



# GRANT OF ELECTRICITY GENERATION LICENCE TO DRUMKEE ENERGY LIMITED

23 October 2020



## About the Utility Regulator

The Utility Regulator is the independent non-ministerial government department responsible for regulating Northern Ireland's electricity, gas, water and sewerage industries, to promote the short and long-term interests of consumers.

We are not a policy-making department of government, but we make sure that the energy and water utility industries in Northern Ireland are regulated and developed within ministerial policy as set out in our statutory duties.

We are governed by a Board of Directors and are accountable to the Northern Ireland Assembly through financial and annual reporting obligations.

We are based at Queens House in the centre of Belfast. The Chief Executive leads a management team of directors representing each of the key functional areas in the organisation: Corporate Affairs, Markets and Networks. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.



### Our mission

To protect the short- and long-term interests of consumers of electricity, gas and water.



### Our vision

To ensure value and sustainability in energy and water.



### Our values

- Be a best practice regulator: transparent, consistent, proportionate, accountable and targeted.
- Be professional – listening, explaining and acting with integrity.
- Be a collaborative, co-operative and learning team.
- Be motivated and empowered to make a difference.



## Abstract

On 10 July 2020, the Utility Regulator (the **UR**) gave notice (the **DEL Notice**) under Article 10(4) of the Electricity (Northern Ireland) Order 1992 (the **1992 Order**) that it proposed to grant a licence authorising the generation of electricity (an **electricity generation licence**) to Drumkee Energy Ltd (**DEL**) under Article 10(1) of the 1992 Order. Having considered various representations and objections (together, the **Correspondence**) - made/raised in the period following the notice of proposed grant - the UR has decided to grant an electricity generation licence to DEL. This licence was granted on 23 October 2020 and is in the form of the licence published alongside the Notice. This document sets out the reasons for our decision and our responses to the Correspondence.

## Audience

Consumers and consumer representatives; flexible technology developers; electricity industry; statutory bodies; government departments.

## Consumer impact

The consumer impact is considered positive. As a licence holder, DEL shall be able to participate in the Single Electricity Market (the **SEM**). It is expected to be able to offer system support services and generally assist in securing that all reasonable demands for electricity are met. Integration of renewable energy sources will be better facilitated. Competition will be promoted between DEL and other system actors involved in the area of generation. Costly system enhancement/re-enforcements may be avoided or deferred. Pressure on prices paid by the NI consumer is expected to be alleviated.



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# 1. Introduction

## The DEL Application and the relevant regulatory framework

In June 2020, the UR<sup>1</sup> received an application from DEL (the **DEL Application**) for the grant of an electricity generation licence. The DEL Application indicated that DEL intended to operate a grid connected battery energy storage system (a **BESS**)<sup>2</sup> at Tamnamore, County Tyrone.

At about the same time the UR received a similar application (the **MEL Application**) from a company called Mullavilly Energy Limited (**MEL**). These applications were the first applications the UR had received for the grant of an electricity generation licence involving the intended operation of a BESS.<sup>3</sup>

Article 10(1)(a) of the 1992 Order empowers the UR to grant an electricity generation licence to an applicant for such a licence. Article 10(3) of the 1992 Order provides that such an application shall be made in a *manner prescribed* and be accompanied by the prescribed fee. Further, Article 10(3) of the 1992 Order also provides that the applicant for an electricity generation licence shall publish the application within 14 days of making the application (in the prescribed manner). The requirements made in Article 10(3) are reflected in (Schedule 4 to) the Electricity (Applications for Licences and Extensions of Licences) (No. 2) Regulations (Northern Ireland) 2007<sup>4</sup> (the **2007 Application Regulations**).

The UR has also published guidance in respect of the making of an application for an electricity generation licence (the **Guidance**).<sup>5</sup> The Guidance makes reference to and reflects the requirements of the 2007 Application Regulations.

In carrying out its (electricity) function to grant (or not grant) an electricity generation licence the UR is required to act in accordance with the provisions of Article 12 of the Energy (NI) Order 2003 (the **2003 Order**).

Article 12(1) of the 2003 Order provides as follows:

*12.—(1) The principal objective of the Department and the Authority in carrying out their respective electricity functions<sup>6</sup> is to protect the interests of consumers<sup>7</sup> 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, distribution or supply of electricity*

Article 12(2) of the 2003 Order provides that

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<sup>1</sup> In this decision paper references to the “UR” “we” “us” “our” “the Utility Regulator” and “the Authority” are used interchangeably to refer to the Northern Ireland Authority for Utility Regulation.

