

**Consultation on Relevant Considerations in
relation to the possible Cancellation of
Generating Unit Agreements in Northern
Ireland**

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2 SUMMARY

The Northern Ireland Authority for Utility Regulation (“the **Authority**”) has the power - as set out in a licence condition contained within electricity generation licences and the electricity supply licence of NIE Energy Limited (“the **Cancellation Condition**”) - to direct the early cancellation of a Generating Unit Agreement (“**GUA**”).

The Authority’s power to cancel a GUA early (“the **cancellation power**”) only applies once it has determined that requisite trading arrangements, which satisfy certain requirements, have been developed. The Authority determined, on 23 October 2007, that the Single Electricity Market (“the **SEM**”) constituted the requisite trading arrangements¹.

There are currently ten GUAs in force between NIE Energy Limited (effectively its Power Procurement Business (“**PPB**”)) and electricity generators in Northern Ireland.

The Cancellation Condition provides that the Authority may give a direction for a GUA to be cancelled at any time on, or after, its Earliest Cancellation Date (“**ECD**”). Eight of the GUAs have an ECD of **1 November 2010**. The other two GUAs have an ECD of **31 March 2012**.

Any direction to cancel early a GUA has to be given at least 180 days in advance of the relevant early cancellation date. Consequently should the Authority determine that early cancellation of any one or more of the GUAs should take place from the earliest possible opportunity (i.e. 1 November 2010), the direction will need to be issued by no later than **4 May 2010**.

The Authority has therefore issued this initial consultation paper in order to:

- set out its initial thoughts on the type of issues and factors the Authority believes will or should inform its decision making process (i.e. whether or not it should exercise its early cancellation power at the earliest opportunity); and
- obtain views of market participants and interested parties.

In terms of structure:

¹ http://www.niaur.gov.uk/news/view/utility_regulator_issues_determination

- **Section 3** sets out the background to and purpose of the GUAs (including the different payment mechanisms) and explains how the costs of the GUAs (which are met by consumers) are managed and reconciled.
- **Section 4** outlines the background of the cancellation power and the circumstances in which it can be exercised, confirms that as the Authority has determined that the SEM constitutes the requisite trading arrangements the power can be exercised at or any time after 1 November 2010 and proposes a further consultation in early spring next year with a view to being in a position to make decision in late spring.
- **Section 5** summarises the principal objective and duties of the Authority (in relation to its electricity functions) and of the SEM Committee.
- **Section 6** explains that a detailed economic analysis will be undertaken to help inform the decision-making process and to ascertain the effect or likely effect on the PSO, explains that the analysis will focus on comparing forecast GUA payments with forecast SEM revenues and ancillary services payments, and explains that modelling will (at least initially) be undertaken for two separate time periods.

The Authority accordingly invites views on the issues discussed in this paper and the relevant considerations in regard to any cancellation decision. These should be addressed (preferably via email) to Paul Bell at paul.bell@niaur.gov.uk and copied to Kenny Dane at kenny.dane@niaur.gov.uk by no later than 17.00hrs on **Wednesday 27 January 2010**.

3 BACKGROUND

When the electricity industry in Northern Ireland was privatised in 1992, the generating stations were sold to private companies and Power Purchase Agreements (“PPAs”) were entered into between these companies and Northern Ireland Electricity plc .

The PPAs with each power station comprise two forms of agreement: a Power Station Agreement (“PSA”) relating to the station’s operation and a number of individual Generating Unit Agreements (“GUAs”) relating to each generating unit within the power station. These contracts are managed by PPB – a business unit within NIE Energy Limited. There are 10 GUAs still in force: 5 for units at Ballylumford Power Station, 1 for a unit at Coolkeeragh Power Station and 4 for units at Kilroot Power Station. Further details are set out in the table below.

The GUAs contain provisions relating to the purchase and payment by PPB for a number of services including the availability of capacity, the generation of electricity and the provision of ancillary services from each individual generating unit. The GUAs make provision for two categories of payment, namely (i) energy payments, and (ii) availability payments.

Energy payments represent reimbursement of fuel costs, while **availability payments** represent reimbursement for acquisition costs and operating costs. Availability payments are paid irrespective of whether electricity is actually generated, subject to the unit being available to generate.

