



**THE ELECTRICITY
ARBITRATION
ASSOCIATION**

The Rules of this Association were amended with effect from the 1st January, 1993 in the manner herein set out. This is to allow for the reference to the Association, in accordance with its Rules, of disputes under contracts entered into by companies operating in Northern Ireland, and to allow for the appointment of experts by the President of the Association.

THE ELECTRICITY ARBITRATION ASSOCIATION

J.R. Merrett Esq.
Deputy President and Secretary,
The Electricity Arbitration Association,
30, Chepstow Road,
London W2 5BE.

Telephone no: 0207 792 8579
Facsimile no: 0207 229 8639

Rules and Constitution

(as amended 1.1.1993)

INDEX

Rules

	Page Numbers
1 Definitions and Interpretation _____	4
2 Commencement _____	6
3 Appointment of Tribunal _____	6
4 Multi-party arbitrations _____	7
5 Procedure _____	9
6 Notices _____	9
7 Submissions and Documents _____	10
8 Investigators and Experts Appointed by the Tribunal _____	11
9 Hearings _____	13
10 Party Representatives _____	14
11 Witnesses _____	14
12 Powers of Arbitrators _____	17
13 Consolidation _____	16
14 Joinder _____	18
15 Severance _____	19
16 Interim Measures _____	19
17 Awards _____	19
18 Decisions of the President _____	20
19 Extra-arbitral Dispute Resolution Procedure _____	21
20 Costs _____	21
21 Exclusion of Liability _____	22
22 Jurisdiction and Governing Law _____	22
APPENDIX 1 _____	22
APPENDIX 2 _____	24

Constitution

	Page Numbers
1 Name _____	30
2 Definitions and Interpretation _____	30
3 Constitution _____	32
4 Objects _____	32
5 Membership _____	32
6 Representation and Voting _____	33
7 The Standing Committee _____	34
8 The President _____	34
9 Powers and Functions of the President _____	35
10 The Secretary _____	35
11 First Meeting _____	36
12 Annual Meeting _____	36
13 Special Meetings _____	36
14 Notice of Meetings _____	37
15 Proceeding at Meetings _____	37
16 Resolutions and Special Resolutions _____	37
17 Delegation of powers to President _____	38
18 Confidentiality _____	38

19	Amendments _____	38
20	Resolution of Association _____	38
21	Group Representatives' addresses _____	38
22	Provisional representation of Member Groups B, D and F _____	39

1 – 3

THE ELECTRICITY ARBITRATION ASSOCIATION

As amended 1.1.93

Rules

1 Definitions and Interpretation

1.1 In these rules unless the context otherwise requires:

- (a) reference to the singular shall include references to the plural and vice versa;
- (b) words denoting natural persons shall include corporations and any other legal entity and vice versa;
- (c) words importing the masculine shall include the feminine;
- (d) words and expressions used herein shall have the same meaning as defined in the Constitution;
- (e) references to a period of days shall mean consecutive days whether or not they are working days;
- (f) references to "statute" or to any Act of Parliament or to any Order in Council or to any section of, or schedule to, or other provision of an Act of Parliament or Order in Council shall be constructed as including a reference to any modification, extension, replacement or re-enactment thereof for the time being in force and to all instruments, orders or regulations for the time being in force and made under or deriving validity from the relevant Act, Order in Council or provision.

1.2 The headings in these rules are inserted for convenience only and are to be ignored for the purposes of construction.

1.3 In these rules, unless the context otherwise requires, the following words and expressions will bear the meanings respectively set out below :-

Act	means the Electricity Act 1989;
arbitration	means an arbitration commenced under these rules;
Association	means the Electricity Arbitration Association;
claimant	means the party commencing an arbitration by serving a notice to arbitrate pursuant to paragraph 2.1;
the Constitution	means the Constitution of the Association;

contacting party	means a party (whether or not a party to an arbitration) to an industry agreement;
dispute	means a dispute or difference referred to arbitration;
Department	4 means the Department of Economic Development acting in accordance with its powers under the Order;
Director	means the Director General of Electricity Supply appointed for the time being pursuant to section 1(1) of the Act, or, as the context may require, the Director General of Electricity Supply for Northern Ireland appointed for the time being pursuant to Article 5(1) of the Order;
Industry agreement	means a contract which contains a reference to arbitration under these rules;
Licence	means any licence granted under section 6 of the Act, or as the context may require, Article 10 of the Order;
non-contracting party	means any person other than a contracting party;
Order	means the Electricity (Northern Ireland) Order 1992;
party	means (except in the case of the definition of "contracting party" above) a party to an arbitration;
the President	means the President of the Association;
register	means the register of suitably qualified persons willing and able to act as arbitrators or investigators or experts, maintained by the Association;
respondent	means the party receiving a notice to arbitrate served by the claimant;
Secretary of State	means the Secretary of State acting in accordance with his powers under the Act, or, as the context may require, the Order;
the Standing Committee	means the Standing Committee established under the Constitution;
third party	means any contracting party joined to an arbitration pursuant to paragraph 4.2;
third party notice	means a notice to arbitrate served pursuant to paragraph 4.2;

the tribunal means the tribunal of one or more arbitrators appointed in accordance with article 3;

working day means any weekday (Monday-Friday) which is not a public holiday.

5

2 Commencement

2.1 Any contracting party shall commence an arbitration under these rules by serving a notice to arbitrate on the other parties to the dispute. The notice shall set out the claimant's proposals with regard to the number and (if desired) identity of the arbitrators to form the tribunal and shall require the respondent to agree to the appointment of one or more arbitrators and shall specify a time limit of not longer than 28 days from the date of the notice for the purpose of paragraph 2.2 below.

2.2 Within the time limit specified in the notice, the claimant shall send a further notice to the President substantially in the form set out in Appendix 1.

3 Appointment of Tribunal

3.1 The parties may agree the number of arbitrators to form the tribunal. In the absence of agreement the President shall determine whether the tribunal shall consist of a sole arbitrator or three arbitrators.

3.2 Subject always to the principle that the parties may agree the identity of any arbitrator, or of any replacement arbitrator in the event any arbitrator is unable or unwilling to act or is successfully challenged, the President shall appoint members of the tribunal in accordance with the following provisions of this article, having ascertained their willingness to act, and having regard to the qualifications, experience and availability of such persons and the facts and issues of the dispute.

3.3 At any time prior to appointment of any arbitrator pursuant to paragraph 3.4, any respondent or third party may send the President a further notice either confirming the contents of the notice served by the claimant under paragraph 2.2 or setting out such further or other information, representations or proposals which may be considered relevant to the exercise of the President's powers under this article 3.

3.4 On the expiry of 7 days after receipt of the notice referred to in paragraph 2.2 above, the President shall:

(a) confirm the appointment of any arbitrators agreed by the parties or nominated pursuant to sub-paragraph 3.5.(b) below;

(b) subject to paragraph 3.5 and 3.6 below, make any appointments (in the absence of agreement) as shall be necessary to complete the tribunal;

(c) send to each of the members of the tribunal a copy of the notice and accompanying documents;

(d) notify the parties of the tribunal's appointment.

3.5 If the tribunal is to consist of three arbitrators, then

(a) if the parties are unable to agree the identity of any, the President shall appoint two arbitrators; but

(b) if there are only two parties, each party may nominate one arbitrator of its choice, whether or not the other party agrees.

3.6 If two arbitrators have been appointed or nominated pursuant to paragraph 3.5, or if the parties have agreed the identity of only two members of a three-arbitrator tribunal, then those two arbitrators shall, within 7 days of their appointment, nominate the third and notify the President of their choice or inform the President that they are unable to agree. The President shall within 7 days thereafter confirm the appointment of the third arbitrator, or make the necessary appointment himself, as appropriate. The third arbitrator shall be the chairman of the tribunal.

3.7 Subject to paragraph 3.6, the members of a three-arbitrator tribunal shall select one of their number to be the chairman of the tribunal and shall inform the parties and the President accordingly.

