

Consultation by NIAUR

on a

Licensing Scheme

**made pursuant to Regulation 35 of the Electricity Regulations
(Northern Ireland) 2007 in respect of the licences granted to
Northern Ireland Electricity plc under Article 10(1)(b) and Article
10(1)(c) of the Electricity (Northern Ireland) Order 1992**

And

On changes to the

Terms of Revocation of all

Northern Ireland Supply Licences

1. Purpose and Scope of this Paper

1.1 This consultation covers two main areas. The first is the proposed text of the Licensing Scheme to apply to NIE's PES licence and the second is the proposed change to all Northern Ireland supply licences to the terms of revocation of licence. In particular the Authority intends to reduce the period of notification of its decision to revoke a licence in certain specified circumstances.

2. Statutory Background

2.1 The Electricity Regulations (Northern Ireland) 2007 (the Regulations) made on 3rd July 2007 provided for the making by the Authority of a Licensing Scheme.

2.2 The Regulations were introduced to amend the Electricity (Northern Ireland) Order 1992 and ensure that it conforms with the requirements of Directive 2003/54/EC. Amongst other matters the Directive requires the legal and functional separation of distribution system activities from those of supply and generation. The Regulations facilitate the restructuring of the former PES licence holder (NIE plc) whose current corporate structure is incompatible with this restriction. It does so by providing for a property arrangements scheme and a complementary licensing scheme. The latter enables the current PES licence to have effect as if it were a supply licence under the new provisions granted to NIE Energy Ltd.

2.3 The Licensing Scheme is designed to transfer the existing NIE PES Licence to NIE Energy Ltd and will sit alongside any Property Arrangements Scheme made by the Authority. This will leave NIE plc with the Transmission licence (which also governs the distribution activity). The proposed Licensing Scheme drafted having regard to the draft Property Arrangements Scheme proposed by NIE plc, forms Appendix 1 hereto.

2.4 The Regulations also provide in Reg 41 for the conversion of existing supply licences to general supply licences with such incidental, consequential and supplementary modifications as appear to the Authority to be necessary or expedient. This consultation therefore incorporates a change proposed to the NIE Energy Limited Supply Licence as well as all other Northern Ireland Supply Licences to amend the terms of revocation.

3. The Scheme

3.1 The Scheme proposed by the Authority and which forms Appendix 1 hereto sets out that NIE plc has, in terms of the Regulations, nominated NIE Energy Limited as its associate to hold NIE's public electricity supply licence.

- 3.2 Once the Scheme takes effect the Supply Licence shall thereafter be held by NIE Energy as if it were a licence granted to NIE Energy under Article 10(1)(c) of the Electricity Order as amended by Regulation 6 of the Regulations.
- 3.3 The Authority is obtaining up-to-date versions of the land bank maps from NIE and it is intended that these be included in Schedule 4 to the Transmission Licence when the Scheme is made.
- 3.4 The Regulations oblige the Authority to make the Licensing Scheme as soon as practicable after 14 August 2007. The Authority is required to consult with DETI, NIE Energy and such other licence holders as it considers appropriate¹ and proceed to make the Licensing Scheme as soon as possible thereafter. Once made, the Licensing Scheme is intended to take effect at Go-Live.
- 3.5 **Comments are requested on the terms of the proposed Licensing Scheme.**

4. Licence Changes

- 4.1 In common with the changes to other supply licences discussed below the Authority wishes to amend the terms of revocation of the Supply Licence to be held by NIE Energy Limited to the extent that the Authority may at any time revoke the Licence by not less than 30 days' notice or 24 hours' notice in the case of the Licensee:
- (i) being unable to pay its debts;
 - (ii) having a receiver appointed;
 - (iii) having an administration order made in relation to it;
 - (iv) passing any resolution for winding-up;
 - (v) becoming subject to an order for winding-up by a court of competent jurisdiction; or
 - (vi) suffering any event analogous to any of the foregoing in any jurisdiction in which it is incorporated or resident.

5. Consultation on Supply Licence Changes

- 5.1 In addition this consultation exercise in respect of the Licensing Scheme incorporates the consultation required in respect of the

¹ Reg 39

changes to be made to all Second Tier Supply Licences under Regulation 41 of the Electricity Regulations, (these reflect changes to be made to the Revocation Schedule of the licence).

