

**Electricity Generation Standard Licence
Condition 18: Generating unit availability**

A consultation document

February 2003

Summary

On 26 September 2002, Powergen UK Plc (“Powergen”) submitted a formal request, to the Gas and Electricity Markets Authority (“the Authority”)¹ seeking disapplication of certain of the provisions of Electricity Generation Standard Licence Condition 18 (“SLC 18”) from its generation licence.

SLC 18 provides Ofgem with one method of ascertaining whether a licensee is pursuing a course of conduct, which is intended to, or likely to, have the effect of restricting, distorting or preventing competition in the generation or supply of electricity. It addresses the issue of generating unit availability and requires certain licensees, including Powergen, to furnish information to Ofgem² relating to the actual availability of their plants compared to their planned availability. In addition, it requires these licensees to use reasonable endeavours to provide six months notice of proposals to reduce materially the capacity of a generating unit (whether temporarily or permanently). Additionally, Ofgem can appoint an independent assessor to determine whether a decision to close a station, in part or in whole, is reasonable.

Together with the other standard licence conditions, SLC 18 was included in Powergen’s generation licence on 27 September 2001 following a review of licence conditions which was undertaken as a consequence of the Utilities Act 2000. SLC 18 replaced an equivalent licence condition that had been introduced into the licences of the major generators, National Power, Powergen and Nuclear Electric, in the early 1990s. Following an extensive consultation process with licensees and other interested parties, SLC 18 was included as a standard licence condition in all generation licences, but only “switched on” for those licensees that had been subject to the previous licence condition.³ However, the condition provides for the provisions in the condition to be “switched on” (become operative) or “switched off” (to be disapplied) in each of the individual generation licences.⁴

In its letter of 26 September 2002, Powergen argued that it was inequitable for this condition to be switched on in its licence when it is switched off in the licences of other

¹ Ofgem is the Office of the Authority. The terms Ofgem and the Authority are used interchangeably in this document.

² Also, in some cases, to third parties on request.

³ As a result of various company changes these licensees are: British Energy Generation Limited, Magnox Electric Plc, (both previously part of Nuclear Electric), Deeside Power Development Company Limited, Innogy Plc and International Power Plc (all previously part of National Power), Powergen UK Plc, Diamond Power Generation Limited, Emerald Power Generation Limited, and Jade Power Generation Plc (all previously part of Powergen).

⁴ SLC 18 is currently only “switched on” in the licences of those generators named above. In respect of these licensees only, paragraphs 1 to 17 inclusive of SLC 18 were switched on via the designation of the UA 2000 licensing schemes made by the Secretary of State under Part II of Schedule 7 of the UA 2000. In accordance with paragraph 2 of SLC 18, SLC 18 can now only be switched on by a direction issued by the Authority.

generators of an equivalent size. Powergen contends that SLC 18 unfairly limits its commercial freedom in a very competitive generation market and requires it to provide advance notice of its commercial decisions to its competitors who do not have to make the same information available, which it believed was inappropriate. Within its letter, Powergen specified 27 March 2004 as the disapplication date,⁵ i.e. the date when the condition would be switched off in its licence.

Powergen put forward two alternative disapplication requests in its submission:⁶

- (i) **To disapply paragraphs 7 to 17 inclusive of SLC 18.** This would switch off⁷ these paragraphs in Powergen's Electricity Generation licence; with the effect that Powergen, like the majority of other generation licensees, would no longer be legally obliged to comply with the requirements in those paragraphs of SLC 18, including giving Ofgem reason(s) for departures from planned availability.⁸ It would also mean Powergen would no longer be required to give Ofgem six months notice of any decision not to make plant available and Ofgem would not be able, under SLC 18, to appoint an independent assessor in the event of a plant closure or a material reduction in capacity at Powergen's power stations; or
- (ii) **To disapply paragraphs 7 to 8 and 10 to 16 of SLC 18 but to continue to have paragraphs 9 and 17 operative.** This again would have the effect that the disappplied paragraphs would be switched off in Powergen's licence and those paragraphs would no longer be operative.⁹ However, unlike the first option above, Powergen would continue to be required by SLC 18 to provide information to Ofgem regarding its generating unit availability as per the requirements of paragraph 9.

SLC 18 also specifies the procedures for considering a disapplication request. While Ofgem may accept Powergen's request, it does not have the power to reject a request for disapplication without further action. If, following consultation, Ofgem considers

⁵ A disapplication request needs to specify not only which parts of the condition the party would like to have disappplied, but also a disapplication date, which must be a date not less than 18 months after the date of the disapplication request.

⁶ Under paragraphs 12 and 13 of SLC 18.

⁷ In accordance with the terms of paragraph 3 of SLC 18.

⁸ Powergen would remain subject to all its other licence conditions, including any information provision requirements under industry codes.

⁹ Unless switched on again in accordance with paragraph 3 of SLC 18.

that the request should be declined, then the matter must be referred to the Competition Commission.¹⁰

Ofgem has decided to go out to consultation regarding Powergen's disapplication requests. If the consultation responses suggest that Ofgem should reject the disapplication request ((i) above) and the alternative request ((ii) above) made by Powergen, the only way that the provisions may be retained in the licence is to refer the matter to the Competition Commission on or before 26 March 2003.

Ofgem has no independent power under SLC 18 to consider extending the disapplication of all, or part, of SLC 18 to the other licensees in whose licence the relevant paragraphs are switched on. In order to consider disapplication in respect of this licence condition in the licences of other generators in whose licence SLC 18 is switched on, the parties concerned would need to exercise their right to request SLC 18's disapplication, as Powergen has done.¹¹ However, if the outcome of this consultation was that Ofgem decided to accept either of Powergen's disapplication requests, and subsequently other licensees choose to apply for disapplications, then Ofgem would be minded to apply the same decision to a future disapplication request without further consultation, unless there was evidence of a material change in circumstances or unique issues in respect of the later applicant that warranted further consultation.

Ofgem is of the view that a full assessment and consultation should be undertaken prior to it taking a decision regarding Powergen's requests to disapply certain provisions of SLC 18. Ofgem therefore wishes to consult on the five options set out below, which include the disapplication options specified by Powergen (Options 1 and 2).

These five options can be summarised as follows:

- Option 1** - Disapplication of Paragraphs 7 to 17 inclusive of SLC 18 in Powergen's Electricity Generation licence only;
- Option 2** - Disapplication of Paragraphs 7 to 8 inclusive and Paragraphs 10 to 16 inclusive of SLC 18 in Powergen's Electricity Generation licence only;

¹⁰ Under paragraph 15 of SLC 18, if Ofgem does not make a reference to the Competition Commission in respect of the disapplication request before the beginning of a period of twelve months which ends on or before the disapplication date, Powergen may serve on Ofgem a termination notice specifying that the provisions shall cease to have effect on either the disapplication date or such a later date as is specified in the notice.

