

From the office of the Chief Executive

Mr Serhiy Zuyev
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Dear Serhiy

**DEROGATION REQUEST IN RESPECT OF UNITS B4 AND B5 AT BALLYLUMFORD
POWER STATION – UR DECISION**

This letter is being written to you in your capacity as President, AES UK and Ireland, acting on behalf of AES Ballylumford Ltd (**ABL**).

It applies to the request for derogations from PC6.1.6 of the SONI Grid Code made by ABL to the Utility Regulator (**UR**) in respect of Units B4 and B5 at Ballylumford Power Station.

The purpose of this letter is to set out the UR's decision in respect of the derogation request and to explain the reasons for that decision.

1. Background

- 1.1 The duty to comply with the provisions of the SONI Grid Code is an obligation placed on ABL under Condition 4(1) of its electricity generation licence (the **Licence**), as granted to it under Article 10(1)(a) of the Electricity (Northern Ireland) Order 1992 (the **Electricity Order**).
- 1.2 The power of the UR to issue a direction relieving ABL of that obligation, either in whole or in part, is found at Condition 4(2)(a) of the Licence. It is that power which the derogation request invited the UR to exercise.
- 1.3 The exercise of the power is discretionary, and in deciding whether (and, if so, on

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what terms) to exercise it the UR must act in accordance with its principal objective and general duties under Article 12 of the Energy (Northern Ireland) Order 2003 (the **Energy Order**).

- 1.4 The UR notified ABL that it was treating its request for a derogation as validly made with effect from 18 April 2018.
- 1.5 At that time, a request for derogations from the same legal obligation had already been received by the UR from AES Kilroot Power Ltd (**KPL**), and was treated as validly made in respect of Units K1 and K2 at Kilroot Power Station.
- 1.6 In light of this, on 23 April 2018, the UR wrote to your predecessor, Ian Luney, indicating that it was minded to consider both derogation requests together, allowing a 'holistic' view to be taken of the position in respect of all four relevant generating units. By his response dated 27 April 2018, Mr Luney agreed on behalf of ABL and KPL that this was the appropriate approach.
- 1.7 As you know, there was then considerable further correspondence and a number of discussions between the UR and AES relating to the derogation requests.
- 1.8 In addition, in accordance with Condition 4(2)(a) of the licence of each company, the UR consulted with both the transmission system operator (**SONI**) and transmission owner (**NIEN**) in Northern Ireland.
- 1.9 In particular the UR requested that SONI undertake a detailed system assessment to provide the UR with a comprehensive report as to whether or not the derogation requests separately and collectively should be granted on the basis of system operational and capacity requirements. SONI provided to the UR a draft report setting out, among other things, its technical assessment of that impact. KPL and ABL had the opportunity to see that draft report and to comment on it and SONI took their comments into account before preparing a 'final draft' of the report.
- 1.10 The UR has previously supplied you with a copy of that final draft. By a letter dated 7 November 2018, SONI confirmed to the UR that this should stand as its final report, without further amendment.
- 1.11 In summary, SONI's technical assessment was (and remains) that, of the four generating units that were the subject of derogation requests, it was necessary –

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having regard to the need for SONI to be able to continue to operate the transmission system to the standards applicable in accordance with its own statutory and licence obligations – for two to be retained on the system for the twelve month period commencing on 1 October 2018 (one of which need to be a Kilroot unit) and for one to be retained thereafter.

