

ELECTRICITY GENERATION LICENCE

in favour of

BALLYLUMFORD POWER LIMITED

**DEPARTMENT OF ECONOMIC DEVELOPMENT
Netherleigh
Massey Avenue
Belfast
BT4 2JP**

5478851.01

Note

The licence holder is subject to the environmental obligations set out in Schedule 9 (Preservation of Amenity and Fisheries) of the Electricity (Northern Ireland) Order 1992.

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PART 1 TERMS OF THE LICENCE

1. The Department, in exercise of the powers conferred by Articles 10(1)(a), 10(6), 11 and 13 of the Electricity (Northern Ireland) Order 1992 (hereinafter referred to as the “**Order**”) hereby grants to Ballylumford Power Limited a licence to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given, during the period specified in paragraph 3 below, subject to the Conditions set out in Part II below (hereinafter referred to as the “**Conditions**”).
2. The Conditions are subject to modification or amendment in accordance with their terms or with Articles 14, 17 or 18 of the Order. The licence hereby granted (hereinafter referred to as “**this licence**”) is further subject to the terms as to revocation specified in Schedule 1.
3. This licence shall come into force on the transfer date appointed under Article 69(3) of the Order and unless revoked in accordance with the provisions of Schedule 1 shall continue in force until determined by not less than 25 years’ notice in writing given by the Department to the licensee, such notice not be served earlier than the tenth anniversary of the date on which this licence comes into force.

31 March 1992

Assistant Secretary
Department of Economic Development

PART II THE CONDITIONS

Condition 1: Interpretation and construction

1. Unless the contrary intention appears:
 - (a) words and expressions used in the Conditions or in Schedule 1 shall be construed as if they were in an enactment and the Interpretation Act (Northern Ireland) 1954 applied to them; and
 - (b) references to an enactment shall include subordinate legislation and in both cases any statutory modification or re-enactment thereof after the date when this licence comes into force.
2. Any word or expression defined for the purposes of any provision of Part II of the Order shall, unless the contrary intention appears, have the same meaning when used in the Conditions or in Schedule 1.
3. In the Conditions and in Schedule 1, unless otherwise specified or the context otherwise requires:

“affiliate” in relation to the licensee or any subsidiary of a holding company of the licensee, means any holding company of the licensee or any subsidiary of the licensee or any subsidiary of a holding company of the licensee, in each case within the meaning of Article 4 of the Companies (Northern Ireland) Order 1986;

“Auditors” means the licensee’s auditors for the time being holding office in accordance with the requirements of the Companies (Northern Ireland) Order 1986;

“authorised” in relation to any business or activity means authorised by licence granted under Article 10 or exemption granted under Article 9 of the Order;

“authorised electricity operator” means any person (other than the licensee) who is authorised to generate, transmit, or supply electricity and any person transferring electricity to or from Northern Ireland across an interconnector or who has made an application for use of an interconnector which has not been refused;

“cancel” in relation to the Director, means the exercise of his cancellation powers;

“cancellable generating unit agreement”

means:

- (a) in relation to the licensee, any of the generating unit agreements specified in Schedule 2 (as it may be modified pursuant to paragraph 2 of Condition 18 or paragraph 5 of Condition 20); and
- (b) in relation to any other generator, a generating unit agreement which may be the subject of a cancellation direction, being the generating unit agreements specified in Schedule 8 of the transmission licence granted to Northern Ireland Electricity plc with effect from 1 April 1992 (as it may be modified pursuant to paragraph 12 of Condition 6 of Part III thereof or paragraph 5 of Condition 7 of Part III thereof);

“cancellation direction”

means a direction issued by the Director to cancel a cancellable generating unit agreement;

“cancellation powers”

means the powers of the Director to direct any party to a cancellable generating unit agreement to terminate that agreement upon such date or the happening of such event as shall be specified in the notice containing the direction;

“Community obligation”

has the meaning ascribed to it in Part II of Schedule 1 to the European Communities Act 1972;

“Department”

means the Department of Economic Development;

“designated”

in relation to any agreement, arrangement, code, notice, proposal therefor or other document, means designated by the Department or on its behalf by means of initialling or descriptive reference whether for the purposes of any Condition of this licence or otherwise, but so that an agreement, arrangement, code, notice, proposal therefor or other document so designated may at the discretion of the Department cease to be designated if amended or modified in any material respect;

“Director”	means the Director General of Electricity Supply for Northern Ireland;
“Distribution Code”	means, in relation to Northern Ireland Electricity plc, the Distribution Code required to be prepared by it pursuant to paragraph 14 of Condition 18 of Part II of its transmission and public electricity supply licences, and, in relation to any other public electricity supplier, the distribution code required to be prepared by such supplier, and in either case approved by the Director, as from time to time revised with the approval of the Director;
“distribution system”	in relation to a public electricity supplier means all electric lines of that public electricity supplier within its authorised area (excepting lines forming part of the transmission licensee’s transmission system or any interconnector) and any other electric lines which the Director may specify as forming part of that public electricity supplier’s distribution system, and includes any electrical plant and meters of that public electricity supplier which are used in connection with distribution by it;
“electricity purchase contract”	shall include any contract or arrangement under which provision is made for the making or receipt of payments by reference to the difference between: <ul style="list-style-type: none"> (a) an amount specified or ascertainable under the terms of such contract or arrangement; and (b) the price at which electricity is sold or purchased: <ul style="list-style-type: none"> (i) under, pursuant to or as required or permitted by the Supply Competition Code; or (ii) under the Pooling and Settlement Agreement; or any component of either of such prices;

and “**electricity sale contract**” shall be construed accordingly;

“ emissions ”	means the discharge of substances into the air;
“ financial year ”	bears the meaning ascribed to it in paragraph 1 of Condition 2;
“ generating unit agreement ”	means a power purchase agreement between a generator and the power procurement manager in respect of a generation set or combination of generation sets;
“ Generation Business ”	means the authorised business of the licensee or any affiliate or related undertaking of the licensee in the generation of electricity or the provision of System Support Services;
“ generation set ”	means any plant or apparatus for the production of electricity;
“ generator ”	means a person authorised by a licence granted under Article 10(1)(a) of the Order;
“ Grid Code ”	means the Grid Code required to be prepared by the transmission licensee and approved by the Director as from time to time revised, amended, supplemented or replaced with the approval or at the instance of the Director;
“ holding company ”	means a holding company within the meaning of Article 4 of the Companies (Northern Ireland) Order 1986;
“ interconnector ”	means electric lines and electrical plant and meters used solely for conveying electricity directly to or from a substation or converter station within Northern Ireland into or out of Northern Ireland;
“ licensee ”	means Ballylumford Power Limited and (where the context so requires) shall include any business in respect of which the licensee is a successor company;
“ licensee’s system ”	means the electric lines owned or operated by the licensee through which electricity is conveyed from generation sets to the point of connection

with the transmission system or the distribution system or any other system of any authorised electricity operator for the distribution of electricity or to the point of delivery to customers, and includes any electrical plant and meters owned or used by the licensee in connection therewith;

“modification”

includes addition, omission, amendment and substitution; and cognate expressions shall be construed accordingly;

“Northern Ireland Fuel Security Code”

means the document of that title designated as such by the Department as from time to time amended in accordance with its provisions, dealing with the co-operation of licence holders in strategic contingency planning in respect of fuel stocks, the modification of the merit order and certain other systems and procedures under the Grid Code during periods when the Department has given and there is in force one or more directions under Article 37(4) of the Order, the entitlement of the licensee and other authorised electricity operators to and the collection of certain payments in anticipation of, during and after the expiry of any such periods, and connected matters;

“notice”

means (unless otherwise specified) notice given either in writing or by electronic data transfer;

“Pooling and Settlement Agreement”

means the agreement of that title approved by the Secretary of State for Energy or by the Director General of Electricity Supply appointed under the Electricity Act 1989 as from time to time amended with the approval of such Director General where so required pursuant to its terms;

“power procurement manager”

means the transmission licensee when it is performing or required to perform its obligations as power procurement manager under its transmission licence;

“power purchase agreement”

means a contract for the provision to the licensee or any other authorised electricity operator of the whole or any part of the available capacity and/or the sale or other disposal to the licensee or any other authorised electricity operator of the whole

or any part of the output of a generation set or combination of generation sets;