Each PSA also contains Change in Law provisions which allow for amendments to payments in the event that a generator’s costs (or revenues) vary as a result of changes in legislation, including environmental legislation. Examples of this are costs incurred by AES Kilroot in the past to install a flue gas de-sulphurisation (“FGD”) plant to comply with more stringent requirements on SO₂ emissions under the Large Combustion Plant Directive (2001/80/EC). Further costs may be incurred by AES Kilroot under this Directive from 2016 to comply with more stringent controls on NO_x emissions. The European Union Greenhouse Gas Emission Trading System (EU ETS), based on EU Directive 2003/87/EC resulted in the granting of free carbon allowances from 2005-2012 to all generators in Northern Ireland. For nine of the GUAs, the parties have accepted that the value of the free carbon allowances reverts to PPB. However, in the case of Coolkeeragh ESB this is, at present, a matter of dispute between the two parties. However it is expected that beyond 2012 no further free allowances will be granted to electricity generators.

PPB sells the energy and capacity purchased from the generating stations through the PPAs in the SEM. PPB also sells ancillary services to the System Operator for Northern Ireland (“**SONI**”).

In any year, PPB will either make a profit or loss on each GUA, i.e. revenues earned in the SEM and from selling ancillary services will either be greater than or less than the costs of the GUAs. In accordance with its licence provisions, PPB passes this profit or loss on to electricity consumers in Northern Ireland as one component of a levy known as the Public Service Obligation (“**PSO**”).

Since the beginning of the SEM in November 2007, on a 12-month rolling average basis, with the exception of the GUAs for the AES Kilroot coal/oil fired units, all GUAs have provided a net financial benefit for consumers. However, historic performance is not a relevant consideration for future cancellation decisions. What matters are the forecast costs and benefits of each GUA between its ECD and its Contract Expiry Date (“**CED**”). For example, the cost of the GUAs for the AES Kilroot coal/oil fired units reduces materially from 1 November 2010 due to the ending of FGD capital costs. Similarly, the cost of the GUAs for the Premier Power CCGT also drops materially from 1 April 2012 due to a reduction in availability payments.

Table 3.1: Expiry and Earliest Cancellation Dates of the GUAs

Company	Generating Unit	GUA Contracted Capacity (MWs)	Fuel Type	Earliest Cancellation Date (ECD)	Contract Expiry Date (CED)
AES Kilroot	G1	260 (oil), 195 (coal)	Coal/Heavy Fuel Oil	1 November 2010	31 March 2024
AES Kilroot	G2	260 (oil), 195 (coal)	Coal/Heavy Fuel Oil	1 November 2010	31 March 2024
AES Kilroot	GT1	29	Distillate	1 November 2010	31 March 2024
AES Kilroot	GT2	29	Distillate	1 November 2010	31 March 2024
Premier Power	CCGT 10	106	Gas	31 March 2012	31 March 2012 (with two five-year extension options exercisable by PPB with two years notice in each case)
Premier Power	CCGT 20	510	Gas	31 March 2012	31 March 2012 (with two five-year extension options exercisable by PPB with two years notice in each case)
Premier Power	G4	180	Gas	1 November 2010	31 March 2012
Premier Power	GT1	58	Distillate	1 November 2010	31 March 2020
Premier Power	GT2	58	Distillate	1 November 2010	31 March 2020
Coolkeeragh ESB	GT8	58	Distillate	1 November 2010	31 March 2020
Total		1548			

4 THE CANCELLATION POWER AND CONSULTATION

As can be seen from the table above, each GUA is scheduled to come to an end at its CED.

However provisions were included in the GUAs to allow for cancellation from an earlier date, the ECD. The ECD for eight of the GUAs is **1 November 2010** whilst the ECD for the other two GUAs is **31 March 2012**.

The GUAs can only be cancelled where certain specified requirements – set out in the Cancellation Condition – are satisfied.

In brief, the Cancellation Condition provides:

- that the Authority is entitled to serve a notice on PPB and the relevant generator party to a GUA directing them to terminate the GUA from a date, or the happening of an event, that is specified in the notice;
- that the Authority can only exercise this power if it has determined that requisite arrangements, which set out the requirements specified in the Cancellation Condition, have been developed; and
- the procedural requirements that need to be followed in order for the Authority to direct the early cancellation of the GUA.

