

## **Single Electricity Market Committee**

# **Decision Paper on Treatment of Gas Transportation Capacity Costs and Modification to the Bidding Code of Practice**

**13 March 2014**

**SEM-14-018**

## 1. CONTENTS

2. PURPOSE OF THIS DOCUMENT .....	3
3. SUMMARY .....	4
4. BACKGROUND .....	5
5. CONSIDERATION OF CONSULTATION RESPONSES (INCLUDING CER/13/191).....	8
6. REASONS AND DECISION.....	15
7. GUIDANCE ON 'UNREASONABLE EXPOSURE' TO CERTAIN CHARGES .....	16
ANNEX 1: SUMMARY OF CONSULTATION RESPONSES .....	17
ANNEX 2: EXTRACT OBJECTIVE AND FUNCTIONS.....	24
ANNEX 3A: MODIFICATION DIRECTION (NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION) .....	30
APPENDIX: MODIFIED BIDDING CODE OF PRACTICE .....	31
ANNEX 3B: MODIFICATION DIRECTION (COMMISSION FOR ENERGY REGULATION)..	36
APPENDIX: MODIFIED BIDDING CODE OF PRACTICE .....	37

## 2. PURPOSE OF THIS DOCUMENT

- 2.1 This document concludes the series of consultations and determinations that the Single Electricity Market Committee (“**SEM Committee**”) has issued to date in relation to gas transportation capacity (“**GTC**”) and in relation to the bidding in of certain charges. It summarises responses to SEM-13-039 and SEM-13-051, including to the proposed modifications to the Bidding Code of Practice (“**BCOP**”). It explains the reasons why the SEM Committee has decided to direct modifications to the BCOP and publishes the modification direction.

### 3. SUMMARY

- 3.1 The SEM Committee has decided to exercise the power under paragraph 5 of the cost-reflective bidding generation licence condition (“**Condition 15/17**”)<sup>1</sup> to modify the BCOP so as to:
- 3.1.1 provide a specific valuation principle for GTC;
  - 3.1.2 specify a principle of good market behaviour which provides that generators must make ‘reasonable’ assessments when including GTC costs in their bids; and
  - 3.1.3 specify a principle of good market behaviour which would require generators to bid on the basis of an expectation that they will act so as to avoid unreasonable exposure to certain charges.
- 3.2 Those modifications will apply from 06:00 on 20 March 2014. The good cause determination set out in SEM-13-039 will also cease to apply from that point. Subject to the change set out in paragraph 5.19 below, the guidance provided in SEM-13-039 and SEM-13-051 will continue to apply.
- 3.3 The SEM Committee will continue to monitor generators’ Commercial Offer Data (“**COD**”) and will consider the merit of taking further action, including investigating compliance with generators’ licence obligations and/or making licence modifications.

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<sup>1</sup> A list of the affected licence conditions is shown in the direction in Annex 3.

## 4. BACKGROUND

- 4.1 In addition to the gas which they use, gas fired electricity generators require sufficient capacity on the gas network to transport that gas to their generating stations. Section 3 of SEM-13-039 describes that system in more detail. The Commission for Energy Regulation (“**CER**”) have made certain changes to that system, which are described in section 5 below.
- 4.2 When it decided on the terms of the BCOP in 2007, the Regulatory Authorities (“**RAs**”) were of the view that the availability of GTC products meant that the cost of GTC could not form part of generators’ bids. However, the RAs noted that that availability may change and so this view may need to be updated in the future.
- 4.3 Following various calls from industry to re-assess this view, the SEM Committee has engaged in a number of consultations, published guidance, issued a good cause determination suspending the current terms of the BCOP and proposed a modification to the BCOP. The various analysis and reasoning to date is contained in:
- 4.3.1 SEM-12-089 “GTC Costs – Consultation Paper” (September 2012);
  - 4.3.2 SEM-13-039 “Provisional Guidance and Good Cause Determination” (June 2013); and
  - 4.3.3 SEM-13-051 “BCOP Modification Consultation” (July 2013).
- 4.4 In summary, the SEM Committee’s view is that the cost of GTC is a cost for the purposes of paragraphs 1 to 3 of Condition 15/17. It also considers that paragraph 1 of that condition operates such that, in formulating and submitting a bid, a generator is required to form an expectation as to the costs which would be attributable to its plant were it called on to generate or not. Whilst recognising that there are various different circumstances in which GTC costs would be so attributable, the SEM Committee has found it useful to consider three particular categories of case:
- 4.4.1 **Category A** (GTC in respect of a relevant trading day not held at the point a generator submits its bid but would be acquired within day if needed). ROI generators could fall into this category, in which case their GTC costs would form part of their short run marginal cost (“**SRMC**”).

- 4.4.2 **Category B** (GTC in respect of a relevant trading day held at the point a generator submits its bid but would be sold within day if not needed). ROI generators could fall into this category, in which case their GTC costs would form part of their SRMC.
- 4.4.3 **Category C** (GTC in respect of a relevant trading day held at the point a generator submits its bid but would not be sold within day if not needed). Both ROI and NI generators could fall into this category, in which case their GTC costs would not form part of their SRMC.
- 4.5 This view recognises that the wholesale cost of electricity may contain an element attributable to GTC.
- 4.6 The SEM Committee has also considered the application of the BCOP valuation principles to GTC. It found good cause to disapply the principles contained in paragraph 8 of the BCOP. It has considered various alternative valuation principles and has set out its reasons for adopting a principle based on the amount a generator would pay for, or realise from, its GTC. It has also set out why it proposes to modify the BCOP so as to, amongst other things, include that principle. In particular the SEM Committee has explained why it considers modifying the BCOP to be in customers' interests and aids transparent pricing.
- 4.7 Finally, the SEM Committee has considered the role of principles of good market behaviour. In particular it has noted that they may be used to guide generators on how to form expectations for the purposes of paragraph 1 of Condition 15/17 (e.g. to make 'reasonable' assessments). The SEM Committee has also given some consideration to the potential inclusion of certain charges, including overrun or unauthorised flow charges, in generator's bids.
- 4.8 On 21 August 2013, the CER published its decision in relation to Access Tariffs and Financing of the Gas Transmission System ("**CER/13/191**"). Certain parts of that decision, in particular its removal of secondary exit GTC, have already been implemented. The SEM Committee notes that the CER has decided to not implement another part of that decision, the removal of primary as well as secondary within-day exit GTC. All of CER/13/191 and its associated directions have been challenged by way of judicial review and so it may ultimately be overturned. Section 5 contains

further information on that decision including the SEM Committee's view of its relationship with this decision.

- 4.9 Consultation on SEM-13-039 and SEM-13-051 closed on 26 September 2013. Five responses have been received, all non-confidential versions of which are being published along with this decision. Many of these responses set out arguments against the SEM Committee's analysis and proposed modification of the BCOP.
- 4.10 The SEM Committee's response to those comments is set out in the following section.