“power station agreement”

means:

- (a) in relation to the licensee, an agreement made with effect from 1 April 1992 between the licensee and the power procurement manager in relation to matters concerning a generating station and designated for the purposes of this licence; and
- (b) in relation to any other generator, an agreement made with effect from 1 April 1992 between that generator and the power procurement manager in relation to matters concerning a generating station and designated for the purposes of this licence;

“public electricity supplier”

means Northern Ireland Electricity plc or any other holder for the time being of a licence under Article 10(1)(c) of the Order except where it is acting otherwise than for purposes connected with the supply of electricity to premises in its authorised area;

“public electricity supply licence”

means a licence granted under Article 10(1)(c) of the Order;

“related undertaking”

in relation to any person means any undertaking in which that person has a participating interest as defined by Article 268 of the Companies (Northern Ireland) Order 1986;

“relevant exempt self-supplier”

means a relevant exempt self supplier within the meaning of the Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) 1992;

“relevant licensed supplier”

means a person authorised by a licence granted under Articles 10(1)(c) or 10(2) of the Order;

“relevant supplier”

means a relevant licensed supplier or a relevant exempt self supplier;

“representation”	includes any objection or any other proposal made in writing;
“Second Tier Supplier”	means a person authorised to supply electricity pursuant to Article 10(2) of the Order;
“Second Tier Supply Business”	means the authorised business (if any) of the licensee or any affiliate or related undertaking of the licensee as a Second Tier Supplier;
“Separate Business”	means each of the Generation Business and the Second Tier Supply Business (if any) each taken separately from one another and from any other business of the licensee or any affiliate or related undertaking of the licensee, but so that where all or any part of such business is carried on by an affiliate or related undertaking of the licensee such part of the business as is carried on by that affiliate or related undertaking shall be consolidated with any other such business of the licensee (and of any other affiliate or related undertaking of the licensee) so as to form a single Separate Business;
“subsidiary”	means a subsidiary within the meaning of Article 4 of the Companies (Northern Ireland) Order 1986;
“successor company”	bears the meaning ascribed to it for the purposes of Part III of the Order;
“Supply Competition Code”	means the document of that title designated as such by the Department, as from time to time revised, amended, supplemented or replaced with the approval or at the instance of the Department or the Director;
“System Support Services”	means: <ul style="list-style-type: none"> (a) spinning reserve, fast start, black start, reactive power, frequency control and such other services as the licensee may be required to have available as system support services in association with any generation set pursuant to the Grid Code, including outage planning incentive arrangements; and

- (b) such services as the licensee may have agreed to have available as being system support services in association with any generation set pursuant to an agreement made with the transmission system operator;

and which may be offered for sale to the transmission system operator for the purpose of securing stability of operation on the transmission licensee's transmission system or distribution system and the distribution system of any authorised electricity operator or any system linked to the transmission licensee's transmission system or distribution system by an interconnector;

“total system”

means the transmission system and the distribution system of Northern Ireland Electricity plc taken together;

“transmission licence”

means a licence granted under Article 10(1)(b) of the Order;

“transmission licensee”

means Northern Ireland Electricity plc or any other holder for the time being of a transmission licence;

“transmission system”

in relation to the transmission licensee means the system of electric lines comprising the transmission licensee's high voltage lines and electrical plant and meters used for conveying electricity from a generating station to a substation, from one generating station to another, and from one substation to another within the transmission licensee's authorised area (except any such lines which the Director may approve as being part of a public electricity supplier's distribution system) and any other electric lines which the Director may specify as forming part of the transmission licensee's transmission system and shall not include any interconnector;

“transmission system operator”

means the transmission licensee when it is performing or required to perform its obligations

as transmission system operator under its transmission licence; and

“**undertaking**” bears the meaning ascribed to it by Article 267 of the Companies (Northern Ireland) Order 1986.

4. Subject as provided in paragraph 5, for as long as Northern Ireland Electricity plc continues to be the holder of both its transmission licence and public electricity supply licence, and notwithstanding anything to the contrary in this licence, this licence (except this paragraph and paragraph 5) shall have effect as if:
 - (a) the distribution system and the transmission system of Northern Ireland Electricity plc were a single system for the transmission and distribution of electricity;
 - (b) all references to the transmission system and to the distribution system, insofar as such systems are the systems of Northern Ireland Electricity plc, were references to the total system; and
 - (c) for as long as the Director shall not have issued any directions to Northern Ireland Electricity plc under paragraph 14 of Condition 18 of Part II of its transmission and public electricity supply licences, all references to the Distribution Code were references to the Grid Code.

5. Notwithstanding the holding by Northern Ireland Electricity plc of both of the licences referred to in paragraph 4, the Director may issue to the licensee directions (which may be subject to conditions which, in the opinion of the Director, are necessary or desirable in order to secure that the Conditions or, as the case may be, paragraphs or subparagraphs of the Conditions in which the relevant references referred to in paragraph 4 appear, operate separately in relation to the transmission system and the distribution system of Northern Ireland Electricity plc) disapplying in whole or in part the provisions of paragraph 4 if:
 - (a) it is necessary for him to do so in order to comply with a Community obligation; or
 - (b) there shall have been granted a subsequent licence under Article 10(1)(b) or 10(1)(c) of the Order.

This licence shall have effect in accordance with the terms of such directions.

6. Unless otherwise specified:
 - (a) any reference to a numbered Condition or to a numbered Schedule is respectively a reference to the Condition or the Schedule bearing that number in this licence;

- (b) any reference to a numbered paragraph is a reference to the paragraph bearing that number in the Condition or Schedule in which the reference occurs; and
 - (c) (without prejudice to any provision which restricts such variation, supplement or replacement) any reference to any agreement, licence (other than this licence), code or other instrument shall include a reference to such agreement, licence, code or other instrument as varied, supplemented or replaced from time to time.
7. The heading or title of any Part, Condition, Schedule or paragraph shall not affect the construction thereof.
 8. Where any obligation of the licensee is expressed to require performance within a specified time limit that obligation shall continue to be binding and enforceable after that time limit if the licensee fails to perform that obligation within that time limit (but without prejudice to all rights and remedies available against the licensee by reason of the licensee's failure to perform within the time limit).
 9. The provisions of section 24 of the Interpretation Act (Northern Ireland) 1954 shall apply for the purposes of the delivery or service of any document, direction or notice to be delivered or served pursuant to this licence and directions issued by the Director pursuant to any Condition shall be delivered or served as aforesaid.

Condition 2: Separate accounts for Separate Businesses

1. The first financial year of the licensee shall run from its date of incorporation to 31 December 1992, and thereafter each financial year of the licensee shall run from 1 January to the following 31 December.
2. The remaining paragraphs of this Condition apply for the purpose of ensuring that the licensee (and any affiliate or related undertaking of the licensee) maintains accounting and reporting arrangements which enable separate accounts to be prepared for each Separate Business and showing the financial affairs of each such Separate Business.
3. The licensee shall in respect of each Separate Business:
 - (a) keep or cause to be kept for the period referred to in Article 230(5)(b) of the Companies (Northern Ireland) Order 1986 and in the manner referred to in that Article such accounting records in respect of each Separate Business as would by Article 229 of the Companies (Northern Ireland) Order 1986 be required to be kept in respect of each such business if it were carried on by a separate company, so that the revenues, costs, assets, liabilities, reserves and provisions of, or reasonably attributable to, each Separate Business are separately identifiable in the books of the licensee (and any affiliate or related undertaking of the licensee) from those of any other business; and
 - (b) prepare on a consistent basis from such accounting records in respect of:
 - (i) the financial year commencing on its date of incorporation and each subsequent financial year, accounting statements comprising a profit and loss account, a balance sheet and a cash flow statement, together with notes thereto, and showing separately in respect of each Separate Business and in appropriate detail the amounts of any revenue, cost, asset, liability, reserve or provision, which has been either:
 - (A) charged from or to any other business (whether or not a Separate Business) together with a description of the basis of that charge; or
 - (B) determined by apportionment or allocation between any Separate Business and any other business (whether or not a Separate Business) together with a description of the basis of the apportionment or allocation; and
 - (ii) the period between its date of incorporation and 30 June 1992 in the case of the first financial year of the licensee and the first 6 months of each subsequent financial year, an interim profit and loss account; and

