

LICENCE CONDITIONS FOR
NIE ENERGY
POWER PROCUREMENT BUSINESS

(Draft 3.0 – 13 April 2007)

Note: These licence conditions relate to the Power Procurement Business of NIE Energy. For their full force and effect they must be read in the context of the draft supply licence to be granted to NIE Energy, of which they will form a part.

Definitions generally applicable to the supply licence as a whole, and other general conditions, such as those relating to the provision of information, are not reproduced in this document, but will apply to the Power Procurement Business as they do to the core Supply Business of NIE Energy.

The other licence conditions applying to NIE Energy are the subject of a separate consultation paper which was published on 27 March 2007. A consolidated version of the two sets of licence conditions, comprising the entire proposed licence for NIE Energy, will be produced at a later stage in the consultation process.

The numbering of the conditions in this document relates to their position in the licence of NIE Energy.

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Condition 53: Power Procurement

- 1 The Licensee shall carry on the Power Procurement Business.
- 2 The Power Procurement Business shall consist in the discharge by the Licensee of the obligations stated or referred to in this Part IV of the Licence.

[Condition 54: The PSO Agreement and the PSO Charges]

[This condition or sections of it may not be required dependant on which entity of Viridian collects PSO revenues]

The PSO Agreement

- 1 The Licensee shall enter into, at all times remain a party to, and comply with the provisions of, the PSO Agreement (being the agreement of that name designated as such by the Authority for the purposes of this Condition) in its capacity as the Power Procurement Business.
- 2 The PSO Agreement shall be capable of modification in accordance with its terms.

The PSO Charges

- 3 The Licensee shall, as soon as practicable after this condition shall have come into force and, in any event, not later than such date as the Authority shall specify in directions issued to the Licensee for the purposes of this Condition, and from time to time thereafter, draw up a schedule of PSO charges to relevant suppliers (and where applicable, to exempt suppliers, to other persons inside the authorised transmission area and to persons outside the authorised transmission area).
- 4 Without prejudice to paragraph 8 and [Schedule X], the PSO charge shall:
 - (a) be in a form which shall require to be approved by the Authority (and, in the case of the financial year commencing on [*date*], also by the Department);
 - (b) contain such detail as shall be necessary to enable any relevant supplier (and where applicable, to exempt suppliers, to other persons inside the authorised transmission area and to persons outside the authorised transmission area) to make a reasonable estimate of the charges to which it would become liable;
- 5 The PSO charge shall be set in accordance with [Schedule X].

- 6 In charging the PSO charge to relevant suppliers (and where applicable, to exempt suppliers, to other persons inside the authorised transmission area and to persons outside the authorised transmission area), the Licensee shall not discriminate:
- (a) as between any relevant suppliers or class or classes of relevant suppliers (and where applicable, to exempt suppliers, to other persons inside the authorised transmission area and to persons outside the authorised transmission area); or
 - (b) as between the Licensee (in its capacity as an electricity supplier) and any relevant supplier or relevant suppliers or class or classes of relevant suppliers (and where applicable, to exempt suppliers, to other persons inside the authorised transmission area and to persons outside the authorised transmission area).
- 7 The Licensee shall give or send a copy of the schedule of PSO charges (as from time to time revised) to the Authority not later than 14 days before it is to be made available to any other person.
- 8 The Licensee shall (subject to paragraph 12) give or send a copy of the schedule of PSO charges (as from time to time revised) to any person requesting the same.
- 9 The Authority may give to the Licensee directions requiring the Licensee to alter the form of the schedule of PSO charges in such manner as shall be specified in the directions, or so as to attain such objectives as may be specified in the directions. No such directions may:
- (a) be given earlier than the date upon which the Authority shall first exercise its cancellation powers; or
 - (b) have the effect of reducing the ability of the Licensee to ensure that in any relevant year the regulated PSO revenue shall not be likely to be less than the maximum regulated PSO revenue calculated in accordance with [Schedule X]. Terms in this sub-paragraph shall have the meanings ascribed to them in [Schedule X].

The Licensee shall forthwith comply with any such directions.

10 In this Condition:

authorised transmission area means the area within which the Transmission Owner is authorised to participate in the transmission of electricity in accordance with the Transmission Owner Licence.

exempt supplier means a person exempt from the requirement to hold a licence under Article 10 [?] of the Order.

