

**Statutory Consultation on Modifications  
to NI electricity generation and NI  
electricity supply Licences,  
necessitated to implement the  
Integrated Single Electricity Market  
(I-SEM)**

2 June 2017



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# About the Utility Regulator

The Utility Regulator is the independent non-ministerial government department responsible for regulating Northern Ireland's electricity, gas, water and sewerage industries, to promote the short and long-term interests of consumers.

We are not a policy-making department of government, but we make sure that the energy and water utility industries in Northern Ireland (NI) are regulated and developed within ministerial policy as set out in our statutory duties.

We are governed by a Board of Directors and are accountable to the Northern Ireland Assembly through financial and annual reporting obligations.

We are based at Queens House in the centre of Belfast. The Chief Executive leads a management team of directors representing each of the key functional areas in the organisation: Corporate Affairs; Electricity; Gas; Retail and Social; and Water. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.

# Abstract

In order to give effect to elements of the Integrated Single Electricity Market (I-SEM) design, as contained in decisions of the SEM Committee, the Utility Regulator is publishing this statutory consultation on proposed licence modifications to NI generation and NI supply licences. This follows two previous consultations published in April 2016<sup>1</sup> and December 2016<sup>2</sup> regarding modifications to the NI TSO and MO licences.

Key licence condition modifications proposed in this consultation relate to the following: the new Balancing Market Principles Code of Practice, the new Capacity Market Code.

# Audience

This document is most likely to be of interest to the holders of NI generation (including DSU) licences, and NI supply (including DSU) licences. A number of regulatory agreements are in place in Northern Ireland between the Utility Regulator and Aggregated Generator Units (AGUs), however, they are not subject to modification at this stage.

A similar licence modification process is being conducted by CER in parallel for the ROI generation and supply licences.

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<sup>1</sup> <https://www.uregni.gov.uk/consultations/i-sem-statutory-consultation-modifications-soni-mo-and-tso-licences>

<sup>2</sup> <https://www.uregni.gov.uk/consultations/i-sem-statutory-consultation-modifications-soni-mo-and-tso-licences-1>

# 1. Foreword

## 1.1 Purpose of this Document

The Integrated Single Electricity Market (I-SEM) is due to go-live on 23 May 2018 and aims to maximise the efficient use of interconnection and facilitate greater cross-border trade through day-ahead and intra-day market coupling. The I-SEM project spans the wholesale electricity markets in Ireland and NI. The Utility Regulator (UR) in NI and the Commission for Energy Regulation (CER) in Ireland, also referred to as the Regulatory Authorities (RAs), have been working alongside SONI Ltd and EirGrid Plc to develop the I-SEM, under the governance of the SEM Committee (SEMC).

One means of implementing the design of the I-SEM (which is reflected in SEMC policy decisions) is via licence modifications to the Generation, Supply, Market Operator (MO), Transmission System Operator (TSO), and Interconnector licences in Ireland and NI. Having focussed on the SONI and EirGrid TSO and MO licence modifications in separate decisions published respectively by the UR and CER in July 2016<sup>3</sup> and March 2017<sup>4</sup>, the RAs now publish consultations on modifications to the generator and supply licences in each jurisdiction; this paper details proposed modifications to the licences in NI.

## 1.2 Document Structure

This consultation document is structured as follows:

- Chapter 1 (Foreword) outlines the purpose and structure of this document, the approach taken to engagement when developing the licence modifications, and the statutory licence modification process being followed by the UR;

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<sup>3</sup> <https://www.uregni.gov.uk/publications/notices-decision-modifications-soni-tso-and-mo-licences-necessitated-implement-i-sem>;

<https://www.cer.ie/docs/001079/CER16171%20CER%20Decision%20Notice%20on%20Modifications%20to%20EirGrid%20Plc%20TSO%20and%20MO%20Licences.pdf>

<sup>4</sup> <https://www.uregni.gov.uk/publications/utility-regulator-i-sem-licence-decision-paper>;  
<http://www.cer.ie/document-detail/Modifications-to-EirGrid-Market-Operator-Licence-and-Transmission-System-Operator-Licence-necessitated-to-implement-the-Integrated-Single-Electricity-Market-I-SEM/1079/8557,8551,8552,8556,8554,8622,8623,8624,8625,8626>

- Chapter 2 (Summary of developments in the Single Electricity Market (SEM)) provides background on the current SEM arrangements and information on the European requirements for market reform leading to the development and implementation of the new “I-SEM”;
- Chapter 3 (NI electricity generator licence modification proposals) outlines the reasons for and effects of the proposed modifications to that category of licence;
- Chapter 4 (NI electricity supply licence modification proposals) outlines the reasons for and effects of the proposed modifications to that category of licence;
- Chapter 5 (Next Steps) provides information on key dates concerning the statutory licence modification process.

### **1.3 Regulatory Approach to Licence Modifications**

In accordance with licence modification procedures set out in Article 14 of the Electricity (Northern Ireland) Order 1992 (as amended) , the Utility Regulator (UR) is to modify the electricity supply licences and electricity generation licences in Northern Ireland.

