

## NOTICE OF REASONS PURSUANT TO ARTICLE 62(1)(F) AND (2) OF THE ENERGY (NORTHERN IRELAND) ORDER 2003 FOR THE DECISION TO MAKE A PROVISIONAL ORDER UNDER ARTICLE 42 OF THE ENERGY ORDER.

1. This notice sets out the reasons why on 24 September 2025, the Northern Ireland Authority for Utility Regulation (the **Authority**) made a provisional order in respect of a likely contravention by EP NI Energy Limited (company number NI667118) having its registered office at Kilroot Power Station (the **Station**), Larne Road, Carrickfergus, Co. Antrim, United Kingdom, BT38 7LX of its obligations.
2. This is a notice pursuant to Article 62(1)(f) and (2) of the Energy Order, which provide that the Authority shall publish a notice stating the reasons for the decision to make a provisional order as soon as reasonably practicable after making such a decision. The content of this notice reflects the Authority's discharge of its duty under Article 62 (4) of the Energy Order.

### Background

3. EP NI Energy Limited (the **Licensee**) holds an electricity generation licence granted by the Authority on 24 March 2021 in accordance with Article 10(1)(A) of the Electricity (Northern Ireland) Order 1992 (the **Electricity Order**).
4. In order to maintain secure electricity supplies to consumers in Northern Ireland, the Transmission System Operator is responsible for dispatching generation sets such as those at the Station on a continuous basis, inter alia, through the acceptance of bids made by generators such as the Licensee into the wholesale electricity market operating on the island of Ireland.
5. Condition 17 of the Licence (the **Condition**) is designed to ensure that such bids are cost reflective. To that end, the Condition requires that the Commercial Offer Data (**COD**) submitted by the Licensee to the market operator in respect of the generation set(s) at the Station for each Trading Day reflect Short Run Marginal Cost, with relevant cost-items being valued at their Opportunity Cost (as defined in the Bidding Code of Practice published jointly by the Authority and the Commission for Regulation of Utilities). Under paragraph 7 of the Condition, the Authority may issue directions to the Licensee for the purpose of securing that the Licensee, in submitting its COD, complies with the requirements of the Condition and of the Bidding Code of Practice (**BCOP**) and provides that the Licensee shall comply with any such directions.
6. On 21 August 2025, the Licensee intimated its intention soon to begin increasing the value of certain components of the COD submitted in respect of certain generation sets at the Station by reference to a purported cost-item relating to certain risks of those units in the lead up to exhaustion of applicable emissions limits (the **Purported Cost-Item**). Given doubts as to the entitlement of the Licensee to include the Purported Cost-Item in its COD and as to the Licensee's assessment of the Opportunity Cost of such Purported Cost-Item, and given the implications for the wholesale market and to consumers of the intended increase in value of the relevant COD, the Authority issued directions dated 10 September 2025 (the **Directions**) to the Licensee under paragraph 7 of the Condition requiring that it not increase the value of any components of such COD with reference to the Purported Cost-Item except in accordance with the prior approval of the Authority (including, but not limited to, as to the methodology according to which such increase is to be calculated).
7. The Directions also required the Licensee, for the purpose of obtaining such prior approval, to supply to the Authority a reasoned explanation of the proposed increase, together with supporting evidence sufficient to establish the consistency thereof with its obligations under the Condition and the BCOP.
8. Despite correspondence between the Licensee and the Authority, no formal submission for approval was made by the Licensee. On 23 September, the Licensee indicated that its position remained unchanged, requiring the Authority to agree with the Licensee's proposal on the Purported Cost-Item or suggest an alternative calculation for the Purported Cost-Item. This engagement showed no indication of the Licensee's intention to comply with the Directions.

### Contravention

9. In the light of the foregoing facts and matters, it appears to the Authority that the Licensee is likely to contravene the Condition; that it is requisite that this order be made; and that the provisions set out in the provisional order are requisite for the purpose of securing compliance with such Condition.

10. Article 42(2) of the Energy Order provides that where it appears to the Authority that a company is contravening, or likely to contravene, a relevant condition or requirement, and it is requisite that a provisional order be made, the Authority shall (instead of taking steps towards the making of a final order), by provisional order make such provision as appears to it requisite for the purpose of securing compliance with the relevant requirement.

### **Reasons for provisional order**

11. The Authority, having had regard to the matters set out in Article 42(3) of the Order, consider it requisite to make a provisional order for the following reasons:
- I. The Authority noted the requirements of the Directions and the letter from the Licensee issued on 21 September 2025. In that letter, which followed the making of the Directions, the Licensee (i) proposed an increase in the value of certain components of its COD by reference to the Purported Cost-Item and (ii) stated that its letter should not be treated as a request for approval in terms of the Directions of 10 September 2025. The Authority noted also that the letter reserved the Licensee's rights to increase the value of its COD by reference to the Purported Cost-Item without approval of the Authority and in contravention of the explicit requirements of the Directions. The Authority was therefore satisfied on evidence from the Licensee that it was, and is not, the Licensee's intention to comply with the Directions, contrary to the requirements of condition 17(7) of its licence.
12. The Authority has had regard to (a) to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the Condition(s), is likely to be done, or omitted to be done, before a final order may be made; and (b) to the fact that the effect of the provisions of Articles 42 and 44 of the Energy Order is to exclude the availability of any remedy (apart from under those provisions or for negligence) in respect of any contravention of the Condition(s). The Authority considers that the increase to the Licensee's COD that would be caused by the Purported Cost Item would eventually lead to loss and damage in the form of increased costs for consumers, although these costs have not been quantified. The Authority also notes that Articles 42 and 44 of the Energy Order exclude the availability of any remedy (apart from under those provisions or for negligence) in respect of any contravention of a relevant condition or requirement. Making a provisional order establishes a legal basis on which third parties would have a right to compensation.
13. The Authority is also satisfied that none of the duties imposed on it by Article 12 or 14 of the Energy Order or Article 9 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 preclude the making of the order; on the contrary it considers that its duties require it to make the Provisional Order.
14. The Authority has also considered whether it would be more appropriate to proceed under the Competition Act 1998 and does not so consider that such alternative provisions would be more appropriate.
15. The Authority is, in addition, not satisfied (a) that the Licensee has agreed to take and is taking all such steps as it appears to the Authority for the time being to be appropriate for the Licensee to take for the purpose of securing or facilitating compliance with the Condition(s); or (b) that the apparent contraventions, or that the apprehended contraventions, by the Licensee are, of a trivial nature.
16. The provisional order made on 24 September 2025 took effect from 18:00 hours on 24 September 2025 and shall lapse on 18:00 hours on 23 December 2025 unless confirmed by the Authority on or before that date.
17. Article 42(4) of the Energy Order provides that, subject to certain exceptions, a provisional order shall be confirmed (with or without modifications) if the Authority is satisfied that the company is contravening, or is likely to contravene, any relevant condition or requirement and the provision made by the order is requisite for the purpose of securing compliance.

### **Content of the order**

18. For the above reasons the Authority decided to make the provisional order. The provisional order is available at Appendix 1.