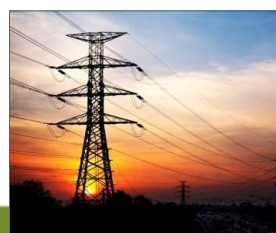


Aggregated Generator Units (AGU) & Demand Side Units (DSU) Licensing Arrangements

Consultation on Licensing to facilitate Participation in the
Wholesale Market

6th August 2014



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 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.

Our Mission

Value and sustainability in energy and water.

Our Vision

We will make a difference for consumers by listening, innovating and leading.

Our Values

Be a best practice regulator: transparent, consistent, proportional, accountable, and targeted.

Be a united team.

Be collaborative and co-operative.

Be professional.

Listen and explain.

Make a difference.

Act with integrity.

Abstract

This consultation is focused on facilitating Aggregated Generation Units and Demand Side Units to fully participate in the wholesale market in a transparent and non-discriminatory manner.

Currently a number of Generator Aggregators have been permitted to operate in Northern Ireland by entering into a Regulatory Agreement with the Utility Regulator. This solution was only ever intended to be short term while licensing provisions were established.

Therefore the Utility Regulator is proposing a more sustainable licensing solution within this consultation paper as a means of supporting AGU and DSUs within the wholesale market. The Utility Regulator will continue to work with the Department of Enterprise, Trade and Investment (DETI) to explore the need for and develop as appropriate more formal arrangements set out in legislation.

Audience

Electricity Industry, Business Community, Statutory Bodies

Consumer impact

As the importance of these activities and the volumes of electricity from these sources increase, the Utility Regulator can obtain all relevant information necessary to promote security of supply and protect consumers.

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Executive Summary

To facilitate further potential benefits to consumers through the wholesale electricity market the Utility Regulator is proposing a more sustainable solution to ensure equal treatment of market participants in terms of the rights and responsibilities. This involves the licensing of Aggregated Generating Units (AGUs) and Demand Side Units (DSUs) which is similar compared to those who currently hold electricity generation, supply, transmission or distribution licences.

An overview of the current licensing regime in Northern Ireland, and the current interim solution for operators of AGUs, is provided in section 2. We will continue to work with DETI on the long term legislative arrangements to bring the activities of operating AGUs and DSUs within the general licensing regime.

In the meantime the proposed solution, described in section 3, is a modified electricity generating licence which contains conditions suitable for regulating the operation of AGUs and DSUs while facilitating the promotion of non-discriminatory and transparent treatment of all those wishing to participate in the Single Electricity Market.

The Utility Regulator has implemented a modification to the Trading and Settlement Code which facilitates a move towards the licensing of both AGUs and DSUs. This modification became effective in April 2014.

For those operators of AGUs who currently hold Regulatory Agreements with the Utility Regulator it is proposed that they transition to the modified licence. Upon the issue of each modified licence the relevant Regulatory Agreement is expected to be terminated, and in due course the use of Regulatory Agreements made redundant.

We welcome responses to this consultation and comments are invited by 5pm on Thursday 4 September 2014 as detailed in section 6.

1. Purpose

1.1 In Northern Ireland, there is a potentially important and growing role for companies who:

- enter into contracts with the owners of small (under 10MW) generating units, for the purpose of acquiring the rights to their output, aggregating it, and selling it into the Single Electricity Market “SEM”. The entities carrying out this activity are known as ‘Generator Aggregators’, and the generating units which they collectively bid into the SEM are the Aggregated Generating Units (AGUs).

- wish to enter into contracts to offer dispatchable demand reduction for sale in the SEM. This includes those who wish to offer their own demand reduction for sale and those who wish to aggregate for sale in the SEM the dispatchable demand reduction of a number of sites. The entities carrying out this activity are known as ‘Dispatchable Demand Customers’ and the demand reduction sites which they bid into the SEM are Demand Side Units (DSUs).

1.2 For convenience the above types of activity will be referred to as “the activities” in the remainder of this paper.

1.3 These are activities which both regulators on the island wish to facilitate, since they offer a range of potential benefits. However, it is also important that the activities do not go unregulated. Accommodating these activities within the Single Electricity Market is a matter for the SEM Committee, which published a decision paper on the ‘Inclusion of Aggregated Generated Units in the SEM’ which is available at the All Island Project

website¹. and a SEM Committee Decision for the Regulatory Authorities in relation to Mod_36_10 (Removal of connection between Supplier Units and DSUs)². However since each jurisdiction is subject to a discrete legal framework in terms of licensing, it is important to consider licensing separately, provided the decisions of the individual regulators are in line with the principles within the SEM decision paper (SEM-08-178) which put in place AGU regulatory contracts recognising ‘this is not a perfect long term solution and is intended as a short term remedy to the problem of AGU compliance’.

