



**Draft Post Go-Active Licence
Modifications - NI Supply Licences**

Consultation Paper

AIP-SEM-07-462

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APPENDIX A - Draft Licence Modifications

1 Introduction

On the 3rd July, the Northern Ireland Authority for Utility Regulation (the Authority) issued notices modifying the electricity transmission, electricity supply and electricity generation licences for Northern Ireland. These modifications were made, with the consent of the Department of Enterprise, Trade and Investment (DETI), pursuant to the Authority's powers under Article 3 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 and Regulation 60 of the Electricity Regulations (Northern Ireland) 2007.

In particular, changes were made to the Public Electricity Supply (PES) licence held by Northern Ireland Electricity plc (NIE)¹. Although a further change that will come into effect at or before SEM Go-Live will be the conversion of this PES licence into a Supply Licence granted under the same prohibition as other Supply licences and the transfer of the licence to NIE Energy, NIE Energy will continue to be subject to conditions that are additional to those that apply to these other supply licensees, and which mirror conditions in NIE's existing PES licence prior to these changes being made.

The purpose of this document is to consult on some further modifications to be made ahead of SEM Go-Live to the conditions in NIE's Supply licence that will endure after SEM Go-Live. In addition one change is proposed to apply also to the licences of all other Suppliers.

Responses are requested by 28 September 2007.

2 Proposed Changes

Drafting of the proposed changes to the conditions to apply from SEM Go-Live in NIE's Supply licence is shown in the Appendix A. The changes are:

1. a change to Condition 46, "Obligation on economic purchasing";
2. a new Condition 54A, "Tariff Methodology Statement";
3. a change to Condition 27, "Terms and Conditions of Electricity Supply Contracts";
4. a change to Condition 53, "Spill arrangements";

¹ "Modification Notice, 'AIP-SEM-07-378, 3 July 2007

5. a new Condition 55A, “Top-up and Standby”;
6. a new Condition 53A, “Duty to Offer Terms for Relevant Arrangement”;
7. a change to Condition 59, “Intermediary Agreements”, consequential on proposed changes to the Generation Licences;
8. a change to Condition 61, “Independence of the Power Procurement Business”; and
9. a change to Condition 68, “Undirected Contracts and Directed Contracts”.

The change proposed to Condition 27 of NIE’s Supply licence is proposed to apply also to Condition 27 in the licences of all other Suppliers. In fact, the provision is aimed primarily at other Suppliers that are not subject to a regulated tariff.

The proposed changes are explained in more detail below.

2.1 Changes to NIE Energy’s Supply Licence

2.1.1 Condition 46, “Obligation on economic purchasing”

At the time of the first and second consultation papers^{2,3} on the Supply licence arrangements for the regulation of ESB Customer Supply and NIE Energy were still under separate consultation^{4,5,6,7}. As such, it was stated that changes to this condition would need to be further considered before Go-Live.

In the decision paper, the Regulatory Authorities (“RAs”) decided,

“A key regulatory control relates to the Economic Purchase Obligation (EPO). As part of the hedging framework, the RAs have decided that ESB CS and NIES can participate in the non-directed contract auctions

² “Draft Supply Licence for Northern Ireland to facilitate the implementation of the Single Electricity Market and EU Directive. Consultation Paper”, AIP-SEM-07-56, 27th March 2007.

³ “Draft Supply Licence for Northern Ireland to facilitate the implementation of the Single Electricity Market and EU Directive. Second Consultation” AIP-SEM-07-153, 15 May 2007.

⁴ “Regulatory Framework for the PES Businesses in NI and ROI Proposal regarding EPO, Revenue Correction Mechanism and Tariff Methodology”, AIP-SEM-07-217, 25th May 2007.

⁵ “Regulation of ESB and NIE in SEM: A Decision Paper”, AIP-SEM-07-304, 20th June 2007.

⁶ “ESB Customer Supply Hedging Policy Statement”, AIP-SEM-07-419, 13th July, 2007

⁷ “Hedging Policy Statement Prepared by NIE Supply”, AIP-SEM-07-420, 10 July 2007

run by ESB PG and NIE PPB. The EPO criteria require ESB and NIE to purchase contracts in a manner that is fair, transparent and non-discriminatory while at the same time not overpaying for their contracts. To the extent that these suppliers pay too much for their contracts, their customers will pay too much for their electricity.”

The proposed amendments to Condition 46 require the licensee, in purchasing electricity at the best effective price reasonably obtainable, to have regard not only to:

(i) the sources available,

as is the case now, but also to,

(ii) the quantities of electricity required by the Licensee to meet the demand of Customers; and

(iii) the desirability to ensure the stability of, and minimise the frequency of changes in, the Licensee's Charges for the Supply of Electricity.

A consequence of the introduction of the Single Electricity Market (“SEM”) is that the majority of NIE Energy’s customers’ demand will be met by purchases from the SEM pool, rather than under bilateral contract and at the regulated Bulk Supply Tariff (the “BST”). Thus the economic purchase obligation applies primarily to purchases, not of electricity, but of hedging contracts. Given that the volume of hedging contracts need not correspond with the volume of energy purchased through the pool, the amendments are intended to oblige the licensee to strike an appropriate balance between the cost of hedging contracts and the price risk to which customers are be exposed⁸.

Note also that the existing condition requires a direction by the Authority to be “switched on”, and hence the Authority intends to issue such a direction.

The decision paper also stated,

“The RAs have decided that both suppliers will be required to produce a Hedging Policy Statement including procurement principles. By approving these statements the RAs aim to ensure that ESCB CS and NIES operate to a clear set of guidelines when deciding whether or not a particular hedge is viewed as being compliant with the EPO. Once approved, the RAs will publish details of these documents in July. The

⁸ Customers are exposed to price risk to the extent that the supply price control allows the licensee to pass through the cost of electricity purchase contracts.

RAs are currently working with NIES and ESB CS on the format and content of the documents.”

Hence, a further proposed change to Condition 46 requires the licensee to prepare, have approved by the Authority, publish and have regard to a Hedging Policy Statement. In line with the timetable set out in the decision, NIE Energy’s Hedging Policy Statement has already been published.