- (c) procure, in respect of the accounting statements prepared in accordance with this Condition in respect of a financial year, a report by the Auditors and addressed to the Director stating whether in their opinion those statements have been properly prepared in accordance with this Condition and give a true and fair view of the revenues, costs, assets, liabilities, reserves and provisions of, or reasonably attributable to, the Separate Business to which the statements relate; and
 - (d) deliver to the Director a copy of the account referred to in sub-paragraph (b)(ii) above, the Auditors' report referred to in sub-paragraph (c) above and the accounting statements referred to in sub-paragraph (b)(i) above as soon as reasonably practicable, and in any event not later than three months after the end of the period to which it relates in the case of the account referred to in sub-paragraph (b)(ii) above and six months after the end of the financial year to which they relate in the case of the accounting statements and Auditors' report referred to in sub-paragraphs (b)(i) and (c) above.
4. (a) The licensee shall not in relation to the accounting statements in respect of a financial year change the bases of charge, apportionment or allocation referred to in sub-paragraph (b)(i) of paragraph 3 from those applied in respect of the previous financial year, unless the Director shall previously have issued directions for the purposes of this Condition directing the licensee to change such bases in a manner set out in the directions or the Director gives his prior written approval to the change in such bases. The licensee shall comply with any directions issued for the purposes of this Condition.
- (b) Where, in relation to the accounting statements in respect of a financial year, the licensee has changed such bases of charge, apportionment or allocation from those adopted for the immediately preceding financial year, the licensee shall, if so directed in directions issued by the Director for the purposes of this Condition, in addition to preparing accounting statements on those bases which it has adopted, prepare such accounting statements on the bases which applied in respect of the immediately preceding financial year.
5. Accounting statements in respect of a financial year prepared under sub-paragraph (b)(i) of paragraph 3 shall, so far as reasonably practicable and unless otherwise approved by the Director having regard to the purposes of this Condition:
- (a) have the same content and format (in relation to each Separate Business) as the annual accounts of the licensee (and any affiliate or related undertaking of the licensee) prepared under Article 234 and, where appropriate, Article 235 of the Companies (Northern Ireland) Order 1986 and conform to the best commercial accounting practices including Statements of Accounting Practice issued or adopted by the Accounting Standards Board currently in force; and
 - (b) state the accounting policies adopted; and

- (c) (with the exception of the part of such statements which shows separately the amounts charged, apportioned or allocated and describes the bases of charge or apportionment or allocation respectively), be published with the annual accounts of the licensee.
6. Unless the accounting statements prepared under sub-paragraph (b)(i) of paragraph 3 are prepared on the current cost basis as provided by the alternative accounting rules, the licensee shall, unless otherwise agreed by the Director, in addition to preparing those accounting statements under that paragraph, prepare accounting statements for each Separate Business covering the same period, which shall comprise and show separately:
- (a) a profit and loss account, a balance sheet and a cash flow statement, together with notes thereto, which shall:
 - (i) include in respect of current cost assets amounts determined on the current cost basis as provided by the alternative accounting rules; and
 - (ii) show or disclose the information and other matters required by the alternative accounting rules to be shown or disclosed in accounts where the amounts included in respect of assets covered by any items shown in those accounts have been determined on any basis mentioned in paragraph 31 of Section C of Part II of Schedule 4 to the Companies (Northern Ireland) Order 1986;
 - (b) in respect of each Separate Business the adjusted amount of any such provision for depreciation as is referred to in paragraph 32(2) of Section C of Part II of Schedule 4 to the Companies (Northern Ireland) Order 1986 and the items shown in the profit and loss account of the Separate Business for the relevant period which are affected by the determination of amounts on the current cost basis as provided by the alternative accounting rules, including the profit (or loss) before taxation; and
 - (c) such other current cost information as is referred to in the Handbook as the Director may reasonably require;

and shall deliver the same, together with an Auditors' report prepared in relation to the current cost basis accounting statements in the form referred to in sub-paragraph (c) of paragraph 3, to the Director within the time limits referred to in sub-paragraph (d) of paragraph 3 and shall (with the exception of the part of such statements which shows separately the amounts charged, apportioned or allocated and describes the basis of charge or apportionment or allocation respectively) publish the same with the annual accounts of the licensee.

7. References in this Condition to costs or liabilities of, or reasonably attributable to, any Separate Business shall be construed as excluding taxation, capital liabilities which do

not relate principally to a particular Separate Business and interest thereon; and references to any accounting statement shall be construed accordingly.

8. For the purposes of paragraph 6:

- “alternative accounting rules”** means the rules set out in Section C of Part II of Schedule 4 to the Companies (Northern Ireland) Order 1986;
- “current cost assets”** means assets of any description mentioned in paragraph 31 of Section C of Part II of Schedule 4 to the Companies (Northern Ireland) Order 1986;
- “the Handbook”** means the handbook issued or adopted by the Accounting Standards Board or any successor body entitled **“Accounting for the effects of changing prices: a Handbook”** in its current edition for the time being or in the event that no such handbook shall be in issue such guidance or publication as may be issued in replacement or substitution therefor.

Condition 3: Prohibition of cross-subsidies and of discrimination

1. The licensee shall procure that no Separate Business gives any cross-subsidy to, or receives any cross-subsidy from, any other business of the licensee or of an affiliate or related undertaking of the licensee (whether or not a Separate Business).
2. The licensee shall not and shall procure that its affiliates and related undertakings shall not provide or offer to provide electricity to any person (including, without limitation, any Second-Tier Supply Business of the licensee or any affiliate or related undertaking of the licensee) or class of persons on terms as to price or on other terms affecting the financial value of the supply which are materially more or less favourable than those on which the licensee or any such affiliate or related undertaking shall provide or offer to provide electricity to comparable purchasers. For these purposes, due regard shall be had to the circumstances of such provision including (without limitation):
 - (i) in the case of supply as part of any Second-Tier Supply Business of the licensee or any affiliate or related undertaking of the licensee, volumes, load factors, conditions of interruptibility, location and number of the premises being supplied and date and duration of the relevant agreement; and
 - (ii) in the case of any electricity sale contract as referred to in sub-paragraph (a)(ii) of paragraph 3, the date and duration of such contract and the circumstances by reference to which the rights of the person to whom such electricity is provided are exercisable.
3. For the purpose of paragraph 2:
 - (a) the provision of electricity shall (without limitation) include:
 - (i) supply to customers of any Second-Tier Supply Business of the licensee or any affiliate or related undertaking of the licensee; and
 - (ii) the provision of electricity by means of the entry by the licensee or any affiliate or related undertaking of the licensee into an electricity sale contract;
 - (b) in determining the price at which the licensee or any affiliate or related undertaking of the licensee shall provide electricity in the manner referred to in sub-paragraph (a)(ii) above, there shall be taken into account both any price received by the licensee or such affiliate or related undertaking in relation to sales of electricity pursuant to the arrangements established, permitted or required by the Supply Competition Code and any payments received or made by the licensee or such affiliate or related undertaking for the grant of or pursuant to any such contract.

4. Paragraphs 2 and 3 shall apply so long as this licence continues in force but shall cease to have effect (in whole or in part, as the case may be) if the licensee delivers to the Director a disapplication request made in accordance with paragraph 5 and:
 - (a) the Director agrees in writing to the disapplication request; or
 - (b) their application (in whole or in part) is terminated by notice given by the licensee in accordance with either paragraph 7 or paragraph 8.
5. A disapplication request shall be in writing addressed to the Director, shall specify the paragraphs (or any part or parts thereof) to which the request relates and shall state the date from which the licensee wishes the Director to agree that the specified paragraphs (or, as the case may be, part or parts thereof) shall cease to have effect.
6. Save where the Director otherwise agrees, no disapplication following delivery of a disapplication request shall have effect earlier than that date (the “**disapplication date**”) which is the later of:
 - (a) the date being not less than 18 months after delivery of the disapplication request; and
 - (b) the fifth anniversary of the date of grant of this licence.
7. If the Director has not made a reference to the Monopolies Commission under Article 15 of the Order relating to the modification of the paragraphs (or any part or parts thereof) specified in the disapplication request before the beginning of the period of 12 months which will end with the disapplication date, the licensee may deliver written notice to the Director terminating the application of such of paragraphs 2 and 3 above (or, as the case may be, any part or parts thereof) as are specified in the disapplication request with effect from the disapplication date or a later date.
8. If the Monopolies Commission makes a report on a reference made by the Director relating to the modification of the paragraphs (or any part or parts thereof) specified in the disapplication request and such report does not include a conclusion that the cessation of such paragraphs, in whole or in part, operates or may be expected to operate against the public interest, the licensee may within 30 days after the publication of the report by the Director in accordance with Article 16 of the Order deliver to him written notice terminating the application of such paragraphs (or, as the case may be, any part or parts thereof) with effect from the disapplication date or a later date.
9. For the purposes of this Condition, a purchaser shall be treated as a single purchaser notwithstanding that the premises at which a supply of electricity is given to him may be located in more than one place.
10. The licensee shall not be in breach of this Condition by reason only of the entry by any of its affiliates into the agreements for the completion of the acquisition of the issued

share capital of the licensee or the licensee's having entered into any agreement with Northern Ireland Electricity plc in connection with that acquisition, such agreements being those designated by the Department for the purposes of this Condition.

