

THE NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION

NOTICE UNDER ARTICLE 14(2) OF THE ELECTRICITY (NORTHERN IRELAND) ORDER 1992 (“THE ORDER”) (AS AMENDED)

MODIFICATIONS PROPOSED TO POWER NI ENERGY LIMITED’S ELECTRICITY SUPPLY LICENCE

The Northern Ireland Authority for Utility Regulation (hereafter referred to as “**the Authority**”) hereby gives notice pursuant to Article 14(2) of the Order as follows:

- 1 The Authority proposes to make modification to the electricity supply licence (“**the Licence**”) held by Power NI Energy Limited (“**the Licensee**”).
- 2 The proposed modifications are to the Determination of the PPB Amount as set out in Annex 3 (to Condition 69) of the Licence. The modifications proposed are shown in redline and strikethrough in the proposed revised version of Annex 3 as set out in Schedule 1 to this notice.
- 3 The reasons for the proposed modifications are to, and their effect is to, enact the determination on the Power Procurement Business price control from 27 May 2019 until the termination or expiry of the remaining Generating Unit Agreements. The determination on the relevant price control is published herewith, and is also dated 14 January 2019.
- 4 Representations or objections with respect to the proposed modifications may be made on or before 5:00pm on Friday 15 February 2019 to:

Kenny Dane
Utility Regulator
Queens House
14 Queen Street
Belfast BT1 6ED
kenny.dane@uregni.gov.uk

- 5 The Authority has, pursuant to Article 14(4) of the Order, sent a copy of this notice to (i) the Licensee, (ii) the Department for the Economy and (iii) the General Consumer Council for Northern Ireland.

Dated this 14th day of January 2019



Jenny Pyper
Chief Executive

For, and on behalf of, the Northern Ireland Authority for Utility Regulation

cc: June Ingram DfE
Roy Foreman Power NI – Power Procurement Business
John French The General Consumer Council for Northern Ireland

SCHEDULE 1

Annex 3 – Determination of the PPB Amount

1. Definitions

1.1 In this Annex:

- “allowed change of law costs”** means an amount determined as such by the Authority in accordance with paragraph 7.1;
- “allowed change of law revenues”** means an amount determined as such by the Authority in accordance with paragraph 7.1;
- “average specified rate”** 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;
- “excluded power procurement costs”** has the meaning ascribed to it in paragraph 5.1;
- “fuel security period”** means a Security Period as defined in paragraph 2 of Part 1 of the Northern Ireland Fuel Security Code as that period may be extended for the purposes of this Annex with the approval of the Authority;
- “maximum regulated PPB PSO revenue”** means the maximum allowed revenue calculated in accordance with the formula in paragraph 2;
- “metered”** means, in relation to any quantity sold, as measured by metering required pursuant to and defined in the Grid Code or (where no

such meter is installed) as otherwise reasonably calculated;

“non PSO revenue”

means the revenue (measured on an accruals basis) derived by the Power Procurement Business from payments to it under the Trading and Settlement Code, from the sale of system support services to the Transmission System Operator and from the settlement payments or receipts under any contracts for differences entered into by the Power Procurement Business, after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived;

“Other System Charges”

means those charges referred to in paragraph 1(d) of Condition 30 of the Transmission System Operator Licence;

“power procurement manager”

means the Power Procurement Business;

“PPB Amount”

means the amount calculated in accordance with paragraph 2;

“PPB Amount

means this Annex as from time to

restriction conditions”

time modified or replaced in accordance therewith or pursuant to Article 14, 17, 17A or 18 of the Order, under the Energy Order under the SEM Order, or under the Directive Regulations;

“period of force majeure”

means a period during which any generator shall have been relieved from liability for breach of, or been entitled to suspend performance of its obligations under any

power purchase agreement and in respect of which the Authority shall agree that the consequences thereof shall qualify for the purposes of paragraph 2, as that period may be extended for the purposes of this Annex with the approval of the Authority;

“power procurement PSO revenue” means the revenue (measured on an accruals basis) derived by the Power Procurement Business under the agreement referred to in paragraph 1 of Condition 69 after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived;

“quantity sold” means the aggregate quantity of units sold in the relevant year t under the Single Electricity Market Trading and Settlement Code;

“relevant year” means a financial year commencing on or after 1 April 1992;

“relevant year t ” 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 ; and similar expressions shall be construed accordingly;

