applicable if the CRU retains paragraphs 3-18 of Condition 20 and clarifies the intention of the Transition provision).  Note that the word 'the' before 'FCA

		Regulation' is missing from the CRU's marked-up version of the EIDAC licence on its website. There is also a square bracket before the word 'arrangements' which we suggest should be removed in the final version.
Section B, Condition 21: Application of Licence Condition 19	Condition 21 has been modified to reflect modifications to conditions 19 and 20. In addition, paragraph 2 has been amended to clarify the legislation referred to therein.	See comments in section 2 above relating to Condition 20.  We welcome the modification at paragraph 2 of Condition 21.
Schedule 2: Right of the Commission to Revoke this Licence	Schedule 2 has now been modified to reflect the new section numbers in the Companies Act 2014.	We welcome the modification.

### 3 NEXT STEPS

EIDAC requests that the CRU clarify an effective date for modifications to the EIDAC licence. It is our preference that the modifications should take effect in advance of the first FTR auction in March 2018, and if this is not feasible, we request that we are notified in writing as soon as possible.

We welcome any further engagement with CRU as necessary to clarify our response.