



# GRANT OF ELECTRICITY GENERATION LICENCE TO BELFAST ENERGY STORAGE COMPANY LIMITED

09 November 2021



## About the Utility Regulator

The Utility Regulator is the independent non-ministerial government department responsible for regulating Northern Ireland's electricity, gas, water and sewerage industries, to promote the short and long-term interests of consumers.

We are not a policy-making department of government, but we make sure that the energy and water utility industries in Northern Ireland are regulated and developed within ministerial policy as set out in our statutory duties.

We are governed by a Board of Directors and are accountable to the Northern Ireland Assembly through financial and annual reporting obligations.

We are based at Queens House in the centre of Belfast. The Chief Executive leads a management team of directors representing each of the key functional areas in the organisation: Corporate Affairs, Markets and Networks. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.



### Our mission

To protect the short- and long-term interests of consumers of electricity, gas and water.



### Our vision

To ensure value and sustainability in energy and water.



### Our values

- Be a best practice regulator: transparent, consistent, proportionate, accountable and targeted.
- Be professional – listening, explaining and acting with integrity.
- Be a collaborative, co-operative and learning team.
- Be motivated and empowered to make a difference.



## Abstract

On 11 August 2021, the Utility Regulator (the **Authority**) gave notice (the **BESC Notice**) under Article 10(4) of the Electricity (Northern Ireland) Order 1992 (the **1992 Order**) that it proposed to grant a licence authorising the generation of electricity (an **electricity generation licence**) to Belfast Energy Storage Company Limited (**BESC**) under Article 10(1) of the 1992 Order. Having considered a single response (the **Response**) to the BESC Notice, the UR has decided to grant an electricity generation licence to BESC. This licence was granted on 09 November 2021 and is in the form of the licence published alongside the BESC Notice. This document sets out the reasons for our decision and our consideration of the Response.

## Audience

Consumers and consumer representatives; flexible technology developers; electricity industry; statutory bodies; government departments.

## Consumer impact

The consumer impact is considered positive. As a licence holder, BESC shall be able to participate in the Single Electricity Market (the **SEM**). It is expected to be able to offer system support services and generally assist in securing that all reasonable demands for electricity are met. Integration of renewable energy sources will be better facilitated. Competition will be promoted between BESC and other system actors involved in the area of generation. Costly system enhancement/re-enforcements may be avoided or deferred. Pressure on prices paid by the NI consumer is expected to be alleviated.



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# 1. Introduction

## Background

On 11 August 2021, the Authority<sup>1</sup> gave notice<sup>2</sup> (**the Notice**) under Article 10(4) of the Electricity (NI) Order (**the 1992 Order**) that it proposed to grant a licence authorising the generation of electricity (an electricity generation licence) to Belfast Energy Storage Company Limited (**BESC**) under Article 10(1) of the 1992 Order. A copy of the proposed licence was published alongside the Notice.

One response (**the Response**) was received to the Notice. This decision document records our consideration of the Response in making our decision to grant an electricity generation licence to BESC.

## Regulatory Framework

Article 10(1)(a) of the 1992 Order empowers the Authority to grant an electricity generation licence to an applicant for such a licence. Article 10(3) of the 1992 Order provides that such an application shall be made in *the prescribed manner* and be accompanied by the prescribed fee. Further, Art 10(3) of the 1992 Order also provides that the applicant for an electricity generation licence shall publish the application within 14 days of making the application (in the prescribed manner). The requirements made in Article 10(3) are reflected in (schedule 4 to) the Electricity (Applications for Licences and Extensions of Licences) (No. 2) Regulations (Northern Ireland) 2007<sup>3</sup> (**the 2007 Application Regulations**).

The Authority has also published guidance in respect of the making of an application for an electricity generation licence (**the Guidance**).<sup>4</sup> The Guidance makes reference to and reflects the requirements of the 2007 Application Regulations.

