

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 public electricity supply licence granted, under Article 10(1)(c) 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, in Condition 1 (Interpretation and Construction) of Chapter 3 of the licence, the existing definition of ‘PSO Agreement’ with the new definition as set out in Appendix 1;
 - (b) modify each of:
 - (i) Condition 27 (Terms and Conditions of Electricity Supply Contracts);
 - (ii) Condition 46 (Obligation on economic purchasing);
 - (iii) Condition 49 (Restriction on use of certain information);
 - (iv) Condition 53 (Spill Arrangements);
 - (v) Condition 59 (Intermediary Agreements);
 - (vi) Condition 60 (Modification of Supply Competition Code and cancellation of contracts);

(vii) Condition 61 (Independence of Power Procurement Business),

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 2; and

(c) insert the following new conditions:

(i) Condition 52A (Top-up and Standby);

(ii) Condition 53A (Duty to offer terms for Relevant Arrangement(s));

(iii) Condition 54A (Tariff Methodology Statement),

in Chapter 3 of the licence, with Condition 52A immediately following Condition 52, Condition 53A immediately following Condition 53 and Condition 54A immediately following Condition 54, and each new condition in the form and content as set out in Appendix 3.

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 1 Interpretation and Construction

PSO Agreement

means the agreement of that title with the Transmission Owner in the form approved from time to time by the Authority.

APPENDIX 2**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 or has the effect of requiring the Customer to:
 - (a) obtain a supply of electricity to the same premises from 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 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 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:

- (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 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) 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 In this Condition (and subject to paragraph 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 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 Paragraphs 2, 6, and 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 The Licensee shall not be in breach of this Condition by reason only of performing a must-take obligation to purchase electricity.
- 12 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 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	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 49: Restriction on use of certain information

- 1 Where the Licensee or any affiliate or related undertaking of the Licensee is in possession of any protected information, the Licensee shall (and shall procure that such affiliate or related undertaking shall) procure:
 - (a) that neither the Licensee nor any other person shall use that protected information for the purpose of obtaining any unfair commercial advantage in relation to any of the Separate Businesses or any other business;
 - (b) that the protected information is not disclosed to any other person except with the prior consent in writing of each person to whose affairs that information relates; and
 - (c) that the protected information in the possession of any Separate Business is not disclosed to any other business of the Licensee except with the prior consent in writing of each person to whose affairs that information relates.
- 2 The Licensee's obligation under paragraph 1 to procure any action on the part of an affiliate or related undertaking shall be taken, in relation to any affiliate or related undertaking which has control of the Licensee, as an obligation to use all reasonable endeavours to procure the taking of that action by obtaining (and enforcing) an appropriate contractual undertaking from that affiliate or related undertaking in respect of the protected information.
- 3 The Licensee shall implement such measures and procedures and take all such other steps as may be specified in directions issued by the Authority from time to time for the purposes of this Condition and considered by the Authority to be reasonably necessary for the purpose of securing compliance by the Licensee with its obligations under paragraph 1.
- 4 Sub-paragraphs 1(b) and 1(c) shall not apply to any disclosure of information which is:
 - (a) authorised by Article 63(3) or (4) of the Energy Order;
 - (b) made in compliance with the duties of the Licensee, or of any affiliate or

related undertaking of the Licensee, in accordance with any:

- (i) licence granted under the Order (including the Licence);
 - (ii) applicable law (including the Order, the Energy Order, the SEM Order or the Directive Regulations);
 - (iii) requirement of a competent authority;
 - (iv) judicial or arbitral process of a competent jurisdiction; or
 - (v) requirement of a relevant stock exchange, or of the Panel on Takeovers and Mergers;
- (c) permitted by and made in compliance with any document referred to in this Licence with which the Licensee or any affiliate or related undertaking of the Licensee is required to comply; or
- (d) necessary in order to enable the Licensee to enter into or give effect to arrangements for the purpose of carrying on any of the Separate Businesses.

5 The Licensee shall ensure that protected information received by the Licensee (or any affiliate or related undertaking of the Licensee) is:

- (a) (except where one of the exceptions under paragraph 4 applies) not divulged by any business person to any person unless that person is an authorised recipient; and
- (b) not used by any business person otherwise than for the purpose of pursuing an authorised purpose or advising in relation to the pursuit of an authorised purpose.

6 The Licensee shall:

- (a) procure and furnish to the Authority, in such manner and at such times as the Authority may require, such information and reports as the Authority may consider necessary concerning the performance by the Licensee of its obligations under paragraphs 1 and 5 and the effectiveness of the measures, procedures and steps specified in the directions referred to in paragraph 3;

- (b) procure that access to any premises of the Licensee shall be given at any time and from time to time to any nominated person(s) for the purpose of investigating whether the Licensee has performed its obligations under paragraphs 1, 3 and 5, and shall procure that the Licensee and its employees co-operate in any such investigation to the extent requested by the nominated person(s); and
- (c) procure that nominated person(s) shall be entitled to inspect and/or take copies of such records and data of the Licensee as they shall consider to be reasonably necessary for the purpose referred to in sub-paragraph (b) above.

