

**EXEMPTION FROM THE
REQUIREMENT FOR A LICENCE TO
GENERATE ELECTRICITY:
PROPOSAL TO MAKE THE
ELECTRICITY (EXEMPTION FROM
THE REQUIREMENT FOR A
GENERATION LICENCE) (CUREN)
(ENGLAND AND WALES) ORDER 2012**

11 July 2012

EXEMPTION FROM THE REQUIREMENT FOR A LICENCE TO GENERATE ELECTRICITY: PROPOSAL TO MAKE THE ELECTRICITY (EXEMPTION FROM THE REQUIREMENT FOR A GENERATION LICENCE) (CUREN) (ENGLAND AND WALES) ORDER 2012

NOTICE

The Secretary of State, pursuant to section 5(2) and (3) of the Electricity Act 1989 (“the Act”) as amended by the Utilities Act 2000, proposes, subject to representations, to make an order under section 5(1) of the Act granting exemption from section 4(1)(a) of the Act to Curen Limited in respect of the Lynemouth Power Station. The condition of granting the exemption is that the exemption is time limited and will expire on 31 March 2015.

The Secretary of State’s reasons for making such an order on the terms proposed are set out below. The terms of the proposed draft Order are set out in the Appendix.

Representations may be made with respect to the proposal in the Document by 22 August 2012 to:-

Chris Chown, Energy Market Design, Department of Energy and Climate Change, Fourth Floor, 3 Whitehall Place, London SW1A 2HD (telephone: 0300 068 6085; e-mail: chris.chown@decc.gsi.gov.uk)

EXECUTIVE SUMMARY

1. The Lynemouth aluminium smelter in Northumberland, owned by Alcan Aluminium UK Ltd (AAUK) closed on 29 March 2012. The smelter was powered by the on-site 420MW coal fired Lynemouth power station. AAUK have entered into a conditional agreement for the sale and purchase of the Lynemouth power station with Curen Limited (Curen), a wholly owned subsidiary of RWE Supply and Trading GmbH. We understand that Curen's objective in acquiring the power station is to convert it to operate as a dedicated biomass station.
2. AAUK currently benefits from a class exemption from the statutory requirement to hold a generation licence. However, this exemption is drafted in such a way that it will not apply to any future owners of the Lynemouth power station (but would continue to apply for so long as the station is owned by AAUK). Curen is therefore seeking a temporary exemption from the requirement for a generation licence for Lynemouth power station until 31 March 2015. A temporary exemption would enable Curen to operate the station immediately on transfer of ownership whilst providing Curen with sufficient time to undertake the necessary technical works to comply with the conditions of a generation licence. It is Curen's intention to apply for and hold a generation licence from 1 April 2015
3. In considering Curen's application for an exemption from the requirement to hold a generation licence, the overall policy objective has been to move towards a point at which Lynemouth can operate under a full electricity generation licence, and play a part in a low-carbon, secure electricity mix in fair competition with other generators. The Secretary of State is minded to agree to a time limited exemption, subject to representations.

BACKGROUND

Lynemouth Power Station

4. The Lynemouth power station is a 420MW coal fired power station comprised of three 140MW generating units located in Lynemouth, Northumberland. The power station was constructed and commissioned in 1972 by AAUK and has continued to be owned and operated by AAUK to the present day. The power station was constructed to provide a secure supply of electricity to the neighbouring Lynemouth Smelter, also owned and operated by AAUK. The power station is connected (at 132 kV) to the local distribution system operated by Northern Powergrid (North-East) Limited (NPG). While the vast majority of its output to date has gone to power the smelter, this connection has enabled the Lynemouth power station to export some power as well, and it has provided frequency response services under contract with National Grid Electricity Transmission (NGET).

Regulation of Electricity Generation

5. Section 4(1) of the Electricity Act 1989 provides that it is an offence to generate electricity unless authorised to do so by a licence. Ofgem considers gas and electricity licence applications and decides whether or not to grant a licence. A generation licence allows the licensee to generate electricity for 'the purpose of giving a supply to any premises or enabling a supply to be given'. Generation licences are generally granted on largely standard conditions, which include compliance with a range of technical obligations, many of which are prescribed in industry-wide codes. Licences are important because the

requirements which are imposed by or under them allow NGET (and Distributed Network Operators) to fulfil its function of managing the electricity transmission (and distribution) system as a whole.

