

ANNEX 5: Proposed drafting of modifications to the AES Ballylumford (Power) Ltd generation licence

Condition 1

~~“Intermediary”~~ has the meaning given in the Single Electricity Market Trading and Settlement Code”

Intermediary Agreement means the agreement entered into by the Licensee pursuant to Condition 18.

Condition 14: Single Electricity Market Trading and Settlement Code

1 The Licensee shall, in respect of any generation set which is owned or operated by it, either:

(a) be a party to and, in so far as applicable to it in its capacity as the holder of a licence under Article 10(1)(a) of the Order, comply with the Single Electricity Market Trading and Settlement Code; or

(b) with the prior consent of the Authority, enter into an agreement to appoint an appropriate person to act as an Intermediary under the Single Electricity Market Trading and Settlement Code in respect of any generation set (as owned or operated by the Licensee) specified in the agreement; or

(c) comply with the requirements of Condition 18.

2. The Licensee shall ensure that the person appointed as an Intermediary under an agreement entered into in accordance with paragraph 1(b):

(a) becomes a party to the Single Electricity Market Trading and Settlement Code; and

(b) complies with its obligations, in relation to any generation set which is specified in the agreement, in the capacity of Intermediary under the Single Electricity Market Trading and Settlement Code.

3.In this Condition:

Intermediary has the meaning given in the Single Electricity Market Trading and Settlement Code.

Condition 17: Cost-Reflective Bidding in the Single Electricity Market

1. The Licensee shall ensure that the price components of all Commercial Offer Data submitted to the Single Market Operation Business under the Single Electricity Market Trading and Settlement Code, whether by the Licensee itself or by any person acting on its behalf in relation to a generation set for which the Licensee is the licensed generator, are cost-reflective.
2. For the purposes of this Condition, the price component of any Commercial Offer Data shall be treated as cost-reflective only if, in relation to each relevant generation set, the Schedule Production Cost related to that generation set in respect of the Trading Day to which the Commercial Offer Data submitted by or on behalf of the Licensee apply is equal to the Short Run Marginal Cost related to that generation set in respect of that Trading Day.
3. For the purposes of paragraph 2, the Short Run Marginal Cost related to a generation set in respect of a Trading Day is to be calculated as:
 - a. the total costs that would be attributable to the ownership, operation and maintenance of that generation set during that Trading Day if the generation set were operating to generate electricity during that day;

minus
 - b. the total costs that would be attributable to the ownership, operation and maintenance of that generation set during that Trading Day if the generation set was not operating to generate electricity during that day,

the result of which calculation may be either a negative or a positive number.
4. For the purposes of paragraph 3, the costs attributable to the ownership, operation or maintenance of a generation set shall be deemed, in respect of each relevant cost-item, to be the Opportunity Cost of that cost-item in relation to the relevant Trading Day.
5. The Authority may publish and, following consultation with generators and such other persons as it considers appropriate, from time to time by direction amend, a document to be known as the Bidding Code of Practice, which shall have the purposes of:
 - a. defining the term Opportunity Cost;
 - b. making provision, in respect of the calculation by the Licensee and other generators of the Opportunity Cost of specified cost-items, for the treatment of:
 - i. the costs of fuel used by generators in the generation of electricity;
 - ii. the value to be attributed to credits issued under the Emissions Trading Scheme established by the European Commission;
 - iii. (variable operational and maintenance costs;
 - iv. start-up and no load costs; and
 - v. any other costs attributable to the generation of electricity; and
 - c. setting out such other principles of good market behaviour as, in the opinion of the Authority, should be observed by the Licensee and other generators in carrying out the activity to which paragraph 1 refers.