On 23 October 2007, the Authority determined that the SEM constituted the requisite trading arrangements². Many of the procedural requirements set out in the Cancellation Condition (including for example the requirement to consult) relate to the making of this determination and have therefore already been followed.

There is in effect only one procedural requirement which concerns the giving of the direction (i.e. the Authority exercising its early cancellation power). This is that the Authority needs to give at least 180 days' notice, of its intention to give a direction, to such persons as are specified in the Cancellation Condition.

Although there is no requirement in the Condition for the Authority to consult before it decides whether or not to exercise its power to direct the cancellation of a GUA, the Authority has always made it clear that it intends to consult widely before making any decision, in order to ensure that it does so having considered all the relevant facts.

² http://www.niaur.gov.uk/news/view/utility_regulator_issues_determination

The SEM Committee of the Authority (“the **SEMC**”) has considered the matter and, based on a preliminary analysis has not determined that cancellation of any GUA is a SEM matter. The SEMC has agreed that the Authority should take the matter forward by consulting and conducting detailed economic analysis. However the SEMC has indicated that it would like to review the matter again following such consultation and analysis.

This paper therefore constitutes the first stage of the consultation by the Authority.

The purpose of this initial consultation paper is to seek opinions from interested parties on the relevant cancellation considerations. The Authority has no view at this stage as to whether or not it will be appropriate for it to exercise its power to direct that any GUA is cancelled, whether at the earliest possible date or at any later date or at the happening of any event.

The Authority presently envisages that a further consultation will take place in March 2010 with a view to a decision or decisions being made, with regard to whether and when the Authority (or if the SEMC determines that the decision as to whether or not to cancel any particular GUA is a SEM matter, the SEMC in relation to the exercise of that function for such GUA(s)) should exercise the cancellation power in regard to any one or more of the GUAs.

5 PRINCIPAL OBJECTIVES AND DUTIES OF THE AUTHORITY AND OF THE SEM COMMITTEE

The Authority/SEM Committee will make the decision(s) as to whether or not to direct early cancellation of any one or more GUA from 1 November 2010 in consideration of its respective principal objective and duties (in the case of the Authority as relating to its electricity functions).

The relevant principal objectives and duties

- of the Authority are set out in Article 12 of the Energy (Northern Ireland) Order 2003; and
- of the SEM Committee are set out in Article 9 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (“**the SEM Order**”).

These are summarised below, but are set out in full in Appendices 1 and 2 of this paper.

The Authority

Article 12 of the Energy (Northern Ireland) Order 2003 sets out the principal objective and general duties of the Authority which apply to almost all of the decisions that it makes within the electricity sector (except for those excluded by Article 13, which is not relevant in this case).

Article 12(1) sets out the Authority’s principal objective in the carrying out of its electricity functions. This is to:

“protect the interests of consumers of electricity supplied by authorised suppliers wherever appropriate by promoting effective competition between persons engaged in or in commercial activities connected with the generation, transmission or supply of electricity”.

Article 12(2) states that it is the duty of the Authority when exercising its electricity functions to act in the manner best calculated to further the principal objective. In doing so it must have regard to:

“the need to secure that all reasonable demands for electricity are met”, and

“the need to secure that licence holders are able to finance the activities which are the subject of obligations imposed by or under Part II of the Electricity (Northern Ireland) Order 1992 or the Energy (Northern Ireland) Order 2003”.

Articles 12(3) to 12(5) list a number of additional matters to which the Authority may or must have regard when making its decision, including for example secure a diverse, viable and environmentally sustainable long-term energy supply.

Article 12(6) requires the Authority not to discriminate between electricity companies in the exercise of its functions.

The SEMC

Article 9 of the SEM Order sets out the principal objective and duties of

- the SEMC in carrying out its functions in relation to a SEM matter; and
- of the Authority in giving effect to any decision of the SEMC.

Article 9(1) sets out the principal objective. This is to:

“protect the interests of consumers of electricity in Northern Ireland and Ireland supplied by authorised persons, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the sale and purchase of electricity through the SEM”.