The RAs note that, in its response to the second consultation on the supply licences, NIE argued that, *“This Condition should be amended to delete references to affiliates having an economic purchasing obligation”*. However, the RAs remain of the view that the appropriateness or otherwise of the economic purchase obligation applying to affiliates of NIE Energy will not be affected by the introduction of the SEM. Hence no change is proposed in this regard.

2.1.2 New Condition 54A, “Tariff Methodology Statement”

A further decision of the decision paper on regulation of ESB and NIE in the SEM was that,

“The RAs have decided that ESB CS and NIES will submit, for approval, their Tariff Methodology Statements. The RAs are currently in discussions with the businesses on the form and content of these documents. The RAs will publish details of these documents during July.”

Accordingly, this proposed new condition requires the licensee to prepare, have approved by the Authority, publish and have regard to a Tariff Methodology Statement. In line with the timetable set out in the decision, NIE’s Tariff Methodology Statement⁹ has already been published.

2.1.3 Condition 27, “Terms and Conditions of Electricity Supply Contracts”

In a decision paper on market power mitigation¹⁰, the RAs decided,

“There will be a licence condition that suppliers who elect to receive directed contracts will be required to certify to the Regulatory Authorities that they have not and will not enter in to agreements with customers that would pre-arrange for the supplier to serve the customer for part of

⁹ “Tariff Methodology Statement Prepared by NIE Supply”, AIP-SEM-07-434, 30 July 2007.

¹⁰ “Market Power Mitigation in the SEM Directed Contracts: Price, Form and Allocation: Supplemental Decision Paper”, AIP/SEM/165/06, 3rd November 2006.

the year and have the PES serve the customer for part of the year or pre arrange for the customer to be switched to the PES and return to the supplier. As suppliers have stated that this is not their business practice, making such a certification should not be a problem. The licence condition would exist in all licences but would only have effect for suppliers electing to subscribe to directed contracts.”

This condition was intended to prevent suppliers from “cherry-picking” regulated supply tariffs.

However, on further consideration, the RAs consider that it would not be necessary that the licensee would need to enter into an agreement with a customer that it will be supplied specifically by the PES in Ireland or NIE Energy in Northern Ireland (in each case as the regulated supplier). Nor is it necessary that the licensee should hold Directed Contracts in order to take advantage of cherry-picking regulated Supply prices. It is necessary only that regulated Supply prices are constant throughout the year whilst the cost of serving customers through purchases from the SEM pool vary seasonally.

Accordingly the RAs propose an alternative additional provision to apply in all supply licences that prohibit the licensee from entering (or offering to enter) into an arrangement with a customer to be supplied by another supplier (or which has the effect of the customer being supplied by another supplier) for a period after which it is supplied again by the licensee. Clearly this provision applies primarily to Suppliers other than NIE Energy, in that only NIE Energy will have regulated prices that other Suppliers could cherry-pick.

Nevertheless, the proposed condition is drafted to apply equally to all Suppliers.

2.1.4 Condition 53, “Spill arrangements”

In the existing PES licence, NIE is under an obligation to purchase spill from small renewable generators at a published and regulated tariff. These are defined as being a non-fossil fuel generating set with a maximum export capacity from the site of 100 kW.

The Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) 1999¹¹ allows certain generators to supply customers without holding a Supply licence. NIE currently operates a system to allocate metered quantities such that these licence exempt generators can “wheel” power to nominated sites across Northern Ireland and trade only the excess

¹¹ “Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) 1999”, Statutory Rule 1999 No. 352 (as amended).

under the present Interim Settlement Agreement. Only a small amount of energy is sold in this way.

However, one consequence of the introduction of the SEM is that the systems that allocate metered quantities for these wheeling transactions will no longer function under the SEM arrangements, and to replicate them for the new arrangements is considered prohibitively expensive in view of the quantity of energy traded.

Accordingly, it is proposed that the current obligation on NIE in Condition 53 to purchase spill from small renewable generators should be extended to cover all generators that would have been able to sell direct to customers under the supply licence exemption and the current wheeling arrangements.

2.1.5 Condition 55A, “Top-up and Standby”

Condition 16 of Part IIE of the existing NIE PES licence obliges the licensee to offer terms for the use of the licensee's system. This includes offering terms for use of system, for connection and for the provision of top-up and standby.

As part of the changes made on 3rd July, the obligation to offer terms for connection and use of system will, from SEM Go-Live, become part of the NIE transmission licence. From this time, however, the obligation to offer top-up and standby is not appropriate for the transmission licensee, and hence is not included in the transmission licence.

Whilst all supply licences to apply from SEM Go-Live include an obligation to offer terms for supply, this obligation applies only in respect of Domestic Customers. In light of the removal of the facility for “wheeling” as discussed above, the RAs thus propose a further condition in the NIE Energy Supply licence to reintroduce the obligation to offer top-up and standby. The proposed obligation mirrors the obligations in the existing PES licence, and applies to both customers of the licensee and to authorised electricity operators, which will include generators. It is intended that this will allow any exempt generator to supply a customer directly, with NIE providing top-up in the circumstances when the generator's output is insufficient to meet the demand of the customer. In this respect, it is a mirror of the obligation to purchase spill. Other Suppliers will be able to agree to supply in such circumstances but, reflecting the current obligation in the NIE licence, only NIE Energy will be obliged to do so.

2.1.6 Condition 53A, “Duty to Offer Terms for Relevant Arrangement”

Under the Renewables Obligation Order (Northern Ireland) 2007¹² (the “NIRO”), any renewable generator in Northern Ireland is granted Renewable Obligation Certificates (ROCs) in respect of its metered output, providing it can declare that the electricity has been supplied to customers in Northern Ireland. Currently a generator can make such a declaration if either: (i) it has a bilateral contract with a supplier supplying customers in Northern Ireland; or (ii) if the output is purchased as spill under the Interim Settlement Agreement. This latter condition thus means that it is not essential that the generator obtain a contract with a supplier in Northern Ireland in order to receive ROCs in respect of its output.

