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RE: Statutory Consultation on Modifications to SONI Market Operator Licence and SONI Transmission System Operator Licence necessitated to implement the Integrated Single Electricity Market (I-SEM)

Dear Leigh,

Bord Gáis Energy (**BGE**) welcomes this opportunity to respond to this Consultation on the modifications to SONI's Market Operator (**MO**) and Transmission System Operator (**TSO**) licences necessary to implement I-SEM (the Consultation). Our primary concern as regards both the TSO and MO licences relates to the potential for conflicts of interest to materialise by virtue of the fact that the TSO, MO and a commercial interconnector arm (East West Interconnector Limited – **EIL**) are owned and controlled by EirGrid group. BGE believes that the relevant licences play a critical role in mitigating these conflict of interest concerns, including SONI's MO and SO licences. We are however cognisant of the synergies that exist by being part of the same group which should not be undermined in the interests of consumer costs. This response therefore focuses on proposals regarding certain aspects of the TSO and MO licences that BGE believes can be further strengthened in order to maximise the role licensing provisions can play in mitigating conflict of interest concerns (which apply across group) while not undermining the aforementioned synergies. These proposals are dealt with in the appendix to this response, dealing with the TSO and MO licence separately. An overview of our conflict of interest concerns and the proposed licence modifications is however provided below, respectively for each licensee (MO, TSO).

An additional area of concern for BGE relates to the effective ring-fencing of EIL from EirGrid group. BGE strongly supports the positive steps taken by the Regulatory Authorities (**RAs**) last summer on this issue. We note the RAs' statement that a "clear protocol" regarding the EirGrid CEO and CFO concerning any business at EIL relating to any other parties of the business will be adopted.¹ In order to support the RAs in their objective of mitigating conflict of interests concerns particularly as regards interconnector operation, BGE urges the RAs to consider the establishment of a "supervisory body" which would effectively be independent of the EirGrid group Board and would have a say in decisions and policies with potential impacts on the long term asset value (but not in day-to-day operations) of EIL. BGE proposals as regards the Supervisory Body and its operation is also outlined below.

1. BGE's conflict of interest concerns and proposed modifications regarding TSO licence

BGE's proposals as regards SONI's TSO licence are primarily made in the context of our conflict of interest concerns that are relevant across EirGrid group. Our main concern however is based on the TSO's role as administrator/ operator of the capacity and balancing markets and role in procuring Ancillary Services (**AS**). TSO decisions in each of these areas can be heavily influenced by the impact such may have on interconnector revenues. For example, the procurement of capacity or AS volumes could result in undue favouritism towards the interconnector depending on the TSOs' compliance with capacity or AS procurement rules/ methodologies. In balancing the system, the TSOs could effectively favour the interconnector with a view to minimising impact on financial revenues (e.g. in curtailing financial transmission rights (**FTRs**) in the forwards timeframe).

BGE does however recognise the work undertaken by the Regulatory Authorities (RAs) to date to alleviate market participants' concerns around conflicts of interest through licence revisions; rules

¹ Referred to in SEM-16-041 p.11

development (e.g. the assignment to the RAs of determining de-rating factors in the capacity market); and the steps taken to address Board make up across EirGrid group as it relates to EIL. BGE is in favour of the majority of the TSO licence changes proposed in the Information Paper but suggests certain modifications with a view to strengthening the ring-fencing rules with which all EirGrid group entities should comply. BGE's key proposed TSO licence provisions are set out in detail in Appendix 1 to this response together with the rationale therefor. In summary they include:

- i. Extending the obligations of the TSO under a number of licence provisions to their role in procurement of Ancillary Services (AS) given the potential conflicts of interest materialising pursuant to their role in AS which is akin to those conflicts that can materialise pursuant to their role in administering the Capacity Market;
- ii. An additional obligation regarding Capacity Market information to provide relevant information concerning capacity requirement calculations at least three months in advance of a capacity auction given the impact of such on auction outcomes;
- iii. Additions in a number of provisions to emphasise the obligation to promote and protect consumer interests such that this obligation is at the fore of the TSOs' minds in decision making and it should supplement the obligation to avoid undue discrimination in favour of its own business arms;
- iv. Additions in a number of provisions to further reinforce the need to avoid undue favouritism for its own business arms on a group wide basis in carrying out any and all of its functions/ tasks;
- v. Certain modifications to the Central Dispatch provision to ensure that market participants are entitled to maximise ex ante market trading insofar as possible before any TSO action is taken before Balancing Market gate closure;
- vi. A proposed new condition obliging the TSOs to provide a REMIT publication platform (but which is only to come into effect/ activation on direction of such by the Utility Regulator (**UR**));
- vii. Proposals around internal and external prevention of disclosure as well as a requirement to meet ISO27001 certification in relation to assurances around information handling that BGE believes are necessary cross group. The restriction on the use of information is critical to provide the necessary industry participant confidence in conflict of interest mitigation;
- viii. Additions to the Compliance and Assurance Officer role regarding in particular the inclusion of details to be covered in its reporting in line with the RAs' suggested licence condition inclusions last summer,² as well as a suggested approach to monitoring by the Officer including a risk management plan. The role of this Officer is crucial to provide sufficient confidence to market participants regarding potential conflict of interest concerns and should in BGE's view be as specific as possible while not undermining the discretion of the RAs to amend their requirements of the Officer over time. The independence and objectivity of this role is critical. The detail to be contained in such Compliance reports and terms of reference should ensure that reports on assessments carried out, findings, steps taken to mitigate revealed breaches, are included and it should ultimately be published (respecting confidentiality). BGE makes specific proposals on the licence condition for the TSO in terms of what it should include e.g. re staff transfers, evidence of practical compliance. Regardless of whether an internal or independent employee is appointed to the role, it is critical that external audit of the group functions akin to that of Elexon in GB which occurs on at least a yearly basis to provide the necessary confidence to the market in terms of compliance with agreed methodologies and processes and in the market outcomes. For robustness, BGE urges the incorporation of this compliance function to be included also in the SONI MO licence;
- ix. Explicit provisions regarding the need for the TSO to have an obligation to provide relevant technical information when requested by the UR such that ex post technical reviews/ audits of compliance with certain processes/ procedures can be effectively carried out. BGE believes this necessary to emphasise the importance of the data so that such audits can provide industry participants with the confidence in market outcomes necessary.

