



Department of Trade and Industry

news release

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1 October 1999

STEPHEN BYERS ACCEPTS NATIONAL POWER UNDERTAKINGS

Stephen Byers, Secretary of State for Trade and Industry, announced today that he had accepted undertakings from National Power plc that it will divest its 4 GigaWatt(GW) coal-fired power station at Drax, in North Yorkshire, on a clean break basis, and agree early modification of the existing arrangements under which it receives earn-out payments from Eastern Group plc, so as to reduce the influence of these arrangements at times of year when Pool prices tend to be low. National Power's acquisition of the supply business of Midlands Electricity plc will therefore not be referred to the Competition Commission.

Mr Byers said:

“National Power has undertaken to divest its 4 GW coal-fired power station at Drax, in North Yorkshire, by 30 November 1999, or such later date as I may agree in writing, to a purchaser or purchasers and on terms to be approved by me. National Power has also undertaken that it will vary its existing right to receive earn-out payments from Eastern Electricity plc so that, from 1 June 2000 until the right expires on 31 March 2003, payments received will be reduced by £1.50 per MegaWatt hour for each of the months of June, July, August and September.

“I announced on 9 April my intention to seek undertakings from National Power on these lines. I also announced my decision that National Power and Midlands should give certain further assurances to address competition and regulatory concerns arising from the merger. I subsequently published draft undertakings for consultation on 5 August.

“I have had regard to the DGFT’s advice that the undertakings now given by National Power, together with the assurances now given by National Power and Midlands Electricity, meet the requirements which I outlined for remedying the adverse effects of the merger. In the light of the DGFT’s advice, I have decided to accept the undertakings in lieu of a reference to the Competition Commission.

“I shall continue to consider any future mergers in this sector on their own merits, and in the light of the DGFT’s advice and the views of the DGES in each case.”

The DGFT’s advice on adverse effects in the present case is attached to this press notice. Also attached are the final text of the undertakings and the assurances. Most of the assurances have been incorporated into licence conditions enforceable under the Electricity Act 1989.

Notes for Editors

1. Section 75G of the Fair Trading Act 1973 (inserted by section 147 of the Companies Act 1989 and amended by the Deregulation and Contracting Out Act 1994) enables the Secretary of State to accept undertakings as an alternative to making a merger reference to the Competition Commission. The Secretary of State must consider whether such undertakings are appropriate to remedy the adverse effects of the merger specified by the DGFT which would otherwise have led him to make a reference to the Commission.
2. Media copies of the Undertakings and assurances signed by National Power and the DGFT’s advice are available from the DTI Press Office.

Press Enquiries: 0171 215 5964

(Out of Hours: 0171 215 5110/5600)

Public Enquiries: 0171 215 5000

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Internet: <http://www.dti.gov.uk>

ACQUISITION BY NATIONAL POWER PLC OF THE ELECTRICITY SUPPLY BUSINESS OF MIDLANDS ELECTRICITY PLC

UNDERTAKINGS GIVEN TO THE SECRETARY OF STATE FOR TRADE AND INDUSTRY BY NATIONAL POWER PLC PURSUANT TO SECTION 75G(1) OF THE FAIR TRADING ACT 1973

WHEREAS:

- (1) On 30 June 1999 National Power acquired control of the electricity supply business of Midlands Electricity plc;
- (2) The Secretary of State has power under section 64(1) of the Act to make a merger reference to the Competition Commission;
- (3) The Director General:
 - (a) has made a recommendation to the Secretary of State that such a reference should be made; and
 - (b) has under section 75G(1)(c) of the Act given advice to the Secretary of State specifying particular effects adverse to the public interest which in his opinion the merger situation qualifying for investigation may have or might be expected to have; and
- (4) The Secretary of State considers the undertakings given below by National Power are appropriate to remedy or prevent the effects adverse to the public interest specified in the advice given by the Director General;

NOW THEREFORE National Power hereby gives to the Secretary of State the following undertakings for the purpose of remedying or preventing the effects adverse to the public interest specified in the advice given by the Director General:

Management of the plant until divestment

1 At all times before the completion of the divestment required by undertaking 2 (except with the prior written consent of the Director General) National Power:

- (a) will take no action which might reasonably be expected to:
 - (i) inhibit or prevent the plant from being carried on as a viable business;
 - (ii) inhibit or prevent the divestment of the plant as a going concern;

- (b) (except in the ordinary course of business) will:
- (i) not accept any loan or credit secured on the assets of the plant;
 - (ii) not dispose of any of the assets of the plant, except to National Power Drax Limited;
 - (iii) not create any interest in any of the assets of the plant other than in favour of National Power Drax Limited;
 - (iv) not dispose of any interest in any of the assets of the plant, except to National Power Drax Limited; and
 - (v) maintain and preserve the assets of the plant in a condition the same as or better than their condition at 9 December 1998; and
- (c) will not, with the exception of the agreements listed at the annex:
- (i) enter into any agreement relating to the plant containing any terms which are unusual or unduly onerous to National Power; or
 - (ii) enter into any agreement for the supply or acquisition by the plant of goods or services:
 - (A) extending or capable at the option of National Power of extending longer than one year, or
 - (B) involving the expenditure by National Power of more than £10 million (excluding value added tax) in any financial year; or
 - (iii) carry on any business at the plant except a business which it carried on at or before 9 December 1998.

Divestment of the plant

2 National Power will complete the divestment of the plant as a going concern, by way of a sale of the assets of the plant or a sale of the shares of National Power Drax Limited, on or before the completion date:

- (a) to a purchaser or purchasers who, and
- (b) on terms (including terms as to the allocation of emission limits and fuel purchase obligations) which

shall have been approved in writing by the Secretary of State.