In carrying out its (electricity) function to grant (or not grant) an electricity generation licence the UR is required to act in accordance with the provisions of Article 12 of the Energy (NI) Order 2003 (**the 2003 Order**).

Article 12(1) of the 2003 Order provides as follows:

*12.—(1) The principal objective of the Department and the Authority in carrying out their respective electricity functions<sup>5</sup> is to protect the interests of consumers<sup>6</sup> of electricity supplied by authorised suppliers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the generation, transmission, distribution or supply of electricity*

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<sup>1</sup> In this document the words “we” “our” “us” “Authority” “UR” “Utility Regulator” and “we” are used interchangeably to refer to the Northern Ireland Authority for Utility Regulation

<sup>2</sup> [Consultation on proposed electricity generation licence for Belfast Energy Storage Company Limited | Utility Regulator \(uregni.gov.uk\)](https://www.uregni.gov.uk/consultation-on-proposed-electricity-generation-licence-for-belfast-energy-storage-company-limited)

<sup>3</sup> [https://www.legislation.gov.uk/nisr/2007/289/pdfs/nisr\\_20070289\\_en.pdf](https://www.legislation.gov.uk/nisr/2007/289/pdfs/nisr_20070289_en.pdf)

<sup>4</sup> <http://www.uregni.gov.uk/applying-licence>

<sup>5</sup> This is read to include the grant of an electricity generation licence.

<sup>6</sup> The reference to “consumers” is to be read as a reference to existing and future consumers. References to “consumers” in this paper are to be read accordingly.

Art. 12(2) of the 2003 Order provides that

*(2) . The Department and the Authority shall carry out those functions in the manner which it considers is best calculated to further the principal objective, having regard to—*

*(a) the need to secure that all reasonable demands in Northern Ireland or Ireland for electricity are met . . .*

Article 12(3) of the 2003 Order provides that in performing the duty under Art 12(2) of the 2003 Order the Authority is obliged to have regard to (but not exclusively to ) the interests of persons described. These persons described are individuals who (i) are the chronically sick or disabled (ii) are of pensionable age (iii) have low incomes and (iv) are residing in rural areas.

Article 10(4) of the 1992 Order provides that:

*(4) Before granting a licence under this Article, the Authority shall give notice—*

*(a) stating that the Authority proposes to grant the licence;*

*(b) stating the reasons why it is proposed to grant the licence; and*

*(c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence may be made,*

*and shall consider any representations or objections which are duly made and not withdrawn.*

### Previous decisions on grant of electricity generation licences to BESS operators

BESC has signalled its intention to operate a battery energy storage system (BESS). The Authority has previously granted generation licences in respect of BESS operations.<sup>7</sup>

### The Notice

The Notice was published on 11 August 2021.

The Notice confirmed that the UR considered (at that time) that the grant of an electricity generation licence<sup>8</sup> to BESC would accord with our responsibilities under Art 12 of the 2003 Order. We assessed at that time that the BESC application for a generation licence was made in the prescribed manner and the appropriate fee had been received. The BESC application was thus considered made in accordance with the 2007 Application Regulations<sup>9</sup> and the Guidance.

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<sup>7</sup> [Utility Regulator decision to grant an Electricity Generation Licence to Mullavilly Energy Ltd: Battery Storage | Utility Regulator \(uregni.gov.uk\)](#) [Utility Regulator decision to grant an Electricity Generation Licence to Drumkee Energy Ltd: Battery Storage | Utility Regulator \(uregni.gov.uk\)](#)

<sup>8</sup> In the (standard) form of that published alongside the published Notice.

<sup>9</sup> We would note that no probity concerns were evident in respect of BESC.