~~**“RPI₂₀₁₄”** means the value of RPI _{t} where the relevant year t is 2014 which has the value of 257.7;~~

“RPI₂₀₁₇” means the value of RPI _{t} where the relevant year t is 2017 which has the value of 275.3;

- “RPI_t”** means the Retail Price Index (1987=100) published or determined with respect to October in the relevant year t;
- “sold”** means sold or otherwise disposed of by the power procurement manager, and cognate expressions shall be construed accordingly;
- “uncollected PPB revenue”** means any amount owed to the Licensee in respect of power procurement PSO revenue or non PSO revenue, which amount remains unpaid six months after the date it first fell due for payment or which amount the Licensee deems (in accordance with the payment security policy) to be unrecoverable before the expiry of that six month period; plus the reasonable recovery costs incurred by the Licensee in respect of such amount and the reasonable interest attributable to such amount (calculated in accordance with the payment security policy);
- “Varied Ballylumford Agreements”** means (i) the buy-out agreement, and (ii) the generating unit agreements for generation sets nos. 4 and 6 at Ballylumford power station, and the power station agreement, each as modified by the re-powering agreement;

2. **Restriction of the PPB Amount: basic formula**

The Licensee shall in setting the PPB Amount use its best endeavours to ensure that in any relevant year the power procurement PSO revenue shall not exceed the maximum regulated PPB PSO revenue calculated in accordance with the formula for M_{PPBt} below.

$$M_{PPBt} = A_t + D_t + E_t + PGS_t - NPR_t + K_{Bt} + Y_t + Z_t$$

where:

M_{PPBt} means the maximum regulated PPB PSO revenue in relevant year t.

A_t means the actual power purchase costs incurred in the purchase of electricity in relevant year t derived by:

- (a) aggregating amounts payable by the power procurement manager to any person in relevant year t (measured on an accruals basis) for:
 - (i) the provision to the power procurement manager of the total available capacity of contracted generation sets and the purchase of electricity;
 - (ii) the use of any interconnector;
 - (iii) the early termination or amendment of any power purchase agreement;
 - (iv) holding stocks of fuel or other materials for the purposes of generation of electricity; and
 - (v) the provision of any other services approved by the Authority for the purpose of this paragraph;
- (b) deducting the excluded power procurement costs (to the extent that those costs are included in sub-paragraph (a)) and the allowed change of law costs for relevant year t;

- (c) adding the net amount (whether a positive or a negative number) payable or receivable (as the case may be and measured on an accruals basis) by the power procurement manager in relevant year t in respect of electricity purchase or sale contracts and other contracts designed to enable the power procurement manager to hedge fuel price or exchange rate risks;

D_t means:

- (a) the allowed charge in relevant year t for excluded power procurement costs and changes of law calculated as the aggregate of the excluded power procurement costs plus the allowed change of law revenues, plus
- (b) any reasonable costs incurred by the Power Procurement Business in complying with the requirements imposed on the Licensee under legislation and other legal requirements through which Directive 2003/54/EC and/or 2009/72/EC¹ is implemented, whether before or after the coming into effect of this Annex, as reasonably determined by the Authority, to the extent not recovered under another part of this Licence or (except to the extent the Transmission Owner is recovering amounts in relation to payments due to the Licensee of the PPB Amount) under the Transmission Owner Licence, plus
- (c) any reasonable costs incurred by the Power Procurement 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, to the extent not recovered under another part of this Licence or (except to the extent the Transmission Owner is recovering amounts

¹ [Note: under LCI 1(b) it is provided that references to an enactment include any statutory modification or re-enactment thereof, but under the relevant interpretation legislation, 'enactment' does not cover EU legislation. The new IME3 Directive has therefore been referred to explicitly.]

in relation to payments due to the Licensee of the PPB Amount) under the Transmission Owner Licence, plus

- (d) any other amounts, not included in the revenues under the Transmission Owner Licence or another Annex of this Licence, requested by the Licensee and approved by the Authority whether prior to or after the coming into effect of this Annex;

E_t means the allowed Power Procurement Business entitlement in relevant year t derived using the following formula:

$$E_t = \text{DEP}_t + \text{RTN}_t + \text{IC}_t + \text{PD}_t$$

where:

~~DEP_t means the depreciation amount allowed in respect of the PPB regulatory asset base for the relevant year t which is derived from the following formula:~~

