

**The Northern Ireland Authority for Utility Regulation**

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**NOTICE UNDER ARTICLE 14(2)**

**OF THE ELECTRICITY (NORTHERN IRELAND) ORDER 1992**

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**MODIFICATION OF NIE ENERGY LIMITED'S**

**ELECTRICITY SUPPLY LICENCE**

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In pursuance of its powers under Article 14(1) of the Electricity (Northern Ireland) Order 1992 (as amended) (hereafter referred to as the “**Order**”) and having obtained the consent of the NIE Energy Limited (the “**Licencee**”), the Northern Ireland Authority for Utility Regulation (hereafter referred to as the “**Authority**”) hereby gives notice under Article 14(2) as follows:

**Replacement Annex 2— Supply Charge Restriction Conditions**

1. Definitions

1.1 In this Annex:

<b>“average charge per unit supplied”</b>	means, in respect of each relevant year, the regulated supply revenue in that relevant year divided by the quantity supplied in that relevant year;
<b>“average specified rate”</b>	means the arithmetic mean of the daily base rates of Northern Bank Limited (or such other bank as the Authority shall specify from time to time) current from time to time during the period in respect of which the calculation falls to be made;
<b>“distribution services”</b>	means all services provided as part of the Distribution Business as defined in the Transmission Owner Licence, other than excluded services (as “excluded services” is defined in Annex 2 of the Transmission Owner Licence);
<b>“Energy Saving Trust”</b>	means the trust of that name appointed by Government whose work includes approving and overseeing energy efficiency schemes on behalf of the Authority;
<b>“Enduring Solutions Project”</b>	means the project being undertaken to migrate retail customers in Northern Ireland from

	existing legacy systems;
<b>“excluded services”</b>	means those services which in accordance with the principles set out in paragraph 6 fall to be treated as excluded services;
<b>“first relevant year”</b>	means the financial year commencing on 1 April 2010;
<b>“maximum average charge per unit supplied”</b>	means the charge calculated in accordance with paragraph 2;
<b>“metered”</b>	means, in relation to any quantity supplied, as measured by metering required pursuant to and defined in the Grid Code or (where no such meter is installed) as otherwise reasonably calculated;
<b>“quantity supplied”</b>	means, in respect of each relevant year, the aggregate quantity of units supplied to supply customers by the Licensee in that relevant year metered at grid supply points;
<b>“regulated premises”</b>	means any premises supplied by the Licensee, other than the following: (a) Non-Domestic premises at which the annual consumption exceeds 150 MWh or such lower amount as the Authority shall specify from time to time by notice to the Licensee or in respect of which annual consumption figures (i.e. last 12 months consumption) are not available; (b) Non-Domestic premises with a connection agreement providing a Maximum Import Capacity of greater than 100 kVA or such lower amount as the Authority shall specify from time to time by notice to the Licensee; and (c) other premises as may be agreed by the Authority and the Licensee from time to time;
<b>“regulated supply revenue”</b>	means the revenue (measured on an accruals basis) derived from supply charges, after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived;
<b>“relevant period”</b>	means the period from 1 April 2010 to 31 March 2011;
<b>“relevant year”</b>	means a financial year commencing on or after 1 April 2010;
<b>“relevant year t”</b>	means that relevant year for the purposes of which any calculation falls to be made; “relevant year t – 1” means the relevant year preceding relevant year t or, in respect of the

	period prior to 1 April 2010 the period of 12 calendar months commencing on 1 April 2009, and similar expressions shall be construed accordingly;
<b>“renewable energy”</b>	means electricity generated from non-fossil fuel generating stations;
<b>“renewables obligation”</b>	means an obligation imposed on electricity suppliers in connection with the supply of electricity from renewable sources by any order made under Article 52 of the Energy Order;
<b>“renewables purchase obligation”</b>	means a level of renewable energy purchasing that the Supply Business must achieve in order to comply with its statutory obligation;
<b>“supply”</b>	excludes supply outside the Licensee's authorised supply area, standby, top-up and any other supplies or sales of electricity to persons other than supply customers; “supplied” and similar expressions shall be construed accordingly;
<b>“supply charge restriction conditions”</b>	means the provisions of this Annex as from time to time modified or replaced in accordance therewith or pursuant to the Order, the Energy Order, the SEM Order or the Directive Regulations;
<b>“supply charges”</b>	means all charges (including any element of such charges as reflects amounts paid, or to be paid, by the Licensee for distribution services and transmission services, and any element of such charges as comprises standing charges) made in respect of electricity supplied to supply customers other than charges for the provision of excluded services;
<b>“supply customer”</b>	means a person who receives a supply of electricity from the Licensee at regulated premises;
<b>“supply contract”</b>	includes deemed supply contracts created pursuant to a former tariff customer scheme;
<b>“transmission services”</b>	means all services provided as part of the Transmission System Operator Business, as defined in the Transmission System Operator Licence;
<b>“unit”</b>	means a kilowatt hour.

