



29 November 2010

Mr. Colin Broomfield
Utility Regulator
Queens House
14 Queen Street
Belfast
BT1 6ED

Mr. Clive Bowers
CER
The Exchange
Belgard Square North
Tallaght
D24

via Email

Re: SEM-10-073

Dear Colin/Clive,

Endesa Ireland welcomes the opportunity to respond to the consultation on the requirement for enhanced market power mitigation measures within generation licences. The acquisition of the Ballylumford Power Station by AES significantly increases that market power held by AES. Endesa Ireland appreciates the opportunity to express potential concerns about the impact of this acquisition on the market.

The Regulatory Authorities have proposed implementing changes to the generation licences to include a provision requiring AES to offer Directed Contracts to the market where directed by the RAs and/or a requirement to ring-fence their generation business.

Endesa Ireland recognises the market power mitigation measures were implemented by the RAs at market start, which have been effective to date. We consider that the Bidding Code of Practice (BCOP) requirements will ensure that AES does not exert market power. In addition, the MMU has been established to monitor compliance with the BCOP, so that any non-compliance can be identified and resolved quickly.

In this regard, the current licence to generate for Ballylumford and Kilroot provides for a prohibition on cross-subsidisation and discrimination (Chapter 2, Condition 3). Notably the prohibition on cross-subsidisation comes into effect where the installed generation capacity of the Licensee and any affiliate or related undertaking exceeds '20 per cent of the aggregate total installed capacity of generators in the Island of Ireland'. The licence therefore envisages that Licensees may have a high level of generation capacity and provides for it. AES capacity falls below this 20% level. A further point to note is that the licence focuses on proportion of generation capacity in the SEM as a whole rather than in Northern Ireland.



The licence to generate also requires the generator to comply with the SEM Trading and Settlement Code (Chapter 2, Condition 14) and Bidding Code of Practice (Chapter 2, Condition 17). In these circumstances it is submitted that the licence conditions are currently 'fit for purpose' and do not require modification.

Given that the HHI for AES is below the threshold for high concentration, Endesa Ireland does not consider that it is necessary to change AES' licence to include a provision requiring AES to offer Directed Contracts.

In addition, under the current market structure, a ring-fencing licence requirement does not seem appropriate. The Regulators are working with ESB to de-regulate the business and are looking at measures to re-integrate the ring-fenced generation business with the supply business. To include such a requirement on AES at this time, particularly when it does not have a retail arm, does not seem to be proportionate.

Endesa Ireland would like to see the establishment of formal investigative procedures for the MMU and requests that the RAs publish a consultation paper on such procedures as a matter of priority.

In addition, we consider that the MMU should review all COD prior to the commissioning of new generators and there should be a wholesale review of all incumbent generator commercial offer data (as such a review did not take place at market start). This would ensure that all generators are in compliance with the BCOP and would allow the MMU to set a validated baseline against which to monitor changes in generator COD.

Please don't hesitate to contact me should you wish to discuss any aspects of this response.

Regards,

A handwritten signature in blue ink that reads 'Deirdre Powers'.

Deirdre Powers
Director, Energy Management