



**Single Electricity Market  
Second PPB  
Licence Consultation and  
Response to Industry Comments  
22 MAY 2007  
AIP/SEM/07/211**

## **Introduction**

On 13 April 2007 the Regulatory Authorities published a document<sup>1</sup> consulting on the PPB licence conditions proposed to apply in Northern Ireland to implement the Single Electricity Market (“SEM”) and European Union Directive 2003/54/EC (the “Directive”). Non-confidential comments were received from:

- Airtricity
- ESB Regulatory Affairs
- NIE plc
- Synergen
- ESBI/ESBIE

This paper gives the Authority’s response to the issues raised in the first consultation by the respondents mentioned above. A second draft of the proposed PPB licence conditions to be incorporated into the new NIE Energy licence accompanies this paper.

The Regulatory Authorities would be interested to receive the views and comments of interested parties to this second consultation draft. The Regulatory Authorities intend to publish all comments received. If any respondent wishes certain sections of their submission to remain confidential they should submit these sections as an appendix marked confidential.

Comments, preferably in electronic form, should be forwarded not later than 5.00pm on the 11 June 2007 to:

Michael Campbell  
Northern Ireland Authority for Utility Regulation  
Queen’s House  
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Belfast.

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<sup>1</sup> Draft PPB licence conditions to facilitate the implementation of the SEM and EU Directive.

## **Changes to the First Consultation Draft.**

### General

The condition numbers have changed from the first draft and are now one greater than the previous draft so the first condition “Power Procurement” which was condition 53 is now condition 54 and so on. These number changes are as a result of changes to the overall draft NIE Energy licence which will include conditions for NIE Supply alongside PPB conditions. For the avoidance of doubt the condition numbers referred to in this paper generally and in the left hand column of the table below are the condition numbers of the first draft.

### Specific

In Condition 54 paragraphs 3 to 10 of the first draft of the PSO condition have been removed. This is as a result of the decision that NIE T&D will collect all PSO revenues and formulate the PSO schedule of charges. The corresponding condition in the TO licence will be updated to reflect this decision also.

Condition 55 of the first draft (“Cost Reflective Bidding”) has also been changed. These changes however are the subject of the ongoing consultation on generation licences and therefore it is unnecessary to comment on them in this paper.

There has been some redrafting of condition 57 “Intermediary Agreements” and this is discussed in the table below. Condition 59 “Independence of the Power Procurement Business” has also been redrafted. This condition provoked the most responses from industry and the Authority has deemed several changes to the condition. These and responses to the comments received are included in the table below.

Similarly condition 60 the “New Electricity Purchase Contracts” condition has been expanded to allow for contracts for differences and new power purchase agreements that PPB may have to enter into to fulfil its rights and /or obligations under an existing cancellable power purchase agreement. Paragraph 1 ( c) has been included to ensure that any contracts for differences entered into by PPB do not extend beyond the earliest cancellation date of the generator unit agreements.

Condition 61 “Undue Discrimination and Undue Preference” has been redrafted and this is discussed below and some definitions namely “relevant asset” and “power purchase energy sales revenue” have been amended. Again these are discussed in the table.

Condition 63 the “Payment Security Policy” condition has had the reference to PSO revenue removed as a consequence of the PSO regulatory decision discussed above. The second draft now includes two new conditions namely PPB/TO Interface Agreement and PPB/TSO Interface Agreement. These conditions are to govern the PTIA and PSIA agreements respectively. In the same way as the “Intermediary Agreement” condition does these conditions ensure that both parties enter into and at all times comply with the agreement and that it must be initially approved by the Authority and that any subsequent amendments proposed by either party will also require Authority approval. In the event that any consequential amendments are made to the equivalent conditions in the TO and SO licences these changes will be reflected in the final PPB draft licence.

Condition 67 (in the new draft) is also a new condition and it will govern PPB’s activity with regard to undirected contracts. This is at present a placeholder and the conditions that will be required as a consequence of the PPB/PES regulation policy decision will be formulated following the decision being made public.