## 5. CONSIDERATION OF CONSULTATION RESPONSES (INCLUDING CER/13/191)

5.1 A detailed summary of the various responses received to SEM-13-039 and SEM-13-051 is included in Annex 1 and copies of the non-confidential versions of those responses are being published along with this decision. Some key themes emerging from those responses and the SEM Committee's response to them are:

### Impact of CER/13/191

5.2 Many responses suggested that the SEM Committee's approach and rationale for action was undermined by CER/13/191. Given that the CER are no longer implementing part of that decision, its effect will be to remove ROI generators' ability to buy or sell exit GTC on the secondary market.

5.3 However it would leave ROI generators' ability to:

5.3.1 buy or sell entry GTC on the secondary market;

5.3.2 buy primary entry and exit capacity within day; and

5.3.3 buy primary entry and exit capacity for any particular day, up to a day in advance.

5.4 In relation to GTC in the SEM, the CER decision is therefore expected to:

5.4.1 Have no effect on Category A and C cases; and

5.4.2 Restrict Category B cases to entry capacity only.

5.5 SEM-13-039 sets out the 'good causes' the SEM Committee found for dis-applying the current BCOP principles to GTC. Amongst others these included:

5.5.1 Doubt about whether either primary or secondary capacity arrangements can properly be described as a 'recognised and generally accessible trading market';

5.5.2 The lack of substitutability, for replacement purposes, between primary and secondary capacity and the complexity and uncertainty which that creates; and

5.5.3 The problems associated with applying the replacement cost principle in paragraph 8(ii) of the BCOP to GTC (which are repeated in paragraph 5.13 below).



- 5.6 As the CER decision has removed secondary exit GTC, the first and second of those three reasons now can only apply to entry capacity. The third reason is largely unaffected by the CER's decision.
- 5.7 Sections 3 and 4 of SEM-13-051 set out further reasons why the SEM Committee proposed the BCOP modifications. The SEM Committee does not consider any of those reasons to be substantially affected by the CER decision.

***Relevance of generator trading strategy position and consistency with Viridian Power Limited & Anor v. The Commission for Energy Regulation & Anor<sup>2</sup>***

- 5.8 A number of responses argued that Condition 15/17 does not permit an approach based on a generators' individual trading strategy. They further suggested that the SEM Committee's analysis and proposed BCOP modification would be inconsistent with the Carbon Levy Judgement because it would fail to respect the primacy of Condition 15/17 over the BCOP. In particular respondents commented that:

5.8.1 *'To satisfy the cost-reflectivity principle of [Condition 15], 'all costs' attributable to generation must be identified and these form the basis of a generators' SRMC; it is not possible to generate without incurring some GTC costs and GTC costs are not required to be incurred when not generating, therefore, irrespective of trading strategies or contractual positions, Condition 15 obliges the inclusion of GTC costs in all SEM gas fired generators' COD.'*<sup>3</sup>

5.8.2 *'The costs a plant would 'in fact' incur is immaterial to the construction and proper interpretation of the Licence and BCOP provisions. Generators are required [by Condition 15/17] to identify all cost items associated with the ownership, operation and maintenance of a plant that are unique to that plant generating.'*<sup>4</sup>

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<sup>2</sup> [2012] IESC 13, majority decision delivered by Hardiman J. (the 'Carbon Levy Judgement').

<sup>3</sup> Energia document 60, p5 para 1 – see further fuel cost analogy in para 2.

<sup>4</sup> Energia document 60, p4 para 1

- 5.9 The SEM Committee does not agree that its proposed approach is inconsistent with the Carbon Levy Judgment. On the contrary, the SEM Committee notes that that judgement confirmed that the terms of the licence must be applied as they are written and that 'cost' means, quite literally, '*that which must be given or surrendered in order to acquire, produce, accomplish or maintain something, the price paid for the thing.*' The SEM Committee's analysis of the terms of Condition 15/17, informed by that judgement, is set out in paragraphs 4.4 to 4.16 of SEM-13-039.
- 5.10 In particular that analysis shows that Condition 15/17 requires the 'total costs...which would be attributable to the ownership, operation and maintenance of that generation [unit/set]' (emphasis added) if it were generating on any particular day to be part of that day's short run marginal cost. This requirement, in the view of the SEM Committee, plainly involves a factual assessment as to the ownership, operation and maintenance of the particular plant (whether those facts are 'unique' or not) and that such an assessment should properly extend to the generator's trading strategy.
- 5.11 Further, the SEM Committee is of the view that applying any term of the BCOP in a way which would enable a generator's bid to include anything other than costs which 'would be attributable' to that plant would be inconsistent with the Carbon Levy Judgement. Such costs would be valued at their opportunity cost as defined in the BCOP, but it could therefore be inconsistent with the Carbon Levy Judgement to, for example, utilise secondary capacity but include the cost of primary capacity.

#### **Application of BCOP paragraph 8(ii) ('replacement cost principle') to GTC**

- 5.12 A number of responses argued that the existing paragraph 8(ii) of the BCOP should apply to value GTC at the regulated price of primary daily capacity. These responses variously argued that applying that value would be both simple and in line with the general definition of opportunity cost set out in paragraph 7 of the BCOP (the 'benefit foregone...by reference to alternative use...').
- 5.13 The reasons the SEM Committee gave for disapplying paragraph 8(ii) to GTC are set out in paragraphs 4.21 to 4.30 of SEM-13-39. In summary those were:
- 5.13.1 the infeasibility of identifying one replacement cost for all circumstances;

- 5.13.2 the fact that the regulated price of primary daily capacity does not properly capture the opportunity cost of the GTC as defined in paragraph 7 of the BCOP;
- 5.13.3 the fact generators may use blends of primary and secondary capacity means that using the regulated price of primary daily capacity as a replacement value would:
- (i) cause generators' bids to not accurately reflect their SRMC;
  - (ii) make monitoring compliance more difficult; and
  - (iii) increase the scope and incentives for generators to formulate misleading bids;
- 5.13.4 the view that replacement cost does not adequately recognise that GTC loses value as the trading day progresses; and
- 5.13.5 the view that, in the absence of a Recognised and Generally Accessible Trading Market, the identification of any replacement cost risks being highly subjective and, thus, prone to manipulation or misstatement.
- 5.14 The SEM Committee does not consider any of the responses received to alter those reasons.

### **Reliance on expectations**

- 5.15 A number of responses suggested the SEM Committee could not seek to apply Condition 15/17 or the BCOP in a way which allowed any role for expectations or subjective assessments.
- 5.16 In relation to application of Condition 15/17, the SEM Committee does not consider any of the responses to have presented any information or analysis that would change its view that an expectation as to the costs which would or would not be attributable to a plant on a particular day is the only basis on which bids can be formed.
- 5.17 In relation to the terms of the BCOP, the SEM Committee is also still of the view that, whilst it is easier to monitor generator bids where the BCOP defines opportunity cost by reference to particular, objectively set, prices, such an approach is not required and is not possible in relation to GTC.

5.18 Finally, a number of responses also suggested that there was no practical difference between:

5.18.1 The guidance in SEM-13-039 that the value of GTC to be included in bids should be the amount which a generator 'would expect' to pay or realised for GTC in Categories A and B respectively; and

5.18.2 Paragraph 12B of the modification proposed in SEM-13-051 which would require the value of GTC to be included in bids to be the amount which a generator 'would' pay or realised for GTC in Categories A and B respectively.