3.8 If any arbitrator is unable or unwilling to act for any reason the President shall within 7 days of receipt of a written request from the arbitrator himself, any of the other members of the tribunal, or any party, appoint a replacement.

3.9 Any party may challenge the appointment of an arbitrator within 28 days of the appointment of that arbitrator (or, if later, within 28 days of becoming aware of the facts and circumstances on which the challenge is based) on grounds of partiality, non-independence, unfitness or inability to act by sending a written statement of its reasons for the challenge to the President. Unless the other parties agree to the challenge, or the arbitrator withdraws, within 14 days, the President shall determine whether the challenge should be sustained and, if so, appoint a replacement within a further 28 days.

3.10 The President shall have power, on the application of any party or on his own motion, and on notice to all parties, to extend or abridge any of the time limits specified in this article 3 or in article 2 or in article 8A.

4 Multi-party arbitrations

4.1 For the avoidance of doubt, a claimant may serve notices to arbitrate on more than one other contracting party pursuant to paragraph 2.1 above and all such contracting parties shall be parties to the same arbitration. Each notice so served shall specify the same time limit for the purpose of paragraphs 2.1 and 2.2, and shall state the names of all other contracting parties on whom notices are being served.

4.2 Where in any arbitration, a respondent

- (a) claims against a contracting party not already a party any contribution or indemnity; or
- (b) claims against a contracting party not already a party any relief or remedy relating to or connected with the dispute between the claimant and respondent; or
- (c) requires that any question or issue relating to or connected with the dispute between the claimant and respondent should be determined not only as between the claimant and respondent but also as between either or both of them and a contracting party not already a party

then the respondent may serve a notice to arbitrate on such contracting party specifying the claim or question or issue to be determined and such contracting party shall thereby become party to the same arbitration as the claimant and respondent. The provisions of this paragraph shall also apply *mutatis mutandis* as if the third party had been the respondent and similarly in relation to any further contracting party served with a notice pursuant to this paragraph.

4.3 A respondent shall, at the same time as serving a third party notice, serve a copy thereof on all other parties, the President and (if appointed) the tribunal.

4.4 Unless all parties otherwise agree, service of a third party notice shall not operate to delay appointment of the tribunal.

4.5 Within 21 days of the service of a third party notice, or of service of a copy pursuant to paragraph 4.3 (or within 21 days of the appointment of the tribunal, whichever is later), any party (except the serving party) may by application to the tribunal object to the third party remaining a party on the grounds that:

- (a) (in the case of an application other than by the third party) information or documents which have been, will be or are likely to be disclosed to any other party are so confidential or commercially sensitive that they could be disclosed only to parties who were parties prior to service of the third party notice; or
- (b) (in the case of an application by the third party) information or documents which are likely to be disclosed to any other party are so confidential or commercially sensitive that they should not be disclosed to any one or more parties (other than the serving party).

4.6 On an application pursuant to paragraph 4.5, the tribunal shall decide, in consultation with the President, whether the objection should be sustained. If so, the tribunal shall order that the third party shall immediately cease to be a party to that arbitration.

4.7 Without prejudice to any other powers of the arbitrators, the tribunal may at any time, on the application of a party or on its own motion, make directions for the manner in which the arbitration is to be conducted as between any claimant, any respondent, any third party, and any two or more of them, and may make such orders and give any such directions as appear to the tribunal proper for having the rights and liabilities of the parties most conveniently determined.

5 Procedure

5.1 The parties are encouraged to agree the procedure appropriate to the dispute.

5.2 Except where the parties have agreed to the contrary, the tribunal shall have the widest discretion permitted by law to determine the procedure (including without limitation, the delegation of the power to make procedural rulings to the chairman of the tribunal), and to ensure the just, expeditious, economical and final determination of the dispute.

5.3 The tribunal is expected to play an active role in the conduct of proceedings. The tribunal has power, of its own motion, to direct any party to take specified steps within a specified time.

5.4 In all matters not expressly provided for in these rules the tribunal may determine the procedure to be adopted, shall act in the spirit of these rules, and shall make every reasonable effort to ensure that any award is legally enforceable.

5.5 A party who knows that any provision of, or requirement under, these rules has not been complied with and yet proceeds with the arbitration without promptly stating its objection to such noncompliance, shall be deemed to have waived its right to object.

6 Notices

6.1 Unless otherwise ordered by the tribunal, or agreed between the parties, or specified in these rules, all notices required by these rules shall be in writing. Notices and all other written communications shall be sent by first class post, fax or telex or delivered by hand.

6.2 Unless the intended recipient proves otherwise:

(a) documents sent by first class post shall be deemed to have been received two working days after posting;

(b) faxes or telexes shall be deemed to have been received at the time transmission ceases;

(c) by hand deliveries shall be deemed to have been received at the time of delivery to the address stated on their face;

References in these rules to receipt of documents shall be construed accordingly.

6.3 Notices shall be effective from the time of receipt. Periods of time measured with reference to the giving, sending, or serving of a document shall be measured with reference to the time that document is received.

6.4 Unless these rules otherwise state, or unless otherwise ordered by the President (if no tribunal has been appointed) or by the tribunal or agreed between the parties, all notices and other documents received on a day which is not a working day or after 6:00pm on any working day shall be deemed to have been received on the following day.

6.5 In every case in which a notice is sent to the President, a copy thereof shall be sent to all parties.

7 Submissions and Documents

7.1 Unless otherwise ordered by the tribunal or agreed between the parties, the procedure following appointment of the tribunal shall be as set out in the rest of this article.

7.2 Within 28 days of being notified of the appointment of the tribunal, the claimant shall send to the tribunal and to all other parties written points of claim which set out any facts or contentions of law on which it relies, and the relief claimed.

7.3 Within 28 days of receipt of the points of claim, the respondent shall send to the tribunal and to all other parties written points of defence stating in sufficient detail which of the facts and contentions of law in the points of claim it admits (or not) or denies, on what grounds, and on what other facts and contentions of law it relies. Any counterclaims shall be submitted with the points of defence in the same manner as claims are set out in the points of claim.

7.4 Within 28 days of receipt of the points of defence, the claimant may send to the tribunal and to all other parties written points of reply which, where there are counterclaims, shall include points of defence to counterclaims.

7.5 If the points of reply contain points of defence to counterclaims, the respondent has a further 28 days to send to the tribunal and to all other parties written points of reply regarding counterclaims.

7.6 All written submissions referred to in this article shall be accompanied by copies (or, if they are especially voluminous, lists) of all essential documents on which the party concerned relies, and (where appropriate) by any relevant samples.

7.7 Unless the parties otherwise agree, no further submissions shall be served without an order from the tribunal.

7.8 The foregoing provisions of this article shall apply, *mutatis mutandis*, to multiple claimants or respondents. In the case of third parties, or in any case where other parties are joined to the arbitration after the appointment of the tribunal, or following a consolidation of arbitrations, the nature, timing and sequence of submissions shall be as directed by the tribunal unless the parties otherwise agree.

7.9 Within 28 days after the time of submissions of the points of reply the tribunal shall convene a hearing at which directions for subsequent procedure of the arbitration may be given.

7.10 Because of their likely sensitive and confidential nature, both as between contracting parties *inter se*, and as between contracting parties and non-contracting parties, all submissions, information and documents produced or sent to the President, any party, arbitrator, investigator or expert during the course of an arbitration, whether voluntarily or pursuant to any order, and every interim and final award made by any tribunal or arbitrator, shall be treated as confidential, and shall not be used by the President, any party, arbitrator, investigator or expert for any purpose other than the arbitration. The intent of this provision is to apply the rule in *Alterskye v. Scott* (1948) 1 A11 ER 469 to any arbitration under these rules and to circumvent the decision in *Shearson Lehman Hutton Inc v. Maclaine Watson & Co Ltd* (1989) 1 A11 ER 1052.