7 In this Condition, unless the context otherwise requires:

authorised adviser means such professional advisers of the Licensee (or of any affiliate or related undertaking of the Licensee), engaged and acting in that capacity, as require access to any protected information.

authorised purpose means the management and operation of each Separate Business, or, where protected information is disclosed to another business of the Licensee (or of an affiliate or related undertaking of the Licensee) in accordance with paragraph 4, the purpose for which such disclosure was made.

authorised recipient means, in relation to any protected information, any business person who, before the protected information had been divulged to him by the Licensee (or any other business person), had been informed of the nature and effect of this Condition and who requires access to such protected information for the proper performance of his duties as a business person in relation to the pursuit of an authorised purpose.

business person	means any employee, subcontractor or agent of the Licensee (or of any affiliate or related undertaking of the Licensee) or any authorised adviser to such persons.
competent authority	means the Department, the Authority and any local or national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom or the European Community.
control	has the meaning attributed to it by section 416 of the Income and Corporation Taxes Act 1988.
nominated person(s)	means the person(s) from time to time nominated by the Authority for the purposes of this Condition by notice to the Licensee.

Condition 53: Spill Arrangements

- 1 The Licensee shall establish arrangements by means of which it shall purchase under a tariff from any authorised generator which requests it to do so:
 - (a) an amount of spill (and any associated benefits) that the generator would be entitled to supply under a Class A exemption; and
 - (b) an amount of spill (and any associated benefits) in excess of the amount the generator would be entitled to supply under such an exemption, to the extent that this additional amount of spill is the output of one or more small renewable generating units.
- 2 The Licensee shall, in connection with the establishment of the arrangements referred to in paragraph 1 above, prepare a pro forma 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.
- 3 The pro forma spill agreement shall include:
 - (a) provisions governing eligibility to enter into a spill agreement;
 - (b) provisions about calculating the quantity of 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 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 spill agreement and the spill tariff as may be specified in them.

- 4 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 spill agreement with such person which shall be substantially the same as the approved pro forma spill agreement.
- 5 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.
- 6 The Licensee shall not, subject to paragraph 9, enter into any agreements or arrangements for the purposes of the relevant objective except under a spill agreement being substantially the same as the approved pro forma spill agreement.
- 7 Upon the application of any person wishing to question the terms of an agreement offered pursuant to paragraph 4 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.
- 8 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.

9 The tariff paid by the Licensee under a 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) the price shall be less than the prevailing market price paid for electricity and associated benefits in Northern Ireland; and

(ii) 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.

10 The Licensee shall (subject to paragraph 11) give or send a copy of the pro forma spill agreement to any person requesting the same.

11 The Licensee may make a charge for any copy given or sent pursuant to paragraph 10 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.

12 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.

13 In this Condition:

associated benefits

means embedded benefits and green benefits.

authorised generator	means any person authorised to generate electricity either by virtue of a licence granted pursuant to Article 10(1)(a) of the Order or by virtue of Article 9 of the Order from the requirement to hold a licence under Article 10(1)(a) of the Order.
Class A exemption	means the exemption granted, under Article 3(1)(b) of the Exemption Order, to the class of persons specified in Class A: Small supply of Schedule 2 to the Exemption Order.
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.
Exemption Order	means the Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) 1999.
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.
renewable generator	means the owner or operator of a generating unit that generates electricity from renewable sources, when acting in its capacity as such.
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
generating unit**

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 capacity to a transmission system or a distribution system of 100 kW.

spill

means electricity that is generated by a generating unit and exported onto any transmission system or distribution system, and which is neither sold by the generator to a party other than the Licensee nor supplied by it to a Customer.

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 means AES Kilroot Limited, Coolkeeragh ESB

Generators

Limited and Premier Power Limited, each in their respective capacities as the holder of an electricity generation licence in Northern Ireland.