5.19 The SEM Committee accepts that there may be little practical difference between these approaches but considers that the drafting approach proposed in SEM-13-051 is closer to the language used in Condition 15/17 and should be used.

#### **Necessity of the 'reasonableness' principle**

5.20 No specific objections were received to the proposed new paragraph 12C and some responses suggested that Condition 15/17 already requires generators' bids to be 'reasonable'. Nonetheless, the SEM Committee remains of the view that it is appropriate to make this principle more transparent in relation to GTC and include it explicitly on the face of the BCOP.

#### **Suitability of the 'unreasonable exposure' principle**

5.21 The SEM Committee received various responses to the proposed new paragraph 12D of the BCOP. These included some suggestions that, so far as any contract (including regulated contracts) imposed a 'penalty' such provision would be unenforceable. Whether or not such provisions are unenforceable is not a matter which the SEM Committee can decide upon.

5.22 Other comments fell into two broad categories:

5.22.1 That any principle of good market behaviour in the BCOP should be directed only to ensuring cost-reflectivity and should not, of itself, be used to influence a generator's trading strategy; and

- 5.22.2 In some circumstances a generator cannot avoid incurring overrun or unauthorised flow charges, in which cases those charges should be recoverable through its bids.
- 5.23 In relation to the second category, the proposed principle only requires that bids reflect an expectation that generators would avoid 'unreasonable exposure' to certain charges. Further guidance on the SEM Committee's likely application of that principle is provided in section 7 below.
- 5.24 In relation to the first category, the SEM Committee notes that paragraph 5(c) of the Condition 15/17 provides that one of the purposes of the BCOP is to *'[set out] such other principles of good market behaviour as, in the opinion of the [Commission/Authority] should be observed by the Licensee and other generators in carrying out the activity to which paragraph 1 refers'*.
- 5.25 In the absence of any further definition of 'good market behaviour', the SEM Committee considers that those words should be given their ordinary and natural meaning and that there is no justification for limiting their scope in the way suggested. The SEM Committee remains of the view that certain charges, such as overrun and unauthorised flow charges, have been designed to incentivise behaviour which is important for the overall efficacy and safe running of either the gas or electricity networks. It therefore considers it to be 'good market behaviour' for generators to refrain from submitting bids which reflect an expectation that they would incur unreasonable exposure to such charges.
- 5.26 Further the SEM Committee notes that responses generally considered reasonable to be inherent in the Condition 15/17 and BCOP obligations. That also supports the inclusion of new paragraph 12D.
- 5.27 Finally, the SEM Committee notes that overrun and unauthorised flow charges relate to the input onto as well as the removal of gas from the network. It has therefore decided to include the phrase 'movement on' rather than 'removal from' in new paragraph 12D.

## **Impact on ability to finance activities**

- 5.28 Finally, some responses suggested that the SEM Committee had failed to consider the impact the proposed modifications would have on generators' ability to finance their activities.
- 5.29 The SEM Committee understands that, in the context of the judicial review of CER/13/191, at least one generator has argued that it would incur significant losses if a) that decision were implemented and b) it were not able to include all overrun / unauthorised flow charges in its bids.
- 5.30 However, the SEM Committee has received no evidence or representations that the proposed modifications would cause any losses on a scale that would compromise any particular generators' ability to finance their activities or indeed compromise the ability of generators' generally to finance their activities. If the SEM Committee receives any evidence in future that such ability is being compromised it will consider it carefully.
- 5.31 Further, the SEM Committee notes that until recently, generators were not including any amounts in respect of GTC and are not currently including any amounts in respect of overrun or authorised flow charges.

## 6. REASONS AND DECISION

- 6.1 The SEM Committee has consulted extensively on this matter and set out, in detail, its analysis and reasoning. Throughout that process, the SEM Committee has been mindful of its statutory objectives, which are set out in Annex 2. In addition to the reasoning provided above, the SEM Committee has set out its particular reasons to modify the BCOP in the terms annexed in sections 3 and 4 of SEM-13-051.
- 6.2 The SEM Committee has therefore decided to exercise the power under paragraph 5 of Condition 15/17 to modify the BCOP so as to:
- 6.2.1 provide a specific valuation principle for GTC;
  - 6.2.2 specify a principle of good market behaviour which provides that generators must make 'reasonable' assessments when including GTC costs in their bids;  
and
  - 6.2.3 specify a principle of good market behaviour which would require generators to bid on the basis of an expectation that they will act so as to avoid unreasonable exposure to certain charges.
- 6.3 A copy of the directions making such modifications is included in Annex 3. The provisional good-cause determination set out in SEM-13-039 will cease to apply on 20 March 2014.

## 7. GUIDANCE ON 'UNREASONABLE EXPOSURE' TO CERTAIN CHARGES

- 7.1 The SEM Committee has also decided to provide initial guidance on how it may apply the new 'unreasonable exposure' principle in future.
- 7.2 Whilst the SEM Committee would consider any particular case on its own terms, there are various factors which it considers will be of wider relevance, such as:
- 7.3 Whether the bid reflected an exposure that was inconsistent with other legal obligations. For example:
- 7.3.1 the SEM Committee understands that the Gaslink Code of Operations requires gas shippers (including those associated with electricity generators) to act as a 'reasonable and prudent operator'<sup>5</sup>.
  - 7.3.2 the SEM Committee understands that EU Regulation 1227/2011 on energy market integrity and transparency ("**REMIT**") prohibits generators from, e.g., giving misleading market signals.

Where the inclusion of penalties in bids would be suggestive of behaviour that was inconsistent with either of these obligations, the SEM Committee considers that there could be grounds for finding the new good market behaviour principle would be contravened.

- 7.4 Whether the bid reflected a systematic exposure to such charges.

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<sup>5</sup> GasLink Code of Operations Part B, Clause 1.1.4. 'Reasonable and Prudent Operator' is defined as: *"a person seeking in good faith to perform its contractual obligations and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected of a skilled and experienced operator complying with applicable law and engaged in the same type of undertaking and under the same or similar circumstances and conditions, and the expression "the standard of a Reasonable and Prudent Operator" shall be construed accordingly;"*



**Energia**

Summary

Energia argue that the ability to purchase GTC in respect of a trading day, not necessarily on the day, is sufficient to allow for the full cost of GTC to be recovered. It argues that there was no demonstrable good cause to be made for the changes to the BCoP and requests that the SEM Committee withdraw both the guidance and consultation. It repeats its position that all gas-fired generators in the SEM are obliged under the licence to include GTC costs in their bids.

