



PART I

General

ESB welcomes the opportunity to respond to the statutory consultation on proposed modifications to licences to generate and licences to supply electricity in the context of the implementation of the Integrated Single Electricity Market (I-SEM).

ESB has been actively engaged with, and strongly supports, the process for the development of I-SEM and in that context ESB understands the need to make certain modification to licences to effectively implement I-SEM. However, ESB strongly objects to certain of the licence modifications as currently proposed by the CER. In particular;

1. Cost Reflective Bidding:

- We reiterate each of the arguments set out in some detail in ESB's response to the SEM Committee ("**SEMC**") consultation on the Balancing Market Principles Code of Practice (the "**proposed BMPCOP**") (SEM-17-026) (the "**BMPCOP Consultation**").
- We do not agree with the proposed replacement of the current form of condition relating to Cost Reflective Bidding in the Single Electricity Market with a condition which does not contain the substantive principles governing the cost reflective bidding controls to which the licensee will be subject. ESB considers that the substantive principles governing the bidding controls rightfully belong within the licence.
- We believe the proposed bidding condition in the licences must be amended to reflect that it should only apply to operators or individual installations that are successful in the capacity auction.
- We do not believe that the proposed licence framework provides sufficient clarity for the bidding by operators who have not been successful in the capacity market.

2. Capacity Market Code: We do not agree with the proposed Capacity Market Code Condition in its current format and believe that the condition must include the principles governing the operation of the Capacity Market and the key rights afforded to generators when offering their capacity to this market.



In addition, we have concerns regarding the following Conditions:

3. [Redacted – Confidential]

4. Public Electricity Supplier Condition: We have noted within this response the objections and comments ESB has in respect of the modifications proposed for the PES licence. Without prejudice to those objections and comments, we wish to take this opportunity to query the continued relevance and, indeed status, of the PES licence in the fully deregulated supply market.

ESB's response to the Consultation on issues 1 to 4 are set out in Part II of this paper.

Clarification on NEMO condition

As a separate matter, we note that the previously suggested NEMO condition (concerning the NEMO exchange rules) has been omitted from the consultation. We understand this to mean there will be no specific condition in the licences dealing with this. ESB does not have any issue with this approach, but in the interests of certainty, requests that the CER might clarify this point, as it is not expressly addressed within the Information Paper.



PART II

1. Proposed Modifications regarding Cost Reflective Bidding – Supply Licence, PES Licence and Generation Licence.

The current generation and supply licences impose a condition on bidding controls which sets out the substantive principles governing the controls and empowers CER to set out further detail in respect of the controls in a separate document. The proposed licence modifications will result in the substantive bidding controls, to which licensees will be subject, sitting entirely outside of the licences and all governing principles being removed from the licence. This would mean that in the future, the bidding rules could be set and modified by the CER/SEMC independently of the licence, without reference to any overriding principles, and, importantly, without invoking the procedures for licence modifications and appeals. Given the critical importance of the bidding controls to the ability of market participants to recover their costs in the wholesale trading market, it is ESB's strong view that the substantive principles governing the controls should remain within the licence, such that any proposed modification thereof can be subject to the modification and appeals processes set out in the Act.

To take the approach currently proposed by CER is ultra vires the CER because (a) it seeks to circumvent the plain intention of the legislature that a licence would specify the conditions to which it is subject in such a manner that the substance of them could not be changed otherwise than subject to the modification and appeal processes set out in the Act and (b) is inconsistent with the established legal principles, responsibilities and obligations to which CER is subject. Apart from the proposed licence modifications themselves, ESB is extremely concerned about the content of the proposed BMPCOP. ESB considers that the effect of the proposed licence modifications and proposed BMPCOP will be detrimental to the I-SEM market.

In relation to the proposed licence modification and the proposed BMPCOP, we would reiterate all of the arguments set out in ESB GWM's response to the BMPCOP Consultation.

(i) Legal Principles & Obligations of SEMC and CER

All regulatory intervention in the SEM/I-SEM must be limited to the minimum necessary intervention, bearing in mind the responsibilities and functions of CER and SEMC. As CER is aware, any such decisions must comply with minimum legal obligations of proportionality, necessity, transparency, accountability and consistency. As bodies making and/or implementing administrative decisions affecting the rights of undertakings, the decisions of CER/SEMC must meet all requirements of natural and constitutional justice.

