

DRAFT ELECTRICITY (SINGLE WHOLESALE MARKET) (NORTHERN IRELAND) ORDER 2007

EXPLANATORY MEMORANDUM

INTRODUCTION

The above draft Order is being made under the Northern Ireland (Miscellaneous Provisions) Act 2006 and is subject to affirmative resolution.

The Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment (the "Department") to assist the reader in understanding the draft Order. It does not form part of the draft Order.

BACKGROUND AND POLICY OBJECTIVES

There are currently geographically distinct markets for the sale of wholesale electricity in Northern Ireland ("NI") on the one hand and the Republic of Ireland ("ROI") on the other. These two markets are governed by separate legislative provisions and are constituted by separate contractual and regulatory arrangements. In November 2004, the Department in NI and the Department of Communications, Marine and Natural Resources in ROI ("DCMNR") published a paper entitled "All Island Energy Market Development Framework" setting out a joint commitment to the establishment of unified markets in NI and ROI for electricity and gas and setting out a schedule for implementation of these proposals. The first step proposed by this paper was the introduction of a unified electricity market which was considered to require the following main elements:

- (a) The removal of physical constraints in the networks linking the electricity networks in NI and ROI, in order to facilitate cross-border trading in electricity;
- (b) The establishment of a single electricity transmission system for NI and ROI, operated by a single system operator; and
- (c) The establishment of a single market for the sale by electricity generators in NI and ROI and the legacy Power Procurement Business (the "PPB") of NIE plc to suppliers of electricity ("wholesale electricity") in NI and ROI (the "Single Electricity Market" or "SEM"), and measures to ensure effective and co-ordinated regulation of the market.

The draft Order sets out the legislation required to facilitate implementation of element (c) above in accordance with the proposals for the reform of the wholesale electricity market in NI and ROI, as set out in a Memorandum of Understanding (the "MOU") between the United Kingdom Government and the Government of ROI in relation to the establishment and operation of the SEM signed on behalf of the United Kingdom Government on 6 December 2006, and on behalf of the Government of ROI on 5 December 2006.

CONSULTATION

Consultation and engagement of all stakeholders has been a key aspect of the SEM project to date and will continue to be so to ensure that the principles and planned procedures meet with the overall needs of the electricity industry.

The Northern Ireland Authority for Energy Regulation (the "Authority") and the Commission for Energy Regulation in ROI ("CER") have undertaken extensive and ongoing consultations within

the electricity sectors, North and South on details of the SEM proposals. The consultation process has helped to refine the overall policy development.

The All Island Energy Market Development Framework was itself subject to its own consultation process. It received the broad support of the energy sectors in both NI and ROI, including key industrial stakeholders and the CBI NI and IBEC-CBI Joint Business Council.

OPTIONS CONSIDERED

The need to replace the current wholesale trading arrangements in ROI and progress a key all-island energy market policy priority presented the Authority and CER with the chance to maximise the opportunities presented by a larger single market. Two potential options that would meet the Authority's principal obligation to protect the interests of consumers were considered, i.e.:

Option 1: maintain the status quo (the 'do nothing' option);

Option 2: move to a single all-island wholesale trading arrangement now.

FINANCIAL EFFECTS OF THE DRAFT ORDER

There will be no financial implications for the Exchequer arising from the Order.

EUROPEAN CONVENTION ON HUMAN RIGHTS

The provisions of the Order are compatible with the Convention on Human Rights.

EQUALITY IMPACT ASSESSMENT (EQIA)

It is not considered that the proposed provisions of the Order will have any differential impact on any of the Section 75 groups. Following completion of the EQIA screening form it was not considered necessary to complete a full EQIA.

SUMMARY OF THE REGULATORY IMPACT

A final regulatory impact assessment has been completed by the Department and can be viewed on the Departmental website on www.detini.gov.uk

MAIN ELEMENTS OF THE DRAFT ORDER

The draft Order is in twelve articles and four schedules. Articles 1 and 2 are introductory.

Articles 3, 4 and 5 (Licences) make provision for (1) the Department or the Authority to modify the conditions of licences for the generation, transmission or supply of electricity in connection with the SEM, (2) the introduction of a licensing regime in respect of the function of market operator of the SEM, which consists of being responsible pursuant to the trading and settlement code referred to in the MOU for calculating charges and other payments due under that code (the "SEM Operator"), and (3) the Authority to make property arrangements schemes to facilitate the transfer of property, rights and obligations between the owner and the operator of a transmission system for the purposes of implementing the SEM. Further details in relation to the power in respect of property arrangements schemes are provided at Schedule 1.