Arguments

1. Energia argue that the Licence is primary and that the definition of “total costs” in Condition 15(3) is to refer to all cost items. This is distinct from their method of valuation, which is the exercise undertaken by the BCoP. GTC costs are costs in the ordinary and natural meaning of the word.
2. Within the Licence (Condition 15) there are no temporal restrictions on the costs to be considered within “total costs”.
3. The Licence allows amendment of the BCoP for the purposes of defining the term and calculating **opportunity cost**.
4. The BCoP is not permitted to derogate from the licence and the SEMC has limited discretion to change it or to exclude any item of costs– this affects points 1 – 3 above.
5. The SEMC Guidance (SEM-13-039) states that Condition 15/17 operates such that in formulating its COD a generator is expected to form an expectation as to the costs it would, in fact, incur were called upon to generate. The costs a plant would “in fact” incur is immaterial to the construction and proper interpretation of the Licence and BCoP as are generator trading strategies.
6. Energia state that “by not generating, a generator does not expect to incur any GTC costs. It is only in generating that a generator would expect to incur such costs.” it is not possible to generate without incurring some GTC costs while GTC costs are not required to be incurred when not generating and therefore Condition 15 of the licence

dealing with the calculation of SRMC obliges the inclusion of GTC costs in generators' COD.

7. It states that “the fact that a generator may hold a long term gas capacity booking is no more material, for the purposes of generators bids, than are the terms of a long term commodity contract (e.g. take-or-pay) for the purchase of gas.” Applying the GTC cost argument of the SEM would lead to commodity costs being both a cost of generating and not generating and not therefore a SRMC. The treatment of the commodity cost is not dependent on timing of purchase or on resale or disposal scenarios and neither should that of capacity.
8. Energia argue that the SEMC interpret the words of the licence and BCoP in a way unsupported by the text and as such are proposing to act in a way that is ultra vires and contrary to the findings of the Irish Supreme Court.
9. Energia state that with reference to paragraph 8 of the BCoP the value of GTC is the price of primary daily capacity from the Transporter and that this represents a Recognised and Generally Accepted Trading market (RAGATM), that the doubts of the SEM Committee on this score are not supported by the arguments given to support this doubt and that if it is deemed that there is no RAGATM then the alternative ‘replacement’ cost provided for in the BCoP is provided by the presence of a daily capacity product. Energia argue that it is the mere presence of a daily capacity product that allows such a product to be valued and it is irrelevant whether a generator actually uses the product or is available for use by a particular generator. It is through the observance of the methodology in paragraph 8 of the BCoP that compliance with paragraph 7 is satisfied.
10. Energia argue that the decision of CER in CER/13/191 to remove the secondary market for capacity products and within-day gas capacity products means that the arguments to apply a ‘good cause’ determination either (1) do not apply (see point 9 above), (2) are no longer an issue with the removal of the secondary market or fail to understand that it is the application of paragraph 8 of the BCoP that satisfies paragraph 7. The ability to purchase GTC in respect of a trading day, not necessarily on the day, is sufficient for the full cost of GTC to be recovered and on this basis there is no longer a legitimate basis for the provisional good cause determination. Under this principle it is unclear where manipulation or misstatement of GTC costs could arise.

11. It is not open to the SEM Committee to include principles of good market behaviour that would seek to oblige generators to purchase specific capacity products or indeed gas capacity as this would be ultra vires.
12. Energia argue that the new paragraph 12C of the BCoP is unnecessary. The principle of reasonableness is already inherent in bidding requirements.
13. In relation to new paragraph 12D on exposure to penalties etc. it states that ‘to the extent that an overrun or uninstructed flow charge is a cost attributable to the generation of electricity, the BCoP is required to value the cost item and cannot expressly exclude it as to do so would be ultra vires the primacy of the Licence and its requirement for cost-reflectivity.’
14. No principle of good market behaviour could oblige generators to purchase specific capacity product or indeed to purchase gas capacity and is ultra vires the discretion afforded to the SEM Committee in Condition 15.5(c) of the Licence.
15. It argues that penalty clauses are unenforceable and that in so far as overrun charges and unauthorised flow charges are imposed as penalties these are also unenforceable although to the extent that they are a cost they must be included within the COD.
16. Energia argue that the SEM Committee has been responsible for an unnecessarily long, piecemeal and deficient process of consultation to the detriment of the regulatory regime and contrary to their statutory duties. Regulatory stability and certainty has been undermined, compounded by the decision to prohibit the inclusion of gas capacity in generators’ COD, which Energia were unaware of being explicitly repealed.
17. Energia argues that the SEM Committee have not had regard or investigated the effects of their proposals on generators.
18. Energia also argues that it would seem inconsistent and legally uncertain for any proposed amendment of the BCoP to alter compliance with the Licence, without subjecting the amendment to the same regulatory and statutory requirements applied to Licence amendments.
19. Energia conclude by stating that the SEM Committee may put themselves in the position of being in direct conflict with a relevant judgement of the Irish Supreme Court.

## Summary

PPB does not see the need for any formal variation to the BCoP or for generators not to use the regulated published tariff for gas capacity as the index for GTC costs within their bids.

## Arguments

1. PPB does not consider that there is any requirement for the proposed principle in relation to good market behaviour. The uncertainty around GTC prices is no different to the uncertainty taken into account for other aspects of the COD.
2. Introduction of the word “would” into the valuation principle does not add clarity or transparency in relation to the interpretation of any valuation as it may allow cost recovery at any level.
3. Adoption of secondary market prices for valuation purposes lacks transparency and makes market price forecasting by market participants very difficult.
4. Adoption of the regulated tariff for the valuation of GTC costs would negate the requirement to introduce the proposed first principle of good market behaviour regarding reasonableness of capacity valuation.
5. PPB does not agree with the second principle of good market behaviour. As generators are not self dispatching they have no control over the amount of gas or GTC they may require during a trading day. It is therefore possible that they may incur penalties or charges due to late changes in dispatch of marginal plant, notwithstanding that they may otherwise have been perfectly in balance. Hence these penalties/charges are a cost of generating in the SEM and should be recoverable through the COD.
6. Requiring gas users to book their maximum capacity on a long term basis would conflict with regulatory duties to promote efficiency and economy.
7. It would set a very dangerous precedent to seek to disallow the recovery of such costs and, given the Irish Supreme Court decision, is likely to be deemed illegal.

8. PPB state that the recent decision to remove secondary products means that the only short term price that will be available will be that of the primary product. The requirement in the consultation for valuation based on secondary products has therefore been superseded.
9. The claim that because the BCoP already makes specific provision for the valuation of start up and no load costs that this framework allows for the treatment of GTC costs proposed is incorrect because the former costs are distinct cost elements of the COD whereas GTC are cost elements of the PQ pairs for which existing BCoP principles apply.
10. Reasonableness is already inherent within the BCoP and there is therefore no requirement for the proposed principle in relation to good market behaviour (12C). The proposals create ambiguity arising from the scope for different interpretation by generators of what is reasonable.
11. PPB is concerned that the decisions of the SEM Committee appear not to be based on the proper determination of what are legitimate marginal costs but are being adopted to overcome wider flaws in the pricing of gas capacity products.

## **SSE**

### Summary

SSE believes that implementation of the changes decided upon by CER in CER/13/191 effectively makes much of the consultation irrelevant and substantial revision is required. It states that the SEM Committee should fully evaluate the changes made by CER in CER/13/191 and consider whether making enduring provision for the treatment of GTC costs in the BCoP is still necessary or desirable.