Condition 60: Modification of Single Electricity Market Trading and Settlement Code and Cancellation of Contracts

- 1 When the Authority shall have determined that the requisite arrangements have been developed and that they satisfy the requirements of paragraph 3, it shall be entitled to exercise the powers specified in paragraph 4, provided that the procedural requirements of paragraph 6 have been followed.
- 2 The requisite arrangements are arrangements which, if implemented by means of the making of modifications of the Single Electricity Market Trading and Settlement Code, the Grid Code and the Northern Ireland Fuel Security Code, or otherwise implemented (in whole or in part) under or by virtue of the powers contained in the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007, would facilitate an increase in competition in the generation of electricity available for supply in Northern Ireland or the supply of electricity in Northern Ireland for the benefit of consumers of electricity in Northern Ireland in respect of the prices charged and the other terms of supply, the continuity of supply and the quality of the electricity supply services provided.
3. The requirements of this paragraph are:
 - (A) that there is available for immediate establishment an electricity trading system by which (except as provided in paragraph 7) all licence holders will be bound and which, in the opinion of the Authority, will:
 - (i) constitute proper and adequate arrangements for the trading of electricity and the calculation and settlement of payments due for the provision of available generating capacity and the delivery or supply of electricity;
 - (ii) ensure that adequate arrangements are in place for the provision by one or more relevant generators of all necessary System Support Services and the proper remuneration of those services;

- (iii) be based upon a system of despatch of generation sets which is technically viable and will not prejudice the security and stability of the total system or any part of it;
- (iv) ensure that there are adequate incentives for relevant generators to make available such generation capacity as will in aggregate be at least sufficient to ensure that all reasonable demands for electricity in Northern Ireland are satisfied;
- (v) ensure that all generators and Electricity Suppliers are contractually bound to comply with the provisions of the Northern Ireland Fuel Security Code or, to the extent superseded by any other code or arrangement, such other code or arrangement;
- (vi) ensure that either:
 - (a) Electricity Suppliers shall contract for or acquire, in aggregate, amounts of generation capacity and quantities of electricity from the Power Procurement Business which are not less than the amounts of generation capacity and quantities of electricity for which the Power Procurement Business is committed to pay under:
 - A. the power purchase agreements to which the Power Procurement Business is a party and which are cancellable generating unit agreements which at all relevant times have not been cancelled; and
 - B. the power purchase agreements to which the Power Procurement Business is a party and which are not liable to be cancelled;
 - or:
 - (b) arrangements are in place pursuant to which the Power Procurement Business is entitled to recover monies equal to

the shortfall (if any) between the sums it pays for amounts of generation capacity and quantities of electricity under:

- A. the power purchase agreements to which the Power Procurement Business is a party and which are cancellable generating unit agreements which at all relevant times have not been cancelled; and
- B. any power purchase agreements to which the Power Procurement Business is a party and which are not liable to be cancelled;

and the amounts it recovers for the provision of such generation capacity and the sale of such quantities of electricity;

- (vii) not in its operation require any generator to breach any obligation incumbent upon it under the Large Combustion Plants (Control of Emissions) Regulations (Northern Ireland) 1991 in relation to emissions;
 - (viii) contain arrangements which will ensure that each generator which shall be a party to a cancellable generating unit agreement, for so long as such agreement shall not have been cancelled, shall be in no worse a financial position in respect of its rights under that cancellable generating unit agreement by reason of the operation of Clause 7.3.2 of each power station agreement;
 - (ix) ensure that an appropriate share of the costs of the Land Bank Business shall be borne by each Electricity Supplier;
 - (x) not, in its operation, cause the Licensee to be unable to finance the carrying on of the activities which it is authorised by this Licence to carry on; and
- (B) that each generator which shall have applied for a licence under Article 10(1)(c) of the Order to have effect from the date upon which any cancellable

generating unit agreement to which it is a party is to be cancelled, shall have been granted such a licence, provided -

- (a) the Authority shall at the relevant time have power under Article 10 of the Order to grant such a licence;
 - (b) the criteria for the grant of such a licence shall otherwise have been satisfied at the date of the application and the date upon which it is first to have effect; and
 - (c) there shall have been no material change in the circumstances of the applicant in any relevant respect between the date of the application and the date upon which the licence is to have effect.
4. The powers referred to in paragraph 1 are powers to serve upon the Power Procurement Business and the generator under a cancellable generating unit agreement a notice directing them to terminate the cancellable generating unit agreement pursuant to Clause 9.3 thereof upon such date or the happening of such event as shall be specified in the notice. The Licensee shall comply with such a direction addressed to him.
 5. The powers specified in paragraph 4 may not be exercised in relation to any cancellable generating unit agreement in the table appearing in Annex 4 of the Licence earlier than the date appearing opposite that cancellable generating unit agreement in that table. The Authority may, in relation to any cancellable generating unit agreement and upon the application of either party to that cancellable generating unit agreement, modify the table appearing in Annex 4 of the Licence by substituting a later date for the date appearing opposite that agreement in that table.
 6. The procedural requirements which require to have been followed for the purposes of paragraph 1 are:
 - (a) in its preparations for the making of the determination referred to in paragraph 1, the Authority shall have consulted with the Department, all licence holders, the General Consumer Council and such other persons as the Authority shall consider likely to be materially affected in relation to the steps that it believes

require to be taken and the documentation and other obligations which it believes require to be entered into, imposed or assumed in order to satisfy the requirements of paragraph 3 and to create and implement the requisite arrangements;

