



**Additional Draft Post Go-Active
Licence Modification to:**

**NIE's Licence to Participate in
Transmission**

Consultation Paper

AIP-SEM-07-485

20th September 2007

Summary

This document sets out proposals for, and invites comments upon, a draft change to NIE's licence to participate in transmission that will apply from SEM/Directive Go-live, currently anticipated to be 1st November 2007.

The change relates to the activities of the NIE Powerteam Limited which is an existing affiliate of NIE and, which NIAUR understands, exists exclusively to provide certain electrical contracting services to the NIE transmission and distribution business. NIAUR is of the view that, subject to certain safeguards, it is appropriate for NIE Powerteam Limited to be carved out of the definition of "Associated Business" for the purposes of Condition 12 (Independence of the Transmission and Distribution Business) in order to facilitate the continued provision of electrical contracting services by NIE Powerteam to NIE T&D after SEM/Directive Go-Live.

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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 its powers under Article 3 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 and Regulation 60 of the Electricity Regulations (Northern Ireland) 2007.

The purpose of this document is to consult on a modification proposed to be made ahead of SEM Go-Live to the conditions applying to NIE's licence to participate in the transmission of electricity.

Essentially the change proposed is to exclude NIE Powerteam Limited from the definition of Associated Business in condition 12 of chapter 3 of the licence.

2 Proposed Licence Changes

It is proposed that Condition 12 of chapter 3 of NIE's licence to participate in transmission be amended as set out in Annex 1.

3 Next Steps and Views Invited

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

Responses may 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 “Response to Consultation on Change to NIE Licence to Participate in Transmission”, should be sent by Friday 28th September. The RAS would prefer responses to be sent by email to Barbara.Cantley@niaur.gov.uk, but responses can be posted to:

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Northern Ireland Authority for Utility Regulation
Queens House
14 Queen Street
Belfast
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Following consideration of the comments received, and subject to the comments, it is intended that modification notices will be issued by the Authority to effect any appropriate licence changes prior to SEM Go-Live.

Annex 1: Proposed revised form of Chapter 3 Condition 12.

Condition 12: Independence of the Transmission and Distribution 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 Transmission and Distribution Business from any Associated Business. Nothing in this Condition 12 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 Transmission and Distribution 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) it does not hold or acquire shares in a holding company of the Licensee or in any electricity undertaking engaged in the generation or supply of electricity on the Island of Ireland;
- (c) decisions for which it is responsible relating to the operation, maintenance and/or development of the total system (or any part of it) are taken by those persons who are directors of the Licensee or who are employed by, and are engaged in, the operation and management of, the Transmission and Distribution Business (and no others), provided that this paragraph 3(c) shall not prevent a relevant holding company approving the Licensee's capital expenditure budget nor exercising its corporate governance role in relation to the Licensee where it does 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;
- (d) any Associated Business does not use or have access to:
 - (i) premises or parts of premises occupied by persons engaged in the management or operation of the Transmission and Distribution Business, except where access is allowed to electricity undertakings (or a class of electricity undertakings not limited to one or more Associated Businesses) generally, in which case Associated Businesses may be allowed access to the same extent, as further detailed in the Compliance Plan;
 - (ii) systems for the recording, processing or storage of data to which persons engaged in the management or operation of the Transmission and Distribution Business also have access (save to the extent the Authority consents to such use or access);
 - (iii) equipment, facilities or property employed for the management or operation of the Transmission and Distribution Business (save to the extent the Authority consents to such use or access); and
 - (iv) the services of persons who are (whether or not as their principal

occupation) engaged in the management or operation of the Transmission and Distribution Business (save to the extent the Authority consents to such use or access);

- (e) it can and does, in so far as is legally possible:
 - (i) ensure that any director of the Licensee is not at the same time also a director of a company which carries on an Associated Business engaged in the supply or generation of electricity; and
 - (ii) prevent any person who has ceased to be engaged in the management or operation of the Transmission and Distribution Business from being engaged in the activities of any Associated Business that is engaged in the generation or supply of electricity until the expiry of an appropriate time from the date on which he ceased to be engaged by the Transmission and Distribution Business, an appropriate time being:
 - (A) in respect of those previously engaged in management, a period of at least 3 months; and
 - (B) in respect of those previously engaged in operation, a period of 3 months or as otherwise specified in the Compliance Plan; and
- (f) an up-to-date register of all persons engaged by the Transmission and Distribution Business, confirming that the provisions of paragraph (e) have been complied with in respect of each person so engaged, is established.