<sup>2</sup> A grid connected BESS may also be called a battery storage facility (**BSF**). We use these terms interchangeably.

<sup>3</sup> The UR is aware that a BESS.BSF has been operating at and within the Kilroot Power station since 2016. The operator of the Kilroot Power station is the holder of an electricity generation licence. The UR understands that the battery unit at Kilroot is used to provide system support services. Its capacity is not above 10MW.

<sup>4</sup> [https://www.legislation.gov.uk/nisr/2007/289/pdfs/nisr\\_20070289\\_en.pdf](https://www.legislation.gov.uk/nisr/2007/289/pdfs/nisr_20070289_en.pdf)

<sup>5</sup> <http://www.uregni.gov.uk/applying-licence>

<sup>6</sup> This is read to include the grant of an electricity generation licence.

<sup>7</sup> The reference to consumers is to be read as a reference to existing and future consumers. References to “consumers” in this paper are to be read accordingly.

(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 . . .*

Article 12(3) of the 2003 Order provides that in performing the duty under Art 12(2) of the 2003 Order the Authority is obliged to have regard to (but not exclusively to ) the interests of persons described. These persons described are individuals who (i) are the chronically sick or disabled (ii) are of pensionable age (iii) have low incomes and (iv) are residing in rural areas.

Article 10(4) of the 1992 Order provides that:

*(4) Before granting a licence under this Article, the Authority shall give notice—*

(a) *stating that the Authority proposes to grant the licence;*

(b) *stating the reasons why it is proposed to grant the licence; and*

(c) *specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence may be made,*

*and shall consider any representations or objections which are duly made and not withdrawn.*

### The DEL Notice

On 10 July 2020 we published the DEL Notice.<sup>8</sup> The DEL Notice confirmed that the UR considered at that time that the grant of an electricity generation licence<sup>9</sup> to DEL would accord with our responsibilities under Article 12 of the 2003 Order. We assessed at that time that the DEL Application was made in the prescribed manner and the appropriate fee had been received. The DEL application was thus considered made in accordance with the 2007 Application Regulations<sup>10</sup> and the Guidance.

In making our Article 12 assessments we had regard to the role that a BESS (such as that intended for operation by DEL) could be expected to play in a modern electricity system. As a licence holder, DEL could participate in the (all-Island) SEM arrangements<sup>11</sup>. DEL could provide valuable system support services envisaged under the DS3<sup>12</sup> programme. Integration of renewable energy sources (**RES**) into the electricity system would be better facilitated given that a BESS can act as demand in times of excess generation and produce electricity for the grid in times of under production from other generation (to include RES). Costly system reinforcements could be deferred or avoided. Pressure on prices to be paid by consumers would be expected to be alleviated. We recognised competition type concerns were regulatory considerations to prevent energy storage investors (such as DEL) from providing services in the energy market.

All in all, it appeared that DEL could assist in securing that all reasonable demands for

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<sup>8</sup> The notice is here <http://www.uregni.gov.uk/sites/uregni/files/media-files/Drumkee%20Public%20Notice%20Article%2010%20-%202020%2007%2010.pdf>

<sup>9</sup> In the (standard) form of that published alongside the published DEL Notice.

<sup>10</sup> We would note that no probity concerns were evident in respect of DEL.

<sup>11</sup> A licenced operator of a BESS/BSF is classed as a Generator Unit within the SEM arrangements. An actor such as DEL requires to hold a licence issued by the UR in order to participate in the SEM arrangements. SONI also requires that an actor such as DEL hold such a licence prior to energisation of a grid connection.

<sup>12</sup> Delivering a secure, sustainable electricity programme (DS3): <https://www.semcommittee.com/ds3>

electricity in Northern Ireland (or Ireland)<sup>13</sup> are met, and as such the proposed grant of a generation licence to DEL was considered to be in full accord with the provisions of Article 12(1) of the 2003 Order (when read with Article 12(2) of the 2003 Order). Granting a licence would, furthermore, address potential barriers to competition. The interest of all consumers<sup>14</sup> would be duly protected.

Our DEL Notice asked for representations or objections to be sent to the UR by 10 August 2020.