ESB is not satisfied that the manner and approach with which CER are seeking to take to the proposed modifications is compatible with the general legal principles and obligations they are required to follow, as further outlined below.

Proportionality and Necessity

The requirement of proportionality derives from both Irish and EU law. The legal obligation on CER with regard to proportionality derives from section 9BD of the Act which states:



“The Minister, the Commission and [the SEMC] 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 ... proportionate ...”

The EU law principle of proportionality has been accepted by the Irish courts and was articulated by Costello J in *Heaney v Ireland*: A decision must (i) be rationally connected to its objective and not be arbitrary, unfair or based on irrational considerations; (ii) impair rights as little as possible; and (iii) be such that its effect on rights is proportional to the objective to be achieved.¹

Under the EU Electricity Directive (2009/72/EC) any measures taken to contribute to the European internal electricity market, like the Directive itself, must

“not go beyond what is necessary in order to achieve that objective.”²

The requirement of proportionality is reiterated in the specific context of electricity balancing in the draft EU Commission electricity balancing regulation (the **“Balancing Regulation”**) which obliges CER/SEMC to apply the principle of proportionality in implementing the regulation.

The requirement of necessity also derives from both Irish and EU law. The Irish law obligation on CER/SEMC derives from section 9BD of the Act which states: *“The Minister, the Commission and [the SEMC] 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 ... targeted only at cases where action is needed...”*

Under the Electricity Directive, regulatory intervention to promote competition should be “necessary and proportionate”.³ The requirement of necessity, in practice, requires that an intervention “does not go beyond what is necessary in order to attain [the legitimate aim pursued]”.⁴

ESB submits that the proposed licence modifications are both disproportionate and unnecessary.

In deciding to bring forward these proposed licence modifications, the SEM Committee has suggested that it needs additional flexibility in opining upon allowed costs and cited previous cases they believed were shortcomings of the current regime. ESB notes that CER states in the Information Paper that the proposed licence modifications

‘would provide greater clarity, flexibility and detail to generators and other relevant market participants regarding the application of the BMPCOP document in I-SEM’

In its response to the BMPCOP Consultation, ESB GWM has questioned the examples cited by the SEM Committee to demonstrate that it has limited flexibility in opining on allowed costs. This was because the specific issues put forward were examples of the SEM Committee seeking to disallow from offers what were ultimately deemed to be legitimate costs.

¹ [1994] 3 IR 593.

² Directive, recital (62).

³ Article 37(4)(b).

⁴ E.g., see *Vital Pérez* (Case C 416/13) para 45.



Accordingly, it was entirely appropriate that the SEM Committee did not, or could not, proceed with these proposals.

Contrary to CER's assertion that the SEM Committee requires increased flexibility in this regard, ESB believes that the current framework has given the SEM Committee significant and appropriate flexibility since 2007. The SEM Committee has successfully used this flexibility without challenge on numerous occasions. Some examples of the exercise of this flexibility are set out below.

- 2008 Bidding of Contract Costs (SEM-08-069);
- 2008 Start-up Costs and risk (SEM-08-069);
- 2008 Transmission Loss-Adjustment in Commercial Offer Data (SEM-08-179);
- 2009 Inclusion of short-term unit commitment status in the formulation of Generator Unit Commercial Offer Data (COD) (SEM-09-014);
- 2011 Harmonised Ancillary Service Arrangements and the Bidding Code of Practice (SEM-11-055);
- 2014 Treatment of Gas Transportation Capacity Costs (SEM-14-018);
- 2014 Clarification to the Decision Paper on Treatment of GTC Costs and Mod to the BCOP (SEM-14-077).

ESB believes that the information presented above clearly shows that the SEM Committee already has significant flexibility with regard to interpreting the framework for bidding. We believe this to be the kind of flexibility envisaged by Mr Justice Clarke in when he stated in *Viridian Power Limited and Huntstown Power Company Limited v Commission for Energy Regulations and Others*:

"There is no reason in principle why a document, such as a licence, by which a statutory body exercises a public law power, cannot retain to the statutory body the power to make further decisions or interpretations in accordance with the provisions of the licence in question. It is only if the retention of such added flexibility is in itself a breach of the overriding statutory power being exercised that the retention of such flexibility would be impermissible".⁵

With the proposed modifications, the CER/SEM Committee seem to be suggesting that the SEM Committee should have some entirely unfettered level of discretion to alter both the rules themselves and the core principles underpinning the rules, without counterbalancing this with the appropriate routes of redress for licensees. That is clearly going beyond the intention of the legislature and seeking to retain an "impermissible" level of flexibility.