The RAs have reviewed the content of the current licences alongside policy decisions of the SEMC in respect of the I-SEM market design to ascertain what modifications are required to the generation and supply licences. The RAs’ approach to licence modification is to focus predominantly on those modifications which are required to facilitate new wholesale market arrangements in the SEM.

In the interest of transparency and in line with best practice regulation, we consider it important to inform licence holders of upcoming modifications to their licences. Accordingly, generation and supply licence holders were offered the opportunity<sup>5</sup> to meet with the UR in March 2017 to discuss potential licence changes and any related concerns. In addition to these bilateral discussions, informative slides<sup>6</sup> were also published on the UR’s website to provide an indication of the content of potential licence changes.

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<sup>5</sup> <https://www.uregni.gov.uk/news-centre/planned-modifications-ni-generation-and-supply-licences-i-sem>

<sup>6</sup> <https://www.uregni.gov.uk/publications/presentation-i-sem-bilaterals-licence-modifications>

To accompany this consultation paper, the UR has also published statutory notices of the proposal to modify NI generation and supply licences, offering a further opportunity for all interested stakeholders to provide representations on the proposed modifications. All representations received will be considered before we reach our decision on each of the proposed modifications.

#### **1.4 High level summary of proposed licence modifications**

Key licence modifications proposed in the NI licences (although not an exhaustive list) are:

- a new condition obliging generators and suppliers (insofar as applicable to them) to comply with the Capacity Market Code (CMC); and
- a modification to the current 'Cost Reflective Bidding in the SEM' condition to "switch it off" when a new 'Balancing Market Bidding Principle' condition takes effect in the generator licences and supply licences (if operating as a Demand Side Unit (DSU)).

In addition, some minor modifications are proposed to relevant definitions within both the supplier and generator licences to give proper legal effect to the new and modified conditions for implementation of I-SEM.

For a more detailed outline of the legal drafting of the proposed licence modifications, please refer to Annex 1 (applying to all NI generators except for DSUs), Annex 2 (applying to all NI suppliers, including DSU supply licences), Annex 3 (applying to the NI DSU generators), Annex 4 (applying to the Power NI/ PPB licence only – section 4.3 of this paper explains the intricacies to this licence), and Annex 5 (applying to the AES Ballylumford (Power) Ltd licence only – section 3.4 of this paper explains the intricacies to this licence).

#### **1.5 Licence Modification Procedure and the Licence Notices**

In Ireland and NI, separate and distinct licence modification processes exist based on jurisdictional legislation; namely, Article 14 of the Electricity (Northern Ireland) Order 1992 in NI and Section 20 of the Electricity Regulation Act 1999 in Ireland. These respective statutory provisions determine the procedures that must be followed in relation to proposed licence changes in each jurisdiction and include the timeline for submission of representations.

This UR consultation paper is published in order to provide background information and rationale in respect of the proposed licence modifications set out in the statutory notices (which are published alongside this paper).

Any representations regarding the proposed licence modifications will be taken into account by the UR when reaching its decisions on them. Stakeholders have a period of no less than 28 days in which representations can be made; representations are due **no later than 17.00 on Tuesday 4 July 2017**. All correspondence should be sent to:

Tony Doherty  
Utility Regulator  
Queens House  
14 Queen Street  
Belfast  
BT1 6ED  
**Email: [isemlicences@uregni.gov.uk](mailto:isemlicences@uregni.gov.uk)**

Our preference would be for responses to be submitted by e-mail so that they can be placed easily on our website.

We normally publish all responses to consultations on licence modifications on our website. If you do not wish your response or name to be made public, please state this clearly by marking the response as 'not for publication'. Please note that any confidentiality disclaimer that is automatically produced by an organisation's IT system or is included as a general statement in your fax or coversheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes; these are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things with obligations of confidence.

In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic

confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the UR.

## 1.6 Timetable

As noted above, this consultation is subject to the respective statutory consultation process in NI:

	<b>Date</b>
Deadline for receipt of responses or representations to UR in respect of NI electricity generation and supply licences	17.00 on Tuesday 4 July 2017

## **2. Summary of developments in the Single Electricity Market (SEM)**

### **2.1 Background**

The SEM for the island of Ireland went live on 1 November 2007. It consists of a centralised and mandatory all-island wholesale pool market through which generators and suppliers from Ireland and NI trade electricity.

In March 2013, the Department of Enterprise, Trade and Investment (DETI) (now, the Department for the Economy (DfE)) and the Department of Communications, Energy and Natural Resources (DCENR) endorsed recommendations of the Single Electricity Market Committee (SEMC) in its implementation of the European Target Model for the 'Single Electricity Market, Next Steps Decision Paper (SEM/13/009). The 'Next Steps' paper proposed a project to develop a High Level Design of the SEM in light of the requirement of the European Target Model. A final decision paper detailing a High Level Design (HLD) for the new market was also endorsed by DETI and DCENR and published on 17 September 2014 (SEM-14-085a).

The new Integrated Single Electricity Market (I-SEM) is due to go-live on 23 May 2018 and will fully facilitate coupling with the electricity markets throughout Europe. As well as building on the SEM, the I-SEM will deliver increased levels of competition which should help put a downward pressure on prices as well as encouraging greater levels of security of supply and transparency.