Various representations and objections were received in the period following the publication of the DEL Notice. Not all of these materials were received prior to 10 August 2020. However, in exercise of our discretion (and in an attempt to further enhance the overall fairness of the process) we have decided to take a *broad approach* and consider all of the material to now be discussed. The materials considered include those that were ostensibly only submitted in respect of the MEL Application. We shall refer to the materials as “the Correspondence”. We have considered (all of the) Correspondence in detail. Failure to mention a specific part of the Correspondence in what is to follow should not be taken as indicating a failure to consider that part of the Correspondence.

## 2. Our consideration of the Correspondence

### A. Response from KellsVOCAL dated 4 August 2020

#### *Points made*

This response objected to the proposed grant of an electricity generation licence on the grounds of stated concerns as to (i) health and safety and (ii) alleged misrepresentation in the planning process. It was pointed out that the DEL Notice did not deal with so called “broader health and safety issues” (over and above those concerning those of employees on site)<sup>15</sup>. It was claimed that our approach was at “best irresponsible” and evidenced a “potential” criminal offence under the Planning (Hazardous Substances (NO 2) Regulations (NI) 2007 and/or the Fire Safety Regulations (NI) 2010.

It was further claimed that it was “incumbent” on the UR in “*awarding the licence*” to satisfy itself that “*all appropriate permissions and certifications were in place to allow the safe operation of the licence in the public domain.*” Particular reference was made to planning permission and hazardous substances consent (**HSC**).

Reference was also made to the provisions of Article 12(5)(b) of the 2003 Order which provides that (with our underlining):

(5) Subject to paragraph (2), the . . . Authority shall carry out [its] . . . electricity functions in the manner which it considers is best calculated—

. . .

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<sup>13</sup> The electricity grid operates on an all-Island basis by virtue of the SEM arrangements.

<sup>14</sup> Which is considered to include those described in Article 12(3) of the 2003 Order

<sup>15</sup> Which we take to be a reference to Condition 10 of the electricity generation licence published alongside the notice of proposed grant.

(b) to protect the public from dangers arising from the generation, transmission or supply of electricity;

### *Our Response*

We do not accept that the provisions of Article 12(5)(b) of the 2003 Order operate to prevent the UR from granting an electricity generation licence to DEL where that grant is otherwise considered appropriate in accordance with Article 12(1) and (2) of the 2003 Order.

Importantly, the underlined section of Article 12(5) clearly provides that the provisions of Article 12(5)(b) are subject to the provisions of Article 12(5)(2). As we have explained, our DEL Notice reflected a consideration that the proposed grant was in accordance with Article 12(1) of the 2003 Order. That consideration reflected our judgement in accordance with Article 12(2) of the 2003 Order. The grant of the licence was expected to assist in securing that all reasonable demands for electricity in NI and Ireland are met. Clearly, people may well reasonably hold alternative perspectives as to the “safety” of BESS facilities. It is not for the UR to adjudicate and determine that controversy within the context of the DEL Application. We can only act within the applicable legislative framework.

Likewise, we do not accept that the UR must consider (prior to any grant of an electricity generation licence) whether (i) the operation of the BESS intended to be operated by DEL should require a HSC certificate and if persuaded in the affirmative (ii) DEL can demonstrate possession of such a HSC. Issues pertaining to HSCs are matters for the planning authorities and the Health and Safety Executive for Northern Ireland (**HSENI**). We note that no mention is made of “safety” certificates or assessments in the 2007 Application Regulations/ the Guidance.

It is for the operator of a BESS to satisfy itself that it is meeting all of its legal obligations in respect of the operation of a BESS. It is for the appropriate statutory agencies to police and enforce these obligations. The UR has no such (legislative) enforcement role in respect of HSCs. The UR is only (here) deciding whether to grant to DEL a licence *authorising the generation of electricity* by DEL. Possession of such a generation licence does not absolve DEL from its ordinary legal obligations involved in operating its BESS facility. The licence only prevents DEL from being guilty of an offence under Article 8 of the 1992 Order should it choose<sup>16</sup> to generate electricity in NI and not qualify for an exemption pursuant to the Electricity (Class Exemptions from the requirement for a Licence) Order (NI) 2013.

We reject as manifestly unfounded the contention that the grant of an electricity generation licence to DEL would evidence potential criminal conduct on the part of the UR. There is no reasonable/proper basis for that contention in the legislative provisions cited. The grant of an electricity generation licence only *authorises* DEL to *generate electricity for the specified purpose*. That is all that it does. It does not, self-evidently, authorise (otherwise) criminal conduct. DEL shall remain liable to the law; to include the law relating to the safe operation of a BESS facility.