11. In this Condition, references to the provision of electricity to any person shall include the provision of available capacity of any generation set.
12. Paragraphs 1 and 10 of this Condition shall not apply for so long as:
 - (a) the installed generation capacity of the licensee and any affiliate or related undertaking of the licensee shall not exceed 20 per cent of the aggregate total installed capacity of generators in Northern Ireland; or
 - (b) the licensee and any affiliate or related undertaking of the licensee shall not hold a licence under Article 10(2) of the Order.

Condition 4: Compliance with Grid Code and, where applicable, Distribution Code

1. The licensee shall comply with the provisions of the Grid Code and the Distribution Code insofar as applicable to it.
2. The Director may, following consultation with the transmission licensee (and, in the relevant circumstances, any public electricity supplier), issue directions relieving the licensee of its obligation under paragraph 1 above in respect of such parts of the Grid Code (and, in the relevant circumstances, the Distribution Code) and to such extent as may be specified in those directions.
3. In this Condition, the “**relevant circumstances**” are where the Director shall have issued directions to the transmission licensee and the public electricity supplier under paragraph 14 of Condition 18 of Part II of the transmission and public electricity supply licences.
4. The Director shall be entitled, in order to implement the requisite arrangements referred to in Condition 20, to issue directions to the transmission licensee requiring it to revise the Grid Code in such manner and with effect from such date as may be specified in the directions, provided that such revisions shall not:
 - (a) come into effect earlier than 1 November 1996; or
 - (b) affect the rights and obligations of any party to:
 - (i) a power purchase agreement which is not a cancellable generating unit agreement; or
 - (ii) a cancellable generating unit agreement which has not, at the relevant time, been the subject of a cancellation direction,under that agreement beyond what may reasonably be regarded as de minimis in relation to that person.

Condition 5: Licensee's system planning

1. The licensee shall plan and develop each part of the licensee's system in accordance with a standard not less than the relevant standard insofar as applicable to it or such other standard of planning as the licensee may, following consultation with the transmission licensee, each public electricity supplier and such (if any) other authorised electricity operators as the Director shall consider appropriate and with the approval of the Director, adopt from time to time.
2. The Director may (following consultation with the licensee, the transmission licensee, each public electricity supplier and such (if any) other authorised electricity operators as the Director shall consider appropriate) issue directions relieving the licensee of its obligation under paragraph 1 in respect of such parts of the licensee's system and to such extent as may be specified in the directions.
3. In this Condition:

“relevant standard”

means the standard laid down in the document entitled **“Transmission and Distribution System Security and Planning Standards”** as submitted from time to time by the transmission licensee to and approved by the Director.

Condition 6: Security arrangements

1. The licensee shall comply with the provisions of the Northern Ireland Fuel Security Code and such provisions shall have effect as if they were set out in this licence.
2. The Northern Ireland Fuel Security Code may be amended in accordance with its provisions.

Condition 7: Central despatch and merit order

1. The licensee shall submit all available generation sets and interconnector transfers to central despatch by the transmission system operator.
2. The licensee shall at such times and in such manner as may be provided under the Grid Code provide the transmission system operator with all information reasonably required by it to enable it, in conformity with the conditions of the transmission licence:
 - (a) to operate the system of central despatch; and
 - (b) to operate the merit order system.
3. In this Condition:

“available” in relation to any generation set or interconnector transfer means a generation set or interconnector transfer which is available in accordance with the Grid Code;

“central despatch” means the process of scheduling and issuing direct instructions for despatch of available generation sets and interconnector transfers by the transmission system operator under the conditions of the transmission licence;

“interconnector transfer” means the flow of energy across an interconnector; and

“merit order system” means a system establishing economic precedence of electricity from available generation sets or interconnector transfers to be delivered or transferred to the total system (subject to other system needs).

Condition 8: System Support Services

1. The licensee shall from time to time upon request by the transmission system operator offer terms for the provision by the licensee of System Support Services from any generation set of the licensee which is capable of operating.
2. The licensee shall from time to time upon request of the Director provide to the Director a report containing details of:
 - (a) prices offered pursuant to paragraph 1 for the provision of System Support Services from each generation set of the licensee; and
 - (b) an explanation of the factors justifying the prices offered including (without limitation) details of the licensee's costs associated with making available such System Support Services in conformity with the Grid Code and of providing the same to the transmission system operator.
3. Paragraphs 1 and 2 shall only have effect from such date as the Director shall specify in directions issued to the licensee for the purpose of this Condition and in relation to the provision by the licensee of System Support Services other than those for which, at the date so specified, it shall already have contracted.
4. Upon the application of the transmission system operator wishing to question the terms offered pursuant to paragraph 1 above, the Director may pursuant to Article 11(3)(c) of the Order, settle any terms of the agreement in dispute between the transmission system operator and the licensee in such manner as appears to the Director to be reasonable.
5. Insofar as the transmission system operator wishes to proceed on the basis of the terms as settled by the Director, the licensee shall forthwith enter into and implement such agreement in accordance with its terms.

Condition 9: Appointment of operator

1. The licensee shall ensure that the operator of each of its generating stations is a person approved in writing by the relevant authority.
2. Subject to paragraph 3, the relevant authority shall not be entitled to refuse to give its approval of a person in pursuance of paragraph 1 if that person is competent to operate the generating station, but where an approved person is no longer competent to exercise that function the relevant authority may, by notice in writing given to the licensee, revoke an approval of that person under this Condition.
3. The relevant authority shall be entitled to refuse to give its approval of a person in pursuance of paragraph 1 if that person is:
 - (a) the holder of a licence granted under Article 10(1)(b) or 10(1)(c) of the Order; or
 - (b) in the case of either Ballylumford generating station or Kilroot generating station, the operator of Kilroot generating station or Ballylumford generating station respectively.

4. In this Condition:

“Ballylumford generating station”

means the generating station located on the site hatched black on the plan in Schedule 3;

“Kilroot generating station”

means the generating station comprising generation sets numbers 1 and 2 and gas turbine generation sets numbers 1 and 2 together with that part of the gas turbine house and control room used for the operation of those sets and for the purposes of identification only hatched black on the plan in Schedule 4;

“operator”

in relation to a generating station, means the person who operates the generating station or who has been delegated decisive economic power over it; and

“relevant authority”

means, in relation to the period prior to 10 April 1992, the Department, and thereafter the Director.

