



**Consultations on Moyle Interconnector Trading  
from October 2011**

**Viridian Power & Energy Additional Comments  
to Mutual Energy**

**09 May 2011**

1. **Introduction**

Viridian Power and Energy (VPE) welcomes this opportunity to further contribute to the above consultations. The following paragraphs set out our comments in relation to the Rules. This non confidential response should be read in conjunction with our previous confidential submission of 3 May 2011.

2. **Key Issues**

2.1 We have set out below our general comments in relation to the Rules, together with specific comments in relation to individual provisions. We consider all of these issues to be important, and each of these (individually and combined) goes to whether the agreement is sufficiently robust and clear as to the rights and obligations of the parties, such that it is capable of being executed by Viridian Power and Energy.

2.2 Without prejudice to the foregoing, we would draw your particular attention to the following key issues, which we consider to be critical to the commercial (and regulatory) acceptability of this document, and which we do not consider to be acceptable in their current form.

**Key Issues**

3. **Indemnity**

Clause 4.1 of the Moyle Interconnector Framework Deed (as scheduled to the MICFA) provides that "... the Moyle Capacity User hereby waives to the fullest extent permissible by law, and releases each SONI Party in respect of, any and all Claims, howsoever arising, the Moyle Capacity User may have against the SONI Party.". Clause 4.2 of the Moyle Interconnector Framework Deed provides that "The Moyle Capacity User shall indemnify and hold harmless each SONI Party on demand from and against any Claim made by the Moyle Capacity User or any Moyle Capacity Party".

We would note that the waiver and indemnity referred to above is very broad and represents Capacity Users assuming additional risk in connection with the use of the interconnector.

The inequitable transfer of risk to Capacity Users is also implemented through rules D2.6.5, D2.7.4, D3.4.3 and D4.4.2 of the Access Rules.

**Consequences of Suspension**

Clause 11.3 of the MICFA provides that "Where the right to use its ICE is suspended under this Clause 11.3, the Capacity Holder shall not be relieved of its payment obligations in respect of any applicable Units and Moyle shall be entitled to offer for resale or resell such Units and the Capacity Holder shall not be entitled to any compensation or rebates in respect of same.". We consider that Moyle should not be permitted to Resell the Participant's capacity without reference to the Participant or to retain the proceeds of that resale. Any proceeds should instead be retained by the Moyle and offset against the outstanding balance (if any) owed by the Participant to the Operator

## Moyle Access Arrangements

### General Comments

1. It appears that further definitions are required throughout the Access Arrangements (please see Schedule 1 to this note). Certain terms, which are defined in the MICFA, are used in the Access Arrangements without being expressly defined in the Access Arrangements themselves. If two separate documents are to exist the terms in each should be fully defined in each.
2. Presumably references made to the “East West Interconnector” should read “Moyle Interconnector”. (e.g. in definition of “Participant System”).
3. From the EWIC Access Rules, it appears that the entirety of provisions relevant to access are contained in the Rules themselves and a Framework Agreement is not used, whereas the MIC provisions are divided between the Access Arrangements and the Capacity Framework Agreement. The reason for this distinction is not apparent and, at least on face value, it would appear more desirable to have all the relevant provisions contained in one document as is the case with EWIC.

### Specific Comments

#### 1. **Section A: General Introduction**

- |           |  |
|-----------|--|
| A2.5      | We would suggest the following amendment: “however a representative of each Participant shall be entitled to attend the Moyle Participant Forum” should be added to the final sentence.  |
| A4.2      | We suggest that “provided that, so far as possible, Participants are given sufficient time between the Amendment Notice and the amendment taking effect in order to implement any changes required” should be added to the final sentence.   |
| A4.3.1    | We would suggest that it is made clear that the amendments do not take effect retrospectively.   |
| A4.3.2    | Provides that amended rules shall apply to rights to use Capacity purchased prior to the amendment taking effect. In the case of material amendments, this retrospective effect may be prejudicial against Participants and should be resisted.  |
| A4.3.3    | Contains an incorrect reference to clause 6.2 of the MICFA, the correct reference is 11.2.   |
| A4.4/A4.5 | The fact that Moyle can deem which amendments are trivial or urgent creates a risk that the notice period will be circumvented without building in a corresponding control. For trivial amendments, there does not appear to be any reason why notification should not be given. For urgent amendments, certification of the urgency by the Authority or another appropriate body could be used as a means of control. Pursuant to A4.6 any Amendment Notice is to be approved by the relevant regulatory authorities. In the case of urgent Amendment Notices the fact that it is to be urgent could be included as part of the approval process. |