7.11 For the avoidance of doubt, paragraph 7.10 shall not preclude the use of any award, together with any necessary supporting documents or information

(a) for the purpose of enforcing such award in any competent court: nor

(b) in any subsequent arbitration or court proceedings in connection with a plea of *res judicata* or issue estoppel, or otherwise that a party to such subsequent proceedings is estopped, by virtue of the award, from bringing a claim against the party relying upon the award.

8 Investigators and Experts Appointed by the Tribunal

8.1 On the application of any party or on its own motion the tribunal may appoint one or more investigators or experts, whether from the register or otherwise, to report to the tribunal on issues specified in the terms of

reference. Unless the parties otherwise agree, the investigator or expert shall deliver to the tribunal and to each of the parties within a time specified by the tribunal a written report setting out his conclusions and the reasons for them.

8.2 The terms of reference of the investigator or expert shall be determined by the tribunal. They shall include;

- (a) any terms of reference agreed between the parties; and
- (b) (whether or not agreed between the parties) terms of reference the tribunal considers necessary; and
- (c) directions to the investigator or expert with respect to
 - (i) the conduct of the investigation, and
 - (ii) the powers (enforceable by the tribunal) which the investigator or expert may exercise; and
- (d) directions to the investigator or expert that the investigations shall be directed to the factual issues specified and should not address any issue of legal liability to which any investigated fact may relate. Any dispute between the parties as to whether a particular matter should become part of the terms of reference shall be resolved by the tribunal.

8.3 The terms of reference of the investigator or expert and the time within which he must produce his report may be varied by the tribunal at any time on the application of the investigator or expert, or of any party, or on the tribunal's own motion.

Any question whether any matter is within the terms of reference shall be resolved by the tribunal.

8.4 The report of the investigator or expert shall not be binding on any issue of fact to be determined by the tribunal, nor shall the report be conclusive on any issue of liability to which the fact may relate. However, the onus of proving that any conclusion reached in the report is erroneous shall be on the party challenging it.

8.5 After delivery of his report, the investigator or expert shall, if a party so requests or if the tribunal of its own motion so orders, participate in an oral hearing at which the parties shall have the opportunity to question him and to present their own expert witnesses in order to testify on the points at issue.

***8A Experts appointed by the President**

8A.1 This article 8A applies where an industry agreement (other than one which provides for an expert to be appointed by a person other than the President) contains provision for any matter to be referred to or resolved by a person (an "Expert") acting as expert and not as arbitrator.

8A.2 A contracting party who wishes to refer any matter to an Expert shall serve a notice to that effect on the other contracting parties to the industry agreement concerned. Such notice shall set out a brief description of the matter to be referred to the Expert, propose a person to be appointed as the Expert, and require the other contracting parties to agree to the appointment of an Expert within 14 days from the date of the notice.

8A.3 If the contracting parties have not agreed upon the appointment of an Expert within 14 days from the date of notice, any contracting party to the industry agreement concerned may apply to the President for the appointment of a person to act as the Expert. Such application shall be accompanied by a copy of the notice served under paragraph 8A.2, and such information, representations and proposals as the applicant may consider relevant to the exercise of the President's powers under this article 8A.

8A.4 At any time before the appointment of the Expert pursuant to paragraph 8A.5, any contracting party to the industry agreement concerned, other than the applicant, may send to the President such further information, representations or proposals as may be considered relevant.

8A.5 On the expiry of 14 days after receipt of any application referred to in paragraph 8A.3 the President shall by notice to the contracting parties concerned appoint a person to act as Expert, having first ascertained his willingness so to act, and having regard to the qualifications, experience and availability of such person and the nature of the subject matter to be referred.

8A.6 If an expert is unable or unwilling to act or to continue to act for any reason, the President shall, within 7 days of receipt of a written request from the Expert or any contracting party to the industry agreement concerned, appoint a replacement.

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9 Hearings

9.1 Any party has the right to be heard before the tribunal, unless the parties have agreed on documents-only arbitration.

9.2 The tribunal shall fix the date, time and (unless the parties otherwise agree) place of any meetings and hearings in the arbitration, and shall give the parties reasonable notice thereof.

9.3 The tribunal may in advance of hearings submit to the parties a list of questions which it wishes them to treat with special attention.

9.4 All meetings and hearings shall be in private unless the parties agree otherwise.

10 Party Representatives

Any party may be represented by legal practitioners or any representatives, subject to such proof of authority as the tribunal may require.

11 Witnesses

11.1 Before any hearing, the tribunal may require any party to give notice of the identity and qualification of witnesses it wishes to call, and may require the parties to exchange statements of evidence to be given by the witnesses a specified time in advance of the hearing.

11.2 The tribunal may allow, refuse, or limit the appearance of witnesses, whether witnesses of fact or expert witnesses.

11.3 Any witness who gives oral evidence may be questioned by each of the parties or their legal practitioners, under the control of the tribunal. The tribunal may put questions at any stage of the examination of the witnesses.

11.4 The tribunal may allow the evidence of a witness to be presented in written form either as a signed statement or by a duly sworn affidavit. Subject to paragraph 11.2 any party may request that such a witness should attend for oral examination at a hearing. If he fails to attend, the tribunal may place such weight on the written evidence as it thinks fit, or exclude it altogether.

12 Powers of Arbitrators

12.1 Without prejudice to any powers which may be given to the arbitrators elsewhere in these rules, the arbitrators shall have power (either on their own motion or on the application of any party, save where stated to the contrary):

(a) to extend or abridge any time limits specified in these rules, or in any order;

(b) at any time to permit any party to amend any submissions;

- (c)** to continue with the reference in default of appearance or of any act by any of the parties in like manner as a judge of the High Court might continue with proceedings in that court where a party fails to comply with an order of that court or a requirement of rules of the court (including, for the avoidance of doubt and without limitation, power to strike out any claim, defence, counterclaim or other submission and to make any award consequent upon any such striking out), in the event a party fails.
- (i)** within the time specified in these rules or in any order or
 - (ii)** if no time is specified, within a reasonable time to do any act required by these rules or to comply with any order;
- (d)** to stay arbitration proceedings in favour of proceedings in the High Court or other forum and, in an appropriate case, to make it a condition of the stay that one or more parties commence proceedings in the High Court or such other forum forthwith;
- (e)** to order any party to provide security for the legal or other costs of any other party in any manner the tribunal thinks fit;
- (f)** to order any party to produce to other parties, a tribunal or an investigator or expert appointed in accordance with article 8, for inspection, and to supply copies of, any documents in that party's possession, custody or power, which, in the event of dispute, the tribunal determines to be relevant;
- (g)** to order any party to answer interrogatories on the application of any other party or of any investigator or expert;
- (h)** to order the inspection, preservation, storage, interim custody, sale or other disposal of any property or thing relevant to the arbitration under the control of any party;
- (i)** to order any party to provide security for all or part of any amount in dispute in the arbitration;
- (j)** to make orders authorizing, for the purpose of enabling any order to be effected, any person to enter upon or into any land or building in the possession of any party;
- (k)** to make orders authorising any samples to be taken, or any observation to be made, or experiment to be tried which may, in the tribunal's discretion, be necessary or expedient for the purpose of obtaining full information or evidence;
- (l)** only on the application of any party, to grant interim and final injunctions (without prejudice to paragraph 16.1);

(m) only on the application of any party, to order specific performance of any contract (not restricted to contracts other than a contract relating to land or any interest in land, but subject to any rule of law which would restrict this power);

(n) to order any party (the payer) to make an interim payment to any other party (the payee) of such amount as the tribunal shall in its discretion think just, not exceeding a reasonable proportion of the monetary award which in the opinion of the tribunal is likely to be recovered by the payee after taking into account any relevant contributory negligence and any set off, cross-claim or counterclaim on which the payer may be entitled to rely;

(o) to require the parties to provide a written statement of their respective cases in relation to particular issues, to provide a written answer and to give reasons for any disagreement;

(p) only on the application of any party and subject to any provision of any statute or License, or any direction or requirement of the Secretary of State, the Department or the Director acting pursuant thereto, in any case in which any industry agreement

(i) leaves any matter to be agreed between parties to the industry agreement at any date subsequent to the date of the industry agreement, and the parties thereto have failed to agree, or

(ii) refers specifically to this sub-paragraph 12.1 (p) in connection with any matter,

to impose terms in relation to any such matter on the parties, and to order that the industry agreement shall stand amended accordingly (subject, in the case of sub-sub-paragraph 12.1 (p) (i), to any contrary intention appearing from that industry agreement) provided that, in every case, the arbitrators shall have regard to the scope and objective of that industry agreement in imposing such terms;

(q) to open up, revise and review any certificate, opinion or decision of any person whose certificate, opinion or decision is subject to reference to arbitration;

(r) only on the application of any party, to order the rectification of any industry agreement, subject to any rule of law which would restrict this power.

