

Acquisition of Ballylumford Power Station by AES Corporation

**Decision on SEM-10-073 (requirement for enhanced
market power mitigation measures within generation
licenses)**

3rd February 2011

SEM-11-013

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1. EXECUTIVE SUMMARY

AES Corporation (AES) owns and operates Kilroot Power Station in Northern Ireland (618 MWs). AES recently acquired Premier Power Limited (PPL) who own and operate Ballylumford Power Station (BPS) in Northern Ireland (1,213 MWs). The new combined market share (by capacity) of AES in the Single Electricity Market (SEM) is around 18%, making AES the second largest generation participant in the SEM.

In considering if any action is required, the SEM Committee published a consultation paper (SEM-10-073), inviting views regarding the implications (if any) this acquisition will have on market power in the SEM and whether the current license conditions are 'fit for purpose' in light of the acquisition. In this consultation paper the SEM Committee requested specific comments from interested parties on the following:

- The impact the acquisition of Ballylumford Power Station by AES will have on the ability of AES to exercise market power, both in the SEM and behind system constraints locally in Northern Ireland.
- Whether the existing relevant licences are 'fit for purpose' in light of this acquisition.

In particular:

- o Should the relevant licences be amended to include a condition relating to Directed Contracts?
- o Is there a need for any additional market power mitigation measures such as the 'ring-fencing' of generation businesses now or in the future?
- Is there a need to introduce any other additional local market power mitigation measures?

Nine responses were received to this consultation and some of the key messages from these responses are summarised in this paper.

After considering these responses the SEM Committee has decided that the market power mitigation measures currently in place are sufficient to address any increase in market power as a result of this acquisition. Hence, the SEM Committee's decision is that no additional market power mitigation conditions are currently required in the relevant generation licences.

The SEM Committee may revisit this decision in the future, in particular if further Generator Unit Agreements (GUAs) are terminated.

2. CONSULTATION RESPONSES

A total of nine responses were received. These are summarised below:

- **Airtricity**
Airtricity commented that it is unlikely that AES have market power in the SEM and that any potential market power in Northern Ireland is best addressed through a vigilant and well resourced MMU. They also thought it was unlikely that AES would be brought into the Directed Contracts mechanism and did not see any benefit in introducing ring-fencing measures.
- **Viridian Power & Energy (VPE)**
VPE commented that it does not appear as though the acquisition will have a material effect on competition in the SEM and as such the relevant licences remain fit for purpose. To the extent that

the acquisition is likely to give rise to local market power, VPE suggest that this be addressed with local market power mitigation measures available to the RAs as outlined in the SEM Market Power Mitigation Strategy (AIP/SEM/31/06).

- **Endesa Ireland**

Endesa commented that given the HHI for AES is below the threshold for high concentration, Endesa Ireland did not consider that it is necessary to change AES' licence to include a provision requiring AES to offer Directed Contracts. In addition, Endesa commented that a ring-fencing licence requirement does not seem appropriate in the current market structure.

- **AES**

AES believe that their current licences are fit for purpose and should not be amended to include Directed Contracts, ring-fencing conditions or any other local market power mitigation measure beyond those already in place. AES made the following points:

- The SEM already has a number of mitigation measures expressly designed to address market power concerns.
- Their licences as they exist direct cost-reflective bidding and compliance with the Bidding Code of Practice, prohibit cross subsidies between affiliates and require affiliates to produce separate accounts.
- A key limitation on a party's ability to manipulate the levels of constraint payments it receives is the fact that bids must be submitted ahead of time and on an unconstrained basis. This means that, even in the absence of market power mitigation measures, any attempt to increase the level of constraint payments is likely to decrease wholesale revenues (or vice versa).
- As NIE PPB bid 51% of the combined portfolio capacity they consider it inappropriate to view market power by considering the combined portfolio of capacity.
- AES state that they have little or no incentive to withhold capacity in order to increase SMP as the loss of availability income associated with the contracted plant and capacity payments associated with the uncontracted plant is more likely to off-set any additional energy payments gained. In any event, they would be in breach of their Generation Licence and Grid Code requirements if they withheld capacity.

- **NIE Energy Limited Power Procurement Business (PPB)**

PPB commented that AES has local market power in Northern Ireland and to some extent in the SEM, however, PPB does not consider AES to have market power in the forward market and hence do not believe that modifying the relevant licences to include conditions in respect of Directed Contracts to be necessary at this time.

- **Synergen**

Synergen does not believe that there is any requirement for AES to be subject to additional market power mitigation measures in their licences.

- **NIE Energy**

NIE Energy believes that AES should be encouraged to offer contracts for difference (which includes Directed Contracts).

- **The Consumer Council (CCNI)**

CCNI commented that given the potential for market concentration within Northern Ireland it may be sensible to consider additional mitigation measures within the AES licence and consideration should

be given to a Condition that would direct AES to offer Directed Contracts. Further mitigation measures should be also considered if the risk to consumers is thought to be substantial as a result of the increased market concentration realised by AES.

- **ESB**

ESB believes that the acquisition will increase the market power of AES at a local level but does not believe that this will merit any ring-fencing within the AES group. ESB believe that ring-fencing would introduce additional costs to the AES business, some of which over time could end up being passed to consumers. ESB felt that the primary method to minimise local market power of AES is through strict enforcement and monitoring of the application of the Bidding Code of Practice. However, should that be deemed insufficient, ESB suggests that there may be a role for the imposition of Directed Contracts.

The majority of these consultation responses were not marked confidential and these have been published along with this Decision Paper.

3. THE SEM COMMITTEE DECISION

The SEM Committee has reviewed the responses received and taken into account the relevant issues raised, along with the analysis presented in the original consultation document. The SEM Committee acknowledges that market concentration in the SEM and locally in Northern Ireland will increase as a result of the acquisition. However, the SEM Committee believe the market power mitigation measures already in place should be sufficient to address any increase in market power as a result of this acquisition. The vast majority of respondents to the consultation appear to agree with this assessment and have indicated that there is currently no need to introduce either ring-fencing or Directed Contracts conditions to the relevant licences.

As a result the SEM Committee has decided that no additional market power mitigation measures within the relevant generation licences are necessary at this stage. However, the SEM Committee may decide to review this decision in the future, in particular if further Generator Unit Agreements are terminated.