

Changes to the cancellation condition in Northern Ireland electricity licences for SEM Go-Live

Decision Paper

23 October 2007

Introduction

On 2 April 2007 the Utility Regulator consulted on changes to the condition in Northern Ireland electricity licences relating to the cancellation of Generator Unit Agreements entered into at privatisation of the electricity industry (the **Cancellation Condition**). This consultation was for the purposes of reflecting the all island nature of the SEM trading arrangements. This process led to the amendment of the Cancellation Condition in the relevant licences as part of the general suite of changes made at go-active on 3 July under Article 3 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 and/or under Regulation 60 of the Electricity Regulations (Northern Ireland) 2007.

On 6 July 2007 the Utility Regulator issued a consultation seeking the views of stakeholders, consumers and other affected persons on its intention to make a determination that SEM will satisfy the requirements of paragraphs 2 and 3 of the Cancellation Condition.

The Cancellation Condition, as amended, was drafted in such a way so as to apply both in the Transition Period and after Go-Live but, given changes to other licences and documents, certain references will not now be strictly correct for the period after Go-Live.

On 21 September we issued a consultation paper which proposed changes which to bring the condition into line with the enduring institutional arrangements. Changes will be made under Article 3 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007.

Comments Received

The only consultation response was from NIE. This response focused on drafting points.

Changes to the Cancellation Condition

The background to the Cancellation Condition was set out in the initial consultation in April 2007.

The changes proposed in the 21 September consultation were those we felt necessary to reflect the establishment of SEM at Go Live, the restructuring of NIE and the coming into effect of new licence conditions across the NI electricity industry.

NIE responded with a number of drafting points. We consider these below.

NIE's main comment was that it would be the introduction or implementation of the Trading and Settlement Code which will develop the requisite arrangements.

However, the cancellation condition modifications will apply from SEM Go-Live and therefore, notwithstanding whether or not SEM as presently designed constitutes requisite arrangements, any future development of an electricity trading system to meet the tests of the condition would presumptively be effected through the modification of the Trading and Settlement Code (which will replace the existing Supply Competition Code), the Grid Code and the Northern Ireland Fuel Security Code.

The Trading and Settlement Code was developed and introduced by the Utility Regulator under powers contained in the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007. It is effectively already in place as all licensees are required to be a party to and comply with it in so far as is applicable to their activities.

In relation to paragraph 3(A) NIE PLC make the point that not all participants are necessarily equally bound by all parts of the electricity trading system, and argues that this should be made explicit in the Condition.

The Utility Regulator does not feel that it is necessary to enumerate in the condition the various elements of the electricity trading system (i.e. the Grid Code, Trading and Settlement Code etc.).

The requirements of Paragraph 3, as it applies to various participants, can be effected through different documentation.

Regarding Paragraph 3(A)(vi) NIE ask if the use of the term “relevant suppliers” correct as it includes Relevant Exempt Self Suppliers.

We have removed the reference to Relevant Exempt Self Suppliers, a category which will no longer exist from 1 November 2007.

NIE ask whether the provision of recompense for the costs of complying with a paragraph 10 request are covered relevant licences

The recovery of costs pursuant to a direction by the Utility Regulator will be dealt with as part of the relevant price controls.

CONCLUSION

With the exception of the removal of the term ‘relevant suppliers’ from paragraph 3(a)(vi) and its replacement with ‘licensed electricity suppliers’, all relevant licences will be amended as set out in the 21 September consultation.

At Annexes A, B and C are copy of the amended conditions which will be included in relevant licences.

Annex A

SUPPLY LICENCES

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:

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.

Annex B NIE Energy

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;
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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.

Annex C Generation Licences

Condition 15: 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 licensed 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) licensed 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 licensed 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 NIE Energy Supply Licence/Schedule 2 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 NIE Energy Supply Licence/Schedule 2 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 NIE Energy Supply 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
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	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.