12.2 For the avoidance of doubt nothing in these rules shall be taken as

(a) conferring power upon the arbitrators to order a party or representative of a party to give evidence (whether in person or by way of documentary or similar evidence) which could not be ordered if the action were proceeding in the High Court;

(b) detracting from the powers exercisable by arbitrators, or derogating from any power with which they may be invested, by virtue of the Arbitration Acts 1950-1979, unless expressly stated in these rules to the contrary.

13 Consolidation

13.1 On the appointment of a tribunal, and whenever requested to do so by a party, the President shall review pending arbitrations and, if it appears to the President:

(a) that some common question of law or fact arises in two or more of them, or

(b) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions, or

(c) that for some or other reason it is desirable to make a direction under this rule,

the President shall so inform the parties to all relevant arbitrations and may, upon the application of one or more of the parties to any of the arbitrations, and after consultation with the arbitrators and the parties, direct those arbitrations to be consolidated on such terms as he considers just or may direct them to be heard at the same time or one immediately after another or may order any of them to be stayed until after the determination of any of them.

13.2 At any time while the President is consulting with the parties pursuant to paragraph 13.1, any party may by application to the President object to the consolidation of the arbitrations on the grounds that information or documents which have been, will be or are likely to be disclosed to any party to the potentially consolidated arbitration are so confidential or commercially sensitive that they should be disclosed only to parties who were already parties to the same arbitration as the objecting party.

13.3 On an application to paragraph 13.2, the President shall decide whether the objection should be sustained. If so, he shall not direct that the arbitrations be consolidated.

13.4 For the purposes of the preceding paragraphs of this article, the President shall be entitled to require the parties to provide him with copies of all submissions and other documents connected with the arbitrations which appear to the President to be relevant.

13.5 If two or more arbitrations are to be consolidated pursuant to paragraph 13.1 above, and all parties to the consolidated arbitration are in agreement as to the choice of arbitrators the same shall be appointed by the President but if all parties cannot agree within 7 days of the direction under paragraph 13.1, the President shall have power to appoint arbitrators for the consolidated arbitration.

14 Joinder

14.1 The tribunal shall have power to order, on notice and on such terms as it considers just, the joinder to the arbitration of any other contracting party on the application of such contracting party or of any party or on the tribunal's own motion.

14.2 The tribunal shall have power, on such terms as it considers just, to permit any non-contracting party on such non-contracting party's application to be joined to an arbitration, but only on the basis that by making such an application the non-contracting party agrees to be bound by all provisions of these rules and by any order or interim or final award.

14.3 The tribunal shall exercise its power of joinder only if it is satisfied that

- (a) joinder of the person sought to be joined is necessary in order to ensure that all matters in dispute in the arbitration may be effectually and completely determined and adjudicated upon, or
- (b) there is a question or issue arising out of or relating to or connected with any relief or remedy claimed in the arbitration which in the opinion of the tribunal it would be just and convenient to determine as between the person sought to be joined and any party, or
- (c) if a separate arbitration was commenced against the person sought to be joined, some common question of law or fact would arise in both arbitrations, and all rights to relief claimed in both such arbitrations would be in respect of or arise out of the same transaction or series of transactions.

14.4 Any party (except, if relevant, the party who had applied to be joined) may by application to the tribunal object to the joined party remaining a party on the grounds that:

- (a) (in the case of an application other than by the joined party) information or documents which have been, will be or are likely to be disclosed to any other party are so confidential or commercially sensitive that they should be disclosed only to parties who were parties prior to the joinder of the joined party; or
- (b) (in the case of an application by the joined party) information or documents which are likely to be disclosed to any other party are so confidential or commercially sensitive that they should not be disclosed to any one or more of the parties.

14.5 On an application pursuant to paragraph 14.4, the tribunal shall decide, in consultation with the President, whether the objection should be sustained. If so, the tribunal shall order that the joined party shall immediately cease to be a party.

15 Severance

Notwithstanding any other provision of these rules concerning joinder of parties or consolidation of arbitrations the tribunal shall have power at any time, on the application of any party or on its own motion, and on such terms as it thinks just:

- (a)** to order any person
 - (i) who has been improperly or unnecessarily made a party, or
 - (ii) who has for any reason ceased to be a proper and necessary party: or
 - (iii) if satisfied that if such person continued as a party it would embarrass or delay the determination of the dispute or would otherwise be embarrassing or inconvenient, to cease to be a party;

- (b)** in any case in which there are three or more parties, to order that the arbitration as between any two or more parties proceed separately (but under the same tribunal) from the arbitration as between any other two or more parties, and to make any directions consequent thereon as the tribunal considers expedient for the future conduct of both proceedings.

16 Interim Measures

16.1 Notwithstanding the agreement to arbitrate any party or contracting party shall be entitled to make an application to the High Court for relief under R.S.C. Ord 29 rules 1-4, 6 or 7A or to any other court for relief analogous to such relief, and such application shall not be deemed incompatible with the agreement to arbitrate or as a waiver of that agreement.

16.2 A party or contracting party applying to a court for such relief shall within 7 days commence an arbitration (if one has not already been commenced) against the contracting party against whom such relief is sought.

17 Awards

17.1 The tribunal shall make its awards in writing and, unless the parties otherwise agree, shall give reasons for the award. The award shall be dated and shall be signed by the members of the tribunal.

17.2 Where there is more than one arbitrator and they fail to agree on any issue, they shall decide by a majority. If an arbitrator refuses or fails to sign the award, the signatures of the majority shall be sufficient, provided that the reason for the omitted signature is stated.

17.3 Where a decision on any issue is by a majority, the award may contain reasons by the dissenting arbitrator for his dissent, in the discretion of that arbitrator;

17.4 Awards may be expressed in any currency claimed in the arbitration.

17.5 The tribunal may award interest on any sum which is the subject of the arbitration at such rates as the tribunal determines to be appropriate and shall have the same (but no greater) powers in this respect as a judge of the High Court.

17.6 The tribunal may make separate final awards on different issues at different times.

17.7 In the event of a settlement, the tribunal may render an award recording the settlement if any party so requests.

17.8 Awards shall be final and binding on the parties as from the date they are made.

17.9 At the same time as making its award, the tribunal shall prepare a summary of the award if the tribunal considers the award contains any points which are of general importance or interest to contracting parties. Subject to paragraph 17.10, the summary shall be filed with the President. Each contracting party (and its authorised representatives) shall have the right of access to and to receive copies of any filed summary.

17.10 Prior to filing the summary with the President, the tribunal shall send a copy to each party for its approval. A party will be deemed to approve unless it objects in writing to the tribunal within 28 days of receipt of the summary. If any party objects to any part of the summary, the summary shall not be filed until the passages in question have been amended or deleted, and all parties have been given a further 28 days to approve the amended version. No summary shall be filed in any event until its contents have been approved by all parties. If no summary has been approved within a period of 6 months after the award, the tribunal shall not be required to file any summary of that award.

17.11 For the avoidance of doubt, the tribunal shall not be *functus officio* for the purposes of paragraphs 17.9 and 17.10.

18 Decisions of the President

The president shall have the sole and exclusive jurisdiction over all matters referred to him for decision by any provision of these rules, and his decision upon such matters shall be final and binding.

