



**Post Go-Active Licence Modifications – Generation
Licence**

AIP-SEM-07-448

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1. Introduction

1.1. Purpose and Scope of the Document

On the 3rd July, the Northern Ireland Authority for Utility Regulation (the Authority) modified the electricity transmission, electricity supply and electricity generation licences for Northern Ireland. These modifications were made, with the consent of the Department of Enterprise, Trade and Investment (DETI), pursuant to its powers under Article 3 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 and Regulation 60 of the Electricity Regulations (Northern Ireland) 2007.

In particular changes were made to the generation licences, and to the public electricity supply licence held by Northern Ireland Electricity plc (NIE PES licence), which includes conditions on both the NIE Supply business and the NIE Power Procurement Business (PPB).

Following further consideration, the Authority now propose some further minor modifications to the Northern Ireland generation licences.

2. Proposed changes to Generation Licences

2.1. Background

One of the design features upon which the Single Electricity Market (SEM) is based is that of a gross mandatory pool, as defined in the Trading and Settlement Code (TSC). This assumes that all energy traded in the SEM will pass through the pool with no bilateral arrangements for the physical trading of energy (other than for that generated by units with a capacity below a de minimis threshold).

The concept of Intermediaries was introduced as a means of dealing with exceptional circumstances under which pre-existing bilateral arrangements could not readily be transitioned to the new market. The legacy power purchase arrangements in Northern Ireland between the Power Procurement Business (PPB) of Northern Ireland Electricity plc and a number of generators (“the PPA Generators”) are a specific example of such arrangements.

The use of Intermediaries by generators would thus provide for a straightforward and transparent means of dealing with specific types of legacy arrangements under the

SEM, effectively minimising disruption caused to existing arrangements that otherwise would be impractical.

On the 28th February 2007, the Regulatory Authorities published the decision paper “The Criteria for Approval of Intermediary Applications under the Trading and Settlement Code”, AIP/SEM/07/029. This extended the range of circumstances in which Intermediaries could be used, and discussed the more complex licensing conditions that would be required as a result of the introduction of Intermediaries to ensure that matters such as compliance with the Grid Code, the TSC and cost reflective bidding were satisfied accordingly.

In particular, the RAs stated that they intended to include a condition in generation licences requiring generators, where they appoint an Intermediary under the TSC, to procure that the Intermediary complies with all of its obligations under the TSC in relation to the relevant generator units. Further, generators will be required to comply with other applicable conditions in their licences relating to their generator units - including ensuring that where an Intermediary is bidding in its electricity into the pool, it does so in a cost reflective manner.

The RAs also noted that in the case of PSO generators the above arrangement might be replaced with direct obligations to comply with the relevant conditions in the licences of the relevant Intermediaries where the relevant Intermediaries are themselves licensed. In these cases, licence breach would be pursued against the Intermediary.

2.2. The Licences as Introduced

The new generation licences as introduced made various provisions in respect of the above arrangements. All the Northern Ireland generation licences included a Condition 14. Paragraph 1 of Condition 14 required the generator in respect of all generating sets which it owned, and which were not subject to an agreement to which Paragraph 2 applied (i.e. where there is an intermediary agreement in place), to become a party to the TSC and to comply with the TSC. Since the licence modifications were made, the Authority has received representations about the precise meaning of the exception with regard to compliance with the TSC where there is an intermediary agreement in existence. Condition 14 provided that the intermediary agreement needed to include provisions requiring the intermediary to become a party to the TSC. However concerns were raised about the scope of

potential regulatory intervention where any such intermediary failed to comply with the TSC.

Additionally, two sets of provisions were included in the new Generation Licences which applied only to the PPA Generators:

- These generators were relieved of their obligations under Condition 17, Cost Reflective Bidding in the Single Electricity Market, in respect of the legacy PPA generating units. Instead, a corresponding obligation was imposed upon PPB through the NIE PES licence condition (Condition 57). However, an obligation was imposed upon the PPA Generators to provide PPB with certain data through Condition 18. Condition 18 is a new condition which applies only to the PPA Generators.
- Condition 18 requires the PPA Generators to enter into a Regulatory approved Intermediary Agreement with PPB in respect of the generating units which are subject of the legacy PPA agreements. PPB has a similar reciprocal agreement imposed upon it through new Condition 59 of the NIE PES licence. The provisions of the Intermediary Agreements must include terms so that:
 - PPB is able to comply with its obligations in respect of Cost-Reflective Bidding; and
 - the PPA Generators and PPB are able to comply with their respective obligations under their licences and the TSC.

Finally, it should be noted that PPB has an obligation through new Condition 58 of the NIE PES licence to be party to the TSC, and to comply with the TSC in respect of any generating units which are the subject of an Intermediary Agreement to which PPB is a party.

2.3. Discussion

Condition 14

The arrangements in respect of cost reflective bidding in the licences, whereby the PPA Generators are relieved of an obligation to comply directly with the condition of Cost Reflective Bidding, while PPB has an obligation to comply with the Condition on

Cost Reflective Bidding are in accordance with the RA decision paper published in February.

However, the position in respect of compliance with the TSC is less clear. While the first alternative provided in the generation licence is for the generator to be a party to the TSC and to comply with the provisions of the TSC, the second alternative is less clear.