Condition 68, which is also a new condition, has been inserted into this draft. This condition governs the determination of the PPB PSO revenue. Paragraph 2 allows that paragraph 1 will cease to have effect 12 months after SEM Go-active. This condition will come into force at Go-Active but currently it is hoped that prior to Go-Live agreement on the exact determination of PPB PSO revenue will be agreed. At that stage a revised enduring licence condition would be put in place and come into effect at SEM Go-Live.

Finally condition 69 is an economic purchase obligation on PPB which covers PPB’s purchasing strategy and requires that it purchase all electricity at the best effective price. Paragraph 6 (b) ensures that PPB will not be in breach of this condition as a consequence of any Grid Code amendments.

Condition	Comment	Respondent	Regulatory Response
Condition 54	<p>In relation to the PSO Agreement, NIE would anticipate that this would broadly seek to continue the arrangements for payment of PSO to PPB as are currently in place. NIE understands that NIAUR is considering a proposal to change this approach by, for example, routing all PSO collection via NIE plc, with NIE plc collecting PSO amounts due to NIE Energy on NIE Energy's behalf. There is no specific SEM or Directive reason for a change to the current approach of separate PSO collection. While ostensibly this proposal may appear to streamline the arrangements, it creates commercial issues for both PPB and NIE plc in terms of practicalities and in the ability to structure PSO collections appropriately. NIE does not therefore believe that it is desirable to change the current approach of separate collection of PSO revenue, and such a change is not required for (and does not appear to be otherwise facilitative of) SEM or Directive compliance. It is understood that the Authority views this approach as necessary to ensure that PPB/NIE Energy does not have access to suppliers' sales data. Under the present SEM proposals, the relevant data will be made public and therefore cannot be construed as commercially sensitive.</p>	NIE	<p>The Authority has finalised the decision regarding the PSO contract. Option 1 is to be adopted with NIE T&amp;D collecting PSO charges from all suppliers. Of the four respondents who expressed a preference three opted for either option 1 or 2. NIE felt the current arrangement should continue.</p> <p>The Authority is sympathetic to the problem of practicalities that NIE may face with these new arrangements but feel these are far outweighed by the advantages to be gained from the option1 model as outlined below.</p> <p>Suppliers will be required to become party to only one contract as opposed to two. This means only one interface for suppliers and has the benefit of simplicity. It may also be possible to include the PSO as an “adder” to the Distribution Use of System agreement and include it in that contractual relationship thus removing the need for a separate PSO contract altogether. This however has yet to be agreed by NIE.</p> <p>Suppliers will not need to have in place credit cover arrangements with PPB and T&amp;D but T&amp;D only.</p>