Article 9(2) states that it is the duty of the SEMC/Authority to carry out its relevant functions in the manner which it considers is best calculated to further the principal objective. In doing so it must have regard to:

“the need to secure that all reasonable demands in Northern Ireland or Ireland for electricity are met”, and

“the need to secure that licence holders are able to finance the activities which are the subject of obligations imposed by or under Part II of the Electricity (Northern Ireland) Order 1992 or the Energy (Northern Ireland) Order 2003 or any corresponding provision of the law in Ireland” and

“the need to secure that the functions of the Department, the Authority, the Irish Minister and CER in relation to the SEM are exercised in a coordinated manner”, and

“the need to ensure transparent pricing in the SEM”, and

“the need to avoid unfair discrimination between customers in Northern Ireland and customers in Ireland”.

Articles 9(3) to 9(7) list a number of additional matters to which the SEMC/Authority may or must have regard when making its decision, including for example secure a diverse, viable and environmentally sustainable long-term energy supply.

Views are invited in particular on:

- 1 Whether cancellation of the GUAs (or any particular GUA) is likely to help further the principal objective of (a) the Authority and (b) the SEMC.
- 2 The kinds of effects, whether positive or negative, (if any) that a decision to cancel the GUAs (or any particular GUA) are likely to have on matters to which the Authority/SEMC must have regard. There may, for example, be particular effects of which respondents are aware that they might wish to bring to our attention on matters such as:
 - prices paid by consumers;
 - the competitiveness of the SEM;
 - security and/or diversity of supply;
 - environmental sustainability.
- 3 Whether respondents believe that:
 - There are any other particular facts or circumstances known to them which the Authority/SEMC should take into consideration in determining whether the exercise of the relevant function would be likely (or not) to help further the relevant principal objective and duties of (i) the Authority and (ii) the SEMC; and
 - The Authority/SEMC should give particular attention or attach particular weight to any of these facts or circumstances when it makes that determination.

6 ECONOMIC ANALYSIS

The cancellation decisions will also be informed by detailed economic analysis.

A key consideration will be the likely effect on PSO charges to Northern Ireland consumers resulting from cancellation, or otherwise, for each GUA over the period between the ECD and the CED. In order to determine the likely effects on the PSO it will be necessary to compare forecast GUA payments with forecast SEM revenues and forecast ancillary service payments from SONI over the remaining lifetime of the contracts. SEM revenues include energy payments and capacity payments. GUA payments include energy payments (offset somewhat by the free carbon allowances until the end of 2012), availability payments and a number of other payments made by PPB.

SEM Revenues

SEM Revenues will be forecast using the industry forecasting model known as Plexos. This will build upon the latest available validated model used in the Directed Contracts process³.

Forecast *energy payments* in the SEM, for each generating unit, will essentially be the product of the forecast unconstrained dispatch volume, or the Market Scheduled Quantity (MSQ), and the forecast System Marginal Price (SMP). Key modelling assumptions are required to determine these forecasts, including forecasts for:

- commodity prices (fuel and carbon);
- foreign exchange rates;
- demand;
- supply (based on assumptions about new entry, including wind, and exits);
- availability levels;
- transmission loss adjustment factors (TLAFs);
- variable operating and maintenance costs; and

³ Directed Contracts are part of the SEM Market Power Mitigation Strategy. Further details can be found at the following web link http://www.allislandproject.org/en/market_modelling_group.aspx

- variable gas transportation costs.

It is proposed that the approach for determining demand and wind forecasts will be consistent with other recent regulatory studies in liaison with the System Operators, SONI and Eirgrid.

Forecast *capacity payments* in the SEM, for each generating unit, will be based on:

- a forecast Capacity Payment Sum, known as the “capacity pot”. This will be based upon the 2010 capacity pot, with the appropriate indices applied;
- the forecast availability of the generating unit; and
- the forecast availability of all other SEM registered generating units.

It is proposed to use the current principles for setting the annual capacity pot. Forecasts for availabilities will be determined using historic performance with performance adjustments to reflect the likely impact of aging.

Forecasts for *ancillary service payments* will be based on the latest available ancillary service arrangements.