- 5.2 The significant changes to the timings of the revocation notice are set out above in 4.1. These timings reflect notice periods provided for in GB.
- 5.3 These changes are thought necessary to accommodate the process for Supplier of Last Resort.
- 5.4 This proposed change will also avoid unnecessary delay in the appointment of the supplier of last resort when the licence is revoked as a consequence of one of the events set out in 4.1. Without adjustment the period of notice would be 30 days even in circumstances where the licensee may no longer be able to trade. This delay in the revocation is seen as unhelpful where customers may need to be allocated to a supplier of last resort without delay.
- 5.5 The proposed terms of the licence changes to apply to all second tier supply licences are those set out in Schedule 2 to Appendix 1.
- 5.6 **Comments are requested on the Terms of Revocation proposed.**

6. *Comments*

- 6.1 The RAs welcome comments on any of the matters covered in this paper. All responses, except those marked as confidential, will be published on the NIAUR website. Respondents should try to confine any confidential material in their responses to appendices. The RAs prefer to receive responses in an electronic form so that they can easily be placed on the website. Responses should be sent by Friday 28th September to Barbara Cantley.

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Appendix 1

PROPOSED LICENSING SCHEME

INCORPORATING

TERMS OF REVOCATION TO APPLY TO ALL

NORTHERN IRELAND

SUPPLY LICENCES

**NORTHERN IRELAND AUTHORITY FOR UTILITY
REGULATION**

LICENSING SCHEME

**A Scheme made pursuant to Regulation 35 of the Electricity Regulations
(Northern Ireland) 2007 in respect of the licences granted to Northern
Ireland Electricity plc under Article 10(1)(b) and Article 10(1)(c) of the
Electricity (Northern Ireland) Order 1992**

Made on [●] 2007

CONTENTS

Clause	Heading	Page
1	Interpretation	4
2	Supply Licence	5
3	Transmission Licence	5
4	Operational Time	5
5	Continuing Effect	5
Annex 1	Schedules to Electricity Supply Licence	7
Annex 2	Schedules to Electricity Transmission Licence	9

THIS LICENSING SCHEME IS MADE ON [●]

2007

BY:

THE NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION (the **Authority**) pursuant to Regulation 35 of the Electricity Regulations (Northern Ireland) 2007 (the **Electricity Regulations**) and it shall come into operation when any Property Arrangements Scheme for the transfer of property, rights and liabilities from NIE plc (**NIE**) to NIE Energy Limited (**NIE Energy**) made by the Authority pursuant to Regulation 14 of the Electricity Regulations takes effect (the **Operational Time**).

WHEREAS:

- (A) NIE will immediately prior to the Operational Time:
 - (i) hold a public electricity supply licence under Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 (the **Electricity Order**); and
 - (ii) hold an electricity transmission licence under Article 10(1)(b) of the Electricity Order; and
 - (iii) undertake activities which include the supply and distribution of electricity.
- (B) Regulation 12 of the Electricity Regulations applies to NIE as holder of the licences and undertaker of the activities referred to in Recital (A) above.
- (C) Pursuant to Regulation 13 of the Electricity Regulations and the Authority's direction of 26 July 2007 specifying 14 August 2007 as the date by which such nomination and application must be made, NIE has:
 - (i) nominated NIE Energy as its associate (as defined in Regulation 12(4) of the Electricity Regulations) which will from the Operational Time hold NIE's public electricity supply licence as if it were a licence granted to it under Article 10(1)(c) of the Electricity Order as it is to be amended by Regulation 6 of the Electricity Regulations; and
 - (ii) applied to the Authority for a Property Arrangements Scheme for the transfer of property, rights and liabilities from itself to NIE Energy.
- (D) Pursuant to Regulation 16 of the Electricity Regulations, the Authority must make a Property Arrangements Scheme in relation to any provisions proposed by NIE which it determines are necessary or expedient for the purposes of implementing Article 15 of European Parliament and Council Directive 2003/54/EC concerning common rules for the internal market in electricity. Regulation 35 of the Electricity Regulations will then apply to NIE as a "nominating licensee" to whom a Property Arrangements Scheme applies.
- (E) Regulation 35 of the Electricity Regulations provides that, as soon as practicable after the date specified in the Authority's direction under Regulation 13 of the Electricity Regulations, the Authority must make a Licensing Scheme providing for NIE's public electricity supply licence to have effect as set out in Regulation 12(2) of the Electricity Regulations and for NIE's transmission licence to have effect with such

modifications as may be made pursuant to Regulation 36 of the Electricity Regulations. In making a Licensing Scheme, the Authority must have regard to the provisions of the Property Arrangements Scheme.