<p>Condition 54</p>	<p>The inclusion of this condition depends on whether the PPB will collect PSO revenues. Consultations are ongoing regarding the development of a common PSO methodology and benchmark within the SEM. The outcome will determine whether this condition or sections of it will remain in the PPB licence. The Regulatory Authorities are proposing three options on the method of revenue collection with a preference for either one or two:</p> <ul style="list-style-type: none"> <li>• a single contract between either NIE T&amp;D or PPB and suppliers;</li> <li>• a multilateral contract to which T&amp;D, PPB and suppliers are parties and</li> <li>• two separate contracts (PPB and suppliers and NIE T&amp;D and suppliers)</li> </ul> <p>ESB agrees with the RA's that options one or two would be more preferable to option three. Whichever of the first two options is finally chosen ESB is of the view that there should be a clear and transparent process with regulatory oversight and subject to external audit.</p>	<p>ESB Regulatory Affairs</p>	<p>This model also obviates the need for a commercial arrangement between PPB and suppliers who are competitors of its affiliate supply business (NIE Supply) which will be part of NIE Energy along with PPB.</p> <p>The model comprises an enduring solution in that it will still work when PPB no longer exists. Also PPB will not be involved in price setting of the PSO into a pence per Kwh charge across customer categories. This removes any concern that PPB may favour its affiliate in this process.</p> <p>NIE have suggested in their response that the change in the arrangements do not facilitate either SEM or Directive compliance. For Directive compliance PPB and NIE Supply are being separated from NIE plc into NIE Energy which will be a sister company of NIE plc. Suppliers currently have a PSO agreement with NIE plc and the Authority is of the opinion that this arrangement should continue. Hence the new arrangement whereby T&amp;D collect PSO revenues is as a consequence of the implementation of the new NIE energy model which is for Directive compliance.</p> <p>NIE are correct in their assumption that the Authority does not wish PPB/NIE Energy to have access to their competitor's sales data. They suggest however that this data will be made public. Agreed procedure 6 "Data Publication" version 3.2a which was</p>
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Condition 54	In 4(b), the wording should reflect the need for PSO-paying Parties to be able to calculate the exact amount of their PSO charges. If the rates of PSO charges are published, then liability for PSO charges will be fully defined.	Airtricity.	published in March 2007 states in appendix 2 that energy charges to supplier units are private data.  Pursuant to the Authority's decision to opt for option 1 paragraph 4 (b) has been removed from this condition. Supplier's ability to calculate charges will be dealt in the NIE plc Transmission licence.
Condition 54	The inclusion of a PSO condition (no. 54) in PPB's licence is only required if PPB continues to collect PSO revenues. Regarding the proposed options for PSO collection in Northern Ireland. ESBI favours option 1, which has the virtue of simplicity, with option 2 ranking second. Our principal concern in this area is the transparency in the setting of the NI PSO.	ESBI/ESBIE	The question of transparency in the setting of the NI PSO will be dealt with separately from this licence consultation.
Condition 55	NIE has made representations as part of the separate consultation on SRMC bidding principles; there are a number of issues specific to the position of PPB as intermediary bidding into the Pool in relation to energy sourced under legacy power purchase agreements. NIE continues to have grave concerns over whether the proposed Condition is practical for PPB, whether the proposals deliver the right result for Northern Ireland customers, and whether PPB can secure compliance with the Condition. There is also a need to consider the knock on	NIE	This condition has been further developed and is part of the consultation on NI generation licences and will also be consulted on separately by the Authority. All queries regarding it will be dealt with in those two public consultations. It is therefore unnecessary to make comment regarding this response in this paper.

	effect on the PSO charges.		
Condition 55	<p>We note the RA's statement that this condition is likely to be subject to modifications as a result of representations made in the course of consultations on the Northern Ireland generation licences. We await the revised wording before commenting further but our assumption is that the condition will closely align to recent wording provided by CER in the draft RoI generation licences.</p> <p>In relation to Condition 55 (8), we note the required certification is being sought retrospectively whereas the RoI licence stipulates certification in advance. However, as the condition is subject to change, this may have already been picked up.</p>	ESB Regulatory Affairs.	This condition has been further developed and is part of the consultation on NI generation licences and will also be consulted on separately by the Authority. All queries regarding it will be dealt with in those two public consultations. It is therefore unnecessary to make comment regarding this response in this paper.
Condition 55	<p>In 2, the definition of SRMC does not appear to match the requirements of the TSC. The rules require complex bids, so that each component can reflect the SRMC of that particular aspect of generation operation; startup, no-load, output level etc.</p> <p>The wording might therefore be better phrased as "the short run marginal cost related to that price component of that generation set ...".</p> <p>3(b) and 4(a) refer to the costs of ownership and replacement cost of cost-items during a Trading Day. How does this deal with plant items that wear out over time, depending on a</p>	Airtricity	This condition has been further developed and is part of the consultation on NI generation licences and will also be consulted on separately by the Authority. All queries regarding it will be dealt with in those two public consultations. It is therefore unnecessary to make comment regarding this response in this paper.



	<p>combination of both running time and output level. Allocation of the cost of expensive plant components that fall into this category must be clear, to avoid definitional ambiguities that may affect Pool price by introducing unexpected price spikes.</p> <p>SRMC bidding rules should also be explicit as to whether the cost of plant components that fail to reach their expected service life can be recovered through an add-on to SRMC bids or not. Perhaps this level of detail is best addressed in Directions issued by the Authority (4(b)), but we believe it must be documented if the bidding rules are to achieve their objective.</p> <p>In 8, it is not clear what is meant by "any other party". Is this intended to refer to another entity, a Party to the Code, or another Participant in the SEM? This should be clarified by providing a definition of "party" in this particular context.</p>		
Condition 55	<p>Synergen responded to the Draft Kilroot Licence (Condition 23) regarding SRMC bidding principles. It notes that the wording of the PPB Licence reflects the wording that was proposed in the Kilroot Licence. Synergen notes that there is a revised SRMC licence condition proposed in the RoI Licences, and understands that this will be consulted on in the second round of NI generation licence consultations. Synergen will comment</p>	Synergen	<p>This condition has been further developed and is part of the consultation on NI generation licences and will also be consulted on separately by the Authority. All queries regarding it will be dealt with in those two public consultations. It is therefore unnecessary to make comment regarding this response in this paper.</p>

