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SCHEDULE

ENERGY TRANSFER SCHEMES

Application of Schedule

1. This Schedule applies where—
 - (a) the High Court has made an energy administration order in relation to a company (the “old energy company”); and
 - (b) it is proposed that a transfer falling within section 18(3) be made to another company (the “new energy company”).
2. It is for the energy administrator, while the energy administration order is in force, to act on behalf of the old energy company in the doing of anything that it is authorised or required to do by or under this Schedule.

Making of energy transfer schemes

- 3.—(1) The old energy company may—
 - (a) with the consent of the new energy company, and
 - (b) for the purpose of giving effect to the proposed transfer,make a scheme under this Schedule for the transfer of property, rights and liabilities from the old energy company to the new energy company (an “energy transfer scheme”).
 - (2) Such a scheme may be made only at a time when the energy administration order is in force in relation to the old energy company.
 - (3) An energy transfer scheme may set out the property, rights and liabilities to be transferred in one or more of the following ways—
 - (a) by specifying or describing them in particular;
 - (b) by identifying them generally by reference to, or to a specified part of, the undertaking of the old energy company; or
 - (c) by specifying the manner in which they are to be determined.
 - (4) An energy transfer scheme shall take effect in accordance with paragraph 8 at the time appointed by the High Court.
 - (5) But the High Court must not appoint a time for a scheme to take effect unless that scheme has been approved by the Department.
 - (6) The Department may modify an energy transfer scheme before approving it, but only modifications to which both the old energy company and the new energy company have consented may be made.
 - (7) In deciding whether to approve an energy transfer scheme, the Department must have regard, in particular, to—

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- (a) the public interest; and
 - (b) the effect the scheme is likely to have (if any) upon the interests of third parties.
- (8) Before approving an energy transfer scheme, the Department must consult the Authority.
- (9) The old energy company and the new energy company each have a duty to provide the Department with all information and other assistance that it may reasonably require for the purposes of, or in connection with, the exercise of the powers conferred on it by this paragraph.

Provision that may be made by a scheme

- 4.—(1) An energy transfer scheme may contain provision—
- (a) for the creation, in favour of the old energy company or the new energy company, of an interest or right in or in relation to property transferred in accordance with the scheme;
 - (b) for giving effect to a transfer to the new energy company by the creation, in favour of that company, of an interest or right in or in relation to property retained by the old energy company;
 - (c) for the creation of new rights and liabilities (including rights of indemnity and duties to indemnify) as between the old energy company and the new energy company;
 - (d) in connection with any provision made under this sub-paragraph, provision making incidental provision as to the interests, rights and liabilities of other persons with respect to the property, rights and liabilities to which the scheme relates.
- (2) The property, rights and liabilities of the old energy company that may be transferred in accordance with an energy transfer scheme include—
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the old energy company;
 - (b) property acquired, and rights and liabilities arising, in the period after the making of the scheme but before it takes effect;
 - (c) rights and liabilities arising after it takes effect in respect of matters occurring before it takes effect;
 - (d) property situated anywhere in Northern Ireland or elsewhere;
 - (e) rights and liabilities under the law of Northern Ireland or of a place outside Northern Ireland;
 - (f) rights and liabilities under any statutory provision or EU instrument.

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(3) The transfers to which effect may be given by an energy transfer scheme include transfers of interests and rights that are to take effect in accordance with the scheme as if there were—

- (a) no such requirement to obtain a person's consent or concurrence,
- (b) no such liability in respect of a contravention of any other requirement, and
- (c) no such interference with any interest or right,

as there would be, in the case of a transaction apart from this Act, by reason of a provision falling within sub-paragraph (4).

(4) A provision falls within this sub-paragraph to the extent that it has effect (whether under a statutory provision or agreement or otherwise) in relation to the terms on which the old energy company is entitled, or subject, to anything to which the transfer relates.

(5) Sub-paragraph (6) applies where (apart from that sub-paragraph) a person would be entitled, in consequence of anything done or likely to be done by or under this Act in connection with an energy transfer scheme—

- (a) to terminate, modify, acquire or claim an interest or right; or
- (b) to treat an interest or right as modified or terminated.

(6) That entitlement—

- (a) shall not be enforceable in relation to that interest or right until after the transfer of the interest or right by the scheme; and
- (b) shall then be enforceable in relation to the interest or right only in so far as the scheme contains provision for the interest or right to be transferred subject to whatever confers that entitlement.