2. **Restriction of supply charges: basic formula**

The Licensee shall in setting its supply charges use its best endeavours to ensure that in any relevant year the average charge per unit supplied shall not exceed the maximum average charge per unit supplied. The maximum average charge per unit supplied shall be calculated in accordance with the following formula:

$$M_{St} = G_t + U_t + S_t + K_{St} + J_t + E_t - D_t$$

where:

$M_{St}$  means the maximum average charge per unit supplied in respect of relevant year t.

$G_t$  means the unit costs incurred in the purchase of electricity in pence per unit supplied in relevant year t, derived by:

- (a) aggregating the amounts payable by the Supply Business to any person (including without limitation energy (SMP) charges, capacity charges, imperfections charges, currency exposure costs, market operator charges, contracts for differences and associated costs, de minimis generation export arrangement costs, NFFO generation purchases, and amounts payable to the “Eco Energy Tariff Trust Fund”) for the purchase of electricity (measured on an accruals basis) in respect of relevant year t (excluding any purchases made for purposes other than supply to supply customers, and excluding Excess NIE Energy Supply Costs as defined under Annex 1),

subtracting

revenue in respect of relevant year t (measured on an accruals basis) derived by the Supply Business from the Single Electricity Market Trading and Settlement Code and from the settlement payments or receipts relating to supply customers under any contracts for differences entered into by the Supply Business, after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived; and

- (b) dividing the resulting amount by the quantity supplied in relevant year t.

$U_t$  means the allowed transmission and distribution cost in pence per unit supplied in relevant year t, derived by:

- (i) aggregating the charges made against the Supply Business (measured on an accruals basis) in respect of relevant year t: (A) by the Distribution Business as defined in the Transmission Owner Licence, including in respect of distribution services, and (as approved by the Authority) other services and; (B) by the Transmission System Operator, including in respect of transmission services;
- (ii) attributing a proportion of such aggregate charges to supply customers in a manner approved by the Authority; and
- (iii) dividing the resulting amount by the quantity supplied in relevant year t.

$S_t$  means the allowed charge in pence per unit supplied to supply customers at regulated premises in relevant year t, which is derived from the following formula:

$$S_t = ((P_t + (P_c * C_t) - A_t) * P_{1t}) / Q_{st}$$

where:

$P_{1t}$  means an amount derived from the following formula:

$$P_{1t} = (1 + (rpi_t - X) / 100) * P_{1t-1}$$

but, in relation to the first relevant year,  $P_{1t-1}$  shall be equal to 1;

and, in each relevant year commencing on or after 1 April 2010, X shall equal 0;

$rpi_t$  in each relevant year means the percentage change (whether a positive or negative value) in the Retail Prices Index between that published or determined with respect to October in relevant year t and that published or determined with respect to the immediately preceding October;

$C_t$  means the number of supply customers as of 31<sup>st</sup> March in relevant year t who are supplied by the Licensee at regulated premises determined in such manner as the Authority shall specify from time to time by notice to the Licensee;

$Q_{st}$  means the quantity supplied in relevant year t;

$P_f$  means £19.04 million;

$P_c$  means £12.67;

$A_t$  means £0.563 million or, if the Authority changes the annual consumption threshold for regulated premises or the premises that constitute regulated premises otherwise change, such other amount calculated using the same methodology used to arrive at the figure of £0.563 million or such other methodology as approved by the Authority;

$K_{St}$  means a correction factor in pence per unit supplied (whether a positive or negative value) to be applied to the average charge per unit supplied in relevant year t derived using the following formula:

$$K_{St} = ((Q_{St-1} * M_{St-1} - R_{St-1})/Q_{St}) (1 + I_t/100)$$

where:

$Q_{St-1}$  means the quantity supplied in relevant year t-1;

$M_{St-1}$  means the maximum average charge per unit supplied in relevant year t-1;

$R_{St-1}$  means the regulated supply revenue in relevant year t-1;

$Q_{St}$  means the quantity supplied in relevant year t; and

$I_t$  means the average specified rate in respect of relevant year t.

