



STATUTORY INSTRUMENTS

S.I. No. 384 of 2008

ELECTRICITY REGULATION ACT 1999 (SECTION 14(1A)) ORDER
2008

(Prn. A8/1502)

ELECTRICITY REGULATION ACT 1999 (SECTION 14(1A)) ORDER
2008

The Commission for Energy Regulation in exercise of the powers conferred on it by Section 14(1A) of the Electricity Regulation Act 1999 (as inserted by Regulation 16(b) of the European Communities (Internal Market in Electricity) Regulations 2005) (S.I. No. 60 of 2005) hereby orders as follows:

Citation.

1. This Order may be cited as the Electricity Regulation Act 1999 (Section 14(1A)) Order 2008.

Commencement.

2. This Order shall come into operation on 25 September 2008.

Interpretation.

3. (1) In this Order, unless the context otherwise requires—

“**Act**” means the Electricity Regulation Act 1999 (No. 23 of 1999), as amended;

“**generator**” means a person licensed to generate electricity under Section 14(1)(a) of the Act;

“**generator site**” means the site owned (or occupied pursuant to a lease, licence or other agreement) by the generator which contains the connection point;

“**generating unit**” means any plant or apparatus for the production of electricity; and

“**installed capacity**” means the normal full load kW capacity of any apparatus which produces electricity, as stated on their nameplates.

(2) In this Order—

(a) A word or expression that is used in this Order and is also used in the Act has, unless the contrary intention appears, the same meaning in this Order as it has in the Act.

(b) Where a word or expression is given a meaning in the Act or in this Order then, except where the context otherwise requires, any cognate word or expression used in this Order shall be construed accordingly.

(c) a reference to an article or schedule is to an Article of, or Schedule to, this Order, unless it is indicated that reference to some other provision is intended, and

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 30th September, 2008.*

- (d) a reference to a paragraph is a reference to a paragraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

Purpose.

4. (1) Pursuant to section 14(1A) of the Act, the Commission may by order provide for the licensing of a person to generate electricity by means of a class or classes of generating station.

(2) Generating stations approved by the Commission as being located within a current or prospective generator site with either:

- (a) a related installed capacity of greater than 1 MW and not exceeding 10 MW, or
- (b) a related installed capacity not exceeding 1 MW,

are classes of generating station to which this Order applies.

Approval.

5. (1) (a) A person with a class of generating station referred to in Article 4(2)(a) shall apply to the Commission for approval to be duly licensed to generate electricity from such pursuant to this Order in accordance with the procedures determined and published by the Commission.

(b) A person proposing to generate electricity from a class of generating station referred to in Article 4(2)(b) shall automatically stand duly licensed to generate electricity pursuant to this Order.

(2) Having considered a person's application submitted in accordance with Article 5(1)(a), the Commission shall communicate to the person its decision to:

- (a) grant the approval sought,
- (b) request further information as the Commission deems necessary, or
- (c) decline to grant the approval.

The decision shall be reasonable having regard to all the circumstances.

Amendment or Revocation of Order

6. Pursuant to section 14(1B) of the Act, the Commission may by order amend or revoke this Order.

Terms and Conditions

7. A person duly authorised to generate electricity pursuant to this Order shall be required to comply with the terms and conditions stated in the Schedule to this Order.

SCHEDULE

The terms and conditions referred to in Article 7 are as follows:

Condition 1: General and Interpretation

(1) This Order shall continue in force unless and until revoked by the Commission by order, in accordance with the Act.

(2) In this Schedule:

“**licensee**” a person duly authorised to generate electricity pursuant to this Order;

“**Metering Code**” means the metering code prepared by the Board and approved by the Commission, as from time to time revised, amended, supplemented or replaced with the approval of, or at the instance, of the Commission;

“**modification**” includes addition, omission, amendment and substitution, and cognate expressions shall be construed accordingly;

“**representation**” includes any objection or any other proposal made in writing;

“**Single Electricity Market Trading and Settlement Code**” means the Trading and Settlement Code provided for in Regulation 4 of the Single Market Regulations, as from time to time revised, amended, supplemented or replaced;

“**Single Market Regulations**” means the Electricity Regulation Act 1999 (Single Electricity Market) Regulations 2007 (S.I. No. 406 of 2007); and

“**system**” shall, except where it appears in the context of the “**transmission system**” or “**distribution system**”, mean the electric lines owned or operated by the licensee through which electricity is conveyed from generation units to the point of connection with the transmission system or the distribution system, as the case may be, and any other electric lines which the Commission may specify as forming part of the licensee's system and includes any electric plant owned or used by the licensee in connection therewith.

