



9th May, 2011

Kevin O'Neill
Electricity Directorate
Queen's House
14 Queen Street
Belfast
BT1 6ED

Dear Kevin,

Re: Acquisition of NIE plc, NIE Powerteam and allied businesses by ESBNI Ltd

Airtricity welcomes the opportunity to comment on the regulatory approach proposed by the SEM Committee to address concerns arising from the acquisition by ESB and ESBNI Limited of Northern Ireland Electricity plc (NIE), in particular, as well as those of NIE Powerteam Limited and Powerteam Electrical Services (UK) Limited and Capital Pension Management Limited.

As the consultation notes, the purchase by ESB of NIE expands further ESB's already extensive role in the energy market on the island of Ireland. Already dominant in both generation and supply in the SEM, as well as being the monopoly owner of the Republic's transmission system, distribution system and the monopoly operator of the Republic's distribution system, the purchase of NIE extends this reach to encompass monopoly ownership of Northern Ireland's transmission system. While the respective competition authorities in both jurisdictions have sanctioned the transaction and signalled no significant negative impact on the Island's competitive landscape, assurances have been exchanged between ESB, the relevant departments and Ministers, nevertheless expansion in the activities of ESB as a result of this purchase of NIE will have significant impact on the SEM. In these circumstances Airtricity **welcomes the SEM Committee's recognition of this material impact and proposed regulatory approach in mitigation.** We support this review of Licences by the SEM Committee that has led to the changes proposed to the Licences, related documents and relevant information required under Licence conditions.

The SEM Committee has noted that it has vires to consider only Licence Changes. The Committee has also noted its role not to over-regulate, but to balance concerns arising as a result of the Purchase against the advantages which the Purchase makes possible. Furthermore the Committee outlines the Commercial Measures to which ESB committed, as setting a necessary context against which the proposed Licence Changes have been determined. Finally we note the statement that "there is already a significant degree of protection of the sort that would otherwise have been sought to ensure the Licences remained fit for purpose", a view accepted by the competition authorities in both jurisdictions in their clearance for the transaction. Our comments on the Licence Change proposals for the NIE Licence therefore reflect this background.

We note that no new conditions have been created or have been proposed to be imposed on NIE. Rather the Proposed Changes are mainly extensions to existing licence requirements that emphasise existing obligations, with the aim to provide greater detail and clarity as to the intent of these existing requirements, and the inclusion of provisions implementing agreements already reached in the process, such as the Commercial Measures. We consider these proposed Changes to be prudent and balanced, and unlikely to increase the regulatory burden on either NIE or ESB.

In view of the robust nature of the existing Licence and the additional requirements that are proposed, Airtricity believes that **the most important issue to be addressed is that of compliance**. With appropriate compliance monitoring and enforcement, we believe the proposed Licence changes are reasonable and prudent within the current market framework.

However we note the SEM Committee's recognition that “issues that materially impact the SEM and the relevant functions of the regulatory authorities can alter over time as will the impact of issues such as the implementation of the Internal Market in Electricity Third Directive”. This is **crucial in our view as significant aspects of the EU Third Energy Package have strong bearings on the new ownership structure of transmission and generation assets in Northern Ireland resulting from the purchase of NIE by ESB**. In this regard we welcome the SEM Committee's intention to “continue to keep under review the arrangements for NIE and ESB” and to continue to review the appropriateness of both Licences “in response to changing circumstances”.

Yours sincerely,

{ sent by e-mail }
Emeka Chukwureh
Regulation