Condition 10: Compulsory acquisition of land

1. Subject to paragraph 5, the powers and rights conferred by or under the provisions of Schedule 3 of the Order (compulsory acquisition of land) shall have effect for the purposes set out in paragraph 2.
2. The purposes referred to in paragraph 1 are:
 - (a) the construction or extension of a generating station;
 - (b) activities connected with the construction or extension of a generating station or connected with the operation of a generating station; and
 - (c) the installation, maintenance, removal or replacement of electric lines, and electrical plant associated with them, connecting a generating station with:
 - (i) the transmission system of the transmission licensee; or
 - (ii) the distribution system of any public electricity supplier or the system for the distribution of electricity of any other authorised electricity operator.
3. In paragraph 2:
 - (a) the references to “**generating station**” are to an electricity generating station which:
 - (i) has, or will have when its construction or extension is completed, a capacity of not less than 2 megawatts or such other capacity as may be specified in relation thereto by order of the Department under Article 39(3) of the Order; and
 - (ii) is, or will be when its construction or extension is completed, operated by or for the licensee; and
 - (b) “**extension**” in relation to a generating station includes the use by the person operating the station of any land (wherever situated) for a purpose directly related to the generation of electricity by that station.
4. If the Director shall be satisfied that it shall be desirable, having regard to the proximity of the land in question to any other land occupied by the licensee under a relevant lease, that any land acquired by the licensee, whether or not using the powers referred to in paragraph 1, should be held by the licensee under a relevant lease, he may issue directions to the licensee requiring the licensee to transfer to the transmission licensee the freehold interest in the land in question upon condition that there shall be immediately granted to the licensee out of such freehold interest a leasehold interest upon the same terms as the

relevant lease to which the licensee is already a party of the land which shall be closest to the land acquired by the licensee using the powers referred to in paragraph 1.

5. The powers referred to in paragraph 1 shall not apply to land forming part of the land bank.
6. Paragraphs 1 to 5 inclusive:
 - (a) shall cease to have effect on 31 March 1996 unless the Director shall before such date have substituted a later date in directions issued to the licensee for the purposes of this Condition; and
 - (b) may be brought into effect after they shall have ceased to have effect on such date as the Director shall specify in directions issued to the licensee for the purposes of this Condition.
7. In this Condition:

“land” includes any right, easement or other interest in land and any wayleave;

“land bank” means the land more fully described in Schedule 9 of the transmission licence granted to Northern Ireland Electricity plc together with such additional land as shall be acquired by Northern Ireland Electricity plc as the holder of that licence by virtue of any requirement that a generator shall transfer to it a freehold interest in any land;

“lease” includes an underlease and a sub-underlease; and

“relevant lease” means a lease of any land or building granted pursuant to the transfer scheme under Article 69(1) of the Order or granted or assigned pursuant to directions issued by the Director pursuant to Condition 17 of Part III of the transmission licence granted to Northern Ireland Electricity plc.

Condition 11: Powers to carry out road works etc

1. For the purpose of enabling the licensee to carry on its authorised activities, the powers and rights conferred by or under the provisions of Schedule 4 of the Order (other powers, etc., of licence holders) shall, subject to paragraph 3, have effect and may be exercised by carrying out works:
 - (a) in relation to, or in pursuance of, the installation, inspection, maintenance, adjustment, repair, alteration, replacement and removal of:
 - (i) electric lines specified in paragraph 2;
 - (ii) electrical plant associated with such lines;
 - (iii) any structures for housing or covering such lines or plant;
 - (b) in relation to the installation of electrical plant to be used in connection with a generating station or the operation of such station;
 - (c) in relation to electric lines or electrical plant as if the references to them in Schedule 4 of the Order includes pipes used or intended to be used for conveying heat produced in association with electricity and steam produced from air and water heated by such heat and associated works in relation to such pipes and as if “**associated works**” had the meaning given in Article 13(3) of the Order.
2. Electric lines are specified for the purposes of sub-paragraph (a) of paragraph 1:
 - (a) if they connect, or will connect when installed, a generating station with:
 - (i) the transmission system; or
 - (ii) the distribution system of any public electricity supplier or the system for the distribution of electricity of any authorised electricity operator; and
 - (b) where “**electric lines**” has the extended meaning given by paragraph 1(c), if they connect a generating station with any premises.
3. Paragraph 15 of Schedule 4 of the Order shall apply to the licensee if:
 - (a) it wishes to exercise its right of entry on land for the purpose of establishing whether or not the land is suitable for the construction or extension of a generating station; and
 - (b) it obtains the consent of the Director before exercising those rights.

4. In this Condition:

“authorised activities”

means the activities which the licensee is authorised by this licence to carry on, and shall include any purpose connected with the supply to any premises of heat produced in association with electricity and steam produced from air and water heated by such heat; and

“generating station” and
“extension”

have the meanings given in paragraph 3 of Condition 10.

5. Paragraphs 1 to 4 inclusive:

- (a) shall cease to have effect on 31 March 1996 unless the Director shall before such date have substituted a later date in directions issued to the licensee for the purposes of this Condition; and
- (b) may be brought into effect after they shall have ceased to have effect on such date as the Director shall specify in directions issued to the licensee for the purposes of this Condition.

Condition 12: Connection and use of system - requirement to offer terms

1. The licensee shall, subject to paragraphs 6, 7 and 10:
 - (a) offer to enter into an agreement to provide a connection to the licensee's system with any person who has made application for connection to the licensee's system; and
 - (b) offer to enter into an agreement for the modification of a connection to the licensee's system with any person who has made application for modification of a connection to the licensee's system; and
 - (c) offer to enter into an agreement with any authorised electricity operator or person who shall have applied for a licence under Article 10 of the Order and whose application has not been withdrawn or rejected who has made application for use of the licensee's system:
 - (i) to accept into the licensee's system at such entry point and in such quantities as may be specified in the application, electricity to be provided by or for that person; and
 - (ii) to deliver electricity equal in quantity to that accepted into the licensee's system (less only any losses incurred in the course of transporting such electricity through the licensee's system) from such exit points on the licensee's system and in such quantities as may be specified in the application to such person as the person making the application may specify.
2. The licensee shall, subject to paragraphs 6, 7 and 10, offer terms for an agreement in accordance with paragraph 1 as soon as practicable and in any event not more than the period specified in paragraph 8 after receipt by the licensee of an application from the person containing all such information as the licensee may reasonably require for the purposes of formulating the terms of its offer.
3. Each offer made in accordance with paragraph 1 shall:
 - (a) make detailed provision regarding such of the following matters as are relevant for the purposes of the agreement:
 - (i) the carrying out of works (if any) required for the construction or modification of the entry point to connect the licensee's system to the transmission system of the transmission licensee or to the distribution system of any public electricity supplier or the system for the distribution of electricity of any other authorised electricity operator or in connection with the construction or modification of any exit points

for the delivery of electricity as specified in the application, and for the obtaining of any consents necessary for such purpose;

- (ii) the carrying out of works (if any) for the provision of electrical plant or for the extension or reinforcement of the licensee's system which are required to be undertaken for the provision of connection to, or the making of a modification to a connection to, the licensee's system or for provision of use of the licensee's system to the person and for the obtaining of any consents necessary for such purposes;
- (iii) the installation of appropriate meters or other apparatus (if any) required to enable the licensee to measure electricity being accepted into the licensee's system at the specified entry point and leaving such system at the specified exit points;
- (iv) the installation of such switchgear or other apparatus (if any) as may be required for interrupting the use of the licensee's system should there be a failure by or for a person to provide electricity at its entry point on the licensee's system for delivery to the person specified by the person making the application from the exit points on the licensee's system;
- (v) the date by which any works required so as to permit access to the licensee's system (including for this purpose any works for its extension or reinforcement) shall be completed and so that, unless otherwise agreed by the person making the application, a failure to complete such works by such date shall be a material breach of the agreement entitling the person to rescind such agreement;
- (vi) the charges to be paid by the person making the application for the provision of electrical plant, for connections to or modification of connections to, or the extension or reinforcement of, the licensee's system, for the installation of meters, switchgear or other apparatus and for their maintenance, for disconnection from the licensee's system and the removal of electrical plant, electric lines and meters following disconnection, and for use of the licensee's system which shall, unless manifestly inappropriate, be set in conformity with paragraph 4; and

(b) contain such other provisions as may be appropriate for the purposes of the agreement in the circumstances in which it is likely to be entered into.