As a result of the SEM, generators may either: (i) sell their output (if below 10MW) to an electricity supplier; or (ii) sell into the SEM Pool. Unlike the present Interim Settlement Agreement, because the SEM Pool covers both Northern Ireland and Ireland, it will not be possible to confirm that the electricity has been supplied in Northern Ireland. Hence it will not be possible to confirm that it qualifies for ROCs.

Changes to the NIRO have been proposed and have been the subject of consultation¹³. It is being proposed that generators may be eligible for ROCs where they have entered into “relevant arrangements” with suppliers, in which the supplier declares that the electricity has been supplied to customers in Northern Ireland. This implies that, in contrast to the current arrangements, the generator has no option other than to enter into a bilateral arrangement with a supplier in Northern Ireland. This has led to concerns that, should there be only a limited number of suppliers active in Northern Ireland, then renewable generators might not be able to obtain relevant arrangements with suppliers without surrendering a significant proportion of the value of the ROCs for which the relevant arrangement is required.

Accordingly, it is proposed, conditional on the relevant amendments to the NIRO being made, that the supply licence for NIE Energy will oblige it to enter into a relevant arrangement on request by any generator, and on terms that allow it to recover no more than its reasonable costs. Note that this does not prevent NIE Energy and a generator entering into agreements, which would

¹² “The Renewables Obligation Order (Northern Ireland) 2007”, Statutory Rule 2007 No. 104.

¹³ “Renewables Obligation (Amendment) Order (NI) 2007. Statutory Consultation on Proposed Changes to the Renewables Obligation To Facilitate its Operation within the All-Island Single Electricity Market”, Department of Enterprise, Trade and Investment, May 2007.

fall under the definition of “relevant arrangements”, but which contain commercial terms; in such cases the generator would merely not apply for a relevant arrangement under this particular Condition.

2.1.7 Condition 59, “Intermediary Agreements”

This condition mirrors a change proposed to Condition 18 of the certain generation licences¹⁴, and allows for Intermediary Agreements between those generators and the Power Procurement Business to provide for changes to be made to the Intermediary Agreements without the consent of the Authority. This is intended to facilitate cost-reflective bidding, by preventing a requirement for regulatory approval delaying necessary changes to technical parameters.

2.1.8 Condition 61, “Independence of the Power Procurement Business”

Paragraph 4 of Condition 61 requires the licensee to prepare and submit to the Authority a compliance plan no later than three months after the date on which the paragraph comes into effect. Given that SEM Go-Live occurs less than three months after the modification notice introducing the condition, then it follows that the paragraph as currently drafted does not require the compliance plan, which is intended to ensure independence of the Power Procurement Business, to be submitted before Go-Live.

Accordingly, the RAs propose that the wording of paragraph 4 of Condition 61 should follow the wording as used in paragraph 4 of Condition 12 of NIE’s transmission licence. This paragraph similarly requires a compliance plan, to ensure independence of the Transmission and Distribution Business, but requires that plan be submitted by SEM Go-Live.

2.1.9 Condition 68, “Undirected Contracts and Directed Contracts”

As currently drafted, Condition 68 is square-bracketed. It is proposed that this licence condition should not be used. At this juncture, the Power Procurement Business has not been required to enter into any Directed Contracts and there are no additional provisions that are currently considered necessary in respect of the sale by PPB of non-directed contracts.

¹⁴ See “Post Go-Active Licence Modifications – Generation Licence”, AIP-SEM-07-448, 24th August 2007.

2.2 Changes to Other Supply Licences

It is proposed that Condition 27, as applying to NIE Energy, should apply also in all other Supply licences.

3 Next Steps and Views Invited

Views are invited on any of the matters covered in this paper.

Responses will be published on the AIP website, unless they are marked as confidential. Respondents are asked to put any confidential material in appendices, such that the main body of the response can still be published.

Responses, marked “NI Supply Licence Post Go-Active Modifications - Response to Consultation”, should be sent by Friday 28 September. The RAs would prefer responses to be sent by email to:

michael.campbell@niaur.gov.uk.

Alternatively, responses can be posted to:

Michael Campbell
Northern Ireland Authority for Utility Regulation
Queens House
14 Queen Street
Belfast
BT1 6ER

Following consideration of the comments received, the appropriate modification notices will be issued by the Authority prior to SEM Go-Live.

APPENDIX A

Proposed Supply Licence Changes

Condition 27: Terms and Conditions of Electricity Supply Contracts

- 1 The Licensee shall ensure that any Contract it enters, or offers to enter, into with a Customer for a supply of electricity contains provisions which are in clear and comprehensible language and which incorporate all relevant information so as to enable the Customer or potential Customer to understand the terms under which the supply of electricity is, or is to be, made.
- 2 The Licensee shall ensure that any Contract it enters into with a Customer for a supply of electricity provides that the Contract will terminate automatically from the date that a Last Resort Supply Direction, given to another Electricity Supplier, takes effect in relation to the premises supplied under that Contract.
- 3 The Licensee shall not enter, or offer to enter, into a Contract, for the supply of electricity to a premises, containing a term which requires the Customer to:
 - (a) enter into a contract for the supply of electricity to the same premises with another Electricity Supplier from a date and for such period as may be specified (whether in the Contract or otherwise) by the Licensee; and
 - (b) immediately following the expiry of that specified period, recommence taking a supply of electricity at the premises from the Licensee.
- 4 The Licensee shall determine standard terms and conditions for the supply of electricity to Domestic Customers and may determine different standard terms and conditions for different cases or classes of cases or for different areas. The Licensee shall not enter, or offer to enter, into a Contract for the supply of electricity with a Domestic Customer otherwise than on its standard terms and conditions.