Condition 2: Compliance with Grid Code, Metering Code and, where applicable, Distribution Code

(1) The licensee shall comply with the provisions of the Grid Code, Metering Code and Distribution Code insofar as applicable to it.

(2) The Commission may, following consultation with the Transmission System Operator (and, in the relevant circumstances, the Distribution System Operator), issue directions relieving a licensee of its obligation under paragraph 1 in respect of such parts of the Grid Code, Metering Code (and, in the relevant circumstances, Distribution Code) and to such extent as may be specified in those directions.

Condition 3: System planning

(1) The licensee shall plan and develop each part of the licensee's system in accordance with a standard not less than the relevant standard insofar as applicable to it or such other standard of planning as the licensee may, following consultation with the Transmission System Operator, the Distribution System Operator and such (if any) other electricity undertakings as the Commission shall consider appropriate and with the approval of the Commission, adopt from time to time.

(2) The Commission may (following consultation with the licensee, the Transmission System Operator, the Distribution System Operator and such (if any) other electricity undertakings as the Commission shall consider appropriate) issue directions relieving the licensee of its obligation under paragraph 1 in respect of such parts of the licensee's system and to such extent as may be specified in the directions.

(3) In this condition:

“**relevant standard**” means the standard laid down in the Grid Code and the Distribution Code, if applicable.

Condition 4: Security arrangements

Where requested by the Commission, the licensee shall co-operate with the Commission in strategic contingency planning in respect of fuel stocks and procedures under the Grid Code during periods when the Commission deems necessary for reasons of security of supply.

Condition 5: Connection to and use of a person's system — requirement to offer terms

(1) The licensee shall, subject to paragraphs 6 and 7:

- (a) offer to enter into an agreement to provide a connection to the system of the licensee with any person who has applied for connection to the licensee's system; and
- (b) offer to enter into an agreement for the modification of a connection to the system of the licensee with any person who has applied for modification of a connection to the licensee's system; and
- (c) offer to enter into an agreement with any electricity undertaking or person who has applied for a licence under Section 14 of the Act or approval under Article 5 of this Order, and whose application has not been withdrawn or rejected, who has applied for use of the licensee's system:
 - i. to accept into the licensee's system at such entry point and in such quantities as may be specified in the application, electricity to be provided by or for that person; and

- ii. to deliver electricity equal in quantity to that accepted into the licensee's system (less only any losses incurred in the course of transporting such electricity through the licensee's system) from such exit points on the licensee's system and in such quantities as may be specified in the application to such person as the person making the application may specify.

(2) The licensee shall, subject to paragraphs 6 and 7, offer terms for an agreement in accordance with paragraph 1 as soon as practicable and in any event not more than the relevant period specified in paragraph 8 after receipt by the licensee of an application from the person containing all such information as the licensee may reasonably require for the purposes of formulating the terms of its offer.

(3) Each offer made in accordance with paragraph 1 shall:

- (a) make detailed provision regarding such of the following matters as are relevant for the purposes of the agreement:
 - i. the carrying out of works (if any) required for the construction or modification of the entry point to connect the system of the licensee to the transmission system or to the distribution system or in connection with the construction or modification of any exit points for the delivery of electricity as specified in the application, and for the obtaining of any consents necessary for such purpose;
 - ii. the carrying out of works (if any) for the provision of electric plant or for the extension or reinforcement of the system of the licensee which are required to be undertaken for the provision of connection to, or the making of a modification to a connection to the licensee's system or for provision of use of the licensee's system to the person making the application and for the obtaining of any consents necessary for such purposes;
 - iii. the installation of appropriate meters or other apparatus (if any) required to enable the licensee to measure electricity being accepted into the licensee's system at the specified entry point and leaving such system at the specified exit points;
 - iv. the installation of such switchgear or other apparatus (if any) as may be required for interrupting the use of the licensee's system should there be a failure by or for a person to provide electricity at its entry point on the licensee's system for delivery to any person specified by the person making the application from the exit points on the system of the licensee;
 - v. the date by which any works required so as to permit access to the system of the licensee (including for this purpose any works for its extension or reinforcement) shall be completed and so that, unless otherwise agreed by the person making the application, a failure to complete such works by such date shall be a material