6. Section 5(1) of the Electricity Act 1989 (as amended by the Utilities Act 2000) enables the Secretary of State to grant exemption from the requirement to hold a generation licence by order to 'a person or to persons of a class'. Compliance with licence requirements have often been considered by DECC to be less necessary if a generating station's activity is at a low level and the acts or omissions of its operator pose no threat to the safe and secure operation of the electricity system or the interests of customers. Exemptions are attractive to generators in that licence exempt generators do not have to adhere to generation licence conditions and do not pay either Balancing Services Use of System Charges (BSUoS) or Transmission Network Use of System charges (TNUoS). Licence exempt generators also do not have to adhere to the Balancing and Settlement Code (BSC).
7. Exemption orders can either refer to individual generating stations or to a class of operators. The Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 ("the Class Exemptions Order") sets out the regime for a number of class exemptions from the requirement to hold a generation licence.

Current Status of Lynemouth Power Station

8. AAUK currently benefits from a "Class D" generation exemption at Lynemouth under the Class Exemptions Order. This exemption applies to non-licensed generators who:
 - a. do not provide electrical power except from generating stations which were connected to the total transmission and distribution system in England and Wales on 30 September 2000; and
 - b. provided that under the terms and conditions of their generation licences were not on that date required to submit those stations to "central despatch" by the licensed transmitter (Schedule 2, Class D to the Class Exemptions Order).
9. This class of exemption reflects that, prior to privatisation, the Central Electricity Generating Board (CEGB) operated the majority of the power stations in the UK. As a privately owned and operated power station Lynemouth was not required to be subject to central dispatch by the CEGB. Lynemouth power station is probably unique in that, to the best of our knowledge, it is the only conventional large power station in UK that is not operated by a licensed generator and has never been subject to central dispatch by the system operator.
10. Following the closure of the aluminium smelter, AAUK could continue to operate the power station and export power to the grid with the benefit of the Class D licence exemption. There is no time limit on the existing exemption. The existing exemption applies only to AAUK and it would not be transferrable if the power station were sold to a different operator.
11. AAUK owns a number of other assets in addition to the power station. Accordingly, Curen is proposing to acquire the power station by means of an asset purchase, rather than an acquisition of AAUK itself. At present, the power station is not capable of complying with the standard conditions of a generation licence. It will take a considerable period of time

for the necessary work to be done to make it capable of complying with those conditions. Therefore, if the power station is to continue to operate pending the carrying out of this work, a new licence exemption needs to be granted to Curen (since none of the other existing classes of exemption would be applicable to it).

Exemptions under the Electricity Act 1989

12. Persons, such as Curen, wishing to operate a generating station not covered by a class exemption may apply under section 5(1) of the Electricity Act 1989 to the Secretary of State for an exemption from the requirement to hold a generation licence. The Electricity Act 1989 does not limit the extent to which the Secretary of State may grant exemption (other than that it may be to a 'person' or to 'persons of a class'), or the conditions which may be attached to exemption.
13. Since 2001, the Secretary of State has received a number of such applications. In considering them, DECC's view has broadly been that applications for individual exemption for stations generating less than 100 MW should be treated sympathetically, whilst stations generating more than 100 MW should be licensed (and therefore not exempted).
14. Section 5(2) of the Electricity Act 1989 provides that the Secretary of State must give notice that he proposes to make an order granting exemption. The notice must be published so as to bring it to the attention of those likely to be affected; set out the terms of the order; and explain why it is proposed to make the order in those terms. In addition:
 - (i) Individual copies of the notice must be served on the Gas and Electricity Markets Authority (GEMA) and Consumer Focus;
 - (ii) At least 28 days must be allowed for receipt of any representations. After those representations have been considered, the exemption order may be made.
15. This document, which is being sent to GEMA and Consumer Focus and published on DECC's website, constitutes notice for the purposes of section 5(2).

CUREN'S APPLICATION

16. AAUK have entered into a conditional agreement for the sale and purchase of the Lynemouth power station with Curen. We understand that Curen's short-to-medium-term objective in acquiring the power station is to convert it to operate as a dedicated biomass-fuelled generating station rather than to continue to operate it as a coal-fired plant beyond the end of 2015, when, as a coal-fired plant, it would need to undergo substantial refurbishment if it were to comply with the new emissions limits for certain pollutants imposed by the Industrial Emissions Directive (2010/75/EU).
17. On purchase of Lynemouth power station, Curen is proposing to undertake a programme of technical compliance measures to bring the power station to a position where it can comply with the standard conditions of generation licences. Curen has had initial discussions with NGET and Ofgem with regard to obtaining a generation licence to operate Lynemouth power station. Whilst good progress has been made, Curen cannot undertake the necessary work without first acquiring the power station, but, having acquired it, it cannot operate it without the benefit of either a licence (with which it cannot

yet comply) or an exemption. Moreover, Curen believes that its purchase of Lynemouth will not be economically viable unless it is able to continue to operate it during the period when the compliance works are being carried out. It is therefore seeking a time-limited exemption from the licensing requirement until 31 March 2015 and proposes to enter into progressive contractual compliance arrangements with NGET (see below) for the period up to that date.