- (b) in the consultations referred to in sub-paragraph (a) above, the Authority shall have made available to each person so consulted such drafts of the documentation in question and of the instruments or other means by which the obligations in question are to be imposed or assumed, as it shall consider are necessary so as properly to inform such persons of the detail of its proposals;
 - (c) the Authority shall have given each person so consulted the opportunity to make representations in relation to the relevant steps and the relevant documentation and shall have taken into consideration all such representations (other than those which are frivolous or trivial) in making the determination;
 - (d) the Authority shall have published its conclusions as to the relevant steps and the relevant documentation (including drafts of the relevant documentation) and its reasons for those conclusions;
 - (e) the Authority shall, before exercising any power under paragraph 4, have given not less than 180 days' notice to the Department, the Power Procurement Business, every person who at the time it gives the notice is a licence holder, and the General Consumer Council that it intends to do so; and
 - (f) the Authority shall, in publishing any statement of proposals or the reasons for them, have treated as confidential any representation (including any submission of any written material) which (and to the extent that) the person making the representation shall, by notice in writing to the Authority or by endorsement on the representation of words indicating the confidential nature of such representation, have specified as confidential information.
7. The rules of the electricity trading system referred to in paragraph 3(A) contained in the Single Electricity Market Trading and Settlement Code or in any instrument code, agreement or other document having effect (in whole or in part) under or by virtue of the powers contained in the Electricity (Single Wholesale Market) (Northern Ireland)

Order 2007, may provide that they are to apply to all licence holders except if and to the extent that:

- (a) they permit the Authority to relieve the licence holder in question from compliance with them or any of them; or
- (b) they make provision that they are to apply to particular licence holders or classes of licence holder differently from the way or ways in which they apply to other licence holders.

8. Notwithstanding paragraph 6, the Authority shall be entitled, after having carried out the consultations referred to in paragraph 6 and published its conclusions, both before and after it shall have given any notice of the kind referred to in sub-paragraph (e) of paragraph 6, to make any modification of the relevant documentation which either:

- (a) is, in its opinion, necessary or desirable in order to refine the requisite arrangements;
- (b) involves only a change of a technical nature in the requisite arrangements; and
- (c) will not increase the liability or decrease the rights of any person bound or to be bound by the Single Electricity Market Trading and Settlement Code beyond what may be regarded as reasonable in relation to that person;

provided it gives due notice of such amendment or variation to such persons as appear to it to be likely to be affected thereby,

or

is made in accordance with the provisions of the relevant documentation being modified.

9. The implementation of the requisite arrangements may be secured (in whole or in part) either

- (a) by the exercise by the Authority of its powers:
 - (i) to make or approve modifications of the Single Electricity Market Trading and Settlement Code);

- (ii) under paragraph 5 of Condition 16 of the Transmission System Operator Licence (to direct the Transmission System Operator to revise the Grid Code);
- (iii) under paragraph 9 of Condition 46 of the Licence (to direct that the economic purchasing obligation of NIE Energy Ltd shall come into force); and
- (iv) under Clause 2.01(F) of Part 2 of the Northern Ireland Fuel Security Code (to make amendments to that Code);

or

- (b) by the exercise of powers under or by virtue of the Electricity (Single Market) Northern Ireland Order 2007.

10. The Licensee shall afford the Authority such co-operation as it shall in directions issued to the Licensee for the purposes of this Condition request in developing and testing its proposals for the establishment of the requisite arrangements and the electricity trading system referred to in paragraph 3(A).
11. The Licensee's reasonable direct costs of complying with a request made under paragraph 10 (incurred prior to the date upon which the Authority shall have first exercised its cancellation powers and for which an invoice shall have been submitted by the Licensee to the Market Operator or the Transmission System Operator not later than 2 months prior to the date upon which the first cancellation direction shall take effect) shall be audited in such manner as the Authority shall from time to time require and shall be recoverable from the Market Operator or the Transmission System Operator.
12. In this Condition:

Land Bank Business has the meaning given to that expression in the transmission licence granted to Northern Ireland Electricity plc on 31 March 1992;

relevant documentation	means the documentation and other obligations referred to in sub paragraph (a) of paragraph 6;
relevant generator	means a generator and/or a person granted a licence pursuant to section 14(1)(a) of the Electricity Regulation Act 1999 to engage in the generation of electricity;
relevant steps	means the steps referred to in sub paragraph (a) of paragraph 6; and
requisite arrangements	means the arrangements referred to as such in paragraph 2.

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 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).

APPENDIX 3**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 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 and following such consultation as the Authority considers appropriate, 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:

- (a) shows undue preference towards, or undue discrimination against, that owner or operator and/or any person(s) or class or classes of persons; or
- (b) 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.