

UTILITY REGULATOR PUBLISHES APPLICATION BY NIE PLC FOR A PROPERTY ARRANGEMENTS SCHEME

16 August 2007

Today the Utility Regulator is publishing an application received from NIE plc (**NIE**) for a Property Arrangements Scheme under Regulation 13(1) of the Electricity Regulations (Northern Ireland) 2007 (the **Electricity Regulations**).

The proposed Property Arrangements Scheme would transfer various rights in relation to property and other rights and liabilities from NIE to NIE Energy Limited (**NIE Energy**), a sister company within the Viridian Group.

Relevant Background

NIE is currently a vertically integrated electricity undertaking, comprising a transmission system owner business, a distribution system owner and operator business, a wholesale supply business (undertaken by NIE's Power Procurement Business (the **PPB**)) and a public electricity supply business (the **PES**). However, Article 15 of Electricity Directive 2003/54/EC (the **Electricity Directive**) requires the legal and functional separation of distribution system activities from supply activities in order to complete the internal electricity market within the European Union. A copy of the Electricity Directive can be viewed at europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_176/l_17620030715en00370055.pdf.

In order to comply with this legal obligation, some corporate restructuring of NIE is required. Specifically, NIE intends to transfer the PPB and the PES to NIE Energy. This transfer is scheduled to coincide with the launch of the Single Electricity Market for wholesale electricity trading on the island of Ireland, currently anticipated to take place on 1 November 2007.

This corporate restructuring will also involve the transfer of a number of assets – including contracts – from NIE to NIE Energy. To facilitate this transfer, the Electricity Regulations, which implement the Electricity Directive in Northern Ireland, allow NIE to apply to the Utility Regulator for a Property Arrangements Scheme.

As set out above, a Property Arrangements Scheme would, if made by the Utility Regulator, transfer to NIE Energy rights in relation to property and other rights and liabilities of NIE. Importantly, such transfer could include property, rights and liabilities which would not otherwise be capable of transfer (e.g. if consent was withheld by the relevant counterparty). In circumstances where a third party is deemed to be adversely affected by any such transfer – because the Property Arrangements Scheme overrides its refusal to consent – the Utility Regulator must consider whether compensation should be paid to that third party.

A copy of the Electricity Regulations accompanies this notice. The relevant provisions can be found at Part III under the heading “Transfer Schemes etc”.

NIE's Application

A non-confidential version of NIE's application accompanies this notice. Alternatively, a paper copy can be obtained by contacting Ashley Crothers at:

Northern Ireland Authority for Utility Regulation
Queens House
14 Queen Street
Belfast, BT1 6ER
or by telephone on 028 9031 1575
or by fax on 028 9031 1740
or email Crothers.Ashley@niaur.gov.uk

Functions of the Utility Regulator

The Utility Regulator must now assess NIE's application in accordance with the requirements of the Electricity Regulations and determine whether to make a Property Arrangements Scheme and, if so, on what terms.

In assessing NIE's application, the Utility Regulator must determine whether:

- (a) the proposed transfer to NIE Energy of rights in relation to property and other rights or liabilities of NIE is "necessary" or "expedient" for the purposes of achieving the effective separation of NIE's distribution and supply activities in compliance with the requirements of the Electricity Directive;
- (b) any transfer of rights in relation to property or other rights or liabilities which is not included in NIE's application is "necessary" or "expedient" for the purposes of achieving the effective separation of NIE's distribution and supply activities in compliance with the requirements of the Electricity Directive.

Further, the Electricity Regulations provide that the Utility Regulator may not include in a Property Arrangements Scheme any provision which adversely affects a third party unless it determines that such provision is "necessary" or "expedient" for achieving effective separation of NIE's distribution and supply activities in compliance with the requirements of the Electricity Directive.

If the Utility Regulator does include any provision which adversely affects a third party, it must determine whether the Property Arrangements Scheme should also include provision to compensate that third party and, if so, what that provision should be. Such determination must be reached on the basis of "what is just in all the circumstances of the case".

Action Required

The Utility Regulator has written directly to all potentially adversely affected third parties identified in NIE's application. If you consider that you may be adversely affected and have not received such communication, please contact Ashley Crothers at the Utility Regulator as soon as possible and in any event not later than **7 September 2007**.

The Utility Regulator also welcomes representations in respect of NIE's application from other affected parties. Such representations must be directed to Ashley Crothers and received not later than **7 September 2007**.