- 5 The Licensee shall ensure that each set of standard terms and conditions it determines for Domestic Customers shall be fair (as between the Licensee and each Domestic Customer) and shall, as a minimum, include the following:
- (a) the identity and address of the Licensee and any other appropriate contact details;
 - (b) the services to be provided, the service quality levels offered by the Licensee (which may be subject to the approval of the Authority pursuant to Condition 29) and the date for the commencement of the electricity supply under the Contract;
 - (c) the duration of the Contract, the conditions for renewal and for termination of the Contract (including any requirement, which must be approved in advance by the Authority, for the Customer to pay charges arising due to the termination of the Contract) and any services provided thereunder and the existence of any right of cancellation or termination of the Contract;
 - (d) (if offered by the Licensee) the types of maintenance service offered under the Contract;
 - (e) a right for the Customer to withdraw from and cancel the Contract:
 - (i) where a supply of electricity has at any time previously been taken at the premises, within seven working days of entering into the Contract; and
 - (ii) where a supply of electricity has not previously been taken at the premises, within seven working days of entering into the Contract, or any time up to seven working days prior to the premises being connected to a distribution system, whichever is the later;
 - (f) a right for the Customer to terminate the Contract where the Licensee proposes a variation to the terms and conditions of the Contract and the Customer does not wish to accept such new terms and conditions;

- (g) the tariffs, charges and other payments required to be paid by the Customer, in a manner that enables the Customer to identify each particular tariff, charge or payment, including without limitation any payment which is or has the effect of being a payment by way of security for the payment of charges for the supply of electricity;
- (h) the means by which up to date information on all applicable tariffs, charges and other payments (including any discounts and promotions) for the supply of electricity and for any other services which are to be provided under the Contract:
 - (i) can be promptly obtained by the Customer; and
 - (ii) will be communicated to the Customer in writing by the Licensee;
- (i) the compensation and the refund arrangements which will apply if contracted service quality levels are not met (which may be subject to the approval of the Authority pursuant to Condition 29);
- (j) details of how the Customer may initiate the Licensee's complaint handling procedure (as established under Condition 33); and
- (k) details of how the Customer can contact, and the relevant address and telephone number of, the General Consumer Council for further help and advice.

6 Before entering into or concluding a Contract with any Domestic Customer, the Licensee shall give the Customer a written copy of the full terms and conditions of the Contract, including without limitation all the information referred to in paragraph 5.

7 The Licensee shall notify each Domestic Customer it supplies with electricity pursuant to the Licence of:

- (a) any proposed variation to the terms of the Contract the Licensee has entered into with that Customer, together with the Customer's right (as

included in the Contract in accordance with paragraph 5) to terminate the Contract before the proposed variation is due to take effect, at least 21 days in advance of the date the variation is due to take effect; and

(b) any actual variation that subsequently does take effect in respect of the charges for the supply of electricity, within 28 days of the date the variation takes effect.

8 The Licensee shall, on the request of a Domestic Customer and without charge, send to that Customer a copy of the then current set or sets of standard terms and conditions (as determined in accordance with this Condition) that are applicable to the request (including, for the avoidance of doubt, the applicable charges and tariffs relating to each such set).

9 The Licensee shall ensure that its standard terms and conditions provide Domestic Customers with a choice of payment methods, including as a minimum making payment:

(a) in arrears (at such frequency as is set out in the terms and conditions);

(b) by direct debit (at such frequency as is set out in the terms and conditions); and

(c) by prepayment meter.

10 Any difference in the charges for supply of electricity according to the choice of payment method shall be calculated by the Licensee on a reasonable basis to reflect the costs to the Licensee of such different payment methods.

11 The Licensee shall not impose on, or request from, a Domestic Customer any charge or payment for the purpose of enabling that Customer to exercise or preventing him from exercising (as the case may be) his right to receive a supply of electricity from his Electricity Supplier of choice.

Condition 46: Obligation on economic purchasing

1 Subject to Condition 52 and paragraph ~~6~~9 of this Condition, the provisions of paragraph 2 shall apply separately in relation to purchases of electricity from the following sources:

- (a) qualifying renewable generation;
- (b) generation from any source other than qualifying renewable generation.

2 In respect of each category referred to in paragraph 1 above, and subject to paragraph ~~4~~7, the Licensee shall:

- (a) itself purchase;
- (b) procure any affiliate of the Licensee to purchase; and
- (c) insofar as it is able through the exercise of voting rights or otherwise to do so, procure any related undertaking of the Licensee or any defined undertaking to purchase,

electricity at the best effective price reasonably obtainable having regard to ~~the sources available~~;

(i) the sources available;

(ii) the quantities of electricity required by the Licensee to meet the demand of Customers; and

(iii) the desirability to ensure the stability of, and minimise the frequency of changes in, the Licensee's Charges for the Supply of Electricity.

3 The Licensee shall within 28 days of the date of the Authority's direction given under paragraph 11 and following consultation with interested parties, prepare and submit to the Authority for its approval a document to be known as the 'Hedging Policy Statement'.

4 The Hedging Policy Statement shall:

- (a) set out the Licensee's policy for entering into electricity purchase contracts designed to enable the Licensee to hedge its risks in respect of the costs of the purchase of electricity by the Licensee (and by any affiliate or related undertaking of the Licensee or any defined undertaking) for the purpose of ensuring the Licensee's compliance with its obligations under paragraph 2; and
- (b) require to be approved by the Authority.

5 The Licensee shall:

- (a) publish the Hedging Policy Statement, as approved by the Authority, in such manner as it considers appropriate to bring it to the attention of interested parties;
- (b) from time to time, and whenever requested to do so by the Authority, review (including where appropriate consulting with interested parties) the Hedging Policy Statement with a view to determining whether it should be revised; and
- (c) where following such review it proposes to revise the Hedging Policy Statement, submit the revised statement to the Authority for its approval.

6 ~~3~~ In determining the effective price at which electricity is purchased by the Licensee or any affiliate or related undertaking of the Licensee or any defined undertaking, 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.

7 ~~In the discharge of its obligations under paragraph 2, the Licensee:~~

- (a) shall have regard to the Hedging Policy Statement; and
- (b) ~~4~~ ~~In the discharge of its obligations under paragraph 2, the Licensee~~ may additionally have regard to any considerations liable to affect its

ability and that of any affiliate or related undertaking of the Licensee to discharge its obligations under this Condition in the future, including the future security, reliability and diversity of sources of electricity available for purchase.