As to the claimed irregularities (or “misrepresentation”) in planning, the UR’s position is clear. Planning matters are matters to be dealt with by the appropriate planning authorities.<sup>17</sup> It is

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<sup>16</sup> It will be noted that an electricity generation licence *authorises* the activity of “generation”: it does not *require* the licence holder to engage in that activity.

<sup>17</sup> Or the courts in the event of litigation.



not for the UR to judge whether any planning consent should or should not have been granted to DEL. We have no power to do that.

We confirm our view that a BESS, of the type intended for operation by DEL, is a form of “generating station” within the meaning of the 1992 Order for licensing purposes. The BESS facility imports electricity from the grid (in “charge” mode), converts that electricity to (electro) chemical energy and then converts (in “discharge” mode) that “stored” energy to electrical energy for export back to the grid. Thus, we consider that a BESS facility is involved in “generation” activity. It produces electricity for the grid when signalled to do so.

We understand that the Department for the Economy (**DfE**) holds a similar view, given that DfE has granted a “consent” to DEL under Article 39 of the 1992 Order.<sup>18</sup> Our view here is also consistent with Ofgem’s perspective on the licensing of energy storage providers.<sup>19</sup> Ofgem grants electricity generation licences to BESS operators. We understand that CRU acts likewise.<sup>20</sup>

It is not for the UR to pronounce in any way as to how the planning authorities have dealt with DEL’s application for planning consent or how DEL presented its application for planning consent. We are not a planning authority. We do not need to enquire as to whether the planning authorities treated the DEL application as involving “generation” as a pre-requisite to the grant of a licence. We note that no mention of planning consent is made in the 2007 Regulations (or the Guidance). We cannot resolve any controversy on planning through assessment of the DEL Application.

#### B. Letter from KellsVOCAL of 4 August 2020

KellsVOCAL addressed this letter to the UR’s CEO. We have considered this correspondence in line with what we have described as our *broad approach*.

##### *Points made*

The points made in the (4 August) response from KellsVOCAL (above) were set out again.

##### *Our response*

We rely upon (but do not repeat) the response made to the KellsVOCAL response of 4 August 2020.

#### C. Letter from MLA of 4 August 2020

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<sup>18</sup> This “consent” was –we understand– granted to DEL on 5 June 2020. We note that the KellsVOCAL response cited correspondence from the DfE stating that the DfE and the UR intended to discuss issues concerning energy storage and implementation of the Clean Energy Package. We do expect those conversations to take place. The UR does not consider that the decision on the DEL Application must await the outcome of those discussions.

<sup>19</sup> See, for example, the regulatory letter on energy storage (which includes BESS) published by Ofgem on 2 October 2020: [https://www.ofgem.gov.uk/system/files/docs/2020/10/storage\\_licensing\\_statcon\\_decision\\_cov\\_letter\\_final\\_for\\_website\\_0.pdf](https://www.ofgem.gov.uk/system/files/docs/2020/10/storage_licensing_statcon_decision_cov_letter_final_for_website_0.pdf)

<sup>20</sup> We recognise that a BESS unlike other forms of generation exhibits substantial demand characteristics. We accept that the overall capabilities and particular features of “storage” technologies (like a BESS/BSF) could be better clarified within the regulatory/statutory framework. We return to this in the Postscript to this paper.

This letter ostensibly only addressed the MEL Notice. Again, however, we refer to it here in following our *broad approach*.

*Points made*

A specific enquiry was made as to whether (a) a HSC was in place for this project and (b) the UR had previously granted an electricity generation licence in respect of a BESS project.

*Our response*

We responded to the queries raised by confirming our position (reflected in our response to the KellsVOCAL 4 August response: as set out above) as to the matter of HSCs and licensing applications. Additionally, we confirmed that we have not previously granted an electricity generation licence to an intended operator of a BESS.

D. KellsVOCAL response of 6 August 2020

This submission was made in respect of the DEL Notice<sup>21</sup>

*Points made*

KELLSVOCAL raised further objection to the proposed grant of an electricity generation licence to DEL.