2. BGE's conflict of interest concerns and proposed modifications regarding MO licence

With regard to the role of the MO in I-SEM and potential conflicts of interest, BGE agrees with the RAs' observation outlined in SEM-16-048 that the MO could be seen to favour its SO role to make it easier for the TSO to operate the system to maintain secure supplies or to out-perform any incentives that

² Referenced in SEM-16-041

may be placed under I-SEM for efficient operation of the system.³ Notwithstanding the RAs' commitments in Information Paper SEM-16-041, BGE urges the RAs to take this opportunity to include official obligations in the MO licence ensuring real or perceived conflicts of interest do not arise as regards the MO role within EirGrid group and its impact on other group business entities. The approach of incorporating conflict of interest provisions in both the TSO and MO licences is in BGE's view necessary to mitigate possible conflicts of interest across the EirGrid group as a whole. BGE's proposals on the MO licence provisions are also detailed in Appendix 1 (separately from the TSO provisions) together with rationale therefor. In summary they include:

- i. Proposals that ensure consumer interests are to the fore in any of the MO's decision making processes and compliance with methodologies in I-SEM;
- ii. Particular additions in certain licence provisions to emphasise the need to avoid real or perceived conflicts of interest arising by prohibiting undue discrimination in favour of any EirGrid group entities;
- iii. The need for NEMO rule changes to be consulted on with industry as and when they arise;
- iv. The need for the AOLR to be explicitly prohibited from making commercial gain/ profit from the role and that any AOLR rule changes are consulted on with wider industry;
- v. Proposals around internal and external prevention of disclosure as well as a requirement to meet ISO27001 certification in relation to assurances around information handling that BGE believes are necessary cross group (as similarly suggested for the TSO licence). The restriction on the use of information is critical to provide the necessary industry participant confidence in conflict of interest mitigation;
- vi. Explicit provisions regarding the need for the TSO to have an obligation to provide relevant technical information when requested by the UR such that ex post technical reviews/ audits of compliance with certain processes/ procedures can be effectively carried out. BGE believes this necessary to emphasise the importance of the data so that such audits can provide industry participants with the confidence in market outcomes necessary;
- vii. Most critically, BGE urges the RAs to consider insertion of the Compliance and Assurance Officer role provision in the MO licence also. Industry confidence in market outcomes and compliance with processes and methodologies across the EirGrid group is necessary in BGE's view. The RAs would retain discretion for the coverage in the report provided by this Officer and as outlined in the TSO proposed licence revisions above, BGE urges the RAs to consider the importance of the independence and objectivity of this role and the need for annual external audit thereof regardless of whether the role is given to an EirGrid group employee or independent person.

3. BGE's proposal for a Supervisory Body for EIL as distinct from the EirGrid group

BGE's final concern of note relates to the steps taken by the RAs to separate EIL Board members' management overlaps across the wider group. BGE commends these steps and notes the SEM-16-041 statement that a "clear protocol" regarding the EirGrid CEO and CFO concerning any business at EIL relating to any other parties of the business will be adopted. To assist the objective of such a protocol, BGE believes that a Supervisory Body for EIL, completely independent of and separate to EirGrid group should be established. At a high level the Supervisory Body members would be separate from the EIL Board and would primarily have a say on non-day-to-day operations such as sale/ acquisition of assets and approval of long term and annual financial plans. Limitation of information flowing from EIL Board through the Supervisory Body would be necessary and provisions around ensuring no member of the Supervisory Body, who is affiliated to EirGrid group will exercise any control over EIL with respect to operational decisions would be necessary. Further details on this proposal is outlined in our response to CER-16-368 regarding TSO/ MO licence changes under the Commission for Energy Regulation consultation.

BGE notes that the regulators have had significant engagement with EirGrid and SONI to gain their perspective of impact of proposed changes and we request that similar engagement with industry occurs prior to consulting on generator and supplier licence changes later this year. It is noted also that

³ SEM-16-041

the first annual compliance statement was to be approved in February 2017⁴ and BGE would welcome confirmation of when this is now anticipated to occur and that market participants will have input thereto?

BGE's detailed proposals are included in the appendix to this response. We hope that you find the proposals therein useful and please do not hesitate to contact me should you have any queries.

Yours sincerely,

Julie-Anne Hannon
Regulatory Affairs – Commercial

{By email}

App. (1)

⁴ As referenced in SEM-16-041, page 28