~~$$\text{DEP}_t = \text{PPB_DEP}_t * \text{RPI}_t / \text{RPI}_{2014}$$~~

where:

~~PPB_DEP_t means the value of the allowed PPB depreciation amount for relevant year t as shown in Part A of Schedule 3;~~

~~RTN_t means the allowed return on the PPB regulatory asset base for the relevant year t which is derived from the following formula:~~

~~$$\text{RTN}_t = \text{PPB_RTN}_t * \text{RPI}_t / \text{RPI}_{2014}$$~~

where:

~~PPB_RTN_t means the value of the allowed PPB return on the PPB regulatory asset base for relevant year t as shown in Part A of Schedule 3;~~

~~IC_t means the PPB core allowance for the relevant year t which is derived from the following formula:~~

$$IC_t = \text{£}3.529\text{m} * RPI_t / RPI_{2014}; \text{£}3.794\text{m} * RPI_t / RPI_{2017};$$

~~PD_t means the allowed PPB pension deficit cost of:~~

- ~~(i) £0.481m per year, or~~
- ~~(ii) such other amount, as reasonably determined by the Authority and notified to the Licensee, which amount reflects and is calculated in accordance with:
 - ~~(A) a report submitted by the Licensee to the Authority setting out the results of the most recent triennial actuarial review undertaken by the Licensee, or~~
 - ~~(B) the regulatory principles, determined by the Authority and notified to the Licensee, as applicable (from the date specified in the Authority's determination) to the allowance of pension deficit costs;~~~~

Where in any relevant year t a termination notice described under Condition 60 of this licence is issued and has effect, such that no Generating Unit Agreements remain following that termination, the value of E_t shall be calculated in accordance with the above formula on a *pro rata* basis in respect of that part of the relevant year which falls prior to the termination notice having effect, and the Authority shall for these purposes specify a *pro rata* value by notice to the Licensee which shall be treated as effective for the purposes of this Annex.

PGS_t means PPB's share of the gross surplus which is derived from the following formulae:

- (a) where GS_t is less than zero: PGS_t = ~~zero~~; zero; or
- (b) where GS_t is greater than zero and less than or equal to £10m: PGS_t = GS_t * ~~20%~~; 6%; or

- (c) where GS_t is greater than £10m: $PGS_t = £2m + ((GS_t - £10m) * 10\%)$
the minimum of (£0.6m + (($GS_t - £10m$) * 3%) and £1.8m.

where:

GS_t means the gross surplus for the relevant year t which is derived from the following formula:

$$GS_t = NPR_t - A_t - D_t - E_t - EX_t$$

~~where:~~ where:

EX_t means exclusions for the relevant year t relating to:

- (i) free carbon permits, the value of which shall be determined on the basis of a methodology agreed with the Authority; and/or
- (ii) certain excluded costs relating to historic cost recovery as agreed with the Authority.

NPR_t means the non PSO revenue in relevant year t:

K_{Bt} means a correction factor (whether a positive or negative value) to be applied to the maximum regulated PPB PSO revenue in relevant year t derived using the following formula:

$$K_{Bt} = [M_{PPBt-1} - R_{PPBt-1}](1 + I_t/100)$$

(but in relation to the first relevant year, K_{Bt} shall be equal to zero);

where:

M_{PPBt-1} means the maximum regulated PPB PSO revenue in relevant year t-1;

R_{PPBt-1} means the power procurement PSO revenue in relevant year t-1;

I_t means the average specified rate,

Y_t means an allowance for pension liabilities of the Power Procurement Business accrued prior to 31 March 2015 to apply for a single year, in the relevant year commencing on the earlier of:

- (a) 1 April 2023, or
- (b) The year immediately following the issuing of a termination notice described under Condition 60 of this licence, such that no Generating Unit Agreements would remain following that termination,

The power procurement manager will provide a written submission to the Authority that sets out an actuarial assessment of the present value of the assets, liabilities and risk of forward movement in these in perpetuity, for pension liabilities accrued prior to 31 March 2015, by the earlier of:

- (a) 1 April 2023, or
- (b) The date of termination contained within a termination notice described under Condition 60 of this licence, such that no Generating Unit Agreements would remain following that termination.

Subject to receipt of the submission by the power procurement manager, the Authority shall determine the amount to apply for Y_t. In any relevant year in which the Authority does not make a determination, Y_t shall equal £0.