The UR in NI and CER in Ireland, also referred to as the RAs, have been working alongside EirGrid Plc and SONI Ltd to develop the I-SEM, under the governance of the SEMC. The RAs have led on the detailed design, with the TSOs leading on the systems implementation stage.

The SEMC has published a number of policy papers on the I-SEM design, including those relating to the new trading arrangements, a new capacity remuneration mechanism, arrangements for the forwards market and for market power mitigation.

One means of implementing SEMC policy decisions is via modifications to various licences, including supply and generation licences. In order to process the required licence modifications, a dedicated licensing team was established within the RAs in 2015. The licensing team commenced the licence modifications process in 2016

and, so far, has conducted two tranches of licence modifications to the EirGrid and SONI MO and TSO licences. This paper details proposed modifications to the generation and supply Licences in NI. A similar licence modifications process in respect of generation and supply Licences is being conducted by the CER in Ireland.

## 2.2 Related Documents

Below is a list of documents reflecting the majority of SEMC policy decisions for the design of the I-SEM:

- I-SEM SEMC decision on the High Level Design (SEM-14-085a)
- Decision on the Aggregator of Last Resort (SEM-15-063)
- Decision on the I-SEM ETA Markets Building Blocks (SEM-15-064)
- Decision on the I-SEM ETA Markets (SEM-15-065)
- I-SEM/ DS3 Mitigations for potential conflicts of interest in EirGrid group (SEM-16-041)
- Decision on Modifications to the SONI MO Licence and SONI TSO Licence, necessitated to implement the Integrated Single Electricity Market (published July 2016)
- BMPS Terms of Reference Decision Paper (SEM-16-058)
- I-SEM Market Power Decision Paper (SEM-16-024)
- CRM Locational issues decision paper (SEM-16-081)
- CRM capacity requirement and de-rating methodology decision paper (SEM-16-082)
- Decision on Modifications to EirGrid MO Licence and TSO Licence, necessitated to implement the I-SEM (published March 2017)
- Decision on I-SEM ETA Supplier Charges Charging Basis (SEM-17-010)
- Decision on measures to promote liquidity in the I-SEM forward market (SEM-17-015)
- Decision on Complex Bid Offer Controls in the I-SEM Balancing Market (SEM-17-020)
- CRM Parameters decision paper (SEM-17-022)
- CRM Auditor and Monitor decision paper (SEM-17-023)
- Decision on I-SEM Trading and Settlement Code Amendments Decision Paper (SEM-17-024)
- Intermediary Transitions to I-SEM decision paper (SEM-17-025)
- Consultation on I-SEM Balancing Market Principles Code of Practice (SEM-17-026)

## 3. Proposed modifications to NI electricity generation licences

### 3.1 Introduction

#### Generation licences (including DSUs)

The Department for the Economy in Northern Ireland (previously the Department for Enterprise, Trade and Investment), in exercise of the powers conferred by Articles 10(1)(a), 10(6), 11 and 13 of the Electricity (Northern Ireland) Order 1992 has granted a number of licences to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given.

In NI, generation licences have been issued to:

- 'conventional' power station generators;
- wind farm generators; and
- Demand Side Units (DSUs)<sup>7</sup>

The UR has reviewed the content of the generation licences in NI against decisions of the SEMC in relation to the I-SEM design in order to determine what changes to this category of licence are needed.

#### De minimis (<10MW) generators

The Electricity (Class Exemptions from the Requirement for a Licence) Order (NI) 1999 states when a generator is exempt from holding a generation licence. One significant exemption provides that persons who do not under normal operating conditions, provide more electrical power than 10MW, disregarding power provided to a single on-site consumer or to two or more on-site consumers who form a qualifying group, are exempt from the need to hold a generation licence. De minimis ( ie. <10MW) generators do not, therefore, hold a licence in NI.

The Trading and Settlement Code (TSC) instead allows small generators to participate in the energy trading arrangements of the SEM (and in due course the capacity market for I-SEM) via an intermediary process. The TSC assumes that all intermediaries are parties to the TSC. Thus, a small generator may, through the appointment of an authorised intermediary (approved by the RAs) participate in the

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<sup>7</sup> These are also paired with DSU supply licences.

market with the intermediary being the code party and subject to all the rules of trading under the code.

### Aggregated Generator Units

A number of regulatory agreements also exist in NI between the UR and Aggregated Generator Units (AGUs). These agreements were issued between 2009 and 2014 as an alternative to licences. The UR published a decision in January 2015<sup>8</sup> regarding the licensing arrangements for AGUs and DSUs; the UR will review the continuation of these agreements and update on any necessary changes in due course to ensure implementation of I-SEM.

## **3.2 New licence conditions proposed in the NI electricity generation licences (including DSUs)**

In order to give effect to the SEMC decisions necessary to implement the design of the I-SEM, the UR is of the view that two new licence conditions need to be inserted to the NI electricity generation licences. There are also some further minor amendments proposed to existing conditions. These are outlined in Annex 1 (applying to 'standard' generator licences) and Annex 3 (applying to DSU generator licences)<sup>9</sup>. In addition, annex 5 provides for modifications specific to the AES Ballylumford generator licence due to interactions with the Power Procurement Business (PPB). This is explained further in section 3.4.