¹¹ Under paragraphs 12 and 13 of SLC 18.

- Option 3** - Retention of SLC 18 as a Standard Licence Condition in Powergen's Electricity Generation licence, with all the provisions remaining operative;
- Option 4** - Switch on SLC 18 in all those Electricity Generation licences in which it is currently switched off; or
- Option 5** - Removal of SLC 18 as a Standard Licence Condition in all Electricity Generation licences by way of licence modification.

Ofgem welcomes all views from interested parties with regard to these options by 5.00pm, on 19 March 2003.

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1. Introduction

Purpose of this document

- 1.1. On 26 September 2002, Powergen UK Plc (“Powergen”) submitted a formal request to the Gas and Electricity Markets Authority (“the Authority”) for a disapplication of certain provisions of Electricity Generation Standard Licence Condition 18 (“SLC 18”) from its generation licence.¹²
- 1.2. SLC 18 provides Ofgem with one method of ascertaining whether a licensee is pursuing a course of conduct, which is intended to or likely to have the effect of restricting, distorting or preventing competition in the generation or supply of electricity. It addresses the issue of generating unit availability and requires certain licensees, including Powergen, to furnish information to Ofgem¹³ relating to the actual availability of their plants compared to their planned availability. In addition, it requires these licensees to use reasonable endeavours to provide six months notice of proposals to reduce materially the capacity of a generating unit (whether temporarily or permanently). Additionally, Ofgem can appoint an independent assessor to determine whether a decision to close a station, in part or in whole, is reasonable. A copy of SLC 18 is included as Appendix 1 of this document.
- 1.3. Powergen contends that it is inequitable for these provisions of SLC 18 to be switched on in its licence when they are switched off in the licences of other generators of an equivalent size. It also contends that SLC 18 unfairly limits its commercial freedom in a very competitive generation market and requires it to provide advance notice of its commercial decisions to its competitors who do not have to make the same information available, which it believes is inappropriate.
- 1.4. Following Powergen’s request, Ofgem has chosen to consult on five possible ways forward in relation to the application of SLC 18, which are explained below. This consultation reviews the history behind SLC 18 (including its predecessor condition) and considers the other regulatory tools available to

¹² Pursuant to paragraphs 12 and 13 of that standard condition.

¹³ Also, in some cases, to third parties on request.

Ofgem to address any potential concerns in the event that SLC 18 is disapplied or otherwise removed.

Background

- 1.5. Under the Pool, the electricity trading arrangements which were operative from 1990-2001, a licence condition similar in scope to SLC 18 was introduced into the generation licences of a number of the larger generators. This condition was introduced following an investigation into Pool prices¹⁴ carried out by the Office of Electricity Regulation (“OFFER”)¹⁵ in late 1991. The investigation concluded that certain generators with a large market share were able to exert undue influence on wholesale electricity prices through their generating unit availability declarations and decisions either to mothball or to close plant to the detriment of customers. Representations were also made to OFFER regarding the failure of some generators to offer for sale plant that they were proposing to mothball or close. A new generating unit availability licence condition was, therefore, introduced into the licences of National Power, Powergen and Nuclear Electric explicitly to prohibit monopolistic or anti-competitive behaviour in relation to such matters as the availability, closure or mothballing of plant. It also incorporated an obligation to publish information relating to these matters, to provide public reassurance of compliance with the licence condition.
- 1.6. During the late 1990s, OFFER and the Department of Trade & Industry (“DTI”) became increasingly concerned that the wholesale electricity market under the Pool was not functioning in a way that adequately protected customers’ interests. They therefore decided to review the trading arrangements, which led to the implementation of a series of reforms known as the New Electricity Trading Arrangements (“NETA”).
- 1.7. The Utilities Act 2000 (the “UA 2000”) changed the framework for gas and electricity regulation in Great Britain and had a significant impact on electricity licences. Among other things, the UA 2000 provided the Secretary of State with the power to incorporate standard licence conditions (“SLCs”) for generation licences into existing generation licences. Following extensive consultation,

¹⁴ “Report on Pool Price Inquiry” December 1991.

¹⁵ OFFER merged with Ofgas (the gas regulator) in 1999 to form Ofgem.

Ofgem and the DTI proposed,¹⁶ and the Secretary of State accepted, that the generating unit availability condition be made a SLC in generation licences to enable the short and longer-term availability of generation plant to be monitored, where appropriate. SLC 18 was, however, not identical to the generator unit availability condition, because it required amending to reflect the introduction of NETA. The main amendments were:

- the inclusion of a provision allowing parts of SLC 18 to be “switched on” (become operative) or “switched off” (to be disapplied);
- the replacement of existing information requirements, which were considered to be onerous, with a requirement for a licensee to inform Ofgem of, and explain, any discrepancies between the forecast it provided to NGC of its planned outages¹⁷ and its actual outages; and
- the inclusion of a provision detailing the purpose of SLC 18.

1.8. On 27 September 2001, the Secretary of State determined the standard licence conditions for generation licences. SLC 18 can only be switched on in two ways; either by the Secretary of State¹⁸ or by a direction issued by the Authority.¹⁹ Under the licensing scheme, the Secretary of State switched on SLC 18 in the generation licences held by British Energy Generation Limited, Magnox Electric Plc (both previously part of Nuclear Electric), Deeside Power Development Company Limited, Innogy Plc, International Power Plc (all previously part of National Power), Powergen UK Plc, Diamond Power Generation Limited, Emerald Power Generation Limited, and Jade Power Generation Plc only (all previously part of Powergen).^{20,21}

1.9. SLC 18 can only be switched off following consent by the Authority to a disapplication request.²² A disapplication request needs to specify not only those parts of the condition to which the request relates, but also requires a

¹⁶ Ofgem documents on behalf of the Secretary of State include “Initial Proposals on Standard Licence Conditions – A Consultation Paper”, November 1999, “Utilities Bill Standard Licence Conditions – Volume 1 Consultation Paper”, February 2000, Utilities Act Standard Licence Conditions – Volume 1 – Final Proposals”, October 2000, “Utilities Act Standard Licence Conditions – Volume 5 – Electricity Generation”, October 2000.

¹⁷ As the transmission company in England and Wales.

¹⁸ Via a licensing scheme made under Part II of Schedule 7 of the UA 2000 (this option is no longer available).

¹⁹ See paragraphs 1 and 2 of SLC 18 respectively.

²⁰ The generation licences then held by the three companies in whose licences the condition was included originally, as a result of various reorganisations.