Z_t means an allowance for wind up costs of the Power Procurement Business to apply to single year, in the relevant year commencing on the earlier of:

- (a) 1 April 2023, or
- (b) The relevant year immediately following the issuing of a termination notice described under Condition 60 of the licence, such that no Generating Unit Agreements would remain following that termination,

and shall equal £0.3m. In all other relevant years, Z_t shall equal £0.

3. **Restriction of the PPB Amount: adjustments**

3.1 If, in respect of any relevant year the power procurement PSO revenue exceeds the maximum regulated PPB PSO revenue 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 the PPB Amount unless it has demonstrated to the reasonable satisfaction of the Authority that the power procurement PSO revenue would not be likely to exceed the maximum regulated PPB PSO revenue in that next following relevant year.

3.2 If, in respect of any 3 successive relevant years, the sum of the amounts by which the power procurement PSO revenue has exceeded the maximum regulated PPB PSO revenue 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 PPB Amount such that the power procurement PSO revenue would not be likely, in the judgment of the Authority, to exceed the maximum regulated PPB PSO revenue in that next following relevant year.

3.3 In this paragraph:

“permitted one-year percentage” means 4 per cent of the maximum regulated PPB PSO revenue; and

“permitted 3-year percentage” means 5 per cent of the maximum regulated PPB PSO revenue in the second of the relevant years.

4. **Information to be provided to the Authority in connection with the PPB Amount restriction conditions**

4.1 Where any change is intended to be made in the PPB Amount regulated under paragraph 2, the Licensee shall not later than the time referred to in paragraph 4.2 provide the Authority with:

- (a) a written forecast of the maximum regulated PPB PSO revenue, 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 regulated PPB PSO revenue, 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 4.6 in respect of relevant year $t-1$ has been furnished by the Licensee to the Authority before the time referred to in paragraph 4.2.

4.2 The relevant time referred to in paragraph 4.1 shall be 14 days prior to the date of publication of such charges.

4.3 If within 3 months of the commencement of any relevant year t the Licensee has not provided the aforementioned forecasts pursuant to paragraph 4.1 for the purpose of such changes in charges as are referred to in paragraph 4.1, the Licensee shall forthwith provide the Authority with a written forecast of the maximum regulated PPB PSO revenue (together with its components) in respect of relevant year t .

4.4 The Authority may issue directions providing that any forecast or estimate provided in accordance with paragraph 4.1 or 4.3 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.

4.5 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 power procurement PPB PSO revenue 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_{Bt} calculated in accordance with the formula set out in paragraph 2 to be applied in calculating the maximum regulated PPB PSO revenue in respect of relevant year t.

4.6 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 4.8.

4.7 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 4.8 in accordance with the requirements of the PPB Amount 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 this Licence; 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 its calculations under paragraph 2 which represents other than
 - (aa) bona fide consideration for electricity sold; or
 - (bb) an amount permitted under the PPB Amount restriction conditions to be so included;
 - (ii) there is no amount included in its calculations of excluded power procurement costs under paragraph 5 which represents other than an amount permitted under the PPB Amount restriction conditions to be so included; and

- (iii) all amounts which should properly be taken into account for the purposes of the PPB Amount restriction conditions have been taken into account.

4.8 The specified items to be contained in the statement referred to in paragraph 4.6 shall be the following:

- (a) the quantity sold;
- (b) the power procurement PSO revenue;
- (c) the Power Procurement Business's costs incurred in the purchase of electricity, calculated as provided under paragraph 2 (showing separately each component thereof);
- (d) the allowed Power Procurement Business entitlement, being E_t calculated as provided under paragraph 2, showing separately each component thereof;
- (e) the excluded power procurement costs referred to at paragraph 5 (showing separately each category of excluded cost);
- (f) NPR_t calculated as provided under paragraph 2, showing separately each component thereof;
- (g) PGS_t calculated as provided under paragraph 2, showing separately each component thereof; and
- (h) such other items as shall be specified in directions issued by the Authority from time to time for the purposes of this Annex.