$J_t$  means the buyout price (for one kilowatt hour) for the renewables obligation as published for relevant year t multiplied by the percentage (in the form 0.xx

where 0.01 represents 1%) established as the renewables purchase obligation for relevant year  $t$ .

$D_t$  means in respect of the Licensee's costs in meeting its renewables obligation and/ or other cost specified by the Authority from time to time, in any relevant year in which the Authority and the Licensee have agreed a mechanism to reflect a sharing of any savings in such costs between the Licensee and its customers, the portion of the savings so agreed for the purposes of  $D_t$  divided by the quantity supplied in relevant year  $t$ , or, if there is no such agreed mechanism,  $D_t$  shall be zero.

$E_t$  means:

(a) any reasonable costs incurred by the Supply Business in complying with the requirements imposed on the Licensee under legislation and other legal requirements through which Directive 2003/54/EC is implemented, and costs incurred by the Supply Business associated with Phase II of the Enduring Solutions Project, whether before or after the coming into effect of this Annex, as reasonably determined by the Authority, and to the extent not recovered under another part of the Licence or any other licence; plus

(b) any reasonable costs incurred by the Supply Business in complying with the requirements imposed on the Licensee under the arrangements for the Single Electricity Market (being the project described in the Memorandum of Understanding dated 23 August 2004 and made between the Authority and the Commission for Energy Regulation in Dublin), whether before or after the coming into effect of this Annex, as reasonably determined by the Authority, and to the extent not recovered under another part of the Licence or under any other licence; plus

(c) any payments made to NIE plc in relation to costs of systems implemented for compliance with (i) the requirements imposed under legislation and other legal requirements through which Directive 2003/54/EC is implemented; and (ii) the requirements imposed under the arrangements for the Single Electricity Market (being the project described in the Memorandum of Understanding dated 23 August 2004 and made between the Authority and the Commission for Energy Regulation in Dublin); in both cases including annual depreciation and financing costs and whether before or after the coming into effect of this Annex,

as reasonably determined by the Authority, and to the extent not recovered under another part of the Licence or under any other licence; plus

(d) pension deficit costs of £1,973,000 per year, such figure to be revised in accordance with the results of an actuarial valuation; plus

(e) the amounts apportioned or allocated to the Supply Business in respect of the fees paid by the Licensee under Condition 11; plus

(f) a reasonable rate of return as reasonably determined by the Authority on the capital represented by the costs incurred by the Supply Business associated with Phase III of the Enduring Solutions Project and an allowance for depreciation of the capital represented by such costs; plus

(g) any operating expenditure reasonably incurred by the Supply Business associated with Phase III of the Enduring Solution Project, whether before or after the coming into effect of this Annex, as reasonably determined by the Authority, and to the extent not recovered under another part of the Licence or under any other licence; plus

(h) any reasonable additional costs incurred by the Supply Business as a result of competition in the supplies or sales of electricity to Domestic Customers, whether before or after the coming into effect of this Annex, as reasonably determined by the Authority, and to the extent not recovered under another part of the Licence or under any other licence.

### 3. **Restriction of supply charges: adjustments**

- 3.1 If, in respect of any relevant year the average charge per unit supplied exceeds the maximum average charge per unit supplied by more than the permitted one-year percentage, the Licensee shall furnish an explanation to the Authority and in the next following relevant year the Licensee shall not effect any increase in supply charges unless it has demonstrated to the reasonable satisfaction of the Authority that the average charge per unit supplied would not be likely to exceed the maximum average charge per unit supplied in that next following relevant year.
- 3.2 If, in respect of any 3 successive relevant years excluding the first relevant year, the sum of the amounts by which the average charge per unit supplied has exceeded the maximum average charge per unit supplied is more than the permitted 3-year percentage, then in the next following relevant year the Licensee shall, if required by the Authority, adjust its

charges such that the average charge per unit supplied would not be likely, in the judgment of the Authority, to exceed the maximum average charge per unit supplied in that next following relevant year.

3.3 In this paragraph:

**“permitted one-year percentage”** means in respect of any relevant year 4 per cent of the maximum average charge per unit supplied for that relevant year; and

**“permitted 3-year percentage”** means in respect of any three successive relevant years 5 per cent of the maximum average charge per unit supplied for the second of those relevant years

#### 4 **Energy Efficiency Investments**

4.1 The Licensee shall implement, during the relevant period, such energy efficiency schemes as are necessary to achieve lifetime energy savings of 42.64 GWh.