19 Extra-arbitral Dispute Resolution Procedure

19.1 The parties to a dispute may at any time agree or the tribunal may, unless all parties otherwise agree, direct to the parties to seek to resolve the dispute by using the procedure set forth in Appendix 2.

19.2 In the event of such an agreement being reached after an arbitration has been commenced, the parties shall:

- (a) promptly notify the tribunal of such agreement and thereafter of the outcome of the procedure; and
- (b) seek directions as to the conduct of the arbitration pending the outcome of the procedure.

19.3 In the event that the tribunal shall direct the parties as in 19.1 above, the tribunal shall:

- (a) make such directions as to the conduct of the arbitration pending the outcome of the procedure as may be appropriate;
- (b) be entitled to direct the parties as to any of the matters set out in the Schedule to Appendix 2.

20 Costs

20.1 The tribunal shall have power to make an interim order that any party shall pay to any other party or to the tribunal or Standing Committee a proportion of any costs of an administrative nature necessarily incurred by a party or by the tribunal or by an investigator or expert in respect of the progress or conduct of the arbitration, with the intent that such costs should, so far as reasonably possible, be borne equally by the parties pending the final award of the tribunal.

20.2 The tribunal shall have power to specify in the award the amount of the costs of the arbitration and shall determine the proportions in which they shall be borne by the parties.

20.3 The tribunal shall have power:

- (a) to order in its award that all or part of the legal or other costs of a party (the payee) be paid by another party; and
- (b) to determine or assess the amount of those costs, if requested by the payee, and for this purpose shall not be *functus officio*.

20.4 If the arbitration is abandoned, suspended, stayed or concluded, by agreement or otherwise, before the final award is made, the parties shall be jointly and severally liable to pay the costs of the arbitration as determined by the tribunal, and for this purpose the tribunal shall not be *functus officio*.

21 Exclusion of Liability

Neither the President, any arbitrator, any Expert, the Association, nor any member of the Standing Committee shall be liable to any party for any act or omission in connection with any arbitration, save that the President, any arbitrator and any Expert may be liable for the consequences of conscious and deliberate wrongdoing.

22 Jurisdiction and Governing Law

22.1 All arbitrations shall take place in England or Wales.

22.2 These rules shall be governed by and construed in accordance with English Law.

ARBITRATION RULES

APPENDIX 1

NOTICE TO PRESIDENT PURSUANT TO PARAGRAPH 2.2

To: The President (Date)
The Electricity Arbitration Association
(Address)

We, (name and address of CLAIMANT) hereby notify you that:-

1. By notice to the arbitrate dated () and served by
(state means of service) on:

(name and address of RESPONDENT)

we commenced an arbitration under the rules of the
Association:

a copy of the said notice is attached hereto.

22

2. The nature and background of the dispute is as follows:

(provide brief statement of relevant details of the dispute, including details of the contract under which the dispute arises and specifying nature of relief requested)

3. The Respondent * has/has not (to the best of our knowledge) served a notice to arbitrate upon (any) additional parties * (A copy of such notice is attached)

4. EITHER

* The parties (or, if not unanimous, state which parties) have reached agreement as to the following matters:

(set out details of any agreement as to matters such as number or identity of arbitrators, or the type of expertise on the part of arbitrators or investigators which is likely to be required, and any particular procedures which the parties wish the tribunal to adopt).

OR

* The parties have not reached agreement as to any procedural matters. The CLAIMANT's proposals are as follows:-

(set out CLAIMANT's proposals as to number of arbitrators, type of expertise likely to be required and particular procedures to be adopted).

*(5. In the event that you determine that a tribunal of 3 arbitrators is appropriate, we nominate (name and address) to act as arbitrator).

(Note – only suitable if there are 2 parties to the arbitration and if the parties have not reached agreement as to identity of arbitrators or that the dispute should be referred to a sole arbitrator)

6. Copies of this notice have been served on all parties to this arbitration.

.....
(for and on Behalf of CLAIMANT)
(Solicitors for the CLAIMANT)

* Delete as appropriate

ARBITRATION RULES

APPENDIX 2

THE ELECTRICITY ARBITRATION ASSOCIATION MODEL PROCEDURE FOR EXTRA-ARBITRAL DISPUTE RESOLUTION

1 Commencement

The parties will commence the procedure by signing an agreement (“the Initiating Agreement”) substantially in the form set forth in the schedule.

2 Neutral Adviser

2.1 The parties will select a mutually acceptable person (“the Neutral Adviser”), who shall have the functions stated below or in the Initiating Agreement. In the absence of agreement between the parties as to the Neutral Adviser, the parties shall apply to the President to appoint one on the parties’ behalf.

2.2 The Neutral Adviser’s fee will be established at the time of his appointment.

3 Formal Meeting

3.1 A formal meeting (“the Formal Meeting”) will be held before a panel consisting of the Neutral Adviser and one management representative of each party (“the Management Representative”) having authority to negotiate a settlement on behalf of the party that he represents.

3.2 The Neutral Adviser will supervise the conduct of the Formal Meeting and shall, in the absence of agreement between the parties, be entitled to direct the length and format thereof.

3.3 The Formal Meeting shall be held at the time and place and in the manner designated in the Initiating Agreement.

3.4 Each party will make an oral presentation of its case and each party shall be entitled to make a reply.

3.5 The presentations and replies may be made in any form and by any individuals and may be supported by the memoranda, documents and other exhibits submitted and exchanged in accordance with clause 4 below.

3.6 The use of witnesses and experts shall be permitted.

3.7 The Neutral Adviser and the Management Representative may ask clarifying questions but otherwise presentations and replies shall not be interrupted.

3.8 A record or transcript of the Formal Meeting shall not be kept, although persons attending may take notes.

3.9 Each Management Representative shall have not more than two advisers in attendance.

4 Exchange of information

4.1 Before the Formal Meeting and by the dates specified in the Initiating Agreement, each party shall exchange and submit to the Neutral Adviser concise memoranda stating the issues in the dispute and its position in relation to such issues, as well as all documents and other exhibits which have an important and direct bearing on the issues and on which each party intends to rely at the Formal Meeting and in the dispute.

4.2 Prior to the Formal Meeting, neither the parties nor their respective advisers may unilaterally communicate with the Neutral Adviser except as specifically provided for herein or otherwise agreed.

5 Negotiations between Management Representatives

5.1 At the conclusion of the Formal Meeting, the Management Representatives shall make all reasonable efforts to agree on a resolution of the dispute.

5.2 No other persons may attend the negotiations save by the consent of all Management Representatives provided always that the Neutral Adviser shall as the request of any Management Representative attend the negotiations and/or shall give an oral opinion as to the issues raised during the Formal Meeting.

5.3 At the request of all Management Representatives, the Neutral Adviser shall also submit a written opinion as to the issues, make a settlement proposal or act as mediator in relation to the negotiations.

5.4 The terms of any settlement are to be set out in a written agreement to be signed by the Management Representatives as soon as possible after the conclusion of the negotiations and will, once signed, be legally binding on the parties.

5.5 An agreement as to terms of settlement shall not be legally binding unless and until it has been reduced to writing and signed by the Management Representatives.

6 Confidentiality

6.1 By entering into this procedure the parties shall be taken to have agreed that:-

(a) the entire procedure is confidential:

(b) the parties, their representatives and advisers and the Neutral Adviser shall keep confidential all statements and all other matters including any settlement agreement relating to the procedure except when and insofar as disclosure is necessary to implement and enforce a settlement agreement;

(c) all such matters and statements shall be inadmissible and not subject to discovery in the arbitration or any other proceedings.

6.2 The Neutral Adviser will be disqualified from acting as a witness, consultant or expert for any party to the procedure and his opinions will be inadmissible in the arbitration or any other proceedings.

7 Costs

Unless the parties otherwise agree, the fees and expenses of the Neutral Adviser as well as any other administrative expenses of the procedure will be borne equally by the parties and each party shall bear its own costs regardless of the outcome of the procedure or of the arbitration or any other proceedings.

