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and

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26 July 2024

Re: Imperfections Charges October 2024 – September 2025 and Reforecast Report October 2022 – September 2023 Consultation Paper (SEM-24-048 of 1st July 2024)

Dear SEM Committee

We refer to the above consultation paper of 1 July 2024 on Imperfections Charges for the period from October 2024 to September 2025 (the **Consultation**). We also refer to the accompanying EirGrid Imperfections Charges Forecast for the Tariff Year 2024/25 (the **Forecast**) contained at Annex 1 to the Consultation.

The Consultation and the Forecast

Paragraph 3.7 of the Consultation states that "*[t]he TSOs seek provision of €158 million for potential payments to participants under Article 13 of Regulation (EU) 2019/943. The TSOs state a provision is sought to ensure sufficient funding is in place to meet any potential future obligations that may arise, without prejudice to the ongoing judicial review process.*"

Paragraph 3.7 then states that "*[t]he TSOs note no payments would be made until the legal process is concluded and there is a regulatory approved calculation methodology and payment mechanism in place.*"

Paragraph 4.3 of the Forecast states that EirGrid seeks provision of €158 million for "*potential payments*" to participants under Article 13(7) of Regulation (EU) 2019/943. However, it then states that the key assumptions regarding this provision include that it is up to market price level meaning it does not include compensation for lost financial support such as REFIT and RESS.

Deferral of compensation

We refer to the judgments in the two sets of proceedings, GR Wind Farms 1 Limited and Others v the CRU and Energia Group Holdings (ROI) DAC and Others v the CRU (the **Judgments**) and the Order made by the High Court quashing the SEMC's Decision on Dispatch, Redispatch, and Compensation Pursuant to Regulation (EU) 2019/943 (the **SEMC Decision** and the **Regulation**) and granting a number of declarations as to the interpretation and application of the Regulation (the **Order**).

The Order includes "*[a] declaration that compensation for non-market based redispatching is required to be paid pursuant to Article 13(7) of the Regulation from 01 January 2020 and that such payments cannot be deferred.*" We note that, on the application of the CRU, the High Court agreed to place a temporary stay on the Order pending an appeal by the CRU and that an application will be made to the Court of Appeal to extend this.

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In circumstances where a stay is in place on the Order, it follows that the SEMC Decision remains in effect and it provided for compensation for curtailment to be paid in the tariff year 2024/25. We are therefore surprised at the statement in paragraph 3.7 that "*[t]he TSOs note no payments would be made until the legal process is concluded and there is a regulatory approved calculation methodology and payment mechanism in place.*"

Please clarify whether the CRU accepts that there is no lawful basis for any further deferral of compensation for curtailment and that this will be paid pending the outcome of the appeal by the CRU.

Article 13(7) and the High Court Judgements

The Order includes "*[a] declaration that revenues from foregone financial supports, such as REFIT and RESS, must be included in the calculation of "net revenues" for the purpose of Article 13(7)(b) of the Regulation.*"

We note that the proposal in the Consultation and the Forecast is to continue to pay compensation for constraint to the market level and that EirGrid would reserve for compensation for curtailment to the market level. This appears insufficient on the basis of the declarations made in the High Court Order and EirGrid should be preparing to pay compensation for foregone financial supports, such as REFIT and RESS in accordance with the Judgments.

Lack of clarity/lawful basis in the approach of the SEM Committee

The SEM Committee is proceeding in a way which creates uncertainty as to whether it is implementing the Decision during the period of the stay and as such raises serious questions concerning the lawful basis for the SEM Committee's proposed decision and creates further uncertainty as to how the SEM Committee is proposing to apply the Regulation.

Given the importance of these matters to all participants in the market, it is important to understand how the SEM Committee proposes to deal with these issues and we call on you to clarify the position of the SEM Committee as a matter of urgency.

We await hearing from you.

Yours faithfully,



Patrick Maguire

For and on behalf of GR Wind Farms 1 Limited