STATUTORY RULES OF NORTHERN IRELAND

2009 No. 154

ELECTRICITY

The Renewables Obligation Order (Northern Ireland) 2009

Laid before the Assembly in draft

Made - - - - 27th March 2009

Coming into operation 1st April 2009

The Department of Enterprise, Trade and Investment makes the following Order in exercise of the powers conferred on it by Articles 52 to 55F and 66(3) of the Energy (Northern Ireland) Order 2003(**1**).

The Department has had regard to those matters stated in Article 54B(4) of that Order.

The Department has consulted the Northern Ireland Authority for Utility Regulation, the General Consumer Council for Northern Ireland, electricity suppliers to whom this Order applies, persons generating electricity from renewable sources in Northern Ireland and such other persons as it considers appropriate.

PART 1

Introductory Provisions

Citation and commencement

1. This Order may be cited as the Renewables Obligation Order (Northern Ireland) 2009 and shall come into operation on 1st April 2009.

Interpretation

2.—(1) In this Order—

"the 2007 Order" means the Renewables Obligation Order (Northern Ireland) 2007(**2**);

"accreditation", in relation to a generating station means accreditation of the generating station in Northern Ireland by the Authority as one which is capable of generating electricity, from renewable sources (and includes accreditation granted before 1st April 2009);

(**1**) S.I. 2003/419 (N.I.6); Article 52 to 55F were substituted for Articles 52 to 55 by S.R. 2009 No.35

(**2**) S.R. 2007 No. 104 as amended by S.R. 2007 No.440.

"anaerobic digestion" means the bacterial fermentation of organic material in the absence of free oxygen;

"biomass" is to be construed in accordance with Article 4;

"CEN/TS 15359:2006" means the document identified by Standard Number DD CEN/TS 15359 and entitled "Solid recovered fuels. Specifications and classes" published by the European Committee for Standardisation on 30th June 2006(**3**);

"CEN/TS 15402:2006" means the document identified by Standard Number DD CEN/TS 15402 and entitled "Solid recovered fuels. Methods for the determination of the content of volatile matter" published by the European Committee for Standardisation on 30th November 2006(**4**);

"CEN/TS 15415:2006" means the document identified by Standard Number DD CEN/TS 15415 and entitled 'Solid recovered fuels. Determination by particle size and particle size distribution by screen method' published by the European Committee for Standardisation on 30th November 2006(**5**);

"CEN/TS 15590:2007" means the document identified by Standard Number DD CEN/TS 15590 and entitled "Solid recovered fuels. Determination of potential rate of microbial self heating using the real dynamic respiration" published by the European Committee for Standardisation on 29th June 2007(**6**);

"CHPQA" means the Combined Heat and Power quality Assurance Standard, Issue 2, November 2007, as published by the Department of Environment, Food and Rural Affairs, and Guidance Note 44 (Use of CHPQA to obtain Renewables Obligation Certificates (ROCs) Including Under a Banded Obligation (expected to apply from April 2009)), published by the Department of Energy and Climate Change;

"civil works", in relation to a hydro generating station, are to be regarded as all man-made weirs, man-made structures and man-made works for holding water, which are located on the inlet side of a turbine (turbine A) excluding any such structures or works which supply another turbine before water is supplied to the structures and works which supply turbine A;

"combined heat and power generating station" means a station producing electricity that is (or may be) operated for purposes including the supply of any premises of—

(a) heat produced in association with electricity; or

(b) steam produced from, or air or water heated by, such heat;

"commissioned", in relation to a generating station, means the completion of such procedures and tests in relation to that station as constitute, at the time they are undertaken, the usual industry standards and practices for commissioning that type of generating station in order to demonstrate that that generating station is capable of commercial operation;

"the Company" means NIE Energy Ltd;

"connected person", in relation to the owner or operator of a generating station, or any party to a NFFO arrangement, means any person connected to the owner, operator or party within the meaning of section 839 of the Income and Corporation Taxes Act 1988(**7**);

"declared net capacity", in relation to a generating station, means the maximum capacity at which the station could be operated for a sustained period without causing damage to it