4. The charges referred to in paragraph 3 to be contained in every agreement the subject of an offer by the licensee shall be such that:

- (a) charges for the provision of electrical plant, connection charges, charges for modification of connections, charges for disconnection from the licensee's system and the removal of electrical plant, electric lines and meters following

disconnection or any charges for extension or reinforcement of the licensee's system or for use of the licensee's system are set at a level which will enable the licensee to recover no more than:

- (i) the appropriate proportion (taking account of the factors referred to in paragraph 5) of the costs directly or indirectly incurred by the licensee; and
 - (ii) a reasonable rate of return on the capital represented by such costs; and
- (b) charges for the installation of meters, switchgear or other apparatus and for their maintenance shall not exceed the costs thereof and a reasonable rate of return on the capital represented by such costs.
5. For the purpose of determining an appropriate proportion of the costs directly or indirectly incurred in carrying out works, the licensee shall have regard to:
- (a) the benefit (if any) to be obtained or likely in the future to be obtained by the licensee or any other person as a result of the carrying out of such works whether by virtue of the provision of electrical plant, the reinforcement or extension of the licensee's system, or the provision of additional entry or exit points on the licensee's system or otherwise; and
 - (b) the ability or likely future ability of the licensee to recoup a proportion of such costs from other persons.
6. The licensee shall not be obliged pursuant to this Condition to offer to enter into any agreement where, by reason of the capacity of the licensee's system and the use made or reasonably expected to be made of it, the licensee would be required to expand or reinforce the capacity of the licensee's system.
7. The licensee shall not be obliged pursuant to this Condition to offer to enter into any agreement with any person if:
- (a) to do so would be likely to involve the licensee:
 - (i) in breach of the Grid Code; or
 - (ii) in breach of the Distribution Code; or
 - (iii) in breach of the Electricity Supply Regulations (Northern Ireland) 1991 or any regulations made under Article 32 of the Order; or
 - (iv) in breach of any other enactment relating to safety or standards applicable to the licensee's system; or

- (b) the person does not undertake to be bound, insofar as applicable, by the terms of such parts of the Codes referred to in sub-paragraphs (a)(i) and (a)(ii) above, as from time to time in force, and to such extent as the Director shall from time to time specify in directions issued to the licensee for the purposes of this Condition.
- 8. For the purposes of paragraph 2, the period specified shall be three months.
- 9. The licensee shall within 28 days following receipt of a request from any person, give or send to such person such information in the possession of the licensee as may be reasonably required by such person for the purpose of completing the appropriate paragraphs of the Electricity (Applications for Licences and Extensions of Licences) Regulations (Northern Ireland) 1992 or such provisions to like effect contained in any further regulations then in force made pursuant to Articles 10(3) and 64 of the Order.
- 10. Paragraphs 1 to 9 inclusive shall apply only if and to the extent that the Director so directs. The licensee shall comply with any such direction.

Condition 13: Connection and use of system - functions of the Director

1. If, after a period which appears to the Director to be reasonable for the purpose, the licensee has failed to enter into an agreement with any person entitled or claiming to be entitled thereto pursuant to an application in accordance with Condition 12, the Director may, pursuant to Article 11(3) of the Order, on the application of such person or the licensee, settle any terms of the agreement in dispute between the licensee and the person in question in such manner as appears to the Director to be reasonable having (insofar as relevant) regard, in particular, to the following considerations:
 - (a) that the person should pay to the licensee the whole or an appropriate proportion (as determined in accordance with paragraph 5 of Condition 12) of the costs directly or indirectly incurred by the licensee in the carrying out of any works or in providing or doing any other thing under the agreement in question calculated in accordance with the principles set out in paragraph 4 of Condition 12 together with a reasonable rate of return on the capital represented by such costs;
 - (b) that the performance by the licensee of its obligations under the agreement should not cause it to be in breach of any other Condition of this licence;
 - (c) that any methods by which the licensee's system is connected to the transmission system of the transmission licensee or to the distribution system of any public electricity supplier or the system for the distribution of electricity of any other person authorised to supply electricity accords with good engineering principles and practices;
 - (d) that the terms and conditions of agreements entered into by the licensee pursuant to an application in accordance with Condition 12 should be, so far as circumstances allow, as similar in substance and form as is practicable.
2. If the person wishes to proceed on the basis of the agreement as settled by the Director, the licensee shall forthwith enter into and implement such agreement in accordance with its terms.
3. If either party to an agreement for connection to, or modification of a connection to, the licensee's system or for use of the licensee's system entered into pursuant to Condition 12 or this Condition proposes to vary the contractual terms of such agreement in any manner provided for under such agreement, the Director may, at the request of the licensee or other party to such agreement, settle any dispute relating to such variation in such manner as appears to the Director to be reasonable having regard (insofar as relevant), in particular, to the considerations set out in sub-paragraphs (a) to (d) of paragraph 1.

Condition 14: Health and safety of employees

It shall be the duty of the licensee to act together with other licence holders to consult with appropriate representatives of the employees for the purpose of establishing and maintaining an appropriate machinery or forum for the joint consideration of matters of mutual concern in respect of the health and safety of persons employed by those licence holders.

Condition 15: Provision of information to the Director

1. Subject to paragraph 3, the licensee shall furnish to the Director, in such manner and at such times as the Director may require, such information and shall procure and furnish to him such reports, as the Director may consider necessary in the light of the Conditions or as he may require for the purpose of performing:
 - (a) the functions assigned to him by or under the Order; and
 - (b) any functions transferred to him under the Order.
2. Without prejudice to the generality of paragraph 1, the Director may call for the furnishing of accounting information which is more extensive than or differs from that required to be prepared and supplied to the Director under Condition 2.
3. The licensee may not be required by the Director to furnish him under this Condition with any information required in relation to an enforcement matter which the licensee could not be compelled to produce or give under Article 31(3) of the Order.
4. The power of the Director to call for information under paragraph 1 is in addition to the power of the Director to call for information under or pursuant to any other Condition.
5. In paragraphs 1 to 4 “**information**” shall include any documents, accounts, estimates, returns or reports (whether or not prepared specifically at the request of the Director) of any description specified by the Director.

Condition 16: Payment of fees

1. The licensee shall, at the times stated hereunder, pay to the Department fees of the amount specified in, or determined under, the following paragraphs of this Condition.
2. Within 30 days after the grant of this licence the licensee shall pay to the Department a fee of £131,400.
3. In respect of the year beginning on 1 April in 1993 and in each subsequent year, the licensee shall pay to the Department a fee which is the aggregate of the following amounts:
 - (a) an amount which is a proportion, as determined by the Director, of the amount estimated by the Director, according to a method which has previously been disclosed in writing to the licensee, as likely to be his costs during the coming year in the exercise of his general functions under the Order in relation to the holders of licences granted under Articles 10(1) and 10(2) of the Order but excluding his costs and expenses incurred or to be incurred in developing the requisite arrangements provided for in Condition 20;
 - (b) an amount which is a proportion as determined by the Director of the amount estimated by the Director (in consultation with the Monopolies Commission) as having been incurred in the calendar year immediately preceding the 1 April in question by the Monopolies Commission in connection with references made to it under Article 15 of the Order with respect to this licence or any other licence issued under Article 10(1)(a) of the Order; and
 - (c) the difference (being a positive or a negative amount), if any, between:
 - (i) the amount of the fee paid by the licensee in respect of the year immediately preceding the 1 April in question less any refund paid to the licensee in respect of that year under paragraph 4 below; and
 - (ii) the amount which that fee would have been in respect of that year had the amount comprised therein under sub-paragraph (a) above (or, where that year commenced on 1 April 1992, had the amount comprised therein which was attributable to the matters referred to in that sub-paragraph, as determined by the Director according to a method disclosed in writing to the licensee) been calculated by reference to the total costs of the Director and the proportion thereof actually attributable to the licensee (such total costs being apportioned as determined by the Director according to a method previously disclosed in writing to the licensee);

and the fee shall be paid by the licensee to the Department within one month of the Director giving notice to the licensee of its amount if that notice is given within six months of the beginning of the year in respect of which the fee is payable.

4. In respect of each year beginning on 1 April 1998 and for each subsequent year, the Director may pay the licensee an amount ("the refund") calculated in accordance with the method previously disclosed in writing to the licensee and by reference to the difference between:
 - (a) the proportion of the licence fee for that year paid by the licensee which is attributable to the Director's estimates in accordance with paragraph 3(a) above; and
 - (b) the Director's reasonable revised estimate of those costs;

provided that any such refund shall be paid to the licensee on or before 31 March in the year to which the licence fee relates.