²¹ The licensing schemes took effect from 1 October 2001 and to date the Authority has not yet exercised its powers under paragraph 2 of SLC 18 to direct that this SLC be applied in respect of any other generation licence.

disapplication date to be specified.²³ In respect of both of its alternative requests, Powergen has specified 27 March 2004 as the disapplication date.

- 1.10. SLC 18 also specifies the procedures for considering a disapplication request. While the Authority can accept a disapplication request, its powers to reject a request are constrained. If the Authority considers that the request should be declined, then the matter must be referred to the Competition Commission.²⁴ Therefore, if the responses to this consultation on Powergen's disapplication requests suggest that Ofgem should reject both versions of the request made by Powergen, the only way that the provisions may be retained in the licence is for Ofgem to refer the matter to the Competition Commission on or before 26 March 2003 for it to make the final decision.
- 1.11. If Ofgem were to conclude that it is appropriate to disapply SLC 18 in Powergen's licence, Ofgem has no independent power under SLC 18 to consider extending the disapplication of all, or part, of SLC 18 to the other licensees in whose licence SLC 18 is switched on. In order to consider disapplication in respect of these licences, the licensees concerned would need to exercise their right to request SLC 18's disapplication, as Powergen has done.²⁵ However, if the outcome of this consultation was for Ofgem to accept either of Powergen's disapplication requests, and if other licensees decided to seek disapplication of SLC 18 (in whole or part) then Ofgem would be minded to follow the results of this consultation and simply apply it to a future disapplication request without further consultation, unless there was evidence of a material change in circumstances or the request had unique issues that warranted further consultation.
- 1.12. To enable SLC 18 to be removed either completely or partially rather than disapplied (switched off) from any Electricity Generation licence, a licence modification consultation would be required.²⁶

²² See paragraphs 3, 12 and 13 of SLC 18.

²³ The disapplication date must be specified in the disapplication request and must be a date not less than 18 months after the date of the disapplication request.

²⁴ Under paragraph 15 of SLC 18, if Ofgem does not make a reference to the Competition Commission in respect of the disapplication request before the beginning of a period of twelve months which ends on the disapplication date, the party making the disapplication request, in this case Powergen, may serve on the Authority a termination notice specifying that the provisions shall cease to have effect on either the disapplication date or such a later date as may be specified in the notice.

²⁵ Under paragraphs 12 and 13 of SLC 18.

²⁶ Under S11A of the Electricity Act 1989.

The way forward

Possible options

1.13. Having considered the issues involved in Powergen's disapplication requests, Ofgem is of the view that a full assessment and consultation should be undertaken prior to a decision being made regarding Powergen's request to disapply certain provisions of SLC 18. Ofgem is therefore seeking views from all interested parties on the five options being considered with respect both to Powergen's disapplication requests specifically and to SLC 18 more generally.

Option 1 - Disapplication of Paragraphs 7 to 17 inclusive of SLC 18 in Powergen's Electricity Generation licence only;

Option 2 - Disapplication of Paragraphs 7 to 8 inclusive and 10 to 16 inclusive of SLC 18 in Powergen's Electricity Generation licence only;

Option 3 - Retention of SLC 18 as a Standard Licence Condition in Powergen's Electricity Generation licence, with all provisions remaining operative;

Option 4 - Switch on SLC 18 in all those Electricity Generation licences in which it is currently switched off; or

Option 5 - Removal of SLC 18 as a Standard Licence Condition in all Electricity Generation licences.

These options are all discussed in further detail in Chapter 2.

Timetable

1.14. Following receipt of the consultation responses, Ofgem will, subject to consideration of the consultation responses received, publish its decision document on or before 26 March 2003, the date by which a reference to the Competition Commission must be made to repeal Powergen's request. This will also contain a summary of respondents' views.

1.15. Dependent on Ofgem's decision, one of the following processes, in line with the statutory procedures, will then occur:

- If Ofgem decides it is appropriate to disapply all or part of SLC 18 from Powergen's licence as per its request, then Ofgem will write to Powergen confirming that, with effect from 27 March 2004, the relevant provisions will be disapplied and that it does not intend to refer the matter to the Competition Commission.
- If Ofgem decides that it is appropriate to retain the relevant provisions in Powergen's licence then it will refer the matter to the Competition Commission on or before 26 March 2003.²⁷
- If Ofgem decides that it is appropriate to switch on SLC 18 in all other generation licences, then the Authority will in due course issue a direction to this effect to each licensee concerned, it will also refer the matter of retaining the relevant provisions in Powergen's licence to the Competition Commission on or before 26 March 2003; or
- If Ofgem decides that it is appropriate to remove SLC 18, either in whole or in part from all licensees, then it will commence in due course the licence modification consultation.²⁸

Views invited

- 1.16. Views are invited in response to the issues raised in this document by 5pm on 19 March 2003. Responses should be addressed to:

Dr Eileen Marshall CBE

Managing Director - Competition & Trading Arrangements

Office of Gas and Electricity Markets

9 Millbank

London

SW1P 3GE

- 1.17. Electronic responses may be sent to: tracey.hunt@ofgem.gov.uk

²⁷ In accordance with the terms of paragraph 15 of SLC 18.

²⁸ Under the Electricity Act 1989.

1.18. Respondents are free to mark their replies as confidential although Ofgem would prefer, as far as possible, to be able to place responses to this paper in the Ofgem library. Unless clearly marked 'confidential', responses will be published by placing them in the Ofgem library and on the Ofgem website.

1.19. If you wish to discuss any aspect of this document, please contact:

- ◆ Sonia Brown – telephone number: 020 7901 7412, fax number: 020 7901 7452, email: sonia.brown@ofgem.gov.uk; or
- ◆ Jo Witters – telephone number: 020 7901 7159, fax number: 020 7901 7452, email: jo.witters@ofgem.gov.uk; or
- ◆ Yemi Olutola – telephone number: 020 7901 7303, fax number: 020 7901 7452, email: yemi.olutola@ofgem.gov.uk

Outline of this document

1.20. Chapter 2 discusses in detail the policy options that Ofgem is considering in relation to Powergen's request for SLC 18 to be disapplied in whole or in part from its generation licence and the options related to the wider context application of SLC 18. Chapter 3 details the various issues that Ofgem considers need to be taken into account when considering SLC 18. Chapter 4 details the way forward. Appendix 1 contains a copy of the text of SLC 18.

2. Rationale

Introduction

2.1. In summary, Standard Licence Condition 18 (a copy of the full text is provided in Appendix 1) requires generators in whose licence the condition is switched on to:-

- Provide Ofgem with a statement of criteria for the temporary or permanent closure of power plant or any material reduction in the capacity of plant (paragraph 8);
- Provide information to Ofgem regarding the availability of generation units (paragraph 9);
- Use reasonable endeavours to give Ofgem not less than six months notice of the licensee's intention to close (permanently or temporarily) any power station or make a material reduction in the capacity of any power station (paragraph 10); and
- Provide to any independent assessor appointed by Ofgem information to allow the assessor to assess whether the licensee's closure decision process and result were reasonable (paragraph 11).

