

The Northern Ireland Authority for Utility Regulation

MODIFICATION NOTICE

Made under Regulation 41 of the Electricity Regulations (Northern Ireland) 2007 (the **Regulations**).

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** (the **Licence**).

- 1 Pursuant to Regulation 41(2)(a) of the Regulations, the Licence shall have effect as a licence under Article 10(1)(c) of the Electricity Order (as amended by the Regulations).
- 2 In pursuance of its powers under Article 41(2)(b) the Northern Ireland Authority for Utility Regulation modifies the terms of the Licence so as to modify Schedule 2 (Terms as to revocation) to the Licence insofar as is necessary to ensure that it is identical in form and content to the Schedule bearing the same number as set out in Appendix 1.
- 3 The modification referred to in paragraph 2 shall take effect from the same time and date as the Licence has effect, in accordance with Regulation 41(2)(a), as a licence under Article 10(1)(c) of the Electricity Order (as amended by the Regulations).
- 4 Paragraph 5 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.

5 Neither the modifications referred to in paragraph 2, nor their coming into effect, shall constitute a relevant change in law.

Dated this day of October 2007

Dermot MacCann

For and on behalf of Northern Ireland Authority for Utility Regulation

Appendix 1

Schedule 2 Terms as to Revocation

1. The Authority may at any time revoke the Licence by not less than 30 days' notice (24 hours' notice in the case of revocation under sub-paragraph 1(e)) in writing to the Licensee:
 - (a) if the Licensee agrees in writing with the Authority that the Licence should be revoked;
 - (b) if any licence fee required to be paid under the Licence is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Authority has given the Licensee notice that the payment is overdue provided that no such notice shall be given earlier than the sixteenth day after the day on which the amount payable became due;
 - (c) if the Licensee fails to comply with a final order (within the meaning of Article 42 of the Energy Order) or with a provisional order (within the meaning of Article 42 of the Energy Order) which has been confirmed under Article 42 of the Energy Order and which (in either case) has been made in respect of a contravention or apprehended contravention of any of the Conditions or of any relevant requirement (as defined in Article 41(2)(a) of the Energy Order) imposed on the Licensee in its capacity as holder of the Licence and (in either case) such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice of such failure to the Licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an application under Article 44 of the Energy Order could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined;
 - (d) if the Licensee fails to comply with an order made by a court under section 34 of the Competition Act 1998; or fails to comply with an

order made under section 72, 75, 76, 81, 83, 84, 158, 160 or 161 of, or under paragraph 2, 5, 6, 10 or 11 of schedule 7 to, the Enterprise Act 2002; or any partner, director, member, secretary or manager of the Licensee is found guilty of an offence under section 188 or 201 of the Enterprise Act 2002;

- (e) if the Licensee:
 - (i) is unable to pay its debts (within the meaning of Article 103(1) or (2) of the Insolvency (Northern Ireland) Order 1989, but subject to paragraph 3 of this Schedule) or if any voluntary arrangement is proposed in relation to it under Article 14 of that Order, or if it enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);
 - (ii) has a receiver (which expression shall include an administrative receiver within the meaning of Article 5(1) of the Insolvency (Northern Ireland) Order 1989) of the whole or any material part of its assets or undertaking appointed;
 - (iii) has an administration order under Article 21 of the Insolvency (Northern Ireland) Order 1989 made in relation to it;
 - (iv) passes any resolution for winding-up other than a resolution previously approved in writing by the Authority;
 - (v) becomes subject to an order for winding-up by a court of competent jurisdiction; or
 - (vi) shall suffer any event analogous to any of the foregoing in any jurisdiction in which it is incorporated or resident;
- (f) if the Licensee is convicted of having committed an offence under Article 63 of the Order or under Article 46 of the Gas (Northern Ireland) Order 1996;

- (g) if the Licensee fails to pay any financial penalty (within the meaning of Article 45 of the Energy Order) imposed in respect of a contravention or apprehended contravention of a Condition or of a “relevant requirement” as defined in Article 41(2)(a) of the Energy Order by the due date for such payment and such payment is not made to the Authority within three months after the Authority has given notice in writing of such failure to the Licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an application under Article 49 of the Energy Order could be made questioning the validity or effect of the financial penalty or before the proceedings relating to any such application are finally determined;
 - (h) if none of the premises specified, or of the description specified, in Schedule 1 shall have been supplied with electricity by the Licensee at any time during any period of 5 years; or
2. For the purposes of paragraph 1(e)(i) of this Schedule Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 shall have effect as if for "£750" there was substituted "£250,000" or such higher figure as the Authority may from time to time determine by notice in writing to the Licensee.
 3. The Licensee shall not be deemed to be unable to pay its debts for the purposes of paragraph 1(e)(i) of this Schedule if any such demand as is mentioned in Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 is being contested in good faith by the licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Authority under paragraph 1 of this Schedule.