Reference was made to a letter from the Chief Planner of 8 July 2020 and the following statement was made (with original underlining):

*“Section 117 [of the Planning (NI) Act 2011] therefore applies to ‘someone who knowingly causes the substance to be present...and any person allowing it to be so present...’ and it would therefore appear that it could include any person such as the UR because you are allowing the substances to be present by awarding the licence to operate and knowingly causing the substance to be present by issuing the licence.”*

The following passage was then set out:

*“Given the above, should in the future there be a loss of control even t at the BESS leading to fire, release of toxic gases and explosion, the question will be asked:*

- did you in your role as Utility Regulator, in awarding the Electricity Generation Licence, ensure that the applicant had fully carried out his responsibilities in relation to confirming the need, or not, for Hazardous Substances Consent?*
- did you in your role as Utility Regulator in awarding the Electricity Generation Licence ensure that the applicant had achieved planning permission for a ‘generating station’ because that is what the licence is for and followed fully the planning procedures for a*

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<sup>21</sup> A submission of the same date was made in respect of the MEL Notice.

*generating station of a scale greater than 30MW including full consultation with the community and scrutiny equivalent to the scale of the development?*

- *did you in your role as Utility Regulator in awarding the Electricity Generation Licence carry out the appropriate pre construction risk assessments on the adjacent electricity substation and the potential impact on the security of supply for Northern Ireland should there be a loss of control of processes resulting in fire, toxic gas clouds and explosion at the BESS?*
- *did you in your role as Utility Regulator in awarding the Electricity Generation Licence, and being fully aware of fires which have taken place internationally and subsequent statutory governance, put in place a rigorous regular independent on-going checking process on the running, maintenance and security of the facility.*

*Until these assessments are carried out, and subsequent checking processes put in place, we do not believe it would be seen as correct to issue the licence.”*

An enquiry was also made as to whether we would be putting aside funds to defend our “future staff” as a result of decisions made today that do not “address the issues” set out.

#### *Our response*

We consider the representations made to (in large part at least) be a further elaboration of the points made in the previous correspondence from KellsVOCAL dated 4 August 2020. We rely upon (but do not repeat) the points made in our response to that KellsVOCAL response of 4 August 2020.

Assessments of issues as to HSC and general safety considerations affecting a BESS facility are not proper matters for the UR to adjudicate on in assessing an application from a person (such as DEL) intending to operate such a facility. They are matters to be policed and enforced by the appropriate statutory agencies (i.e., the planning authorities and the HSENI).

We confirm (again) our view that a BESS is a form of “generating station” within the meaning of the 1992 Order for licensing purposes. How the planning authorities treated the planning application made by DEL is a matter for those authorities.<sup>22</sup>

We reject as manifestly unfounded the suggestion that the UR would (or could) be involving itself in criminal conduct in granting an electricity generation licence to DEL. There is no support for that contention to be found in the legislation. As we have explained previously, the grant of an electricity generation licence does not authorise (or “allow”) a licence holder to commit acts that would otherwise be a contravention of HSC related provisions. The BESS operator is still subject to HSC requirements (if applicable) even if it holds an electricity generation licence. And those HSC type obligations (if extant) are expected to be policed and enforced by the appropriate statutory agencies (i.e., the planning authorities and HSENI).

We note that the third bullet point appears (in context) to be a reference to a proposed BESS

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<sup>22</sup> And the court should there be litigation raised in respect of the matter.

at Kells. It is not related to the DEL Application. However, mindful again of our broad approach, we do not take that technical point, as it appears that the DEL Application itself concerns an existing adjacent sub-station.

We do not consider that we are obliged to carry out the described *pre-construction* “risk assessments” in advance of (and as a pre-requisite to) the grant of an electricity generation licence to DEL. SONI is responsible for the proper design of the connection of DEL’s BESS. It does so within its statutory duties - as provided for in Article 12(2) of the 1992 Order - and the general obligations of its licence. The Article 12(2) obligations record an obligation to take steps to contribute to system *security* and *reliability*. It could be expected that SONI’s system design (for the connection of a BESS facility) takes place before advanced construction of any relevant BESS project.<sup>23</sup>

Furthermore, and importantly, DfE has the defined statutory role of granting Article 39 “consents” to BESS facilities. We also note that there is no obligation in the 2007 Application Regulations (or the Guidance) that such *pre-construction* “assessments” (whatever they may be) take place prior to any grant of an electricity generation licence. All told, we consider that there is no warrant for the “pre-construction tests” referenced being a pre-condition to a grant of an electricity generation licence.