The fact that CER/SEM Committee may go to consultation in respect of any proposed changes to the BMPCOP in the future does not provide sufficient comfort or certainty to market participants. There is a robust statutory process in place for licensees in respect of licence modifications, which includes statutory consultation and a specific appeals procedure involving the establishment of an expert panel to review the modification decision. The effect of the proposed decision is that none of the substantive bidding principles would be contained in the licence. Accordingly, CER/SEM Committee would have the ability to amend the

⁵ [2011] IEHC 266 p.37 para 5.12. Although the High Court decision was overturned on appeal to the Supreme Court, it does not appear that this analysis was disputed.



BMPCOP at its discretion without reference to the licence or procedures governing modifications of the licence. In the event that a licensee's representations in any consultation were not sufficiently addressed, the only remaining route for redress would be by means of judicial review, and that is simply not acceptable as the only means of reviewing substantive issues of such importance to licensees.

The move to iSEM does not justify this change of approach in terms of the content of the licence condition. It is simply not necessary to remove the substantive principle governing bidding controls from the licence. Further, the proposals are disproportionate when one has regard to the impact on licensees who are being deprived of a significant right of appeal under the licence in respect of this issue.

The proposed modifications are also in excess of what is required to mitigate any potential for market power in the balancing market since (as further outlined below), they are to extend to early energy actions (and potentially to all energy actions); can be expected to suppress price signals in other markets; do not allow generation units which are required to run to recover their costs of doing so and can be expected to have negative consequences for security of supply.

In summary, we do not believe that sufficient evidence has been brought forward by the SEM Committee or the CER to justify the licence modifications proposed and the changes are both disproportionate and unnecessary.

Transparency, accountability and consistency

These Irish law obligations on CER/SEMC derive from section 9BD of the Act which states:

*“The Minister, the Commission and the SEMC 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... consistent...”*⁶ ESB considers that the approach proposed by CER in respect of the proposed licence modifications would represent an approach which would bring into question the CER's transparency, accountability and consistency. In particular:

- a. The bidding controls would lack transparency since they are susceptible to modification by CER/SEMC outside of the scope of any substantive principles clearly set out in the licence at the outset;
- b. CER would be less accountable to licence holders than was clearly intended by legislature when it established the licence modification and appeal processes; and
- c. The approach taken to bidding controls in I-SEM would lack consistency with CER/SEMCs approach to SEM without any proper justification.

⁶ See also the requirements of Articles 3(1)(a) and 3(2)(b) of the Balancing Regulation in respect of transparency.



Natural and constitutional justice

In making an administrative decision and exercising its powers, CER/SEMC must meet all requirements of natural and constitutional justice. This includes the following:

- a) As with all administrative bodies, CER/SEMC must consider all relevant evidence and must not consider irrelevant information when coming to its decision.⁷

- b) ESB, as a party affected by a regulatory decision, has the right to have its submissions fully considered. Importantly, “the product of consultations must be conscientiously taken into account in finalising any ... proposals.”⁸ Following such consideration, the mere “pro forma recitation of the matters which are contained in [a] decision” does not amount to compliance with the obligation to give reasons.⁹

ESB has concerns about the manner in which the SEMC and CER have conducted consultation on this matter and the apparent lack of consideration of the impact of the proposals on the market. In particular:

- It appears that neither SEMC nor CER have had proper regard to the submissions made by ESB (and other market participants) on this matter. In that context, we note that the various queries ESB GWM raised in its response to the BMPCOP Consultation do not appear to have been taken into account by CER in finalising a draft of the proposed modifications of the licence conditions for consultation;
- ESB has concerns in relation to the order in which related matters have been consulted upon. For example, the CER could have ensured a more robust process by publishing the proposed licence modifications only after making its final decision on the specifics of the balancing market bidding controls;
- ESB considers that CER’s level of engagement with ESB in respect of the proposed licence modifications has been unsatisfactory. In particular, in response to a request from ESB to meet to discuss the proposed modifications (as offered by CER), ESB were advised by email dated [23 February 2017] that the CER did not have the time to meet . ESB were denied a bilateral meeting (notwithstanding that ESB requested this before the deadline specified by CER), and CER instead offered to send the slides from the bilateral meetings to ESB;

- Neither the SEM Committee nor the CER have provided any evidence of the necessity of the proposed modifications in the context of I-SEM , and have failed to carry out any meaningful assessment of the long term implications that the modifications will have on market participants. In fact, the proposal reflects a very one-sided approach to seeking additional flexibility for the SEM Committee which is not warranted, whilst failing to have regard to the consequences of this for market participants who would

⁷ *Killeen v DPP* [1998] 1 ILRM 1.