The RAs therefore propose that the condition on being party to the TSC and complying with the TSC should be treated in exactly the same general manner as bidding compliance. In general, the obligations should lie with the generator. Thus, in general, generators will have a condition either to

- be party to the TSC, and to comply with the TSC in respect of their generating sets, or
- to procure that their Intermediary is a party to the TSC, and that the Intermediary complies with the TSC in respect of their generating sets

However, in the case of the PPA Generators, where PPB has a direct licence obligation to be party to the TSC, and to comply with the TSC in respect of those generating sets which are the subject of an Intermediary Agreement to which PPB is party, then the PPA Generators should be relieved of any obligations to procure that PPB is a party to, and complies with the TSC in respect of those generating sets.

Proposed revised wording to Condition 14 of the Generation Licences is attached in Appendix I. Slightly different wording is proposed for Condition 14 for the PPA Generators to allow for the extra option as compared to the non-PPA Generators.

Condition 18

Condition 18 which requires the PPA Generators and PPB to enter into an Intermediary Agreement, requires this agreement to have Regulatory Approval, and for any changes to this agreement to have Regulatory Approval.

Further reflection on this condition shows that this requirement can be slightly relaxed while maintaining appropriate regulatory oversight of the Intermediary Agreement. One of the objectives of the Intermediary Agreement is to facilitate cost reflective bidding. The condition as drafted would require the Generators and PPB to obtain Regulatory Approval to adjust the Intermediary Agreement, should the agreement

contain a specific reference to a value such as a generating set heat rate which a PPA generator had to provide to PPB to facilitate Cost Reflective bidding. The need for such Regulatory approval might in fact hinder the requirement for Cost Reflective Bidding through delaying changes to technical parameters underlying

It is therefore proposed to relax the requirement that changes to an Intermediary Agreement require Regulatory Approval, so that they do not need do so where the Agreement itself specifically exempts the change from the requirement for Regulatory Approval. Since the initial Intermediary Agreement will be subject to Regulatory Approval, this will mean that overall an appropriate level of regulatory oversight is maintained. The parties will however, be required to forward all changes to the Agreement to the Regulator.

Proposed revised wording to Condition 18, paragraph 7 of the Generation Licences is attached in Appendix I. This Condition only applies to the PPA Generators.

3. Views

The RAs welcome comments on any of the matters covered in this paper. All responses, except those marked as confidential, will be published on the AIP website. Respondents should try to confine any confidential material in their responses to appendices. The RAs prefer to receive responses in an electronic form so that they can easily be placed on the website. Responses should be sent by **Friday 21st September** to Barbara Cantley.

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4. Appendix 1

Condition 14: Single Electricity Market Trading and Settlement Code

(to be 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~~is 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

(to be 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

(this condition only applies to the PPA Generators)

1. The Licensee shall, in conjunction and co-operation with the Power Procurement Business, prepare and seek to agree with the Power Procurement Business the terms of an agreement between them to be known as an Intermediary Agreement.
2. The Authority may:
 - (a) in default of agreement between the Licensee and the Power Procurement Business as to the terms of an Intermediary Agreement, determine the form and content of that agreement; or
 - (b) where the Licensee and the Power Procurement Business agree the terms of the Intermediary Agreement, approve that agreement subject to such modifications as the Authority may consider appropriate.
3. The Authority may, by a direction given in writing, direct the Licensee to enter into any Intermediary Agreement which has been determined or approved by the Authority in accordance with paragraph 2, and the Licensee shall comply with that direction by any date that may be set out therein.
4. The Licensee shall at all times comply with any Intermediary Agreement entered into by it in accordance with this Condition.
5. For the purposes of paragraphs 1 to 4, an Intermediary Agreement:
 - (a) shall be a contractually-binding agreement designed to govern the relationship between the Licensee and the Power Procurement Business in respect of the Power Procurement Business acting as an Intermediary in relation to the agreements specified at Schedule 2, for so long as such agreements remain extant;

- (b) shall specify the categories and detailed descriptions of data to be provided by the Licensee to the Power Procurement Business to enable the Power Procurement Business to comply with its obligations under Condition 57 (Cost-Reflective Bidding in the Single Electricity Market) of the NIE Energy Supply Licence in respect of generation sets which are the subject of the agreements specified at Schedule 2;
- (c) shall require that the Licensee provides the data referred to in sub-paragraph (b) to the Power Procurement Business in a form which is both timely and accurate; and
- (d) shall make such further provision as may be necessary or expedient to ensure that:
 - (i) the Power Procurement Business is able to comply with its obligations under Condition 57 (Cost-Reflective Bidding in the Single Electricity Market) of the NIE Energy Supply Licence; and
 - (ii) the Licensee and the Power Procurement Business are able to comply with their respective obligations under their licences and the Single Electricity Market Trading and Settlement Code,

in respect of generation sets which are the subject of the agreements specified at Schedule 2,

but may not make any provision which has the effect of increasing the liability or limiting the rights – in either case as contained in the Intermediary Agreement or any agreement specified at Schedule 2 – of a party to the Intermediary Agreement other than where it is, in the opinion of the Authority, reasonable in all the circumstances for such a provision to be made in relation to that party.

6. The Licensee shall from time to time, in conjunction and co-operation with the Power Procurement Business, review the terms and operation of an

Intermediary Agreement, and may following that review propose any amendments to an Intermediary Agreement that it considers appropriate.

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.