

## **[Draft] Electricity Regulations (Northern Ireland) 2007**

### **NIAUR Response to the Public Consultation**

#### Commencement

We acknowledge that the Regulations cannot be subject to commencement orders. Nonetheless it is the case that certain provisions will need to have taken effect before others in order for these other provisions to apply. This is because some provisions are reliant on certain activities or events as authorised or provided by the Regulations having been undertaken. It is not therefore practical or appropriate for all of the provisions to come into force from the same date. Therefore it will be necessary to find a mechanism for 'staged' commencement of the Regulations. This could be facilitated by the Regulations stating when certain provisions are to come into force i.e. commencement dates. We suggest that the commencement dates will need to be linked to Go Active and Go Live dates or events.

Regulation 4 - The definition of "electricity distributor" currently proposed may, inadvertently, capture transmission licensees who do not own a distribution system, but who are undertaking transmission activities that relate to distribution. It would therefore benefit from further clarification.

Regulation 7 - The combination of transmission and distribution in the proposed Article 12(2) appears to place obligations regarding distribution on persons who undertake only transmission activities. It would be appropriate for the existing Article 12(2) to remain unaltered, and a new Article 12(3) to be added in the same form, save that it applies to electricity distributors (rather than holders of licences under 10(1)(b) generally) and to distribution (rather than transmission).

Regulation 12 – The requirement in paragraphs 4 and 5 of this regulation i.e. that the separate licences can only include those conditions which relate to activities associated with distribution/transmission and with supply (as the case may be) would unnecessarily fetter the discretion of the Authority and also conflicts with the licensing scheme provisions.

Regulation 13 – Allowing the relevant parties three months to submit an application is too long given that the Authority needs to publish the scheme at least 28 days prior to Go-Live. We consider that the application needs to be made within 28 days of the relevant provision coming into force but that the Authority could direct a later date if necessary.

Regulation 14 – The property arrangements scheme could be used as the vehicle under which the public electricity supply licence is transferred to the nominated associate. This would alleviate the need for a separate licensing scheme. The PES licence could be converted, with the necessary modifications, into a supply licence under the transfer scheme and the transmission licence, which will remain with NIE plc, also modified accordingly. However, if this approach was to be adopted the relevant provisions would need to clarify that in making the scheme the Authority could make modifications to the terms and conditions of both licences i.e. the new supply licence and the existing transmission licence.

Regulations 16 & 17– The property arrangements scheme must be as approved by the Authority. It is unacceptable that as presently proposed the Authority would be obliged to make a scheme which has been agreed between the relevant licensees – irrespective of whether it considers the scheme to be appropriate. The scheme is being effected for Directive compliance purposes to effectively separate the networks business from the supply and generation businesses. The process should be one whereby the nominating licensee submits a scheme which has to be approved by the Authority. In giving any such approval the Authority can make such modifications as it considers appropriate for compliance purposes. In other words the Authority has the final say (subject to CAT appeal). Also in order for the CAT appeal provisions to be meaningful it would be necessary for the scheme to be published and to allow parties longer than 7 days within which to make the appeal.

Regulation 23 – This provides for a person to appeal against any determination made by the Authority under Part III. It would be more appropriate (and a simpler process) for it to provide that appeal can be made in respect of the transfer scheme as made by the Authority and require the Authority to publish the scheme for. As presently drafted any aggrieved person can apply to the CAT for a review of a determination by the Authority within 7 days of the Authority making that determination but any such person would not know (i) what was in the original application made by the nominating licensee or (ii) when the Authority had made any such determination.

Regulations 35-37 – As mentioned above, it may not be necessary to have a separate ‘licensing scheme’ if the property arrangements scheme provisions were amended to provide for the transfer, conversion and modification of the PES licence and for the modification of the existing transmission licence.

Regulation 41 – The PES licence is to be transferred separately (either under the property arrangements scheme or under the proposed licensing scheme). This means that regulation 41 only needs to provide for the conversion of licences granted under Article 10(2) of the Order. Also given that the Authority is responsible for the NIE licence and property transfer schemes, it would also be appropriate, in terms of co-ordination, for the Authority to be responsible for the conversion of such licences.

Regulation 56 – It would be appropriate to add that that any arrangement or scheme made under the Regulations, and the coming into operation of any such arrangement or scheme, are also not considered to be relevant changes of law.