5. **Excluded power procurement costs**

5.1 Subject to paragraph 5.2, the following costs and revenues of the power procurement manager (whether a positive or negative amount) shall be treated as excluded power procurement costs in relevant year t (and, in the case of (xii) and (xiii) below, such costs shall be so treated for each year in which the buy-out agreement continues to be in force):

- (i) the cost incurred in the purchase of electricity during fuel security periods and periods of force majeure in relevant year t calculated in accordance with the definition of A_t and with a basis for attributing costs between different periods of the year approved by the Authority;
- (ii) the Licensee's allowed power procurement related security costs, being any cost incurred by the power procurement manager and approved by the Authority as being an allowed security cost in accordance with the Northern Ireland Fuel Security Code (as that term is therein defined), but excluding any cost which forms part of:
 - (a) the Transmission Owner's allowed related security costs; or
 - (b) any payment of the kind referred to in sub-paragraph (ii) above;
- (iii) payments made by the power procurement manager to generators in consideration of their compliance with any directions made to them in relation to stocks of fuel and other materials under Article 37 of the Order;
- (iv) amounts paid or payable to generators by way of compensation for any damage, costs, losses and expenses suffered or incurred by them as a result of complying or attempting to comply (in either case acting as reasonable and prudent operators) with any request or instruction from the transmission system operator pursuant to OC2.6.2(c)(ii), OC2.6.2(c)(iii), OC2.6.3(c)(ii), OC2.6.3(f)(ii), OC2.6.3(f)(iii), OC2.6.3(c)(iii), OC2.6.7.4, OC7.4.6.6 and SDC2.4.2.9 of the Grid Code (and the corresponding provisions of any replacement of the Grid Code), including:
 - (a) physical damage to or operational deterioration of any generation set or other plant;
 - (b) increased costs of operation or maintenance of the generation set or other plant;
 - (c) costs and claims of contractors; and

- (d) loss or diminution of any payments to which the generators would have been entitled for the provision of available capacity (including reductions and/or increased rebates thereof) in relation to any such compliance at any time prior to 31 March 1997,

to the extent that the Authority is satisfied that:

- (aa) the compensation in question shall have had deducted from it any payment which the Licensee shall have received or have been entitled to receive from any generator whose act or omission was responsible for the request or instruction in question from the grid operator, in relation to such act or omission;
- (bb) it was necessary for the transmission system operator to have made the request or instruction in question in order to protect or maintain the security and stability of the system; and
- (cc) the Licensee, acting reasonably and prudently, could not have avoided the threat in question to the security and stability of the system;
- (v) an amount representing 10% (the PPB share) of the demonstrable financial benefits that PPB achieves under arrangements that qualify for this incentive as the Licensee shall agree from time to time with the Authority;
- (vi) no longer used
- (vii) amounts that become uncollected PPB revenue in relevant year t less any amount or part of an amount treated as uncollected PPB revenue in respect of a preceding relevant year that has been paid to the Licensee in the relevant year t;
- (viii) no longer used;
- (ix) the following amounts:

- (a) any amount which shall be payable by the power procurement manager to any generator or relevant supplier in compensation for the costs of complying with a request made by the Authority under paragraph 10 of Condition 15 of any generation licence (as amended or supplemented and to the extent not recovered under paragraph 11 thereof) and paragraph 9 of Condition 5 of any supply licence other than the NIE Energy Supply licence (as amended or supplemented and to the extent not recovered under paragraph 10 thereof) (as the case may be);
 - (b) the reasonable direct costs of the Licensee in complying with a request made by the Authority under paragraph 10 of Condition 60, to the extent not recovered in accordance with paragraph 11 of Condition 60; and
 - (c) such amount as shall have been paid to the Authority in reimbursement of its costs and expenses incurred or to be incurred in developing the requisite arrangements provided for in Condition 60.
- (x) any other costs or revenues of the Power Procurement Business which:
- (a) were not taken into account in setting E_t (as defined in paragraph 2);
 - (b) in the case of costs, those which cannot reasonably be controlled by the power procurement manager; and
 - (c) the Authority shall determine, upon an application to it by the Licensee, shall be included for the purposes of this paragraph.
- (xi) no longer used;
- (xii) an amount equal to the cost of servicing the buy-out agreement (being the contract entitled “Availability payment buy-out contract” dated 6 December 2000 between the Licensee and Premier Power Limited) in relevant year t ;

- (xiii) Without limitation to paragraph (xii), any additional costs which are incurred under the buy-out agreement by reason of any Increase in Tax (as such term is defined in the buy-out agreement);
- (xiv) The applicable Breakage Charges and applicable reimbursable costs (as such items are defined in the re-powering agreement) incurred as a result of the re-powering agreement; and
- (xv) Charges in respect of generating units contracted to the power procurement manager for Transmission Use of System and Other System Charges.

