



**Post Go-Active Licence Modifications -
Additional Change to NIE Energy
Supply Licence**

Consultation Paper

AIP-SEM-07-503

4th October 2007

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1 Introduction

On the 3rd July 2007, the Northern Ireland Authority for Utility Regulation (NIAUR) 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.

On 7th September 2007, NIAUR published a paper¹ ("the September paper") consulting on further changes that it proposed should be made to supply licences in Northern Ireland by the Authority using these same powers. One further change related to Condition 46 of the NIE Energy Supply Licence. Having received responses to the consultation, NIAUR is of the view that one aspect of the proposed drafting did not deliver the intent of the policy as described both in the consultation paper and in relevant policy decision papers that have preceded it. The purpose of this paper is thus to consult formally on an additional change to Condition 46 of the NIE Energy Supply licence.

Responses are requested no later than 25th October 2007.

2 Proposed Change

2.1 The September Paper

The September paper proposed changes to Condition 46 of the NIE Energy Supply Licence to:

- (i) change the obligation to purchase economically to reflect that, under the Single Electricity Market, 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, and that thus the economic purchase obligation applies primarily to purchases, not of electricity, but of hedging contracts; and

¹ "Draft Post Go-Active Licence Modifications - NI Supply Licences. Consultation Paper", AIP-SEM-07-462, 7th September 2007.

- (ii) require the licensee to prepare, have approved by the Authority, publish and have regard to a Hedging Policy Statement.

The September paper also noted that, both before and after the proposed changes, a direction by the Authority was required to “switch on” the condition, and stated that the Authority intended to issue such a direction.

2.2 Additional Change

In its response, NIE pointed out that Condition 46, both before and after the proposed changes, states that

“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”

but goes on to state further that

“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”.

The drafting of this second part is conceivably open to different interpretations, with one such interpretation being that no such direction could take effect until after the exercise of the cancellation powers. These cancellation powers cannot be exercised until 2010, at the earliest, whereas the intention is for a direction to be issued to take effect at Go-Live.

Hence an additional change **is** proposed, deleting the second sentence, such that the paragraph reads,

“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”.

This change, in addition to the changes proposed to Condition 46 in the September paper, is shown in the Appendix.

Whilst, NIAUR considers that the policy intent has been clear, it recognises that, taken in isolation, this change could be regarded as a significant, and hence that it is appropriate to consult.

3 Next Steps and Views Invited

Views are invited on the additional change described 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 Additional Consultation”, should be received by 25th October 2007. 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

Separately, NIAUR will be considering the responses to the September paper, and the appropriate modification notices will be issued by the Authority prior to SEM Go-Live, taking into account the responses received to both this and the September paper.

APPENDIX A
Proposed Change to
Condition 46 of NIE Energy's Supply Licence

The changes marked up, below, are the changes as proposed in the September paper, on which the Regulatory Authorities have yet to conclude. The additional change being proposed in this consultation paper is the change to paragraph 12.

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, ~~36~~, and ~~47~~ 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.