As to the point made about putting in place regular “checks” on the “running, maintenance and security of the system”: that is not our role. We repeat that it is for HSENI (and the planning authorities) to police the HSC safety concerns raised.

We confirm that we see no need, in the circumstances, to set aside any “funds” to defend our “future staff”.

#### E. Response from WTAWT dated 10 August

A response was received from West Tyrone against Wind Turbines (**WTAWT**) on 10 August 2020.

##### *Points made*

WTAWT contended that the UR could not grant an electricity generation licence to DEL because DEL has planning permission for a “*non-generating project*”. It was further contended that the UR could not grant an electricity generation licence to DEL “*until such times as the Planning Authorities gave planning permission to BESSs as generating projects, as they are deemed to be in the whole of the UK*”.

WTAWT referred to “cross departmental checking” involving HMRC and planning consent for dwellings. WTAWT contended that cross departmental checking should take place with regard to HSC and general “safety”. Reference was made to the provisions of Article 12(3) of the 2003 Order which provides as follows. Reference was also made to Article 12(5) of the

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<sup>23</sup> The SONI Grid Code is approved by the UR. The SONI Grid Code arrangements recognise BESS facilities. See Battery ESPS Implementation Note: June 2020: <http://www.eirgridgroup.com/site-files/library/EirGrid/Integration-of-Batteries-Implementation-Note.pdf>

2003 Order (which has been set out above).

The submission closed by stating that:

*“For BESS’s the safety mechanism is in the form of HSC approval. Therefore, before the UR grants any licence to a BESS, they should have proof of HSC approval”*

*Our response*

First, as to the point made as to planning permission. We would rely upon (but not repeat) our responses to the same point as raised by Kells VOCAL in their 4 August 2020 response (as further elaborated on in their 6 August response). In basic summary, issues of planning are issues for the planning authorities. It is not for the UR to adjudicate a planning controversy. We confirm our view that a BESS, of the type intended for operation by DEL, is a form of “generating station” within the meaning of the 1992 Order for licensing purposes

Second, as to the point made about HSC “approval”. Again, we would rely upon (but not repeat) our response to the same point as raised by KellsVOCAL in their 4 August 2020 response (as further elaborated on in their 6 August response). For the reasons previously expressed we do not consider that we should embark on the stated “cross departmental checking” as to HSC “approval”. The issue of HSC “approval” is not a matter for us in processing the DEL Application. It is matter for the planning authorities and HSENI.

We note that WTAWT broadens out the HSC “approval” point by reference to the matters set out in Article 12(3) of the 2003 Order. We consider that the general body of NI consumers can be expected to benefit from the decision to grant an electricity generation licence to DEL; and not just those described in in Article 12(3). We have explained how we consider that the grant of an electricity generation licence to DEL can be expected to help secure the reasonable needs of NI consumers for electricity.

An insecure electricity system would obviously compromise the interests of all NI consumers. However, it could further be expected to have an even greater impact on those persons described in Article 12(3) of the 2003 Order. Electricity is an essential good/service to all NI consumers. But loss of electricity supply may be greater felt by those persons described in Article 12(3).

Further, we have explained how the grant of an electricity generation licence to DEL can be expected to alleviate costs pressures that are reflected in the prices that consumers pay for electricity: with competition expected to be promoted. Higher prices are felt by all consumers, but the greatest impact may well be felt by those consumers described in Article 12(3) (for example, those on “low incomes”).

We do not consider that there is anything in Article 12(3)<sup>24</sup> that means we must be satisfied that DEL is possessed of “proof” of a HSC “approval” before granting DEL an electricity generation licence. As we have stated, enforcing “safety” obligations (to include those related to HSC “approvals”) is a matter for the appropriate statutory agencies (like the planning

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<sup>24</sup> Indeed, we consider that consideration of Article 12(3) of the 2003 Order provides strong support for the decision to grant an electricity generation licence to DEL.

authorities and HSENI). The persons within the categories of Article 12(3) are as entitled as those other persons making up the general NI consumer body to look to those agencies to fulfil their respective (statutory) enforcement functions. The UR is not authorised or empowered to carry out that function.

F. Open Letter from KellsVOCAL of 9 September 2020

This letter was received outside the period stipulated in the DEL Notice. We have, however, adopting the “broad approach” indicated above, decided to take this correspondence into account. It is understood that the 9 September 2020 letter was written in respect of both the DEL Notice and the MEL Notice.