5.2 ~~5.2~~—No cost incurred or revenues received by the power procurement manager shall be included in more than one of the categories in sub-paragraphs (i) to (xv) of paragraph 5.1.

5.25.3 No individual cost incurred by the power procurement manager of less than £30,000 shall be included in more than one of the categories in sub paragraph (i) to (xv) of paragraph 5.1, unless it can be demonstrated to the Authority's satisfaction that such cost is a component of a wider expense that qualifies as an Excluded Cost under this Section 5.

6. **Duration of PPB Amount restriction conditions**

6.1 This Annex 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 request (a “Disapplication Request”) made in accordance with paragraph 6.3 and:

- (a) the Authority agrees in writing to the request; or
- (b) the application of this Annex (or any other part of it) is terminated by notice given by the Licensee in accordance with paragraph 6.4 and not withdrawn.

6.2 Save where the Authority otherwise agrees, no disapplication following delivery of a Disapplication Request pursuant to this paragraph 6 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

(a)(b) ~~31 March 2017 with Utility Regulator option to extend up to 23rd
September 2018~~ 23 September 2018

~~31 March 2017 with Utility Regulator option to extend up to 23rd September 2018~~

6.3 Disapplication Request pursuant to this paragraph 6.3 shall:

- (a) be in writing addressed to the Authority;
- (b) specify this Annex or any part of it to which the request relates, (excluding in either case this paragraph 6); and
- (c) state the date from which the Licensee wishes the Authority to agree that this Annex or the specified part of it shall cease to have effect.

6.4 A Disapplication Notice pursuant to this paragraph 6.4:

- (a) may be given in the circumstances described in either paragraph 6.5 or paragraph 6.6;
- (b) may be withdrawn by the Licensee at any time prior to the Disapplication Date; and
- (c) where it is given, shall:
 - (I) be in writing addressed to the Authority;
 - (II) specify this Annex, or any part of it (which shall comprise only such part as was specified in the Disapplication Request) to which the notice relates; and
 - (III) state the date from which the Licensee wishes the notice to take effect, which shall not be earlier than the Disapplication Date.

6.5 The circumstances described in this paragraph are that, by the beginning of the period of six months which will end with the Disapplication Date, the Authority has not in response to the Disapplication Request published a decision under Article 14(8) of the Order to modify:

- (a) this Annex, or any part of it to which the Disapplication Request relates; or

- (b) this paragraph 6, so as to remove the right of the Licensee to give to the Authority a Disapplication Notice in respect of the relevant Disapplication Request.

6.6 The circumstances described in this paragraph are that:

- (a) by no later than the beginning of the period of six months which will end with the Disapplication Date, the Authority has in response to the Disapplication Request published a decision of a type referred to in paragraph 6.5 above;
- (b) the Licensee has exercised its right to appeal to the CMA against that decision in accordance with Article 14B of the Order;
- (c) the CMA has, in respect of the provisions to which the Disapplication Request relates:
 - (I) quashed the decision of the Authority under Article 14E(2)(a) of the Order; and
 - (II) neither remitted the matter back to the Authority under Article 14E(2)(b) of the Order nor substituted its own decision for that of the Authority under Article 14E(2)(c) of the Order; and
- (d) no more than 30 days has elapsed since the date on which the CMA quashed the decision of the Authority.

6.7 A Disapplication Request or Disapplication Notice served under this paragraph 6 may be served in respect of a specified geographic area.

7. **Change of Law**

7.1 Where it appears to the power procurement manager that there has been, or is likely to be, a relevant change of law which has had or is likely to have a material effect on the financial position and performance of the Power Procurement Business, the power procurement manager may require the Authority to determine whether the relevant change of law has had or is likely to have such an effect, and if so, what amounts, if any, should be treated as:

- (a) allowed change of law costs in calculating A_t for relevant year t and each succeeding relevant year in accordance with paragraph 2; and
- (b) allowed change of law revenues in calculating D_t for relevant year t and each succeeding relevant year in accordance with paragraph 2,

to ensure that the financial position and performance of the Licensee is likely, so far as reasonably practicable, to be the same as if the relevant change of law had not taken place. In determining the matters provided for in sub-paragraphs (a) and (b) above, the Authority shall have regard, where relevant, to:

- (a) its intentions in relation to the development and implementation of the requisite arrangements provided for in Condition 60;
- (b) the period over which the Licensee shall incur costs by reason of the relevant change of law;
- (c) the incremental costs (including financing costs) which the Licensee has been or will be required to incur as a consequence of the relevant change of law; and
- (d) the other circumstances of the case.