8 ~~5~~ In this Condition (and subject to paragraph ~~6~~9) references to qualifying renewable generation shall refer to generation from capacity of that description which:

- (a) was contracted by the predecessor company or any defined undertaking under arrangements of the kind mentioned in Article 35(1)(a) of the Order entered into prior to the relevant date; or
- (b) is available to be contracted under arrangements to be produced to the Authority in satisfaction of an obligation imposed on the predecessor company or the Licensee by order made under Article 35 of the Order after the relevant date.

9 ~~6~~ Notwithstanding that generation may previously have been contracted as being qualifying renewable generation, it shall cease to be so treated to the extent that:

- (a) the Licensee (or any affiliate or related undertaking of the Licensee or any defined undertaking) enjoys contractual freedom to vary or discontinue its obligation to purchase such generation; and
- (b) capacity from which qualifying renewable generation is otherwise contracted by the Licensee or any affiliate or related undertaking of the Licensee or any defined undertaking is equal to or exceeds the aggregate capacity specified in any orders previously made under Article 35 of the Order and continuing in force, as being required to be available to the predecessor company or the Licensee at that time or in respect of any future period covered by such orders.

10 ~~7~~ Paragraphs 2, ~~3~~6, and ~~4~~7 shall apply mutatis mutandis where the Licensee (or any affiliate or related undertaking of the Licensee) exercises a discretion

or (by agreement or otherwise) varies the terms of an existing agreement (whether or not entered into prior to the relevant date) in such a manner as to alter the effective price under such agreement.

11 ~~8~~ The Licensee shall not be in breach of this Condition by reason only of performing a must-take obligation to purchase electricity.

12 ~~9~~ This Condition shall have effect from the date specified for its coming into force in a direction issued to the Licensee by the Authority for the purposes of this Condition. The date so specified shall not be earlier than the date of the direction or the date upon which the Authority shall first have exercised its cancellation powers.

13 ~~10~~ In this Condition:

defined undertaking means any entity through which the Licensee enters into arrangements of the kind mentioned in Article 35(1)(a) of the Order.

Interested parties means such persons as in the opinion of the Licensee are likely to have an interest [in the Licensee's Hedging Policy Statement];

must-take obligation an agreement which imposes an obligation on the Licensee to make a payment to another party to the agreement in the event that the Licensee does not purchase electricity (or a minimum quantity of electricity) under the agreement shall be deemed to be an agreement under which the Licensee has a must-take obligation to purchase electricity and any quantity of electricity purchased by the Licensee pursuant to the agreement shall be deemed to have been purchased in performance of a must-take obligation to purchase electricity if the Licensee would have been obliged to

make a payment to another party to the agreement had it not purchased such quantity of electricity.

~~purchase~~Purchase

includes the acquisition of electricity from sources falling to be treated as own-generation for the purpose of Condition 44, and the purchase of electricity under electricity purchase contracts.

relevant date

means 31 March 1992.

Condition 52A: Top-up and Standby

Requirement to offer terms

- 1 The Licensee shall (subject to paragraph 3) offer to enter into an agreement with any person who requests the same to provide top-up or standby, such offer to make provision for the charges to be made in respect of top-up or standby, such charges:
 - (a) to be presented in such a way as to be referable to the statement prepared in accordance with paragraph 4 (or, as the case may be, paragraph 7) or any revision of such statement; and
 - (b) to be set in conformity with the requirements of paragraph 6.
- 2 The Licensee shall offer terms for agreements in accordance with paragraph 1 as soon as practicable and (save where the Authority consents to a longer period) in any event not more than 28 days after receipt by the Licensee of an application containing all such information as the Licensee may reasonably require for the purpose of formulating the terms of the offer.
- 3 The Licensee shall not be obliged pursuant to this Condition to offer to enter or to enter into any agreement:
 - (a) if to do so would involve the Licensee being:
 - (i) in breach of the Electricity Supply Regulations (Northern Ireland) 1991 as amended by the Electricity Supply (Amendment) Regulations (Northern Ireland) 1993 or of any regulations made under Article 32 of the Order; or
 - (ii) in breach of the Conditions; or
 - (iii) in breach of the Grid Code; or
 - (b) if to do so would cause the Licensee to be in breach of the Distribution Code.

Basis of Charges – requirements for transparency

- 4 The Licensee shall as soon as practicable after this Condition has 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, prepare a statement approved by the Authority setting out the basis upon which charges will be made for the provision of top-up and standby.
- 5 The statement referred to in paragraph 4 shall:
 - (a) be in such form and contain such detail as shall be necessary to enable any person to make a reasonable estimate of the charges to which it would become liable for the provision of such services; and
 - (b) set out the methods by which and the principles on which charges for the provision of each of top-up and standby will be made.
- 6 The basis on which charges for the provision of top-up and standby shall be set shall reflect the costs directly incurred in the provision thereof, together with a reasonable rate of return on the capital represented by such costs.
- 7 In addition to, and without prejudice to, the Licensee's obligations under paragraph 4, the Licensee shall, upon being directed to do so in directions issued by the Authority from time to time for the purposes of this Condition and within such period as shall be specified in the directions, prepare a statement approved by the Authority providing that charges for the provision of top-up and standby will be made on such basis as shall be specified in the directions and such statement shall be in such form and contain such detail as shall be necessary to enable any person to make a reasonable estimate of the charges to which it would become liable for the provision of such services and (without prejudice to the foregoing) including such information as shall be specified in the directions. Each statement prepared in accordance with this paragraph shall, with effect from the date on which it is approved by the Authority or such later date as the Authority shall specify, replace the corresponding statement prepared by the Licensee in accordance with paragraph 4 or, as the case may be, this paragraph (as from time to time

revised in accordance with paragraph 8) which is in force at such date and the Licensee shall, with effect from such date make charges in accordance with the statement (as from time to time revised in accordance with paragraph 8) which has replaced such corresponding statement.