4.2 In the event that the Energy Saving Trust notifies the Authority that the energy efficiency schemes implemented during the relevant period do not achieve lifetime energy savings of 42.64 GWh, the Authority may, taking into account any representations by the Licensee including on the level of lifetime energy savings achieved and/or the cause of any expected savings not achieved, by notice direct that the Licensee’s allowed revenue (as determined by the Authority) for the period commencing 1 April 2011 be reduced by an amount up to a maximum of £7,000 for every GWh of lifetime energy savings that the Licensee fails to achieve by its energy efficiency schemes, as determined by the Energy Saving Trust and approved by the Authority.

4.3 The Licensee shall submit to the Energy Saving Trust a written proposal for each scheme to be implemented under the provisions of this Paragraph 4 in a form approved by the Energy Saving Trust.

4.4 For each scheme approved by the Energy Saving Trust under subparagraph 4.1, the Licensee shall report to the Energy Saving Trust, on the period up to and including 31 March 2011, in a form approved by and at such time as may be required by the Energy Saving Trust, on the energy savings provided by the measures installed during the relevant period under that

energy efficiency scheme. The report shall cover a minimum of 5% of homes in which measures implemented under the relevant scheme have been installed, provided that in the case of energy efficiency schemes offering compact fluorescent lamps, the Licensee will report to the Energy Saving Trust on a 1% sample of homes in which the measures have been installed.

4.5 On completion of each energy efficiency scheme, the Licensee shall submit to the Energy Saving Trust a completion spreadsheet and post-implementation report in a form approved by the Energy Saving Trust.

4.6 In this paragraph:

“**energy efficiency schemes**” means any scheme approved as such by the Energy Saving Trust.

“**lifetime energy savings**” means, in respect of each energy efficiency scheme, the lifetime fuel standardised energy savings in GWh attributable to that scheme as may be determined by the Energy Saving Trust in accordance with the Energy Efficiency Framework Document as updated 22 September 2008 and as further updated from time to time.

5 **Information to be provided to the Authority in connection with the supply charge restriction conditions**

5.1 Where any change is intended to be made in supply charges regulated under paragraph 2, the Licensee shall not later than the time referred to in paragraph 5.2 provide the Authority with:

(a) a written forecast of the maximum average charge per unit supplied, together with its components, in respect of the relevant year  $t$  in which such change is to take effect and in respect of the next following relevant year  $t + 1$ ;

(b) a written estimate of the maximum average charge per unit supplied, together with its components, in respect of the relevant year  $t-1$  immediately preceding the relevant year in which the change is to take effect unless a statement complying with paragraph 5.6 in respect of relevant year  $t-1$  has been furnished by the Licensee to the Authority before the time referred to in paragraph 5.2.

- 5.2 The relevant time referred to in paragraph 5.1 shall be not later than 14 days prior to the date of publication of such charges.
- 5.3 If within 3 months of the commencement of any relevant year  $t$  the Licensee has not provided the aforementioned forecasts pursuant to paragraph 5.1 for the purpose of such changes in charges as are referred to in paragraph 5.1, the Licensee shall forthwith provide the Authority with a written forecast of the maximum average charge per unit supplied (together with its components) in respect of relevant year  $t$ .
- 5.4 The Authority may issue directions providing that any forecast or estimate provided in accordance with paragraph 5.1 or 5.3 shall be accompanied by such information as regards the assumptions underlying the forecast or estimate as may be necessary to enable the Authority to be satisfied that the forecast or estimate has been properly prepared on a consistent basis and the Licensee shall comply with any such directions.
- 5.5 Not later than 6 weeks after the commencement of each relevant year  $t$ , the Licensee shall send to the Authority a statement as to:
- (a) whether or not the provisions of paragraph 3 are likely to be applicable in consequence of the average charge per unit supplied in the preceding relevant year  $t-1$  or the 3 preceding relevant years  $t-1$ ,  $t-2$  and  $t-3$ ; and
  - (b) its best estimate as to the relevant correction factor  $K_{S_t}$  calculated in accordance with the formula set out in paragraph 2 to be applied in calculating the maximum average charge per unit supplied in respect of relevant year  $t$ .
- 5.6 Not later than 3 months after the end of each relevant year the Licensee shall send to the Authority a statement, in respect of that relevant year, showing the specified items referred to in paragraph 5.8.
- 5.7 The statement referred to in the preceding paragraph shall be:
- (a) accompanied by a report from the Auditors that in their opinion:
    - (i) such statement fairly presents each of the specified items referred to in paragraph 5.8 in accordance with the requirements of the supply charge restriction conditions; and
    - (ii) the amounts shown in respect of each of those specified items are in accordance with the Licensee's accounting records which have been

maintained in respect of each of the relevant Separate Businesses in accordance with Condition 47; and