breach of the agreement entitling the person to rescind such agreement;

vi. the charges to be paid by the person making the application for the provision of electric plant, for connections to or modification of connections to, or the extension or reinforcement of, the system of the licensee, for the installation of meters, switchgear or other apparatus and for their maintenance, for disconnection from the system of the licensee and the removal of electric plant, electric lines and meters following disconnection, and for use of the licensee's system of the licensee which shall, unless manifestly inappropriate, be set in conformity with paragraph 4; and

(b) contain such other provisions as may be appropriate for the purposes of the agreement in the circumstances in which it is likely to be entered into.

(4) The charges referred to in paragraph 3 to be contained in every agreement that is the subject of an offer by the licensee shall be such that:

(a) charges for the provision of electric plant, connection charges, charges for modification of connections, charges for disconnection from the licensee's system and the removal of electric plant, electric lines and meters following disconnection or any charges for extension or reinforcement of the licensee's system or for use of the licensee's system are set at a level which will enable the licensee to recover no more than:

i. the appropriate proportion (taking account of the factors referred to in paragraph 5) of the costs directly or indirectly incurred by the licensee; and

ii. a reasonable rate of return on the capital represented by such costs; and

(b) charges for the installation of meters, switchgear or other apparatus and for their maintenance shall not exceed the costs thereof and a reasonable rate of return on the capital represented by such costs.

(5) For the purpose of determining an appropriate proportion of the costs directly or indirectly incurred in carrying out works, the licensee shall have regard to:

(a) the benefit (if any) to be obtained or likely in the future to be obtained by the licensee or any other person as a result of the carrying out of such works whether by virtue of the provision of electric plant, the reinforcement or extension of the licensee's system or the provision of additional entry or exit points on the system of the licensee or otherwise; and

- (b) the ability or likely future ability of the licensee to recoup a proportion of such costs from other persons.

(6) A licensee shall not be obliged pursuant to this condition to offer to enter into any agreement where, by reason of the capacity of the licensee's system and the use made or reasonably expected to be made of it, a licensee would be required to expand or reinforce the capacity of the licensee's system and where it would be unreasonable, having regard to all the circumstances, for a licensee to undertake such expansion or reinforcement.

(7) A licensee shall not enter into any agreement with any person if:

- (a) to do so would be likely to involve the licensee in a breach of:

- i. the Grid Code; or

- ii. the Distribution Code; or

- iii. the Act or any regulations made under the Act; or

- iv. any other enactment relating to safety or standards applicable to the system of the licensee; or

- (b) the other person does not undertake to be bound, insofar as applicable, by the Terms of the Codes referred to in sub-paragraphs (a)(i) and (a)(ii).

(8) For the purposes of paragraph 2, the period specified shall be:

- (a) in the case of persons seeking use of the licensee's system only, 28 days; and

- (b) in the case of persons seeking connection or modification of an existing connection or seeking use of the licensee's system in conjunction with connection, three months.

Condition 6: Connection to and use of the system — functions of the Commission

(1) If, after a period which appears to the Commission to be reasonable for the purpose, the licensee has failed to enter into an agreement with any person entitled or claiming to be entitled thereto pursuant to an application in accordance with condition 5, the Commission shall, on the application of such person or the licensee, settle any terms of the agreement in dispute between the licensee and the person in question in such manner as appears to the Commission to be reasonable having (insofar as relevant) regard, in particular, to the following considerations:

- (a) that the person should pay to the licensee the whole or an appropriate proportion (as determined in accordance with paragraph 5 of condition 5) of the costs directly or indirectly incurred by the licensee in

the carrying out of any works or in providing or doing any other thing under the agreement in question calculated in accordance with the principles set out in paragraph 4 of condition 5 together with a reasonable rate of return on the capital represented by such costs;

- (b) that the performance by the licensee of its obligations under the agreement should not cause it to be in breach of any other condition of this Order or any other statutory requirement;
- (c) that any methods by which the licensee's system is connected to the transmission system or distribution system accords with good engineering principles and practices; or
- (d) that the terms and conditions of agreements entered into by the licensee pursuant to an application in accordance with condition 5 should be, so far as circumstances allow, as similar in substance and form as is practicable.