	<p>separately on the revised condition in its response to the draft generation licences. Synergen understands that the PPB licence will reflect the final versions of the generation licences – which will be identical in this regard in each jurisdiction. Synergen strongly supports the RAs view that licences will be identical in each jurisdiction given that the SEM is “one market”.</p>		
Condition 55	<p>ESBI understands that the bidding principle condition (no. 55) in this licence will be changed in view of the decision to change this condition in the Kilroot licence (which is being used as a NI generation licence template) and that any changes will be in line with the condition as set out in the RoI generation licences. While we welcome this, we would like clarification of the comment in the paper on the Kilroot licence consultation which suggested that the contracted generators might be exempt from this condition, in light of the consultation on the cancellation of the NI generator contracts.</p>	ESBI/ESBIE	<p>This condition has been further developed and is part of the consultation on NI generation licences and will also be consulted on separately by the Authority. All queries regarding it will be dealt with in those two public consultations. It is therefore unnecessary to make comment regarding this response in this paper.</p>

<p>Condition 57</p>	<p>This Condition should be consistent with the corresponding provisions in the Generation Licences of Generators with plant subject to legacy power purchase agreements and any changes should be incorporated into both Licences. We also note that NIAUR is consulting on transition licence conditions, and that PPB and relevant Generators would be directed to enter into the initial Intermediary Agreements. It is therefore not clear what is intended by paragraph 2 of this Condition which seems to provide another default position.</p> <p>Also, given the purpose of the Intermediary Agreement, once established the parties should review the agreement and propose changes (subject to NIAUR approval) where any additional matter needs to be addressed. It would not be appropriate, given the contractual nature of the underlying documents and market arrangements, for changes to be required at the initiative of NIAUR from time to time as currently proposed. Paragraph 3(c) should therefore be restricted to directions given from time to time under paragraph 4.</p> <p>As a minor point, the words “of the Licensee” should be deleted from Paragraph 3(a) of this Condition.</p>	<p>NIE</p>	<p>Paragraphs one and two of this condition have been re-drafted to more accurately define the Authority’s intentions, namely that only in the event of non-agreement between the parties will the Authority determine the form and content of the Intermediary Agreement. . It also allows for the Authority to modify the agreement even in the case of agreement between parties. New paragraph 3 allows the Authority by direction to instruct the licensee to enter into the agreement whose form and content it has decided by a specified date and new paragraph 4 ensures compliance by the licensee with the intermediary agreement.</p> <p>Paragraph 3 (c) has been removed from this condition. Also the inclusion of the new paragraph 6 allows the licensee in conjunction with the relevant generator to propose amendments to the agreement. The inclusion of the new paragraph 7 ensures that any such proposed amendment be approved by the Authority.</p> <p>The words “of the licensee” have been removed and the reference to “power procurement business of the licensee” has been replaced with “the licensee”.</p>
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<p>Condition 59</p>	<p>This Condition has the potential for wide-ranging impacts on NIE (and in due course, NIE Energy’s) business. It is therefore important that it be properly circumscribed so that it does not prevent proper functioning of NIE Energy’s business. NIE has a number of significant concerns over the scope and drafting of this Condition. We make some general comments here, but would welcome a discussion on this further.</p> <p>We note that some aspects of paragraph 3 replicate aspects of the TO licence that are not appropriate or applicable to PPB in the same way, such as paragraph 3(b). For example, some aspects, such as paragraph 3(c), lack clarity as to what is intended to be achieved, in particular as to the meaning of “decision” and “business”. As currently worded, paragraph 3(c) would cause PPB to be in breach of its licence by fulfilling its normal obligations under the PPAs and Intermediary Agreements.</p> <p>A specific exception is required relating to NFFO plant. In addition, the words “(Except as provided in the PPB / SONI Interface Agreement and/or the PPB / T&amp;D Interface Agreement)” should be inserted at the start of paragraph 3(b).</p> <p>A number of aspects of paragraph 3(d) go well beyond what would be required for the</p>		<p>PPB concerns are noted by the Authority.</p> <p>Paragraph 3 (b) has been redrafted. The inclusion of the words “except as provided for in the PTIA or PSIA” allows for the effective operation of these agreements between T&amp;D and SONI and PPB.</p> <p>Paragraph 3 (c) has been redrafted to allow PPB to fulfil its obligations under the PPAs and Intermediary agreements.</p> <p>The words “except as provided for in the PSIA and/or PTIA” have been included at the beginning of paragraph 3 (b).</p>