Condition 55: Cost-Reflective Bidding in the Single Electricity Market

[This Condition has been the subject of consultation as part of a consultation paper on the Northern Ireland generation licences which was issued on 28 February 2007. It is likely to be subject to modifications as a result of representations made in the course of that consultation, in which case equivalent adjustments will be made to this Condition as it applies to the Power Procurement Business.]

- 1 The Licensee shall ensure that the price components of all Commercial Offer Data submitted to the Single Market Operation Business under the Single Electricity Market Trading and Settlement Code, in relation to any generation set, are cost-reflective.
- 2 For the purposes of this Condition, the price component of any Commercial Offer Data shall be treated as cost-reflective only if, in relation to each relevant generation set:

$$PC = SRMC$$

where:

PC means the Schedule Production Cost related to that generation set in respect of the Trading Day to which the Commercial Offer Data submitted by the Licensee apply, and

SRMC means the Short Run Marginal Cost related to that generation set in respect of that Trading Day.

- 3 For the purposes of paragraph 2, the Short Run Marginal Cost related to a generation set in respect of a Trading Day is to be calculated as:
 - (a) the total costs that would be attributable to the ownership, operation and maintenance of that generation set during that Trading Day if the generation set were operating to generate electricity during that day

minus

- (b) the total costs that would be attributable to the ownership, operation and maintenance of that generation set during that Trading Day if the generation set was not operating to generate electricity during that day,

the result of which calculation may be either a negative or a positive number

- 4 For the purposes of paragraph 3, the costs attributable to the ownership, operation or maintenance of a generation set shall:

- (a) be deemed, in respect of each relevant cost-item, to be the Replacement Cost of that cost-item in relation to the relevant Trading Day,

unless,

- (b) in respect of any particular costs, the Authority has issued a direction (which may be subject to such terms and conditions as the Authority may determine, and may be addressed to the Licensee alone or to it and any one or more other persons) to the effect that the relevant cost-item is to be valued at Opportunity Cost.

- 5 The Licensee shall retain each set of Commercial Offer Data, and all of its supporting data relevant to the calculation of the price component of that Commercial Offer Data, for a period of at least four years commencing on the date on which the Commercial Offer Data is submitted to the Single Market Operation Business.

- 6 The Licensee shall, if requested to do so by the Authority, provide the Authority with:

- (a) a reasoned explanation of its calculations in relation to any Commercial Offer Data; and

- (b) supporting evidence sufficient to establish the consistency of that data with the obligations of the Licensee under this Condition.

- 7 In any case in which Commercial Offer Data are submitted to the Single Market Operation Business which are not consistent with the Licensee's obligation under paragraph 1 of this Condition, the Licensee shall immediately inform the Authority and provide to the Authority a statement of its reasons for the Commercial Offer Data submitted.

- 8 The Licensee shall ensure that by 1 June in each year it submits to the Authority a certificate, signed by at least one director on behalf of the board of directors of the Licensee, to confirm that during the period of twelve months ending on the preceding 31 March it has acted independently in relation to the submission of Commercial Offer Data under the Single Electricity Market Trading and Settlement Code and that submissions made by it or on its behalf have not been co-ordinated with those of any other party.
- 9 The Authority may, by a direction given to the Licensee (which may be subject to such terms and conditions as the Authority thinks fit):
- (a) provide that the obligation under paragraph 1 shall not apply in respect of any generation sets which may be specified or described in the direction;
 - (b) modify any of the provisions of paragraphs 2 to 4 affecting the basis on which the cost-reflectivity of the price components of Commercial Offer Data is to be assessed; and
 - (c) provide that any of the obligations under paragraphs 5 to 8 shall not apply to any generation sets which may be specified or described in the direction.
- 10 In this Condition:

Commercial Offer Data has the meaning given to it in the Single Electricity Market Trading and Settlement Code, as it may be amended from time to time.

Opportunity Cost shall have the meaning set out in, and the value calculated in accordance with, the principles of any direction issued by the Authority to the Licensee (whether alone or together with any one or more other persons) under sub-paragraph 4(b).