⁸ *R v Borough of Barnet, ex p B* [1994] ELR 357. See also, *Re Haughey* [1971] IR 217, *Eurofood* [2004] 4 IR 370, *Davy v Financial Services Ombudsman* [2008] IEHC 256.

⁹ *Deerland Construction Ltd v Aquaculture Licences Appeals Board* [2008] IEHC 289.



be left with increased legal uncertainty, and a limited, expensive and ill-suited means of challenge (i.e. judicial review).

(ii) *Vires and the intention of the right of appeal to licence modification in the Act.*

ESB believes that the proposed licence modifications undermine the intention of the legislature in providing a right of appeal against certain decisions of the CER.

The Act sets out a detailed process for the modification of a licence and makes the CER's decisions in regard to licence modifications¹⁰ subject to an appeal to an appeal panel which may confirm or reverse the decision.¹¹ The appeal mechanism applies only to decisions to grant, refuse, modify or decline to modify a licence or authorisation. Plainly the legislature considered that these particular decisions merited, and should be subject to, a more substantive review (i.e. an appeal on the merits) to a panel (which we expect would be comprised of relevant experts), than any other CER decisions (which may be challenged only by judicial review subject to Section 32 of the Act). Furthermore, if appealed, such licence decisions will not have effect unless confirmed by the appeals panel. These provisions of the Act plainly indicate that the legislature considered licence decisions to be particularly important and more likely to be suited to a substantive (expert) review than other decisions. While judicial review examines the legality of public decision-making, it is not in any way equivalent to an appeal on the merits.

As supported by Mr. J. Clarke's view in Justice Clarke said in *Viridian Power Limited and Huntstown Power Company Limited v Commission for Energy Regulations and Others*, referred to above, the Act does not prohibit the imposition of a condition requiring compliance with an external document (instead of setting out the contents of that document in the licence).

However, given that the legislature has specifically provided for both a modification process and an appeal process in respect of licence decisions, it plainly intended that a licence would contain terms and conditions of sufficient substance to merit the application of those processes. If a licence was to contain little more than a requirement to comply with pre-existing legal obligations (e.g. a condition to comply with environmental obligations) and obligations to comply with external documents which can be amended without licence modification and/or decisions of the CER to be taken from time to time at the CER's discretion (without clear substantive principles being set out in the licence), it is doubtful that the licence could be considered to "specify" the conditions to which it is subject in a manner compatible with the application of the modification and appeal processes. If substantive requirements of the licence conditions (which should benefit from the modification and appeal processes) are in fact moved to external documents or decisions by the CER, which may be modified in accordance with their terms, the effect of the licence may be dramatically changed without any resort to the modification or appeal processes and, as outlined below, from the perspective of the licensee, the licence becomes little more than an empty shell. To take the proposed approach would represent a clear breach of the overriding statutory right of appeal of the licence modification process enshrined in the Act.

¹⁰ Sections 19-23 of the Act.

¹¹ Sections 29-31 of the Act.



When bringing forward licence conditions to implement SEM in 2007, the CER placed the substantive principles governing the bidding controls to which licensees would be subject within the relevant licences. This approach was appropriate considering the importance of the controls to licensees and the availability of the option to appeal any modification sought by CER consistent with the intention of the provision of the right to appeal within the Act. The effect of the proposed licence modification is that market participants will be denied the ability to appeal any modification to substantive bidding control obligations by way of the appeal process, which the legislature considered was the appropriate mechanism to test proposed modifications to the licence.

Further, as set out in more detail above, ESB submits that CER has not provided adequate justification or reasoning for the proposed licence modifications.

The SEM Committee has suggested that the proposed licence modifications are necessary to make the operation of the regulatory framework more efficient and to avoid expensive and time consuming court proceedings. ESB is of the view that the proposals may in fact increase the likelihood of court proceedings given that judicial review would be the only route to challenge the content of the proposed BMPCOP.

