Fuel Mix Disclosure in the SEM: calculation methodology consultation paper

SEM – 11 – 058

Power NI's Response

26 August 2011

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Power NI welcomes the opportunity to comment on the calculation methodology for fuel mix disclosure. However, Power NI is concerned that the proposals contained in the paper create a false sense of reality and transparency for customers regarding the origin of the electricity that they consume.

Power NI would refer NIAUR to its submission on the previous consultation regarding the draft licence condition on fuel mix disclosure submitted in December 2008 (attached with this response).

The specific issue concerns the creation of a process of allocation of generation when there is a mandatory pool for generation over 10MW on the island of Ireland. We maintain the view that (except for electricity sold on a bilateral basis) within the pool system, electricity cannot be fairly or meaningfully allocated to any particular supplier.

The proposal to attribute generation also creates a situation where vertically integrated organisations declare their generated production to affiliated suppliers at the behest of group companies. This leaves non-vertically integrated suppliers exposed to residual pool volumes. Given the administrative burden there is no incentive for independent generators to declare in favour of a supplier and therefore this proposal discriminates against non-vertically integrated suppliers - contrary to the objectives of the Trading and Settlement Code.

Section 2.3 of the current consultation acknowledges this situation (ie no direct link) but goes on to say that the system being proposed would allow meaningful comparison between suppliers. We cannot understand the basis of this statement.

With regard to renewable energy, the system of GOs again does little to encourage transparency. For example, the same unit of electricity can have a LEC associated with it and therefore presented on a customer's bill to allow avoidance of the climate change levy. The ROC associated with the same unit of generation can be presented against a supplier's Renewable Obligation (not necessarily the same supplier) and now the GO may be used for another supplier's fuel mix disclosure, and not even necessarily in the same country. ie three separate claims of the same unit of generation's renewable energy source but actually accounted for potentially by three separate suppliers.

The arrangements proposed, in Power NI's view, do little to provide transparency, and add additional costs to a customer's end bill, without adding any value.

For example, Power NI is aware that a number of customers have switched from its Eco Energy tariff (which displays a 100% renewable FMD table) to another supplier on the assumption that they are continuing to receive 100% green electricity when this is not the case.

The RAs should also be mindful that renewable generation is connected at both transmission and distribution level. The treatment of loss adjustment factors proposed does not provide sufficient clarity regarding this issue. It should be noted that SEMO (the Calculating Body) receives demand at trading point (i.e. already loss adjusted) this is not the same as meter point demand and furthermore prior to global aggregation in Northern Ireland there is no accurate means for determining total meter point demand.

Finally, with regard to the introduction of any new arrangements, Power NI would advocate that they should be introduced in advance of a disclosure period, not when we are already 2/3rd of the way through the period and no provision or discussion regarding GOs or declarations has taken place.

Appendix 1 – December 2008 response to Fuel Mix Disclosure Consultation

NIE ENERGY (SUPPLY)

RESPONSE TO DRAFT LICENCE CONDITION ON FUEL MIX DISCLOSURE

18 December 2008

1. Introduction

NIEES welcomes the opportunity to comment on the proposed way of implementing Article 3(6) of Directive 2003/54/EC (the "**Directive**"), as outlined in the Proposed Decision Paper of 22 February 2008 (SEM-08-006) (the "**Proposed Decision Paper**") and reflected in the draft licence condition provided (together, the "**Proposals**"). We would however express concern that the Proposals are incomplete, would result in misleading information being provided to consumers, have wider implications for the electricity market and do not appear to be consistent with the requirements of the Directive.

2. Policy Issues

2.1 What will be disclosed under the proposals?

Where electricity is bought and sold through a pool system, such as the Single Electricity Market (the "**SEM**"), suppliers do not contract with particular generators for the purchase of electricity but purchase their electricity from all generators that are selling into the pool, meaning that there is no bilateral contractual link between a generator and a supplier. In such a system, electricity generated from one particular source cannot be allocated to a particular supplier.

On the island of Ireland, participation in the SEM pool is mandatory for licensed generators and suppliers, save for generators which have a maximum export capacity of less than 10 MW for whom participation is voluntary. As a consequence, most electricity generated on the island of Ireland has to be sold into, and purchased from, the SEM pool. The Trading and Settlement Code (the "**TSC**") governs these sales and purchases and is a multilateral contract between, among others, participating generators and suppliers. It provides for all generators to receive, and all suppliers to pay, the same price for electricity and it does not provide any means for allocating electricity generated from a specific fuel source to any particular supplier.

