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13 April 2015

Dear Mary

Consultation on the Proposed Grant of a Supply and Generation Licence to Demand Side Unit Operators

On 4 September 2014 NIE submitted a response to the Utility Regulator's consultation document of August 2014 in relation to Aggregator Generator Units (AGUs) and Demand Side Units (DSUs) licencing arrangements. While NIE remains supportive of the proposal to licence AGU and DSU operation, we have a number of concerns that we believe the UR needs to consider carefully before reaching a final decision as to whether to proceed with the granting of supply and generation licences for AGU/DSU operation.

1. Lack of consultation in relation to the content of a DSU Supply Licence

NIE notes that the UR did not previously include an example Supply Licence in its consultation on the licensing arrangements for AGUs and DSUs in August 2014. Therefore industry participants have not had the opportunity to consider the implications of, or requirements arising from, the grant of such a Licence. Nor indeed has the UR had an opportunity to consider any potential concerns that may have been raised in respect of the grant of such a Supply Licence. By contrast, the opportunity was afforded to industry to comment on the proposed Generation Licences published alongside the AGU/DSU licensing consultation. On this basis, NIE would question if it is appropriate at all for the UR consider granting a Supply Licence to a DSU applicant at this time, without due and proper consultation on said Licence.

2. Failure of Licences to reflect proposed market arrangements

First, and by way of background, NIE would remind the UR of the concerns that the TSOs and DSOs on the island of Ireland have raised with the UR and the CER (the Regulatory Authorities, or RAs) in respect of DSUs. In a joint letter of 12 March 2015, the TSOs and DSOs highlighted issues for the RAs to consider. The letter also set out some proposed solutions. Among these solutions was a proposed process whereby an Individual Demand Site (IDS) wishing to operate as part of a DSU would be subject to a DSO planning study in the first instance. Following a successful study confirming that there are no congestion issues,



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only then would a DSU operator be allowed to include the IDS in question in their application to the TSOs. I have appended the letter of 12 March to this response, for your reference.

It is the function of the DSU Operator Licences to regulate the activities of the DSU Operator. While the grant of a Supply Licence may be a temporary requirement, pending a revision to the Trading and Settlement Code (TSC), a requirement for a Generation Licence is likely to be ongoing. Consideration needs to be given by the Utility Regulator to including provisions in either the Generation Licence or both licences, to reflect the proposed application process referenced above. While future amendments to the TSC, Grid Code or Distribution Code may require compliance with an application process, NIE does not believe that such amendments have yet been proposed or consulted upon. Until any of these Codes require compliance by a DSU Operator with an application process, then it would fall to the Connection Agreement between NIE and each IDS to impose such compliance. However, current NIE Connection Agreements do not refer to an application process to be undertaken should the IDS be part of a DSU.

In the absence of a requirement in the relevant industry Codes or Connection Agreements requiring an IDS/DSU to comply with the application process, then NIE as DSO may have no mechanism for enforcing such compliance. In theory therefore, once a Supply Licence and Generation Licence is granted to a DSU Operator it will be free to operate a DSU regardless of any application process that is considered suitable by the RAs in future. Therefore NIE suggests that the Generation Licence or both licences should, at a minimum, contain a reference to an application process, in the same way that a standard Supply Licence makes reference to a supplier undertaking the market registration process. While such a reference in a Generation Licence would not be included in any other type of generation licence, it is necessary to distinguish between the technical consequences of DSU operation and standard generation and to reflect that DSU operation may be undertaken by an IDS which already holds a Connection Agreement (which would remove the need for an application process in relation to connection to the network).

3. Failure of Supply Licence to identify DSU operation

Currently a supplier of electricity carrying on a supply business requires a supply licence. A standard supply licence requires the supplier to undertake the market registration process by stipulating that the supplier enters into a Market Registration Framework Agreement. While the proposed DSU Operator Supply Licence removes this requirement the Licence is vague as to the nature of the business being undertaken by the licence holder. Unlike the Generation Licence there is no reference to the terms 'Demand Side Unit' or 'Demand Side Unit Operator' and therefore nothing to link this Licence to DSU operation as opposed to a standard supply activity.

The licence also causes confusion in other ways –

- a. The Licence appears to confer the right to supply all premises in Northern Ireland (see Schedule 1). It is not clear from the Licence whether or not it applies to any specific DSU or to any specific IDS. NIE proposes that a DSU Operator Licence (whether a Generation or Supply Licence) should be granted as a multiple site licence with each IDS comprising the DSU being identified in the Licence so that those become the authorised sites. This would be consistent with an application process which requires that each IDS is the subject of an application for registration as part of a DSU. NIE refers to the SSE Renewables Generation Licence of May 2013 as a precedent for this approach.

- b. The Licence has a new Condition 45A restricting the DSU Operator from carrying on a business in the supply of electricity to premises without prior UR approval. This appears inconsistent with Schedule 1, and it is unclear how it applies to an IDS with onsite generation. It would be preferable for Condition 45A to explicitly state that the Licence is for DSU operation only. It would also assist if the Licence was retitled 'Supply Licence for DSU Operation' so that it is clear when the proposed licence is being consulted upon that it is not a standard supply licence which requires a market registration process to be followed for which NIE is responsible.
- c. The Licence makes no reference to the fact that the licence holder cannot use the NIE Distribution System. The fact that the Licence does not include a requirement to undergo market registration or sign a PSO agreement only makes sense if there is no use of the Distribution System to supply a point of supply. However, the current Licence construct ostensibly treats the holder as an electricity supplier (subject to condition 45A) but does not prevent the licence holder from using the Distribution System. This leaves NIE in the position of having to determine whether to regard the licence holder as a user of the Distribution System.

Whilst NIE acknowledges the need for an AGU/DSU Licence holder to avail of other licence functions, we have concerns about the positioning / naming of these "pseudo licences" within the overall market documentation. The market registration requirements for Supply Licence holders are clearly and rigorously defined and managed within a defined legal and regulatory framework, yet the proposed route for an AGU/DSU licence holder would be much less rigorous. For example, if an AGU/DSU is not required to sign up to the Retail Market Registration Code (MRC), NIE would be under no obligation to provide data pertaining to a particular customer under the terms of the MRC. NIE would therefore ask the UR to ensure that a legal review / impact assessment on all market documentation is completed to ensure the proposed market arrangements for AGU/DSUs take due account of established market arrangements for existing parties to the MRC.

As a final point, it is anticipated that consultation on the all-island registration process for DSU operation will be concluded in April. If the process is adopted as part of the TSC we assume that this will ensure compliance by a DSU Operator. If not, it will be necessary to discuss further the implementation of the process in Northern Ireland. In the meantime however we request that no Generation Licence or Supply Licence is issued to any proposed DSU Operator in Northern Ireland.

Yours sincerely



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Regulation Officer