

**TYNAGH ENERGY**  
**L I M I T E D**

Clive Bowers  
Commission for Energy Regulation  
The Exchange  
Belfast Square North  
Tallaght  
Dublin 24

Kenny Dane  
Utility Regulator  
Queens House  
14 Queen Street  
Belfast  
BT1 6ED

Ref: TEL/EOD/11/032

25-02-2011

**RE: The Market Monitoring Unit (MMU) Governance Process Manual**

Dear Kenny and Clive,

Tynagh Energy Limited (Tynagh) welcomes the opportunity to provide its feedback on the proposed Market Monitoring Unit (MMU) Governance Process Manual that is outlined within the consultation paper SEM/10/085.

In responding to this consultation paper Tynagh is cognisant of the difficult task that is faced by the MMU in monitoring compliance with the Licence Condition on Cost Reflective Bidding in the Single Electricity Market (SEM) and the SEM bidding principles contained in the Bidding Code of Practice (BCOP). The monitoring difficulties arise from the fact that, as decided at the outset of the market, participants in the SEM are bound to act in accordance with a set of bidding principles rather than a prescriptive set of bidding rules.

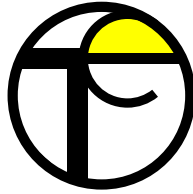
From a market monitoring perspective, bidding principles and prescriptive bidding are in stark contrast with each other. With prescriptive bidding controls, a generator is essentially told how it must bid and the process of detecting any subsequent divergences from the prescribed controls is a relatively straightforward one. On the other hand, bidding principles, such as those outlined within the SEM BCOP, allow generators considerable latitude in deciding how best to determine their short run marginal costs (SRMC) and generators are encouraged to innovate through bidding strategy.

The application of bidding principles will therefore always be a process that lacks transparency because, by definition, a clear and universal definition of permissible SRMC applied at the generator level does not exist. With this backdrop in mind, Tynagh is conscious that in introducing an Investigation Process Manual for the MMU the Regulatory Authorities should not inadvertently stray towards implementing a highly inflexible rules-based process as to do so would undermine the ethos of the BCOP.

---

**The Crescent Building, Northwood Park, Santry  
Dublin 9  
IRELAND**  
**TEL:** +353 (0) 1 857 8700  
**FAX:** +353 (0) 1 857 8701

**DIRECTORS**  
Mr Bran Keogh (IRE), Mr Martin Parkes (UK)  
Mr Robert Hadden (USA), Mr Ramzi Nassar (USA)  
Mr Orkun Eyilik (TR)  
**REGISTERED NUMBER:** 378735



Notwithstanding our concerns surrounding the possible imposition of an overly rigid bidding framework, Tynagh is supportive of the proposals outlined within SEM/10/085. In our opinion a more transparent set of processes to be followed by the MMU with respect to formal and informal investigations of non compliance with the BCOP are indeed required.

At present very little guidance is provided to generators detailing under what circumstances they may be investigated by the MMU, how any investigation will be conducted and what are the likely outcomes of an investigation process. In the SEM, the majority of the regulatory burden associated with bidding compliance is borne by the generator who must be capable of justifying a bidding strategy if questioned by the MMU. It follows therefore that explicit guidance surrounding the circumstances in which a generators bids might be questioned by the MMU, and the processes that follow thereafter, is of vital importance.

Tynagh understands that an investigation of bidding activities may be instigated by the MMU itself or following the receipt of a valid complaint from another market participant. In the latter case, the process through which the MMU determines the validity of a complaint should be a core component of the MMU process manual. In a competitive market, such as that which exists in the SEM, innovation by a market participant may well result in a complaint being made by a disgruntled competitor alleging that the innovative conduct is in fact non-compliant with the BCOP. A generator has no control over such complaints being made against it and it is incumbent upon the office of the MMU, playing the role of gatekeeper, to stop such complaints at source.

As a market participant with a single generation asset, Tynagh is concerned at the prospect of the drain on its resources that would occur if spurious or unsubstantiated complaints are entertained by the MMU. The current criteria for determining the validity of a formal complaint are outlined in Annex A of consultation paper SEM-07-511<sup>1</sup>. These criteria are not detailed enough and should be expanded with the aim of reducing the amount of MMU discretion involved in determining complaint compliance.

One notable absence within the proposed Investigation Process Manual is information regarding investigation timelines. Although Tynagh accepts that it is in the interest of the MMU to minimise potential market distortions by concluding investigations in a timely manner, a commitment should be made to complete investigations within specified time periods. A high level target of concluding Low Concern (Level 0) investigations within 1 week, Medium/High Concern (Level 1 & Level 2) investigations within 1 month and Formal investigations (Level 3) within 2 months could be regarded as achievable initial timeframe targets.

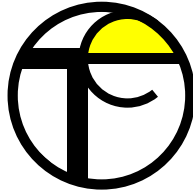
As long as further efforts are made to bolster the criteria against which an entity making a complaint must comply and target investigation timeframe commitments are given, Tynagh has no objections to the proposed Traffic Light Report or the proposed publication of this report on the AIP website on a monthly basis.

The proposed adoption of a more formalised approach to market monitoring will ultimately increase the workload of the office of the MMU. In light of this Tynagh would seek reassurance that the MMU is adequately resourced to carry out its duties, particularly given that the MMU must also fulfil the additional responsibilities associated with the annual PLEXOS validation project and Capacity Payments Mechanism processes.

Tynagh suggests that a useful way of tracking the ability of the MMU to keep pace with its monitoring duties would be a requirement to publish, as part of the Traffic Light Report,

---

<sup>1</sup> Market Monitoring in the SEM: Scope of the MMU and interaction with Market Participants and other Interested Parties.



whether an investigation was instigated by the MMU or by a market participant. If it outturns that the majority of complaints are not being instigated by the MMU, it may act as a signal to the market that additional MMU resources are required.

Finally, the only approach to market monitoring that is consistent with the flexibility and latitude that is inherent within the BCOP is to create an environment within which generators can actively and innovatively interpret the BCOP without transgressing a restrictive interpretation of the document that is applied retrospectively by the MMU. We would therefore suggest that, as part of this consultation process, the MMU also establish a formal process whereby a generator wishing to apply a certain interpretation of the BCOP can table its plans to the MMU, and then secure sign off prior to implementation, to avoid needless investigation processes being subsequently entered in to.

Tynagh is, as ever, willing to discuss any aspect of this response in further detail.

Yours sincerely

A handwritten signature in black ink, appearing to read 'E. O'Donoghue', with a long horizontal flourish extending to the right.

---

**Eamonn O'Donoghue**  
**Risk & Regulatory Manager**