The statutory notices published alongside this paper and the paragraphs below describe the effects of such changes and supporting reasoning.

### **3.2.1 New Condition 17a: Balancing Market Principles Code of Practice<sup>10</sup>**

A new licence condition is proposed in the generation licences which will obligate licensees to comply with the Balancing Market Principles Code of Practice

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<sup>8</sup> <https://www.uregni.gov.uk/news-centre/utility-regulator-decision-agu-dsu-licensing-arrangements>

<sup>9</sup> For clarity, two separate annexes are published for the generator licences because as well as 'new' conditions being inserted (which apply across both 'standard' and DSU generators), there are also modifications to existing conditions which are currently drafted differently, so the existing conditions have been replicated as per the 'standard' and DSU generator drafting.

<sup>10</sup> This will be numbered as Condition 17a in both the 'standard' generator licences and the DSU generator licences.

(BMPCOP) when formulating and submitting Commercial Offer Data (COD) to the Single Market Operation Business.

This new condition is designed to replace, for the I-SEM, the existing Cost Reflective Bidding licence condition (condition 17) and is designed to implement the policy decisions made in SEM-17-020.

### **Reasons for modification**

The current policy underpinning the market power mitigation strategy in the Single Electricity Market is partially based on bidding principles for generators, including a Bidding Code of Practice (BPCOP), in terms of which generators are required, inter alia, to bid cost reflectively. The latest version of the BPCOP was published in 2014 (SEM-14-019).

The I-SEM Power Mitigation Decision Paper (SEM-16-024) confirmed, inter alia, that the wording of the existing bidding principles will be considered by the SEMC prior to the introduction of a relevant licence condition, which will be required to facilitate compliance with the principles.

In October 2016, the SEMC published a Consultation Paper "Offers in the I-SEM Balancing Market" (SEM-16-059), which proposed the development of a generic generator licence condition which would require, inter alia, generators to comply with the I-SEM BMPCOP document. The paper also proposed that the licence condition would not define what cost items should be included within a generator's complex bid offer, nor contain a definition of Short Run Marginal Cost (SRMC). As part of its rationale, the Consultation Paper stated that *"such an approach would provide greater clarity, flexibility, and detail to generators and other relevant market participants regarding the application of the BMPCOP document in I-SEM"*. Two licence conditions were published for consultation, one in respect of each option for applying ex ante bidding controls to complex bid offer data in the I-SEM Balancing Market, as well as a draft of the BMPCOP document that would be required under Option 1.

In considering responses received, the SEMC noted that *“its proposal to create a generic licence condition and transfer content (e.g. definition of SRMC) from the existing “Cost Reflective Bidding in the Single Electricity Market” licence condition is consistent with previous SEM Committee communications to stakeholders regarding I-SEM”* and that *“the transfer of content from the “Cost Reflective Bidding in the Single Electricity Market” licence condition necessary to facilitate the creation of a dynamic BMPCOP document for I-SEM that can give greater clarity to industry regarding eligible costs [ ]”*. The SEM Committee provides further rationale for its decision by noting that *its proposal will ensure that, in the future, “doubts as to the meaning or application of the BMPCOP can be definitively resolved by the SEM Committee and recorded in the BMPCOP document, which would be updated by the SEM Committee to reflect particular circumstances following the appropriate consultation process”*. In this way, the SEMC *“considers it reasonable and prudent to have a framework that allows timely amendments to any future BMPCOP document should potential deficiencies arise or need for changes be identified”*.

Having considered responses received, the SEMC published a Decision Paper *“Complex Bid Offer Controls in the I-SEM Balancing Market”* (SEM-17-020), notifying stakeholders, inter alia, of its decision to establish a generic licence condition to require Generation Licence holders to comply with the BMPCOP: *“Taking account of respondents’ comments, the SEM Committee is satisfied with its proposal to establish a generic generator licence condition, which would require, inter-alia, generators to comply with the I-SEM BMPCOP document”*. The Decision Paper further confirmed that *“By implementing an amended version of Option 1, the SEM Committee is also approving the governance approach envisaged in the Consultation Paper in terms of which the new licence condition would prescribe fewer matters than the existing “Cost Reflective Bidding in the Single Electricity Market” generation licence condition and more matters (e.g. a revised definition of SRMC) being included in a new Balancing Market Principles Code of Practice (BMPCOP) document for I-SEM”*. The SEM Committee further stated that the RAs would *“separately consult on the details of new licence condition”*. The proposed condition mirrors the draft condition published in SEM-16-059 in respect of Option 1.

## **Effects of modification**

This proposed licence condition will obligate the licensee to comply with the BMPCOP when formulating and submitting COD in the Balancing Market.

The proposed condition will empower the RAs to publish the BMPCOP and amend it from time to time following consultation. It also provides that the BMPCOP will (a) apply only to those categories of COD which are specified in it from time to time and (b) make such provision as appears requisite to the UR to ensure such data are cost reflective.

The condition will also give the RAs power to issue directions to licensees to secure compliance with the licence condition and the BMPCOP.