- (F) The purpose of this Licensing Scheme is to provide for:
- (i) NIE's public electricity supply licence to be amended so as to conform with the provisions of this Licensing Scheme and to have effect on and after the Operational Time as a supply licence granted to NIE Energy under Article 10(1)(c) of the Electricity Order as amended by Regulation 6 of the Electricity Regulations; and
 - (ii) NIE's transmission licence to be amended so as to conform to the provisions of this Licensing Scheme.
- (G) The Authority has consulted with the Department of Enterprise, Trade and Investment, NIE Energy and such licence holders as it considers appropriate on this Licensing Scheme, in accordance with Regulation 39 of the Electricity Regulations.

THIS LICENSING SCHEME PROVIDES as follows:

1 Interpretation

1.1 In this Licensing Scheme, unless the context otherwise requires, the following expressions shall have the meanings ascribed to them below:

Authority	means the Northern Ireland Authority for Utility Regulation established under Article 3 Part II of the Energy (Northern Ireland) Order 2003 as amended by Article 3 of the Water and Sewerage Services (Northern Ireland) Order 2006
Electricity Order	means the Electricity (Northern Ireland) Order 1992
Electricity Regulations	means the Electricity Regulations (Northern Ireland) 2007
NIE	means Northern Ireland Electricity plc, a company with registration number NI026041 whose registered office is at 120 Malone Road, Belfast BT9 5HT
NIE Energy	means NIE Energy Limited, a company with registration number NI027394 whose registered office is at 120 Malone Road, Belfast BT9 5HT
Operational Time	means the time and date at which any Property Arrangements Scheme made by the Authority pursuant to Regulation 14 of the

Electricity Regulations takes effect

Property Arrangements Scheme	means a Property Arrangements Scheme for the transfer of property, rights and liabilities from NIE to NIE Energy within the meaning of Regulation 14 of the Electricity Regulations
Supply Licence	means the public electricity supply licence granted to NIE on 31 March 1992 under Article 10(1)(c) of the Electricity Order
Transmission Licence	means the electricity transmission licence granted to NIE on 31 March 1992 under Article 10(1)(b) of the Electricity Order

- 1.2 This Licensing Scheme shall be interpreted as if it were an enactment to which the Interpretation Act (Northern Ireland) 1954 applied.
- 1.3 Except where the context otherwise requires, words and expressions used in Part II of the Electricity Order (as the context requires, in force before or after the Operational Time) or in the Electricity Regulations shall have the same meaning when used in this Licensing Scheme.
- 1.4 The Annexes to this Licensing Scheme form part of this Licensing Scheme and reference to this Licensing Scheme includes reference to its Annexes.

2 Supply Licence

- 2.1 The Schedules to the Supply Licence shall with effect from the Operational Time be amended as set out in Annex 1 hereto and the Supply Licence shall thereafter be held by NIE Energy as if it were a licence granted to NIE Energy under Article 10(1)(c) of the Electricity Order as amended by Regulation 6 of the Electricity Regulations.

3 Transmission Licence

- 3.1 The Schedules to the Transmission Licence shall with effect from the Operational Time be amended as set out in Annex 2 hereto.

4 Operational Time

- 4.1 This Licensing Scheme shall take effect at the Operational Time.
- 4.2 If the Authority makes a Property Arrangements Scheme but it does not take effect, this Licensing Scheme will have no effect.

5 Continuing Effect

5.1 Anything done under or by virtue of the Supply Licence or the Transmission Licence which is in effect immediately before the Operational Time shall have continuing effect after the Operational Time.

5.2 Without prejudice to the generality of sub-clause 5.1 above:

- (a) every statement, code or other document prepared pursuant to an obligation in the Supply Licence, which in each case is in effect immediately before the Operational Time, shall have continuing effect after the Operational Time as though it had been prepared pursuant to an obligation in a licence granted to NIE Energy under Article 10(1)(c) of the Electricity Order as amended by Regulation 6 of the Electricity Regulations; and
- (b) every direction, consent, approval, determination, designation or other instrument made by the Department of Enterprise, Trade and Investment or the Authority under the Supply Licence, which in each case is in effect immediately before the Operational Time, shall have continuing effect after the Operational Time as though such direction, consent, approval, determination, designation or other instrument had been issued under a licence granted to NIE Energy under Article 10(1)(c) of the Electricity Order as amended by Regulation 6 of the Electricity Regulations.