18. The intention of these arrangements is to ensure that the power station can fully comply with generation licence conditions and the industry arrangements that flow from them, excepting any derogations that may be agreed with NGET and Ofgem. They include:
- i. Entry into a trading services agreement with NGET that would enable dispatch of the Power Station by the NGET control room on appropriate commercial terms;
 - ii. Entry into a Bilateral Embedded Licence Exemptible Large Power Station Agreement (BELLA) with NGET to commence from the 1 April 2013. This would require Curen to accede to the Connection and Use of System Code (CUSC) and comply with the Grid Code (to the extent necessary); and
 - iii. Replacement of the BELLA with a Bilateral Embedded Generation Agreement (BEGA), to take effect from 1 April 2015. This would be supplemented with a requirement to accede to the BSC and obtain a generation licence with associated derogations. The BEGA would identify the TEC for the site and introduce a liability to pay generation TNUoS charges.
19. These contractual arrangements will ensure Curen progressively complies with the substance of certain elements of the Grid Code and CUSC prior to becoming a licensed generator on 1 April 2015.

REASONS FOR MAKING ORDER

DECC's Objective

20. We believe that Lynemouth power station is in the unique position of being the only plant of its size (420 MW) to benefit from an existing class exemption. It is also clear that the rationale behind exempting the power station from licensing requirements was that the vast majority of its output was provided to the Lynemouth smelter, making it appropriate for it not to comply with generation licence conditions that are predicated on generating stations exporting most of their output to the Grid. This will not be the case with the Lynemouth smelter no longer in operation. We therefore need to reflect this in the way Lynemouth is to be regulated in the future.
21. In doing so, we have applied the policy objective to Curen's application that it is desirable to move towards a point at which Lynemouth can operate under a full electricity generation licence, and play a part in a low-carbon, secure electricity mix in competition with other generators. DECC has therefore considered a number of options.

Options

Granting a full exemption

22. Lynemouth power station, under AAUK ownership, benefits from a class exemption. It could be argued, therefore, that a precedent exists for Lynemouth to continue to enjoy exempt status, either through a class exemption or an exemption given by the Secretary of State. However, it is clear that, as with Curen, any new owners would seek to operate Lynemouth as a fully integrated generating plant, rather than as on site generation for an industrial process. Thus a revised permanent exemption would not be maintaining the precedent in the sense that it would be being granted for the same purposes as the exemption from which AAUK has benefited.
23. It is also clear that permanent exemption, class or otherwise, would not meet the policy objective of Lynemouth operating under a full electricity generation licence as soon as practicable.

Do nothing

24. Under this option, in order for Curen to purchase Lynemouth and legally generate electricity, they would need to obtain a licence agreement. This would necessitate bringing Lynemouth quickly up to a minimum standard of compliance to enable it to be licensed.
25. We are clear that the licensing of a power station of Lynemouth's capacity is desirable. However, in its current configuration, it would not be proportionate to expect the current or future owners of Lynemouth to complete the works needed to achieve full compliance in the immediate short-term. This would require the closure of Lynemouth while a licence was negotiated with Ofgem and further shut-downs while works were taking place. It is likely that, in such circumstances, any potential buyer for Lynemouth power station would not consider it economically viable to proceed. AAUK could continue to operate the power plant under the existing licence, which would not meet the policy objective of Lynemouth eventually operating under a full electricity generation licence.

Granting a time-limited licence exemption

26. Under this option the Secretary of State would grant a time-limited exemption from licensing for Lynemouth with Curen working toward obtaining a licence for the station by 1 April 2015. This temporary exemption would enable Curen to start operating the station immediately on transfer of ownership whilst providing Curen with sufficient time to undertake the necessary technical works to comply with the conditions of a generation licence. This reflects that Lynemouth power station has not had to be compliant under its current owners due to its exempt status and that allowing the station to operate, even at reduced capacity, makes its potential purchase viable.