In making our Article 12 assessments we had regard to the role that a BESS (such as that intended for operation by BESC) could be expected to play in a modern electricity system. As a licence holder, BESC could participate in the (all-Island) SEM arrangements<sup>10</sup>. BESC could provide valuable system support services envisaged under the DS3<sup>11</sup> programme. Integration of renewable energy sources (**RES**) into the electricity system would be better facilitated given that a BESS can act as demand in times of excess generation and produce electricity for the grid in times of under production from other generation (to include RES). Costly system reinforcements could be deferred or avoided. Pressure on prices to be paid by consumers would be expected to be alleviated. We recognised competition type concerns where regulatory considerations to prevent energy storage investors (such as BESC) from providing services in the energy market.

All in all, it appeared that BESC could assist in securing that all reasonable demands for electricity in Northern Ireland (or Ireland)<sup>12</sup> are met, and as such the proposed grant of a generation licence to BESC was considered to be in full accord with the provisions of Article 12(1) of the 2003 Order (when read with Art. 12(2) of the 2003 Order). Granting a licence would, furthermore, address potential barriers to competition.<sup>13</sup> The interest of all consumers<sup>14</sup> would be duly protected.

The Notice asked for representations or objections to be sent to us by 9 September 2021. The Response was sent in two parts. The first part was sent by an email of 30 August 2021. The second part was sent by an email to us of 6 September 2021. This correspondence is detailed below.

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**10** A licenced operator of a BESS/BSF is classed as a Generator Unit within the SEM arrangements. An actor such as BESC requires to hold a licence issued by the UR in order to participate in the SEM arrangements. SONI also requires that an actor such as BESC hold such a licence prior to energisation of a grid connection.

**11** Delivering a secure, sustainable electricity programme (DS3): <https://www.semcommittee.com/ds3>

**12** The electricity grid operates on an all-Island basis by virtue of the SEM arrangements.

**13** Noting that the Authority had already granted electricity generation licences to other BESS operators.

**14** Which is considered to include those described in Art 12(3) of the 2003 Order. For example people of low income can be expected to feel higher prices more than those on higher incomes. Security of supply might also be a more acute issue for those with disabilities or the chronically sick.

## 2. Our consideration of the Response

As mentioned, the Response was in two parts.

A. Email of 30 August 2021:

This email was received from an individual. Attached to the email was (i) a copy of the proposed licence for BESC and (ii) a Technical Note (**TN**) prepared for the Health and Safety Executive of Northern Ireland (**HSENI**). The TN made reference to operational hazards that may arise from a BESS.

The TN is publically available. It may be found under the published agenda item 6 of the Lisburn and Castlereagh City Council planning appeal committee meeting held on 2 August 2021. It may be found here (at pages 262-283): [Planning Committee - 2nd August 2021 \(02/08/2021\) \(lisburncastlereagh.gov.uk\)](https://www.lisburncastlereagh.gov.uk/planning-committee-2nd-august-2021-02/08/2021)

In their email the single individual respondent stated:

*For the attention of the board<sup>15</sup> in relation to the following:*

*Consultation on proposed electricity generation licence for Belfast Energy Storage Company Limited | Utility Regulator located at Lisnabreeny Belfast.*

*I live on the road that the BESS is being built.*

*I have attached the most recent report of the HSENI regarding the dangers associated with these developments. It shows an ever expanding list of serious BESS failures. Please note that the research deals with only one BESS container in distress and we have eighteen very close together. As you can imagine I am extremely disturbed at the information within it as any member of the Board would be if they lived as close to it as the residents on the Lisnabreeny Road East do, and certainly within the distances within the report. I would ask that the Board members ensure that all aspects are addressed and mitigation's set in place.*

*I believe that the Board of the Utility Regulator should ask the executive officers to investigate the issues included and the lack of any safety provision at all being provided in this and any of the BESS developments built or in process in Northern Ireland.*

*Thank you*

*[redacted]*

B. Email of 6 September 2021:

To this email was attached

(i) a letter from HSENI to Armagh City, Banbridge and Craigavon Council dated 20 May 2021. This letter is in the form of a *consultation response by HSENI* to a planning application for a BESS under the reference: LA08/2021/0586/F. This document is publically available. It can be found here: [Application Documents \(planningni.gov.uk\)](https://www.planningni.gov.uk/application-documents)

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<sup>15</sup> It will be noted that the respondent has been advised that their correspondence on the Notice would be addressed in our decision document on the BESC application for a generation licence.