2.2. The predecessor of SLC 18 was originally introduced when there were serious concerns regarding the ability of certain generators with a large market share to exert undue influence on wholesale electricity prices through their generating unit availability declarations, in both the short and long term. However, following significant changes to the generation market in England and Wales, as discussed further in Chapter 3, SLC 18 is currently operative in the generation licences of companies that by comparison do not have large market shares and additionally is not currently operative in the generation licences of other companies with larger market shares.

Issue

2.3. Powergen has requested that certain paragraphs within SLC 18 of its Electricity Generation licence should be disapplied on the grounds that in its view it unfairly restricts its commercial freedom in a very competitive generation market, particularly given that these paragraphs are not applied to all generation licensees. In this way, Powergen contends that competition is being distorted and/or restricted. Powergen has suggested two alternative sets of paragraphs that could be disapplied and the merits of these alternatives also need to be assessed. Powergen's alternatives are:

- **Option 1: To disapply paragraphs 7 to 17 inclusive of SLC 18.** This would switch off²⁹ these paragraphs in Powergen's Electricity Generation licence; with the effect that Powergen, like the majority of other generation licensees, would no longer be legally obliged to comply with the requirements in those paragraphs of SLC 18.³⁰ It would mean that Ofgem would no longer be able to review the availability of Powergen's generating units under SLC 18.³¹ It would mean Powergen would no longer need to make reasonable endeavours to give Ofgem six months notice of any decision to close plant (permanently or temporarily) or reduce the availability of plant. Powergen would also not need to specify in reasonable detail to Ofgem the criteria it will use for the purpose of planning the availability of its generating units regarding both closures and the reduction of capacity. In addition, Ofgem would not be in a position to appoint an independent assessor in the event of a planned plant closure or a material reduction in capacity at Powergen's power stations.
- **Option 2: To disapply paragraphs 7 to 8 and 10 to 16 of SLC 18 but to continue to apply paragraphs 9 and 17.** This again would have the effect that the disapplied paragraphs would be switched off in Powergen's licence and the relevant paragraphs would no longer be operative.³² However, unlike the first option above, Powergen would continue to be required by SLC 18 to provide information to Ofgem regarding its generating unit

²⁹ In accordance with the terms of paragraph 3 of SLC 18.

³⁰ Powergen would remain subject to all its other licence conditions, including any information provision requirements under industry codes.

³¹ Unless switched on again in accordance with paragraph 3 of SLC 18.

³² Unless switched on again in accordance with paragraph 3 of SLC 18.

availability as per the requirements of paragraph 9 (paragraph 17 defines terms in the licence condition). These provisions would continue to be switched on and would remain operative.

Objectives

2.4. Ofgem is seeking views on five options:

- Option 1** - Powergen's request to disapply Paragraphs 7 to 17 inclusive of SLC 18 in Powergen's Electricity Generation licence only; or
- Option 2** - Powergen's request to disapply Paragraphs 7 to 8 inclusive and 10 to 16 inclusive of SLC 18 in Powergen's Electricity Generation licence only; or
- Option 3** - Retention of SLC 18 as a Standard Licence Condition in Powergen's Electricity Generation licence, with all the provisions remaining operative; or
- Option 4** - Switch on SLC 18 in all those Electricity Generation licences in which it is currently switched off; or
- Option 5** - Removal of SLC 18 as a Standard Licence Condition in all Electricity Generation licences.

2.5. The five options are discussed in more detail below. Under all the options, Powergen (and any other generators affected by the option) would remain subject to all its other licence conditions, including any information provision requirements under industry codes. Ofgem would also have power, under the Competition Act 1998, to investigate Powergen's plant availability further, if it considers there are reasonable grounds for believing that Powergen is entering into agreements to reduce its capacity with the intention of restricting or distorting competition or that Powergen is abusing a dominant position by limiting its output. These powers are discussed in more detail in Chapter 3.

Policy

Option 1- Disapplication of paragraphs 7 to 17 inclusive of SLC 18 in Powergen's licence

- 2.6. This option would result in SLC 18 being "switched off" in Powergen's generation licence.
- 2.7. It would result in there being no specific requirement for Powergen to provide information on the availability of its generating units under SLC 18, although Ofgem may be able to request this information using other provisions within Powergen's licence.³³
- 2.8. Powergen would also no longer be required to give Ofgem six months notice of any decision not to make plant available. In addition, it would also no longer be required to provide Ofgem with notice of, or a statement of criteria for, the temporary, or permanent, closure, or any material reduction in the registered capacity, of its power stations. In addition, Ofgem would not be able to appoint an independent assessor in the event of a plant closure or a material reduction in capacity at Powergen's power stations.³⁴
- 2.9. The disapplication of these paragraphs would therefore remove a number of regulatory requirements from Powergen. There are, however, a number of other regulatory levers, including other licence conditions and Competition legislation which can have the same effect, in prescribed circumstances, as some of the requirements of SLC 18. As noted above, these include a condition concerning the provision of information to Ofgem.
- 2.10. If this option (or Option 2) was implemented, then the condition could only be "switched on" again at a later date by a direction issued by the Authority,³⁵ if, for example, because the Authority considered such a direction was appropriate due to a change in market conditions or unique issues arose such that to do so would be considered appropriate.

³³ For example, under Electricity Generation Standard Licence Condition 13, the licensee is required to provide to the Authority any such information required by the Authority in order for it to perform its functions under the Electricity Act 1989.

³⁴ OFFER appointed independent assessors to review closure decisions of National Power and Powergen. See "Statement on Independent Assessor's report on plant closures" OFFER, March 1993 and "Independent Assessor's report on plant

Option 2 - Disapplication of paragraphs 7 to 8 inclusive and 10 to 16 inclusive of SLC 18 in Powergen's licence

- 2.11. The difference between this option and Option 1 is that Powergen would retain the obligation to provide Ofgem, when applicable and in addition to related Grid Code requirements, with a detailed statement regarding any material differences between planned and actual generation unit availability together with the reason(s) for the differences. All its other obligations in respect of the availability of its plant (as detailed for Option 1) would be removed.
- 2.12. It may be argued that this option would be more beneficial to Ofgem than Option 1. However, Ofgem may be able to obtain this information using its other powers if necessary.