Replacement Cost in respect of any cost-item that is attributable to the ownership, operation or maintenance of a generation set:

(a) means the best available price at which a reasonable and prudent operator in the circumstances of the operator of that generation set could, at the time at which the Commercial Offer Data is submitted, acquire that item for use on the relevant Trading Day;

and

(b) shall, where there exists a recognised and generally-accessible trading market in the relevant item, be deemed to be the price that would be paid for the item in that market at the time at which the Licensee submits the Commercial Offer Data, with a view to its delivery for use on the relevant Trading Day,

including in each case any reasonably associated costs of the transaction and of the transportation of the relevant item.

Schedule Production Cost

has the meaning given to it in the Single Electricity Market Trading and Settlement Code, as it may be amended from time to time.

Short Run Marginal Cost

means certain costs attributable to the ownership, operation and maintenance of a generation set, as calculated in accordance with paragraph 3 of this Condition.

**Single Market Operation
Business**

has the meaning given to it in the market operator licence for Northern Ireland.

Trading Day

has the meaning given to it in the Single

Electricity Market Trading and Settlement Code,
as it may be amended from time to time.

Condition 56: Trading and Settlement Code

1 The Licensee shall enter into and at all times remain a party to the Single Electricity Market Trading and Settlement Code in its capacity as the Power Procurement Business, and shall comply with the Code insofar as it is applicable to the Licensee in the discharge of its obligations under any Intermediary Agreement.

2 In this Condition:

Intermediary Agreement has the meaning given to it at Condition 57.

Condition 57: Intermediary Agreements

- 1 The Licensee shall, in conjunction and co-operation with each Relevant Electricity Generator, prepare, enter into and at all times comply with an agreement with that generator to be known as an Intermediary Agreement.
- 2 In default of agreement between the Licensee and any Relevant Electricity Generator, the Authority may determine the form and content of an Intermediary Agreement
- 3 For the purposes of paragraphs 1 and 2, an Intermediary Agreement:
 - (a) shall be a contractually-binding agreement designed to govern the relationship between the Power Procurement Business of the Licensee and a Relevant Electricity Generator in relation to the agreements specified at Schedule 2 to the licence of that generator, for so long as such agreements remain extant;
 - (b) shall make such provision as is necessary or expedient to ensure that both the Power Procurement Business and the Relevant Electricity Generator are able to comply with their respective obligations under their licences and under the Single Electricity Market Trading and Settlement Code; and
 - (c) may make further provisions of such description as may from time to time be set out in a direction given to the Licensee by the Authority,but may not make any provision which has the effect of requiring or accepting amendments to the terms of any agreement specified at Schedule 2 to the licence of the Relevant Electricity Generator.
- 4 Save in so far as it is determined by the Authority under paragraph 2, an Intermediary Agreement, and any amendment to it that may be made from time to time, shall be required to be approved by the Authority prior to coming into effect.
- 5 In this Condition:

Relevant Electricity Generators means AES Kilroot Limited, Coolkeeragh ESB Limited and Premier Power Limited, each in their respective capacities as the holder of an

electricity generation licence in Northern
Ireland.

Condition 58: Cancellation of Contracts

[This Condition – to be based on Condition 7 of Part IIIB of the current Northern Ireland Electricity plc combined transmission and public electricity supply licence – is the subject of a separate consultation paper published on 2 April 2007.]

Condition 59: Independence of the Power Procurement Business

General Duty

1 The Licensee shall:

- (a) unless it has already done so prior to this Condition coming into force, establish; and
- (b) at all times thereafter maintain,

the full managerial and operational independence of the Power Procurement Business from any Associated Business, save that nothing in this Condition shall prevent any director of a relevant holding company from being a director of an Associated Business.

2 Without limiting:

- (a) the ability of the Authority to require revisions to the Compliance Plan pursuant to paragraph 6 to ensure its compliance with this Condition (including paragraph 1); or
- (b) the obligation of the Licensee to review the Compliance Plan in accordance with paragraph 8 to ensure its compliance with this Condition (including paragraph 1),

the Licensee shall be taken to have complied with paragraph 1 where it complies with paragraphs 3 and 5.