(ii) a letter dated 8 July 2021 from the Chief Planner to the local heads of planning on the treatment of issues pertaining to BESS.

(iii) a submission from Northern Ireland Fire and Rescue on matters pertaining to BESS.

It will be noted that the documents at (ii) and (iii) are publically available. They are available here<sup>16</sup> (at pages 258-261 and 284-285 respectively): [Planning Committee - 2nd August 2021 \(02/08/2021\) \(lisburncastlereagh.gov.uk\)](#)

The email stated

*Hello [redacted]*

*Thank you for passing on the email, could I ask you to forward these attachments?  
The information in the attached letters will let you understand why I am so concerned about the battery site.*

*Thank you  
[redacted]*

### Consideration

We are aware that there have been expressions of concern as to issues of operational safety affecting BESS. Similar concerns to those expressed in the Response (and articulated in the attached documents) have been relayed to the Authority previously. Our previous decisions on the grant of generation licences to BESS operators ranged over these matters. This decision should be read with those previous decisions.<sup>17</sup>

We consider that a decision to grant a generation licence to BESC is in harmony with the provisions of Art 12 of the 2003 Order. We have had regard to the provisions of Art 12(5) of the 2003 Order which provides so far as relevant that:

*(5) Subject to paragraph (2), the . . . Authority shall carry out [its] . . . electricity functions in the manner which it considers is best calculated*

*. . .*

*(b) to protect the public from dangers arising from the generation, transmission or supply of electricity*

As recorded in our previous decisions, we do not accept that the provisions of Art 12(5)(b) of the 2003 Order operate to prevent the Authority from granting an electricity generation licence to BESC where that grant is otherwise considered appropriate (as it is) in accordance with Article 12(1) and (2) of the 2003 Order.

Importantly, the underlined section of Article 12(5) clearly provides that the provisions of Art. 12(5)(b) are subject to the provisions of Art 12(5)(2). As we have explained, the Notice

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<sup>16</sup> This is the same place where the TN is to be found.

<sup>17</sup> [Utility Regulator decision to grant an Electricity Generation Licence to Mullavilly Energy Ltd: Battery Storage | Utility Regulator \(uregni.gov.uk\)](#) [Utility Regulator decision to grant an Electricity Generation Licence to Drumkee Energy Ltd: Battery Storage | Utility Regulator \(uregni.gov.uk\)](#)

reflected a consideration that the proposed grant was in accordance with Art 12(1) of the 2003 Order. That consideration reflected our judgement in accordance with Article 12(2) of the 2003 Order. The grant of the licence was (and is) expected to assist in securing that all reasonable demands for electricity in NI and Ireland are met.<sup>18</sup>

Clearly, people may well reasonably hold alternative perspectives as to the “safety” of BESS facilities. It is not for the Authority to adjudicate and determine that controversy within the context of the BESC application for a generation licence. We can only act within the applicable legislative framework.

In so far as reference is made (in the documents attached to the emails making up the Response) to issues concerning Hazardous Substances Consent (HSC) our position remains that assessment of issues as to HSC are matters for the appropriate authorities. These are matters to be policed and enforced by the appropriate statutory agencies (i.e., the planning authorities and the HSENI). Accordingly, we do not consider that it is for the Authority (as per the Response) to “investigate” safety “provision” (or an alleged lack thereof) for the BESC facility and all other BESS facilities in Northern Ireland.

We note that no mention is made of “safety” certificates or assessments in the 2007 Application Regulations/the Guidance.

It is for the operator of a BESS to satisfy itself that it is meeting all of its legal obligations (to include relevant safety obligations) in respect of the operation of a BESS. It is for the appropriate statutory agencies to police and enforce these obligations. We proceed on the basis that they will. The Authority has no such (legislative) enforcement role in respect of HSC requirements.