(iii) Proposed Balancing Market Principles Code of Practice

In addition to our concerns regarding the removal of the substantive principles governing the bidding controls from the licence, ESB is extremely concerned about the content of the proposed BMPCOP. ESB believes that the proposed BMPCOP will greatly restrict the opportunity for legitimate cost recovery in I-SEM compared to SEM.

In particular, provision for risk and foregone revenues has been declared not to be an eligible cost for inclusion in offers. ESB has provided evidence to the SEM Committee as to why the proposals are not appropriate but there is no evidence that the issues raised in these submissions have been considered or addressed by the SEM Committee. In our view, the current proposals ignore the SEM Committee's own established precedent on eligible costs which was established in the 2008 bidding inquiry (SEM-08-069). The move to iSEM does not justify such a significant change to the existing principles. This reinforces the importance for operators in having clarity within the licence, and, in particular, to enshrine the principle that the operator must be given an opportunity to recover their total costs of operating in the market when they are clearly required by the system.

ESB further considers that the proposals from the SEM Committee will impact on the imbalance price in I-SEM and, ultimately, on the operation and sustainability of the market into the future. In particular, we believe that the operation of the imbalance pricing mechanism and the TSO's proposed approach to the operation of the system will greatly expand the reach of the bidding controls compared to what has been suggested by the SEM Committee. ESB has elaborated on this in considerable detail in its response to the SEM Committee BMPCOP Consultation Paper (SEM-17-026).

We believe that the proposed BMPCOP as put forward by the SEM Committee run contrary to the general direction of travel for EU electricity markets.

To demonstrate that this is not just an ESB view, we have cited commentary from EU bodies on the harmful effects of limiting price formation in balancing markets. The European Commission has highlighted in its Working Document on the Final Report of the Sector Inquiry



on Capacity Mechanisms the adverse impacts on other markets of price controls in balancing markets and offering guidance on excess/unfair pricing which is relevant in this context.¹²

*“(82) Moreover, prices in every market timeframe (i.e. intra-day, day-ahead, etc.) are interdependent and the incentives of market participants are influenced by their expectations about prices in markets closer to delivery. The rules by which imbalance settlements are calculated can for instance affect bids in the day-ahead market: **even if there is no price cap in the day-ahead market, electricity suppliers will never choose to pay more for electricity in the day-ahead market than what they would be charged for being out of balance through imbalance settlement.** Also, even if the balancing market price is in principle uncapped, the activation of operating reserves, dispatching emergency demand response or implementing voltage reductions are sometimes used to balance supply and demand that suppress price signals, instead of implementing involuntary curtailments of demand and let the balancing price rise up to VOLL. If these balancing services are not charged to reflect their full costs (including the cost of the unmet demand at VOLL), price signals in all market timeframes will be distorted, and market participants will adapt their behaviour accordingly. In all these cases, balancing rules and interventions may impose an implicit cap on electricity prices...[ESB added emphasis]*

The Agency for the Cooperation of Energy Regulators (ACER) and the Council of European Energy Regulators (CEER) recently published a White Paper on Efficient Wholesale Price Formation¹³. A key tenet of that White Paper is that efficient price formation in real time markets is paramount to the success of the market as a whole. Specifically, the report states that “robust, transparent price signals, with consistent market rules, are necessary to provide for efficient prices to consumers, the right incentives for participants and appropriate price signals to drive investments”.

(iv) Installations without a Reliability Option

Related to the above, the suite of proposed licence conditions and the proposed BMPCOP would require a generator or demand side unit, which has not been successful in the capacity market or is not required by the TSO, to make offers to the TSOs in line with the BMPCOP. The proposed BMPCOP would place strict short run marginal cost bidding restrictions on three part offers of all plants.

In a situation where a plant does not hold a reliability option but chooses not to close, and finds itself required by the TSO in the balancing market, it is only reasonable that it should be allowed to bid in a manner that will allow it to recover its fixed as well as variable costs, since it would have no revenue stream from the capacity market. The licence modifications as proposed by CER does not allow this. There can be no reasonable basis for this approach, nor are we aware of any precedent for such an approach in other electricity markets.

ESB GWM specifically raised the above concerns in its response to the BMPCOP Consultation. ESB also raised the concerns at the bilateral meeting with the CER and the Utility Regulator on 8 December 2016. We received neither clarity on the matter from the SEM Committee or the CER ahead of publication of the Consultation nor satisfactory justification for the proposed licence modifications. We believe this is a very clear

¹² Brussels, 30.11.2016 SWD (2016) 385 Final.