Modelling of forecast revenues is likely to be conducted over different time periods to reflect expected step changes in GUA costs, as described later in this paper. Some examples of these step changes are:

- from 1 January 2013, all else being equal, the cost of all GUAs is likely to increase due to the ending of free carbon allowances.
- from 1 April 2012 there is a material reduction in availability payments in the GUAs for the Premier Power CCGT.
- from 1 January 2016 there may be material changes to GUA payments for the AES Kilroot coal/oil fired units due to requirements for NO_x emissions controls under the Large Combustion Plant Directive (“**LCPD**”).

Forecast GUA costs will be compared with forecast SEM revenues for each period in chronological order. Given that a decision to cancel is irreversible, and that the results from periods can differ directionally, all periods will be compared before any decision to cancel is exercised.

For the first time period (up until 31 December 2009), the Authority is minded to source and process commodity prices in a similar fashion to that used in the Directed Contracts

process⁴. Fuel prices used for Directed Contract modelling include the following forward prices:

- a) Gas: Heren ICE NBP futures;
- b) Coal: Argus API2 (CIF, ARA);
- c) Gasoil: Platts Gasoil .1% (CIF, NWE);
- d) LSFO: Platts 1% LSFO (FOB, NWE).

Sensitivity analysis will be run on a selection of input variables that are traditionally expected to have wider confidence intervals. These include:

- Demand; in terms of volume as well as peak/volatility;
- Wind profiles (not installed capacity);
- Half-hourly Unit availability profiles.

For all other time periods forward commodity prices as per first time period will be used up until the latest available data from each source. For commodity prices beyond this, it is anticipated that extrapolation will be used similarly to that presented in the SEM Committee Consultation Paper on the Principles of Dispatch and the Design of the Market Schedule in the Trading and Settlement Code⁵ (SEM-09-073). The Authority is minded to consider a range of commodity price scenarios.

Sensitivity analyses may also be run on the other modelling periods (should it appear necessary), particularly with regard to demand and assumed installed plant profiles;

Views are invited in particular on:

1. The phased modelling approach;
2. The commodity indices being proposed, in particular the method for deriving longer term prices;
3. The variables that sensitivity analyses should be performed on, as well as the statistical or heuristic methods and/or ranges that should be considered for each;
4. Any other aspects of modelling and/or assumptions that should be considered when forecasting SEM Revenues.

⁴ See SEM-09-061c published under [SEM Publications 2009](#)

⁵ See SEM-09-073 published under [SEM Publications 2009](#)

GUA Payments

Forecast GUA payments over the relevant period will include forecast availability payments, forecast energy payments (offset somewhat by the free carbon allowances until the end of 2012) and any other payments made by PPB (including transmission use of system charges, rates, fuel stocking payments, etc.).

Forecast availability payments, for each GUA, will be based on the base availability payments, forecasts availability levels and inflation, given that the base availability payments are indexed to inflation. For forecast availability levels, consideration will be given to the past performance of generating units and to the likely future effects of aging.

Forecast energy payments, for each GUA, will be based on forecast dispatch, the GUA formulae for calculating energy payments, which are based on fuel market indices and contractual (rather than actual) thermal efficiencies.

Consideration will also be given to likely changes to availability payments and energy payments (and in some cases possible changes to SEM revenues), arising out of the Change in Law provision or other material factors in specific GUAs. In particular:

1. The availability payments for the Premier Power CCGT GUAs drop significantly from April 2012. This is because these GUAs allowed for full recovery of the capital cost over a timescale of around nine years.
2. It is expected that free carbon allowances will come to an end beyond 2012.
3. Another Change in Law effect relates to the GUA for the Kilroot coal/oil fired units. These units will have to comply with new requirements for NO_x emissions from 2016 under the Large Combustion Plant Directive (“**LCPD**”). This could result in increases to availability payments, and/or increases to energy payments, and/or reductions in SEM revenues, due to (i) an increases in capital and/or operating costs, (ii) a reduction in thermal efficiency, (iii) a reduction in net declared capacity, or (iv) imposed limitations on operating hours. If necessary, expert advice will be obtained on the likely cost implications of the LCPD.
4. Availability payments for the Kilroot coal/oil-fired units drop significantly from 1 November 2010 to reflect the ending of the FGD capital cost recovery.