CONCLUSION

27. DECC's overall policy objective in considering this application is to ensure that Lynemouth power station moves towards a point at which the plant can operate under a

full electricity generation licence, so that it can play a part in a low-carbon, secure electricity mix.

28. A 420MW licence exempt station is somewhat of an anomaly and DECC is unable to agree to an indefinite extension of that exempt status. If it were a new station, it is unlikely that the Secretary of State would contemplate exempting it from the requirement to hold a generation licence. But it is an existing generating station and its position is unique in many ways. Our provisional view is that it would not be proportionate to expect potential buyers of Lynemouth to undertake lengthy and expensive compliance works to obtain a licence before Lynemouth can start exporting electricity. DECC is also mindful that under continued AAUK ownership the station could continue to generate with a licence exemption for so long as it is economic for it to do so. Exemption for a limited period, therefore, allows Curen to manage such compliance works whilst operating Lynemouth with reduced output. This will lead, eventually, to a position whereby Lynemouth is operated with the obligations of a generation licence in place, thus removing the anomalous nature of its current operation.

29. The Secretary of State is therefore minded, subject to representations received, to approve Curen's request for a time limited exemption, until 30 March 2015, with the intention that Curen operate Lynemouth with a generation licence by no later than 1 April 2015.

Representations

30. Representations may be made with respect to the proposal in the Document by 22 August 2012. to:-

31. *Chris Chown, Energy Market Design, Department of Energy and Climate Change, Fourth Floor, 3 Whitehall Place, London SW1A 2HD (telephone: 0300 068 6085; e-mail: chris.chown@decc.gsi.gov.uk)*

DRAFT STATUTORY INSTRUMENTS**2012 No. 0000****ELECTRICITY, ENGLAND AND WALES****The Electricity (Exemption from the Requirement for a Generation Licence)
(Curen) (England and Wales) Order 2012***Made* - - - - - [July] 2012*Laid before Parliament* [July] 2012*Coming into force* - - - [•] September 2012

The Secretary of State makes the following Order in exercise of the powers conferred by section 5 of the Electricity Act 1989(1).

In accordance with section 5(2) and 5(3) of that Act the Secretary of State has given notice of the proposal to make this Order [and has considered representations accordingly – DETAILS TO BE INSERTED].

Citation, commencement and extent

1.—(1) This Order may be cited as the Electricity (Exemption from the Requirement for a Generation Licence) (Curen) (England and Wales) Order 2012 and shall come into force on [...2012].

(2) This Order extends to England and Wales only.

Interpretation

2. In this Order—

“the Act” means the Electricity Act 1989;

“Lynemouth Power Station” means the generating station located at Ordnance Survey map reference NZ 3055 9015, approximately 5 kilometres north-east of Ashington, in Lynemouth, Northumberland;

“Curen Limited” means the company of that name registered in England and Wales with number 07866585;

Exemption from section 4(1)(a) of the Act

3. Exemption is granted from section 4(1)(a) of the Act (prohibition of unlicensed generation of electricity for supply) to Curen Limited in respect of Lynemouth Power Station.

Conditions on exemption

4. The exemption granted by article 3 to Curen Limited is subject to compliance with the following conditions—

(a) that Curen Limited does not hold a licence under section 6(1)(a) of the Act(2) (a generation licence);

(1) 1989 c.29; section 5 was substituted by section 29 of the Utilities Act 2000 (c.27).

(2) Section 6 was substituted by section 30 of the Utilities Act 2000.

- (b) that the highest generation of electricity from any generating station of such a person (at the main alternator terminals) which can be maintained indefinitely without causing damage to the plant (the “maximum capacity”) shall not at any time exceed the maximum capacity of that generating station on 30th September 2000; and
- (c) that the exemption terminates on 31st March 2015.

Name
Minister of State,
Department of Energy and Climate Change

Date

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants a time-limited exemption from the requirements of section 4(1)(a) of the Electricity Act 1989 (which prohibits the generation of electricity to any premises without a licence) to Curen Limited in relation to Lynemouth Power Station, which is located approximately 5 kilometres north-east of Ashington, in Lynemouth, Northumberland.

A regulatory impact assessment in respect of this exemption was prepared in 2012 and can be obtained from the Department of Energy and Climate Change, Energy Markets Unit, 4th Floor, 3 Whitehall Place, London, SW1A 2AW. Copies have been placed in the libraries of both Houses of Parliament.

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