### Arguments

1. SSE argue that it is not currently possible for generators to recover the costs of gas transportation capacity.
2. Implementation of the changes decided upon by CER in CER/13/191 – removal of secondary capacity transfers at the exit and of within day purchases of short term capacity at the exit effectively makes much of the consultation irrelevant.

3. Various purchasing strategies for GTC mean that the cash used to purchase the product would be a SRMC as defined by the BCoP in some cases and not in others. SSE argue that as long as a choice between purchasing a daily GTC product and not purchasing a daily GTC product exists, then a generator has an opportunity cost equivalent to the cash used to purchase that product. As long as daily capacity is available this would be a SRMC and generators would be obliged to include it in their bids. The introduction of an element of interpretation into the BCoP might allow generators to exclude costs that fall within the definition of a SRMC .and creates a risk that participants might structure their bids to the detriment of customers or other market participants.
4. SSE states that the Determination and Guidance papers appear to disregard both the merit order dispatch and market power mitigation pillars of the SEM High Level Design. The proposed modifications appear to be moving away from the fundamental design principle of merit order dispatch reflective of underlying costs.
5. Market monitoring is substantially more difficult. It will be difficult for the Market monitoring Unit to provide effective oversight of how a marginal generator might structure its GTC purchases and how this might impact upon its price-quantity pairs.
6. SSE agrees that generators should bid on the basis of an expectation that they would not be unreasonably exposed to penalty charges and state that the phrasing in the consultation seems appropriate. SSE assume that by setting an expectation that generators will act so as to avoid unreasonable exposure to penalty charges generators can appropriately account for risk if such charges are a central and unavoidable part of the purchase of a cost item.

## ***Tynagh Energy Limited***

### Summary

Tynagh argue that the SEM Committee is not the arbiter of correct interpretation of the Licence and BCoP and is not involved in the exercise of any discretionary power, which is a question of law for the courts.

### Arguments

1. The SEM Committee may set out principles of good market behaviour to ensure price components of COD are cost reflective but the proposed amendments appear to go beyond this to attempt to regulate generator behaviour in booking gas capacity.
2. Tynagh argues that the Irish Supreme Court concluded that the opportunity cost of a levy is the actual cash cost and this is equally applicable to overrun charges.
3. Penalty charges, if they were penalties, would be unenforceable. Tynagh argues that they are not in fact penalties but costs and cannot be excluded from offer data by the BCoP.
4. Such charges can only be included in the BCoP for the purposes of ensuring that offer data is cost reflective. Changes to principles of good market behaviour cannot be made for any other purpose.
5. In so far as overrun charges are designed to incentivise behaviour they are like other costs which have the same purpose and as costs should be included in COD.
6. Tynagh states that it is arguable that the SEM Committee has failed to have regard to its duty to the need to ensure that undertakings are capable of financing their activities.
7. Disapplying Condition 8(ii) for the sole reason that a RAGATM does not exist is inconsistent since the condition has been drafted for the express purpose of valuing cost items under such circumstances. This therefore gives rise to the risk of inconsistent application of valuation principles and treatment of costs.
8. In making an assessment of the costs associated with GTC a generator is required to calculate the costs on the basis of SRMC defined as the difference between generating and not generating. It should not take account of an assessment of the expected market schedule quantity. The generator would not be in a position to make an assessment of the anticipated availability of GTC on any particular trading day prior at 9:00am D-1.

***Principal Objective and Duties of the Utility Regulator SEM Committee: The Electricity (Single Wholesale Market (Northern Ireland) Order 2007***

**Articles 9 & 10**

*Principal objective and duties of Department, the Authority and SEM Committee in relation to SEM*

**9.**

- (1) The principal objective of—
- (a) the Department in carrying out its electricity functions in relation to matters which it considers materially affect, or are likely materially to affect, the SEM;
  - (b) the Authority in carrying out its functions under Article 3 (b) the Authority in giving effect to any decision of the SEM Committee;
  - (c) the SEM Committee in carrying out its functions under Article 6(2),
- is to protect the interests of consumers of electricity in Northern Ireland and Ireland supplied by authorised persons, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the sale or purchase of electricity through the SEM.
- (2) The Department, the Authority and the SEM Committee shall carry out those functions in the manner which it considers is best calculated to further the principal objective, having regard to—
- (a) the need to secure that all reasonable demands for electricity in Northern Ireland and Ireland are met; and
  - (b) the need to secure that authorised persons are able to finance the activities which are the subject of obligations imposed by or under Part II of the Electricity Order or the Energy Order or any corresponding provision of the law of Ireland; and
  - (c) the need to secure that the functions of the Department, the Authority, the Irish Minister and CER in relation to the SEM are exercised in a co-ordinated manner,
  - (d) the need to ensure transparent pricing in the SEM;
  - (e) the need to avoid unfair discrimination between consumers in Northern Ireland and consumers in Ireland.



- (3) The Department, the Authority and the SEM Committee may, in carrying out any of the functions mentioned in paragraph (1), have regard to the interests of consumers in Northern Ireland and Ireland in relation to gas.
- (4) Subject to paragraph (2), the Department, the Authority and the SEM Committee shall carry out the functions mentioned in paragraph (1) in the manner which it considers is best calculated—
- (a) to promote efficiency and economy on the part of authorised persons;
  - (b) to secure a diverse, viable and environmentally sustainable long-term energy supply in Northern Ireland and Ireland; and
  - (c) to promote research into, and the development and use of—
    - (i) new techniques by or on behalf of authorised persons;
    - (ii) methods of increasing efficiency in the use and generation of electricity.
- (5) Subject to paragraph (2), in carrying out any of the functions mentioned in paragraph (1) the Department, the Authority and the SEM Committee shall have regard to—
- (a) the effect on the environment in Northern Ireland and Ireland of the activities of authorised persons, and
  - (b) the need, where appropriate, to promote the use of energy from renewable energy sources.
- (6) In carrying out any of the functions mentioned in paragraph (1) the Department, the Authority and the SEM Committee shall not discriminate unfairly—
- (a) between authorised persons; or
  - (b) between persons who are applying to become authorised persons.
- (7) In carrying out any of the functions mentioned in paragraph (1) in accordance with the preceding provisions of this Article, the Department, the Authority and the SEM Committee shall have regard to—
- (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed;
  - (b) any other principles appearing to it to represent the best regulatory practice.
- (8) In this Article—
- "authorised person" means the holder of a licence or exemption granted under Part II of the Electricity Order or any corresponding provision of the law of Ireland;
- "electricity functions" means —

- (a) functions under Part II of the Electricity Order;
- (b) functions under the Energy Order relating to electricity;
- (c) functions under Part IV of the Electricity Order 1992 (Amendment) Regulations (Northern Ireland) 2005 (SR 2005/ 335); and
- (d) functions under this Order;

"environmental sustainability" includes the need to guard against climate change; and  
 "renewable energy sources" has the same meaning as in the Directive.