8 Termination of Procedure

The procedure shall be deemed to have been terminated if and when:-

(a) the parties have not signed a settlement agreement within 14 days after the Formal Meeting (unless such deadline has been extended by mutual agreement); or

(b) a party serves on the other party or parties and on the Neutral Adviser a written notice of withdrawal from the procedure.

SCHEDULE

**Agreement to Initiate Extra – arbitral
Dispute Resolution Procedure**

BETWEEN

..... (Name) (“Party A”)

of
(full address)

and

.....(Name) (“PartyB”)

of
(full address)

MATTER

(Title/subject matter, parties)

DISPUTE

(Identify briefly nature of dispute) (“the dispute”)

TERMS OF AGREEMENT

1 Procedure

By this agreement we agree to seek to resolve the dispute by adopting and using The Electricity Arbitration Association Model Procedure for Extra-arbitral Dispute Resolution (“the Model Procedure”) as modified by the provisions of this agreement.

2 Management Representatives

The Management Representatives shall be:-

.....
(Name and position of Management Representative of Party A)

.....
(Name and position of Management Representative of Party B)

The Management Representatives will represent their respective companies at the Formal Meeting and will have full authority to settle the dispute.

3 Place and Time of Formal Meeting

The Formal Meeting will take place in the manner set out in Clause 3 of the Model Procedure at:

.....
..... (full address).

at o'clock on (date)

4 Exchange of Information

The parties shall comply with the provisions of Clause 4 (“Exchange of information”) of the Model Procedure by (date).

5 Conduct of Formal Meeting and Negotiations

The Formal Meeting will be conducted, as provided by Clause 3 of the Model Procedure, as follows:-

..... o'clock to o'clock
Presentation by Party A of its case.

..... o'clock to o'clock
Reply by Part B.

..... o'clock to o'clock
Presentation by Party B of its case.

..... o'clock to o'clock
Reply by Part A

The Management Representatives (and the Neutral Adviser) will meet for negotiations to settle the dispute at o'clock on
.....
(date – if possible, immediately after the Formal Meeting).

6 Conduct of Arbitration

The following directions will be sought, as provided in Clause () of the Arbitration Rules in relation to the arbitration relating to the dispute:-
(If no arbitration has been commenced, it may be agreed that none will be commenced until the termination of this procedure, in accordance with Clause 8 of the Model Procedure).

7 Neutral Adviser

The Neutral Adviser will be (name). (Delete if no Neutral Adviser to be appointed)

(Or)

The nomination of the Neutral Adviser is to be agreed between the parties by (date). The Neutral Adviser is to be qualified as follows:-

- (professional qualifications)
- (linguistic ability)
- (nationality)

SIGNED **(NAME)**
For and on behalf of Party A

SIGNED **(NAME)**
For and on behalf of Party B

THE ELECTRICITY ARBITRATION ASSOCIATION

Constitution

THE CONSTITUTION OF THE ELECTRICITY ARBITRATION ASSOCIATION

1 Name

The association shall be called The Electricity Arbitration Association.

2 Definitions and Interpretation

2.1 The following words and expressions shall have the following meanings:-

“Affiliate” in relation to a member of a Member Group means any holding company or subsidiary of that member or any subsidiary of a holding company of that member, in each case within the meaning of Sections 736, 736A and 736B of the Companies Act 1985 as substituted by Section 144 of the Companies Act 1989 and if that section is not in force at the date of formation of the Association as if such section were in force at such date:

“Arbitration” means an arbitration commenced under the Arbitration Rules;

“Arbitration Rules” means the rules adopted for the time being and from time to time by the Association to regulate the conduct of arbitrations;

“Association” means The Electricity Arbitration Association;

“Constitution” means the constitution of the Association as set out herein and as may be amended from time to time;

“Deputy President” means the person named as such at clause 8.2 or the person appointed under clause 8.4;

“Disputes Resolution Procedure” means the procedure for resolution of disputes within the electricity supply industry by means of arbitration or otherwise in accordance with the Arbitration Rules or such other procedural rules as may be adopted from time to time by the Association;

“Group Representative” means a person duly appointed either for the purpose of representing and voting on behalf of a Member Group or as a Provisional Group Representative;

“Independent of” means (i) not being employed or remunerated in any form by, and (ii) having had no connection of such nature of degree as may reasonably and objectively give rise to doubt as to lack of bias or favour;

“Member Group” means one or other of the organisations described at clause 5.1;

“President” means the person appointed under clause 8.1 or the person appointed from time to time under clause 8.3; all references herein to “the President” shall, where the context so admits, include the Deputy President;

“Provisional Group Representative” means a person appointed as such from time to time under clause 22.1;

“Register of Arbitrators” means the register of suitably qualified persons willing and able to act as arbitrators or investigators or experts maintained by the Association;

“Related Undertaking” in relation to a member of a Member Group means any undertaking in which that member has a participating interest as defined by Section 260 of the Companies Act 1985 as substituted by Section 22 of the Companies Act 1989 and if that section is not in force at the date of formation of the Association as if such section were in force at such date;

“Secretary” means the person named as such in clause 10.2 or the person appointed as such under clause 10.1;

“Standing Committee” means the committee described at clause 7.

2.2 Except as otherwise provided herein and unless the context otherwise admits, words and expressions used herein shall have the same meaning as defined in the Arbitration Rules.

2.3 Words importing the singular only also include the plural and vice versa where the context requires. Words importing the masculine only also include the feminine. Words denoting natural persons shall include corporations and vice versa.

2.4 Headings and titles shall not be taken into consideration in the interpretation or construction of the words and expressions used herein.

3 Constitution

The Association shall constitute an unincorporated members' association.

4 Objects

4.1 The objects of the Association shall be:-

- 4.1.1 to promote the efficient and economic operation of the Disputes Resolution Procedure;
- 4.1.2 to review and, if considered appropriate, to implement changes in the Arbitration Rules and all other procedural rules as may from time to time be adopted in connection with the Disputes Resolution Procedure;
- 4.1.3 to assist in the administration of the Disputes Resolution Procedure including without limitation the performance of all functions and powers vested in the President by the Arbitration Rules;
- 4.1.4 to set up and maintain the Register of Arbitrators;
- 4.1.5 to maintain a library of such summaries of arbitral awards as may be lodged in respect of Arbitrations.

5 Membership

5.1 Membership of the Association shall comprise three or more of the following six organisations:-

Member Group A: the members of which shall be National Power plc, PowerGen plc and Nuclear Electric plc

Member Group B: the members of which shall be all other generators

Member Group C: the members of which shall be public electricity suppliers, being initially:-

Eastern Electricity plc	NORWEB plc
East Midlands Electricity plc	SEEBOARD plc
London Electricity plc	Southern Electric plc
Manweb plc	South Wales Electricity (Trydan de Cymru) plc
Midlands Electricity plc	South Western Electricity plc
Northern Electric plc	Yorkshire Electricity Group plc

Member Group D: the members of which shall be independent distributors

Member Group E: the members of which shall be holders for the time being and from time to time of a transmission licence, being initially The National Grid Company plc

Member Group F: the members of which shall be persons who require or contract for a supply of electricity

5.2 Each Member Group shall procure that:-

5.2.1 its members shall be bound by the Disputes Resolution Procedure in relation to any industry agreement which contains a reference to arbitration under the Arbitration Rules; and

5.2.2 its members, and its members' Affiliates and Related Undertakings, shall not be members of any other Member Group.

5.3 Membership of the Association may be extended by Special Resolution to other organisations whose members are involved or have an interest in the electricity supply industry and whose members have agreed to be bound by the Disputes Resolutions Procedure.

6 Representation and voting

6.1 The President and each Group Representative shall be entitled to attend and be heard at every meeting of the Standing Committee.

6.2 Each Member Group shall nominate one person to act as Group Representative for the purpose of representing it and voting on its behalf.

