

SUPPLY COMPETITION CODE

(Designated by the Department of Economic Development  
as at 31 March 1992  
as a condition of licences  
granted under Article 10  
of the Electricity (Northern Ireland) Order 1992  
and modified by the  
Director General of Electricity Supply for Northern Ireland  
on 13 May 1993, 1 July 1999, 13 March 2000 and 28 September 2000)

DEPARTMENT OF ECONOMIC DEVELOPMENT

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1. Name

This Code shall be known as the “Supply Competition Code”.

2. Effective Date

This Code shall come into force on 1 April 1992.

3. Definitions

3.1 In this Code, except where the context otherwise requires:

“authorised transmission area”: means the area from time to time comprised in paragraph 1 of Schedule 1 of the transmission licence;

“CHP”: means combined heat and power;

“CHP generation set”: means a generation set used for the simultaneous generation of usable heat and power in a single process at high efficiency;

“Coal products”: means any substances produced directly or indirectly from coal;

“Department”: means the Department of Economic Development;

“Directive” means Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity;

“Director”: means the Director General of Electricity Supply for Northern Ireland;

“eligible customer”: means any person supplied or requiring to be supplied with electricity at single premises where the demand and/or consumption of electricity for such single premises is greater than or equal to the eligibility limit;

“eligibility limit” means as of 1 October 2000:

- (i) a maximum demand for electricity greater than or equal to 1 megawatt; and/or
- (ii) an expected normal annual consumption of electricity of no less than 1.33 gigawatt hours;

or such greater threshold amounts as shall be specified by the Department as a result of a change in the average Community share defining the degree of market opening as notified by the Commission in the Official Journal of the EC pursuant to Article 19 of the Directive;

“fossil fuel”: means coal, coal products, peat, lignite, crude liquid petroleum or petroleum products;

“generation licence”: means a licence granted under Article 10(1)(a) of the Order;

“generation set”: means any plant or apparatus for the production of electricity;

“generator”: means the holder of a generation licence;

“Interim Settlement Agreement” means an agreement of that title in the form approved by the Director under the provisions of Condition 24 of Part III of the transmission licence and entered into between Northern Ireland Electricity plc and any authorised electricity operator;

“natural gas” : has the same meaning as in the Energy Act 1976;

“non-fossil fuel generation set” : means a generation set which is fuelled or driven principally otherwise than by a fossil fuel or by natural gas;

“Order”: means the Electricity (Northern Ireland) Order 1992, as from time to time modified, extended or re-enacted;

“petroleum products” : has the same meaning as in the Energy Act 1976;

“power procurement manager”: means the transmission licensee when it is performing or required to perform its obligations as power procurement manager under its transmission licence;

“power purchase agreement”: means a contract for the provision to the power procurement manager of the whole or any part of the available capacity and/or the sale or other disposal to the power procurement manager of the whole or any part of the output of a generation set or combination of generation sets;

“public electricity supply licence”: means a licence granted under Article 10(1)(c) of the Order;

“public electricity supply licensee”: means the holder of the public electricity supply licence;

“relevant exempt self supplier”: means a relevant exempt self supplier within the meaning of the Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) 1999;

“relevant licensed supplier”: means a person authorised by a licence granted under Article 10(1)(c) or 10(2) of the Order;

“relevant supplier”: means a relevant licensed supplier or a relevant exempt self supplier;

“single premises”: means any premises or, in the case of sites or buildings in multi-occupation, any area in respect of which the supply of electricity is or is to be separately metered and the occupier individually invoiced by any relevant supplier;

“total system”: means the transmission system and distribution system of Northern Ireland Electricity plc, taken together;

“transmission licence”: means the licence granted under Article 10 (1)(b) of the Order to Northern Ireland Electricity plc;

“transmission licensee”: means the holder of the transmission licence; and

“year”: means a calendar year.