Obligations imposed on licensees under this condition include:

- a) retaining records regarding the COD (including support data) for a period of four years and providing the UR with explanations of its calculations as regards COD and their consistency with obligations under the condition and the code;
- b) immediately informing the UR of any case where the COD it submits is inconsistent with its obligations and provide a statement of reasons; and
- c) providing an annual certificate by 1 June (signed by at least one director) to confirm that during the 12 month period ending on the preceding 31 March that it has acted independently in relation to all submissions of COD and no submissions have been co-ordinated with any other submissions made by another party to the TSC.

### **3.2.2 New Condition 19: Capacity Market Code<sup>11</sup>**

The Capacity Market Code (CMC) has been developed by the TSOs through the I-SEM Market Rules Working Group and is published by the RAs today, 2 June 2017. A draft of the CMC was published for consultation on 12 January 2017 in SEM-17-004.

## **Reasons for modification**

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<sup>11</sup> This will be numbered as Condition 19 in both the 'standard' generator licences and the DSU generator licences.

The CMC is a core document of the I-SEM. It sets out the rules and procedures of the I-SEM Capacity Market and the associated Capacity Remuneration Mechanism (CRM) which is designed to ensure adequate levels of capacity exist in the I-SEM.

The detailed design of the CRM has been set out in a series of SEMC decision papers (following extensive consultation) which has then been translated into a set of detailed rules in the CMC.

The CMC has its own governance system, which allows for modifications to be implemented according to the procedures set out in the code. The development of the CMC has undergone a multi-stage consultative process facilitated through the I-SEM Rules Working Group, set up to allow participants, the RAs, the SEMO and the TSO to consult on the drafting of the I-SEM Capacity Market rules required to implement the I-SEM market design<sup>12</sup>. The consolidated CMC was delivered to the SEMC in January 2017<sup>13</sup>.

to allow market participants and other interested parties to carry out their own detailed review of the provisions of the code.

In setting out the proposed governance arrangements for the CRM, the SEMC stated that *“should the capacity mechanism be mandatory for existing licence holders in Ireland and Northern Ireland, **we will amend generation and supplier licences to require accession to the capacity market rules and prequalification for auction**”*.<sup>14</sup>

CRM1 Decision SEM-15-103<sup>15</sup> makes participation mandatory for capacity providers *“...The SEM Committee has decided on the following principles: Existing dispatchable plant will need to bid within a tolerance band of the centrally determined de-rating factor for that plant...”* and *“considers the proposed governance arrangements, including associated licence and code changes, as suitable...”*

Following the position set out in these previous consultation and decision papers, the SEMC has decided there will be a new condition included in the generator and

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<sup>12</sup> Documents relevant to the consultative process for the provisions of the Capacity Market Code can be found on the [SEM Committee website](#).

<sup>13</sup> The consolidated version of the Capacity Market Code can be found on the [SEM Committee website](#).

<sup>14</sup> [CRM1 Consultation SEM-15-044](#)

<sup>15</sup> [CRM1 Decision SEM-15-103](#)

supplier licences obliging them to become a Party to and comply with the Capacity Market Code, insofar as it is applicable to them: *“The SEM Committee therefore (a) decides that a licence condition requiring compliance with the CMC (insofar as applicable to them) should be included in generator and supply licences”* (SEM-17-033). For those licensees that do not have any obligations under the CMC, there will be no requirement to become a Party for as long as that position remains.

Electricity suppliers may have obligations to comply with under the Capacity Market Code e.g. when acting as a Demand Side Unit opting to participate in an auction. To the extent that this is the case, it is important that the UR has the ability to enforce compliance with those obligations under the code. The introduction of this licence conditions is the means by which the UR can do so. For any suppliers that do not have any obligations under the CMC (and instead their only obligations e.g. re capacity settlement are included in the Trading and Settlement Code) there will be no obligation to be a party to and comply with the CMC.

### **Effects of modification**

The proposed condition obligates the licence holder to be party to and comply with the CMC insofar as applicable to it.

Where the UR has consented to the registration of any of the licensee’s generation sets by an intermediary, the licensee shall not be obliged to be a party to the code in respect of such generation sets but shall ensure that the intermediary shall be party to and comply with the code in respect of the generation sets.

Consents granted by the UR in relation to intermediaries acting under the TSC in the SEM shall be grandfathered in the I-SEM and will cover both the TSC and the CMC (See SEM-17-025 Modifications to the Intermediary Arrangements for the Integrated Single Electricity Market).

The proposed new condition is to be inserted into all generation licences. It should be noted, however, that the scope of the obligation to comply with the code applies ‘insofar as applicable to [Licensees]’. Therefore, to the extent that (and for so long as) licensees are not mandated to take certain actions under the code and those licensees choose not to participate in the capacity market, the obligation in respect of

becoming a party to, and complying with, the code will not apply to them for as long as that position remains (see section 4.6.4 of CMC Decision Paper).

### **3.3 Modifications proposed to existing conditions in the NI electricity generation licences (including DSU licences)**

In addition to the new conditions outlined above, the UR also proposes to modify the following existing conditions in the NI generation licences:

#### **3.3.1 Condition 1: Interpretation and Construction<sup>16</sup>**

A definition modification proposed to this condition. The effect is that:

- the definition of 'intermediary' , is being deleted (and instead place into Condition 14 for applicability).