As mentioned above, generators with a maximum export capacity of less than 10 MW can sell electricity to suppliers outside the SEM pool on a bilateral basis. This allows electricity generated from a specific fuel source to be allocated to the supplier who has purchased it.

Generators and suppliers also enter into bilateral financial contracts, commonly known as contracts for differences, which provide for payments to be made from one party to the other depending on whether the agreed strike price is below or above the SEM pool price. These contracts are financial contracts which allow the risk of fluctuating pool prices to be mitigated. They do not relate to electricity and so do not provide a way of allocating a specific generator's electricity to a specific supplier.

Given the market arrangements that were introduced to the island of Ireland last year, we do not believe that, with the exception of electricity sold outside the pool on a bilateral basis, electricity can fairly or meaningfully be allocated to any particular supplier. The Proposals as set out by the Regulatory Authorities would seem to be set up to create a fiction of bilateral arrangements being in place and this is misleading and not sustained by the actual arrangements. We cannot see how this process could be in the interests of ensuring that customers get an accurate view of fuel mix, which is the purpose of the Directive requirements.

2.2 Customer Confusion

It is very important to ensure that consumers understand and have confidence in the information provided to them, particularly in relation to "green" claims. The Proposals are therefore likely to mislead consumers. The fuel mix disclosed will not reflect the fuel mix purchased by suppliers. This will, we believe, undermine consumer confidence in green claims and bring the new arrangements into disrepute.

The purpose of the fuel mix disclosure provisions of the Directive is two-fold – (1) to inform consumers and allow them to make decisions based on preferred fuel mix and (2) to give to suppliers an incentive to contract for certain types of fuel generation. In order to achieve the first objective, it is essential that consumers are given accurate information and the Proposals do not achieve this. It needs to be accepted that there is limited scope for achieving the second objective in the current market structure. This is because suppliers are only able to contract for electricity generated from specific fuel types when they purchase electricity outside the SEM pool. Given this, the Regulatory Authorities need to focus on ensuring that they implement the fuel mix disclosure provisions in a way that will result in signals being sent to suppliers to contract for specific types of fuel generation where they can be. By favouring arbitrary representations of fuel mix unconnected with actual procurement of power by the supplier, the Proposals undermine the limited ability to send signals to suppliers that does currently exist.

2.3 Implementation the Directive

Misunderstanding of Directive's objective

In the Proposed Decision Paper, the Regulatory Authorities consider that the proposal to disclose fuel mix on the basis of an average pool fuel mix conflicts with the objectives of the Directive. In this context, they note that the objectives of the disclosure requirement set out by the EU Commission include enabling consumers to make informed choices regarding suppliers based on the generation characteristics of the electricity they supply.

In our view, the Proposals fail to achieve the objective of consumers being able to make informed choices. We do not see how consumers can make informed choices regarding suppliers based on the generation characteristics of the electricity supplied when the fuel mix to be disclosed to consumers bears no relation to the electricity supplied. Further, as set out in paragraph 2.2 above, we believe that the Proposals will actually undermine the ability of consumers to send signals to suppliers. Therefore the grounds on which the Regulatory Authorities rejected the proposal to disclose fuel

mix on the basis of an average pool fuel mix are directly contrary to the objectives of the Directive.

Failure to take into account the ability to use aggregate figures

The Regulatory Authorities consider that the proposal to disclose fuel mix on an aggregate basis conflicts with the objectives of the Directive; however, the Regulatory Authorities do not appear to have taken into account that this is expressly permitted by Article 3(6) of the Directive, which states that:

> "With respect to electricity obtained via an electricity exchange or imported from an undertaking situated outside the Community, aggregate figures provided by the exchange or the undertaking in question over the preceding year may be used".

We understand that suppliers in GB disclose the fuel mix of electricity purchased from the NGC's balancing mechanism on an aggregate basis.

Failure to take into account need for information to be reliable

We would also draw the Regulatory Authorities' attention to the obligation of Member States under Article 3(6) of the Directive to "take the necessary steps to ensure that the information provided by suppliers to their customers pursuant to this Article is reliable". The information to be disclosed under the new proposals will be inherently unreliable and misleading to consumers and therefore inconsistent with the Directive.