Specific Duties

3 The Licensee shall ensure that:

- (a) the Power Procurement Business is provided with the premises, systems, equipment, facilities, property, personnel, data and management resources that are necessary for its efficient and effective managerial and operational independence from any Associated Business;

- (b) decisions relating to the Power Procurement Business (or any part of it) are taken by those persons who are employed on behalf of, and are engaged in the operation and management of, the Power Procurement Business, provided that this sub-paragraph shall not prevent either the directors of the Licensee or any relevant holding company approving the Licensee's capital expenditure budget or exercising their corporate governance role in relation to the Licensee where they do so in a way calculated to ensure that such exercise does not restrict, prevent or distort competition in the supply or generation of electricity on the Island of Ireland;
- (c) decisions relating to any business in the generation or supply of electricity on the Island of Ireland are not taken by those persons who are employed on behalf of, and are engaged in the operation and management of, the Power Procurement Business;
- (d) any Associated Business does not (save in so far as the Authority otherwise consents) use or have access to:
 - (i) premises or parts of premises occupied by persons engaged in the management or operation of the Power Procurement Business;
 - (ii) systems for the recording, processing or storage of data to which persons engaged in the management or operation of the Power Procurement Business also have access save to the extent the Authority consents on such access
 - (iii) equipment, facilities or property employed for the management or operation of the Power Procurement Business save to the extent the Authority consents to such access; and
 - (iv) the services of persons who are (whether or not as their principal occupation) engaged in the management or operation of the Power Procurement Business;
- (e) the Licensee, in so far as is legally possible:

- (i) ensures that any director of the Licensee is not at the same time also a director of another company which carries on an Associated Business engaged in the transmission, distribution, generation or supply of electricity on the Island of Ireland;
 - (ii) prevents any person who has ceased to be engaged in the management or operation of the Power Procurement Business from being engaged in the activities of any Associated Business in the transmission, distribution, generation or supply of electricity on the Island of Ireland until the expiry of an appropriate time (being a period of at least three months) from the date on which he ceased to be engaged by the Power Procurement Business;
- (f) the Licensee establishes and maintains an up-to-date register of all persons engaged in the management or operation of the Power Procurement Business, confirming that the provisions of paragraph (e) have been complied with in respect of each person so engaged; and
- (g) the Licensee, in so far as is legally possible, ensures that, in making any decisions relating to the Power Procurement Business, the directors of the Licensee:
- (i) have regard only to the need to ensure that the Power Procurement Business is able to discharge its obligations under Part IV of this Licence; and
 - (ii) act in a manner calculated to secure that the operation and management of the Power Procurement Business does not restrict, distort or prevent competition in the supply or generation of electricity on the Island of Ireland (provided that no actions necessary to ensure the compliance of the Licensee with the other provisions of this Part IV shall be held to be a breach of this sub-paragraph (ii)).

Compliance Plan

4 The Licensee shall, no later than 3 months after the date on which this paragraph becomes effective, prepare and submit to the Authority for its approval a compliance plan setting out the practices, procedures, systems and rules of conduct which the Licensee has adopted, or intends to adopt, together with the timescales for adoption, to ensure its compliance with this Condition.

5 The Licensee shall comply with its approved compliance plan (the **Plan**) and shall from time to time publish the up-to-date Plan on its website.

6 The Authority may:

- (a) within 30 days of the Licensee submitting an initial or revised Plan; and
- (b) following any review of the Plan that the Authority may conduct from time to time,

notify the Licensee that, in its opinion, the Plan is not, or is no longer, sufficient for the purposes of the Licensee's compliance with this Condition, and require such revisions to be made to the Plan as are in the Authority's opinion necessary or expedient in order for it to be sufficient for the purposes of ensuring the Licensee's compliance or continued compliance with this Condition.

7 Where the Licensee receives a notification in accordance with paragraph 5, it shall within 30 days revise the Plan in such manner and to such extent as will reflect the Authority's requirements.

8 The Licensee shall at least once every year during which this Condition is in force review the Plan so as to ensure:

- (a) its continued compliance with its obligations under this Condition; and
- (b) that the information set out in the Plan continues to be accurate in all material respects.

9 Where the Licensee revises the Plan, either in accordance with paragraph 6 or following a review conducted by it in accordance with paragraph 7, it shall submit the revised Plan to the Authority for its approval.