Condition 17: Amendments of generating unit agreements or power station agreements

1. If not later than 20 August 1992 the power procurement manager shall have sought and failed to obtain the agreement of the licensee to the making of an amendment of a cancellable generating unit agreement or a power station agreement, the Department, upon the application of the power procurement manager, may, after consultation with the Director and having taken into consideration any representations made to it by the licensee and the power procurement manager, issue directions to the licensee to execute an amendment, in such form and by such time as shall be specified in the directions, of the cancellable generating unit agreement or power station agreement in question provided that:
 - (a) the Department shall on reasonable grounds consider that if such amendment were not made, there would exist a substantial risk that the transmission licensee or the public electricity supplier would, by reason of such amendment not having been made, be unable at any time in the reasonably foreseeable future, to comply with any relevant condition or relevant requirement (within the meaning of Article 3 of the Order) or any rule of law; and
 - (b) subject to paragraph 2, the amendment in question provides for the licensee to receive from the power procurement manager an amount which, in the reasonable opinion of the Department, fully compensates the licensee for:
 - (i) any amounts by which its costs would be likely to increase beyond those which it would have been likely to incur if the amendment in question had not been made;
 - (ii) any amount which the licensee could reasonably have been expected to receive under the generating unit agreement and which it shall not, as a result of the amendment in question having been made, be likely to receive;
 - (iii) the reasonable fees and other expenses of its personnel and advisers which are incurred in connection with the making of the amendment in question; and
 - (iv) a reasonable rate of return on the amounts provided for in subparagraphs (i), (ii) and (iii) above.
2. The licensee shall not be entitled to be compensated pursuant to paragraph 1 for any amount or cost which the Department shall on reasonable grounds determine that no reasonable generator could, prior to the relevant time, reasonably have expected to have been entitled to recover or to continue to recover if the results of shadow running had been known at that time. The Department shall not be entitled pursuant to this paragraph to make a determination that:

- (a) the Base Availability Credit under a generating unit agreement (as that term is therein defined) shall be altered without compensation under paragraph 1; or
 - (b) there shall be no compensation under paragraph 1 for any change in the expected availability of a generation set.
3. Except in the circumstances described in paragraph 4, paragraph 2 shall not apply if and to the extent that, if it were to apply, any affiliate of the licensee would be in breach of any financing agreement.
 4. The circumstances referred to in paragraph 3 are where the breach in question shall be or shall be likely to be caused as a result of the inclusion in any financing agreement of any term or condition which, whether alone or with others, has as its main object or one of its main objects that paragraph 2 should not receive effect.
 5. The licensee shall comply with any directions issued to it under paragraph 1.
 6. The licensee shall provide to the Department such information within such time as the Department shall specify in directions issued to the licensee for the purposes of this Condition and afford to the Department such co-operation as it shall request in relation to the exercise of its powers under this Condition.
 7. The licensee shall not be entitled to call into question the validity or any other aspect of a determination made by the Department under this Condition unless within 14 days of such determination it shall have given notice to the Department that it intends to apply to the court for an appropriate order or declaration in that respect.
 8. In this Condition:

“**financing agreement**” means an agreement made by any affiliate of the licensee and any person who shall have provided finance for the acquisition of the issued share capital of the licensee;

“**relevant time**” means the time the contract in question shall have been entered into; and

“**shadow running**” means the testing of the arrangements between the licensee, other generators and the power procurement manager for the provision of available capacity and the delivery or supply of electricity between 1 April 1992 and the date upon which the amendment in question shall have been sought by the power procurement manager.

Condition 18: Cancellable Generating Unit Agreements

1. The licensee shall not exercise any right, howsoever arising, to terminate any of the cancellable generating unit agreements unless any contract which it shall enter into in relation to the generation set or combination of generation sets in respect of which the cancellable generating unit agreement so terminated applied shall contain a provision in the terms provided for in paragraph 3.
2. Any new contract of the kind referred to in paragraph 1, and any other contract in relation to the generation set or combination of generation sets in respect of which a cancellable generating unit agreement which shall have been terminated by effluxion of time applied, shall become a cancellable generating unit agreement, and Schedule 2 shall be modified so as to include the new contract or contracts in place of the cancellable generating unit agreement or cancellable generating unit agreements which shall have been terminated. No such amendment may alter the date appearing opposite the relevant cancellable generating unit agreement in Schedule 2.
3. The terms referred to in paragraph 1 are:

“Termination following Director’s Notice”

“Notwithstanding any other provision of this agreement, either party shall be entitled to terminate this agreement if each party shall have received from the Director General of Electricity Supply for Northern Ireland (the “Director”) a notice directing it to do so (in the case of Northern Ireland Electricity plc) pursuant to Condition 7 of Part III of the licence granted under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992 to Northern Ireland Electricity plc, and (in the case of Ballylumford Power Limited) pursuant to Condition 20 of the licence granted under Article 10(1)(a) of the Electricity (Northern Ireland) Order 1992 to Ballylumford Power Limited.”

“Such termination shall have effect upon the later of:

- (a) [insert earliest cancellation date for that cancellable generating unit agreement];
and
- (b) the date or the happening of such event as shall be specified for such termination in the Director’s notice.”

“Neither party shall have any right of action against the other by virtue only of such termination, but subject thereto nothing herein shall affect any accrued rights and obligations of the parties.”

4. The licensee shall not agree to any amendment or deletion of the provision in any cancellable generating unit agreement which entitles either or both parties to terminate the agreement after receipt of a cancellation direction.

Condition 19: Supply Competition Code

1. The licensee shall comply with the provisions of the Supply Competition Code insofar as applicable to it, including any requirements thereunder for the Director's approval or consent, for compliance with directions issued by the Director or relating to determinations made by the Director.
2. The provisions of the Supply Competition Code shall have effect as if they were set out in this licence.
3. The Supply Competition Code may be modified:
 - (a) in accordance with paragraph 4;
 - (b) in accordance with the provisions of the Supply Competition Code; or
 - (c) not later than 1 June 1993 by the Director so as to add in paragraph 6 of the Supply Competition Code, after the word "manager" the words "provided that, in calculating such total requirements, no account shall be taken of electricity which a relevant supplier generates himself where the relevant supplier, as respects that electricity, satisfies the relevant condition. In this paragraph "relevant condition" has the same meaning as in paragraph D.2(a) of Schedule 2 to the Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) 1992, save that the reference therein to "person in question" shall be treated as a reference to "relevant supplier in question".
4. The Director shall be entitled to make such modifications of the Supply Competition Code as shall, in his opinion, be necessary to implement the requisite arrangements referred to in Condition 20, or in accordance with paragraph 8 of that Condition, provided that such modifications shall not come into effect earlier than 1 November 1996.
5. The modification of the Supply Competition Code made pursuant to paragraph 4 shall include the establishment of procedures for its further modification with the agreement of all licence holders and, in the absence of such agreement, in the manner provided for in Articles 14 to 18 of the Order.
6. No modification of the Supply Competition Code pursuant to paragraph 4 shall affect the rights or obligations of any party to:
 - (a) a power purchase agreement which is not a cancellable generating unit agreement;
or
 - (b) a cancellable generating unit agreement which has not, at the relevant time, been the subject of a cancellation direction,

under that agreement beyond what may reasonably be regarded as de minimis in relation to that person.

Condition 20: Modification of Supply Competition Code and cancellation of contracts

1. When the Director shall have determined that the requisite arrangements have been developed and that they satisfy the requirements of paragraph 3, he 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, would facilitate an increase in competition in the generation or 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 Director, 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 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 all generators to make available such generation capacity as will in aggregate be sufficient to ensure that all reasonable demands for electricity 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;
 - (vi) ensure that 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;
 - (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 Director 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 Director 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 his preparations for the making of the determination referred to in paragraph 1, the Director shall have consulted with the Department, all licence holders, the power procurement manager, the consumer committee and such other persons as the Director shall consider likely to be materially affected in relation to the steps that he believes require to be taken and the documentation and other obligations which he 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 Director 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 he shall consider are necessary so as properly to inform such persons of the detail of his proposals;
 - (c) the Director shall have given each person so consulted the opportunity to make representations in relation to the relevant steps and 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 Director shall have published his conclusions as to the relevant steps and relevant documentation (including drafts of the relevant documentation) and his reasons for those conclusions;
 - (e) the Director 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 he gives the notice is a licence holder, and the consumer committee that he intends to do so; and
 - (f) the Director 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 Director 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 Director in the exercise of his powers under paragraph 4 of Condition 19, may provide that they are to apply to all licence holders except if and to the extent that:
 - (a) they permit the Director 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 Director shall be entitled, after having carried out the consultations referred to in paragraph 6 and published his conclusions, both before and after he 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:
 - (a) is, in his 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 he gives due notice of such amendment or variation to such persons as appear to him to be likely to be affected thereby.