2.4 Policy implications of Proposals

The basis on which Generator Declarations will be allocated to suppliers needs to be explained and explored. This clearly relates to the fundamental question of what will actually be disclosed by the new licence condition. It also has some profound implications for the electricity market that appear not to have been analysed to date, some of which are set out below.

Creation of new market in Generator Declarations

The Proposals seem likely to introduce a new market in Generator Declarations. In GB, we understand that Generator Declarations are provided by the relevant generators to the purchasers of their electricity. As generators do not sell their electricity directly to electricity suppliers in the Single Electricity Market, it seems likely that a new market will inadvertently be created for these products unless generators are compelled to produce declarations and assign them to suppliers on a specified basis. A new market may result in additional costs to suppliers. The implications of such a new market need to be considered thoroughly rather than being brought in inadvertently.

Move back to a bilateral market

The requirement to put in place arrangements between generators and suppliers seems to represent a move back towards a bilateral market. One of the benefits of a pool system is that it helps ensure market liquidity, enabling small suppliers to secure access to electricity on an equal basis. The need to put in place contractual arrangements with generators to secure

Generator Declarations would make it more difficult for smaller suppliers to compete.

Conflict with "unbundling"

The proposals are likely to favour vertically integrated electricity suppliers, as they will have easier access to Generator Declarations. This contradicts the European policy objective of "unbundling" generation from supply.

Discriminatory impact on NIEES

As NIEES is prohibited from owning any generation, it will not have equal access to Generator Declarations as compared to vertically integrated suppliers. There is no process in place to secure Generator Declarations for non-vertically integrated businesses. Would NIEES be permitted to approach NIE PPB to secure (at no cost) a Generator Declaration for Ballylumford?

An arbitrary and unjustifiable decision appears to be proposed whereby NIEES would be allocated the residual pool mix which would leave it with the worst fuel mix on the island. This is discriminatory, particularly given that NIEES will have no opportunity to influence its poor fuel mix. The result will be an adverse impact for NIEES, but without any policy upside as NIEES will not be able to influence its fuel mix. This negates a key objective of the fuel mix disclosure requirement, which is to impact suppliers' behaviour by sending the right signals and providing a framework within which suppliers can actively respond to those signals.

3. Other issues

3.1 Amendment of 2003 Regulations

The Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) Regulations (Northern Ireland) 2003 (which provide the framework for the issue of REGOs) contain references to Northern Ireland Electricity plc as being the party to the Northern Ireland NFFO contracts. As the NFFO contracts were transferred to NIEES in 2007 when the Single Electricity Market was introduced, this reference will need to be amended.

3.2 Promotional Materials

The proposed definition in the licence does not help to clarify what constitutes promotional materials. Although there is no definition of "promotional materials" in the Directive and we understand the obligation to ensure that the obligation in the Directive is fully implemented, we note that the Note of DG Energy & Transport on Directives 2003/54 and 2003/55 provides that "promotional materials are materials handed out or sent directly to consumers, but do not include newspaper, magazine, bill-board and television advertisements". We suggest that this guidance is reflected in the licence definition. Note that in the SLC 21 in GB, "Promotional Materials" is defined to mean, "documents, other than newspapers

and magazines, that are handed out or sent directly to consumers and are intended to promote the sale of electricity".

3.3 Compliance Period and Compliance Date

The proposed disclosure period follows the calendar year. We would prefer the disclosure period to follow either the tariff year (1 October) or the Renewable Obligation year (1 April). Introducing a third year would result in contractual complexities and an increased administrative burden.

A related point is that paragraph 6a of the draft licence condition proposes that REGOs would need to be held on 1 January. We would expect REGOs to be issued in a similar way as ROCs, which have a time-lag of approximately 2.5 months.

3.4 Obligation to provide evidence of accuracy

NIEES notes the proposed obligation (in paragraphs 10 and 12 of the draft licence condition) to provide evidence relating to the accuracy of the licensee's disclosed fuel mix. Given the uncertainty as to what is to be disclosed (and on what basis), this will be impossible to comply with.

3.5 Further comments

When there is further policy clarity, NIEES will be able to provide further comments on the draft licence condition. For example, it is clear that the condition needs to clarify how a generator is to determine "the amount of electricity assigned to the Licensee" when completing a generator declaration. However, as the policy in relation to this and other key areas has not yet been developed, it is not possible to make detailed comments on the draft licence condition at this stage.