- 10 The Licensee shall ensure that persons engaged in the management and operation of the Power Procurement Business:
- (a) are made aware of the practices, procedures, systems and rules of conduct set out in the Plan;
 - (b) have the necessary information and facilities to comply with their respective obligations as provided for in the Plan; and
 - (c) are aware of the disciplinary procedures that may be activated should they fail to comply with their obligations under the Plan.

Compliance Manager

- 11 The Licensee shall, following consultation with the Authority, appoint a senior member of its personnel engaged in the management and operation of the Power Procurement Business as a manager (the **Compliance Manager**) for the purpose of facilitating compliance with its obligations under this Condition and with the Plan.
- 12 The Licensee shall ensure that the Compliance Manager has access to such staff, premises, systems, information, documentation, equipment, facilities and other resources as he might reasonably expect to require to fulfil the duties and tasks assigned to him.
- 13 The duties and tasks assigned to the Compliance Manager shall include:
- (a) providing relevant advice and information to the Licensee for the purpose of ensuring its compliance with this Condition and with the Plan;
 - (b) monitoring the effectiveness of and the Licensee's compliance with the Plan;
 - (c) investigating any complaint or representation received by the Licensee from any person in respect of any matter arising under or by virtue of this Condition or in relation to the Plan;
 - (d) recommending and advising upon the remedial action which any such investigation has demonstrated to be necessary or desirable, including where necessary revising the Plan to reflect such recommendation and advice; and

- (e) reporting, at such frequency as is determined in writing by the Authority, to the directors of the Licensee on his activities during the period covered by the report, on the investigations he has conducted and on progress towards the implementation of the Plan.
- 14 The Licensee shall, at such frequency as is determined in writing by the Authority, submit a report to the Authority:
- (a) detailing the activities of the Compliance Manager during the period covered by the report;
 - (b) providing a progress update on the Licensee's implementation of the Plan; and
 - (c) setting out the details of any investigations conducted by the Compliance Manager, including:
 - (i) the number, type and source of the complaint or representation on which such investigations were based;
 - (ii) the outcome of such investigations; and
 - (iii) any remedial action taken by the Licensee following each such investigation.

Undertakings

- 15 The Licensee shall procure from each relevant holding company a legally enforceable undertaking in favour of the Licensee, in a form specified by the Authority, that the relevant holding company will not exercise its corporate governance role in relation to the Licensee other than in a manner calculated to ensure that such exercise does not restrict, prevent or distort competition in the supply or generation of electricity on the Island of Ireland.
- 16 The undertaking referred to in paragraph 15 shall be obtained within seven days after the date when these modifications become effective, or after the person in question becomes a relevant holding company (as the case may be), and shall remain in force for as long as the Licensee remains the holder of this Licence and the giver of the undertaking remains a relevant holding company of the Licensee.

- 17 The Licensee shall:
- (a) deliver to the Authority evidence (including a copy of each such undertaking) that the Licensee has complied with the obligation to procure undertakings pursuant to paragraph 15;
 - (b) inform the Authority immediately in writing if the directors of the Licensee become aware that any such undertaking has ceased to be legally enforceable or that its terms have been breached; and
 - (c) comply with any direction from the Authority to enforce any such undertaking.
- 18 The Licensee shall not, save with the written consent of the Authority, enter (directly or indirectly) into any agreement or arrangement with a relevant holding company at a time when:
- (a) an undertaking in compliance with paragraph 15 is not in place in relation to that relevant holding company;
 - (b) there is an unremedied breach of such undertaking; or
 - (c) the Licensee is in breach of the terms of any direction issued by the Authority under paragraph 17.
- 19 Where and to the extent that either the directors of the Licensee or a relevant holding company exercise their corporate governance role in relation to the Licensee, the Licensee shall within [*three*] days of such exercise notify the Authority of that fact and provide such other information regarding such exercise as the Authority may require.

Definition

- 20 In this Condition:

Associated Business means any business of the Licensee (or of any affiliate or related undertaking of the Licensee) other than a relevant holding company and the

Power Procurement Business.

relevant holding company

means each holding company of the Licensee which does not itself transmit, distribute, generate or supply electricity on the Island of Ireland and which has no holding company that itself transmits, distributes, generates or supplies electricity on the Island of Ireland (regardless of whether any subsidiaries of such companies undertake such transmission, distribution, generation or supply).