Option 3 - Retention of SLC 18 as a SLC in Powergen's licence, with all provisions remaining operative

- 2.13. This option would involve the complete retention of Powergen's obligations under SLC 18 i.e. the status quo would be maintained.
- 2.14. Ofgem would continue to review Powergen's conduct in decisions regarding the availability of its generating units through this licence condition. Powergen would continue to be required to provide Ofgem with notice of, and a statement of criteria regarding, any temporary or permanent closure, or any material reduction in the registered capacity, of its power stations and Ofgem would continue to be able to require an independent assessment to be carried out.
- 2.15. Powergen has requested disapplication of SLC 18 on the grounds that, in its view, it unfairly restricts its commercial freedom, particularly given that these paragraphs are not applied in all generation licensees. If, following receipt and consideration of the responses to this consultation, Ofgem considers that retention of SLC 18 would be in the best interests of consumers, Ofgem would seek to maintain the status quo. To do so the Authority must refer the matter to the Competition Commission on or before 26 March 2003.³⁶

closure" OFFER, April 1998. See Chapter 3 for more detail.

³⁵ Under paragraph 2 of SLC 18.

³⁶ In accordance with the terms of paragraph 15 of SLC 18.

Option 4 – Switch on SLC 18 in all generation licences

- 2.16. Currently SLC 18 is only switched on in the Electricity Generation licences of: British Energy Generation Limited, Magnox Electric Plc, Deeside Power Development Company Limited, Innogy Plc, International Power Plc, Powergen UK Plc, Diamond Power Generation Limited, Emerald Power Generation Limited and Jade Power Generation Plc. This option would switch on SLC 18 in the licences of all other generation licensees in England and Wales.
- 2.17. One of Powergen's concerns is that SLC 18 is switched on in its licence but switched off in the licences of other generators of an equivalent size. This option would remove any such perceived inequality. It would enable Ofgem to review the conduct of all generators regarding decisions related to the availability of their generating units.³⁷ All generators would be required to provide Ofgem with information about generator unit availability and notice of, and a statement regarding, any temporary or permanent closure, or any material reduction in the registered capacity, of their power stations. In the event of a plant closure or a material reduction in registered capacity for any generator in England and Wales, Ofgem could require an independent assessment of this decision to be carried out.

Option 5 – Removal of SLC 18 as a Standard Licence Condition in all generation licences.

- 2.18. This option would involve the removal of SLC 18 from all generation licences by way of a licence modification.
- 2.19. This option goes further than allowing Option 1 to be applied to all generation licences, if the relevant licensees apply for disapplication of SLC 18. Once removed from the licence, a licence condition cannot simply be reinstated. To reintroduce the obligation a licence modification would need to be proposed by Ofgem under Section 11 or Section 11a of the Electricity Act 1989, as appropriate, if circumstances were to arise that suggested that the provisions contained in SLC 18 were once again considered by Ofgem to be appropriate. If the licensees objected to the introduction of a new licence condition along the

³⁷ Except those generating units having a registered capacity of 10 MW or less.
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lines of SLC 18, the condition could only be introduced if the Competition Commission accepted evidence provided by Ofgem to justify the introduction of such a condition.

- 2.20. As noted above, Ofgem is seeking consultation responses on all five options detailed within this document. A decision as to which is the most appropriate way forward with respect to SLC 18 in Powergen's Electricity Generation licence will be made following receipt and review of consultation responses in March 2003.

Ofgem's recommendation

- 2.21. Ofgem recognises Powergen's concerns surrounding the current application of SLC 18. In the absence of compelling reasons to switch on SLC 18 in all generation licences, Ofgem is minded to accept one of Powergen's disapplication requests. Unless there was evidence of a material change in circumstances or the request had unique issues, Ofgem would be minded to treat any other disapplication requests in the same way. In each case, Ofgem would consult using a simplified process.

3. Issues to consider

Introduction

- 3.1. This chapter discusses the issues that need to be considered when assessing Powergen's application to disapply SLC 18. In particular, it explains the background to the introduction of the licence condition, when the condition has been used in the past, and the changes to the generation market since the introduction of the licence condition. The chapter also outlines other powers that Ofgem has to address any potential concerns regarding the availability of generating plant and Ofgem's ability to obtain information regarding that availability.

The original generating unit availability condition

Removal of units from the system and the introduction of the licence condition

- 3.2. As discussed earlier in the document, SLC 18 replaced a previous licence condition (9A) introduced in response to concerns that certain large generators were able to exert undue influence on the Pool based electricity trading arrangements through their generating unit availability declarations and decisions to either mothball or close plant. The condition was introduced into the licences of National Power, Powergen and Nuclear Electric following an investigation into Pool prices that was carried out by OFFER in late 1991³⁸ and representations that were made to OFFER regarding the failure of some generators to offer for sale plant that they were proposing to mothball or close. At that time, the generation market was significantly more concentrated than today with three generators accounting for over 90% of the generating capacity in England and Wales,³⁹ see Figure 3.1.

³⁸ "Report on Pool Price Inquiry", December 1991.

³⁹ Powergen, National Power (the precursor of Innogy and International Power) and Nuclear Electric (the precursor of British Energy and Magnox Electric).

- 3.3. As discussed below, during the course of the 1990s the operation of the Pool's Capacity Payment mechanism and the actions of the generators provided evidence of the continuing need for the generating unit availability condition.

The role of Capacity Payments

- 3.4. The Pool provided a set of rules defining how wholesale electricity was to be traded in England and Wales. The price charged by the most expensive plant on the system in each half hour – the top of the merit order – became the basis for the Pool price for all electricity generated (the System Marginal Price ("SMP")). In addition to being paid SMP for their output, generators were also paid a centrally calculated price for making their generating capacity available. These 'Capacity Payments' were set according to a complex formula and were intended to operate as both a short and long term signal of capacity requirements.
- 3.5. During the 1990s, there was increasing criticism of the Pool as a market mechanism for setting electricity prices, both from within Government and from other parties, such as large industrial and commercial users of electricity. As a result, a number of further inquiries concerning Pool prices and the operation of the Pool were undertaken by OFFER.⁴⁰ These inquiries resulted in further action being taken by the Director General, including the generators' price undertakings (the price caps) in 1994/95 and 1995/96, and the divestment of 6 GW of coal-fired plant by National Power and Powergen to Eastern in 1996.
- 3.6. Despite these actions, concerns persisted regarding generators' behaviour and the role of Capacity Payments. The Capacity Payment mechanism gave generators the ability to increase Capacity Payments as a result of plant retirements and low declarations of plant availability, followed on occasions by subsequent redeclarations of availability. Thus, in the short to medium term, rather than being a mechanism that encouraged plant availability, Capacity Payments tended to provide a further means by which generators influenced Pool prices to their own advantage. The nature of the mechanism also meant

⁴⁰ These include: "Review of Pool prices", December 1992, "Consultation on Pool reform", March 1994, "Pool Prices and the Undertakings on pricing given by National Power and Powergen", January 1995, "Generators' Pool price Undertakings 1994/95", June 1995, "Report on Pool prices increases in winter 1997/98", June 1998, "Pool price: a consultation paper", February 1999, "Pool Price: a Decision Document", May 1999, "Rises in Pool prices in July: Ofgem consultation", July 1999, "Rises in Pool prices in July: a decision document", October 1999.

that very large changes in Capacity Payments could result from relatively small changes in plant margin, so there was considerable volatility in Capacity Payments year on year and hence they provided a relatively poor long term signal of the need for new capacity.