- (9) In relation to any time after the coming into operation of Article 3 but before the establishment of the SEM Committee, this Article has effect as if for paragraph (1)(b) there were substituted—

" (b) the Authority in carrying out its functions under Article 3;"

*Exemptions from the general duties*

**10**

- (1) Article 9 does not apply in relation to the functions of the Department under
  - (a) Article 39, 40, 58, 59 or 60 of the Electricity Order; or
  - (b) Article 61 of the Energy Order
  
- (2) Article 9 does not apply in relation to anything done by the SEM Committee in taking a decision as to the exercise of any function of the Authority-
  - (a) which relates to the determination of disputes;
  - (b) under Article 46(3) of the Electricity Order; or
  - (c) under Article 8 of the Energy Order;
 or to anything done by the Authority in giving effect to that decision.
  
- (3) The SEM Committee may nevertheless, when taking a decision as to the exercise of any function of the Authority under Article 46(3) of the Electricity Order, have regard to any matter in respect of which a duty is imposed by Article 9 if it is a matter to which the Office of Fair Trading could have regard when exercising that function.
  
- (4) The duties imposed by Article 9 do not affect the obligation of the Authority or the Department to perform or comply with any other duty or requirement (whether arising under this Order or another statutory provision, by virtue of any Community obligation or otherwise).

**Principal Objective and Functions of the Commission for Energy Regulation SEM Committee: Energy Regulation Act 1999 - Sections 9BC & 9BD**

*Principal objective and functions of Minister, the Commission and SEM Committee in carrying out their functions in relation to the Single Electricity Market*

9BC.—(1) The principal objective of—

- (a) the Minister in carrying out his or her electricity functions in relation to matters which the Minister considers materially affect, or are likely materially to affect, the Single Electricity Market,
  - (b) the Commission in giving effect to any decision of the SEM Committee, and
  - (c) the SEM Committee in carrying out its functions under section 8A(4), is to protect the interests of consumers of electricity in the State and Northern Ireland supplied by authorised persons, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the sale or purchase of electricity through the Single Electricity Market.
- (2) The Minister, the Commission and the SEM Committee shall carry out their respective functions referred to in subsection (1) in the manner which each considers is best calculated to further the principal objective, having regard to—
- (a) the need to secure that all reasonable demands for electricity in the State and Northern Ireland are met,
  - (b) the need to secure that authorised persons are able to finance the activities which are the subject of conditions or obligations imposed by or under this Act or the Internal Market Regulations or any corresponding provision of the law of Northern Ireland,
  - (c) the need to secure that the functions of the Minister, the Commission, the Authority, and the Department in relation to the Single Electricity Market are exercised in a coordinated manner,
  - (d) the need to ensure transparent pricing in the Single Electricity Market, and
  - (e) the need to avoid unfair discrimination between consumers in the State and consumers in Northern Ireland.
- (3) The Minister, the Commission and the SEM Committee may, in carrying out any of the functions mentioned in subsection (1), have regard to the interests of consumers in the State and Northern Ireland in relation to gas.

- (4) Subject to subsection (2), the Minister, the Commission and the SEM Committee shall carry out the functions mentioned in subsection (1) in the manner which each of them consider is best calculated—
- (a) to promote efficiency and economy on the part of authorised persons,
  - (b) to secure a diverse, viable and environmentally sustainable long-term energy supply in the State and Northern Ireland,
  - (c) to promote research into, and the development and use of—
    - (i) new techniques by or on behalf of authorised persons, and
    - (ii) methods of increasing efficiency in the use and generation of electricity.
- (5) Subject to subsection (2), in carrying out any of the functions mentioned in subsection (1) the Minister, the Commission and the SEM Committee shall have regard to—
- (a) the effect on the environment in the State and Northern Ireland of the activities of authorised persons, and
  - (b) the need, where appropriate, to promote the use of energy from renewable energy sources.
- (6) In carrying out any of the functions mentioned in subsection (1) the Minister, the Commission and the SEM Committee shall not discriminate unfairly as regards terms and conditions—
- (a) between authorised persons, or
  - (b) between persons who are applying to become authorised persons.
- (7) In this section—
- ‘authorised person’ means the holder of a licence or exemption under a provision of this Act relating to electricity or under any corresponding provision of the law of Northern Ireland;
- ‘electricity functions’ means—
- (a) functions under this Act, and
  - (b) functions under the Internal Market Regulations,
- relating to electricity;
- ‘environmentally sustainable’ includes the need to guard against climate change;
- ‘renewable energy sources’ has the same meaning as in Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC.

### **Performance of functions relating to Single Electricity Market**

9BD.—The Minister, the Commission and the SEM Committee shall have regard to the objective that the performance of any of their respective functions in relation to the Single Electricity Market should, to the extent that the person exercising the function believes is practical in the circumstances, be transparent, accountable, proportionate, consistent and targeted only at cases where action is needed.

## ANNEX 3A: MODIFICATION DIRECTION (NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION)

1. Exercising its power under paragraph 5 of the undernoted licence conditions and having consulted with generators (i.e. the holders of generation licence) and such other persons as it considers appropriate, the Northern Ireland Authority for Utility Regulation hereby directs that the Bidding Code of Practice shall be amended as indicated in the appended version with effect from 20 March 2014.
2. In this direction the 'Bidding Code of Practice' means the code of that name set out in Annex A of the publications known as AIP-SEM-07-430 "The Bidding Code of Practice a Response and Decision Paper" published on 30 July 2007.



Name: Jenny Pyper  
Position: Chief Executive  
Direction made on: 13 March 2014

### Undernoted Licence Conditions

- i. **Condition 17** of each electricity generation licence granted by the Northern Ireland Authority for Utility Regulation under Article 10(1) of the Electricity (Northern Ireland) Order 1992, as amended;
- ii. Condition 57 of the public electricity supply licence granted to **Northern Ireland Electricity** plc under Article 10(1) of the Electricity (Northern Ireland) Order 1992, as amended under a licence document dated 31 March 1992 and transferred to NIE Energy Limited;

## BIDDING CODE OF PRACTICE

### INTRODUCTION

1. This Bidding Code of Practice (**this Code**) is published jointly by:
  - a. the Northern Ireland Authority for Utility Regulation (**the Authority**), in accordance with paragraph 5 of the following conditions of licences in Northern Ireland:
    - (i) Condition 17 of each electricity generation licence; and
    - (ii) Condition 57 of the public electricity supply licence granted to Northern Ireland Electricity plc under Article 10(1) of the Electricity (Northern Ireland) Order 1992 under a licence document dated 31 March 1992 and transferred to NIE Energy Limited; and
  - b. the Commission for Energy Regulation (**the Commission**), in accordance with paragraph 5 of the following conditions of licences to generate electricity in the Republic of Ireland:
    - (i) Condition 17 of the interim electricity generation licence granted to the Electricity Supply Board on 21 April 2006;
    - (ii) Condition 16 of the electricity generation licence granted to Synergen on 31 July 2002; and
    - (iii) Condition 15 of electricity generation licences granted to all other licensed generators of electricity.
2. For the purposes of the licence conditions under which it is made (**the relevant conditions**), this Code defines the concept of Opportunity Cost, makes provision for the calculation of cost-items and sets out other principles of good behaviour in the Single Electricity Market.
3. In accordance with paragraph 6 of each relevant condition:
  - a. electricity generators are required to comply with the provisions of this Code in submitting Commercial Offer Data under the Single Electricity Market Trading and Settlement Code, whether by themselves or through Intermediaries; and