2. The 'Minded to' Position

- 2.1 By a letter to you dated 15 August 2018, the UR notified ABL and KPL of its provisional conclusions and 'minded to' position in respect of their derogation requests.
- 2.2 For the purposes of those conclusions, the UR noted that it had regard to its principal objective and statutory duties as a whole but that two of its statutory duties were of particular significance in the context of the derogation requests:
 - (a) the duties in respect of promoting the operation of effective, reliable and secure electricity networks in accordance with Article 36 of Directive 2009/72/EC (and Article 12(1A) of the Energy Order) and the contribution made by the operation of such networks to securing that all reasonable demands for electricity are met (Article 12(2)(a) of the Energy Order) – for convenience, these duties in combination being referred to as the **network security duty**; and
 - (b) the duty to have regard to the need to secure that licence holders are able to finance the activities which are the subject of obligations placed on them (Article 12(2)(b) of the Energy Order) – for convenience, that duty being referred to as the **financing duty**.
- 2.3 The UR also noted that it had considered fully all of the evidence provided and representations made to it by ABL and KPL.
- 2.4 Since SONI is the certified transmission system operator for Northern Ireland, and in the light of the company's expertise in the operation of its transmission system, the UR concluded that it ought to give considerable weight to SONI's opinion.
- 2.5 Consequently, the UR accepted SONI's technical assessment, while noting that there was more than one combination of the AES generating units that would

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meet SONI's technical requirements.

- 2.6 Insofar as relevant to ABL, the UR's provisional conclusions were as follows.
- 2.7 First, the UR was minded to refuse the derogation request in respect of unit B4. That unit would be capable of meeting (in part) the system requirements described in the technical assessment provided by SONI. Moreover, because it held awarded capacity under the I-SEM CRM for the twelve month period starting on 1 October 2018, the UR was satisfied that it was financeable.
- 2.8 Therefore the UR provisionally concluded that unit B4 would contribute to meeting the network security duty, consistently with the satisfaction of the financing duty. In accordance with the UR's statutory duties, it followed that there was no basis for releasing ABL from its obligation under PC6.1.6 in relation to that unit.
- 2.9 Second, the UR was minded to grant the derogation request in respect of unit B5. The evidence suggested that this unit was not financeable and – on the basis that unit B4 was to remain available to the system for the reasons just given – it was also not capable of meeting the system requirements set out in SONI's technical assessment, since (in combination with B4) SONI advised that only one of the Kilroot units would be able to do so.
- 2.10 Therefore the UR provisionally concluded that unit B5 would not contribute towards the satisfaction of the network security duty, and that the financing duty would not be met in relation to it. In accordance with the UR's statutory duties, it followed that ABL could be released from its obligation under PC6.1.6 in relation to unit B5, and the UR was minded to make a direction to that effect under Condition 4(2) of the Licence.
- 2.11 The UR made clear that it would reassess its position in respect of both units in the light of any material changes in fact between those applicable as at 15 August 2018 and those which prevailed at the time of its final decision.

3. Following the 'Minded to' Position

- 3.1 After 15 August 2018, a number of further events occurred, which can briefly be summarised as follows:

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- (a) SONI and KPL entered into negotiations in respect of a contract for the provision of system support services by KPL to SONI from unit K1.
- (b) On 25 September 2018, in circumstances in which agreement had not yet been reached on the terms of that contract, SONI referred the terms of the contract to the UR for determination under Condition 7(4) of the KPL electricity generation licence.
- (c) On 28 September 2018 KPL indicated by letter addressed to the UR and SONI that it was prepared to accept the terms offered by SONI and to contract for system support services on that basis.
- (d) In light of that letter, on 2 October 2018, the UR wrote to SONI and KPL indicating that it was placing a stay on the Condition 7(4) process to allow a further opportunity for SONI and KPL to agree and enter into the contract.
- (e) On 10 October 2018, ABL made a valid request to both the UR and the Commission for the Regulation of Utilities (CRU) in the Republic of Ireland for their consent for the I-SEM CRM awarded capacity at Unit B4 to be transferred to Unit K2.
- (f) On 2 November 2018, the UR and CRU consented to that transfer.
- (g) On 7 November 2018, ABL and KPL applied to SONI for the I-SEM CRM awarded capacity to be transferred from unit B4 to unit K2.
- (h) On 7 November 2018, SONI notified the UR both that it was formally withdrawing the Condition 7(4) referral, and that the system support services contract between it and KPL had been executed on that date.
- (i) On 8 November 2018, SONI notified the UR that a deed of transfer of the capacity award from unit B4 to Unit K2 had been executed on that date and that the transfer would be effective from 23.00 on 9 November.
- (j) On 8 November 2018, KPL informed the UR by letter that it wished to withdraw its request for derogations from PC6.1.6 in respect of Units K1 and K2.

