

## The Northern Ireland Authority for Utility Regulation

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### MODIFICATION NOTICE

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

In respect of the licence, under Article 10(2) of the Electricity (Northern Ireland) Order 1992 (the **Electricity Order**), to supply electricity granted to **Powergen plc**.

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- 1 In pursuance of its powers under Article 3 of the SEM Order, 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 5 (Modification of Supply Competition Code and cancellation of contracts); and
    - (ii) Condition 27 (Terms and Conditions of Electricity Supply Contracts),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.
- 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.

**Condition 5: 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.
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 NIE Energy Supply 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 NIE Energy Supply 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 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).

10. The Licensee's reasonable direct costs of complying with a request made under paragraph 9 (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.

11. In this Condition:

<b>Land Bank Business</b>	has the meaning given to that expression in the transmission licence granted to Northern Ireland Electricity plc on 31 March 1992;
<b>relevant documentation</b>	means the documentation and other obligations referred to in sub paragraph (a) of paragraph 6;
<b>relevant generator</b>	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;
<b>relevant steps</b>	means the steps referred to in sub paragraph (a) of paragraph 6; and
<b>requisite arrangements</b>	means the arrangements referred to as such in paragraph 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

- (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.