9. The implementation of the requisite arrangements may be secured by the exercise by the Director of his powers:
 - (a) under paragraph 4 of Condition 19 (to make modifications of the Supply Competition Code);
 - (b) referred to in paragraph 4 of Condition 4 (to direct the transmission licensee to revise the Grid Code);
 - (c) 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);

- (d) 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
 - (e) under Clause 2.01(F) of Part 2 of the Northern Ireland Fuel Security Code (to make amendments to that Code).
10. The licensee shall afford the Director such co-operation as he shall in directions issued to the licensee for the purposes of this Condition request in developing and testing his 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 Director shall have first exercised his 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 Director shall from time to time require and shall be recoverable from the transmission licensee.
 12. In this Condition:
 - “**Land Bank Business**” means the business of Northern Ireland Electricity plc in the discharge of its obligations under Condition 17 of Part III of its transmission licence;
 - “**relevant documentation**” means the documentation and other obligations referred to in sub-paragraph (a) of paragraph 6;
 - “**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 21: Provision of Information

1. The licensee shall furnish to the transmission system operator in such manner and at such times as may be required, such information as may reasonably be required, and which the Director deems necessary, by the transmission system operator in order to comply with its obligations in relation to any authorised business or activity.
2. The information provided under paragraph 1 shall be furnished in accordance with directions issued by the Director from time to time.

Condition 22: Trading Arrangements

1. The licensee shall use its reasonable endeavours in conjunction with other licence holders to facilitate the development of trading arrangements which, subject to paragraph 3, will supersede the interim settlement arrangements established under Condition 24 of Part III of the transmission licence for the trading of electricity between authorised electricity operators with a view to developing more flexible trading arrangements to facilitate the competitive electricity market as envisaged by Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity.
2. The arrangements referred to in paragraph (1) above shall be developed in accordance with such timetable and in such format as the Director shall consider appropriate and shall require to be approved by the Director.
3. If, as part of the process referred to in paragraph 1 above, the licensee and the other licence holders agree that the interim settlement arrangements meet the criteria specified in paragraph 1 above and that it will not be advantageous for the interim settlement arrangements to be replaced and superseded by other trading arrangements, the licensee and the other licence holders together shall notify the Director accordingly. Subject to the approval of the Director, the interim settlement arrangements will then remain in force and effect and will become, and be, the trading arrangements referred to in paragraph 1 above.

SCHEDULE 1

Terms as to revocation

1. The Department may at any time revoke this licence by not less than 30 days' notice in writing to the licensee:
 - (a) if the licensee agrees in writing with the Department that this licence should be revoked;
 - (b) if any amount payable under Condition 16 is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Department has given the licensee notice that the payment is overdue. Provided that no such notice shall be given earlier than the sixteenth day after the day on which the amount payable became due;
 - (c) if the licensee fails to comply with a final order (within the meaning of Article 3 of the Order) or with a provisional order (within the meaning of Article 3 of the Order) which has been confirmed under Article 28 of the Order and which (in either case) has been made in respect of a contravention or apprehended contravention of any of the Conditions or of any relevant requirement (within the meaning of Article 3 of the Order) imposed on the licensee in its capacity as holder of this licence and (in either case) such failure is not rectified to the satisfaction of the Department within three months after the Department has given notice of such failure to the licensee. Provided that no such notice shall be given by the Department before the expiration of the period within which an application under Article 30 of the Order could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined;
 - (d) if the licensee fails to comply with any order made by the Secretary of State under Sections 56, 73, 74 or 89 of the Fair Trading Act 1973 or under Section 10(2)(a) of the Competition Act 1980;
 - (e) if the licensee:
 - (i) is unable to pay its debts (within the meaning of Article 103(1) or (2) of the Insolvency (Northern Ireland) Order 1989, but subject to paragraph 2 of this Schedule) or if any voluntary arrangement is proposed in relation to it under Article 14 of that Order or if it enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Department); or
 - (ii) has a receiver (which expression shall include an administrative receiver within the meaning of Article 5(1) of the Insolvency (Northern Ireland)

- Order 1989) of the whole or any material part of its assets or undertaking appointed; or
- (iii) has an administration order under Article 21 of the Insolvency (Northern Ireland) Order 1989 made in relation to it; or
 - (iv) passes any resolution for winding up other than a resolution previously approved in writing by the Department; or
 - (v) becomes subject to an order for winding up by a court of competent jurisdiction;
- (f) if:
- (i) there is a change in the control of the licensee;
 - (ii) the Department serves notice on the licensee stating that the Department proposes to revoke this licence in pursuance of this paragraph unless such further change in control of the licensee as is specified in the notice takes place within the period of three months beginning with the date of service of the notice; and
 - (iii) that further change does not take place within that period;
- (g) if the licensee shall have intentionally or recklessly failed to notify the Department as soon as practicable thereafter that a change in the control of the licensee shall have occurred;
- (h) if the power procurement manager shall have rescinded any generating unit agreement as a consequence of a material breach of that generating unit agreement by the licensee;
- (i) if the licensee fails to use its best endeavours to comply with any direction given to it by the Department under Article 58 of the Order, and there shall as a result of such failure be a disruption or a material risk of a disruption in electricity supplies to consumers in Northern Ireland;
- (j) if the licensee is convicted of having committed an offence under Article 63 of the Order; or
- (k) if the licensee ceases to carry on the Generation Business.
2. (a) For the purposes of paragraph 1(e)(i) of this Schedule Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 shall have effect as if for “£750” there was substituted “£250,000” or such higher figure as the Director may from time to time determine by notice in writing to the Department and the licensee.

- (b) The licensee shall not be deemed to be unable to pay its debts for the purposes of paragraph 1(e)(i) of this Schedule if any such demand as is mentioned in Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 is being contested in good faith by the licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Department under paragraph 1 of this Schedule.
- 3.
 - (a) There is a change in the control of the licensee for the purposes of paragraphs 1(f) and (g) of this Schedule whenever a person has control of the licensee who did not have control of the licensee when this licence was granted.
 - (b) Subsections (2) and (4) to (6) of section 416 of the Income and Corporation Taxes Act 1988 shall apply for the purpose of determining whether for the purposes of this paragraph a person has or had control of the licensee, with the modifications specified in sub-paragraph (c).
 - (c) The modifications referred to in sub-paragraph (b) are:
 - (i) for the words “the greater part” wherever they occur in the said subsection (2) there shall be substituted the word “one-third or more”;
 - (ii) in the said subsection (6), for the word “may” there shall be substituted the word “shall”, the words from “and such attributions” onwards shall be omitted and in the other provisions of that subsection any reference to an associate of a person shall be construed as including only a relative of his (as defined by section 417(4) of that Act), a partner of his and a trustee of a settlement (as defined by section 681(4) of that Act) of which he is a beneficiary.

SCHEDULE 2

CANCELLABLE GENERATING UNIT AGREEMENTS

<u>Cancellable Generating Unit Agreement</u>	<u>Earliest Cancellation Date</u>
Agreement dated 1 April 1992 between the licensee and the power procurement manager in respect of generation set no. 1 at Ballylumford power station	1 November 2010
Agreement dated 1 April 1992 between the licensee and the power procurement manager in respect of generation set no. 2 at Ballylumford power station	1 November 2010
Agreement dated 1 April 1992 between the licensee and the power procurement manager in respect of generation set no. 3 at Ballylumford power station	1 November 2010
Agreement dated 1 April 1992 between the licensee and the power procurement manager in respect of generation set no. 4 at Ballylumford power station	1 November 2010
Agreement dated 1 April 1992 between the licensee and the power procurement manager in respect of generation set no. 5 at Ballylumford power station	1 November 2010
Agreement dated 1 April 1992 between the licensee and the power procurement manager in respect of generation set no. 6 at Ballylumford power station	1 November 2010
Agreement dated 1 April 1992 between the licensee and the power procurement manager in respect of gas turbine generation set no. 1 at Ballylumford power station	1 November 2010
Agreement dated 1 April 1992 between the licensee and the power procurement manager in respect of gas turbine generation set no. 2 at Ballylumford power station	1 November 2010