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<p>purposes of the SEM and implementation of the Directive, and it would be useful to understand what is sought to be properly achieved so that the provisions can be properly circumscribed. In particular, regarding paragraph 3(d)(i), we do not believe that PPB needs to be separately located from NIE Energy’s supply business. However, to allay any possible concern, security access arrangements could be put in place.</p> <p>The three month “gardening leave” restriction imposed by paragraph 3(e)(ii) is inappropriate as a blanket requirement for all employees. The wording in parentheses starting on line four should be changed to provide the requisite flexibility to enable the appropriate approach to be taken to different types of employees: “(being a period of 3 months or such shorter period as the Authority may direct in respect of any person or class of persons)”.</p> <p>The restriction on employees and directors contained in Paragraph 3(e) should in any event apply only to generation and supply and should not cover transmission and distribution.</p> <p>The first section of paragraph 3(g) should be amended as follows: “it, in so far as is legally possible and without prejudice to their general duties as directors, ensures that, in making any decisions relating to the Power Procurement Business, the directors of the Licensee:”</p>		<p>The Authority is of the opinion that for effective independence from NIE Supply the Power Procurement Business should be located in separate premises.</p> <p>The Authority sympathises with this point and paragraph 3(e)(ii) has been redrafted to allow for a lesser period than three months with Authority approval.</p> <p>The redrafting of paragraph 3(e)(i) now makes reference only to generation and supply. References to transmission and distribution have been removed.</p> <p>This point has been noted and paragraph 3(g) has been amended to include the words “ and without prejudice to their general duties as directors”</p>
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<p>Condition 59</p>	<p>As stated in our response to AIP consultation paper AIP/SEM/07/561 ESB is concerned regarding the proposal to have a single licence for NIE Supply and the PPB. Our belief is that NIE Supply and NIE PPB should be separated both in respect of licence requirements and operationally. Neither the draft Electricity Supply Licence nor the draft PPB licence conditions appear to require the complete and effective separation of the supply business from the PPB business.</p> <p>The definitions used in the different parts of the licence contribute to the lack of clarity. Condition 13 requires the Supply Business not to disclose commercially sensitive information to “Regulated Businesses” which includes the PPB. Condition 59 requires managerial and operational independence of the PPB from any “Associated Business”. It is not clear, however, that this definition includes the supply business. We also request clarification that the definition of “Associated Business” includes Energia and Huntstown.</p> <p>The conditions regarding business separation and ring fencing for both entities should have equivalent obligations to those of the Republic of Ireland licences. These conditions should include for the provision regarding the protection of commercially sensitive information, prohibition of the concurrent use</p>	<p>ESB Regulatory Affairs.</p>	<p>Separation of NIE plc for Directive purposes is a matter for the Department of Enterprise, Trade and Investment (DETI).</p> <p>The definition of associated business seems to the Authority to be clear and concise. It is any business of the licensee (or of any affiliate or related undertaking of the licensee) other than PPB itself and the relevant holding company. For the avoidance of doubt NIE supply is an associated business of PPB. Also Energia and Huntstown are associated businesses of PPB.</p> <p>The RAs are of the view that the conditions developed for the PPB licence remain appropriate given the arrangements under which the PPB activity will be licensed in Northern Ireland. The conditions that have been developed are consistent with those developed for other licences in Northern Ireland as</p>
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	<p>of staff/consultants in separate parts of the business and a code of conduct for the transfer/movement of staff between businesses. In relation to condition 59 (1), we note that nothing in the licence prevents a director of the holding company from being a director of an associated business. The Regulators recent position paper on the acquisition of Viridian Group plc, outlines the intention to impose a licence condition obliging at least half of NIE's board to be independent non-executives. The paper notes that the introduction of the SEM and full retail competition in Northern Ireland make it particularly important that NIE's interests are seen as separate from those of the rest of the Viridian Group. We would like to understand how this requirement will be reflected in this licence.</p>		<p>part of the implementation of the SEM/Directive. It is noted that it is intended that additional detail of obligations of this nature will be set out in the Compliance Plan.</p>
Condition 59	<p>3(c), might be strengthened by rewording the first line to read, "...relating to any associated business or affiliate in the generation or supply ...". It is not clear from the published parts of the</p>	Airtricity	<p>The definition of associated business includes affiliates.</p>