## 2. Section B: Rules Applicable to Participation

- B2.1 The conditions listed in this rule should be collectively defined as the “Eligibility Conditions”.
- B2.1(b) The reference to clause 6.3 of MICFA does not match the referencing in the new draft MICFA. The correct reference in respect of the new draft MICFA is clause 11.3.
- B2.2 The correct reference is to Rule F2.1 not F6.1.
- B2.3 We suggest that “necessary authorisations” should be more specifically defined, cross referencing to B2.1 could be used to this end. Additionally, Moyle’s right to suspend for breach of this rule should be cross-referred to Rule F2.2.2(d). There is also a typo in the first sentence, the first “to” should be deleted.
- B2.5.2 We would have some concern that B2.5.2 could undermine the status of ‘final’ auction results. As a trader, we carry the risk if we have traded on the back of auction results that are then voided at a later date; particularly if we are not the party at fault or of concern to the RAs.
- B3.2.1(a) The deletion of “pursuant to” should enable this clause to make sense.
- B3.2.1(b) Query how the Applicant could cause the Operator to breach its licence, in particular if they have not yet become a Participant. In any event this should be limited to a ‘direct’ cause as it is too vague as currently drafted. In terms of drafting, paragraph should refer to an Applicant, not a Participant and to the Irish Regulator and the GB Regulator (as being the correct defined terms). We presume the “and” in the final sentence should be “and/or”.
- B3.2.1(c) We suggest that “applicable legal requirement” should be more specifically defined.
- B3.2.2 This rule contains a list of events when Moyle can refuse to enter into an MICFA – query whether it is appropriate to include B3.3.1 and B3.2.2 in the Rules rather than the MICFA document.
- B3.3.1 Presumably an Applicant becomes a Participant when they enter into an MICFA and meet the other conditions set out in B2.1 It is not clear why B3.3.1, B3.3.2 and B3.3.3 refers to both Applicants and Participants. If Applicants are only eligible to participate and become Capacity Holders once they are Participants, then it would be sufficient for these rules to apply to Participants (as only Participants will be able to participate in Auctions).
- B3.4 “Moyle” should be inserted between “provides to” and “remains”.
- B4.1 Risk for Moyle’s AMP failure appears to be transferred to Participants pursuant to this clause. In the event that the Participant System fails to communicate with Moyle’s AMP due to a fault of Moyle, it would be appropriate for Moyle to be liable.

- B4.4.1 This obligation should be amended to be limited to “insofar as reasonably possible”.
- B4.4.2 The current wording “on behalf of the Participant” is too loose and should be defined more specifically.
- B4.5.1 Further provisions required in respect of the cost of training. Moyle should provide standard training at no cost.

3. **Section C: Financial Matters Applicable to the Rules**

While financial matters are considered in the EWIC Rules, the Moyle documentation is different in that financial matters are dealt with in the MICFA. A review of the provisions relating to the financial matters in respect of MIC is set out below and considered in the review of the MICFA.

- C3.1.3 In the event that a warning message is communicated pursuant to this clause, it is assumed that a Participant will be entitled to submit a further bid. However, we note that the definition of Credit Cover at C3.1.1 refers to the amount ‘immediately prior to the Auction commencement’. As such, it is not clear that there will (always/ever) be time to submit a lower bid. We suggest that bids should be scaled automatically relative to the amount of credit cover available as is the case with SEM CfD auctions.

4. **Section D: Auction Rules**

- D2.6.5 Pursuant to this clause Moyle is exempt from liability attaching to any error in the results of Daily and Intra-Day Auctions or its consideration of (or failure to consider) any queries in respect of this type of Auction. As a result the risk attaching to Participants in respect of Daily and Intra-Day Auctions is increased. In addition the Participant is expected to indemnify Moyle in the event of any such error.
- D2.5.4./D2.7.4 There should be a backstop such that the Participants are informed of the results in enough time to allow them to bid that capacity into the market.
- D2.7.4 Moyle seeks to avoid liability for any costs or loss incurred by Participants in respect of any delayed publication of results. It would seem that liability caused by an undue delay as a result of an error of Moyle should be borne by Moyle.
- D2.9 The Fall Back Procedure in the case of a Moyle Auction Platform Failure is very vague. It would be of use to at least prescribe some basis principles.
- D2.10.1 We would have some concern that D2.10.1(c) undermines the status of ‘final’ auction results as it essentially provides that these results might yet be revisited. We query the rationale for this. Under what circumstances might results be revisited ex post? As a trader, we carry the risk if we have traded on what then turns out to be incorrect auction results. As such, we must be able to rely on the ‘firmness’ (subject to operational issues) of the final

allocation, and consider that, in principle, it should not be possible to revisit 'final' results.