The definition of 'intermediary' is being replaced elsewhere in the licence to make it clear that the definition only relates to intermediaries in the context of the TSC.

#### **3.3.2 Condition 14: Single Electricity Market Trading and Settlement Code<sup>17</sup>**

A new paragraph 3 is proposed to this existing condition, to include a definition of 'intermediary' (rather than it continuing to be placed in Condition 1 of the licence). The definition will be: "has the meaning given in the Single Electricity Market Trading and Settlement Code". The reason for this replacement is described in section 3.1.1.

#### **3.3.3 Condition 17: Cost Reflective Bidding in the Single Electricity Market<sup>18</sup>**

##### **Reasons for the modification**

The proposed modification is required to enable the UR to turn off the condition (which requires compliance with the BCOP) at such date and time as determined by

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<sup>16</sup> This is numbered as existing Condition 1 in both the 'standard' generator licences and the DSU generator licences. The proposed modification is the same to both categories of licence.

<sup>17</sup> This is numbered as existing Condition 14 in both the 'standard' generator licences and the DSU generator licences. The proposed modification is the same to both categories of licence.

<sup>18</sup> This is numbered as existing Condition 17 in both the 'standard' generator licences and the DSU generator licences. The proposed modification is the same to both categories of licence.

it. This will be at the same point in time as the UR provides for the coming into force of the new proposed condition, Condition 17a Balancing Market Principles Code of Practice.

### **Effects of the modification**

It is proposed to include a new provision stating that this condition will cease to have effect at a date (and subject to such transitional arrangements) as determined by the UR.

A new paragraph 12 will be inserted into condition 17 stating “This Condition shall cease to have any effect from the date determined by the Authority subject to any transitional arrangements which the Authority may direct and without prejudice to the continuing enforceability of any rights or obligations which may have accrued or otherwise fallen due for performance prior to that date (including any requirement to comply with the direction of the Authority issued prior to that date).“

This condition is to be switched off and replaced with the BMPCOP condition (new condition 17a).

### **3.4 Modifications proposed to AES Ballylumford generation licence**

The modifications proposed in respect of the AES Ballylumford Generation licence are set out in a separate table in the statutory notice (and shown in annex 5). These modifications take account of some differences that exist between the conditions of the AES Ballylumford Licence as compared to other generation licences.

The differences reflect the existence of agreements which Ballylumford has with the Power Procurement Business (PPB) of Power NI. The role of PPB, established before the creation of the SEM, was to purchase power under long term legacy contracts from independently owned generators. These long term contracts are known as Generating Unit Agreements (GUA). Ballylumford is one of these independently owned generators and in fact, is the only remaining generator with whom PPB is party to a GUA.

Ballylumford and Power NI (PPB) are subject to specific licence conditions to reflect these arrangements, including a condition obliging them to enter into a so called Intermediary Agreement (see condition 18 of Ballylumford’s Licence and condition 59 of Power NI’s Licence).

The Intermediary Agreement is a contractually binding agreement to govern the relationship between Ballylumford and PPB (acting as Intermediary) and amongst

other things is to specify the data to be provided by Ballylumford to PPB to enable PPB to comply with particular licence obligations e.g. Cost Reflective Bidding and compliance with the Trading and Settlement Code.

The scope of the licence modifications to the AES Ballylumford Licence are broadly the same as for other generators with some minor revisions to take account of these specific arrangements with PPB.

The proposed modifications to the AES Ballylumford licence can be viewed in Annex 5 to this document.

## **4. Proposed modifications to NI electricity supply licences**

### **4.1 Introduction**

In order to give effect to the SEMC decisions necessary to implement the design of the I-SEM, the UR is of the view that new licence conditions need to be inserted to the NI electricity supply licences and a few modifications are required to existing conditions. Supply licences are also issued to Demand Side Units (DSUs).

The proposed modifications are outlined in the next paragraphs, together with the effects of such changes and supporting reasoning. Annex 2 provides the proposed legal drafting for the modifications to all NI electricity supply licences, including those issued to DSUs<sup>19</sup>, and Annex 4 provides the proposed legal drafting for the modifications to the Power NI/ PPB licence.

### **4.2 New licence conditions proposed in the NI electricity supply licences (including DSU licences)**

#### **4.2.1 New condition 25a: Balancing Market Principles Code Of Practice<sup>20</sup>**

A new licence condition is proposed in the supply licences which will obligate licensees (where operating as a DSU) to comply with the BMPCOP when formulating and submitting COD to the Single Market Operation Business.

This new condition is designed to replace, for the I-SEM, the existing Cost Reflective Bidding licence condition (condition 19) and is designed to implement the policy decisions made in SEM-17-020.

#### **Reasons for modification**

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<sup>19</sup> For clarity, Annex 2 applies to all supply licences, including DSU supply licences because the only modifications being made to the supply licences are the insertion of new conditions – the drafting of which applies to both ‘standard’ and DSU supply licences.

