

1990 No. 1859

ELECTRICITY

The Electricity (Non-Fossil Fuel Sources) (England and Wales) (No. 2) Order 1990

<i>Made</i>	- - - -	<i>12th September 1990</i>
<i>Laid before Parliament</i>		<i>18th September 1990</i>
<i>Coming into force</i>	-	<i>29th September 1990</i>

Whereas an order^(a) under section 32 of the Electricity Act 1989^(b) has been made and has had effect in relation to each public electricity supplier in England and Wales;

Now, therefore, the Secretary of State, in exercise of the powers conferred by section 32(1) of the said Act of 1989, and of all other enabling powers, after consultation in accordance with the requirements of the said section 32(1), hereby makes the following Order:-

Citation, commencement and application

1.—(1) This Order may be cited as the Electricity (Non-Fossil Fuel Sources) (England and Wales) (No. 2) Order 1990 and shall come into force on 29th September 1990.

(2) This Order does not apply to Scotland.

Interpretation

2. In this Order—

- (a) references to relevant non-fossil fuel generating stations are references to any such stations which are or may be fuelled or driven otherwise than by nuclear fuel; and
- (b) references to relevant arrangements are references to any arrangements evidence of the making of which is produced to the Director in compliance with article 3 of this Order.

Requirement to make arrangements etc.

3. Each public electricity supplier in England and Wales (whose names are specified in the left-hand column of the Table in Schedule 1 (specified aggregate amounts of non-fossil fuel generating capacity) to this Order) shall, before 30th September 1990, make (in so far as he has not already done so) and produce to the Director evidence showing that he has made such additional arrangements as will secure that, for each period shown in that Table, the aggregate amount of non-fossil fuel generating capacity available to him from relevant non-fossil fuel generating stations will not be less than that specified in the Table in relation to him for that period.

(a) S.I. 1990/263, as amended by S.I. 1990/494.

(b) 1989 c.29.

4.—(1) Where any relevant arrangements—

- (a) provide that the availability to the supplier in question of some or all of the capacity of the relevant non-fossil fuel generating stations is conditional upon the satisfaction of any such requirement as is mentioned in Schedule 2 (conditions precedent) to this Order (whether the requirement in question is described in the terms of that Schedule or in terms to the like effect); and
- (b) result, on the first day of any specified period, in some or all of that capacity not being available to that supplier, by reason of any such requirement not being satisfied as was then due under those arrangements to have been satisfied,

then, in relation to any day during that or any subsequent specified period ascertained in accordance with paragraph (3) of this article, this Order shall have effect as if the relevant aggregate amount specified in relation to that period were the amount specified in relation to that supplier for the period which includes that day in the Table in Schedule 1 to this Order, less (subject to the following proviso) an amount equal to the sum of any capacity whose availability is at that time conditional upon the satisfaction of such requirement or requirements and any capacity which has ceased to be available at that time by reason of the occurrence of any such event or events as are referred to in paragraph (2) of this article:

Provided that the amount so specified shall not be reduced so as to be less than the relevant aggregate amount actually available to that supplier under the relevant arrangements during the period in question.

(2) Where any relevant arrangements—

- (a) provide that some or all of the relevant generating capacity may reduce or cease to be available following the occurrence of any such event as is mentioned in Schedule 3 (termination events) to this Order (whether the event in question is described in the terms of that Schedule or in terms to the like effect); and
- (b) result in some or all of that capacity not being available to that supplier, on any day during any specified period, by reason of the occurrence of any such event,

then the specified period then current shall forthwith terminate and, in relation to any day during any subsequent specified period ascertained in accordance with paragraph (3) of this article, this Order shall have effect as if the relevant aggregate amount specified in relation to that period were the amount specified in relation to that supplier for the period which includes that day in the Table in Schedule 1 to this Order, less an amount equal to the sum of any capacity which has ceased to be available at that time by reason of the occurrence of any such event or events and any capacity whose availability is at that time conditional upon the satisfaction of any such requirement or requirements as are referred to in paragraph (1) of this article, but subject to the proviso contained in that paragraph.

