



Response to SEM-10-085

***The Market Monitoring Unit Governance Process Manual
Consultation***

on behalf of

AES Kilroot Power Ltd and AES Ballylumford Ltd

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Submitted by

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Introduction

AES Kilroot Power Limited and AES Ballylumford Limited (collectively “AES”) welcome the opportunity to comment on The Market Monitoring Unit Governance Process Manual Consultation Paper (“the Consultation Paper”).

Summary

AES considers the proposals to publish an Investigation Process Manual and a Traffic Light Report as an extremely positive step in improving the transparency both around the operation of the Market Monitoring Unit (“MMU”) and the issues being reviewed or investigated in the market. For some time AES been concerned about the lack of information surrounding the work of the MMU as currently the only information available appears to be the brief references in SEM Committee minutes. It is therefore difficult for market participants to gain confidence that the MMU is robustly carrying out its duties.

AES therefore supports the full disclosure of the generating units under review in the Traffic Light Report provided the report clearly indicates those cases that have been closed with no further action required. AES does however believe that the MMU should retain the right to preserve confidentiality if there are justifiable grounds for doing so. In such circumstances the MMU should endeavour to include a brief justification as to why confidentiality is required.

Publication of an Investigation Process Manual will also reassure market participants that all investigations are being carried out consistently.

AES therefore welcomes the proposals to publish a Traffic Light Report and an Investigation Process Manual as ultimately confidence in the operation of the MMU will increase confidence of operation in the SEM and reduce investor risk.

Comments

Should the Traffic Light Report be made public?

AES agrees with the SEM Committee that transparency should be a key undertaking within the MMU investigation process. AES therefore believes that the Traffic Light Report should be made public and that the generating units under review should be disclosed. This will increase participants’ confidence in the role that the MMU plays in the market as part of the SEM market power mitigation strategy, and ultimately increase investor confidence. It should also provide comfort to those participants who have been investigated and exonerated.

It is therefore important that the Traffic Light Report provides a clear audit trail of all cases opened and closed along with a brief description of any findings or action taken. In this regard AES would disagree with the proposal to remove cases from the Traffic Light Report. Instead AES believes that all cases should be retained on the report so that there is a complete record of all cases and their outcomes. AES would also suggest that the title of the Enforcement Journal be changed to

Investigation Journal as the word 'Enforcement' has a somewhat negative connotation and does not appear to reflect the nature of the work being carried.

Once a case has been investigated what level of information should be published, to whom and in what arena?

Regarding the level of information to be published AES considers that this should be sufficient to give the reader of the Traffic Light Report a reasonable understanding of the issue and the findings. More information should be provided on an issue that is likely to be of relevance to other participants or likely to provide clarification on the SEM Committee's view of the treatment of, for example, an item within a generator's Commercial Offer Data. The level of information required is likely to be proportional to the complexity or contentious nature of the issue and therefore on occasions may require a separate, formal communication on the matter.

To ensure that the reader of the Traffic Light Report gains a holistic view of the investigation AES believes that the Traffic Light Report should set out conclusions and findings for all cases listed in the report. AES therefore disagrees with the statement on page 19 of the Investigation Process Manual that, regarding the Informal Inquiry Process, "When closing a case and removing it from the Traffic Light Report, the MMU may, with the permission of the OC publish a short statement of its findings." AES believes that a short statement of findings should always be included so that the reader is not left in any doubt as to why the case has disappeared from the report. For the same reason, and as noted earlier, AES believes that all cases should be retained on the Traffic Light Report so that readers have a complete audit trail of all investigations carried out and their findings.

In the introduction to Section 5 'Informal Inquiry' on page 16 it states that "In some circumstances it may be reasonable for the MMU to conduct an informal inquiry in a different way to that set out below. In such cases the MMU will develop an alternative process, communicating that process to the generator." AES fully accepts this principle however in addition to communicating that process to the generator a brief note should be included in both the communication to the generator and the Traffic Light Report as to why a departure from the normal investigation process is warranted.

AES considers that the publication of the Traffic Light Report on a monthly basis would be a reasonable timescale and that it should be published on the All Island Project website.

Other Comments on the Investigation Process Manual

Repeat Offenders

Page 19 of the Investigation Process Manual states that, when launching a Formal Investigation into a market participant's behaviour as a result of the number of informal inquiries carried out, the Formal Investigation would re-examine any or all of the previous informal inquiries relating to that participant's behaviour. AES believes that if the number of informal inquiries is the source of justification of the Formal Inquiry then all of the previous informal inquiries should be re-examined.

Non-Investigative Work of the MMU

Given the useful analysis that the MMU appears to carry out AES would welcome the timely, regular publication of a report on the general operation of the SEM. As a minimum this should be annual and produced by the end of the first quarter following the year to which it relates.