*Points made*

The following passage is set out in the Open letter from KellsVOCAL

*We believe the UR cannot give an electricity generating licence under the Electricity (Northern Ireland) Order 1992, because the applicant has to apply for consent for an electricity generating station under Article 39 of the Electricity (Northern Ireland) Order 1992 from DfE and for that, planning permission is required for the development as a generating station. The applicant did not apply for his development to be a ‘generating station’ in fact he based his entire application and subsequent Appeal to the PAC on the basis that his development was non generational and that is what he has planning permission for.*

Reference was then made to the Guidance. It was asserted that the UR could not be satisfied that the DEL and MEL Applications concerned a “generating station”.

*Our response*

We rely upon (but do not repeat) the points already made as regarding the “planning” position. The planning matters are for the planning authorities.

We do not consider that the absence of a relevant Article 39 “consent” would preclude the grant of an electricity generation licence to DEL. Obviously, DEL would (should it hold an electricity generation licence) still be the subject of legal sanction were it to operate a BESS where to do so would be unlawful by reason of the absence of a relevant Art 39 consent. In any event, we understand that the DfE granted an Article 39 consent to DEL on 5 June 2020.

We confirm our view that a BESS facility of the type intended to be operated by DEL is a form of “generating station” within the meaning of the 1992 Order for licensing purposes. We consider that the DEL Application was made in accordance with the 2007 Application Regulations and the Guidance. The appropriate licence fee was paid.

G. Letter on behalf of DEL (and MEL) to UR Board on 11 September 2020

This letter is considered in accord with the described broad approach.

### *Points made*

Complaint was made as to the delay in granting electricity generation licences to both MEL and DEL. Reference was made to the fact that both Ofgem and CRU grant electricity generation licences to operators of BESS facilities. A list of electricity generation licences granted by CRU to BESS operators was provided.

### *Response*

We do not consider that this correspondence weighs in favour (or against) the grant of an electricity generation licence to DEL. We were already aware that both Ofgem and CRU have been granting electricity generation licences to operators of BESS facilities.

## **3. Our Decision**

Having carefully considered the Correspondence we have concluded that an electricity generation licence is to be granted to DEL.

We consider that the grant of an electricity licence to DEL is appropriate for the reasons set out in the DEL Notice. It is considered that the grant of the electricity licence to DEL is in accord with our statutory responsibilities as set out in Article 12 of the 2003 Order. The DEL Application was made in accordance with the 2007 Application Regulations (and the Guidance). No probity concerns have been raised in respect of DEL.

As a licence holder, DEL can be expected to contribute to overall security of supply by participation in the SEM and the DS3 arrangements in respect of the provision of system services. Matching demand with available supply of electricity will be better secured. Integration of RES is expected to be better facilitated. Competition will be promoted. Costly re-enforcement works may be delayed or avoided. Price pressures are expected to be alleviated. The decision is consistent with our principal objective of protecting the interests of existing and future consumers.

An electricity generation licence (the **DEL Licence**) was granted to DEL on 23 October 2020. The DEL Licence is in the form of the licence published alongside the DEL Notice. A copy of the DEL Licence shall be published on the UR's website. A copy of the DEL Licence may also be viewed by contacting the Utility Regulator's office (noting that while restrictions on movement are in place in NI, visibility may not be possible).

## **4. Postscript**

We understand that DfE intends to bring forward legislation to make particular provision for energy "storage". A consultation was published by DfE on 3 September 2020.<sup>25</sup> The important role envisaged for "storage" providers in modern electricity systems is explicitly recognised in the provisions of the Clean Energy Package. We expect to liaise with DfE on these matters.

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<sup>25</sup> <https://www.economy-ni.gov.uk/consultations/transposition-2019-electricity-recast-directive>

Like Ofgem<sup>26</sup> we consider that legislation may better clarify where energy storage (to include but not limited to BESS facilities) “sits” within the regulatory framework.

We also intend, in due course, to engage publically on the proper charging arrangements for BESS operators.

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**26** See, for example, the regulatory letter on energy storage (which includes BESS) published by Ofgem on 2 October 2020: [https://www.ofgem.gov.uk/system/files/docs/2020/10/storage\\_licensing\\_statcon\\_decision\\_cov\\_letter\\_final\\_for\\_website\\_0.pdf](https://www.ofgem.gov.uk/system/files/docs/2020/10/storage_licensing_statcon_decision_cov_letter_final_for_website_0.pdf)