Appointment of Independent Assessors under the condition

- 3.7. On two occasions during the 1990s, the Director General appointed an independent assessor to examine and report to him on the plant closure programmes of National Power and Powergen under Licence Condition 9A, the predecessor of SLC 18.⁴¹
- 3.8. In 1993, in relation to a tranche of generating capacity closures announced by National Power and Powergen, an independent assessor concluded that the decision making process used by National Power and Powergen to justify the proposed plant closures was a reasonable one, although neither company had made sufficient endeavours to sell or lease the stations to a third party, at a time when the generation market was highly concentrated.
- 3.9. In 1998, an independent assessor was appointed in relation to the closure of units (rather than stations) by National Power and Powergen. The assessor concluded that the generators might be exploiting their market position by withdrawing units, due in part to the difficulty of a third party buying or leasing individual units within a station. In relation to the period of notice given for the closure of one particular unit (four days), the Director General concluded that Powergen was in breach of its licence in this respect, however, the Electricity Act 1989 provided the Director General with no direct enforcement powers in respect of a past breach of licence. The Director General therefore decided that there was a need to take further steps to increase competition in generation so as to reduce the market's vulnerability to plant closures in the future.

⁴¹ "Statement on Independent Assessor's report on plant closures", OFFER, March 1993 and "Independent Assessor's report on plant closure", OFFER, April 1998.

Changes in the generation market since the licence condition was introduced

Changes in market share

- 3.10. As noted above, in 1990 there were three major power producers in England and Wales – National Power (which later split into Innogy and International Power), Powergen and Nuclear Electric,⁴² with around 80 per cent of the generating capacity originally owned by the two non-nuclear generators. As mentioned above, National Power and Powergen were required to divest plant in 1996. They were required to divest further plant in 1999 as a precondition of their each acquiring distribution and supply businesses. These divestments, together with further sales and closures of plant and significant new generation entry led to a sharp drop in their market shares. By the end of 2000, their combined share of generation capacity had fallen to around 25 per cent, leaving British Energy as the largest generator, with around 14 per cent of generation capacity.
- 3.11. Figure 3.1 illustrates the concentration in the generation sector in 1991⁴³ and 2002.⁴⁴ Generators with a market share of less than 5% have been included in the “other” category⁴⁵, except where they have been counted as independent power producers (IPP).

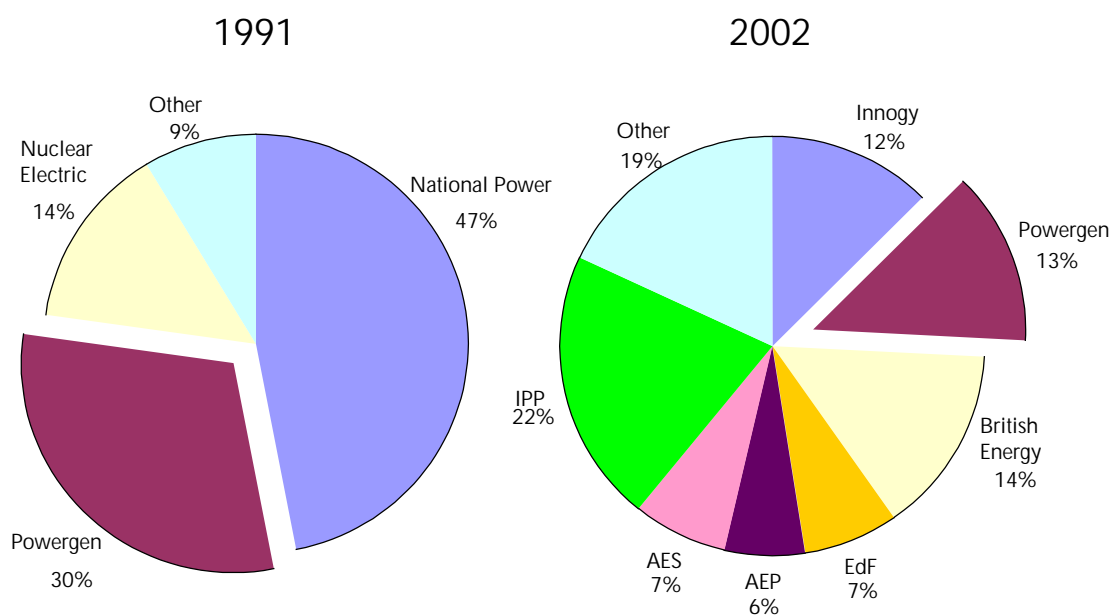
⁴² Nuclear Electric was subsequently split in two with part being merged with Scottish Nuclear and privatised as British Energy in 1996. British Energy owns the more modern nuclear power stations and British Nuclear Fuels Limited owns the older reactors.

⁴³ The year a generating unit availability condition was first introduced.

⁴⁴ 2002 data based on NGC's Seven Year Statement January 2003 update. This allows for Powergen's recent acquisition of TXU's generating assets, however the recent announcement concerning the withdrawal of capacity at High Marnham and Drakelow C is not accounted for in this assessment.

⁴⁵ It should be noted that several generators are included in the “other” category by virtue of their respective market shares. Despite this, SLC 18 is switched on in their generation licences.

Figure 3.1 Generation market shares (by capacity) in 1991 and 2002



Ofgem's powers under the Competition Act 1998

3.12. In considering whether SLC 18 should be removed, it is relevant to consider what other options are available to Ofgem if it has reason to believe that a company is seeking to manipulate the market through changes to the availability of its generating plant. In this respect, Ofgem's powers under the Competition Act 1998⁴⁶ represent the most obvious alternative approach to investigating issues relating to generating unit availabilities. The Competition Act 1998 introduced two prohibitions against anti-competitive behaviour.

3.13. The Chapter I prohibition prohibits agreements between undertakings, concerted practices and decisions by associations that have the object or effect of preventing, restricting or distorting competition in the United Kingdom. In relation to the issues covered by SLC 18, an example of behaviour that might breach this prohibition includes (without limitation) collusion over market shares or agreements to limit capacity and thus output.⁴⁷

⁴⁶ Under which it has concurrent powers with the Director General of Fair Trading ("DGFT") in relation to activities in the gas and electricity sectors. Sectoral Regulators' powers under the Competition Act are discussed more fully in "Concurrent Application to Regulated Industries", OFT 405, Office of Fair Trading, March 1999. Discussion of the application of the Competition Act in the electricity sector can be found in "The application in the Energy Sector", OFT 428, Office of Fair Trading/Ofgem, March 2001.