(3) In this article “specified period” means, in relation to any public electricity supplier, each successive period commencing and ending on the dates specified in the Table in Schedule 1 to this Order but so that—

- (a) the first such period shall commence on 1st October 1990 or (where all the arrangements made by the supplier make provision as mentioned in paragraph (1)(a) of this article) on the date on which all applicable requirements mentioned in paragraphs (1) to (6) of Schedule 2 to this Order have been satisfied in respect of any such arrangements;
- (b) on any such day as is mentioned in paragraph (1)(b) of this article there shall be substituted, in place of any specified period that would otherwise have commenced on that day, a period commencing on such day and expiring (subject to paragraphs (3)(d) and (3)(e) of this article) on the day on which the relevant requirement is satisfied either wholly or in part;
- (c) upon the expiry of any specified period ascertained in accordance with this subparagraph or with paragraph (3)(b) of this article, the next specified period shall commence on the following day and shall continue, subject to paragraphs (3)(d) and (3)(e) of this article, until the day on which the relevant requirement is either wholly satisfied or further satisfied in part;
- (d) on any such day as is mentioned in paragraph (2)(b) of this article, the then

- current specified period shall forthwith terminate and shall be followed by a new period commencing immediately upon such termination; and
- (e) any specified period which is current on any of the period end dates specified in the Table in Schedule 1 to this Order shall expire on that date.

Dated 12th September 1990

John Wakeham
Secretary of State for Energy

SCHEDULE 1

Article 3

SPECIFIED AGGREGATE AMOUNTS OF NON-FOSSIL FUEL GENERATING CAPACITY

TABLE

<i>Name of supplier</i>	1	2	3	<i>Period</i> 4	5	6
Eastern Electricity plc	3.99	4.40	8.82	13.86	13.98	14.01
East Midlands Electricity plc	2.62	2.89	5.79	9.10	9.18	9.20
London Electricity plc	2.91	3.22	6.44	10.12	10.21	10.23
Manweb plc	1.69	1.86	3.73	5.87	5.92	5.93
Midlands Electricity plc	2.82	3.12	6.24	9.81	9.90	9.92
Northern Electric plc	1.54	1.70	3.41	5.36	5.41	5.42
NORWEB plc	2.44	2.70	5.41	8.50	8.57	8.59
SEEBOARD plc	2.42	2.67	5.34	8.40	8.47	8.49
Southern Electric plc	3.61	3.99	7.98	12.54	12.65	12.68
South Wales Electricity plc	1.02	1.13	2.25	3.54	3.57	3.58
South West Electricity plc	1.66	1.83	3.67	5.77	5.82	5.83
Yorkshire Electricity Group plc	2.39	2.64	5.28	8.29	8.37	8.38

In this Table—

- (a) period 1 means 1 October 1990 to 31 March 1991; period 2 means 1 April 1991 to 31 March 1992; period 3 means 1 April 1992 to 31 March 1993; period 4 means 1 April 1993 to 31 March 1994; period 5 means 1 April 1994 to 31 March 1995; period 6 means 1 April 1995 to 31 December 1998; and
- (b) capacity amounts are expressed in megawatts (MW).