<sup>20</sup> The drafting of this new condition is the same for both ‘standard’ supply and DSU supply licences.

The current policy underpinning the market power mitigation strategy in the SEM is partially based on bidding principles for generators, including a BCOP in terms of which generators are required, inter alia, to bid cost reflectively. The latest version of the BCOP was published in 2014 (SEM-14-019).

The I-SEM Market Power Mitigation Decision Paper (SEM-16-024) confirmed, inter alia, that the wording of the existing bidding principles will be considered by the SEM prior to the introduction of a relevant licence condition, which will be required to facilitate compliance with the principles.

In October 2016, the SEMC published a Consultation Paper “Offers in the I-SEM Balancing Market” (SEM-16-059), which proposed the development of a generic generator licence condition which would require, inter alia, generators to comply with the I-SEM BMPCOP. The paper also proposed that the licence condition would not define what cost items should be included with a generator’s complex bid offer, nor contain a definition of Short Run Marginal Cost (SRMC). As part of its rationale, the consultation stated that *‘such an approach would provide greater clarity, flexibility, and detail to generators and other relevant market participants regarding the application of the BMPCOP document in I-SEM’*. Two licence conditions were published for consultation, one in respect of each option for applying ex ante bidding controls to complex bid offer data in the I-SEM Balancing Market, as well as a draft of the BMPCOP document that would be required under Option 1. In considering responses received the SEMC noted that *‘its proposal to create a generic licence condition and transfer content (eg. Definition of SRMC) from the existing “Cost Reflective Bidding in the Single Electricity Market” licence condition is consistent with previous SEMC communications to stakeholders regarding I-SEM’* and that *‘the transfer of content from the “Cost Reflective Bidding in the Single Electricity Market” licence condition necessary to facilitate the creation of a dynamic BMPCOP document for I-SEM that can give greater clarity to industry regarding eligible costs [ ]’*. The SEMC provides further rationale for its decision by noting that its proposal will ensure that, in the future, *‘doubts as to the meaning or application of the BMPCOP can be definitively resolved by the SEMC and recorded in the BMPCOP document, which would be updated by the SEMC to reflect particular circumstances following the appropriate consultation process’*. In this way, the SEMC *‘considers it reasonable and prudent to have a framework that allows timely amendments to any future BMPCOP document should potential deficiencies arise or need for changes be identified’*.

Having considered responses received, the SEMC published a decision paper (SEM-17-020) notifying stakeholders, inter alia, of its decision to establish a generic

licence condition to require generation licence holders to comply with the BMPCOP: *'Taking account of respondents' comments, the SEMC is satisfied with its proposal to establish a generic generator licence condition, which would require, inter alia, generators to comply with the I-SEM BMPCOP document'*. The decision paper further confirmed that *'By implementing an amended version of Option 1, the SEMC is also approving the governance approach envisaged in the Consultation Paper in terms of which the new licence condition would prescribe fewer matters than the existing 'Cost Reflective Bidding in the Single Electricity Market' generation licence condition and more matters (eg. A revised definition of SRMC) being included in a new Balancing Market Principles Code of Practice (BMPCOP) document for I-SEM'*. The SEMC further stated that the RAs would 'separately consult on the details of a new licence condition'. The proposed condition mirrors the draft condition published in SEM-16-059 in respect of Option 1.

The UR notes that the SEMC's decision refers to a generic *'generator licence condition'*. To align with the ROI supply licences (i.e. that it is to apply in the context of Demand Side Units), the BMPCOP condition is to apply to NI supply licences operating as a DSU.

### **Effects of modification**

This proposed licence condition will obligate the licensee (where it is operating as a DSU) to comply with the BMPCOP when formulating and submitting COD in the Balancing Market.

The proposed condition will empower the RAs to publish the BMPCOP and amend it from time to time following consultation. It also provides that the BMPCOP will (a) apply to those categories of COD which are specified in it from time to time and (b) make such provision as appears requisite to the UR to ensure such data are cost reflective.

The condition will also give the RAs power to issue directions to licensees to secure compliance with the licence condition and the BMPCOP.

Licencees will be obliged to:

- a) retain records regarding the COD (including support data) for a period of four years and providing the UR with explanations of its calculations as regards COD and their consistency with obligations under the condition and the code;

- b) immediately inform the UR of any case where the COD it submits is inconsistent with its obligations and provide a statement of reasons; and
- c) provide an annual certificate by 1 June (signed by at least one director) to confirm that during the 12 month period ending on the preceding 31 March that it has acted independently in relation to all submissions of COD and no submissions have been co-ordinated with any other submissions made by another party to the TSC.

A new definition of the 'Balancing Market' has been inserted within the condition to allow for the operation of condition 25a.

#### **4.2.2 New condition 25b: Capacity Market Code<sup>21</sup>**

The CMC has been developed by the TSOs through the I-SEM Market Rules Working Group and is published by the RAs today, 2 June 2017 (SEM-17-033). A draft of the CMC was published for consultation on 12 January 2017 in SEM-17-004.

#### **Reasons for modification**

The CMC is a core document of the I-SEM. It sets out the rules and procedures of the I-SEM Capacity Market and the associated CRM which is designed to ensure adequate levels of capacity exist in the I-SEM.