- D3.4.2 We consider the 30 minute timeframe to be too short. This should be extended to 24 hrs.
- D3.4.3 Moyle (and the Authority and SONI) seek to disclaim any liability in relation to any Long Term Auction and any related Auction Specification. If Moyle are at fault in respect of running a particular Long Term Auction and such fault causes damage to a Participant, it would be expected that Moyle should carry liability for any such damage.
- D4.4.2 Moyle (and the Authority and SONI) seek to disclaim any liability in relation to any Daily Auction and any related Auction Specification. If Moyle are at fault in respect of running a particular Daily Auction and such fault causes damage to a Participant, it would be expected that Moyle should carry liability for any such damage.
- Also query whether the 15 minute time frame referred to is sufficient.
- D6.2.3 The Agreement should clarify the position in relation to withdrawing a bid. Can you amend your bid to bid for no capacity?
- D6.5.1 It is unclear how the proposal that Participants are to provide a range of parameters of min/max prices and volumes outside of which bids will be rejected would work in operation. Presumably this is to deal with cases of manifest error in respect of bids, however perhaps this proposal could be further explained. Must participants provide these parameters or is bid validation optional?
- D7.2 The marginal price in the event that the number of Units purchased in an Auction is equal to or less than the offered capacity is to be the reserve price or zero in cases where the reserve price is set at zero. As per the EWIC documentation the marginal price in all such instances should be zero.

## 5. **Section E: Capacity Usage Rules**

While capacity usage rules are considered in the EWIC Rules, the Moyle documentation is different in that these are dealt with in the MICFA.

A review of the provisions relating to Interconnector Capacity Entitlement, Capacity Nominations, the Secondary Market and Curtailment in respect of MIC are considered under the comments relating to the Moyle Interconnector Framework Agreement below.

## 6. **Section F: General Conditions**

Rule F1.2 states that rules relating to the Annual Publication of Information is detailed at Rule F3, however there is no such Rule provided.

---

# Moyle Interconnector Framework Agreement

## General Comments

### 1. **Definitions**

The term Interconnector User is used in the MICFA but is not defined in the document. It would appear that where it appears “Interconnector User” could be replaced with the defined term “Capacity User”.

Auction Credit Limit is referred to in the definitions section but is not defined or used in the MICFA.

### 2. **Incorporation of ENTSO-E Rules**

Schedule 2 Clause 5 of the MICFA (and D6.3.4 of the Access Arrangements) provide for information to be submitted pursuant to ENTSO-E recommendations. Where ENTSO-E recommendations are intended to be reflected in the Rules, the Rules should be amended such that there is no ambiguity as to what is required of Participants.

### 3. **Status of Documents / Priority**

The issue of priority should be addressed between the MICFA and the Access Arrangements. Auction Specifications take precedence over the contract. The Rules should take precedence over Business Rules.

## Specific Comments

### 1. **Final Auction Allocation Conformation: 3.3 (c)-(d)**

Additional wording is included concerning the publication of a Final Auction Allocation Confirmation and provisions detailing when it is deemed that a Capacity Contract is concluded.

Clause 3.3(d) provides that, for Intraday Auctions and Daily Auctions, a capacity contract is deemed to be concluded immediately upon publication of the Final Auction Allocation Confirmation. It should be noted that, pursuant to Rule D2.6.5 that Moyle shall not be required to consider any queries in respect of Daily or Intra-Day Auctions As a result, from a practical point of view the publication of preliminary auction results for Intraday Auctions and Daily Auctions are potentially binding.

The proposed timing in respect of when a Capacity Contract is deemed to be concluded for Intraday and Daily Auctions would be more consistent with a position where there was an obligation on Moyle to consider queries raised following the publication of preliminary results.

### 2. **Resale of Units**

The resale of units has been significantly revised in light of the proposed online platform. The online platform facilitates a secondary trading market and therefore the previous provisions in respect of participants being able to assign/ novate capacity have been replaced with provisions governing the Resale of Units.