Views Are Invited On:

1. The proposed methodology for forecasting availability and energy payments for the GUAs.
2. The cost implications of the Large Combustion Plant Directive (LCPD).
3. Any other cost considerations which you consider to be relevant.

7 NEXT STEPS

The Authority/SEMC intends to be in a position to determine whether or not it should exercise its early cancellation power in time for the cancellation of the relevant GUAs to take place on 1 November 2010 should that be appropriate.

The Cancellation Condition requires the Authority to give at least 180 days' notice of the intention to direct the termination of the GUAs. This means that should the Authority/SEMC wish to direct the termination of any GUA from 1 November 2010 – the earliest possible date – it would need to have given such notice by no later than 4 May 2010.

After the Authority have considered the responses to this consultation, more detailed economic analysis will be completed for GUAs with earliest cancellation dates on the 1 November 2010. The Authority will share the responses to this consultation and its detailed economic analysis with the SEMC.

The Authority/SEMC will then consult further on minded to decisions in regard to cancellation of the GUAs with earliest cancellation dates of 1 November 2010, It is presently envisaged that this will be a six-week consultation.

It should be noted however that even if the Authority/SEMC were minded to direct that the GUAs should be cancelled early, it does not follow that it would conclude that they should be cancelled from the earliest possible date or that they should all be cancelled at the same time.

Along the same lines, were the Authority/SEMC to conclude that it should not direct the early cancellation of the GUAs at this stage, it would not follow that the GUAs would necessarily need to continue until their expiry date. The power to direct early cancellation can be taken at any time and therefore early cancellation would remain possible and could be the subject of further consultations at a later point in time.

8 RESPONSES

Views are invited regarding any and all aspects of the proposals put forward in this Consultation Paper, and should be addressed (preferably via email) to Paul Bell at paul.bell@niaur.gov.uk and copied to Kenny Dane at kenny.dane@niaur.gov.uk by 17.00hrs **on Wednesday 27 January 2010**.

APPENDIX 1 – ARTICLE 12 OF THE ENERGY (NORTHERN IRELAND) ORDER 2003 - THE PRINCIPAL OBJECTIVE AND GENERAL DUTIES OF THE DEPARTMENT AND THE AUTHORITY IN RELATION TO ELECTRICITY

- (1) The principal objective of the Department and the Authority in carrying out their respective electricity functions is to protect the interests of consumers of electricity supplied by authorised suppliers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the generation, transmission or supply of electricity.
- (2) The Department and the Authority shall carry out those functions in the manner which it considers is best calculated to further the principal objective, having regard to:
 - (a) the need to secure that all reasonable demands in Northern Ireland or Ireland for electricity are met; and
 - (b) the need to secure that licence holders are able to finance the activities which are the subject of obligations imposed by or under Part II of the Electricity Order or this Order.
- (3) In performing that duty, the Department or the Authority shall have regard to the interests of –
 - (a) individuals who are disabled or chronically sick;
 - (b) individuals of pensionable age;
 - (c) individuals with low incomes; and
 - (d) individuals residing in rural areas;but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.
- (4) The Department and the Authority may, in carrying out any electricity functions, have regard to the interests of consumers in relation to gas and in relation to water or sewerage services.
- (5) Subject to paragraph (2), the Department and the Authority shall carry out their respective electricity functions in the manner which it considers is best calculated –

- (a) to promote the efficient use of electricity and efficiency and economy on the part of persons authorised by licences or exemptions to supply or participate in the transmission of electricity;
- (b) to protect the public from dangers arising from the generation, transmission or supply of electricity;
- (c) to secure a diverse, viable and environmentally sustainable long-term energy supply;
- (d) to promote research into, and the development and use of, new techniques by or on behalf of persons authorised by a licence to generate, supply or participate in the transmission of electricity; and
- (e) to secure the establishment and maintenance of machinery for promoting the health and safety of persons employed in the generation, transmission or supply of electricity;

and shall have regard, in carrying out those functions, to the effect on the environment of activities connected with the generation, transmission or supply of electricity.