THIS LICENSING SCHEME is made on the day and date first before written

.....

A person duly authorised to act
on behalf of the Northern Ireland
Authority for Utility Regulation

ANNEX 1

**THE ELECTRICITY (NORTHERN IRELAND) ORDER 1992
SECTION 10(1)(C)**

**SCHEDULES TO THE
ELECTRICITY SUPPLY LICENCE
FOR
NIE ENERGY LIMITED**

Schedule 1 Specified Premises

The Licensee is authorised to supply electricity to all premises in Northern Ireland.

Schedule 2 Terms as to Revocation

1 The Authority may at any time revoke the Licence by not less than 30 days' notice (24 hours' notice in the case of revocation under sub-paragraph 1(e)) in writing to the Licensee:

- (a) if the Licensee agrees in writing with the Authority that the Licence should be revoked;
- (b) if any licence fee required to be paid under the Licence is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Authority has given the Licensee notice that the payment is overdue provided that no such notice shall be given earlier than the sixteenth day after the day on which the amount payable became due;
- (c) if the Licensee fails to comply with a final order (within the meaning of Article 42 of the Energy Order) or with a provisional order (within the meaning of Article 42 of the Energy Order) which has been confirmed under Article 42 of the Energy Order and which (in either case) has been made in respect of a contravention or apprehended contravention of any of the Conditions or of any relevant requirement (as defined in Article 41(2)(a) of the Energy Order) imposed on the Licensee in its capacity as holder of the Licence and (in either case) such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice of such failure to the Licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an application under Article 44 of the Energy Order could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined;
- (d) if the Licensee fails to comply with an order made by a court under section 34 of the Competition Act 1998; or fails to comply with an order made under section 72, 75, 76, 81, 83, 84, 158, 160 or 161 of, or under paragraph 2, 5, 6, 10 or 11 of schedule 7 to, the Enterprise Act 2002; or is found guilty of an offence under section 188, 193 or 194 of the Enterprise Act 2002;

- (e) if the Licensee:
 - (i) is unable to pay its debts (within the meaning of Article 103(1) or (2) of the Insolvency (Northern Ireland) Order 1989, but subject to paragraph 3 of this Schedule) or if any voluntary arrangement is proposed in relation to it under Article 14 of that Order, or if it enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);
 - (ii) has a receiver (which expression shall include an administrative receiver within the meaning of Article 5(1) of the Insolvency (Northern Ireland) Order 1989) of the whole or any material part of its assets or undertaking appointed;
 - (iii) has an administration order under Article 21 of the Insolvency (Northern Ireland) Order 1989 made in relation to it;
 - (iv) passes any resolution for winding-up other than a resolution previously approved in writing by the Authority;
 - (v) becomes subject to an order for winding-up by a court of competent jurisdiction; or
 - (vi) shall suffer any event analogous to any of the foregoing in any jurisdiction in which it is incorporated or resident;
- (f) if the Licensee is convicted of having committed an offence under Article 63 of the Order or under Article 46 of the Gas (Northern Ireland) Order 1996;
- (g) if the Licensee fails to pay any financial penalty (within the meaning of Article 45 of the Energy Order) imposed in respect of a contravention or apprehended contravention of a Condition or of a “relevant requirement” as defined in Article 41(2)(a) of the Energy Order by the due date for such payment and such payment is not made to the Authority within three months after the Authority has given notice in writing of such failure to the Licensee, provided that no such notice shall be given by the Authority before the expiration of the

period within which an application under Article 49 of the Energy Order could be made questioning the validity or effect of the financial penalty or before the proceedings relating to any such application are finally determined;

- (h) if none of the premises specified, or of the description specified, in Schedule 1 shall have been supplied with electricity by the Licensee at any time during any period of 5 years; or
- (i) if the Licensee ceases to carry on the Power Procurement Business other than with the consent of the Authority.