- b. the Power Procurement Business of NIE Energy Limited is required to comply with the provisions of this Code in submitting Commercial Offer Data under the Single Electricity Market Trading and Settlement Code.
4. This Code aims to facilitate the efficient operation of the Single Electricity Market by ensuring that:
  - in combination with the Capacity Payment Mechanism established under the Single Electricity Market Trading and Settlement Code, generators are appropriately compensated for making available their generation sets or units (as appropriate) and for generating electricity in the Single Electricity Market;
  - generators cannot exercise market power in the generation of electricity on the island of Ireland or any part thereof; and
  - the Power Procurement Business cannot exercise market power by virtue of generation sets or units contracted to it under long term power purchases agreements in Northern Ireland, in respect of which it has been appointed an Intermediary.
5. **Words and expressions used in this Code and not defined shall, unless the context otherwise requires, have the same meaning as when used in the licences containing the relevant conditions or (where appropriate) in the Single Electricity Market Trading and Settlement Code.**

## **DEFINITION OF OPPORTUNITY COST, VALUATION OF COST-ITEMS AND PRINCIPLES OF GOOD MARKET BEHAVIOUR**

### **General Principles**

6. When calculating the Short Run Marginal Cost of a generation set or unit in respect of a Trading Day, constituent cost-items are to be valued at their Opportunity Cost, and so that a reasoned explanation of the calculation of that Opportunity Cost is capable of being given to the Authority or the Commission (as appropriate) on request.
7. The Opportunity Cost of any cost-item shall comprise the value of the benefit foregone by a generator in employing that cost-item for the purposes of electricity generation, by reference to the most valuable realisable alternative use of that cost-item for purposes other than electricity generation.



8. Save as otherwise provided in this Code, ~~in~~ calculating the value of the benefit foregone in employing a cost-item for the purposes of electricity generation, the following principles shall, unless it can be demonstrated to the satisfaction of the Authority or the Commission (as appropriate) that there is good cause not to, be applied:
- (i) where there exists a recognised and generally accessible trading market in the relevant cost-item, the Opportunity Cost of that item should reflect the prevailing price of the cost-item, which may be for immediate or future delivery or use as appropriate to the circumstances of the relevant generator, having regard to:
    - (a) costs the relevant generator would incur in offering that cost-item for sale, or acquiring that cost-item, on a recognised and generally accessible trading market;
    - (b) reasonable provision for the variability of the prevailing price of a cost-item on a recognised and generally accessible trading market;
  - (ii) where no recognised and generally accessible trading market exists in the relevant cost-item the Opportunity Cost of that item should reflect the costs which would be incurred by the relevant generator in replacing that cost-item; and
  - (iii) reasonable provision for increased risks to plant and equipment as a result of the operation of a generation set or unit may be included.
9. Subject to paragraph 12, all Commercial Offer Data submitted in respect of a generation set or unit are to reflect the costs relating to that generation set or unit when considered on a stand-alone basis.

### **Start-Up and No Load Costs**

10. Start-up and no load costs should reflect the actual start-up and no load costs of the generation set or unit unless it can be demonstrated to the satisfaction of the Authority or the Commission (as appropriate) that the scheduling algorithm and associated software operates in such a way that the bidding of actual start-up and no load costs would distort the true economics of the generation set or unit.

### **Energy, Emissions or Time Limited Units**

11. Where there is a constraint on:

- a. the total time a generation set or unit may run, or
  - b. the total emissions a generation set or unit may emit over a period of time, or
  - c. the total amount of energy available to a generation set or unit for a period of time,
- bids should reflect the Opportunity Cost of the generation set or unit over that period of time.

### **Co-Generation**

12. Where the generation of electricity is associated with additional processes other than generation, the Opportunity Cost of generating electricity for delivery to the Single Electricity Market should reflect the value of the use of electricity, or heat used to generate electricity, or both, in those associated processes.

### **Gas Transportation Capacity Costs**

12A. To the extent that the price components of the Commercial Offer Data (COD) submitted by a Licensee in respect of a Trading Day are required by the relevant conditions to reflect the gas transportation capacity (GTC) costs relating to a generating unit, the provisions of paragraphs 12B and 12C shall apply.

12B. Where this paragraph applies the value of the benefit foregone in employing GTC for the purposes of electricity generation by reference to the most valuable realisable alternative use of that GTC for purposes other than electricity generation, shall:

- (i) to the extent that the relevant COD reflects GTC not yet held by the Licensee in respect of the Trading Day, correspond to the amount which the Licensee would pay to purchase sufficient additional GTC within the Trading Day; and
- (ii) to the extent that the relevant COD reflects GTC held in respect of the Trading Day, correspond to the amount which the Licensee would realise by disposing of the unused GTC within the Trading Day.

12C. Where this paragraph applies, any assessment as to whether the price components mentioned in paragraph 12A are required to reflect GTC costs and any assessment of an amount under paragraph 12B must be reasonable.

### **Unreasonable Exposure to Certain Charges**

12D. A Licensee's COD should reflect an expectation that it will act so as to avoid unreasonable exposure to the following:

a. charges (known as overrun charges in Ireland and unauthorised flow charges in Northern Ireland) associated with the movement of gas on the relevant system without capacity; and

b. any other penalties or charges of a similar nature.

## **CHANGE MANAGEMENT**

13. In accordance with paragraph 5 of the relevant conditions, this Code may, following consultation with the holders of generation licences and such other persons as the Authority or the Commission (as the case may be) consider appropriate, from time to time be amended by direction.

## ANNEX 3B: MODIFICATION DIRECTION (COMMISSION FOR ENERGY REGULATION)

3. Exercising its power under paragraph 5 of the undernoted licence conditions and having consulted with generators (i.e. the holders of generation licence) and such other persons as it considers appropriate, the Commission for Energy Regulation hereby directs that the Bidding Code of Practice shall be amended as indicated in the appended version with effect from 20 March 2014.
  
4. In this direction the 'Bidding Code of Practice' means the code of that name set out in Annex A of the publications known as AIP-SEM-07-430 "The Bidding Code of Practice a Response and Decision Paper" published on 30 July 2007.



Name: Garrett Blaney  
Position: Chairperson  
Direction made on: 13 March 2014

### Undernoted Licence Conditions

- i. Condition 17 of the electricity generation licence dated 1 April 2013, granted by the Commission for Energy Regulation to **Electricity Supply Board** under section 14(1)(a) of the Electricity Regulation Act 1999;
  
- ii. Condition 16 of the electricity generation licence dated 27 November 2001, granted by the Commission for Energy Regulation to **Synergen** under section 14(1)(a) of the Electricity Regulation Act 1999;
  
- iii. **Condition 15** of all other electricity generation licences granted by the Commission for Energy Regulation.
  
- iv. **Condition 19** (Cost-Reflective Bidding in the Single Electricity Market) of Electricity Supply Licences granted by the Commission for Energy Regulation under section 14(1)(b) of the Electricity Regulation Act 1999.