Articles 6-8 inclusive (The SEM Committee) provide for the establishment of a special committee of the Authority to be known as the Single Electricity Market Committee (the "SEM Committee")

which shall take any decision as to the exercise of certain functions of the Authority, where it considers such functions materially affect or are likely materially to affect the SEM. Schedule 2 (The SEM Committee) provides further details with respect to the SEM Committee, such as its composition and proceedings. Article 8 and Schedule 3 provide powers for officers of the Authority to enter the premises of licence holders in relation to the investigation of licence contraventions.

Articles 9 and 10 (Objectives and duties of the Department, the Authority and the SEM Committee) provide for the imposition of new SEM-related duties on the Department, the Authority and the SEM Committee in carrying out their functions in relation to the SEM.

Articles 11 and 12 (Miscellaneous) clarify the effect of the draft Order on certain agreements between licence holders and provide for certain minor and consequential amendments to be made in accordance with Schedule 4.

COMMENTARY ON ARTICLES

Comments are not given where the wording is self-explanatory.

INTRODUCTORY

Article 2: Interpretation

Article 2 defines certain key terms used throughout the draft Order, in particular, “the SEM”. “The SEM” is defined as the Single Electricity Market, being the new arrangements in NI and ROI which are designed to promote the establishment and operation of a single competitive wholesale electricity market in NI and ROI and are described in broad terms in the MOU.

LICENCES

Article 3: Power to modify licence conditions in connection with SEM arrangements

Article 3 allows the Department after consultation with the Authority, or the Authority with the consent of the Department, to modify the licences of market participants without their consent to the extent considered necessary or expedient for the purpose of implementing or facilitating the operation of the SEM or in consequence thereof. The purpose of this Article is to provide for the introduction of new contractual and licensing arrangements relating to the trading of wholesale electricity in NI and ROI in place of the existing wholesale electricity trading arrangements in NI and to facilitate the appropriate operation of those arrangements. These arrangements will be implemented in part by requiring market participants to become party to new contracts in place of certain existing contracts and in part by requiring the amendment of certain existing contracts.

Before making modifications using this power, the Department or the Authority must consult the holder of any licence being modified, and such other persons as the Department or the Authority consider appropriate. In addition, where the Department or the Authority make any modifications under Article 3, they must publish such modifications in such manner as they consider appropriate. There is a time limit on the power to modify licence conditions under this Article, being the end of the period of 24 months beginning on the day on which this Article comes into operation.

Article 4: Licensing of SEM Operator

The purpose of Article 4 is to establish a new licensable activity of acting as SEM Operator, so as to enable the independent licensing and regulation of the person or persons who administer the

SEM trading arrangements. In particular, the SEM Operator's responsibility will include responsibility, pursuant to the trading and settlement code referred to in the MOU, for the calculation of charges and other payments due under that code. It is therefore this function which forms the basis of the prohibited activity. Undertaking the function of SEM Operator without authorisation by way of licence or exemption will be a new criminal offence.

Article 5: Property arrangements schemes in respect of certain licence holders

Article 5 provides for Schedule 1, which makes provision for property arrangements schemes in respect of certain licence holders, to have effect.

Schedule 1 provides power to the Authority to make property arrangements schemes to enable the transfer of property, rights or liabilities between the owner and the operator of a transmission system for the purposes of implementing the SEM as provided for in the MOU on the application of either or both of the owner and operator.

THE SEM COMMITTEE

Article 6: The SEM Committee

Article 6 and Schedule 2 establish a special committee of the Authority to take any decision as to the exercise of certain of the Authority's functions in circumstances provided by the draft Order. In particular, any decision as to the exercise of a relevant function of the Authority in relation to a "SEM matter" must be taken on behalf of the Authority by the SEM Committee, and the Authority is required to give effect to any decision so taken. A "relevant function" here means: (a) a function under Part II of the Electricity (Northern Ireland) Order 1992 No. 231 (N.I. 1) (the "Electricity Order"); (b) a function under the Energy (Northern Ireland) Order 2003 No. 419 (N.I. 6) (the "Energy Order") which relates to electricity; (c) a function under the Electricity Order 1992 (Amendment) Regulations (Northern Ireland) 2005 (SR 2005/335); and a function under Article 3 of the draft Order, other than a function specified as not being a relevant function under this Article (for example, the determination of disputes under Article 26 and the fixing of the maximum resale price of electricity under Article 47 of the Electricity Order are not relevant functions for the purposes of this draft Order). A matter will be a "SEM matter" if the SEM Committee determines that the exercise of a relevant function of the Authority in relation to that matter materially affects or is likely materially to affect the SEM.