⁴⁷ There are, of course, many other types of behaviour that could breach the Chapter I prohibitions, which Ofgem would investigate.

- 3.14. The Chapter II prohibition prohibits the abuse of a dominant position by an undertaking in the United Kingdom. In the context of SLC 18, without limitation, restricting available capacity could be an example of abusive behaviour if its intention was primarily to increase prices.⁴⁸ The withholding of capacity could be for a relatively short period when supply and demand are tight but have a very large effect as a result of inelastic supply and demand over that period.
- 3.15. Undertakings can be fined up to 10% of their turnover. It should be noted that the Competition Act 1998 can only be invoked if there is an anti-competitive agreement or a company is in a dominant position; these are not restrictions that apply in the case of SLC 18.

Process of investigation under the Competition Act 1998

- 3.16. In order to commence an investigation under the Competition Act 1998, Ofgem must have reasonable grounds for suspecting that one of the prohibitions has been infringed. This suspicion may be the result of complaints, or it may derive from Ofgem's own market surveillance or acquired knowledge.
- 3.17. Following the investigation, if it is decided that there has been an infringement of either prohibition, written directions may be given to the company that are appropriate to bring the infringement to an end. These directions can require modification or cessation of the offending conduct. In an urgent situation before an investigation has concluded, written notice may also be given of interim measures to prevent the serious and irreparable harm to any person or general danger to the public interest.
- 3.18. At the conclusion of the investigation, if Ofgem proposes to make a decision that there has been an infringement of a prohibition, written notice must be given to those affected, and they must be offered the opportunity to make representations. If a company is found to have infringed either of the prohibitions under the Competition Act 1998, Ofgem has the power to impose a financial penalty on the company.

⁴⁸ Again, the example is included for illustrative purposes only and in no way limits the actions that Ofgem might consider investigating.

Information provision

- 3.19. As noted in Chapter 2, there are a number of other regulatory levers including other licence conditions in addition to the Competition Act 1998 which can have the same effect as some of the requirements of SLC 18. These include Electricity Generation Standard Licence Condition 13, under which the licensee is required to provide to Ofgem such information that Ofgem requires in order for it to perform its functions under the Electricity Act 1989.
- 3.20. Licenced generators are also required to provide information under industry codes. For example, under the Planning Section of the Grid Code, Users must supply certain information to NGC in order for it to undertake the planning and development of the transmission system.
- 3.21. Whilst neither of these alternatives provide the same regular information provision to Ofgem as SLC 18, they do ensure that Ofgem has the ability to obtain any information it may require in order to facilitate the discharge of its functions.

Summary

- 3.22. Market conditions, in terms of generation concentration, have changed considerably since the original generating unit availability condition was introduced. Moreover, Ofgem now has powers, under the Competition Act 1998, to investigate anti-competitive behaviour, including (but not limited to) actions in relation to the availability of generating plant. It can also request information from generators under a number of other licence conditions.
- 3.23. However, neither the Competition Act 1998 nor the information provision conditions completely replicate generators' obligations under SLC 18. SLC 18 ensures that Ofgem is regularly provided with information on generating unit availabilities. In addition, the potential to appoint an independent assessor to examine mothballing or closure decisions is specific to SLC 18.
- 3.24. It is in the context of these competing considerations that Powergen's disapplication request and the other options set out in Chapter 2 need to be assessed.

Ofgem's recommendation

- 3.25. Ofgem recognises Powergen's concerns surrounding the current application of SLC 18. In the absence of compelling reasons to switch on SLC 18 in all generation licences, Ofgem is minded to accept one of Powergen's disapplication requests. Unless there was evidence of a material change in circumstances or the request had unique issues, Ofgem would be minded to treat any other disapplication requests in the same way. In each case, Ofgem would consult using a simplified process.

4. Way Forward

Summary of views invited

- 4.1. Views are invited in response to the issues raised in this document. Responses should be submitted in writing by 19 March 2003.
- 4.2. Ofgem invites views on any of the issues raised in this document. In particular on:
 - the five options detailed within Chapter 2 of this document;
 - the appropriateness of the options to retain, disapply or remove SLC 18 given today's environment; and
 - the extent to which Ofgem's Competition Act 1998 powers would provide an appropriate substitute to SLC 18.

Next steps

- 4.3. Following consideration of respondents' views to the issues raised in this document, Ofgem will publish its decision document on or before 26 March 2003.

Appendix 1 Standard Licence Condition

September 2001

Condition 18. Generating Unit Availability

1. Where the Secretary of State provides, by a scheme made under Schedule 7 to the Utilities Act 2000, for this condition to have effect within this licence, the licensee shall be obliged to comply with the requirements of the provisions contained in paragraph 7 to 17 from the date the said scheme takes effect.
2. Subject to paragraph 3, the Authority may issue a direction providing that paragraphs 7 to 17 shall have effect in this licence. Where the Authority has issued to the licensee a direction, paragraphs 7 to 17 shall have effect within the licence from the date specified in the Authority's direction and the licensee shall be obliged to comply with the requirements of the provisions contained in those paragraphs from that date.
3. Where -
 - (a) the Authority has consented to a disapplication request pursuant to paragraph 13; or
 - (b) the licensee has issued a termination notice pursuant to paragraph 15 or 16, the Authority shall not thereafter issue a direction pursuant to paragraph 2 to the licensee in respect of the paragraphs (or any part or parts thereof) to which the termination notice relates until -
 - (i) at least 12 months have elapsed since the date of the termination notice, and
 - (ii) the Authority is of the opinion that circumstances have changed in a material respect.
4. Until:
 - (a) the Secretary of State provides, by a scheme made under Schedule 7 to the Utilities Act 2000, for this condition to have effect within this licence; or
 - (b) the Authority has issued to the licensee a direction for the purposes of this condition, the provisions contained in paragraphs 7 to 17 shall not have effect within this licence and the licensee shall not be obliged to comply with any of the requirements of such paragraphs.
5. Where the Authority has issued to the licensee a direction pursuant to paragraph 2, the provisions contained in paragraphs 7 to 17 shall be deemed to have effect within the licence and shall apply to the licensee from the date specified in the Authority's direction.
6. A direction pursuant to paragraph 2 may be issued at any time from the date the Secretary of State determines these standard conditions pursuant to subsection 33(1) of the Utilities Act 2000.
7. The purpose of this condition is to enable the Authority to keep under review the behaviour of the licensee to ascertain whether the licensee is pursuing a course of conduct in making or declining (whether temporarily or permanently) to make available generating units owned or operated by the licensee which is intended to have or is likely to have the effect of restricting, distorting or preventing competition in the generation or supply of electricity.