- (b) certified by a director of the Licensee on behalf of the Licensee that to the best of his knowledge, information and belief having made all reasonable enquiries:
  - (i) there is no amount included in such statement and the relevant calculations under paragraph 2 which is other than
    - (aa) bona fide consideration for electricity supplied to supply customers in the course of the Supply Business; or
    - (bb) an amount permitted under the supply charge restriction conditions to be so included;
  - (ii) no service has been treated as an excluded service which was not properly so treated and no amount included in the revenues in respect thereof represents other than bona fide consideration for the provision of the excluded service to which it relates; and
  - (iii) all amounts which should properly be taken into account for the purposes of the supply charge restriction conditions have been taken into account.

5.8 The specified items to be contained in the statement referred to in paragraph 5.6 shall be the following:

- (a) the quantity supplied;
- (b) the average charge per unit supplied;
- (c) the Supply Business' unit costs incurred in the purchase of electricity, being  $G_t$  calculated as provided under paragraph 2;
- (d) the allowed charge for supply per unit, being  $S_t$  calculated as provided under paragraph 2;
- (e) the allowed transmission and distribution cost per unit, being  $U_t$  calculated as provided under paragraph 2;
- (f) the revenue derived from excluded services (showing separately the revenue from each category of excluded service) as provided for in paragraph 6.2; and

- (g) such other items as shall be specified in directions issued by the Authority from time to time for the purposes of this Annex.

## **6 Excluded services for the purposes of the Supply Business**

- 6.1 Subject to paragraph 6.3, a service provided as part of the Supply Business may be treated as an excluded service insofar as it consists of the provision of services for the specific benefit of customers requesting the same and not made available as a normal part of the Supply Business.
- 6.2 The Licensee shall following the end of each relevant year furnish the Authority, as being one of the specified items to be included in the statement referred to in paragraph 5.6, details specifying separately the nature of all services provided as part of the Supply Business and treated as excluded services by the Licensee during the course of such year and stating the revenues derived in respect of each such service so treated.
- 6.3 Where the Authority is satisfied that in the light of the principles set out in paragraph 6.1 any service treated by the Licensee as being or not being an excluded service should not be so treated, the Authority shall issue directions to that effect, and the service or services specified in the directions shall cease to be treated as excluded services from the date of issue of the directions or such other date (being not earlier than the commencement of the relevant year to which the statement last furnished to the Authority pursuant to paragraph 5.6 prior to issue of such directions related, unless such statement or the accompanying report or certificate referred to in paragraph 5.7 or any earlier such statement, report or certificate was incorrect or misleading in any material respect) as may be specified in the directions.

## **7 Duration of supply charge restriction conditions**

- 7.1 This Annex other than this paragraph 7 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 Authority a disapplication request made in accordance with paragraph 7.2 and:
  - (a) the Authority agrees in writing to the disapplication request; or
  - (b) the application (in whole or in part) of this Annex (other than this paragraph 7) is terminated by notice given by the Licensee in accordance with either paragraph 7.4 or paragraph 7.5.
- 7.2 A disapplication request pursuant to this paragraph 7 shall (a) be in writing addressed to the Authority, (b) specify this Annex (or any part or parts thereof) to which the request relates and

(c) state the date from which the Licensee wishes the Authority to agree that the specified paragraphs of this Annex shall cease to have effect.

7.3 Save where the Authority otherwise agrees, no disapplication following delivery of a disapplication request pursuant to this paragraph 7 shall have effect earlier than the date (the “Disapplication Date”) which is the later of:

(a) the date occurring 18 months after delivery of the disapplication request; and

(b) 31 March 2011.

7.4 If the Authority has not made a reference to the Competition Commission under Article 15 of the Order relating to the modification of the relevant paragraphs of this Annex before the beginning of the period of 12 months which will end with the Disapplication Date, the Licensee may deliver written notice to the Authority terminating the application of this Annex (or any part or parts thereof other than this paragraph 7) as are specified in the disapplication request with effect from the Disapplication Date or a later date.

7.5 If the Competition Commission makes a report on a reference made by the Authority relating to the modification of this Annex (or any part or parts thereof) specified in the disapplication request and such report does not include a conclusion that the cessation of this Annex, 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 Authority in accordance with Article 16 of the Order deliver to it written notice terminating the application of this Annex (or any part or parts thereof other than this paragraph 7) with effect from the Disapplication Date or a later date.

7.6 A disapplication request or notice served under this paragraph 7 may be served in respect of a specified geographic area.