3 At all times after the completion date (except with the prior written consent of the Secretary of State) National Power:

- (a) will not directly or indirectly:
 - (i) hold any interest in the plant;
 - (ii) hold any interest in any undertaking having control of or carrying on the plant;
 - (iii) hold any option to acquire an interest referred to in sub-paragraph (i) or (ii) above; or
 - (iv) acquire any assets of the plant;
- (b) will procure that no director or employee of National Power holds any directorship or managerial position in any undertaking having control of or carrying on the plant and will not nominate any person to any such directorship or managerial position; and
- (c) will not participate in the formulation of or influence or attempt to influence the policy of any person having control of or carrying on the plant.

Earn-out agreement with Eastern

4. National Power will take such steps as are necessary to vary rights which it acquired under the lease made on 27 June 1996 between National Power and Eastern to earn-out payments from Eastern so that, until the earn-out payments made under the lease expire on 31 March 2003, National Power will receive earn-out payments in relation to Eastern's plants at West Burton, Rugeley and Ironbridge from 1 June 2000 reduced by £1.50 per MegaWatt hour for each of the months of June, July, August and September.

Compliance

5 National Power will procure that each of its subsidiaries complies with these undertakings as if it had given them.

6 National Power will forthwith provide to the Director General such information as he may from time to time reasonably require for the purpose of monitoring compliance by National Power and its subsidiaries with these undertakings.

7 National Power will comply with such written directions as the Director General may give from time to time to take such steps within its competence as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings.

ANNEX

The following agreements which shall be in such form and entered into on such date as the Director General shall approve in writing are the agreements excepted from paragraph 1(c) of the undertakings:

1. Agreement for the sale of coal made between National Power and National Power Drax Limited,
2. Ash marketing agreement made between National Power and National Power Drax Limited,
3. National Power intellectual property and knowhow licence made between National Power and National Power Drax Limited,
4. IT support services and transitional services agreement made between National Power and National Power Drax Limited, and
5. Technical support agreement made between National Power and National Power Drax Limited.

DEFINITIONS

For the purposes of these undertakings:

"the Act" means the Fair Trading Act 1973;

"assets" in relation to the plant includes its business, undertaking and property;

"business" has the meaning given by section 137(2) of the Act;

"the completion date" means 30 November 1999, or such later date as the Secretary of State may specify in writing;

"control" is to be construed in accordance with section 65 of the Act, and a person shall be deemed to have control of a body corporate if he holds or has an interest in shares of that body corporate amounting to 10 per cent of its issued share capital or carrying an entitlement to vote at its meetings amounting to 10 per cent of the total number of votes which may be cast at such meetings;

"the Director General" means the Director General of Fair Trading;

"Eastern" means Eastern Electricity plc;

"goods" includes electricity;

"interest" includes shares, an interest in shares and any other interest carrying an entitlement to vote at meetings of shareholders, and an interest in shares includes an entitlement by a person other than the registered holder to exercise any right conferred by the holding of those shares and an entitlement to control the exercise of any such right;

"merger situation qualifying for investigation" has the meaning given by section 64(8) of the Act;


"National Power" means National Power plc;

"the plant" means the coal-fired generating plant having a capacity of 4 gigawatts of electricity at Drax, Selby, North Yorkshire; and

"the Secretary of State" means the Secretary of State for Trade and Industry.

On behalf of National Power plc:

Signed

B. Co -- 

(director)

M. Swanson 

(director/secretary)

Date

1 OCTOBER 1999

Acquisition by National Power plc of the supply business of Midlands Electricity plc

Assurances from National Power plc

National Power PLC (NP) assures the Secretary of State for Trade and Industry that, in the context of its acquisition of the electricity supply business of Midlands Electricity plc (MEB), it will:

- 1 agree to changes in NP's present second tier licence for England and Wales to prohibit sales to designated customers in MEB's area;
- 2 surrender NP's present second tier licence by April 2000 or as soon as is reasonably practicable thereafter;
- 3 agree to new licence conditions in a new supply licence designed to:
 - 3.1 require NP to comply with the obligations relating to electricity supply by MEB in MEB's Authorised Area;
 - 3.2 ensure NP co-operates with MEB to provide for the separation of distribution and supply activities; and
 - 3.3 ensure NP complies with the requirements placed on MEB, in condition 41 of its PES licence, relating to the treatment of information provided for the purposes of the MEB distribution business;
- 4 put in place arrangements to ring-fence information concerning MEB's power-purchase agreements within the supply business of National Power Energy Co. Ltd. (NPEC), so that NP's generation business has no access to this information;
- 5 conclude no new electricity contracts with MEB's business supplying electricity to Designated Premises in MEB's Authorised Area;
- 6 ensure that the supply business is separately managed and provided with sufficient management and other resources to carry out the supply business functions;
- 7 co-operate with the regulator in the appointment of a compliance officer (as specified in assurance 2(iii) given by MEB in respect of this transaction) to report on compliance with the obligations;
- 8 not complete the acquisition until the licence amendments concerning the separation of distribution and supply (as specified in assurances 1 and 3 above and in assurances 2(i)-(iii) and, where relevant, assurance 1 given by MEB in respect of this transaction) are in place; and
- 9 where these assurances contemplate changes in licence conditions not directly related to the separation of distribution and supply, to act as if the licence amendments were in force from the date of the merger.

Signed for and on behalf of National Power PLC

Andrew Swanson
Company Secretary



dated 1/10/99