Clauses 5.1 – 5.4 are essentially a “Use-it-or-Sell” provisions which provide that if a capacity holder does not Nominate any Long-Term Units for any hour of a Trading day, Moyle will

make such Units available in the Daily Auction for the Trading day. The sale by Moyle of the unused units does not relieve a Capacity Holder from payment obligations in relation to that Unit, however all revenues derived from the sale are to be remitted to the Capacity Holder. It should be noted that, in the case of a Daily Auction cancellation, no compensation shall be paid in respect of unused units. This is different from the EWIC position, which provides that “in the case of a Daily Auction cancellation, compensation to Participants for Long-Term Unused Units will be based on the weighted average price of Long-Term Units of the Participant”. The approach taken in the EWIC Rules should be adopted by Moyle.

Clauses 5.5 – 5.18 provide for when a Capacity Holder elects to resell Units it has purchased in a forthcoming Long Term Auction. Clause 5.9 provides for circumstances when Moyle may reject a Resale Request, this clause states that “Moyle may reject any Resale Request that is invalid or that purports to resell Units in circumstances not permitted by this clause 5.9...” - it would be useful if what constitutes an invalid Resale Request, appropriate cross references to 5.5, 5.6 and 5.7 could be used to achieve this.

Clause 5.10 provides that, where one or more Resale Request is made for a forthcoming Long Term Auction, Moyle will include the total associated Units from the requests in the forthcoming Auction to the extent that capacity is available. It should be specified that the rights attaching to any Units which are the subject of such a request but which are not included in the forthcoming auction (due to lack of capacity) will not be affected and remain with the relevant Capacity Holder.

Pursuant to clause 5.16, submission of a Resale Request in respect of specified Units will forego a capacity holder’s rights in those Units regardless of whether or not the units are sold and any payment is received in respect of the Resale Proceeds Payment. Providing the deadline for nomination of these units has not elapsed the rights associated with the unsold units should revert to the capacity holder who can then elect to either use the units or sell them in future upcoming auctions.

### **3. Unavailability of Auction Platform**

In the event that it is deemed by Moyle that it is not practicable to operate a Capacity Transfer of a Resale Request Electronically and an alternate procedure cannot be implemented, the current drafting provides that such Capacity Transfer or Resale Request is to be deferred.

This should be revised to provide participants with the option of electing to cancel their respective Capacity Transfer/ Resale Requests rather than automatically having them deferred in such situations.

### **4. Outages/ Curtailment**

Clause 9.4 provides that “Moyle remain free to plan and execute any Outages that it considers necessary.”. In light of the requirement at clause 9.3 for Moyle to use all reasonable endeavours to ensure that the indicative schedule of Outages is accurate, the ability for Moyle to plan and execute outages should be limited to Outages contained in the indicative schedule and further Outages which were not reasonably foreseeable at the time of preparing the indicative schedule.

The relevant units should be added to the definitions provided for the Curtailment Compensation payment in clause 9.9.

5. **Payment**

Clause 10.1 a) to c) seems to assume that units will continue to be priced in £/MW-month rather than £/MWh.

6. **Nominations**

Schedule 2, Clause 4 provides that “Moyle will reject a Nomination in its entirety for the Trading Day where the corresponding Nomination(s) in one or more hours exceed(s) the ICE acquired by the Capacity Holder in Long Term Auctions. Rejection of full nomination for trading day if error in one period is unnecessary. The Nomination should only be rejected for the duration of the excess nomination. It should be clarified whether such a rejection will be automatically generated by the online platform or if some time delay is likely. In the event that time delay is possible, Moyle should undertake to endeavour as far as possible to notify a Capacity Holder of such a rejection in time to allow it to be corrected.

Schedule 2, Clause 15 provides for the event where it is not possible for a Capacity Holder to submit its Nominations electronically. It would be helpful to more clearly define what will constitute an “alternative valid means of communication”.

---

**Schedule 1 – Examples of Undefined Terms in the Access Arrangements**

1. Applicable Laws
2. Grid Code
3. Implicit Intraday Auction
4. Interconnector Administrator
5. Interconnector Error Administrator
6. Moyle Interconnector Operation Agency Agreement
7. Moyle Participant Forum
8. Participation Requirements
9. SONI (is not defined and the definition of System Operator should be appropriately amended)
10. Unit Holder