6. The Licensee shall, in carrying out the activity to which paragraph 1 refers, act so as to ensure its compliance with the requirements of the Bidding Code of Practice.
7. The Authority may issue directions to the Licensee for the purpose of securing that the Licensee, in carrying out the activity to which paragraph 1 refers, complies with the requirements of this Condition and of the Bidding Code of Practice, and the Licensee shall comply with any such directions.
8. The Licensee shall retain each set of Commercial Offer Data, and all of its supporting data relevant to the calculation of the price component of that Commercial Offer Data, for a period of at least four years commencing on the date on which the Commercial Offer Data is submitted to the Single Market Operation Business.
9. The Licensee shall, if requested to do so by the Authority, provide the Authority with:
 - a. a reasoned explanation of its calculations in relation to any Commercial Offer Data; and
 - b. supporting evidence sufficient to establish the consistency of that data with the obligations of the Licensee under this Condition.
10. In any case in which Commercial Offer Data are submitted to the Single Market Operation Business which are not consistent with the Licensee's obligation under paragraph 1 of this Condition, the Licensee shall immediately inform the Authority and provide to the Authority a statement of its reasons for the Commercial Offer Data submitted.
11. The Licensee shall by 1 June in each year submit to the Authority a certificate, signed by at least one director on behalf of the board of directors of the Licensee, to confirm that during the period of twelve months ending on the preceding 31 March:
 - a. it has acted independently in relation to all submissions of Commercial Offer Data that have been made, by it or on its behalf, under the Single Electricity Market Trading and Settlement Code; and
 - b. no such submissions made by it or on its behalf have been co-ordinated with any other submissions made by or on behalf of any other party to the Code.
12. The provisions of paragraphs 1 to 11 shall not apply in respect of any generation set in relation to which the Power Procurement Business is, in accordance with an Intermediary Agreement with the Licensee, acting as an Intermediary under the Single Electricity Market Trading and Settlement Code.
13. This Condition shall cease to have any effect from the date determined by the Authority subject to any transitional arrangements which the Authority may direct and without prejudice to the continuing enforceability of any rights or obligations which may have accrued or otherwise fallen due for performance prior to that date (including any requirement to comply with the direction of the Authority issued prior to that date).
14. In this Condition:

Bidding Code of Practice	means the document of that title published by the Authority in accordance with paragraph 5, as it may be amended from time to time.
Commercial Offer Data	has the meaning given to it in the Single Electricity Market Trading and Settlement Code, as it may be amended from time to time.
Intermediary Agreement	means the agreement entered into by the Licensee pursuant to Condition 18.
Opportunity Cost	shall have the meaning set out in, and the value calculated in accordance with, the terms of the Bidding Code of Practice.
Schedule Production Cost	has the meaning given to it in the Single Electricity Market Trading and Settlement Code, as it may be amended from time to time.
Short Run Marginal Cost	means certain costs attributable to the ownership, operation and maintenance of a generation set, as calculated in accordance with paragraph 3 of this Condition.
Single Market Operation Business	has the meaning given to it in the market operator licence for Northern Ireland.
Trading Day	has the meaning given to it in the Single Electricity Market Trading and Settlement Code, as it may be amended from time to time.

Condition 17a: Balancing Market Principles Code of Practice

1. The Licensee shall ensure that, in formulating and submitting Commercial Offer Data to the Single Market Operation Business in the Balancing Market under the Single Electricity Market Trading and Settlement Code (whether by the Licensee itself or by any person acting on its behalf in relation to a generation set for which the Licensee is the licensed generator), it acts so as to ensure its compliance with the Balancing Market Principles Code of Practice.
2. The Authority shall publish and, following consultation with the holders of Generation Licences and such other persons as the Authority considers appropriate, from time to time by direction amend, a document to be known as the Balancing Market Principles Code of Practice, which:
 - (a) shall apply to such categories of Commercial Offer Data submitted into the Balancing Market as may be specified in the Code of Practice from time to time;
 - (b) shall make such provision as appears requisite to the Authority for the purpose of securing that such Commercial Offer Data are cost-reflectiveand the Authority may elect to perform the functions conferred by this paragraph jointly with the Commission for Energy Regulation.
3. The Authority may issue directions to the Licensee for the purposes of securing that the Licensee, in carrying out the activity to which paragraph 1 refers, complies with this Condition and with the Code of Practice, and the Licensee shall comply with such directions.
4. The Licensee shall retain records of each set of Relevant Commercial Offer Data, and all of its supporting data relevant to the calculation of the components of such Relevant Commercial Offer Data, for a period of at least four years commencing on the date on which the relevant Commercial Offer Data are submitted to the Single Market Operation Business.
5. The Licensee shall, if requested to do so by the Authority, provide the Authority with:
 - (a) a reasoned explanation of its calculations in relation to any Relevant Commercial Offer Data; and
 - (b) supporting evidence sufficient to establish the consistency of those Relevant

