

## The Northern Ireland Authority for Utility Regulation

---

### MODIFICATION NOTICE

Made under Article 3 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (the **SEM Order**) & Regulation 60 of the Electricity Regulations (Northern Ireland) 2007 (the **Regulations**).

In respect of the licence to participate in the transmission of electricity granted, under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992 (the **Electricity Order**), to **Northern Ireland Electricity plc** under a licence document dated 31 March 1992.

---

- 1 In pursuance of its powers under Article 3 of the SEM Order and Regulation 60 of the Regulations, the Northern Ireland Authority for Utility Regulation, with the consent of the Department of Enterprise, Trade and Investment, hereby modifies the conditions of the above mentioned licence so as to:
  - (a) replace existing paragraph 6 of Condition C (Transition Steps Specific) of Chapter 1 with new paragraph 6 as follows:
    6. *Without prejudice to the Authority's ability to approve under Condition 24A of Chapter 3 such form of PSO Agreement as the Authority considers appropriate (having undertaken such consultation as the Authority considers appropriate), the Licensee shall submit to the Authority, by 1 September 2007 (or such later date as the Authority may direct), a draft form of PSO Agreement for the Authority's consideration.*
  - (b) modify Condition 12 of Chapter 3 of the licence insofar as is necessary to ensure that it is identical in form and content to the condition bearing the same number as set out in Appendix 1;

- (c) modify Condition 24A of Chapter 3 of the licence insofar as is necessary to ensure that it is identical in form and content to the condition bearing the same number as set out in Appendix 1;
- (d) in each place it appears in Annex 1 (Determination of the PSO Charges) and in paragraph 1 of Annex 2 (Transmission and Distribution Charge Restriction Condition) replace the words “PSO Agreement” with the words “***PSO Agreements***”; and
- (e) in paragraph 9 of Annex 1 (Determination of the PSO Charges) replace the existing definition of “PSO Agreement” with the following definition

***“PSO Agreements                      means the agreements of that name established pursuant to Condition 24A.”***

- 2 Paragraph 3 applies for the purposes of any agreement between the holder of a licence under Article 10(1)(a) of the Electricity Order and any other holder of a licence under that Order which:
  - (a) contains (in whatever terms) provisions which apply where there is a relevant change in law (as defined in the agreement), and also
  - (b) contains provisions which exclude from the definition of a relevant change in law any change in law which provides that it should not be a relevant change in law.
- 3 Neither the modifications referred to in paragraph 1, nor their coming into effect, shall constitute a relevant change in law.

Dated this    day of October 2007

Dermot MacCann

**Northern Ireland Authority for Utility Regulation**

**APPENDIX 1**

**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;

- (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:

- |                                     |  |
|-------------------------------------|--|
| <p><b>“Associated Business”</b></p> | 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, the Market Operation Activity and Powerteam. |
| <p><b>“Compliance Manager”</b></p>  | shall have the meaning attributed to that expression in paragraph 11.  |
| <p><b>“Compliance Plan”</b></p>     | shall have the meaning attributed to that expression in paragraph 5.   |
| <p><b>“Powerteam”</b></p>           | 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) exclusively 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 sub-paragraph (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.

**Condition 24A. PSO Agreement**

- 1 The Licensee shall (as part of the Distribution Business and in respect of each relevant person) enter into, at all times remain a party to, and comply with the provisions of, an agreement in the form described in paragraph 2 (each a “**PSO Agreement**”).
- 2 Each PSO Agreement shall be in the form approved from time to time by the Authority and designed to secure that the Licensee is entitled to recover the PSO Charges (as from time to time modified) from the relevant persons.

Setting the PSO Charges

- 3 The PSO Charges applying from time to time shall be set in accordance with Annex 1.

PSO Charge Schedule

- 4 The Licensee shall, as soon as practicable after this Condition shall have 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, and from time to time thereafter, draw up a schedule of the PSO Charges to be payable by relevant persons in accordance with the PSO Agreements from time to time.
- 5 Without prejudice to Annex 1, the schedule of PSO Charges shall:
  - (a) be in a form which shall require to be approved by the Authority; and
  - (b) contain such detail as shall be necessary to enable any relevant person to make a reasonable estimate of the charges to which it would become liable.