The Authority is only (here) deciding whether to grant to BESC a licence *authorising the generation of electricity* by BESC. Possession of such a generation licence does not absolve BESC from its ordinary legal obligations involved in operating its BESS facility. The licence only prevents BESC from being guilty of an offence under Article 8 of the 1992 Order should it choose<sup>19</sup> to generate electricity in NI and not qualify for an exemption pursuant to the Electricity (Class Exemptions from the requirement for a Licence) Order (NI) 2013.

We confirm our view that a BESS, of the type intended for operation by BESC, is a form of “generating station” within the meaning of the 1992 Order for licensing purposes. The BESS facility imports electricity from the grid (in “charge” mode), converts that electricity to (electro) chemical energy and then converts (in “discharge” mode) that “stored” energy to electrical energy for export back to the grid. Thus, we consider that a BESS facility is involved in “generation” activity. It produces electricity for the grid when signalled to do so.

Our view here is also consistent with Ofgem’s perspective on the licensing of BESS operators.<sup>20</sup> Ofgem grants electricity generation licences to BESS operators. We understand

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<sup>18</sup> To specifically include those in the Art 12(3) categories.

<sup>19</sup> It will be noted that an electricity generation licence *authorises* the activity of “*generation*”: it does not *require* the licence holder to engage in that activity.

<sup>20</sup> See, for example, the regulatory letter on energy storage (which includes BESS) published by Ofgem on 2 October 2020:

[https://www.ofgem.gov.uk/system/files/docs/2020/10/storage\\_licensing\\_statcon\\_decision\\_cov\\_letter\\_final\\_for\\_website\\_0.pdf](https://www.ofgem.gov.uk/system/files/docs/2020/10/storage_licensing_statcon_decision_cov_letter_final_for_website_0.pdf)

that CRU acts likewise.<sup>21</sup>

We note with interest the recent decision of the High Court in the *ABO Wind* case.<sup>22</sup> We consider that there is nothing in that decision that calls into question our present decision (or previous decisions) to grant an electricity generation to a BESS operator.<sup>23</sup>

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**21** We recognise that a BESS unlike other forms of generation exhibits substantial demand characteristics. We accept that the overall capabilities and particular features of “storage” technologies (like a BESS) could be better clarified within the regulatory/statutory framework.

**22** Delivered on 21 October 2021. Ref HUM11648

**23** We note in particular paragraphs [76] and [84]

### 3. Our Decision

Having carefully considered the Response<sup>24</sup> we have concluded that an electricity generation licence is to be granted to BESC.

We consider that the grant of an electricity licence to BESC is appropriate for the reasons set out in the Notice. It is considered that the grant of the electricity licence to BESC is in accord with our statutory responsibilities as set out in Article 12 of the 2003 Order. The BESC application (for a generation licence) was made in accordance with the 2007 Application Regulations (and the Guidance). No probity concerns have been raised in respect of BESC.

As a licence holder, BESC can be expected to contribute to overall security of supply by participation in the SEM and the DS3 arrangements in respect of the provision of system services. Matching demand with available supply of electricity will be better secured. Integration of RES is expected to be better facilitated. Competition will be promoted. Costly re-enforcement works may be delayed or avoided. Price pressures are expected to be alleviated. The decision is consistent with our principal objective of protecting the interests of existing and future consumers.

An electricity generation licence (the **BESC Licence**) was granted to BESC on 09 November 2021. The BESC Licence is in the form of the licence published alongside the Notice. A copy of the BESC Licence shall be published on the Authority's website. A copy of the BESC Licence may also be viewed by contacting the Utility Regulator's office (noting that due to the current working from home arrangements in place in NI and the Regulator's office, visibility may not be possible).

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<sup>24</sup> To include the attachments to the emails of 30 August and 6 September 2021.