



STATUTORY INSTRUMENTS

S.I. No. 383 of 2008



ELECTRICITY REGULATION ACT 1999 (SECTION 16(3A)) ORDER
2008

(Prn. A8/1501)

ELECTRICITY REGULATION ACT 1999 (SECTION 16(3A)) ORDER
2008

The Commission for Energy Regulation in exercise of the powers conferred on it by Section 16(3A) of the Electricity Regulation Act 1999 (as inserted by Regulation 13(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 16(3A)) 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;

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

“**S.I. No. 60 of 2005**” means the European Communities (Internal Market in Electricity) Regulations 2005 (S. I. No. 60 of 2005).

(2) In this Order:

- (a) 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.
- (b) 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.
- (c) 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.

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

- (d) 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.

Purpose.

4. (1) Pursuant to Section 16(3A) of the Act, the Commission may by order provide for the authorisation of persons in relation to the construction or reconstruction 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.

Authorisation.

5. (1) (a) A person proposing to construct or re-construct a class of generating station referred to in Article 4(2)(a) shall apply to the Commission to be duly authorised to construct or reconstruct such generating station pursuant to this Order in accordance with the procedures determined and published by the Commission.

(b) A person proposing to construct or re-construct a class of generating station referred to in Article 4(2)(b) shall automatically stand duly authorised 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 authorisation sought,
- (b) request further information as the Commission deems necessary, or
- (c) decline to grant the authorisation.

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

Amendment or Revocation of Order.

6. Pursuant to section 16(3B) of the Act, the Commission may by order amend or revoke this Order.

Terms and Conditions

7. A person duly authorised to construct or reconstruct a generating station 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:

1. In this Schedule, “authorised person” means a person duly authorised to construct or reconstruct a generating station pursuant to this Order.
2. This Order shall continue in force unless and until revoked by the Commission by order, in accordance with the Act.
3. An authorised person shall not commence construction or reconstruction of the generating station in question until all necessary planning authority and statutory consents, permissions or approvals, have been acquired.
4. An authorised person shall comply at all times with all planning authority and statutory consents, permissions or approvals.
5. A person duly authorised to construct or reconstruct a generating station pursuant to Article 5(1)(a) of this Order shall complete the construction/reconstruction and commissioning of the generating station no later than five (5) years from the date of authorisation, or such longer period as the Commission may thereafter direct in writing.
6. An authorised person shall furnish to the Commission information in such manner and at such times as the Commission may require, 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. The power of the Commission to request information under this paragraph is without prejudice to the power of the Commission to request information under or pursuant to the Act or this Order.

In this paragraph, “**information**” shall include any permissions, consents, licences, (including any conditions attached to such permissions, consents or licences), surveys, investigations, documents, records (whether stored, maintained or preserved by means of any mechanical or electronic device or otherwise), accounts, estimates, or reports (whether or not prepared specifically at the request of the Commission) of any description specified by the Commission.

7. A person duly authorised to construct or reconstruct a generating station pursuant to Article 5(1)(a) of this Order shall not, without the prior written consent of the Commission, assign or transfer an authorisation. Any consent of the Commission to any assignment or transfer of an authorisation under Article 5(1)(a) shall be subject to the Commission being satisfied that the assignee will have the technical and financial capability to comply with:

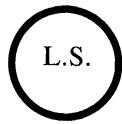
- (a) the conditions of this Order, and
 - (b) any other matters determined by the Commission to be necessary.
8. The Commission may at any time revoke an authorisation issued to an authorised person by giving not less than 30 days notice in writing if in the opinion of the Commission, one or more of the following circumstances exist:
- (a) if the person agrees in writing with the Commission that the authorisation should be revoked;
 - (b) if the person fails to comply with a direction under section 23 or section 24 of the Act, a determination under section 25 of the Act or an order under section 26 of the Act which (in respect of any of these cases) has been made in respect of a contravention or likely 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 specify) after the Commission has given notice of such failure to the person. 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;
 - (c) if the authorised person:
 - (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 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.
 - (d) For the purposes of paragraph (c)(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 authorised person.

Sealed with the common seal of the Commission for Energy Regulation on the
25 September 2008.



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 authorisation of persons to construct or reconstruct generating stations located within a Generator Site with an installed capacity not exceeding 10 MW by way of Order made pursuant to Section 16(3A) of the Act.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
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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PUBLISHED BY THE STATIONERY OFFICE
To be purchased directly from the
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€2.54

