

The Northern Ireland Authority for Utility Regulation

MODIFICATION NOTICE

Made under Article 3 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (the **SEM Order**).

In respect of the licence, under Article 10(1)(a) of the Electricity (Northern Ireland) Order 1992 (the **Electricity Order**), to generate electricity held by **AES Kilroot Power Limited**.

1 In pursuance of its powers under Article 3 of the SEM Order the Northern Ireland Authority for Utility Regulation, with the consent of the Department of Enterprise, Trade and Investment, hereby modifies the conditions of the above mentioned licence so as to:

(a) modify each of:

- (i) Condition 14 (Single Electricity Market Trading and Settlement Code);
- (ii) Condition 15 (Modification of Supply Competition Code and cancellation of contracts); and
- (iii) Condition 18 (Intermediary Agreement),

of Chapter 3 of the licence insofar as is necessary to ensure that it is identical in form and content to the condition bearing the same number as set out in Appendix 1.

2 Paragraph 3 applies for the purposes of any agreement between the holder of a licence under Article 10(1)(a) of the Electricity Order and any other holder of a licence under that Order which:

- (a) contains (in whatever terms) provisions which apply where there is a relevant change in law (as defined in the agreement), and also

(b) contains provisions which exclude from the definition of a relevant change in law any change in law which provides that it should not be a relevant change in law.

3 Neither the modifications referred to in paragraph 1, nor their coming into effect, shall constitute a relevant change in law.

Dated this day of October 2007

Dermot MacCann

Northern Ireland Authority for Utility Regulation

APPENDIX 1

Condition 14: Single Electricity Market Trading and Settlement Code

- 1 The Licensee shall, in respect of any generation set which is owned or operated by it, either:
 - (a) be a party to and, 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
 - (b) 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 set (as owned or operated by the Licensee) 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) becomes a party to the Single Electricity Market Trading and Settlement Code; and
 - (b) 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.

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 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 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 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.

Condition 18: Intermediary Agreement

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 subparagraph (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.