

# Appendix 13

## All Electricity Generation Licences (Based on AES Kilroot Generating Ltd extracts)

### Condition 1: Interpretation and construction

<b>Competition <u>and Markets</u> <u>Authority (CMA)</u> <u>Commission</u></b>	<u>means the body of that name established by section 25 of the Enterprise and Regulatory Reform Act 2013</u> <del>means the body of that name established by Section 45 of the Competition Act 1998.</del>
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### **Condition 3: Prohibition of cross-subsidies and of discrimination**

1. The Licensee shall procure that no Separate Business gives any cross-subsidy to, or receives any cross-subsidy from, any other business of the Licensee or of an affiliate or related undertaking of the Licensee (whether or not a Separate Business).
2. The Licensee shall not and shall procure that its affiliates and related undertakings shall not provide or offer to provide electricity to any person (including, without limitation, any Supply Business of the Licensee or any affiliate or related undertaking of the Licensee) or class of persons on terms as to price or on other terms affecting the financial value of the supply which are materially more or less favourable than those on which the Licensee or any such affiliate or related undertaking shall provide or offer to provide electricity to comparable purchasers within the Island of Ireland. For these purposes, due regard shall be had to the circumstances of such provision including (without limitation):
  - (i) in the case of supply as part of any Supply Business of the Licensee or any affiliate or related undertaking of the Licensee, volumes, load factors, conditions of interruptibility, location and number of the premises being supplied and date and duration of the relevant agreement; and
  - (ii) in the case of any electricity sale contract as referred to in sub-paragraph 3(a)(ii), the date and duration of such contract and the circumstances by reference to which the rights of the person to whom such electricity is provided are exercisable.
3. For the purpose of paragraph 2:
  - (a) the provision of electricity shall (without limitation) include:
    - (i) supply to customers of any Supply Business of the Licensee or any affiliate or related undertaking of the Licensee; and
    - (ii) the provision of electricity by means of the entry by the Licensee or

any affiliate or related undertaking of the Licensee into an electricity sale contract;

- (b) in determining the price at which the Licensee or any affiliate or related undertaking of the Licensee shall provide electricity in the manner referred to in sub-paragraph (a)(ii), there shall be taken into account both any price received by the Licensee or such affiliate or related undertaking in relation to sales of electricity pursuant to the arrangements established, permitted or required by the Single Electricity Market Trading and Settlement Code and any payments received or made by the Licensee or such affiliate or related undertaking for the grant of or pursuant to any such contract.

4. Paragraphs 2 and 3 shall apply so long as this licence continues in force but shall cease to have effect (in whole or in part, as the case may be) if the Licensee delivers to the Authority a ~~disapplication~~ request (a "Disapplication Request") made in accordance with ~~paragraph 5~~this Condition and:

- (a) the Authority agrees in writing to the ~~disapplication~~ request; or
- (b) their application (in whole or in part) is terminated by a notice (a "Disapplication Notice") given by the Licensee in accordance with ~~either paragraph 7 and not withdrawn or paragraph 8.~~

~~5. A disapplication request shall be in writing addressed to the Authority, shall specify the paragraphs (or any part or parts thereof) to which the request relates and shall state the date from which the Licensee wishes the Authority to agree that the specified paragraphs (or, as the case may be, part or parts thereof) shall cease to have effect.~~

~~6~~5. Save where the Authority otherwise agrees, no disapplication following delivery of a ~~disapplication request~~Disapplication Request shall have effect earlier than that date (the ~~disapplication date~~"Disapplication Date") which is the later of:

- (a) the date being not less than 18 months after delivery of the disapplication request; and
- (b) the fifth anniversary of the date of grant of this licence.

~~7. If the Authority has not made a reference to the Competition Commission under Article 15 of the Order relating to the modification of the paragraphs (or any part or parts thereof) specified in the disapplication request before the beginning of the period of 12 months which will end with the disapplication date, the Licensee may deliver written notice to the Authority terminating the application of such of paragraphs 2 and 3 (or, as the case may be, any part or parts thereof) as are specified in the disapplication request with effect from the disapplication date or a later date.~~

~~8. If the Competition Commission makes a report on a reference made by the Authority relating to the modification of the paragraphs (or any part or parts thereof) specified in the disapplication request and such report does not include a conclusion that the cessation of such paragraphs, in whole or in part, operates or may be expected to operate against the public interest, the Licensee may within 30 days after the publication of the report by the Authority in accordance with Article 16 of the Order deliver to it written notice terminating the application of such paragraphs (or, as the case may be, any part or parts thereof) with effect from the disapplication date or a later date.~~

96. A Disapplication Request pursuant to this Condition shall:

(a) be in writing addressed to the Authority;

(b) specify paragraphs 2 and 3, or such parts of them to which the request relates;  
and

(c) state the date from which the Licensee wishes the Authority to agree that paragraphs 2 and 3 (or the specified part of them) shall cease to have effect.