(7) Sub-paragraphs (3) to (6) have effect where shares in a subsidiary of the old energy company are transferred—

- (a) as if the reference in sub-paragraph (4) to the terms on which the old energy company is entitled or subject to anything to which the transfer relates included a reference to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect; and
- (b) in relation to an interest or right of the subsidiary, as if the references in sub-paragraph (6) to the transfer of the interest or right included a reference to the transfer of the shares.

(8) Sub-paragraphs (3) and (4) apply to the creation of an interest or right by an energy transfer scheme as they apply to the transfer of an interest or right.

Transfer of licences

5.—(1) The provision that may be made by an energy transfer scheme includes the transfer of a licence from the old energy company to the new energy company.

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- (2) Such a transfer may relate to the whole or any part of the licence.
- (3) Where such a transfer relates to a part of the licence, the provision made under sub-paragraph (1) may include—
 - (a) provision apportioning responsibility between the old energy company and the new energy company in relation to—
 - (i) the making of payments required by conditions included in the licence;
 - (ii) ensuring compliance with any other requirements of the conditions included in the licence; and
 - (b) provision making incidental modifications to the terms and conditions of the licence.
- (4) References in this paragraph to a part of a licence are references to one or both of—
 - (a) part of the activities authorised by the licence;
 - (b) a part of the area in relation to which the holder of the licence is authorised to carry on those activities.

Powers and duties under statutory provisions

- 6.—(1) The provision that may be made by an energy transfer scheme includes provision for some or all of the powers and duties to which this paragraph applies—
- (a) to be transferred to the new energy company; or
 - (b) to become powers and duties that are exercisable, or must be performed, concurrently by the old energy company and the new energy company.
- (2) Provision falling within sub-paragraph (1) may apply to powers and duties only in so far as they are exercisable or required to be performed in the area specified or described in the provision.
- (3) The powers and duties to which this paragraph applies are the powers and duties conferred or imposed upon the old energy company by or under a statutory provision, so far as those powers and duties are connected with—
- (a) the undertaking of the old energy company to the extent the energy transfer scheme relates to that undertaking; or
 - (b) any property, rights or liabilities to be transferred in accordance with the scheme.
- (4) The powers and duties mentioned in sub-paragraph (3) include, in particular, powers and duties relating to the carrying out of works or the acquisition of land.

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Supplemental provisions relating to transfers

7.—(1) An energy transfer scheme may make incidental, supplemental, consequential and transitional provision in connection with the other provisions of the scheme.

(2) Such provision may include different provision for different cases or different purposes.

(3) In particular, an energy transfer scheme may make provision, in relation to a provision of the scheme—

- (a) for the new energy company to be treated as the same person in law as the old energy company;
- (b) for agreements made, transactions effected or other things done by or in relation to the old energy company to be treated, so far as may be necessary for the purposes of or in connection with a transfer in accordance with the scheme, as made, effected or done by or in relation to the new energy company;
- (c) for references in an agreement, instrument or other document to the old energy company or to an employee or office holder with the old energy company to have effect, so far as may be necessary for the purposes of or in connection with a transfer in accordance with the scheme, with such modifications as are specified in the scheme;
- (d) that the effect of any transfer in accordance with the scheme in relation to contracts of employment with the old energy company is not to terminate any of those contracts but is to be that periods of employment with that company are to count for all purposes as periods of employment with the new energy company;
- (e) for proceedings commenced by or against the old energy company to be continued by or against the new energy company.

(4) Sub-paragraph (3)(c) does not apply to references in a statutory provision.

(5) An energy transfer scheme may make provision for disputes as to the effect of the scheme between the old energy company and the new energy company to be referred to such arbitration as may be specified in or determined under the scheme.

(6) Where a person is entitled, in consequence of an energy transfer scheme, to possession of a document relating in part to the title to land or other property in Northern Ireland, or to the management of such land or other property, the scheme may—

- (a) provide for that person to be treated as having given another person an acknowledgement in writing of the right of that other person to production of the document and to delivery of copies of it; and
- (b) apply section 9 of the Conveyancing Act 1881 (c. 41) (with any specified modifications) in relation to any such case.

(7) In this paragraph references to a transfer in accordance with an energy transfer scheme include references to the creation in accordance with such a scheme of an interest, right or liability.

Effect of scheme

8.—(1) In relation to each provision of an energy transfer scheme for the transfer of property, rights or liabilities, or for the creation of interests, rights or liabilities—

- (a) this Act shall have effect so as, without further assurance, to vest the property or interests, or those rights or liabilities, in the transferee at the time appointed by the High Court for the purposes of paragraph 3(4); and
- (b) the provisions of that scheme in relation to that property or those interests, or those rights or liabilities, shall have effect from that time.