7.2 A notice given to the Authority by the power procurement manager pursuant to paragraph 7.1 shall contain or be accompanied by all relevant details of the relevant change of law and such other information as the Authority shall require and, unless the Authority shall otherwise consent, shall be given not later than the first day of October immediately preceding the first of the relevant years in respect of which the power procurement manager wishes any change in such elements to take effect.

7.3 In this paragraph:

“environment” has the meaning ascribed to it in the Environmental Protection Act 1990;

“harm to the environment” means actual or potential adverse effects on the environment or living organisms (including man), and shall include changes in climatic conditions or other

natural physical systems or functions in the world or any part thereof, and shall also include harm as that expression is defined in the Environmental Protection Act 1990;

“legal requirement”

means, in relation to a relevant person, any of the following:

- (a) any enactment to the extent that it applies to the relevant person;
- (b) any regulation made by the Council or the Commission of the European Communities to the extent that it applies to the relevant person or a decision taken by the said Commission which is binding on the relevant person to the extent that it is so binding;
- (c) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within (a) or (b) above to have effect in a way that is different to that in which it previously had effect;
- (d) any direction of a competent authority other than, insofar as it applies to the Licensee, the Authority (except in the exercise of its powers under paragraph 4 of Condition 16 of the Transmission System Operator Licence or successor paragraph) or the Department;

“relevant change of law” means any of the following:

- (a) the application to the power procurement manager of any legal requirement which did not previously so apply or the change of any legal requirement relating to the Power Procurement Business (including any such legal requirement ceasing to apply, being withdrawn or not being renewed);
- (b) a change of the United Kingdom Plan, as it applies to Northern Ireland, for the reduction of emissions, made by the Secretary of State on 20 December 1990 pursuant to section 3(5) of the Environmental Protection Act 1990 (as it shall have been amended, supplemented or replaced from time to time); and
- (c) the application to any generator of any legal requirement which did not previously so apply or the change of any legal requirement relating to that generator (including any such legal requirement ceasing to apply, being withdrawn or not being renewed) which has the effect of increasing the cost of electricity purchased by the power procurement manager,

other than in relation to:

- (i) corporation tax (or any other tax of a similar nature replacing corporation tax on profits or gains); or
- (ii) Value Added Tax (save to the extent that the generator is not entitled to credit for the same as input tax under section 14 of the Value Added Tax Act 1983);

save to the extent that the rate, incidence or basis of or other provisions applicable to such tax differ as between one case and another, by reason of considerations or matters relating to harm to the environment so as to result in the imposition of tax or costs at a greater level or higher amount, as between one case and another, than would otherwise be the case.

For the above purposes, a tax shall be treated as charged, levied, imposed or payable in relation to or because of considerations or matters relating to harm to the environment, or differences as between one case and another shall be treated as applying by reason of considerations or matters relating to harm to the environment, if in all the circumstances it may reasonably be considered that considerations or matters relating to harm to the environment were a material factor in relation to the charging, levying or imposition or making provision for payment of such tax or the making of provision for such difference;

“relevant person” means a generator or the Licensee; and

“tax” means any tax, duty, impost or levy of any nature whatsoever and wherever and whenever charged, levied or imposed.

8. **Modification of Generating Unit Agreements, Power Station Agreements and/or the Grid Code**

No longer used.

9. **Purpose of PPB Amount Restriction Condition**

It is acknowledged that the purpose of this Annex 3 is to ensure that, subject to the conditions contained in paragraphs 1 to 8, and having regard to other sources of revenue available to the Licensee (and the costs to be recovered therefrom), the Licensee is and shall at all times be able to recover, the aggregate payments made by the Licensee from time to time under the Varied Ballylumford Agreements in the manner described in a letter from the Authority to the predecessor company dated 27 July 2000.

Schedule 3: PPB Price Control Allowances and Incentive Targets and Weights

Schedule 3 - Part A: Price Control Allowances

The following allowances are agreed for PPB and are expressed in 2014/15 (October 2014) prices:

	2015/16	2016/17	2017/18
PPB_DEP_t	£0.292m	£0.292m	£0.293m
PPB_RTN_t	£0.044m	£0.028m	£0.012m