(2) If the person wishes to proceed on the basis of the agreement as settled by the Commission, the licensee shall forthwith enter into and implement such agreement in accordance with its terms.

(3) If either party to an agreement for connection to, or modification of a connection to, the licensee's system or for use of the licensee's system entered into pursuant to condition 5 or this condition proposes to vary the contractual terms of such agreement in any manner provided for under such agreement, the Commission shall, at the request of the licensee or other party to such agreement, settle any dispute relating to such variation in such manner as appears to the Commission to be reasonable having regard (insofar as relevant), in particular, to the considerations set out in sub-paragraphs (a) to (d) of paragraph 1.

Condition 7: Provision of information to the Commission

(1) The licensee shall furnish to the Commission, in such manner and at such times as the Commission may require, such information and shall procure and furnish to it such reports as the Commission may consider necessary in the light of the conditions or as it may require for the purpose of performing the functions assigned or transferred to it by or under the Act.

(2) The power of the Commission to request information under paragraph 1 is without prejudice to the power of the Commission to request information under or pursuant to any other condition of this Order, the Act, or any other enactment.

(3) In this condition:

“**information**” shall include any books, documents, records, accounts, estimates, returns or reports (whether or not prepared specifically at the request of the Commission) of any description and in any format specified by the Commission.

Condition 8: Payment of levy

(1) Where applicable, the licensee shall pay to the Commission any amounts specified in, or determined under a Levy Order, in accordance with the provisions of such Levy Order.

(2) In this condition:

“**Levy Order**” means an Order made by the Commission under paragraph 16 of the Schedule to the Act.

Condition 9: Trading and Settlement Code

(1) If the licensee is, at the coming into effect of this Order, or subsequently chooses to become, a party to the Single Electricity Market Trading and Settlement Code, then it shall comply with the Single Electricity Market Trading and Settlement Code insofar as applicable to it.

(2) Where a licensee wishes to procure the registration of any of its generation units under the Single Electricity Market Trading and Settlement Code, and the Commission has consented to the registration of such generation units by an Intermediary, the licensee shall ensure that the Intermediary shall be party to and shall comply with the Single Electricity Market Trading and Settlement Code insofar as applicable to the Intermediary in respect of such generation units.

(3) In this condition:

“**Intermediary**” has the meaning given to it in the Single Electricity Market Trading and Settlement Code.

Condition 10: Cost-Reflective Bidding in the Single Electricity Market

(1) Where any generation unit of a licensee is registered under the Single Electricity Market Trading and Settlement Code, such person 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 in relation to such generation unit, whether by the licensee or by any person acting on its behalf in relation to that generation, 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 the relevant generation unit, the Schedule Production Cost related to that generation unit 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 unit in respect of that Trading Day.

(3) For the purposes of paragraph 2, the Short Run Marginal Cost related to a generation unit 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 unit during that Trading Day if the generation unit 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 unit during that Trading Day if the generation unit 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 and maintenance of a generation unit 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 Commission may publish and, following consultation with the holders of Generation Licences and such other persons as the Commission 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 Commission, 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 Commission 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 Order and with the Bidding Code of Practice, and the licensee shall comply with such directions.

(8) A 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 Commission, provide the Commission with:

- (a) a reasoned explanation of its calculations in relation to any Commercial Offer Data submitted to the Single Market Operation Business in relation to any of its generation units; 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 obligation of the licensee under paragraph 1 of this condition, the licensee shall immediately inform the Commission and provide to the Commission a statement of its reasons for the Commercial Offer Data submitted.