Commercial Offer Data with the obligations of the Licensee under this Condition and the Code of Practice.

6. In any case in which Relevant Commercial Offer Data are submitted to the Single Market Operation Business which are not consistent with the Licensee's obligation under paragraph 1 of this Condition, the Licensee shall immediately inform the Authority and provide to the Authority a statement of its reasons for the Relevant Commercial Offer Data submitted.
7. The Licensee shall by 1 June in each year submit to the Authority a certificate, signed by at least one director on behalf of the board of directors of the Licensee, to confirm that during the period of twelve months ending on the preceding 31 March:
 - (a) it has acted independently in relation to all submissions of Relevant Commercial Offer Data that have been submitted, by it or on its behalf, under the Single Electricity Market Trading and Settlement Code; and
 - (b) no such submissions made by it or on its behalf have been co-ordinated with any other submissions made by or on behalf of another party to the Single Electricity Market Trading and Settlement Code.
8. The provisions of paragraphs 1 to 7 shall not apply in respect of any generation set in relation to which the Power Procurement Business is, in accordance with an Intermediary Agreement with the Licensee, acting as an Intermediary under the Single Electricity Market Trading and Settlement Code.
9. The provisions of this Condition (other than those of this paragraph and paragraph 10 below which shall come into immediate effect) shall come into effect on such day, and subject to such transitional arrangements, as the Authority may by direction appoint. Different days may be so appointed for different provisions and for different purposes.

9. In this Condition:

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| Balancing Market | has the meaning given to it in the Single Electricity Market Trading and Settlement Code, Part B; |
| Balancing Market Principles Code of Practice or Code of Practice | means the document of that title published by the Authority in accordance with |

paragraph 2, as it may be amended from time to time in accordance with the provisions of that paragraph;

Commercial Offer Data

has the meaning given to it in the Single Electricity Market Trading and Settlement Code as it may be amended from time to time;

Relevant Commercial Offer Data

means Commercial Offer Data falling within the category specified in the Code of Practice; and

Single Market Operation Business

has the meaning given to it in Northern Ireland Market Operator Licence.

