



**Single Electricity Market  
Generation  
Licence Decision and  
Response to Industry Comments  
15th November 2007  
AIP/SEM/07/577**

## **Background**

On the 24<sup>th</sup> August 2007 the Regulatory Authorities published a post Go-Active consultation on the proposed enduring Generation Licence conditions<sup>1</sup>. In response to this consultation the RAs received submissions from:

- Airtricity
- ESB International
- NIE
- Premier Power Ltd (PPL)

In light of these responses, the RAs considered their proposals. NIAUR brought forward changes to the enduring licence conditions which were made via modification notices which were made, with the consent of DETI, on the 22<sup>nd</sup> October 2007 and then published on AIP web-site.

This decision paper outlines our responses to the individual suggestions and shows the changes which were made. Although this is a final decision paper, if market participants have any further questions please direct them to:

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<sup>1</sup> <http://www.allislandproject.org/en/generation.aspx?article=98f61967-8fe4-4ad9-9866-a16103abb6f9>

## **Post Go-Active Generation Licence changes conclusions.**

The Regulatory Authorities conducted two consultations on post-Go-Active changes to the Generation Licences and some changes to the NIE Energy Supply Licence.

The consultation on the generation licence proposed changes to the following two conditions:

- Gen Licence: Condition 14 - Electricity Market Trading and Settlement Code, and
- Gen Licence: Condition 18 - Intermediary Agreement (*for Generation Licences that contain that condition*).

There is an equivalent condition to Gen Licence Condition 18 in the NIE Energy Supply licence (PPB Conditions)

- PPB Licence: Condition 59 - Intermediary Agreement

This paper concludes on the Generation Licence changes, and the equivalent changes to the PPB Licence Conditions. Other changes to the NIE Energy Supply Licence are considered separately.

This paper contains a table of responses and comments, and the text of the changes which were introduced.

Condition	Comment	Respondent	Regulatory Response
Gen Licence Condition 14	Drafting point. It is incorrect to introduce the choice of three options with “either”	PPL	Generally, either refers to exactly two alternatives. One generally accepted exception to this rule is when either is used as a conjunction to introduce a string of either/or alternatives. <b>NO CHANGE</b>
G 14	At the outset, we wish to object to the use of the nomenclature “PPA Generators”. Although this term is traditional, it is highly misleading as it could encompass all other Generators who have PPAs.	Airtricity	As noted – a traditional nomenclature. <b>NO CHANGE</b>
G 14	In general, we do not agree with the principle of punishing two parties in respect of one party’s breach. This is the practical effect of Condition 14 (1) (b) and 14 (2) (b). If the Intermediary breaches its obligations under the trading and settlement code, action should be taken against the intermediary and not against the Intermediary and Generator. A literal interpretation of 14(2) (b) would mean that if the Intermediary breaches its obligations under the trading and settlement code in respect of the licensees generating units, the Licensee would be in breach of its obligation to “ensure” that the Intermediary complies with its obligations under the trading and Settlement code. The consequence of a breach of this condition would result in the revocation of the Generator’s Licence. Hence the Intermediary would be in breach of its obligations under the Trading and Settlement Code and the	Airtricity	The Regulatory Objective is that in the event of a breach of the TSC by a party, there should be a single party which is then in breach of its licence, and against whom Regulatory action could be taken if necessary.  This is achieved in all three cases in the licence.  <ul style="list-style-type: none"> <li>• In the case of a generator acceding to the TSC, the generator itself;</li> <li>• In the [general] case of a generator appointing an intermediary – the generator (as there is no obligation on the intermediary to be licensed. <i>This is the case that Airtricity objects to</i></li> <li>• In the special case of the PPA generators and NIE (PPB), PPB through its licence</li> </ul> The condition as drafted therefore meets the regulatory objectives. <b>NO CHANGE</b>

	Generator would also be in breach of its Generation Licence		
G 14	We do not have any comments	NIE	<b>NO CHANGE</b>
Condition 18 (Gen Licence) Condition 59 (NIE Supply (PPB)Licence)	Para 1 is drafted as if IA will be executed by PPB. It has since been agreed that it will be executed by NIE and novated to PPB	PPL	<p>We do not consider that there is a difficulty from a licence perspective with the IA being entered into by NIE and then novated/assigned to NIE Energy.</p> <p>By virtue of Condition A in NIE's PES licence, Condition 59 came into effect at Go-Active and therefore is applicable to NIE plc within its PES licence. Similarly Condition 18 or the [relevant] Generation Licences also came into effect at Go-Active. Whilst this refers to the IA being within the Power Procurement Business, given the interpretation provisions in Condition A of both the NIE PES licence, and the relevant Generation Licences, until Go-Live, PPB effectively means NIE plc.</p> <p><b>NO CHANGE</b></p>
G 18/ PPB 59	Para 5 (d)(ii) implies that the Licensee will have obligation under the TSC, however it is only the Intermediary that will have these obligations.	PPL	We do not consider that Para 5(d)(ii) makes the implication that PPL suggest. <b>NO CHANGE</b>
G 18/ PPB 59	We welcome the RAs proposal to relax the requirement the changes to an Intermediary Agreement require Regulatory approval, so that they do not need to do so where the Agreement itself specifically exempts the change from the requirement for Regulatory Approval.	ESBI	<b>NO CHANGE</b>