- 8 The Licensee may periodically revise the information set out in and, with the approval of the Authority, alter the form of the statements prepared in accordance with paragraphs 4 and 7 and shall, at least once in every year the Licence is in force, revise such statements in order that the information set out in the statements shall continue to be accurate in all material respects.
- 9 The Licensee shall send a copy of the statement prepared in accordance with paragraphs 4 and 7 and of each revision of such statement in accordance with paragraph 8 to the Authority. Each such revision shall require to be approved by the Authority and shall not become effective until approved by the Authority.
- 10 The Licensee shall give or send a copy of the statement prepared in accordance with paragraphs 4 and 7 or (as the case may be) of the latest revision of such statements in accordance with paragraph 8 approved by the Authority pursuant to such paragraph to any person who requests a copy of such statement.
- 11 The Licensee may make a charge for any statement given or sent pursuant to paragraph 10 of an amount reflecting the Licensee's reasonable costs of providing such a statement which shall not exceed the maximum amount specified in directions issued by the Authority from time to time for the purposes of this Condition.

Non-discrimination in the provision of top-up or standby

- 12 In the provision of top-up or standby the Licensee shall not discriminate as between any persons or class or classes of persons except insofar as any difference in the amounts charged for or any other terms or conditions of such provision reflects, to the satisfaction of the Authority, the difference between

the costs or other circumstances of such provision or carrying out to one person or class of persons and another.

- 13 Without prejudice to paragraph 12, the Licensee shall not make charges for the provision of top-up or standby to any person or class or classes of persons which differ from the charges for such provision to any other person or class or classes of persons except insofar as such differences reasonably reflect differences in the costs associated with such provision.
- 14 The Licensee shall not in setting its charges for provision of top-up or standby restrict, distort or prevent competition in the generation, transmission, distribution or supply of electricity.
- 15 The Licensee shall not be in breach of its obligations under this Condition only by reason of its establishing and performing its obligations under Condition 53 (Small Renewable Spill Arrangements).

Functions of the Authority

- 16 If, after a period which appears to the Authority to be reasonable for the purpose, the Licensee has failed to enter into an agreement with any person entitled or claiming to be entitled thereto pursuant to a request under paragraph 1, the Authority may, pursuant to Article 11(3)(c) of the Order and on the application of that person or the Licensee, settle any terms of the agreement in dispute between the Licensee and that person in such manner as appears to the Authority to be reasonable having (insofar as relevant) regard in particular to the following considerations:
 - (a) that such person should pay to the Licensee such sum as is determined in accordance with the provisions of paragraph 6;
 - (b) that the performance by the Licensee of its obligations under the agreement should not involve the Licensee in a breach such as is referred to in paragraph 3; and
 - (c) that the terms and conditions of the agreement so settled by the Authority and of any other agreements entered into by the Licensee

pursuant to an application under this Condition should be, so far as circumstances allow, in as similar a form as is practicable.

- 17 If the person wishes to proceed on the basis of the agreement as settled by the Authority, the Licensee shall forthwith enter into and implement such agreement in accordance with its terms.

Definitions

- 18 In this Condition

exempt supplier means an electricity supplier which is, by virtue of Article 9 of the Order, exempt from the requirement to hold an electricity supply licence.

standby means the periodic or intermittent supply or sale of electricity by the Licensee to:

- (a) a Customer of the Licensee, to make good any shortfall between the Customer's total supply requirements and those which are met either by its own generation or by electricity supplied by an authorised electricity operator; or
- (b) any authorised electricity operator which is an exempt supplier, to make good any shortfall between the total requirements of a Customer of that operator and those which are met by electricity generated by that operator and supplied by it to that Customer,

such standby supply or sale being provided at such point on the transmission system or any distribution system as the Customer or operator (as the case may

be) may request.

top-up

means the supply or sale of electricity by the Licensee on a continuing or regular basis to:

- (a) a Customer of the Licensee, to make good any shortfall between the Customer's total supply requirements and those which are met either by its own generation or by electricity supplied by an authorised electricity operator; or
- (b) any authorised electricity operator which is an exempt supplier, to make good any shortfall between the total requirements of a Customer of that operator and those which are met by electricity generated by that operator and supplied by it to that Customer,

such top-up supply or sale being provided at such point on the transmission system or any distribution system as the Customer or operator (as the case may be) may request.

Condition 53: ~~Small Renewable~~ Spill Arrangements

- 14 The Licensee shall establish arrangements for ~~small-renewable~~exempt generating units to facilitate the achievement of the objective set out in paragraph 2 (the “**relevant objective**”).
- 15 The relevant objective is to facilitate the promotion by the Authority of ~~renewable~~exempt generation in Northern Ireland by providing arrangements whereby the Licensee purchases ~~renewable~~-spill (and ~~the~~any associated benefits) from ~~small-renewable~~exempt generating units under a tariff.
- 16 The Licensee shall, in connection with the establishment of the arrangements referred to in paragraph 1 above, prepare a pro forma ~~renewable~~-spill agreement, which shall be furnished to the Authority for its approval, and may be amended from time to time subject to the Authority's approval.
- 17 The pro forma ~~renewable~~-spill agreement shall include:
- (a) provisions governing eligibility to enter into a ~~renewable~~-spill agreement;
 - (b) provisions about calculating the quantity of ~~small-renewable~~-spill and any associated benefits;
 - (c) information requirements including the nature of the information, its format and where and when it must be given and to whom;
 - (d) provisions about payments for the ~~renewable-source~~-electricity and associated benefits and related obligations;
 - (e) remedies for non-compliance;
 - (f) termination arrangements; and
 - (g) provisions for there to be referred to the Authority for determination such matters arising under the ~~small-renewable~~-spill agreement and the ~~small-renewable~~ spill tariff as may be specified in them.