Schedule 2 has effect in relation to the SEM Committee and provides details of the following (among other things): the composition of the SEM Committee and the terms of appointment and remuneration of its members; the establishment of sub-committees; the regulation of its proceedings; meeting requirements; decision making and voting procedures; and the delegation of its functions.

Article 7: Working arrangements for the SEM

Article 7 requires the Authority to publish a statement relating to the carrying out of the SEM Committee functions and describing how it will work together with CER in the exercise of their respective statutory functions in relation to the SEM.

Article 8: Powers of entry

Article 8 provides for Schedule 3 to have effect where the SEM Committee determines that there are reasonable grounds for suspecting that a licence holder may be contravening or may have contravened any condition of his licence and that such contravention would materially affect, or is likely materially to affect the SEM.

Schedule 3 provides powers for officers of the Authority to enter premises of a licence holder, both with and without a warrant, where the SEM Committee has made a determination under Article 8, and sets out various new offences for failure to co-operate with investigations of the Authority in this regard.

OBJECTIVES AND DUTIES OF THE DEPARTMENT, THE AUTHORITY AND THE SEM COMMITTEE

Article 9: The principal objective and general duties of the Department, the Authority and the SEM Committee in carrying out their functions in relation to the SEM

Article 9 introduces a new set of duties which will apply to the Department in carrying out its electricity functions in relation to matters which it considers materially affect or are likely to materially affect the SEM; to the Authority in giving effect to any decision of the SEM Committee; and to the SEM Committee in taking any decision as to the exercise of a relevant function of the Authority. The SEM duties consist of a principal objective, followed by a suite of subsidiary and additional duties.

The principal objective of the Department, the Authority and the SEM Committee in carrying out their electricity functions in relation to SEM matters is to protect the interests of consumers of electricity in NI and ROI supplied by licence holders or persons authorised by exemption under Part II of the Electricity Order or any corresponding provision of ROI law (for the purposes of this Article, "authorised persons"), wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the sale or purchase of electricity through the SEM.

Article 9(2) requires the Department, the Authority and the SEM Committee to carry out their electricity functions in the manner they consider is best calculated to further the principal objective, having regard to a number of factors, including the need to secure that all reasonable demands for electricity in NI and ROI are met; the need to secure that authorised persons are able to finance their regulated activities; the need to secure co-ordinated regulation of the SEM; the need to ensure transparent pricing in the SEM; and the need to avoid unfair discrimination between consumers in NI and consumers in ROI. In addition, subject to Article 9(2), the Department, the Authority and the SEM Committee are required to carry out their electricity functions in the manner they consider is best calculated to, among other things, promote efficiency and economy on the part of authorised persons; and secure a diverse, viable and environmentally sustainable long-term energy supply in NI and ROI. Further, subject to Article 9(2), the Department, the Authority and the SEM Committee must have regard to the effect on the environment in NI and ROI of activities and the need (where appropriate) to promote the use of energy from renewable sources.

The Department, the Authority and the SEM Committee have an additional duty not to discriminate unfairly between authorised persons or between persons who are applying to become authorised persons.

Further, in carrying out any of their functions in relation to the SEM, the Department, the Authority and the SEM Committee may have regard to the interests of gas consumers in NI and ROI.

Finally, in carrying out their functions in relation to the SEM, the Department, the Authority and the SEM Committee must have regard to principles of best regulatory practice as specified.

Article 10: Exceptions from the general duties

Article 10 disapplies Article 9 of the draft Order in relation to certain functions of the Department and the Authority under the Electricity Order and the Energy Order (broadly, the same functions to which the existing duties of the Department and the Authority under the Energy Order do not apply).

MISCELLANEOUS

Article 11: Effect of this Order on certain agreements

Article 11 provides that the draft Order shall not be a relevant change in law for the purposes of any agreement in force between the holder of a generation licence and any other licence holder which contains provisions relating to a relevant change in law.

Article 12: Minor and consequential amendments

Article 12 provides that the provisions of Schedule 4 are to have effect subject to the minor and consequential amendments specified in that Schedule.

Schedule 4 sets out various minor and consequential amendments to the Electricity Order and the Energy Order.

COMMENCEMENT

Article 1 provides for Articles 1 and 2 to come into operation one week after the day on which the draft Order is made and empowers the Department to bring the remaining provisions of the draft Order into force by order on appointed days.

© Crown Copyright 2007

Printed and published in the U.K. by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament
N3065 2/2007

£3.00