Miscellaneous

- 6 In recovering PSO Charges and developing the schedule of PSO Charges, the Licensee shall not discriminate as between any relevant persons or class or classes of relevant persons.
- 7 The Licensee shall give or send a copy of the schedule of PSO Charges (as from time to time revised) to the Authority not later than 14 days before it is to be made available to any other person. The Licensee shall give or send a copy of the schedule of PSO Charges (as from time to time revised) to any person requesting the same.

- 8 The Licensee shall comply with any directions made by the Authority requiring the Licensee to alter the form of the schedule of PSO Charges in such manner as shall be specified in the directions, or so as to attain such objectives as may be specified in the directions. No such directions may:
- (a) prevent the Licensee from recovering, in each month, an amount equal to the aggregate of the monthly instalments that the Licensee is obliged to pay to NIE Energy (Supply) and NIE Energy (PPB) in respect of the NIE Energy Supply Amount and the PPB Amount in that month; or
  - (b) be designed to reduce the aggregate revenue likely to be received under the PSO Agreements in respect of any relevant year, below the maximum allowed amount referred to in Annex 1 for that relevant year.

Obligations in Respect of the NIE Energy Supply Amount and the PPB Amount

- 9 The Licensee shall enter into, and at all times remain party to, an agreement with NIE Energy (Supply) which provides for:
- (a) notification by NIE Energy (Supply) of its schedule of monthly charges in relation to the NIE Energy Supply Amount for each relevant year, in such amounts each month as NIE Energy (Supply) reasonably considers appropriate, and any mid-year adjustments that may from time to time be agreed with the Authority; and
  - (b) an obligation on the Licensee to make payments each month to NIE Energy (Supply) of the monthly charge relating to the NIE Energy Supply Amount (or, where the NIE Energy Supply Amount is a negative number, for payment in the relevant month of the monthly charge by NIE Energy (Supply) to the Licensee).
- 10 The Licensee shall enter into, and at all times remain party to, an agreement with NIE Energy (PPB) which provides for:
- (a) notification by NIE Energy (PPB) of its schedule of monthly charges in relation to the PPB Amount for each relevant year, in such amounts each month as NIE Energy (PPB) reasonably considers appropriate, and any mid-

year adjustments that may from time to time be agreed with the Authority; and

- (b) an obligation on the Licensee to make payments each month to NIE Energy (PPB) of the monthly charges in relation to the PPB Amount (or, where the PPB Amount is a negative number, for payment in the relevant month of the monthly charge by NIE Energy (PPB) to the Licensee).

11 Where the relevant monthly payment in respect of the NIE Energy Supply Amount or the PPB Amount is a positive number, the Licensee shall pay the relevant amount to NIE Energy (Supply) or NIE Energy (PPB) (as appropriate) in accordance with the agreement referred to in paragraph 9 or 10 (as appropriate).

12 The agreements referred to in paragraphs 9 and 10, and any amendment to them, shall require to be approved by the Authority.

#### Definitions

13 In this Condition, unless the context otherwise requires:

**“NIE Energy Supply Amount”** means the amount determined as such in accordance with annex 1 of the NIE Energy Supply Licence.

**“NIE Energy (Supply)”** means the person authorised, from time to time, under the NIE Energy Supply Licence in its capacity as the holder of that licence, but excluding where it is acting in its capacity as the Power Procurement Business.

**“NIE Energy (PPB)”** means the person authorised, from time to time, under the NIE Energy Supply Licence in its capacity as the holder of that licence, but excluding where it is acting otherwise than in its capacity as the Power Procurement Business.

**“PPB Amount”** means the amount determined as such in accordance with annex 3 of the NIE Energy Supply Licence.

**“PSO Charges”** means the charges set as such in accordance with

paragraph 3.

**“relevant persons”**

means relevant licensed suppliers and, where directed by the Authority, persons exempt from the requirement to hold a licence under Article 10(1)(c) of the Order.

**“relevant year”**

has the meaning given to that expression in Annex 1.