(**3**) ISBN 0580485350. Copies can be obtained from the British Standards Institution: www.bsi-global.com/en/
(**4**) ISBN 0580495485. Copies can be obtained from the British Standards Institution: www.bsi-global.com/en/
(**5**) ISBN 058049554X. Copies can be obtained from the British Standards Institution: www.bsi-global.com/en/
(**6**) ISBN 9780580576546. Copies can be obtained from the British Standards Institution www.bsi-global.com/en/
(**7**) 1988 c.1. Section 839 was amended by Section 74 of and Schedule 17, paragraph 20 to the Finance Act 1995 (c.4), by sections 89 and 178 of and Schedule 13, Part 2 paragraphs 7, 25 and 27(1) and Schedule 26, Part 3 to the Finance Act 2006 (c.25), by section 1027 of and Schedule 1, Part 1, paragraphs 1 and 223 to the Income Tax Act 2007 (c.3), and by regulations 47 and 100 of S.I. 2005/3229.

(assuming the source of power used by it to generate electricity was available to it without interruption) less the amount of electricity that is consumed by the plant;

"designated electricity supplier" except where it appears in the definition of "Great Britain designated supplier", is to be construed in accordance with Article 5(1);

"the Electricity Act" means the Electricity Act 1989(**8**);

"energy content", in relation to any substance, means the energy contained within that substance (whether measured by a calorimeter or determined in some other way) expressed in terms of the substance's gross calorific value within the meaning of British Standard BS 7420:1991 (Guide for determination of calorific values of solid, liquid and gaseous fuels (including definitions) published by British Standards Institute on 28th June 1991)(**9**);

"energy crops" means a plant crop planted after 31st December 1989 which is grown primarily for the purpose of being used as fuel or which is one of the following—

(a) Miscanthus giganteus (a perennial grass);

(b) Salix (also known as short rotation coppice willow);

(c) Populus (also known as short rotation coppice poplar);

"the Energy Order" means the Energy (Northern Ireland) Order 2003;

"gasification" means the substoichiometric oxidation or steam reformation of a substance to produce a gaseous mixture containing two or all of the following: oxides of carbon, methane and hydrogen;

"GBRO Order" means any order made pursuant to section 32 of the Electricity Act;

"GBROC" means a certificate issued by the Great Britain Authority under section 32B of the Electricity Act and pursuant to a GBRO Order and, save where the context otherwise requires, includes a replacement GBROC;

"GBROC identifier" means an identifier unique to a GBROC determined by the Great Britain authority and containing the following information (or reference to that information in coded format)

(a) the month and year during which the electricity was generated;

(b) the location of the generating station or, where the GBROC certifies the matters within section 32B(5), (6) or (8) of the Electricity Act the location of the agent to whom the GBROC was issued under a GBRO Order;

(c) a description of the generating station including reference to the source or sources of fuel used by it or them to generate electricity or, where the GBROC certifies the matters within section 32B(5), (6) or (8) of the Electricity Act, the generating station to which the GBROC relates;

(d) the date of issue of the GBROC; and

(e) the number allocated to a GBROC by the Great Britain authority in accordance with a GBRO Order;

"Great Britain authority" means the Gas and Electricity Markets Authority;

"Great Britain designated supplier" means a designated electricity supplier within the meaning of a GBRO Order;

"hazardous waste" means any waste which is hazardous waste as defined by Article 1(4) of the Hazardous Waste directive;

(**8**) 1989 c.29
(**9**) ISBN 0580194825. Copies can be obtained from the British Standards Institute; www.bsi-global.com/en/

"Hazardous Waste Directive" means Council Directive 91/689/EEC on hazardous waste (**10**), as amended by Council Directive 94/31/EC(**11**);

"hydro generating station" means a generating station driven by water (other than a generating station driven by tidal flows, waves, ocean currents or geothermal sources) and includes all turbines supplied with water by or from the same civil works, except any turbine driven by a compensation flow supplied by or from those civil works in a natural water course where there is a statutory obligation to maintain that compensation flow in that water course (in which case that turbine and associated infrastructure is to be regarded as a separate hydro generating station);

"landfill" has the meaning given in Article 2(g) of Council Directive 1993/31/EC(**12**).

"landfill gas" means gas formed by the digestion of material in a landfill.