- 3.2 Unless the context otherwise requires, any agreement or any deed or other instrument shall be construed as a reference to that agreement, deed or other instrument as the same may have been, or may from time to time be, amended, varied, supplemented or novated.

4. Modification

This Code may be modified in accordance with conditions 5 and 7 of Part III of the transmission licence and conditions 19 and 20 of any generation licence.

5. Obligations of generators

5.1 Save as provided in paragraph 5.2 below, all generators shall perform their obligations under power purchase agreements to which they are a party in relation to the whole of the electricity generation capacity and the output of their generation sets.

5.2 Paragraph 5.1 above does not apply to that part of the electricity generation capacity and output of a generator's generation sets that is not subject to a power purchase agreement if the generator is party to and performing its obligations under an Interim Settlement Agreement in relation to that capacity.

6. Obligations of relevant suppliers

Save as provided in paragraph 7 below, all relevant suppliers shall purchase or otherwise acquire their total requirements for electricity from the power procurement manager provided that, in calculating such total requirements, no account shall be taken of electricity which a relevant supplier generates himself where the relevant supplier, as respects that electricity, satisfies the relevant condition. In this paragraph “relevant condition” has the same meaning as in paragraph D.2(a) of Schedule 2 to the Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) 1992, save that the reference therein to “person in question” shall be treated as a reference to “relevant supplier in question”.

7. Exceptions to paragraph 6

Notwithstanding paragraph 6 above, suppliers of electricity and relevant suppliers, other than the public electricity supply licensee ( except in circumstances where paragraph 10 applies), shall be permitted to purchase or otherwise acquire electricity other than from the power procurement manager where:

- (a) The relevant supplier purchases or otherwise acquires such electricity:
  - (i) For the purpose of supplying it to eligible customers; or
  - (ii) in circumstances where paragraph 10 applies; and
- (B) The relevant supplier is a party to an Interim Settlement Agreement.

8. Definition of Eligibility limit”

8.1 For the purpose of establishing the eligibility limit, the following bases of assessment shall be applied:-

- (a) For single premises occupied by existing customers:
  - (i) the maximum demand for electricity in megawatts shall be calculated by taking the average of the maximum monthly demands at such single premises, whether supplied by one or more relevant suppliers, in the three months of highest maximum demand on the total system over the most recent twelve month period for which figures are available; and
  - (ii) the expected normal annual consumption of electricity in gigawatt hours shall be calculated by reference to the total actual consumption at such single premises over the most recent twelve month period for which figures are available.
- (b) For single premises occupied by a new customer:
  - (i) the maximum demand for electricity in megawatts shall be calculated by reference to the maximum monthly demand that might reasonably be expected in the three months of highest maximum demand on the total system over a twelve month period at premises having similar demand characteristics to the single premises occupied by such new customer; and
  - (ii) the expected normal annual consumption of electricity in gigawatt hours shall be calculated by reference to the total consumption that a customer might reasonably be expected to have consumed over a twelve month

period at premises having similar consumption characteristics to the single premises occupied by the new customer.

- (c) In calculating (a) and (b) above, the relevant supplier shall take into account any plans, alterations, projects or proposals (made by the customer or a local authority or otherwise) that will have the effect of increasing or decreasing the level of demand and/or annual consumption during the twelve months following commencement of supply of electricity to the single premises, provided that the relevant supplier has been notified prior to entering into the contract for the supply of electricity to such premises of any such plans, alterations, projects or proposals.
- (d) In calculating (a) and (b) above, the relevant supplier shall also be entitled to make the following assumptions:
  - (i) that all supplies of electricity are made under normal operating conditions; and
  - (iii) that, if the demand or the consumption of a single premises has not been recorded for any month, the relevant figures shall be the same as the figures for demand or consumption during that month at premises with similar demand or consumption characteristics to the premises occupied (or to be occupied) by the customer.