(2) In this paragraph “the transferee”—

- (a) in relation to property, rights or liabilities transferred by an energy transfer scheme, means the new energy company; and
- (b) in relation to interests, rights or liabilities created by such a scheme, means the person in whose favour, or in relation to whom, they are created.

Subsequent modification of scheme

9.—(1) The Department may by notice to the old energy company and the new energy company modify an energy transfer scheme after it has taken effect, but only modifications to which both the old energy company and the new energy company have consented may be made.

(2) The notice must specify the time at which it is to take effect (the “modification time”).

(3) Where a notice is issued under this paragraph in relation to an energy transfer scheme, as from the modification time, the scheme shall for all purposes be treated as having taken effect, at the time appointed for the purposes of paragraph 3(4), with the modifications made by the notice.

(4) Those modifications may make—

- (a) any provision that could have been included in the scheme when it took effect at the time appointed for the purposes of paragraph 3(4); and
- (b) transitional provision in connection with provision falling within paragraph (a).

(5) In deciding whether to modify an energy transfer scheme, the Department must have regard, in particular, to—

- (a) the public interest; and

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(b) the effect the modification is likely to have (if any) upon the interests of third parties.

(6) Before modifying an energy transfer scheme that has taken effect, the Department must consult the Authority.

(7) The old energy company and the new energy company each have a duty to provide the Department with all information and other assistance that it may reasonably require for the purposes of, or in connection with, the exercise of the powers conferred on it by this paragraph.

Transfers in the case of non-NI companies

10. Where the old energy company is a non-NI company, the property, rights and liabilities of that company which may be transferred by an energy transfer scheme, or in relation to which interests, rights or liabilities may be created by such a scheme, are confined to—

- (a) property of the old energy company in Northern Ireland;
- (b) rights and liabilities arising in relation to any such property; and
- (c) rights and liabilities arising in connection with the affairs and business of the company so far as carried on in Northern Ireland.

Provision relating to foreign property etc.

11.—(1) Where there is a transfer in accordance with an energy transfer scheme of—

- (a) any foreign property, or
- (b) a foreign right or liability,

the old energy company and the new energy company must each take all requisite steps to secure that the vesting of the foreign property, right or liability in the new energy company is effective under the relevant foreign law.

(2) Until the vesting of the foreign property, right or liability in the new energy company in accordance with the energy transfer scheme is effective under the relevant foreign law, the old energy company must—

- (a) hold the property or right for the benefit of the new energy company; or
- (b) discharge the liability on behalf of the new energy company.

(3) The old energy company must comply with any directions given to it by the new energy company in relation to the performance of the obligations under sub-paragraphs (1) and (2) of the old energy company.

(4) Nothing in sub-paragraphs (1) to (3) prejudices the effect under the law of Northern Ireland of the vesting of a foreign property, right or liability in the new energy company in accordance with an energy transfer scheme.

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(5) Where—

- (a) any foreign property, right or liability is acquired or incurred in respect of any other property, right or liability by a company, and
- (b) by virtue of this paragraph, the company holds the other property or right for the benefit of the new energy company or is required to discharge the liability on behalf of the new energy company,

the property, right or liability acquired or incurred shall immediately become the property, right or liability of the new energy company.

(6) The provisions of sub-paragraphs (1) to (5) shall have effect in relation to foreign property, rights or liabilities transferred to the new energy company under sub-paragraph (5) as they have effect in the case of property, rights and liabilities transferred in accordance with an energy transfer scheme.

(7) References in this paragraph to foreign property, or to a foreign right or liability, are references to any property, right or liability as respects which an issue arising in any proceedings would be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside Northern Ireland.

(8) Expenses incurred under this paragraph by a company as the company from which anything is transferred shall be met by the new energy company.

(9) An obligation imposed under this paragraph in relation to property, rights or liabilities shall be enforceable as if contained in a contract between the old energy company and the new energy company.

Application of Schedule to transfers to subsidiaries

12. Where the proposed transfer falling within subsection (3) of section 18 is a transfer of the kind mentioned in subsection (4)(a) of that section, this Schedule shall have effect in relation to that transfer as if—

- (a) paragraph 3(1)(a) were omitted; and
- (b) paragraph 3(6) had effect with “the old energy company has consented may be made” substituted for the words from “both” onwards.

Interpretation

13. In this Schedule—

- “energy transfer scheme” has the meaning given by paragraph 3(1);
- “new energy company” has the meaning given by paragraph 1;
- “old energy company” has the meaning given by paragraph 1;
- “third party”, in relation to an energy transfer scheme or any modification of such a scheme, means a person who is neither—

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- (a) the old energy company; nor
- (b) the new energy company.

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