CONDITIONS PRECEDENT

The requirements referred to in article 4(1)(a) of this Order are-

(1) that planning permission and all necessary consents (including any necessary wayleave consents), easements and rights to enable any relevant non-fossil fuel generating station to be constructed and operated in accordance with and as contemplated by the terms of the relevant arrangements have been granted;

(2) that planning permission and all necessary consents (including any necessary wayleave consents), easements and rights to enable any public electricity supplier in whose authorised area any relevant non-fossil fuel generating station is to be located to comply with his obligations as contemplated by the terms of the relevant arrangements have been granted;

(3) that the operator of any relevant non-fossil fuel generating station or stations has entered into, and there has come into force, an agreement providing for the connection of such station or stations to a system of electric lines and electrical plant operated by a public electricity supplier in whose authorised area any relevant non-fossil fuel generating station is or will be located;

(4) that the operator of any relevant non-fossil fuel generating station holds a licence or has the benefit of an exemption under Part I of the Act authorising him to generate electricity and to convey electricity from the place at which it is generated to the point of delivery for the purposes of the relevant arrangements;

(5) (to the extent that the arrangements relate to a relevant non-fossil fuel generating station whose operator is so required) that the operator of any relevant non-fossil fuel generating station has entered into a pooling and settlement agreement, as required by the licence granted to him under section 6 of the Act, for the purpose of calculating the payments due to or owing by the parties thereto in respect of their production and consumption of electricity;

(6) that there have been satisfactorily completed such procedures and tests as from time to time constitute usual industry standards and practices for commissioning a relevant non-fossil fuel generating station in order to-

- (a) demonstrate that the relevant non-fossil fuel generating station is capable of commercial operation for the purpose of the relevant arrangements;
- (b) establish the external physical conditions outside the control of the operator which are necessary for the operation of such station or which control the amount of electricity produced by the station; and
- (c) establish the operating parameters within which such station can be operated in accordance with practices, methods and procedures which are or should be adopted by a person exercising that degree of judgment, skill, diligence and foresight which would ordinarily and reasonably be expected from a skilled and experienced operator engaged in the business of operating such a station lawfully.

Note: In the above provisions, "the Act" means the Electricity Act 1989.

SCHEDULE 3

TERMINATION EVENTS

The events referred to in article 4(2)(a) of this Order are-

(1) the operator of any relevant non-fossil fuel generating station ceasing for any reason to be authorised by a licence or exemption granted under the Act to generate electricity for the purposes of giving a supply to any premises or enabling a supply to be given;

(2) the operator of any relevant non-fossil fuel generating station defaulting in the performance of any of his material obligations under the relevant arrangements and in the case of a default which is, in the opinion of the relevant public electricity supplier (acting reasonably), capable of remedy continuing to be unremedied at the expiry of 60 days following the date on which the supplier shall have given notice thereof to the operator;

(3) a binding order being made or an effective resolution being passed for the winding up of the operator of any relevant non-fossil fuel generating station (otherwise than for the purposes of reconstruction or amalgamation on terms previously approved in writing by the relevant public electricity supplier (whose approval shall not unreasonably be withheld)), and within 28 days of his appointment the liquidator of the operator not having provided to the supplier a guarantee or performance of the obligations of the operator under the relevant arrangements in such form and amount as the supplier (acting reasonably) may require.

Note: In the above provisions, "the Act" means the Electricity Act 1989.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order imposes on public electricity suppliers in England and Wales an obligation to make arrangements to secure the availability during specified periods of specified aggregate amounts of generating capacity from non-fossil fuel generating stations. The arrangements must be made, and evidence of their making must be produced to the Director General of Electricity Supply, before 30th September 1990.

Article 2 requires that the capacity come from non-fossil fuel generating stations other than nuclear stations. Article 3 imposes the obligation; and introduces Schedule 1 in which is set out a Table specifying, in relation to each public electricity supplier, the periods and amounts of capacity whose availability is to be secured. The amounts are specified in megawatts (one megawatt equals one million watts). Article 4 provides a mechanism whereby, if certain conditions are not satisfied (see Schedule 2) or if certain events occur (see Schedule 3), the Order is to have effect as if the relevant period specified in the Table in Schedule 1 were replaced by a different period and, as a consequence of that, as if the relevant amount of capacity specified in that Table were a reduced amount, the amount of the reduction being the amount of capacity which has ceased to be available by reason of (as the case may be) the condition not having been satisfied or the event having occurred.