¹³ Accessible at

http://www.ceer.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/White%20Papers



manifestation of the concerns we hold in respect of the manner on which consultation on this matter has been conducted, as outlined above.

In addition to affecting ESB's generation business, the legal uncertainty brought about by the CER's proposal with regard to the bidding principles equally impacts negatively on Electric Ireland's DSU business.

ESB believes, for all of the reasons set out above, that, subject to CER taking on board our proposed changes to the Capacity Market Code Condition, the more appropriate approach would be to retain format of the existing Cost Reflective Bidding Condition in the licences in I-SEM (with an amendment to the wording of the condition to make clear that bidding controls will not apply to units that do not hold a reliability option), rather than taking the approach proposed by CER.

The licence modifications as proposed by CER and the BMPCOP proposed by the SEM Committee are inconsistent with general legal principles and obligations of the CER and SEMC and with the intention of the right of appeal built into legislation. The proposed modifications, and the uncertainty they would bring, would have a detrimental impact on ESB and on the I-SEM market in general.

2. Proposed Capacity Market Code Condition – Supply Licence, PES Licence and Generation Licence.

The CER has proposed a new licence condition requiring licensed operators to sign up the new established Capacity Market Code insofar as it applies to them. While we understand that the Capacity market has been developed as an integral part of the I-SEM design, the proposed licence condition places an open ended obligation on operators to participate in the capacity market without any commensurate rights bestowed upon the licensee.

Unlike the Trading and Settlement Code or the Grid Code, the new Capacity Market is not underpinned by any legislative basis. We therefore believe that the Capacity Market Code licence condition needs to contain more detail on the Capacity Market including the underlying principles of the market and the recognition that participating capacity providers will be given an opportunity to recover the appropriate costs of providing their capacity to the TSOs.

ESB's generation businesses believe that the capacity market code condition should be amended to include a set of principles which provide some clarity and protection for the licensee. We have suggested potential wording for the condition below (based on paragraph 4 of the current SEM Bidding Code of Practice).

"The Capacity Market Code aims to facilitate the efficient operation of the Single Electricity Market by ensuring that:

in combination with the Energy Market established under the Single Electricity Market Trading and Settlement Code and NEMO rules, operators are appropriately incentivised to make available their generation sets or units (as appropriate) and for generating electricity in the Single Electricity Market."

3. [Redacted – Confidential]



4. PES Licence

Without prejudice to the representations and objections above relating to the conditions proposed to be included in the PES Licence, ESB wishes to take this opportunity to query the continued need for the PES licence in the deregulated supply market. As ESB has previously submitted in relevant consultation responses to the CER on the matter of PES¹⁴, the concept of the PES licence is incompatible with the deregulated supply market. In practical terms, the licence serves no purpose at this time - as the Commission is aware, all ESB supply customers are, and have been for some time, served under the generic supply licence granted to ESB.

ESB would welcome clarity on the status of the PES licence at the appropriate time.

5. Conclusion

ESB has been extensively engaged through the development of the I-SEM and we understand that appropriate licence conditions must be brought forward to implement the new arrangements. However, we believe that the proposed licence modifications are not appropriate in their current form and need to be changed before we could accept them.

- (i) We do not agree with the removal of the Cost Reflective Bidding Condition but rather favour its amendment to reflect the specifics of I-SEM.
- (ii) We believe the bidding condition must be amended to reflect that it should only apply to operators or individual installations that are successful in the capacity auction.
- (iii) We do not agree with the addition of the proposed Balancing Market Principles Code of Practice Condition on the basis that the existing Condition should be amended.
- (iv) We do not agree with the proposed Capacity Market Code Condition and believe that the condition must include the principles of the Capacity Market and the key rights afforded to generators when offering their capacity to this market.

[Redacted – Confidential].

We believe that the CER needs to give further consideration to the points raised in this response and our previous responses to the SEM Committee before finalising licence conditions.

Finally, we would welcome the opportunity to meet with the CER to discuss the contents of this letter and to explain further our concerns. We would also welcome clarity from CER on when a final decision will be published on the licence changes. Such a date does not appear to be contained in the current I-SEM plan.

¹⁴ See response of Electric Ireland to CER Consultation (CER)/11/039) on the role of the PES and the SoLR in the deregulated electricity market.



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