2 For the purposes of paragraph 1(e)(i) of this Schedule Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 shall have effect as if for "£750" there was substituted "£250,000" or such higher figure as the Authority may from time to time determine by notice in writing to the Licensee.

3 The Licensee shall not be deemed to be unable to pay its debts for the purposes of paragraph 1(e)(i) of this Schedule if any such demand as is mentioned in Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 is being contested in good faith by the licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Authority under paragraph 1 of this Schedule.

ANNEX 2

**THE ELECTRICITY (NORTHERN IRELAND) ORDER 1992
SECTION 10(1)(B)**

**SCHEDULES TO THE
ELECTRICITY TRANSMISSION LICENCE
FOR
NIE ENERGY LIMITED**

Schedule 1 Authorised Transmission Area

1. The authorised transmission area shall comprise Northern Ireland.

Schedule 2 Terms as to Revocation

1 The Authority may at any time revoke the Licence by not less than 30 days' notice in writing to the Licensee:

- (a) if the Licensee agrees in writing with the Authority that the Licence should be revoked;
- (b) if any licence fee required to be paid under the Licence is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Authority has given the Licensee notice that the payment is overdue provided that no such notice shall be given earlier than the sixteenth day after the day on which the amount payable became due;
- (c) if the Licensee fails to comply with a final order (within the meaning of Article 42 of the Energy Order) or with a provisional order (within the meaning of Article 42 of the Energy Order) which has been confirmed under Article 42 of the Energy Order and which (in either case) has been made in respect of a contravention or apprehended contravention of a Condition or of a relevant requirement as defined in Article 41(2)(a) of the Energy Order imposed on the Licensee in its capacity as holder of the Licence and (in either case) such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice of such failure to the Licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an application under Article 44 of the Energy Order could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined;
- (d) if the Licensee fails to comply with an order made by a court under section 34 of the Competition Act 1998; or fails to comply with an order made under section 72, 75, 76, 81, 83, 84, 158, 160 or 161 of, or under paragraph 2, 5, 6, 10 or 11 of schedule 7 to, the Enterprise Act 2002; or is found guilty of an offence under section 188, 193 or 194 of the Enterprise Act 2002;
- (e) if the Licensee:

- (i) is unable to pay its debts (within the meaning of Article 103(1) or (2) of the Insolvency (Northern Ireland) Order 1989, but subject to paragraph 3 of this Schedule) or if any voluntary arrangement is proposed in relation to it under Article 14 of that Order, or if it enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);
 - (ii) has a receiver (which expression shall include an administrative receiver within the meaning of Article 5(1) of the Insolvency (Northern Ireland) Order 1989) of the whole or any material part of its assets or undertaking appointed;
 - (iii) has an administration order under Article 21 of the Insolvency (Northern Ireland) Order 1989 made in relation to it;
 - (iv) passes any resolution for winding-up other than a resolution previously approved in writing by the Authority; or
 - (v) becomes subject to an order for winding-up by a court of competent jurisdiction;
- (f) if the Licensee is convicted of having committed an offence under Article 63 of the Order or under Article 46 of the Gas (Northern Ireland) Order 1996;
- (g) if the Licensee fails to pay any financial penalty (within the meaning of Article 45 of the Energy Order) imposed in respect of a contravention or apprehended contravention of a Condition or of a “relevant requirement” as defined in Article 41(2)(a) of the Energy Order by the due date for such payment and such payment is not made to the Authority within three months after the Authority has given notice in writing of such failure to the Licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an application under Article 49 of the Energy Order could be made questioning the validity or effect of the financial penalty or before the proceedings relating to any such application are finally determined; or

- (h) if the Licensee ceases to carry on the Distribution Business or the Transmission Owner Business other than with the consent of the Authority.
- 2 For the purposes of paragraph 1(e)(i) of this Schedule, Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 shall have effect as if for "£750" there was substituted "£250,000" or such higher figure as the Authority may from time to time determine by notice in writing to the Authority and the Licensee.
- 3 The Licensee shall not be deemed to be unable to pay its debts for the purposes of paragraph 1(e)(i) of this Schedule if any such demand as is mentioned in Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 is being contested in good faith by the Licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Authority under paragraph 1 of this Schedule.

Schedule 3 Not used

Schedule 4 Plans Of Land Comprising The Land Bank

The land for the purposes of identification shown edged red on the plans on the following [seven] pages.