7. A Disapplication Notice pursuant to this Condition:

(a) may be given in the circumstances described in either paragraph 8 or 9; and

(b) may be withdrawn by the Licensee at any time prior to the Disapplication Date; and

(c) where it is given shall:

(i) be in writing addressed to the Authority;

(ii) specify paragraphs 2 and 3 (or any part of them, which shall comprise only such part as was specified in the Disapplication Request) to which the notice relates; and

(iii) state the date from which the Licensee wishes the notice to take effect, which shall not be earlier than the Disapplication Date.

8. The circumstances described in this paragraph are that, by the beginning of the period of six months which will end with the Disapplication Date, the Authority has not in response to the Disapplication Request published a decision under Article 14(8) of the Order to modify:

(a) paragraphs 2 and 3, or any part of them to which the request relates; or

(b) paragraphs 4 to 7, so as to remove the right of the Licensee to give to the Authority a Disapplication Notice in respect of the relevant Disapplication Request.

9. The circumstances described in this paragraph are that:

(a) by no later than the beginning of the period of six months which will end with the Disapplication Date, the Authority has in response to the Disapplication Request published a decision of a type referred to in paragraph 8;

(b) the Licensee has exercised its right to appeal to the CMA against that decision in accordance with Article 14B of the Order;

(c) the CMA has, in respect of the provisions to which the Disapplication Request relates:

(i) quashed the decision of the Authority under Article 14E(2)(a) of the Order; and

(ii) neither remitted the matter back to the Authority under Article 14E(2)(b) of the Order nor substituted its own decision for that of the Authority under Article 14E(2)(c) of the Order; and

(d) no more than 30 days has elapsed since the date on which the CMA quashed the decision of the Authority.

10. For the purposes of this Condition, a purchaser shall be treated as a single purchaser notwithstanding that the premises at which a supply of electricity is given to him may be located in more than one place.

~~1011.~~ In this Condition, references to the provision of electricity to any person shall include the provision of available capacity of any generation set.

~~1112.~~ Paragraph 1 of this Condition shall not apply for so long as:

- (a) the installed generation capacity of the Licensee and any affiliate or related undertaking of the Licensee shall not exceed 20 per cent of the aggregate total installed capacity of generators in the Island of Ireland; or
- (b) the Licensee and any affiliate or related undertaking of the Licensee shall not hold a licence under Article 10(1)(c) of the Order.

## **Condition 12: Payment of Fees**

- 1 The Licensee shall, at the times stated hereunder, pay to the Authority fees of the amount specified in or determined under the following paragraphs of this Condition.
- 2 Within 30 days after the grant of this Licence but in any event before [date], the Licensee shall pay to the Authority an initial fee of £[xxx].
- 3 In respect of the year beginning on 1 April in the year following the grant of the licence and in each subsequent year, the Licensee shall pay to the Authority a fee which is the aggregate of the following amounts:
  - (a) an amount which is a proportion, as determined by the Authority, of the amount estimated by the Authority, according to a method which has previously been disclosed in writing to the Licensee, as likely to be its costs during the year in question in the exercise of its functions ~~under the Order, the Energy Order, the SEM Order and the Directive Regulations in relation to the holders of licences granted under Article 10(1) of the Order;~~in relation to electricity as conferred on it, or assigned or transferred to it, by or under any legislation; and
  - ~~(b) an amount which is a proportion as determined by the Authority of the amount estimated by the Authority (in consultation with the Competition Commission) as having been incurred in the calendar year immediately preceding the 1 April in question by the Competition Commission in connection with references made to it under Article 15 of the Order with respect to the Licence or any other licence issued under Article 10(1)(a) of the Order; and~~
  - ~~(c)~~(b) the difference (being a positive or a negative amount), if any, between:
    - (i) the amount of the fee paid by the Licensee in respect of the year immediately preceding the 1 April in question less any refund paid to the Licensee in respect of that year under paragraph 4; and
    - (ii) the amount which that fee would have been in respect of that year had the amount comprised therein under sub-paragraph (a) been calculated by

reference to the total costs of the Authority in connection with the functions referred to in sub-paragraph (a) and the proportion thereof actually attributable to the Licensee,

(such total costs being apportioned as determined by the Authority according to a method previously disclosed in writing to the Licensee),

and the fee shall be paid by the Licensee to the Authority within one month of the Authority giving notice to the Licensee of its amount, provided that notice is given within six months of the beginning of the year in respect of which the fee is payable.

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In respect of the year beginning on 1 April of the year subsequent to the grant of the licence and for each subsequent year, the Authority may pay the Licensee an amount (**the refund**) calculated in accordance with the method previously disclosed in writing to the Licensee and by reference to the difference between:

- (a) the proportion of the licence fee for that year paid by the Licensee which is attributable to the Authority's estimate of its costs in accordance with paragraph 3(a); and
- (b) the Authority's reasonable revised estimate of those costs provided that any such refund shall be paid to the Licensee on or before 31 March in the year to which the fee relates.