- 18 On application made by any person, the Licensee shall, as soon as practicable and (save where the Authority consents to a longer period) in any event not later than 14 days after receipt by the Licensee of the duly completed application, offer to enter into a ~~renewable~~-spill agreement with such person which shall be substantially the same as the approved pro forma-~~renewable~~ spill agreement.
- 19 The Licensee shall not be obliged pursuant to this Condition to offer to enter or to enter into any agreement:
- (a) if to do so would involve the Licensee being:
 - (i) in breach of its duties under Article 12 of the Order; or
 - (ii) in breach of any regulations made under Article 32 of the Order or of any other enactment relating to safety or standards applicable in respect of the Supply Business; or
 - (iii) in breach of any of the Conditions of the Licence; or
 - (iv) in breach of the Grid Code; or
 - (b) if to do so would cause the Licensee to be in breach of the Distribution Code or if the person making the application does not undertake to be bound by such parts of the Distribution Code and of the Grid Code and to such extent as the Authority shall from time to time specify in directions issued to the Licensee for the purposes of this Condition.
- 20 The Licensee shall not, subject to paragraph 10, enter into any agreements or arrangements for the purposes of the relevant objective except under a ~~renewable~~-spill agreement being substantially the same as the approved pro forma-~~renewable~~ spill agreement.
- 21 Upon the application of any person wishing to question the terms of an agreement offered pursuant to paragraph 5 above, or upon the application of the Licensee, the Authority may, pursuant to Article 11(3)(c) of the Order, settle any terms of the agreement in dispute between the Licensee and that

person in such manner as appears to the Authority to be reasonable.

22 Insofar as any person entitled to an offer under this Condition wishes to proceed on the basis of the agreement as settled by the Authority, the Licensee shall forthwith enter into, and implement such agreement in accordance with its terms.

23 The tariff paid by the Licensee under a ~~renewable~~ spill agreement and associated terms shall be set by the Licensee with the approval of the Authority. The tariff price is to be set in accordance with the following principles:

(a) in respect of renewable generators:

(i) ~~(a)~~ the price shall be less than the prevailing market price paid for electricity ~~from renewable sources~~ and associated benefits in Northern Ireland; and

(ii) ~~(b)~~ that part of the price representing payment for electricity and generating capacity may be above the prevailing market price in Northern Ireland for electricity that is not electricity from renewable sources; and

(b) in respect of other generators, the price shall be the same as the price available to renewable generators, less any amount attributable in the case of renewable generators to green benefits.

24 The Licensee shall (subject to paragraph 12) give or send a copy of the pro forma ~~renewable~~ spill agreement to any person requesting the same.

25 The Licensee may make a charge for any copy given or sent pursuant to paragraph 11 of any amount reflecting the Licensee's reasonable costs of the documents which will not exceed any amount specified for the time being for the purposes of this Condition in directions issued from time to time by the Authority.

26 This Condition shall cease to have effect if the Authority delivers to the

Licensee a notice given for the purposes of this paragraph, such notice to take effect from the date stated in the notice.

27 In this Condition:

associated benefits means embedded benefits and green benefits~~;~~

embedded benefits means benefits available by virtue of a generating unit being connected to a distribution system, including rebates, payments and avoided costs and any instruments associated with such benefits~~;~~

exempt means exempt, by virtue of Article 9 of the Order, from the requirement to hold a licence or (as the case may be) be the subject of a licence.

green benefits means benefits available by virtue of a generating unit using non-fossil or carbon emission saving fuels or waste to generate electricity, including payments, rebates and avoided costs, and any instrument associated with such benefits, including renewables obligation certificates which are or will become available in Northern Ireland and levy exemption certificates under Schedule 6 of the Finance Act ~~2000;~~2000.

~~**same site** includes sites immediately adjoining each other and sites separated from each other only by road, railway or water course or by another site owned by the person, or any affiliate of the person, that owns the separated sites;~~

~~**small** ~~renewable~~ means a non-fossil fuel generation set (as defined in Condition 44) located in Northern Ireland and that whether taken alone or together with other generating sets on the same site has a maximum export~~
generating unitgenerator the owner

or operator of a generating unit that generates electricity from renewable sources, when acting in its capacity to a transmission system or a distribution system of 100 kW; and as such.

small renewable spill

means electricity that is generated ~~from small renewable generating units and that is of a class or type and satisfies such other eligibility criteria as may be specified by the Licensee for the purposes of this Condition with the approval of the Authority from time to time~~ by an exempt generating unit and exported onto any distribution system, and which is neither sold by the generator to a party other than the Licensee nor (where that generator is also an exempt supplier) supplied by it to a Customer.

Condition 53A: Duty to Offer Terms for Relevant Arrangement(s)

1. The Licensee shall on application made by any owner or operator of a generating station:
 - (a) offer to enter into a Relevant Arrangement with that owner or operator; and
 - (b) where the terms offered are acceptable to the owner or operator making the application, enter into a Relevant Arrangement in accordance with such terms.
2. The Licensee shall offer terms in accordance with paragraph 1 as soon as practicable after the receipt by the Licensee of an application containing all such information as it may reasonably require for the purpose of formulating the terms of the offer and, in any event, within 14 days.
3. In making an offer to enter into a Relevant Arrangement in accordance with paragraph 1, the Licensee shall set out the charges to be paid to it under such Relevant Arrangement. These charges shall not exceed the total costs reasonably incurred by the Licensee in relation to the Relevant Arrangement.
4. The Licensee shall not be obliged pursuant to this Condition to offer to enter or to enter into any Relevant Arrangement if to do so would be likely to cause the Licensee to be in breach of any obligation under the Licence or any Act or statutory instrument or if it would otherwise be unreasonable to do so in all the circumstances of the case.
5. In the event of any dispute between the Licensee and an owner or operator of a generating station in relation to the making of an offer, its terms or entry into a Relevant Arrangement, the Licensee or the operator of a generating station may refer the matter to the Authority for determination (which determination shall be final). The Authority shall determine any dispute referred to it as it sees fit having regard to all the circumstances of the case.
6. The Authority may, on the application of the Licensee, issue a direction relieving the Licensee of its obligations under paragraph 1 in respect of such

Relevant Arrangement(s) and subject to such terms and conditions as may be specified in the direction.

7. The Licensee shall not enter into a Relevant Arrangement with any owner or operator of a generating station which is intended or is likely to restrict, distort or prevent competition in the supply of electricity.
8. In this Condition:

Relevant Arrangement shall have the meaning given to it in Article 16(11) of The Renewables Obligation Order (Northern Ireland) 2007.