	<p>Licence, what the "activities of the Power Procurement Business" are (Part IV of the Licence?). If it is intended to act as the energy trading arm of the NIE supply business, then it would be reasonable to permit the two to have a common brand. If PPB is supposed to act as a proxy generator, acting for the legacy generators and trading "independently" with all market Participants, then it would be reasonable to require the business to have a separately branded identity.</p> <p>We would welcome clarification on the market relationship between PPB, the various other market entities owned by Viridian Group and the rest of the market. The Licence should define PPB's brand identity in this context.</p> <p>We would expect that the Authority's approval of the compliance plan, as described in 6, would be dependent on the inclusion of contact details for the compliance manager being published on the website, to facilitate receipt of the representations or complaints envisioned in 13(c).</p>		<p>Part IV of the licence is the conditions in this draft. Part IV will be conditions governing PPB in the overall NIE Energy Licence.</p> <p>The proposed arrangements for separation of businesses are considered to be appropriate.</p> <p>The Authority notes this point. Contact details for the compliance manager will be held by the Authority in the event of non-publication on the website.</p>
Condition 59	<p>This condition (Section 1) relates to the "full managerial and operational independence of the Power Procurement Board" from any Associated Business. Specific duties are set out in section 3. The key requirement is that there will be effective ring fencing provisions between the "regulated" businesses and</p>	Synergen	<p>The RAs have updated this condition in light of comments received. Generally, it is noted that it is intended that more detailed matters relating to independence will be dealt with in the Compliance Plan.</p>



	<p>“unregulated” businesses.. For clarity, “regulated” relates to the main legacy businesses (in this case the NIE PES, the PPB and the wires businesses) while “unregulated” relates to the IPPs and non-franchise supply businesses (e.g. Huntstown and Energia).</p> <p>Synergen supports the intent of this condition and believes that “full managerial and operational independence” should cover:</p> <ul style="list-style-type: none"> <li>• the disclosure of commercially confidential information (such as but not limited to plant availability data, bidding strategies and pre-gate closure prices etc);</li> <li>• the sharing of any software systems via common purchase and / or sharing of central data;</li> <li>• the sharing of modelling / forecasting data;</li> <li>• the restrictions on the movement of personnel between Separate Business – consistent with those that apply to movements between a number of the ESB Businesses; and</li> <li>• the isolation of e-mail addresses and systems – such that PPB employees have separate e-mail addresses and the e-mail servers are isolated from the main NIE network.</li> </ul> <p>In particular, any market monitoring operations should assess the interaction of within group availabilities, constraints and price outcomes. This should apply cross jurisdiction across all related affiliates.</p>		
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Condition 59	We welcome the condition of independence of the PPB (no. 59) but note that there are no specific requirements of the kind which ESBI is obliged to fulfil in its ring-fenced businesses regarding staff transfers, access to telephone and computer systems, sharing of confidential information and use of consultants.	ESBI/ESBIE	The proposed arrangements for separation of businesses are considered to be appropriate for the PPB activity.
Condition 60	This Condition crosses over a number of issues being considered as part of the separate consultation on the role of PPB following the introduction of the SEM, and we would anticipate that the outcome of that consultation would be reflected here. This Condition also needs to recognise and except PPB's actions in relation to the EPO requirement. The Condition should not inhibit the ability to 'manage' the existing power purchase agreements where that might technically result in a new agreement being entered into in relation to such a contract. There are a number of examples of this, and we would be happy to discuss that further with you. Perhaps the easiest way to achieve this would be to exempt the existing power purchase agreements (not just contractual commitments) and agreements entered into related to those existing contracts.	NIE	This condition has been redrafted to allow PPB to manage the existing power purchase agreements where that might result in a new agreement being entered into in relation to such a contract. The inclusion of new paragraph 1 (c) allows for PPB to enter into contracts for differences but these cannot have effect after 1 November 2010.  Condition 46 of part III of this licence (i.e the NIE Energy Licence) is an Economic Purchase Obligation and PPB as the licensee will be bound by its terms. Paragraph 3 of that condition states that as well as determining the effective price at which electricity is purchased "regard shall be had to any payments made or received or to be made or received for the grant of or pursuant to any electricity purchase contract".
Condition 60	As stated in our comments above, without Part IV of the licence, it is unclear what the activities of the Power Procurement Business	Airtricity	This draft of PPB licence conditions will constitute Part IV of the new NIE Energy Licence which will govern both NIE Supply and PPB as the two sections