6.3 The first Group Representatives shall be:-

Member Group A: Mr John Stubbs of Sudbury House,
15 Newgate Street, London EC1A 7UA

Member Group C: Mr Michael Brown of Templar House,
81 – 87 High Holborn, London WC1V 6NU

Member Group E: Mrs Judith Hayden of National Grid House,
Sumner Street, London SE1 9JU

6.4 Pending the formation and admission of organisations as Member Groups B, D and F the interests of the prospective members of each such Member Group shall be represented by such persons as may be appointed from time to time under clause 22.1.

6.5 Only Group Representatives and the President shall be entitled to vote.

6.6 Each Group Representative and the President shall be entitled to cast one vote. In the event of an equality of votes, the President shall have a second or casting vote.

6.7 Each group Representative shall be entitled to appoint another person (whether a Group Representative or not) as his proxy to attend and vote instead of him. A proxy shall also have the same right to be heard.

6.8 An instrument appointing a proxy shall be in writing.

7 The Standing Committee

7.1 The Group Representatives and the President shall form the Standing Committee. All the powers and functions of the Association are delegated to the Standing Committee.

7.2 Meetings and resolutions of the Standing Committee shall constitute meetings and resolutions of the Association.

8 The President

8.1 The terms of appointment of the first President and the first Deputy President shall be considered and, if approved, ratified at a meeting of the Standing Committee. The President and the Deputy President shall not be entitled to vote in relation thereto.

8.2 The first Deputy President shall be Mr David Sarre of 15 Model Cottages, Mortlake, London SW14 7PH.

8.3 Upon retirement or removal of the first and each successive President, the Group Representatives shall appoint a suitably qualified person to act as President.

8.4 Upon retirement or removal of the first and each successive Deputy President the President shall nominate for appointment by the Group Representatives a suitably qualified person to act as Deputy President.

8.5 The President and Deputy President shall be and shall remain for their respective terms of office independent of members of the Member Groups and of persons on the Register of Arbitrators.

8.6 The President shall be appointed for a period not exceeding 3 years and on such terms as the Group Representatives think fit. The President shall be eligible for re-election.

8.7 The President and the Deputy President shall be entitled to such remuneration as the Standing Committee may resolve at the time of their appointment, The remuneration shall be deemed to accrue from day to day.

8.8 The President or the Deputy President may at any time be removed from office by Special Resolution.

9 Powers and Functions of the President

9.1 The President shall exercise all functions and powers which are for the time being and from time to time vested in or ascribed to him by the Constitution, the Arbitration Rules, any other procedural rules as may from time to time be adopted by the Association in connection with the Disputes Resolution Procedure, or by Special Resolution.

9.2 Without prejudice to the generality of the foregoing, the President shall have sole and exclusive jurisdiction over all matters referred to him for decision in accordance with the Arbitration Rules and his decision upon such matters shall be final and binding.

9.3 The Deputy President shall exercise all such functions and powers of the President but only on such occasions or for such periods when there is no President or when the President may for any reason be unable to carry out his duties.

9.4 The President shall act as chairman of every meeting of the Standing Committee at which he is present. If for any reason the President is not present, the Group Representatives shall appoint one of their number to act as chairman for the purpose of conducting that meeting; no special voting right shall attach to a Group Representative thus appointed.

9.5 The President shall be entitled to require each Member Group to procure evidence of compliance with clause 5.2.

10 The Secretary

10.1 The Association shall have power to appoint pay and dismiss a Secretary and such other employees as it may deem necessary.

10.2 The first Secretary shall be Mr David Sarre of 15 Model Cottages, Mortlake, London SW14 7PH.

10.3 The Secretary's duties shall be to attend to the day to day operation of the Association and, in particular ;-

- (i) to maintain a file in respect of each Arbitration;
- (ii) to recover all charges payable to the Association;
- (iii) to attend to the requisition of meetings and to serve all requisite notices;
- (iv) to manage the accounts and periodically to prepare a report, balance sheet and profit and loss statements together with estimates of future receipts and expenditures (provided always that the Secretary may delegate performance of these duties to suitably qualified persons);

- (v) to maintain a register of names and addresses of members of the Association and of Group Representatives as nominated from time to time;
- (vi) to maintain the Register of Arbitrators;
- (vii) to keep minutes of all meetings and to circulate such minutes to the President and Group Representatives;
- (viii) to maintain and make available to parties to Arbitrations a library of such summaries of arbitral awards as may have been lodged in respect of previous Arbitrations;
- (ix) to attend to the recovery of the operational costs of the Association through the pooling and settlement arrangements for the electricity supply industry.

11 First Meeting

Notwithstanding clause 15.1, the quorum for the first meeting of the Standing committee shall be three Group Representatives present in person or by proxy. The business to be conducted at the first meeting shall include the appointment, or ratification of appointment, of the President, the Deputy President and/or the Secretary, and the adoption of the Constitution and the Arbitration Rules.

12 Annual meeting

Annual meetings shall be held in every calendar year for the following purposes:-

- (i) to receive from the Secretary a report, balance sheet and statement of accounts for the preceding financial year and an estimate of the receipts and expenditure for the current financial year;
- (ii) to appoint an auditor for the ensuing year;
- (iii) to decide on any resolution which may be submitted to the meeting;
- (iv) to elect or re-elect the President.

13 Special meetings

13.1 The President or any Group Representative may request the Secretary to requisition a special meeting at any time upon due notice being given.

13.2 If at any time a person has not been appointed as Secretary, or the Secretary is for any reason unable to act, the President shall attend to the requisition of special meetings.

14 Notice of meetings

14.1 All meetings shall be called by the Secretary on at least 14 days' written notice, or by shorter notice if so agreed in writing by all Group Representatives.

14.2 The notice of each meeting shall contain a summary of the business to be conducted together with the terms of any Special Resolution to be proposed.

14.3 Notice shall be given to the President, the Secretary and all the Group Representatives.

14.4 The accidental omission to give notice of a meeting or the non-receipt of notice to a meeting by a person entitled to receive notice shall not invalidate the proceedings at that meeting.

15 Proceedings at Meetings

15.1 The quorum shall be four Group Representatives present in person or by proxy provided that until such time as a Group Representative or a Provisional Group Representative has been appointed for one or more of the Member Groups B, D or F, the quorum shall be three Group Representatives present in person or by proxy.

15.2 No business other than that of which notices has been given shall be conducted.

15.3 A resolution put to the vote of a meeting shall be decided by a show of hands provided always that account shall be taken of votes cast by proxy.

16 Resolutions and Special Resolutions

16.1 Save where the Constitution stipulates otherwise, a resolution of the Association shall be passed by a simple majority of votes cast.

16.2 A resolution shall be a Special Resolution when passed by a majority of not less than five-sevenths of votes cast in person or by proxy.

16.3 A special Resolution shall not be passed unless notice of its proposal and of its terms was included in the notice of the meeting at which it is proposed unless agreed otherwise in writing by all Group Representatives.

16.4 A resolution in writing signed by all Group Representatives and the President shall be as valid and effective as if it had been passed at a meeting of the Association duly convened and held and may consist of several documents in the like form each signed by one or more Group Representatives and the President.

17 Delegation of Powers to President

In addition to the functions and powers delegated to the President by virtue of clause 9.1, the Standing Committee may by Special Resolution delegate to the President such further or other functions and powers as it may think fit.

18 Confidentiality

The President, Secretary and the Group Representatives shall maintain the confidentiality of any and all information relating to the business affairs of parties to disputes, including without limitation details of disputes and the terms of their resolution, to which they may gain access in the course of their involvement in the Association.

19 Amendments

19.1 Subject to clause 19.2 the Constitution, the Arbitration Rules and all other procedural rules as may from time to time be adopted in connection with the Disputes Resolution Procedure may be added to, replaced or amended by Special Resolution, save that a resolution for the variation or amendment of the representation or voting rights of Member Groups under the Constitution shall require the unanimous vote of all Group Representatives.

19.2 No amendments shall be made to either the Constitution or the Arbitration Rules prior to 1st October 1990 or the appointment of Provisional Group Representatives for Member Groups B, D and F whichever shall first occur.