Condition 54A: Tariff Methodology Statement

- 1 The Licensee shall within 28 days of this Condition taking effect and following consultation with interested parties, prepare and submit to the Authority for its approval a document to be known as the “**Tariff Methodology Statement**”.
- 2 The Tariff Methodology Statement shall:
 - (a) for each relevant year, set out the Licensee’s policy for calculating and setting the prices it shall, for that relevant year, charge any Customer or class of Customer for the supply of electricity; and
 - (b) require to be approved by the Authority.
- 3 The Licensee shall:
 - (a) publish the Tariff Methodology Statement, as approved by the Authority, in such manner as it considers appropriate to bring it to the attention of interested parties;
 - (b) from time to time and whenever requested to do so by the Authority, review (including where appropriate consulting with interested parties) the Tariff Methodology Statement with a view to determining whether it should be revised; and
 - (c) where following such review it proposes to revise the Tariff Methodology Statement in respect of any relevant year, submit the revised statement to the Authority for its approval.
- 4 The Licensee shall, in calculating and setting the prices it charges any Customer or class of Customer for the supply of electricity, have regard to the Tariff Methodology Statement.
- 5 In this Condition:

interested parties

means such persons as in the opinion of the Licensee are likely to have an interest in the Licensee's Tariff Methodology Statement.

Condition 59: Intermediary Agreements

- 1 The Licensee shall, in conjunction and co-operation with each Relevant Electricity Generator, prepare and seek to agree with that generator the terms of an agreement between them to be known as an Intermediary Agreement.
- 2 The Authority may:
 - (a) in default of agreement between the Licensee and any Relevant Electricity Generator as to the terms of an Intermediary Agreement, determine the form and content of that agreement; or
 - (b) where the Licensee and that generator agree the terms of the Intermediary Agreement, approve that agreement subject to such modifications as the Authority may consider appropriate.
- 3 The Authority may, by a direction given in writing, direct the Licensee to enter into any Intermediary Agreement which has been determined or approved by the Authority in accordance with paragraph 2, and the Licensee shall comply with that direction by any date that may be set out therein.
- 4 The Licensee shall at all times comply with any Intermediary Agreement entered into by it in accordance with this Condition.
- 5 For the purposes of paragraphs 1 to 4, an Intermediary Agreement:
 - (a) shall be a contractually-binding agreement designed to govern the relationship between the Licensee and a Relevant Electricity Generator in respect of the Licensee acting as an Intermediary 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 specify the categories and detailed descriptions of data to be provided by the Relevant Electricity Generator to the Licensee to enable the Licensee to comply with its obligations under Condition 57

in respect of generation sets which are the subject of the agreements specified at Schedule 2 to the licence of that generator;

- (c) shall require that the Relevant Electricity Generator provides the data referred to in sub-paragraph (b) to the Licensee in a form which is both timely and accurate; and
- (d) shall make such further provision as may be necessary or expedient to ensure that
 - (i) the Licensee is able to comply with its obligations under Condition 57; and
 - (ii) the Licensee and the Relevant Electricity Generator are able to comply with their respective obligation under their licenses and the Single Electricity Market Trading and Settlement Code,

in respect of generation sets which are the subject of the agreements specified at Schedule 2 to the licence of the Relevant Electricity Generator,

but may not make any provision which has the effect of increasing the liability or limiting the rights (in either case as contained in the Intermediary Agreement or any agreement specified at Schedule 2 to the licence of the Relevant Electricity Generator) of a party to the Intermediary Agreement other than where it is, in the opinion of the Authority, reasonable in all the circumstances for such a provision to be made in relation to that party.

- 6 The Licensee shall from time to time, in conjunction and co-operation with each Relevant Electricity Generator, review the terms and operation of the Intermediary Agreements, and may following that review propose any amendments to an Intermediary Agreement that it considers appropriate.
- 7 Any amendment that the Licensee proposes to make to an Intermediary Agreement shall, unless the Intermediary Agreement otherwise provides, require to be submitted to the Authority for its approval and, if the Authority

approves that amendment, shall be given effect in the Intermediary Agreement.

8 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 61: 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) except as provided for in the PTIA or PSIA, decisions concerning the carrying out of the activities of 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 annual financial plan (or equivalent instrument) 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) (save in respect of those generation sets that are the subject of cancellable generating unit agreements) 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;
 - (iii) equipment, facilities or property employed for the management or operation of the Power Procurement Business; 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) in so far as is legally possible, it:
 - (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 generation or supply of electricity on the Island of Ireland;
 - (ii) prevents any persons who have 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 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, or such lesser period as may be approved by the Authority for the purposes of the Compliance Plan) from the date on which they ceased to be engaged by the Power Procurement Business;
- (f) it 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) 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:
 - (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, by no later than ~~3 months after the date on which this paragraph becomes effective~~ SEM Go-Live, 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 **Compliance Plan**) and shall from time to time publish the up-to-date Compliance Plan on its website.

6 The Authority may:

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

notify the Licensee that, in its opinion, the Compliance 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 Compliance 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 6, it shall within 30 days revise the Compliance 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 Compliance Plan so as to ensure:

- (a) its continued compliance with its obligations under this Condition; and
 - (b) that the information set out in the Compliance Plan continues to be accurate in all material respects.
- 9 Where the Licensee revises the Compliance Plan, either in accordance with paragraph 7 or following a review conducted by it in accordance with paragraph 8, it shall submit the revised Compliance 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 Compliance Plan;
 - (b) have the necessary information and facilities to comply with their respective obligations as provided for in the Compliance Plan; and
 - (c) are aware of the disciplinary procedures that may be activated should they fail to comply with their obligations under the Compliance 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 Compliance 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 Compliance Plan;
- (b) monitoring the effectiveness of and the Licensee's compliance with the Compliance 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 Compliance 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 Compliance 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 Compliance 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 Compliance 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 (as referred to in paragraph 3(b)) 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 (as referred to in paragraph 3(b)), 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.
Compliance Manager	has the meaning given at paragraph 11.
Compliance Plan	has the meaning given at paragraph 5.
PSIA	has the meaning given at Condition 67.
PTIA	has the meaning given at Condition 66.
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 68: ~~[Undirected Contracts and Directed Contracts]~~Not Used