The detailed design of the CRM has been set out in a series of SEMC decision papers<sup>22</sup> (following extensive consultation) which has then been translated into a set of detailed rules in the CMC.

The development of the CMC has undergone a multi-stage consultative process facilitated through the I-SEM Rules Working Group, set up to allow participants, the RAs, the SEMO and the TSO to consult on the drafting of the I-SEM Capacity Market rules required to implement the I-SEM market design<sup>23</sup>. The consolidated CMC was delivered to the SEMC in January 2017<sup>24</sup>.

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<sup>21</sup> The drafting of this new condition is the same for both 'standard' supply and DSU supply licences.

<sup>22</sup> The drafting of this new condition is the same for both 'standard' supply and DSU supply licences.

<sup>23</sup> Documents relevant to the consultative process for the provisions of the Capacity Market Code can be found on the [SEM Committee website](#).

<sup>24</sup> The consolidated version of the Capacity Market Code can be found on the [SEM Committee website](#).

The CMC has its own governance system, which allows for modifications to be implemented according to the procedures set out in the code. In January 2017, the SEMC published the draft CMC for consultation (SEM-17-004)<sup>25</sup>, to allow market participants and other interested parties to carry out their own detailed review of the provisions of the code.

In setting out the proposed governance arrangements for the CRM, the SEMC stated that *“should the capacity mechanism be mandatory for existing licence holders in Ireland and Northern Ireland, **we will amend generation and supplier licences to require accession to the capacity market rules and prequalification for auction**”*.<sup>26</sup>

CRM1 Decision SEM-15-103<sup>27</sup> makes participation mandatory for capacity providers *“...The SEM Committee has decided on the following principles: Existing dispatchable plant will need to bid within a tolerance band of the centrally determined de-rating factor for that plant...”* and *“considers the proposed governance arrangements, including associated licence and code changes, as suitable...”*

Further references to the mandatory nature of the CRM and associated market power controls are included in CRM3 Decision SEM-16-039<sup>28</sup>: *“the SEM Committee has decided that in addition to the market power mitigation measures set out in CRM Decision 1 (mandatory bidding, adjusting the capacity requirement- see SEM-15-103) the SEM Committee will apply the following market power mitigation measures with respect to the auctions:...”*.

Following the position set out in these previous consultation and decision papers<sup>1</sup>, the SEMC has decided that there will be a new condition included in the generator and supplier licences obliging them to become a Party to and comply with the Capacity Market Code, insofar as it is applicable to them: *“The SEMC therefore (a) decides that a licence condition requiring compliance with the CMC (insofar as applicable to them) should be included in generator and supply licences”* (SEM-17-033). For those licensees that do not have any obligations under the CMC, there will be no requirement to become a Party for as long as that position remains.

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<sup>25</sup> [SEM-17-004 CRM Capacity Market Code Consultation](#)

<sup>26</sup> [CRM1 Consultation SEM-15-044](#)

<sup>27</sup> [CRM1 Decision SEM-15-103](#)

<sup>28</sup> [CRM3 Decision SEM-16-039](#)

Electricity suppliers may have obligations to comply with under the CMC eg. if they offer capacity into the market as a DSU. To the extent that this is the case, it is important that the UR has the ability to enforce compliance with those obligations under the code. The introduction of this licence condition is the means by which the UR can do so. For any suppliers that do not have obligations under the CMC (and instead their only obligations, relating to issues such as capacity settlement, are included in the TSC) there will be no obligation to be a party to and comply with the CMC.

### **Effects of modification**

The proposed condition obligates the licence holder to be party to and comply with the CMC insofar as applicable to it.

Whilst the licence condition is to be incorporated into all supply licences, in practical terms in the context of electricity suppliers, the obligations to comply with the code (and in turn, the licence condition) will be most relevant for those suppliers that elect to offer demand side response into the capacity market.

### **4.3 Modifications proposed to the Power NI/ PPB licence**

The modifications proposed in respect of the Power NI Licence (in particular to Part IV) are set out in a separate table in the statutory notice. Part IV of the Power NI licence sets out the licence conditions which apply to the Power Procurement Business. These modifications take account of the particular role that PPB performs.

The role of the PPB is described at section 3.4 above. In terms of the proposed modifications, PPB is to be subject to the same licence obligations as other generators but only in relation to those generation sets in respect of which it acts as an Intermediary for AES Ballylumford.Ltd. The scope of the licence modifications to Part IV of the Power NI licence are broadly the same as for other generators with some minor revisions to take account of the specific arrangements with AES Ballylumford.

The proposed legal drafting for the modifications to the Power NI/ PPB licence can be viewed in Annex 4 to this document.

## 5. Next Steps

	<b>Date</b>
Deadline for receipt of responses or representations to UR Licence Modification Consultation published on 2 June 2017	17:00 on Tuesday 4 July 2017

The deadline for receipt of representations or objections to the proposed modifications outlined in this consultation paper is 17.00 on Tuesday 4 July 2017.

The UR will publish a decision on the licence modifications once all responses have been subject to review, and the licence modifications published in the UR's decision will take effect not less than 56 days afterwards.