Condition 60: New Electricity Purchase Contracts

- 1 The Licensee shall not, in the course of carrying out the activities of the Power Procurement Business, enter into any electricity purchase contract at any time after the date on which this condition comes into effect, except where:
 - (a) it is directed by the Authority to do so in accordance with any other Condition of this Licence; or
 - (b) it is necessary for it to do so in order to ensure its compliance with any contractual obligation binding on it at the date at which this Condition comes into force.

Condition 61: Undue Discrimination and Undue Preference

- 1 The Licensee shall not, in the course of carrying out the activities of the Power Procurement Business:
 - (a) show undue preference towards, or undue discrimination against, any supplier or generator, or class or classes of suppliers or generators; or
 - (b) act so as to obtain a commercial advantage for any business of the Licensee (or of any affiliate or related undertaking of the Licensee) other than the Power Procurement Business, in relation to competitors of that business operating in the same market as it.

Condition 62: Disposal of Relevant Assets

- 1 The Licensee shall not dispose of or relinquish operational control over any relevant asset otherwise than in accordance with the following paragraphs of this Condition.
- 2 Save as provided in paragraph 3, the Licensee shall give to the Authority not less than two months' prior written notice of its intention to dispose of or relinquish operational control over any relevant asset, together with such further information as the Authority may request relating to such asset or the circumstances of such intended disposal or relinquishment of control or to the intentions in regard thereto of the person proposing to acquire such asset or operational control over such asset.
- 3 Notwithstanding paragraphs 1 and 2, the Licensee may dispose of or relinquish operational control over any relevant asset:
 - (a) where:
 - (i) the Authority has issued directions for the purposes of this Condition containing a general consent (whether or not subject to conditions) to:
 - (A) transactions of a specified description; and/or
 - (B) the disposal of or relinquishment of operational control over relevant assets of a specified description; and
 - (ii) the disposal or relinquishment of operational control in question is effected pursuant to a transaction of a description specified in the directions, or the relevant asset in question is of a description so specified, and the disposal or relinquishment of operational control is in accordance with any conditions to which the consent is subject; or
 - (b) where the disposal or relinquishment of operational control in question is required by or under any enactment or by or under the transfer scheme.
- 4 Notwithstanding paragraph 1, the Licensee may dispose of or relinquish operational control over any relevant asset specified in any notice given under paragraph 2 in circumstances where:

- (a) subject to paragraph 5, the Authority confirms in writing that it consents to such disposal or relinquishment (which consent may be made subject to the acceptance by the Licensee or any third party in favour of whom the relevant asset is proposed to be disposed or operational control is proposed to be relinquished of such conditions as the Authority may specify); or
- (b) the Authority does not inform the Licensee in writing of any objection to such disposal or relinquishment of control within the notice period referred to in paragraph 2.

5 In relation to a material disposal, any consent of the Authority pursuant to paragraph 4 shall be given after the Authority shall have consulted and taken into consideration any representations timeously made by any authorised electricity operator liable to be materially affected by the disposal in question

6 In this Condition:

disposal includes any sale, assignment, gift, lease, licence, the grant of any right of possession, loan, security, mortgage, charge or the grant of any other encumbrance or the permitting of any encumbrance to subsist or any other disposition to a third party, and **dispose** shall be construed accordingly.

relevant asset means the interest of the Power Procurement Business under any power purchase agreement.

Condition 63: Payment Security Policy

- 1 The Licensee shall develop, and may from time to time amend, a payment security policy describing its security cover and debt recovery procedures in respect of power procurement energy sales revenue and regulated PSO revenue (including details of what is to be considered reasonable recovery costs and reasonable interest for the purposes of calculating uncollected revenue.
- 2 The Licensee shall submit the payment security policy and any amendments thereto to the Authority for its approval.

3 In this Condition:

power procurement energy sales revenue means the revenue to which the Licensee is entitled for the sale under the Single Electricity Market Trading and Settlement Agreement of electricity acquired by it under power purchase agreements.

regulated PSO revenue has the meaning given to it at Schedule [X]

Condition 64: Directed/Undirected Contracts

[This Condition is the subject of separate consultation.]