"licensed supplier" means an electricity supplier or any electricity supplier within the meaning of Part I of the Electricity Act.

"linked person" in relation to a person who is a party a NFFO arrangement ("the first person"), means another person who has given or has arranged to give to the first person or has ensured that or has arranged to ensure that the first person is given, a financial or other inducement relating to any right or interest in, or in respect of, the construction or operation of a generating station at the location;

"microgenerator" means a generating station which has a declared net capacity of 50 kilowatts or less;

"micro hydro generating station" means a hydro generating station which—

(a) has a declared net capacity of 1.25 megawatts or less; and

(b) has never generated electricity under an arrangement which has ever been a NFFO arrangement;

"NFFO arrangement" means an arrangement which was originally made pursuant to a Non-Fossil Fuel Order (and includes any replacement of such an arrangement where that replacement was made pursuant to an order made under Article 57 of the Energy Order);

"NIROC" means a certificate issued by the authority under Article 54 of the Energy Order and pursuant to this Order;

"NIROC identifier" has the meaning given by paragraph 3 of Schedule 3;

"Non-Fossil Fuel Order" means the Electricity (Non-Fossil Fuel Sources) Order (Northern Ireland) 1994(**13**) or the Electricity (Non-Fossil Fuel Sources) Order (Northern Ireland) 1996(**14**);

"obligation period" means any of the periods referred to in the first column of Schedule 1;

"permitted ancillary purposes" is to be construed in accordance with Article 21(3) (fossil fuel or waste used for permitted ancillary purposes);

"plant", with reference to crops or plant matter, includes shrubs and trees;

"preliminary accreditation", in relation to a generating station, means accreditation of the station as one which (when commissioned) will be capable of generating electricity from renewable sources by the Authority (and includes preliminary accreditation granted before 1st April 2009);

(**10**) OJ L 377, 31.12.1991, p. 20.
(**11**) OJ L 168, 2.7.1994, p. 28.
(**12**) OJL 182, 16.7 1999, p.1
(**13**) S.R. 1994 No. 132
(**14**) S.R. 1996 No. 407

"pyrolysis" means the thermal degradation of a substance in the absence of any oxidising agent (other than that which forms part of the substance itself) to produce char and one or both of gas and liquid;

"qualifying combined heat and power generating station" means a combined heat and power generating station which has been accredited under CHPQA;

"qualifying power output" in relation to a qualifying combined heat and power generating station, has the meaning given to them in the CHPQA;

"Register" has the meaning given to it in Article 51(1);

"registered holder" has the meaning given to it in paragraph 3 of Schedule 3;

"regular biomass" means biomass other than—

(a) sewage gas,

(b) landfill gas,

(c) energy crops,

(d) fuel produced by means of anaerobic digestion, gasification or pyrolysis;

"renewables obligation" has the meaning given to it in Article 5(1);

"renewables obligation certificate" means—

(a) a renewables obligation certificate issued by the Authority under this Order;

(b) a GBROC;

"renewable output" is to be construed in accordance with Articles 23 and 24;

"Respiratory Index" means the rate of oxygen uptake expressed in milligrams of oxygen per kilogram of volatile solids per hour;

"retail prices index" means—

(a) the general index of retail prices (for all items) published by the Office for National Statistics; or

(b) where the index is not published for a year, any substituted index or figures published by that Office;

"sewage gas" means gas formed by the anaerobic digestion of sewage (including sewage which has been treated or processed);

"specified day", in relation to an obligation period, means the 1st September immediately following it;

"Solid Recovered Fuel" means solid fuel which—

(a) complies with the classification and specification requirements in CEN/TS 15359:2006

(b) is prepared from a waste which is not a hazardous waste

(c) has a maximum Respiratory Index value of no more than 1500 milligrams of oxygen per kilogram of volatile solids per hour when measured using the real dynamic respiration test specified in CEN/TS 15590:2007 and

(d) when subject to a methodology for the determination of particle size in accordance with CEN/TS 15415:2006 is able to pass through an opening measuring no more than 150 millimetres in all dimensions;

"total installed capacity", in relation to a generating station, means the maximum capacity at which the station could be operated for a sustained period without causing damage to it (assuming the source of power used by it to generate electricity was available to it without interruption);