1.4 Therefore the purpose of this paper is to:

- explain the current licensing regime in Northern Ireland;
- explain the current system as it relates to the accommodation of the activities within the SEM;
- propose a solution aimed at delivering equal treatment as regards the rights and responsibilities of those who operate AGUs and DSUs compared to those who currently hold electricity generation, supply, transmission or distribution licences.

¹ SEM-08-178

<http://www.allislandproject.org/GetAttachment.aspx?id=66925151-d8ae-4933-89d2-0feb07143f10>

²http://www.semo.com/MarketDevelopment/ModificationDocuments/120403%20SEM%20C%20Decision%20on%20Mod%2036_10.pdf

2. The Licensing Regime in Northern Ireland

- 2.1 The electricity licensing regime in Northern Ireland is set out in Article 8 of the Electricity (Northern Ireland) Order 1992 (Electricity Order). It is an offence for a person to carry out the generation, supply, distribution or transmission of electricity or act as a SEM operator unless they are licensed to do so. All of the current Northern Ireland electricity licences are available on the Utility Regulator's (URs) website³.
- 2.2 Electricity licences are legal documents which set out the rights and responsibilities of licence holders. They are key tools by which the UR carries out its duties and functions, including the duties to protect electricity customers, ensure electricity licence holders can finance their activities and ensure all reasonable demands for electricity are met. Among other things all Northern Ireland electricity licences contain provisions requiring the holder of the licence to contribute to the cost of electricity regulation in Northern Ireland by way of a licence fee and provide information to the UR, where the information is necessary for the UR to fulfil its duties and functions. Where a licence holder breaches a licence condition the UR can in appropriate circumstances;
- issue enforcement orders requiring compliance;
 - issue financial penalties; or
 - if necessary withdraw a licence⁴.
- 2.3 In return licence holders have the right to carry out the activities set out in the licence and therefore to participate in the electricity market on the island of Ireland.
- 2.4 At present, engaging in the activities of a Generator Aggregator or

³ <http://www.uregni.gov.uk/electricity/licences/>

⁴ See Article 28 of the Electricity (Northern Ireland) Order 1992

Dispatchable Demand Customer are not prohibited licensable activities as set out in Article 8 of the Electricity Order. In due course it is desirable that the activities are set out in legislation and that individuals engaged in the activities should be required to obtain a licence in the usual way. This is particularly important because of the potentially significant volumes of electricity that could be traded from these sources and the impact that they could have on the electricity market. The UR is currently in discussion with the Department of Enterprise Trade and Investment (DETI) regarding the desirability of legislative change and the need to ensure that all electricity market participants are licensed and therefore regulated in a transparent non-discriminatory way.

2.5 In the meantime a number of Generator Aggregators have been permitted to trade in the SEM under a short term interim solution as recognised in SEM decision SEM-08-178. Where a Generator Aggregator has

“entered into an agreement with the Regulatory Authority, whereby the Generator Aggregator agrees to comply with the same obligations in relation to participation in the Single Electricity Market as a licensed generator would be required to comply with.”⁵

2.6 There is a standard form of agreement in use for this purpose in Northern Ireland. The key purpose of the agreement is to require the Generator Aggregator to comply with provisions on cost reflective bidding in the SEM Trading and Settlement Code. This solution was only ever intended to be short term while licensing provisions were established. While it attempts to replicate the responsibility of licence holders to comply with the SEM Trading and Settlement Code, it cannot by its nature fully replicate a licence.

⁵ See paragraph 5.195.2 of the Trading and Settlement Code

3. Proposed Interim Licensing Solution

- 3.1 The UR proposes a more sustainable interim solution whereby any person who wishes to engage in the activities may if they wish apply for and, under appropriate circumstances, obtain a modified electricity generating licence which contains conditions suitable for regulating the activities. The purpose of this proposal is to:
- a. Promote non-discrimination and transparency in the treatment of all those wishing to trade in the market. Essentially the proposal is to demonstrate that in practice electricity generators who bring a particular volume of electricity generation to the market will be treated in exactly the same way as those acting as a Generator Aggregator or Dispatchable Demand Customer bringing a similar volume of electricity to market.
 - b. Put the activities on a more secure and transparent regulatory footing which is appropriate and as far as possible the same as that which applies to existing licensable activities.
 - c. Ensure that as the volume of electricity from these sources increases, the UR can obtain all relevant information necessary to promote security of supply and protect customers.
 - d. Ensure that in the event of a breach of licence condition, the UR can take appropriate action.
- 3.2 Ideally the UR considers that in the long term it is desirable that the activities are regularised within the legislation. We continue to work with DETI in this regard. However given legislative timetables, and the need to ensure that any change is compatible with EU requirements regarding regional market structures, it is likely that such a change in legislation would be considered in the context of the I-SEM project. Therefore in order

to allow Northern Ireland to take full advantage of the benefits offered by AGUs and DSUs the UR considers that a more robust and sustainable regulatory framework is required to deliver the benefits noted in paragraph 3.1 above.