3A The Licensee shall procure from each relevant holding company a legally enforceable undertaking in favour of the Licensee in a form approved by the Authority that the relevant holding company will not exercise its corporate governance role in relation to the Licensee other than in a manner calculated to ensure that such exercise does not restrict, prevent or distort competition in the supply or generation of electricity on the Island of Ireland. Such undertaking shall be obtained within 7 days after the date when this paragraph becomes 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.

3B The Licensee shall:

- (g) 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 3A;
- (h) 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
- (i) comply with any direction from the Authority to enforce any such undertaking.

3C 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:

- (j) an undertaking complying with paragraph 3A is not in place in relation to that relevant holding company; or
- (k) there is an unremedied breach of such undertaking; or
- (l) the Licensee is in breach of the terms of any direction issued by the Authority under paragraph 3B.

3D Where and to the extent that a relevant holding company exercises its corporate governance role in relation to the Licensee, unless that exercise falls within the relevant part of the Compliance Plan permitting such exercise in specified circumstances, the Licensee shall within 3 days of such exercise notify the Authority of that fact and provide such other information regarding such exercise as the Authority may require.

3E. Where this paragraph applies, the Licensee shall ensure that in carrying on the Transmission and Distribution Business, it does not, in any of the names, brands, trade names or advertising of the Transmission and Distribution Business, use a name,

brand or trade name used by or associated with the Supply Business or the Power Procurement Business.

3F Paragraph 3E shall only apply from the date (and to the extent) specified in any direction issued by the Authority under this paragraph, and the Authority may issue a direction:

- (a) only after having first consulted with the Licensee and with such other persons as in the opinion of the Authority are likely to be affected by the application of paragraph 3E, and having had full regard to any representations or objections made to it in the course of such consultation; and
- (b) subject to such conditions as it may see fit (which may, without limitation, include provisions for the direction ceasing to have effect on the occurrence of specified events).

Compliance Plan

- 4. The Licensee shall, by no later than 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 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, on becoming aware of any matter which has (or may have) a material impact on the managerial and/or operational independence of the Transmission and Distribution Business from any Associated Business (and, in any event, 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 Transmission and Distribution 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 Transmission and Distribution 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, the investigations he has conducted and on progress towards 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) annexing a report by the Compliance Manager as to whether the exclusion of Powerteam from the definition of Associated Business lessens the independence of the Transmission and Distribution Business from businesses engaged in the generation or supply of electricity on the Island of Ireland; and
- (d) 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 such investigations.

Definitions

15. In this Condition, unless the context otherwise requires:

“**Associated Business**” means any business of the Licensee (or of any affiliate or related undertaking of the Licensee) other than a relevant holding company, the Transmission and Distribution Business, the Land Bank Business, the Transmission System Operator Business, ~~and~~ the Market Operation Activity and Powerteam.

“**Compliance Manager**” shall have the meaning attributed to that expression

in paragraph 11.

“Compliance Plan”

shall have the meaning attributed to that expression in paragraph 5.

“Powerteam”

means NIE Powerteam Limited (which is registered in Northern Ireland under company number NI032214), but only if, and for so long as, it:

(a) is an affiliate of the Licensee;

(b) primarily undertakes a business providing services to the Transmission and Distribution Business in relation to its licensed activities;

(c) does not generate or supply electricity on the Island of Ireland; and

(d) does not purchase or otherwise acquire (within the meaning of paragraph 3 of Condition 13) electricity, save to the extent it is necessary to do so in undertaking a business providing the services referred to in subparagraph (b) and services similar thereto.

“relevant holding company”

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

“Supply Business”

means any business of any affiliate or related undertaking of the Licensee carrying out activities authorised pursuant to a licence granted under Article 10(1)(c) of the Order.