8.2 Subject to paragraph 8.3, if at any time during the period for which the eligibility limit is applicable, the relevant demand in megawatts or the annual consumption of electricity, at any single premises to which a supply is given by the relevant supplier (in each case calculated as above) should fall below the eligibility limit the relevant supplier may, notwithstanding such fact, continue to supply such premises without being in breach of this Code until such time as:

- (a) any contract existing between the relevant supplier and the customer occupying such premises is determined by effluxion of time or otherwise; or
- (b) the supply arrangements between the relevant supplier and the customer occupying such premises shall for any other reason be terminated.

8.3. Save where the Director otherwise agrees, if (having regard to the bases of assessment referred to in sub-paragraph 8.1(b)) the relevant demand in megawatts or the annual consumption in gigawatt hours of a customer who was a new customer at the time of commencement of supply by the relevant supplier should, in the first twelve-month period for which figures are available, prove to be less than was reasonably expected of such customer and to fall to or below the eligibility limit, the relevant supplier shall cease to supply such customer under any arrangements relating to supply to eligible customers.

8.4 For the purpose of this Code occupation of any premises by an affiliate of a person shall be deemed to be occupation by that person.

8.5 In this paragraph 8:

“existing customer” means any person occupying premises to which a supply is being given by the relevant supplier which person (or any affiliate or related undertaking of such person) and premises have been supplied for a clear period of at least 12 months prior to the date on which application for supply by the licensee is made;

“new customer” means any person supplied or applying for a supply to premises other than an existing customer.

9. Exception to Paragraph 5

The provisions of paragraph 5.1 above shall not apply to generate electricity principally by:

- (a) CHP generation sets; or
- (b) non-fossil fuel generation sets,

provided that, in the case of a generator who is putting electricity into the total system, the generator is a party to an Interim Settlement Agreement.

10. Further exception to Paragraph 6

10.1 Notwithstanding, paragraph 6 above, relevant suppliers shall be permitted to purchase or otherwise acquire electricity other than from the power procurement manager procurement manager where the relevant supplier purchases or otherwise acquires its total requirements for electricity from generators who have generated such electricity principally by:

- (a) CHP generation sets where the relevant supplier purchases or otherwise acquires such electricity for supply to a Consumer provided that, in the case relevant supplier who is taking electricity off the total system, that relevant supplier is a party to an Interim Settlement Agreement; or
- (b) non-fossil fuel generation sets where the relevant supplier purchases or otherwise acquires such electricity for supply to other than an eligible customer.

10.2 In paragraph 10.1(a), “Consumer” means:

- (a) A single consumer (the “qualifying consumer”) who occupies premises which are on the same site as the premises where the CHP generation set at those premises; or
- (b) One or more persons who, with the qualifying consumer, from a qualifying group, each of whom occupies premises which are on the same site, receive their

electricity supply from the CHP generating set and consume all the electricity provided to those premises from the CHP generation set at those premises.

10.3 For the purposes of paragraphs 10.2(a) and (b) above, “premises” shall be treated as on the same site as each other if they are:

- (a) the same premises;
- (b) immediately adjoining each other; or
- (c) separated from each other only by a road, railway or water course or by other premises occupied by the relevant supplier or the qualifying consumer or by any other person who together with the qualifying consumer forms a qualifying group.

10.4 For the purpose of paragraph 10.2(b) above, one or more persons form a “Qualifying group” if, being bodies corporate, they fall within the definition of affiliate or related undertaking or, if not being bodies corporate, they are controlled by the qualifying consumer or are controlled by the same entity as the qualifying consumer where:-

“Affiliate” in relation to any person any holding company or subsidiary of that person or any subsidiary of a holding company of that person, in each case within the meaning of Article 4 of the Companies (Northern Ireland) Order 1986;

“control” means having control of such entity in terms of management and/or funding. If such entity is the responsibility of a government or local government authority, any entity which is also the responsibility of the same authority shall be deemed to be controlled by the same entity;

“Related undertaking” in relation to any person means any undertaking in which that person has a participating interest as defined by Article 268 of the Companies (Northern Ireland) Order 1986.