8. The licensee shall within 2 months of the Authority's direction under paragraph 2 prepare a statement, for approval as to form by the Authority, specifying in reasonable detail the criteria upon which the licensee will, for the purpose of planning the availability of generating units:
 - (a) determine its policy regarding the closure, whether permanent or temporary, of any generating units; and
 - (b) determine its policy regarding the reduction in capacity of any generating units,
9. (a) Where the licensee is required, pursuant to any Grid Code, to provide information to a transmission company relating to planned availability of any generating unit operated by the licensee, then, where applicable, in respect of each planned availability period, as soon as is reasonably practicable and in any event no later than 2 months from the end of the planned availability period in question, the licensee shall provide the Authority with a statement setting out in reasonable detail the information specified in sub-paragraph (b).
 - (b) The information referred to in sub-paragraph (a) shall, in respect of each generating unit involved, comprise the following:
 - (i) details of any material differences between the actual availability and the information specified in sub-paragraph (a) relating to planned availability, such information to include the date and duration of any unavailability; and
 - (ii) an explanation (with appropriate supporting technical information) as to how each such difference has arisen.
10. (a) The licensee shall give notice to the Authority of the date upon which it is intended:
 - (i) to close permanently or close temporarily any power station; or
 - (ii) to make a material reduction in the registered capacity of any power station, and shall use its reasonable endeavours to give that notice not less than six months prior to the date of the intended closure or reduction in capacity.

(b) A notice under sub-paragraph (a) shall specify the power station to which it relates, the intended date of closure or reduction in capacity and, if in respect of sub-paragraph (a)(ii), shall also specify:

 - (i) the existing and proposed registered capacity;
 - (ii) the expected duration of the reduction in capacity;
 - (iii) the reasons for the reduction in capacity; and
 - (iv) (if the reduction is as a result of the cessation of operation of a generating unit or units) whether it would be practicable for that generating unit or those units (on the assumption, if not the case, that it or they were operational) to be operated separately from the other unit or units of that station and, if not, the reasons therefore.

(c) For the purpose of this paragraph:

 - (i) a reduction of more than 10 per cent in the registered capacity of an open cycle gas turbine generating unit is material;

- (ii) subject to (c)(i), a reduction in capacity is material if it will reduce the registered capacity of a power station by more than 25 megawatts or more than 10 per cent whichever is the lesser; and
 - (iii) “close temporarily” means to close or not to make available for a period greater than one year but not permanently.
- 11. (a) Within one month of delivery of a notice under paragraph 10(a)(i), the licensee shall provide to the Authority a statement setting out in reasonable detail:
 - (i) (if in relation to any closure of a power station) the reasons for the decision referred to in the notice;
 - (ii) (if in respect of a temporary closure of a power station) the circumstances in which the licensee expects to recommence operating the power station; and
 - (iii) (if in respect of a permanent closure of a power station) the licensee’s proposals for use or disposal of the site and the plant, and alternative proposals considered and the reason for adopting the chosen proposal.
- (b) The licensee shall provide to such independent and competent assessor (if any) as may be appointed by the Authority with the approval of the licensee (such approval not to be unreasonably withheld) such information (in addition to that contained in any notice under paragraph 10(a)(i) or the statement under paragraph 11(a)) as the assessor may reasonably require to enable him to provide to the Authority and the licensee within two months of his appointment (or such longer period as the Authority may approve) an assessment of whether the above decision process and result were reasonable, taking into account all the relevant circumstances and opportunities, identifying the direct and indirect financial implications for the licensee, and the amounts if any which third parties have offered or would be likely to pay to purchase or lease the plant or site and associated facilities whether or not for use as an operating power station.
- 12. A licensee, in whose licence this condition has effect, may make a disapplication request in writing to the Authority. The disapplication request shall specify the paragraphs of this condition (or any part or parts thereof) to which the request relates and shall state the date (“the disapplication date”, being a date not less than 18 months after the date of delivery of the request) from which the licensee wishes the Authority to agree that the specified paragraphs (or the specified part or parts thereof) shall cease to have effect.
- 13. Paragraphs 7 to 17 of this condition (or any part or parts thereof) shall cease to have effect from the date specified in the disapplication request or such later date as may be agreed, if the licensee delivers to the Authority a disapplication request made in accordance with paragraph 12 and the Authority agrees in writing to the disapplication request.
- 14. Save where the Authority otherwise agrees, no further disapplication request pursuant to paragraph 12 may be served within 12 months following the date on which a report is delivered by the Competition Commission following a reference under paragraph 15 where the report of the Competition

Commission did not entitle the licensee to deliver a notice to the Authority under paragraph 16.

15. If the Authority has not made a reference to the Competition Commission in respect of this licence under section 12 of the Act relating to the modification of this licence by the removal of the paragraphs (or any part or parts thereof) specified in the disapplication request before the beginning of the period of 12 months which will end with the disapplication date, the licensee may deliver a termination notice to the Authority. Following the service of a termination notice, with effect from the disapplication date or such later date as may be specified in the termination notice such of the paragraphs (or any part or parts thereof) as are specified in the disapplication request shall cease to have effect in this licence.
16. If the Competition Commission makes a report on a reference in respect of this licence made by the Authority relating to the modification of this licence by the removal of the paragraphs (or any part or parts thereof) specified in the disapplication request and such report does not include a conclusion that the removal of such paragraphs (or any part or parts thereof) operates or may be expected to operate against the public interest, the licensee may within 30 days after the publication of the report by the Authority in accordance with section 13 of the Act deliver a termination notice to the Authority. With effect from the disapplication date or such later date as may be specified in the termination notice such paragraphs (or any part or parts thereof) as are specified in the disapplication request and in respect of which the Competition Commission report does not include the aforementioned conclusion shall cease to have effect in this licence.
17. In this condition:
 - “registered capacity”;
 - “generating unit”,
 - “power station”each shall have the same meaning as in the Grid Code, but as if in relation to a power station the registered capacity means the aggregate of the registered capacity of the generating units forming part of that power station;
 - and,
 - “settlement period”
 - “planned availability period”means each period of 4 successive weeks, the first such period to begin on the first date in respect of which the licensee is required, pursuant to any Grid Code, to provide the information specified in sub-paragraph 9(a) of this condition.
 - (a) This condition does not apply to any generating unit having a registered capacity of [10] megawatts or less.
 - (b) Unless the Authority otherwise directs, any reference to generating unit or power station shall mean, respectively, each generating unit owned or operated by the licensee forming part of a power station owned or operated by the licensee which is capable of providing 100 megawatts or more to the total system being the transmission and distribution systems of all authorised electricity operators which are located in Great Britain.