

Decision on changes to conditions in Northern Ireland Electricity Licences relating to the Cancellation of Generator Unit Agreements

18 June 2007

INTRODUCTION

On 2 April 2007, the Utility Regulator issued a consultation on proposed amendments to the conditions in Northern Ireland Electricity Licences relating to cancellation of Generating Unit Agreements.

Modifications made to the Cancellation Condition in the licences will be made under Article 3 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007.¹

This consultation was undertaken on the basis of Condition 20 of the Generation Licence granted to Kilroot Power Limited. It is intended that changes made to this document will be reflected in all relevant NI Generation Licences and NIE's licence as it relates to Power Procurement.

In this paper references to the "Cancellation Condition" are references to Condition 20 in Kilroot's licence and the equivalent condition in other Electricity Licences.

RESPONSES

Responses were received from the Consumer Council, Scottish and Southern Energy, and NIE PLC,

Responses to our proposals were positive and supportive of our proposals. Respondents felt that it was very important that the existing powers relating to cancellation were retained.

CONCLUSION

With the exception of the addition of the words "at least" before sufficient in paragraph 3 (A) (iv) we propose that the proposed licence condition we consulted on be included in all relevant licences.

In particular we wish to reaffirm our belief that the amendments we proposed in paragraph 8 recognising that the SEM is being established with its own governance and change procedures (the Trading and Settlement Code) are appropriate.

At Annex A is a copy of the amended condition which will be included in all relevant licences.

¹ <http://www.detini.gov.uk/cgi-bin/downutildoc?id=1779>

Annex A

Condition 20: Modification of Supply Competition 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 Supply Competition 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) the power procurement manager and 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 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 relevant licensed 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) relevant suppliers shall contract for or acquire, in aggregate, amounts of generation capacity and quantities of electricity from the power procurement manager which are not less than the amounts of generation capacity and quantities of electricity for which the power procurement manager is committed to pay under:

A. the power purchase agreements to which the power procurement manager 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 manager is a party and which are not liable to be cancelled;

or:

(b) arrangements are in place pursuant to which the power procurement manager 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 manager 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 manager 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 relevant 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(2) 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 manager 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 Schedule 2 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 Schedule 2 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 power procurement manager, 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 manager, 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 Supply Competition Code as modified by the Authority in the exercise of its powers under paragraph 4 of Condition 19 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 subparagraph (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 Supply Competition 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) under paragraph 4 of Condition 19 (to make modifications of the Supply Competition Code);
- (ii) referred to in paragraph 4 of Condition 4 (to direct the transmission licensee to revise the Grid Code);
- (iii) under paragraph 12 of Condition 3 of Part III of the transmission licence granted to Northern Ireland Electricity plc (to direct the transmission licensee to alter the form of the bulk supply tariff);
- (iv) under paragraph 9 of Condition 6 of Part IV of the transmission licence granted to Northern Ireland Electricity plc (to direct that the economic purchasing obligation of Northern Ireland Electricity plc as public electricity supplier shall come into force); and
- (v) 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 transmission licensee 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 transmission licensee.
12. In this Condition:
- “power procurement manager”** shall:
- (a) whilst Condition 1 of this licence contains a definition of that term, have the meaning given to that term in that condition; and
 - (b) where Condition 1 of this licence does not contain a definition of that term, shall mean the Power Procurement Business.

“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 [reference to Republic of Ireland legislation] 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.