G 18/ PPB 59	Secondly, the language of Condition 14 is mandatory, yet ambiguous. It states that the Generator shall enter into an agreement to appoint an Intermediary and the Licensee shall ensure that “under” such agreement, the Intermediary becomes a party to the Trading and Settlement Code and complies with its obligations in relation to any generation set which is specified in the agreement, in the capacity of Intermediary under the Single Electricity Market Trading and Settlement Code.	Airtricity	We do not consider this to be ambiguous. <b>NO CHANGE</b>
G 18/ PPB 59	What is unclear is whether the obligation to enter into an agreement is fulfilled by executing a form of authority and by including clauses into the underlying legacy Power Purchase Agreement to cover off issues such as compliance with the Code, or whether a new stand- alone Intermediary Agreement needs to be executed above and beyond the fore-mentioned.	Airtricity	We do not consider this to be ambiguous. <b>NO CHANGE</b>
G 18/ PPB 59	The wording of condition 18 should be changed from permissive to mandatory, for example, in its present draft form, 18(2) reads” the Authority may” determine or approve the content of the agreement. This should read the “Authority shall” review all agreements. Considering the power of the respective contracts, the Authority must ensure oversight	Airtricity	The objective of the licence is not to bind the Authority. <b>NO CHANGE</b>
G 18/ PPB 59	In particular, we strongly suggest that Condition 18(7) should be changed back to its former draft. The words “unless the Intermediary Agreement otherwise provides” should be	Airtricity	The only clauses that can be changed are those which have been approved by the Authority at the outset. The parties cannot exempt themselves.

	deleted. It is not acceptable that the parties can by means of a clause in their Intermediary Agreements bilaterally exempt themselves from seeking regulatory approval in respect of any amendments to the Intermediary Agreement.		<b>NO CHANGE</b>
G 18/ PPB 59	We have no comments	NIE	<b>NO CHANGE</b>

**Appendix 2: Full text of proposed changes in change marked format**

**Condition 14: Single Electricity Market Trading and Settlement Code**

*(which was applied to the PPA Generators)*

- 1 The Licensee shall, in respect of any generation ~~sets~~set which ~~are~~is owned or operated by it ~~and which are not the subject of an agreement to which paragraph 2 applies, either:~~
  - (a) be a party to ~~the Single Electricity Market Trading and Settlement Code;~~ and ~~(b) comply with the Single Electricity Market Trading and Settlement Code,~~ in so far as applicable to it in its capacity as the holder of a licence under Article 10(1)(a) of the Order; comply with the Single Electricity Market Trading and Settlement Code; or
  - ~~2 An agreement to which this paragraph applies is an agreement entered into by the Licensee, with the prior consent of the Authority, to:~~
    - (b) ~~(a) with the prior consent of the Authority, enter into an agreement to~~ appoint an appropriate person to act as an Intermediary under the Single Electricity Market Trading and Settlement Code in respect of any generation ~~sets which are~~set (as owned or operated by the Licensee ~~and~~) specified in the agreement; or
    - (c) comply with the requirements of Condition 18.
- 2 The Licensee shall ensure that the person appointed as an Intermediary under an agreement entered into in accordance with paragraph 1(b):
  - (a) ~~(b) secure that the appointed person~~ becomes a party to the Single Electricity Market Trading and Settlement Code; and
  - (b) ~~(c) secure that the appointed person~~ complies with its obligations, in relation to ~~the any~~ generation ~~sets~~set which ~~are owned or operated by the Licensee and~~is specified in the agreement, in



the capacity of Intermediary under the Single Electricity Market Trading and Settlement Code.

#### Condition 14: Single Electricity Market Trading and Settlement Code

*(which was applied to the non-PPA Generators)*

1. The Licensee shall, in respect of any generation ~~sets~~set which ~~are~~is owned or operated by it ~~and which are not the subject of an agreement to which paragraph 2 applies, either:~~
  - (a) be a party to ~~the Single Electricity Market Trading and Settlement Code;~~ and ~~(b) comply with the Single Electricity Market Trading and Settlement Code,~~ in so far as applicable to it in its capacity as the holder of a licence under Article 10(1)(a) of the Order, comply with the Single Electricity Market Trading and Settlement Code; or
    - ~~2~~ ~~An agreement to which this paragraph applies is an agreement entered into by the Licensee, with the prior consent of the Authority, to:~~
      - (a) ~~with the prior consent of the Authority, enter into an agreement to~~ appoint an appropriate person to act as an Intermediary under the Single Electricity Market Trading and Settlement Code in respect of any generation ~~sets which are~~set (as owned or operated by the Licensee ~~and)~~ specified in the agreement.
2. The Licensee shall ensure that the person appointed as an Intermediary under an agreement entered into in accordance with paragraph 1(b):
  - (a) ~~(b) secure that the appointed person~~ becomes a party to the Single Electricity Market Trading and Settlement Code; and
  - (b) ~~(c) secure that the appointed person~~ complies with its obligations, in relation to ~~the any~~ generation ~~sets~~set which ~~are owned or operated by the Licensee and~~is specified in the agreement, in the capacity of Intermediary under the Single Electricity Market Trading and Settlement Code.



**Condition 18: Intermediary Agreement (PPA Generator Licences), and  
Condition 59 NIE Energy Licence**

*(this condition only applies to the PPA Generators, and PPB)*

*the only change is to paragraph 7*

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.