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3.2 Accordingly, as at the date of this decision, the only derogation request which remains outstanding and falls to be determined by the UR is the request by ABL for derogations in respect of Units B4 and B5.

3.3 The factual circumstances in which the UR's determination must be made are those now prevailing, as summarised above, which are significantly different to the circumstances applicable at the time the UR adopted its 'minded to' position.

4. The UR Decision on the Derogation Request

4.1 The UR has considered carefully:

- (a) all of the submissions that have been made to it, in writing and orally, by ABL in relation to the derogation request;
- (b) the responses received from its consultation with NIEN and SONI, and in particular the final SONI technical assessment;
- (c) the factual circumstances now prevailing, as briefly summarised in this letter, including in particular:
 - (i) the transfer of the I-SEM CRM capacity award from unit B4 to Unit K2;
 - (ii) the withdrawal of KPL's request for a derogation in respect of Units K1 and K2, in light of the transfer of the capacity award to Unit K2 and the system support services contract entered into between SONI and KPL.

4.2 The UR has also considered carefully its principal objective and statutory duties under Article 12 of the Energy Order. In particular, but not exclusively, it has considered the importance of the network security duty and the financing duty in the context of the derogation request.

4.3 Applying its principal objective and statutory duties to the factual situation now presented to it, the UR has determined to grant derogations to ABL from PC6.1.6 of the SONI Grid Code in respect of both Units B4 and B5.

4.4 The effect of the derogations is that ABL may withdraw those units from service

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at any time by giving notice of its intention to SONI to do so. The UR has determined that no minimum notice period is required for this purpose.

- 4.5 However, the UR determines that the notice (whether of immediate withdrawal or of withdrawal after any period specified in it) must be given to SONI by no later than 31 December 2018. If no such notice has been given to SONI by that date, the derogation will lapse and a further derogation will need to be applied for by ABL.
- 4.6 The purpose of this restriction is to ensure that, if ABL wishes to rely on the derogation, it does so during a period in which the facts prevailing as at the date of this decision are still extant. The derogation is not intended to remain open to ABL for an indefinite period, when it may be exercised at a time when those facts have materially changed.
- 4.7 The UR's reasons for granting the requested derogation are as follows –
- (a) The purpose of PC6.1.6 of the SONI Grid Code is to ensure that large generators engage in an orderly market exit, so that SONI, as system operator, has a window of time in which it can respond to that market exit and take such steps as are necessary to ensure network security.
 - (b) KPL has withdrawn its derogation request, the effect of which is that PC6.1.6 continues to apply in respect of Units K1 and K2.
 - (c) The effect of the technical assessment set out in SONI's final report is that if Units K1 and K2 are maintained on the system, it is unnecessary for network security purposes also to retain either (or both) of Units B4 or B5.
 - (d) The UR accepts that technical assessment.
 - (e) In consequence of the technical assessment, the UR concludes that it is therefore unnecessary for Units B4 and B5 to be retained on the system for any further period of time in order to achieve an orderly market exit and ensure network security.
 - (f) The policy purposes of PC6.1.6 are therefore fulfilled without the need to hold ABL to the period of notice set out in that provision.

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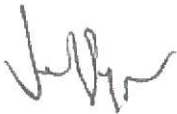
- (g) There are no other reasons for which it is necessary to require ABL to be held to the period of notice set out in that provision.
- (h) Consequently, it is consistent with the UR's principal objective and statutory duties to grant the derogation sought by ABL in respect of Units B4 and B5.

5. Conclusion

- 5.1 The UR's decision in relation to the derogation request made by ABL is given legal effect by virtue of the direction attached to this letter.
- 5.2 That direction has immediate effect.

A copy of this letter is being sent to SONI and to KPL for information.

Yours sincerely



JENNY PYPER
Chief Executive

cc. Serhiy Zuyev, KPL
Robin McCormick, SONI
Jo Aston, UR