## BIDDING CODE OF PRACTICE

### INTRODUCTION

1. This Bidding Code of Practice (**this Code**) is published jointly by:
  - a. the Northern Ireland Authority for Utility Regulation (**the Authority**), in accordance with paragraph 5 of the following conditions of licences in Northern Ireland:
    - (i) Condition 17 of each electricity generation licence; and
    - (ii) Condition 57 of the public electricity supply licence granted to Northern Ireland Electricity plc under Article 10(1) of the Electricity (Northern Ireland) Order 1992 under a licence document dated 31 March 1992 and transferred to NIE Energy Limited; and
  - b. the Commission for Energy Regulation (**the Commission**), in accordance with paragraph 5 of the following conditions of licences to generate electricity in the Republic of Ireland:
    - (i) Condition 17 of the interim electricity generation licence granted to the Electricity Supply Board on 21 April 2006;
    - (ii) Condition 16 of the electricity generation licence granted to Synergen on 31 July 2002; and
    - (iii) Condition 15 of electricity generation licences granted to all other licensed generators of electricity.
2. For the purposes of the licence conditions under which it is made (**the relevant conditions**), this Code defines the concept of Opportunity Cost, makes provision for the calculation of cost-items and sets out other principles of good behaviour in the Single Electricity Market.
3. In accordance with paragraph 6 of each relevant condition:
  - a. electricity generators are required to comply with the provisions of this Code in submitting Commercial Offer Data under the Single Electricity Market Trading and Settlement Code, whether by themselves or through Intermediaries; and

- b. the Power Procurement Business of NIE Energy Limited is required to comply with the provisions of this Code in submitting Commercial Offer Data under the Single Electricity Market Trading and Settlement Code.
4. This Code aims to facilitate the efficient operation of the Single Electricity Market by ensuring that:
  - in combination with the Capacity Payment Mechanism established under the Single Electricity Market Trading and Settlement Code, generators are appropriately compensated for making available their generation sets or units (as appropriate) and for generating electricity in the Single Electricity Market;
  - generators cannot exercise market power in the generation of electricity on the island of Ireland or any part thereof; and
  - the Power Procurement Business cannot exercise market power by virtue of generation sets or units contracted to it under long term power purchases agreements in Northern Ireland, in respect of which it has been appointed an Intermediary.
5. **Words and expressions used in this Code and not defined shall, unless the context otherwise requires, have the same meaning as when used in the licences containing the relevant conditions or (where appropriate) in the Single Electricity Market Trading and Settlement Code.**

## **DEFINITION OF OPPORTUNITY COST, VALUATION OF COST-ITEMS AND PRINCIPLES OF GOOD MARKET BEHAVIOUR**

### **General Principles**

6. When calculating the Short Run Marginal Cost of a generation set or unit in respect of a Trading Day, constituent cost-items are to be valued at their Opportunity Cost, and so that a reasoned explanation of the calculation of that Opportunity Cost is capable of being given to the Authority or the Commission (as appropriate) on request.
7. The Opportunity Cost of any cost-item shall comprise the value of the benefit foregone by a generator in employing that cost-item for the purposes of electricity generation, by reference to the most valuable realisable alternative use of that cost-item for purposes other than electricity generation.

8. Save as otherwise provided in this Code, ~~in~~ calculating the value of the benefit foregone in employing a cost-item for the purposes of electricity generation, the following principles shall, unless it can be demonstrated to the satisfaction of the Authority or the Commission (as appropriate) that there is good cause not to, be applied:
- (i) where there exists a recognised and generally accessible trading market in the relevant cost-item, the Opportunity Cost of that item should reflect the prevailing price of the cost-item, which may be for immediate or future delivery or use as appropriate to the circumstances of the relevant generator, having regard to:
    - (a) costs the relevant generator would incur in offering that cost-item for sale, or acquiring that cost-item, on a recognised and generally accessible trading market;
    - (b) reasonable provision for the variability of the prevailing price of a cost-item on a recognised and generally accessible trading market;
  - (ii) where no recognised and generally accessible trading market exists in the relevant cost-item the Opportunity Cost of that item should reflect the costs which would be incurred by the relevant generator in replacing that cost-item; and
  - (iii) reasonable provision for increased risks to plant and equipment as a result of the operation of a generation set or unit may be included.
9. Subject to paragraph 12, all Commercial Offer Data submitted in respect of a generation set or unit are to reflect the costs relating to that generation set or unit when considered on a stand-alone basis.

### **Start-Up and No Load Costs**

10. Start-up and no load costs should reflect the actual start-up and no load costs of the generation set or unit unless it can be demonstrated to the satisfaction of the Authority or the Commission (as appropriate) that the scheduling algorithm and associated software operates in such a way that the bidding of actual start-up and no load costs would distort the true economics of the generation set or unit.

### **Energy, Emissions or Time Limited Units**

11. Where there is a constraint on:

- a. the total time a generation set or unit may run, or
  - b. the total emissions a generation set or unit may emit over a period of time, or
  - c. the total amount of energy available to a generation set or unit for a period of time,
- bids should reflect the Opportunity Cost of the generation set or unit over that period of time.

### **Co-Generation**

12. Where the generation of electricity is associated with additional processes other than generation, the Opportunity Cost of generating electricity for delivery to the Single Electricity Market should reflect the value of the use of electricity, or heat used to generate electricity, or both, in those associated processes.

### **Gas Transportation Capacity Costs**

12A. To the extent that the price components of the Commercial Offer Data (COD) submitted by a Licensee in respect of a Trading Day are required by the relevant conditions to reflect the gas transportation capacity (GTC) costs relating to a generating unit, the provisions of paragraphs 12B and 12C shall apply.

12B. Where this paragraph applies the value of the benefit foregone in employing GTC for the purposes of electricity generation by reference to the most valuable realisable alternative use of that GTC for purposes other than electricity generation, shall:

- (i) to the extent that the relevant COD reflects GTC not yet held by the Licensee in respect of the Trading Day, correspond to the amount which the Licensee would pay to purchase sufficient additional GTC within the Trading Day; and
- (ii) to the extent that the relevant COD reflects GTC held in respect of the Trading Day, correspond to the amount which the Licensee would realise by disposing of the unused GTC within the Trading Day.

12C. Where this paragraph applies, any assessment as to whether the price components mentioned in paragraph 12A are required to reflect GTC costs and any assessment of an amount under paragraph 12B must be reasonable.

### **Unreasonable Exposure to Certain Charges**



12D. A Licensee's COD should reflect an expectation that it will act so as to avoid unreasonable exposure to the following:

a. charges (known as overrun charges in Ireland and unauthorised flow charges in Northern Ireland) associated with the movement of gas on the relevant system without capacity; and

b. any other penalties or charges of a similar nature.

## **CHANGE MANAGEMENT**

13. In accordance with paragraph 5 of the relevant conditions, this Code may, following consultation with the holders of generation licences and such other persons as the Authority or the Commission (as the case may be) consider appropriate, from time to time be amended by direction.