20 Dissolution of Association

If at any meeting a resolution for the dissolution of the Association shall be passed unanimously, the President shall immediately or at such future date as shall be specified in such resolution, proceed to realise the property of the Association and after the discharge of all liabilities shall divide such property equally among the Member Groups. On the completion of such division the Association shall be dissolved.

21 Group Representatives' addresses

Every Group Representative shall from time to time communicate to the Secretary his address and all notices sent to such address shall be considered as having been duly given.

22 Provisional representation of Member Groups B, D and F

22.1 The President may nominate and appoint a suitable person to act as a Provisional Group Representative or to succeed any Provisional Group Representative whose appointment is terminated or who becomes unable or unwilling to act as such.

22.2 The appointment of a Provisional Group Representative shall be honorary, and shall be terminable at will by the President.

ADDITIONAL ARBITRATION RULES TO THE RULES OF THE ELECTRICITY ARBITRATION ASSOCIATION

THESE ADDITIONAL RULES SHALL BE KNOWN AS THE ELECTRICITY ARBITRATION ASSOCIATION

(LIMITED COST) ARBITRATION RULES

(2001 EDITION)

For use in England, Wales and Northern Ireland

Where any agreement, submission or reference provides for arbitration under the Electricity Arbitration Association (Limited Cost) Arbitration Rules, the parties shall be taken to have agreed that the arbitration shall be conducted in accordance with the Rules of the Electricity Arbitration Association, as amended by the aforesaid (Limited Cost) Arbitration Rules or any modified, amended or substituted Rules of Arbitration of the Electricity Arbitration Association or limited cost rules which the Association may have adopted and which have come into effect before the commencement of that arbitration.

Article 1. Introductory

1.1 These Rules are intended to govern arbitrations conducted under the Rules of the Electricity Arbitration Association (“the Principal Rules”) and the Arbitration Act 1996 (the Arbitration Act) and incorporate all the provisions of the Principal Rules and of the Arbitration Act (whether mandatory or non-mandatory) unless any such provision is non-mandatory and is expressly excluded or modified by these Rules or by the agreement of the parties.

1.2 The parties may not amend or modify these Rules or any procedure under them after the appointment of an arbitrator unless the arbitrator agrees to such amendment or modification.

1.3 By providing for the resolution of their dispute in accordance with these Rules the parties agree that the arbitrator has all necessary power to direct the arbitration procedure in such a way that the fair resolution of the parties’ dispute is achieved in a manner commensurate with the objective that the total cost of the reference (including his own fees and expenses) do not exceed 20% of the sums in issue in the reference and any costs recovered by one party from the other do not exceed 10% of such sums, provided that where such sums cannot be determined or the relief sought is not susceptible to quantification the limit may be set by the arbitrator.

1.4 The parties also agree in extension of their general duties under section 40 of the Arbitration Act to conduct themselves under these Rules in such a way that the arbitrator is given every assistance to control costs within the limits set out in Article 1.3 above.

Article 2. **Powers of the Arbitrator**

Add after paragraph 5.1:-

“5.1A The arbitrator shall have all the powers given to an arbitrator by the Arbitration Act.”

Add after paragraph 5.2:-

“5.2.A The arbitrator shall exercise his powers under section 65 of the Arbitration Act in such a way as to comply with the costs limits set out in Article 1.3 of these Rules.

5.2.B The arbitrator may limit the number of expert witnesses to be called by any party or may direct that no expert be called on any issue or issues or that expert evidence may be called only with the leave of the arbitrator.

5.2.C The arbitrator shall have the power to order on a provisional basis any relief which it would have power to grant in a final award including, without limitation, any of the following matters:-

- a) the payment of money or the disposition of property as between the parties;
- b) the grant of any relief claimed in the arbitration.

The arbitrator may exercise the power of granting provisional relief on the application of any party or of his own motion provided that he gives notice to all parties of his attention to do so and provides an opportunity to each party to make representations in respect thereof.

An order for provisional relief may be confirmed, varied or revoked in whole or in part by the arbitrator who made it or by any other arbitrator who may subsequently have jurisdiction over the dispute to which it relates.

An order for provisional relief may be enforced as a peremptory order under s. 42 of the Arbitration Act.”

Article 3. **Powers of arbitrator**

Add after paragraph 12.1:-

“12.1.A At any time after his appointment and whether before or after the close of submissions the arbitrator may give detailed directions with any appropriate timetable for all further procedural steps in the arbitration, including (but not limited to) the following:-

- a) the exchange of submissions between the parties;
- b) any amendment to, expansion of, summary of or reproduction in some other format of, any submission or any extension to or alteration of time limits for submissions;
- c) disclosure and production of documents as between the parties;
- d) the exchange of statements of evidence of witness of fact;
- e) the number and type of experts and exchanges of their reports;
- f) meetings between experts;
- g) arrangements for any hearing;
- h) the procedures to be adopted at any hearing;
- i) any time limits to be imposed on the length of oral submissions or the examination or cross examination of witnesses.

The arbitrator may give directions for the conduct of the arbitration in stages and may review, amend or vary any directions previously given in the arbitration.

The arbitrator may at any time order any of the following to be delivered to him in writing:-

- i) submissions to be advanced by or on behalf of any party;
- ii) questions intended to be put to any witness;
- iii) answers by any witness to any identified witness.

In exercising any such powers the arbitrator shall use his best endeavours to order procedures which will have the effect of ensuring the costs of the arbitration are within the limits set out in Article 1.3 of these Rules subject to the discretion of the arbitrator to vary or amend those limits where he thinks it appropriate to do so.”

Article 4. **Costs and limits on recoverable costs.**

Add after paragraph 20.3:-

“20.3.A The arbitrator shall apply the general principle that costs shall be paid by the losing party but subject to the over-riding discretion of the arbitrator as to which party will bear what proportion of the costs of the arbitration.

20.3.B The arbitrator shall have power to make separate awards of costs in relation to separate issues in the arbitration which may be set off so as to produce an overall award of costs in the arbitration.

20.3.C In exercise of his discretion the arbitrator shall have regard to all the material circumstances, including such of the following as may be relevant:-

- a) which of the issues raised in the arbitration has led to the incurring of substantial costs and which party succeeded in respect of such issues;
- b) whether any claim which succeeded was unreasonably exaggerated;
- c) the conduct of the party which succeeded on any claim and any concession made by the other party;
- d) the degree of success of each party, and
- e) any admissible evidence of any offer of settlement or compromise made by any party.

Nothing herein shall preclude the arbitrator from awarding costs at a lower level than the figure set by him in exercise of his powers to cap the costs of the arbitration where it is just and equitable so to do.

20.3.D If any admissible evidence of any offer of settlement or compromise by the respondent is provided to the arbitrator (whether such offer was made before or after the commencement of the arbitration), the arbitrator shall normally follow the principle that a claimant who is awarded the same as or less than was offered should recover costs recoverable only up to the date when it was reasonable that the offer should have been accepted and the party making the offer should recover the costs thereafter, unless the arbitrator has good reason to depart from this principle.

20.3.E If any admissible evidence of any offer of settlement or compromise by the claimant is provided to the arbitrator (whether such offer was made before or after the commencement of the arbitration), the arbitrator shall normally follow the principle that a claimant who is awarded the same as or more than the sum at which he offered to settle or otherwise obtains a more advantageous award should recover costs recoverable on an indemnity basis from the date when it was reasonable that the offer should have been accepted, unless the arbitrator has good reason to depart from this principle.

20.3.F Unless the arbitrator in his absolute discretion considers that there are good reasons for a different order the arbitrator will order that the costs recoverable by one party against the other or others shall be limited to 10% of the total of the sums in issue in the reference including any counterclaim.

20.3.G Good reasons for a different order shall include (but are not limited to):-

- a) that some or all of the relief claimed is not capable of quantification;
- b) that the total of the sums in issue is so low that it is impracticable to impose a 10% limit;
- c) that the total sums in issue is sufficiently high that the figure of 10% is incompatible with the principles of cost effective arbitration;
- d) that the total of the sums in issue was inflated by a claim made by the receiving party which was unreasonably exaggerated.