	<p>are. This Condition reads as though the PPB is intended to be wound up on cancellation of the last legacy contract. Are CfDs regarded as electricity purchase contracts for the purpose of this condition and if so, will PPB be directed to enter into such contracts for hedging purposes to manage imbalances and thereby allowed to trade with other participants on an appropriate power exchange?</p> <p>We believe it is important for PPB to be allowed to trade with other Participants, in order to provide liquidity in the contract market. For the sake of clarity, this Condition should be developed to include appropriate definitions.</p>		<p>of NIE Energy.</p> <p>PPB will be actively trading in CFDs and this condition has been redrafted to reflect this PPB activity.</p>
Condition 61	<p>PPB will be part of the same corporate entity as NIE Supply, and there are certain consequences of that - for example, both businesses would be trading in the TSC separately, but as one corporate entity. The drafting of the TSC currently, in relation for example to defaults and payment, means that actions of PPB could impact on NIE Supply and vice versa, and therefore make it impossible for PPB to confirm that this condition as drafted would not be impacted by it being a party to the TSC. There is therefore a need to consider the scope of the proposed Condition further.</p> <p>Also, we note that on undue discrimination the more usual wording that is adopted for this is in</p>	NIE	<p>Paragraph 2 (b) has been redrafted and now includes the words “act in a manner designed so as to obtain a commercial advantage .....”</p> <p>The Authority is of the view that the wording does not require change. In particular the words “undue</p>

	Condition 15(2) Part II of the current NIE licence, in terms of offering agreements, and Condition 13 Part III in terms of operating the transmission system. We do not see a reason to depart from the usual formulation adopted in relation to this.		preference” appear in Article 21 (4) of the Electricity Order so the use of this term is not unprecedented.
Condition 62	The definition of “relevant asset” is odd and requires further consideration.	NIE	The definition of “relevant asset” has been changed in this draft.
Condition 63	The definition of “power procurement energy sales revenue” needs to be amended to incorporate revenue relating to contracts for differences.	NIE	The definition of “power purchase energy sales revenue” has been changed in this draft.
Condition 63	This condition requires the PPB to submit their payment security policy to the Regulatory Authorities only. ESB is of the view that as an independent body all information should be made available and made public except where the information is commercially sensitive to generators.	ESB Regulatory Affairs	This suggested change by ESB Regulatory Affairs is not facilitative of SEM or the Directive 2003/54/EC.

## **Next Steps**

The Regulatory Authorities request comments from interested parties in relation to this second draft of PPB conditions.

Following a consideration of the responses and other relevant matters (for example consequential changes arising from the consideration of other consultations etc.) it is expected that the enduring conditions of the licence will be finalised for implementation from SEM/Directive Go-active, planned for 3 July 2007. It is noted that a separate consultation exercise is being undertaken on the transitional conditions that it is proposed will also apply from SEM/Directive Go-active.

Comments should be forwarded, preferably in electronic form, to [michael.campbell@niaur.gov.uk](mailto:michael.campbell@niaur.gov.uk) or posted to:

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