Condition 18: Intermediary Agreement

1. The Licensee shall, in conjunction and co-operation with the Power Procurement Business, prepare and seek to agree with the Power Procurement Business the terms of an agreement between them to be known as an Intermediary Agreement.
2. The Authority may:
 - a. in default of agreement between the Licensee and the Power Procurement Business as to the terms of an Intermediary Agreement, determine the form and content of that agreement; or
 - b. where the Licensee and the Power Procurement Business agree the terms of the Intermediary Agreement, approve that agreement subject to such modifications as the Authority may consider appropriate.
3. The Authority may, by a direction given in writing, direct the Licensee to enter into any Intermediary Agreement which has been determined or approved by the Authority in accordance with paragraph 2, and the Licensee shall comply with that direction by any date that may be set out therein.
4. The Licensee shall at all times comply with any Intermediary Agreement entered into by it in accordance with this Condition.
5. For the purposes of paragraphs 1 to 4, an Intermediary Agreement:
 - a. shall be a contractually-binding agreement designed to govern the relationship between the Licensee and the Power Procurement Business in respect of the Power Procurement Business acting as an Intermediary in relation to the agreements specified at Schedule 2, for so long as such agreements remain extant;
 - b. shall specify the categories and detailed descriptions of data to be provided by the Licensee to the Power Procurement Business to enable the Power Procurement Business to comply with its obligations under **Condition 57a (Balancing Market Principles Code of Practice)** ~~Condition 57 (Cost-Reflective Bidding in the Single Electricity Market)~~ of the NIE Energy Supply Licence in respect of generation sets which are the subject of the agreements specified at Schedule 2;
 - c. shall require that the Licensee provides the data referred to in sub-paragraph (b) to the Power Procurement Business in a form which is both timely and accurate; and
 - d. shall make such further provision as may be necessary or expedient to ensure that:
 - i. the Power Procurement Business is able to comply with its obligations under ~~Condition 57 (Cost-Reflective Bidding in the Single Electricity Market)~~ **Condition 57a (Balancing Market Principles Code of Practice)** of the NIE Energy Supply Licence; and
 - ii. (ii) the Licensee and the Power Procurement Business are able to comply with their respective obligations under their licences, ~~and the Single~~

Electricity Market Trading and Settlement Code and the Capacity Market Code,

in respect of generation sets which are the subject of the agreements specified at Schedule 2,

but may not make any provision which has the effect of increasing the liability or limiting the rights – in either case as contained in the Intermediary Agreement or any agreement specified at Schedule 2 – of a party to the Intermediary Agreement other than where it is, in the opinion of the Authority, reasonable in all the circumstances for such a provision to be made in relation to that party.

6. The Licensee shall from time to time, in conjunction and co-operation with the Power Procurement Business, review the terms and operation of an Intermediary Agreement, and may following that review propose any amendments to an Intermediary Agreement that it considers appropriate.
7. Any amendment that the Licensee proposes to make to an Intermediary Agreement shall, unless the Intermediary Agreement otherwise provides, require to be submitted to the Authority for its approval and, if the Authority approves that amendment, shall be given effect in the Intermediary Agreement.
8. The provisions of this Condition inserted (or, as the case may be, removed) by virtue of the decision of the Authority dated [#] shall come into (or, as the case may be, continue to have) effect on (or, as the case may be, until) such day, and subject to such transitional arrangements as the Authority may by direction appoint. Different days may be so appointed for different provisions and for different purposes.
9. In this Condition:

Capacity Market Code has the meaning given to that term in the Transmission System Operator Licence.

Condition 19: Capacity Market Code

1. The Licensee shall, in respect of any generation set which is owned or operated by it, either:
 - (a) be a party to, and comply with, the Capacity Market Code in so far as applicable to it in its capacity as the holder of a licence under Article 10(1)(a) of the Order; or
 - (b) with the prior consent of the Authority, enter into an agreement to appoint an appropriate person to act as an Intermediary under the Capacity Market Code in respect of any generation set (as owned or operated by the Licensee) specified in the agreement; or
 - (c) comply with the requirements of Condition 18.
2. The Licensee shall ensure that the person appointed as an Intermediary under an agreement entered into in accordance with paragraph 1(b) insofar as applicable to it:
 - (a) becomes a party to the Capacity Market Code; and
 - (b) complies with its obligations, in relation to any generation set which is specified in the agreement, in the capacity of Intermediary under the Capacity Market Code.
3. The provisions of this Condition (other than those of this paragraph and paragraph 4 below which shall come into immediate effect) shall come into effect on such day, and subject to such transitional arrangements, as the Authority may by direction appoint. Different days may be so appointed for different provisions and for different purposes.

4. In this Condition:

Capacity Market Code	has the meaning given to that term in the Transmission System Operator Licence; and
Intermediary	has the meaning given to that term in the Capacity Market Code.