- (6) In carrying out their respective electricity functions the Department or the Authority shall not discriminate between persons whose activities consist of or include generating, supplying or transmitting electricity as regards either rights or obligations.

- (7) In this Article –

“electricity functions” means functions under Part II of the Electricity Order and functions under this Order relating to electricity; and

“environmental sustainability” includes the need to guard against climate change.

APPENDIX 2 – ARTICLE 9 OF THE ELECTRICITY (SINGLE WHOLESale MARKET) (NORTHERN IRELAND) ORDER 2007 – THE PRINCIPAL OBJECTIVE AND DUTIES OF THE DEPARTMENT, THE AUTHORITY AND THE SEM COMMITTEE IN RELATION TO SEM

- 1 The principal objective of—
 - (a) the Department in carrying out its electricity functions in relation to matters which it considers materially affect, or are likely materially to affect, the SEM;
 - (b) the Authority in giving effect to any decision of the SEM Committee;
 - (c) the SEM Committee in carrying out its functions under Article 6(2),is to protect the interests of consumers of electricity in Northern Ireland and Ireland supplied by authorised persons, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the sale or purchase of electricity through the SEM.
- 2 The Department, the Authority and the SEM Committee shall carry out those functions in the manner which it considers is best calculated to further the principal objective, having regard to—
 - (a) the need to secure that all reasonable demands for electricity in Northern Ireland and Ireland are met; and
 - (b) the need to secure that authorised persons are able to finance the activities which are the subject of obligations imposed by or under Part II of the Electricity Order or the Energy Order or any corresponding provision of the law of Ireland; and
 - (c) the need to secure that the functions of the Department, the Authority, the Irish Minister and CER in relation to the SEM are exercised in a co-ordinated manner,
 - (d) the need to ensure transparent pricing in the SEM;
 - (e) the need to avoid unfair discrimination between consumers in Northern Ireland and consumers in Ireland.
- 3 The Department, the Authority and the SEM Committee may, in carrying out any of the functions mentioned in paragraph (1), have regard to the interests of consumers in Northern Ireland and Ireland in relation to gas.

- 4 Subject to paragraph (2), the Department, the Authority and the SEM Committee shall carry out the functions mentioned in paragraph (1) in the manner which it considers is best calculated—
- (a) to promote efficiency and economy on the part of authorised persons;
 - (b) to secure a diverse, viable and environmentally sustainable long-term energy supply in Northern Ireland and Ireland; and
 - (c) to promote research into, and the development and use of—
 - (i) new techniques by or on behalf of authorised persons;
 - (ii) methods of increasing efficiency in the use and generation of electricity.
- 5 Subject to paragraph (2), in carrying out any of the functions mentioned in paragraph (1) the Department, the Authority and the SEM Committee shall have regard to—
- (a) the effect on the environment in Northern Ireland and Ireland of the activities of authorised persons, and
 - (b) the need, where appropriate, to promote the use of energy from renewable energy sources.
- 6 In carrying out any of the functions mentioned in paragraph (1) the Department, the Authority and the SEM Committee shall not discriminate unfairly—
- (a) between authorised persons; or
 - (b) between persons who are applying to become authorised persons.
- 7 In carrying out any of the functions mentioned in paragraph (1) in accordance with the preceding provisions of this Article, the Department, the Authority and the SEM Committee shall have regard to—
- (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed;
 - (b) any other principles appearing to it to represent the best regulatory practice.
- 8 In this Article—
- “authorised person” means the holder of a licence or exemption granted under Part II of the Electricity Order or any corresponding provision of the law of Ireland;
- “electricity functions” means —

- (a) functions under Part II of the Electricity Order;
- (b) functions under the Energy Order relating to electricity;
- (c) functions under Part IV of the Electricity Order 1992 (Amendment) Regulations (Northern Ireland) 2005 (SR 2005/ 335); and
- (d) functions under this Order;

“environmental sustainability” includes the need to guard against climate change; and

“renewable energy sources” has the same meaning as in the Directive.

9 In relation to any time after the coming into operation of Article 3 but before the establishment of the SEM Committee, this Article has effect as if for paragraph (1)(b) there were substituted—

“(b) the Authority in carrying out its functions under Article 3;” .