- 3.3 The electricity market is governed by a Trading and Settlement Code, to which all market participants must become parties. A modified generating licence will give licence holders the right to become a party to the code for the purpose of trading within the electricity market.
- 3.4 For existing operators who have entered into Regulatory Agreements with the UR, the UR will look to have them regulated with an appropriate licence and hence result in the termination of the Regulatory Agreement.
- 3.5 We consider that the proposal to issue licences to all those who wish to engage in the wholesale electricity market is compatible with European Directive requirements. In particular:
 - a. Article 3 of The Electricity Directive (2007/72/EC) requires that Transmission System Operators on a non discriminatory and transparent basis facilitate participation of final customers and final customer aggregators in reserve and balancing markets. We consider that issuing licences will improve transparency.
 - b. Article 3 of the REMIT Regulations (Regulation EU No 1227/2011) of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency refers to a Regulated Person as being a market participant. We consider that by issuing licences to all those who wish to engage in the wholesale market we are in line with these Regulations.

c. Article 15(8) of the Energy Efficiency Directive (2012/27/EU) requires regulatory authorities to encourage demand side resources, such as demand response, to participate alongside supply in wholesale and retail markets.

3.6 The proposed modified Electricity Generation Licences for a Generator Aggregator and a Dispatchable Demand Customer are set out in the Appendices to this consultation paper.

4. The Trading and Settlement Code

4.1 A modification⁶ (MOD_05_14) to the Trading and Settlement code was approved and became effective from April 2014. This modification facilitates a move towards the licensing of either or both of AGUs or DSUs. The modification does not seek to place a direct obligation on Participants to enter into such licenses because the licensing arena has always been treated as outside the TSC and indeed of a higher priority than the TSC (See Section 2: Legal and Governance of the Code). Instead this modification requires Regulatory Authority approval for the registration of any AGU or DSU, which is a current requirement in any event. The revised provisions also enable the Regulatory Authorities to require a participant to enter into a “form of licence or other agreement”. The legal drafting also justifies such arrangements on the basis of avoiding discrimination between the obligations on Generator Units operating in the SEM.

⁶ MOD_05_14 Update on AGU and DSU Registration Provisions
[http://www.semo.com/MarketDevelopment/ModificationDocuments/140402%20SEM%20Committee%20Decision%20on%20Mod%2005_14%20\(FRR_05_14%20v2%200\).pdf](http://www.semo.com/MarketDevelopment/ModificationDocuments/140402%20SEM%20Committee%20Decision%20on%20Mod%2005_14%20(FRR_05_14%20v2%200).pdf)

5. Existing Regulatory Agreements

- 5.1 The UR has entered into a number of Regulatory Agreements with Generator Aggregators under the current interim solution noted in paragraph 2.5 above. Therefore in respect to those Generator Aggregators who have entered into a Regulatory Agreement with the UR, the UR expects these Generator Aggregators to apply for a licence. When a licence is issued to a party with an existing Regulatory Agreement, the UR expects that the Agreement would be terminated.

6. Consultation Process

- 6.1 This is an open consultation. We have not posed any specific questions in this paper. Instead we invite stakeholders to express a view on any particular aspect of this paper and attached draft Licences for a Generator Aggregator and Dispatchable Demand Customer as set out in Appendix 1 and 2 of this consultation.

Responses should be received by 5pm on **Thursday^{4th} September 2014** and should be addressed to:

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Utility Regulator
Queens House
14 Queens Street
BELFAST
BT1 6ER

Tel: 028 9031 6321

E-mail: Joe.Craig@uregni.gov.uk and Karen.Shiels@uregni.gov.uk

- 6.2 Our preference would be for responses to be submitted by e-mail.
- 6.3 Individual respondents may ask for their responses in whole or in part, not to be published, or that their identity should be withheld from public disclosure. Where either of these is the case, we will ask respondents to also supply us with the redacted version of the response that can be published.
- 6.4 As a public body and non-ministerial Government department, we are bound by the Freedom of Information Act (FOIA) which came into full force and effect on 1 January 2005. According to the remit of FOIA, it is possible that certain recorded information contained in consultation responses can be put into the public domain. Hence, it is now possible that all responses made to consultations will be discoverable under FOIA – even if respondents ask the Utility Regulator to treat responses as confidential. It is therefore important that respondents note these developments and in particular, when marking responses as confidential or asking the Utility Regulator to treat responses as confidential, should specify why they consider the information in question to be confidential.