(11) In this condition:

“**Bidding Code of Practice**” means the document of that title published by the Commission 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;

“**Generation Licence**” means a licence granted under section 14(1)(a) of the Act;

“**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;

“**Short Run Marginal Cost**” means certain costs attributable to the ownership, operation and maintenance of a generation unit, as calculated in accordance with paragraph 3 of this condition;

“**Single Market Operation Business**” has the meaning given to it in the licence granted pursuant to section 14(1)(j) of the Act; and

“**Trading Day**” has the meaning given to it in the Single Electricity Market Trading and Settlement Code.

Condition 11: Assignment of approval and transfer of Generation Business

(1) The licensee shall not, without the prior written consent of the Commission, assign an approval issued under Article 5(1)(a) of this Order.

(2) The licensee shall not, without the prior written consent of the Commission, transfer to another person (the “**transferee**”) all or any part of the Generation Business carried out under an approval issued under Article 5(1)(a) of this Order.

(3) Any consent of the Commission to any assignment of an approval under Article 5(1)(a) of this Order or transfer of the Generation Business of the licensee shall be subject to the Commission being satisfied that the assignee or transferee, as the case may be, will have the technical and financial capability to comply with the conditions of this Order and, in the case of a transfer only, the transferee being granted an approval under Article 5(1)(a) of this Order, and may be subject to compliance by the assignee or transferee, as the case may be, with any other matters determined by the Commission to be necessary including the modification of an approval issued pursuant to Article 5(1)(a) of this Order.

(4) Nothing in this condition shall prevent the licensee transferring its Generation Business to an assignee where the Commission has consented to such assignment provided that such transfer is effected as soon as practicable after such consent has been given.

Condition 12: Change in control

The licensee shall notify the Commission of a change in control of the licensee as soon as is practicable after such a change in control occurs.

Condition 13: Right of Commission to revoke approval

(1) The Commission may revoke approval issued under this Order, by not less than thirty days notice in writing to the licensee in any of the following circumstances:

- (a) if the licensee agrees in writing with the Commission that the approval should be revoked;
- (b) where applicable, if any amount payable under a Levy Order is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Commission has given the licensee notice in writing that the payment is overdue. Provided that no such notice shall be given earlier than the 16th day after the day on which the amount payable became due;

- (c) if the licensee fails to comply with a direction under section 24 of the Act, a determination under section 25 of the Act or an order under section 26 of the Act and which (in respect of any of these cases) has been made in respect of a contravention or apprehended contravention of any of the conditions of this Order and (in respect of any of these cases) such failure is not rectified to the satisfaction of the Commission within three months, or such other period as the Commission may determine, after the Commission has given notice of such failure to the licensee. Provided that in respect of a direction under section 24 of the Act, no such notice shall be given by the Commission before the expiration of the period within which representations or objections under section 24 of the Act could be made questioning a direction under section 24 of the Act or before the proceedings relating to any such representations or objections are finally determined;
- (d) if the licensee:
- i. is unable to pay its debts (within the meaning of section 214 of the Companies Act 1963) or if it enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Commission); or
 - ii. has a receiver or an examiner within the meaning of section 1 of the Companies (Amendment) Act 1990, of the whole or any material part of its assets or undertaking appointed; or
 - iii. passes any resolution for winding up other than a resolution previously approved in writing by the Commission; or
 - iv. becomes subject to an order for winding up by a court of competent jurisdiction; or
 - v. is dissolved, declared bankrupt or being of unsound mind.
- (2) For the purposes of paragraph 1(d)(i) of this condition, section 214 of the Companies Act, 1963 shall have effect as if for “€1,000” there was substituted “€50,000” or such higher figure as the Commission may from time to time determine by notice in writing to the licensee.

Sealed with the common seal of the Commission for Energy Regulation
on .



GIVEN under my Official Seal,
25 September 2008

MICHAEL G. TUTTY
Member of Commission



GIVEN under my Official Seal,
25 September 2008

PAUL McGOWAN
Member of Staff of Commission

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The purpose of this Order is to provide for the licensing of persons to generate electricity from generating stations located within a Generator Site with an installed capacity not exceeding 10 MW made pursuant to Order as facilitated under Section 14(1A) of the Act.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
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